A-201-845
Suspension Agreement – Admin Review
POR: 12/1/17-11/30/2018
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January 31, 2020

MEMORANDUM TO: Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

FROM: Carole Showers
Acting Deputy Assistant Secretary
for Policy & Negotiations
Enforcement & Compliance

SUBJECT: Issues and Decision Memorandum for the Preliminary Results of the Administrative Review of the Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico, as Amended, for the period December 1, 2017, through November 30, 2018

I. SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the current status of, and compliance with, the Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico (AD Agreement), as amended on June 30, 2017 (collectively, amended AD Agreement), for the December 1, 2017, through November 30, 2018 period of review (POR) when such amended AD Agreement was in effect. Commerce has reviewed the current status of the amended AD Agreement and compliance with the amended AD Agreement. For the reasons stated in this memorandum, Commerce preliminarily determines that the respondents selected for individual examination were in compliance with the amended AD Agreement in effect during the POR and that the amended AD Agreement was meeting the statutory requirements under sections 734(c) and (d) of the Tariff Act of 1930, as amended (the Act).

The following is a list of issues discussed in this memorandum:

1. The Administrative Review is Not Moot
2. Compliance with Section VI of the Amended AD Agreement (Elimination of 85 Percent of Dumping)
3. Reporting Concerns Regarding the Terms of Certain Transactions

II. SCOPE OF THE AGREEMENT

The product covered by this amended AD Agreement is raw and refined sugar of all polarimeter readings derived from sugar cane or sugar beets. The chemical sucrose gives sugar its essential character. Sucrose is a nonreducing disaccharide composed of glucose and fructose linked by a glycosidic bond via their anomeric carbons. The molecular formula for sucrose is C12H22O11; the International Union of Pure and Applied Chemistry (IUPAC) International Chemical Identifier (InChl) for sucrose is 1S/C12H22O11/c13-l-4-6(16)8(18)9(19)11(21-4)23-12(3-15)10(20)7(17) 5(2-14)22-12/h4-11,13-20H,1-3H2/t4-,5-,6-,7-,8+,9-,10+,11-,12+/m1/s1; the InChl Key for sucrose is CZMRCDWAGMRECN-UGDNZRGBSA-N; the U.S. National Institutes of Health PubChem Compound Identifier (CID) for sucrose is 5988; and the Chemical Abstracts Service (CAS) Number of sucrose is 57-50-1.

Sugar described in the previous paragraph includes products of all polarimeter readings described in various forms, such as raw sugar, estandar or standard sugar, high polarity or semi-refined sugar, special white sugar, refined sugar, brown sugar, edible molasses, desugaring molasses, organic raw sugar, and organic refined sugar. Other sugar products, such as powdered sugar, colored sugar, flavored sugar, and liquids and syrups that contain 95 percent or more sugar by dry weight are also within the scope of this AD Agreement.

The scope of the amended AD Agreement does not include (1) sugar imported under the Refined Sugar Re-Export Programs of the U.S. Department of Agriculture; (2) sugar products produced in Mexico that contain 95 percent or more sugar by dry weight that originated outside of Mexico; (3) inedible molasses (other than inedible desugaring molasses noted above); (4) beverages; (5) candy; (6) certain specialty sugars; and (7) processed food products that contain sugar (e.g., cereals). Specialty sugars excluded from the scope of this AD Agreement are limited to the following: caramelized slab sugar candy, pearl sugar, rock candy, dragees for cooking and baking, fondant, golden syrup, and sugar decorations.

Merchandise covered by this amended AD Agreement is typically imported under the following headings of the HTSUS: 1701.12.1000, 1701.12.5000, 1701.13.1000, 1701.13.5000, 1701.14.1000, 1701.14.5000, 1701.91.1000, 1701.91.3000, 1701.99.1010, 1701.99.1025, 1701.99.1050, 1701.99.5010, 1701.99.5025, 1701.99.5050, and 1702.90.4000. The tariff classification is provided for convenience and customs purposes; however, the written description of the scope of this amended AD Agreement is dispositive.

III. BACKGROUND

On December 19, 2014, Commerce signed an agreement under section 734(c) of Act with a representative of Mexican producers/exporters accounting for substantially all imports of sugar from Mexico, suspending the antidumping duty (AD) investigation on sugar from Mexico.[1]

[1] *See Sugar from Mexico: Suspension of Antidumping Duty Investigation,* 79 FR 78039 (December 29, 2014) (AD Agreement).

On June 30, 2017, Commerce and a representative of the Mexican sugar producers/exporters accounting for substantially all imports of sugar from Mexico signed an amendment to the AD Agreement (2017 AD Amendment).[2]

On December 4, 2017, Commerce published a notice of opportunity to request an administrative review of the amended AD Agreement.[3] On December 26, 2018, the American Sugar Coalition and its Members[4] (petitioners) filed a timely request for an administrative review of the amended AD Agreement.[5] On January 28, 2019, Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018, through the resumption of operations on January 29, 2019.[6] On February 12, 2019, petitioners renewed their request for an administrative review of the amended AD Agreement.[7] On March 14, 2019, Commerce initiated an administrative review for the December 1, 2017, through November 30, 2018, POR.[8]

On March 18, 2019, Commerce placed import data obtained from U.S. Customs and Border Protection (CBP) on the record of the proceeding to assist in respondent selection,[9] and interested parties filed comments on respondent selection for the AD review.[10] On May 6, 2019, Commerce selected mandatory respondents and issued its questionnaire to the selected respondent companies (and their affiliates) in alphabetical order:[11] Ingenio Aldolfo Lopez Mateos S.A. de C.V. (Grupo PIASA) and Ingenio Pánuco S.A.P.I de C.V. (Pánuco). These two companies represented the largest producers/exporters/signatories of subject merchandise imported into the United States during the POR.

[2] *See Sugar From Mexico: Amendment to the Agreement Suspending the Antidumping Duty Investigation,* 82 FR 31945 (July 11, 2017) (AD Amendment).
[3] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 83 FR 62293 (December 3, 2018).
[4] The members of the American Sugar Coalition are as follows: American Sugar Cane League, American Sugarbeet Growers Association, American Sugar Refining, Inc., Florida Sugar Cane League, Rio Grande Valley Sugar Growers, Inc., Sugar Cane Growers Cooperative of Florida, and the United States Beet Sugar Association.
[5] *See* Letter to Wilbur Ross, Secretary of Commerce, from American Sugar Coalition and its Members, "Sugar from Mexico: Request for Administrative Review" (December 26, 2018).
[6] *See* Memorandum to the Record, "Deadlines Affected by the Partial Shutdown of the Federal Government" (January 28, 2019). All deadlines in this segment of the proceeding have been extended by 40 days.
[7] *See* Letter to Wilbur Ross, Secretary of Commerce, from American Sugar Coalition and its Members, "Sugar from Mexico: Resubmission of Request for Administrative Review" (February 12, 2019).
[8] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 84 FR 9297 (March 14, 2019).
[9] *See* Memorandum to the File, "Administrative Review of the Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico, as Amended: Placement of CBP Data on the Record for Respondent Selection" (March 18, 2019).
[10] *See* Letter to Wilbur Ross, Secretary of Commerce, from the American Sugar Coalition and its Members, "Sugar from Mexico: Comments on Respondent Selection" (March 28, 2019); *see also* Letter to Wilbur Ross, Secretary of Commerce, from Cámara Nacional de las Industrias Azucarera y Alcoholera, "Sugar from Mexico – Comments on CBP Data" (March 28, 2019)**;** Letter to Wilbur Ross, Secretary of Commerce, from Cámara Nacional de las Industrias Azucarera y Alcoholera, "Sugar from Mexico – Rebuttal *Comments on Respondent Selection*" (April 4, 2019); Letter to Wilbur Ross, Secretary of Commerce, from the American Sugar Coalition and its Members, "Sugar from Mexico: Reply to Camara's Rebuttal Comments on Respondent Selection" (April 12, 2019).
[11] *See* Memorandum to P. Lee Smith "2018 Administrative Review of the Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico As Amended: Respondent Selection" (May 6, 2019).

On June 27, 2019, Pánuco filed its response to the producer/exporter questionnaire,[12] and Grupo PIASA filed its response to the questionnaire on June 28, 2019.[13] On July 10, 2019, petitioners submitted comments on Pánuco's questionnaire response,[14] to which Pánuco replied on July 17, 2019.[15] Petitioners also submitted comments on Grupo PIASA's questionnaire response on July 11, 2019,[16] to which Grupo PIASA replied on July 18, 2019.[17]

Commerce issued supplemental questionnaires to the respondents, Pánuco and Grupo PIASA, on September 6, 2019.[18] After Commerce granted three extensions,[19] the respondents timely filed their supplemental questionnaire responses on October 10, 2019.[20] Petitioners submitted comments on Pánuco's and Grupo PIASA's questionnaire responses on December 11, 2019.[21] On January 9, 2020, petitioners submitted pre-preliminary comments.[22] On January 24, 2020, respondents submitted a response to the petitioners' pre-preliminary comments.[23]

IV. DISCUSSION OF THE ISSUES

Issue 1: The Administrative Review is Not Moot

[12] *See* Letter to Wilbur Ross, Secretary of Commerce, from Pánuco, "Sugar from Mexico – *Questionnaire Response*" (June 27, 2019) (Pánuco's Response).
[13] *See* Letter to Wilbur Ross, Secretary of Commerce, from Grupo PIASA, "Sugar from Mexico – *Questionnaire Response*" (June 28, 2019) (Grupo PIASA Response).
[14] *See* Letter to Wilbur Ross, Secretary of Commerce, from the American Sugar Coalition and its Members, "Sugar from Mexico: Comments on Pánuco's Questionnaire Response" (July 10, 2019)
[15] *See* Letter to Wilbur Ross, Secretary of Commerce, from Pánuco, "Sugar from Mexico – *Response to Petitioners' Comments dated July 10, 2019*" (July 17, 2019).
[16] *See* Letter to Wilbur Ross, Secretary of Commerce, from the American Sugar Coalition and its Members, "Sugar from Mexico: Comments on Grupo Piasa's Questionnaire Response" (July 11, 2019).
[17] *See* Letter to Wilbur Ross, Secretary of Commerce, from Pánuco, "Sugar from Mexico – *Response to Petitioners' Comments dated July 11, 2019*" (July 18, 2019).
[18] *See* Letter to Grupo PIASA, from Sally C. Gannon, Director for Bilateral Agreements, "Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico: 2018 Administrative Review — Supplemental Questionnaire" (September 6, 2019); Letter to Pánuco, from Sally C. Gannon, Director for Bilateral Agreements, "Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico: 2018 Administrative Review — Supplemental Questionnaire" (September 6, 2019).
[19] *See* Letter to Grupo PIASA and Pánuco, from Sally C. Gannon, Director for Bilateral Agreements, "Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico; Reply to Third Extension Requests" (October 3, 2019).
[20] *See* Letter to Wilbur Ross, Secretary of Commerce, from Grupo PIASA, "Sugar from Mexico – *Grupo PIASA's Supplemental Questionnaire Response*" (October 10, 2019) (Grupo PIASA Supplemental Response); Letter to Wilbur Ross, Secretary of Commerce, from Pánuco, "Sugar from Mexico – *Panuco's Supplemental Questionnaire Response*" (October 10, 2019) (Pánuco Supplemental Response).
[21] *See* Letter to Wilbur Ross, Secretary of Commerce, from the American Sugar Coalition and Its Members, "Sugar from Mexico: Comments on Panuco's and Grupo Piasa's Supplemental Questionnaire Responses" (December 11, 2019) (Deficiency Comments II).
[22] *See* Letter to Wilbur Ross, Secretary of Commerce, from the American Sugar Coalition and Its Members, "Sugar from Mexico (4th Administrative Review): Pre-Preliminary Results Comments" (January 9, 2020) (Petitioners' Pre-Prelim Comments).
[23] *See* Letter to Wilbur Ross, Secretary of Commerce, from Grupo PIASA and Pánuco, "Sugar from Mexico – Response to Petitioners' Pre-Preliminary Comments dated January 9, 2019" (January 24, 2020). Commerce considered these comments for the preliminary determination but did not summarize them because the comments were submitted close to the deadline for the preliminary determination.

Petitioners' Arguments

- The administrative review examines the respondents' compliance with the law in effect at the time.[24]
- The post-POR termination of the 2017 AD Amendment does not change the respondents' obligations during the POR.[25]
- Certain obligations of the respondents have existed under all forms of the suspension agreement.[26]

Respondents' Arguments

- The current administrative review focuses on compliance with the terms of the 2017 AD Amendment, which has been vacated.[27] Therefore, the review is moot and rescission is appropriate.[28]
- Commerce previously rescinded administrative reviews under similar circumstances when the underlying suspension agreement was being renegotiated.[29]

Commerce's Position

For administrative reviews of suspension agreements, Commerce is tasked with examining "the current status of" and "compliance with" the suspension agreement.[30] Respondents suggest that the review is moot because the 2017 AD Amendment has been vacated. We disagree that the review is moot for several reasons.

As an initial matter, respondents incorrectly characterize the administrative review as a review of the "vacated 2017 AD Amendment."[31] In accordance with the requirements of the statute, the administrative review examines the "current status of" and "compliance with" the suspension agreement.[32] Certain provisions being examined in the review, *e.g.*, compliance with Section IV of the amended AD Agreement (elimination of 85 percent of dumping), have been obligations of the respondents in every iteration of the AD Agreement. The administrative review, therefore, continues to examine certain of the respondents' obligations during the POR that are still in effect.

The review is not moot because it still may have legal effect. Administrative reviews of suspension agreements, like other administrative reviews, are retrospective.[33] In other words, this administrative review examines the circumstances and obligations in effect during the period

[24] *See* Petitioners' Pre-Prelim Comments at 2.
[25] *Id*. at 3.
[26] *Id*.
[27] *See* Respondents' Pre-Prelim Response at 2.
[28] *Id*.
[29] *Id*.
[30] *See* section 751(a)(1)(C) of the Act.
[31] *See* Respondents' Pre-Prelim Response at 2.
[32] *See* section 751(a)(1)(C) of the Act.
[33] *See generally* 19 CFR 351.213(a).

of review. Furthermore, the results of the administrative review can still have an effect on the rights and obligations of the parties. For example, section 734(i) of the Act states that if Commerce determines a suspension agreement "is being, *or has been*, violated" (emphasis added) then it shall terminate the suspension agreement. Therefore, violations of the terms of the 2017 AD Amendment, if uncovered in this administrative review, could result in termination of the entire suspension agreement. We emphasize, though, that we have not found any such noncompliance or violations in the preliminary results of this review.

Even in the absence of violations, administrative reviews of suspension agreements serve important purposes. The close scrutiny of an administrative review allows Commerce to identify and correct potential noncompliance with the terms of the suspension agreement. Furthermore, the administrative review provides Commerce valuable information about respondents' behavior under the 2017 AD Amendment while it was in effect. Such information can be probative of the respondents' future behavior under the current terms of the suspension agreement.

Lastly, respondents point out that Commerce has previously rescinded administrative reviews under similar circumstances. The rescissions to which respondents refer are distinguishable from this case. In 2017, we rescinded two administrative reviews stating that "{Commerce} intends to terminate the AD Agreement, or, in the alternative, amend the AD Agreement prior to the expiration of the termination period."[34] In this case, we have not announced any intention to terminate the AD Agreement. Furthermore, a significant focus of the rescinded reviews was whether the suspension agreement was meeting the statutory requirements — the amendment that Commerce sought at the time was intended to cure the statutory defects in the original AD Agreement.[35] Rescission was proper in those circumstances because the administrative reviews could have no further legal effect — Commerce already announced its intent to terminate or revise the original AD Agreement.

Issue 2: Compliance with Section VI of the Amended AD Agreement (Elimination of 85 Percent of Dumping)

<u>Petitioners' Arguments</u>

- Respondents calculated normal value with certain sales that cannot be used as a basis for normal value.[36]

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[34] *See Antidumping Suspension Agreement on Sugar From Mexico: Rescission of 2014–2015 and 2015–2016 Administrative Reviews*, 82 FR 26914 (June 12, 2017).
[35] *See*, *e.g.*, Attachment 1: Letter to Penny S. Pritzker, Secretary of Commerce, from the American Sugar Coalition, "Sugar from Mexico: Petitioners' Comments in Advance of the Department's Preliminary Results" (October 28, 2016); Attachment 2: Memorandum for Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, "Amendment to the Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico: U.S. Import Coverage, Existence of Extraordinary Circumstances, Public Interest, and Effective Monitoring Assessments" (August 7, 2017).
[36] *Id*. at 5.

- Certain sales that respondents used to calculate normal value are outside the ordinary course of trade.[37]
- Home market comparisons should have the same physical characteristics as the export sales being evaluated; therefore, there should be a match with respect to polarity.[38]

Respondents' Arguments

- Based on Commerce's normal practice, the sales in question may be used to calculate normal value.[39]

Commerce's Position

We preliminarily determine that the respondents were in compliance with section VI of the amended AD Agreement (elimination of 85 percent of dumping) during the POR. We preliminarily find the information submitted by the respondents sufficient to make this determination. However, we intend to continue examining the issues discussed below, and we intend to issue a post-preliminary analysis if necessary.

Analyzing petitioners' arguments regarding the basis for normal value requires a detailed discussion of business proprietary information. We therefore address these issues in a separate, business proprietary memorandum for each respondent.[40] We preliminarily determine that the sales in question may be used to calculate normal value. Additionally, we preliminarily find that there is insufficient evidence to determine that the sales are outside the ordinary course of trade. Accordingly, the sales may be used as a proper basis for normal value.

We agree with petitioners that the merchandise used in home market comparisons should have comparable physical characteristics to the merchandise used in the export sales being evaluated. Accordingly, Commerce intends to gather additional information and further analyze compliance with section VI of the amended AD Agreement in a post-preliminary analysis if necessary.

Issue 3: Reporting Concerns Regarding the Terms of Certain Transactions

Petitioners' Arguments

- The terms according to which Pánuco and Grupo PIASA engage in certain transactions are unclear.[41]

Commerce's Position

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[37] *Id*.
[38] *Id*. at 7.
[39] *See* Grupo PIASA Supplemental Response at 7-8; Pánuco's Supplemental Response at 9.
[40] *See* Memorandum to the File, "Analysis of Proprietary Information and Argument Regarding Ingenio Aldolfo Lopez Mateos S.A. de C.V. and Its Affiliates" (January 31, 2020) (Grupo PIASA Proprietary Memorandum); Memorandum to the File, "Analysis of Proprietary Information and Argument Regarding Ingenio Pánuco, S.A.P.I. de C.V." (January 31, 2020)(Pánuco Proprietary Memorandum).
[41] Petitioners' Pre-Prelim Comments at 7-8.

The transactions to which petitioners refer are business proprietary in nature. We agree, however, that the impact of these transactions, if any, is unclear. For these reasons, we intend to gather additional information and further address this issue in a post-preliminary analysis if necessary.

Preliminary Results of Review

For administrative reviews of suspension agreements, Commerce is tasked with examining "the current status of" and "compliance with" the suspension agreement.[42] Although interested parties did not comment on many issues related to compliance, we nevertheless examine these issues as part of the administrative review.

A. Compliance with Section VI, and the Reference Prices in Appendix I, of the Amended AD Agreement

We preliminarily determine that the respondents complied with the reference price provisions of the amended AD Agreement, which were in effect during the POR. Both Pánuco and Grupo PIASA submitted a U.S. sales listing as part of their initial questionnaire responses.[43] Grupo PIASA provided supporting documentation in its initial response and its supplemental response.[44] Pánuco also provided supporting documentation in its responses to Commerce's questionnaires.[45] Commerce reviewed this information and did not find discrepancies in the documentation or noncompliance with the applicable reference price provisions of the amended AD Agreement.

B. Compliance with the Polarity Testing Requirements

We preliminarily determine that the respondents have complied with the polarity testing requirements of the amended AD Agreement, which were in effect during the POR. Commerce compared the information submitted in the U.S. sales databases of Grupo PIASA and Pánuco with the polarity testing documentation on the record of the suspension agreement. We did not find any significant discrepancies regarding the polarity testing documentation. The testing documentation, which is proprietary, is collected and placed on the record of the administrative review through the respective business proprietary memoranda for Pánuco and Grupo PIASA.[46]

C. Other Statutory Requirements

We preliminarily determine that the amended AD Agreement met the other requirements of the statute, including the prevention of price suppression or undercutting and the public interest requirement, during the POR. No interested parties have commented on these issues on the record of this review thus far. At this time, we did not find any evidence on the record of this

[42] *See* section 751(a)(1)(C) of the Act.
[43] *See* Grupo PIASA Response at Exhibit AD-8; Pánuco's Response at Exhibit AD-9.
[44] *See* Grupo PIASA Response at Exhibit AD-7; Grupo PIASA Supplemental Response at Exhibits SAD-9 and SAD-10.
[45] *See* Pánuco's Response at Exhibit AD-7; Pánuco's Supplemental Response at Exhibits SAD-6, SAD-7, and SAD-8.
[46] *See* Grupo PIASA Proprietary Memorandum at Attachment 2; Pánuco Proprietary Memorandum at Attachment 2.

review indicating that the amended AD Agreement failed to meet these statutory requirements during the POR.

Recommendation

Based on the discussion above, we recommend preliminarily determining that the respondents were in compliance with the reference price provisions and polarity testing provisions of the amended AD Agreement in effect during the POR. We also recommend preliminarily determining that the amended AD Agreement prevented price suppression or undercutting during the POR. Further, we recommend gathering more information regarding compliance with section VI of the amended AD Agreement and gathering more information regarding the data reporting issues identified in this memorandum. If this recommendation is accepted, we will publish the preliminary results of the review in the *Federal Register*.

Agree __X__ Disagree ____

1/31/2020

X

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

ATTACHMENT 1

CASSIDY LEVY KENT (USA) LLP
2000 Pennsylvania Avenue, N.W., Suite 3000
Washington, D.C. 20006

ROBERT C. CASSIDY, JR.
rcassidy@cassidylevy.com

202.567.2302 (Direct)
202.567.2301 (Telecopy)

October 28, 2016

VIA ELECTRONIC FILING

The Honorable Penny S. Pritzker
Secretary of Commerce
Attention: Enforcement and Compliance
Room 1870
U.S. Department of Commerce
14th Street and Constitution Avenue, N.W.
Washington, DC 20230

DOC Case No.: A-201-845
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POR: 12/19/2014 – 11/30/2015
Office of Policy & Negotiations,
Enforcement & Compliance

Business Proprietary Information Removed from Pages i, 2, 4-20, 22.

PUBLIC VERSION

Re: Sugar from Mexico: Petitioners' Comments in Advance of the Department's *Preliminary Results*

Dear Secretary Pritzker:

On behalf of the American Sugar Coalition and its members[1] ("Petitioners"), we hereby submit the following comments in advance of the Department's *Preliminary Results* of the instant administrative review.

We hereby request proprietary treatment for the information contained in brackets in this submission pursuant to 19 C.F.R. § 351.303 because this information has been designated as proprietary by the mandatory respondents to this review. Pursuant to the Department's one-day

[1] The Members of the American Sugar Coalition are as follows: American Sugar Cane League, American Sugarbeet Growers Association, American Sugar Refining, Inc., Florida Sugar Cane League, Rio Grande Valley Sugar Growers, Inc., Sugar Cane Growers Cooperative of Florida, and the United States Beet Sugar Association.

lag rule, the initial proprietary version of this submission was filed on Friday and a final version containing any changes to the bracketing of proprietary information will be filed today under separate cover.

Please do not hesitate to contact the undersigned with any questions or concerns regarding this submission.

Respectfully submitted,

/s/ Robert C. Cassidy, Jr.

Patrick Edwards
Deirdre Maloney
Angelica Townshend
International Trade Advisors

Robert C. Cassidy, Jr.
Charles S. Levy
James R. Cannon, Jr.
Jonathan M. Zielinski
Thomas M. Beline
CASSIDY LEVY KENT (USA) LLP
Counsel for Petitioners

REPRESENTATIVE CERTIFICATION

I, Jonathan M. Zielinski, with Cassidy Levy Kent (USA) LLP, counsel to the American Sugar Coalition, certify that I have read the attached submission, *"Sugar from Mexico: Petitioners' Comments in Advance of the Department's Preliminary Results"* dated October 28, 2016 pursuant to the Administrative Review of the Suspension Agreement suspending the Antidumping Duty Investigation on Sugar from Mexico (A-201-845). In my capacity as counsel of this submission, I certify that the information contained in this submission is accurate and complete to the best of my knowledge. I am aware that U.S. law (including, but not limited to, 18 U.S.C. 1001) imposes criminal sanctions on individuals who knowingly and willfully make material false statements to the U.S. Government. In addition, I am aware that, even if this submission may be withdrawn from the record of the AD proceeding, the U.S. Department of Commerce may preserve this submission, including a business proprietary submission, for purposes of determining the accuracy of this certification. I certify that a copy of this signed certification will be filed with this submission to the U.S. Department of Commerce.

Signature:

Date: 10-28-16

PUBLIC CERTIFICATE OF SERVICE

I hereby certify on October 31, 2016 that a copy of the foregoing submission is being served via email or *first class U.S. mail on the following parties:

Jeffrey S. Grimson, Esq.
Mowry & Grimson, PLLC
5335 Wisconsin Ave, NW
Suite 810
Washington, DC 20015

Meghan A. Davidson, Esq.
Davidson Law Group, P.A.
7950 NW 53rd Street
Suite 337
Miami, FL 33166

Gregory J. Spak
White & Case LLP
701 Thirteenth Street, N.W.
Washington, DC 20005-3807

Matthew R. Nicely, Esq.
Hughes Hubbard & Reed LLP
1775 I Street, NW
Washington, DC 20006-2401

Rosa S. Jeong, Esq.
Greenberg Traurig LLP
2101 L Street, NW
Suite 1000
Washington, DC 20037

Aristeo Lopez, Esq.
Legal Counsel for International Trade
Representative of Government of Mexico
Embassy of Mexico
1911 Pennsylvania Ave., NW
Washington, DC 20006

John R Magnus, Esq.
Tradewins LLC
1333 New Hampshire Ave., NW
11th Floor
Washington, DC 20036

Stephan E. Becker, Esq.
Pillsbury Winthrop Shaw Pittman LLP
1200 Seventeenth Street, NW
Washington, DC 20036

Thomas Wilner, Esq.
Shearman & Stering LLP
401 9th Street, NW
Washington, DC 20004

Paul Farmer
President
CSC Sugar LLC
36 Grove Street
New Canaan, CT 06840

Richard E. Pasco, Esq.
Sweetener Users Association
One Massachusetts Ave., NW
Suite 800
Washington, DC 20001

*Manuel "Manny" Sanchez
Sanchez Daniels & Hoffman LLP
333 West Wacker Drive
Suite 500
Chicago IL 60606

/s/ Allison Hollander
Allison Hollander

PUBLIC VERSION

BUSINESS PROPRIETARY DATA SUBJECT TO PROTECTIVE ORDER IS REMOVED FROM BRACKETS ON PAGES i, 2, 4-20, and 22.

In the Matter of:

ADMINISTRATIVE REVIEW OF THE AGREEMENT SUSPENDING THE ANTIDUMPING DUTY INVESTIGATION ON SUGAR FROM MEXICO

PUBLIC VERSION

PRELIMINARY RESULTS COMMENTS BY THE AMERICAN SUGAR COALITION

Deirdre Maloney
Patrick Edwards
Angelica L. Townshend
International Trade Advisors

Robert C. Cassidy
Charles S. Levy
James R. Cannon Jr.
Jonathan M. Zielinski
CASSIDY LEVY KENT (USA) LLP
2000 Pennsylvania Avenue, NW
Suite 3000
Washington, DC 20006
202.567.2318

October 28, 2016

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BEFORE THE INTERNATIONAL TRADE ADMINISTRATION
U.S. DEPARTMENT OF COMMERCE

In the Matter of:

ADMINISTRATIVE REVIEW OF THE AGREEMENT SUSPENDING THE ANTIDUMPING DUTY INVESTIGATION ON SUGAR FROM MEXICO

PUBLIC VERSION

PRELIMINARY RESULTS COMMENTS
BY THE AMERICAN SUGAR COALITION

On behalf of The American Sugar Coalition, we herein address the preliminary results currently scheduled to be made on November 4, 2016. The record information collected to date establishes that the Agreement Suspending the Antidumping Duty Investigation of Sugar from Mexico[1] is being violated by exporters and importers of sugar from Mexico, and otherwise is not eliminating the injurious effects of dumped sugar imports. Moreover, the responses filed by Mexican exporters are incomplete, unsupported, and do not provide a sufficient basis for evaluating Mexico's compliance. For these reasons, the Department of Commerce should terminate the *AD Agreement* and issue an antidumping duty order on imports of sugar from Mexico at the rates established in the original investigation.

[1] *Sugar From Mexico: Suspension of Antidumping Investigation*, 79 Fed. Reg. 78,039 (Dep't of Commerce Dec. 29, 2014) ("*AD Agreement*").

I. INTRODUCTION

The *AD Agreement* has failed to achieve its statutory objective to eliminate the injurious effect of Mexican sugar imports within the meaning of Section 734(c) of the Tariff Act of 1930, as amended (the "Act"). The record in this first administrative review establishes that the current *AD Agreement* is not in the public interest and effective monitoring of Mexican sugar imports is not practicable within the meaning of Section 734(d) of the Act. In large measure, the *AD Agreement* has failed because of a lack of compliance by Mexican exporters with the terms of the *AD Agreement*. To the extent the record evidence submitted by the respondents can be read coherently, it indicates that there are widespread violations of the requirement to follow Mexican export rules. Otherwise, the respondents have not provided the information necessary for the Department to properly determine their level of compliance. Overall, it is not possible to confirm whether the reference prices listed in the *AD Agreement* are being followed.

As demonstrated below, Fideicomiso Ingenio San Cristobal ("San Cristobal"), its affiliates under Fondo de Empresas Exproriadas del Sector Azucaro ("FEESA"), Central Motzorongo S.A. de C.V. ("Motzorongo"), and its affiliated companies have violated the terms of the *AD Agreement* and have repeatedly failed to provide complete or adequate responses to the Department's questionnaires. The *AD Agreement* requires Signatories to comply with Mexican rules put in place to ensure compliance with the *AD Agreement*. However, the record demonstrates that respondents have failed to follow one of the most basic rules, *i.e.*, that [ ]. This is important because effective monitoring of the *AD Agreement* presupposes that exporters [ ].

Additionally, respondents have failed to cooperate to the best of their ability by not providing the information necessary for the Department to conduct its analysis. The relevant data are missing, incomplete, or irreconcilable. As a result, the Department should infer that imports of Refined Sugar were exported under an Other Sugar export license (and vice versa), that the reported prices are unreliable, and that Mexican sugar imports otherwise are not in compliance with the *AD Agreement*.

The *AD Agreement* was implemented with reference prices for certain polarity sugar, *inter alia*, as a means to ensure that domestic refiners receive an adequate supply of sugar for refining. However, the lack of compliance with the terms of the *AD Agreement* has resulted in sugar that enters the United States under the lower reference price, bypassing refiners and being sold directly to non-refiners and end users. This lower-priced "Other Sugar" then competes directly with domestic refined sugar. Consequently, domestic refiners do not receive an adequate supply of sugar for refining, and domestic refined prices are depressed. The *AD Agreement* therefore has not provided an adequate supply of sugar to cane refiners or preserved the competitiveness of the domestic industry.

The *AD Agreement* provides that the Department may terminate the agreement if it determines that there has been "a violation of the Agreement or that the Agreement no longer meets the requirements of Section 734(c) or (d) of the Act."[2] Or, it may terminate the *AD Agreement* "at any time" by written notice provided 60 days prior to termination.[3] The Department has terminated suspension agreements on the basis of information collected through

[2] *AD Agreement*, 79 Fed. Reg. at 78,043, Section VIII.A.

[3] *Id.*, Section X.B.

a Section 751(a) administrative review.[4] Based upon the record evidence here, the Department should conclude that the *AD Agreement* has been violated and no longer meets the requirements of Section 734(c) or (d) of the Act. Accordingly, the Department should issue preliminary results finding that the *AD Agreement* should be terminated and announcing its intention to terminate the agreement and issue an antidumping duty order at the rates established in the original investigation.

II. MEXICAN EXPORTERS ARE NOT IN COMPLIANCE WITH THE AD SUSPENSION AGREEMENT

The purpose of this administrative review is to ensure compliance with the *AD Agreement*. However, to the extent the record can confirm anything, it is that Mexican exporters are not in compliance with the terms of the *AD Agreement*. As explained below, Mexican exporters have failed to comply with the requirements of all Mexican regulations, and have not demonstrated that they have complied with the reference prices specified in the *AD Agreement*.

A. Mexican Exporters Have Violated the *AD Agreement* By Not Complying With All Requirements of Mexican Regulations

Section VII.C.2 requires that Signatories to the *AD Agreement* "fully comply with all requirements of Mexican regulations issued by the relevant Mexican authorities." Mexican export licenses specify certain information related to sales of sugar, including [

[4] *See*, *e.g.*, *Termination of the Suspension Agreement on Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From the Russian Federation, Rescission of 2013-2014 Administrative Review, and Issuance of Antidumping Duty Order*, 79 Fed. Reg. 77,455 (Dec. 24, 2014) ("*Hot-Rolled Steel from Russia*"); *Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Products From Brazil: Final Results of Antidumping Duty Administrative Review and Termination of the Suspension Agreement*, 67 Fed. Reg. 6,226 (Feb. 11, 2002) ("*Hot-Rolled Steel from Brazil*").

].[5] The export licenses also [

].[6] This means that [

].[7] The record contains ample evidence of the respondents' failure to comply with this requirement.

1. <u>The Respondents Report [ ] Sugar That [ ]</u>

As noted above, Mexican export licenses require that the [ ]. This is important because knowing the [ ] is inherent to the Department's ability to determine whether Fideicomiso Ingenio San Cristobal (and its affiliates under Fondo de Empresas Exproriadas del Sector Azucaro ("FEESA")) (together "San Cristobal") and Central Motzorongo S.A. de C.V. ("Motzorongo") (and its affiliated companies) are abiding by the terms of the *AD Agreement*. That is, without knowing the [ ], the Department cannot determine whether exporters are [

[5] *See*, *e.g.*, Second Supplemental Questionnaire Response from San Cristobal, re: "Sugar From Mexico – Second Supplemental Questionnaire Response," dated October 4, 2016 ("San Cristobal Second Supp QR"), at Exhibit S2-15 (*e.g.*, [ ]).

[6] *Id*.

[7] *Id*.

].

In their Second Supp QR, San Cristobal and its affiliates state that they reported the polarity of sugar exported to the United States "for each export permit listed in the U.S. sales database."[8] Using [ ] and the export license associated with invoice [ ],[9] we note the following:

Source of Information	**Sales Terms**	**Type of Sugar**	**HTS**	**Polarity Level of Sugar**	**FOB Per-Unit Price ($/lb.)**
Corrected U.S. Sales Database (Exhibit S2-1)	[				]
Invoice [ ]	[				]
[ ] [ ]	[				][10]
Export License/Permit [ ]	[				][11]

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[8] *Id.* at S2-8 and Exhibits S2-1 ("Corrected U.S. Sales Database") and S2-5 (San Cristobal's "Polarity Database").

[9] *Id.* at Exhibit S2-15 (at [ ]). *See also* Exhibit S2-1.

[10] *Id.* The [ ] specifies a total value of [ ] for [ ] MTs associated with invoice [ ], resulting in a per unit price of [ ] per MT or [ ] per lb. ([ ]). We note that this [ ] reflect a per-unit price equivalent to [ ] per lb.

[11] *Id.* To derive this per-unit price, Petitioners [ ]. We then [ ]. Lastly, to calculate the per-lb. price, we [ ].

As demonstrated above, the polarity level of the sugar [

] in San Cristobal's U.S. sales database (*see* Exhibit S2-1) or specified in invoice [ ]. This [

].[12] [

]. San Cristobal also reported that "the FEESA Mills are not provided any information with respect to the final customer."[13] The export licenses, therefore, do not provide a reliable basis to ensure compliance with the *AD Agreement*.

Further, according to San Cristobal, the polarity level of the sugar reported in its U.S. sales database for these sales was subject to testing, and the polarity levels reported on its sales invoices reflected the results of the tests.[14] Thus, using the example above for invoice [

], San Cristobal and its affiliates [

]. Again, Mexican export licenses [

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[12] *Id.* at Exhibit S2-15.

[13] *See* Questionnaire Response from San Cristobal, re: "Sugar From Mexico – Questionnaire Response for the December 19, 2014 through November 30, 2015, Period of Review," dated July 27, 2016 ("IQR") at 8.

[14] San Cristobal Second Supp QR at S2-8 ("Polarity as tested by San Cristobal – polarity recorded on the sales invoice."). *See also* San Cristobal IQR at Exhibit 8 (where San Cristobal provided [

]).

].

Additionally, the record makes clear that that the total quantity of sugar sold for export to the United States on a single invoice was [

]. However, the polarity indicated on the sales invoices [

]. San Cristobal reported sales of sugar at [

].[15] When asked by the Department to explain, San Cristobal asserted that "any material with a polarity of [

].[16] In other words, [

].

The record demonstrates that Motzorongo has also failed to comply with [

]. Indeed, record evidence indicates that the polarity level of sugar specified in Motzorongo's sales contracts [

]. Motzorongo reported instances where [ ] invoices (representing [ ] individual sales transactions reported under these invoices) were [ ], but at [ ] and [

].[17] The [

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[15] San Cristobal Second Supp QR at Exhibit S2-2. Exhibit S2-1 shows that [

].

[16] *Id*. at 2.

[17] *See* Motozorongo's "Expense Clarification Response," dated September 30, 2016 ("Expense Clarification Response"), and the accompanying, final, U.S. sales database as Microsoft® Excel® file - invoice numbers [ ] exported under Export License Numbers [ ].

] the export licenses for these sales.[18]

2. <u>The Reported Export Prices in San Cristobal's [</u>
]

Mexican export licenses also [

]. The GOM's Suspension Agreement compliance guidelines published in the Federal Gazette [ ] require that "the unit price of the goods declared in the pedimento ***shall be equal to or higher*** {deberá ser igual o superior} than those stated in the export permit, and the type of sugar should coincide with that declared in the pedimento for it to be valid."[19]

In its questionnaire responses to the Department, San Cristobal asserts that the minimum unit price for sugar sold is specified on the export license issued by the GOM and the pedimento (which comply with the established Reference Prices).[20] However, [

].

Using the example provided in the table above, [

], the per-unit price attributed to the export permit [ ] is

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[18] *See* Motzorongo's Second Supplemental Response, re: "Sugar from Mexico – Second Supplemental Questionnaire Response," dated September 20, 2016 ("Second Supp QR") at Exhibit S-1, where invoice [ ] indicates a [ ], whereas the [
].

[19] *See* San Cristobal IQR at Exhibit 6 (emphasis-added). We note that San Cristobal erroneously translates this statement as follows: "the unit price of the goods declared in the customs declaration ***should be less than*** those stated in the permit, and the type of sugar should coincide with that declared in the pedimento for it to be valid." (emphasis-added).

[20] *See* San Cristobal Second Supp QR at S2-4.

[ ] per-MT (*i.e.*, [ ]), which results in a [ ] per-lb price.[21] This price is [ ], which is equivalent to a per-lb. sales price of [ ]).[22]

Moreover, the reported price is [ ] for this type of sugar, *i.e.*, [ ].[23] Thus, not only is this a violation of San Cristobal's responsibility to comply with Mexican regulations, it is a *prima facie* violation of [ ] in the *AD Agreement*.

B. Mexican Exporters Have Violated The *AD Agreement* By Taking Actions To Circumvent Or Evade The Terms Of The *AD Agreement*

Section VII.C.3 requires Signatories "not to take any action that would circumvent or otherwise evade, or defeat the purpose of, this Agreement." The record evidence demonstrates that San Cristobal and Motzorongo [

].[24]

In its questionnaire responses, San Cristobal asserts that the "sales contracts dictate the price of the sugar and these prices are consistently at or above the reference price for those

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[21] *Id.*, at Exhibit S2-15 ([ ]) – [ ] specifies a total value of [ ] for [ ] MTs associated with invoice [ ], resulting in a per unit price of [ ] per MT or [ ] per lb. ([ ]).

[22] *Id.* at Exhibit S2-15 ([ ]).

[23] *See AD Agreement*, 79 Fed. Reg. at 78,044 (Appendix I–Suspension of Antidumping Investigation–Sugar From Mexico–Reference Prices).

[24] *See*, *e.g.*, San Cristobal Second Supp QR at Exhibit S2-4.

contracts issued after the suspension agreement came into effect."[25] It explained that its reported delivered values and FOB per unit sales prices are the result of its allocation of the total sales value of all POR sales invoices and all corresponding POR [ ] on a contract-specific basis.[26] San Cristobal further explained that the delivered values and per unit prices reported in its U.S. sales database reflect "an overall unit sales price for the contract."[27] In other words, San Cristobal allocated the total value of all sales invoices and [ ] over the total quantity specified for a particular sales contract with the U.S. customer. It provided sample price calculations to demonstrate its allocation methodology at Exhibit S2-4 of its Second Supp QR. However, in several instances the per-unit prices [ ].[28] For example, according to San Cristobal's allocation methodology and its sample price calculations at Exhibit S2-4_2, the total FOB sales values and FOB per unit prices for these sales invoices should be [ ]. However, this is not the case, *see*, *e.g.*, invoices [ ].[29]

Importantly, San Cristobal explains that the assignment of [ ][30] and that [

[25] *Id*. at S2-4.

[26] *Id*. at S2-6, S2-7, and S2-11.

[27] *Id*. at S2-7.

[28] *Id*. at Exhibit S2-1 and Exhibit S2-4.

[29] *Id*.

[30] *Id*. at S2-6.

][31]. San Cristobal states that "all invoices – sales invoices and [ ] – "are generated when the customer makes a payment" and are issued against a contract.[32] However, the record shows that [ ]. For example, the [ ] indicate that the [ ].[33]

Referring back to the example in the table above, invoice [ ] illustrates that the per-unit prices stated on the invoice and [ ] (*i.e.*, FOB [ ] per-MT, or FOB [ ] per-lb.) are both [ ].[34] However, using its allocation methodology, San Cristobal reports in its revised U.S. sales database a FOB per-unit price of [ ], or [ ] per-lb., *i.e.*, "an overall unit sales price" for this invoice, that is [ ]. Yet, the record does <u>not</u> contain documentation confirming that San Cristobal's customers [ ].[35] In simple

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[31] *Id*. at S2-11.

[32] *Id*. at S2-6, S2-7, and S2-11.

[33] *Id*. at Exhibit S2-11.

[34] *Id*. at Exhibit S2-15 (at [ ]). *See also* Exhibit S2-1.

[35] *Id*. at Exhibit S2-8 (where San Cristobal provided [ ]. However, [ ]).

terms, the record shows [

].[36]

Motzorongo also reports including [

].[37] It failed to provide any documentation to substantiate [

]."[38] As detailed above, Petitioners have demonstrated that Motzorongo [

].[39] Thus, Motzorongo is [

].

The record contains no support indicating that the [ ] by San Cristobal and Motzorongo are legitimate. Rather, San Cristobal and Motzorongo have taken action through [ ], and, according to San Cristobal [

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[36] For illustration purposes, Petitioners have limited their analysis to one sample invoice. We note, however, that based on current record information there are at least [ ] sales ([ ] MT of sugar) with prices that violate the agreement, *i.e.*, [

].

[37] *See*, *e.g.*, Motzorongo's Second Supp QR at S-2.

[38] *Id.*

[39] *Id.* at Exhibit S-1, where [

].

][40] [

]. This is an evasion of the purpose of the *AD Agreement*, and therefore, it is a violation.

III. The Preliminary Results Should Be Based on Adverse Inferences Because the Respondents have made it Impossible for the Department to Determine Whether They have Complied with the Terms of the *AD Agreement*

Pursuant to Sections 776(a) and (b) of the Act, when a party does not act to the best of its ability by failing to provide information or significantly impeding the proceeding, the Department may rely upon adverse facts available in making its determination. As demonstrated below, San Cristobal and Motzorongo have repeatedly failed to respond to the Department's initial questionnaire and supplemental questionnaires in the form requested – despite multiple opportunities to do so.[41] As a result, their questionnaire responses are full of conflicting and unsupported information. Because of their failure to cooperate to the best of their ability, the Department does not have the information necessary to determine whether San Cristobal and Motzorongo have complied with the terms of the *AD Agreement*. Consequently, as adverse facts available, the Department should find that both respondents have violated the *AD Agreement*.

A. San Cristobal and Motzorongo Have Reported Incomplete and Inaccurate Home Market Sales Data and Dumping Margin Analyses

As in any investigation or review, respondents should be required to reconcile their reported sales to their audited income statements. The U.S. Court of International Trade has

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[40] San Cristobal Second Supp QR at S2-6.

[41] *See* Letter from Petitioners, re: "Deficiency Comments Regarding the Respondents' Questionnaire Responses," dated September 8, 2016 and Letter from Petitioners, re: "Deficiency Comments Regarding the Respondents' Initial and Supplemental Questionnaire Responses," dated October 14, 2016.

recognized that the Department considers reconciliation to be the starting point for verifying a respondent's reported data.[42] Here, the record lacks the necessary information to reconcile the respondents' home market and export sales data to their normal books and records.

For example, in its IQR, San Cristobal calculated its level of dumping for two months during the POR for which it reported having the highest volume of U.S. sales.[43] In deriving its normal value for this analysis, it deducted inland freight expenses from its home market POR sales value ("for Refined {Sugar} in MXP").[44] However, it failed to provide any documentation to support or reconcile these claimed inland freight expenses. Subsequently, it revised its dumping analysis using U.S. export and home market FOB sales values (*i.e.*, exclusive of inland freight) for exports of refined sugar and deducted packing costs from both values along with discounts and rebates for export sales.[45] It did not provide any documentation to substantiate its claimed discounts or rebates and packing expenses for U.S. sales or packing expenses incurred on home market sales. Nor did San Cristobal report the transaction-specific U.S. discount/rebates and packing expenses in its U.S. sales database.[46] Moreover, the record does not contain transaction-specific information for each POR home market sales transaction, *e.g.*,

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[42] *Myland Indus., Ltd. v. United States*, 31 CIT 1696, 1703 (Ct. Int'l Trade 2007) (affirming the application of total facts available when a respondent did not provide a usable cost reconciliation).

[43] San Cristobal IQR at 13 and Exhibit 9.

[44] *Id.*, at Exhibit 9.

[45] *See* Supplemental Questionnaire Response from San Cristobal, re: "Sugar From Mexico - Supplemental Questionnaire Response," dated August 30, 2016 ("First Supp QR") at Exhibit S-16.

[46] According to Exhibit S-16 of its First Supp QR, invoice [
].

transaction-specific quantities and prices, expenses, *etc*. Nor does it contain sample home market sales documentation.

We also note that in preparing its Second Supp QR, San Cristobal "discovered" that it had inadvertently included certain sales in its U.S. sales database that were not sold to the U.S. market, but rather to customers in Mexico.[47] Therefore, it removed these sales from its revised U.S. sales database.[48] San Cristobal failed, however, to provide any documentation to support its exclusion of these sales from its U.S. sales database despite other record evidence that questioned its assertion that, [

]. Specifically, the [

].[49] Moreover, San Cristobal has

[

].[50] Importantly, while San Cristobal [

].

Without information to substantiate and reconcile the total home market sales quantity and value and expenses reported by respondents, the Department cannot rely on the resulting per-unit normal values to determine whether San Cristobal and Motzorongo sold sugar to the United States with dumping margins that do not exceed 15 percent of the weighted average

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[47] San Cristobal Second Supp QR at S2-9.

[48] *Id*.

[49] San Cristobal IQR at Exhibit 5. *See also* San Cristobal Second Supp QR at Exhibit S2-1 ("Corrected U.S. Sales Database").

[50] *See* San Cristobal Second Supp QR at Exhibit S2-1 ("Corrected U.S. Sales Database").

margin in the original investigation.

B. San Cristobal and Motzorongo Have Reported Conflicting Information Regarding Total Quantity of Sugar Exported to the United States

In [ ], the export volumes reported in field "Quantity in MT" in San Cristobal's revised U.S. sales database [ ]. For example, invoices [ ] and [ ] specify a total export quantity of [ ] MT and [ ] MT, respectively.[51] Whereas, according to the "Polarity Database" San Cristobal provided at Exhibit S2-5, the total quantities exported specified in the pedimentos associated with these invoices are [ ] MT and [ ] MT, *i.e.*, [ ] reported in its U.S. sales database (Exhibit S2-1) for these sales.[52] Also, at Exhibit S2-2, San Cristobal reported that it sold a total of [ ] MT of [ ] to customers [ ] during the POR. However, the total quantity of sales reported in San Cristobal's U.S. sales database for these customers is [ ] MT. Further, given that San Cristobal only provided sample price calculations for a [ ],[53] it is unclear whether the allocation methodology it used to derive the total delivered sales values and FOB per unit prices for these, and other invoices where there are discrepancies [ ] sugar exported to the

[51] *Id.*

[52] Without explanation, San Cristobal also included pedimentos in its "Polarity Database" that had a [ ].

[53] San Cristobal Second Supp QR at Exhibit S2-4.

United States. In other words, it is unclear whether San Cristobal [ ] to obtain the reported FOB per unit prices for such sales in its U.S. sales database.

Additionally, according to pedimento [ ], the total quantity for invoice [ ] to be exported is [ ] metric tons (*see* Exhibit S2-15). However, according to the reconciliation list of invoices, export permits, and invoices provided by San Cristobal at Exhibit S2-5, the total quantity exported for invoice [ ] and pedimento [ ] is [ ] metric tons. Similarly, according to the pedimento [ ], the total quantity for invoice [ ] to be exported is [ ] metric tons (*see* Exhibit S2-15). However, according to the reconciliation list of invoices, export permits, and invoices provided at Exhibit S2-5, the total quantity exported for invoice [ ] and pedimento [ ] is [ ] metric tons. Moreover, in reviewing the invoices provided in Exhibit S2-15, we note that San Cristobal included invoice [ ] (demonstrating that this sale [ ]). However, this invoice is [ ].[54] We also note that [ ] refers to invoice [ ]; however, this invoice is [ ].[55]

Also, the import data obtained by the Department from U.S. Customs and Border Protection ("CBP") indicate that both San Cristobal and Motzorongo exported [

[54] *Id.* at Exhibits S2-1 ("Corrected U.S. Sales Database") and S2-15 – [ ].

[55] *Id.*

] of sugar than what they reported to the Department. The CBP data indicate that San Cristobal and its affiliates exported [ ] MT of sugar during the POR, whereas they report exports of [ ] MT.[56] Similarly, for Motzorongo, the CBP import data indicate that it exported [ ] MT of sugar during the POR, although it reports exports of [ ] MT.[57]

C. San Cristobal and Motzorongo Have Reported Movement and Warehousing Expenses Incompletely and Inaccurately

San Cristobal claims that "{it} did not incur [ ]" for certain invoices[58] because "{t}he sugar was [ ]."[59] However, it failed to report the [ ].

Additionally, not until its Second Supp QR, did San Cristobal ***finally*** report warehousing

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[56] *See* CBP Data.

[57] *Id*. The data also indicate that Motzorongo's sugar exports were imported under HTS [ ], whereas Motzorongo reports that it exported sugar to the United States under HTS [ ].[57] This means that the [ ]. *See also* Motozorongo's "Expense Clarification Response," dated September 30, 2016 ("Expense Clarification Response"), and the accompanying, final, U.S. sales database as Microsoft® Excel® file.

[58] San Cristobal Second Supp QR at S2-9 and S2-10. Specifically, invoices [ ]. San Cristobal refers to invoices [ ] in its narrative response. However, these invoices do not exist in its U.S. sales listing. Rather, it appears San Cristobal is referring to invoices [ ].

[59] *Id*.

expenses it incurred related to storing its sales of sugar for export to the United States.[60] To support its reporting of these expenses, it provided a [ ], which at [ ].[61] However, San Cristobal [ ]. Lastly, in reviewing the Freight Rate Schedules provided at Exhibit S2-18, San Cristobal and its affiliates appear to utilize [ ].

With regard to Motzorongo, the record is simply devoid of information necessary for the Department to determine whether it has properly accounted for all movement and warehousing expenses (and any other adjustments) to render delivered prices on a FOB plant-basis.

Without complete [ ] and warehousing expense information associated with their reporting of U.S. sales,[62] the Department cannot ascertain whether San Cristobal (and its affiliates) and Motzorongo are selling at or above the Reference Prices established by the *AD Agreement*.

IV. THE DEPARTMENT SHOULD PRELIMINARILY TERMINATE THE *AD AGREEMENT* BECAUSE IT DOES NOT ELIMINATE THE INJURIOUS EFFECTS OF MEXICAN IMPORTS

The respondents' violations indicate that the *AD Agreement* is not working as intended. The domestic industry has suffered as a result of this failure. In particular, the *AD Agreement*

[60] *Id*. at S2-8 and S2-9. *See also* Exhibits S2-1 and S2-6.

[61] *Id*. at Exhibit S2-6.

[62] *Id*. at Exhibit S2-1 ("Corrected U.S. Sales Database"). *See also* Motozorongo's Expense Clarification Response, and the accompanying U.S. sales database as Microsoft® Excel® file.

has led to a lack of supply of "Other Sugar" to U.S. cane refiners, and has caused domestic price suppression and depression. Consequently, the *AD Agreement* has not eliminated the injurious effect found by the U.S. International Trade Commission in the original investigation, and is no longer in the public interest. Therefore, in accordance with Section VIII, paragraph A of the *AD Agreement* and subsection 734(i) of the Act, Department should make a preliminary determination to terminate the *AD Agreement*.

A. The *AD Agreement* Does Not Ensure a Sufficient Volume of "Other Sugar" for U.S. Cane Refiners

The *AD Agreement* requires Mexican "Refined Sugar" (sugar with a polarity of 99.5 or higher) to be sold at a price that is equal to or higher than $0.2600 per pound and requires "Other Sugar" (sugar with a polarity of less than 99.5) to be sold at or above $0.2225 per pound.[63] Exports of Refined Sugar may not exceed 53 percent of all Mexican exports.[64]

The design of the *AD Agreement* is based on the assumptions by the U.S. Government that:

1. all "Other Sugar" would be sold to domestic cane refiners, and
2. the Refined Sugar reference price would prevent suppression or undercutting of prices for domestic refined sugar (sugar with a polarity of 99.9 or higher) in the United States.

These assumptions have proven to be wrong. Instead, the lower reference price has created an incentive for Mexican exporters to sell Other Sugar in greater quantities to non-refiners and end users, resulting in a shortage to refiners and an oversupply of Other Sugar in the U.S. market.

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[63] *AD Agreement*, Appendix I, 79 Fed. Reg. at 78,044.

[64] *Sugar From Mexico: Suspension of Countervailing Duty Investigation*, 79 Fed. Reg. 78,044, 78,047 (Dep't of Commerce Dec. 29, 2014) ("*CVD Agreement*").

Record data confirm that Mexican exports of Other Sugar are by-passing U.S. cane refiners. Specifically, exports of Other Sugar by San Cristobal and Motzorongo and its affiliates [ ] their exports of Refined Sugar – where exports of Other Sugar [ ].[65] [ ] [66] [ ] the terms of the *AD Agreement*. This [ ] Other Sugar that enters the United States at the lower reference price is being sold to domestic non-refiners and end-users. As a result, it is not being sold to U.S. refiners. All supplies of sugar to U.S. refiners from domestic, third country and Mexican sources are regulated. If U.S. refiners cannot get adequate supplies from Mexico, they have no alternative source of supply. Consequently, domestic refiners have been harmed as a result of the diversion of Mexican Other Sugar to non-refiners and end-users in the United States.

B. <u>The *AD Agreement* is Depressing and Suppressing Prices</u>

As a result of [ ] of Other Sugar to non-refiners and end users, this Other Sugar is now competing directly with domestic refined sugar, as opposed to being processed by cane refiners. Because the Other Sugar enters the United States at the lower reference price, the

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[65] *See* San Cristobal Second Supp QR at Exhibit S2-1 ("Corrected U.S. Sales Database") and Motozorongo's Expense Clarification Response, and the accompanying U.S. sales database as Microsoft® Excel® file (at Tab S3-1). Petitioners' calculated the percentage of respondents' exports of Other Sugar as follows: [ ].

[66] *Id*. It is unclear how [ ].

direct competition with domestic refined sugar occurs on the basis of that lower price. Thus, this competition depresses and suppresses the price of domestic refined sugar.

C. The *AD Agreement* is not in the Public Interest

In the Statutory Criteria Memo, the Department found that the *AD Agreement* would protect the international economic interests of the United States by "ensuring that imports of the subject merchandise are fairly-traded at prices at or above the reference prices," meaning that those imports would not "negatively impact the competitiveness of the domestic industry."[67] As described above, the record of this review indicates that respondents are violating the terms of the *AD Agreement*, and impeding the Department from determining whether additional violations have occurred. The record also demonstrates that the *AD Agreement* has not succeeded in ensuring an adequate supply of sugar to refiners, and has depressed and suppressed domestic prices. As a result, the Department should find that the *AD Agreement* has not succeeded in "ensuring that imports of the subject merchandise are fairly-traded at prices at or above the reference prices." Consequently, the Department should preliminarily find that the *AD Agreement* no longer benefits the domestic industry, and thus, is no longer in the public interest.[68]

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[67] *See* Memorandum from Lynn Fischer Fox to Paul Piquado, U.S. Import Coverage, Existence of Extraordinary Circumstances, Public Interest, and Effective Monitoring Assessments (Dec. 19, 2014) at 4.

[68] *See*, *e.g.*, *Leather Wearing Apparel From Colombia*, 56 Fed. Reg. 13,621 (Dep't of Commerce Apr. 3, 1991) (cancellation of suspension agreement) (". . . the Department determines that the requirements of section 704(b) of the Tariff Act have not been satisfied and that continuation of the suspension agreement is not in the public interest").

V. Conclusion

For the reasons set forth above, the American Sugar Coalition respectfully requests the Department to issue preliminary results finding on the basis of the administrative record that the *AD Agreement* has been violated or no longer meets the requirements of Sections 734(c) and (d) of the Act.

ATTACHMENT 2

UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, DC 20230

A-201-845
Suspension Agreement
Public Document
ITA/E&C/P&N/OP/BAU: DWC

August 7, 2017

MEMORANDUM FOR: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

FROM: P. Lee Smith
Deputy Assistant Secretary
for Policy & Negotiations
Enforcement and Compliance

SUBJECT: Amendment to the Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico: U.S. Import Coverage, Existence of Extraordinary Circumstances, Public Interest, and Effective Monitoring Assessments

Statutory Requirements

On December 19, 2014, the U.S. Department of Commerce ("the Department") and producers/exporters accounting for substantially all imports of Sugar from Mexico signed the Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico ("the Agreement").[1] On June 6, 2017, the Department and the Government of Mexico, acting on behalf of Mexican producers/exporters of sugar, announced an agreement in principle to an amendment to the Agreement. On June 14, 2017, the Department and representatives of Mexican producers/exporters of sugar initialed a draft amendment to the Agreement. On June 16, 2017, the Department released its draft statutory assessment memorandum to interested parties, inviting them to submit any comments by June 23, 2017, and any rebuttal comments by June 26, 2017. One party, the Sweetener Users Association ("SUA")[2] submitted comments on June 23, 2017. On June 30, 2017, the Department and a representative of producers/exporters who account for substantially all of the imports of Sugar from Mexico signed a finalized

[1] *See Sugar from Mexico: Suspension of Antidumping Investigation*, 79 FR 78039 (December 29, 2014) ("the Agreement").

[2] Although the Department requested comments from the public, for purposes of clarity, the Department notes that the SUA does not qualify as an "interested party" within the meaning of section 771(9) the Tariff Act of 1930, as amended (the Act). In particular, the SUA does not qualify as part of the domestic industry under section 771(4)(E) of the Act. Rather, the SUA qualifies as an industrial user of the subject merchandise under section 777(h) of the Act.

amendment to the Agreement ("the amendment" or, as integrated into the Agreement, "the amended Agreement").[3]

In accordance with section 734(c)(1) of the Tariff Act of 1930, as amended ("the Act"), the amended Agreement is designed to completely eliminate the injurious effect of exports to the United States, and to prevent the suppression or undercutting of price levels of domestic products by imports of that merchandise. In addition, for each entry of each exporter the amount by which the estimated normal value exceeds the export price (or constructed export price) will not exceed 15 percent of the weighted-average amount by which the estimated normal value exceeded the export price (or constructed export price) for all less-than-fair-value entries of the producer/exporter examined during the course of the investigation (*see* Section VI ("Price Undertaking") of the Agreement).

In accordance with section 734(c)(1) of the Act and section 351.208(b) of the Department's regulations, the Department may suspend an investigation when signatory exporters, collectively accounting for substantially all of the imports of the subject merchandise, agree to revise their prices to eliminate completely the injurious effect of exports to the United States of that merchandise, as described above. Section 351.208(c) of the Department's regulations provides that "substantially all" under section 734 of the Act means "exporters and producers that have accounted for not less than 85 percent by value or volume of the subject merchandise during the period for which the Secretary is measuring dumping or countervailable subsidization in the investigation or such other period that the Secretary considers representative." The Department finds that the U.S. import coverage requirement is met for this amended Agreement, as detailed below.

Section 734(c) of the Act indicates that extraordinary circumstances must be present for the Department to suspend an investigation under this section of the law. In accordance with section 734(c)(2) of the Act, the Department finds, as detailed below, that extraordinary circumstances exist with respect to this amended Agreement. Furthermore, the Department is satisfied that the amended Agreement is in the public interest and can be monitored effectively, as required under section 734(d) of the Act and addressed below in this memorandum.

Comments from Interested Parties

SUA argues that the price increases in the draft amendment to the Agreement are unnecessary and argues that "{e}ach increase in reference prices will send more money to the U.S. and Mexican sugar industries at the expense of U.S. manufacturers and ultimately consumers."[4] SUA further argues that the price analysis "does not consider the market-skewing effect that artificially high sugar prices have on sweetener choice by food and beverage companies.[5]

SUA also criticizes the Department's analysis that the draft amendment to the Agreement is in

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[3] *See Sugar From Mexico: Amendment to the Agreement Suspending the Antidumping Duty Investigation*, 82 FR 31945 (July 11, 2017) ("the amendment").

[4] *See* SUA's submission entitled "Draft Price Suppression and Statutory Memoranda to A-201-845 – Amendment to the Agreement Suspending the Antidumping Investigation on Sugar from Mexico," (June 23, 2017) (SUA Memoranda Comments) at 2.

[5] *Id.*

the public interest, asserting that it focuses almost entirely on the benefits to the sugar industry, as though they were "the public." SUA claims that "{f}rom the beginning, benefits to the sugar industry have been identified with the public interest."[6] SUA argues "{t}he amendments to the agreements clearly do not serve the interests of U.S. consumers, nor food companies who are forced to pay higher prices resulting from the implementation of a regressive sugar policy."[7]

The Department addresses these comments in its "Memorandum Addressing Comments on the Amendment to the Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico", (Department Comment's Memorandum), dated concurrently with this Memorandum, at 10.

U.S. Import Coverage

A representative of Cámara Nacional de Las Industrias Azucarera y Alcoholera (Mexican Sugar Chamber) ("Cámara") signed the amended Agreement on behalf of the Mexican sugar industry. Cámara also signed the original Agreement; at that time, by reviewing U.S. Customs and Border Protection ("CBP") data on imports of Sugar from Mexico during the period of investigation ("POI") (*i.e.*, January 1 – December 31, 2013), the Department confirmed that the producers/exporters of sugar to Mexico represented by Cámara accounted for at least 85 percent of the imports of subject merchandise into the United States during the POI.[8] For the original Agreement, the Department found the CBP data to be reliable and, accordingly, thereby determined that Cámara represented the signatory Mexican sugar producers/exporters accounting for substantially all of the imports during the POI.[9]

For the initialing of the draft amendment, the Department relied on a statement by Cámara placed on the record of the Agreement which provided the authorization for Cámara's representative to initial the draft amendment on behalf of the Mexican sugar industry.[10] In the Representation Letter, Cámara indicates that it represents over 99 percent of the exports of Sugar from Mexico to the United States and provides a listing of the member sugar companies and mills.[11] The Department has confirmed this coverage by examining CBP data for Mexico for the period January 1, 2016, through June 20, 2017, to confirm that Cámara's member companies and mills account for at least 85 percent of the imports of subject merchandise into the United States.[12] Therefore, we find that the requirement of section 734(c) of the Act concerning agreement by "substantially all" exporters, as defined in section 351.208(c) of the Department's

[6] *Id.* at 3.
[7] *Id.*
[8] *See* Memorandum to the File regarding "Release of Customs Entry Data for Respondent Selection in the Antidumping and Countervailing Duty Investigations of Sugar from Mexico," April 25, 2014 ("CBP Entry Data Memorandum"); *see also* Letter to the Honorable Penny Pritzker, Secretary of Commerce, from Greenberg Traurig, re "Investigation of Sugar from Mexico; Representation of Mexican Sugar Producers/Exporters" (November 25, 2014).
[9] *See* Section IV of the Agreement.
[10] *See* Letter to the Honorable Wilbur L Ross, Jr., Secretary of Commerce, from Rosa S. Jeong, Greenberg Traurig LLP, re "Sugar from Mexico – *Representation of Mexican Sugar Industry*" (June 12, 2017) ("Representation Letter").
[11] *See* Representation Letter.
[12] *See* Memorandum to the File entitled "Release of Customs Entry Data and Import Coverage Analysis for the Amended Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico" (August 7, 2017).

regulations, has been satisfied for purposes of this amendment.

Extraordinary Circumstances

Subsections 734(c)(2)(A)(i) and (ii) of the Act define the term "extraordinary circumstances" as circumstances in which the suspension of the investigation will be more beneficial to the domestic industry than continuation of the investigation and in which the investigation is complex.

Continued Suspension is More Beneficial to the Domestic Industry Than Termination

As for whether the suspension of the antidumping duty investigation on Sugar from Mexico will be more beneficial to the domestic industry than continuation and thus issuance of the antidumping duty order, we find that the amendment will resolve issues that have arisen since the signing of the Agreement; and that the amended Agreement re-establishes effective relief and, in several respects, has distinct advantages when compared with an antidumping duty order.

First, the amended Agreement will benefit domestic producers by eliminating the injurious effects of exports of the subject merchandise to the United States, eliminating price suppression or undercutting, and eliminating at least 85 percent of dumping, as required by section 734(c)(1) of the Act.[13] Specifically, the amended Agreement sets higher minimum reference prices for sales of Other Sugar and Refined Sugar than the Agreement, and ensures that those reference prices are exclusive of packaging, transportation, and other supplemental costs, *i.e.*, so that it is clear such costs must be added to the base reference prices. The amendment to the accompanying Agreement Suspending the Countervailing Duty Investigation on Sugar from Mexico ("the CVD Agreement", or, incorporating the amendment, "the amended CVD Agreement") limits the volume of Mexican sugar exports to the needs of the U.S. market, thereby reducing the likelihood that Sugar from Mexico will oversupply the U.S. market; the higher minimum reference prices in the amended Agreement work in conjunction with these provisions in the amended CVD Agreement to ensure that, even if market supply were to exceed demand, prices for the first U.S. sale cannot be set so low as to cause injury to the U.S. industry.[14] Moreover, by specifying that the minimum reference prices are exclusive of packaging, the amended Agreement ensures that the minimum references prices cannot be artificially lowered through the sale of sugar in relatively expensive packaging. By setting minimum reference prices, the amended Agreement, in conjunction the limitations on exports under the amended CVD Agreement (together, "the amended Agreements"), works to prevent price suppression or undercutting resulting from the oversupply of Mexican sugar in the United States.

The amended Agreement further eliminates the injurious effects of exports of Mexican sugar to the United States by redefining Refined Sugar and Other Sugar. The Agreement, as originally written, differentiated between "Refined Sugar" at a polarity of 99.5 degrees and above, and

[13] *See* Section VI ("Price Undertaking") of the Agreement.
[14] *See* accompanying memorandum, "Amendment to the Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico: The Prevention of Price Suppression or Undercutting of Price Levels by the Amended Agreement," (August 7, 2017) (Price Suppression Memorandum) at 15-16.

"Other Sugar" at a polarity less than 99.5 degrees. The amended Agreement redefines "Refined Sugar" as sugar at a polarity of 99.2 degrees and above, and "Other Sugar" as sugar at a polarity less than 99.2 degrees and shipped in bulk, freely flowing. These changes, which move the dividing line between Refined and Other Sugar down to 99.2 from 99.5 degrees, and add shipping conditions for Other Sugar, address the concern that a large portion of Other Sugar has been bypassing cane refiners for direct consumption or end use. Specifically, petitioner American Sugar Coalition has asserted that the sale of Mexican semi-refined sugar subject to the lower reference price of Other Sugar set in the original language of the Agreement hinders the competitiveness of U.S. cane refiners by diminishing the supply of Mexican sugar for their processing operations, supplanting their sales of refined sugar, and suppressing U.S. prices for refined sugar.[15]

Semi-refined sugar of a polarity under, but near 99.5 degrees, when packaged to avoid contamination, may be fit for human consumption without any processing to increase its polarity. Indeed, information on the record indicates Mexican "estandar" (standard or semi-refined sugar) is fit for such use, and has a minimum polarity of 99.4 degrees.[16] Such semi-refined sugar functions in the market as the equivalent of Refined Sugar, but was permitted under the original terms of the Agreement to enter at the lower price for Other Sugar.[17] The change in the definition of Other Sugar in terms of polarity, and the requirement that Other Sugar is to be shipped in bulk, freely-flowing, ensure to the fullest extent possible under the amended Agreements that sugar that enters subject to the lower reference price is sold in the market segment of sugar that requires further processing.

These changes to the definitions of Refined and Other Sugar ensure to the fullest extent possible under the amended Agreements the availability of supply of input sugar for U.S. cane refiners. Availability of supply is a particular concern in the market for sugar for further processing, because access to sugar from countries other than Mexico is restricted by U.S. tariff-rate quotas. Short of requesting that the U.S. Department of Agriculture (USDA) take action to permit additional sugar imports, U.S. refiners may not have an economically-viable alternative source of input sugar if Mexican Other Sugar is sold for direct consumption.

Further, the lower polarity threshold further prevents "estandar" from being sold directly for end use and without further processing, thereby supplanting refined sugar sales in the U.S. market. Sugar that is under 99.2 degrees in polarity and shipped in bulk, freely flowing – *i.e.*, not in food grade conditions – is extremely likely to require further processing. In May 2016, in response to a shortage of sugar for further processing, USDA requested that the Department increase the Export Limit and stated that "to ensure that this is the type of sugar for which there is an increasing demand in the U.S. market, and which also requires further processing, this additional sugar must have a polarity of less than 99.2 degrees."[18] Thus, in USDA's view, 99.2 degrees

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[15] *See* Letter from American Sugar Coalition, "Sugar from Mexico: Request to Terminate Suspension Agreements" (June 2, 2017) (Petitioner's June 2 Letter) at Attachment 4, 18-20.
[16] *See* Secretaria de Economia, "Sugar Industry Specifications, NMX-F-084-SCFI-2004" at Sections 3.1 & 5.1 (2004) at Attachment 1 to this Memorandum.
[17] *See* Petitioner's June 2 Letter at Attachment 4, 18-20.
[18] *See* Letter from Alexis M. Taylor, Deputy Under Secretary, USDA, "Sugar from Mexico and Request for Increase in Mexican Sugar Export Limit" (May 16, 2016) (USDA's May 16 Letter) and placed on the record of the AD Agreement at Attachment 2 to this Memorandum.

was the appropriate cut-off to ensure that the imported sugar required further processing and met the needs of the U.S. market. The Department has adopted that standard for all Other Sugar in the amended Agreements, recognizing that although the Department permitted a small quantity of additional sugar with a polarity below 99.2 degrees based on USDA's May 2016 request, the ending stocks of cane refiners for the 2015/16 season were still lower than the historical average and shortages of sugar for further processing have persisted.[19] Requiring all Other Sugar to have a polarity under 99.2 degrees is likely to address these shortages.

Although sugar may enter under the U.S. tariff rate quotas as long as it has a polarity under 99.5 degrees, the most recent analysis of such imports by CBP indicated an average polarity of 98.8 degrees,[20] and there is no evidence that any other country exports to the United States significant quantities of sugar that has been semi-refined or has been purchased for direct consumption. By contrast, Mexico exports to the United States significant quantities of "estandar" sugar that may fall under 99.5 degrees but is fit for direct consumption. Thus, there is reason to apply a different threshold for shipments of "Other Sugar" from Mexico in the context of this amended Agreements, which must completely eliminate the injurious effects of sugar imports from Mexico. However, the amended Agreements retain the dividing line of 99.5 degrees in polarity between Refined and Other Sugar for Additional U.S. Needs Sugar, as defined in the amendments, that is offered to Mexico on or after May 1 of any Export Limit Period (as defined in the amended CVD Agreement), except where extraordinary or unforeseen circumstances apply.[21] Mexico has indicated it may be unable to provide sufficient sugar with a polarity below 99.2 degrees after May 1 because such sugar is not produced for its domestic market. As discussed above, Mexican "estandar" contains a polarity of at least 99.4 degrees, and by May 1 Mexico's harvest season has concluded. The shipping conditions of Other Sugar, however, continue to apply, and thus any additional Other Sugar that is allowed to be exported on or after May 1 is likely to require further processing even if it is of a semi-refined polarity.

In sum, by amending the Agreement to set the threshold polarity between Other Sugar and Refined Sugar at 99.2, and by requiring that Other Sugar be shipped in bulk and freely flowing, the amended Agreement will ensure an adequate supply of input material to the U.S. industry for further processing, a crucial benefit that could not be guaranteed with an antidumping duty order.

The amended Agreement also provides a more stable and predictable environment for the U.S. industry than would an antidumping duty order. As discussed above, the definitions of Other Sugar and Refined Sugar have been revised through the amendment, so as to ensure a stable supply of sugar in need of further processing for U.S. cane refiners. This supply could not be guaranteed with an antidumping duty order. Moreover, under an order, duty rates can be adjusted, potentially every year, through administrative reviews. In addition, given the unique parameters of the U.S. sugar market, the issuance of an antidumping duty order has the potential to destabilize the U.S. sugar market, and potentially cause shortages of sugar in the United States.

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[19] *See* Petitioner's June 2 Letter at Attachment 5.
[20] *See* CBP Quota Bulletin number 15-131 at https://www.cbp.gov/trade/quota/bulletins/qb-15-131-2016-raw-sugar and at Attachment 3 of this Memorandum.
[21] *See* Section V.B.4.d of the amended CVD Agreement.

Finally, it is anticipated that the increase in market certainty and price stability that will result from the amended Agreement will aid the domestic industry in its production planning and sales/contracting activities for the upcoming season.

The Investigation is Complex

Regarding whether the antidumping duty investigation on Sugar from Mexico is complex, section 734(c)(2)(B) of the Act defines the term "complex" as an investigation involving: (1) a large number of transactions to be investigated or adjustments to be considered; (2) novel issues; or (3) a large number of firms. All three of these circumstances existed in the antidumping duty investigation on Sugar from Mexico, and continue to exist. Specifically, the investigation: (1) covered transactions totaling more than 350 million dollars of sales in the U.S. market, and cost of production figures for 12 mills involving numerous adjustments; (2) raised complex issues, including how the investigation would impact, and be impacted by, USDA's sugar program and the tariff rate quotas administered by the U.S. Trade Representative;[22] and (3) concerned nearly 50 entities producing/exporting Sugar from Mexico.

Thus, based on the factors discussed above, we find that extraordinary circumstances exist, in accordance with section 734(c)(2) of the Act.

Public Interest

The statute provides that the Department shall not accept a subsection 734(c) suspension agreement unless "it is satisfied that suspension of the investigation is in the public interest."[23] A review of the legislative history reveals that Congress did not elaborate on the definition of public interest, stating only that "[t]he committee intends that investigations be suspended only when that action serves the interest of the public and the domestic industry affected."[24] Clearly, neither the statute nor the legislative history defined the term "public interest" as it is used in this context.[25] Therefore, Congress conferred broad discretion upon the Department in making this assessment.[26]

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[22] *See* Price Suppression Memorandum at 4-6 (describing the U.S. sugar program as administered by USDA and the U.S. Trade Representative); *see also* Congressional Research Service Report entitled "U.S. Sugar Program Fundamentals" by Mark A. McMinimy Analyst in Agricultural Policy, (U.S. Sugar Program Fundamentals) (April 6, 2016) available at https://fas.org/sgp/crs/misc/R43998.pdf and at Attachment 4 to this Memorandum.

[23] *See* Section 734(d)(1) of the Act.

[24] *See Report of Senate Finance Committee*, S. Rep. 96-249 at 71; *see also Id*. at 54 (discussing similar provision in countervailing duty context).

[25] "As stated by the Supreme Court, '[w]here Congress uses terms that have accumulated settled meaning under either equity or the common law, a court must infer, unless the statute otherwise dictates, that Congress means to incorporate the established meaning of these terms.'" NSK Ltd. v. United States, 115 F.3d 965, 974 (Fed. Cir. 1997) (quoting NLRB v. Amax Coal Co., 435 U.S. 322, 329 (1981)). Here, the established meaning of the word "satisfied" refers to a highly-subjective state of mind. *See* Merriam-Webster's Collegiate Dictionary 1038 (10th ed. 1999) (defining "satisfy" as "to make happy: PLEASE").

[26] The Federal Circuit has explained that the Department's "'interpretation governs in the absence of unambiguous statutory language to the contrary or unreasonable resolution of language that is ambiguous.'" Ad Hoc Shrimp Trade Action Committee v. United States, 596 F.3d 1365, 1368 (Fed. Cir. 2010) ("Ad Hoc Shrimp") (quoting United States v. Eurodif S.A., 555 U.S. 305, 316 (2009). Similarly, the Federal Circuit has reasoned that, under Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984), a court must accept the Department's reasonable interpretation of a statute when the statute is silent regarding a specific issue, even if the

The Department's analysis demonstrates that the amended Agreement establishes effective relief and, in a number of respects, has distinct advantages when compared to an antidumping duty order, such that suspension of the antidumping duty investigation remains in the public interest. As discussed above, the amended Agreement benefits domestic producers by eliminating the injurious effects of exports of the subject merchandise to the United States. Under the terms of the amended Agreement, the signatory producers/exporters of the subject merchandise who account for substantially all of the imports of that merchandise, as described above, have agreed to revise their prices to eliminate completely the injurious effect of exports to the United States of that merchandise. Furthermore, as discussed above, the amended definitions of Refined Sugar and Other Sugar will ensure an adequate supply of input material to the U.S. industry for further processing, a crucial benefit that could not be guaranteed with an antidumping duty order. Ensuring adequate supply for U.S. cane refiners not only benefits those refiners, but also the general public. If domestic refined sugar prices were to fall, due to continued competition between domestically refined sugar and "estandar" entering at the lower reference price, the U.S. industry might have been forced to forfeit sugar that it produced, causing sugar prices to fluctuate dramatically. Since the effective date of the Agreement, there have been no forfeitures of sugar; the amended Agreement strengthens these provisions.[27] As such, the amended Agreement will benefit U.S. producers by ensuring that imports of the subject merchandise are fairly-traded at prices at or above the reference prices and should not, therefore, negatively impact the competitiveness of the domestic industry. This arrangement is more stable and predictable than conditions under an order, whereby Mexican sugar producers and exporters could engage in dumping until requested administrative reviews potentially adjusted the antidumping duty margins.

Third, the amended Agreement will protect the international economic interests of the United States. Working in concert with the sugar program administered by USDA, the amended Agreement will significantly reduce the likelihood that significant shortages would arise in the U.S. market or USDA would need to purchase forfeited sugar, thereby avoiding increased public debt. Moreover, by setting higher minimum reference prices for Other Sugar and Refined Sugar, in conjunction with the amended polarity threshold and shipping requirements for Other Sugar and Refined Sugar, the amended Agreement will prevent significant shortages of sugar in the United States, thereby ensuring a stable supply of sugar for United States consumers. These changes, working in concert with the sugar program administered by the USDA, should continue to enhance the international economic interests of the United States. Although SUA disputes that "raising floor prices in the domestic market and adding new restrictions on much-needed sugar imports in the domestic market benefit{s} U.S. consumers," and argues that the Department has mistakenly focused on benefits to the sugar industry in place of the broader

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court would have preferred a different interpretation. SKF USA, Inc. v. United States, 537 F.3d 1373, 1379 (Fed.Cir.2008) (citing Koyo Seiko Co. v. United States, 36 F.3d 1565, 1570 (Fed. Cir. 1994); *see also* Ad Hoc Shrimp, 596 F.3d at 1369.

[27] *See* USDA's Dairy and Sweeteners Analysis, "Forfeitures and Purchases Fiscal Year 2001 - Fiscal Year 2016" (June 16, 2017), available at: https://www.fsa.usda.gov/programs-and-services/economic-and-policy-analysis/dairy-and-sweeteners-analysis/index and at Attachment 5 to this Memorandum.

public,[28] preventing shortages of sugar is in the overall public interest, even if the measures to prevent the shortage include raising floor prices for sugar.[29] Moreover, we recognize that the purpose of the dumping law is to alleviate the injury to the sugar industry, and thus, any increase in sugar prices will only be to fairly traded prices, as compared to dumped prices.[30] Accordingly, the Department continues to conclude that the amended Agreements will help ensure a stable supply of sugar for United States consumers, thereby advancing the public interest.

Finally, the amended Agreement addresses the availability of the supplies of raw sugar to the United States.[31] As discussed above, the amended Agreement will increase the supply of raw sugar by revising the threshold degree of polarity dividing Other Sugar and Refined Sugar. Beginning in March 2016, domestic interested parties reported to the Department that there was insufficient raw sugar to sustain their cane sugar processing operations. In May 2016, in response to a request from USDA, the Department increased the Export Limit by 60,000 short tons raw value for Other Sugar with a polarity of less than 99.2 degrees. In its request, USDA cited the "increasing demand in the U.S. market" for sugar that has a polarity below 99.2 degrees and requires further processing.[32] Despite this increase to the Export Limit, the ending stocks of raw cane sugar for the 2015/16 season were significantly lower than the historical average.[33] In addition, "semi-refined" or "estandar" sugar with a polarity between 99.2 and 99.5, which in the Agreement was classified as "Other Sugar," was exported for direct consumption and therefore decreased the amount of sugar available for further processing. By revising the degrees of polarity at which Other Sugar and Refined Sugar are defined, the amended Agreement will ensure an adequate supply of input material to the U.S. industry for further processing. The amended Agreement will therefore enhance, not negatively impact, the competitiveness of the domestic industry producing the like merchandise, and employment and investment in that industry.

Moreover, other factors demonstrate that the amended Agreement is in the public interest. As noted above, the Agreement has provided a more stable and predictable environment for the U.S. industry than would an antidumping duty order, and the amendments will continue to provide stability and predictability for the U.S. industry. Under an order, duty rates can be adjusted, potentially every year, through administrative reviews. Further, given the unique parameters of the U.S. sugar market, the issuance of an antidumping duty order has the potential to destabilize the U.S. sugar market, and cause shortages of sugar in the United States. The amendments will increase the supply of Other Sugar that reaches U.S. cane refiners for further processing, and reduce the competition between "estandar" and domestically-refined sugar. Under an antidumping duty order, there could be no mandate of the type of sugar imported into the United

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[28] *See* SUA Memoranda Comments at 3.
[29] *See* Department Comment's Memorandum at 10.
[30] *Id.*
[31] USDA defines "raw sugar" as "any sugar not suitable for human consumption without further refinement, regardless of polarity," available at https://www.fsa.usda.gov/Internet/FSA_File/sugar_glossary.pdf and at Attachment 6 to this Memorandum.
[32] *See* USDA's May 16 Letter.
[33] *See* Petitioner's June 2 Letter at Attachment 5.

States; the only remedy available to the U.S. industry would be a duty and there would be no means to increase the likelihood of a steady supply of Other Sugar for further processing. Furthermore, this amended Agreement prevents disruptions and uncertainties in the market to the benefit of traders and consumers alike, by allowing Mexican sugar producers and exporters to have continued access to the U.S. market while ensuring that such access is consistent with requirements of section 734(c) of the Act.

Practicability of Effective Monitoring and Enforcement

We find that the amended Agreements can be administered and enforced by the Department. As part of the original Agreement and CVD Agreement (together, "the Agreements"), the Mexican producers/exporters and the Government of Mexico agreed to supply the Department with all information that the Department deems necessary to ensure full compliance with the price, polarity, export limits, and other terms and conditions of the Agreements, and that the Department has the authority to verify that information.[34] Among other provisions, the original Agreements specify that the Department would monitor and review the operation of the applicable agreement.[35] In order to do so, the original Agreement required Mexican producers/exporters to regularly certify to their compliance with the Agreement, *see* Section VIII.C.4, and to provide, at the Department's request, documentation confirming the price received on any sale subject to the Agreement.[36] Similarly, the Government of Mexico was required to collect and, at the Department's request, provide to the Department certain information regarding exports of Sugar to the United States.[37] Further, the original Agreements permitted the Department to "conduct verifications of persons or entities handling Signatory merchandise," under the Agreement, *see* Section VII.B.4, and to conduct verification of all information related to the administration of the CVD Agreement, *see* Section VIII.B.2. If the Department were to determine that sales were made at prices inconsistent with the Agreement, the Department could undertake consultations with the Mexican producer/exporter responsible, and take certain actions to prevent circumvention of the Agreement.[38] Similarly, if the Department were to determine that Sugar from Mexico entered the United States in excess of the Export Limit or without a valid Export License, the Department could undertake consultations with the Government of Mexico and request that the Government reduce the export allocation for the producer/exporter involved by twice the volume of the entry.[39] Both of the Agreements provided for the Department to take certain enforcement actions should the Department find that there has been a violation of the applicable agreement.[40] The original CVD Agreement also required the Government of Mexico to take certain enforcement actions against Mexican exporters that are found to have circumvented the Agreements.[41]

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[34] *See*, *e.g.*, Sections VIII.B.1 and VIII.B.2 and Appendix II of the CVD Agreement; Sections VII. and VIII.C of the Agreement.
[35] *See* Sections VII.A and VIII.B.3 of the Agreement; Sections VIII.A and VIII.B of the CVD Agreement
[36] *See* Section VII.B. of the Agreement.
[37] *See* Section VIII.B of the CVD Agreement.
[38] *See* Section VIII.E of the Agreement.
[39] *See* Sections V.D and VIII.D.2 of the CVD Agreement.
[40] *See* Section VIII of the Agreement; Section IX of the CVD Agreement.
[41] *See* Section VII of the CVD Agreement.

The amendments to the Agreements have substantially reworked these mechanisms to ensure compliance with the terms of the amended Agreements, and to strengthen the Department's ability to fully evaluate the performance of the amended Agreement throughout the course of the Department's administration of the amended Agreements.

Additional Monitoring of Producers/Exporters and Their Customers

The amended Agreement provides for additional monitoring and verification of the information provided by the Mexican producers, exporters, and intermediary customers of Mexican producers/exporters. As discussed above, the original language of the Agreements did not specify whether the Department had the authority to request or verify certain information from resellers or traders of sugar. Nor was it clear that resellers' or traders' sales of Sugar from Mexico into the United States were subject to the terms of the Agreements. The amendments to the Agreements specifically address the Department's ability to monitor and verify compliance with the Agreements under these circumstances, *i.e.*, when sugar is not sold directly from the Mexican producer/exporter to the first unaffiliated customer in the United States. In particular, the amended Agreement will require Mexican producers/exporters to include certain provisions in their sales contracts with intermediary customers (such as traders, processors, or other resellers) who are not the first unaffiliated purchasers in the United States. Those contractual provisions will require that each purchaser abide by the terms of the amended Agreement as though the purchaser were a signatory producer/exporter. Moreover, the amended Agreement will require all Mexican producers/exporters (and their purchasers, through contractual provision) to retain evidence in their files to document their compliance with the amended Agreement. Further, the amendment to the Agreement states that the Department may request the signatory producer/exporter or the intermediary customer to provide supporting documentation and may verify such information. Accordingly, the amendments substantially strengthen the ability of the Department to monitor and verify compliance with the Agreement when Sugar is not sold directly from the Mexican producer/exporter to the first unaffiliated purchaser in the United States.

Strengthened Monitoring of Polarity of Specific Sugar Shipments

Further, the amended CVD Agreement includes certain enhanced monitoring and compliance mechanisms, including the Government of Mexico's commitment to issue export licenses through its export licensing system that are specific to a contract, rather than shipment-specific. These amendments will strengthen the Department's ability to precisely tie certain sales to export licenses issued by the Government of Mexico, thereby enabling the Department to more accurately monitor and verify compliance with the provisions of the Agreement. Moreover, under the original CVD Agreement, the Government of Mexico is required to specify, on export licenses, whether or not exported Other Sugar is intended for further processing in the United States.[42] The amended CVD Agreement will additionally require the Government of Mexico to specify, if known, the identify of the entity that is further processing the Other Sugar. This

[42] *See* Appendices I and II to the CVD Agreement.

added requirement will improve the Department's ability to track sales of sugar as it monitors' signatories' compliance with the amended Agreements, including whether sales have been made at the correct reference price under the amended Agreement.

Additional mechanisms also ensure that the amended Agreements can be effectively monitored and enforced. Under the original language of the CVD Agreement, the export license was required to include the polarity of the imported sugar (*see* Appendices I and II to the CVD Agreement), but the CVD Agreement was silent regarding whether testing to confirm the polarity listed on the export license was to occur before or after importation, or the specific testing protocols to be followed. The amendments to the Agreements include critical elements that specify imports of Other Sugar must arrive in the United States in bulk, on vessels, and must be tested for polarity by a CBP-approved laboratory upon entry into the United States. With the addition of the testing requirements, the Department will be able to determine with greater certainty when specific sales or shipments exceed the polarity for Other Sugar (and, thus, evaluate whether the sale occurred at or above the correct minimum reference price). Further, pursuant to the amendment to the Agreement, importers must report the polarity test results for every entered shipment to the Department within 30 days of entry and exporters must ensure compliance by importers in the context of contractual clauses. These new requirements will enable the Department to act expeditiously to identify episodes of non-compliance, and impose penalties on non-compliant shipments, thereby creating a substantial deterrent against non-compliant conduct.

Enhanced Enforcement of Polarity and Price Requirements

Moreover, pursuant to the amendments to the Agreements, the Department can enforce compliance with the polarity limits for Other Sugar and ensure that sugar that is, based on its polarity, Refined Sugar is being sold at the minimum reference price for Refined Sugar. The original language of the Agreement defined certain actions that would be considered violations of the Agreement, including sales at net prices below the reference price, and that the Department could act under section 734(i) of the Act.[43]

The amendments to the Agreements amplify the Department's ability to enforce the Agreement. First, under the amended Agreement, a failure to abide by the polarity testing and reporting requirements may be considered to be a violation of the amended Agreement. Second, should the Department find that issues with the polarity requirements—including the polarity limits for Other and Refined Sugar, the polarity testing requirement, and/or the polarity test reporting requirement— continue to arise, the Department may terminate the amended Agreement, or apply any of the penalties for non-compliance available under the amended CVD Agreement.

Additionally, the amendment to the CVD Agreement augments the penalties available to the Department to enforce both amended Agreements. Under the original language of the CVD Agreement, if the Department were to determine that Sugar from Mexico entered the United States in excess of the Export Limit or without a valid Export License, the Department could

[43] *See* Sections VIII.A and VIII.D of the Agreement.

undertake consultations with the Government of Mexico and request that the Government reduce the export allocation for the producer/exporter involved by twice the volume of the entry.[44] If the entry could not be tied to a specific producer/exporter, the Department could reduce the Export Limit by twice the volume of the entry.[45]

The amendment to the CVD Agreement enhances this penalty: where the Department finds that polarity test results are not compliant with the amended Agreement's applicable definition of Other Sugar (and therefore, under the Agreement, the Sugar was sold at below the applicable reference price), the amended CVD Agreement provides for penalties that significantly reduce the quota amount Mexico is permitted to import under the CVD Agreement. Specifically, where the Department determines that a shipment that entered the United States as Other Sugar has a polarity of above the applicable polarity limit for Other Sugar (and therefore, under the Agreement, was sold at below the applicable reference price), the Department will reduce Mexico's Export Limit by double the quantity of the non-compliant shipment. Accordingly, under the amended CVD Agreement, the Export Limit reduction will follow from any shipment that fails to comply with the Agreements' polarity requirements. Further, the Government of Mexico will deduct double the quantity of the non-compliant shipment from the export limit allocation of the specific producer(s)/exporter(s) responsible for the shipment. Finally, if the Department has penalized the Government of Mexico for polarity non-compliance in a given Export Limit period, Mexico may not be eligible to fill any additional need for sugar in the U.S. market. These are severe penalties designed to encourage compliance with the polarity limits for Other Sugar in both the amended Agreements, and enable the Department to effectively enforce the polarity requirements set out in both the amended Agreements.

Furthermore, under the amendment to the Agreement, the Department may consider non-compliance with the polarity testing provision to be a violation of the Agreement. In addition, if the above-noted provisions prove to be insufficient to ensure compliance with the polarity requirements of the amended Agreement, the amendment further specifies that the Department may terminate the Agreement or take additional steps to ensure compliance such as increasing the penalty for non-compliance by deducting triple the amount of the non-compliant shipments from Mexico's Export Limit.

The amendments requiring polarity testing upon import, in conjunction with the amendment to the CVD agreement penalizing Mexico and the producer(s)/exporter(s) responsible for shipments with polarity that is not compliant with the amended Agreements by reducing Mexico's Export Limit, will encourage compliance with the polarity provisions of the amended Agreements, and enable the Department to effectively identify and address non-compliance with those provisions.

Based on the terms of the amended Agreements, the Department's experience and expertise in monitoring and enforcing suspension agreements, and the commitment from the Government of Mexico and the Mexican producers/exporters to abide by the terms of the amended Agreements, effective monitoring and enforcement of the amended Agreement is practicable.

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[44] *See* Section V.D of the CVD Agreement.
[45] *See* Section V.D of the CVD Agreement.

ATTACHMENT 1

NMX-F-084-SCFI-2004

INDUSTRIA AZUCARERA - AZÚCAR ESTÁNDAR - ESPECIFICACIONES (CANCELA A LA NMX-F-084-1991)

SUGAR INDUSTRY - SUGAR STANDAR - SPECIFICATIONS

PREFACIO

En la elaboración de la presente norma mexicana participaron las siguientes empresas e instituciones:

- ASOCIACIÓN DE TÉCNICOS AZUCAREROS DE MÉXICO, A.C.
- CÁMARA NACIONAL DE LAS INDUSTRIAS AZUCARERA Y ALCOHOLERA
- COMITÉ DE LA AGROINDUSTRIA AZUCARERA
- COMITÉ TÉCNICO DE NORMALIZACIÓN NACIONAL DE LA INDUSTRIA AZUCARERA
- CONSORCIO AZUCARERO ESCORPIÓN, S.A. DE C.V.
- FIDEICOMISO DE EMPRESAS EXPROPIADAS DEL SECTOR AZUCARERO
- FONDO DE EMPRESAS EXPROPIADAS DEL SECTOR AZUCARERO
- GRUPO AZUCARERO MÉXICO, S.A. DE C.V.
- GRUPO BETA SAN MIGUEL, S.A. DE C.V.
- INGENIO CENTRAL MOTZORONGO, S.A.
- INGENIO LA GLORIA, S.A.
- INGENIO LOS MOCHIS, S.A. DE C.V.
- INGENIO PLAN DE AYALA, S.A.
- INGENIO PUGA, S.A.
- INGENIO SAN NICOLÁS, S.A.
- INGENIO TAMAZULA, S.A. DE C.V.

- JUNTA DE CONTROVERSIAS AZUCARERAS
- PROMOTORA INDUSTRIAL AZUCARERA, S.A. DE C.V. (PIASA)
- SECRETARÍA DE AGRICULTURA, GANADERÍA, DESARROLLO RURAL, PESCA Y ALIMENTACIÓN
- SECRETARÍA DE SALUD
  Dirección de Normalización Sanitaria.
- SERVICIO DE ADMINISTRACIÓN Y ENAJENACIÓN DE BIENES UNIÓN NACIONAL DE CAÑEROS, CNPR
- UNIÓN NACIONAL DE CAÑEROS, CNPR
- UNION NACIONAL DE PRODUCTORES DE CAÑA DE AZÚCAR, C.N.C.
- UNIVERSIDAD NACIONAL AUTÓNOMA DE MÉXICO
  Facultad de Química.

CDU: 644.11
CANCELA A LA
NMX-F-084 -1991

NMX-F-084-SCFI-2004

INDUSTRIA AZUCARERA - AZÚCAR ESTÁNDAR - ESPECIFICACIONES (CANCELA A LA NMX-F-084-1991)

SUGAR INDUSTRY - SUGAR STANDAR - SPECIFICATIONS

1 OBJETIVO Y CAMPO DE APLICACIÓN

Esta norma mexicana establece las especificaciones de calidad que debe cumplir el azúcar (sacarosa) estándar que se comercializa en territorio nacional.

2 REFERENCIAS

Para la correcta aplicación de esta norma mexicana se deben consultar las siguientes normas oficiales mexicanas y normas mexicanas vigentes o las que las sustituyan:

NOM-051-SCFI-1994	Especificaciones generales de etiquetado para alimentos y bebidas no alcohólicas preenvasados, publicada en el Diario Oficial de la Federación el 24 de enero de 1996.
NOM-092-SSA1-1994	Bienes y servicios. Método para la cuenta de bacterias aerobias en placa, publicada en el Diario Oficial de la Federación el 12 de diciembre de 1995.
NOM-110-SSA1-1994	Bienes y servicios. Preparación y dilución de muestras de alimentos para su análisis microbiológico, publicada en el Diario Oficial de la Federación el 16 de octubre de 1995.

NOM-111-SSA1-1994	Bienes y servicios. Método para la cuenta de mohos y levaduras en alimentos, publicada en el Diario Oficial de la Federación el 13 de septiembre de 1995.
NOM-112-SSA1-1994	Bienes y servicios. Determinación de bacterias coliformes. Técnica del número más probable, publicada en el Diario Oficial de la Federación el 19 de octubre de 1995.
NOM-114-SSA1-1994	Bienes y servicios. Método para la determinación de salmonella en alimentos, publicada en el Diario Oficial de la Federación el 22 de septiembre de 1995.
NOM-117-SSA1-1994	Bienes y servicios. Método de prueba para la determinación de cadmio, arsénico, plomo, estaño, cobre, fierro, zinc y mercurio en alimentos, agua potable y agua purificada por espectrometría de absorción atómica, publicada en el Diario Oficial de la Federación el 16 de agosto de 1995.
NOM-120-SSA1-1994	Bienes y servicios. Prácticas de higiene y sanidad para el proceso de alimentos y bebidas no alcohólicas, publicada en el Diario Oficial de la Federación el 28 de agosto de 1995.
NOM-145-SSA1-1995	Productos cárnicos troceados y curados – Productos cárnicos, troceados y madurados – Disposiciones y especificaciones sanitarias, publicada en el Diario Oficial de la Federación el 13 de diciembre de 1999.
NMX-EE-048-SCFI-2003	Industria azucarera - Sacos de polipropileno, sacos con liner de polietileno y sacos laminados para envasar azúcar - Especificaciones y métodos de prueba.
NMX-EE-223-1991	Industria del plástico - Envase y embalaje - Sacos de polietileno para uso industrial - Especificaciones. Declaratoria de vigencia publicada en el Diario Oficial de la Federación el 17 de enero de 1992.

NMX-F-079-1986	Azúcar - Determinación de la polarización A 293 K (20°C). Declaratoria de vigencia publicada en el Diario Oficial de la Federación el 16 de diciembre de 1986.
NMX-F-082-1986	Ingenios azucareros - Cenizas sulfatadas en azúcares - Método gravimétrico. Declaratoria de vigencia publicada en el Diario Oficial de la Federación el 30 de diciembre de 1986.
NMX-F-253-1977	Cuenta de bacterias mesofílicas aerobias. Declaratoria de vigencia publicada en el Diario Oficial de la Federación el 8 de marzo de 1977.
NMX-F-255-1978	Método de conteo de hongos y levaduras en alimentos. Declaratoria de vigencia publicada en el Diario Oficial de la Federación el 3 de marzo de 1978.
NMX-F-286-1992	Alimentos - Preparación y dilución de muestras de alimentos para análisis microbiológicos. Declaratoria de vigencia publicada en el Diario Oficial de la Federación el 5 de junio de 1992.
NMX-F-294-1986	Industria azucarera - Determinación de humedad en muestras de azúcares. Declaratoria de vigencia publicada en el Diario Oficial de la Federación el 3 de noviembre de 1986.
NMX-F-304-1977	Método general de investigación de salmonella en alimentos. Declaratoria de vigencia publicada en el Diario Oficial de la Federación el 8 de marzo de 1977.
NMX-F-308-1992	Alimentos - Cuenta de organismos coliformes fecales. Declaratoria de vigencia publicada en el Diario Oficial de la Federación el 5 de junio de 1992.
NMX-F-495-1986	Industria azucarera - Determinación de reductores directos en azúcares. Declaratoria de vigencia publicada en el Diario Oficial de la Federación el 15 de diciembre de 1986.

NMX-F-498-1987	Ingenios azucareros - Determinación de arsénico en muestreo de azúcares blancos. Declaratoria de vigencia publicada en el Diario Oficial de la Federación el 20 de julio de 1987.
NMX-F-499-1987	Ingenios azucareros - Determinación de plomo en azúcares blancos y azúcar mascabado (crudo). Declaratoria de vigencia publicada en el Diario Oficial de la Federación el 21 de agosto de 1987.
NMX-F-501-1987	Ingenios azucareros - Determinación de dióxido de azufre en muestras de azúcares blancos. Declaratoria de vigencia publicada en el Diario Oficial de la Federación el 21 de agosto de 1987.
NMX-F-526-1992	Industria azucarera - Determinación de color por absorbancia en azúcares blancos - Método de prueba. Declaratoria de vigencia publicada en el Diario Oficial de la Federación el 20 de marzo de 1992.

3 DEFINICIONES

Para los efectos de esta norma, se establece la definición siguiente:

3.1 Azúcar estándar

Es el producto sólido derivado de la caña de azúcar, constituido esencialmente por cristales sueltos de sacarosa, en una concentración mínima de 99,40 % de polarización.

Este tipo de azúcar se obtiene mediante proceso similar al utilizado para producir azúcar crudo (mascabado), aplicando variantes en las etapas de clarificación y centrifugación, con el fin de conseguir la calidad del producto deseada.

4 CLASIFICACIÓN

El producto que refiere la presente norma, se clasifica por su grado de calidad en azúcar estándar.

5 ESPECIFICACIONES

Para facilitar las especificaciones establecidas en esta norma, es recomendable que en la elaboración del azúcar (sacarosa) estándar, se industrialice materia prima de buena calidad, se apliquen técnicas adecuadas en su proceso y se cuenten con instalaciones higiénicas.

5.1 Fisicoquímicas

El azúcar estándar producto del objeto de la aplicación de esta norma debe cumplir con las especificaciones establecidas en la tabla 1.

TABLA 1.- Especificaciones fisicoquímicas

Parámetros de calidad	Unidad	Valores	Nivel	Método de prueba
Polarización	%	99,40	Mínimo	NMX-F-079
Color	U.I.	600	Máximo	NMX-F-526; inciso 10.4
Cenizas (sulfatadas/conductividad)	%	0,25	Máximo	NMX-F-082; incisos 10.5 y 10.6
Humedad	%	0,06	Máximo	NMX-F-294
Azúcares reductores directos	%	0,10	Máximo	NMX-F-495
Dióxido de azufre (sulfitos)	ppm	20,00	Máximo	NMX-F-501; inciso 10.9
Materia insoluble	ppm	N.A.		
Plomo Arsénico	ppm ppm	0,50 1,00	Máximo Máximo	NMX-F-499 NMX-F-498
Partículas metálicas (hierro)	ppm	10,00	Máximo	OPCIONAL
Granulometría:				
Tamaño medio de grano	mm	N.A.		

UI Unidades ICUMSA.
NA No aplica.

5.2 Materia extraña

El producto objeto de la aplicación de esta norma, deberá estar libre de impurezas, que se derivan de su almacenamiento, tales como fragmentos de vidrio, plástico, metal, hilos de costal; así como cualquier otro contaminante de origen animal, vegetal o mineral.

5.3 Microbiológicas

El azúcar estándar producto del objeto de esta norma debe cumplir con las especificaciones establecidas en la tabla 2.

TABLA 2.- Especificaciones microbiológicas

Parámetro	Unidad	Límite	Método de prueba
Mesofilos aerobios	UFC/g	MÁXIMO 20	NMX-F-253; NOM-092-SSA1
Hongos	UFC/g	< 10	NMX-F-255; NOM-111-SSA1
Levaduras	UFC/g	< 10	NMX-F-255; NOM-111-SSA1
Salmonella sp	-----	AUSENTE EN 25 g	NMX-F-304; NOM-114-SSA1
Escherichia coli	NMP/g	AUSENTE	NOM-112-SSA1 NOM-145-SSA1

UFC Unidades formadoras de colonias.
NMP Número más probable.

5.4 Sensoriales

El azúcar estándar producto del objeto de esta norma debe cumplir con las especificaciones establecidas en la tabla 3.

TABLA 3.- Especificaciones sensoriales

Aspecto	Granulado uniforme
Sabor	Dulce
Color	Marfil Variando el tono del claro al obscuro
Olor	Característico del producto

6 ALMACENAMIENTO

Después de envasado el producto objeto de esta norma, para evitar su contaminación, se debe almacenar en lugares cerrados, frescos, con ventilación, secos, libres de polvo, higiénicos y que estén protegidos contra insectos, roedores, etc.

Vida de anaquel.- estando en condiciones adecuadas de almacenamiento se garantiza dos años la vida de anaquel.

7 MÉTODOS DE PRUEBA

Para verificar las especificaciones de calidad, fisicoquímicas y microbiológicas establecidas en la presente norma, se deben aplicar los métodos de prueba indicados en el capítulo de referencias o en su caso, utilizar los métodos del ICUMSA que se indican en el capítulo de bibliografía.

8 MARCADO Y ENVASADO

8.1 Marcado en el envase

Cada saco o envase individual debe llevar en impresión permanente, legible e indeleble, los datos indicados en la norma oficial mexicana NOM-051-SCFI (ver 2 Referencias) que se establecen a continuación:

- Denominación del producto conforme a la clasificación de esta norma;
- El “contenido neto” de acuerdo con las disposiciones de la Secretaría de Economía (ver inciso 9.1);
- Nombre o razón social y domicilio fiscal del fabricante;
- Serie y número progresivo de fabricación y zafra correspondiente (debe estar impreso en la parte inferior de los sacos);
- Identificación del lote, y
- La leyenda “Hecho en México”.

Los caracteres deben estar impresos en parte visible en todo momento.

8.2 Marcado en el embalaje

Se deben anotar los datos señalados en el inciso 8.1 para identificar el producto y además los concernientes para prever accidentes en el manejo y uso de los embalajes.

8.3 Envase

8.3.1 Envase en sacos de 50 kg

El producto objeto de esta norma se debe envasar en sacos que cumplan con la norma mexicana NMX-EE-048-SCFI (ver 2 Referencias).

8.3.2 Envase en sacos menores de 50 kg

El producto objeto de esta norma se debe envasar en un material resistente e inocuo, para garantizar la estabilidad del mismo, evitar su contaminación y no alterar la calidad ni sus especificaciones sensoriales.

8.4 Embalaje

Para el embalaje del producto, se deben usar cajas de cartón o contenedores de algún otro material apropiado, con la debida resistencia para proteger el producto, facilitar su manejo en el almacenamiento y distribución y no exponer la integridad de las personas encargadas de su manipulación (ver inciso 9.2).

9 APÉNDICE NORMATIVO

9.1 la leyenda ”contenido neto” debe ir seguida de los datos cuantitativo y del símbolo de la unidad correspondiente, de acuerdo al sistema general de unidades de medida, expresada en minúsculas, sin pluralizar y sin punto abreviatorio; debe presentarse en el ángulo inferior derecho o centrada en la parte inferior, de manera clara y ostensible, en un tamaño que guarde proporción con el texto mas sobresaliente de la información y en contraste con el fondo de la etiqueta. Este dato debe aparecer libre de cualquier otra referencia que le reste importancia.

9.2 las especificaciones de envase y embalaje que deben aplicarse para cumplir con los inciso 8.2 y 8.4, serán las correspondientes a las normas mexicanas de envase y embalaje especificas para cada presentación del producto.

10 BIBLIOGRAFÍA

10.1	NOM-008-SCFI-2002	Sistema General de Unidades de Medida, publicada en el Diario Oficial de la Federación el 27 de noviembre de 2002.
10.2	NMX-F-084-1991	Industria azucarera - Azúcar estándar - Especificaciones. Declaratoria de vigencia publicada en el Diario Oficial de la Federación el 17 de enero de 1992.
10.3	NMX-Z-013-1977	Guía para la redacción, estructuración y presentación de las normas mexicanas. Declaratoria de vigencia publicada en el Diario Oficial de la Federación el 31 de octubre de 1977.
10.4	GS1/3-7 (2000)	Determinación de color en azúcar morena.
10.5	GS1/3/4/7/8-11	Determinación de cenizas sulfatadas en azúcar morena.
10.6	GS1/3/4/7/8-13	Determinación de cenizas por conductividad en azúcar morena.
10.7	GS2/3-1 (1994)	Determinación de la polarización del azúcar blanco.
10.8	GS2/1/3-15 (1994)	Determinación de humedad en azúcares por desecación.
10.9	GS2-33 (1994)	Determinación de sulfitos en azúcar blanco.
10.10	GS2-37 (1994)	Determinación de la distribución del tamaño de partícula en azúcar blanco.
10.11	GS2/3-19 (1994)	Determinación de sólidos insolubles en azúcar blanco.
10.12	GS2/3-43 (1994)	Determinación de bacterias mesófilas totales en azúcar refinado.

10.13 GS2/3-47 (1994) Determinación de levaduras y hongos en azúcar refinado.

10.14 ICUMSA.- Publications Department c/o British Sugar Technical Centre Norwich Research Park; Colney Norwich nr4 7ub, England.

10.15 Cane sugar handbook, -meade chen- 11 th. Ed. John wiley & sons, inc. New York isbn 0-471-86650-4, versión en español 1991, 1991, ed. Limusa primera edición: 1991 isbn-968-18-3662-6. Impreso en México.

10.16 Sugar cane factory control- john h. Payne, 5 th. Ed., elsevier publishing co., Amsterdam 1968.

10.17 Methods book (1994) with first (1998) and second (2000) supplements.- international commission for uniform methods of sugar analysis (ICUMSA).

10.18 Dirección de investigaciones de salud – Secretaría de Salud - Técnicas para el muestreo y análisis microbiológicos de alimentos.

11 CONCORDANCIA CON NORMAS INTERNACIONALES

Esta norma mexicana no es equivalente a ninguna norma internacional por no existir referencia alguna al momento de su elaboración.

México D.F., a

MIGUEL AGUILAR ROMO
DIRECTOR GENERAL

RCG/DLR/MRG.

ATTACHMENT 2

United States Department of Agriculture

Office of the Secretary
Washington, D.C. 20250

MAY 16 2016

DOC Case No: C-201-846
Suspension Agreements
PUBLIC DOCUMENT

The Honorable Penny S. Pritzker
Secretary of Commerce
Attention: Enforcement and Compliance
APO Dockets Unit, Room 18022
U.S. Department of Commerce
14th and Constitution Avenue, N.W.
Washington, D.C. 20230

Re: Sugar from Mexico and request for increase in Mexican sugar Export Limit.

Dear Secretary Pritzker:

The U.S. Department of Agriculture (USDA) has determined that there is a need for additional sugar from Mexico in the U.S. market. The demand for raw cane sugar has outpaced supply, and the U.S. raw sugar futures price has been increasing for several months, reflecting this tightness. Under Section V(B)(4) of the Agreement Suspending the Countervailing Duty Investigation on Sugar from Mexico (79 FR 78044, December 29, 2014), the Department of Commerce may increase Mexico's sugar Export Limit, if USDA informs the Department of Commerce in writing of any additional need for sugar from Mexico.

USDA is hereby requesting that the Department of Commerce increase the Mexican sugar Export Limit for the period October 1, 2015 through September 30, 2016, by 60,000 short tons raw value of certain "Other Sugar", as defined in the CVD Agreement. Specifically, to ensure that this is the type of sugar for which there is an increasing demand in the U.S. market, and which also requires further processing, this additional sugar must have a polarity of less than 99.2 degrees.

Sincerely,

Alexis M. Taylor
Deputy Under Secretary
Farm and Foreign Agricultural Services

ATTACHMENT 3

U.S. Customs and Border Protection (/)

QB 15-131 2016 Raw Sugar

COMMODITY:

Raw cane sugar as provided for in Chapter 17, Additional U.S. Note 5

QUOTA PERIOD:

October 1, 2015 through September 30, 2016

OPENING DATE:

Thursday, October 1, 2015

RESTRAINT LEVEL:

Argentina 45,281,000 kg

Australia 87,402,000 kg

Barbados 7,371,000 kg

Belize 11,584,000 kg

Bolivia 8,424,000 kg

Brazil 152,691,000 kg

Colombia 25,273,000 kg

Congo 7,258,000 kg

Costa Rica 15,796,000 kg

Cote d'Ivoire 7,258,000 kg

Dominican Republic 185,335,000 kg

Ecuador 11,584,000 kg

El Salvador 27,379,000 kg

Fiji 9,477,000 kg

Gabon 7,258,000 kg

Guatemala 50,546,000 kg

Guyana 12,636,000 kg

Haiti 7,258,000 kg

Honduras 10,530,000 kg

India 8,424,000 kg

Jamaica 11,584,000 kg

Madagascar 7,258,000 kg

Malawi 10,530,000 kg

Mauritius 12,636,000 kg

Mexico 7,258,000 kg

Mozambique 13,690,000 kg

Nicaragua 22,114,000 kg

Panama 30,538,000 kg

Papua New Guinea 7,258,000 kg

Paraguay 7,258,000 kg

Peru 43,175,000 kg

Philippines 142,160,000 kg

South Africa 24,220,000 kg

St. Kitts & Nevis 7,258,000 kg

Swaziland 16,849,000 kg

Taiwan 12,636,000 kg

Thailand 14,743,000 kg

Trinidad-Tobago 7,371,000 kg

Uruguay 7,258,000 kg

Zimbabwe 12,636,000 kg

HTS NUMBERS:

First Tariff Field Second Tariff Field

Low Rate: (CQE required)

1701.13.1000 Blank

1701.14.1000

High Rate: (No CQE required)

9904.17.01 1701.13.5000 or 1701.14.5000

9904.17.02

9904.17.03

9904.17.04

9904.17.05

9904.17.06

Re-export Sugar

1701.13.2000 or 1701.14.2000

REPORTING INSTRUCTIONS:

Use entry type 02, 06, 07, 12, 23, 32, 38, or 52

All raw cane sugar, HTS numbers 1701.13.1000 or 1701.14.1000, must be sampled in accordance with Customs Directive 3820-001B, dated May 01, 2007.

Report in kilograms (kg)

SPECIAL INSTRUCTIONS:

An original certificate of quota eligibility (CQE) is required for raw cane sugar entry(s) with country specific allocations for the in-quota duty rate. The CQE must be transmitted electronically via the Automated Broker Interface (ABI). If the CQE has not been transmitted in ABI; the entry summary should be returned to the filer for corrective action. In addition, CQE number annotations in the quota module’s remarks field or via the electronic note system in ACS are no longer needed.

Any country without a quantity allocation, which is not subject to a United States embargo, may export raw cane sugar, provided it is entered at the over-quota duty rate. These countries are not required to furnish a CQE.

Note: The quantity to be charged for quota purposes is based on a 98.8-degree polarity with a conversion factor of 1.04909. This is to ensure that the individual country quotas do not overfill when the final raw value becomes available. HQ Quota Branch will make the conversion.

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ATTACHMENT 4

U.S. Sugar Program Fundamentals

Mark A. McMinimy
Analyst in Agricultural Policy

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Committees of Congress

Summary

The U.S. sugar program provides a price guarantee to producers of sugar beets and sugarcane and to the processors of both crops. The U.S. Department of Agriculture (USDA), as program administrator, is directed to administer the program at no budgetary cost to the federal government by limiting the amount of sugar supplied for food use in the U.S. market. To achieve both objectives, USDA uses four tools—as reauthorized without change by the 2014 farm bill (P.L. 113-79) and found in chapter 17 of the Harmonized Tariff Schedules of the United States—to keep domestic market prices above guaranteed levels. These are:

- price support loans at specified levels—the basis for the price guarantee;
- marketing allotments to limit the amount of sugar that each processor can sell;
- import quotas to control the amount of sugar entering the U.S. market;
- a sugar-to-ethanol backstop—available if marketing allotments and import quotas are insufficient to prevent a sugar surplus from developing, which in turn could result in market prices falling below guaranteed levels.

To supplement these policy tools in supporting sugar prices above government loan levels, while avoiding costly loan forfeitures, important administrative changes were adopted in late 2014. These included imposing limits on U.S. imports of Mexican sugar and establishing minimum prices for Mexican sugar imports, actions that fundamentally recast the terms of bilateral trade in sugar. Two U.S. sugar refiners have initiated a legal challenge to the U.S. government's finding that these changes have eliminated the harm to the U.S. sugar industry, so although this new regime is in effect, a measure of uncertainty about its future remains.

Under the U.S. sugar program, nonrecourse loans that may be taken out by sugar processors, not producers themselves, provide a source of short-term, low-cost financing until a raw cane sugar mill or beet sugar refiner sells sugar. The "nonrecourse" feature of these loans means that processors—to meet their repayment obligation—can exercise the legal right to forfeit sugar offered as collateral to USDA to secure the loan, if the market price is below the effective support level when the loan comes due.

Sugar marketing allotments limit the amount of domestically produced sugar that processors can sell each year. In a 2008 farm bill provision, retained by the 2014 farm bill, USDA each year must set the overall allotment quantity (OAQ) at not less than 85% of estimated U.S. human consumption of sugar. The OAQ is intended to ensure that permitted sales of domestic sugar, when added to imports under U.S. trade commitments, do not depress market prices below loan forfeiture levels for refined beet sugar and raw cane sugar.

The United States imports sugar in order to meet total food demand. The amount of foreign sugar supplied to the U.S. market reflects U.S. commitments made under various trade agreements. The most significant import obligation is the World Trade Organization (WTO) quota commitment, which requires the United States to allow not less than 1.256 million tons of sugar (almost all raw cane) to enter the domestic market from 40 countries. The United States also grants much smaller import quotas to nine countries covered by four free trade agreements. At the same time, a 2008 farm bill provision, also retained in the 2014 farm bill, directs USDA to manage overall U.S. sugar supply, including imports, so that market prices do not fall below effective support levels.

If market prices fall below levels guaranteed by the sugar program, USDA must administer a sugar-for-ethanol program in which it buys domestically produced sugar from the market and sells it to ethanol producers as feedstock for fuel ethanol. A source of controversy over the sugar program is the balance it strikes between the interests of the sugar industry and sugar users.

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Sugar Policy Overview

The U.S. sugar program is singular among major agricultural commodity programs in that it combines a floor price guarantee with a supply management structure that encompasses both domestic production for human use and sugar imports. The sugar program provides a price guarantee to the processors of sugarcane and sugar beets, and by extension, to the producers of both crops. The U.S. Department of Agriculture (USDA) is directed to administer the program at no budgetary cost to the federal government by limiting the amount of sugar supplied for food use in the U.S. market. To achieve both objectives, USDA uses four tools to keep domestic market prices above guaranteed levels. Measures one through three below were reauthorized through crop year 2018 without change by the 2014 farm bill (P.L. 113-79). The fourth measure is found in long-standing trade law. The four are:

1. price support loans at specified levels—the basis for the price guarantee;
2. marketing allotments to limit the amount of sugar that each processor can sell;
3. a sugar-to-ethanol (feedstock flexibility) backstop—available if marketing allotments and import quotas fail to prevent a price-depressing surplus of sugar from developing (i.e., fail to keep market prices above guaranteed levels);
4. import quotas to control the amount of sugar entering the U.S. market.

In addition to the foregoing policy tools, two agreements signed by the U.S. Department of Commerce (DOC) in late 2014—one with the government of Mexico and another with Mexican sugar producers and exporters—impose annual limits on Mexican sugar exports to the United States and establish minimum prices for imported Mexican sugar.

The current sugar program has its roots in the Agriculture and Food Act of 1981 (P.L. 97-98), according to the USDA.[1] The sugar program that Congress enacted in the 1981 farm bill required the Secretary of Agriculture to support prices of U.S. sugarcane and sugar beets at minimum levels—initially through purchases of processed sugar, and subsequently by offering nonrecourse loans. The legislation also encouraged the President to impose duties, fees or quotas on foreign sugar to prevent domestic prices from moving below established support levels to avoid imposing budgetary costs on the government. In its report on the 1981 farm bill, the Senate Committee on Agriculture, Nutrition and Forestry cited the importance of sugar imports to U.S. sugar supplies, pointing out that volatile world market prices of sugar contributed to sharp fluctuations in U.S. sugar prices, while adding that the United States was alone among sugar producing nations in being without an effective government price support program.[2]

The sugar program has long been a source of political controversy over the degree of government support and market intervention it involves with sharply differing perspectives on the balance of benefits and drawbacks to the program. Critics of the program, including the Coalition for Sugar Reform, which represents consumer, trade and commerce groups, manufacturing associations and food and beverage companies that use sugar, argue the sugar program acts to keep domestic prices far above world sugar prices. In so doing, the Coalition contends the sugar program imposes a hidden tax on consumers and has led to the loss of jobs in the food manufacturing sector by encouraging imports of sugar-containing products and by providing manufacturers with an incentive to move facilities abroad to gain access to lower priced sugar. The American Sugar Alliance, consisting of sugarcane and sugar beet producers, including farmers, processors,

[1] USDA, ERS Sugar & Sweeteners at http://www.ers.usda.gov/topics/crops/sugar-sweeteners/policy.aspx.

[2] Report of the Senate Committee on Agriculture, Nutrition, and Forestry to accompany S. 884, May 27, 1981.

refiners, suppliers and sugar workers, is a leading advocate for the U.S. sugar program. It points out that the price support feature of the sugar program fosters a reliable supply of sugar at reasonable prices at no cost to the government. The sugar program, it argues, is necessary to shield the domestic sugar industry from unfair competition from sugar imports at world market prices that it contends are distorted by heavily subsidized foreign sugar that is dumped on the world market at prices that are below production costs (see "Sugar Program Draws Sharply Differing Views" below).

For background on sugar policy debate, see CRS Report R42551, *Sugar Provisions of the 2014 Farm Bill (P.L. 113-79)*, by Mark A. McMinimy.

Price Support Loans

Nonrecourse loans taken out by a processor of a sugar crop, not producers themselves, provide a source of short-term, low-cost financing until a raw cane sugar mill or beet sugar refiner sells sugar. The "nonrecourse" feature means that processors—to meet their loan repayment obligation—can exercise the legal right to forfeit sugar offered as collateral to USDA to secure the loan, if the market price is below the effective support level when the loan comes due. **Figure 1** and **Figure 2** illustrate the repayment options available to raw cane sugar mills and beet sugar refiners, respectively, and show loan rates and effective support levels for FY2016.

The price levels at which processors can take out loans are referred to as "loan rates." The 2014 farm bill made no changes in the sugar program, so the current rates date from the 2008 farm bill, P.L. 110-246. The raw cane sugar loan rate (18.75¢/lb) is lower than the refined beet sugar loan rate (24.09¢/lb) to reflect its unprocessed state. The raw sugar loan rate is lower because raw sugarcane must be further processed by a cane refinery to have the same value and characteristics as refined beet sugar for food use. These loan rates are national averages. Actual loan rates are adjusted by region to reflect marketing cost differentials.

The minimum market price that a processor wants to receive in order to remove the incentive to forfeit sugar and instead repay a price support loan, though, is higher than the loan rate. This "effective support level," also called the loan forfeiture level, represents all of the costs that processors need to offset to make it economically viable to repay the loan. These costs equal the loan rate, *plus* interest accrued over the nine-month term of the loan, *plus* certain marketing costs. The effective support level for 2015-crop (FY2016) of raw cane sugar is 20.87¢/lb; for refined beet sugar, it ranges from 24.4¢ to 26.04¢/lb, depending on the region.

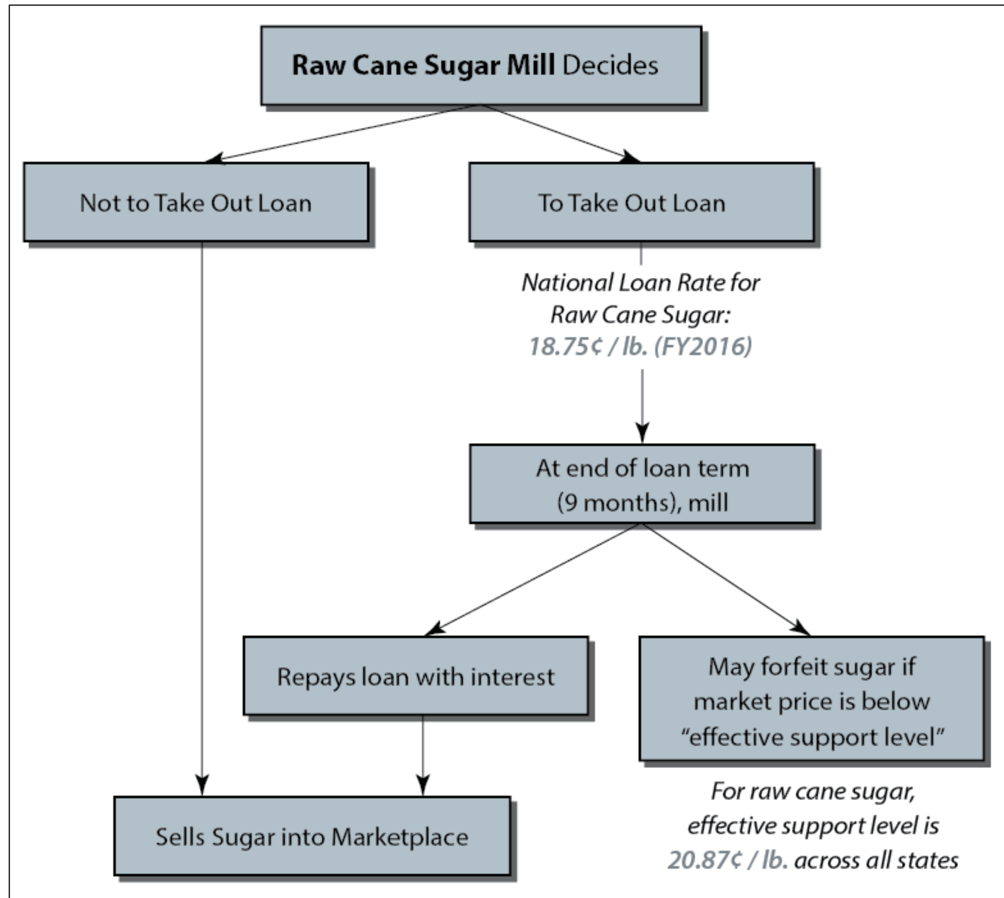
If market prices are below these loan forfeiture levels when a price support loan usually comes due (i.e., July to September), and a processor hands over sugar earlier pledged to obtain this loan rather than repaying it, USDA records a budgetary expense (i.e., an outlay). If this occurs, USDA gains title to the sugar and is responsible for disposing of this asset.

Two suspension agreements the DOC signed in December 2014—one with the Government of Mexico and another with Mexican sugar producers and exporters—have substantially modified the terms for importing sugar from Mexico and may have the practical effect of raising the effective support level.[3] For one, Mexican sugar is an important source of the U.S. sugar supply, with imports of Mexican sugar averaging 15% of the sum of U.S. production plus imports during

[3] See Agreement Suspending the Countervailing Duty Investigation on Sugar from Mexico at http://enforcement.trade.gov/agreements/sugar-mexico/CVD-Agreement.pdf; also, Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico at http://enforcement.trade.gov/agreements/sugar-mexico/AD-Agreement.pdf.

the three marketing years prior to the onset of the suspension agreements from 2011/2012 to 2013/2014.[4] Imports of sugar from Mexico in 2014/2015, the year the suspension agreements took effect, represented 11% of the total of U.S. production plus imports.[5] The agreements (see "Suspension Agreements Recast Sugar Trade with Mexico" below) establish minimum prices for Mexican sugar imports that are at, or above, effective U.S. support levels. These minimum prices are calculated at Mexican plants, so transportation costs to the U.S. processor or end user would add several cents per pound to the delivered cost of Mexican sugar. As a result, prices of imported Mexican sugar should track well above levels that would encourage U.S. loan forfeitures.

Figure 1. Price Support Loan Making Process for Raw Cane Sugar



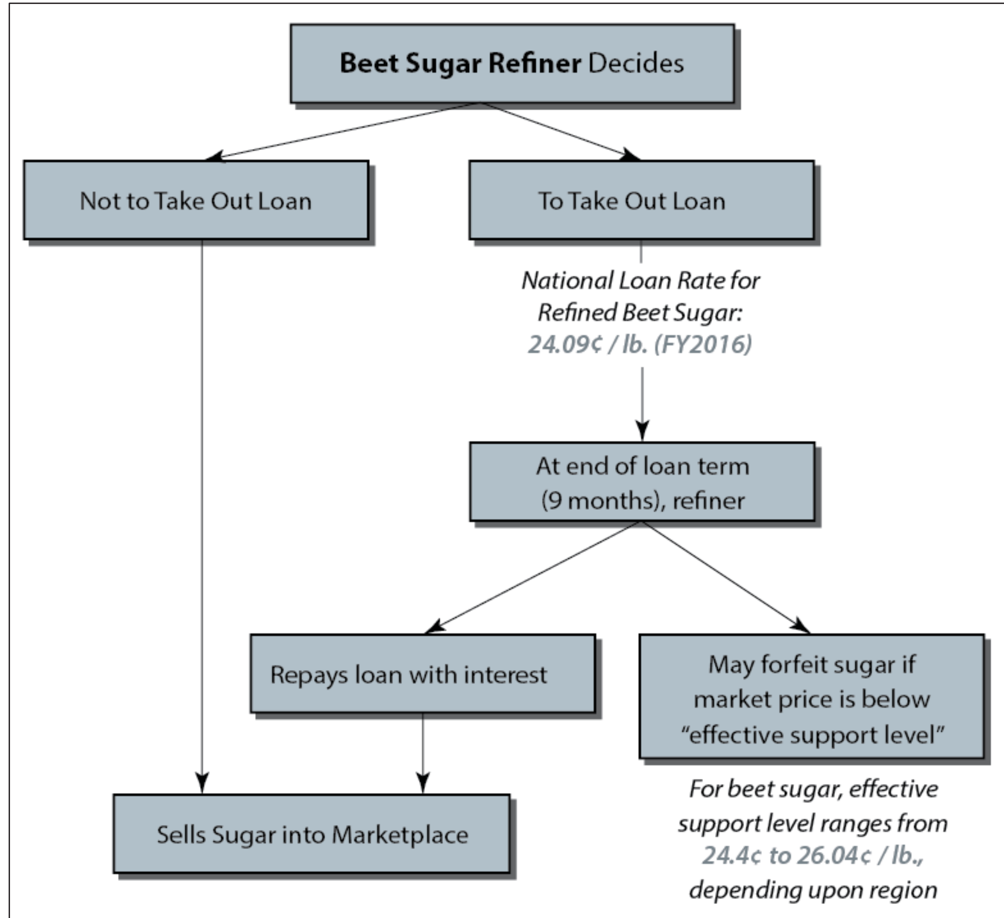
Note: As of March 30, 2016, USDA data indicates that mills that process sugarcane had 509,255 short tons of 2015-crop raw cane sugar under loan valued at $195.9 million. This represented 13.6% of USDA's March 2016 estimate of raw cane sugar production from the 2015 sugarcane crop.

---

[4] The marketing year for U.S. sugar is the same as the U.S. government's fiscal year: October1-September 30.

[5] USDA, Economic Research Service, *Sugar and Sweeteners Outlook*, March 15, 2016.

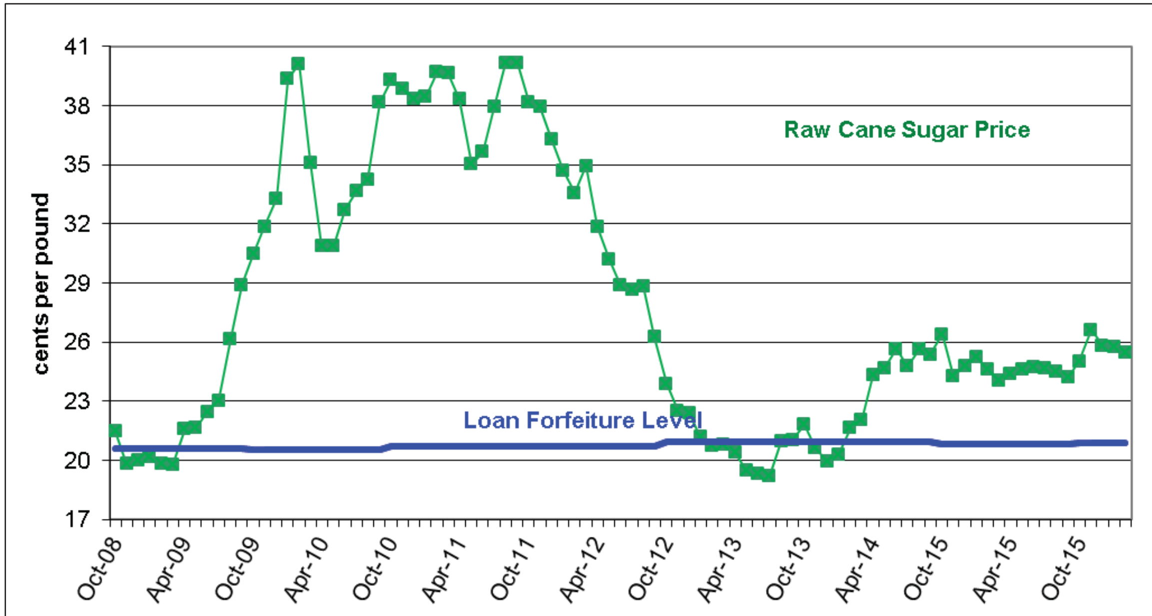
Figure 2. Price Support Loan Making Process for Refined Beet Sugar



Note: As of March 30, 2016, USDA indicates that processors of sugar beets had 1,129,250 short tons of 2015 crop beet sugar and in-process beet sugar under loan valued at $500 million. This represented 23% of USDA's March 2016 estimate of refined beet sugar production from the 2015 sugar beet crop.

Market prices for raw cane sugar and refined beet sugar since the 2008 farm bill provisions took effect were higher than loan forfeiture levels until mid-year 2013 (**Figure 3** and **Figure 4**, respectively). Toward the end of FY2013, market prices that were below these effective support levels prompted processors to forfeit, or hand over, to USDA 381,875 tons of sugar (4.3% of FY2013 U.S. sugar output valued at almost $172 million). USDA actions taken to avert these forfeitures, and then to dispose of sugar acquired as a result of these forfeitures, are detailed below in "Sugar Purchases and Exchanges for Import Rights" and "Feedstock Flexibility Program for Bioenergy Producers."

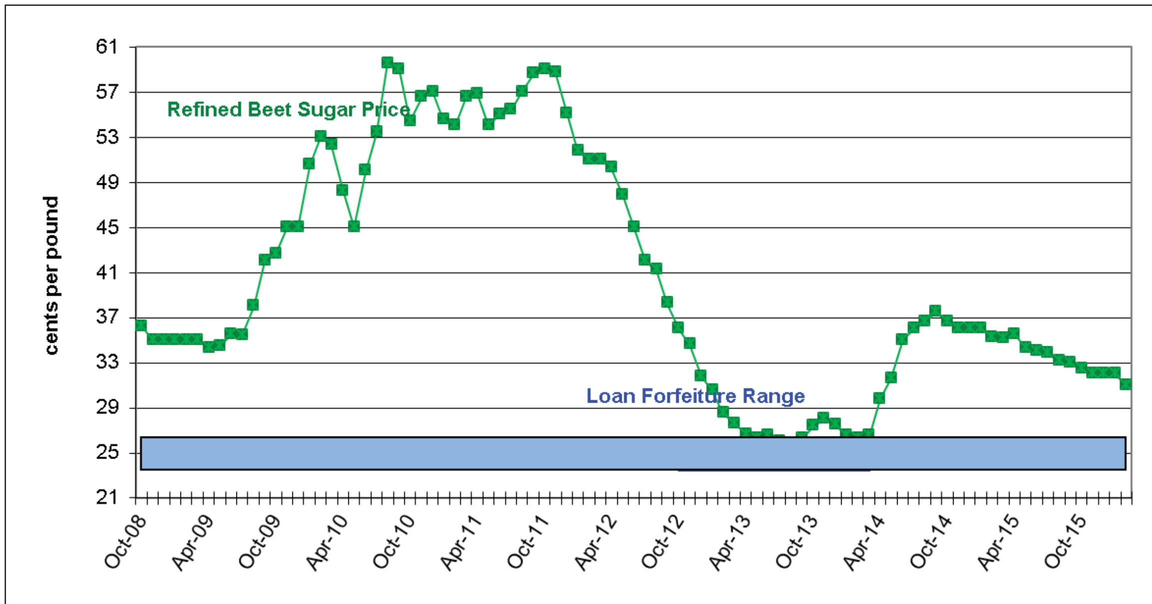
Figure 3. Raw Cane Sugar Prices Have Been Above Loan Forfeiture Level Since the 2008 Farm Bill Except in Early FY2009, Late FY2013, and Early FY2014



Source: USDA, Economic Research Service, for price data; USDA, Farm Service Agency, for loan forfeiture level.

Note: Raw cane sugar market price is the average futures price for the nearby month contract for domestic #16, traded in New York City on the Intercontinental Exchange (ICE).

Figure 4. Refined Beet Sugar Prices Have Stayed Above Loan Forfeiture Range Since the 2008 Farm Bill Until February 2016



Source: USDA, Economic Research Service, for price data; USDA, Farm Service Agency, for loan forfeiture range.

Note: The market price for refined beet sugar is the quoted price for wholesale refined beet sugar in Midwest markets, as published by *Milling and Baking News*.

Tools for Balancing Supplies and Supporting Prices

The government sets annual limits on the quantity of domestically produced sugar that can be sold for human use. It also restricts the level of imports that may enter the domestic market through tariff-rate quotas and via an import limitation agreement with Mexico. This is done to avoid costs during times when an imbalance between sugar supplies and demand could lead to low prices and sugar forfeitures under the loan program.

Marketing Allotments

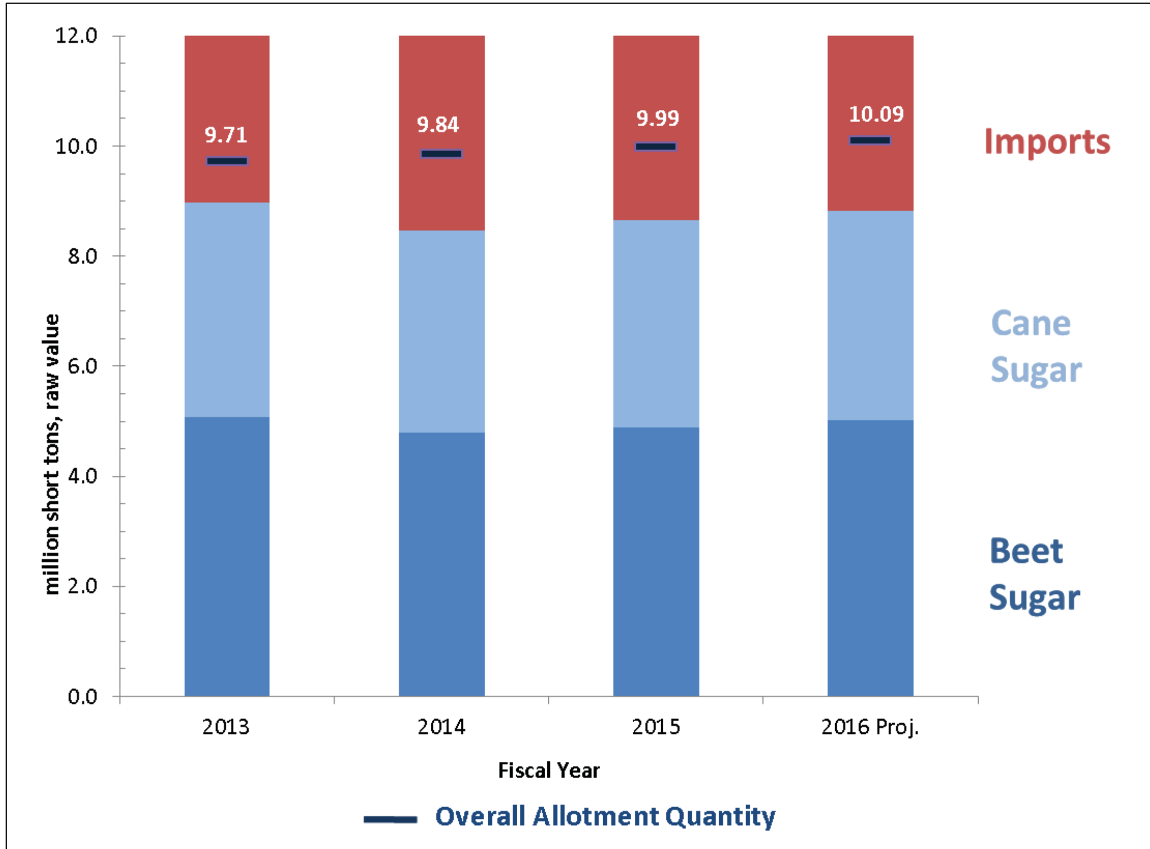
Sugar marketing allotments limit the amount of domestically produced sugar that processors can sell each year. They do not, however, limit how much beet and cane farmers can produce, nor do they limit how much sugar beets and sugarcane that beet refiners and raw sugar mills can process. In a 2008 farm bill provision that was retained in the 2014 farm bill, USDA is required each year to set the overall allotment quantity (OAQ) at not less than 85% of estimated U.S. human consumption of sugar for food. This task is carried out by the USDA's Commodity Credit Corporation (CCC) at the beginning of each fiscal year. The OAQ is intended to ensure that permitted sales of domestic sugar, when added to imports under U.S. trade commitments, do not depress market prices below loan forfeiture levels for refined beet sugar and raw cane sugar. Sugar production that is in excess of a processors' marketing allotment may not be sold for human consumption except to allow another processor to meet its allocation or for export.

In recent years, U.S. sugar production has consistently fallen short of the OAQ, averaging 88% of the OAQ threshold during the most recent three completed years from FY2013 through FY2015. Over this same period, U.S. sugar production has amounted to 74% of U.S. human use of sugar.

Figure 5 illustrates the persistent gap between domestic sugar production, the higher levels of the OAQ, and U.S. domestic consumption for human use. Substantial quantities of sugar have been imported to cover the shortfall between domestic output and human consumption. For this reason, market participants view USDA's decisions on setting import quotas rather than marketing allotments as having more of an impact on market price levels (see "Import Quotas").

The national OAQ is split between the beet and cane sectors and then allocated to processing companies based on previous sales and production capacity. If either sector is not able to supply sugar against its allotment, USDA has authority to reassign such a "shortfall" to imports.

Figure 5. Overall Allotment Quantity Compared to Total U.S. Sugar Supply



Source: Derived by CRS from USDA sugar program announcements and USDA's World Agricultural Supply and Demand Estimates reports.

Note: Imports shown occur under terms of U.S. trade commitments and are discussed in more detail in the next section.

Import Quotas

The United States imports sugar in order to meet total food demand. From FY2013 through FY2015, imports accounted for 30% of U.S. sugar used in food and beverages. The amount of foreign sugar supplied to the U.S. market reflects U.S. commitments made under various trade agreements. At the same time, a 2008 farm bill provision—one retained in the 2014 farm bill—directs USDA to manage overall U.S. sugar supply, including imports, so that market prices do not fall below effective support levels. The most significant import limit is the World Trade Organization (WTO) quota commitment, which requires the United States to allow not less than 1.256 million tons, raw value, of sugar (almost all raw cane) to enter the domestic market from 40 countries (equivalent to 1.139 million metric tons, raw value [MTRV]). The raw cane sugar tariff-rate quota (TRQ), representing 98% of the WTO minimum quota commitment of the United States, is allocated based on trade in sugar from 1975 to 1981, years during which this trade was relatively unrestricted.

The United States also grants much smaller import quotas to the six countries covered by the Dominican Republic-Central American Free Trade Agreement (DR-CAFTA), and to Colombia, Panama, and Peru under separate free trade agreements (FTAs). For calendar year 2016, the TRQ

under these FTAs totals 140,580 MTRV for the DR-CAFTA countries, 53,000 tons for Colombia, 7,325 tons for Panama, and 2,000 tons for Peru.

Beyond these defined import commitments, unrestricted, duty-free access to Mexican sugar under the North American Free Trade Agreement (NAFTA) introduced uncertainty over how much sugar Mexico would ship north in any year. To illustrate, U.S. imports of Mexican sugar since 2008 have ranged from a low of about 800,000 tons in FY2010 to a high of almost 2.1 million tons in FY2013. This variability (**Figure 6**) in part reflects large swings in the amount of Mexican sugar available for export in any year, depending on the impact of drought in some years in Mexico's sugarcane-producing regions, and the degree to which U.S. exports of cheaper high-fructose corn syrup displace Mexican consumption of Mexican-produced sugar.

During the three most recently completed marketing years, FY2013-FY2015, Mexico was by far the largest source of U.S. sugar imports, supplying 55% of total U.S. sugar imports on average over this period. Reflecting Mexico's unique status as an unrestricted supplier up until December 2014, its annual shipments varied from a high of 2.1 million short tons, raw value (STRV)[6], comprising 66% of U.S. sugar imports in FY2013, to a low of 1.5 million STRV, comprising 43% of U.S. imports in FY2015. Sugar entering the United States under tariff-rate quota programs during these three years amounted to 36% of all imports, with DR-CAFTA countries supplying a subtotal of nearly 4% of total U.S. sugar imports (**Figure 6**).

To address the market uncertainty expected from imports of Mexican sugar once it achieved unrestricted access in 2008, the 2008 farm bill introduced a new policy to regulate imports, and this policy was retained by the 2014 farm bill. The farm bill directed that at the beginning of each marketing year (October 1) USDA was required to set the WTO quotas for raw cane and refined sugar at the minimum level—1.256 million STRV—necessary to comply with this trade commitment (**Figure 6**). In case of an emergency shortfall of sugar prior to April 1, due to either weather or war, USDA was directed to increase these quotas. After April 1 (the midpoint of the marketing year), USDA may increase the WTO raw sugar quota consistent with the dual objectives of maintaining sugar prices above loan forfeiture levels and providing for adequate supplies of raw and refined sugar in the domestic market. Any increase in the import quota is temporary in that it applies only until the next marketing year, which begins on October 1.

TPP Agreement and U.S. Sugar Imports

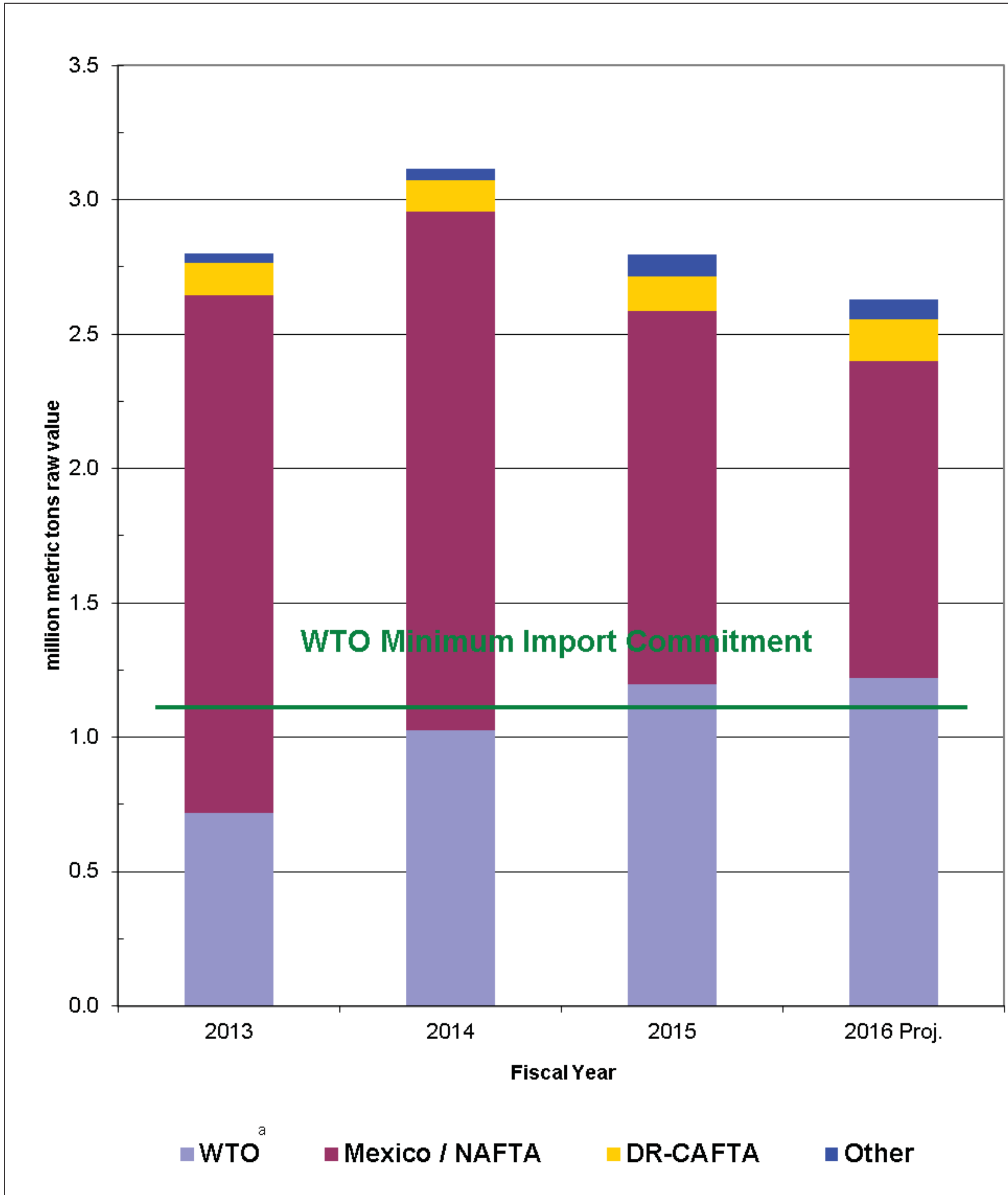
The Trans-Pacific Partnership (TPP) is a regional FTA that the United States concluded with 11 other Pacific Ocean–facing nations in October 2015 and was signed by the participating governments in February 2016. Among its provisions, the United States agreed to make available additional amounts of TRQ sugar exports to five countries. The total quantity involved amounts to 86,300 metric tons (MT) of sugar and sugar-containing products. Recipients of the additional TRQ sugar are Australia (65,500 MT), Canada (19,200 MT), Vietnam (1,500 MT), Malaysia (500 MT), and Japan (100 MT). If the agreement is implemented, this additional TRQ sugar would represent about 3% of U.S. sugar imports in FY2014/2015. Any additional sugar imports under TPP would not be expected to increase the likelihood of forfeitures under the U.S. sugar program; more likely, they would displace a portion of Mexican sugar exports to the United States. The reason for this outcome is that under the U.S.-Mexico bilateral suspension agreements of December 2014, Mexico has, in effect, become the "swing" (or residual) supplier of sugar to the U.S. market, so additional TRQ sugar would be expected to displace shipments of Mexican sugar. Importantly, the TPP agreement will not have the force of law for the United States unless Congress enacts implementing legislation.[7]

[6] A short ton is equivalent to 2,000 pounds. Raw value is a factor of 1.07 of refined value, according to USDA, except for Mexican sugar for which raw value is a factor of 1.06 of the actual weight of the shipped product.

[7] For additional background on the TPP agreement, see CRS Report R44278, *The Trans-Pacific Partnership (TPP): In Brief*, by Ian F. Fergusson, Mark A. McMinimy, and Brock R. Williams.

Figure 6. U.S. Sugar Imports, by Trade Agreement

Raw Cane and Refined Sugar



Source: USDA Economic Research Service, Foreign Agricultural Service, and World Agricultural Outlook Board.

Notes: Imports for domestic food/beverage use only; excludes sugar imported for the sugar re-export program.

a. Imports under the WTO commitment have typically fallen short of the quantity of sugar that eligible countries with a quota can sell to the U.S. market. For FY2016, USDA projects a shortfall of 27,956 tons as of March 2016. The projected shortfall compares with actual shortfalls of 65,682 tons in FY2015, 214,859 tons in FY2014, and 515,441 tons in FY2013.

Suspension Agreements Recast Sugar Trade with Mexico

While the 2014 farm bill reauthorized the sugar program intact for five years through 2018 crops, events since enactment of the farm bill have materially altered the program. A major change with substantial repercussions for the U.S. sugar program in late 2014 concerned the treatment of imported sugar from Mexico. From 2008 until December 2014, Mexican sugar exports were accorded unrestricted, duty-free access to the U.S. market under NAFTA. Two suspension agreements that the U.S. government signed with the Government of Mexico and with Mexican sugar producers and exporters in December 2014 have fundamentally altered trade in sugar with Mexico while creating ripple effects for the sugar program and for sugar users. The two suspension agreements stem from parallel countervailing duty (CVD) and antidumping (AD) investigations initiated in the spring of 2014 by the International Trade Commission (ITC) and the International Trade Administration (ITA) of the DOC in response to a petition filed by the American Sugar Coalition (ASC). The ASC represents sugarcane and sugar beet producers, processors, refiners, and sugar workers. Sections 704 and 734 of the Tariff Act of 1930 (19 U.S.C. §1671(c) and §1673(c)), as amended, provide the legal authority for the CVD and AD suspension agreements.

Preliminary findings in the CVD investigation determined that the Mexican government was subsidizing Mexican sugar exports.[8] The AD investigation concluded as a preliminary matter that Mexican sugar was being dumped into the U.S. market, that is, sold at less than fair value—defined as below the sale price in Mexico, or below the cost of production.[9] The investigations determined these actions had injured the U.S. sugar industry, and based on these preliminary findings, the DOC imposed cumulative duties on U.S. imports of Mexican sugar to be deposited by U.S. importers of sugar, ranging from 2.99% to 17.01% under the CVD order, and from 39.54% to 47.26% under the AD order.

In December 2014, the U.S. Department of Commerce (DOC) entered into suspension agreements with the Government of Mexico and with Mexican sugar industry interests.[10] Under the CVD agreement that DOC entered into with the Government of Mexico and the AD order that DOC signed with Mexican sugar producers and exporters, the DOC agreed to suspend both the CVD and AD investigations and to remove the duties it had imposed on imports of Mexican sugar. In return, the Government of Mexico agreed to relinquish the unrestricted access to the U.S. sugar market it had negotiated under NAFTA. Further, the Mexican government and Mexican producer groups and exporters also agreed to observe the certain restrictions on Mexican sugar exports to the United States.

The two suspension agreements have substantially recast U.S. sugar trade with Mexico by imposing three fundamental changes on Mexican sugar exports to the United States.

- Mexico's previously unlimited sugar exports to the U.S. market are henceforth limited to an assessment of U.S. needs, defined as the residual of projected U.S. human use less domestic production and imports from tariff-rate quota countries.

[8] See U.S. Department of Commerce Fact Sheet of August 26, 2014, at http://enforcement.trade.gov/download/factsheets/factsheet-mexico-sugar-ad-prelim-082614.pdf.

[9] See U.S. Department of Commerce Fact Sheet of October 27 at http://enforcement.trade.gov/download/factsheets/factsheet-mexico-sugar-ad-prelim-102714.pdf.

[10] For the text of the two agreements suspending countervailing duties and antidumping duties, see http://enforcement.trade.gov/agreements/sugar-mexico/index.html.

- Refined sugar exports from Mexico are limited to 53% of Mexico's allowable quantity in any given marketing year (October 1 to September 30), whereas previously no such restriction was in place.
- Mexican sugar is subject to minimum reference prices of $0.26 per pound for refined sugar and $0.2225 for all other sugar.[11] Prior to the agreements, no floor price was imposed.

To determine the quantity of Mexican sugar that may be imported into the United States in a given marketing year under the suspension agreements, DOC is tasked with making an initial calculation of the domestic requirement for Mexican sugar in July. This quantity is subject to a recalculation in September, December, and March that may result in increases in quantity from the initial calculation. The agreement with the government of Mexico suspending countervailing duties states that Mexico's export limit is determined according to a calculation of U.S. needs that is based on a U.S. sugar carryover of 13.5%.[12] The carryover, or stocks-to-use ratio (SUA), is the quantity of sugar available at the end of the marketing year (September 30) expressed as a percentage of annual usage. This formula has been a point of concern for some U.S. sugar users. The Sweetener Users Association, for one, has argued that an SUA of 13.5% is too restrictive of supplies and runs the risk of creating shortages in the domestic sugar market.[13] In commenting on the draft suspension agreements, the Sweetener Users Association contended that an SUA of at least 14.5%, if not 15.5%, would be a more appropriate level.

In addition to imposing limits on the quantity of Mexican sugar that may be imported into the U.S. market, the agreements limit the concentration of Mexican sugar imports over the course of the marketing year to not more than 30% of the assessment of U.S. needs from October 1 through December 31 and not more than 55% from October 1 through March 31. For instance, in the wake of the agreement the initial export limit on Mexican sugar of 1,162,604.75 metric tons raw value for the 2014/2015 marketing year was subsequently increased to 1,383,969.68 metric tons raw value, which became effective on March 30, 2015.

Potential Effects on Government Outlays and Sugar Prices

In practice, the changes ushered in by the suspension agreements should greatly facilitate the USDA's task of operating the sugar program at no cost to the government, as Congress directed in the 2014 farm bill. Prior to the suspension agreements, imports of sugar from Mexico represented the only unmanaged source of supply under the sugar program. The USDA's ability to administer the sugar program at no net cost has been at issue since the 2012/2013 crop year, when net government outlays for the sugar program spiked to $259 million. That year, large quantities of domestic sugar under loan were forfeited in the face of excess supplies and low market prices. This obligated USDA to dispose of the forfeited sugar at a significant loss under the Feedstock Flexibility Program (FFP) and via exchanges in which the agency provided swapped forfeited domestic sugar for the right to import certain quantities of sugar.[14]

[11] Prices are based on dry weight, commercial value, f.o.b. at Mexican plants.

[12] See agreement suspending countervailing duties at http://enforcement.trade.gov/agreements/sugar-mexico/index.html.

[13] See "Comments of Sweetener User Association on Draft Agreements Suspending Antidumping and Countervailing Duty Investigations on Sugar from Mexico of November 18, 2014," http://sugarreform.org/wp-content/uploads/2014/11/SUA-Comments-re-Draft-Agreements.pdf,

[14] See U.S. International Trade Commission publication 4467, Sugar from Mexico, p. 27, http://usitc.gov/publications/701_731/pub4467.pdf.

In an analysis issued in March 2015, the Food and Agricultural Policy Institute (FAPRI) at the University of Missouri projected net government outlays for the sugar program under two scenarios: with the suspension agreements, and without them. FAPRI concluded that under the suspension agreements net government outlays for sugar would be zero over marketing years 2016 through 2024. Without the agreements, FAPRI projected that annual outlays would average $16 million a year during marketing years 2016 through 2018, declining to $8 million a year on average from 2019 through 2024.[15]

In its March 2015 Baseline for Farm Programs, the Congressional Budget Office (CBO) projects government outlays for the sugar program at zero over the period FY2015 through FY2019. From FY2020 through FY2025 CBO projects outlays totaling $115 million, reflecting a likely re-examination of the agreement after five years and the potential for policy uncertainty over Mexican sugar imports thereafter.[16] The USDA projects no sugar program costs through FY2026 based on the *USDA Agricultural Projections to 2025* analysis, which assumes no changes in government agricultural policies and that existing trade arrangements remain in place.[17]

Assessing the potential for the suspension agreements to add to costs borne by sugar-using industries and consumers, the Coalition for Sugar Reform, representing consumer, trade, and commerce groups; manufacturing associations; and food and beverage companies that use sugar, contends that the suspension agreements will result in higher sugar prices for U.S. users and consumers. Following the signing of the suspension agreements in December 2014, the Coalition asserted, "These agreements will ensure that any Mexican sugar needed to adequately supply the U.S. market must be priced well above world market prices—prices that are even higher than mandated by the U.S. sugar program."[18] The American Sugar Alliance, a coalition of sugar producers, including farmers, processors, refiners, sugar suppliers and workers, has expressed support for the agreements, contending they will foster free and fair trade in sugar, while benefiting U.S. sugar farmers, workers, consumers, and taxpayers.[19]

Considering that Mexican sugar is a significant source of U.S. sugar supplies that can vary in quantity from one year to the next, and considering also that minimum prices of Mexican sugar are at U.S. loan levels, or above them, without including transportation costs to U.S. destinations, it is evident that pricing on Mexican sugar should be well above U.S. loan levels as long as the suspension agreements remain in effect. Transportation from Mexican mills adds several cents per pound to the cost of sugar delivered to U.S. plants—as much as $0.03 to $0.06 per pound, according to FAPRI.

Two Sugarcane Refiners Challenging Suspension Agreements

Whether the new framework around trade in Mexican sugar imposed by the suspension agreements will remain in effect is not entirely certain. The agreements have no termination date, but the signatories may terminate them at any time. The suspended CVD and AD investigations

[15] Impacts of the U.S.-Mexico Antidumping and Countervailing Duty Suspension Agreement, FAPRI, March 27, 2015, at http://www.fapri.missouri.edu/wp-content/uploads/2015/03/FAPRI-MU-Bulletin-07-15.pdf.

[16] Telephone conversation of April 1, 2015, with Dave Hull, Congressional Budget Office.

[17] See USDA, Economic Research Service, *Sugar and Sweeteners Outlook, March 15, 2016*, http://www.ers.usda.gov/media/2030300/sss-m-331-mar2016-final.pdf.

[18] Coalition for Sugar Reform press release of December 22, 2014, at http://sugarreform.org/wp-content/uploads/2011/07/CSR-AD-CVD-Agreements-Signed-12-22-14-FINAL.pdf.

[19] American Sugar Alliance press release of March 19, 2015, at http://www.sugaralliance.org/itc-suspension-agreements-remove-the-injury-caused-by-unfairly-traded-mexican-sugar-5245/.

are subject to a review after five years. More immediately, two U.S. sugarcane refiners—Imperial Sugar Company and AmCane Sugar LLC—are challenging the agreements. In January 2015, the two companies petitioned the U.S. International Trade Commission (ITC), contending the agreements do not eliminate completely the injurious effect of sugar imports from Mexico as the law permitting such agreements requires.[20] In a unanimous decision issued in March 2015, the ITC concluded the agreements do eliminate entirely the injurious effect of Mexican sugar imports.[21] In the wake of the ITC's determination, the two cane refiners filed petitions with the U.S. Court of International Trade, contending that the ITC's determination was not supported by the evidence and was not in accordance with the governing statute. The complaints have been consolidated by the court and were under review as of the end of March 2016.

On a separate track, the two cane refining companies also petitioned the DOC to continue the CVD and AD investigations to final determinations. In early May 2015, the DOC determined the two sugar-refining companies had standing under the law to make such a petition and announced it would resume the CVD and AD investigations.[22] Pending final determinations in these investigations, the terms of the suspension agreements remained in force. In September 2015, the DOC issued its final determinations, affirming its preliminary findings that, prior to the entry into force of the suspension agreements, Mexican sugar exports were being subsidized by the government and dumped into the U.S. market at prices below their fair market value. The DOC found that dumping margins on Mexican sugar ranged from 40.48% to 42.14%, depending on the producer/exporter, and that government subsidies on exported sugar ranged from 5.78% to 43.93%. Following these determinations, the ITC reaffirmed its earlier finding that the U.S. sugar industry was injured as a result of these practices.[23] As a consequence, the suspension agreements remain in force pending a decision by the U.S. Court of International Trade.

Mechanisms Aimed at Countering Low Prices

In addition to domestic marketing allotments and import quotas and limits, USDA has two policy mechanisms to help prevent prices from slipping below effective loan forfeiture levels, thereby limiting program costs that might otherwise accrue to the government as a result of substantial loan forfeitures. These include offering CCC sugar to processors in exchange for surrendering rights to import tariff-rate quota sugar; purchasing sugar from processors in exchange for surrendering tariff-rate quota sugar; and removing sugar from the human food market by purchasing sugar from processors for resale to ethanol producers for fuel ethanol production.

Sugar Purchases and Exchanges for Import Rights

To dispose of sugar owned by CCC without increasing the risk of loan forfeitures, the farm bill authorizes USDA to transfer ownership of CCC-owned sugar in exchange for rights to purchase tariff-rate quota sugar, or certificates of quota entry, which carry a low tariff rate or zero tariff. From July to September 2013, USDA completed four sugar "exchanges" in an effort to bolster market prices and forestall loan forfeitures of some 2012 crop sugar. Two exchanges involved

[20] CVD: 19U.S.C. §1671c(c); AD: 19 U.S.C. §1673c(c).

[21] See U.S. ITC press release of March 19, 2015, at http://www.usitc.gov/press_room/news_release/2015/er0319ll436.htm.

[22] Federal Register notice of May 4, 2015, at https://www.federalregister.gov/articles/2015/05/04/2015-10253/sugar-from-mexico-continuation-of-antidumping-and-countervailing-duty-investigations.

[23] See ITC, *Sugar from Mexico*, https://www.usitc.gov/publications/701_731/pub4577.pdf.

bids made by refiners and brokers for sugar acquired by USDA from processors as a result of loan forfeitures in return for surrendering import rights. Two other exchanges involved USDA purchasing sugar from processors, which then was exchanged for import rights that cane refiners and brokers surrendered to USDA. The latter two initiatives were taken to reduce the amount of sugar expected to be supplied to the U.S. market and were implemented by USDA using 1985 farm bill authority. This cost reduction provision authorizes USDA to purchase a supported commodity deemed to be in surplus if such action results in program savings.

Feedstock Flexibility Program for Bioenergy Producers

If market prices fall to levels that threaten to result in loan forfeitures, the Secretary of Agriculture may purchase surplus sugar and sell it to bioenergy producers to avoid forfeitures. In the event that forfeitures of sugar loans do occur, the Secretary is required to administer a sugar-for-ethanol program using domestic sugar intended for food use. The objective of this Feedstock Flexibility Program (FFP) is to permanently remove sugar from the market for human consumption by diverting it into a non-food use—ethanol. When the Secretary activates this program, USDA will purchase surplus and other sugar acquired from processors and then sell that sugar to bioenergy producers for processing into fuel-grade ethanol and other biofuels. Competitive bids would be used by USDA to purchase sugar from processors and also to sell that sugar (together with any sugar forfeited by processors) to ethanol producers. An exception to the requirement to activate this program is that forfeited sugar may be sold back into the market for human food use in the event of an emergency shortfall of sugar. In August and September 2013, USDA activated this program as remaining loans came due and sugar prices headed below effective support levels (**Figure 3** and **Figure 4**).

Sugar Program Draws Sharply Differing Views

The sugar program has long been the subject of controversy, both among lawmakers and among competing interests within the sugar market. In part, disagreement over the sugar program has centered on whether it strikes the right balance between government support for the domestic sugar industry in the face of subsidized foreign sugar and the cost this support may impose on sugar users and consumers in the form of marketplace distortions and potentially higher sugar prices than might otherwise prevail.

From one side of this controversy, the American Sugar Alliance (ASA), representing U.S. sugar industry interests, asserts that even though U.S. sugar producers are among the most efficient in the world, they cannot compete with foreign subsidies that encourage the production of surpluses that are dumped onto the world market at prices that are often below the cost of production.[24] As to the competitiveness of U.S. sugar prices, ASA issued the results of a study from 2015 that indicated that U.S. retail prices of sugar in 2014 were below the average for developed countries and also below the average retail price in some major exporting countries, including Brazil and Australia.[25]

The Sugar Users Association, representing companies that use sweeteners in their business operations, has a very different perspective on this issue, contending that the sugar program is

[24] See testimony of Jack Roney, American Sugar Alliance, before the House Committee on Agriculture, October 21, 2015, at http://agriculture.house.gov/uploadedfiles/10.21.15_roney_testimony.pdf.

[25] See *Global Retail Sugar Prices*, July 2015, https://sugaralliance.org/wp-content/uploads/2015/08/SIS-Global-Sugar-Price-Survey-2015-Summary.pdf.

poorly designed. In particular, it argues that TRQ allocations are dated and that this has the effect of restricting export quotas to certain countries that in some cases either cannot fill their entire quotas or may not ship any sugar to the United States. As such, it asserts the TRQ program tends to distort and destabilize the U.S. sugar market, which it argues has led to job losses in sugar-using food industries.[26]

As to whether the sugar program harms consumers through higher sugar prices, an analysis issued in 2013 by the Center for Agricultural and Rural Development at Iowa State University concluded that eliminating the U.S. sugar program—including marketing allotments and import quotas and tariffs that restrict the availability of sugar for domestic human use—would increase U.S. consumers' welfare by between $2.9 billion and $3.5 billion each year while also supporting a modest increase in employment in the U.S. food processing industry.[27] The paper was commissioned by the Sweetener Users Association.

The ITC took a narrower approach to this question in a report from 2013 that analyzed the potential effects of removing only the existing restrictions on U.S. sugar imports.[28] The ITC concluded that removing sugar import restrictions would result in a meaningful decline in U.S. sugar production and employment within the sugar production and processing sectors in tandem with a substantial expansion in total U.S. sugar imports. As for sugar prices, the report projected that the elimination of import restrictions would produce welfare gains for U.S. consumers amounting to $1.66 billion over the period 2012-2017, equating to a yearly benefit of $277 million.

[26] See Thomas Earley, oral statement on behalf of the Sweetener Users Association to the U.S. International Trade Commission, March 19, 2013, http://www.sweetenerusers.org/Tom%20Earley%20ITC%20SUA%20Oral%20statement%20-%203-19-13%20FINAL.pdf.

[27] See *The Impact of the Sugar Program Redux*, 2013, at http://www.card.iastate.edu/publications/synopsis.aspx?id=1183.

[28] See *The Economic Effects of Significant U.S. Import Restraints* (Publication 4440) at http://www.usitc.gov/publications/332/pub4440.pdf.

Administrative Year in the Sugar Program

The text box below sets out specific dates, and calendar windows, for undertaking key administrative actions that are integral to managing the U.S. sugar program.

U.S. Sugar Program Calendar of Administrative Actions

In July, DOC is to calculate the "export limit" for Mexican sugar for the U.S. market for the upcoming marketing year (October-September), which is to be 70% of the projection of the "target quantity of U.S. needs" for Mexican sugar based on the USDA's July World Agricultural Supply and Demand Estimates (WASDE) report. The export limit becomes effective October 1.

On September 1, the Secretary of Agriculture is to announce the amount of sugar (if any) that the Commodity Credit Corporation (CCC) is to purchase prior to the end of the current marketing year (September 30) to avoid loan forfeitures. Any purchases are to be resold for ethanol production under the Feedstock Flexibility Program (FFV).

In September, a subsequent calculation of the target quantity of U.S. needs is to be carried out based on the September WASDE with the export limit to remain at 70% of the target quantity. The new export limit quantity cannot be below the export limit announced in July.

By September 30, USDA must announce sugar loan rates for the year beginning October 1.

By October 1, USDA is to establish domestic human consumption of sugar for the new marketing year (October-September) and also establish domestic marketing allotments for sugarcane and sugar beet processors.

By October 1, the Secretary of Agriculture sets initial sugar import quotas for the new marketing year (October-September) at the minimum levels that are required to comply with international trade agreements, except for refined sugar.

By October 1, USDA is to announce the amount of sugar, if any, the CCC is to purchase in current crop year that is to be made available for sale under the FFV, and to re-estimate this amount and provide notice by Jan. 1, April 1, and July 1.

From October 1 to March 31, the Secretary of Agriculture may increase the import quota for refined sugar, but only in the event of war or natural disaster.

In December, DOC is to recalculate the target quantity for Mexican sugar for the current marketing year based on the December WASDE report. The export limit is to be raised to 80% of target quantity as of January 1. The new export limit quantity cannot be below the September export limit.

In March, DOC is to recalculate the target quantity for Mexican sugar based on the March WASDE report. The export limit is to be raised to 100% of target quantity as of April 1. The new export limit quantity cannot be below the December export limit.

Prior to April 1, DOC may increase the export limit on Mexican sugar to address potential shortages in the U.S. market.

From April 1, the Secretary may increase the Overall Allotment Quota and the tariff rate quotas that restrain imports of sugar in the event of an emergency shortfall of sugar.

From April 1, tariff rate quotas on imported sugar may be increased as long as doing so will not threaten to result in forfeitures under the sugar loan program.

After April 1, DOC may increase the export limit on Mexican sugar in response to a written request from USDA citing the need for additional imports of Mexican sugar.

Author Contact Information

Mark A. McMinimy
Analyst in Agricultural Policy
mmcminimy@crs.loc.gov, 7-2172

ATTACHMENT 5

	FY02	FY03	FY04	FY05	FY06	FY07	FY08	FY09	FY10	FY11	FY12	FY13	FY14	FY15	FY16
Raw cane loan rate	$ 0.1798	$ 0.1799	$ 0.1793	$ 0.1793	$ 0.1800	$ 0.1800	$ 0.1800	$ 0.1800	$ 0.1800	$ 0.1850	$ 0.1875	$ 0.1875	$ 0.1875	$ 0.1875	$ 0.1875
Refined beet loan rate	$ 0.2282	$ 0.2254	$ 0.2288	$ 0.2288	$ 0.2300	$ 0.2300	$ 0.2300	$ 0.2300	$ 0.2300	$ 0.2377	$ 0.2409	$ 0.2409	$ 0.2409	$ 0.2409	$ 0.2409
							actual pounds								
Forfeitures (pounds):	16,659,699		32,000,000	48,000,000								170,750,000	593,000,000		
Cane Sugar	-		-	-								140,750,000	90,000,000		
Beet Sugar	16,659,699		32,000,000	28,000,000								30,000,000	463,000,000		
In Process Beet Sugar				20,000,000								-	40,000,000		
							total dollars								
Forfeitures (dollars) :	3,678,462		7,616,000	9,675,200								34,568,950	138,799,500		
Cane Sugar	-		-	-								27,389,950	17,514,000		
Beet Sugar	3,678,462		7,616,000	6,157,200								7,179,000	111,965,500		
In Process Beet Sugar				3,518,000								-	9,320,000		
							actual pounds								
Purchases (pounds):												521,611,462			
Cane Sugar												155,316,600			
Beet Sugar												366,294,862			
							total dollars								
Purchases (dollars):												120,196,018			
Cane Sugar												30,665,968			
Beet Sugar												89,530,050			

ATTACHMENT 6

USDA's Domestic Sugar Program and Reporting Glossary Terms

Beet sugar means sugar that is processed directly or indirectly from sugar beets, sugar beet molasses or in-process beet sugar whether produced domestically or imported.

Cane juice means water containing the sucrose extracted from crushed sugarcane.

Cane sugar means sugar derived directly or indirectly from sugarcane produced in the United States, including sugar produced from sugarcane molasses.

Cane sugar refiner means a person in the U.S. Customs Territory that refines raw cane sugar through affination or defecation, clarification, and further purification by absorption or crystallization.

Cane syrup means concentrated cane juice from which no sucrose has been extracted. Weight is based on sugar solids contained.

CCC means the Commodity Credit Corporation.

Deliveries means the movement of refined sugar from a cane sugar refiner, a sugar beet processor, a sugarcane processor, or a trader, to end-users or brokers for consumption, either as sugar or for use in products containing sugar, including sugar delivered to manufacturers for use in products to be exported.

Direct-consumption sugar means any sugar which is not to be further refined or improved in quality, whether such sugar is principally of crystalline structure or is liquid sugar, edible molasses, sugar syrup, or cane syrup.

Edible molasses means molasses that is not to be further refined or improved in quality and that is to be distributed for human consumption, either directly or in molasses-containing products.

Entry: For purposes of USDA sugar reporting, "Entry" of sugar can only be reported after the reporting company has a completed Entry Summary form (CBP Form 7501), or equivalent electronic form if using the Automated Broker Interface (ABI). Documents must be retained for 5 years.

Exports: For purposes of USDA sugar reporting, USDA uses the U.S. Customs and Border Protection (CBP) definition of export. For evidence of export to Mexico, a pedimento (Mexican Customs Form) from the importer must be obtained. For export to Canada, a Canadian Customs B-3 must be obtained. For countries other than Canada and Mexico, the report of an export may be made only after a Shippers Export Declaration (SED Form 7525-V) is obtained. Documents must be retained for 5 years. Exports are recorded in the month coinciding with the transaction date noted on the Custom's form.

Extraction Rate: Extraction rate refers to the percent of sucrose obtained from processing sugar beets or sugarcane, compared to the sucrose content in the sugar beet or sugarcane before processing -- pounds sucrose obtained/pound sucrose before slicing/crushing.

Fiscal year means that year beginning October 1 and ending the following September 30, i.e., FY 2008 is the period from October 1, 2007 - September 30, 2008.

FSA means the Farm Service Agency.

Imports: For purposes of USDA sugar reporting, an "Import" has occurred when a good has physically cleared through U.S. Customs and Border Protection processing for “entry”, either entering consumption channels immediately or entering after withdrawal for consumption from bonded warehouses under Customs custody or from Foreign Trade Zones. Physical arrival of sugar that is only entered into a bonded warehouse or a Foreign Trade Zone does not constitute an import for USDA reporting purposes. Imports are recorded in the month coinciding with the transaction date noted on the Custom’s form. You must be the “importer of record” to record an import.

In-process beet sugar means the intermediate product, as CCC determines produced from processing sugar beets. Like sugar beets, it is considered an input into the production of sugar regardless of whether it is produced domestically or imported. Domestically produced in-process beet sugar is eligible for a loan, but does not count against a processor’s marketing allocation upon sale.

In-process cane sugar means the intermediate sugar containing product, as CCC determines, produced in the processing of sugarcane. It is not raw sugar, nor is it suitable for direct human consumption. Domestically produced in-process cane sugar is eligible for a loan and counts against a processor’s marketing allocation upon sale.

Inventory held for others means inventory that has been sold (title has transferred) but has not been delivered.

Invert sugar means a mixture of glucose (dextrose) and fructose (levulose) formed by the hydrolysis of sucrose.

Liquid sugar means a direct-consumption sugar which is not principally of crystalline structure and which contains, or which is to be used for the production of, any sugars principally not of crystalline structure which contain soluble non-sugar solids (excluding any foreign substances that may have been added or developed in the product) equal to 6 percent or less of the total soluble solids. Liquid sugar is exclusive of cane syrup and edible molasses.

Market or marketing means the transfer of title associated with the sale or other disposition of sugar for human consumption in United States commerce. A marketing also includes a sale of sugar under the Feedstock Flexibility Program, the forfeiture of sugar loan collateral under the

Sugar Loan Program, exportation of sugar from the United States customs territory eligible to receive credits under re-export programs for refined sugar or sugar containing products administered by the Foreign Agricultural Service, or the sale of sugar eligible to receive credit for the production of polyhydric alcohol under Polyhydric Alcohol program (see part 1530 of this title) administered by the Foreign Agricultural Service, and for any integrated processor and refiner, the movement of raw cane sugar into the refining process.

Molasses means thick syrup which is a byproduct of processing sugar beets or sugarcane, or of refining raw cane sugar. Weight is based on sugar solids contained.

Other sugar means any sugar suitable for human consumption that does not require further refinement. May include refined crystalline, liquid sugar, edible molasses, sugar syrups and cane syrups.

Over-allocation sales means all sales of sugar that have been sold over the processors' allocation quantity.

Person means an individual, corporation, association, marketing or processing cooperative, joint stock company, estate or trust, or other legal entity.

Plant capacity means the maximum capability, on a short tons per day basis, of a processing or refining facility to process sugar beets (cleaned and tared), sugarcane, and/or raw sugar.

Processing facility means a distinct physical facility, at a single location, which processes sugarcane, sugar beets, or molasses into sugar.

Processing inputs means the quantity of raw materials (e.g., sugarcane, sugar beets, raw sugar, and molasses) used in processing or refining operations.

Processor stocks means all stocks that have not been previously sold.

Production means the output of beet sugar from the processing by sugar beet processors of domestically produced sugar beets, sugar beet molasses or in-process beet sugar whether produced domestically or imported; the output of cane sugar (including edible molasses and cane syrup) by sugarcane processors of domestically produced sugarcane or sugarcane molasses; or the output of sugar (including edible molasses and sugar syrup) from the processing by cane sugar refiners of raw cane sugar or imported molasses.

Raw sugar means any sugar not suitable for human consumption without further refinement, regardless of polarity.

Raw value means of any quantity of sugar means its equivalent in terms of raw sugar testing 96 sugar degrees, as determined by a polarimetric test performed under procedures recognized by the International Commission for Uniform Methods of Sugar Analysis (ICUMSA). Direct-consumption sugar derived from sugar beets and testing 92 or more sugar degrees by the

polariscope shall be translated into terms of raw value by multiplying the actual number of pounds of such sugar by 1.07. Sugar derived from sugarcane and testing 92 sugar degrees or more by the polariscope shall be translated into terms of raw value in the following manner: raw value = {[(actual degree of polarization -92) x 0.0175] + 0.93} x actual weight. For sugar testing less than 92 sugar degrees by the polariscope, derive raw value by dividing the number of pounds of the "total sugar content" (i.e., the sum of the sucrose and invert sugars) thereof by 0.972.

Receipts mean the quantity of domestically-sourced raw materials (e.g., sugarcane, sugar beets, raw sugar, refined sugar, liquid sugar, syrups, and molasses) received by the processing facility, refining facility, liquid station or otherwise.

Refined crystalline sugar means centrifugal, crystalline sugar (including "high-polarity" sugar from raw cane mills, and "soft" or "brown" sugars) which is not to be further refined or improved in quality.

Refining facility means a distinct physical facility, at a single location, which processes raw sugar or imported molasses into refined sugar.

Re-export credit occurs when a licensee under the Refined Sugar Re-Export Program exports sugar, or transfers sugar to a licensee of the Sugar-Containing Products Re-Export Program or the Polyhydric Alcohol Program. At that point, the licensee receives a credit on his license. He can subsequently import raw cane sugar, outside of any quota or high-tier duty. Imports are recorded on his license as a debit. Over time, debits and credits will balance; at any time, the license cannot exceed 50,000 metric tons raw value on either the debit or the credit side.

Re-export Program is designed to facilitate the use of domestic refining capacity to export refined sugar into the world market. The program establishes a license against which a refiner can export domestically produced refined sugar and later import world raw sugar, import world raw sugar for refining and distribution into the domestic market and later export refined sugar, or import raw sugar, refine it and export it into the world market. The program was implemented to mitigate the imposition of restrictive quotas, which reduced the quantity of raw sugar allowed to enter the U.S. domestic market. Imports of sugar under HTS 1701.11.20 are permitted only for those importers who hold a license issued by the U.S. Department of Agriculture. The regulations are found at 7 CFR 1530, which implements authority given to the Secretary of Agriculture in Additional U.S. note 6 to chapter 17 of the HTS.

Region (FSA designated areas for reporting sugar deliveries)

- New England - Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, and Connecticut.
- Middle Atlantic - New York, New Jersey, and Pennsylvania.
- North Central - Ohio, Indiana, Illinois, Michigan, Wisconsin, Minnesota, Iowa, Missouri, North Dakota, South Dakota, Nebraska, and Kansas.

- South - Delaware, Maryland, District of Columbia, Virginia, West Virginia, North Carolina, South Carolina, Georgia, Florida, Kentucky, Tennessee, Alabama, Mississippi, Arkansas, Louisiana, Oklahoma, and Texas.
- West - Alaska, Hawaii, Montana, Idaho, Wyoming, Colorado, New Mexico, Arizona, Utah, Nevada, Washington, Oregon, and California.
- Puerto Rico - entered separately and included with U.S. total.

Stocks means inventory of sugar on hand at the beginning and at the end of the calendar month for which data are being reported.

Sucrose means a disaccharide carbohydrate having the chemical formula $C_{12}H_{22}O_{11}$.

Sugar means any grade or type of saccharine product derived, directly or indirectly, from sugarcane, sugar beets, sugarcane molasses, sugar beet molasses or in-process beet sugar whether domestically produced or imported and consisting of, or containing, sucrose or invert sugar, including raw sugar, refined crystalline sugar, edible molasses, edible cane syrup, liquid sugar, and in-process cane sugar.

Sugar for allotments means any grade or type of saccharine product processed, directly or indirectly, from sugarcane or sugar beets (including sugar produced from sugar beet or sugarcane molasses), produced for human consumption, and consisting of, or containing, sucrose or invert sugar, including raw sugar, refined crystalline sugar, edible molasses, edible cane syrup, and liquid sugar.

Sugar beet processor means an allocation holder who commercially produces sugar, directly or indirectly, from sugar beets, sugar beet molasses, or in-process beet sugar whether domestically produced or imported, has a viable processing facility and a supply of sugar beets for the applicable allotment year.

Sugarcane processor means an allocation holder who commercially produces sugar, directly or indirectly, from sugarcane, has a viable processing facility and a supply of sugarcane for the applicable allotment year.

Sugar syrup means a direct-consumption liquid sugar with a sucrose content of less than 94 percent of the total soluble solids. Weight is based on sugar solids contained.

Swap means when a sugar company delivers sugar for the account of another sugar company due to freight savings. In turn the company who delivers the sugar to another sugar company's customer will report such transaction to USDA as a shipment/return of swap sugar. The receiving sugar company will report the transaction as a receipt of swap sugar.

Syrup means a viscous, concentrated sugar solution resulting from the evaporation of water, or the remaining liquor after crystallization of sugar from a solution.

Tolling means when company A has a product (ex: molasses and thick juice) that is owned by company B. Company A converts the product to refined sugar and sends it back to company B. Company B maintains ownership of it.

Ton means a short ton or 2,000 pounds.

USDA means the United States Department of Agriculture.

Weight Shrink/Gain: means the percent change in sugar beet weight from the time of piling, until the time of slicing. Shrink should be entered as a (-) negative.