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SENDER'S DIRECT DIAL

December 11, 2003

**BY HAND DELIVERY**

Ms. Jean Webb  
Secretary  
Commodity Futures Trading Commission  
Three Lafayette Center  
1155 21st Street, N.W.  
Washington, D.C. 20581

COMMENT

RECORDS SECTION

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RECEIVED  
C.F.T.C.

Re: **FCOJ-A and FCOJ-B Futures and Options Contract and FCOJ-B Futures Contract, 68 Fed. Reg. 66402 (Nov. 26, 2003)**

Dear Ms. Webb:

We represent TicoFruit, S.A. and its United States affiliate, Tampa Juice Service, Inc. (collectively, "TicoFruit"). TicoFruit is a Costa Rica-based orange grower and processor of frozen concentrated orange juice ("FCOJ"). We write to state the views of TicoFruit regarding the proposed new FCOJ-A and FCOJ-B futures and options contract and FCOJ-B futures contract proposed by the Citrus Associate of the New York Cotton Exchange ("CANYCE"). TicoFruit opposes the proposed contract change.

The proposed change would restrict the main trading vehicle (FCOJ-A) to contracts for delivery of Florida and Brazil FCOJ only. We believe that the proposed change is unjustified by

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market conditions. The new contract will harm producers like TicoFruit whose FCOJ products would now be disfavored for trading. The change also risks harm to the buyers of FCOJ.

***Harm to Non-Florida, Non-Brazil Producers Will Cause Harm to Purchasers***

The proposal discriminates unreasonably between FCOJ of equal quality, based solely on point of origin. This discrimination will prevent non-Florida, non-Brazil producers – including those from California, Texas, Costa Rica, Mexico and Belize -- from hedging their crops using the main FCOJ trading vehicle.

The proposal to include the unrestricted FCOJ-B differential contract will not protect the disfavored producers. Based on prior experience with such differential contracts in FCOJ, it is virtually certain that FCOJ-B will fail due to insufficient trading volumes. *See* Affidavit of John G. Reilly, Ph.D (“Reilly Aff.,” Ex. A hereto) ¶¶ 15-20.

Loss of hedging is a serious competitive disadvantage for non-Florida, non-Brazil producers. To survive in a market with high price volatility, growers must rely heavily on futures markets as a vehicle for hedging against price fluctuations. *See* Reilly Aff. ¶¶ 13, 21-22. The disfavored producers’ ability to finance their operations and invest in supply will be sharply reduced. Some producers may even be forced to exit the market or scale back supply, raising the total level of market concentration to the detriment of consumers.

Discrimination against non-Brazil foreign source FCOJ would harm FCOJ buyers. Buyers’ interests are served when a variety of producers compete. We note that the Brazil and Florida FCOJ markets appear to be highly concentrated and interlocking. *See* Reilly Aff. ¶¶ 22-3. One observer recently described the Brazilian market as a “cartel” that is controlled by a “few huge [ ] processors.” *See* A. Lavigne, “Keep Tariffs on Imported Orange Juice,” *Miami Herald*, Nov. 14, 2003 (Ex. B). Under these circumstances, any proposal that harms the competitive strength of non-Brazil foreign sources is very likely to harm consumers.

***Need for Change Has Not Been Demonstrated.***

CANYCE has not produced market data supporting the need for the proposed change. Their November 11 submission does not attach any data. On October 31 we requested supporting data directly from CANYCE, and none has yet been provided to us.

CANYCE cites only the Customs Service labeling regulations as the reason for its proposed change. However, CANYCE concedes that buyers can use standardized labels for their juice provided that 75% or more of the foreign-sourced contents are from a single country such as Brazil. Thus, buyers who use standardized labels do *not* need to exclude non-Brazil FCOJ from their purchases.

We have proposed non-discriminatory and less-restrictive means to assist FCOJ buyers to meet their labeling requirements. *See* letter, M. Strimel to F. Schoenhut, Oct. 31, 2003 (Ex. C). Thus, we suggested a requirement that country of origin percentages be specified at delivery. Such a non-discriminatory requirement would allow compliance with Customs regulations while preserving customer choice and protecting the ability of producers in non-dominant regions to compete. Moreover, we demonstrated how such a percentage labeling requirement would provide information that the Customs Service already requires processors to know, and how it would facilitate compliance with the Bioterrorism Preparedness and Response Act of 2002. *Id.* CANYCE, intent on a solution that favors companies from Florida and Brazil, has never explained why this reasonable proposal is inadequate.

In sum, the Customs Service regulations do not discriminate against non-Brazilian foreign-source FCOJ. Nor do they discriminate against non-Florida domestic FCOJ. Thus, neither should the Exchange.

#### ***The Commission Should Not Approve the Proposed Change***

Because the proposed contract changes submitted by CANYCE are inconsistent with the Commodities Exchange Act ("CEA") and regulations thereunder, the Commission has the authority and the responsibility to prevent these changes from taking effect by issuing a notice of non-approval. *See* 17 C.F.R. § 40.3(d). In particular, we believe CANYCE's proposal violates several "[c]ore principles for contract markets" as set out in the CEA:

- The proposed changes would not "protect market participants." 7 U.S.C. § 7(d)(12). To the contrary, as discussed above, the proposed changes pose a significant threat to TicoFruit and other non-Florida, non-Brazil producers.
- The proposed changes could create "contracts that are readily subject to market manipulation." *Id.* § 7(d)(3). Based on prior market experience, the volume likely to be traded on FCOJ-B is very small. When recommending approval of the old FCOJ-2 contract in September 1999, the Commission's own Division of Economic Analysis, discussing whether the differential contract would be "readily susceptible to price manipulation or distortion," concluded that the contract was acceptable in part because it represented such a large percentage of the total volume traded. *See* Exhibit D. This same reasoning should now lead the Commission to question whether the proposed FCOJ-B contract, representing such a small percentage of the deliverable volume, poses a danger of price manipulation or distortion.
- The proposed changes result from "conflicts of interest in the decisionmaking process of the contract market." *Id.* § 7(d)(15). The CANYCE committee responsible for the proposal includes Florida and Brazil producers, but none from

other regions. The conflict is evident from the fact that CANYCE cites only the Customs Regulations as the reason for the proposed change, yet those regulations do not distinguish between Florida and non-Florida domestic FCOJ, nor do they prevent buyers from using non-Brazil FCOJ. It seems clear that the purpose of the proposed change is to advantage Florida and Brazil producers that proposed the change.

- The proposed changes raise serious concerns about “[a]ntitrust considerations,” particularly whether the new contracts would “result in unreasonable restraints of trade” or “impos[e] any material anticompetitive burden on trading on the contract market.” *Id.* § 7(d)(18). The proposal will place producers from non-dominant regions at risk. This will inhibit their ability to compete, and enhance the market power of a small number of very large producers in Brazil and Florida. Such concerns are heightened by the recent observation of Andrew W. LaVigne, CEO of Florida Citrus Mutual, that the Brazilian orange juice processors are a “cartel.” *See* Exhibit B.

A final reason to deny approval is that the proposed change increases trade barriers by discriminating against producers from countries other than Brazil (and from states other than Florida). At a time when the United States is actively seeking to open markets for U.S. products within the Americas, it would be anomalous to allow commodities exchanges in the United States to discriminate against non-Florida, non-Brazil producers.

Prior to CANYCE’s approval of the proposed changes, we wrote to CANYCE and the New York Board of Trade (“NYBOT”) to express our concerns. *See* Ex. C. CANYCE’s filing with the Commission omits any discussion of the consequences of its proposed contract changes. Thus, CANYCE does not even attempt to show how the changes would “protect market participants,” as required by the CEA.

Furthermore, our letter to CANYCE discussed why a “differential” contract for products from the disfavored regions would not mitigate the harm to disfavored purchasers. Although we submitted the affidavit of an economist, John G. Reilly, Ph.D., who opined that the new differential contract would most likely fail, CANYCE does nothing to respond to the economic evidence.

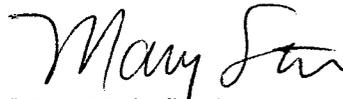
CANYCE also ignored our observations about the conflicts of interest present in its decision-making process. CANYCE does not deny that the only growers and processors represented on the committees that considered the proposed changes were from Florida and Brazil, the regions sought to be benefitted by the proposed contract changes. Furthermore, CANYCE refused to provide us with access to the voting records of the committees sponsoring the proposed changes. The Commission should investigate whether the procedures used by CANYCE in approving this change violated the CEA as well as CANYCE’s own rules.

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Finally, as Dr. Reilly recognized, the relevant market for FCOJ is characterized by a significant and growing level of concentration among dominant producers. Because the likely effect of the proposed contract changes is to increase this market concentration, the proposed changes raise serious antitrust concerns. Such concerns are heightened by the recent observation of Andrew W. LaVigne, CEO of Florida Citrus Mutual, that the Brazilian orange juice processors are a "cartel." *See* Exhibit B.

For the foregoing reasons and those expressed in our letter to CANYCE and Dr. Reilly's affidavit, TicoFruit respectfully requests that the Commission issue a notice of non-approval with respect to the proposed contract changes.

Very truly yours,

  
Mary N. Strimel

cc: Philip Tope



Affidavit of  
John G. Reilly  
Nathan Associates Inc.

Proposed Changes to the  
Frozen Concentrated Orange Juice  
Futures Contracts (FCOJ)

October 31, 2003

1. I have been asked by Cohen, Milstein, Hausfeld & Toll, P.L.L.C. to submit an affidavit (the "Affidavit") concerning the proposed changes by the Citrus Associates of the New York Cotton Exchange ("CANYCE") to the Frozen Concentrated Orange Juice ("FCOJ") Futures Contracts traded in the New York Board of Trade ("NYBOT") and its potential effects on orange juice producers in regions different from Brazil and Florida.

2. I am Director of the International Trade Economics and Policy Practice of Nathan Associates Inc., an economic and management consulting firm established in 1946 that provides economic research and analysis to public and private clients throughout the United States and abroad.

3. I have worked with Nathan Associates as an economist and management consultant in the economics of international trade and competition for over 10 years. During the past 24 years, I have provided economic analysis and expert testimony in more than a hundred international trade litigation proceedings. The focus of my work has been on the economics of competition between the imported and domestic products of concern and the principal forces influencing the operational and financial performance of domestic producers claiming to be injured by the subject imports. My case experience includes a wide variety of iron and steel products, ferroalloys, non-ferrous metals, chemical products, motor vehicles, aircraft, processed foods, textile products, electronic products, cameras and photographic supplies, industrial machinery, agricultural products, and numerous other manufactured goods. In each case I have prepared economic analyses of issues related to economic injury and causation, expert testimony, and evaluation and rebuttal of opposing economic arguments.

4. I received a Bachelor of Arts Degree in Economics from Boston College in 1963, and an M.B.A degree from the Amos Tuck Graduate School of Business Administration at

Dartmouth College in 1965. My resume and a case list are incorporated in this Affidavit as Appendix A.

5. A list of documents, data and other materials which I have reviewed and relied upon in forming the opinions expressed in this Affidavit may be found in Appendix B. These materials include industry studies and reports, reports and data from the NYBOT, reports and data from the U.S. International Trade Commission, documents provided by Cohen, Milstein, Hausfeld & Toll, P.L.L.C and publicly available information regarding the orange juice industry.

#### **Summary of Conclusions**

6. It is highly likely that the new FCOJ-2 and FCOJ-Differential futures contracts for FCOJ from regions other than Florida and Brazil that are presently under consideration would fail, as did the original FCOJ-2 and FCOJ-Differential contracts for FCOJ from Florida and Brazil. Since the new FCOJ-1 contract under consideration is limited to FCOJ from Florida and Brazil, failure of the new FCOJ-2 and FCOJ-Differential contracts would exclude all non-Florida and non-Brazil FCOJ from the futures market and seriously impair the affected producers' ability to hedge the risk associated with highly volatile FCOJ prices. In addition, restriction of futures trading to FCOJ from Florida and Brazil would confer on the dominant Florida and Brazil producers a significant additional competitive advantage over FCOJ producers in all other regions.

#### **Data and Analysis**

7. The world's largest producers of orange juice are Brazil and the United States. In the 2001 -2002 marketing year, the United States and Brazil produced approximately 91 percent of the world's total orange juice supply.<sup>1</sup> Florida alone, which accounts for approximately 95

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<sup>1</sup> "Situation and Outlook for Orange Juice," World Horticultural Trade & U.S. Export Opportunities, USDA, January 2003, pp 4, 5.

percent of total U.S. production of orange juice, provided approximately 40 percent of the total world new supply in the 2001 – 2002 marketing year.<sup>2</sup>

8. During the 2001 – 2002 marketing year, 132.1 million boxes of Florida oranges were processed into FCOJ and 85.9 million boxes were processed into chilled orange juice (COJ); thus FCOJ production accounted for approximately 60 percent of the Florida oranges processed during the period.<sup>3</sup> In 2001 - 2002, Florida accounted for roughly 89 percent of the new domestic FCOJ supply, while imports accounted for the remainder.<sup>4</sup>

9. During calendar 2002, Brazil accounted for 61.6 percent of total U.S. orange juice imports by volume, while Mexico accounted for 19.4 percent and Costa Rica accounted for 12.5 percent.<sup>5</sup>

10. The NYBOT has indicated that, due to the influence of U.S. labeling laws, FCOJ from Florida and Brazil normally trades at a premium to FCOJ from other sources.<sup>6</sup>

11. To comply with customs regulations, buyers should be able to establish the relative proportions of FCOJ from foreign sources. Buyers of FCOJ from foreign sources cannot always be sure of the specific origins of the delivered FCOJ, because the sellers frequently provide little information about proportions by country of origin. The lack of complete information about the origin of the delivered FCOJ could result in inadvertent violation of Customs labeling regulations with attendant financial penalties. Customs labeling regulations do not apply to FCOJ from Florida, and Brazil is by far the dominant foreign supplier of FCOJ to the United States. In this climate, U.S. purchasers have relied principally on Florida FCOJ, which is not subject to labeling regulations and identified Brazilian FCOJ for their foreign supply, in order to limit both their labeling costs and their

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<sup>2</sup> Id.

<sup>3</sup> "Florida Citrus Outlook 2002-03 Season," Florida Citrus Commission, October 30, 2002, Table 1.

<sup>4</sup> Id., Table 6

<sup>5</sup> See Table 1. In Calendar 2001, Brazil accounted for 64.7 percent of U.S. imports by volume.

labeling compliance risks. The dominant volume of FCOJ from Florida and Brazil in the market and the related regulatory compliance benefits are the sources of the price premium for FCOJ from Florida and Brazil. Conversely, regulatory compliance costs and risks make producers in Costa Rica, Mexico, Belize, and the like the marginal suppliers to the market after Florida and Brazil. That is, in the current climate buyers will prefer to take up the FCOJ supply from Florida and Brazil before turning to other sources to meet their full requirements.

12. Because the weather-dependent supply of FCOJ is subject to sudden significant changes, FCOJ prices are highly volatile.<sup>7</sup>

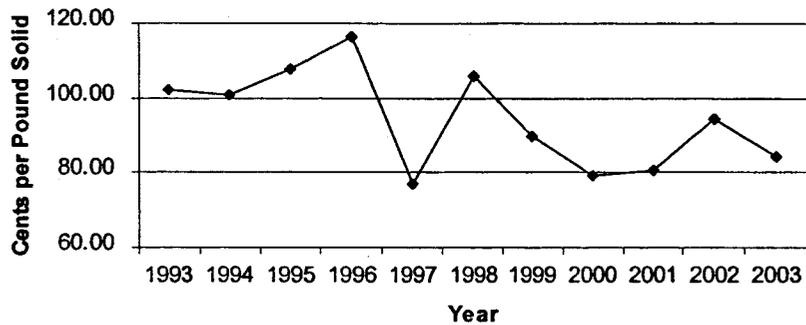
13. Buyers and sellers in markets characterized by volatile prices employ hedging strategies, which entail the buying and selling of futures contracts, to limit their risk. Although specific hedging instruments may vary, hedging in one form or another is the only available strategy to limit the risk associated with price volatility. FCOJ futures contracts are very important vehicles for managing the substantial risks inherent in FCOJ prices. Table 2 shows monthly FCOJ futures settlement prices from 1966 to the present. Average annual prices varied significantly throughout the 1966 - 2002 period. Moreover, significant variation of monthly prices within a given year is the rule rather than the exception. Figures 1 and 2 (incorporating data from Table 5) provide recent examples of annual and monthly price volatility.

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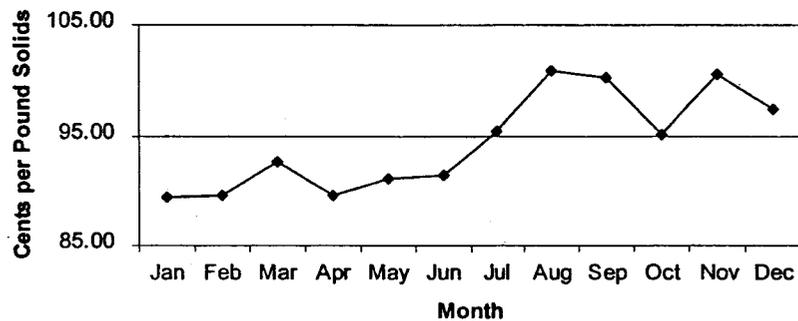
<sup>6</sup> FCOJ-2 and Differential Frequently Asked Questions (FAQ), NYBOT web site ([www.nybot.com](http://www.nybot.com)).

<sup>7</sup> "Supply factors include the amount of land for cultivation, yields and age of trees, weather conditions and the incidence of diseases. Demand depends on factors such as income levels, population growth, availability and relative prices of substitute fruits and the changing consumer preferences for fresh produce, including health, quality, convenience or taste characteristics...Citrus fruit crops are highly vulnerable to weather conditions. Frosts, freezes, droughts, wind and hurricanes may affect them considerably, resulting in supply disruptions and increases in prices." (<http://r0.unctad.org/infocomm/anglais/orange/prices.htm>).

**Figure 1: FCOJ Average Futures Settlement Price  
1993-2003 (Cents per Pounds Solids)**



**Figure 2: FCOJ Average Futures Settlement Price  
2002 (Cents per Pounds Solids)**



14. The New York Board of Trade (NYBOT) has traded three different FCOJ futures contracts since the inception of trading. The original contract ("FCOJ-1"), created in 1966, calls for delivery of 15,000 pounds of orange solids (3 percent more or less) at exchange licensed warehouses in Florida, New Jersey, Delaware, and California, not limited to any specific country of origin.<sup>8</sup>

15. The NYBOT introduced a second FCOJ futures contracts in 1999.<sup>9</sup> This new "FCOJ-2" contract calls for delivery of 15,000 pounds of orange solids (3 percent more or less) at

<sup>8</sup> The exact specifications of the contract can be obtained from the NYBOT ([www.nybot.com](http://www.nybot.com)). See <http://www.nybot.com/specs/oj.htm>.

<sup>9</sup> According to the NYBOT: "Due in large part to product labeling laws in the US, the market frequently values Florida and Brazil product differently than it values juice from other origins, even when the quality of the juices is otherwise the same. Normally, Florida and Brazil juice are valued at some premium to other juices, or to blends containing other origins, and this

exchange licensed warehouses in Florida, New Jersey, Delaware, and California, restricted to product of Florida only, Brazil only, or any combination of the two. FCOJ-2 does not trade as an outright contract for most of its life. Instead, it trades for all but a day and a half as a differential ("FCOJ-Differential") contract versus the existing FCOJ-1 contract. In the final day and a half, it trades as an FCOJ-2 contract.<sup>10</sup>

16. The FCOJ-2 and FCOJ-Differential contracts (hereinafter "FCOJ-2/Differential contracts") allowed trading of the price difference between the Florida/Brazil juice and the juice of no specific origin represented by the FCOJ-1. The intent of the NYBOT was to allow FCOJ market participants to hedge price volatility associated with the Florida/Brazil product, given its very high relative importance in the marketplace. Indeed, in justifying the FCOJ-2/Differential contract, "... the CANYCE indicated that, because FCOJ that meets the proposed delivery requirements of the FCOJ-2 futures contract constitutes approximately 90% of all FCOJ currently deliverable on the FCOJ-1 futures contract, there will be an adequate deliverable supply of FCOJ available for the amended FCOJ-2 futures contract."<sup>11</sup> The CANYCE was assuring the Commodity Futures Trading Commission and the general public that the market was not too thin to support the proposed FCOJ-2/Differential contracts.

17. In practice, the new contracts were employed very infrequently and on insignificant FCOJ volumes in comparison to the original FCOJ-1 contract. In 2001, 712,204 FCOJ-1 contracts were opened versus only 1,003 FCOJ-2/Differential contracts.<sup>12</sup> In April 2001, the NYBOT announced its intention to delist from trading FCOJ-2/Differential contracts

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premium itself can change over time...FCOJ-2 futures contracts are being introduced to allow the futures market to price the same FCOJ product which is most routinely being traded in the cash market: Florida/Brazil juice."

<sup>10</sup> See "FCOJ-2 and FCOJ Differential FAQs." New York Board of Trade.

<sup>11</sup> Federal Register: August 20, 1999 (Volume 64, Number 161), Page 45515 - 45517. Commodity Futures Trading Commission: Notice of availability of proposed amendments to contract terms and conditions.

<sup>12</sup> See Table 6.

covering certain delivery months for which there were no open contracts (open interest).<sup>13</sup>

From 2002 until the present, there have been no open FCOJ-2/Differential contracts. In short, the FCOJ-2/Differential contracts had failed despite their potential applicability to some 90 percent of the total volume traded in the FCOJ futures market.

18. In September 2003, Citrus Associates of the New York Cotton Exchange (CANYCE) announced in a press release that it was considering changes to the terms and conditions of the FCOJ futures contracts.<sup>14</sup> It is my understanding that the two major changes being considered are (1) modifying the original FCOJ-1 contract to specify delivery of Brazil/Florida product only ("Modified FCOJ-1 contract");<sup>15</sup> and (2) modifying the FCOJ-2/Differential contracts ("Modified FCOJ-2/Differential contract") to specify delivery of juice from any source other than Florida and Brazil.

19. The failure of the FCOJ-2/Differential contract introduced in 1999, suggests that the Modified FCOJ-2/Differential contract will most likely also fail. The potential FCOJ supply available for the Modified FCOJ-2/Differential contracts is only a tenth of that covered by the original contracts and there can be no assurance that there will be an adequate deliverable supply available for the Modified FCOJ-2/Differential contracts. In addition, the regulatory compliance utility of FCOJ from Florida and Brazil will continue to make producers in other regions the marginal suppliers. In short, the original failed FCOJ-2/Differential contracts had far more going for them than the proposed Modified FCOJ-2/differential contracts.

20. In theory, the new proposed FCOJ-Differential Modified futures contract would allow market participants to trade the price difference between the juices from regions other

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<sup>13</sup> See "NYBOT to delist FCOJ-2 and FCOJ-Differential Contracts." Reuters. April 27, 2001.

<sup>14</sup> "Changes Planned in FCOJ Contract - No new months to be listed in Current Contract." NYBOT. September 30, 2003.

<sup>15</sup> According to a Bloomberg article, "the board probably will specify that concentrate deliverable against futures contracts comes only from Brazil ... or from Florida." Bloomberg. September 30, 2003.

than from Florida and Brazil and the Florida/Brazil juice represented by the Modified FCOJ-1 contract. In a far more likely reality, the failure of the Modified FCOJ-2/Differential contracts means that only FCOJ from Florida and Brazil will be traded on the futures market.

21. Failure of the Modified FCOJ-2/Differential contracts will force suppliers in regions other than Brazil and Florida to trade their product in the cash market with an impaired ability to hedge the substantial risks associated with price FCOJ price volatility. In theory, the suppliers in regions other than Florida and Brazil and their customers could trade the Modified FCOJ-1 contracts as hedging vehicles. As a practical matter, however, such contracts may not provide adequate hedging vehicles due to insufficient correlation of the price for FCOJ from Florida and Brazil with the prices of FCOJ from other sources. The failure of the Modified FCOJ-2/Differential contract and the restriction of the Modified FJOC-1 contract to FCOJ from Florida and Brazil will only exacerbate the differentiation between FCOJ from Brazil and Florida and FCOJ from all other suppliers created by the labeling regulations. FCOJ from Brazil and Florida will be the primary supply for the U.S. market and FCOJ from other regions will be the marginal or "swing" supply. Accordingly, it is conceivable that relatively minor changes in the supply of FCOJ from Brazil and Florida could have significant effects on the demand for and prices of FCOJ from other regions. The prices of FCOJ from the other regions could therefore be significantly more volatile than the price of FCOJ from Florida and Brazil. Under these conditions, the Modified FCOJ-1 contract would not work as a hedging vehicle.

22. This increased risk exposure will in turn adversely affect the financial stability of producers in regions other than Florida and Brazil as well as their related ability to raise capital in debt and equity markets. In addition, Florida and Brazil FCOJ producers, which

are already advantaged by U.S. labeling laws, will enjoy an additional significant competitive advantage, since both they and their customers will be able to fully hedge the risks associated with FCOJ price volatility. Such an advantage would likely position the suppliers in Florida and Brazil to further expand their already dominant market shares at the expense of the suppliers locked out of the futures market.

23. There is a strong interlocking relationship between U.S. and Brazil FCOJ producers. There are currently fourteen major extractor-processors in Florida operating twenty facilities. Four of these organizations operating seven extraction facilities have Brazilian affiliations. They are Cargill Citro Pure, L.P., Citrusuco North America, Inc., Cutrale Citrus Juices, USA, Inc., and Louis Dreyfus Citrus, Inc.<sup>16</sup> These interlocking relationships only add to the likelihood that the Modified FCOJ-1 futures contract and a failed Modified FCOJ-2/Differential contract will harm the suppliers left out in the cold.

24. I reserve the right to amend and supplement this affidavit and to submit a rebuttal affidavit or report related to the proposed changes to the Frozen Concentrated Orange Juice ("FCOJ") Futures Contracts traded in the New York Board of Trade ("NYBOT") and its potential effects on orange juice producers in regions other than Brazil and Florida.

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<sup>16</sup> Telephone conversation with Lisa Rath, Executive Vice president, Florida Citrus Processors Association, October 31, 2003.

John G. Reilly  
John G. Reilly

City/County of Arlington  
Commonwealth of Virginia

The foregoing document was acknowledged before me this 31<sup>st</sup> day of October, 2003.

Notary Public Eric K. Bredehorst

My commission expires: \_\_\_\_\_



Eric K. Bredehorst  
NOTARY PUBLIC  
Commonwealth of Virginia  
My Commission Expires  
JULY 31, 2004

## **Appendix A: Resume of John Reilly**

**POSITION:** Consultant, Director International Trade  
Economics and Policy Practice

**NAME:** John G. Reilly

**CITIZENSHIP:** United States

**EDUCATION:** M.B.A., Amos Tuck School of Business Administration,  
Dartmouth College, 1965  
A.B., Economics, Boston College, 1963

**EXPERIENCE SUMMARY:**

Mr Reilly has thirty-five years of experience as a management consultant and economist. He is a nationally recognized expert in the economics of international trade and competition. Mr. Reilly has appeared as an expert witness on more than one hundred occasions before the U.S. International Trade Commission, the U.S. Department of Commerce, the Canadian International Trade Tribunal, the U.S./Canada Binational Panel and other bodies concerned with international trade law and economics. He has presented testimony concerning the economics of import competition and the principal forces influencing the operational and financial performance of domestic producers. In the course of this work, he has developed numerous microeconomic simulations of the roles of prices, demand characteristics, international supply dynamics, and related competitive strategies in determining relative market shares and revenues for U.S. producers, the import sources subject to litigation, and all other import sources. Mr. Reilly's industry knowledge and experience is very broad. His litigation related work has included cases involving iron and steel, ferroalloys, non-ferrous metals, chemicals, motor vehicles, aircraft, processed foods, textile products, electronic products, cameras and photographic supplies, industrial machinery, agricultural products, and other manufactured goods.

Mr. Reilly has also directed numerous studies of the competitive and economic welfare consequences of proposed trade agreements and legislation. His recent work has included:

- Development of a general purpose, multi-country simulation model (TRADESIM) for analyzing production, consumption, and international trade flow effects of new international trade agreements including the WTO; existing regional trading blocs such as NAFTA, the E.U., ASEAN, the Andean Pact, and MERCOSUR; and proposed trading blocs such as the FTAA and TRAF TA

- Estimation of the effects of Uruguay Round tariff reductions and NAFTA tariff preferences on U.S production and trade with respect to certain synthetic organic chemicals.

**John G. Reilly•2**

- A comprehensive analysis of the U.S. competitive and economic welfare effects of all Uruguay Round and NAFTA provisions affecting international trade in textile and apparel products.
- An assessment of the competitive implications for a major textile producer of tariff reductions and the elimination MFA quotas under the Uruguay Round, the creation of significant textile and tariff preferences under NAFTA, and potential parity with NAFTA for the CBERA nations.
- An evaluation of the raw material sourcing and plant location implications for a major chemical products manufacturer of rules of origin and related tariff preferences under NAFTA.
- An assessment for an Asian precision machinery producer of importing and U.S. production alternatives as they relate to competitive effectiveness and potential vulnerability to litigation under U.S. trade laws.
- An assessment for a U.S plastics products manufacturer of the specific sources of import competition in the domestic market, the strategies employed by the foreign competitors, the effects of such competition on the U.S. producer's performance, and potential competitive responses.

**EMPLOYMENT HISTORY:**

Nov. 1989- Feb. 1993 Trade Research & Analysis, Principal and Director

Mar. 1988- Oct. 1989 Temple, Barker and Sloane Inc., Vice President

July 1980- Mar. 1988 ICF Incorporated, President, International Programs

Apr. 1968- July 1980 Booz, Allen & Hamilton, Inc., Vice President

Apr. 1966- Apr. 1968 U.S. Army, Captain

Prior to joining Nathan Associates, Mr. Reilly was Principal and Director of Trade Research & Analysis, a firm he founded with P. Lance Graef, who is also with Nathan Associates. His clients at TRA included major companies in the industrial machinery, artificial fiber, inorganic chemicals, and primary metals industries concerned with international trade litigation and the international competitive implications of a variety of bilateral and multilateral trade agreements.

At Temple, Barker and Sloane Mr. Reilly directed a corporate consulting practice concerned principally with economic issues related to international trade policies and litigation. During his

eight years at ICF, Mr. Reilly built a nationally prominent international trade economics consulting practice. Under his leadership, ICF completed more than one hundred assignments for domestic and

**John G. Reilly •3**

foreign clients engaged in international trade litigation or concerned with the business and economic implications of a variety of international trade policy and legislative issues.

Mr. Reilly joined Booz, Allen & Hamilton, Inc. in 1968 and became a Vice President in 1973. From 1974 to 1977 he was both the Managing Officer of the firm's Institutional and Public Management Consulting Division and the director of a consulting practice concerned with the economic effects of U.S. environmental and energy policies on major U.S. manufacturing industries. From 1977 to 1980 Mr. Reilly directed a major international trade strategy study jointly funded by some 30 BA&H corporate clients. This study originated new methods for integrating trade policy variables and related political and economic uncertainties into the business planning process.

## John G. Reilly: International Trade Litigation Experience

Products	Clients
ANTIDUMPING AND COUNTERVAILING DUTY CASES	
Canned pineapple fruit Bicycles (China)	Thai Food Processors Association, Chinese International Chamber of Commerce
Pipe fittings (Canada)	Elkhart Products Corp.
Color negative photographic paper	Fuji Film
Flat rolled carbon steel products	Nippon Steel, Kobe Steel
Prof. cutting and grinding tools	Black & Decker
Stainless steel fittings	Taiwanese exporters
Special quality steel bars	Villares Group
PVC battery covers	Zweckform GmbH
Forklift trucks	Toyota
PC steel wire strand	CCG
Passenger cars (Canada)	Hyundai Auto Canada, Inc.
Titanium sponge	Philip Brothers, Nippon soda, Osaka Titanium, Toho Titanium
Cotton-polyester print cloth	Chinatex
Certain wine and grapes	Joseph E. Seagram & Son, Ltd.
Potash	Dead Sea Works, Ltd.
Cellular mobile telephones	Fujitsu, Hitachi, Kokusai, Matsushita, NEC, Oki, and Toshiba
Welded steel pipes and tubes	Thai Union Steel Co., Thai Steel Pipe Ind. Co., and Siam Steel Pipe Import Export Co.
Electronic display pagers	Matsushita
CTV picture tubes	Hitachi, Matsushita, Mitsubishi, and Toshiba
CTV picture tubes (Ann. review)	Electronics Industry Association of Japan
LCD television receivers	Casio, Citizen, Hitachi, Matsushita, NEC, Seiko, Epson, Sharp, Toshiba

Nathan Associates Inc.

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**Products**

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**Clients**

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**ANTIDUMPING AND COUNTERVAILING  
DUTY CASES (CONTINUED)**

Industrial nitrocellulose	Société Nationale des Poudres et Explosifs
Sodium nitrate	Chilean Nitrate Sales Corporation
Calcium hypochlorite	Nippon Soda, Nissin Denka
Pressure pipes and tubes	Sumitomo
Shop towels	Chinatex
Fresh cut roses	FTD, Asocoflores
Certain cut flowers	FTD
Industrial phosphoric acid	Negev Phosphates
Electrolytic manganese dioxide	Tosoh, Mitsui, Mitsubishi
Commercial microwave ovens	Matsushita, Sharp
Extruded rubber thread	Heveafil Sdn. Bhd., Rubberflex Sdn. Bhd.
Automobile shock absorbers	Monroe Auto Equipment Corporation
Fuel ethanol	Brazilian respondents
Bicycles (Taiwan)	Kent International
Steel rails	Krupp AG
Steel line pipe	Mannesmann AG
Hot rolled carbon steel sheet	Usinor, Creusot Loire
Brass valves	Giacomini, SpA
Commuter aircraft	Aerospatiale
Certain carbon steel products	USIMINAS, COSIPA
Certain steel pipes and tubes	Valourec
Ferrosilicon (751 Review)	General Motors
Silicon metal (751 Review)	General Motors
Hot-rolled carbon steel	Nippon steel, NKK, et al
Cold-rolled carbon steel flat products	Nippon steel, NKK, et al
Cold-rolled carbon steel (Sunset)	German steel producers, Hoogovens
Corrosion-resistant steel (Sunset)	German steel producers, Usinor
Small diameter seamless steel pipe	Iscor, Romanian producers, Czech producers
Apple juice concentrate	Chinese producers
Methionine (Sunset)	Japanese producers

<b>Products</b>	<b>Clients</b>
<b>ANTIDUMPING &amp; COUNTERVAILING DUTY CASES (CONTINUED)</b>	
Electrolytic manganese dioxide	Tosoh (Japan)
Processed mushrooms	Chinese producers
DRAMs	Taiwanese producers
Stainless steel wire rods (Sunset)	Ugine-Savoy Imphy (Usinor)
Extruded rubber tape	Indian producer
Polystyrene resin	Korean producers
Sodium sulfate	Goldcorp, Inc. (Canada)
DRAMs (Sunset)	Hyundai (Korea)
Greenhouse tomatoes	Canadian producers
Canned pineapple fruit (Sunset)	Thai food Processors Association
Wide flange steel beams (2000)	Trade Arbed
Certain carbon steel beams (2001)	Trade Arbed
Silicomanganese	Consider
Low Enriched Uranium	COGEMA and URENCO
Cold-rolled steel (2002)	Brazilian, German, Japanese, Korean producers
PC Steel wire strand	Joint Respondents from Brazil, Korea, and Mexico
Color TV Receivers (2003)	Chinese Chamber of Commerce and Chinese producers
<b>ESCAPE CLAUSE CASES (SECTION 201)</b>	
Automobiles	Automobile Importers of America, Inc.
Heavyweight motorcycles	Honda, Kawasaki, Suzuki, and Yamaha
Certain stainless steel products	Japan Specialty Steel Producers Association
Certain carbon steel products	American Institute for Imported Steel
Extruded rubber thread	Malaysian Exporters (Heveafil, Filati)

<b>Products</b>	<b>Clients</b>
ESCAPE CLAUSE CASES (SECTION 201) (CONTINUED)	
Static random access memories	Taiwanese Exporters and U.S. Fabless producers
Crawfish tail meat	Louisiana Processors
Collated roofing nails	Selected importers
Stainless steel wire rod	Taiwanese exporters
Electric shavers	North American Philips Corp.
Stainless steel flatware	Stainless Steel Flatware Marketing Guild
Certain cameras	Japanese Camera Industries Association, Taiwan Optical Appliance Manufacturers Association
Nonrubber Footwear	Footwear Industries of America, Inc., Amalgamated Clothing and Textile Workers Union
Canned tuna fish	Association of Food Industries, Inc., Thai Food Processors Association
Welded steel line pipe	Japanese and Korean producers
Crabmeat	
Steel – Injury and remedy phases	European Iron and Steel Federation
- Hot-rolled sheet and strip	
- Cold-rolled sheet and strip	
- Coated sheet and strip	
- Tin mill products	
- Heavy steel structurals	
- Stainless steel bars	
- Stainless steel wire rods	
- Stainless steel wire	
- Tool steel	
Steel – Remedy phase	South Africa Iron & Steel Institute
- All steel products	

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<b>OTHER CASES Products</b>	<b>Clients</b>
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(SECTION 402, SECTION 421, SECTION 332 SECTION 337, ETC.)

Chinaware	Ceramic Importers Association of America
Casein	Abbott Laboratories
Raw cotton	American Textile Manufacturers Institute
Leaf tobacco	Leaf Tobacco Exporters Association
Canned tuna fish	Thai Food Processors Association
Microwave ovens	Whirlpool, Tappan, Magic Chef
Fuel ethanol from CBERA nations	Tropicana, Costa Rican Sugar Cooperative
Motorcycles	Japanese Automobile Manufacturers Association
Certain street motorcycles	American Honda Motor Company
All terrain vehicles	American Honda Motor Company
Color TV picture tubes	Mitsubishi Electronics America, Inc.
Bromine compounds	Ameribrom, Inc.
Certain steel hangers	Chinese producers and MOFTEC
Certain Brake drums and rotors	Chinese producers and MOFTEC
Augmentin (antibiotic)	Glaxo SmithKline
NATIONAL DEFENSE	
Ferroalloys from South Africa	South African exporters

## Appendix B: List of Materials Reviewed and Relied Upon

"Changes Planned in FCOJ Contract - No new months to be listed in Current Contract,"  
New York Board of Trade, September 30, 2003.

Claudia Carpenter, "N.Y. Board of Trade Plans Orange-Juice Futures Change," September 30, 2003, Bloomberg, sent in an email to Philip Tope.

"Cumulative U.S. Orange-Juice Imports by Country of Origin, January-December 2001 and 2002," Florida Department of Citrus, U.S. Orange-Juice Imports, Economic & Market Research Report No. IM-02-12, February 24, 2003,  
<<http://www.fred.ifas.ufl.edu/citrus/pubs/import/im1202.htm>>.

Email and Attachment from Phil Tope, October 13, 2003, regarding FCOJ #2 Contract Volume History.

Email from Tom Abrahamson, August 27, 2003, regarding Citrus Associates Special Committee Meeting Notes/Next Meeting.

Facsimile from Citrus Associates of the New York Cotton Exchange, Inc. to Jean A. Webb, July 31, 2003, regarding Amendments to Citrus Rule 63(a)(1)-Submission Pursuant to Section 5c(c)(2) of the Act and Regulation 40.4.

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Federal Register: August 20, 1999 (Volume 64, Number 161), Commodity Futures Trading Commission: Notice of availability of proposed amendments to contract terms and conditions. Citrus Associates of the New York Cotton Exchange: Proposed Amendments to the Frozen Concentrated Orange Juice-2 (FCOJ-2) Futures Contract,  
<<http://www.cftc.gov/foia/fedreg99/foi990820a.htm>>.

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Publication 3195, May 1999, U.S. International Trade Commission.

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Concentrated Orange Juice Futures Contract Options Rules,"  
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les.htm](http://www.nybot.com/rulebooks/citrus/viewable/E.%20FCOJ%20Option%20Rules.htm)>.

New York Board of Trade, "Contract Specifications: FCOJ Futures and Options,"  
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New York Board of Trade, "FCOJ-1 & FCOJ Differential Brochure,"  
<<http://www.nybot.com/reports/ojbrochure.htm>>.

"New York FCOJ Monthly Average Nearby Futures Settlement Price (Cents Per Pounds  
Solids)," Florida Department of Citrus Economic and Market Research,  
<<http://www.fred.ifas.ufl.edu/citrus/data/OJFutures.pdf>>.

"NYBOT to delist FCOJ-2 and FCOJ-differential contracts," April 27, 2001, Reuters, sent in  
an email by Ernie Thom.

"Situation and Outlook for Orange Juice," World Horticultural Trade & U.S. Export  
Opportunities, USDA, January 2003.

Richard F. Matthews, "Frozen Concentrated Orange Juice From Florida Oranges,"  
University of Florida, Fact Sheet FS 8, April 1994,  
<<http://www.ultimatecitrus.com/pdf/fcoj.pdf>>.

United Nations Conference on Trade and Development (UNCTAD), "Citrus Fruit Prices:  
Benchmark and price discovery mechanism,"  
<<http://r0.unctad.org/infocomm/anglais/orange/prices.htm>>.

## **Appendix C: Tables**

**Table 1: U.S. Orange Juice Imports by Country of Origin, January-December 2001 and 2002**

Country	January-December 2001			January-December 2002		
	Consumptive Use (SSE Gallons)	Value (\$)	% of Total	Consumptive Use (SSE Gallons)	Value (\$)	% of Total
Brazil	156,713,496	79,953,426	64.7%	117,960,221	74,366,862	61.6%
Costa Rica	27,075,723	33,717,971	11.2%	23,909,685	36,360,482	12.5%
Mexico	37,493,058	28,083,508	15.5%	37,118,707	33,359,574	19.4%
Belize	10,985,927	20,885,783	4.5%	3,183,759	11,747,256	1.7%
Canada	2,349,888	5,124,072	1.0%	2,407,286	4,832,301	1.3%
Honduras	5,155,835	4,776,112	2.1%	2,938,667	3,717,244	1.5%
Dominican Republic	1,661,341	1,814,392	0.7%	1,478,729	1,700,359	0.8%
Republic of South Africa	140,266	191,563	0.1%	1,814,001	1,496,551	0.9%
Colombia	92,394	122,431	0.0%	317,902	285,847	0.2%
Italy	72,376	213,326	0.0%	63,561	237,839	0.1%
Trinidad/Tobago	3,391	16,486	0.0%	25,386	69,090	0.0%
France	55,273	122,010	0.0%	6,592	61,061	0.0%
Japan	54,240	57,053	0.0%	28,806	38,571	0.0%
Argentina	58,810	55,891	0.0%	28,365	30,530	0.0%
Netherlands	0	0	0.0%	15,740	24,794	0.0%
Spain	3	4,215	0.0%	5,590	22,171	0.0%
Uruguay	53,110	35,839	0.0%	6,960	18,285	0.0%
Swaziland	3,898	13,304	0.0%	3,898	18,274	0.0%
Hungary	0	0	0.0%	4,702	17,448	0.0%
Israel	1,307	2,711	0.0%	7,728	14,443	0.0%
All Other Countries	257,776	263,915	0.1%	47,287	102,231	0.0%
<b>Total</b>	<b>242,228,112</b>	<b>175,454,008</b>	<b>100%</b>	<b>191,373,572</b>	<b>168,521,213</b>	<b>100%</b>

Source: "Cumulative U.S. Orange-Juice Imports by Country of Origin, January-December 2001 and 2002," Florida Department of Citrus, U.S. Orange-Juice Imports, Economic & Market Research Report No. IM-02-12, February 24, 2003, <<http://www.ifas.ufl.edu/citrus/pubs/importfm1202.htm>>.

**Table 2: New York FCOJ Average Nearby Futures Settlement Price (1966-2003)**  
(Cents Per Pounds Solids)

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Average
1966	-	-	-	-	-	-	-	-	-	33.30	35.50	34.77	34.52
1967	32.55	32.91	30.06	30.30	36.19	37.07	37.76	36.01	36.78	43.59	52.88	58.83	38.74
1968	55.25	51.22	53.38	55.30	55.31	49.40	48.15	56.88	62.68	68.41	59.02	54.42	55.79
1969	65.10	65.61	58.67	55.78	51.77	51.12	49.25	46.37	45.78	45.46	42.50	41.87	51.61
1970	50.05	42.23	36.85	39.50	38.35	35.01	37.16	37.80	36.83	35.14	35.18	36.54	38.39
1971	36.86	44.58	46.96	52.12	58.46	63.35	60.60	60.17	57.31	62.03	65.18	61.42	55.75
1972	57.92	56.30	53.13	49.68	53.40	52.63	53.82	54.37	53.03	48.10	48.25	46.48	52.26
1973	43.77	43.32	44.06	43.07	43.62	43.81	47.38	48.52	48.85	53.20	56.66	56.11	47.70
1974	52.51	51.54	47.15	47.34	47.93	48.81	50.10	51.75	52.89	53.30	55.13	53.11	50.96
1975	48.45	47.51	48.43	48.09	51.35	52.91	56.17	59.33	61.76	61.69	62.00	59.67	54.78
1976	59.24	62.20	61.60	60.15	58.50	55.07	53.54	50.38	49.74	48.54	47.50	43.52	54.17
1977	48.64	72.12	77.77	79.48	83.69	96.48	104.22	116.41	121.38	125.41	128.59	110.63	97.07
1978	108.50	121.03	119.01	117.11	112.12	118.09	122.53	123.22	119.36	121.66	119.89	114.10	118.05
1979	118.57	113.06	103.79	106.21	103.13	97.44	100.46	106.97	107.47	106.23	101.20	97.35	105.16
1980	91.25	85.43	95.31	89.13	88.75	86.65	87.75	91.71	97.40	94.10	89.94	82.94	90.03
1981	104.25	137.13	135.59	143.35	140.25	134.25	126.79	126.32	127.42	121.20	120.74	122.75	128.34
1982	138.29	133.39	120.02	115.15	117.14	116.05	124.93	129.31	127.22	125.06	125.21	123.95	124.64
1983	111.56	107.57	113.41	114.37	116.62	117.01	118.61	118.70	120.83	123.89	128.57	126.26	118.12
1984	149.66	161.28	168.30	179.80	184.26	178.17	171.39	171.99	177.63	169.99	167.10	161.96	170.13
1985	166.13	170.16	163.71	157.46	151.54	142.57	136.98	134.08	135.13	121.03	113.47	116.02	142.36
1986	96.89	86.75	88.33	93.13	97.89	101.06	103.03	101.49	103.62	112.01	121.71	126.84	102.73
1987	122.24	123.41	132.68	133.52	133.58	132.62	129.32	129.51	134.64	142.53	163.10	167.65	137.07
1988	169.99	168.05	166.37	170.20	169.36	176.80	190.06	193.35	184.98	185.24	177.91	164.20	176.38
1989	148.08	138.39	149.22	171.90	186.42	180.65	166.48	158.86	148.29	133.07	128.97	135.61	153.83
1990	191.30	197.74	192.27	196.04	194.95	186.45	183.34	172.24	144.56	123.08	112.72	108.43	166.93
1991	118.19	117.07	115.64	115.07	119.10	116.31	118.65	118.09	120.64	151.01	168.77	160.40	128.25
1992	149.59	141.87	143.36	136.06	135.67	129.04	121.78	112.92	114.27	101.12	95.52	94.56	122.98
1993	78.91	69.11	78.46	90.65	102.46	112.91	119.03	118.71	122.53	119.39	104.81	105.97	101.91
1994	108.47	105.83	109.50	102.21	96.50	92.44	89.99	94.12	90.25	100.12	108.99	111.21	100.80
1995	103.33	102.68	100.98	107.01	104.65	100.90	97.82	105.00	111.61	115.96	123.27	120.90	107.84
1996	117.93	124.16	132.78	132.07	123.23	122.17	116.40	117.20	110.14	111.50	101.59	88.70	116.49
1997	83.56	80.36	82.98	75.13	78.64	75.95	74.86	72.21	69.99	69.82	78.02	84.11	77.14
1998	90.98	97.67	105.94	97.07	109.96	103.73	104.01	110.18	108.18	115.24	117.72	108.57	105.77
1999	99.66	93.00	83.48	84.47	85.42	89.23	80.16	92.55	92.97	88.52	94.85	93.19	89.79
2000	84.37	84.66	84.82	82.49	81.77	84.44	79.65	74.07	71.42	70.03	73.99	80.42	79.34
2001	76.01	75.69	74.80	74.25	78.33	77.02	81.36	77.68	80.81	85.26	93.76	91.67	80.55
2002	89.41	89.64	92.68	89.61	91.17	91.40	95.42	100.93	100.30	95.14	100.53	97.36	94.47
2003	92.04	87.08	84.68	85.49	85.74	85.30	81.31	78.66	77.17	-	-	-	84.16

Source: "New York FCOJ Monthly Average Nearby Futures Settlement Price (Cents Per Pounds Solids)", Florida Department of Citrus Economic and Market Research, <<http://www.fred.ifas.ufl.edu/citrus/data/OJFutures.pdf>>.

**Table 3: Annual Volume of Orange Juice Frozen Concentrate Futures Contracts (1997-2003)**

Type of Futures Contract	1997	1998	1999	2000	2001	2002	YTD-thru Sept 2003
FCOJ-1	1,029,861	914,614	795,733	712,204	577,496	577,757	445,571
FCOJ-2			82	202			
FCOJ-Differential			886	1,003	15		
<b>Total Orange Juice Futures</b>	<b>1,029,861</b>	<b>914,614</b>	<b>796,701</b>	<b>713,409</b>	<b>577,511</b>	<b>577,757</b>	<b>445,571</b>

Source: Email and Attachment from Phil Tope, October 13, 2003, regarding FCOJ #2 Contract Volume History.



Posted on Fri, Nov. 14, 2003

**FTAA**

## **Keep tariffs on imported orange juice**

**BY ANDREW W. LaVIGNE**  
[www.flcitrusmutual.com](http://www.flcitrusmutual.com)

As the U.S. government moves forward with efforts to negotiate multilateral trade agreements, it is vitally important to the state of Florida and to its citrus growers that our negotiators preserve the tariffs on imported orange juice. Our industry now finds itself at the center of regional and global trade negotiations that, if the current tariffs were reduced or eliminated, would destroy the \$9.1 billion in economic activity that our industry provides.

Free-trade proponents seek to increase competition and reduce the cost of a product or service to the consumer. However, because 90 percent of the world's orange juice is produced in two locations -- Florida and Brazil -- reducing or eliminating the tariffs will only create a foreign monopoly. This, in turn, will eliminate competition and leave consumers at the whim of a cartel, which is already controlled by only a few huge Brazilian processors. There are also only two significant markets for orange juice -- North America and the European Union. In fact, Brazil exports 99 percent of its orange-juice production to those two markets.

Florida citrus growers produce their product without the benefit of government subsidies or price supports. Our growers are the most efficient producers in the world, out-producing Brazilian growers by nearly 1,000 pounds of juice per acre. Our growers also continue to fund research efforts to make our industry more competitive and reduce production costs. Thus, the current orange-juice tariffs provide a level playing field between Brazilian citrus processors and Florida citrus growers. The tariffs, which actually produce income for the federal government, also ensure a healthy market competition.

For more than 50 years, Florida's citrus growers have spent their money to increase consumption and develop the U.S. market, which is the largest single orange-juice consuming country. They have developed new products, such as frozen concentrate and not-from-concentrate orange juice.

Just as Florida citrus growers would be decimated, Florida residents would be adversely affected by a tariff reduction:

- The Florida citrus industry provides an annual \$9.1 billion economic benefit and employs nearly 90,000 people. If the tariffs are reduced or eliminated, that economic impact and those jobs would be eliminated.
- Nearly 800,000 acres of citrus groves that provide Florida residents with green space, aquifer recharge areas and wildlife corridors would be devastated. If Florida citrus growers lose the tariffs and are put out of business, urban sprawl will increase because groves will be destroyed to make way for houses, strip malls and other forms of development.

Florida's citrus growers do not oppose the Free Trade Area of the Americas or free trade in general. In fact, Florida Citrus Mutual, the state's largest grower organization, is working closely with the Florida Chamber of Commerce and FTAA Inc. in an effort to secure the FTAA Secretariat in Miami.

We are working to ensure that the U.S. government recognizes the unique nature of the global orange-juice marketplace. We seek to promote fair trade and prevent the abuse that comes with monopoly power. To achieve these goals, the orange-juice tariffs should be excluded from any trade negotiations involving Brazil.

Andrew W. LaVigne is the executive vice president/CEO of Florida Citrus Mutual.



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OF COUNSEL

JERRY S. COHEN (1925-1995)

October 31, 2003

**VIA OVERNIGHT DELIVERY**

Frederick W. Schoenhut, Chairman  
The New York Board of Trade  
One North End Avenue  
New York, NY 10282-1101

Re: Proposed Changes to FCOJ Futures Contract

Dear Mr. Schoenhut:

We represent TicoFrut, S.A. and its United States affiliate, Tampa Juice Service, Inc. (collectively, "TicoFrut"). TicoFrut is a Costa Rica-based orange grower and processor of frozen concentrated orange juice ("FCOJ").

TicoFrut views with increasing alarm the public announcements by the Citrus Associates of the New York Cotton Exchange ("CANYCE") regarding proposed changes to FCOJ futures contracts. CANYCE has advised me that the proposed contract changes are not yet final. However, CANYCE's public statements indicate that the new contract will specify that FCOJ must originate *only* in Florida or Brazil. See Bloomberg, Sept. 30, 2003.

We believe that the proposed contract change risks severe harm to producers like TicoFrut whose countries' products would now be disfavored for trading on the New York Board of Trade exchange. We are convinced that harm to TicoFrut (and others) will not be avoided by the fig leaf of offering a "differential" contract for FCOJ from non-favored regions. We believe

that less-discriminatory means are available for NYBOT to meet market demand for country of origin declarations in FCOJ contracts. Accordingly, we urge that NYBOT drop from consideration any FCOJ contract change that unfairly favors Florida and Brazil products over other regions' products. We urge instead that NYBOT either leave the contract unchanged (*i.e.*, no country of origin restriction), or use one of several non-discriminatory means that are available to meet customer labeling requirements.

Below we analyze the likely harm to producers and markets from NYBOT's proposal, as we understand that proposal from CANYCE's public statements.<sup>1</sup> We ask that you provide a copy of this letter to the NYBOT and CANYCE committees responsible for proposing and enacting the contract changes.

A. Producers from Disfavored Regions Will Be Harmed.

The market for FCOJ is characterized by a high level of price volatility. *See* Affidavit of John G. Reilly, Ph.D ("Reilly Aff.," attached hereto), ¶ 12-13. To survive in such a market, growers must rely heavily on futures markets as a vehicle for hedging against price fluctuations. *Id.* ¶¶ 13, 21-22.

NYBOT / NYCE is the only market in this hemisphere on which FCOJ futures contracts are traded. By restricting the futures contract to Florida/Brazil FCOJ only, NYBOT eliminates at a stroke the ability of non-Florida, non-Brazil growers to hedge in this market. The harms to these disfavored producers will likely be swift. Such producers' ability to finance their operations and invest in supply will be sharply reduced. Some producers may even be forced to exit the market or scale back supply, raising the total level of market concentration to the detriment of consumers.

B. A Differential Contract Will Not Mitigate the Harm to Disfavored Producers.

The anti-competitive effect of the proposed restriction will not likely be avoided by offering a "differential" contract for products from the disfavored regions.

In 1999, the NYBOT introduced a differential contract, FCOJ-2, that was restricted to Florida and Brazil product only. The CANYCE asserted that over 90% of the total volume that was then traded on the FCOJ-1 contract would also qualify for trading under the FCOJ-2 contract. Nonetheless, the FCOJ-2 contract failed. From 2002 until now, there have been no open FCOJ-2/Differential contracts. *See* Reilly Aff. ¶ 17. It is thus highly likely that a proposed

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<sup>1</sup> CANYCE has declined to provide us a copy of the draft proposal, on the asserted grounds that the draft constitutes "proprietary, confidential business information." Letter, J. Fassler to M. Strimel, Oct. 21, 2003.

FCOJ-2 contract representing only about 10% of the deliverable volume, would also fail. *Id.* ¶¶ 19-20. The end result is that only FCOJ from Florida and Brazil would be traded on the futures market. *Id.*

Thus, a decision by NYBOT to trade non-Florida, non-Brazil FCOJ in a differential contract is likely the functional equivalent of a refusal to trade such products at all. Should the differential contract fail, as appears likely, the ability of TicoFrut and others to compete in the United States FCOJ market is placed at serious risk.

C. Less Restrictive Means Are Available to Meet Country of Origin Requirements

Given the likely harm to producers in the relevant market, what explanations have been offered for the proposed change? According to public statements, CANYCE will assert that the contract restriction is necessary in order to help customers (*i.e.*, bottlers and packers) comply with country of origin labeling requirements imposed by the Bureau of Customs and Border Protection ("CBP"). We do not believe this assertion justifies the proposed change to a Florida/Brazil contract.

The most effective (and non-discriminatory) way for NYBOT to meet customers' labeling needs would be for the FCOJ contract to require the country of origin percentages to be specified at delivery. The CBP labeling scheme is based on the percentages of country of origin for the product. The policy of the Bureau of Customs and Border Protection ("CBP") is that a processor need not list every country of origin for FCOJ. *See, e.g.*, 62 Fed. Reg. 49597 (Sept. 23, 1997). Instead, CBP allows "major supplier marking," so that processors can list up to ten foreign sources that account for 75 percent or more of the imported FCOJ. *See id.* at 49597. Therefore, it is important for purchasers to know the percentages of non-U.S. origins for the products they buy. There is no regulatory reason why NYBOT must favor the dominant producing regions of Florida and Brazil over other regions.

Moreover, the Food and Drug Administration ("FDA") recently announced regulations that would force deliverers to declare country of origin for their products. Buyers will thus have ready means to obtain the information they need for labeling compliance. The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 ("Bioterrorism Act"), Pub. L. 107-188, which President Bush signed into law on June 12, 2002, requires that the FDA receive prior notification of food imported into the United States, including "the country from which the article originates," beginning on December 12, 2003. *See id.* at § 307. On October 10, 2003, the FDA issued an interim final regulation implementing this provision. *See* 68 Fed. Reg. 58975 (Oct. 10, 2003).<sup>2</sup> According to the regulations, an importer must disclose the "FDA Country of

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<sup>2</sup> The statutory notification requirement regarding country of origin will go into effect on December 12, 2003 regardless of whether there is a final regulation in place.

Production,” which is defined for foods in their natural state as “the country where the article of food was grown” and for foods not in their natural state (e.g., frozen) as “the country where the article was made.” *Id.* at 59070-72. Given that importers will have to comply with this requirement by disclosing the country or countries of origin for FCOJ, there should be no additional difficulties in disclosing the country of origin percentages upon delivery.

Ultimately, a non-discriminatory percentage labeling requirement would preserve customer choice and preserve the ability of producers in non-dominant regions to compete. It would avoid the anti-competitive effects that would flow from eliminating a hedging vehicle that is essential to those producers’ ability to compete effectively in the United States.

D. Conflict of Interest

As described above, we believe the effect of the proposed contract change is to confer a significant business advantage on Florida and Brazil producers while putting their competitors from other regions, and therefore competition itself, at risk.

Based on the information we have from NYBOT, we believe that the committee membership that initiated the proposed change does *not* include representation from the grower regions that would be hurt by the change. Indeed, as far as we know the *only* growers and processors represented on the relevant committees are from Florida and Brazil, the regions sought to be benefitted by the proposed change.<sup>3</sup>

We wrote to CANYCE on October 8 to request information regarding the voting records of the committees that had sponsored the change, but our request for information was denied on the grounds that TicoFrut is not a member of CANYCE and “therefore[] not entitled to access to minutes of Exchange proceedings that are not public.” Letter, J. Fassler to M. Strimel, Oct. 21, 2003. Further, CANYCE asserted that “any economic analyses, drafts of new contract terms and conditions, notes or other information disseminated to and relied upon by the Board or

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<sup>3</sup> By statute, designated contract markets must “establish and enforce rules to minimize conflicts of interest in the decisionmaking process of the contract market and establish a process for resolving such conflicts of interest.” 7 U.S.C. § 7(b)(15); *see also* 17 C.F.R. Pt. 38, App. B (“The means to address conflicts of interest in decision-making of a contract market should include methods to ascertain the presence of conflicts of interest and to make decisions in the event of such a conflict.”). In addition, regulations issued by the Commodities Futures Trading Commission (“CFTC”) restrict the ability of members of a self-regulatory organization’s governing board or committees to participate in deliberations or voting on certain significant actions when they have conflicts of interest. 17 C.F.R. § 1.69; *see also* Citrus Associates Rules 69A, 69B.

Frederick W. Schoenhut  
October 31, 2003  
Page 5

committees [is] proprietary, confidential business information which the Exchange is not making public at this time." *Id.*

We are very concerned by what appears to be an agreement by Florida and Brazil producers to sponsor contract rule changes that will confer a market advantage on themselves at the expense of non-Florida/non-Brazil producers. Our concern about possible anti-competitive agreements is heightened by the significant and growing level of concentration among dominant producers in the relevant market for FCOJ. Reilly Aff. ¶ 23. If the contract changes are enacted as public reports suggest, we believe that the resulting harm to the competing producers and the FCOJ market as a whole would raise serious concerns under the antitrust laws.

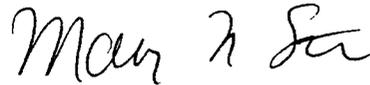
E. Conclusion

We request that NYBOT take the following steps to avoid the risk of undue harm to competitors and competition in FCOJ:

1. Cease consideration of any proposed contract change that would restrict FCOJ futures to Brazil and Florida (even if such a change included a differential contract for other countries' products); and either
2. Leave the present contract unchanged (*i.e.*, no restraint on point of origin); or
3. Enact a non-discriminatory contract change that meets customer needs for percentage-based point of origin labeling.

If NYBOT intends to proceed with a Florida/Brazil contract despite the risks we have described, we repeat our request that CANYCE provide us with the economic data and analysis supporting its actions, so that we may respond. We are willing to engage in a dialogue with CANYCE regarding the types of contract changes that would meet actual customer needs without impairing competitors and competition.

Very truly yours,



Mary N. Strimel

cc: Randy Freeman  
Thomas Abrahamson  
Jill Fassler, Esq.  
Philip Tope





U.S. COMMODITY FUTURES TRADING COMMISSION

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RECEIVED
E.T.C.

1999 SEP 22 P 1:00

DIVISION OF ECONOMIC ANALYSIS

September 22, 1999

TAC 7-1/10

To: The Commission
From: The Division of Economic Analysis
Subject: New York Cotton Exchange Proposed Amendments to the Frozen Concentrated Orange Juice-2 (FCOJ-2) Futures Contract, a Regulation 5.2 Request to List Additional Contract Months in the Dormant FCOJ-2 Futures Contract, and Conforming Amendments to the Speculative Limit Provisions of the FCOJ-1 Futures and Option Contracts, Submitted Under Fast Track Procedures.

Recommendation: The proposals appear to comply with the requirements of Commission Regulation 1.41(b) regarding Fast Track review of rule changes. Accordingly, the Division recommends that the Commission take no action to extend or terminate the 45-day Fast Track review period. Notice of this recommendation is being provided to the Office of the General Counsel and other interested staff units on September 22, 1999. Absent action by the Commission prior to the close of business on September 27, 1999, 45 days after receipt of the proposals by the Commission, the proposed amendments to the FCOJ-2 and FCOJ-1 futures contracts' rules and the Regulation 5.2 request to list additional contract months in the dormant FCOJ-2 futures contract will be deemed approved.

PROCESSING INFORMATION

Table with 3 columns: Submitted/Processed Under, Date, and Responsible DEA Staff. Includes details for 45-Day Fast Track processing and staff names like John Bird, Fred Linse, and Rick Shilts.

REQUEST FOR COMMENT

Table with 3 columns: Federal Register Publication, Comments Received, and Government Agency Comments. Shows a publication on 08/20/99 and no other agency comments.

INTRODUCTION

The New York Cotton Exchange (NYCE or Exchange) currently is designated to trade two frozen concentrated orange juice futures contracts, the actively traded FCOJ-1 futures contract and the dormant FCOJ-2 futures contract. Most of the terms of the FCOJ-1 and FCOJ-2 futures contracts are the same; the only material exception relates to certain quality specifications. In this regard, the FCOJ-1 futures contract provides for the delivery of United

States Department of Agriculture (USDA) Grade A FCOJ having a Brix value<sup>1</sup> to acid ratio of not less than 14.0 to 1 and not more than 18.0 to 1 and a minimum score of 94, with minimum component quality factors of 37 for color, 37 for flavor, and 19 for defects.<sup>2</sup> In contrast, the dormant FCOJ-2 futures contract provides for the delivery of Grade A FCOJ having a Brix value to acid ratio of not less than 13.0 to 1 and not more than 19.0 to 1 and a minimum score of 92, with minimum component quality factors of 36 for color, 36 for flavor, and 19 for defects.

Both futures contracts permit delivery of FCOJ of all origins, domestic and imported. In addition, both contracts provide for the delivery of shipping certificates, which require the certificate issuers to load FCOJ into transportation equipment provided by the certificate holder at FCOJ tank storage facilities, or warehouse receipts which represent FCOJ stored in drums at cold storage warehouses. The contracts' delivery points consist of approved delivery facilities which may be located at Wilmington, Delaware; Newark and Port Elizabeth, New Jersey; in 11 specified counties in California; and in 16 specified counties in central Florida. FCOJ is deliverable at par at the delivery facilities in Florida, Wilmington, Newark and Port Elizabeth. FCOJ in delivery facilities in California is deliverable at a discount of 10 cents per pound. Currently, a trader's combined position in both the FCOJ-1 and FCOJ-2 futures contracts is subject to speculative position limits of 3,000 contracts in all contract months combined, 1,800 contracts in individual non-spot contract months, and 300 contracts in the spot month.

#### SUMMARY OF PROPOSED AMENDMENTS

The Exchange has proposed substantive revisions to its dormant FCOJ-2 futures contract related to the origin of deliverable product and the pricing mechanism. First, the Exchange proposes to stipulate that deliverable FCOJ must originate in Florida or Brazil exclusively. To implement these proposed amendments to the origin requirements for the FCOJ-2 contract, the Exchange proposes to require that the shipping certificate issuer obtain from the USDA a *Certificate of Quality and Condition* that will certify that the delivery FCOJ originates in Florida or Brazil. In the case of FCOJ delivered against shipping certificates, the *Certificate of Quality and Condition* will be issued to the receiver. In the case of delivery against warehouse receipts, this certificate will be issued to the deliverer upon completion of the inspection and packing of the FCOJ in drums.<sup>3</sup> The Division notes these proposed

<sup>1</sup> Brix value or "degrees Brix," is a measure of the quantity of solids dissolved in a liquid. In this case, Brix is essentially a measure of the sugar content of FCOJ. FCOJ consists of water, sugar, orange solids other than sugar, citric acid and essential oils. In order to be deliverable on the FCOJ-1 contract and on the FCOJ-2 contract after trading recommences, FCOJ must have a minimum Brix value of 62.5 degrees and a Brix to acid ratio of not less than 14.0 to 1 and not more than 18.0 to 1.

<sup>2</sup> To be designated as USDA Grade A requires a minimum total scoring (grading) factor score of 90 points and minimum scores of 36 points for the color factor, 18 for defects and 36 for flavor. The lowest score for any one factor determines the grade even though the total score (the sum of the factor scores) for the lot would otherwise place it in the higher grade. For example, FCOJ having a total score of 93 with a color score of 38, a defects score of 20 and a flavor score of 35 would be Grade B. In contrast, FCOJ having a lower total score of 90 with a color score of 36, a defects score of 18 and a flavor score of 36 would be Grade A. The minimum scores required for eligibility for delivery on the FCOJ-1 futures contract are total minimum 94, color and flavor 37 each, and defects 19. The minimum scores required for eligibility for delivery on the FCOJ-2 futures contract would be total minimum 92, color and flavor 36 each, and defects 19.

<sup>3</sup> As a condition of regularity, delivery facilities are required to be under continuous USDA inspection. USDA will provide certification for any defined aspect of quality or origin that can be objectively verified upon request and payment of an appropriate inspection fee.

amendments to limit the origins of deliverable product do not affect the existing FCOJ-1 contract, as FCOJ from all origins would continue to be deliverable on the FCOJ-1 contract.

In addition, the Exchange has proposed amendments to change the pricing of the contract, by providing for the trading of the FCOJ-2 futures contract as a component of a differential price spread between the FCOJ-2 and FCOJ-1 futures contracts during most of the trading life of a contract month (FCOJ Differential Contract trading). In this respect, the proposed amendments define a long FCOJ Differential Contract as consisting of a long FCOJ-2 futures contract and a short FCOJ-1 futures contract. A short FCOJ Differential Contract is defined as a short FCOJ-2 futures contract and a long FCOJ-1 futures contract. Prior to the delivery month, a trader's position in the amended FCOJ-2 contract (termed an FCOJ Differential Contract position) would be traded as a single contract (representing the opposite FCOJ-1 and FCOJ-2 futures components) with prices being quoted on a differential basis. If the trader holds that position on the second business day preceding the first delivery notice day for the expiring contract month and thereafter, the proposed amendments provide that, on the second business day preceding the first delivery notice day for a contract month, each FCOJ Differential Contract position in that expiring contract month would be divided into its component FCOJ-1 and FCOJ-2 positions. Thus, on that date the trader would receive by book entry a long (short) position in the FCOJ-2 futures contract and an opposite short (long) position in the FCOJ-1 futures contract. Trading in the FCOJ-2 futures contract will then continue until the first notice day, with prices being quoted based on the actual value of FCOJ (not the price spread differential between the FCOJ-2 and FCOJ-1 futures contracts). Trading in the FCOJ-2 futures contract would end on the first delivery notice day for a contract month, and all positions remaining open after the close of trading on that day would be required to be settled by delivery. These amendments would not change the existing pricing conventions or the trading and delivery notice periods for expiring FCOJ-1 futures contract month.

The proposed amendments also would make the FCOJ-2 futures contract's quality specifications (specifications other than origin) identical to those of the FCOJ-1 futures contract. Other proposed amendments would provide for speculative position limits of 3,000 contracts for each of the FCOJ-1 and FCOJ-2 futures contracts in all contract months combined and 1,800 contracts for each of the FCOJ-1 and FCOJ-2 futures contracts in individual non-spot contract months. The spot month speculative position limit would continue to be applicable to a trader's combined gross position in both the FCOJ-1 and FCOJ-2 futures contracts.

Finally, the Exchange has submitted a proposal to recommence trading in the dormant FCOJ-2 contract pursuant to the provisions of Commission Regulation 5.2.

#### **ANALYSIS**

The proposed amendments are acceptable because they are consistent with the Commodity Exchange Act, the Commission's Guideline No. 1 and Regulation 150 regarding speculative limits. The amendments related to the origin requirements, pricing provisions and speculative limits are discussed below. Applying the quality standards currently applicable to the FCOJ-1 contract to the FCOJ-2 contract is appropriate because these standards reflect the most common quality of FCOJ produced, imported and used in the U.S. All other terms and conditions of the FCOJ-2 contract which are not being amended, related to the delivery locations and facilities, contract size, etc., also continue to be acceptable, because they are identical to the provisions currently applicable to the FCOJ-1 contract and they meet the requirements of the Commission's Guideline No. 1, as shown in the attached table.

Limiting the allowable origins of deliverable FCOJ, to Florida and Brazil, would not make the amended FCOJ-2 contract readily susceptible to price manipulation or distortion. In this regard, a review of the available data indicates that supplies of FCOJ that would be deliverable on the amended FCOJ-2 futures contract account for about 90 percent of the FCOJ that is deliverable on the currently trading FCOJ-1 futures contract.<sup>4</sup> Approximately one-half of the FCOJ consumed in the U.S. in a typical year is produced in the U.S., mostly in Florida, though FCOJ is produced in some other states, notably California. The majority of the remaining supply of FCOJ consumed in the U.S. is imported mainly from Brazil, though FCOJ is also imported from some other countries such as Mexico. Moreover, most of FCOJ delivered on the FCOJ-1 contract is produced in Florida or Brazil. Accordingly, deliverable supplies for the amended contract should be adequate. Finally, the Division notes that the existing spot month speculative limit, which applies to a trader's combined FCOJ-1 and FCOJ-2 positions on a gross position (rather than net) basis, further deters attempts to manipulate the futures contract.

Regarding the proposal to trade the FCOJ-2 futures as a differential to the FCOJ-1 futures contract, the Commission previously approved trading in futures contracts priced in terms of a differential to another futures contract (e.g., the Coffee, Sugar and Cocoa Exchange coffee Euro-Diff and the Brazil Diff futures contracts). Those contracts are priced based on the difference between the price of the CSCE's coffee "C" futures contract and the value of arabica coffee at European delivery points or the value of coffee of Brazilian origin at U.S. delivery points, respectively. The only difference between these previously approved futures contracts and the amended FCOJ-2 futures contract is that just prior to the delivery period the FCOJ-2 futures contract would be divided into its FCOJ-1 and FCOJ-2 futures components and then traded based on market values. The Euro Diff and Brazil Diff coffee contracts rules specify that those contracts are to be traded as differential contracts throughout the life of a contract month.

The proposal to divide the FCOJ differential contract into its FCOJ-1 and FCOJ-2 components on the second day preceding first notice day for the underlying FCOJ-1 futures contract is acceptable because it does not violate any provisions of the Act and should not lead to congestion in the futures delivery process. The unique trading features of the amended futures contract should not create any impediment to physical delivery of FCOJ for either contract. Moreover, the proposed trading provisions would not be detrimental to the economic functions of either contract. Traders would have ample time to plan their trading strategies well in advance of the date the Diff (consisting of FCOJ-1 and FCOJ-2 futures contracts) is split into its components and should have sufficient time to execute their trading plans during the limited period that the FCOJ-2 futures contract trades as an outright futures contract.<sup>5</sup>

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<sup>4</sup> In general, the determination as to whether a particular lot of FCOJ contains FCOJ produced only in Florida or Brazil is difficult because the same quality FCOJ is essentially indistinguishable as to the point of origin. However, it is possible in some cases to make a judgement as to the FCOJ origin based on its quality characteristics. In this respect, the quality of FCOJ from certain origins typically exhibits certain characteristics that differ from the characteristics of FCOJ of other origins. For example, FCOJ produced in Florida frequently exhibits a high flavor score but relatively low color score, while the reverse is true of FCOJ produced in California. This is due to differences in the varieties of oranges used to produce the FCOJ and differences in growing conditions. Defect scores (based on such factors as the presence of immature seeds) for FCOJ produced using current best practice are almost always 18 or higher.

<sup>5</sup> As in the case of traders seeking to hedge coffee in Europe or Brazilian coffee in the U.S. using the coffee differential contracts, traders wishing to hedge Florida/Brazil-origin FCOJ would need to establish a separate, parallel position in the FCOJ-1 contract, on the same side of the market as the position established in the FCOJ-2 contract. This is necessary because, at the time the FCOJ-2 differential contract is divided into its two futures components, the FCOJ-1 position established outright would offset

The proposed amendments related to speculative position limits for the FCOJ-2 and FCOJ-1 contracts are acceptable.<sup>6</sup> These amendments are not substantive and are necessary to accommodate trading under the amended terms of the FCOJ-2 contract. The spot month speculative position limit would continue to be applicable to a trader's combined gross position in both the FCOJ-1 and FCOJ-2 futures contracts.

The Division also has considered that the amended FCOJ-2 futures contract will provide for the delivery of only Florida and Brazilian origin FCOJ at all of the contract's delivery points, including the California delivery points. In this regard, the Division notes that the existing 10 cent per pound discount for delivery in California may not fall within the range of commonly observed cash market pricing relationships for generic FCOJ in California relative to the contract's other delivery points, as required by the Commission's policy on the establishment of locational price differentials.

California and other western states regularly import high flavor score FCOJ of Florida and Brazil origin to blend with FCOJ produced in California because California FCOJ frequently has a low flavor score. High flavor score FCOJ produced in Florida and Brazil generally has a higher cash market value in California than at the contract's other delivery points because such FCOJ must bear the cost of shipping to California for blending. However, Florida and Brazil FCOJ shipped to California for blending typically is not merchandized after arrival in California and, thus, would not be expected to be available for futures delivery. Accordingly, the amended FCOJ-2 futures contract's apparent deviation from the Commission's policy on locational price differentials is acceptable. Application of the existing discount for FCOJ delivery in California in satisfaction of the FCOJ-1 futures contract would not be conducive to manipulation of the FCOJ-2 futures contract given the availability of adequate deliverable supplies at the contract's other delivery points.

#### **PROPOSAL TO LIST CONTRACT MONTHS IN THE FCOJ-2 FUTURES CONTRACT**

As noted above, currently the FCOJ-2 futures contract is dormant within the meaning of Commission Regulation 5.2. Accordingly, the Exchange has submitted a proposal to list months in this dormant contract pursuant to the provisions of Regulation 5.2.

Exchange staff have indicated that the NYCE believes that it is reasonable to expect that the futures contract, as amended, will be used for hedging. The Division understands from the Exchange staff as well as industry sources that the amended FCOJ-2 futures contract may offer improved pricing and hedging utility, because the prices of the amended FCOJ-2 contract would reflect the value of FCOJ from the primary origination areas for FCOJ consumed in the U.S. Moreover, as noted, the Division is of the opinion that the terms and conditions of the subject contract, as amended, meet the requirements of Guideline No. 1 and believes that the

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the FCOJ-1 position obtained from the FCOJ-2 differential contract; thereby leaving the trader with an outright position in FCOJ-2 – the desired hedge position. Retaining this FCOJ-2 position would require delivery or receipt of FCOJ originating in either Florida or Brazil unless the position was offset before trading in the FCOJ-2 contract ended.

<sup>6</sup> Under the proposal, because each FCOJ-2 differential contract consists of an FCOJ-1 and an FCOJ-2 component, individual traders could hold a maximum of 3,000 FCOJ-1 and 3,000 FCOJ Differential contracts in all months combined, or 1,800 FCOJ-1 and 1,800 FCOJ Differential contracts in any single non-spot contract month.

amended futures contract reasonably can be expected to be used for hedging on more than an occasional basis. Therefore, the request to list months in the dormant contract should be approved pursuant to Regulation 5.2.

**Attachments**

Draft letter to the Exchange

Exchange submission dated August 11, 1999

Supplemental submission dated August 11, 1999 proposing to list new contract months under Regulation 5.2

Supplemental submission dated August 11, 1999 containing deliverable supply data



**U.S. COMMODITY FUTURES TRADING COMMISSION**

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**DIVISION OF  
ECONOMIC ANALYSIS**

September 28, 1999

Ms. Jill S. Fassler  
Associate General Counsel  
Citrus Associates of the New York Cotton Exchange, Inc.  
4 World Trade Center  
New York, New York 10048

Re: Notice that proposed amendments to the FCOJ-2 futures contract have been deemed approved; and that the request under Commission Regulation 5.2 to list additional contract months in the FCOJ-2 futures contract has been deemed approved.

Dear Ms. Fassler:

By correspondence dated August 11, 1999, the Citrus Associates of the New York Cotton Exchange, Inc. (NYCE) submitted, pursuant to Section 5a(a)(12) of the Act, 7 U.S.C. § 7a(a)(12), and Commission Regulations 1.41(b) and 5.2, proposed amendments to the FCOJ-2 futures contract and a request to list additional contract months in that contract. The proposals were submitted under the 45-day Fast Track procedures of Commission Regulation 1.41(b).

The Division has reviewed the materials submitted by the NYCE and has determined that the proposed amendments to the futures contract appear to meet the Fast Track review requirements of Commission Regulation 1.41(b). Accordingly, you are advised that, as of the close of business on September 27, 1999 the proposed new Section 79 - Scope of Chapter, amendments to Section 82, and amendments to Trading Rules 1, 3, 6, 31, 44, 47, 50, and 63 were deemed approved pursuant to Section 5a(a)(12) of the Act, 7 U.S.C. § 7a(a)(12) and Regulation 1.41(b).

Sincerely,

  
John Mielke  
Acting Director

**ATTACHMENT**

**Review of Amended Terms and Conditions of the FCOJ-2 Futures Contract**

<b>Futures Term</b>	<b>Exchange Proposal</b>	<b>Comment/Analysis</b>
Commodity Characteristics	FCOJ meeting specifications identical to the requirements of the FCOJ-1 futures contract except that the FCOJ must have been produced in Florida or Brazil, or be a blend of such FCOJ.	Acceptable. Same quality specifications adopted for the FCOJ-1 contract, which reflect commercial standards.
Delivery Points	Delivery in Florida, New Jersey and Delaware would be at par. Delivery in California would be at a discount of 10¢ per pound.	Acceptable. All delivery facilities regular for delivery of FCOJ-1 are also regular for delivery on the FCOJ-2 contract.
Delivery Instruments	<i>Shipping certificates</i> which obligate the certificate issuer to deliver FCOJ meeting contract specifications into transportation equipment provided by the certificate holder at the issuer's delivery facility. One year after a certificate is issued, the issuer is permitted to convert an outstanding shipping certificate into a <i>warehouse receipt</i> representing a specific lot of FCOJ stored in drums. Certificate holders are required to pay issuers fees (tariffs) for storage, handling, interest, insurance and other items applicable to the delivery FCOJ. The tariffs charged by the issuer must be satisfactory to the Exchange.	Acceptable. The delivery instruments for the FCOJ-2 contract are the same as those used for the FCOJ-1 contract. Though shipping certificates are not used in the cash market, shipping certificates are acceptable in view of the through-put nature of the FCOJ delivery facilities. The tariff provisions are identical to those applicable to FCOJ-1 contract deliveries. The tariff applicable to each regular delivery facility is set forth in the Exchange's "Delivery Cost Handbook." The delivery facilities are not public storage facilities.
Eligibility Requirements for Shipping Certificate Issuers	Issuers must be approved by the NYCE. Issuers must "have the capacity, equipment and ability to handle and deliver [FCOJ]," and meet safety, USDA inspection requirements and financial condition requirements including a minimum working capital of \$2,000,000 and have a letter of credit for \$1,000,000.	Acceptable. The requirements are identical to the provisions applicable to the FCOJ-1 contract.
Inspection Procedures	Shipping certificate issuers (warehouse receipt issuers) are responsible for arranging and paying for the cost of USDA inspection of delivery FCOJ to determine whether it complies with the contract's quality and origin standards.	Acceptable. The requirements other than those relating to origin are identical to the provisions applicable to the FCOJ-1 contract.
Delivery Procedure	The certificate issuer must load out the FCOJ commencing no later than 10 calendar days and ending no more than 30 business days after the certificate holder demands load out of the FCOJ.	Acceptable. The requirements are identical to the provisions applicable to the FCOJ-1 contract.
Contract Size	15,000 (±3%) pounds of FCOJ solids.	Acceptable. The contract size and related specifications are identical to those applicable to the FCOJ-1 contract.
Trading Months	January, March, May, July, September, and November.	Acceptable. The trading months are identical to those for the FCOJ-1 contract. As discussed above, the amended contract terms provide for levels of deliverable

Futures Term	Exchange Proposal	Comment/Analysis
		supplies which will not be conducive to price manipulation or distortion in those months.
Trading Hours	10:15 a.m. to 2:15 p.m.	Any hours are acceptable.
Last Trading Day	First business day of the expiring contract month.	Acceptable.
Pricing Basis and Minimum Tick	In dollars and cents per pound of FCOJ solids, in increments of \$0.0005 per pound (\$7.50 per contract).	Acceptable. The requirements are identical to the provisions applicable to the FCOJ-1 contract.
Daily Price Limit	\$.05 per pound (\$750.00 per contract), except in the spot month and next deferred contract month where a daily limit of \$.10 per pound is applicable (\$1,500.00 per contract).	Acceptable. The proposed requirements are identical to the provisions applicable to FCOJ-1 contract. The differential pricing aspects are discussed above.
Speculative Position Limits	<p>Net long or short, 1,800 contracts in any individual non-spot contract month and 3,000 in all contract months combined in FCOJ-1, FCOJ-2 ( including FCOJ differential contracts until unbundled), or options.</p> <p>300 contracts gross in FCOJ-1 and FCOJ-2 combined, effective at the commencement of trading on the business day before the first calendar day of the spot month.</p>	<p>Consistent with the requirements of Part 150 of the Commission's regulations. FCOJ-2 <i>differential</i> contracts would consist of offsetting positions in FCOJ-1 and FCOJ-2. The FCOJ differential contracts would be unbundled into the two component contracts at the close of trading on the second business day preceding the first notice day for the spot month, thus, no spot month limit is proposed for trading in the FCOJ differential contract.</p> <p>Appropriate in light of expected deliverable supply.</p>
Reportable Position Level	25 contracts.	Acceptable. Minimum level set by Commission for non-specified contracts.

**Citrus Associates of the New York Cotton Exchange, Inc.**

4 WORLD TRADE CENTER

NEW YORK, N.Y. 10048

1999-0120

**BY FACSIMILE and FEDERAL EXPRESS**

99-55

August 11, 1999

Ms. Jean A. Webb  
Secretary to the Commission  
Office of the Secretary  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21<sup>st</sup> Street, NW  
Washington, DC 20581

Re: **Amendments to FCOJ-2 Futures Contract -  
Submission Pursuant to Commission Regulation 1.41(b) - Fast Track**

Dear Ms. Webb:

Pursuant to Section 5a(12)(A) of the Commodity Exchange Act and Commission Regulation 1.41(b), the Citrus Associates of the New York Cotton Exchange, Inc. (the "Exchange") submits amendments to its Frozen Concentrated Orange Juice No. 2 futures contract ("FCOJ-2"), attached as Exhibit A.

The existing contract market for Frozen Concentrated Orange Juice ("FCOJ") calls for delivery of FCOJ-1 or FCOJ-2. Currently, the differences between FCOJ-1 and FCOJ-2 go to differences in quality characteristics. However, FCOJ-2 has never been listed for trading.

The amendments alter the juice that is deliverable under FCOJ-2 as well as how FCOJ-2 will trade. The amendments to FCOJ-2 call for the delivery of juice with the same specifications as FCOJ-1 with the single exception of the country of origin. FCOJ-2 requires the delivery of

-2-

100% Florida, 100% Brazil or blends thereof, while FCOJ-1 has no such requirements.

So as not to dilute open interest and trading in FCOJ-1, the amendments have FCOJ-2 only trade as a component of the differential spread between FCOJ-2 and FCOJ-1 (hereinafter

referred to as "the Diff") for most of its trading life. The amendments define a long position in the Diff as being long FCOJ-2 and short FCOJ-1 and a short position in the Diff as being short FCOJ-2 and long FCOJ-1.

In order to have an efficient and orderly expiration and delivery process, FCOJ-2 will trade as a component of the Diff until the close of trading on the second business day prior to first notice day. At the close of trading on the second business day prior to first notice day, the Diff positions will be unbundled into their respective FCOJ-2 and FCOJ-1 components. FCOJ-2 will then trade as an outright until noon of the first notice day. For example, if the first notice day is a Monday, the FCOJ-2 would trade only as a component of the Diff until the close of trading on the prior Thursday. On Thursday night, the Diff positions would be unbundled into positions in the FCOJ-2 contract and the FCOJ-1 contract. On Friday, FCOJ-2 would begin to trade as an outright until noon on Monday. The time period from Thursday night until noon Monday will allow for market participants to adjust their positions as necessary.

The amendments effectively make the deliverable supply of juice for FCOJ-2 a subset of FCOJ-1 deliverable juice. In other words, juice meeting the requirements of FCOJ-2 can be delivered as FCOJ-1 but not the reverse. Juice meeting FCOJ-2 delivery requirements historically constitutes approximately 90% of all FCOJ deliverable supply, (see the Chart which is attached as Exhibit B). Therefore, there is an adequate deliverable supply of juice which meets FCOJ-2 requirements.

The amendments further provide that the Diff have speculative position limits of net 1800 contracts in any one month and net combined of all months of 3000 contracts. Since the Diff is unbundled on the evening before the spot month begins, the Diff will not exist during a spot month and, therefore, no position limits are set for the spot month. However, after unbundling, the amendments require that FCOJ-1 and FCOJ-2 have a spot month position limit of 300 contracts gross. Existing aggregation provisions (Citrus Rule 63) would apply to FCOJ-2.

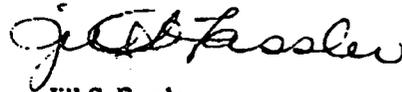
The Exchange's Board of Directors approved the amendments at their meeting on August 11, 1999. No substantive opposing views were expressed by members or others with respect to the amendments.

The Exchange intends to make the amendments effective on October 1, 1999 with the commencement of trading of the Diff.

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If you have any questions, please contact me at 212-742-6247.

Sincerely,



Jill S. Fassler  
Associate General Counsel

Enc.  
cc: David Van Wagner  
CFTC, Division of Trading and Markets  
Frederick Linse  
CFTC, Division of Economic Analysis  
Marvin Jackson  
Allen Cooper  
CFTC, Eastern Regional Office

(In the amendments below, additions are underlined and deletions are bracketed and lined out.)

FROZEN CONCENTRATED ORANGE JUICE FUTURES AND OPTIONS CONTRACTS (1801-72-84)

SECTION 72 SCOPE OF CHAPTER

For the purpose of this Section, the FCOJ contract market consists of two separate market segments: FCOJ-1 and FCOJ-2, as described in Section 80 herein. Unless otherwise noted in this Section or in subsequent Sections or Rules, futures and options contracts on FCOJ-1 and FCOJ-2 will be subject to the same Exchange Rules.

This Chapter governs transactions in:

- a) FCOJ-1 futures contracts;
- b) FCOJ-2 futures contracts;
- c) options on FCOJ-1 futures contracts.

FCOJ-2 futures contracts shall trade only as a component of the spread between FCOJ-2 and FCOJ-1 futures contracts for any like trading month (hereafter known as "FCOJ Differential contracts"), until such time as set forth in Rule 47(d); and thereafter FCOJ-2 futures contracts may trade as an outright as well as a component of the spread until the Last Trading Day as set forth in Rule 47(c).

As of the close of trading on the second business day preceding first notice day, open positions in FCOJ Differential contracts shall be assigned FCOJ-2 and FCOJ-1 futures positions in the following manner: a long FCOJ Differential position shall be assigned a long FCOJ-2 futures position and a short FCOJ-1 futures position. A short FCOJ Differential position shall be assigned a short FCOJ-2 futures position and a long FCOJ-1 futures position.

EXHIBIT A

**\*SECTION 82 FROZEN CONCENTRATED ORANGE JUICE  
TENDERABLE AGAINST EXCHANGE CONTRACTS**

- (a) FCOJ-1: "U.S. Grade A with a Brix value of not less than 62.5\*\* degrees having a Brix value to acid ratio of not less than 14.0 to 1 nor more than 18.0 to 1 and a minimum score of 94, with the minimums for the component factors fixed at 37 for color, 37 for flavor and 19 for defects. [-]"
- (b) FCOJ-2: [~~U.S. Grade A, with a Brix value of not less than 62.5\*\* degrees having a Brix value to acid ratio of not less than 13.0 to 1 nor more than 19.0 to 1 and a minimum score of 92, with the minimums for the component factors fixed at 36 for color, 36 for flavor and 19 for defects.~~] In addition to the requirements of Section 82(a) herein, FCOJ-2 shall be of 100% Florida origin, 100% Brazil origin, or blends thereof.

FCOJ as specified in a and b above is the quality of frozen concentrated orange juice that is deliverable under Exchange contract, provided that frozen concentrated orange juice with a Brix value of more than 66 degrees shall be calculated as having 7.278 pounds of solids per gallon delivered. The United States Standards for Grades of concentrated orange juice for manufacturing effective November 17, 1964 shall be used as the Standards for the grade and quality of all frozen concentrated orange juice delivered on contract for future delivery. In the event of an amendment to the official U.S. Standards for Grades of concentrated orange juice for manufacturing, such amended Standards shall become effective for deliveries on and after the effective date of such Standards.\*\*\*

---

\*The quality for FCOJ on amended FCOJ is that set forth in Section 82 (a); deliveries commenced with the January 1992 contract.

The quality for "original" FCOJ is set forth in Section 82 (b) and ceased being deliverable after the November 1991 contract.

\*\*Minimum Brix value for delivery is now 57 degrees but commencing with September 1994 deliveries, the minimum for deliveries was changed to 62.5.

\*\*\*The last amendment to such Standards was effective January 10, 1983.

**TRADING RULES**

**TRADING (1-10)**

**RULE 1 EXCHANGE HOURS**

- (a) The hour for opening the Exchange for trading in FCOJ[=1] futures contracts and FCOJ-1 options contracts shall be 10:15 a.m. and the Exchange shall remain open for trading until 2:15 p.m.

\* \* \*

- (f) On the last trading day in FCOJ futures contracts, trading in an expiring FCOJ futures contract month shall cease at 12:00 p.m., and trading in an expiring FCOJ-1 options contract month shall cease at 2:15 p.m.

**RULE 3 CONTRACT MONTHS**

- (a) Futures trading in shall be conducted in and be confined to contracts providing for delivery in the months of January, March, May, July, September, and November. (See Rule 47(a))
- (b) No futures trading shall be permitted beyond the eighteenth month after the current month except for January futures which always will have the two nearest January's listed for trading.
- (c) No options contracts shall be made or recorded for any month except those months authorized in Chapter 5 of the Rules.

**RULE 6 PRICE LIMITS**

\* \* \*

- (h) The price limits described in subparagraphs (a)-(g) above do not apply to FCOJ Differential contracts.

**RULE 31 QUALIFICATIONS**

\* \* \*

- (f) USDA Inspection

\* \* \*

- (2) In the conduct of continuous inspection, the USDA may conduct such tests, as they deem necessary, to provide assurance that the FCOJ meets the requirements set forth in By-Law 82 for FCOJ-1 and FCOJ-2. The USDA shall issue a Certificate of Quality and Condition that in the case of FCOJ-2 includes the origin designation of "Florida, "Brazil" or "Florida/Brazil" in the following manner:
  - (A) Tank delivery. On the day of physical delivery of FCOJ by tank delivery, the USDA shall issue a USDA Certificate to the receiver.
  - (B) Drum delivery. The USDA shall issue a USDA Certificate to deliverer upon inspection and packing of the drums.

[REMAINDER OF RULE UNCHANGED]

**RULE 44 SHIPPING CERTIFICATES - FROZEN CONCENTRATED ORANGE JUICE**

**A) FCOJ-1**

The following form of Frozen Concentrated Orange Juice Shipping Certificate shall be used:

**CITRUS ASSOCIATES OF THE NEW YORK COTTON EXCHANGE, INC. (Exchange)  
FROZEN CONCENTRATED ORANGE JUICE (FCOJ-1) SHIPPING CERTIFICATE FOR  
DELIVERY IN SATISFACTION OF AN EXCHANGE CONTRACT.**

Licensed Tank Facility \_\_\_\_\_

Located at \_\_\_\_\_

Tank Facility No. \_\_\_\_\_

Shipping Certificate No. \_\_\_\_\_

This is to certify that the aforesaid tank facility has on hand and shall deliver to bearer 15,000 lbs. solids (plus or minus 3%) of frozen concentrated orange juice (FCOJ-1) at the unloading platform

of said facility meeting the specifications for deliverable frozen concentrated orange juice under the By-Laws, Rules and Regulations of the Exchange upon the surrender of this shipping certificate and the payment only of all unpaid storage charges due to the facility for periods subsequent to the date of the issuance of this certificate and of such load-out charges which have not been previously paid to the facility.

#### TERMS AND CONDITIONS

- (1) (a) The facility agrees to deliver for shipment the frozen concentrated orange juice (FCOJ-1) commencing no later than 10 calendar days ("Day 10") and ending no later than 30 business days ("Day 30") after the date of demand by the holder. All requests for delivery made by a single holder or a nominee of that holder within a five day continuous period may be declared to be a batch and will be subject to the same date of demand. For purposes of this certificate, the term "date of demand" means the date on which the facility receives the shipping certificate, or in the case of the batch being declared by the facility, the term "date of demand" will refer to the first date of receipt of the certificate in such declared batch, and the term "multiple demand" means demands by the same person for delivery on 2 or more certificates with identical dates of demand.
- (i) All other rules that govern the times of delivery may be suspended if a facility requests the Warehouse and Delivery Committee to determine if an inappropriate number of requests for delivery during any given period of physical deliveries have been received.
- (ii) The facility will immediately contact the Secretary of the Exchange, or his designees. The information regarding delivery requests will be promptly relayed to the Warehouse and Delivery Committee. The Committee or a Panel of the Committee appointed by the President will decide if an inappropriate number of requests has been made. If they so decide they will set up a schedule of deliveries that will permit all deliveries to occur during a period not to exceed 30 business days from the demand date.
- (b) In making deliveries within the time period set forth in this certificate, the facility shall use its best efforts to make prompt deliveries in an orderly manner, including, but not limited to, the making of weekly pro-rata deliveries, beginning during the week within which Day 10 falls, to satisfy multiple demands outstanding.
- (c) In the event that the facility is unable to make available frozen concentrated orange juice (FCOJ-1) before the end of Day 10 then:
- (1) the facility shall pay as penalty to the holder \$150 a day for each business day after Day 10 that the facility is unable to fulfill this certificate;
- (d) The holder and the facility shall use their best efforts to coordinate dates and times

within which the frozen concentrated orange juice (FCOJ-1), in satisfaction of shipping certificate(s), will be made available and picked up.

- (c) In the event that the facility is unable to make available frozen concentrated orange juice (FCOJ-1) before the end of Day 30, then:
- (i) the facility shall pay as a penalty to the holder \$150 a day for each business day after Day 30 that the facility fails to fulfill this certificate; and
  - (ii) storage charges incurred through Day 30 remain in effect; however, storage charges arising after Day 30 shall be waived; provided, however, that if the holder does not adhere to the schedule called for in Section (1)(d) of this certificate, then the above penalty shall not apply and a new Day 10 and/or Day 30 may be commenced on any certificate(s) upon which the schedule was violated.
- (2) The facility agrees to deliver for shipment the frozen concentrated orange juice (FCOJ-1) at a maximum temperature of 20 degrees Fahrenheit.
- (3) In the event of a failure of the holder of this certificate to pay storage for three months, the undersigned reserves the right to sell or dispose of the frozen concentrated orange juice (FCOJ-1) hereunder and claims a lien against the frozen concentrated orange juice (FCOJ-1) or against the person entitled under this document or on the proceeds thereof in his possession for charges for storage, transportation, loading, handling (including the demurrage and terminal charges), labor and other charges present or future in relation to the goods and for expenses necessary for the preservation of the goods or reasonably incurred in their sale pursuant to law.
- (4) This shipping certificate is subject to conversion to a warehouse receipt requiring delivery by drums of FCOJ-1 upon demand of the facility after the expiration of one year from the date hereof. In case of such demand, the facility shall give notice thereof to the holder of this certificate if its identity and location have been furnished to the facility. The holder of this certificate should notify the facility of its identity and location not later than one year from the date hereof, failing which, delivery of the frozen concentrated orange juice (FCOJ-1) represented by this certificate may require conversion to a warehouse receipt prior to its delivery. Notice of the holders identity and location shall be held confidential by the facility.
- (5) (a) This shipping certificate may not be tendered in satisfaction of an Exchange contract under the By-Laws, Rules, and Regulations of the Citrus Associates of the New York Cotton Exchange, Inc. unless this certificate has been registered and assigned a number by the Exchange Registrar.

(b) The By-Laws, Rules, and procedures of the Citrus Associates of the New York Cotton Exchange, Inc. limit the number of shipping certificates that the Exchange is obligated to register.

(6) **UNLESS THE SHIPPING CERTIFICATE IS SIGNED, REGISTERED AND PROPERLY ENDORSED BY THE REGISTRAR WITH THE EXCHANGE SEAL IT MAY NOT BE USED FOR EXCHANGE PURPOSES.**

Signed at \_\_\_\_\_  
Tank Facility

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Authorized Signatory of  
Licensed Facility

Assigned # \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Exchange Registrar

THIS SHIPPING CERTIFICATE MAY ONLY BE CANCELED UPON NOTICE TO THE REGISTRAR'S OFFICE

B) FCOJ-2

The following form of Frozen Concentrated Orange Juice Shipping Certificate shall be used:

CITRUS ASSOCIATES OF THE NEW YORK COTTON EXCHANGE, INC. (Exchange)  
FROZEN CONCENTRATED ORANGE JUICE (FCOJ-2) SHIPPING CERTIFICATE FOR  
DELIVERY IN SATISFACTION OF AN EXCHANGE CONTRACT.

\_\_\_\_\_  
Licensed Tank Facility

\_\_\_\_\_  
Located at

\_\_\_\_\_  
Tank Facility No.

\_\_\_\_\_  
Shipping Certificate No.

This is to certify that the aforesaid tank facility has on hand and shall deliver to bearer 15,000 lbs. solids (plus or minus 3%) of frozen concentrated orange juice (FCOJ-2) at the unloading platform of said facility meeting the specifications for deliverable frozen concentrated orange juice under the By-Laws, Rules and Regulations of the Exchange upon the surrender of this shipping certificate and the payment only of all unpaid storage charges due to the facility for periods subsequent to the date of the issuance of this certificate and of such load-out charges which have not been previously paid to the facility.

(1) (a) The facility agrees to deliver for shipment the frozen concentrated orange juice

(FCOJ-2) commencing no later than 10 calendar days ("Day 10") and ending no later than 30 business days ("Day 30") after the date of demand by the holder. All requests for delivery made by a single holder or a nominee of that holder within a five day continuous period may be declared to be a batch and will be subject to the same date of demand. For purposes of this certificate, the term "date of demand" means the date on which the facility receives the shipping certificate, or in the case of the batch being declared by the facility, the term "date of demand" will refer to the first date of receipt of the certificate in such declared batch, and the term "multiple demand" means demands by the same person for delivery on 2 or more certificates with identical dates of demand.

- (i) All other rules that govern the times of delivery may be suspended if a facility requests the Warehouse and Delivery Committee to determine if an inappropriate number of requests for delivery during any given period of physical deliveries have been received.
- (ii) The facility will immediately contact the Secretary of the Exchange, or his designees. The information regarding delivery requests will be promptly relayed to the Warehouse and Delivery Committee. The Committee or a Panel of the Committee appointed by the President will decide if an inappropriate number of requests has been made. If they so decide they will set up a schedule of deliveries that will permit all deliveries to occur during a period not to exceed 30 business days from the demand date.
- (b) In making deliveries within the time period set forth in this certificate, the facility shall use its best efforts to make prompt deliveries in an orderly manner, including but not limited to, the making of weekly pro-rata deliveries, beginning during the week within which Day 10 falls, to satisfy multiple demands outstanding.
- (c) In the event that the facility is unable to make available frozen concentrated orange juice (FCOJ-2) before the end of Day 10 then:

  - (1) the facility shall pay as penalty to the holder \$150 a day for each business day after Day 10 that the facility is unable to fulfill this certificate;
- (d) The holder and the facility shall use their best efforts to coordinate dates and times within which the frozen concentrated orange juice (FCOJ-2), in satisfaction of shipping certificate(s), will be made available and picked up.
- (e) In the event that the facility is unable to make available frozen concentrated orange juice (FCOJ-2) before the end of Day 30, then:

  - (i) the facility shall pay as a penalty to the holder \$150 a day for each business day after Day 30 that the facility fails to fulfill this certificate; and

- (ii) storage charges incurred through Day 30 remain in effect; however, storage charges arising after Day 30 shall be waived; provided, however, that if the holder does not adhere to the schedule called for in Section (1)(d) of this certificate, then the above penalty shall not apply and a new Day 10 and/or Day 30 may be commenced on any certificate(s) upon which the schedule was violated.
- (2) The facility agrees to deliver for shipment the frozen concentrated orange juice (FCOJ-2) at a maximum temperature of 20 degrees Fahrenheit.
- (3) In the event of a failure of the holder of this certificate to pay storage for three months, the undersigned reserves the right to sell or dispose of the frozen concentrated orange juice (FCOJ-2) hereunder and claims a lien against the frozen concentrated orange juice (FCOJ-2) or against the person entitled under this document or on the proceeds thereof in his possession for charges for storage, transportation, loading, handling (including the demurrage and terminal charges), labor and other charges present or future in relation to the goods and for expenses necessary for the preservation of the goods or reasonably incurred in their sale pursuant to law.
- (4) This shipping certificate is subject to conversion to a warehouse receipt requiring delivery by drums of FCOJ-2 upon demand of the facility after the expiration of one year from the date hereof. In case of such demand, the facility shall give notice thereof to the holder of this certificate if its identity and location have been furnished to the facility. The holder of this certificate should notify the facility of its identity and location not later than one year from the date hereof, failing which, delivery of the frozen concentrated orange juice (FCOJ-2) represented by this certificate may require conversion to a warehouse receipt prior to its delivery. Notice of the holders identity and location shall be held confidential by the facility.
- (5) (a) This shipping certificate may not be tendered in satisfaction of an Exchange contract under the By-Laws, Rules, and Regulations of the Citrus Associates of the New York Cotton Exchange, Inc. unless this certificate has been registered and assigned a number by the Exchange Registrar.
- (b) The By-Laws, Rules, and procedures of the Citrus Associates of the New York Cotton Exchange, Inc. limit the number of shipping certificates that the Exchange is obligated to register.

(6) UNLESS THE SHIPPING CERTIFICATE IS SIGNED, REGISTERED AND PROPERLY ENDORSED BY THE REGISTRAR WITH THE EXCHANGE SEAL IT MAY NOT BE USED FOR EXCHANGE PURPOSES.

Signed at \_\_\_\_\_  
Tank Facility

Dated: \_\_\_\_\_ By: \_\_\_\_\_  
Authorized Signatory of Licensed Facility

Assigned # \_\_\_\_\_  
Date: \_\_\_\_\_  
By: \_\_\_\_\_  
Exchange Registrar

THIS SHIPPING CERTIFICATE MAY ONLY BE CANCELED UPON NOTICE TO THE REGISTRAR'S OFFICE.

**RULE 47 TRADING MONTHS, NOTICES AND DELIVERIES**

\* \* \*

(c) Last Trading Day

- (1) The last day of trading in FCOJ-1 futures is the 15th last business day of the month.
- (2) The last day of trading in FCOJ-2 futures is the first business day of the month.

\* \* \*

(d) FCOJ-2 Futures contracts shall trade only as a component of the FCOJ Differential until the close of trading on the day business preceding first notice day. Thereafter, FCOJ-2 may trade as an outright futures contract as well as a component of a spread until its last day of trading as set forth in Rule 47(c).

([d]e) First and Last Delivery Days

\* \* \*

([e]f) Procedures Re Notices

\* \* \*

(E) [the] notices shall be in the following form, or in a form substantially similar that is acceptable to the Commodity Clearing Corporation:

**RULE 47**

a) FCOJ-1

**CITRUS ASSOCIATES OF THE NEW YORK COTTON EXCHANGE, INC.**

**NOTICE OF DELIVERY FOR FROZEN CONCENTRATED ORANGE JUICE (FCOJ-1) CONTRACT**

CCC No.

INTERNAL REFERENCE NO.

ISSUE DATE

TO: Commodity Clearing Corporation

PLEASE TAKE NOTICE THAT, on \_\_\_\_\_ in accordance with and subject to the By-Laws and Rules of the Citrus Associates of the New York Cotton Exchange, Inc., we shall deliver to the clearing member(s) designated by the CCC \_\_\_\_\_ contract(s) with the following specifications;

For each contract \_\_\_\_\_ warehouse receipt(s) (drum)/or \_\_\_\_\_ shipping certificate(s) (tank), will be delivered representing 15,000 pounds, 3 percent more or less, of solids of frozen concentrated orange juice (FCOJ-1) at the notice price of \_\_\_\_\_ cents per pound from the following warehouse/delivery point:

\_\_\_\_\_  
Prefix Warehouse/Delivery Point\*  
Number Name

\_\_\_\_\_  
Clearing Member Name and Number  
Print Name      Print Number

By: \_\_\_\_\_  
Authorized Signatory (Sign)

\_\_\_\_\_  
Authorized Signatory Print Name

\_\_\_\_\_  
Telephone

\_\_\_\_\_  
Date

TO BE DELIVERED TO THE OFFICE OF THE COMMODITY CLEARING CORPORATION PRIOR TO 6:00 P.M. ON BUSINESS DAY PRIOR TO NOTICE DAY.

\* Separate notice forms must be completed for each Warehouse or Tank facility delivery point.

Such Notice, if issued and tendered as herein provided, shall be accepted by the clearing member of the Exchange receiving such notice.

The difference between the price of every contract on which such Notice is tendered and the price at which the Notice is issued shall be paid on the day following the date of the Notice.

The failure on the part of the holder of any Notice to notify the issuer thereof, as provided therein, shall subject him to a penalty of One Hundred Twenty-Five Dollars for each Notice, to be paid to the issuer thereof, the contract to remain in full force.

The Secretary, or his representative, shall at the close of the Exchange on the day previous to each Notice day, post upon the bulletin of the Exchange the price at which Notices shall be issued on the following day. The respective frozen concentrated orange juice (FCOI-1) shall be paid for at the Notice price plus or minus the difference between said price and the settlement price the day previous to delivery as determined by the Exchange.

b) FCOI-2

CITRUS ASSOCIATES OF THE NEW YORK COTTON EXCHANGE, INC.

NOTICE OF DELIVERY FOR FROZEN CONCENTRATED ORANGE JUICE (FCOI-2) CONTRACT

CCC No. \_\_\_\_\_ INTERNAL REFERENCE NO. \_\_\_\_\_

ISSUE DATE \_\_\_\_\_

TO: Commodity Clearing Corporation

PLEASE TAKE NOTICE THAT, on \_\_\_\_\_ in accordance with and subject to the By-Laws and Rules of the Citrus Associates of the New York Cotton Exchange, Inc., we shall deliver to the clearing member(s) designated by the CCC contract(s) with the following specifications:

For each contract warehouse receipt(s) (drum)/or shipping certificate(s) (tank), will be delivered representing 15,000 pounds, 3 percent more or less, of solids of frozen concentrated orange juice

(FCOJ-2) at the notice price of cents per pound from the following warehouse/delivery point:

Prefix Warehouse/Delivery Point\*  
Number Name

Clearing Member Name and Number  
Print Name            Print Number

By: Authorized Signatory (Sign)

Authorized Signatory Print Name

Telephone

Date

**TO BE DELIVERED TO THE OFFICE OF THE COMMODITY CLEARING CORPORATION PRIOR TO 6:00 P.M. ON BUSINESS DAY PRIOR TO NOTICE DAY.**

**\* Separate notice forms must be completed for each Warehouse or Tank facility delivery point.**

Such Notice, if issued and tendered as herein provided, shall be accepted by the clearing member of the Exchange receiving such notice.

The difference between the price of every contract on which such Notice is tendered and the price at which the Notice is issued shall be paid on the day following the date of the Notice.

The failure on the part of the holder of any Notice to notify the issuer thereof, as provided therein, shall subject him to a penalty of One Hundred Twenty-Five Dollars for each Notice, to be paid to the issuer thereof, the contract to remain in full force.

The Secretary, or his representative, shall at the close of the Exchange on the day previous to each Notice day, post upon the bulletin of the Exchange the price at which Notices shall be issued on the following day. The respective frozen concentrated orange juice (FCOJ-2) shall be paid for at the Notice price plus or minus the difference between said price and the settlement price the day previous to delivery as determined by the Exchange.

**RULE 50 DELIVERY OF INVOICE AND DOCUMENTS**

(a) For purposes of this Rule, and the Exchange's Warehousing and Delivery Rules, storage charges are all those charges set forth in the Licensed Facility's tariff published pursuant to Rule 32(f).

(b) (1) Drum Delivery

On drum delivery, the deliverer shall tender to the receiver before 1:00 p.m. on the day prior to the day of delivery the following documents: an Exchange Certificate; a Certificate of Quality and Condition issued by the U.S.D.A.; a Packer's Manifest showing drum numbers, net weight, Brix, Brix to acid ratio and pounds of solids; a document evidencing storage charges paid through at least the end of the delivery month and a completed invoice. In addition, if FCOJ-2 is delivered, the deliverer shall also tender to the receiver a Certificate of Origin issued by the U.S.D.A.

[REMAINDER OF RULE UNCHANGED]

(In the text of amendments below, additions are underlined and deletions are bracketed and lined out.)

**RULE 63 SPECULATIVE POSITION LIMITS**

(a) Position Limits

- (1) The limit on the maximum net long or net short position on a futures equivalent basis which any one person may hold or control under contracts for futures delivery of Frozen Concentrated Orange Juice ("FCOJ") or options thereon is:

~~[(1)] 300 contracts in any futures spot month(s); [(2)](a) 1800 in any other month; and [(3)](b) 3000 in all months combined.~~

In addition, effective at the commencement of trading on the business day before the first calendar day of the expiring month, the maximum gross long and/or short position that any one person may hold or control in the spot month is 300 contracts.

- (2) The limit on the maximum net long or net short position on a futures equivalent basis which any one person may hold or control under contracts for future delivery of FCOJ Differentials ("Diff") or options thereon is:

(a) 1800 in any month; and (b) 3000 in all months combined.

[REMAINDER OF RULE UNCHANGED]

Estimated U.S. Orange Juice Availability<sup>1</sup>

Season	Beginning Stocks	Florida FCOJ 11.8 Brx			Calif. <sup>2</sup> Arizona	U.S. Imports		Estimated FCOJ-1 Availability	Estimated FCOJ-2 Availability	FCOJ-2 Available Supply as a % of FCOJ-1
		Texas <sup>3</sup>	From Brazil	Total		% from Brazil				
1988-89	212	705.7	1.7	53.2	326.7	382.6	85.39%	1,355.2	1,244.4	91.8%
1989-90	233	364.7	3.2	84.1	408.7	492.1	83.05%	1,187.1	1,006.4	84.8%
1990-91	225	611.5	- <sup>b</sup>	35.8	272.5	327.2	83.28%	1,199.5	1,109.0	92.5%
1991-92	158	587.3	- <sup>b</sup>	110.9	257.2	286.0	89.93%	1,142.2	1,002.5	87.8%
1992-93	170	842.8	0.4	58.5	288.1	326.1	88.35%	1,397.8	1,300.9	93.1%
1993-94	249	738.0	0.3	66.3	342.2	404.5	84.60%	1,456.1	1,327.2	91.1%
1994-95	360	874.4	2.0	35.0	103.2	198.4	52.02%	1,469.8	1,337.6	91.0%
1995-96	283	817.3	0.9	58.8	186.2	260.6	71.45%	1,420.4	1,286.5	90.6%
1996-97	298	976.6	2.7	44.7	155.9	256.3	60.83%	1,578.3	1,430.5	90.6%
1997-98	390	1,024.8	2.3	65.5	193.4	304.4	63.53%	1,787.0	1,608.2	90.0%
1998-99 <sup>c</sup>	449	661.1	2.5	37.0		330.0		1,479.6		

million SSE gallons

<sup>a</sup>Based on assumed yields.

<sup>b</sup>EMRD projected 4/99

SOURCES: FCPA, FASS Citrus Summary, FAS, NASS, U.S. Department of Commerce, FDOC-EMRD

<sup>1</sup> Available supply of frozen concentrate orange juice. It assumes that beginning stocks and imports are in the form of frozen concentrated orange juice. For an estimate of available supply for FCOJ-1, the Exchange aggregated 1) beginning stocks 2) concentrate that is produced in Florida, Texas and California and 3) imports. For an estimate of available supply for FCOJ-2, the Exchange aggregated 1) beginning stocks, 2) concentrate that is produced only in Florida and 3) imports only from Brazil.

EXHIBIT B

**Citrus Associates of the New York Cotton Exchange, Inc.**

4 WORLD TRADE CENTER  
NEW YORK, N.Y. 10048

RECEIVED

AUG 11 1999

**BY FACSIMILE and FEDERAL EXPRESS**

99-55

August 11, 1999

Ms. Jean A. Webb  
Secretary to the Commission  
Office of the Secretary  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21<sup>st</sup> Street, NW  
Washington, DC 20581

Re: **Amendments to FCOJ-2 Futures Contract -  
Supplemental Submission Pursuant to Commission Regulation 1.41(b) - Fast Track**

Dear Ms. Webb:

In a letter dated August 11, 1999, the Citrus Associates of the New York Cotton Exchange, Inc. (the "Exchange") submitted amendments to its Frozen Concentrated Orange Juice No. 2 futures contract ("FCOJ-2"), in accordance with Section 5a(a)(12)(A) of the Commodity Exchange Act ("Act") and Commission Regulation 1.41(b). Please note that in addition to the cited sections of the Act and Regulations, the Exchange also makes its submission pursuant to Rule 5.2 of Part 5 of the Commission's Regulations.

If you have any questions, please contact me at 212-742-6247.

Sincerely,



Jill S. Fassler  
Associate General Counsel

cc: David Van Wagner  
CFTC, Division of Trading and Markets  
Frederick Linse  
CFTC, Division of Economic Analysis

Estimate of Available Supply for FCOJ-2

Month/Year	Florida Goods on Hand (gallons @ 42 degree Brix)*	Florida Goods on Hand converted to millions SSE gallons	Total Imports into Florida (millions SSE gallons)**	Total US Imports from Brazil (millions SSE gallons)**	Available Supply (millions SSE gallons)	Available Supply (futures contracts) 15,000 pound solids
Last Saturday of the Month						
26-Nov-94	61,051,257	246.58	18.77	36.41	284.22	17,118
31-Dec-94	111,182,491	449.05	8.06	18.56	459.55	29,773
28-Jan-95	134,053,339	541.42	14.02	21.35	548.76	35,553
25-Feb-95	137,418,446	555.02	12.46	15.36	557.92	36,146
25-Mar-95	143,470,511	579.46	4.54	3.94	578.87	37,503
29-Apr-95	148,445,644	599.55	3.32	2.76	598.99	38,807
27-May-95	156,934,398	633.84	1.28	1.07	633.82	41,051
24-Jun-95	145,196,134	586.43	1.12	1.36	586.67	38,009
29-Jul-95	123,975,127	500.72	3.06	3.28	500.94	32,455
26-Aug-95	105,123,906	424.58	2.56	3.00	425.02	27,536
30-Sep-95	81,444,008	328.94	6.59	6.87	329.22	21,329
28-Oct-95	62,050,721	250.61	4.53	4.37	250.46	16,226
25-Nov-95	48,632,974	186.42	20.59	21.30	197.12	12,771
30-Dec-95	94,152,519	380.27	10.87	11.81	381.21	24,698
27-Jan-96	108,661,096	438.87	13.24	16.21	441.83	28,625
24-Feb-96	114,565,859	462.72	13.14	11.29	460.87	29,859
30-Mar-96	108,950,038	440.04	11.15	11.81	440.70	28,552
27-Apr-96	117,477,988	474.48	12.11	16.47	478.84	31,023
25-May-96	132,968,400	535.43	14.06	15.13	536.50	34,758
29-Jun-96	122,527,552	494.87	5.37	8.91	498.41	32,291
27-Jul-96	109,773,934	443.36	13.97	14.58	443.98	28,764
31-Aug-96	89,044,882	359.64	5.28	7.03	361.38	23,413
28-Sep-96	70,481,080	284.66	6.32	8.68	287.02	18,596
26-Oct-96	52,895,461	213.64	22.06	31.33	222.91	14,442
30-Nov-96	41,224,268	166.50	27.94	32.94	171.50	11,111
28-Dec-96	89,363,735	360.93	23.86	27.34	364.41	23,609
25-Jan-97	121,602,341	491.14	16.76	21.93	496.30	32,154
22-Feb-97	147,314,031	594.98	18.65	17.83	594.16	38,495
29-Mar-97	144,239,134	582.56	18.14	12.43	576.86	37,373
26-Apr-97	157,512,150	636.17	4.97	6.41	637.61	41,309
31-May-97	168,139,815	679.09	8.69	4.72	675.13	43,740
28-Jun-97	160,096,863	646.61	8.21	8.81	647.21	41,931
26-Jul-97	146,490,023	591.65	1.65	3.09	593.10	38,425
30-Aug-97	124,420,716	502.52	15.52	15.16	502.16	32,534
27-Sep-97	105,454,086	425.92	9.12	11.27	428.07	27,733
25-Oct-97	88,911,105	351.02	16.09	17.92	352.86	22,861
29-Nov-97	68,988,719	278.56	6.81	9.01	280.76	18,190
27-Dec-97	117,538,238	474.72	20.20	27.31	481.84	31,217

SOURCES: \* Florida Citrus Processors Association; \*\* Department of Commerce as reported by Florida Department of Citrus

EXHIBIT A

Estimate of Available Supply for FCOJ-2

Month/Year	Florida Goods on Hand (gallons @ 42 degree Brix)*	Florida Goods on Hand converted to millions SSE gallons	Total Imports into Florida (millions SSE gallons)**	Total US Imports from Brazil (millions SSE gallons)**	Available Supply (millions SSE gallons)	Available Supply (futures contracts) 15,000 pound solids
27-Dec-97	117,538,238	474.72	20.20	27.31	481.84	31,217
31-Jan-98	150,888,594	609.42	18.43	27.81	618.81	40,091
28-Feb-98	162,868,322	657.80	4.81	10.80	663.80	43,006
28-Mar-98	173,221,860	699.62	12.38	19.88	707.12	45,813
25-Apr-98	194,033,569	783.68	3.75	7.93	787.85	51,043
30-May-98	211,880,438	854.95	9.07	12.21	858.09	55,594
27-Jun-98	196,773,425	794.74	13.92	12.60	793.42	51,404
25-Jul-98	179,885,030	726.45	7.94	27.81	746.32	48,353
29-Aug-98	156,019,302	630.14	9.22	12.94	633.86	41,067
26-Sep-98	139,880,771	564.96	4.88	7.14	567.42	36,762
31-Oct-98	118,339,453	477.96	13.81	18.18	482.33	31,249
28-Nov-98	104,644,504	422.65	23.91	27.26	426.00	27,599
26-Dec-98	125,576,492	507.19	18.90	22.69	510.98	33,105
30-Jan-99	151,424,898	611.58	21.76	27.45	617.27	39,992
27-Feb-99	163,905,428	661.99	18.86	21.78	664.91	43,078
27-Mar-99	163,960,604	662.22	8.22	15.71	669.70	43,389
24-Apr-99	173,880,430	702.28	16.66	21.18	706.80	45,792
29-May-99	165,550,397	668.64	10.27	16.52	674.89	43,724
26-Jun-99	150,428,258	607.56	3.14	0.00	604.42	39,159
31-Jul-99	134,603,590	543.65			543.65	35,222

Notes

1. Goods on Hand is calculated from figures reported by Florida Citrus Processors Association. It is Carry over + Pack thru Season to Date minus Total Movement
2. Goods on Hand reported in 42 degree Brix gallons. Multiply by 4.03887 to get SSE gallons. Divide by 1,000,000 to get Millions SSE gallons
3. Available Supply equals Florida Goods on Hand + Total US Imports from Brazil - Florida total imports
4. There are 1.029 PS per Gallon at 11.8 degree brix

SOURCES: \* Florida Citrus Processors Association;  
 \*\* Department of Commerce as reported by Florida Department of Citrus