

The U.S. anti-dumping investigation against lemon juice exports from South Africa: background, recent updates and next steps

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South African producers and exporters of lemon juice (and no doubt exporters of citrus fruit) received an unwelcome surprise early January 2022 that a California-based company producing various citrus juices – Ventura Coastal LLC¹ – had petitioned the United States International Trade Commission (USITC) and the Department of Commerce (DOC) to investigate shipments of lemon juice from South Africa and Brazil, claiming these were being sold on the U.S. market at less than fair value (LTFV), i.e. being dumped.²

The petitioner submitted that the dumping margin – the difference between the export price in the U.S. and theoretical normal / fair price – was 128.61%, and proposed that as a trade remedy, the U.S. should impose equivalent anti-dumping duties on lemon juice imports from South Africa (the “subject imports”). A company in Paarl (Western Cape) and one in Addo (Eastern Cape) were listed in the petition, effectively as respondents in the matter.

The petitioner believes that as a result of the alleged sale of lemon juice at LTFV, the U.S. industry is being materially injured, or threatened with material injury.³ Material injury in this context is defined by the U.S. legislation as “*harm which is not inconsequential, immaterial, or unimportant*”⁴.

¹ Ventura Coastal LLC. Company website: <https://www.venturacoastal.com>

² United States Code. Selling at less than fair value is defined in the US legislation at 19 U.S.C. § 1677(34).
<https://www.law.cornell.edu/uscode/text/19/1677>

³ Federal Register (2022). Department of Commerce, International Trade Division. Lemon Juice from Brazil and South Africa: Initiation of Less-Than-Fair-Value Investigations. Vol. 87, No. 16.
https://www.usitc.gov/trade_remedy/731_ad_701_cvd/investigations/2021/Lemon%20Juice%20from%20Brazil%20and%20South%20Africa/Preliminary/notice_of_initiation_lemon_juice-ita.pdf

⁴ United States Code. 19 U.S.C. § 1677(7)(A). <https://www.law.cornell.edu/uscode/text/19/1677>

U.S. authorities accepted the petition as “legally sufficient”⁵, and being representative of the industry in which the petitioner operates. U.S. tariff legislation – the U.S. Tariff Act of 1930, as amended – requires that petitions be filed *on behalf* of an industry; *inter alia*, the petition must be supported by producers or workers representing at least 25% of domestic production. Ventura Coastal, per the preliminary investigation by the Department of Commerce, is one of two operators in the U.S. market, and the larger of the two⁶.

An anti-dumping investigation that meets the initial filing criteria and is accepted by the U.S. authorities then triggers a 45-day period in which initial investigations are undertaken by the USITC; this includes industry surveys, limited hearings and the accepting the filing of briefs. The role of the USITC is to make the initial determination on whether there is material injury to the local industry, or a threat thereof, and ultimately a positive determination by both the Trade Commission as well as the Department of Commerce (Enforcement and Compliance division) would lead to Customs and Border Protection (U.S. Customs) to assess additional duties against such imports.

On 11 February 2022, the USITC voted to continue the investigation, finding in its preliminary investigation that there is a reasonable indication that there is material injury (or the threat thereof), or that the establishment of an industry is materially retarded by subject imports (South African and Brazilian lemon juice).⁷ The preliminary investigation also established that subject imports had grown to 28.1% of the import market in the 9-month period to September 2021, thus exceeding any negligibility criteria set out in the legislation⁸ which may otherwise have resulted in a possible early termination of the investigation. .

Which products have been identified as “subject imports”

This investigation covers lemon juice used for further manufacture, and generally used as an ingredient in other products; lemon juice typically sold in retail size containers for non-industrial use is excluded. Subject goods are described more narrowly as lemon juice with or without the addition of preservatives,

⁵ United States Tariff Act (1930). 19 U.S. Code Chapter 4. <https://www.law.cornell.edu/uscode/text/19/chapter-4>

⁶ Federal Register (2022). Department of Commerce, International Trade Division. Lemon Juice from Brazil and South Africa: Initiation of Less-Than-Fair-Value Investigations. Vol. 87, No. 16. https://www.usitc.gov/trade_remedy/731_ad_701_cvd/investigations/2021/Lemon%20Juice%20from%20Brazil%20and%20South%20Africa/Preliminary/notice_of_initiation_lemon_juice-ita.pdf

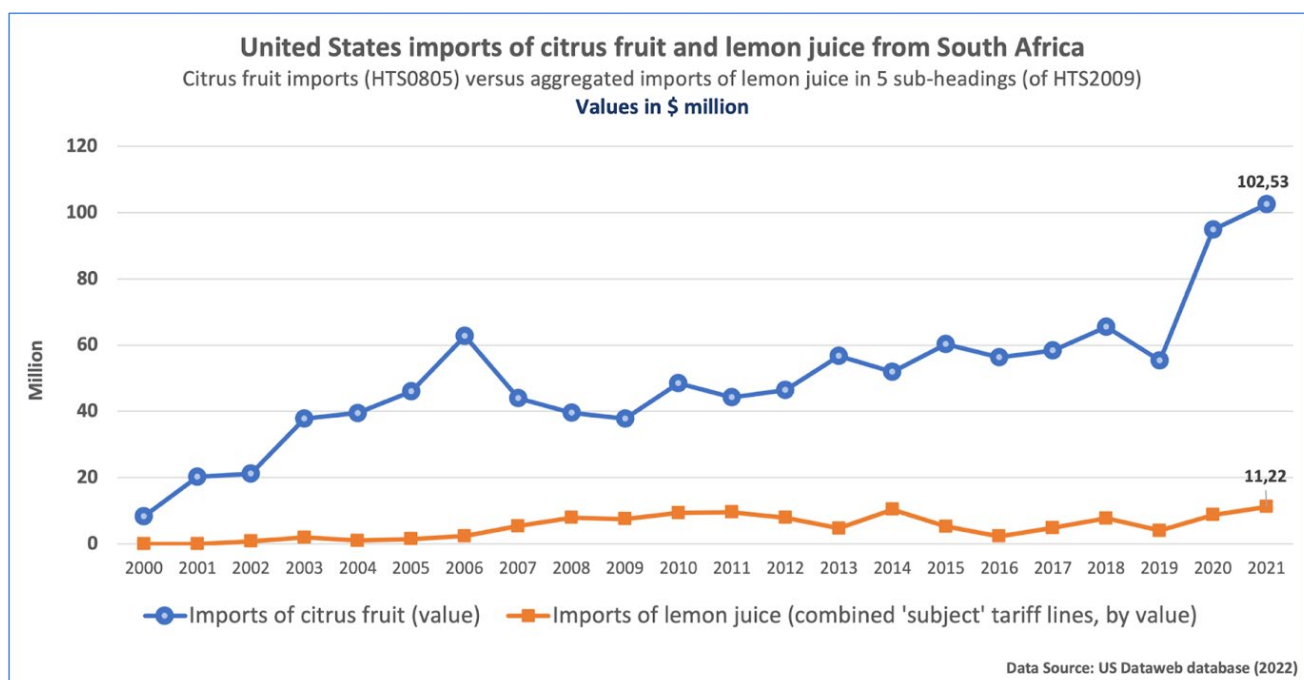
⁷ USITC (2022). Investigation Nos. 731-TA-1578-1579 (Preliminary). Federal Register Notice https://www.usitc.gov/secretary/fed_reg_notices/701_731/731_1578_notice_02152022sgl.pdf

⁸ United States Code. 19 U.S.C. § 1677(24). <https://www.law.cornell.edu/uscode/text/19/1677>

sugar or other sweeteners, regardless of the citric acid concentration, brix level, brix/acid ratio, pulp content, clarity, grade, horticulture method (for example whether organic or not), its processed form (for example whether frozen or reconstituted from concentrate), packaging method, and so forth. Also included is lemon juice that is blended with lemon juice from sources that are not subject to the investigation; only the component of this blended merchandise that originates in South Africa and Brazil is covered by the investigation.

South Africa’s exports of ‘subject goods’ to the U.S.

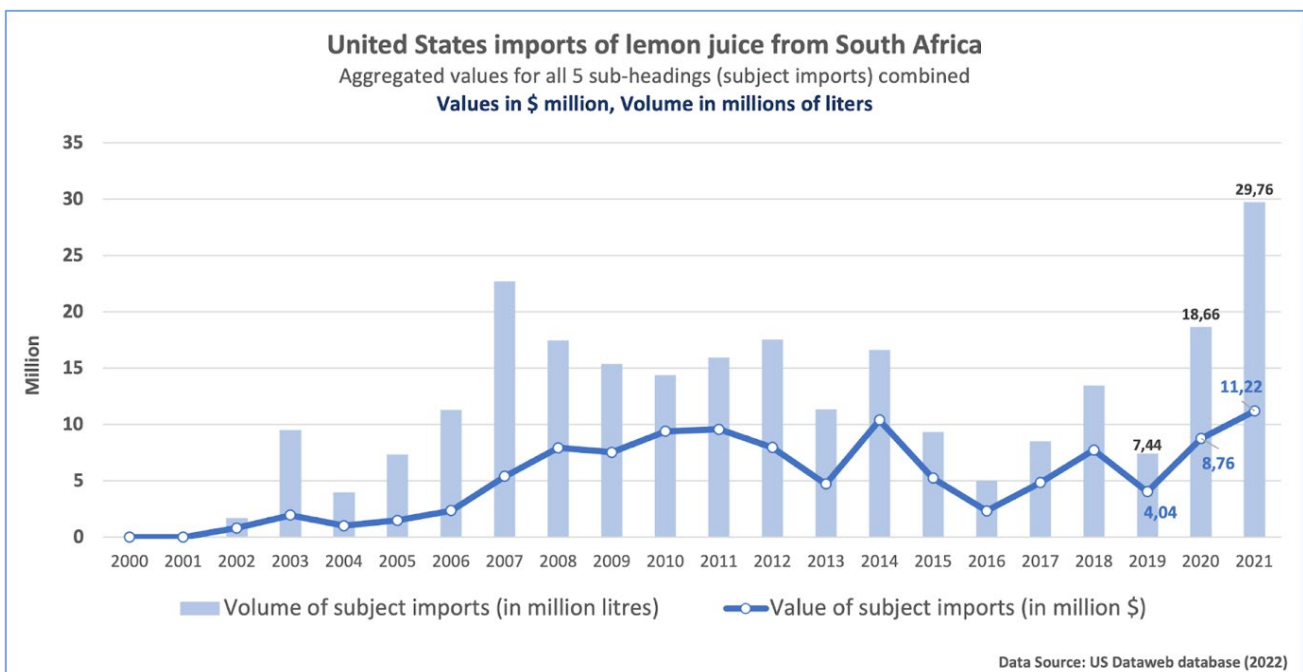
South Africa’s citrus exports to the U.S. achieved an all-time high in 2021; this applies to both the main category (citrus fruit classified under HTS 0805 – \$103m) as well as to lemon juice (\$11m). See the chart below. Despite the recent rise in lemon juice exports, this does however remain in the broad ballpark of exports over the past decade, notwithstanding a notable dip in the mid-2010s and again in 2019, just prior to the current period under investigation.



The U.S. investigation looks at the value and volume of lemon juice imported from South Africa, since both are elements in the assessment of average unit values and import market share. The following chart plots lemon juice imports in the subject tariff lines. Over the past two decades, the value and volume of U.S. imports from South Africa have broadly moved in a correlated way, albeit with exceptions. For example, in the 2011-2012 period, the volume increased while the overall value of

shipments decreased. However, one should be cautious before drawing any firm conclusions, not least because other variables may be having a significant impact on these values, for example currency movements (a depreciation in the South African exchange rate versus the US \$ would lower the nominal value of U.S. imports at each volume level) while input cost changes, harvest size and external (even global) competitive factors may also have an impact on selling prices.

During the most recent period, the trade data shows that U.S. imports of lemon juice rose rapidly in volume terms from 7.4m liters (2019) to 29.8m liters (2021) while the value of imports increased from \$4m (2019) to \$11.2m (2021). This roughly equals a fourfold increase in volume and a three-fold increase in value (U.S. \$) and suggests a significant decline in unit values over this period.



In terms of U.S. import market share, the USITC’s preliminary investigation made certain findings with respect to subject imports:

Variable	Period: 2020	Period: Jan-Sept 2021
Share of U.S. lemon juice imports from South Africa <u>by volume</u>	8.5%	13.7%
Combined import market share of South African and Brazilian lemon juice <u>by volume</u> in the U.S.	19.3%	28.1%
The share of lemon juice imported into the U.S. from South Africa, by value	6%	7.9%
Average unit value of lemon juice imported into the U.S. from South Africa (dollar per gallon)	\$15.07	\$12.19

AGOA status of ‘subject’ goods

U.S. importers sourcing South African-made lemon juice in the subject tariff lines are able to obtain these on a duty-free basis by virtue of South Africa’s AGOA eligibility status and each of these tariff lines qualifying for AGOA preferences⁹. This makes the product more competitive in the U.S. market relative to other countries’ goods, and avoids standard import tariffs of up to 7.9%. Products from Brazil would be subject to the standard U.S. import duties. U.S. importers of South African lemon juice actively utilize these preferences and have cleared 98% of South Africa-sourced lemon juice under AGOA since the preference program’s inception.

Outcome of the investigation so far

The U.S. anti-dumping investigation moved past the first substantial stage following the preliminary outcome announced by the USITC in February 2022, where the agency found there is a reasonable indication that the U.S. industry *“is materially injured by reason of imports of lemon juice from Brazil and South Africa... that are alleged to be sold in the United States at less than fair value (“LTFV”)”*¹⁰. The Commissioners were unanimous in this preliminary finding. The investigation reviewed the underlying legal standards, the competitive environment and business cycles of lemon juice production and trade, the volume and value of imports and price effects of subject imports, and other factors.

⁹ AGOA.info. AGOA product database tool. <https://agoa.info/about-agoa/products.html>

¹⁰ USITC (2022). Investigation Nos. 731-TA-1578-1579 (Preliminary). Federal Register Notice https://www.usitc.gov/secretary/fed_reg_notices/701_731/731_1578_notice_02152022sgl.pdf

Two parallel and interrelated processes are currently underway, one through the USITC and one by the U.S. Department of Commerce. One of the purposes of the initial USITC investigation (see full report¹¹) had been to establish whether there is a reasonable prospect that the local industry is being injured, or more specifically, that there are no compelling reasons that would prove that the industry is *not* being injured (or any material injury is not caused by subject imports but by other factors). In any case, none of the various factors being considered within this initial investigation are dispositive with respect to the overall outcome.

The USITC preliminary finding meant that the investigation entered its next stage (had there been a negative determination, the investigation would have been terminated), and the Department of Commerce investigation is now expected to deliver a preliminary anti-dumping determination on or around 29 July 2022, a deviation through extension from the standard date in early June¹².

What happens when the U.S. Commerce Department makes a preliminary determination in June 2022?

A **positive** determination by the Commerce Department will have immediate and significant impacts: the dumping margin (the margin between export price or constructed export price and normal value, reflecting the amount by which subject goods are considered to be sold at less than fair value) would result in equivalent provisional duties being imposed on subject imports. Different dumping margins may apply to the South African and Brazilian exporters. These would from this date onwards need to be paid by importers as guarantees in cash or bond.

For any rational decision maker in business, this would effectively be considered the new price level and have serious consequences, especially when alternative supply sources can be found. The current uncertainty may already have and be impacting purchasing and other business decisions. While the petitioner alleged a dumping margin of 128.61%, the preliminary investigation adjusted this downwards to 97.15%, still a prohibitive margin. The Commerce preliminary results announcement expected by end July – if positive – could however significantly adjust this margin downwards - or indeed upwards.

If this effectively prices 'subject' goods out of the U.S. market, South African producers will likely have to find other purposes and markets for their lemon juice. Since lemon juice does not have to be sold

¹¹ USITC (2022). Lemon Juice from Brazil and South Africa. Investigation Nos. 731-TA-1578-1579 (Preliminary). Publication 5284. https://www.usitc.gov/publications/701_731/pub5284.pdf

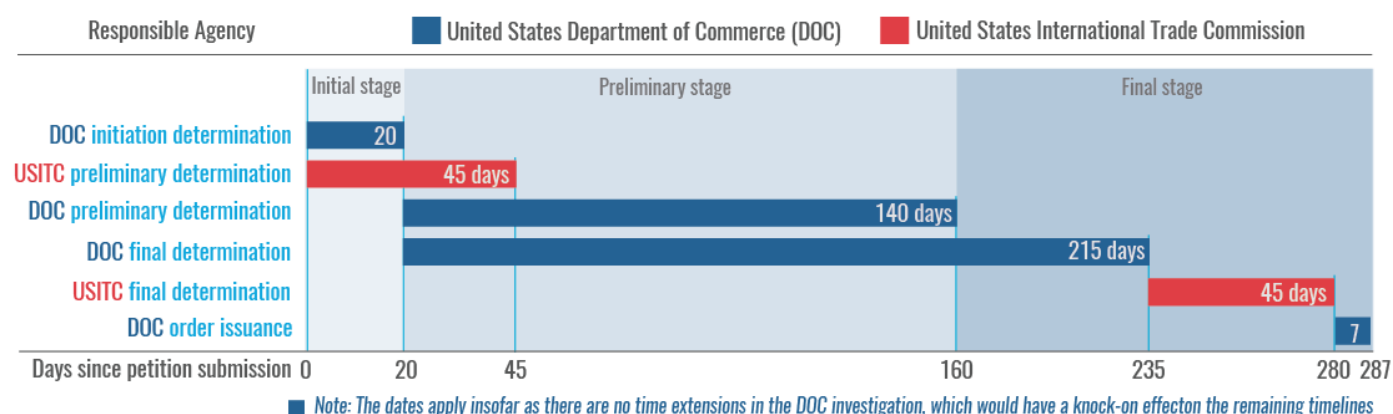
¹² Department of Commerce (2022). International Trade Administration. Case #A-791-827 AD/CVD Case Search Portal <https://beta.trade.gov/adcvd?adcvdcase=A-791-827>

within the same timeframe as, say, fresh fruit (lemon juice can be preserved in a frozen state for a much longer time period, even years), there will likely still be a significant quantity of stock that needs to find new buyers sooner rather than later. As the pressure to find new buyers in established or new markets accelerates, especially with a full South African growing season still ahead, there is the very real risk that a surge in exports into other markets could create similar issues elsewhere (and this in turn may lead to further trade remedy action against South African exports).

Already, South African citrus continues to be in the spotlight in the EU. On Friday 20 May the European Commission unexpectedly shelved a vote that could have imposed special measures – already agreed in draft form – on South African citrus exports in order to combat the potential spread of ‘False Codling Moth’¹³. This would have required costly and lengthy (if not logistically impractical) cold-treatment of citrus prior to being accepted for shipment to the EU.

Final steps

The U.S. Tariff Act of 1930 (as amended) established legislation that provides extensive protection to U.S. businesses under a range of circumstances and events. The legislation prescribes many of the trade governance timeframes and some of the methodologies for conducting such investigations.



As mentioned above, the next significant stage is the *preliminary* determination of the Department of Commerce investigation, which may result in a positive or negative determination on dumping. A

¹³ FruitNet portal (2022). Spanish lobby group accuses Commission of betrayal after it withdraws key vote on new rules. <https://www.fruitnet.com/eurofruit/eu-halts-plans-for-cold-treatment-on-rsa-citrus-imports/246341.article>

negative determination would effectively conclude the process, a positive determination triggers immediate duties (or equivalent deposits) from importers of subject goods.

The process then enters the next phase whereby the Department of Commerce conducts its final investigation into subject sales at LTFV, a process that includes public hearings, verification and the opportunity for additional inputs. A negative determination again terminates the process, while a positive determination results in (revised) provisional anti-dumping duties in line with the determination made in its final investigation.

After this, the USITC is allowed time to conclude its final injury investigation, a process that also involves hearings, questionnaires and the opportunity for further inputs and briefs. This should conclude within 45 days of the final Commerce determination, but may be extended by an additional month; it eventually culminates in a final determination and publication (in the Federal Register) of the antidumping order and associated tariffs on subject goods.

Trade remedies such as anti-dumping duties are usually imposed for a period of 5 years, when a sunset review is undertaken and which may result in tariffs being abolished or extended. There may also be interim reviews, which may temporarily suspend the action if (for example) a separate agreement is concluded with exporters in the subject countries, which could set lower price limits (price floors) on subject imports. This is presently the situation with lemon juice exports from Argentina, with anti-dumping action suspended but specific industry agreements in force.

In any case, while South African citrus exports to the U.S. (and elsewhere) have been booming, the case highlights how sales into an export market can have consequences especially when domestic industries in import markets feel that they have been materially injured as a result of such imports.

