



A-357-818
Five-Year Sunset Review
IA/OP/BAU: JHS
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DATE: December 3, 2012

TO: Paul Piquado
Assistant Secretary
for Import Administration

FROM: Lynn Fischer Fox *LMFF*
Deputy Assistant Secretary
for Policy and Negotiations

SUBJECT: Issues and Decision Memorandum for the Final Results of the Expedited
Sunset Review of the Suspended Antidumping Duty Investigation on
Lemon Juice from Argentina

Summary

We have analyzed the substantive response of the interested party in the sunset review of the suspended antidumping duty investigation covering lemon juice from Argentina. We recommend that you approve the positions described in the Discussion of the Issues section of this memorandum. Below is the complete list of the issues in this expedited sunset review for which we received comments from the domestic interested party. Respondent interested parties did not comment.

1. Likelihood of Continuation or Recurrence of Dumping
2. Magnitude of the Margin Likely to Prevail

History of the Agreement

On October 11, 2006, the Department initiated an antidumping duty (“AD”) investigation under section 732 of the Tariff Act of 1930, as amended, (“the Act”) to determine whether imports of lemon juice from Argentina are being, or are likely to be sold in the United States at less than fair value.¹ On November 3, 2007, the United States International Trade Commission (“ITC”) notified the Department of its affirmative preliminary injury determination in this case² and, on April 19, 2007, the Department preliminarily determined that lemon juice is being, or is likely to be sold in the United States at less than fair value, as provided in section 733 of the Act.³ The

¹ See Initiation of Antidumping Duty Investigations: Lemon Juice from Argentina and Mexico, 71 FR 61710 (October 19, 2006).

² See Lemon Juice from Argentina and Mexico, Inv. Nos. 731-TA-1105-1106 (Preliminary), USITC Pub. No. 3891 (November 2006) (“ITC Preliminary Determination”).

³ See Lemon Juice from Argentina: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances, 72 FR 20820 (April 26, 2007).



Department, Citrusvil, S.A. (“Citrusvil”) and San Miguel A.G.I.C.y.F. (“San Miguel”) signed an agreement suspending the AD investigation on lemon juice from Argentina (“the Agreement”) on September 10, 2007.⁴ On September 17, 2009, Citromax S.A.C.I. (“Citromax”) also became a signatory to the Agreement.⁵

Background

On August 1, 2012, the Department initiated a sunset review of the Agreement Suspending the Antidumping Investigation of Lemon Juice from Argentina (“Notice of Initiation”). *See Initiation of Five-year (“Sunset”) Review and Correction*, 77 FR 45589 (August 1, 2012). The Department received a notice of intent to participate from Ventura Coastal LLC (“Ventura”), the domestic interested party, within the deadline specified in 19 CFR 351.218(d)(1)(i). Ventura claimed interested party status under section 771(9)(C) of the Act as a U.S. producer of the domestic like product. On August 31, 2012, within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i), we received a complete substantive response from Ventura. The Department received no responses from respondent interested parties to this proceeding. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted an expedited (120-day) sunset review of this suspended antidumping duty investigation.

Discussion of the Issues

In accordance with section 751(c)(1) of the Act, the Department is conducting this sunset review to determine whether termination of the suspended antidumping duty investigation would be likely to lead to continuation or recurrence of dumping. Sections 752(c)(1)(A) and (B) of the Act provide that, in making this determination, the Department shall consider both the weighted-average dumping margin determined in the investigations and subsequent reviews and the volume of imports of the subject merchandise for the periods before and after acceptance of the Agreement. In addition, section 752(c)(3) of the Act provides that the Department shall provide to the ITC the magnitude of the margins of dumping likely to prevail if the suspended investigation were revoked.

1. Likelihood of Continuation or Recurrence of Dumping

Interested Party Comments

Ventura argues that the import trends since the initiation of the investigation indicate that revocation of the suspended investigation will likely lead to the continuation or recurrence of dumping. Ventura contends imports of lemon juice from Argentina have declined significantly not only since the initiation of the antidumping investigation, but also since the signing of the

⁴ *See* Suspension of Antidumping Duty Investigation: Lemon Juice From Argentina, 72 FR 53991 (September 21, 2007).

⁵ *See* Accession to the Agreement Suspending the Antidumping Duty Investigation on Lemon Juice from Argentina, September 17, 2009.

Agreement. Ventura notes that imports of lemon juice from Argentina did increase significantly in 2011; however, this one-time increase does not undermine the overall downward trend in import volumes. The increase was attributed by Ventura to increased production in Argentina, a temporary decline in U.S. production and falling demand in Europe due to the economic crisis. Ventura cites to import statistics for the first half of 2011, which indicate that imports of Argentine lemon juice declined during that period compared with the same period in 2010. Ventura hypothesizes that the increase in 2011 could be attributed to customers making advanced purchases in 2011 in anticipation of higher normal values in 2012 as a result of adverse weather events in Argentina during 2010. Ventura also conjectures that new Argentine companies may have entered the U.S. market in 2011 due to increased Argentine lemon juice production.

Ventura asserts that Argentina has a significant capacity to produce lemon juice, and that Argentine production has increased since 2005. Ventura contends that the recession in the EU has weakened EU demand for lemon juice, and caused the United States to become a more attractive market. Further, Ventura argues that lemon juice production in Argentina is a function of lemon oil production and the Argentine producers' primary interest is the production of lemon oil. Ventura asserts that given the demand for lemon oil, Argentine lemon processors produce lemon juice without regard to demand and a significant volume of this lemon juice will likely be sold in the United States. Therefore, Ventura asserts that the Department should conclude that dumping will continue or recur if the suspended investigation is terminated.

Department's Position

In accordance with section 752(c)(1) of the Act, in a sunset review, the Department shall determine whether termination of a suspended investigation would be likely to lead to a continuation or recurrence of sales of the subject merchandise at less than fair value. In making its determination, the Department shall consider: (a) the weighted-average dumping margins determined in the investigation⁶ and subsequent reviews, and (b) the volume of imports of the subject merchandise for the period before and the period after acceptance of the suspension agreement. See sections 752(c)(1)(A) and (B).

Further, drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act, specifically the Statement of Administrative Action ("SAA"), H.R. Doc. No. 103-316, vol. I (1994), the House Report, H. Rep. No. 103-826, pt. I (1994) ("House Report"), and the Senate Report, S. Rep. No. 103-412 (1994) ("Senate Report"), the Department's determinations of likelihood will be made on an order-wide basis. In addition, the Department normally will determine that termination of a suspended investigation is likely to lead to continuation or recurrence of dumping where: (a) dumping continued at any level above

⁶ The rates calculated in the suspended investigation were not calculated using zeroing because the Department's 2006 modification in methodology for AD investigations applied to the suspended investigation. See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification, 71 FR 77722 (Dec. 26, 2006). Accordingly, the Department's recently announced modification in methodology for sunset reviews does not pertain to this sunset review. See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification for Reviews, 77 FR 8101, 8108-09 (February 14, 2012).

de minimis after acceptance of the suspension agreement, (b) imports of the subject merchandise ceased after acceptance of the suspension agreement, or (c) dumping was eliminated after acceptance of the suspension agreement and import volumes for the subject merchandise declined significantly. The Department also recognizes that in the context of a sunset review of a suspended investigation, the data relevant to weighted-average dumping margins and import volumes may not be conclusive in determining the likelihood of future dumping. Consequently, the Department may be more likely to take other factors into consideration, provided good cause is shown

With respect to dumping margins, the Department calculated weighted-average dumping margins in its preliminary determination of the investigation of 85.64 percent for San Miguel, 128.5 percent for Citrusvil and 113.52 percent for all other exporters of the subject merchandise. No more recently calculated margins exist. As such, we find the weighted-average dumping margins determined in the suspended investigation demonstrative of the behavior of Argentine manufacturers, producers, and exporters without the discipline of a suspension agreement in place.

Regarding import levels, import data released by the ITC indicates that imports declined significantly following acceptance of the suspension agreement. With the exception of 2011, when imports were anomalously high, the Department found that the five years following initiation of the investigation, imports remained lower than in 2006, the year prior to the domestic producer's petition. Indeed, imports from 2007 through 2010 ranged from 24 percent to 66 percent of pre-petition import volumes.⁷

Based on this information, the Department finds that the general decrease in export volumes after acceptance of the Suspension Agreement is highly probative of the likelihood of continuation or recurrence of dumping. As discussed in the SAA and the House Report, declining import volumes after the acceptance of an agreement may provide a strong indication that dumping would be likely to continue or recur if the suspended investigation were terminated.⁸

Therefore, given the level of dumping found in the original investigation and the significant decline in import volumes following acceptance of the Agreement, we find that dumping is likely to continue or recur if the Agreement and underlying investigation were terminated.

2. Magnitude of the Margin Likely to Prevail

Interested Party Comments

Ventura contends that, as in previous cases involving suspension agreements where no final determination was issued, the Department has provided the ITC with the margins from the preliminary determination in the investigation.⁹ Accordingly, Ventura states that the Department

⁷ See Appendix 1 (USITC Dataweb import statistics).

⁸ See SAA at 890 and House Report at 63-64.

⁹ See Ventura's August 31, 2012, Substantive Response, at 10.

should provide the ITC with the weighted-average dumping margins calculated in the preliminary determination of the original investigation of 85.64 percent for San Miguel, 128.5 percent for Citrusvil and an all others rate of 113.52 percent. No more recently calculated margins exist. As such, Ventura contends that the weighted-average dumping margins determined in the suspended investigation are demonstrative of the behavior of Argentine manufacturers, producers, and exporters without the discipline of a suspension agreement.

Department's Position

Pursuant to section 752(c)(3), the Department shall provide to the ITC the magnitude of the margin likely to prevail if the suspended investigation is terminated. The Department will normally provide to the ITC the company-specific margin from the investigation for each company.¹⁰ For companies not investigated specifically, or that did not begin shipping until after the agreement was signed, the Department normally will provide a margin based on the "all others" rate from the investigation. In addition, where the Department did not issue a final determination because the investigation was suspended and continuation was not requested, we may use the margin that was determined in the preliminary determination in the original investigation.

In the preliminary determination of the original investigation, the Department calculated dumping margins of 85.64 percent for San Miguel, 128.5 percent for Citrusvil and an all-others rate of 113.52 percent. The calculated margins from the original investigation are the only rates that reflect the behavior of Argentine producers and exporters without the discipline of the suspension agreement in place. Furthermore, no respondent party provided information in this sunset review that would update or invalidate the calculated margins from the investigation. Therefore, pursuant to section 752(c)(3) of the Act, the Department will report to the ITC the company-specific margins and the "all-others" margin from the investigation.

FINAL RESULTS OF REVIEW

We determine that termination of the suspended investigation on lemon juice from Argentina would be likely to lead to continuation or recurrence of dumping at the following weighted-average margins: 85.64 percent for San Miguel, 128.5 percent for Citrusvil and 113.52 percent for all other exporters of the subject merchandise.

¹⁰ See Persulfates from the People's Republic of China: Notice of Final Results of the Expedited Second Sunset Review of the Antidumping Duty Order, 73 FR 11868 (March 5, 2008), and accompanying Issues and Decision Memorandum at comment 2. As noted in fn 6 supra, the Department's recently announced modification in methodology for sunset reviews does not pertain to this sunset review.

Recommendation

Based on our analysis of the substantive response received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of review in the *Federal Register*, and notify the ITC of our determination.

AGREE _____

DISAGREE _____

Ronald K. Horvath

for

Paul Piquado
Assistant Secretary
for Import Administration

December 3, 2012

Date

APPENDIX I

**Lemon Juice: First Unit of Quantity by First Unit of Quantity
for Argentina**

U.S. Imports for Consumption

Annual + Year-To-Date Data from Jan - Sep

Quantity Description	2006	2007	2008	2009	2010	2011	2011 YTD	2012 YTD	Percent Change YTD2011 - YTD2012
	<i>In Actual Units of Quantity</i>								
liters	58,812,573	14,013,107	39,547,435	30,539,981	38,958,683	101,519,134	71,901,436	52,554,707	-26.9%

Sources: Data on this site have been compiled from tariff and trade data from the U.S. Department of Commerce and the U.S. International Trade Commission.