Florida State University Law Review

Volume 31 | Issue 2 Article 2

2003

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FLORIDA STATE UNIVERSITY LAW REVIEW

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VOLUME 31 WINTER 2003 NUMBER 2

Recommended citation: Adam H. Putnam, *The Free Trade Area of the Americas: Opportunities for Economic Growth Through Fair Trade in the Hemisphere*, 31. FLA. ST. U. L. REV. 279 (2003).

THE FREE TRADE AREA OF THE AMERICAS: OPPORTUNITIES FOR ECONOMIC GROWTH THROUGH FAIR TRADE IN THE HEMISPHERE

CONGRESSMAN ADAM H. PUTNAM*

> "We have a great vision before us: a fully democratic hemisphere, bound together by good will and free trade."[1]

The Free Trade Area of the Americas is a proposal that would create the largest free-trade zone in the world, encompassing nearly all of the countries of the Western Hemisphere, a population of 825 million people in thirty-four countries and a GDP of US $13 trillion. According to the U.S. Trade Representative, "The Free Trade [Area] of the Americas (FTAA) is the cornerstone of President Bush's vision for trade in the Western Hemisphere—a plan that would foster economic growth and opportunity, promote regional integration and strengthen democracies."[2]

The countries that would be included in the FTAA account for the vast majority of the world's orange juice production. The states of Sao Paulo, Brazil, and Florida, United States, together produce approximately eighty-five percent of the world's orange juice, with the remainder derived from Mexico and Cuba in the Western Hemisphere, and Italy, Spain, and Greece in Europe.[3]

While recognizing the goals of free and fair trade among nations, an FTAA that includes tariff[4] reductions on products including Florida citrus is not in the best economic interest of our hemisphere. It would prove damaging to the economic infrastructure of the state of

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1. OFFICE OF THE U.S. TRADE REPRESENTATIVE, EXECUTIVE OFFICE OF THE PRESIDENT, TRADE FACTS, FREE TRADE AREA OF THE AMERICAS: THE OPPORTUNITY FOR A HEMISPHERIC MARKET PLACE 2 (2003) (quoting President George W. Bush, 3rd. Summit of the Americas, April 2001), *available at* http://www.ustr.gov/regions/whemisphere /ftaa2002/2003-02-11-tradefacts-english.PDF.

2. *Id.* at 1.

3. THOMAS H. SPREEN ET AL., UNIV. OF FLA. INST. OF FOOD & AGRIC. SCIENCES, THE IMPACT OF ELIMINATION OF THE U.S. ORANGE JUICE TARIFF ON THE MARKET FOR PROCESSED ORANGE PRODUCTS 4 (2002), *available at* http://www.fred.ifas.ufl.edu /iatpc/docs/policy_brief/PBTC_02-3.pdf.

4. In 1930, the citrus tariff was established at 70 cents per gallon for all orange juice. In 1948, the Geneva Round of the General Agreement of Tariffs and Trade (GATT), the rule making entity governing world trade, reduced the tariff by nearly one half to 35.02 cents per gallon (cpg). In 1972, the Kennedy GATT Round reduced the tariff to 20.07 cpg for not-from-concentrate juice only. The Uruguay Round of GATT, completed in 1994, established the latest round of tariff reductions for orange juice effective in 1997. It immediately lowered the from-concentrate tariff to 34.15 cpg and, effective in 2000, it lowered the rate again to 29.72 cpg. Also effective in 2000, the Uruguay Round lowered the tariff on not-from-concentrate products to 17.04 cpg. Bob Crawford, Executive Director, Florida Department of Citrus, Presentation to the Florida Agricultural Trade Advisory Committee (Oct. 7, 2002) (presentation on file with the author).

Florida, would not be in the best interest of consumers, and would not achieve the stated goals of the Administration, including greater opportunity and economic growth throughout the Western Hemisphere. Initiatives to limit the scope of the FTAA, which are necessary to address the national economic interests of all the participants and reenergize the negotiations to reach a constructive outcome, are positive steps toward fostering regional competition and economic opportunity among nations.

Any tariff reduction on processed orange juice will dramatically affect the state of Florida, and will devastate the U.S. industry that grows oranges for processing, which has an estimated industry output of 9.13 billion dollars.[5] The Florida citrus industry and the global citrus market are unique and import sensitive due to the structure, dynamics, and history of the global orange juice industry. Perhaps the most significant factor is that the Florida citrus industry is Brazil's only competitor of global significance. World orange juice production is concentrated chiefly between only two states in the world: Florida and Sao Paulo, Brazil.[6]

Given this concentration of production, any reduction or elimination of the citrus tariff would not result in lowered prices to consumers. Elimination of the tariff would create a monopoly-type environment, as competition would be eliminated and the price of U.S. orange juice could rise because the one source of production remaining in the world—Brazil—could dictate the price.

The future expansion of export markets is welcome. The Florida citrus industry does not object to the improvement of U.S. ties throughout the world via stronger trading relationships; it has supported many such agreements over the years, such as the Caribbean Basin Initiative and others.[7]

There have been four major trade initiatives related to citrus since the mid-1980's. These are the Japanese Beef and Citrus Agreement; the Caribbean Basin Economic Recovery Act (CBERA), which eliminated tariffs on citrus from Belize, Honduras, and the Dominican Republic; the North American Free Trade Agreement (NAFTA), which phased out United States and Mexican orange juice tariffs; and the Uruguay Round of the GATT.[8] The latter three agreements

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5. ALAN HODGES ET AL., UNIV. OF FLA. INST. OF FOOD & AGRIC. SCIENCES, ECONOMIC IMPACT OF FLORIDA'S CITRUS INDUSTRY, 1999-2000 at 3 (2001), *available at* http://economicimpact.ifas.ufl.edu/publications/er01-2-citrus.pdf.

6. SPREEN ET AL., *supra* note 3, at 4.

7. *The Status of the World Trade Organization Negotiations on Agriculture: Hearing Before the House Comm. on Agric.*, 108th Cong. 122 (2003) [hereinafter *Trade Negotiations*] (statement of Andrew LaVigne, Florida Citrus Mutual), *available at* http://agriculture.house.gov/hearings/1085.pdf.

8. THOMAS H. SPREEN, UNIV. OF FLA. DEPT. OF FOOD & RESOURCE ECON., THE FREE TRADE AREA OF THE AMERICAS AND THE FLORIDA CITRUS INDUSTRY 2-5, 11 (2002), *at*

served to encourage orange juice production in regions in competition with the United States. While CBERA and NAFTA have reduced tariffs for competing suppliers of orange juice in the Caribbean and Mexico, increasing imports into the United States, Brazil remains by far the most important import supplier of orange juice to the U.S. market.[9] Therefore, the stakes for Florida citrus production in the FTAA are much higher than in previous trade agreements.[10]

Florida orange growers are the most efficient in the world in terms of production yield per acre.[11] Yet, neither the state of Florida nor American consumers are expected to benefit from global trade liberalization under the current conditions: concentration of power in the hands of a few Brazilian producers. The stated goals of expanding democracy throughout the hemisphere will also not be realized or enhanced by this effort. Until this concentration is diminished, fair trade is established, and consumer purchasing power is increased around the world, the United States and Western Europe will remain the targeted markets for orange juice, and the economic survival of the Florida citrus industry will continue to be contingent on the existence of the U.S. orange juice tariff on Brazilian juice.[12]

Given the oligopistic structure of the Brazilian citrus industry, as well as the significant disparity in labor and environmental standards between the two countries, the U.S. orange juice tariff provides a mechanism to provide fair trade between the two nations. The tariff counteracts the market power of Brazil's highly concentrated industry (which sells globally a dollar-denominated commodity made with progressively devalued local inputs), the extreme pricing pressure inflicted by frequent devaluation of Brazil's currency, and the predatory pricing behavior of the Brazilian orange juice oligopoly. Finally, in a nation that places a high value on environmental and work protections, the tariff serves to harmonize market production costs between the two citrus-growing countries. All imports from Brazil are subject to the most favored nation (MFN) duty, which is currently 28.9 cents per pound solid for frozen concentrate orange juice (FCOJ), and 17 cents per single-strength gallon.[13]

The concentration of production among five large Brazilian orange juice processors has enabled the South American country to place

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http://www.fred.ifas.ufl.edu/iatpc/ppt/con-11-14-02/ses5/order1-spreen.ppt (last visited Oct. 13, 2003).

9. *Id.* at 4-13.

10. *Id.* at 22-27.

11. *Trade Negotiations*, *supra* note 7, at 122.

12. *Id.* at 122-23.

13. THOMAS H. SPREEN, UNIV. OF FLA. DEPT. OF FOOD & RESOURCE ECON., THE INTERPLAY BETWEEN THE U.S. ORANGE JUICE TARIFF AND U.S. ORANGE JUICE DEMAND 4 (2003), *at* http://www.flcitrusmutual.com/resources/PDFs/drspreen.pdf (last visited Oct. 13, 2002).

downward pressure on processed orange prices in Brazil. This group accounts for approximately eighty percent of Brazil's FCOJ production.[14] These companies indirectly control nearly all of Brazil's FCOJ exports, as they also operate and control Brazil's tank-ship distribution system.[15] These large Brazilian processors benefit from advantages brought by past subsidization and dumping, lax environmental protection, weak and largely unenforced labor laws, frequent national currency devaluation (which reduces the relative cost of production inputs and provides false incentives to overproduce), and oligopolistic price manipulation.[16]

Expansion and continuation of export markets for U.S. orange juice, particularly throughout the European Union, has been hindered by Brazilian orange juice prices that frequently appear to be below Brazilian cost of production. As a result of an affirmative Sunset Review Determination in 1999, an antidumping order remains in effect on several processors of FCOJ from Brazil; the applicable dumping margins for the suppliers are significant.[17] In 2001, the president of the Italian Consortium of Citrus Processors appealed to the European Commission for protection, citing Brazilian predatory practices of selling processed orange juice at prices below the cost of production.[18] "[T]he long-term annual average trend in the price of Brazilian orange juice exports has been downward during the past decade and a half. Such constant downward price pressure in foreign markets makes the exporting of U.S. orange juice nearly impossible."[19]

In addition, the U.S. Agricultural Attaché in Sao Paulo has indicated that for ten consecutive seasons, from 1991/92 through 2000/01, initial Brazilian estimates of orange juice production have understated actual output by up to twenty-seven percent, distorting world orange juice prices.[20]

Florida orange juice producers are eager to expand juice exports overseas; however, it is unlikely that growth in U.S. citrus export potential could offset the significant displacement of U.S. juice in the

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14. *Trade Negotiations*, *supra* note 7, at 123.

15. *In the Matter of Market Access in the Free Trade Area of the Americas Negotiations: Hearing Before the Trade Policy Staff Committee, Office of the United States Trade Representative* 3 (2002) [hereinafter *Market Access*] (statement of Andrew LaVigne, Florida Citrus Mutual), *available at* http://www.flcitrusmutual.com/resources/PDFs/marketaccess.pdf.

16. *Trade Negotiations*, *supra* note 7, at 122-23.

17. *Market Access*, *supra* note 15, at 8.

18. *Id.* at 9.

19. *Id.*

20. *President Bush's Trade Agenda for 2003: Hearing Before the House Comm. on Ways and Means*, 108th Cong. 9 (2003) [hereinafter *Trade Agenda*] (statement of Andrew LaVigne, CEO, Florida Citrus Mutual).

domestic market as a result of U.S. tariff reductions. According to the U.S. Department of Commerce, U.S. orange juice exports dropped 5% between 2001 and 2003, with exports to Japan down 64% and to Europe down 53%, primarily due to less expensive imports from Brazil.[21]

While the citrus industry welcomes greater access to foreign markets, the marginal benefits of exporting to South and Central American markets, which have historically low demand, would be rendered meaningless if the U.S. orange juice tariff is reduced.[22] The U.S. Department of Agriculture, in its assessment *Free Trade Area of the Americas: What Are the Benefits for U.S. Agriculture?*, concluded: "In terms of shares of U.S. trade, . . . the region is substantially more important as a source of imports for the U.S. than as a destination for U.S. exports."[23] The report also noted, "The agreement could have major implications for U.S. sugar, peanuts, and orange juice . . . . Removal of [the] tariffs may create incentives to import less–expensive Brazilian orange juice, which may displace some Florida juice."[24]

The comparative harvesting costs for processed oranges in Florida and Sao Paulo demonstrate the vast disparity in production costs. In Sao Paulo, harvesting costs, including picking and hauling, are estimated at roughly one-quarter the cost in southwest Florida, as Florida production costs are an average of US $.32 per pound solids (pps.), in comparison to harvesting costs in Sao Paulo of US $.08 pps. When delivered transportation shipment costs to the United States and the tariff are included, the cost of production in both countries is roughly the same: $1.05 pps. (Florida) and $1.03 pps. (Brazil).[25]

The enforcement of child labor laws has also been brought into question. A 1998 U.S. Department of Labor report to Congress alleged that close to 150,000 children are employed during Brazil's citrus harvesting season, picking in severe heat for as long as twelve hours a day.[26] Another Department of Labor report noted that Brazilian farms regularly employ children, paying them $3.00 for a 14 hour

21. FLORIDA DEP'T OF CITRUS, FLORIDA CITRUS ECONOMIC INDICATORS 5 (July 2002), *available at* http://www.fred.ifas.ufl.edu/citrus/pubs/economic/index.htm.

22. *Market Access*, *supra* note 15, at 3.

23. Mary Burfisher & John Link, *Free Trade Area of the Americas: What Are the Benefits for U.S. Agriculture?*, AGRIC. OUTLOOK, Apr. 2000, at 15, 17, *available at* http://www.ers.usda.gov/publications/agoutlook/apr2000/ao270e.pdf.

24. *Id.* at 16.

25. RONALD P. MURARO ET AL., UNIV. OF FLA. INST. OF FOOD & AGRIC. SCIENCES, COMPARATIVE COSTS OF GROWING CITRUS IN FLORIDA AND SAO PAULO (BRAZIL) FOR THE 2000-01 SEASON 2-3 (2002), *available at* http://edis.ifas.ufl.edu/FE364.

26. BUREAU OF INT'L LABOR AFFAIRS, U.S. DEP'T OF LABOR, BY THE SWEAT & TOIL OF CHILDREN: VOLUME V: EFFORTS TO ELIMINATE CHILD LABOR 18-19 (1998).

day—or 22 cents an hour.[27] The average agricultural wage in Florida is over $9 an hour[28] and child labor is strictly prohibited.

> In an ideal free market world economy where basic and equivalent labor, environmental, and health/safety laws exist and are enforced, where world production and prices are not controlled by a single oligopolistic industry, and where currency devaluations do not tip the scales dramatically in favor of the foreign exporters, the law of natural advantages might outweigh arguments for tariff protection.[29]

However, "Brazil's advantages are not 'natural' and the playing field is grossly skewed. The tariff is the only offset on which this unsubsidized U.S. industry can rely to counter these 'unnatural' advantages."[30]

The studies of an elimination of the U.S. orange juice tariff on Brazil suggest that while the benefit to Brazilian orange producers would not be large, as production would be expected to increase slightly, the impact on Florida producers would be significant. Production in Florida would contract and on-tree prices would decline substantially. If the tariff were eliminated, producer income is estimated to decline by twenty-five percent. Projected on-tree prices in Florida, after elimination of the tariff, would be, in most cases, *below the cost of production*, suggesting further decreases in Florida orange output.[31]

Increased Brazilian imports by the United States would come at the expense of Brazilian exports to the European Union (EU) and Japan, if both the EU and Japan were to maintain their FCOJ tariffs; supply in these two regions would be adversely affected by either a phaseout or immediate elimination of the United State's FCOJ tariff. Furthermore, the positive effect on Brazil would be relatively small, as under tariff elimination, the United States is expected to account for less than ten percent of Sao Paulo's market. Therefore, the impact on Brazilian growers and processors would be diluted by the fact that the majority of its products would still be sent to other markets.[32]

Smaller orange producing countries such as Mexico, Belize, and Costa Rica would also be adversely affected, as these countries cur-

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27. BUREAU OF INT'L LABOR AFFAIRS, U.S. DEP'T OF LABOR, BY THE SWEAT & TOIL OF CHILDREN: VOLUME II: THE USE OF CHILD LABOR IN U.S. AGRICULTURAL IMPORTS AND FORCED AND BONDED CHILD LABOR 67 (1995).

28. FLORIDA AGRICULTURAL STATISTICS SERVICE, FARM LABOR 1 (2003), *at* http://www.nass.usda.gov/fl/econ/labor/2003/lab0803.pdf.

29. *Market Access*, *supra* note 15, at 15-16.

30. *Id.* at 16.

31. SPREEN ET AL., *supra* note 3, at 10-11.

32. *Id.* at 13.

rently enjoy preferential treatment in the U.S. market. Reduced tariffs for Brazilian exporters would result in lower prices received for exports from third-party countries.[33]

A 2002 University of Florida report entitled, *The Impact of Elimination of the U.S. Orange Juice Tariff on the Market for Processed Orange Products* stated, "The clear conclusion drawn from the figures presented . . . is that U.S. imports of FCOJ from Brazil will increase substantially if the U.S. orange juice tariff is eliminated."[34] Under the analysis conducted, exports of FCOJ from Sao Paulo under elimination of the U.S. tariff were projected to grow from 53,000 metric tons to 313,000 metric tons, an increase of 500%.[35]

A General Accounting Office (GAO) report to Congress entitled, *Free Trade Area of the Americas: Negotiators Move Toward Agreement That Will Have Benefits, Costs to U.S. Economy*, found that certain U.S. sectors, including textiles, apparel, and agricultural goods such as sugar and citrus, may face increased imports and declining production if barriers are lowered.[36] The GAO report noted that both the United States and other FTAA countries view expanding access to agricultural markets as one of their priorities.[37] However, several outstanding issues remain. First, FTAA countries must decide how to address domestic subsidies, as several FTAA countries object to U.S. farm support payments on many agricultural goods.[38] It should be noted that U.S. citrus does not receive government subsidies. In addition, several sectors would prefer to address market access issues on a multilateral level through the World Trade Organization, rather than on a regional basis in the FTAA. Finally, within tariff negotiations, FTAA countries must decide how to treat import sensitive agricultural products.[39] The GAO Report noted, "often a sensitive product from one country (such as orange juice in the United States) is a competitive product for another country (Brazil)."[40]

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33. *Id.* at 15.

34. *Id.* at 13.

35. *Id.* at 32 tbl.14.

36. U.S. GENERAL ACCOUNTING OFFICE, REPORT TO THE RANKING MINORITY MEMBER, COMM. ON FIN., U.S. SENATE, GAO-01-1027, FREE TRADE AREA OF THE AMERICAS: NEGOTIATORS MOVE TOWARD AGREEMENT THAT WILL HAVE BENEFITS, COSTS TO U.S. ECONOMY 101-02 (2001), *available at* http://www.gao.gov/new.items/d011027.pdf.

37. *Id.* at 35-36.

38. *Id.* at 38.

39. *Id.* at 5.

40. *Id.* In July 2002, Congress approved, and the President signed into law, legislation providing the President with Trade Promotion Authority (TPA). Under the terms of the trade legislation, the Administration was granted the authority to negotiate international trade agreements subject to an up-or-down vote by Congress, not subject to congressional amendment. Special provisions were included in TPA for *import sensitive* products, including orange juice, requiring that special consultative measures be taken by the Administration to advise Congress of any attempt to lower tariffs on import sensitive products. Also, the International Trade Commission was required to conduct an assessment on

Since the latest round of tariff reductions in the GATT Uruguay Round, in which tariffs were reduced fifteen percent, the global bulk juice price and average return to Florida growers has steadily declined, while the price of the finished product to consumers has risen, demonstrating the disconnect between tariff reductions and greater competition, or reduced prices to consumers.[41] At the retail level, U.S. orange juice prices do not track declining wholesale and grower prices, as retail prices have increased sharply in recent years, by over twenty-five percent, while prices received have fallen roughly fifty percent from the retail level.[42]

This pricing situation benefits the Brazilian processing structure, which presently owns approximately half of the processing facilities in Florida. Brazilian low-priced exports to the United States depress the prices paid to domestic growers, expanding control of the Brazilian processors over world orange juice supplies. Should tariffs on orange juice from Brazil be reduced or eliminated, this situation could be exacerbated.[43]

A reduction in the tariff would result in a significant negative impact throughout the economic infrastructure of the state of Florida. As agricultural production is the second largest industry in Florida,[44] the results would be dramatic. Citrus is produced in over two-thirds of Florida's counties, reaching nearly 1 million acres—by far the largest citrus growing region in the United States.[45] A loss of the $9 billion citrus industry would result in severe consequences for state and local tax assessments, placing pressure on government services, banking, insurance, real estate, transportation and shipping, suppliers, packers, fertilizer and equipment dealers, and other related industries including:

> [N]urseries that supply replacement trees to citrus groves, suppliers of fertilizer and agricultural chemicals to citrus groves, suppliers of irrigation and spraying systems, mechanical harvesters, and

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the potential impact of such proposed tariff reductions on the affected industry. *See* 19 U.S.C. §§ 3804(a)-(b) (2002).

41. *The Impact of Trade Agreements: Effect of the Tokyo Round, U.S.-Israel FTA, U.S.-Canada FTA, NAFTA, and the Uruguay Round on the U.S. Economy: Hearing Before the U.S. International Trade Commission*, 4-11 (2003) (statement of Andrew LaVigne, CEO, Florida Citrus Mutual).

42. *Market Access*, *supra* note 15, at 23 (citing the New York Cotton Exchange).

43. The United States currently has one of the lowest tariff levels among all FTAA or world trading partners, with tariffs averaging eleven percent as compared to Brazil, Argentina, Venezuela, and Columbia: all with tariff averages of approximately sixty-five percent. *See Trade Agenda*, *supra* note 20, at 30 (citing the FREE TRADE AREA OF THE AMERICAS: HEMISPHERIC TRADE AND TARIFF DATA BASE FOR MARKET ACCESS, *available at* http://www.ftaa-alca.org/NGROUPS/NGMADB_E.asp).

44. News Release, Florida Farm Bureau Federation, Florida Farmers in Cyberspace (Nov. 21, 2002), *at* http://www.fb.com/flfb/newsrel/2002/Florida-FarmerWeb.html.

45. HODGES ET AL., *supra* note 5, at 3, 5.

> farm implements, financial institutions, especially merchant banks that have citrus exposure, insurance companies that serve the citrus industry, freight companies that haul citrus to processing plants.[46]

The citrus industry has always been one of the most efficient free-market industries in U.S. agriculture, choosing not to receive part of the $20 billion in government price supports and subsidies enjoyed by other American agricultural industries, many of which receive the majority of their farm income from the government. While the citrus industry does not receive federal government subsidies, the tariff provides a mechanism to ensure market stability. U.S. direct payments to subsidized sectors are much more costly to the U.S. government and taxpayers than is the U.S. orange juice tariff, which, through its tariff collection, has a positive impact on the federal budget.[47]

Florida citrus welcomes greater access to foreign markets; however, the perceived benefits of expansion into such markets could not offset the dramatic impact of a tariff reduction. The current tariff serves to level the international playing field, roughly accounting for the difference in production costs between the two nations.

While recognizing the overall goals of free trade, given the unique international market, where only two states in the world produce the vast majority of the world's orange juice, any reduction in the citrus tariff will not lead to the stated objectives of free trade, including greater competition and consumer choice, lower prices, or expanded global economic growth. Rather, a reduction in the current citrus tariff would result in centralized consolidation of global citrus production within one region of the world and would create a monopoly-type market environment that would dramatically curtail international market competition and diminish consumer choice.

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46. *Trade Agenda*, *supra* note 20, at 19.
47. *Id.* at 30-31.