



A-201-835
Sunset Review
IA/OP/BAU: MP
Public Document

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

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

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

Summary

We have analyzed the comments of the respondent interested parties and the rebuttal comments of the domestic interested party for the final 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:

1. Likelihood of Continuation or Recurrence of Dumping
2. Magnitude of the Margins Likely to Prevail
3. Whether to Disregard Ventura's Response

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.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

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

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

than fair value, as provided in section 733 of the Act.³ 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, 2007.⁴ On June 18, 2009, Procimart Citrus (“Procimart”) also became a signatory to the Agreement.⁵

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.⁶ 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.⁷ Ventura is a joint venture between Ventura Coastal and Sunkist Growers, Inc. (“Sunkist”), the original petitioner in the underlying investigation, and stated that it is the successor to Sunkist with respect to the production and sale of lemon juice in the United States.⁸ 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).⁹ On September 4, 2012, the Department granted an extension of the due date for filing rebuttal comments on the substantive responses from September 5, 2012 to September 7, 2012.¹⁰ On September 7, 2012, Ventura and Procimart filed rebuttal comments.¹¹ The Department published the Preliminary Results of Full Sunset Review of the Suspended Antidumping Duty Investigation (the Preliminary Results) on December 26,

³ 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.

⁴ Suspension of Antidumping Duty Investigation: Lemon Juice From Mexico, 72 FR 53995, September 21, 2007.

⁵ Accession to the Agreement Suspending the Antidumping Duty Investigation on Lemon Juice from Mexico, June 18, 2009.

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

⁷ Lemon Juice from Mexico - Notice of Intent to Participate for Ventura Coastal, LLC, August 15, 2012.

⁸ Id.

⁹ 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, August 31, 2012.

¹⁰ 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, September 4, 2012.

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

2012.¹² On January 25, 2013, Procimart filed a request for a hearing which it later withdrew.¹³ On February 14, 2013, the respondent interested parties submitted comments on the Preliminary Results¹⁴ and, on February 19, 2013, Ventura submitted rebuttal comments.¹⁵ On March 18, 2013, the Department extended the deadline for the final results of full sunset review of the Agreement and the suspended antidumping duty investigation to July 1, 2013.¹⁶

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

Respondents' Comments

TCCC argues that the termination of the suspended investigation would not be likely to lead to a continuation or recurrence of sales of the subject merchandise at less than fair value. Procimart concurs with TCCC and has incorporated TCCC's arguments by reference into its comments.

TCCC states that the bankruptcy and liquidation of Citrico International ("Citrico"), which caused an oversupply of lemon juice in the market and a drop in lemon juice prices during the investigation, has been resolved. TCCC states that: the ITC Preliminary Determination covered the period of investigation from January 2003-August 2006; the ITC reported that Citrico filed for bankruptcy in August 2004 and its inventories were sold by a liquidator; the petitioner acknowledged to the ITC that the liquidation led

¹² Lemon Juice from Mexico: Preliminary Results of Full Sunset Review of the Suspended Antidumping Duty Investigation, 77 FR 75998, December 26, 2012 ("Preliminary Results").

¹³ Lemon Juice from Mexico; Request to Participate at Hearing on behalf of Procimart Citrus, January 25, 2013; Lemon Juice from Mexico; Withdraw of Hearing Request Sunset Review on behalf of Procimart Citrus, February 15, 2013.

¹⁴ Lemon Juice from Mexico (A-201-835) Sunset Review; TCCC Case Brief, February 14, 2013; Procimart SA de CV and the Citrus Team Company Brief, February 14, 2013.

¹⁵ Lemon Juice from Mexico -Rebuttal Brief on behalf of Ventura Coastal, LLC (Rebuttal Brief), February 19, 2013.

¹⁶ Memorandum from Maureen Price, Senior Policy Analyst, to Lynn Fischer Fox, Deputy Assistant Secretary for Policy and Negotiations, Lemon Juice from Mexico: Extension of Deadline for Final Results of Full Sunset Review of the Agreement and the Suspended Antidumping Duty Investigation, March 18, 2013.

to a dramatic decrease in lemon juice prices; and the ITC cited to an e-mail stating that the lemon juice prices “are expected to rebound soon” from the Citrico liquidation.¹⁷ TCCC argues that such information regarding the Citrico situation is contrary to the Department’s finding in the Preliminary Results that the Citrico bankruptcy “could not have been the sole cause of low prices and dumping margins.”¹⁸

TCCC argues that the price impact of Citrico’s bankruptcy, the pricing information provided in TCCC’s Substantive Response showing prices significantly higher than the normal values (“NVs”), the significant change in the Mexican lemon juice producing industry through TCCC’s termination of its toll-processing arrangement with Procimart and Procimart becoming a signatory to the Agreement with its own NVs combine to present substantial evidence that dumping will not continue or recur if the Agreement is terminated. TCCC disagrees with the Department’s finding in the Preliminary Results that consistent sales at or above the NVs demonstrated compliance with the Agreement rather than showing how the companies would behave if the Agreement were terminated.¹⁹ TCCC points to record evidence of strong prices with healthy import volumes is evidence of strong demand in the United States. Finally, TCCC asserts that the dumping margins from the preliminary determination in the original investigation are in no way supported by the evidence on the record.

Procimart argues that, in the Preliminary Results, the Department ignored the substantial changes to the industry since the original investigation. Procimart claims that the conditions of competition have changed significantly since the original investigation because the bankruptcy of Citrico flooded the market with juice and suppressed profits, which distorted the market. Procimart supports this claim by asserting that the ITC found that, at the end of the period of investigation, prices trended upward.²⁰ Procimart also claims that the fresh market has become significantly more important in Mexico and, as the ITC found, the fresh market is generally more profitable. Procimart asserts that this is true in both the United States and Mexico, and argues that this is one reason that U.S. producers Ventura/Sunkist cannot supply the U.S. market with juice and prices have remained high. Procimart claims that Sunkist produces lemons for the fresh market and only sends fruit that it cannot sell into the fresh market for juicing, consequently restricting the global supply of juice. Procimart states that, since the signing of the Agreement, the level of imports has remained substantial and in some years has exceeded the level at the time of the original investigation which is evidence that the dumping will not recur if the Agreement is terminated.

Further, Procimart states that, under Section 752 of the Act, the Department is required to consider the weighted-average dumping margins determined in the investigation and subsequent reviews in determining whether termination of the agreement would result in a continuation or recurrence of dumping. Procimart states that, in the Preliminary Results, the Department found that the preliminary dumping margins from the investigation are the only evidence of the behavior of Mexican manufacturers, producers and exporters without the discipline of a suspension agreement in place.²¹

¹⁷ ITC Preliminary Determination, page V-4 (Table V-1) and V-4 n.7.

¹⁸ Preliminary Results and accompanying Issues and Decision Memorandum, December 19, 2012 (“Issues and Decision Memo”), page 9.

¹⁹ Issues and Decision Memo, page 8.

²⁰ Procimart Substantive Response, August 31, 2012, page 11.

²¹ Issues and Decision Memo, page 12.

However, Procimart points out that the Department went on to state that “lemon-juice is a by-product.” Procimart asserts that this is inconsistent with the Department’s finding in the original investigation and negates the margins found in the preliminary determination which were clearly calculated by the Department based on using a co-product analysis.²²

Procimart asserts that, if the Department now agrees with TCCC’s position in the original investigation that lemon juice is a by-product, the margin from the investigation should be adjusted. Furthermore, Procimart argues that, consistent with a by-product analysis and as stated in the Department’s cost memorandum from the preliminary determination in the original investigation, in its normal books and records, TCCC allocated zero cost to lemon juice and instead used the lemon juice revenue to offset the material cost of the primary product.²³ Procimart maintains that, if the Department now uses a by-product analysis, the resulting margin found will, therefore, be zero. Procimart states that, in reversing its co-product/by-product decision from the original investigation, the Department has itself invalidated the margin from the preliminary determination. Therefore, Procimart maintains that such revision will result in a zero margin, rendering one of the requirements for determining continuation or recurrence of dumping void.

Petitioner’s Rebuttal Comments

Ventura states that it strongly disagrees with TCCC’s assertion now and in the original investigation that the oversupply in the U.S. market during the original investigation was a temporary phenomenon caused by the bankruptcy of Citrico. Ventura says it argued in its previous submissions, and continues to argue now, that the oversupply of lemon juice on the U.S. market and the low prices during the original investigation were caused by the structure of the lemon juice industries in Argentina and Mexico, rather than any one-time event.

Ventura states that TCCC submitted no evidence that the bankruptcy of Citrico was the sole or even primary cause of the lower lemon juice prices in effect prior to the Agreement and that TCCC cited to select pages from the record of the underlying preliminary investigation of the ITC. Ventura asserts that, at best, this shows that some parties, including TCCC, made the same argument before the ITC during the original investigation, but that it does not substantiate the accuracy of those allegations. Ventura holds that, while petitioner acknowledged that the liquidation of Citrico's inventories had a negative effect on prices during the original period of investigation, petitioner did not and does not concede that the liquidation of those inventories was the sole or even primary cause of the low prices prevalent in the U.S. market during the original period of investigation.

Ventura believes it is noteworthy that TCCC only submitted pages from the ITC's Staff Report in the preliminary phase of the investigation and not any pages from the ITC’s actual determination. Ventura states that the ITC did not accept TCCC’s argument and made no findings that supported that argument. Ventura contends that the best that TCCC can say is that the ITC agreed to collect additional evidence and consider the issue of Citrico’s status further in the final phase of the injury investigation, which was

²² Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – Coexport, Memorandum to Neal M. Halper, Director, Office of Accounting from Mark Todd, Senior Accountant, April 19, 2007, page 1.

²³ Id.

cut short by the signing of the Agreement.²⁴ Ventura argues that TCCC has not submitted any evidence for the record of this sunset review that substantiates its allegations that the bankruptcy of Citrico was the sole cause of the lower market prices prevalent in years prior to the signing of the Agreement.

Further, Ventura disputes TCCC's challenge to the Department's finding that "during the three years prior to the Agreement, import values were steady and significantly lower than after the Agreement became effective."²⁵ Ventura maintains that while TCCC states that the three-year period prior to the Agreement coincides with the bankruptcy of Citrico and the liquidation of its inventories, TCCC fails to note that the ITC's record indicates that Citrico went bankrupt in August 2004 and that the subsequent liquidation of its inventories did not start until the beginning of 2005. Ventura reasons that, even to the extent the bankruptcy of Citrico and the liquidation of its inventories in 2005 had an effect on prices in 2005 or subsequent to 2005, it does not explain the low prices in 2004. Ventura asserts that, in its Preliminary Results, the Department demonstrated that prices in 2004 were \$0.19 per liter, which was significantly lower than the prices prevailing after the signing of the Agreement, which range from \$0.49 to \$0.72 per liter.²⁶ Ventura encourages the Department to add data from 2003 to the record to eliminate any doubt that the Agreement has had a dramatic and positive effect on the price of lemon juice from Mexico.

Ventura asserts, therefore, that the Department should reject TCCC's arguments regarding the impact of Citrico's bankruptcy as not supported by the record evidence. Further, the Department should affirm its findings that import values increased significantly as a result of the Agreement and that the bankruptcy of Citrico could not have been the sole cause of the low prices and dumping margins in the years prior to the Agreement.

Ventura disagrees with Procimart's argument that the Department ignored various alleged changes to the industry since the original investigation, including: 1) the bankruptcy of Citrico, 2) the importance of the fresh market in Mexico, and 3) restrictions on supply caused by Sunkist's alleged focus on the fresh market. With regard to Citrico, Ventura refers to its rebuttal arguments to TCCC's comments, as detailed above. With regard to the fresh market in Mexico, Ventura states that, if the alleged increase in demand for fresh lemons in Mexico were a substantial change in the market, one would have expected a decline in the volume of lemon juice exported from Mexico. However, Ventura states that the Department correctly noted in its preliminary determination that any alleged increase in the market for fresh lemons in Mexico did not result in any decline in the import volume of lemon juice from Mexico.²⁷ Finally, with regard to supply, Ventura reiterates the comments made in its submission of September 7, 2012, which it claims showed that U.S. production of lemons has actually been relatively steady during the past five years.²⁸ Ventura states that, although there have been fluctuations, the data indicate that the amount of lemons sent for processing has been relatively stable or increased since the original investigation.

²⁴ ITC Preliminary Determination, page 17.

²⁵ Issues and Decision Memo, page 9.

²⁶ Issues and Decision Memo, Appendix I.

²⁷ *Id.*, page 9.

²⁸ Ventura Rebuttal Brief, pages 3-5 and Exhibits 1-3.

Ventura also disagrees with Procimart that the level of imports remaining substantial is evidence that dumping will not recur if the Agreement is terminated. Ventura maintains that the volume trends alone are not an accurate indicator of whether dumping will continue or recur if the suspended investigation is terminated. Ventura agrees with the Department's Preliminary Results 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;²⁹ the Policy Bulletin provides that the elimination of dumping, coupled with steady or increasing import volumes, may not be conclusive with respect to no likelihood of resumption of dumping, and the Department may be more likely to entertain good cause arguments;³⁰ and that there was good cause to consider other factors.³¹ Ventura asserts that, in this case, the absence of any significant decline in Mexican imports is to be expected because 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. Ventura states that the volume of lemon juice produced in a given year is not controllable by the Mexican processors but is dependent on the volume of lemons available for processing and the demand for lemon oil. Ventura maintains that Mexican producers will process lemons and produce lemon juice regardless of the actual demand for lemon juice in the U.S. market.

Furthermore, Ventura notes that, not only must the volume of lemon juice produced be sold in the United States because Mexico has no other significant market for lemon juice, but the largest Mexican producers and exporters have relationships with importers in the United States that are unlikely or unable to change their sourcing. Ventura states that, given the fact that lemon juice will be produced regardless of demand, the lack of significant markets outside the United States, and the existence of relationships with importers, the volume of lemon juice exported to the United States from Mexico is unlikely to decline significantly. Therefore, Ventura asserts, the main effect of the Agreement is to ensure that lemon juice is not sold at dumped prices, which drives down the U.S. market price.

The 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 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.³² Additionally, if good cause is shown, the Department "shall also consider such other price, cost, market, or economic factors as it deems relevant."³³

²⁹ Id., pages 7-8.

³⁰ Id.

³¹ Id.

³² Section 752(c)(1)(A) and (B) of the Act.

³³ Section 752(c)(2) of the Act.

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 be conclusive with respect to likelihood.³⁴ 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.³⁵

In the Preliminary Results, in addition to considering the weighted-average dumping margins determined in the investigation and the volume of imports before and after acceptance of the suspension agreement, the Department found good cause existed to consider additional factors under section 752(c)(2) of the Act. After examining other factors, including the nature of lemon juice production, the viability of the home market for lemon juice consumption, the size and proximity of the United States market for lemon juice from Mexico and the average per-unit import price before and after the implementation of the Agreement, the Department concluded that, absent the discipline of the Agreement and the suspended investigation, dumping of lemon juice from Mexico would likely resume.

For these final results, the Department continues to determine that termination of the Agreement and the suspended investigation would lead to a continuation or recurrence of dumping. The Department disagrees with TCCC's and Procimart's arguments regarding Citrico's impact on the U.S. lemon juice market during the investigation. Although the ITC reviewed the 2003-2006 period for its preliminary determination, contrary to TCCC's and Procimart's argument, the ITC made no findings regarding the impact of Citrico's bankruptcy on the domestic industry. In fact, the ITC stated:

The parties disagree about how this bankruptcy and the liquidation of Citrico's inventory have affected the domestic industry. We plan to seek further information regarding Citrico's bankruptcy and the liquidation of its assets, including inventories, in any final phase of these investigations.³⁶

Because of the Agreement, the ITC never reached the final phase of the investigation and, accordingly, made no findings to support TCCC's and Procimart's argument that Citrico's bankruptcy was the sole or primary cause of the lemon juice prices. Per petitioner's suggestion, the Department expanded its examination of the import data released by the ITC, from the data examined in the Preliminary Results, to include the years 2003 through 2012 in order to analyze import price and quantity levels prior to Citrico's bankruptcy, as well as after the signing of the Agreement.³⁷ As seen in the attached Appendix I, the volume and per-unit value of lemon juice imports from Mexico are steady and consistent from 2003 through 2007, with the exception of a 33 percent drop in the per-unit value in 2005. Notably, the per-unit value increased 148 percent in 2008, the first full year of the Agreement, from 2007. Therefore, while Citrico's bankruptcy and liquidation may have impacted the market, there is no evidence that it was the primary cause of the indisputably sustained and suppressed prices of lemon juice from Mexico prior to the implementation of the Agreement.

³⁴ 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).

³⁵ Id.

³⁶ Id., page 18.

³⁷ Appendix I (USITC Data web import statistics).

With respect to Procimart's assertion that the ITC's finding that prices trended upward at the end of the period of investigation indicated that the market for lemon juice at the time of the investigation was significantly distorted due to Citrico's bankruptcy,³⁸ the Department notes that the ITC's own preliminary determination stated that "{t}he Commission's pricing data show some fluctuations but generally an overall decline in prices for both the domestic and subject lemon juice."³⁹

The Department disagrees with TCCC's and Procimart's arguments that there is no likelihood of continuation or recurrence of dumping because substantial changes to the lemon juice industry have occurred since the investigation. As we stated in the Preliminary Results, the Department is charged with determining whether the 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. Compliance with the Agreement, which includes selling at or above the NV, does not necessarily indicate how companies would behave in the future if the Agreement were terminated. Further, the Department disagrees with Procimart with respect to whether the fresh lemon market has an impact upon the potential for lemon juice to be sold at less than fair value in the United States in the absence of the Agreement. Procimart argues that the rise of the fresh lemon market will limit the supply of lemons for processing. The Department, however, agrees with petitioner that a decline in Mexican imports of lemon juice would be the anticipated consequence of more lemons going to the fresh market instead of being processed, which is contrary to TCCC's and Procimart's descriptions of lemon juice imports from Mexico as "strong" and "substantial," respectively. Additionally, the Department notes that Ventura refuted Procimart's claim that the petitioner is diverting lemons to the fresh lemon market, causing shortages in the juice market. Ventura submitted data demonstrating that the U.S. production of lemons has been relatively steady and the amount of lemons sent for processing has been relatively stable or increased since the original investigation.⁴⁰

Regarding Procimart's argument that the Department should adjust the preliminary margin from the investigation based on a by-product analysis, we disagree. Moreover, although we inaccurately stated in the Preliminary Results that lemon juice is a by-product of the lemon oil production process, what we intended with that statement was that lemon juice is produced jointly with lemon oil. Therefore, whether lemon juice is categorized as a by-product or a co-product of lemon oil, it must be sold regardless of price when lemon oil is produced. The ITC recognized in its Preliminary Determination that:

Lemon is one of the most widely used materials in the flavor and fragrance industry. Since the processing of fresh lemons into juice and oil is most commonly simultaneously or sequentially performed, and the disposal of lemon juice is complicated, a large producer of lemon oil is likely also a large producer of lemon juice.⁴¹

Further, in the Preliminary Results, the Department determined that the United States is the largest and closest market for lemon juice from Mexico, thus, making it a natural destination for exports. As such,

³⁸ Procimart Substantive Response, August 31, 2012, page 11.

³⁹ ITC Preliminary Determination, page 22.

⁴⁰ Ventura Rebuttal Brief, pages 3-5 and Exhibits 1-3.

⁴¹ ITC Preliminary Determination, page VII-5

the Department continues to conclude for these final results that, absent the discipline of the Agreement and the suspended investigation, dumping of lemon juice from Mexico would likely resume due to the following combination of factors: the nature of lemon juice production; 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. For these reasons, the Department finds in these final results that the termination of the Agreement and the suspended investigation would lead to a continuation or recurrence of dumping.

2. Magnitude of the Margin Likely to Prevail

Respondents' Comments

Procimart argues that the Department's analysis of the dumping margin found in the original investigation is inconsistent with the margin found in the Preliminary Results and every round of NVs calculated for Procimart. TCCC concurs with Procimart and has incorporated Procimart's arguments by reference into its comments.

Procimart further argues that the Department failed to address its position that "adherence to the terms, i.e. {sic} reference prices and export limits, set by a suspension agreement is a reasonable substitute for a determination that sales of the subject merchandise were at or above normal values."⁴² Procimart states that, in this case, both TCCC and Procimart have adhered to the terms of the Agreement and this alone is a reasonable substitute that sales of the subject merchandise were at or above NV. Procimart also points out that, in an ordinary dumping investigation or review, in the absence of home market or third country sales to be used as the basis for NV, the Department would use constructed value and that sales above constructed value are by definition not dumped. Procimart states that it provided data in its August 31, 2012, substantive response showing that each year its average price was substantially above the calculated NV and that the Department did not address this evidence in its preliminary determination. Therefore, Procimart claims, irrespective of the co-product/by-product issue, the evidence on the record of this case is conclusive that, if this Agreement is terminated, the margin of dumping likely to prevail would be zero.

Petitioner's Rebuttal Comments

Contrary to Procimart's argument, Ventura asserts that there is no inconsistency between the Department's determinations in the sunset review and the original investigation and there has been no reversal of position by the Department on the by-product/co-product issue. Ventura argues that the purpose of the sunset review is to determine what is likely to happen in the future if the order is revoked, specifically whether dumping is likely to continue or recur and at what margin. In this context, Ventura states that the way a respondent treats lemon juice in its books and records, as a by-product, is relevant to this prospective analysis, regardless of how the Department treats lemon juice for purposes of calculating the antidumping margin in the original investigation. Ventura contends that, when a respondent treats lemon juice as a by-product, it assigns it no production costs, which subsequently impacts both the price at which the respondent is willing to sell and its production, regardless of demand in the market.

As it noted in its previous responses, Ventura maintains that Mexican processors of lemons are primarily interested in the production of lemon oil for soft drink manufacturers and the production of lemon juice

⁴² Floral Trade Council v. United States, 991 F. Supp. 655, 663-664 (CIT 1997).

is simply an unavoidable consequence of their lemon oil production process. Thus, Ventura asserts, the volume of lemon juice produced in a given year is not controllable by the Mexican processors and is dependent on the volume of lemons available for processing and the demand for lemon oil. Ventura asserts that this is true, irrespective of whether lemon juice is termed a by-product or a co-product in the company's accounting records, because Mexican processors' primary concern is disposing of the resulting lemon juice regardless of price. Ventura reasons that this information on the nature of respondents' businesses and the role of lemon juice in those businesses is relevant to the Department's analysis of how respondents are likely to participate in the U.S. market if the Agreement is terminated, which is a separate issue from how the Department treats lemon juice for purposes of calculating the antidumping margin.

Ventura maintains that the fact that a respondent treats a product as a by-product on its normal books and records does not mean that the Department must accept that classification for purposes of determining the antidumping margin. Ventura notes that, while the statute does provide that costs "shall normally" be calculated based on the record of the exporter or producer of the merchandise, it also provides that the Department will only use such records if they "reasonably reflect the costs associated with the production and sale of the merchandise ..."⁴³ Ventura cites to a previous decision by the Department which stated that "{t}he respondent's normal accounting treatment indicates its opinion as to whether the product in question is a by- or co-product. A respondent's normal treatment is not considered persuasive if the Department has evidence indicating that it would be unreasonable for purposes of an antidumping analysis."⁴⁴

Ventura states that the opinion of the company is relevant in considering how it will participate in the market absent the constraints of an antidumping order or Agreement, but it is not relevant in determining a reasonable methodology for calculating the antidumping margin that accounts for all of a respondent's *actual costs* incurred in producing and selling the product under investigation, as the Department determined in Final Determination of Sales at Less Than Fair Value: New Minivans from Japan and Canned Pineapple From Thailand.⁴⁵

Finally, Ventura asserts that the Department is not tasked in a sunset review with reopening previous segments of the proceeding or reconsidering determinations made in previous segments of the proceeding with respect to the margin calculation methodology, as Procimart suggests. Ventura argues that both the Statement of Administrative Action ("SAA") and the Department's Sunset Policy Bulletin provide that the Department will normally select a margin from the original investigation.⁴⁶ Further, Ventura notes that the Sunset Policy Bulletin provides that the Department may provide to the ITC the margin that was determined in the preliminary determination in the original investigation "where the Department did not issue a final determination because the investigation was suspended and

⁴³ 19 U.S.C. 1677b(f)(1)(A).

⁴⁴ Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Goods From Argentina, 60 FR 33539, June 28, 1995.

⁴⁵ Final Determination of Sales at Less Than Fair Value: New Minivans from Japan, 57 FR 21937, 21952, May 26, 1992; Final Determination of Sales at Less Than Fair Value: Canned Pineapple From Thailand, 60 FR 29553, 29559-62, June 5, 1995.

⁴⁶ H.R. DOC No. 103-316, vol. 1 at 890 (1994) and Sunset Policy Bulletin 98.3, Section II.B.1.

continuation was not requested."⁴⁷ Ventura states that there is precedent for the Department to provide the ITC with the margin that was determined in the preliminary determination of the investigation in sunset reviews of suspension agreements where no final determination was issued.⁴⁸

Ventura maintains that this sunset review is not a continuation of the underlying antidumping investigation. The sunset review does not require the Department to issue the final determination that respondents decided not to pursue when they signed the Agreement. Ventura states that, if respondents now want the Department to issue its final determination as to whether lemon juice should be considered a by-product or co-product for purposes of the margin calculation, they continue to have the option to withdraw from the Agreement and allow the investigation to continue.

Ventura also takes issue with Procimart's argument that the Department should find that a margin of zero will likely prevail based solely on the fact that signatories abided by the terms of the suspension agreement in making sales to the United States. Such a finding, Ventura asserts, would be contrary to logic, Department precedent, and the statute. Ventura believes that Procimart incorrectly cites to the U.S. Court of International Trade decision in *Floral Trade Council v. United States*⁴⁹ because the fact that a respondent sells at or above the NV while subject to a suspension agreement is not indicative of their behavior in the absence of the suspension agreement for purposes of this sunset review, and asserts that the Court did not hold otherwise.

Ventura states that, as it believes has been explained in the context of every other sunset review, the behavior of a respondent subject to the discipline of an antidumping order or a suspension agreement is not indicative of their behavior absent an order or suspension agreement. Ventura cites to the sunset review of Ammonium Nitrate from the Russian Federation to emphasize that "... just because the Russian respondents have made sales at reference prices during the life of the agreement, it does not follow that their pricing has been at or above fair value, nor does it follow that their pricing would be at or above fair value in the absence of the Suspension Agreement. Indeed, the weighted-average dumping margins determined in the suspended investigation are the only evidence we have of the behavior of Russian manufacturers, producers, and exporters without the discipline of a suspension agreement in place."⁵⁰ Ventura states that it is for this reason that the Statement of Administrative Action accompanying the House Report on the Uruguay Round amendments to the statute 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."⁵¹ Ventura notes that compliance with the terms of the suspension agreement is simply a logically-

⁴⁷ Sunset Policy Bulletin 98.3, Section II.B.1.

⁴⁸ Uranium from the Russian Federation: Final Results of Expedited Sunset Review of the Suspension Agreement, 76 FR 68404, November 4, 2011 (and accompanying Issues and Decision Memorandum); Preliminary Results of Five-Year Sunset Review of Suspended Antidumping Duty Investigation: Fresh Tomatoes from Mexico, 67 FR 4237, January 29, 2002 (and accompanying Issues and Decision Memorandum).

⁴⁹ 991 F. Supp 655, 663-664 (1997).

⁵⁰ Issues and Decision Memorandum for the Preliminary Results of the Full Five-Year Sunset Review of the Suspended Antidumping Duty Investigation on Ammonium Nitrate from the Russian Federation, 70 FR 61431, October 24, 2005 ("Ammonium Nitrate Preliminary Sunset Results").

⁵¹ H.R. DOC No. 103-316, vol. 1 at 890 (1994).

insufficient basis to justify termination of the suspension agreement; otherwise, every suspension agreement would be terminated within five years, either as a result of compliance or noncompliance.

The Department's Position

With respect to the co-product/by-product issue, the Department agrees with Ventura that it is not tasked in a sunset review with reopening previous segments of the proceeding or reconsidering determinations made in previous segments of the proceeding regarding the margin calculation methodology, as Procimart suggests. As the Department noted above, lemon juice is produced jointly with lemon oil, whether categorized as a by-product or co-product of lemon oil and, therefore, lemon juice must be sold regardless of price when lemon oil is produced.

The Department also disagrees with Procimart's argument that because both TCCC and Procimart have adhered to the terms of the agreement, this alone is a reasonable substitute for determining that sales of the subject merchandise were at or above NV and is *de facto* evidence that the sales are not dumped. The Department found in the Preliminary Results, and continues to find for these final results, that the fact that respondents have complied with the Agreement does not demonstrate that there would be no likelihood of dumping if the suspended investigation were terminated and the discipline of selling at or above the calculated NVs was no longer in place. As such, consistent with our practice, 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.⁵²

The Department, therefore, disagrees with Procimart that the evidence on the record of this case is conclusive that, if this Agreement were terminated, the margin of dumping likely to prevail would be zero. Further, we note 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."⁵³ Thus, for these final results of the sunset review, the Department will provide to the ITC the preliminary determination margins in the less-than-fair-value investigation.

3. Whether to Disregard Ventura's Response

Respondents' Comments

Procimart states that the Department's regulations give it discretion in determining whether or not to disregard Ventura's response because it is an importer of subject merchandise from Mexico.⁵⁴ Procimart asserts that the Department's Preliminary Results ignored the fact that Ventura was a substantial purchaser of Mexican lemon juice in 2011 and that the Department should reverse its preliminary decision in this case and disregard Ventura's response.

⁵² Issues and Decision Memorandum for the Final Results of the Expedited Sunset Review of the Agreement Suspending the Antidumping Duty Investigation of Certain Cut-to-Length Carbon Steel Plate from the Russian Federation, 73 FR 74461, December 8, 2008.

⁵³ H.R. DOC No. 103-316, vol. 1 at 890 (1994).

⁵⁴ 19 CFR 35.1.2.18(e)(1)(i)(B).

Petitioner's Rebuttal Comments

Ventura states that the Department correctly and reasonably used its discretion in the Preliminary Results to find that Ventura is a domestic interested party with standing in this sunset review.

First, Ventura argues that Procimart provides no context to support its assertion that the volumes of Mexican lemon juice purchased by Ventura are "substantial." Second, Ventura asserts that the regulation at issue gives the Department the discretion to disregard the position of domestic parties that are also "importers."⁵⁵ Ventura contends that Procimart seems confused as to whether Ventura was an "importer" or a "purchaser" of the volumes at issue, as it uses both terms. Third, Ventura notes that the joint venture between Ventura Coastal and Sunkist did not even start until February 2012 and all of the alleged imports/purchases occurred in 2011.

Ventura maintains that Procimart has not submitted any evidence that Sunkist ever imported or purchased any merchandise from Mexico, nor has Procimart presented any evidence that the joint venture imported any lemon juice from Mexico after its formation. Ventura emphasizes that this is a joint venture, not a merger, and Sunkist has not ceased to exist. Ventura contends that there is no basis to exclude Sunkist from the domestic industry simply because its joint venture partner allegedly imported or purchased, prior to the formation of the joint venture, a volume of lemon juice that may or may not be "substantial," nor is there any basis to disregard the response of the joint venture, which has not imported any lemon juice from Mexico.

The Department's Position

As the Department stated in the Preliminary Results, 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 Sunkist, Ventura Coastal, the parent, or Ventura, are importers or purchasers of the subject merchandise, there is no evidence that Ventura is not participating as a domestic interested party. Therefore, the Department finds for these final results that Ventura is a domestic interested party in this sunset review.

Final Results of Review

We determine that revocation of the Agreement and the underlying antidumping duty investigation on lemon juice from Mexico would be likely to lead to continuation or recurrence of dumping at the following weighted-average dumping margins:

<u>Manufacturer/Producer/Exporter</u>	<u>Weighted-Average Dumping Margin (percent)</u>
The Coca-Cola Company	146.10 percent
Citrotam Internacional S.P.R. de R.L. (Citrotam)/Productos Naturales de Citricos (Pronacit)	205.37 percent
all other exporters	146.10 percent

⁵⁵ Id.

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 final results of this review in the Federal Register.

AGREE

DISAGREE

Ronald K. Lorentzen

Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

June 20, 2013
(Date)

APPENDIX I

Lemon Juice: Customs Value by Customs Value
for Mexico
U.S. Imports for Consumption

Annual

TOTAL	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
<i>In Actual Dollars</i>										
Customs Value where quantities are collected in liters										
TOTAL	5,672,028	5,461,094	3,797,729	5,962,310	5,721,799	17,825,532	10,064,704	29,422,038	17,716,291	9,884,209
Total	5,672,028	5,461,094	3,797,729	5,962,310	5,721,799	17,825,532	10,064,704	29,422,038	17,716,291	9,884,209

Lemon Juice: First Unit of Quantity by Customs Value
for Mexico
U.S. Imports for Consumption

Annual

TOTAL	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
<i>In Actual Units of Quantity</i>										
First Unit of Quantity where quantities are collected in liters										
TOTAL	28,927,184	28,565,272	28,873,058	29,941,691	27,435,280	34,314,196	20,680,618	40,511,497	29,138,324	27,318,528

Lemon Juice: (Customs Value)/(First Unit of Quantity) by Customs Value
for Mexico
U.S. Imports for Consumption

Annual

TOTAL	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
<i>In Actual Dollars/Unit of Quantity</i>										
(Customs Value)/(First Unit of Quantity) where quantities are collected in liters										
TOTAL	0.196	0.191	0.132	0.199	0.209	0.519	0.487	0.726	0.608	0.362

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.