

December 19, 2012

MEMORANDUM TO: Paul Piquado  
Assistant Secretary  
for Import Administration

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

SUBJECT: Issues and Decision Memorandum for the Preliminary Results of  
Full Sunset Review of the Suspended Antidumping Duty  
Investigation on Lemon Juice from Mexico

### **Summary**

We have analyzed the substantive responses and rebuttal comments of the domestic and respondent interested parties for the preliminary results of this full sunset review of the suspended antidumping duty investigation on lemon juice from Mexico. We recommend that you approve the positions we developed in the Discussion of the Issues section of this memorandum. Below is the complete list of the issues in this sunset review for which we received substantive responses and comments:

1. Likelihood of continuation or recurrence of dumping
2. Magnitude of the margins likely to prevail
3. Standing of Domestic Interested Party

### **History of the Agreement and Underlying Suspended Antidumping Duty Investigation**

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 Mexico are being, or are likely to be sold in the United States at less than fair value.<sup>1</sup> On November 3, 2007, the United States International Trade Commission (“ITC”)

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

notified the Department of its affirmative preliminary injury determination in this case<sup>2</sup> 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.<sup>3</sup> The Department and The Coca-Cola Company and its subsidiary, The Coca-Cola Export Corporation, Mexico Branch (collectively, “TCCC”), the largest Mexican respondent, signed the Agreement Suspending the Antidumping Duty Investigation on Lemon Juice from Mexico (“the Agreement”) on September 10, 2007.<sup>4</sup> On June 18, 2009, Procimart Citrus (“Procimart”) also became a signatory to Agreement.<sup>5</sup>

## **Background**

On August 1, 2012, the Department initiated a sunset review of the Agreement and the underlying suspended antidumping duty investigation on lemon juice from Mexico, pursuant to section 751(c) of the Act.<sup>6</sup> On August 15, 2012, the Department received a notice of intent to participate on behalf of Ventura Coastal LLC (“Ventura”) within the applicable deadline specified in section 351.218(d)(1)(i) of the Department’s regulations.<sup>7</sup> Ventura is a joint venture between Ventura Coastal and Sunkist Growers, Inc. (“Sunkist”), and stated that it is the successor to Sunkist with respect to the production and sale of lemon juice in the United States.<sup>8</sup> Sunkist was the petitioner in the underlying investigation. Ventura claimed interested party status under section 771(9)(C) of the Act as a 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 complete substantive responses from Ventura and from TCCC and Procimart (collectively, “the respondent interested parties”) consistent with 19 CFR 351.218(e)(1).<sup>9</sup> On September 4, 2012, the Department granted an extension of the due date for filing rebuttal comments on the substantive

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

<sup>3</sup> See Notice of Preliminary Determinations of Sales at Less Than Fair Value and of Critical Circumstances in Part: Lemon Juice from Mexico, 72 FR 20830 (April 26, 2007).

<sup>4</sup> See Suspension of Antidumping Duty Investigation: Lemon Juice From Mexico, 72 FR 53995 (September 21, 2007).

<sup>5</sup> See Accession to the Agreement Suspending the Antidumping Duty Investigation on Lemon Juice from Mexico, dated June 18, 2009.

<sup>6</sup> See Initiation of Five-year (“Sunset”) Review, 77 FR 45589 (August 1, 2012) (“Notice of Initiation”).

<sup>7</sup> See Lemon Juice from Mexico - Notice of Intent to Participate for Ventura Coastal, LLC, dated August 15, 2012.

<sup>8</sup> Id.

<sup>9</sup> See Lemon Juice from Mexico – Ventura Coastal LLC Substantive Response, dated August 31, 2012; Lemon Juice from Mexico - TCCC Substantive Response, dated August 31, 2012; Lemon Juice from Mexico - Procimart Substantive Response, dated August 31, 2012.

responses from September 5, 2012 to September 7, 2012.<sup>10</sup> On September 7, 2012, Ventura and Procimart filed rebuttal comments.<sup>11</sup>

## **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 investigation would be likely to lead to a 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 the weighted-average dumping margins determined in the investigation 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.

Below we address the comments of the interested parties.

### 1. Likelihood of Continuation or Recurrence of Dumping

#### Domestic Interested Party Comments

Ventura asserts that dumping will continue or recur if the suspended investigation is terminated. Ventura believes that good cause in accordance with section 752(c)(2) of the Act exists for the Department to look at other factors, aside from volume of imports or the level of dumping, in determining that dumping is likely to continue or recur if the suspended investigation is terminated. Ventura notes that good cause is established because: the nature of the Agreement is to ensure that lemon juice is not sold at dumped prices in the United States; the volume of lemon juice exported to the United States from Mexico is unlikely to decline significantly because lemon juice will be produced regardless of demand as production and sales are dependent on the volume of lemons available for processing and the demand for lemon oil, not lemon juice; the largest Mexican producers, in addition to selling to unrelated parties, have related importers in the United States that are unlikely to change their sourcing; and, to petitioner's knowledge, Mexico has no other significant market for lemon juice other than the United States. Ventura asserts that Mexico is a significant producer of lemons and comments that private sources claim lemon production in Mexico has been underreported. Ventura states that Mexican processors' primary concern is selling lemon oil and disposing of the resulting

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<sup>10</sup> See Letter from Sally C. Gannon to Stephen W. Brophy, Barnes, Richardson & Colburn, Extension Request in the Sunset Review of the Agreement Suspending the Antidumping Investigation of Lemon Juice from Mexico, dated September 4, 2012.

<sup>11</sup> See Lemon Juice from Mexico – Rebuttal to Substantive Responses for Ventura Coastal, LLC, dated September 7, 2012; Lemon Juice from Mexico: Rebuttal to Petitioners Substantive Response for Procimart, dated September 7, 2012.

lemon juice, regardless of price. Ventura asserts that a review of the import data demonstrates that, prior to the Agreement, Mexican producers dumped lemon juice in the U.S. market at extremely high margins.

#### Respondent Interested Party Comments

Respondents maintain that termination of the suspended investigation will not be likely to lead to the recurrence of sales of lemon juice from Mexico at less than fair value. TCCC asserts that the totality of the evidence supports such a finding by the Department, while Procimart adds that termination of the suspended investigation would not likely have any significant effect on the U.S. lemon juice industry. Respondents note that section 752(c) of the Act requires the Department to consider both the weighted-average dumping margins determined in the investigation and subsequent reviews, and the volume of imports of the subject merchandise for the period before and the period after acceptance of the suspension agreement, as well as other price, cost, market, or economic factors as it deems relevant in determining whether termination of a suspension agreement would lead to a continuation or recurrence of dumping. Respondents state that, because the Department did not publish a final determination and has not conducted administrative reviews leading to published margin results, the Department has never found a final dumping margin in this case.

Procimart asserts that it has always sold at prices significantly above the normal values (“NVs”) and that, according to the Department in its administrative review of the suspension agreement on cut-to-length plate from Ukraine, selling at or above the NVs is *de facto* evidence that sales are not dumped. Procimart states that, although it was not a respondent in the original investigation, it has never had a problem exporting lemon juice to the United States and has sold significant amounts since it has been a signatory to the Agreement. Procimart notes that its NVs are based on its own cost of production and profit, as opposed to reference prices, and that selling at or above NVs is evidence that Procimart will not sell at dumped prices if the suspended investigation is terminated.

With respect to the volume of imports of lemon juice from Mexico, after the Agreement went into place, TCCC states that the decrease in TCCC’s imports during the five year period is due to the termination of TCCC’s toll-processing contract with Procimart. TCCC argues that, as Procimart has since become a signatory to the Agreement and obtained its own NVs in order to ship to the United States, TCCC’s export quantity should be combined with Procimart’s export quantity in order to develop an accurate picture of lemon juice exports from Mexico. Since signing the Agreement, Procimart asserts that the level of exports has remained significant throughout the life of this Agreement, and that, in some years, the level of exports has exceeded the amount of exports prior to the signing of the Agreement.

Respondents argue that there is no rationale for subject producers/exporters to sell lemon juice to the United States at less than fair value. Respondents further assert that imported lemon juice prices have exceeded the Department’s calculated NVs on a consistent basis and that there is steady demand for lemon juice, low inventories, and limited supply of fresh lemons for processing into lemon juice. Both TCCC and Procimart assert that the condition of the lemon

juice industry, in the United States and worldwide, is dramatically different today than during the investigation; prices for lemon juice have increased since the investigation; and, overall, the market for lemon juice since the investigation has been tight, rather than in oversupply. TCCC states that lemon juice is in demand for use in flavored water beverages that have become popular since the investigation, and it is also being used as a natural flavoring in a number of other products so they can be marketed as natural products. Procimart states that the tight lemon juice market is demonstrated by the fact that Ventura imported a significant volume of lemon juice from Procimart in 2011. Further, respondents claim that Sunkist, the original petitioner, as well as lemon producers in Mexico, prefer to sell lemons to the fresh market in recent years due to higher prices. Respondents assert that U.S. producers are not able to supply the demand for lemon juice in the United States because the United States does not produce enough fresh lemons for processing.

TCCC asserts that global production, including in the United States, of limes/lemons is down, while demand for fresh lemons in the United States is strong. TCCC states that although there has been some increase in lemon production in Mexico, as noted above, most such production remain focused on the fresh market, juice prices remain high, and Mexican suppliers continue to sell well above the NVs calculated by the Department. TCCC and Procimart note that, during the investigation, there were very low prices and a temporary oversupply of lemon juice attributable in part to the bankruptcy of the juice trading company called Citrico International (“Citrico”), as noted by the ITC in its Preliminary Determination, but that is no longer the case today.

#### Domestic Interested Party Rebuttal Comments

Ventura states that TCCC’s and Procimart’s claims that lemon juice production has decreased and that a market once characterized by oversupply is now tight are exaggerated and not supported by the facts. Ventura challenges TCCC’s argument that the oversupply in the U.S. market during the original investigation was a temporary phenomenon caused by the bankruptcy of one lemon juice trading company, Citrico. Petitioner contends that the oversupply of lemon juice on the U.S. market during the original investigation was caused by the structure of the lemon juice industries in Argentina and Mexico, rather than any one-time event. As petitioner discussed in the petition, Ventura states that, as Argentine and Mexican processors of lemons are primarily interested in the production of lemon oil for soft drink manufacturers and the production of lemon juice is simply an unavoidable consequence of their lemon oil production process, lemon juice will be produced regardless of any actual demand in the market. Ventura states that high global demand for lemon oil creates severe overproduction of lemon juice that has not changed since the original investigation. Ventura asserts that the difference between now and then is that the lemon juice industry is now somewhat insulated from the low prices of these oversupplies due to the Agreement.

Ventura states that, although respondents argue that the market has tightened since the original investigation, U.S. production of lemons has actually been relatively steady during the past five years and the portion of the U.S. lemon crop that has been processed has been relatively stable or increased. Ventura adds that the volume of lemons available for processing has been increasing in Argentina and that Argentina processes the majority of lemons that it grows. Further, Ventura

points out that Mexico, the second largest U.S. import source of lemon juice after Argentina, has increased lemon production in Mexico.

Ventura states that a review of the import data demonstrates that the Agreement has had a dramatic effect on the pricing of U.S. imports of lemon juice from Mexico. It also states that, in assessing the volumes of subject merchandise under the Agreement, the Department should ensure that the volumes reported by TCCC and Procimart are on the same basis: Procimart reports its volumes on the basis of gallons at 400 GPL; TCCC, however, does not specify on what basis it is reporting the volumes.

In summary, Ventura concludes that there have been no significant changes in the market for lemon juice that would lead the Department to believe that Mexican exporters would not resume dumping if the discipline of the Agreement was removed. Ventura notes that the volume of available juice has not changed so dramatically since the Agreement went into place as to undermine the presumption that dumping would resume in its absence and that the U.S. prices of both imports and domestic juice due to fair pricing enforced by NVs calculated under the terms of the Agreement have increased.

#### Respondent Interested Party Rebuttal Comments

Procimart agrees with Ventura that imports of lemon juice remained steady and prices increased substantially under the Agreement. Procimart states that, while the production of lemons may have increased, the fact that imports remained substantial and steady, rather than increasing, demonstrates that the fruit available for processing has not increased. Procimart asserts that lemons do not need to be turned into juice and states that petitioner has ignored the increased importance of the market for fresh lemons from Mexico, as shown in the increased value of fresh lemons imported since 2005. Procimart also refers to the ITC's preliminary determination in this case where the ITC described that demand for lemons in the more profitable fresh market are one of the factors affecting the supply of lemon juice.

Further, Procimart contends that, according to Ventura's argument, the supply of juice would have increased substantially and the prices would have decreased. However, Procimart asserts that every signatory to this Agreement has sold at, or in most cases, significantly above NVs which suggests that, absent the Agreement, prices would have been, and presumably will continue to be, above the NV. Procimart notes that the producers have no incentive to sell at lower prices with reduced profits if the Agreement is eliminated and that the Department has never made a final determination about dumping in this case. Therefore, Procimart contends that there is no basis for petitioner to maintain that the main effect of the Agreement is to ensure that lemon juice is not sold at dumped prices.

Procimart also asserts that petitioner has ignored other substantial market changes that have occurred since prior to the initiation of this case. First, as discussed in its substantive response to the Department, Procimart notes that the ITC found that Citrico, a U.S. importer of lemon juice from Argentina, declared bankruptcy during the period and that the ITC planned to seek further information about the subsequent inventory liquidation in the final phase of the investigation, which did not occur. Procimart contends that, once the liquidated juice worked its way through

the system, prices increased. Second, Procimart notes that, prior to and during the original investigation, it was a toller for TCCC. Procimart reports that it now purchases lemons on the open market.

### 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 investigation<sup>12</sup> 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.

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.<sup>13</sup> 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 *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.<sup>14</sup> 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.

Section 752(c)(2) of the Act states that, “if good cause is shown,” the Department shall consider other factors. The Department’s Policy Bulletin recognizes that, in the context of a sunset review of a suspended investigation, the dumping margins and/or the volume of imports may not

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<sup>12</sup> 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).

<sup>13</sup> See SAA at 879 and House Report at 56.

<sup>14</sup> See SAA at 889-890, House Report at 63-64, and Senate Report at 52.

be conclusive with respect to likelihood.<sup>15</sup> Specifically, the Policy Bulletin notes that, in the context of a sunset review of a suspended investigation, the elimination of dumping, coupled with steady or increasing import volumes, may not be conclusive with respect to no likelihood and we may be more likely to entertain good cause arguments.<sup>16</sup>

With respect to dumping margins, the Department calculated weighted-average dumping margins in its preliminary determination of 146.10 percent for TCCC, 205.37 percent for Citrotam Internacional S.P.R. de R.L.(Citrotam)/Productos Naturales de Citricos (Pronacit) and 146.10 percent for all other exporters of the subject merchandise. Although the Department did not publish a final determination or conduct any administrative reviews, we find that the preliminary dumping margins are the only evidence of the behavior of Mexican manufacturers, producers and exporters without the discipline of a suspension agreement in place. Further, the respondents have stated that lemon juice prices are consistently above the NVs and that this is *de facto* evidence that the sales are not dumped. While the Department acknowledges that TCCC and Procimart have consistently sold at or above the NVs and complied with the Agreement, the Department is charged with determining 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 the absence of the Agreement. The fact that respondents have complied with the Agreement does not demonstrate that there would be no likelihood of dumping if the suspended investigation is terminated. As such, the Department finds the weighted-average dumping margins determined in the suspended investigation demonstrative of the behavior of Mexican manufacturers, producers, and exporters without the discipline of a suspension agreement in place.

With respect to volume of imports, as both respondents and the petitioner have noted, lemon juice imports from Mexico have not dropped off, but have remained steady or increased during the life of the Agreement. Procimart states that it has never had a problem exporting lemon juice to the United States and has sold significant amounts. However, as noted above, the Policy Bulletin states that steady or increasing import volumes may not be conclusive with respect to no likelihood and we may be more likely to entertain good cause arguments. In this case, we find that the volume of imports is inconclusive and agree with the petitioner that, because lemon juice is a by-product of lemon oil,<sup>17</sup> it must be sold regardless of price and that the U.S. is the largest, closest lemon juice market for Mexican imports, leading to good cause to examine other factors under section 752(c)(2) of the Act.

Regarding good cause factors, the SAA provides that such other factors might include the market share of foreign producers subject to the AD proceeding; changes in exchange rates, inventory levels, production capacity, and capacity utilization; any history of sales below cost of

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<sup>15</sup> Policies Regarding the Conduct of Five-year (“Sunset”) Reviews of Antidumping and Countervailing Duty Orders, 63 FR 18871, 18872 (April 16, 1998) (Policy Bulletin 98.3).

<sup>16</sup> Id.

<sup>17</sup> See Lemon Juice from Mexico; Response to Section D of the Questionnaire (CoExport), dated November 3, 2011, page D-6.

production; changes in manufacturing technology in the industry; and prevailing prices in relevant markets.<sup>18</sup> The SAA also notes that the list of factors is illustrative and that the Department should analyze such information on a case-by-case basis.<sup>19</sup>

Therefore, in examining other factors, we considered the lemon juice market in Mexico and the United States, as well as the prices before and after acceptance of the Agreement. As respondents have noted, throughout the life of the Agreement, Mexico has had no viable home market for lemon juice consumption.<sup>20</sup> The United States is the largest and closest market for lemon juice from Mexico, thus, making it a natural destination for exports. Analyzing the average per-unit price in the import data released by the ITC, we find that the import values significantly increased after the Agreement went into place.<sup>21</sup> The Department notes that during the three years prior to the Agreement, import values were steady and significantly lower than after the Agreement became effective.<sup>22</sup> Therefore, contrary to respondents' contention, the bankruptcy of Citrico during the investigation could not have been the sole cause of the low prices and dumping margins. Further, the Department finds that the increase in prices following the implementation of the Agreement could very likely have been due to the discipline of the Agreement rather than the liquidation of Citrico's inventory, as respondents allege.

Respondents also point to the increased importance of fresh lemons from Mexico as limiting the supply of lemons for processing. However, imports of lemon juice have not decreased. While the market for fresh lemons may have increased, that does not detract from the fact that lemon juice is a by-product and will be produced because lemon oil is produced. Therefore, lemon juice must be sold regardless of price. The Department agrees with Ventura's assertion that the suspension agreement had a dramatic effect on increasing the prices of U.S. imports of lemon juice from Mexico.

Consequently, the combination of the nature of lemon juice production as a by-product, the lack of a viable domestic demand for lemon juice, a large, adjacent U.S. market, and the change in price levels before and after the Agreement leads us to conclude that, absent the discipline of the Agreement and the suspended investigation, dumping of lemon juice from Mexico would likely resume.

## 2. Magnitude of the Margins Likely to Prevail

### Domestic Interested Party Comments

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<sup>18</sup> SAA at 890.

<sup>19</sup> Id.

<sup>20</sup> See, Lemon Juice from Mexico; Response to Section A of the Questionnaire (CoExport), dated November 3, 2011, page A-3 and Response to Section A Questionnaire of Procimart Citrus, dated October 31, 2011, page A-3. IS

<sup>21</sup> See Appendix I (USITC Data web import statistics).

Ventura states that the statute provides that the Department will supply the ITC with the magnitude of the margin of dumping that is likely to prevail if the suspended investigation is terminated and the SAA provides that the Department will normally select a margin “from the investigation, because this is the only calculated rate that reflects the behavior of exporters ... without the discipline of an order or suspension in place.”<sup>23</sup> Ventura also states that the Department’s Policy Bulletin maintains that the Department normally will provide to the ITC the margin that was determined in the final determination in the original investigation.

Ventura states that the Department’s Policy Bulletin specifies that the Department may provide the ITC with the margin that was determined in the preliminary determination in the original investigation if the investigation was suspended and continuation was not requested. Ventura notes that, in previous cases involving suspension agreements where no final determination was issued, the Department provided the ITC with the margin that was determined in the preliminary determination in the investigation.

Since this review also concerns a suspension agreement for which continuation was not requested and for which no final determination was issued, Ventura asserts that the Department should follow its past precedent and select the margins from the preliminary determination as the margins that will likely prevail if the Department terminates the suspended investigation.

#### Respondent Interested Party Comments

TCCC and Procimart assert that the Department has monitored and determined in each period of review that they complied with the terms of the Agreement. Respondents maintain that they sold lemon juice to the U.S. market at prices above the NV, which is based on their cost of production, and that the average lemon juice price has increased significantly since the original investigation. Respondents argue that, in view of this consistent and more contemporaneous record evidence, reliance on the original investigation’s preliminary determination margin would not be supported by substantial evidence in the record.

TCCC asserts that the dumping margin likely to prevail for TCCC if the suspended investigation is terminated is zero. Procimart states that the NVs are not restricting exports to the United States, and have not done so for three years, and that it is safe to assume Procimart will not begin to sell at dumped prices in the foreseeable future. Further, Procimart states that it was not a producer during the original investigation and, therefore, the rates determined in the preliminary investigation are not related to Procimart.

#### Domestic Interested Party Rebuttal Comments

Ventura states that TCCC and Procimart both argue that the Department should find that a margin of zero will likely prevail based solely on the fact that they have abided by the terms of the Agreement in making sales to the United States. Ventura maintains that such a finding would be contrary to logic, Department precedent, and the statute. Ventura refers to the sunset

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<sup>23</sup> SAA at 890.

review of Russian Ammonium Nitrate to illustrate the Department's determination that the behavior of a respondent subject to the discipline of an antidumping order or a suspension agreement is not indicative of its behavior absent an order or suspension agreement.

Ventura contends that both the SAA and the Department's Policy Bulletin state that the Department will normally provide the ITC with the margin that was determined in the final determination in the original investigation. Ventura notes that the Policy Bulletin also states that, where the Department did not issue a final determination because the investigation was suspended and continuation was not requested, the Department may provide the ITC with the margin that was determined in the preliminary determination in the original investigation. Further, Ventura refers to Department precedent for suspension agreements where no final determination was issued and the Department provided the ITC with the margin that was found in the preliminary determination in the investigation.

Ventura also refutes TCCC's argument that the Department might have found a margin of zero in a final determination in the underlying investigation had the Department accepted all of TCCC's arguments with regard to the calculation methodology to be used. Ventura notes that the petitioner strongly disagreed with TCCC's proposed calculation methodology in the underlying investigation as contrary to the statute and the Department rejected that proposed methodology in its preliminary determination; thus, TCCC cannot conclude now that the likely margin in the absence of the Agreement is zero.

Further, Ventura notes that Mexican respondents received special treatment when the Agreement was entered into because, instead of allocating common lemon oil and lemon juice costs based on a net realizable value, the Department and respondents agreed to allocate 8.5 percent of the reported lemon fruit costs and common lemon processing costs to lemon juice and 91.5 percent of these same costs to lemon oil for purposes of calculating The Coca-Cola Export Corporation, Mexico Branch's NVs. Ventura asserts that it is unreasonable for respondents to expect the Department to reward them for abiding by the Agreement and selling at or above their NVs.

Ventura refutes Procimart's attempts to distinguish the Department's determination in Russian Ammonium Nitrate by noting that that review dealt with a reference price, which differs from the NVs issued by the Department in these reviews which are essentially based on the respondents' cost of production. Ventura asserts that, in both cases, respondents were required to sell subject merchandise in the United States at or above certain prices under the relevant agreements and that how that price is calculated is irrelevant. Ventura argues that just because respondents adhered to the Agreement by selling at or above their cost of production does not indicate that they would do so in the absence of the Agreement. Furthermore, Ventura notes that the Department's NV methodology under the Agreement is not an exact substitute for a dumping margin calculation since the Agreement's NV calculation is based on costs from prior years rather than the costs of the lemon juice actually sold in a given year.

Finally, Ventura notes that Procimart claims it was not a producer during the original investigation and implies that the margins are, therefore, not applicable to it. Ventura counters that Procimart was a toll processor for TCCC during the original period of investigation; the fact

that it was not issued its own dumping margin during the original investigation is irrelevant; and the “all others” rate during the investigation was 146.10 percent.

In summary, Ventura states that there is no basis for the Department to conclude that the margin likely to prevail is anything other than the margins determined in the preliminary determination in the underlying investigation as this is the only evidence of the behavior of respondents absent the discipline of the Agreement.

### Department’s Position

Pursuant to section 752(c)(3) of the Act, the Department shall provide to the ITC the magnitude of the margin likely to prevail if the suspended investigation is terminated. While the Department acknowledges that TCCC and Procimart have consistently sold at or above the NVs and complied with the Agreement, in the absence of a more recently calculated margin, the Department will normally provide to the ITC the company-specific margin from the investigation for each company.<sup>24</sup> 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 will use the margin that was determined in the preliminary determination in the original investigation.<sup>25</sup>

In the preliminary determination of the original investigation, the Department calculated dumping margins of 146.10 percent for The Coca-Cola Export Corporation, Mexico Branch, 205.37 percent for Citrotam Internacional S.P.R. de R.L.(Citrotam)/Productos Naturales de Citricos (Pronacit) and 146.10 percent for the “all others” rate. The preliminary calculated margins from the original investigation are the only rates that reflect the behavior of Mexican producers and exporters without the discipline of the 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, for Procimart and all other exporters, the “all-others” margin from the preliminary determination of the investigation.

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<sup>24</sup> See, e.g., 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 25 supra, the Department’s recently announced modification in methodology for sunset reviews does not pertain to this sunset review.

<sup>25</sup> See Lemon Juice From Argentina: Final Results of the Expedited First Sunset Review of the Suspended Antidumping Duty Investigation, 77 FR 73021, December 7, 2012 and accompanying Issues and Decision Memorandum at page 5.

### 3. Standing of Domestic Interested Party

#### Respondent Interested Party Comments

In its rebuttal comments, Procimart argues that under the regulations (19 CFR 351.218(e)(1)(i)(B)), the Department may disregard a response from a domestic producer that is an importer of subject merchandise or is related to such an importer. Procimart argues that the Department should disregard the submission of Ventura because both Ventura and its parent, Ventura Coastal, imported subject merchandise. As such, Ventura is related to an importer of subject merchandise under the regulations.

Procimart asserts that sales invoices show that Ventura was the purchaser of a substantial volume of lemon juice from Procimart in 2011 and, as such, may also have been an importer of subject merchandise.

Procimart asserts that Ventura's substantive response should be ignored by the Department and treated as a failure by the U.S. industry to respond, resulting in termination of the Agreement, or that the Department should conduct a full review in this case to fully investigate the issue of whether Ventura is a domestic interested party.

#### Department's Position

Ventura is a joint venture between Sunkist Growers, Inc. and Ventura Coastal, and is claiming to be the petitioner, a domestic producer and the domestic interested party in this case.

Under 19 CFR 351.218(e)(1)(i)(B), the Department has discretion in determining whether to disregard a response from a domestic producer that is an importer or is related to an importer of subject merchandise. In this case, even if Ventura Coastal, the parent, or Ventura, are importers of the subject merchandise, there is no evidence that Ventura is not participating as a domestic interested party. Indeed, it would be logical that, if Ventura was acting according to the interests of an importer and not a domestic producer, it would argue for the elimination of the suspended investigation so that lemon juice prices were not subject to NVs. Therefore, the Department finds that Ventura is a domestic interested party in this sunset review.

#### Preliminary Results of Review

We preliminarily find that dumping will be likely to continue or to recur if the Agreement were to be terminated. Further, we preliminarily determine that the magnitude of the margin likely to prevail were the Agreement to be terminated is 146.10 percent for TCCC, 205.37 percent for Citrotam /Pronacit, and 146.10 for Procimart and all other Mexican producers and exporters of lemon juice.

**Recommendation**

Based on our analysis of the responses and comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the preliminary results of this review in the Federal Register.

AGREE \_\_\_\_\_

DISAGREE \_\_\_\_\_

\_\_\_\_\_  
Paul Piquado  
Assistant Secretary  
for Import Administration

\_\_\_\_\_  
(Date)