

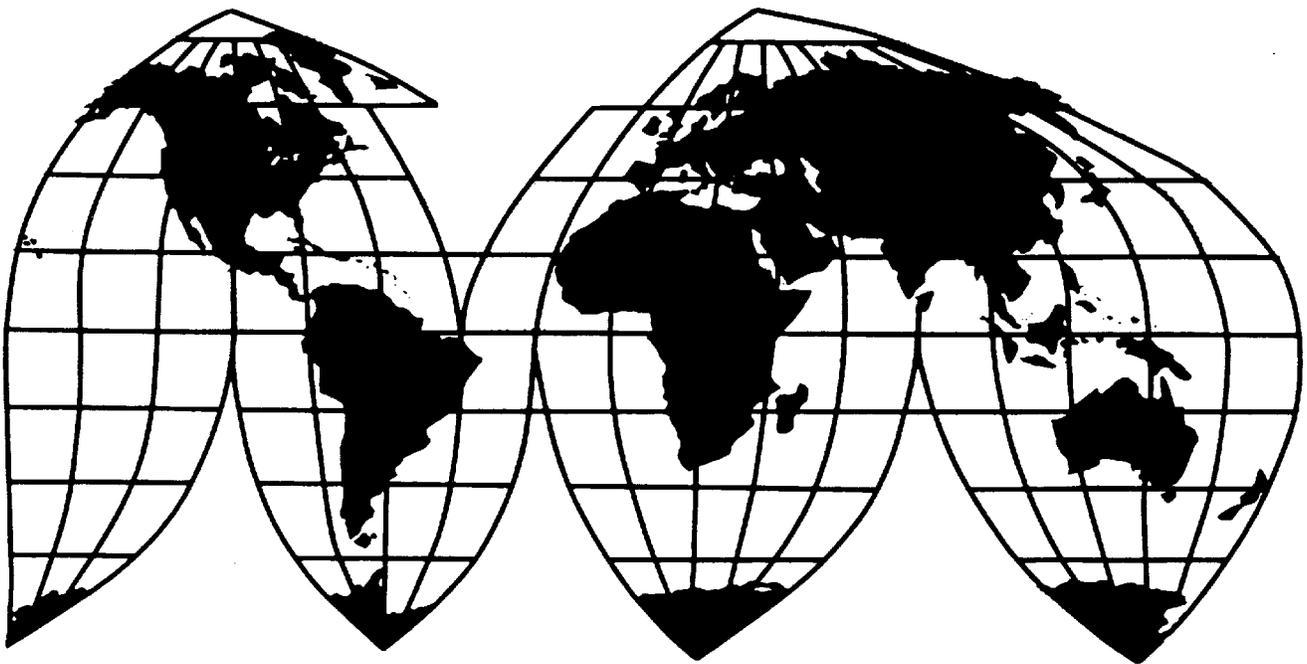
# Lemon Juice From Argentina and Mexico

Investigation Nos. 731-TA-1105-1106(Preliminary)

Publication 3891

November 2006

**U.S. International Trade Commission**



Washington, DC 20436

# U.S. International Trade Commission

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# CONTENTS

	<i>Page</i>
Determinations .....	1
Views of the Commission .....	3
Part I: Introduction .....	I-1
Background .....	I-1
Summary data .....	I-1
The subject product .....	I-2
Physical characteristics and uses .....	I-2
Manufacturing facilities and manufacturing process .....	I-3
Interchangeability and customer and producer perceptions .....	I-5
Channels of distribution .....	I-5
Price .....	I-5
Domestic like product and the domestic industry .....	I-5
Part II: Conditions of competition in the U.S. market .....	II-1
U.S. market segments/channels of distribution .....	II-1
Supply and demand considerations .....	II-1
U.S. supply .....	II-1
U.S. demand .....	II-3
Substitute products .....	II-4
Substitutability issues .....	II-5
Comparisons of domestic product and subject imports .....	II-5
Other country comparisons .....	II-7
Part III: U.S. producers' production, shipments, and employment .....	III-1
U.S. producers .....	III-1
U.S. producers' capacity, production, capacity utilization, shipment, inventory, and employment data .....	III-3
U.S. processors' imports .....	III-3
Part IV: U.S. imports, apparent consumption, and market shares .....	IV-1
U.S. importers .....	IV-1
U.S. imports .....	IV-3
Negligibility .....	IV-6
Apparent U.S. consumption .....	IV-6
U.S. market shares .....	IV-6
Ratio of subject imports to U.S. production .....	IV-6
Cumulation considerations .....	IV-7
Geographical markets .....	IV-7
Simultaneous presence in the market .....	IV-9
Part V: Pricing and related information .....	V-1
Factors affecting prices .....	V-1
Transportation costs to the U.S. market .....	V-1
U.S. inland transportation costs .....	V-1
Exchange rates .....	V-1
Pricing practices .....	V-1
Pricing methods .....	V-1
Sales terms and discounts .....	V-3
Price data .....	V-3
Price trends .....	V-4
Price comparisons .....	V-5
Lost sales and lost revenues .....	V-6

**CONTENTS—Continued**

	<i>Page</i>
Part VI: Financial experience of U.S. processors .....	VI-1
Background .....	VI-1
Operations on lemon juice (including ***) .....	VI-2
Variance analysis .....	VI-5
Capital expenditures and research and development expenses .....	VI-6
Assets and return on investment .....	VI-6
Capital and investment .....	VI-6
Actual negative effects .....	VI-6
Anticipated negative effects .....	VI-6
Part VII: Threat considerations .....	VII-1
The industry in Argentina .....	VII-1
The industry in Mexico .....	VII-4
Nonsubject imports .....	VII-5
Global market conditions in the lemon industry .....	VII-6
U.S. importers' inventories .....	VII-7
Imports subsequent to August 31, 2006 .....	VII-7
Antidumping duty orders in third-country markets .....	VII-7

**Appendixes**

A. <i>Federal Register</i> notices .....	A-1
B. Conference witnesses .....	B-1
C. Summary data .....	C-1
D. Processor and importer comments regarding differences and similarities between concentrated lemon juice and NFCLJ, organic and nonorganic lemon juice, and lemon juice and lemon oil .....	D-1
E. Cooperative form for Sunkist's results of operations .....	E-1
F. Additional pricing data as reported by *** .....	F-1

Note. – Information that would reveal confidential operations of individual concerns may not be published and, therefore, has been deleted from this report. Such deletions are indicated by asterisks.

## UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation Nos. 731-TA-1105-1106 (Preliminary)

### LEMON JUICE FROM ARGENTINA AND MEXICO

#### DETERMINATIONS

On the basis of the record<sup>1</sup> developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Argentina and Mexico of lemon juice, provided for in subheadings 2009.31.40, 2009.31.60, and 2009.39.60 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

#### COMMENCEMENT OF FINAL PHASE INVESTIGATIONS

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the *Federal Register* as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce (Commerce) of affirmative preliminary determinations in the investigations under section 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in the investigations under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

#### BACKGROUND

On September 21, 2006, a petition was filed with the Commission and Commerce by Sunkist Growers, Inc., Sherman Oaks, CA, alleging that an industry in the United States is materially injured and threatened with material by reason of LTFV imports of lemon juice from Argentina and Mexico. Accordingly, effective September 21, 2006, the Commission instituted antidumping duty investigation Nos. 731-TA-1105-1106 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of September 27, 2006 (71 FR 56550). The conference was held in Washington, DC, on October 13, 2006, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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<sup>1</sup> The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).



## IEWS OF THE COMMISSION

Based on the record in the preliminary phase of these investigations, we find that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of lemon juice from Argentina and Mexico that allegedly are sold in the United States at less than fair value (“LTFV”).

### I. THE LEGAL STANDARD FOR PRELIMINARY DETERMINATIONS

The legal standard for preliminary antidumping and countervailing duty determinations requires the Commission to determine, based upon the information available at the time of the preliminary determination, whether there is a reasonable indication that a domestic industry is materially injured, threatened with material injury, or whether the establishment of an industry is materially retarded, by reason of the allegedly unfairly traded imports.<sup>1</sup> In applying this standard, the Commission weighs the evidence before it and determines whether “(1) the record as a whole contains clear and convincing evidence that there is no material injury or threat of such injury; and (2) no likelihood exists that contrary evidence will arise in a final investigation.”<sup>2</sup>

### II. BACKGROUND

The antidumping petition in these investigations was filed on September 21, 2006. The petitioner, Sunkist Growers, Inc. (“Petitioner” or “Sunkist”), a domestic producer of lemon juice, participated at the October 13, 2006 conference conducted in these investigations and filed a postconference brief. Another domestic producer, Ventura Coastal, LLC (“Ventura Coastal”), and two of the six respondent parties participated in the conference: (1) The Coca-Cola Company (“Coca-Cola” or “TCCC”), an exporter of subject merchandise from Mexico; and (2) Eastcoast Flavors, Inc. (“Eastcoast”), an importer of lemon juice from Argentina.<sup>3</sup> A total of six respondent parties filed briefs, including: (1) Coca-Cola; (2) Eastcoast; (3) a group of Argentine exporters: Asociacion Tucumana del Citrus, Camara de Industrias Citricas de Argentina, S.A. San Miguel, Citrusvil S.A., La Moraleja S.A., and Citromax S.A.C.I. (collectively “Argentine exporters”); (4) Secretaria de Agricultura, Ganaderia, Desarrollo Rural, Pesca y Alimentacion (“SAGARPA”), which is the Mexican Ministry of Agriculture; (5) PepsiCo and Tropicana Products, Inc. (collectively “Tropicana”), an importer of subject merchandise; and (6) Greenwood Associates, an importer of subject merchandise. Finally, the Commission also received a brief from The UniMark Group, Inc. (“UniMark”), a grower of lemons in Mexico.

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<sup>1</sup> 19 U.S.C. § 1673b(a); see also, e.g., Co-Steel Raritan, Inc. v. United States, 357 F.3d 1294 (Fed. Cir. 2004); American Lamb Co. v. United States, 785 F.2d 994, 1001-1004 (Fed. Cir. 1986); Aristech Chemical Corp. v. United States, 20 CIT 353, 354 (1996). No party argued that the establishment of an industry is materially retarded by reason of the allegedly unfairly traded imports.

<sup>2</sup> American Lamb, 785 F.2d at 1001 (Fed. Cir. 1986); see also Texas Crushed Stone Co. v. United States, 35 F.3d 1535, 1543 (Fed. Cir. 1994).

<sup>3</sup> Eastcoast is \*\*\*. Eastcoast Postconference Brief at 1.

### III. DOMESTIC LIKE PRODUCT AND DOMESTIC INDUSTRY

#### A. In General

In determining whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of the subject merchandise, the Commission first defines the “domestic like product” and the “industry.”<sup>4</sup> Section 771(4)(A) of the Tariff Act of 1930, as amended (“the Act”), defines the relevant domestic industry as the “producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product.”<sup>5</sup> In turn, the Act defines “domestic like product” as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation . . . .”<sup>6</sup>

The decision regarding the appropriate domestic like product(s) in an investigation is a factual determination, and the Commission has applied the statutory standard of “like” or “most similar in characteristics and uses” on a case-by-case basis.<sup>7</sup> No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.<sup>8</sup> The Commission looks for clear dividing lines among possible like products and disregards minor variations.<sup>9</sup> Although the Commission must accept the determination of the U.S. Department of Commerce (“Commerce”) as to the scope of the imported merchandise allegedly sold at LTFV,<sup>10</sup> the Commission determines what domestic product is like the imported articles Commerce has identified.<sup>11</sup> The Commission must base its domestic like product determination on the record in these investigations. The

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<sup>4</sup> 19 U.S.C. § 1677(4)(A).

<sup>5</sup> 19 U.S.C. § 1677(4)(A).

<sup>6</sup> 19 U.S.C. § 1677(10).

<sup>7</sup> See, e.g., NEC Corp. v. Department of Commerce, 36 F. Supp. 2d 380, 383 (Ct. Int’l Trade 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Torrington Co. v. United States, 747 F. Supp. 744, 749 n.3 (Ct. Int’l Trade 1990), aff’d, 938 F.2d 1278 (Fed. Cir. 1991) (“every like product determination ‘must be made on the particular record at issue’ and the ‘unique facts of each case’”). The Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes, and production employees; and, where appropriate, (6) price. See Nippon, 19 CIT at 455 n.4; Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int’l Trade 1996).

<sup>8</sup> See, e.g., S. Rep. No. 96-249 at 90-91 (1979).

<sup>9</sup> Nippon Steel, 19 CIT at 455; Torrington, 747 F. Supp. at 748-49. See also S. Rep. No. 96-249 at 90-91 (1979) (Congress has indicated that the like product standard should not be interpreted in “such a narrow fashion as to permit minor differences in physical characteristics or uses to lead to the conclusion that the product and article are not ‘like’ each other, nor should the definition of ‘like product’ be interpreted in such a fashion as to prevent consideration of an industry adversely affected by the imports under consideration.”).

<sup>10</sup> See, e.g., USEC, Inc. v. United States, Slip Op. 01-1421 (Fed. Cir. April 25, 2002) at 9 (“The ITC may not modify the class or kind of imported merchandise examined by Commerce.”); Algoma Steel Corp. v. United States, 688 F. Supp. 639, 644 (Ct. Int’l Trade 1988), aff’d, 865 F.3d 240 (Fed. Cir.), cert. denied, 492 US. 919 (1989).

<sup>11</sup> Hosiden Corp. v. Advanced Display Mfrs., 85 F.3d 1561, 1568 (Fed. Cir. 1996) (Commission may find a single like product corresponding to several different classes or kinds defined by Commerce); Torrington, 747 F. Supp. at 748-752 (affirming Commission determination of six like products in investigations where Commerce found five classes or kinds).

Commission is not bound by prior determinations, even those pertaining to the same imported products, but may draw upon previous determinations in addressing pertinent like product issues.<sup>12</sup>

## **B. Product Description**

In its notice of initiation, Commerce defined the imported merchandise within the scope of these investigations as:

certain lemon juice for further manufacture, with or without addition of preservatives, sugar, or other sweeteners, regardless of the GPL (grams per liter of citric acid) level of concentration, brix level, brix/acid ratio, pulp content, clarity, grade, horticulture method (*e.g.*, organic or not), processed form (*e.g.*, frozen or not-from-concentrate), FDA standard of identity, the size of the container in which packed, or the method of packing. Excluded from the scope are: (1) lemon juice at any level of concentration packed in retail-sized containers ready for sale to consumers, typically at a level of concentration of 48 GPL; and (2) beverage products such as lemonade that typically contain 20% or less lemon juice as an ingredient.<sup>13</sup>

The subject merchandise is all lemon juice for further manufacturing, regardless of level of concentration, clarity, pulp content, horticultural method, and processing form (*e.g.*, concentrated, frozen, or not-from-concentrate (or “NFCLJ”)).

## **C. Domestic Like Product**

Petitioner and all respondents agree that a single domestic like product should be defined to include all lemon juice for further manufacturing in all concentrations, processed forms (*e.g.*, concentrated, frozen, and NFCLJ) and by all methods (organic and non-organic).<sup>14</sup> They also agree that the domestic like product should not be defined more broadly than the scope of investigation to include such products as lemon oil, a co-product in the processing of lemon juice.<sup>15</sup>

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<sup>12</sup> Acciai Speciali Terni S.p.A. v. United States, 118 F. Supp. 2d 1298, 1304-05 (Ct. Int’l Trade 2000); Nippon Steel Corp. v. United States, 19 CIT at 455; Asociacion Colombiana de Exportadores de Flores v. United States, 693 F. Supp. 1165, 1169 n.5 (Ct. Int’l Trade 1988) (particularly addressing like product determination); Citrosuco Paulista, S.A. v. United States, 704 F. Supp. 1075, 1087-88 (Ct. Int’l Trade 1988).

<sup>13</sup> Lemon Juice from Argentina and Mexico, 71 Fed. Reg. 61710, 61711 (Oct. 19, 2006). Lemon juice is classifiable under subheadings 2009.39.6020, 2009.31.6020, 2009.31.4000, 2009.31.6040, and 2009.39.6040 of the Harmonized Tariff Schedule of the United States (“HTSUS”). While HTSUS subheadings are provided for convenience and Customs and Border Patrol purposes, the written description of the scope of investigation is dispositive. *Id.*

<sup>14</sup> Petition at 12-16; Petitioner’s Postconference Brief at 2; Transcript of October 13, 2006 Commission Conference (“Conference Tr.”) at 41, 132, and 152; Tropicana’s Postconference Brief at 1.

<sup>15</sup> Petition at 12-16; Petitioner’s Postconference Brief at 2; Conference Tr. at 41, 131, and 152; Tropicana’s Postconference Brief at 1. No party advocated the inclusion of fresh lemons in the domestic like product in the preliminary phase of these investigations.

Based on the evidence,<sup>16</sup> as discussed below, we define a single domestic like product consisting of all lemon juice for further manufacturing, coextensive with the scope of investigation.

*Physical Characteristics and End Uses.* Lemon juice is produced from fresh lemons, primarily those lemons with imperfections or that fail to meet the size or grade standards for sale as fresh lemons.<sup>17</sup> There are no particular varieties of lemons used, or even preferred, for processing into lemon juice.<sup>18</sup> Lemon juice is commonly processed into frozen concentrated lemon juice (“FCLJ”) and NFCLJ. Both forms can be processed using organic or nonorganic lemons.<sup>19</sup> Concentrated lemon juice can be further processed into a “clear” or “clarified” form with no visible pulp, or a “cloudy” form containing up to 12 percent pulp.<sup>20</sup> The physical differences of lemon juice at varying concentration levels, with FCLJ sold in a highly concentrated state and NFCLJ sold in its natural state, is the amount of water contained in the juice.<sup>21</sup> However, a distinct physical characteristic of lemon juice is its particularly high acid content when compared to juice of other citrus species, which means it typically is not consumed at full strength and needs to be further processed.<sup>22</sup>

Lemon juice in all forms is bottled as lemon juice or used as an ingredient in beverages, particularly lemonade and soft drinks, and other foods, such as salad dressings, sauces, and baked goods. It is also used in non-food products, such as household cleaners.<sup>23</sup>

*Interchangeability.* All forms of lemon juice (*e.g.*, FCLJ, NFCLJ, organic) are interchangeable in that they are used to produce the same products, such as lemonade and bottled lemon juice. However, in some circumstances the interchangeability may be one-way (*e.g.*, organic lemon juice may be used for nonorganic to produce a nonorganic further processed product, but nonorganic lemon juice cannot be used to produce an organic further processed product).<sup>24</sup>

*Channels of Distribution.* The majority of lemon juice in all forms is sold in bulk to food processors, followed by remanufacturers and packagers.<sup>25</sup> The largest purchasers of bulk lemon juice typically purchase all forms of the product.<sup>26</sup>

*Manufacturing Facilities, Production Processes, and Production Employees.* Lemon juice is produced by one of two principal methods – the FMC extraction method or the Brown Oil extractor method – from fresh lemons.<sup>27</sup> Organic lemon juice, which is designated by the particular cultivation of the fresh lemons, is produced using the same equipment as that used to produce nonorganic lemon

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<sup>16</sup> See, *e.g.*, Confidential Staff Report (“CR”) at I-2-8 and Appendix D; Public Staff Report (“PR”) at I-2-5 and Appendix D.

<sup>17</sup> CR/PR at I-2.

<sup>18</sup> Petition at 13.

<sup>19</sup> CR at I-3; Petition at 13-14. Organic lemon juice accounts for a very small share of the domestic production. CR/PR at II-1, n.1; Conference Tr. at 103.

<sup>20</sup> CR at I-3; PR at I-2.

<sup>21</sup> Petition at 14.

<sup>22</sup> CR/PR at I-2. Most lemon juice is sold in concentrated form, since it is more economically transported, and is later diluted to be sold as reconstituted single strength lemon juice or used in production of lemonade and other beverages. NFCLJ is used in the production of premium lemonades. CR at I-3; PR at I-2.

<sup>23</sup> CR/PR at I-2.

<sup>24</sup> CR at I-7; PR at I-5.

<sup>25</sup> CR at I-8; PR at I-5.

<sup>26</sup> Petition at 16.

<sup>27</sup> CR at I-4-5; PR at I-3-4; Conference Tr. at 42. Sunkist has used both methods during the period of investigation. Conference Tr. at 42.

juice.<sup>28</sup> The equipment goes through a thorough cleaning process before being used to process organic lemon juice.<sup>29</sup> After extraction, lemon juice is further processed in a centrifuge to remove any remaining bits of seed, peel, and excess pulp.<sup>30</sup> The lemon juice may then be pasteurized resulting in NFCLJ, or it may be evaporated to remove water to produce lemon juice concentrate and then pasteurized.<sup>31</sup> Both concentrated lemon juice and NFCLJ are packaged in bulk tankers, bins, or steel drums and frozen or chilled for storage and/or shipping.<sup>32</sup>

*Producer and Customer Perceptions.* Overall, lemon juice in all forms is perceived to be a similar product.<sup>33</sup> Nevertheless, questionnaire responses reported that NFCLJ and organic lemon juice are perceived as premium products, selling for at least twice as much as concentrated non-organic lemon juice.<sup>34</sup>

*Price.* FCLJ, which involves lower transportation and storage costs, generally sells at a discount when compared to NFCLJ at the wholesale level.<sup>35</sup>

*Conclusion.* All forms of lemon juice share certain general physical characteristics and uses, are interchangeable in end uses, are sold to food processors for further manufacturing, are produced in similar production processes, and generally are perceived to be similar products. Thus, we define a single domestic like product consisting of all lemon juice for further manufacturing, coextensive with the scope of these investigations.

*Lemon Oil.* With respect to the issue of whether lemon oil should be included in the domestic like product, we find that lemon oil and lemon juice are distinct products. They have different chemical profiles, with lemon oil produced from the lemon's peel and lemon juice produced from the inside fruit of the lemon.<sup>36</sup> Lemon oil generally is used as a flavor or fragrance enhancer in beverages, foods, and household cleaning supplies.<sup>37</sup> Moreover, while lemon oil and lemon juice both may be ingredients in beverages, lemon oil is used to impart flavor while lemon juice is used to impart acidic tartness.<sup>38</sup> As such, we note that lemon oil and lemon juice are not interchangeable and that both producers and customers perceive the two products as distinct.<sup>39</sup> With respect to the production process, under the FMC extraction method, lemon juice and lemon oil are produced at the same time, while under the Brown Oil extractor method, the lemon oil is produced first, followed by production of lemon juice.<sup>40</sup> Accordingly, and because no party has argued for its inclusion in the like product definition, we find that the evidence does not support defining a domestic like product broader than the scope of the investigations to include lemon oil.

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<sup>28</sup> CR/PR at I-3.

<sup>29</sup> CR/PR at I-3.

<sup>30</sup> CR at I-5; PR at I-4.

<sup>31</sup> CR at I-5; PR at I-4.

<sup>32</sup> CR at I-5-6; PR at I-4.

<sup>33</sup> CR at I-7; PR at I-5; Petition at 16.

<sup>34</sup> CR at I-7; PR at I-5.

<sup>35</sup> Petition at 16. In comparing prices for product 3 relative to products 1 and 2, we recognize the difference in the concentration levels of a gallon of products 1 and 2 relative to the single strength concentration level of product 3. See CR at V-4 and Tables V-1 - V-3; PR at V-3 and Tables V-1 - V-3.

<sup>36</sup> CR at I-3; PR at I-2.

<sup>37</sup> CR/PR at I-3; Conference Tr. at 43 and 51-52.

<sup>38</sup> CR/PR at I-3; Conference Tr. at 51-53.

<sup>39</sup> Conference Tr. at 51-53; CR at I-7 and Appendix D-23-24; PR at I-5 and Appendix D-3.

<sup>40</sup> CR at I-5; PR at I-3-4.

#### **D. Domestic Industry and Related Parties**

The domestic industry is defined as the domestic “producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product.”<sup>41</sup> In defining the domestic industry, the Commission’s general practice has been to include in the industry producers of all domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.

There are two domestic industry issues in these preliminary phase investigations: (1) whether growers of lemons should be included in the domestic industry; and (2) whether appropriate circumstances exist under the statutory related parties provision to exclude a domestic producer that imported subject lemon juice during the period examined. For the reasons discussed below, we find that the lemon growers do not meet the criteria for inclusion in the domestic industry pursuant to the statutory grower/processor provision, and that appropriate circumstances do not exist to exclude any domestic producer of lemon juice as a related party. Thus, we define a single domestic industry consisting of all domestic producers of lemon juice for further manufacture, corresponding to the subject merchandise in these investigations.

##### **1. Whether the Domestic Industry Should Include Lemon Growers**

Petitioner argues that the domestic industry consists solely of U.S. extractor/processors of lemon juice and that neither the statute nor Commission precedent would support including growers of lemons in the definition of the domestic industry.<sup>42</sup> Several Respondents focus on the second of two statutory criteria (coincidence of economic interests) and argue that on that basis growers of lemons should be included in the domestic industry.<sup>43</sup>

In investigations involving processed agricultural products, the statute, 19 U.S.C. § 1677(4)(E), provides that the Commission “may” include growers of a raw agricultural product as producers within the domestic industry producing the processed agricultural product if two conditions are satisfied, namely:

- (I) the processed agricultural product is produced from the raw agricultural product through a single continuous line of production; and
- (II) there is a substantial coincidence of economic interest between the producers or growers of the raw agricultural product and processors of the processed agricultural product based upon relevant economic factors, which may, in the discretion of the Commission, include price, added market value, or other economic interrelationships

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<sup>41</sup> 19 U.S.C. § 1677(4)(A).

<sup>42</sup> Petition at 17-19; Petitioner’s Postconference Brief at 3-21.

<sup>43</sup> E.g., Coca-Cola Postconference Brief at 11-25; Argentina Exporters’ Postconference Brief at 9-12; Eastcoast Postconference Brief at 2-9. Specifically, they maintain that “the Commission should consider the totality of the circumstances showing the substantial legal and economic ties between Petitioner’s member lemon growers and the Ontario processing facility, which indicates their commonality of economic interests, and the fluctuating amount of lemons that are directed for processing in any given year.” Coca-Cola Postconference Brief at 12. Compare Tropicana’s Postconference Brief at 1, n.2 (“does not dispute that the domestic lemon growers are not to be considered part of the domestic industry because they fail to meet the requirements of Section 771(4)(E) of the Tariff Act of 1930, 19 U.S.C. § 1677(4)(E).”).

(regardless of whether such coincidence of economic interest is based upon any legal relationship).<sup>44</sup>

The use of the term “and” in this provision and a statement in the legislative history indicate that Congress expected both tests to be met before the Commission may exercise its discretion to include the growers in the domestic industry along with the processors of the agricultural product.<sup>45</sup>

Under the first test, the processed agricultural product shall be considered to be processed from the raw agricultural product through a single, continuous line of production if:

- (I) the raw agricultural input is substantially or completely devoted to the production of the processed agricultural product; and
- (II) the processed agricultural product is produced substantially or completely from the raw product.<sup>46</sup>

The legislative history and prior Commission determinations suggest that the phrase “substantially or completely” requires that nearly the entire yield of the raw agricultural product be used in the production of the processed agricultural product.<sup>47</sup> Specifically, the pertinent House Report states:

The Committee does not expect this test to be met if the raw product is devoted to production of several different processed products, or if the processed product is produced from several different raw products. The Committee intends “substantially or completely” to mean all or almost all.<sup>48</sup>

While the relevant Senate Report indicates that “‘substantially or completely devoted’ does not necessarily imply a fixed percentage, . . . [the term] should be interpreted consistently with prior Commission determinations.”<sup>49</sup> Similar to the House Report, the Senate Report “does not expect this test to be met if the raw product is devoted to production of several different processed products.”<sup>50</sup>

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<sup>44</sup> 19 U.S.C. § 1677(4)(E)(i) (emphasis added). The provisions relating to the inclusion of growers was added to the statute by the 1988 Omnibus Trade and Competitiveness Act.

<sup>45</sup> See H.Rep. 100-40, Part I, at 121 (1987) (“the growers or producers of the raw agricultural product may be considered part of the industry producing the processed product if two tests are met”). Respondents’ contention that the coincidence of economic interests “is more important” ignores the explicit language in the statute and the legislative history that both tests must be met. See, e.g., Coca-Cola Postconference Brief at 15; Conference Tr. at 169 (“What is more important is the coincidence of economic interest”) and 170 (“The legislative history to this provision suggests that the economic co-integration is the more critical of the two factors.”).

<sup>46</sup> 19 U.S.C. § 1677(4)(E)(ii).

<sup>47</sup> In presenting arguments regarding the meaning of “substantial” in other contexts, Respondents fail to discuss the legislative history, which defines it in the context of the agricultural grower/processor provision. See H.Rep. 100-40, Part I, at 121; S.Rep. 100-71 at 109. See, e.g., Coca-Cola Postconference Brief at 21-25.

<sup>48</sup> See H.Rep. 100-40, Part I, at 121 (1987).

<sup>49</sup> S.Rep. 100-71 at 109 (1987).

<sup>50</sup> S.Rep. 100-71 at 109 (1987). In arguing that the second factor is more important than the first, Eastcoast refers to the legislative history regarding the example where the raw agricultural product is devoted to a predominant use with some additional uses as well. Eastcoast Postconference Brief at 4-5 quoting S.Rep. 100-71 at 109 (1987) (“The Committee notes, for example, that with regard to a product such as grapes, certain varieties have multiple

(continued...)

Previous Commission decisions are consonant with the view that a very large percentage of the raw agricultural product must be devoted to the processed agricultural product in order to meet the “substantially or completely” requirement.<sup>51</sup> Where the raw agricultural product has multiple uses or is not predominantly devoted to production of the processed agricultural product, the Commission has found the substantially or completely devoted criterion not to be satisfied.<sup>52</sup> In certain circumstances, such as the Orange Juice and Individually Quick Frozen Red Raspberries (“IQF Raspberries”) investigations, the Commission found it appropriate to define the raw agricultural product more narrowly than either all oranges or all red raspberries. After doing so, the Commission found the first prong, “substantially or completely devoted to,” satisfied.<sup>53</sup> In the present investigations, however, the appropriately defined raw agricultural product is all lemons, since there is no distinction between

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<sup>50</sup> (...continued)

uses, others are wine variety grapes used almost entirely in the production of wine, and still others have a predominant use but are put to additional uses as well. Particularly in the third instance, the Commission must exercise its discretion, applying all the necessary factors (including the ‘substantial coincidence of economic interest’ criterion), before reaching its conclusions as to the scope of the industry.”). The example cited by Eastcoast is inapposite to the facts here, however, because, as discussed below, lemons are not predominantly devoted to the production of lemon juice. Most domestically produced lemons are sold into the fresh market, with the remainder processed into various other products in addition to lemon juice, including lemon oil.

<sup>51</sup> See, e.g., Certain Orange Juice from Brazil, Inv. No. 731-TA-1089 (Final), USITC Pub. 3838 at 10 (March 2006) (including growers in the domestic industry where over 95 percent of the raw agricultural product, round oranges, was devoted to the production of orange juice (FCOJM and NFC)); Frozen and Canned Warmwater Shrimp Prawns from Brazil, China, Ecuador, India, Thailand, and Vietnam, Inv. Nos. 731-TA-1063-1068 (Final), USITC Pub. No. 3748 (January 2005) (including growers in the domestic industry where approximately 90 percent of raw agricultural product was devoted to the production of the processed product); Certain Fresh Atlantic Groundfish from Canada, Inv. No. 701-TA-257 (Final), USITC Pub. 1844 (1986) (finding that “substantially or completely devoted” standard was satisfied where 90 percent of the raw agricultural product was used to produce the processed agricultural product). Compare Frozen Concentrated Orange Juice from Brazil, 731-TA-326 (Final), USITC Pub. No. 1970 (April 1987) (including growers in the domestic industry where less than 70 percent of the raw agricultural product (round oranges) was devoted to the production of the processed agricultural product (FCOJM)) with Frozen Concentrated Orange Juice from Brazil, 731-TA-326 (Second Review), USITC Pub. No. 3760 at 6-7 (March 2005) (“Given that only about half of round oranges are currently devoted to the production of FCOJM, we find that the raw agricultural product is not ‘substantially or completely’ devoted to production of the processed agricultural product.”).

<sup>52</sup> See, e.g., Certain Processed Hazelnuts from Turkey, Inv. No. 731-TA-1057 (Preliminary), USITC Pub. 3656 at 10 (December 2003) (found 35 percent to be an insufficient percentage on the basis that “devotion of a percentage that is significantly less than half is insufficient to satisfy the first prong of the statute”); Certain Frozen Fish Fillets from Vietnam, Inv. No. 731-TA-1012 (Final), USITC Pub. 3617 at 8 (August 2003) (catfish farmers not included because only one-half (by weight) of the live food-sized catfish acquired by domestic processors was processed into catfish fillets); Certain Non-Frozen Concentrated Apple Juice from China, Inv. No. 731-TA-841 (Final), USITC Pub. 3303 (May 2000) (growers of apples not included because only 20 percent of all domestically grown apples were used as juice apples); Canned Pineapple Fruit from Thailand, Inv. Nos. 731-TA-706 (Final), USITC Pub. 2907 (July 1995) (growers not included because only 31 percent of the raw agricultural product (fresh, whole pineapple) was devoted to the production of the processed product (canned pineapple fruit)).

<sup>53</sup> For example, in IQF Raspberries, IQF processed raspberries as a share of all red raspberries was 46.6 percent in 2001. However, the Commission defined the raw agricultural product as IQF-quality red raspberries and included growers in the domestic industry after finding that 78.8 percent of the IQF-quality raspberries when harvested were actually used in IQF production in 2001. Individually Quick Frozen Red Raspberries from Chile, Inv. No. 731-TA-948 (Final), USITC Pub. 3524 at 8-10 (June 2002).

varieties used for lemon juice nor differing harvesting requirements for those entering the fresh market or processed into lemon juice.<sup>54</sup>

The evidence in these investigations strongly indicates that the raw agricultural product (lemons) is not substantially or completely devoted to the production of a processed agricultural product (lemon juice). USDA data, referenced by both Petitioner and Respondents, indicate that about 31 percent of lemons were processed into lemon juice in crop year 2004/2005, with an average of 37 percent during the period of investigation (crop years 2002/03 - 2004/05).<sup>55</sup> Moreover, there are multiple uses for lemons, including the fresh market – which all parties consider to be the predominant use<sup>56</sup> – followed by lemon juice, lemon oil, and by-products produced from the processing.

We find that the percentage of lemons processed into lemon juice does not satisfy the “substantially or completely devoted” requirement in the statute. Accordingly, we find that the continuous line of production requirement for including growers in the domestic industry is not satisfied and need not reach the second prong of the test.<sup>57 58</sup> Therefore, we do not include growers in the industry producing lemon juice.

## 2. Related Parties

We must further determine whether any producer of the domestic like product should be excluded from the domestic industry pursuant to 19 U.S.C. § 1677(4)(B). That provision of the statute allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry producers that are related to an exporter or importer of subject merchandise, or who are themselves

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<sup>54</sup> While Argentine Exporters suggest that the Commission more narrowly define the raw agricultural product as juice lemons, this distinction only occurs after grading by the packer and seems to be contradicted by its own arguments that the substantially devoted criterion is met because all lemons are possibly juice lemons. Argentine Exporters Postconference Brief at 10-11 (“Because virtually all lemons not suitable for the fresh market will go to processing, all lemon growers are necessarily producers of lemons dedicated to juice. Thus, if the Commission were to limit its analysis to ‘juice quality’ lemons (in the same way that it limited its examination of ‘IQF-quality’ raspberries), virtually all of the lemons grown by Sunkist’s members that do not meet the grade and size standards for the fresh market are processed into juice.”).

<sup>55</sup> CR/PR at VI-2 and n.4; Petition at Exhibit 8; Coca-Cola Postconference Brief at Exhibit 11. Respondents have not challenged this evidence; rather they point to the highest historical percentage ever reached, which occurred 25 years ago. See, e.g. Coca-Cola Postconference Brief at 24. The more recent USDA data provided in Petitioner’s Postconference Brief show a similar percentage, 43 percent for crop year 2004/05 and 30 percent for crop year 2005/06, with an average for the most recent four marketing years of 38 percent. Petitioner’s Postconference Brief at 9 and Attachment 8.

<sup>56</sup> See e.g., Coca-Cola Postconference Brief at 11; Petitioner’s Postconference Brief at 5; Petition at 17.

<sup>57</sup> In presenting argument with respect to the coincidence of the economic interests (the second statutory test) some Respondents seem to assume that the Commission would consider the economic interests of growers as to their production of all lemons, including those sold into the fresh market. See e.g., Argentine Exporters Postconference Brief at 11; Coca-Cola Postconference Brief at 11-12 and 18-21. However, the Commission would appropriately consider the economic interests of growers only as to their production of lemons ultimately used for processing of lemon juice.

<sup>58</sup> Although we do not include lemon growers in the domestic industry, we have considered the role of the raw agriculture product, lemons, as a condition of competition for the lemon juice industry.

importers.<sup>59</sup> Exclusion of such a producer is within the Commission's discretion based upon the facts presented in each case.<sup>60</sup>

Neither Petitioner nor any of the Respondents presented arguments on the related parties issue. The record, however, indicates that one U.S. producer, Ventura Coastal, imported subject merchandise between 2003 and August 2006, and thus is a related party potentially subject to exclusion under the related parties provision.<sup>61</sup> Ventura Coastal imported \*\*\*.<sup>62</sup> Ventura Coastal accounted for \*\*\* of reported U.S. lemon juice production in 2005.<sup>63</sup> It indicated that "in order to compete with import prices, we were forced to cut our cost by importing cheap juice from Argentina and Mexico and blending it with our own production."<sup>64</sup> Ventura Coastal's ratio of imports from \*\*\* in 2005.<sup>65</sup> Its operating income as a ratio of net sales \*\*\* in 2005.<sup>66</sup> While Ventura Coastal may be \*\*\*,<sup>67</sup> it appears that Ventura's primary interests lie in domestic production, that it has shifted production to higher-value products, and that it imported to maintain complete product lines.<sup>68</sup> Thus, for purposes of these preliminary determinations, we find that appropriate circumstances do not exist to exclude Ventura Coastal from the domestic industry.

#### IV. CUMULATION

For purposes of evaluating the volume and price effects for a determination of material injury by reason of the subject imports, section 771(7)(G)(i) of the Act requires the Commission to cumulate subject imports from all countries as to which petitions were filed and/or investigations self-initiated by Commerce on the same day, if such imports compete with each other and with domestic like products in the U.S. market.<sup>69</sup> In assessing whether subject imports compete with each other and with the domestic like product, the Commission has generally considered the following factors:

- (1) the degree of fungibility between the subject imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions;

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<sup>59</sup> 19 U.S.C. § 1677(4)(B).

<sup>60</sup> Sandvik AB v. United States, 721 F. Supp. 1322, 1331-32 (Ct. Int'l Trade 1989), aff'd without opinion, 904 F.2d 46 (Fed. Cir. 1990); Empire Plow Co. v. United States, 675 F. Supp. 1348, 1352 (Ct. Int'l Trade 1987). See, e.g., Torrington Co. v. United States, 790 F. Supp. 1161, 1168 (Ct. Int'l Trade 1992), aff'd without opinion, 991 F.2d 809 (Fed. Cir. 1993).

<sup>61</sup> Conference Tr. at 27 and 61.

<sup>62</sup> CR/PR at Table III-3.

<sup>63</sup> CR/PR at III-1.

<sup>64</sup> Conference Tr. at 27 and 61 ("Simply to cut costs. There was juice in the market that was so cheap that our strategy became one of acquiring it at those prices, blending it with our own and then being able to offer pricing that could compete in our home market.").

<sup>65</sup> CR/PR at Table III-3.

<sup>66</sup> CR/PR at Table VI-3.

<sup>67</sup> Vice Chairman Aranoff does not ordinarily rely on individual-company operating income margins in assessing whether a related party has benefitted from importation of subject merchandise. Rather, she determines whether to exclude a related party based principally on its ratio of subject imports to domestic shipments and whether its primary interests lie in domestic production or importation.

<sup>68</sup> Conference Tr. at 27 ("we put our emphasis on the sale of value-added lemon juice products such as ultra low pulp and clarified lemon juice where the margins are higher, but the customers are fewer and there's less volume available.").

<sup>69</sup> 19 U.S.C. § 1677(7)(G)(i).

- (2) the presence of sales or offers to sell in the same geographic markets of subject imports from different countries and the domestic like product;
- (3) the existence of common or similar channels of distribution for subject imports from different countries and the domestic like product; and
- (4) whether the subject imports are simultaneously present in the market.<sup>70</sup>

While no single factor is necessarily determinative, and the list of factors is not exclusive, these factors are intended to provide the Commission with a framework for determining whether the subject imports compete with each other and with the domestic like product.<sup>71</sup> Only a “reasonable overlap” of competition is required.<sup>72</sup>

Petitioner contends subject imports from Argentina and Mexico should be cumulated on the basis that they are fungible with the domestic product and each other, are sold in the same geographic markets, through common or similar channels of distribution, and were both present in the U.S. market during the three-year period of investigation.<sup>73</sup> Respondents, for their part, generally present arguments that were based on the assumption that subject imports would be cumulated for purposes of assessing the volume and effects of subject imports for determining material injury. One respondent, Argentine Exporters, contends that there is not a reasonable overlap of competition between Argentine and Mexican imports in arguing against cumulation in the threat context.<sup>74</sup>

In these investigations, the threshold criterion is met since the antidumping duty petitions with respect to subject imports from Argentina and Mexico were both filed on the same day, September 21, 2006. None of the statutory exceptions to cumulation is applicable.<sup>75</sup> Subject imports from Argentina and Mexico are thus eligible for cumulation. We next examine the four factors that the Commission customarily considers in determining whether there is a reasonable overlap of competition.

*Fungibility.* The evidence indicates that there generally is interchangeability between domestically-produced lemon juice and lemon juice from Argentina and Mexico.<sup>76</sup> Factors that may limit

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<sup>70</sup> See Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea, and Taiwan, Inv. Nos. 731-TA-278-280 (Final), USITC Pub. 1845 (May 1986), aff'd, Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898 (Ct. Int'l Trade), aff'd, 859 F.2d 915 (Fed. Cir. 1988).

<sup>71</sup> See, e.g., Wieland Werke, AG v. United States, 718 F. Supp. 50 (Ct. Int'l Trade 1989).

<sup>72</sup> The SAA (at 848) expressly states that “the new section will not affect current Commission practice under which the statutory requirement is satisfied if there is a reasonable overlap of competition.” SAA at 848 (citing Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898, 902 (Ct. Int'l Trade 1988)), aff'd 859 F.2d 915 (Fed. Cir. 1988). See Goss Graphic Sys., Inc. v. United States, 33 F. Supp. 2d 1082,1087 (Ct. Int'l Trade 1998) (“cumulation does not require two products to be highly fungible”); Wieland Werke, AG, 718 F. Supp. at 52 (“Completely overlapping markets are not required.”).

<sup>73</sup> Petition at 25-26; Petitioner’s Postconference Brief at 22-23.

<sup>74</sup> Argentine Exporters Postconference Brief at 31-34. Argentine Exporters argue that subject merchandise from Argentina is different physically from the juice sold by Mexican and U.S. producers, since it typically is sold in the 500-to-600 GPL range, while Mexican and virtually all U.S.- produced lemon juice is sold at 400 GPL. They claim resulting transport and storage cost savings make the Argentine lemon juice more attractive to lemonade and beverage manufacturers. According to Argentine Exporters, Argentine lemon juice is perceived to be higher quality because it has a better, more preferred color (more yellow). Thus, they maintain that Argentine lemon juice is not completely fungible with other lemon juices. They also assert that Argentine and Mexican lemon juice have different marketing channels given that Argentine lemon juice has a variety of U.S. customers where Mexican lemon juice is marketed almost entirely through and to Coca-Cola. Id.

<sup>75</sup> See 19 U.S.C. § 1677(7)(G)(ii).

<sup>76</sup> CR at I-7 and II-7-10; PR at I-5 and II-5-7.

interchangeability are the concentration (or GPL level), color, and viscosity.<sup>77</sup> However, as discussed above, the physical difference between lemon juice at varying concentration levels is the amount of water contained in the juice.<sup>78</sup> U.S. processors and the majority of importers found domestically-produced lemon juice is always or frequently interchangeable with lemon juice from Argentina and Mexico.<sup>79</sup> A majority of market participants who compared subject imports from different sources also found them to be always or frequently interchangeable.<sup>80</sup>

*Geographic Overlap.* The market for lemon juice is not limited by geography and tends to be nationwide. U.S. producers reported nationwide sales of lemon juice.<sup>81</sup> While subject imports may enter the United States through specific customs districts, they are sold throughout the country.<sup>82</sup>

*Channels of Distribution.* During the period of investigation, the majority of shipments of domestically-produced lemon juice and the subject imports from Argentina and Mexico were sold to food processors (including nonjuice and fruit drink producers), followed by remanufacturers and packagers.<sup>83</sup>

*Simultaneous Presence.* Between January 2003 and August 2006, subject imports of lemon juice from Argentina and Mexico have simultaneously been present in the U.S. market.<sup>84</sup> Specifically, subject imports from Argentina and Mexico have entered the U.S. market in each of the 20 months from January 2005 to August 2006.<sup>85</sup>

*Conclusion.* The record indicates that both U.S.-produced lemon juice and subject imports from Argentina and Mexico are fungible, are primarily sold to food processors, have geographic overlaps in sales, and have been simultaneously present in the U.S. market during the entire period of investigation. We consequently conclude that the subject imports from Argentina and Mexico compete with each other and with the domestic like product, and cumulatively assess the volume and effects of subject imports for determining a reasonable indication of material injury by reason of subject imports.

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<sup>77</sup> CR at II-7; PR at II-5.

<sup>78</sup> Petition at 21.

<sup>79</sup> CR/PR at Table II-2.

<sup>80</sup> CR/PR at Table II-2.

<sup>81</sup> CR at II-1 and IV-14; PR at II-1 and IV-7-8.

<sup>82</sup> CR at II-1 and IV-14; PR at II-1 and IV-7-8. Specifically, while three of ten importers of subject merchandise indicated that they sold nationwide, the others reported overlapping geographic regions. *Id.* and Table IV-7. The majority of U.S. sales for both U.S.-produced product and subject imports occur over 100 miles from their facilities and/or importers' storage facilities. For U.S. processors, \*\*\* were over 1,000 miles from their facilities; for subject imports from Argentina, \*\*\* were over 1,000 miles from importers' storage facilities; and for subject imports from Mexico, \*\*\* were over 1,000 miles from importers' storage facilities. CR at II-1-2; PR at II-1.

<sup>83</sup> CR at I-8 and II-1; PR at I-5 and II-1. The largest customers for \*\*\* importers were fruit juice and soda producers. *Id.* at II-1.

<sup>84</sup> CR/PR at Table IV-2.

<sup>85</sup> CR/PR at Table IV-8.

## V. REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF SUBJECT IMPORTS<sup>86</sup>

In the preliminary phase of antidumping or countervailing duty investigations, the Commission determines whether there is a reasonable indication that an industry in the United States is materially injured by reason of the imports under investigation.<sup>87</sup> In making this determination, the Commission must consider the volume of subject imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.<sup>88</sup> The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”<sup>89</sup> In assessing whether there is a reasonable indication that the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United States.<sup>90</sup> No single factor is dispositive, and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”<sup>91</sup>

For the reasons stated below, we determine that there is a reasonable indication that the domestic industry producing lemon juice is materially injured by reason of imports of lemon juice from Argentina and Mexico.

### A. Conditions of Competition and the Business Cycle

The following conditions of competition inform our analysis of whether there is a reasonable indication of material injury by reason of subject imports.

#### 1. Supply Conditions

Lemon juice is produced from the juice of fresh lemons.<sup>92</sup> As noted above, no particular variety of lemons is used, or even preferred, for the processing of lemon juice.<sup>93</sup>

Factors affecting the supply of lemon juice include the size of the lemon crop, the quality of lemons harvested, the demand for lemons in the fresh market, and the demand for lemon oil, a co-product

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<sup>86</sup> Negligibility is not an issue in these investigations under 19 U.S.C. § 1677(24). The petition was filed on September 21, 2006. Based on official import statistics, subject imports from Argentina and Mexico accounted for 51.6 percent and 34.3 percent, respectively, of total imports of lemon juice for the most recent 12-month period (September 2005-August 2006) for which data were available that preceded the filing of the petition. CR/PR at Table IV-3.

<sup>87</sup> 19 U.S.C. §§ 1671b(a) and 1673b(a).

<sup>88</sup> 19 U.S.C. § 1677(7)(B)(i). The Commission “may consider such other economic factors as are relevant to the determination” but shall “identify each [such] factor . . . [a]nd explain in full its relevance to the determination.” 19 U.S.C. § 1677(7)(B). See also Angus Chemical Co. v. United States, 140 F.3d 1478 (Fed. Cir. 1998).

<sup>89</sup> 19 U.S.C. § 1677(7)(A).

<sup>90</sup> 19 U.S.C. § 1677(7)(C)(iii).

<sup>91</sup> 19 U.S.C. § 1677(7)(C)(iii).

<sup>92</sup> CR/PR at I-2.

<sup>93</sup> Petition at 13.

of lemon juice.<sup>94</sup> Lemons generally are grown for the more profitable fresh market.<sup>95</sup> However, at the packinghouse, lemons are sorted and graded.<sup>96</sup> Lemons with imperfections or that fail to meet size or grade standards for sale as fresh lemons are shipped for processing into various products including lemon juice.<sup>97</sup> Moreover, lemons are perishable and can only be stored for a few months in cold storage before they must be sold to the fresh market or further processed into lemon juice or lemon oil.<sup>98</sup>

Simple disposal of lemons not destined for the fresh market is very costly and restricted by environmental regulations in the United States, which limit the amount of fresh fruit that can be disposed of in landfills.<sup>99</sup> While composting is an alternative means of disposal, composting capacity in the United States is limited.<sup>100</sup> Thus, lemons not destined for the fresh market are processed into lemon juice and its co-product, lemon oil, and various by-products, such as lemon pulp, lemon peel, pectin, and animal feed.<sup>101</sup> Lemon oil has become an increasingly valuable product as a flavor or fragrance enhancer in beverages, foods, and household cleaning supplies.<sup>102</sup> The increasing demand for lemon oil has reportedly resulted in an oversupply of its co-product, lemon juice.<sup>103</sup>

Similar to fresh lemons, disposal of lemon juice is very difficult and costly since two of its components are environmentally unfriendly – sugar and acid.<sup>104</sup> The treatment and disposal of lemon juice into the wastewater system is regulated at the Federal, State and local levels under the National Pretreatment Program, and reportedly such disposal would be cost-prohibitive, for even a small portion of lemon juice.<sup>105</sup>

Excess lemon juice therefore is placed in inventory and must be sold before it reaches its maximum shelf life, which typically is one to two years.<sup>106</sup> As inventoried lemon juice reaches its

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<sup>94</sup> In any final phase investigations, we will seek further information on the interrelationship of the demand for fresh lemons, the demand for lemon oil, and the supply of lemon juice.

<sup>95</sup> CR/PR at I-2.

<sup>96</sup> CR at I-4 and II-2; PR at I-3 and II-1.

<sup>97</sup> In the last four marketing years, an average of 38 percent of lemons were further processed into lemon juice in the United States. The most recent USDA data are provided in Petitioner's Postconference Brief at Attachment 8.

<sup>98</sup> Petitioner's Postconference Brief at 29.

<sup>99</sup> CR at II-2 and VI-2-3; PR at II-1 and VI-2; Conference Tr. at 25; Petitioner's Postconference Brief at 30-31.

<sup>100</sup> CR at II-2; PR at II-1; Petitioner's Postconference Brief at 30. According to Petitioner, leaving the fruit unharvested is not a viable option in the United States because it leads to disease and acidification of the soil, which harms future crops. However, Petitioner reports that lemons sometimes are left unharvested in Argentina. Petitioner's Postconference Brief at 29, n. 62.

<sup>101</sup> CR/PR at I-2 and n. 7, and VI-2; Conf. Tr. at 45 ("When you get the lemon, you get both product streams. You get oil, and you get juice").

<sup>102</sup> CR/PR at I-3; Conference Tr. at 43 and 51-52.

<sup>103</sup> Petitioner contends that in order to have a continuous supply of lemon oil for beverage manufacturing, large soft drinks manufacturers and consumers of lemon oil have encouraged global production of lemons, principally in Argentina and Mexico. The effect of this policy has created an oversupply of lemons, and by extension lemon juice, that is likely to continue since lemon trees that have been planted will remain productive for years. See Petition at 41-42 and 46-47-51 and Exhibit 37.

<sup>104</sup> Petitioner's Postconference Brief at 31.

<sup>105</sup> Petitioner's Postconference Brief at 31. Sunkist, which recently constructed a wastewater pretreatment plant to handle the run-off water from its lemon processing operations, contends that "the disposal of all the juice from crushing – if it were otherwise economically viable to extract and sell only the lemon oil in an FMC process such as Sunkist's – would be environmentally prohibitive." Id.

<sup>106</sup> CR at II-3; PR at II-2; Petitioner's Postconference Brief at 29; Eastcoast Postconference Brief at 10-11. Sunkist maintains that it currently has enough in inventory to supply the entire U.S. market. Conference Tr. at 74

(continued...)

maximum shelf life, it sells at a discount, which reportedly can be as high as \*\*\* because it often needs to be blended with fresher lemon juice at a ratio of three parts fresher lemon juice to one part older lemon juice.<sup>107</sup>

Due to variations in growing conditions in California and Arizona, lemons are processed year-round in the United States. However, in Argentina and Mexico, the processing of lemons into juice and oil occurs only during several months a year immediately following harvest.<sup>108</sup>

The domestic industry historically has supplied only a portion of the U.S. supply of lemon juice, with the remainder supplied by imports.<sup>109</sup> Domestic processors' share of the U.S. market has fluctuated between years and declined overall from \*\*\* in 2005.<sup>110</sup> Subject imports' share of the U.S. market also has fluctuated between years, but increased overall from \*\*\* in 2005.<sup>111</sup>

While the Petitioner and Respondents disagree as to its importance, an additional condition of competition is that Citrico International, a U.S. importer of subject lemon juice from Argentina, declared bankruptcy during the period examined.<sup>112</sup> That event possibly caused the stockpiling of Argentine exports in a bonded warehouse, and may have played a role in the fluctuations in subject import volume from Argentina over the period examined.<sup>113</sup> The parties disagree about how this bankruptcy and the liquidation of Citrico's inventory have affected the domestic industry.<sup>114</sup> We plan to seek further

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<sup>106</sup> (...continued)

("Mr. Bragg: I have enough juice to satisfy the U.S. market for the coming year. . . . We can pretty well supply this market because I'm going to produce another year's worth of production by the time this would go. . . . By the time I shipped all my juice, I made new juice, we wouldn't need imports. That's how flooded this market is."). TCCC, on the other hand, asserts that present U.S. producer inventories are insufficient to supply U.S. consumption \*\*\*. Coca-Cola Postconference Brief at 3-4.

<sup>107</sup> CR at II-3, n.7; PR at II-2, n.7.

<sup>108</sup> CR at I-4, n.13; PR at I-3, n.13.

<sup>109</sup> Conference Tr. at 49-50 ("We've always had more demand in the U.S. than we produced in juice and oil in California and Arizona so it didn't matter at some points [sic] that there were some imports always going to come into the country. . . . It's only to the point in the last four years where the market went upside-down, and there's more juice that's flooded into this market that creates not a home for the juice that's being produced in Argentina and Mexico.").

<sup>110</sup> CR/PR at Table IV-5.

<sup>111</sup> CR/PR at Table IV-5.

<sup>112</sup> CR/PR at IV-2.

<sup>113</sup> During the period examined, Citrico filed for bankruptcy, and its inventory of imports of lemon juice were liquidated beginning in early 2005. CR/PR at IV-2.

<sup>114</sup> CR at IV-2 and IV-3; PR at IV-2; Petition at 21-22 ("Argentina is awash with unsold stocks after the juice processing division of Citrico International went into liquidation at the end of last year'. . . . Many of these [subject] imports remained in bonded storage in the United States for several months before they were released for consumption causing severe price depression during 2005 and 2006. . . . this is not a one-time event . . . [and] is very likely to last into the foreseeable future." *Id.* at 22); Petitioner's Postconference Brief at 26-27; Coca-Cola Postconference Brief at 27-34 ("Sunkist Growers' complaint here is not with subject imports but with Citrico's bankruptcy and the liquidators who sold its accumulated stocks . . . too quickly and too cheaply." *Id.* at 32); Argentine Exporters Postconference Brief at 28-30. Sunkist and Coca-Cola also disagree about Coca-Cola's role in the liquidation of Citrico's inventory. At the Commission's conference, Coca-Cola's representative stated: "Citrico was not a subsidiary of the Coca-Cola Company at any time. When Citrico entered into bankruptcy, the Coca-Cola Company obtained the essentially worthless equity in Citrico, in satisfaction of obligations to Coca-Cola. Sunkist Growers assertion is simply wrong." Conference Tr. at 129. Yet, the evidence provided by Petitioner seems to show that Coca-Cola was Citrico's sole shareholder beginning in 2000. Petitioner's Postconference Brief at 26-27 and Attachment 3. In any final phase of these investigations, we will further examine Coca-Cola's ownership interest and

(continued...)

information regarding Citrico's bankruptcy and the liquidation of its assets, including inventories, in any final phase of these investigations.

Finally, the U.S. market share held by nonsubject imports has declined from \*\*\* in 2003 to \*\*\* in 2004 and \*\*\* in 2005.<sup>115</sup> The volume of nonsubject imports also has declined, by 24.7 percent, from 2003 to 2005.<sup>116</sup> The leading sources of nonsubject imports, in descending order of market share, are: South Africa, Brazil, Italy, and the Dominican Republic.<sup>117</sup>

## 2. Demand Conditions

U.S. apparent consumption has fluctuated during the period examined and declined from \*\*\*, for an overall decline of \*\*\*.<sup>118</sup> Despite this evidence of declining consumption, the majority of respondents to the Commission's questionnaire, specifically \*\*\*, indicated that demand for lemon juice has been unchanged since January 2003.<sup>119</sup> We recognize that examining data on a yearly basis may not accurately reflect U.S. consumption because it does not take into account available lemon juice that may remain in inventory for up to two years, with some of the inventory in bonded warehouses, as well as the reporting differences between crop and fiscal years.

Subject lemon juice is either bottled as lemon juice or used as an ingredient in beverages, particularly lemonade and soft drinks, and other foods, such as salad dressings, sauces, and baked goods. It is also used in non-food products, such as household cleaners.<sup>120</sup> While there is a demand for lemon juice to be used in beverages and other food and nonfood products, as discussed above, the processing of lemon juice is not necessarily triggered by the demand for the juice, itself, but rather seems to be based in the United States on the availability of lemons for processing, the demand for lemon oil, and the high cost of alternate means of disposing of lemons not needed for the fresh market.<sup>121</sup>

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<sup>114</sup> (...continued)

its role in the liquidation of Citrico's assets including any inventories of lemon juice.

<sup>115</sup> CR/PR at Tables IV-5 and C-1.

<sup>116</sup> CR/PR at Tables IV-5 and C-1.

<sup>117</sup> CR/PR at Table IV-5.

<sup>118</sup> CR/PR at Tables IV-5 and C-1.

<sup>119</sup> CR at II-5; PR at II-3-4.

<sup>120</sup> CR/PR at I-2.

<sup>121</sup> At the Commission's conference, the following comments were made about what controls how much lemon juice is processed:

*Question* – "So when you've got demand for lemon juice or demand for lemon oil, which one is actually controlling? . . ."

*Mr. Bragg* [Sunkist's representative]– "Neither. You process it all. . . . The game is once you start that extraction process to get as high a yield of both out of that so you can sell them on the other side."

. . . .

*Question* – "So the amount of juice you're going to produce in any year and/or oil by fact that you produce both from it has to do with how many lemons you've produced that don't meet the quality standards for the fresh? It's not the demand of the lemon juice market?"

*Mr. Bragg* – "I think it's fair to say that, yes. Correct."

Conference Tr. at 45-47.

### 3. Industry Structure

The record indicates that the majority of lemons grown in the United States are sold through cooperatives, which include both growers and processors.<sup>122</sup> Sunkist is the largest processor of lemon juice and the grower-owned cooperative accounts for most of the lemons grown in the United States.<sup>123</sup> Sunkist has one facility in Ontario, California, devoted to processing lemon juice.<sup>124</sup> In the cooperative pooling system used by Sunkist for lemons for processing, growers receive payment in two parts: first, an advance payment, made six months after the fruit delivery that is equal to 50 percent of the projected market value of the fruit when delivered to the plant; and second, a final payment, made when most of the products have been sold and the product pool has been financially closed.<sup>125</sup> Thus, under this system, a part of the grower's compensation for the lemons is contingent on the sale of the lemon juice by the processor.

There reportedly are six other small domestic processors of lemon juice: Ventura Coastal, Sun Orchard, Vita-Pakt Citrus Products, Perricone Juices, California Citrus Products, and PF&B.<sup>126</sup> These domestic processors differ from Sunkist in that they purchase lemons for processing from unrelated growers at market prices. Each of these processors also produces other citrus juices.<sup>127</sup>

During the period examined, Ventura Coastal closed one of its three U.S. processing facilities, which it claimed was "partially due to low lemon juice prices caused by unfairly priced imports from Argentina and Mexico."<sup>128</sup> In addition, Sunkist upgraded its processing equipment during the period of investigation.<sup>129</sup>

### 4. Substitutability

All responding domestic processors and a majority of responding importers found that subject imports were always or frequently interchangeable with the domestic like product.<sup>130</sup> Market participants, however, did not agree on the importance of price in purchasing decisions.<sup>131</sup>

Citric acid was the most often cited substitute for lemon juice by \*\*\* and most responding importers.<sup>132</sup> Other possible substitutes included lime juice, other natural and artificial flavorings, sugar,

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<sup>122</sup> CR at III-1-2 and VI-1; CR at III-1 and VI-1.

<sup>123</sup> See CR/PR at VI-1, n.1.

<sup>124</sup> CR/PR at III-1.

<sup>125</sup> CR at VI-8; PR at VI-3-4.

<sup>126</sup> CR at III-1-4; PR at III-1-2.

<sup>127</sup> CR at III-2-4; PR at III-1-2.

<sup>128</sup> Conference Tr. at 26.

<sup>129</sup> See Coca-Cola Postconference Brief at Exhibit 16 (Sunkist's August 23, 2006 Press Release, "Sunkist Citrus Juice and Oil Business On Upswing With Refocused Sales Strategies and Modernized Plants") and \*\*\*.

<sup>130</sup> CR/PR at Table II-2. As discussed above regarding cumulation, Argentine Exporters contended that subject imports from Argentina are not fungible with subject imports from Mexico and the domestic like product on the basis of differences in concentration levels. Argentine Exporters Postconference Brief at 31-33. However, the evidence demonstrates that differences in lemon juice at varying concentration levels only involve the amount of water contained in the juice. Although such differences may affect prices and storage/transport costs, they do not limit the interchangeability of lemon juice at varying concentration levels.

<sup>131</sup> CR/PR at Table II-3.

<sup>132</sup> CR at II-6; PR at II-4-5.

and orange juice.<sup>133</sup> Citric acid is reportedly used in carbonated beverages as well as other non-beverage applications. The use of citric acid instead of lemon juice is reportedly a cost-cutting measure.<sup>134</sup> Two importers reported that the price of substitutes, especially citric acid, can affect prices of lemon juice by limiting price increases as well as by causing beverage producers to reformulate their beverages to substitute lemon juice for less expensive alternatives.<sup>135</sup> However, others note that switching to citric acid means that the product cannot be labeled as containing lemon juice, which may reduce the marketing value of many juice products.<sup>136</sup>

## **B. Volume of the Subject Imports**

Section 771(7)(C) of the Act provides that the “Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.”<sup>137</sup>

We find that cumulated subject import volume is significant both in absolute terms and relative to consumption and production in the United States.

Cumulated subject imports accounted for a large and increasing share of U.S. consumption and increased relative to U.S. production from 2003 to 2005.<sup>138</sup> The market share held by cumulated subject imports fluctuated between years but increased overall from \*\*\* in 2005.<sup>139</sup> The ratio of the quantity of cumulated subject imports relative to U.S. production rose steadily from \*\*\* in 2005.<sup>140</sup> While the volume of cumulated subject imports fluctuated during the period examined<sup>141</sup> and declined overall by 4.6 percent from 2003 to 2005,<sup>142</sup> the rate of decline was less than the decline in U.S. apparent consumption (\*\*\*) for the same period.<sup>143</sup> Thus, subject imports gained market share at a time of

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<sup>133</sup> CR at II-6; PR at II-4-5.

<sup>134</sup> CR at II-7; PR at II-5.

<sup>135</sup> CR at II-7; PR at II-5.

<sup>136</sup> CR at II-6-7; PR at II-4-5.

<sup>137</sup> 19 U.S.C. § 1677(7)(C)(i).

<sup>138</sup> We have placed less weight on the trade data for the interim period which may not accurately reflect seasonality differences in processing lemon juice in both Argentina and Mexico relative to the year-round processing in the United States.

<sup>139</sup> CR/PR at Table IV-5. The U.S. market share held by cumulated subject imports was \*\*\* in 2005. Subject imports’ share of the U.S. market was \*\*\* in interim period 2006. Id.

<sup>140</sup> CR/PR at Table IV-6. Cumulated subject imports’ share of U.S. production was \*\*\* in 2005. Subject imports’ share of the U.S. production was \*\*\* in interim period 2006. Id.

<sup>141</sup> We note that the bankruptcy of Citrico may have resulted in stockpiling of Argentine exports in bonded warehouses, and therefore could have played a role in the fluctuations in subject import volume from 2003 to 2005, particularly the decline in imports from Argentina from 2003 to 2004 and the increase from 2004 to 2005 as liquidation of the Citrico inventories occurred. See CR/PR at Tables IV-2 and IV-4. We plan to further examine the effects of the bankruptcy and these fluctuations in any final phase investigations.

<sup>142</sup> We find that the evidence in the record, including Petitioner’s Postconference Brief at Attachment 2, does not support Petitioner’s allegation that “2003 was an exceptional year, particularly with regard to imports from Argentina.” Compare Petitioner’s Postconference Brief at 23-24 with id. at Attachment 2.

<sup>143</sup> CR/PR at Tables IV-2, IV-4, and C-1. Cumulated subject imports were: 3.0 million gallons in 2003, 2.0 million gallons in 2004, and 2.9 million gallons in 2005. In the interim periods, cumulated subject imports were: 1.7 million gallons in interim period 2005 and 1.5 million gallons in interim period 2006. Id.

declining consumption. Moreover, U.S. importers' inventories of subject merchandise increased \*\*\* in 2004 and \*\*\* in 2005.<sup>144 145</sup>

The increase in cumulated subject imports' share of the U.S. market from 2003 to 2005 was accompanied by an overall decline in the domestic producers' market share, from \*\*\* in 2005.<sup>146</sup> Thus, subject imports gained market share at the expense of the domestic industry. Nonsubject imports, both in absolute terms and relative to U.S. consumption, declined from 2003 to 2005.<sup>147 148</sup>

We find for purposes of the preliminary phase of these investigations that cumulated subject import volume is significant, both in absolute terms and relative to consumption and production in the United States.

### C. Price Effects of the Subject Imports

Section 771(7)(C)(ii) of the Act provides that, in evaluating the price effects of the subject imports, the Commission shall consider whether –

(I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and

(II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.<sup>149</sup>

The record reflects divergent views by market participants on the importance of price in purchasing decisions. As noted above, all responding domestic processors and a majority of responding

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<sup>144</sup> CR/PR at Tables VII-3 and C-1. U.S. importers' inventories of subject merchandise were: \*\*\* in interim period 2006. *Id.* \*\*\* of these inventories are of subject merchandise from Argentina.

<sup>145</sup> In addition, inventories of lemon juice held by both Argentine and Mexican producers are \*\*\* and increasing. CR/PR at Tables VII-1 and VII-2. End-of-period inventories held by Argentine producers, which fluctuated between years and increased overall by 16.9 percent from 2003 to 2005, were equivalent in 2005 to about \*\*\* of U.S. apparent consumption. *Id.* at Tables VII-1 and C-1. End-of-period inventories held by Mexican producers, which \*\*\* from 2003 to 2005, were equivalent in 2005 to about \*\*\* of U.S. apparent consumption. *Id.* at Tables VII-2 and C-1.

<sup>146</sup> CR/PR at Table IV-5. The U.S. market share held by domestic producers was \*\*\* in 2005. Domestic producers' share of the U.S. market was \*\*\* in interim period 2006. *Id.*

<sup>147</sup> CR/PR at Tables IV-2, IV-4 and IV-5. Nonsubject imports were: 499,000 gallons in 2003, 374,000 gallons in 2004, and 376,000 gallons in 2005. In the interim periods, nonsubject imports were: 223,000 gallons in interim period 2005 and 290,000 gallons in interim period 2006. *Id.* at Tables IV-2 and IV-4. The U.S. market share held by nonsubject imports was \*\*\* in 2005. Nonsubject imports' share of the U.S. market was \*\*\* in interim period 2006. *Id.* at Table IV-5.

<sup>148</sup> In any final phase investigations, we will seek information on the role of nonsubject imports of lemon juice in the U.S. market. We invite parties to comment in any final phase investigations on whether the recent decision by the U.S. Court of Appeals for the Federal Circuit, Bratsk Aluminum Smelter v. United States, 444 F.3d 1369 (Fed. Cir. 2006), is applicable to the facts of these investigations. The Commission also invites parties to comment on what additional information the Commission should collect to address the issues raised by the Court and how that information should be collected, and to identify which of the various nonsubject sources should be the focus of additional information gathering by the Commission in any final phase investigation.

<sup>149</sup> 19 U.S.C. § 1677(7)(C)(ii).

importers found that subject imports were always or frequently interchangeable with the domestic like product.<sup>150</sup> However, while all responding domestic processors reported that non-price differences between subject imports and the domestic like product were never or only sometimes a factor in purchasing decisions, the majority of responding importers reported that non-price differences were always or frequently an important factor.<sup>151</sup>

In these investigations, U.S. processors and importers provided monthly pricing data for three types of lemon juice for further manufacture.<sup>152</sup> The pricing data show a pattern of mixed underselling by subject imports. Subject imports undersold the domestic like product in 71 of the 113 monthly comparisons, with margins of underselling ranging from 0.3 percent to 51.8 percent.<sup>153</sup> Subject imports from Argentina undersold the domestic like product in 37 of the 73 monthly comparisons of products 1 and 2, with margins of underselling ranging from 0.3 percent to 51.8 percent.<sup>154</sup> Subject imports from Mexico undersold the domestic like product in 34 of the 40 monthly comparisons of products 1 and 3, with margins of underselling ranging from 0.6 percent to 48.9 percent.<sup>155</sup> For purposes of these preliminary investigations, we find that there has been mixed price underselling of the domestic like product by subject imports and intend to further examine this issue, including the trends during the period of investigation, in any final phase investigations.<sup>156</sup>

We have also considered movements in lemon juice prices over the period of investigation. The Commission's pricing data show some fluctuations but generally an overall decline in prices for both the domestic and subject lemon juice.<sup>157</sup> Specifically, regarding product 1, which accounts for the largest volume of lemon juice for which prices were reported, the Commission's data show the price for the U.S.-produced product 1 declined by \*\*\* from January 2003 to August 2006, while the prices for the corresponding Argentine imports declined by \*\*\* for the same period and the prices for the Mexican imports declined by \*\*\* from February 2003 to June 2006.<sup>158</sup> However, we recognize that these pricing data show that the prices for the U.S.-produced product 2, which were reported for \*\*\*, increased by \*\*\* from January 2003 to August 2006 while the prices for the corresponding Argentine imports declined by \*\*\* from February 2003 to August 2006.<sup>159</sup> The prices reported for the U.S.-produced product 3, which also covers \*\*\*, decreased by \*\*\* from January 2003 to August 2006, while the prices for the corresponding Mexican imports declined by \*\*\*.<sup>160</sup> Therefore, we find some evidence that subject imports are depressing domestic lemon juice prices.

In addition, we find a reasonable indication that subject imports prevented domestic price increases that otherwise would have occurred. The domestic industry's cost of goods sold ("COGS") as

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<sup>150</sup> CR/PR at Table II-2.

<sup>151</sup> CR/PR at Table II-3.

<sup>152</sup> The three types of lemon juice for which pricing data were requested are: Product 1 – Cloudy frozen concentrated lemon juice, nonorganic, for further manufacture; Product 2 – Clarified frozen concentrated lemon juice, nonorganic, for further manufacture; and Product 3 – Cloudy NFCLJ, non-organic, for further manufacture. CR at V-4, PR at V-3.

<sup>153</sup> CR/PR at Tables V-1 - V-4.

<sup>154</sup> CR/PR at Tables V-1 - V-2 and V-4.

<sup>155</sup> CR/PR at Tables V-1, V-3 and V-4.

<sup>156</sup> Chairman Pearson notes that most of the underselling occurred with respect to subject imports from Mexico, and that mixed overselling and underselling is not unusual in a fungible, agricultural product.

<sup>157</sup> CR/PR at Tables V-1 - V-3.

<sup>158</sup> CR/PR at V-6 and Table V-1.

<sup>159</sup> CR at V-6 and Table V-2.

<sup>160</sup> CR at V-6 and Table V-3.

a share of net sales fluctuated between years and increased overall from \*\*\* in 2003 to \*\*\* in 2005.<sup>161</sup> Unit COGS also fluctuated between years and increased overall from \*\*\* in 2003 to \*\*\* in 2005.<sup>162</sup> These data indicate that, as the domestic industry's costs increased and significant volumes of lower priced subject imports entered the U.S. market, the domestic processors were unable to raise their prices to cover increasing costs. This evidence suggests some price suppression in the form of a cost-price squeeze due in part to the subject imports.<sup>163</sup> However, as discussed below, we will further examine in any final phase investigations the appropriate method to consider financial data, including cost data, for this domestic industry and thus will reconsider the evidence in this context as well.

For the foregoing reasons, we find for purposes of these preliminary determinations that the subject imports have had significant adverse effects on domestic prices.

#### **D. Impact of the Subject Imports on the Domestic Industry**<sup>164</sup>

Section 771(7)(C)(iii) of the Act provides that the Commission, in examining the impact of the subject imports on the domestic industry, "shall evaluate all relevant economic factors which have a bearing on the state of the industry."<sup>165</sup> These factors include output, sales, inventories, ability to raise capital, research and development, and factors affecting domestic prices. No single factor is dispositive and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."<sup>166</sup>

We have examined the performance indicators in the trade and financial data for the domestic industry producing lemon juice. These data indicate declining overall trends, although some indicators have fluctuated between years.<sup>167</sup>

U.S. production, capacity, capacity utilization, shipments, and net sales quantity and value all declined overall from 2003 to 2005. U.S. processors' production of lemon juice declined \*\*\* from 2003 to 2004, and only partially recovered in 2005 for an overall decline of \*\*\* from 2003 to 2005.<sup>168</sup> We note, however, that production may vary with the size of the lemon crop.<sup>169</sup> Domestic processors' U.S.

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<sup>161</sup> CR/PR at Table C-1.

<sup>162</sup> CR/PR at Table C-1.

<sup>163</sup> The evidence of two confirmed lost sales and revenues provide additional support for our finding that subject imports have suppressed and/or depressed prices. CR at V-15 - V-18 and Tables V-5 and V-6.

<sup>164</sup> In its notice of initiation, Commerce estimated the dumping margins for imports of subject lemon juice as 102.46 percent with respect to Argentina and 134.22 percent with respect to Mexico. 71 Fed. Reg. at 61713 (Oct. 19, 2006).

<sup>165</sup> 19 U.S.C. § 1677(7)(C)(iii); see also SAA at 851 and 885 ("In material injury determinations, the Commission considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they also may demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports."). SAA at 885.

<sup>166</sup> 19 U.S.C. § 1677(7)(C)(iii); see also SAA at 851, 885; Live Cattle from Canada and Mexico, Inv. Nos. 701-TA-386, 731-TA-812-813 (Preliminary), USITC Pub. 3155 (Feb. 1999) at 25 n.148.

<sup>167</sup> We have placed less weight on the trade and financial data for interim periods which may not accurately reflect seasonality differences in Argentina and Mexico relative to U.S. production and are based only on reported estimates for some domestic industry data.

<sup>168</sup> U.S. production declined from \*\*\* in 2003 to \*\*\* in 2004 and then increased to \*\*\* in 2005. CR/PR at Tables III-2 and C-1.

<sup>169</sup> CR at I-4; PR at I-3.

shipments of lemon juice declined each year for an overall decline of \*\*\* from 2003 to 2005.<sup>170</sup> Both industry capacity and capacity utilization fell over the period of investigation. Capacity utilization declined from \*\*\* in 2005.<sup>171</sup> Net sales volume declined steadily from \*\*\* in 2003 to \*\*\* in 2005.<sup>172</sup>

As U.S. apparent consumption declined overall from 2003 to 2005, subject imports gained U.S. market share at the expense of the market share held by domestic processors.<sup>173</sup> Moreover, U.S. importers' inventories of subject merchandise increased \*\*\* in 2005.<sup>174</sup> Similarly, domestic processors' inventories increased by \*\*\* over the period of investigation and rose as a share of total shipments from \*\*\* in 2005.<sup>175</sup>

The average number of production related workers, hours worked, and wages paid for processing lemon juice experienced a steady increase from 2003 to 2005.<sup>176</sup> Productivity declined overall from 2003 to 2005, despite some recovery in 2005 compared to 2004.<sup>177</sup>

In examining the financial performance indicators for this industry, we first look at the data for the industry as a whole in the form in which the data were reported to the Commission. However, as discussed above, Sunkist, which accounted for \*\*\* of domestic production in 2005, is a division of a grower-owned cooperative. In certain cases involving cooperatives, we have found it advantageous to our analysis to consider data for cooperatives in a different format and separately from data for non-cooperatives in the domestic industry.<sup>178</sup> In the preliminary phase of these investigations, we received complete financial data only from Sunkist and Ventura Coastal.<sup>179</sup> Thus, we have examined financial indicators for Ventura Coastal and Sunkist separately, and also considered the data for the industry as a whole using our standard methodology.<sup>180</sup> In addition, we examine a restated profit-and-loss methodology that reflects the cooperative nature of Sunkist's operations. In any final phase investigations, we will reexamine the appropriate methodology to use to consider financial indicators for the lemon juice industry, which includes both cooperative and non-cooperative processors.

Regardless of the reporting methodology, many of the domestic industry's financial indicators declined overall or remained at low levels over the period of investigation. In considering the domestic industry as a whole, operating income, operating margins, and net sales measured by quantity and value

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<sup>170</sup> U.S. shipments declined from \*\*\* in 2003 to \*\*\* in 2004 and \*\*\* in 2005. CR/PR at Tables III-2 and C-1.

<sup>171</sup> CR/PR at Tables III-2 and C-1.

<sup>172</sup> CR/PR at Table C-1.

<sup>173</sup> CR/PR at Tables IV-5 and C-1.

<sup>174</sup> CR/PR at Tables VII-3 and C-1.

<sup>175</sup> CR/PR at Tables III-2 and C-1.

<sup>176</sup> The average number of production workers increased from \*\*\* in 2003 to \*\*\* in 2004 and then \*\*\* in 2005. The hours worked also increased from \*\*\* in 2003 to \*\*\* in 2005. Accordingly, the wages paid increased from \*\*\* in 2003 to \*\*\* in 2005. CR/PR at Tables III-2 and C-1. In any final phase investigations, we will further examine these increases in workforce as production and shipments declined. However, we recognize that the reported number of production workers in 2003 and 2004 may reflect that Sunkist \*\*\*. See \*\*\*. Ventura Coastal claimed that it closed a processing facility in 2003 "partially due to low lemon juice prices caused by unfairly priced imports from Argentina and Mexico." Conference Tr. at 26.

<sup>177</sup> Productivity declined from \*\*\* in 2003 to \*\*\* in 2004, then rose to \*\*\* in 2005. CR/PR at Tables III-2 and C-1.

<sup>178</sup> Compare Non-Frozen Concentrated Apple Juice from China, Inv. No. 731-TA-841, USITC Pub. 3303 (May 2000) at 15-16 with Certain Orange Juice from Brazil, Inv. No. 731-TA-1089 (Final), USITC Pub. 3838 at 26-27 (March 2006).

<sup>179</sup> CR/PR at VI-1.

<sup>180</sup> We recognize that Sunkist prepared its questionnaire response in conformity with its corporate statements and included its transfers to members on the raw material costs' line to comply with the Commission's questionnaire. See CR at E-4 and Table VI-2; PR at E-3 and Table VI-2.

all declined, although capital expenditures increased over the period examined.<sup>181</sup> Operating income \*\*\* in 2005.<sup>182</sup> Operating margins \*\*\* in 2003 to \*\*\* in 2004, and then fell to \*\*\* in 2005.<sup>183</sup>

Both net sales measured by quantity and value \*\*\*, respectively, from 2003 to 2005.<sup>184</sup> As discussed previously, COGS as a ratio to sales increased overall from 2003 to 2005. COGS was \*\*\* of sales in 2003, and increased to \*\*\* of sales in 2005.<sup>185</sup> Thus, net income/loss as a share of net sales \*\*\* in 2003 to \*\*\* in 2005.<sup>186</sup>

While \*\*\* financial performance was \*\*\* than the industry as a whole, it also experienced \*\*\* over the period of investigation.<sup>187</sup> Operating margins \*\*\* in 2003 to \*\*\* in 2004, and then \*\*\* in 2005.<sup>188</sup> Both total sales measured by quantity and value \*\*\*, respectively, from 2003 to 2005.<sup>189</sup> COGS as a ratio to sales \*\*\* of sales in 2003 to \*\*\* of sales in 2005.<sup>190</sup> Thus, net income as a share of net sales \*\*\* in 2003 to \*\*\* in 2005.<sup>191</sup> Using a restated profit-and-loss format that resembles Sunkist Growers' consolidated statements and reflects its cooperative nature, its financial results \*\*\* trend.<sup>192</sup> <sup>193</sup> Total

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<sup>181</sup> Capital expenditures for the domestic industry \*\*\* in 2003 to \*\*\* in 2005. CR/PR at Tables VI-5 and C-1.

<sup>182</sup> CR/PR at Tables VI-1 and C-1. Operating income increased from \*\*\* in 2003 to \*\*\* in 2004, then fell to \*\*\* in 2005. Id.

<sup>183</sup> CR/PR at Tables VI-1 and C-1.

<sup>184</sup> CR/PR at Tables VI-1 and C-1. Net sales measured by quantity decreased from \*\*\* in 2003 to \*\*\* in 2004 and \*\*\* in 2005. Net sales measured by value decreased from \*\*\* in 2003 to \*\*\* in 2004 and \*\*\* in 2005. Id.

<sup>185</sup> CR/PR at Tables VI-1 and C-1.

<sup>186</sup> CR/PR at Table VI-1.

<sup>187</sup> Ventura Coastal's performance may be the result of its shift of production to higher-value products. Conference Tr. at 27 ("we put our emphasis on the sale of value-added lemon juice products such as ultra low pulp and clarified lemon juice where the margins are higher, but the customers are fewer and there's less volume available.").

<sup>188</sup> CR/PR at Table VI-3.

<sup>189</sup> CR/PR at Table VI-3. \*\*\* from 2003 to 2004. However, from 2004 to 2005, both its total sales measured by quantity and value also decreased by \*\*\*, respectively. Id.

<sup>190</sup> CR/PR at Table VI-3.

<sup>191</sup> CR/PR at Table VI-3.

<sup>192</sup> Respondents argue that Sunkist is immune to injury because of the way the cooperative operation is structured. When lemon juice is processed and sold, the processing costs are taken from the proceeds and retained by the processor, while any net proceeds are distributed to the growers who are the ultimate owners of the processing operation. Respondents contend that, because the processing operation is structured always to recover its costs and never to make a profit, it cannot be injured by the volume or price effects of subject imports. See e.g., Tropicana Postconference Brief at 5 ("Sunkist is the agent for growers . . . [and] does not profit from its sales of members' lemon juice. Instead, it recovers its processing and marketing costs. . . . Because of this structure, Sunkist cannot be considered materially injured by reason of the subject imports.") and 8-21. While we will explore Sunkist's cooperative structure, including its relationship with growers, in any final phase investigations, we do not agree with Respondents' argument that Sunkist is immune from injury solely because of its cooperative structure. We note that domestic processor Ventura Coastal and other noncooperatives are in business to make a profit on lemon juice production, and the fact, taken in isolation, that a business is structured as a cooperative does not mean that it cannot be materially injured by reason of subject imports. Pursuant to the statute, profits are only one of the relevant economic factors that the Commission is required to consider in examining the impact of subject imports on the domestic industry, and, in doing so, the "presence or absence of any factor which the Commission is required to evaluate under subparagraph (C) or (D) shall not necessarily give decisive guidance with respect to the determination by the Commission of material injury." 19 U.S.C. § 1677 (7)(C)(iii) and (E)(ii).

<sup>193</sup> On the record in these preliminary investigations, Vice Chairman Aranoff and Commissioner Hillman find that the best measure of the profitability of Sunkist's cooperative processing operation is the net revenues available  
(continued...)

revenue \*\*\* from 2003 to 2005.<sup>194</sup> Its cost of processing as a ratio to total revenues \*\*\* of revenues in 2003 to \*\*\* of revenues in 2005.<sup>195</sup> The ratio of net revenues available for distribution to grower members as a share of total revenues steadily \*\*\* in 2005.<sup>196</sup> However, the distributions (payments) by Sunkist to the grower members were \*\*\*.<sup>197</sup> These distributions as a share of total revenues were: \*\*\* in 2005.<sup>198</sup>

Using the format in which the data were reported, \*\*\* financial performance indicators \*\*\* those for the industry as a whole, fluctuating between years and declining overall from 2003 to 2005. Operating margins \*\*\* in 2003 to \*\*\* in 2004, and then \*\*\* in 2005.<sup>199</sup> Both total sales measured by quantity and value \*\*\*, respectively, from 2003 to 2005.<sup>200</sup> COGS as a ratio to sales \*\*\* of sales in 2003 to \*\*\* of sales in 2005.<sup>201</sup> \*\*\* in 2005.<sup>202</sup>

The evidence in the record demonstrates, and parties agree, that there has been an oversupply of lemon juice available for or in the U.S. market during the period of investigation.<sup>203</sup> However, the parties do not agree on the reasons for that oversupply or whether it will continue in the future. There have been a number of reasons put forward – including the effects of the liquidation of Citrico’s inventory, the effects of demand for fresh lemons and/or the demand for lemon oil on the lemon juice supply, the need to dispose of lemons, the increasing production of lemons and lemon juice in Argentina and Mexico, and the increasing inventories held by both U.S. importers and foreign producers of subject merchandise – all of which we will further examine in any final phase investigations.

For purposes of these preliminary determinations, we conclude that subject imports had an adverse impact on the condition of the domestic industry during the period of investigation. We find that the absolute and relative volume of subject imports are significant, have gained market share at the expense of the domestic industry, and have depressed domestic prices to a significant degree, for purposes of these preliminary determinations. The depressed domestic prices, combined with the pattern

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<sup>193</sup> (...continued)

for payment to growers. See CR and PR at Table E-1. This is consistent with the Commission's approach to this issue in Certain Non-Frozen Concentrated Apple Juice from China, Inv. No. 731-TA-841 (Final), USITC Pub. 3303 (May 2000) at 16. Although they have found that lemons are not part of the domestic like product, and that the growing operations of lemon growers are not part of the domestic lemon juice industry, it is nevertheless true that growers own the Sunkist processing facility because they own the cooperative. Accordingly, the Commission can properly look both at the processing facility's ability to recover its production costs and at net proceeds available for payment to growers in assessing the profitability of the domestic industry.

<sup>194</sup> CR/PR at Table E-1.

<sup>195</sup> CR/PR at Table E-1.

<sup>196</sup> CR/PR at Table E-1.

<sup>197</sup> In any final phase investigations, we will seek more information regarding the contractual relationships between the growers and the Sunkist cooperative structure, including the terms for obtaining lemons and for remittances to grower members. We will also further examine the control Sunkist exercises over its raw material costs, and how the need to dispose of lemons by processing them into lemon juice affects supply, demand, and financial performance in the U.S. lemon juice industry.

<sup>198</sup> CR/PR at Table E-1. Sunkist explained that its \*\*\*. CR at E-4.

<sup>199</sup> CR/PR at Table VI-2.

<sup>200</sup> CR/PR at Table VI-2.

<sup>201</sup> CR/PR at Table VI-2.

<sup>202</sup> CR/PR at Table VI-2.

<sup>203</sup> See e.g., Petition at 40-51 and Exhibit 37; Petitioner’s Postconference Brief at 25-26; Coca-Cola Postconference Brief at 27-33; Argentine Exporters Postconference Brief at 24-30; Eastcoast Postconference Brief at 18 and 25-32.

of mixed underselling, has caused declines in the domestic industry's financial performance over the period of investigation.

### **CONCLUSION**

For the reasons stated above, we find that there is a reasonable indication that the domestic industry is materially injured by reason of subject imports of lemon juice from Argentina and Mexico that allegedly are sold in the United States at less than fair value.



## PART I: INTRODUCTION

### BACKGROUND

These investigations result from a petition filed by Sunkist Growers, Inc. (Sunkist), Sherman Oaks, CA, on September 21, 2006, alleging that an industry in the United States is materially injured and threatened with material injury by reason of less-than-fair-value (LTFV) imports of lemon juice<sup>1</sup> from Argentina and Mexico. Information relating to the background of the investigations<sup>2</sup> is presented in the following tabulation.<sup>3</sup>

<i>Date</i>	<i>Action</i>
September 21, 2006 .	Petition filed with Commerce and the Commission; <sup>4</sup> institution of Commission investigations (71 FR 56550, September 27, 2006)
October 13, 2006 . . .	Commission's conference <sup>5</sup>
October 19, 2006 . . .	Commerce's notice of initiation (71 FR 61710)
November 3, 2006 . .	Date of the Commission's vote
November 6, 2006 . .	Commission determinations transmitted to Commerce
November 14, 2006 .	Commission opinions transmitted to Commerce

### SUMMARY DATA

A summary of data collected in these investigations is presented in appendix C. In table C-1, U.S. industry lemon juice data are based on questionnaire responses of three firms that accounted for in excess of \*\*\* percent of U.S. production during 2003-05.<sup>6</sup> U.S. imports are based on official import statistics.

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<sup>1</sup> In its notice of initiation, Commerce defined the subject product as follows:

*“ . . . includes certain lemon juice for further manufacture, with or without addition of preservatives, sugar, or other sweeteners, regardless of the GPL (grams per liter of citric acid) level of concentration, brix level, brix/acid ratio, pulp content, clarity, grade, horticulture method (e.g., organic or not), processed form (e.g., frozen or not-from-concentrate, FDA standard of identity, the size of the container in which packed, or the method of packing.*

*Excluded from the scope are (1) lemon juice at any level of concentration packed in retail sized containers ready for resale to consumers, typically at a level of concentration of 48 GPL; and (2) beverage products such as lemonade that typically contain 20 percent or less lemon juice as an ingredient.”*

Lemon juice subject to these investigations is classifiable under statistical reporting numbers 2009.31.4000, 2009.31.6020, 2009.31.6040, 2009.39.6020, and 2009.39.6040 of the Harmonized Tariff Schedule of the United States (HTS).

<sup>2</sup> There have been no previous Commission investigations concerning lemon juice.

<sup>3</sup> *Federal Register* notices cited in the tabulation are presented in app. A.

<sup>4</sup> The LTFV margins alleged in the petition, as recalculated by Commerce, are 102.46 percent for Argentina (71 FR 61713, October 19, 2006) and 134.22 percent for Mexico (71 FR 61713, October 19, 2006).

<sup>5</sup> A list of witnesses appearing at the conference is presented in app. B.

<sup>6</sup> \*\*\*.

## THE SUBJECT PRODUCT

The imported lemon juice covered by the scope of these investigations is described in detail in the “Background” section earlier in Part I.

### Physical Characteristics and Uses

Lemon juice is produced from the juice of fresh lemons, *Citrus Limon*. Generally, lemons are grown for the fresh market. Those with imperfections or that fail to meet size or grade standards are culled from the fresh market and are shipped for processing into various products including lemon juice.<sup>7</sup> Lemon juice has a particularly high acid content when compared to juice of other citrus species, typically above 4.5 percent by weight, and is not typically consumed alone at full strength, unlike orange juice. Lemon juice is used as an ingredient in beverages, particularly lemonade and soft drinks, and other foods, such as salad dressings, sauces, and baked goods. Lemon juice is sold to be used as an ingredient by food and beverage processing companies as well as producers of non-food products, such as household cleaners. Lemon juice is also sold at retail grocers to be used as an ingredient in home food and beverage preparation.

Lemons are processed into juice with varying concentration, acidity, and sugar content. Concentrated lemon juice and not-from-concentrate lemon juice (NFCLJ) are the two main types. Concentrated lemon juice can be marketed as cloudy, containing up to 12 percent pulp, or clear or clarified, which has no visible pulp. The level of concentration is principally measured by its acidity as grams per liter of anhydrous citric acid (GPL).<sup>8</sup> Concentrated lemon juice is typically concentrated to 400 GPL or 500 GPL, but can be tailored to customer specifications.<sup>9</sup> Most lemon juice is sold into the concentrate market and is later diluted and sold as reconstituted single strength lemon juice, or used in lemonade and other lemon-flavored beverages and soft drinks. Concentrated lemon juice is more economically transported than NFCLJ since removing the water means less bulk and weight to be moved and stored. In addition, highly concentrated lemon juice is less susceptible to microorganisms and may be stored refrigerated rather than frozen, which reduces the energy costs of storage and transport. NFCLJ is used in the production of “premium” lemonades.

Organic lemon juice is also sold commercially. The organic designation specifies particular cultivation methods in the lemon orchard, such as prohibited use of pesticides or chemical fertilizers, and segregation of product at the processing plant. Although the manufacturing process is the same for organic and nonorganic lemon juice, manufacturing equipment that has been exposed to non-organic residues must be thoroughly cleaned before processing organic lemons into juice. Organic lemon juice tends to sell for a higher price, reflecting the higher cost of growing fresh organic lemons, which typically have lower yields and efficiencies of growing and harvesting than do nonorganic lemons.

Lemon juice and lemon oil, which is extracted from the lemon’s peel, are two distinct products with different chemical profiles, although they may be ingredients in the same end products. Lemon oil is generally used as a flavor and fragrance enhancer in beverages, foods, and household cleaning

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<sup>7</sup> Other processed lemon products include lemon oil and its fractions, lemon peel, and pectin. Over 400 specialty products can be made from lemons, but a much smaller number have established commercial markets. Pectin, derived from lemon peel, is widely used in the food industry as a thickening agent, and pectin pomace is used as a source of dietary fiber that, when pelletized, can be fed to cattle. Pulp wash is used in the beverage industry to add fruit solids and a cloudy appearance to juice drinks, while vitamin C, folic acid, carotenoids, flavonoids, narigin, and hesperidin can be extracted from lemon peel to be used in the health food and vitamin industries.

<sup>8</sup> Petition, p.7.

<sup>9</sup> Ibid.

supplies.<sup>10</sup> Both can be used in beverages; lemon oil is used to impart flavor, while lemon juice is used to impart acidic tartness. Although lemon juice and oil are considered co-products in that the production of one necessitates the production of the other, the pricing of the two products is generally independent of one another.<sup>11</sup>

### **Manufacturing Facilities and Manufacturing Process**

Lemons are grown in orchards, harvested, and transported to a packing house for sorting. Generally, the packing house is where fresh market lemons are distinguished from those sent for processing. Lemons for processing are culled from fresh market lemons usually based on imperfections in appearance or failure to meet size or grade standards.<sup>12</sup> The demand and supply for a particular size of fresh lemon may vary from year to year, based on market conditions. If there are too many fresh lemons of a particular size, they may be culled into the juice market.

Commercial processing plants which produce lemon juice may also process other citrus fruits such as oranges, grapefruit, and limes.<sup>13</sup> Ventura Coastal indicated at the Commission conference that shifting production from processing one citrus fruit to another involves “about a four hour cleanup.”<sup>14</sup> For lemon processing, fruit is unloaded from trucks, brush-washed, and passed over grading tables and sizers before entering the juice/oil extractor. Although several lemon extraction systems are used worldwide for lemons, the most widely used in the United States is the FMC system.<sup>15</sup> Three different FMC extractor models extract juice and oil from small oranges, lemons, or limes; large oranges and small grapefruit; and large grapefruit. With this equipment, various citrus fruits of roughly similar sizes can be processed by the same extractor.

The FMC extraction method involves cutting a plug in the center of the fruit into which a strainer is inserted. A mechanical hand presses juice and pulp against the strainer allowing juice to flow down away from pulp and peel. Peel is pushed up with pressure while a fine water mist is sprayed on the peel, creating an emulsion that flows away from the peel. Juice, pulp, peel, peel oil, seeds, and rag are separated into distinct streams.

The Brown Oil Extractor (BOE) is also used in the United States as well as South America.<sup>16</sup> The BOE differs from the FMC method in that the oil is extracted from the lemons first by gently

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<sup>10</sup> Bates, R.P. and J.R. Morris. “Principles and Practices of Small and Medium Scale Fruit Juice Processing.” FAO Agricultural Services Bulletin 146, 2001.

<sup>11</sup> In general, citrus fruit processing is designed for the collection of the juice, with the peel oil being a byproduct, as is the case with lemons, oranges, grapefruit, and Persian limes. The reverse is true, however for key limes in Mexico and Peru. Performing oil extraction without juicing is not generally considered commercially viable, since without the additional revenue stream from the juice, the cost of extracting the lemon oil would be prohibitive.

<sup>12</sup> Lemons for the fresh market are often grown to meet exact size requirements over a large range of sizes. For example, many of the largest U.S. lemons are exported to Japan for use as gifts, whereas small lemons are often sold to bars and restaurants for use as condiments for drinks and garnish for food.

<sup>13</sup> In most countries, lemon processing takes place only during several months of the year immediately following harvest and, therefore, citrus juicing plants process other fruits on the off-season from lemons. U.S. lemons, however, are harvested throughout most of the year due to variations in growing conditions in California and Arizona. All U.S. lemon juice processors process a variety of citrus fruits. \*\*\*.

<sup>14</sup> See, testimony of William Borgers, Ventura Coastal, conference transcript (conference TR), p. 56.

<sup>15</sup> FMC extractor equipment is generally rented rather than owned by the juice processor and the rental fee is based on the volume of juice extracted, with maintenance and updating responsibility left to the FMC FoodTech Citrus Systems Corporation. FMC claims to process 75 percent of world juice production. FMC FoodTech, “Citrus Juice Extractor,” retrieved at [www.fmctechnologies.com](http://www.fmctechnologies.com), on October 12, 2006.

<sup>16</sup> Reeve, Daemmon. “Citrus Focus: A Cultivated Zest, the Lemon’s Origins, Production and Processing.” *Perfumer & Flavorist*. Vol. 30 no. 3, May 2005.

puncturing the peel of the whole fruit with thousands of stainless steel needle points. The oil sacks in the colored portion of the peel are ruptured, releasing the oil, which is emulsified in a water spray. A centrifuge then separates the oil from the water and polishes and finishes the oil, while the juice is drawn away in another stream. A third method of oil extraction involves an Italian-designed machine called a Pelatrice that rasps the whole fruit with rolling disc graters while the oil is captured in a water spray.<sup>17</sup> With both the BOE and Pelatrice methods of extraction, juicing of the fruit is performed sequentially with oil extraction, rather than simultaneously, as with the FMC method.

After extraction, lemon juice is further processed in a centrifuge to remove any remaining bits of seed, peel, and excess pulp. At this point, the juice can be pasteurized at 90 degrees Celsius for a few seconds, resulting in NFCLJ, or it can be evaporated to remove water to produce lemon juice concentrate of a specified GPL and then pasteurized.<sup>18</sup> Clarified lemon juice is ultrafiltered before pasteurization to eliminate all pulp content, then concentrated by evaporation and pasteurized.<sup>19</sup> Concentrated lemon juice and NFCLJ are both packaged in bulk tankers, bins, or steel drums and frozen or chilled for storage and/or shipping. According to petitioners, both concentrated lemon juice and NFCLJ can be kept in cold storage for up to two years without compromising flavor or color.<sup>20</sup> However, Argentine exporters state that lemon juice in cold storage begins to decline significantly in quality as it approaches two years of age, and that lemon juice in storage longer than two years is not considered to be of commercial quality.<sup>21</sup>

The extraction of additional lemon derivatives or oil fractions requires further specialized equipment, and generally a processing plant must be planned from early in the design phase in order to produce such products. Lemon processing plants must also be carefully planned in order to economically dispose of the peel and other solid wastes from the lemons, usually in compliance with local and national environmental requirements.<sup>22</sup> Lemons cannot be disposed of in landfills because of their high moisture content, but may be composted.<sup>23</sup> Lemon juice disposal is regulated in the United States at the Federal, State, and local levels and must be pretreated prior to disposal due to its high sugar and acid content.<sup>24</sup>

Unlike other citrus fruits, such as limes and juice oranges that are typically grown in humid tropical climates, lemons tend to grow in arid, subtropical regions, such as those in California and Arizona in the United States. Processing generally takes place at juice/oil extraction plants nearby growing areas. During the period examined in these investigations, 68 percent of U.S.-grown lemons were sold fresh, both domestically and for export, and 32 percent were processed into lemon juice and other processed products. Over the past 10 years, the percentage of lemons sold in the fresh market ranged from 48 to 69 percent and the percentage processed ranged from 31 percent to 52 percent, with the lowest percentage of all lemons that were processed occurring in the 2004-05 crop year.<sup>25</sup> Demand for lemon juice in the United States is highest during the summer months when more lemonade is consumed. U.S. per capita consumption of lemon juice, while fluctuating from year to year, has remained in a relatively low range over the past 20 years, varying between a pint to a quart single-

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<sup>17</sup> Ibid.

<sup>18</sup> Bates, R.P. and J.R. Morris. "Principles and Practices of Small and Medium Scale Fruit Juice Processing." FAO Agricultural Services Bulletin 146, 2001.

<sup>19</sup> Importer questionnaire of \*\*\*.

<sup>20</sup> Petition, p. 37.

<sup>21</sup> Argentine Exporters' postconference brief, p. 31.

<sup>22</sup> Bates, R.P. and J.R. Morris. "Principles and Practices of Small and Medium Scale Fruit Juice Processing." FAO Agricultural Services Bulletin 146, 2001.

<sup>23</sup> Petitioner's postconference brief, p. 31.

<sup>24</sup> Ibid.

<sup>25</sup> U.S. Dept. of Agriculture, Economic Research Service, *Fruit and Tree Nuts Situation and Outlook Yearbook*, FTS-2005, October 2005.

strength equivalent (SSE).<sup>26</sup> This is approximately 3 percent of the rate of consumption for orange juice, and one-third to one-half of the level of grapefruit juice, but 5 to 10 times the rate for lime juice.<sup>27</sup>

### **Interchangeability and Customer and Producer Perceptions**

U.S. processor and importer questionnaire respondents reported that there was general interchangeability between U.S.-produced, Argentine, and Mexican lemon juice. U.S. processors and most responding importers cited one or more alternatives to the use of lemon juice, with citric acid being named most often for use in certain applications. In discussing organic versus nonorganic lemon juice, most questionnaire respondents noted that while organic could be substituted for nonorganic the reverse was not true.<sup>28</sup> With respect to customer and producer perceptions, questionnaire respondents reported that NFCLJ and organic lemon juice were perceived as “premium,” selling for at least twice as much as concentrated lemon juice. Questionnaire respondents said customers and producers viewed lemon oil as a completely different product that sold for 6 to 12 times as much as lemon juice. More detailed information on interchangeability and customer and producer perceptions can be found in Part II of this report, *Conditions of Competition in the U.S. Market*.

### **Channels of Distribution**

The majority of shipments of lemon juice by both U.S. processors and importers went to food processors (including nonjuice and fruit drink producers), followed by remanufacturers and packagers. More detailed information on channels of distribution can be found in Part II of this report, *Conditions of Competition in the U.S. Market*.

### **Price**

Information with regard to prices of lemon juice is presented in Part V of this report, *Pricing and Related Information*.

## **DOMESTIC LIKE PRODUCT AND THE DOMESTIC INDUSTRY**

During these investigations, petitioner has argued that concentrated lemon juice and NFCLJ are the same domestic like product and, additionally, that organic and nonorganic juice are the same domestic like product.<sup>29</sup> They argue that the industry producing the product is that which extracts juice from lemons and converts it into lemon juice.<sup>30</sup> Additionally, petitioners argue that “lemon juice and

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<sup>26</sup> Ibid., table F-35.

<sup>27</sup> Ibid.

<sup>28</sup> Organic juice accounts for a very small portion of total lemon juice processing by U.S., Argentine, and Mexican processors. Any such processing tends to be done by very small, niche processors. \*\*\*.

<sup>29</sup> See, testimony of Matthew McGrath, counsel for petitioners, conference transcript (conference TR), p. 13.

<sup>30</sup> Ibid, pp. 12-13. Petitioner further states that reprocessing, reconstituting, blending, packaging, and later processing of lemon juice products or beverages that contain lemon juice are not part of the relevant domestic industry, noting that those activities are performed by their customers.

lemon oil are not the same like product, and they are not in the same industry that produces the like product.”<sup>31 32</sup>

With respect to the domestic industry producing the like product, the petitioner argues that the domestic industry consists solely of U.S. extractor/processors of lemon juice.<sup>33</sup> Specifically, the petitioner notes that “it is clear both from the plain language of the statute, as well as past Commission precedent that both conditions (a single continuous line of production and a substantial coincidence of economic interest) must be met before the Commission can exercise its discretion to include growers in the domestic industry.”<sup>34</sup> According to the petitioner, the average utilization of lemons processed into lemon juice for the last four marketing years was 38 percent and thus insufficient to meet the criterion of being substantially or completely devoted to the production of lemon juice.<sup>35</sup> If the second prong is considered, the petitioner does not agree that there is a coincidence of economic interests within the meaning of the statute.<sup>36</sup>

The respondents focus on the second statutory criterion (coincidence of economic interests) and argue that on that basis growers of lemons should be included in the domestic industry.<sup>37</sup> They maintain that “the Commission should consider the totality of the circumstances showing the substantial legal and economic ties between the petitioner’s member lemon growers and the Ontario processing facility which indicates their commonality of economic interests, and the fluctuating amount of lemons that are directed for processing in any given year.”<sup>38</sup> The respondents argue that Congress added the agricultural provision as a result of “too rigid analysis of what constitutes integrated economic interests” by the Commission, and urged the Commission not to do so in these investigations.<sup>39</sup>

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<sup>31</sup> See, testimony of Matthew McGrath, counsel for petitioners, conference TR, p. 13.

<sup>32</sup> The Commission asked processors and importers to comment on the comparability of concentrated lemon juice and NFCLJ, organic and nonorganic lemon juice, and lemon juice and lemon oil. Those comments are presented in app. D.

<sup>33</sup> Petition, pp. 17-19; Petitioner’s postconference brief, app. 3-21.

<sup>34</sup> Petitioner’s postconference brief, pp. 3-4.

<sup>35</sup> *Ibid.*, pp. 8-9.

<sup>36</sup> *Ibid.*, p. 10.

<sup>37</sup> Coca Cola’s postconference brief, pp. 11-25; Argentina Exporters’ postconference brief, pp. 9-12; Eastcoast Flavors’ postconference brief, pp. 2-9. Compare Tropicana’s postconference brief at 1, n.2 (“does not dispute that the domestic lemon growers are not to be considered part of the domestic industry because they fail to meet the requirements of Section 771(4)(E) of the Tariff Act of 1930, 19 U.S.C. § 1677(4)(E).”).

<sup>38</sup> Coca Cola’s postconference brief, p. 12.

<sup>39</sup> *Ibid.*, pp. 13-15.

## **PART II: CONDITIONS OF COMPETITION IN THE U.S. MARKET**

### **U.S. MARKET SEGMENTS/CHANNELS OF DISTRIBUTION**

Lemon juice is sold in two forms: lemon juice concentrate and NFCLJ.<sup>1</sup> These forms may be either clarified or cloudy, as identified by the pulp content. The product is sold to be used as an ingredient in lemonade, to be bottled as lemon juice, to be used as lemon flavoring in certain soft drinks and beverages, and for baking applications.

Most sales of lemon juice went to food processors, including fruit drink and nonjuice producers,<sup>2</sup> remanufacturers, and packagers. \*\*\*. Among responding importers of lemon juice, their reported largest customers are fruit juice and soda producers, followed by nonjuice producers.

When firms were asked to list market areas in the United States where they sell lemon juice, the responses showed that the market areas tended to be nationwide. Among two responding U.S. processors, \*\*\*. Among the ten responding importers, three importers of lemon juice from Argentina (two of which also import from Mexico) reported that they sold nationally. The others listed specific geographic regions, including the Southeast, Northeast, Midwest, Southwest, and the west coast.

U.S. inland shipping distances for U.S.-processed lemon juice were compared with those for imports from Argentina and Mexico. For U.S. processors, \*\*\* percent of their U.S. sales occur within 100 miles of their storage or production facility, \*\*\* percent were within distances of 101 to 1,000 miles, and \*\*\* percent were at distances of over 1,000 miles from their facilities. For imports from Argentina, \*\*\* percent of sales occurred within 100 miles of importers' storage facilities, \*\*\* percent were within 101 to 1,000 miles, and \*\*\* percent were over 1,000 miles. For imports from Mexico, \*\*\* percent of sales occurred within 100 miles of importers' storage facilities, \*\*\* percent were within 101 to 1,000 miles, and \*\*\* percent were over 1,000 miles.

Lead times for delivery of lemon juice for U.S. processors ranged from \*\*\* to \*\*\*. For importers, they ranged from one day to as much as six months.

### **SUPPLY AND DEMAND CONSIDERATIONS**

#### **U.S. Supply**

##### **Domestic Production**

The supply of lemon juice largely depends on the amount of lemons grown and the share of those lemons that meet quality standards and go into the fresh lemon market. The remainder of the lemons are destined for processing. Moreover, it is reportedly very costly to dispose of lemons that are not processed or sold on the fresh market. Environmental regulations in the United States restrict the amount of fresh fruit that can be disposed of in landfills.<sup>3</sup> Composting is an alternative means of disposal, but composting capacity in the United States is very limited.<sup>4</sup> Petitioner reports that lemons are sometimes left unharvested in Argentina, but that it does not consider this a viable option because it leads to disease

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<sup>1</sup> Lemon juice is also available in non-organic and organic varieties. According to the domestic industry, organic lemon juice accounts for a very small share of the entire industry. See, testimony of Frank Bragg, Sunkist, and William Borgers, Ventura Coastal, conference TR, p. 103.

<sup>2</sup> Nonjuice products may include fruit purees, citrus peels, dehydrated fruits, and liquid flavorings or syrups.

<sup>3</sup> Petitioner's postconference brief, p. 30.

<sup>4</sup> Petitioner's postconference brief, p. 30.

and acidification of the soil.<sup>5</sup> Therefore, despite considerable inventory levels, the evidence indicates that the U.S. supply of lemon juice is likely to be inelastic.<sup>6</sup>

### ***Industry capacity***

U.S. processors' annual capacity utilization decreased from \*\*\* percent in 2003 to \*\*\* percent in 2004, before rebounding to \*\*\* percent in 2005. This level of capacity utilization indicates that U.S. processors have unused capacity with which they could increase production of lemon juice in the event of a price change.

### ***Alternative markets***

Total exports by U.S. processors, as a share of total shipments, \*\*\* increased from \*\*\* percent in 2003 to \*\*\* percent in 2004, and then decreased to \*\*\* percent in 2005. These data indicate that U.S. processors have a \*\*\* limited ability to divert shipments to or from alternative markets in response to changes in the price of lemon juice.

### ***Inventory levels***

The ratio of end-of-period inventories to U.S. shipments \*\*\* decreased from \*\*\* percent in 2003 to \*\*\* percent in 2004, before increasing to \*\*\* percent in 2005. These data indicate that U.S. processors have \*\*\* inventories and could use them as a means of increasing shipments of lemon juice to the U.S. market. Petitioner reports that lemon juice inventories have a maximum shelf life of one to two years.<sup>7</sup>

### ***Production alternatives***

\*\*\*.

### **Subject Imports**

The responsiveness of supply of imports from Argentina and Mexico to changes in price in the U.S. market is affected by such factors as capacity utilization rates and the availability of home markets and other export markets. Based on available information, processors in both Argentina and Mexico are likely to respond to changes in demand with moderate changes in the quantity of shipments of lemon juice to the U.S. market. The main contributing factors to this degree of responsiveness of supply are the availability of unused capacity and the \*\*\* level of inventories.

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<sup>5</sup> Petitioner's postconference brief, p. 29.

<sup>6</sup> \*\*\* cites the \*\*\* as evidence that there is some supply elasticity. \*\*\*'s postconference brief, p. 10. However, due to the several supply constraints as discussed in this section, staff estimates that supply is relatively inelastic.

<sup>7</sup> Petitioner's postconference brief, p. 29. Eastcoast Flavors agrees that lemon juice inventories last up to two years. Eastcoast Flavors' postconference brief, p. 10. Importer \*\*\* reports that inventory that is two years old sells at a discount of up to \*\*\* percent because it often needs to be blended with fresher lemon juice at a ratio of three parts fresher lemon juice to one part older lemon juice.

### ***Industry capacity***

During the period of investigation, the capacity utilization rate for Argentine processors of lemon juice increased from 67.3 percent in 2003 to 77.3 percent in 2004 and 80.8 percent in 2005; it is projected to reach 87.8 percent in 2006. During the period of investigation, the capacity utilization rate for Mexican processors of lemon juice increased from \*\*\* percent in 2003 to \*\*\* percent in 2004, before decreasing to \*\*\* percent in 2005; it is projected to be \*\*\* percent in 2006.

### ***Alternative markets***

Available data indicate that processors in Argentina have the ability to divert shipments to or from alternative markets in response to changes in the price of lemon juice, whereas processors in Mexico have a limited ability to do so. Shipments of lemon juice from Argentina to the United States decreased from approximately 24.5 percent of total shipments in 2003 to 18.6 percent in 2005. The share of Argentina's shipments to export markets other than the United States increased from about 55.8 percent in 2003 to 66.7 percent in 2005, with the remainder going to its home market, including internal consumption. Shipments of lemon juice from Mexico to the United States decreased from approximately \*\*\* percent of total shipments in 2003 to \*\*\* percent in 2005, with the remainder going to its home market, including internal consumption. There were no reported shipments from Mexico to other export markets.

### ***Inventory levels***

Argentine processors' inventories, as a share of total shipments, increased from 39.0 percent in 2003 to 57.5 percent in 2004, before decreasing to 32.2 percent in 2005. Mexican processors' inventories, as a share of total shipments, decreased from \*\*\* percent in 2003 to \*\*\* percent in 2005. These data indicate that foreign processors have the ability to use inventories as a means of increasing shipments of lemon juice to the U.S. market.

### ***Nonsubject Imports***

Based on official Commerce data, U.S. imports of lemon juice from nonsubject sources accounted for 11.6 percent of the quantity of total U.S. imports in 2005.

## **U.S. Demand**

### **Demand Characteristics**

The evidence discussed below indicates that the demand for this product is likely to be relatively price inelastic. U.S. apparent consumption decreased by \*\*\* percent from 2003 to 2004, and increased by \*\*\* percent from 2004 to 2005. When asked how the overall demand for lemon juice has changed since January 2003, \*\*\* eight of the importers stated that the demand was unchanged.<sup>8</sup> \*\*\*, while stating that demand for lemon juice in general was unchanged, also reported that demand for premium lemonade, which uses NFCLJ, has increased. One importer reported that demand for organic lemon juice

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<sup>8</sup> Two importers reported that demand had increased and the others reported that they did not know how demand had changed.

grows 20 percent every year in the United States. Another importer reported that particularly hot summers can increase consumer demand for lemonade.

As shown in table II-1, \*\*\* responding U.S. processors and two out of ten responding importers indicated that the impact of subject imports of lemon juice on apparent consumption of lemon juice within the United States since January 2003 was “very important,” while seven of the responding importers reported that it was “somewhat important.” One importer specifically reported that the liquidation of Citrico’s inventories had a “very important” impact on apparent consumption.<sup>9</sup> Another importer reported that none of the supply factors listed in table II-1 had an impact on U.S. consumption because supply has exceeded demand since January 2003. \*\*\* reported that due to the loss of citrus grove acreage in Florida, growers in Mexico are replacing lemon groves with other citrus fruit, including grapefruit and tangerines, whereas in Argentina, \*\*\* reports that lemon groves are increasingly being replaced by sugar cane to meet an increased demand for ethanol.

**Table II-1  
Lemon juice: Perceived degree of impact of various supply factors on apparent consumption**

Factor	Number of U.S. processors reporting			Number of importers reporting		
	Very important	Somewhat important	Not important	Very important	Somewhat important	Not important
Argentine lemon crop	***	***	***	4	7	0
Mexican lemon crop	***	***	***	2	9	0
Disease	***	***	***	1	1	8
Nonsubject imports of lemon juice	***	***	***	0	6	4
Packaging	***	***	***	0	0	9
Subject imports of lemon juice	***	***	***	2	7	1
U.S. lemon crop	***	***	***	5	4	2
U.S. inventories of lemon juice	***	***	***	7	4	0
Weather	***	***	***	3	4	3
Other	***	***	***	2	1	0

<sup>1</sup> Other factors include one instance of freight as a “very important” factor, one instance of foreign countries increasingly exporting processed lemons as opposed to fresh lemons as a “very important” factor, one instance of Citrico’s bankruptcy as a “very important” factor, one instance of \*\*\* prices being too high as a “very important” factor, and one instance of nonsubject lemon crops as a “somewhat important” factor.

Source: Compiled from data submitted in response to Commission questionnaires.

### Substitute Products

When asked whether there are substitutes for lemon juice, \*\*\* most responding importers cited one or more alternatives. Citric acid was named most often; other possible substitutes named included

<sup>9</sup> This importer, \*\*\*, reported that this liquidation, which occurred in August 2004, temporarily depressed prices of lemon juice internationally.

lime juice, other natural and artificial flavorings, sugar, and orange juice. Citric acid is reportedly used in soda as well as in non-drink applications. Lime juice and orange juice can reportedly be used in drinks in which lemon is not the primary flavor. However, Coca-Cola noted that products that substitute citric acid or lime or orange juice for lemon juice cannot be labeled as containing lemon juice.<sup>10</sup> Using citric acid instead of lemon juice is reportedly a cost-cutting measure.<sup>11</sup> Two importers reported that the price of substitutes, especially citric acid, can affect prices of lemon juice by limiting price increases as well as by causing beverage producers to reformulate their beverages to substitute lemon juice for less expensive alternatives.<sup>12</sup>

## **SUBSTITUTABILITY ISSUES**

The extent of substitutability between domestic products and subject and nonsubject imports and between subject and nonsubject imports is examined in this section. The discussion is based upon the results of questionnaire responses from processors and importers.

### **Comparison of Domestic Product and Subject Imports**

In order to determine whether U.S.-processed lemon juice can generally be used in the same applications as imports from Argentina and Mexico, processors and importers were asked whether the products can “always,” “frequently,” “sometimes,” or “never” be used interchangeably. U.S. processors that compared both lemon juice concentrate and NFCLJ from Argentina and Mexico with the products from the United States reported that they are always or frequently comparable, as shown in table II-2. The majority of importers that compared the products from Argentina and Mexico with the product from the United States reported that they are always or frequently comparable. Factors limiting interchangeability are the concentration (or GPL level), color, and viscosity. One U.S. processor reported that Mexican lemon juice typically has quality problems and that processors in Argentina have more unique packaging options than those in Mexico, which typically ships in frozen or bulk form. One importer reported that Mexico does not produce a large volume of clarified lemon juice. Five importers reported that lemon juice concentrate from Argentina is considered to be of a higher quality than lemon juice concentrate from the United States or Mexico. In particular, two importers reported that lemon juice concentrate from Argentina has a brighter color, higher acidity, and is less viscous, which facilitates further processing. One of these importers reported that some of its customers specifically require lemon juice from Argentina because its superior color characteristics are not available from U.S. producers. Moreover, this importer reported that these customers are willing to pay prices above domestic prices in order to obtain lemon juice from Argentina, partly due to its high quality and also to ensure against supply interruptions including freezes.<sup>13</sup>

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<sup>10</sup> Coca-Cola also reported that the Food and Drug Administration does not require lemonade to contain a certain amount of lemon juice. See, testimony of Dan Casper, Coca-Cola, conference TR, pp. 123-124.

<sup>11</sup> See, testimony of Frank Bragg, Sunkist, conference TR, p. 54.

<sup>12</sup> This importer also reported that reformulation of a beverage requires time.

<sup>13</sup> \*\*\* and staff telephone interview with \*\*\*, \*\*\*.

**Table II-2**

**Lemon juice: Perceived degree of interchangeability of product produced in the United States and in other countries**

Country comparison	U.S. processors				U.S. importers			
	A	F	S	N	A	F	S	N
<b>Lemon juice concentrate:</b>								
U.S. vs. Argentina	***	***	***	***	3	5	1	2
U.S. vs. Mexico	***	***	***	***	3	3	2	0
U.S. vs. Nonsubject	***	***	***	***	2	4	1	0
Argentina vs. Mexico	***	***	***	***	1	4	2	2
Argentina vs. Nonsubject	***	***	***	***	2	4	1	2
Mexico vs. Nonsubject	***	***	***	***	2	4	0	0
<b>NFCLJ:</b>								
U.S. vs. Argentina	***	***	***	***	3	2	0	0
U.S. vs. Mexico	***	***	***	***	2	3	0	0
U.S. vs. Nonsubject	***	***	***	***	1	2	0	0
Argentina vs. Mexico	***	***	***	***	1	2	0	0
Argentina vs. Nonsubject	***	***	***	***	1	2	0	0
Mexico vs. Nonsubject	***	***	***	***	1	2	0	0

Note: "A" = Always, "F" = Frequently, "S" = Sometimes, and "N" = Never.

Source: Compiled from data submitted in response to Commission questionnaires.

Two other importers and Argentine exporters reported that Argentina produces lemon juice at higher GPL levels (including 500, 560, 570, and 600 GPL) than the product available from the United States (virtually all 400 GPL) or Mexico (all 400 GPL). One of these importers and Argentine exporters also reported that some customers choose not to purchase lower-concentration lemon juice because it takes up more space and is therefore more costly to ship and store.<sup>14</sup> Petitioner reported that it most commonly produces lemon juice at 400 GPL, but is able to produce higher or lower GPL levels based on customer requirements.<sup>15</sup>

Coca-Cola reported that it has experienced quality problems with U.S.-processed lemon juice; however, these problems may have occurred prior to the period of investigation.<sup>16</sup> \*\*\*.<sup>17</sup>

As indicated in table II-3, the U.S. processors that compared the United States with Argentina and Mexico said that differences other than price are sometimes or never significant. The majority of

<sup>14</sup> The importer \*\*\* also reported that customers may require a price discount when buying lemon juice at 400 GPL to cover the additional freight and warehousing costs.

<sup>15</sup> See, testimony of Eric Larson, Sunkist, conference TR, p. 73.

<sup>16</sup> See, testimony of Dan Casper, Coca-Cola, conference TR, p. 191.

<sup>17</sup> \*\*\*. Petitioner's postconference brief, attachment 1, p. 2.

responding importers reported that differences other than price between lemon juice concentrate processed in the United States compared to lemon juice concentrate processed in the subject countries are always or frequently significant. For NFCLJ, importers reported that differences other than price between product from the United States and product from Argentina and Mexico were either always or never significant; however, there was no clear consensus on which product was superior in these comparisons.

**Table II-3**

**Lemon juice: Differences other than price between products from different sources<sup>1</sup>**

Country comparison	U.S. processors				U.S. importers			
	A	F	S	N	A	F	S	N
<b>Lemon juice concentrate:</b>								
U.S. vs. Argentina	***	***	***	***	3	3	1	2
U.S. vs. Mexico	***	***	***	***	1	2	1	1
U.S. vs. Nonsubject	***	***	***	***	1	1	2	2
Argentina vs. Mexico	***	***	***	***	2	3	1	1
Argentina vs. Nonsubject	***	***	***	***	2	2	1	1
Mexico vs. Nonsubject	***	***	***	***	1	1	2	1
<b>NFCLJ:</b>								
U.S. vs. Argentina	***	***	***	***	1	0	0	2
U.S. vs. Mexico	***	***	***	***	1	0	0	1
U.S. vs. Nonsubject	***	***	***	***	1	0	0	2
Argentina vs. Mexico	***	***	***	***	1	0	0	1
Argentina vs. Nonsubject	***	***	***	***	1	0	0	2
Mexico vs. Nonsubject	***	***	***	***	1	0	0	1
<sup>1</sup> Processors and importers were asked if differences other than price between lemon juice produced in the United States and in other countries are a significant factor in their firms' sales of lemon juice. Note: "A" = Always, "F" = Frequently, "S" = Sometimes, and "N" = Never. Source: Compiled from data submitted in response to Commission questionnaires.								

### Other Country Comparisons

In addition to comparisons between the U.S. product and imports from the subject countries, U.S. processor and importer comparisons between the United States and imports from nonsubject countries and between subject imports and nonsubject imports are also shown in tables II-2 and II-3.



### **PART III: U.S. PRODUCERS' PRODUCTION, SHIPMENTS, AND EMPLOYMENT**

The Commission analyzes a number of factors in making injury determinations (see 19 U.S.C. §§ 1677(7)(B) and 1677(7)(C)). Information on the alleged margins of dumping was presented earlier in this report and information on the volume and pricing of imports of the subject merchandise is presented in Parts IV and V. Information, as it relates to lemon juice, on the other factors specified is presented in this section and/or Part VI and (except as noted) is based on the questionnaire responses of three firms (Sunkist, Ventura Coastal, and \*\*\* that accounted for nearly all of U.S. production during 2003-August 2006. For 2005, Sunkist, Ventura Coastal, and \*\*\* accounted for \*\*\* percent, respectively, of reported lemon juice production (table III-1).

#### **U.S. PRODUCERS**

The petition identified seven firms that were believed to have produced lemon juice during 2003-August 2006. In addition to Sunkist, Ventura Coastal; Sun Orchard; Vita-Pakt Citrus Products (Vita Pakt); Perricone Juices (Perricone); California Citrus Products, Inc. (CCPI); Hi-Country Foods Corporation (Hi-Country);<sup>1</sup> and PF&B were named as producers.<sup>2</sup>

Sunkist operates its processing business through its Citrus Juice and Oils Business Unit and has one lemon processing plant located in Ontario, CA.<sup>3</sup> Sunkist is not a publicly traded company. It is a grower-owned cooperative with over 6,000 members. It operates under a federated cooperative structure, whereby the relationship is based upon a three-party agreement between the grower, the packer (either itself a cooperative or licensed), and Sunkist. Pursuant to the terms of the agreement, the grower obligates all fruit from certain acreage to be handled by the Sunkist packer with whom they are contracted. The packer is obligated by contract with Sunkist to market the fruit.<sup>4</sup> The packer sorts the lemons from the grower on the basis of appearance, grade and/or size into those that will be sold in the fresh market and those that will be sent to the processing operation for production into various products including lemon juice. According to its website, Sunkist is "one of the 10 largest marketing cooperatives in America and the largest marketing cooperative in the world's fruit and vegetable industry."<sup>5</sup>

Ventura Coastal, headquartered in Ventura, CA, has been in the citrus business since 1940 processing lemons, oranges, and grapefruits. Approximately \*\*\* percent of Ventura Coastal's 2005 sales were accounted for by lemon juice.<sup>6</sup> Ventura Coastal supplies juice, oil, and pulp products directly from the fruit, as well as customized blends to meet the customers' needs. Ventura Coastal currently has two processing plants located in Ventura and Visalia. Ventura had a third processing facility in Indio, CA, but, according its president, was "forced to close that plant in 2003 at least partially due to low lemon

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<sup>1</sup> Hi-Country of Corona, CA, filed for Chapter 11 bankruptcy in 2003 and no longer is in operation.

<sup>2</sup> PF&B describes itself as follows: \*\*\*. Letter from \*\*\*.

<sup>3</sup> Sunkist's Ontario processing facility is dedicated to the production of lemon juice, lemon oil, peel, and rind. In 2005, lemon juice accounted for \*\*\* percent of sales from the Ontario facility, while sales of lemon oil, lemon peel, and lemon essences accounted for \*\*\* percent, respectively. Sunkist's Tipton, CA processing facility is dedicated to the production of orange, orange oil, peel, and rind as well as tangerine products.

<sup>4</sup> Petition, p. 2.

<sup>5</sup> <http://www.sunkist.com/about/>, retrieved October 18, 2006.

<sup>6</sup> \*\*\*.

**Table III-1**

**Lemon juice: U.S. processors, positions on the petition, U.S. production locations, and shares of reported 2005 production**

Firm	Position	Production location (s)	Share of 2005 reported production (percent)
Sunkist	Support	California	***
***	***	***	***
Ventura Coastal	Support	California	***
Total			100.0

Source: Compiled from data submitted in response to Commission questionnaires.

juice prices caused by unfairly priced imports from Argentina and Mexico.”<sup>7</sup> Ventura Coastal processes lemons, oranges, and grapefruits at both of its facilities with a conversion of the production line from one product to another taking about four hours.<sup>8</sup>

Sun Orchard has been in operation since 1984 and is headquartered in Tempe, AZ. In 1992, Sun Orchard purchased the land and a building to open a seasonal bulk-juice-extraction facility in central California at Strathmore. In addition to lemon juice, Sun Orchard processes orange, lime, and grapefruit juice with \*\*\* percent of its production being lemon juice in 2005.<sup>9</sup> According to its website, Sun Orchard:

“ . . . sources premium fruit on a year-round basis, processing it seasonally, so that we’re always working with the cream of the crop. With fruit processing capabilities in Arizona, California and Florida, we are able to source the best seasonal fruit at its peak and produce exceptional fresh-squeezed juices, juice-based beverages and bar mixes. We are not a juice factory and stock virtually no finished juice inventory. Like any fine-dining establishment, Sun Orchard creates "juices to order" only as our customers’ requests are received.”<sup>10</sup>

Vita-Pakt, located in Covina, CA, began operations as a fruit processor in 1957. According to its website, Vita-Pakt:

“ . . . became the major supplier of fresh, not from concentrate, chilled orange juice in California, Arizona and Nevada. The company evolved and expanded its operations beyond retail chilled juice becoming a significant industrial food ingredient supplier. In 1997 management elected to focus exclusively on the food ingredient products business.

<sup>7</sup> See, testimony of William Borgers, President, Ventura Coastal, conference TR, p. 26.

<sup>8</sup> In this regard, William Borgers of Ventura Coastal stated:

“It’s about a four hour clean-up between running one varietal fruit to the other. During that time you’re washing down the extraction lines, you’re cleaning the evaporators, the concentrators and all the affiliated equipment. It’s about a four hour conversion time.”

Ibid., pp. 56.

<sup>9</sup> \*\*\*.

<sup>10</sup> <http://sunorchard.com/juices.aspx>, retrieved October 18, 2006.

Today Vita-Pakt is fully committed to the ingredient business...no longer marketing or co-packing retail packaged juice products. Vita-Pakt supplies food and beverage manufacturers worldwide with unsurpassed quality ingredients and service.”<sup>11</sup>

### **U.S. PRODUCERS’ CAPACITY, PRODUCTION, CAPACITY UTILIZATION, SHIPMENT, INVENTORY, AND EMPLOYMENT DATA**

Tables III-2 presents U.S. producers’ capacity, production,<sup>12</sup> capacity utilization, shipment,<sup>13</sup> inventory, and employment data, for lemon juice.

#### **Table III-2**

**Lemon juice: U.S. capacity, production, capacity utilization, shipments, end-of-period inventories, and employment-related indicators, 2003-05, January-August 2005, and January-August 2006**

\* \* \* \* \*

### **U.S. PROCESSORS’ IMPORTS**

One U.S. processor, Ventura Coastal, reported that they imported lemon juice. Table III-3 presents Ventura Coastal’s direct imports of lemon juice from subject sources.

#### **Table III-3**

**Lemon juice: Ventura Coastal’s imports from subject sources, 2003-2005, January-August 2005, and January-August June 2006**

\* \* \* \* \*

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<sup>11</sup> <http://www.vita-pakt.com/about.html>, retrieved October 18, 2006.

<sup>12</sup> In 2005, \*\*\* percent of total lemon juice production consisted of NFCLJ.

<sup>13</sup> In 2005, \*\*\* percent of total U.S. shipments of lemon juice consisted of NFCLJ.



## PART IV: U.S. IMPORTS, APPARENT CONSUMPTION, AND MARKET SHARES

### U.S. IMPORTERS

The Commission sent importer questionnaires to 21 firms believed to be importers of lemon juice, as well as to all U.S. producers.<sup>1 2</sup> Of the 13 firms that provided import data for the period examined during these investigations, 10 provided information on imports of lemon juice from Argentina, six firms provided information relative to imports from Mexico, and one provided information on imports from other sources.<sup>3 4</sup> The three largest responding firms providing data on imports of lemon juice from Argentina were \*\*\*,<sup>5</sup> which accounted for the vast majority of imports of lemon juice from Argentina over the period examined in these investigations. With respect to imports of lemon juice from Mexico, two firms, \*\*\*, accounted for most of the imports of Mexican products.<sup>6</sup>

Virtually all comment concerning importers by the parties to these investigations dealt with Citrico International (Citrico)<sup>7</sup> and its bankruptcy filing in August and the subsequent liquidation of its assets (including inventories of imported lemon juice) beginning in early 2005.<sup>8</sup> Coca Cola and the Argentine Exporters, both at the conference and in their postconference briefs, essentially argued that any injury the domestic industry may have suffered during the period examined was the result of the liquidation of Citrico's inventories and not caused by any imports.<sup>9</sup> The petitioner and Coca Cola have also argued as to who owned Citrico and what led to the liquidation. In August 2004, petitioner states that "Citrico, a wholly-owned subsidiary of Coca Cola and a marketer of lemon juice and oil, declared bankruptcy."<sup>10 11</sup> Facing bankruptcy, petitioner stated that "Citrico released its suppliers from contracts,<sup>12</sup>

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<sup>1</sup> The Commission sent questionnaires to those firms identified in the petition and firms identified by the U.S. Customs and Border Protection ("Customs") as possible importers.

<sup>2</sup> \*\*\*.

<sup>3</sup> The only "other source" reported was South Africa.

<sup>4</sup> Responding importers reported information in a variety of capacities (i.e., importer of record, consignee, taking title to the imported product, and/or as customs broker or freight forwarder); hence, there was a considerable degree of double-counting in the reported import data.

<sup>5</sup> \*\*\*.

<sup>6</sup> \*\*\*.

<sup>7</sup> Citrico, located in Northbrook, IL, was a U.S. importer of lemon juice from Argentina.

<sup>8</sup> Citrico was \*\*\*.

<sup>9</sup> Coca Cola's postconference brief, pp. 27-33 and the Argentine Exporters' postconference brief, pp. 28-30.

<sup>10</sup> Petition, pp. 21-22.

<sup>11</sup> With regard to the Coca Cola and Citrico relationship, Coca Cola states:

"Citrico was never a subsidiary of the Coca Cola Company. As explained by Mr. Casper at the preliminary conference, the Coca Cola Company obtained the worthless equity in Citrico International in collection with that entity's bankruptcy pursuant to contractual obligations to the Coca Cola Company. To the best of the Coca Cola Company's knowledge, ownership and control of Citrico, Inc., the entity that purchased and sold lemon juice, among other products, was and remains in the sole control of its founder. As recently as September 13, 2006, Hoover's listed Citrico, Inc. as a going concern founded in 1997 by Chairman and CEO and owner Edward Heinz."

Coca Cola's postconference brief, p. 28.

In its postconference brief, petitioner states:

"... at the hearing, Coca Cola representatives challenged the assertions made in the

(continued...)

resulting in large inventories of the subject merchandise.”<sup>13</sup> Citrico went into liquidation of its stocks at the end of 2004 with its product being sold by liquidators beginning in early 2005. Regarding the impact of the bankruptcy and the subsequent liquidation of Citrico’s assets, counsel for Coca Cola stated:

“So, we have a situation where, by their (Sunkist’s) testimony, inventories that were frozen in bankruptcy, had literally frozen in storage, came on to the market, not in the hands of the importers, not in the hands of the foreign producers, but in the hands of liquidators. The liquidators, doing what liquidators do, sought to convert those stocks to cash as quickly as possible.

If there is a causal relationship here, the causal relationship is between the prices that Mr. Bragg and Ms. Warlick refer to and the liquidation in bankruptcy, the decisions that were made by bankruptcy liquidators to extinguish those stocks. These do not represent choices that were made by foreign producers. They do not represent choices made by importers. So, to the extent that Citrico -- the more you hear about Citrico,

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<sup>11</sup> (...continued)

petition regarding Coca Cola’s ownership of Citrico. Coke’s representatives tried to deny any role in dumping large volumes of Citrico’s overstocks onto the market, claiming that ‘Citrico was not a subsidiary of the Coca Cola Company at any time’ and that Coca Cola did not obtain equity in Citrico until after the company entered bankruptcy. A review of the bankruptcy court filings, however, confirm Petitioner’s initial assertion. The documents reveal the following: Citrico, Inc., a Delaware corporation, was a wholly-owned subsidiary of Citrico Holdings (Holdings), which originally owned Citrico International (International), a Cayman Islands company. Citrico Inc., by virtue of an agreement dated May 1, 1999, pledged all 100 outstanding shares of International to the Coca Cola Company (Coke) to secure a debt owing to Coke. The 100 International shares were transferred to Coke on June 15, 2000. Accordingly, Coke is the current shareholder of International.

While Coke acquired sole ownership of International in June 2000, bankruptcy proceedings for International did not commence until August 2004. On August 17, 2004, International filed a petition with the Grand Court of the Cayman Islands initiating a provisional liquidation proceeding. The Cayman proceeding was made by its sole shareholder, Coca Cola. On August 17, 2004, International filed a petition for an ancillary proceeding in the United States Bankruptcy Court for the Northern District of Georgia Atlanta Division pursuant to Section 304(b) of the U.S. Bankruptcy Code in order ‘to protect and maximize the value of (International’s) assets and to effect an equitable distribution of those assets among (International’s) various creditors.’ The petition further states that International’s assets in the United States are ‘primarily comprised of a series of contracts entered into between (International) and (Coca Cola).’

Clearly, a review of the record in the Georgia bankruptcy case demonstrates that Coke owned International for more than 4 years before bankruptcy proceedings commenced. As set forth in the petition, when Citrico had to be liquidated, so as to satisfy its debts to its sole shareholder, Coca Cola, and other creditors, its inventory of juice in or outside of the United States was among the assets for which cash might have been readily recovered. Given Coke’s over-riding interest in this company both before and after the bankruptcy, and its admitted previous purchasing of lemon juice stocks, it is reasonable to conclude that ‘liquidation’ would be more likely to result in price suppression in the market than even a ‘normal’ overstock held by a solvent company.”

Petitioner’s postconference brief, pp. 26-27.

<sup>12</sup> Among Citrico’s suppliers were Citrusvil and La Moraleja, Argentine processor/exporters, who decided to market their production of the lemon juice themselves in 2005. Petition, p. 22, fn. 44.

<sup>13</sup> Petition, p. 22.

Citrico appears to be the tipping point for this case, you must understand, exactly as Mr. Bragg described it, that Citrico represents a one off circumstance.”<sup>14</sup>

With regard to firms responding to the Commission’s importer questionnaire, a list of those firms and the subject countries from which they imported during 2003-August 2006 are presented in table IV-1.

**Table IV-1**  
**Lemon juice: U.S. importers and sources of their imports, 2003-August 2006**

\* \* \* \* \*

**U.S. IMPORTS**

U.S. imports of lemon juice are presented in table IV-2.<sup>15</sup> In 2005, Argentina and Mexico were the largest exporters of lemon juice to the United States, accounting for 58.5 and 29.9 percent, respectively, of total imports of lemon juice. The leading sources of nonsubject lemon juice during the period examined in these investigations were Brazil, the Dominican Republic, Italy, and South Africa.

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<sup>14</sup> See, testimony of Matthew Clark, counsel for Coca Cola, conference TR, 150-151.

<sup>15</sup> Imports of lemon juice are from official statistics under HTS statistical reporting numbers 2009.31.4000, 2009.31.6020, 2009.31.6040, 2009.39.6020, and 2009.39.6040. The import data presented herein are "imports for consumption," consisting of imports of merchandise that has physically cleared through Customs, either entering consumption channels immediately or entering after withdrawal from bonded warehouses under Customs custody or from foreign trade zones. Not presented herein are "general imports," consisting of the total physical arrivals of merchandise from foreign countries, whether such merchandise enters consumption channels immediately or is entered into bonded warehouses or foreign trade zones under Customs custody. In some years, general imports of lemon juice exceed imports for consumption, and in other years imports for consumption exceed general imports as merchandise is removed from bonded warehouses to go into consumption channels.

Table IV-2

Lemon juice: U.S. imports, by sources, 2003-05, January-August 2005, and January-August 2006

Source	Calendar year			January-August	
	2003	2004	2005	2005	2006
<b>Quantity (1,000 gallons @ 400 GPL)</b>					
Argentina	2,034	1,075	1,897	1,311	1,043
Mexico	972	960	970	358	472
Subtotal	3,007	2,036	2,868	1,669	1,515
Brazil	125	188	44	30	17
Dominican Republic	1	0	24	20	8
Italy	28	24	34	20	32
South Africa	320	135	247	137	207
All other sources	24	28	28	16	26
Subtotal	499	374	376	223	290
Total	3,506	2,410	3,243	1,892	1,805
<b>Value (1,000 dollars)<sup>1</sup></b>					
Argentina	17,322	10,035	16,080	11,587	8,378
Mexico	5,914	5,732	4,113	2,180	3,399
Subtotal	23,236	15,767	20,193	13,767	11,777
Brazil	864	1,946	1,008	685	162
Dominican Republic	7	0	564	449	281
Italy	1,735	1,766	1,860	1,316	1,536
South Africa	2,347	1,356	1,748	1,111	1,362
All other sources	687	783	1,124	739	821
Subtotal	5,640	5,852	6,304	4,299	4,163
Total	28,876	21,619	26,497	18,066	15,940
<b>Unit value (per gallon)<sup>1</sup></b>					
Argentina	\$8.52	\$9.33	\$8.48	\$8.84	\$8.03
Mexico	6.08	5.97	4.24	6.09	7.21
Average	7.73	7.75	7.04	8.25	7.77
Brazil	6.90	10.35	23.17	22.99	9.56
Dominican Republic	5.70	-	23.68	22.09	33.12
Italy	61.37	75.05	54.92	65.56	47.65
South Africa	7.33	10.06	7.09	8.09	6.59
All other sources	28.79	28.07	40.32	47.50	31.43
Average	11.30	15.64	16.78	19.28	14.33
Average	8.24	8.97	8.17	9.55	8.83
Table continued on next page.					

Table IV-2

Lemon juice: U.S. imports, by sources, 2003-05, January-August 2005, and January-August 2006

Source	Calendar year			January-August	
	2003	2004	2005	2005	2006
<b>Share of quantity (percent)</b>					
Argentina	58.0	44.6	58.5	69.3	57.8
Mexico	27.7	39.8	29.9	18.9	26.1
Subtotal	85.8	84.5	88.4	88.2	83.9
Brazil	3.6	7.8	1.3	1.6	0.9
Dominican Republic	0.0	0.0	0.7	1.1	0.5
Italy	0.8	1.0	1.0	1.1	1.8
South Africa	9.1	5.6	7.6	7.3	11.4
All other sources	0.7	1.2	0.9	0.8	1.4
Subtotal	14.2	15.5	11.6	11.8	16.1
Total	100.0	100.0	100.0	100.0	100.0
<b>Share of value (percent)</b>					
Argentina	60.0	46.4	60.7	64.1	52.6
Mexico	20.5	26.5	15.5	12.1	21.3
Subtotal	80.5	72.9	76.2	76.2	73.9
Brazil	3.0	9.0	3.8	3.8	1.0
Dominican Republic	0.0	0.0	2.1	2.5	1.8
Italy	6.0	8.2	7.0	7.3	9.6
South Africa	8.1	6.3	6.6	6.2	8.5
All other sources	2.4	3.6	4.2	4.1	5.2
Subtotal	19.5	27.1	23.8	23.8	26.1
Total	100.0	100.0	100.0	100.0	100.0
<sup>1</sup> Landed, duty-paid. Note.—Because of rounding, figures may not add to the totals shown. Source: Compiled from official Commerce statistics.					

## NEGLIGENCE

The Tariff Act provides for the termination of an investigation if imports of the subject product from a country are less than 3 percent of total imports, or, if there is more than one such country, their combined share is less than or equal to 7 percent of total imports, during the most recent 12 months for which data are available preceding the filing of the petition – in this case September 2005 to August 2006. The shares (in *percent*) of the total quantity of U.S. imports, by sources, are presented in table IV-3.

**Table IV-3**

**Lemon juice: U.S. imports, by sources, and share of total imports (in *percent*), September 2005-August 2006**

Source	Imports (1,000 gallons @ 400 GPL)	Share of total imports ( <i>percent</i> )
Argentina	1,630	51.6
Mexico	1,084	34.3
Other sources	443	14.0
Total	3,157	100.0
Note.—Because of rounding, figures may not add to the totals shown.		
Source: Compiled from official Commerce Statistics.		

## APPARENT U.S. CONSUMPTION

Data on apparent U.S. consumption of lemon juice are presented in table IV-4. The quantity of apparent U.S. consumption of lemon juice decreased by \*\*\* percent from 2003 to 2005, while the value of apparent U.S. consumption of lemon juice declined by \*\*\* percent from 2003 to 2005.

**Table IV-4**

**Lemon juice: U.S. producers' U.S. shipments, U.S. imports, by sources, and total U.S. consumption, 2003-05, January-August 2005, and January-August 2006**

\* \* \* \* \*

## U.S. MARKET SHARES

U.S. market shares for lemon juice are presented in table IV-5.

**Table IV-5**

**Lemon juice: U.S. consumption and market shares, 2003-05, January-August 2005, and January-August 2006**

\* \* \* \* \*

## RATIO OF SUBJECT IMPORTS TO U.S. PRODUCTION

Information concerning the ratio of subject imports to U.S. production of lemon juice is presented in table IV-6.

**Table IV-6**

**Lemon juice: Ratio of U.S. imports to U.S. production, by sources, 2003-05, January-August 2005, and January-August 2006**

\* \* \* \* \*

## CUMULATION CONSIDERATIONS

In assessing whether subject imports compete with each other and with the domestic like product, the Commission has generally considered four factors: (1) the degree of fungibility, including specific customer requirements and other quality related questions; (2) presence of sales or offers to sell in the same geographical markets; (3) common channels of distribution; and (4) simultaneous presence in the market. Degree of fungibility and channels of distribution are discussed in Parts I and II of this report; geographical markets and presence in the market are discussed below.

In these investigations, petitioners argue that imports from Argentina and Mexico should be cumulated in that they are fungible with the domestic product and each other, are being sold and offered in the same geographical markets through common channels of distribution, and are simultaneously present in the market.<sup>16</sup>

Respondents representing the Argentine Exporters and Tropicana/PepsiCo argue that cumulation should not be adopted for these investigations. In this regard, the Argentine Exporters argue that there are “compelling” reasons not to cumulate imports from Argentina with imports from Mexico, stating that (1) Argentine juice is sold at 500 GPL or greater, while Mexican is not; (2) Argentine juice has a better color than Mexican or U.S. juice; (3) Mexican juice is marketed almost entirely to and through Coca Cola, while Argentine juice has a variety of customers; and (4) the trends in imports from the two countries are very different in that imports of Mexican juice have risen sharply and continuously and Argentine imports of juice have fallen.<sup>17</sup> Tropicana/PepsiCo stated:

“ . . . cumulation is not appropriate in this case because subject imports from Argentina and Mexico have displayed disparate volume trends during the POI. Indeed, while the volume of subject imports from Mexico has steadily increased, rising from 691,285 gallons in 2002/03 to 926,557 gallons in 2004/05 and finally to 1,002,983 gallons in 2005/06, the volume of subject imports from Argentina has steadily declined, falling from 2,031,862 in 2002/03 to 1,786,529 gallons in 2004/05 and finally to 1,637,093 gallons in 2005/05. In addition, the subject imports have experienced different trends with respect to market penetration. While Mexican imports of lemon juice gained approximately \*\*\* of the U.S. market during the POI, subject imports from Argentina \*\*\*.”<sup>18</sup>

### Geographical Markets

Lemon juice produced in the United States is shipped nationwide. While imports of lemon juice from the subject countries may enter specific Customs districts, the product is then generally sold nationwide. Table IV-7, based on Commerce statistics for the period 2003-05 and January-August 2006, presents U.S. import quantities of lemon juice, by the subject countries, according to the Customs districts

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<sup>16</sup> With respect to geographical markets, petitioner stated:

“ . . . subject imports from Argentina and Mexico, as well as domestic product, are generally sold in the same geographic markets. \*\*\*.”

Petitioner’s postconference brief, p. 22.

With respect to simultaneous presence in the market, petitioner stated:

“ . . . demonstrated through import statistics, as well as the parties’ questionnaire responses, subject imports from Argentina and Mexico were present in the U.S. market during the three-year POI.”

Ibid., p. 23.

<sup>17</sup> Argentine Exporters’ postconference brief, pp. 31-34.

<sup>18</sup> Tropicana/PepsiCo’s postconference brief, p. 22, numbers cited to petition, p. 28, table T-A.

through which they entered. Virtually all imports from Mexico entered through the Customs district of Laredo, TX, whereas no imports from Argentina entered through that district.

**Table IV-7  
Lemon juice: U.S. imports, by subject countries and by customs districts, 2003-05 and January-August 2006**

Customs district	Argentina				Mexico			
	2003	2004	2005	Jan.- August 2006	2003	2004	2005	Jan.- August 2006
	<b>Quantity (1,000 gallons @ 400 GPL)</b>							
Baltimore, MD	96	63	99	108	-	-	-	-
Buffalo, NY	11	10	3	11	-	-	-	-
Charleston, SC	11	3	0	1	-	-	-	-
Detroit, MI	10	6	( <sup>1</sup> )	5	-	-	-	-
Houston- Galveston, TX	51	31	124	97	-	-	-	-
Laredo, TX	-	-	-	-	972	959	970	472
Los Angeles, CA	41	25	107	20	-	-	-	-
Miami, FL	472	134	427	69	-	-	-	-
New Orleans, LA	0	0	0	( <sup>1</sup> )	-	-	-	-
New York, NY	181	80	178	134	-	-	-	-
Norfolk, VA	0	3	0	( <sup>1</sup> )	-	-	-	-
Ogdensburg, NY	1	0	0	1	-	-	-	-
Philadelphia, PA	528	404	262	336	-	-	-	-
San Diego, CA	( <sup>1</sup> )	0	0	0	0	1	0	0
San Francisco, CA	29	22	2	2	-	-	-	-
Savannah, GA	9	6	0	3	-	-	-	-
Seattle, WA	0	3	( <sup>1</sup> )	( <sup>1</sup> )	-	-	-	-
St. Albans, VT	-	-	-	-	0	0	0	( <sup>1</sup> )
Tampa, FL	596	286	695	256	-	-	-	-
<b>Total</b>	<b>2,034</b>	<b>1,075</b>	<b>1,897</b>	<b>1,043</b>	<b>972</b>	<b>960</b>	<b>970</b>	<b>472</b>
<sup>1</sup> Less than 500 gallons @ 400 GPL. Source: Compiled from official Commerce statistics.								

### Simultaneous Presence in the Market

Lemon juice produced in the United States was present in the market throughout the period for which data were collected. Table IV-8 presents monthly U.S. imports of lemon juice during calendar year 2005 and January-August 2006. Based on official U.S. import statistics, there were U.S. imports of lemon juice from each of the subject countries in each month during January 2005-August 2006.

**Table IV-8**  
**Lemon juice: U.S. imports, by source and month, January 2005-August 2006**

Month	Argentina	Mexico	All other sources	Total
<i>Quantity (1,000 gallons @ 400 GPL)</i>				
January 2005	177	98	19	294
February 2005	103	68	33	204
March 2005	139	51	31	221
April 2005	142	10	38	190
May 2005	301	37	20	358
June 2005	180	36	15	230
July 2005	178	26	40	243
August 2005	92	33	27	152
September 2005	123	122	11	255
October 2005	141	130	50	322
November 2005	112	171	38	321
December 2005	211	189	54	454
January 2006	102	63	27	192
February 2006	98	13	26	137
March 2006	148	3	54	204
April 2006	67	1	51	119
May 2006	144	32	42	218
June 2006	197	118	34	348
July 2006	149	163	24	337
August 2006	138	79	32	249
Source: Compiled from official Commerce statistics.				



## **PART V: PRICING AND RELATED INFORMATION**

### **FACTORS AFFECTING PRICES**

#### **Transportation Costs to the U.S. Market**

Transportation costs for lemon juice shipped from Argentina to the United States averaged 23.4 percent of the customs value during 2005. Transportation costs for lemon juice shipped from Mexico to the United States averaged 8.9 percent of the customs value during 2005. These estimates are derived from official import data.<sup>1</sup>

#### **U.S. Inland Transportation Costs**

Transportation costs on U.S. inland shipments of lemon juice generally account for a small to moderate share of the delivered price of these products. For \*\*\*, reported costs averaged \*\*\* percent of the delivered price. For importers from Argentina and Mexico, the costs ranged from 2 percent to as much as 48 percent of the delivered price.<sup>2</sup>

#### **Exchange Rates**

Nominal and real exchange rate data for Argentina and Mexico are presented on a quarterly basis in figure V-1.<sup>3</sup> The data show that the nominal and real exchange rates of the Argentine peso appreciated moderately over the period relative to the U.S. dollar. In both nominal and real terms, the Mexican peso remained relatively stable relative to the U.S. dollar over the period, depreciating slightly through mid-2004 followed by a rebound.

### **PRICING PRACTICES**

#### **Pricing Methods**

When questionnaire respondents were asked how they determined the prices that they charge for lemon juice, responses were varied. Among U.S. processors, \*\*\*. \*\*\* also reported that the weather and the lemon crop each year can affect its prices. It reported that the crop from the \*\*\* season was lighter than normal and that it was thus able to temporarily increase prices, whereas the \*\*\* crop was above normal and \*\*\* could not compete with the lower import prices.<sup>4</sup> Most responding importers reported the use of transaction-by-transaction negotiations, but others reported the use of contracts for multiple shipments or prices that reflect market conditions. No firms reported the use of price lists.

Prices of lemon juice are most commonly quoted on an f.o.b. basis rather than on a delivered basis. Four importers reported that they quote on a delivered basis and another reported that it quotes on both delivered and f.o.b. bases.

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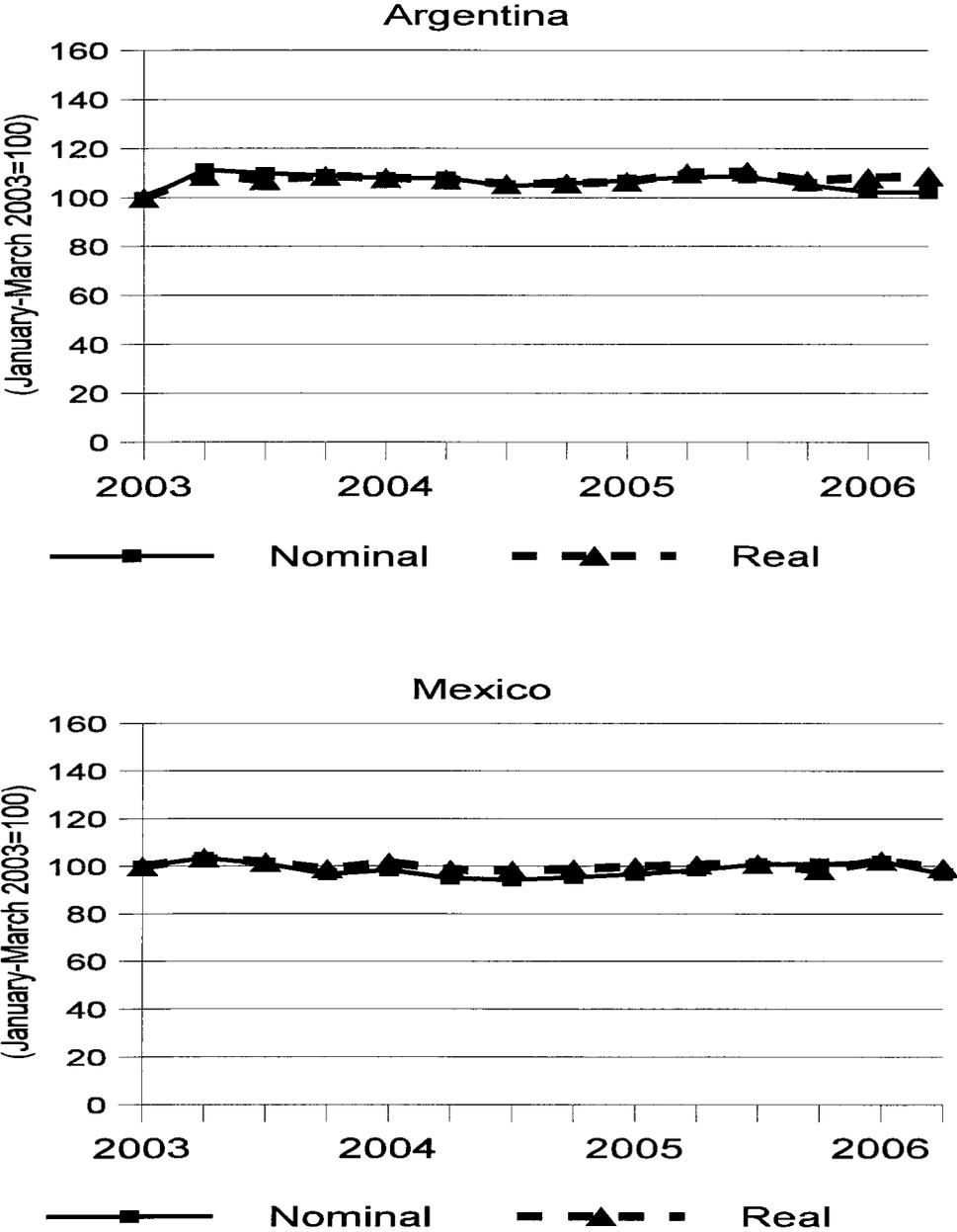
<sup>1</sup> The estimated cost was obtained by subtracting the customs value from the c.i.f. value of the imports for 2005 and then dividing by the customs value. This calculation used import data on HTS statistical reporting numbers 2009.31.6020 and 2009.39.6020.

<sup>2</sup> One importer reported that its purchasers pay for U.S. inland transportation costs.

<sup>3</sup> Real exchange rates are calculated by adjusting the nominal rates for movements in producer prices in the United States and each of the subject countries.

<sup>4</sup> \*\*\* reported that the \*\*\*, \*\*\* questionnaire response at IV-B-15.

**Figure V-1**  
**Exchange rates: Indices of the nominal and real exchange rates of the Argentine and Mexican currencies relative to the U.S. dollar, by quarters, January 2003-June 2006**



Source: International Monetary Fund, *International Financial Statistics*, October 20, 2006.

## Sales Terms and Discounts

U.S. processors and importers of lemon juice from Argentina and Mexico were asked what shares of their sales were on a (1) long-term contract basis (multiple deliveries for more than 12 months), (2) short-term contract basis, and (3) spot sales basis (for a single delivery) in 2005. Among processors, \*\*\*. Among the ten responding importers, six reported that they sell predominantly on a short-term contract basis. Two importers reported that they sell exclusively on a spot basis, and the remaining two importers reported that they sell predominantly on a long-term contract basis.

For U.S. processors selling on a contract basis, provisions varied from company to company. Long-term contracts are typically for periods of one to three years, while short-term contracts are for periods of up to one year. For both long- and short-term contracts, both price and quantity are fixed during the contract period. These processor contracts usually do not have a meet-or-release provision. In the case of importers, long-term contracts are typically for periods of one to two years and short-term contracts are typically for periods of one year. Both price and quantity are typically fixed during the contract period. These importer contracts typically do not contain meet-or-release provisions.

Discount policies on sales of lemon juice vary widely. \*\*\*. Most responding importers reported that they do not use discounts. Two importers reported the use of volume discounts; one of these importers reported that it may apply up to a 10-percent discount based on volume or on old crop sales. One importer also reported that lemon juice that has been in inventory for two years sells at a discount because it is typically inferior in color and must be blended with fresher lemon juice.<sup>5</sup>

## PRICE DATA

The Commission requested U.S. processors and importers of lemon juice to provide monthly data for the total quantity and f.o.b. value of selected products that were shipped to unrelated customers in the U.S. market. Data were requested for the period January 2003-August 2006. The products for which pricing data were requested are as follows:

***Product 1.—Cloudy frozen concentrated lemon juice, nonorganic, for further manufacture***

***Product 2.—Clarified frozen concentrated lemon juice, nonorganic, for further manufacture***

***Product 3.—Cloudy NFCLJ, non-organic, for further manufacture***

\*\*\* and seven importers (\*\*\*) provided usable pricing data for sales of the requested products, although not all firms reported pricing for all products for all months.<sup>6</sup> Pricing data reported by these firms accounted for \*\*\* of U.S. processors' U.S. shipments of lemon juice during January 2003-August 2006 and \*\*\* percent of U.S. imports from Argentina and \*\*\* percent of U.S. imports from Mexico over the same period.

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<sup>5</sup> Staff telephone interview with \*\*\*.

<sup>6</sup> \*\*\*, \*\*\*, \*\*\* provided \*\*\* to its \*\*\*. \*\*\* and \*\*\* provided purchase prices. Pricing data as reported by these firms are presented in app. F.

## Price Trends<sup>7</sup>

Weighted-average prices reported for U.S. processors and importers are presented in tables V-1 through V-3 and in figures V-2 through V-4 on a monthly basis during January 2003-August 2006. Domestic prices trended downwards over the period of investigation. Prices of the product imported from Argentina also trended downwards, with most of the decrease occurring in the second half of 2004 and 2005. Prices of the product imported from Mexico fluctuated until peaking in early 2005 and then trended downwards.

The weighted-average sales price of U.S.-produced product 1 decreased by \*\*\* percent from January 2003 to August 2006. Most of this decrease occurred from \*\*\* during which domestic prices decreased by \*\*\* percent, then rebounded, and began a \*\*\* decline of \*\*\* percent from \*\*\*. The weighted-average sales price of product 1 imported from Argentina decreased by \*\*\* percent over the same period, first increasing by \*\*\* percent from \*\*\* and then decreasing by \*\*\* percent from \*\*\*.<sup>8</sup> The weighted-average sales price of product 1 imported from Mexico decreased by \*\*\* percent from February 2003 to June 2006.

The weighted-average sales price of U.S.-produced product 2 increased by \*\*\* percent from January 2003 to August 2006. The annual weighted-average U.S. sales prices reflect a decrease of \*\*\* percent from 2003 to 2004, which was partially offset by a rebound of \*\*\* percent from 2004 to 2005. The weighted-average sales price of product 2 imported from Argentina decreased by \*\*\* percent from February 2003 to August 2006.

The weighted-average sales price of U.S.-produced product 3 decreased by \*\*\* percent from January 2003 to August 2006. The weighted-average sales price of product 3 imported from Mexico decreased by \*\*\* percent over the same period.

**Table V-1**

**Lemon juice: Weighted-average f.o.b. prices and quantities of domestic and imported product 1 and margins of underselling/(overselling), by months, January 2003-August 2006**

\* \* \* \* \*

**Table V-2**

**Lemon juice: Weighted-average f.o.b. prices and quantities of domestic and imported product 2 and margins of underselling/(overselling), by months, January 2003-August 2006**

\* \* \* \* \*

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<sup>7</sup> As previously discussed, Citrico, a large lemon juice importer, filed for bankruptcy in August 2004 and its inventories were subsequently sold by a liquidator. Petitioner reports that the liquidation led to a dramatic decrease in lemon juice prices, beginning in \*\*\*. See, testimony of Amy Warlick, conference transcript, p. 34. Petitioner also reports that the impact on prices occurred in \*\*\*. E-mail from \*\*\*. \*\*\* stated that the Citrico liquidation temporarily depressed lemon juice prices internationally but that prices are expected to rebound soon. \*\*\* also reported that it first purchased the liquidated inventory on \*\*\* for a discounted price of up to \*\*\* percent and last purchased the liquidated inventory in \*\*\*. Staff interview with \*\*\*. \*\*\* reported that the liquidation's impact on prices extended through the \*\*\* and \*\*\*. Staff interview with \*\*\*. \*\*\* reported that the liquidated inventory first came onto the market in \*\*\* and was priced about \$\*\*\* below \*\*\* prices, up through \*\*\*. E-mail from \*\*\*. \*\*\* reported that the impact on prices lasted from \*\*\* up through \*\*\*. E-mail from \*\*\*.

<sup>8</sup> One price associated with a very small quantity of product 1 imported from Argentina as reported by \*\*\* was excluded as it was deemed to be an outlier.

**Table V-3**

**Lemon juice: Weighted-average f.o.b. prices and quantities of domestic and imported product 3 and margins of underselling/(overselling), by months, January 2003-August 2006**

\* \* \* \* \*

**Figure V-2**

**Lemon juice: Weighted-average f.o.b prices and quantities of domestic and imported product 1 by months, January 2003-August 2006**

\* \* \* \* \*

**Figure V-3**

**Lemon juice: Weighted-average f.o.b prices and quantities of domestic and imported product 2, by months, January 2003-August 2006**

\* \* \* \* \*

**Figure V-4**

**Lemon juice: Weighted-average f.o.b prices and quantities of domestic and imported product 3, by months, January 2003-August 2006**

\* \* \* \* \*

### Price Comparisons

Margins of underselling and overselling for the period are presented by product category in table V-4. Prices of imports from Argentina and Mexico were lower than the U.S. processor prices in 71 out of 113 monthly comparisons of products 1-3, by margins of 0.3 percent to 51.8 percent. In the remaining 42 instances, the imported product was priced above the comparable domestic product; margins of overselling ranged from 0.1 percent to 79.9 percent. Prices of imports from Argentina were lower than U.S. processor prices in 37 out of 73 monthly comparisons of products 1 and 2, by margins of 0.3 percent to 51.8 percent. In the remaining 36 instances, the imported product from Argentina was priced above the comparable domestic product; margins of overselling ranged from 0.1 percent to 79.9 percent.<sup>9</sup> Prices of imports from Mexico were lower than U.S. processor prices in 34 out of 40 monthly comparisons of products 1 and 3, by margins of 0.6 percent to 48.9 percent. In the remaining six instances, the imported product from Mexico was priced above the comparable domestic product; margins of overselling ranged from 1.2 percent to 25.0 percent.

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<sup>9</sup> For product 1, the majority of instances in which the product from Argentina oversold the domestic product occurred in \*\*\*.

**Table V-4**

**Lemon juice: Instances of underselling/overselling and the range and average of margins for products 1-3, January 2003-August 2006**

	Underselling			Overselling		
	Number of instances	Range (percent)	Average margin (percent)	Number of instances	Range (percent)	Average margin (percent)
<b>By product:</b>						
Product 1	36	0.3 to 34.4	7.3	36	0.1 to 54.4	12.9
Product 2	23	4.0 to 51.8	21.2	6	2.9 to 79.9	24.7
Product 3	12	4.9 to 48.9	36.9	0	(1)	(1)
<b>Total<sup>2</sup></b>	<b>71</b>	<b>0.3 to 51.8</b>	<b>12.8</b>	<b>42</b>	<b>0.1 to 79.9</b>	<b>14.6</b>
<b>By country:</b>						
Argentina	37	0.3 to 51.8	14.8	36	0.1 to 79.9	15.2
Mexico	34	0.6 to 48.9	9.0	6	1.2 to 25.0	10.7
<b>Total<sup>2</sup></b>	<b>71</b>	<b>0.3 to 51.8</b>	<b>12.8</b>	<b>42</b>	<b>0.1 to 79.9</b>	<b>14.6</b>
<sup>1</sup> Not applicable. <sup>2</sup> Total number of instances for all cited products, range of margins for all cited products, and average margin for all cited products.						
Source: Compiled from data submitted in response to Commission questionnaires.						

### LOST SALES AND LOST REVENUES

The Commission requested U.S. processors of lemon juice to report any instances of lost sales or revenues they experienced due to competition from imports of lemon juice from Argentina and Mexico from January 2003 to August 2006. The U.S. processors provided \*\*\* lost sales allegations and \*\*\* lost revenue allegations. The \*\*\* lost sales allegations totaled \$\*\*\* and the \*\*\* lost revenue allegations totaled \$\*\*\*. Staff contacted the \*\*\* purchasers cited in the allegations; \*\*\* responded. \*\*\* out of the \*\*\* purchasers disagreed with the allegations. The results are summarized in tables V-5 and V-6 and are discussed below. \*\*\* was named in \*\*\* valued at \$\*\*\* allegedly occurring in \*\*\*. \*\*\* disagreed with the \*\*\*. It stated that it was \*\*\*. Moreover, \*\*\* reported that the price quotes from \*\*\* were lower than those presented in the \*\*\*. In the \*\*\*, \*\*\* reported that \*\*\* offered a price of \$\*\*\*/gallon, but that it instead purchased lemon juice from \*\*\* at \$\*\*\*/gallon. In the \*\*\*, \*\*\* reported that \*\*\* offered a price of \$\*\*\*/gallon and that it instead purchased lemon juice at \*\*\* from \*\*\*.

\*\*\* was named in \*\*\* valued at \$\*\*\* allegedly occurring in \*\*\*. It agreed with \*\*\*, but disagreed with \*\*\*. \*\*\* also reported that it uses \*\*\* for unplanned or new demand. It also stated that it considers supplier qualifications, type of packaging being offered, and delivery times when choosing a supplier.

\*\*\* was named in \*\*\* valued at \$\*\*\* allegedly occurring in \*\*\*. It disagreed with the allegation, stating that it was already over-booked when it received the offer from the domestic supplier.

\*\*\* was named in \*\*\* valued at \$\*\*\* allegedly occurring in \*\*\*. It disagreed with the allegation, stating that it has purchased both domestic lemon juice and subject imports each year over the period of investigation. It reported that it purchases lemon juice from \*\*\* to ensure a year-round supply. Moreover, it reported that price is not the deciding factor in its purchasing decisions.

**Table V-5**  
**Lemon juice: U.S. processors' lost sales allegations**

\* \* \* \* \*

**Table V-6**  
**Lemon juice: U.S. processors' lost revenue allegations**

\* \* \* \* \*

\*\*\* was named in \*\*\* allegedly occurring in \*\*\*. It disagreed, stating that the lower price was on distressed, "out of code" product. Moreover, it reported that it utilizes all suppliers, based on price and quality.

\*\*\* was named in \*\*\* valued at \$\*\*\* allegedly occurring in \*\*\*. It agreed with the allegation, stating that it competes against companies that buy cheaper imported lemon juice concentrate. However, it also reported that it prefers to buy from U.S. producers for better taste and quality of their product.



## PART VI: FINANCIAL EXPERIENCE OF U.S. PROCESSORS

### BACKGROUND

Two processors, accounting for the vast majority of reported U.S. production of lemon juice in 2005, provided usable financial data on their lemon juice operations, including their \*\*\*. One of these firms, Sunkist, is a federated agricultural cooperative<sup>1</sup> while the other firm, Ventura Coastal,<sup>2</sup> is a producer of citrus products that is not affiliated with growers.

Appearance factors are important in citrus products going to the fresh market and lemons generally are graded, sorted, and packed by grade at the packinghouse. Physical appearance is not an issue for processed lemons, and processed products represent a residual usage for fruit not suited for the fresh market, with yearly processing volumes varying depending on fresh market conditions.<sup>3</sup> Lemons for processing constituted about 31 percent of the total lemon crop harvested in the 2004/05 crop year by volume (the percentage varies by crop year), but only a tiny fraction—about 1 percent—of the total crop, by

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<sup>1</sup> Sunkist is owned by its member growers and packing houses, and has a fiscal year that ends \*\*\*. Sunkist reported total revenues of \$1.005 billion in its fiscal year 2005 of which over 80 percent was represented by sales of fresh fruit. Sunkist's sales of "fruit products," which include lemon juice, lemon oil, orange juice, grapefruit juice, and other processed fruit products, totaled \$48.6 million in that year. "Federated" refers to members' activities as regional as opposed to local. Sunkist described its legal relationships with lemon growers as follows: \*\*\*. Sunkist's processors' questionnaire response to question II-9.

This structure also is described in a USDA publication, "Cooperatives in the U.S.-Citrus Industry," which states in summarized form that the Sunkist system is a "pyramid" linked by contractual agreements at three levels, the packinghouse, the district exchange, and Sunkist Growers, Inc. The grower (who has to be a member of Sunkist Growers, Inc.) has the right to decide what varieties and how much to plant; growers also are affiliated with a district exchange. The packinghouse coordinates grove care, fruit harvesting, and hauling, and obligates itself to pack only the fruit of Sunkist members and to comply with Sunkist standards and regulations; the packinghouse signs a licensing agreement with the district exchange and with Sunkist. District exchanges (which sign membership agreements with Sunkist and are represented on Sunkist's board of directors) are a mechanism for collecting and disseminating information between Sunkist Central and the local packinghouses, and for coordinating sales orders and shipments of fresh lemons. Within the Sunkist system, the selling and decisionmaking relationships are different between fresh and processed product marketing. Growers, packinghouses, and district exchanges decide on selling prices for fresh lemons. However, in processed products, Sunkist Growers owns the processing facilities and makes all decisions on processed product pricing and marketing. Fresh lemons are categorized by quality within weekly pools with different per-box prices (prices differ according to quality and proximity to market). On the other hand, processed products are shipped to Sunkist's plant and enter the same cost year-long pool (i.e., because all processed pool costs are deducted from the gross revenues and the net proceeds are returned to members on their prorata share of deliveries to processing, growers essentially obtain the same unit value). Reportedly the accounting records and pools for fresh lemons and processed lemons are not commingled, and there are two separate accounting revenue and cost streams. *See* Jacobs, James A., "Cooperatives in the U.S. Citrus Industry," USDA, Rural Business and Cooperative Development Service, RBCDS Research Report 137 (December 1994), pp. 24-26 (hereafter, "USDA RR137 study"). Other than amending four statements regarding fresh fruit, this study was commented on favorably in Sunkist's postconference brief, pp. 12-16. Also, *see* Jermolowicz, Andrew A., "Cooperative Pooling Operations," USDA, Rural Business-Cooperative Service, RBS Research Report 166, May 1999.

<sup>2</sup> Ventura Coastal is an independent processor that purchases lemons for processing from unrelated packing houses, and it has a fiscal year that ends \*\*\*. Lemon juice \*\*\* in 2005; Ventura Coastal reported \*\*\* in 2005.

<sup>3</sup> USDA RR137 study, p. 36. Compare the data for fresh lemons and processed lemons in terms of utilization of production and value of production for crop years 2002/03, 2003/04, and 2004/05 in USDA, Citrus Fruits 2005 Summary, pp. 14 and 15, respectively (contained as exhibit 8 in the petition). At the conference, industry witnesses stated that if a lemon does not make the quality standard for the fresh lemon market, then it is processed. *See* testimony of Frank Bragg, President of Sunkist, conference TR, p. 47.

value.<sup>4</sup> Essentially all of the lemon is processed in the production of lemon juice and lemon oil (the two primary co-products) and byproducts such as lemon pulp, lemon peel, and animal feed. The incremental revenues from such residual usage add to grower incomes or cover processing costs. Additionally, simple disposal without processing is not a viable alternative. As Frank Bragg of Sunkist testified at the staff conference, “such vast quantities of unprocessed lemons are highly acidic and would pose environmental disposal problems. Neutralizing the acid from lemons that would otherwise been processed . . . would be a costly proposition.”<sup>5</sup>

### OPERATIONS ON LEMON JUICE (INCLUDING \*\*\*)

The Commission requested financial data from processors of lemon juice. Two processors responded, as noted earlier. The combined data of Sunkist<sup>6</sup> and Ventura Coastal are shown in table VI-1;

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<sup>4</sup> The percentage of the crop that is processed has generally fallen, from about 64 percent in the 1980/81 crop year down to about 31 percent in the 2004/05 crop year, while it averaged about 37 percent during the period of investigation (the three crop years of 2002/03 through 2004/05). Calculated from data in table C-14 on page 87 in *Fruit and Tree Nuts Situation and Outlook Yearbook*, FTS-2005/October 2005, petition, exh. 8. The residual nature of lemons for processing means that such usage is affected by the size and quality of the lemon crop and by U.S. domestic and export demand for fresh lemons. Sunkist noted that Japan, its largest overseas lemon market, and other markets around the Pacific Rim were open to Argentine, South African, and Chilean production while there was growing competition in the U.S. market. It noted that the United States was the high-cost producer of lemons. Sunkist Growers, Inc., “2003 in Review,” p. 6, found at Sunkist’s Internet site. A Commission study on the citrus industry also noted that U.S. production costs have been rising, attributed to rising costs of labor and other inputs, increasingly stringent labor and environmental protection regulations, restrictions on land and water use, and energy costs. *Conditions of Competition for Certain Oranges and Lemons in the U.S. Fresh Market, Investigation No. 332-469*, USITC Publication 3863 (July 2006), p. 4-1. Frank Bragg, President of Sunkist, stated that Sunkist’s Ontario, CA plant is in one of the most heavily regulated areas of the country, indicating that it purchased and installed a \$7 million wastewater treatment plant to meet those regulations. See testimony of Frank Bragg, conference transcript, p. 40.

<sup>5</sup> See testimony of Frank Bragg, conference transcript, p. 25. Also, see Petitioner’s postconference brief, pp. 30-31.

<sup>6</sup> Each of the respondents have criticized the petition’s proposed industry and Sunkist’s questionnaire response. For example, respondents state that lemon juice is a by-product and any injury suffered by Sunkist’s growers is the result of allocation between lemons for the fresh market and the processed market, and is offset by the increase in market prices for fresh lemons because Sunkist manages per-acre net returns (The UniMark Group’s postconference brief, p. 5). A similar argument is advanced by SAGARPA, that because lemons for processing are a by-product of lemons sold in the “fresh” market, then the by-product should have no cost; SAGARPA takes issue with the transfer prices of lemons from growers to Sunkist and the split between lemon juice and lemon oil (SAGARPA’s postconference brief, pp. 5-7). Another also notes that lemon juice is only one product in Sunkist’s integrated operation, and states that Sunkist’s \*\*\* (Greenwood Associates’ postconference brief, pp. 1-3). EastCoast Flavors argues that the domestic industry should include lemon growers while also raising questions about cost allocation between lemon juice and lemon oil; EastCoast also states that Sunkist is insulated from the effects of imports because it is merely the agent for its member growers (EastCoast’s postconference brief, pp. 2-7 and appendix, p. 2). The Argentine exporters group argue that lemon juice production is not a profit-making endeavor (i.e., it is a cost-reducing effort), and, therefore profitability is essentially meaningless (Argentine Exporters’ postconference brief, pp. 2-8). Coca-Cola likewise argues for an expansion of the industry, citing the growers’ stake in processed products and their ownership of Sunkist, and the use of lemons in downstream processed products; Coca-Cola also argues that Sunkist’s structure insulates it from losses (Coca-Cola’s postconference brief, pp. 9-21 and 34). Finally, Tropicana and PepsiCo. state: Because (1) Sunkist acts as an agent for its growers, it is similar to a not-for-profit; (2) it fully recovers its marketing and processing costs; and (3) Sunkist’s lemon juice processing operation is not in business to make a profit. These respondents conclude that the question of how much revenue remains available for

(continued...)

these data include \*\*\*.

**Table VI-1  
Lemon juice: Aggregated results of \*\*\* of Sunkist and Ventura Coastal, fiscal years 2003-05,  
January-August 2005, and January-August 2006**

\* \* \* \* \*

Based on the aggregated results, between 2003 and 2005 the quantity of sales and tolling fell by approximately \*\*\* gallons @ 400 GPL, the value of sales and tolling fell by \$\*\*\*, and the two processors together reported \*\*\*. Although the total combined quantity and value rose, the \*\*\*. Sunkist accounted for \*\*\* shown in table VI-1 (Ventura Coastal accounted \*\*\* percent of the combined quantity, \*\*\* percent of the combined value, \*\*\* percent of the combined COGS, and reported \*\*\* in 2005 compared with Sunkist’s \*\*\* in that year). Sunkist’s \*\*\* in January-August 2006 compared with January-August 2005; Ventura Coastal’s \*\*\*.

Table VI-2 presents the data reported by Sunkist.

**Table VI-2  
Lemon juice: Results of \*\*\* of Sunkist, fiscal years 2003-05, January-August 2005, and January-August 2006**

\* \* \* \* \*

Sunkist reported \*\*\*. The value added to raw materials that Sunkist \*\*\*.

There are considerable differences between Sunkist and Ventura Coastal in terms of their form of business organization, which lead to differences in reporting of sales and cost accounting. “All of the products’ grade fruit received by Sunkist is accounted for under cooperative pooling principles, in accordance with pooling plans established by the Board of Directors.”<sup>7</sup> The cooperative pooling principles are those in accordance with the AICPA’s Statement of Position (SOP) 85-3, “Accounting by Agricultural Producers and Agricultural Cooperatives.”<sup>8</sup> Patrons’ fungible products, lemons for

<sup>6</sup> (...continued)

distribution to the growers is immaterial to whether Sunkist is materially injured by reason of the subject imports (i.e., it is insulated from the effects of imports of lemon juice). Tropicana and PepsiCo. also recalculate Sunkist’s results of operations by subtracting raw materials from COGS (Tropicana and PepsiCo’s postconference brief, pp. 2-8 and 13-15). Petitioner counters that this is only another type of integrated industry similar to other ones that the Commission has investigated in the past. Petitioner’s postconference brief, p. 15. It should be noted that Sunkist reported a loss on its overall operations in 2002, 2004, and 2005. See Sunkist Growers, Inc., “Consolidated Statements of Operations and Comprehensive Loss,” at Sunkist’s Internet site.

<sup>7</sup> Sunkist Growers, Inc. and Subsidiaries, Notes to the Consolidated Financial Statements, As of and for the Years Ended October 31, 2005 and 2004, p. 18, found at Sunkist’s Internet site, retrieved on September 26, 2006. See footnote 1 in this part of the report for a description of Sunkist’s structure.

<sup>8</sup> AICPA’s Statements of Position are a source of established accounting principles (GAAP). SOP 85-3 covers the accounting by agricultural producers and agricultural cooperatives, and establishes the accounting by cooperatives for products received from patrons. A primary difference between cooperatives and other business enterprises is that the cooperative and its patrons operate as single economic units to accomplish specific business purposes, here the marketing of citrus products. A “patron” is defined as any individual, trust, estate, partnership, corporation, or cooperative with or for whom a cooperative does business on a cooperative basis, whether a member (which has voting rights) or nonmember (does not have voting rights) of the cooperative association. Members control the organization in their capacity as patrons and not as equity investors (i.e., the patron’s role as an investor is secondary and incidental to his business relationship). Patronage is defined as the amount of business done with a

(continued...)

processing, are commingled in “pools,” and the excess of revenues over costs for each pool is allocated to patrons on the basis of their pro rata contributions to the pool. Sunkist makes transfer payments on lemons for processing, which are reflected in “raw materials” in table VI-2, in two parts: “the first payment is an advance payment, made six months after fruit delivery that is equal to 50 percent of the projected market value of the fruit when delivered to the plant; the second, or final settlement, is made when most of the products have been sold and the product pool has been financially closed.”<sup>9</sup> The Commission has conducted many investigations where one or more U.S. producers were cooperatives. Typically, the financial results of those cooperative producer(s) were presented separately from the results of other producers because cooperatives do not prepare conventional financial statements that include results of operations. Staff presents Sunkist’s data in a manner that resembles its cooperative nature in appendix E.

The Commission’s questionnaire requested processors to provide data for the quantity and value of lemons that they purchased or received for processing. Sunkist provided the requested data, which are shown in the following tabulation:<sup>10</sup>

\* \* \* \* \*

The quantity reconciles with Sunkist’s \*\*\* of lemon juice. The \*\*\*<sup>11</sup>\*\*\*.<sup>12</sup> Nonetheless, the unit value is \*\*\* on a per-carton (76 pounds) basis than that shown by the USDA data which show such values at the packinghouse door at approximately 1 cent per box,<sup>13</sup> and \*\*\*.<sup>14</sup> As noted earlier, Sunkist \*\*\*.<sup>15</sup>

Table VI-3 presents the data on operations by Ventura Coastal.

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<sup>8</sup> (...continued)

cooperative by one of its patrons, here the quantity or value of lemons received by Sunkist. Patronage allocations are the proportionate share of a patron’s earnings, which are defined, in turn, as the excess of a cooperative’s revenues over its costs arising from transactions done with or for its patrons. Pools are accounting cost centers used to determine earnings and patronage refunds, in this case, for each lemon crop that Sunkist receives from its growers, and assets are distributed periodically to patrons on a patronage basis. *See* SOP 85-3, April 30, 1985.

<sup>9</sup> Sunkist, Notes to 2005 Consolidated Financial Statements, p. 18. These notes further describe fruit products inventory as being carried at the lower of fruit value plus the average cost incurred in production or marketing. AICPA’s SOP 85-3 discusses the use of net realizable value (market-based value) as the accounting basis of inventories, noting that its use is appropriate by pooling cooperatives for products received from patrons (paragraph 083 of SOP 85-3).

<sup>10</sup> Sunkist’s U.S. processors’ questionnaire, response to question III-11.

<sup>11</sup> Submission by Sunkist, October 19, 2006, p. 2.

<sup>12</sup> Sunkist states that “the market value of member fruit received for processing is included as part of fruit products inventory. When such fruit inventory is sold, the fruit value is reflected . . . in the {consolidated statements}.” Sunkist, Notes to 2005 Consolidated Financial Statements, p. 18.

<sup>13</sup> Fruit and Tree Nuts Situation and Outlook Yearbook/FTS-2005/October 2005, petition, exh. 8.

<sup>14</sup> Testimony of Amy Warlick, conference transcript, p. 37.

<sup>15</sup> Sunkist’s U.S. processors’ questionnaire response to question III-12. In an e-mail to staff, \*\*\*. E-mail received October 27, 2006.

**Table VI-3  
Lemon juice: Results of \*\*\* of Ventura Coastal, fiscal years 2003-05, January-August 2005, and January-August 2006**

\* \* \* \* \*

As noted earlier, Ventura Coastal reported \*\*\* in 2003 when \*\*\*. Ventura Coastal reported producing \*\*\*. The average unit value of \*\*\* was \$\*\*\* while its \*\*\* was \$\*\*\*, both per gallon @ 400 GPL. Expressed as a ratio to \*\*\* revenue, \*\*\* costs were \*\*\* percent while its \*\*\* percent.

Ventura Coastal processes lemons “into lemon juice, lemon oil, and various lemon by-products, including dried lemon peel for pectin,”<sup>16</sup> like Sunkist. However, Ventura Coastal differs from Sunkist in several ways. Ventura Coastal purchases lemons on the cash market (the purchase price is reflected in “raw materials” in table VI-3) and it is \*\*\*. Compare, for example, Ventura Coastal’s lemon purchases, shown in the following tabulation,<sup>17</sup> with Sunkist’s purchases (shown earlier):

\* \* \* \* \*

Ventura Coastal operates two facilities at which it processes other fruit in addition to lemons, compared with Sunkist’s one facility that is dedicated to processing lemons. Ventura Coastal \*\*\*.<sup>18</sup> Finally, Ventura Coastal has tried to put its sales emphasis on value-added products such as ultra-low pulp and clarified lemon juice.<sup>19</sup>

### Variance Analysis

A variance analysis based upon the results of the U.S. firms on their operations producing all lemon juice (*i.e.*, the data in table VI-1) is presented here in table VI-4. A variance analysis, which provides an assessment of changes in profitability as a result of changes in volume, sales prices, and costs, is effective when the product under examination is homogeneous through the periods examined, with little or no variation in product mix. Because the usefulness of the analysis may be diminished by the product mix and cost differences \*\*\* at the end of table VI-4.

This analysis shows that the decrease in operating income between 2003 and 2005 of \$\*\*\* was attributable to combined unfavorable variances of net cost/expense \*\*\*, and lower sales volume; these were the same factors behind the increase in \*\*\* between January-August 2005 and the same period in 2006. However, while lower volume led to the \*\*\*.

**Table VI-4  
Lemon juice: Variance analysis on results of operations, fiscal years 2003-05, and January-August 2005-06**

\* \* \* \* \*

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<sup>16</sup> Testimony of William Borgers, President, Ventura Coastal, conference transcript, p. 26.

<sup>17</sup> Ventura Coastal’s U.S. processors’ questionnaire, response to question III-11. Because Ventura Coastal \*\*\*, Ventura Coastal’s U.S. processors’ questionnaire, response to question III-12.

<sup>18</sup> Ventura Coastal’s U.S. processors’ questionnaire, response to question II-12. Sales and costs of \*\*\*.

<sup>19</sup> Testimony of William Borgers, President, Ventura Coastal, conference TR, p. 27.

## CAPITAL EXPENDITURES AND RESEARCH AND DEVELOPMENT EXPENSES

Sunkist provided data on its capital expenditures,<sup>20</sup> which are shown in table VI-5.

**Table VI-5**

**Lemon juice: Value of capital expenditures of Sunkist, fiscal years 2003-05, January-August 2005, and January-August 2006**

\* \* \* \* \*

Sunkist stated that the value of its research and development (“R&D”) expenses was \*\*\*. Ventura Coastal \*\*\*, stating that such \*\*\*. Sunkist provided detailed data for its capital expenditures in 2005. These were aimed toward \*\*\*.

## ASSETS AND RETURN ON INVESTMENT

The Commission’s questionnaire requested data on assets used in the production, warehousing, and sale of lemon juice to compute return on investment (“ROI”) for 2003 to 2005. The data for \*\*\* are from table VI-1. Operating income was divided by total assets, resulting in ROI. U.S. producers’ total assets and their ROI are presented in table VI-6. The total assets utilized in the production, warehousing, and sales of lemon juice fell from 2003 to 2005 because of lower values in the following categories: \*\*\*.

**Table VI-6**

**Lemon juice: Value of assets used in the production, warehousing, and sale, and return on investment, fiscal years 2003-05**

\* \* \* \* \*

## CAPITAL AND INVESTMENT

The Commission requested U.S. processors to describe any actual or potential negative effects of imports of lemon juice from Argentina and Mexico on their firms’ return on investment or growth, investment, ability to raise capital, existing development and production efforts (including efforts to develop a derivative or more advanced version of the product), or the scale of capital investments. Their responses are as follows:

### Actual Negative Effects

Sunkist: \*\*\*.

Ventura Coastal: \*\*\*.

### Anticipated Negative Effects

Sunkist: \*\*\*.

Ventura Coastal: \*\*\*.

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<sup>20</sup> \*\*\*.

## PART VII: THREAT CONSIDERATIONS

The Commission analyzes a number of factors in making threat determinations (see 19 U.S.C. § 1677(7)(F)(i)). Information on the volume and pricing of imports of the subject merchandise is presented in Parts IV and V; and information on the effects of imports of the subject merchandise on U.S. producers' existing development and production efforts is presented in Part VI. Information on inventories of the subject merchandise; foreign producers' operations, including the potential for "product-shifting;" any other threat indicators, if applicable; and any dumping in third-country markets, follows.

### THE INDUSTRY IN ARGENTINA

Argentina is the second-largest grower of lemons in the world. While Argentine lemon production and growing area was steady at roughly 1,240,000 metric tons and 44,000 hectares during the period examined in these investigations, lemon production nearly doubled during 1995-2005.<sup>1</sup> Expansion of the lemon industry during this period is attributed to a shift from other agricultural industries, particularly sugar,<sup>2</sup> in the primary growing region of Tucumán, and from contracts with major global soft drink manufacturers to supply processed lemon products, such as juice and oil.<sup>3</sup> The highest quality Argentine lemons are generally sold fresh on the export market or domestically, while the remainder is further processed. Lemon production is concentrated, consisting of a small number of vertically-integrated companies which typically own nurseries, citrus groves, and packing houses.<sup>4</sup> Several large, integrated firms also own processing facilities. The main lemon juice processing companies in Argentina are Citrusvil, San Miguel, Citromax, Vincente Trapani, Litoral Citrus, and COTA in the Tucumán region and La Moraleja in the northern province of Salta.<sup>5</sup> Citrusvil and San Miguel accounted for \*\*\* percent of total production of all processed lemon products in 2004.<sup>6</sup> These two firms are also the largest exporters of fresh lemons in Argentina.<sup>7</sup>

The Argentine lemon industry has its origins in the development of contracts with multinational soft drink companies in the 1950s, and the processing sector has dominated since then.<sup>8</sup> In 2004, 69 percent of Argentine lemon production was processed into lemon juice and concentrate, oil, and peel.<sup>9</sup> However, the export of fresh lemons from Argentina has increased in recent years as the processing-

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<sup>1</sup> U.S. International Trade Commission. *Conditions of Competition for Certain Oranges and Lemons in the U.S. Fresh Market*, USITC Publication 3863. Washington, DC: USITC, 2005, p. 5-1.

<sup>2</sup> The mechanization of the sugar industry lead to a labor surplus, which was absorbed by the citrus industry.

<sup>3</sup> U.S. International Trade Commission. *Conditions of Competition for Certain Oranges and Lemons in the U.S. Fresh Market*, USITC Publication 3863. Washington, DC: USITC, 2005, p. 5-2.

<sup>4</sup> Ibid., p. 5-5.

<sup>5</sup> Trebilcock, Patricio, "Argentina responds to collapsing lemon juice prices with cutbacks," FOODNEWS, Vol. 33, No. 19, May 2005, also, attachment 5 of Petitioner's Response to the Supplemental Questionnaire to the Petition, October 3, 2006.

<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

<sup>8</sup> U.S. International Trade Commission. *Conditions of Competition for Certain Oranges and Lemons in the U.S. Fresh Market*, USITC Publication 3863. Washington, DC: USITC, 2005, p. 5-6.

<sup>9</sup> Ibid.

oriented industry has developed new markets for fresh product and seeks to spread risk and increase revenues.<sup>10</sup>

Argentine exports of lemon juice to the U.S. market face tariffs of \$0.034-\$0.079/liter, or approximately 28 percent *ad valorem* equivalent (AVE) in 2005.<sup>11</sup> Argentina's principle export markets for fresh lemons are the EU and Russia. The U.S. market is currently closed to fresh Argentine lemons due to U.S. phytosanitary restrictions on citrus canker.<sup>12</sup>

There are 16 citrus processing plants in Argentina.<sup>13</sup> The Commission received foreign producer questionnaires from six processor/exporters in Argentina that reported producing lemon juice during the period examined during these investigations (table VII-1).<sup>14</sup> The exports to the United States of these firms were amounted to more than 100 percent of lemon juice U.S. imports from Argentina in 2005. The growing season for lemons in Argentina is February-December.<sup>15</sup> Lemon producers have limited cold storage and typically send fruit for processing soon after harvest.<sup>16</sup>

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<sup>10</sup> Ibid.

<sup>11</sup> The AVE tariff rate is based on calculated duties of U.S. imports from all countries and the customs value for all countries, and is based on official tariff and trade data compiled by the U.S. Department of Commerce and the U.S. International Trade Commission. AVE rates of duty of the subject products in 2005 ranged from a low of 1.5 percent for unfrozen lemon juice of less than 20 degrees brix, to a high of 45 percent for frozen concentrated lemon juice greater than 20 degrees brix, which is also the largest category of imports.

<sup>12</sup> Imports of fresh lemons from Argentina did enter the U.S. market in 2000 and 2001 after the Animal Plant Health and Inspection Service (APHIS) of the U.S. Department of Agriculture's initial pest risk assessment allowed for their entry. A challenge by the U.S. citrus industry in federal court resulted in a ban on such imports in late 2001. A new pest risk assessment by APHIS is currently in progress. U.S. International Trade Commission. *Conditions of Competition for Certain Oranges and Lemons in the U.S. Fresh Market*, USITC Publication 3863. Washington, DC: USITC, 2005, p. 5-10.

<sup>13</sup> U.S. International Trade Commission. *Conditions of Competition for Certain Oranges and Lemons in the U.S. Fresh Market*, USITC Publication 3863. Washington, DC: USITC, 2005, p. 5-5.

<sup>14</sup> \*\*\*.

<sup>15</sup> U.S. International Trade Commission. *Conditions of Competition for Certain Oranges and Lemons in the U.S. Fresh Market*, USITC Publication 3863. Washington, DC: USITC, 2005, p. 5-13.

<sup>16</sup> Ibid., p. 5-8.

Table VII-1

Lemon juice: Argentine production capacity, production, shipments, and inventories, 2003-05, January-August 2005, January-August 2006, and projected 2006-07

Item	Actual experience					Projections	
	2003	2004	2005	January-August		2006	2007
				2005	2006		
<b>Quantity (1,000 gallons @ 400 GPL)</b>							
Capacity	14,614	14,614	14,014	11,093	11,191	14,140	14,140
Production	9,832	11,301	11,351	8,753	9,648	12,421	12,460
End-of-period inventories	3,634	5,447	4,247	6,092	6,293	4,804	4,707
Shipments:							
Internal consumption	153	150	469	228	325	344	344
Home market	1,687	1,519	1,472	851	1,094	1,759	1,974
Exports to--							
The United States	2,276	1,740	2,448	1,889	1,394	1,782	1,527
European Union	3,906	4,586	5,821	3,825	3,424	5,478	6,042
Asia	696	1,096	1,839	668	1,429	1,977	1,688
All other markets	590	382	1,136	686	548	810	942
Total exports	7,469	7,804	11,243	7,069	6,794	10,047	10,200
Total shipments	9,309	9,472	13,184	8,148	8,213	12,149	12,517
<b>Ratios and shares (percent)</b>							
Capacity utilization	67.3	77.3	80.8	78.6	86.1	87.8	88.1
Inventories/production	37.0	48.2	37.4	46.4	43.5	38.7	37.8
Inventories/shipments	39.0	57.5	32.2	49.8	51.1	39.5	37.6
Share of total shipments:							
Internal consumption	1.6	1.6	3.6	2.8	4.0	2.8	2.7
Home market	18.1	16.0	11.2	10.4	13.3	14.5	15.8
Exports to--							
The United States	24.5	18.4	18.6	23.2	17.0	14.7	12.2
European Union	42.0	48.4	44.1	46.9	41.7	45.1	48.3
Asia	7.5	11.6	13.9	8.2	17.4	16.3	13.5
All other markets	6.3	4.0	8.6	8.4	6.7	6.7	7.5
Total exports	80.2	82.4	85.3	86.8	82.7	82.7	81.5
<b>Value (1,000 dollars)<sup>1</sup></b>							
Commercial shipments:							
Home market	6,297	6,039	5,328	3,410	3,259	5,540	5,972
Exports to--							
The United States	8,693	6,765	6,086	5,178	3,672	4,744	4,208
European Union	13,744	16,137	15,153	9,848	8,754	14,795	16,367
Asia	3,328	4,533	5,072	2,969	2,995	5,771	12,657
All other markets	2,110	1,316	3,058	1,856	1,521	2,267	2,740
Total exports	27,875	28,751	29,369	19,852	16,942	27,577	35,973
Total commercial shipments	34,172	34,790	34,697	23,262	20,201	33,117	41,945

Table continued on next page.

**Table VII-1**

**Lemon juice: Argentine production capacity, production, shipments, and inventories, 2003-05, January-August 2005, January-August 2006, and projected 2006-07**

Item	Actual experience					Projections	
	2003	2004	2005	January-August		2006	2007
				2005	2006		
Unit value (per gallon) <sup>1</sup>							
Commercial shipments: Home market	\$3.73	\$3.98	\$3.62	\$4.01	\$2.98	\$3.15	\$3.03
Exports to-- The United States	3.82	3.89	2.49	2.74	2.63	2.66	2.76
European Union	3.52	3.52	2.60	2.57	2.56	2.70	2.71
Asia	4.78	4.14	2.76	4.44	2.10	2.92	7.50
All other markets	3.58	3.45	2.69	2.70	2.78	2.80	2.91
Total exports	3.73	3.68	2.61	2.81	2.49	2.74	3.53
Total commercial shipments	3.73	3.73	2.73	2.94	2.56	2.81	3.45
<sup>1</sup> F.o.b. point of shipment in Argentina. Note.--Because of rounding, figures may not add to the totals shown. Source: Compiled from data submitted in response to Commission questionnaires.							

### THE INDUSTRY IN MEXICO

Globally, Mexico is a relatively small volume producer of lemons.<sup>17</sup> Production of lemons began in Eastern Mexico in the 1970s to supply large beverage bottlers, including Coca Cola, with processed lemon products, such as lemon oil and lemon juice.<sup>18</sup> The volume and area of Mexico's lemon production is not fully known.<sup>19</sup> The Coca Cola Export Corporation, Mexico Branch (TCCEC) estimates Mexican production to be 60,000-90,000 metric tons per year.<sup>20</sup> Other industry sources estimate 2005 production to be in the 100,000-120,000 metric ton range.<sup>21</sup> The largest single lemon grower in Mexico reportedly is currently \*\*\*.<sup>22</sup> The domestic market for Mexican fresh lemons historically has been negligible, but, reportedly, small amounts of Mexican fresh lemons have been marketed recently to large retailers in Mexico.<sup>23</sup>

U.S. imports of Mexican lemon juice are duty-free. Under NAFTA, fresh lemon trade between Mexico and the United States is not subject to tariffs, quotas, or product preferences; however, Mexican

<sup>17</sup> Although limes have long been a part of Mexican culture, lemons have not been traditionally consumed.

<sup>18</sup> Mondragón, Juan Pablo, Thomas H. Spreen, Chris O. Andrew, and Ronald P. Muraro. *Oranges in Eastern Mexico*. Lake Alfred, FL: Florida Science Source, Inc., 1998, and U.S. International Trade Commission. *Conditions of Competition for Certain Oranges and Lemons in the U.S. Fresh Market*, USITC Publication 3863. Washington, DC: USITC, 2005, p. 9-5.

<sup>19</sup> Global lemon production data from The United Nations Food and Agriculture Organization aggregates lemons and limes. Mexico is a significant global producer and exporter of limes. Likely because Mexican lemon production is relatively small, official Mexican government statistics understate its production.

<sup>20</sup> Coca Cola's postconference brief, p. 40.

<sup>21</sup> U.S. International Trade Commission. *Conditions of Competition for Certain Oranges and Lemons in the U.S. Fresh Market*, USITC Publication 3863. Washington, DC: USITC, 2005, p. 9-2.

<sup>22</sup> Foreign producer questionnaire of \*\*\*.

<sup>23</sup> *Ibid.*, exhibit A, p. 2.

lemon shipments must meet U.S. grade and inspection regulations.<sup>24</sup> Mexican exporters of fresh lemons report that there have been no material phytosanitary restrictions that have inhibited the sale of fresh Mexican lemons in the U.S. market.<sup>25</sup> Mexican fresh lemon exports, almost exclusively to the United States, have been in relatively small volumes, but with increased rates of growth since 2004.<sup>26</sup>

In 2005, there were 14 operating citrus processing plants in Mexico.<sup>27</sup> According to importers, the vast majority of processed lemon production in Mexico is accounted for by two plants, Procimart and Pronacit,<sup>28</sup> located in Ciudad Victoria, in the state of Tamaulipas, Mexico. \*\*\*<sup>29</sup> \*\*\*<sup>30</sup> \*\*\*<sup>31</sup> \*\*\*<sup>32</sup> Coca Cola Internacional \*\*\* tolling arrangement in 2006 with at least one other citrus processing plant located near Akil, Yucatán.<sup>33</sup> Table VII-2 presents data from Mexican processor/exporters \*\*\* whose exports to the United States accounted for nearly all U.S. lemon juice imports from Mexico in 2005.

**Table VII-2  
Lemon juice: Mexican production capacity, production, shipments, and inventories, 2003-05, January-August 2005, January-August 2006, and projected 2006-07**

\* \* \* \* \*

### NONSUBJECT IMPORTS

In 2005, nonsubject imports accounted for 12 percent of total U.S. imports of lemon juice by volume. The majority of U.S. imports of nonsubject lemon juice during the period examined during these investigations was from South Africa, Brazil, and Italy. Official statistics show that while the bulk of imports from South Africa were primarily of frozen concentrated lemon juice, those from Italy were NFCLJ. U.S. imports from Brazil in 2003-04 were predominantly lemon juice concentrate, but in 2005 were exclusively NFCLJ.

The largest lemon-producing countries in 2005 were Argentina, the United States, Spain, Italy, Turkey, and South Africa.<sup>34</sup> Of these countries, Argentina, the United States, Italy, and South Africa are important exporters of fresh and/or processed lemon products, including lemon juice and oil.<sup>35</sup> Of South

<sup>24</sup> U.S. International Trade Commission. *Conditions of Competition for Certain Oranges and Lemons in the U.S. Fresh Market*, USITC Publication 3863. Washington, DC: USITC, 2005, p. 9-8.

<sup>25</sup> \*\*\* and U.S. International Trade Commission. *Conditions of Competition for Certain Oranges and Lemons in the U.S. Fresh Market*, USITC Publication 3863. Washington, DC: USITC, 2005, p. 9-8.

<sup>26</sup> U.S. imports of fresh lemons from Mexico increased from 2,746 metric tons in 2003 to 12,502 metric tons in 2005.

<sup>27</sup> “Crean FINCA citrícola para abrir créditos a más de 2 mil 700 productores,” Secretaría de Agricultura, Ganadería, Desarrollo Rural, Pesca y Alimentación, retrieved at <http://www.sagarpa.gob.mx/cgcs/newsletter/2005/j270605/citricos.htm>, on October 20, 2006.

<sup>28</sup> Prior to March 2006, Pronacit was known as CitroTam Internacional SPR de RL.

<sup>29</sup> \*\*\*.

<sup>30</sup> \*\*\*.

<sup>31</sup> \*\*\*.

<sup>32</sup> \*\*\*.

<sup>33</sup> “A buen ritmo la juguera,” *Diario de Yucatán, Edición electrónica*, retrieved at [yucatan.com.mx](http://yucatan.com.mx) on October 5, 2006.

<sup>34</sup> USDA PSD database.

<sup>35</sup> 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. In 2005, Argentina accounted for approximately 53 percent of global lemon oil exports by volume, followed by the United

(continued...)

Africa's 182,870 metric tons of lemon production in 2005, approximately 30 percent was processed, consistent with previous years.<sup>36</sup> Processed lemon product production in Italy, once the dominant producer, has been decreasing in the past decade due to difficulties competing against Argentine costs and scale of production.<sup>37</sup> Brazil, a much more important orange producer, processor, and exporter, has been increasing its processed lemon output in recent years, building on its expertise in orange processing.<sup>38</sup>

## GLOBAL MARKET CONDITIONS IN THE LEMON INDUSTRY

A variety of factors have contributed to an increasingly competitive situation for global suppliers of fresh citrus fruits in recent years which have implications for the global market for processed citrus products, in particular lemons. In general, lemon producing industries make choices to market lemons for fresh use, domestically and/or abroad, or to process them and market lemon juice and possible other byproducts. Generally, lemons marketed for fresh use garner much greater returns, and, particularly in developing producer countries, lemons exported for fresh use command higher prices than fresh lemons sold in the domestic market. Demand for fresh lemons in developed markets generally has leveled off, while consumption in developing markets is increasing as incomes rise. As a result, several large lemon-producing countries have begun to export fresh lemons in greater volumes, and several current suppliers have recently developed fresh lemon industries where processed lemon industries once predominated. Many of the new export market players for fresh lemons are low-cost producers and increasingly supply high quality lemons that compete directly with traditional suppliers. In addition, they generally have low or negligible domestic consumption of fresh lemons, so that any increases in production are most likely to be shipped for export. At the same time, sanitary and phytosanitary (SPS) conditions keep certain country or regional suppliers out of certain markets until inter-country protocols can be established and met. Some suppliers face considerable obstacles to achieving SPS standards in certain markets due to persistent pest and disease problems or adverse climatic conditions.

Although the first market for lemon producers is generally the export market, for the reasons cited above, quality or disease issues may relegate a certain portion of an industry's production to the processing sector. However, in the case of Argentina and Mexico, the lemon industries have their origins in processing to supply multinational beverage companies with lemon oil,<sup>39</sup> and both industries relatively recently have begun to export or are working to increase exports of fresh lemons to diversify their product offerings and to increase revenues.<sup>40</sup>

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<sup>35</sup> (...continued)

States (17 percent), South Africa (8 percent), and Mexico, Brazil, and Peru (each less than 7 percent).

<sup>36</sup> Citrus Growers Association of South Africa. "Key Industry Statistics, 2006."

<sup>37</sup> Reeve, Daemmon. "A Cultivated Zest." *Perfumer & Flavorist*, vol. 30 no. 3, May 2005.

<sup>38</sup> Ibid.

<sup>39</sup> U.S. International Trade Commission. *Conditions of Competition for Certain Oranges and Lemons in the U.S. Fresh Market*, USITC Publication 3863. Washington, DC: USITC, 2005, pp. 5-6 and 9-5.

<sup>40</sup> Ibid., p. 5-6.

## U.S. IMPORTERS' INVENTORIES

Inventories of lemon juice as reported by U.S. importers are presented in table VII-3.

### Table VII-3

**Lemon juice: U.S. importers' end-of-period inventories of imports, 2003-05, January-August 2005, and January-August 2006**

\* \* \* \* \*

### IMPORTS SUBSEQUENT TO AUGUST 31, 2006

Importer questionnaire respondents reported there were more than \*\*\* gallons of Argentine product and more than \*\*\* gallons of Mexican product scheduled for delivery after August 31, 2006.

### ANTIDUMPING DUTY ORDERS IN THIRD-COUNTRY MARKETS

None of the parties to these investigations is aware of any dumping findings or antidumping remedies imposed on lemon juice in third-country markets.



**APPENDIX A**  
***FEDERAL REGISTER* NOTICES**



Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping investigations in 45 days, or in this case by November 6, 2006. The Commission's views are due at Commerce within five business days thereafter, or by November 14, 2006.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

**DATES:** *Effective Date:* September 21, 2006.

**FOR FURTHER INFORMATION CONTACT:** Jim McClure (202-205-3191), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

**SUPPLEMENTARY INFORMATION:**

*Background.*—These investigations are being instituted in response to a petition filed on September 21, 2006, by Sunkist Growers, Inc., Sherman Oaks, CA.

*Participation in the investigations and public service list.*—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the

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**INTERNATIONAL TRADE  
COMMISSION**

[Investigation Nos. 731-TA-1105-1106  
(Preliminary)]

**Lemon Juice From Argentina and  
Mexico**

**AGENCY:** United States International  
Trade Commission.

**ACTION:** Institution of antidumping  
investigations and scheduling of  
preliminary phase investigations.

**SUMMARY:** The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping investigation Nos. 731-TA-1105-1106 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Argentina and Mexico of lemon juice, provided for in subheadings 2009.31.40, 2009.31.60, and 2009.39.60 of the Harmonized Tariff

expiration of the period for filing entries of appearance.

*Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.*—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

*Conference.*—The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on October 13, 2006, at the U.S. International Trade Commission Building, 500 E Street, SW., Washington, DC. Parties wishing to participate in the conference should contact Jim McClure (202-205-3191) not later than October 10, 2006, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

*Written submissions.*—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before October 18, 2006, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic

Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

**Authority:** These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: September 21, 2006.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. E6-15851 Filed 9-26-06; 8:45 am]

BILLING CODE 7020-02-P

**DEPARTMENT OF COMMERCE****International Trade Administration**

[A-357-818/Argentina; A-201-835/Mexico]

**Initiation of Antidumping Duty  
Investigations: Lemon Juice from  
Argentina and Mexico****AGENCY:** Import Administration,  
International Trade Administration,  
Department of Commerce.**EFFECTIVE DATE:** October 19, 2006.**FOR FURTHER INFORMATION CONTACT:**Mark Hoadley (Argentina) or Hermes  
Pinilla (Mexico), AD/CVD Operations,  
Office 6 and Office 5, Import  
Administration, International Trade  
Administration, U.S. Department of  
Commerce, 14th Street and Constitution  
Avenue, NW, Washington, DC 20230;  
telephone: (202) 482-3148 or (202) 482-  
3477, respectively.**SUPPLEMENTARY INFORMATION:****The Petition**

On September 21, 2006, the Department of Commerce (the Department) received a petition on imports of lemon juice from Argentina and Mexico filed in proper form by Sunkist Growers, Inc. (the petitioner). *See Petition for the Imposition of Antidumping Duties Against Lemon Juice from Argentina and Mexico* (September 21, 2006) (petition). On September 28, 2006, the Department issued a request for additional information and clarification of certain areas of the petition. Based on the

Department's request, the petitioner filed amendments to the petition on October 3, 2006. See *Supplemental Questionnaire: Petition for the Imposition of Antidumping Duties Against Lemon Juice from Argentina and Mexico* (October 3, 2006). On October 6, October 10, and October 11, 2006, the Department discussed further concerns with the petitioner by phone. See *Memorandum to the File: Lemon Juice from Argentina and Mexico - Telephone Conversation with counsel to the Petitioner*, dated October 6, 2006, *Memorandum to the File: Lemon Juice from Argentina and Mexico - Telephone Conversations with counsel to the Petitioner*, dated October 10, 2006, and *Memorandum to the File: Lemon Juice from Argentina and Mexico - Telephone Conversation with counsel to the Petitioner*, dated October 11, 2006. In response to these concerns, the petitioner filed additional petition amendments on October 10, 2006 and October 11, 2006.

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that imports of lemon juice from Argentina and Mexico are being, or are likely to be, sold in the United States at less than fair value, within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, an industry in the United States.

The Department finds that the petitioner filed this petition on behalf of the domestic industry because the petitioner is an interested party as defined in section 771(9)(C) of the Act, and the petitioner has demonstrated sufficient industry support with respect to the investigations that the petitioner is requesting the Department to initiate (see "Determination of Industry Support for the Petition" below).

#### Scope of Investigations

The merchandise covered by each of these investigations includes certain lemon juice for further manufacture, with or without addition of preservatives, sugar, or other sweeteners, regardless of the GPL (grams per liter of citric acid) level of concentration, brix level, brix/acid ratio, pulp content, clarity, grade, horticulture method (e.g., organic or not), processed form (e.g., frozen or not-from-concentrate), FDA standard of identity, the size of the container in which packed, or the method of packing.

Excluded from the scope are: (1) lemon juice at any level of concentration packed in retail-sized containers ready for sale to consumers, typically at a level of concentration of

48 GPL; and (2) beverage products such as lemonade that typically contain 20% or less lemon juice as an ingredient.

Lemon juice is classifiable under subheadings 2009.39.6020, 2009.31.6020, 2009.31.4000, 2009.31.6040, and 2009.39.6040 of the Harmonized Tariff Schedule of the United States (HTSUS). While HTSUS subheadings are provided for convenience and Customs and Border Patrol purposes, our written description of the scope of this investigation is dispositive.

During our review of the petition, we discussed the scope with the petitioner to ensure that it is an accurate reflection of the products for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the regulations (*Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for interested parties to raise issues regarding product coverage. The Department encourages all interested parties to submit such comments within 20 calendar days of the publication of this notice. Comments should be addressed to Import Administration's Central Records Unit (CRU), Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and to consult with parties prior to the issuance of the preliminary determinations.

#### Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for (1) at least 25 percent of the total production of the domestic like product and (2) the domestic producers or workers who support the petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the petition.

Section 771(4)(A) of the Act defines the "industry" as the producers as a whole of a domestic like product. Thus, to determine whether the petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC) is responsible for determining whether "the domestic

industry" has been injured and must also determine what constitutes a domestic like product in order to define the industry. While the Department and the ITC must apply the same statutory definition regarding the domestic like product, they do so for different purposes and pursuant to separate and distinct authority. See section 771(10) of the Act. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the domestic like product, such differences do not render the decision of either agency contrary to law.<sup>1</sup>

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation," i.e., the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

With regard to domestic like product, the petitioner does not offer a definition of domestic like product distinct from the scope of the investigations. Based on our analysis of the information presented by the petitioner, we have determined that there is a single domestic like product, lemon juice, which is defined in the "Scope of Investigations" section above, and we have analyzed industry support in terms of the domestic like product.

We received no opposition to this petition. The petitioner accounts for a sufficient percentage of the total production of the domestic like product, and the requirements of section 732(c)(4)(A) are met. Accordingly, the Department determines that the petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act. See "Office of AD/CVD Operations Initiation Checklist for the Antidumping Duty Petition on Lemon Juice from Argentina," at Attachment II (October 11, 2006) (*Argentina Initiation Checklist*) and "Office of AD/CVD Operations Initiation Checklist for the Antidumping Duty Petition on Lemon Juice from Mexico," at Attachment II (October 11, 2006) (*Mexico Initiation Checklist*), on file in the CRU.

<sup>1</sup> See *USEC, Inc. v. United States*, 25 CIT 49, 55-56, 132 F. Supp. 2d 1, 7-8 (Jan. 24, 2001) (citing *Algoma Steel Corp. v. United States*, 12 CIT 518, 523, 688 F. Supp. 639, 642-44 (June 8, 1988)).

### Allegations and Evidence of Material Injury and Causation

The petitioner alleges that the U.S. industry producing the domestic like product is being materially injured and is threatened with material injury by reason of the imports of the subject merchandise sold at less than fair value. The petitioner contends that the industry's injury is evidenced by reduced market share, increased inventories, lost sales, reduced production, lower capacity and capacity utilization rates, decline in prices, lost revenue, reduced employment, decreased capital expenditures, and a decline in financial performance.

These allegations are supported by relevant evidence including import data, evidence of lost sales, and pricing information. We assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and have determined that these allegations are supported by accurate and adequate evidence and meet the statutory requirements for initiation. See *Argentina Initiation Checklist* at Attachment III and *Mexico Initiation Checklist* at Attachment III.

### Period of Investigation

In accordance with section 351.204(b) of the Department's regulations, because the petition was filed on September 21, 2006, the anticipated period of investigation (POI) is July 1, 2005 through June 30, 2006.

### Allegations of Sales at Less Than Fair Value

The following is a description of the allegations of sales at less than fair value upon which the Department has based its decision to initiate investigations with respect to Argentina and Mexico. The sources of data for the deductions and adjustments relating to U.S. price and normal value are discussed in greater detail in the *Argentina Initiation Checklist* and *Mexico Initiation Checklist*. Should the need arise to use any of this information as facts available under section 776 of the Act, we may reexamine the information and revise the margin calculation, if appropriate.

### Use of a Third Country Market and Sales Below Cost Allegation

With respect to normal value (NV), the petitioner stated that home market prices are not reasonably available. According to the petitioner, the Argentine and Mexican lemon juice industry is geared almost exclusively to exports. See, e.g., pages 12 and 22 of the October 3, 2006 petition amendment. The petitioner stated that its personnel most knowledgeable about international

markets inquired about the Argentine and Mexican home markets for lemon juice from their sources but that they were unable to obtain home market prices in Argentina or Mexico. In addition, the petitioner stated that there were no indications of domestic prices for lemon juice in these markets in the several Department of Agriculture and ITC reports which were included in the petition, and which the Department has reviewed.

The petitioner therefore proposed the Netherlands as a third country comparison market for both Argentina and Mexico, and demonstrated the viability of the Netherlands as a third country market. In the case of Argentina, the petitioner provided Argentine figures for exports of lemon juice to the Netherlands and the United States. In the case of Mexico, the petitioner provided European Union lemon juice import data for exports from Mexico into the Netherlands and compared them with U.S. lemon juice import data for imports from Mexico. According to these figures, sales to the Netherlands were greater than 5 percent of sales by volume to the United States for both Argentina and Mexico, and thus the petitioner claims that the Netherlands is an appropriate comparison market in accordance with section 773(a)(1)(B)(ii)(II) of the Act.

The petitioner then claimed that sales prices to the Netherlands are below cost, for both Argentine and Mexican exports. The petitioner provided information demonstrating reasonable grounds to believe or suspect that sales of lemon juice in the comparison market (*i.e.*, the Netherlands) were made at prices below the fully absorbed cost of production (COP), within the meaning of section 773(b) of the Act, and requested that the Department conduct country-wide sales-below-cost investigations for both Argentina and Mexico. Pursuant to section 773(b)(3) of the Act, COP consists of the cost of manufacturing (COM), selling, general, and administrative (SG&A) expenses, financial expenses, and packing expenses (where appropriate). Details regarding the calculation of the COP cost elements (*i.e.*, COM, SG&A, and financial expenses) are included in our discussion of constructed value (CV), in the "*Alleged U.S. Price and Normal Value*" sections below.<sup>2</sup> The petitioner calculated export prices for the Netherlands using average unit customs values for imports from Argentina and

Mexico. In order to calculate a conservative estimate, the petitioner did not make any deductions to these average unit customs values.

Based upon a comparison of the gross price of the foreign like product in the comparison market to the COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating country-wide cost investigations with regard to both Argentina and Mexico. If we determine during the course of these investigations that the home markets (*i.e.*, Argentina and Mexico) are viable or that the Netherlands is not the appropriate third-country market upon which to base normal value, our initiation of country-wide cost investigations with respect to sales to the Netherlands will be rendered moot. Because it alleged sales below cost, pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, the petitioner then based NV for sales in the Netherlands on constructed value (CV).

### Alleged U.S. Price and Normal Value: Argentina

The petitioner calculated a single export price (EP) using the average unit customs values for import data collected by the U.S. Census Bureau. It used a weighted average of all five HTSUS numbers under which subject merchandise could be imported: 2009.31.4000, 2009.31.6020, 2009.31.6040, 2009.39.6020, and 2009.39.6040. The petitioner deducted amounts for domestic inland freight, storage and other harbor charges, and an export tax to arrive at an EP figure for a product at the same concentration level as the product for which CV was calculated. The deductions are based on an affidavit of one of the petitioner's company officials, and represent the cost of transporting subject merchandise to Buenos Aires and preparing it for export as well as an estimate for the export tax.

We analyzed the five HTSUS numbers used by the petitioner in calculating EP. Four of the five HTSUS categories were comprised solely of subject merchandise; however, one HTSUS number was a basket category, and, therefore, could include significant amounts of merchandise other than subject merchandise. Accordingly, we recalculated EP by removing HTSUS number 2009.31.4000, the basket category. In addition, we did not make the deductions to price made by the petitioner, as the petitioner could not demonstrate that these amounts were

<sup>2</sup> In this case, the elements of COP and CV are calculated identically. The only difference between the COP figure used to demonstrate sales below cost and the CV figure used as normal value is that CV includes an amount for profit.

not in the SG&A expense figure it calculated. Specifically, it is not clear based on S.A. San Miguel's (an Argentine lemon juice producer) unconsolidated financial statements whether the items which the petitioner subtracted from the average unit value (*i.e.*, export tax, storage, and movement expenses) were included in the reported SG&A expense. Therefore, to avoid possible double counting, we did not make these deductions.

Pursuant to section 773(a)(4) of the Act, the petitioner calculated a single CV as the basis for NV. See "*Use of a Third Country Market and Sales Below Cost Allegation*" above. The petitioner calculated CV based on the price of lemons in Buenos Aires, its own processing and packing costs and by-product offsets, and SG&A, interest, and profit taken from the public financial statements of an Argentine producer of lemon juice. It adjusted its own processing costs for known differences between U.S. and Argentine production costs. It also deducted an amount from CV for export tax, in order to offset the export tax deduction to EP.

Specifically, to value raw materials, the petitioner used the prices quoted on the Mercado Central in Buenos Aires for lemons sold during the POI. The added processing costs were based on the petitioner's fiscal year 2005 experience adjusted for known differences between U.S. and Argentine production costs (electricity rates and manufacturing labor wages). See U.S. Department of Energy: Energy Statistics - Electricity Prices, and International Labor Organization: Labor Statistics - Wages and Manufacturing for Argentina, found in the *Argentina Initiation Checklist* at Attachment VII and Attachment VIII, respectively. Additional information, including by-product offsets and packing expenses, were provided in affidavits from company officials of the petitioner, and reasonably reflect its POI experience. To calculate SG&A, financial expenses, and profit, the petitioner relied upon amounts reported in the 2005 fiscal year financial statements of S.A. San Miguel. See *Argentina Initiation Checklist*.

In making fair value calculations for Argentina, we used the CV calculated by the petitioner, except that we did not make a deduction for export tax from CV, which the petitioner had suggested as a means of offsetting its export tax deduction from EP, as we did not make such a deduction from EP.

#### *Alleged U.S. Price and Normal Value: Mexico*

The petitioner calculated a single Mexican EP using the average unit

customs values for import data collected by the U.S. Census Bureau. It used a weighted average of all five HTSUS numbers under which subject merchandise could be imported: 2009.31.4000, 2009.31.6020, 2009.31.6040, 2009.39.6020, and 2009.39.6040. The petitioner did not make any adjustments to U.S. price. We recalculated EP by removing the same basket category as we did for Argentina.

Pursuant to section 773(a)(4) of the Act, the petitioner calculated a single CV as the basis for normal value (NV). See "*Use of a Third Country Market and Sales Below Cost Allegation*" above. The petitioner calculated CV using its own data for some values, published data for other cost values, and costs values from a Mexican lemon juice manufacturer's publicly available financial statement for other factors. It adjusted its own processing costs for known differences between U.S. and Mexican production costs.

Specifically, to value raw materials, the petitioner used the 2005 average Mexican cost of production for lemons (excluding packing costs) from an ITC publication. See ITC publication on *Conditions for Certain Oranges and Lemons in the U.S. Fresh Market*, Table 9-16, p. 9-17. The added processing costs were based on the petitioner's fiscal year 2005 experience adjusted for known differences between U.S. and Mexican production costs (electricity rates and manufacturing labor wages). See *Mexico Initiation Checklist* at Attachments VII and VIII. The petitioner did not adjust for storage, packing and transportation costs in its calculation of processing cost. The petitioner based the SG&A and financial expenses on the most recently available fiscal year 2003 financial statements (the most current statements available) of UniMark Group, a Mexican lemon juice producer. The petitioner assumed a packing cost of zero because there were no packing cost data available to the petitioner. To calculate an amount for profit consistent with section 773(e)(2) of the Act, the petitioner relied upon amounts reported in UniMark Group's income statement for the most recently available fiscal year 2003. Because UniMark Group's income statement for fiscal year 2003 showed a loss, the petitioner assumed a zero profit in the calculation of the constructed value. See *Mexican Initiation Checklist*.

The petitioner did not claim any other adjustments to either EP or CV and we found that no other adjustments were warranted.

#### **Fair Value Comparisons**

Based on a comparison of the revised EP to CV, the dumping margin is 102.46 percent with respect to Argentina and 134.22 percent with respect to Mexico. Therefore, in accordance with section 773(a) of the Act, there is reason to believe that imports of lemon juice from Argentina and Mexico are being, or are likely to be, sold in the United States at less than fair value.

#### **Initiation of Antidumping Investigations**

Based upon the examination of the petition on lemon juice from Argentina and Mexico and other information reasonably available to the Department, the Department finds that the petition meets the requirements of section 732 of the Act. Therefore, we are initiating antidumping duty investigations to determine whether imports of lemon juice from Argentina and Mexico are being, or are likely to be, sold in the United States at less than fair value. In accordance with section 733(b)(1)(A) of the Act, unless postponed, we will make our preliminary determinations no later than 140 days after the date of this initiation.

#### **Distribution of Copies of the Petition**

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the petition has been provided to the representatives of the Governments of Argentina and Mexico. We will attempt to provide a copy of the public version of the petition to the foreign producers/exporters named in the petition.

#### **International Trade Commission Notification**

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

#### **Preliminary Determination by the International Trade Commission**

The ITC will preliminarily determine, no later than November 6, 2006, whether there is a reasonable indication that imports of lemon juice from Argentina and Mexico are materially injuring, or threatening material injury to, a U.S. industry. A negative ITC determination will result in the investigations being terminated; otherwise, these investigations will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: October 11, 2006.

**David M. Spooner,**  
*Assistant Secretary for Import  
Administration.*

[FR Doc. E6-17381 Filed 10-18-06; 8:45 am]

**BILLING CODE 3510-DS-S**



**APPENDIX B**  
**CONFERENCE WITNESSES**



**CALENDAR OF THE PUBLIC CONFERENCE**

Those listed below appeared as witnesses at the United States International Trade Commission's conference:

Subject: Lemon Juice from Argentina and Mexico  
Inv Nos: 731-TA-1105-1106 (Preliminary)  
Date and Time: October 13, 2006 - 9:30 a.m.

The conference in connection with these investigations was held in the Main Hearing Room, 500 E Street, SW, Washington, DC.

**In Support of the Imposition of Antidumping Duties:**

Barnes, Richardson, & Colburn  
Washington, DC  
on behalf of

Sunkist Growers, Inc.

Frank Bragg, Vice President, Citrus Juices and Oil Business Unit, Sunkist Growers, Inc.  
Eric Larson, Leader of Sales and Marketing, Citrus Juices and Oil Business Unit,  
Sunkist Growers, Inc.  
Barbara Ratchford, Leader of Finance, Citrus Juices and Oil Business Unit,  
Sunkist Growers, Inc.  
Michael Wootton, Senior Vice-President, Corporate Relations and Administration,  
Sunkist Growers, Inc.  
William Borgers, President, Ventura Coastal, LLC  
Amy Warlick, International Trade Economist, Barnes, Richardson & Colburn

Matthew T. McGrath )  
Stephen W. Brophy ) OF COUNSEL

**In Opposition to the Imposition of Antidumping Duties:**

Arent Fox, PLLC  
Washington, DC  
on behalf of

The Coca Cola Company

Dan Casper, Strategic Global Procurement Manager, The Coca Cola Company

Matthew J. Clark )  
Nancy A. Noonan ) OF COUNSEL

**In Opposition to the Imposition of Antidumping Duties – *Continued***

Blank Rome, LLP  
Washington, DC  
on behalf of

Eastcoast Flavors, Inc.

Michael D. Bradley, Professor, Department of Economics, The George Washington University

Frederick L. Ikenson    )  
Edward J. Farrell        ) – OF COUNSEL  
Roberta Kienast Dagher )

**APPENDIX C**  
**SUMMARY DATA**



**Table C-1**  
**Total lemon juice: Summary data concerning the U.S. market, 2003-05, January-August 2005, and January-August 2006**

\* \* \* \* \*



**APPENDIX D**

**PROCESSOR AND IMPORTER COMMENTS REGARDING DIFFERENCES  
AND SIMILARITIES BETWEEN  
CONCENTRATED LEMON JUICE AND NFCLJ,  
ORGANIC AND NONORGANIC LEMON JUICE,  
AND LEMON JUICE AND LEMON OIL**



The Commission requested producers and importers to describe the differences and similarities between concentrated lemon juice and NFCLJ with respect to characteristics and uses; interchangeability; manufacturing processes; channels of distribution; customer and producer perceptions; and price. The responses follow:

\* \* \* \* \*

The Commission requested producers and importers to describe the differences and similarities between organic and nonorganic lemon juice with respect to characteristics and uses; interchangeability; manufacturing processes; channels of distribution; customer and producer perceptions; and price. The responses follow:

\* \* \* \* \*

The Commission requested producers and importers to describe the differences and similarities between lemon juice and lemon oil with respect to characteristics and uses; interchangeability; manufacturing processes; channels of distribution; customer and producer perceptions; and price. The responses follow:

\* \* \* \* \*



**APPENDIX E**

**COOPERATIVE FORM FOR  
SUNKIST'S RESULTS OF OPERATIONS**



This appendix presents a restated profit-and-loss table for Sunkist on its operations on lemon juice. The format has been altered from that in the Commission's questionnaire to one that more closely resembles Sunkist Growers' consolidated statements in the form that an agricultural cooperative prepares. Two changes have been made: (1) the line item for "raw materials" has been removed from cost of processing (previously, "cost of goods sold") and the "raw material" cost data are shown on a newly-titled line "distributions to members;" (2) other lines have been retitled as well for clarity.

Sunkist is an agricultural cooperative that acts as an agent on behalf of its member patrons. As such, its patrons retain title to fruit that they deliver to the cooperative and it remits back to its patrons the sales proceeds net of expenses (processing fees, selling and administrative expenses, transportation, and the like) that it incurs on their behalf. The structure of its consolidated statements of operations adds the various sources of total revenues and then subtracts the various items of costs and expenses (including "payments on products' fruit delivered and sold"), resulting in a line item for revenues in excess of costs and expenses.<sup>1</sup> The total of payments to members less payments on products' fruit delivered and sold is deducted from this last line, resulting in retained income or retained loss.<sup>2</sup>

On the line for \*\*\* to "payments on products' fruit delivered and sold." The explanatory notes to Sunkist's consolidated statements lend credence to this statement as does an explanation received from Sunkist's attorney.<sup>3</sup> The notes state:

Payments on products' fruit are generally made to members in at least two parts. The first payment is an advance payment, and is made in the sixth month after fruit delivery. The amount of the advance is equal to approximately 50% of the projected market value of the fruit when delivered to the plant. Final settlements are made after most the products have been sold and the products pools financially closed.<sup>4</sup>

Several of the respondents argued that Sunkist is insulated from the impact of any injury from imports by the nature of its co-op structure and its recovery of costs.<sup>5</sup> Respondents Tropicana and PepsiCo. state that Sunkist \*\*\* and compare Sunkist's operating results with and without raw material costs, resulting in the respondents' conclusion that "Sunkist's misallocation of costs has caused it to \*\*\*."<sup>6</sup> Staff notes that Sunkist prepared its questionnaire response in conformity with its corporate statements and included its transfers to members on the raw material costs' line to comply with the Commission's questionnaire.

As shown in table E-1, the distributions (payments) Sunkist made to its members were, \*\*\*. Sunkist, a not-for-profit operation, explained that it \*\*\*.

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<sup>1</sup> See, Sunkist Growers, Inc. and Subsidiaries, Consolidated Statements of Operations and Comprehensive Loss, found on Sunkist's Internet site, retrieved on September 26, 2006.

<sup>2</sup> Staff notes that Sunkist Growers, Inc. reported "retained income before income tax expense" in 2002 (\$2.5 million) and in 2003 (\$29.6 million, including gain on sale of land of \$23.6 million). Sunkist reported a "retained loss before income tax expense" in 2004 of \$3.5 million, and in 2005 of \$989,000.

<sup>3</sup> Sunkist's submission of October 19, 2006, question (4).

<sup>4</sup> Sunkist's Notes to Consolidated Financial Statements, p. 18.

<sup>5</sup> See, for example, Eastcoast Flavors's postconference brief, p. 21; Coca-Cola's postconference brief, p. 34; Tropicana and PepsiCo.'s postconference brief, p. 8.

<sup>6</sup> Tropicana and PepsiCo.'s postconference brief, pp. 13-16.

**Table E-1**  
**Lemon juice: Results of \*\*\* of Sunkist, fiscal years 2003-05, January-August 2005, and January-August 2006**

\* \* \* \* \*

**APPENDIX F**

**ADDITIONAL PRICING DATA AS REPORTED BY \*\*\***



**Table F-1**

**Lemon juice: Weighted-average f.o.b. prices and quantities of domestic product 1 as reported by \*\*\*, by months, January 2003-August 2006**

\* \* \* \* \*

**Table F-2**

**Lemon juice: Weighted-average f.o.b. \*\*\* prices and quantities of product 1 imported from Mexico as reported by \*\*\*, by months, January 2003-August 2006**

\* \* \* \* \*

**Table F-3**

**Lemon juice: Weighted-average purchase prices and quantities of products 1 and 2 imported from Argentina as reported by \*\*\*, by months, January 2003-August 2006**

\* \* \* \* \*

**Table F-4**

**Lemon juice: Weighted-average purchase prices and quantities of product 1 imported from Argentina as reported by \*\*\*, by months, January 2003-August 2006**

\* \* \* \* \*