SWEETENER USERS ASSOCIATION

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December 14, 2015

The Honorable Michael Scuse
Under Secretary
Farm and Foreign Agricultural Services
U.S. Department of Agriculture
1400 Independence Avenue, S.W.
Washington, DC 20250

Dear Mr. Under Secretary:

Given the Department's forecast of ending sugar stocks in the December 9 *World Agricultural Supply and Demand Estimates*, the Sweetener Users Association (SUA) believes that it is timely for the Department of Agriculture to review the prospects for sugar supply availability during the balance of this fiscal year and announce an increase in the raw sugar tariff-rate quota. The December WASDE not only shows carryover stocks down 196,000 tons from November, but also shows a 170,000-ton increase in projected consumption. Moreover, the latest Sweetener Market Data report show stocks of raw sugar on October 31 to be almost 300,000 tons below a year earlier. Such a review is especially important because the terms of the U.S.-Mexico suspension agreements may inadvertently complicate the ability of U.S. cane refiners to supply sufficient amounts of refined cane sugar this year.

Importance of the U.S. Cane Refining Sector

In our view, a viable and competitive cane refining sector is fundamental to America's food security, and is especially critical to the smooth operation of those segments of the U.S. food industry that use sugar. These industries employ some 600,000 Americans. If U.S. sugar policies threaten the cane refining industry, there should be an offsetting policy response. There are ample precedents for such responses, notably the Refined Sugar Re-Export Program, which was created after the imposition of import quotas in the early 1980s limited cane refinery throughput.

Increasing Marketplace Preference for Cane Sugar

A relatively new factor which underscores cane refining's importance is the growing demand for ingredients that do not contain genetically modified organisms (GMOs). We believe that biotechnology has provided important benefits to sugar beet farmers, and support their ability to make their own choices about varieties. Moreover, there is no doubt that GMOs on the market today are safe. However, consumer preferences are also a factor that many food companies will take into account. Our purpose in this letter is not to debate the trend toward GMO-free labeling – merely to submit that it *is* a trend, and one that must be taken into account. As noted in the attached Reuters article, the demand for refined cane sugar may continue to increase at the expense of the demand for refined beet sugar. Likewise, the November 23 JSG Report refers to "an apparent preference for refined cane sugar over GM beet supplies."

We are aware of anecdotal reports that a market premium for cane sugar may be emerging to reflect its use in GMO-free products. However that may be, any increase in the demand for cane sugar rather than beet sugar could be exacerbated by the Food and Drug Administration's recent finalization of guidance on the use of labeling to distinguish non-GMO foods, inasmuch as the guidance document could provide greater certainty to food manufacturers interested in such labeling. Thus, the U.S. cane sector – which has long fallen short of producing its share of the Overall Allotment Quantity (OAQ) for raw sugar – could be further strained.

Impact of U.S.-Mexico Suspension Agreements

The U.S.-Mexico suspension agreements create additional hazards for cane refiners, especially those that are not integrated backward into the production sector and thus lack captive supplies of raw sugar. These agreements create a powerful incentive for Mexico to supply as much sugar as possible in the higher-priced category with approximately a 4-cent-per-pound premium to the minimum price for Mexican raw sugar. Some of this sugar, sold for direct consumption, competes directly with the final product sold by cane refiners. Other Mexican sugar requires further refining for most commercial purposes, yet because of its polarity can be sold at the higher of the two minimum prices, making it unaffordable as a feedstock for U.S. cane refineries.

Limitations of WASDE

Because of these and other factors – e.g., the still-unknown impacts of recent weather events in Mexico – there is a significant risk that even if the all-sugar balance sheet approach used by the WASDE might show adequate supplies and stocks, that will not be available in the real world. The WASDE numbers, taken alone, are insufficiently granular to allow policy makers to assess the disparate conditions facing cane refiners, as opposed to sellers of beet sugar.

Calculating Supply Adequacy

We therefore believe it is important for USDA to estimate whether raw cane sugar supplies will be adequate to permit cane refineries to utilize capacity efficiently and in a stable fashion throughout the marketing year, and to supply the amount of refined cane sugar demanded by the market on a timely basis. Toward that end, we believe USDA should consult with market participants to assess what portion of demand can be met exclusively with cane sugar. USDA should calculate U.S. refining capacity on both an aggregate and individual refinery basis, and evaluate supplies potentially available to refiners from domestic, Mexican and TRQ sources. We are concerned this exercise may reveal that some or all cane refiners will have inadequate supplies of raw cane sugar to supply the requisite amount of refined sugar demanded by the market.

Need and Authority for TRQ Increase

If this is the case, we would strongly urge USDA to take the obvious step of increasing the TRQ for raw cane sugar in an amount sufficient to supply all domestic refineries. There may be a perception that USDA's hands may be tied, in this regard, by the 2008 and 2014 farm bills. We respectfully submit that this perception is inaccurate. In fact, USDA has ample statutory authorities to ensure U.S. supply adequacy, and the Department's discretion is actually much greater than is commonly understood.

Suspension Agreements Are No Obstacle

First, nothing in the U.S.-Mexico suspension agreements requires USDA to administer sugar policy with a stocks-to-use (S/U) target of 13.5%. This is indeed a binding metric in the suspension agreements, but its sole function is to calibrate imports of sugar from Mexico. The bilateral agreement does not – and indeed, could not – say anything about USDA's ability to increase imports from third countries. The agreement changes no part of U.S. law. It follows that if USDA established a S/U target of 15.5%, as SUA has long advocated, the Department would not in any way violate the U.S.-Mexico agreements by increasing the WTO TRQ to attain that stocks level.

In fact, in the current situation where normal market patterns may be distorted by the suspension agreements, we would urge USDA to solve for that S/U ratio which keeps cane refineries adequately and consistently supplied with raw sugar throughout the fiscal year, even if the resulting ending stocks exceed 15.5% of use. In that regard, it should be noted that most countries maintain a S/U ratio of at least 20% or higher.

HTSUS Authority to Increase TRQs

Additional U.S. Note 5(a)(ii) to Chapter 17 of the Harmonized Tariff Schedule of the United States (HTSUS) provides that if "the Secretary [of Agriculture] believes that domestic supplies of sugar may be inadequate to meet domestic demand at reasonable prices," the TRQs may be increased. As explained further below, this authority has been neither repealed nor amended in any way by the 2008 and 2014 farm bills.

Marketing Allotment Laws Are No Obstacle

The statute requiring marketing allotments requires (at 7 U.S.C. 1359kk(a)) that the Secretary, "notwithstanding any other provision of law," establish TRQs at their minimum levels, but this requirement is only made effective "at the beginning of the quota year," i.e., on October 1, not at any time thereafter. 7 U.S.C. 1359kk(b) specifies circumstances in which the Secretary "shall" and "may" increase the raw and refined TRQs, depending on the time of year. However, nothing in this language says that the Secretary may *only* increase the TRQ in these circumstances. Congress could easily have stated that TRQs could *only* be increased as provided in 7 U.S.C. 1359kk(b), but did not do so. Importantly, the instructions in this subsection also do *not* contain the phrase "notwithstanding any other provision of law." Thus, the subsection does not have the effect of modifying in any way the authority of the Secretary under the HTSUS (an "other provision of law") to increase TRQs.

It follows that the Secretary has discretion to increase TRQs pursuant to the HTSUS if he determines that supplies "may be inadequate to meet domestic demand at reasonable prices." He need not find an "emergency shortage" under 7 U.S.C. 1359kk(b), because he would not be acting under that authority, but under the different yet undiminished authority of the HTSUS.

OAQ Adjustment as Avenue for TRQ Increase

Finally, 7 U.S.C. 1359cc(b)(2)(B) provides that the Secretary "shall adjust" the OAQ to maintain "adequate supplies of raw and refined sugar in the domestic market." The requirement is mandatory, not discretionary. 7 U.S.C. 1359ee(b) sets out a procedure for the Secretary to reassign "deficits" to other sources, i.e., recognize the inability of a sector to meet its allotment and provide for an alternative means of ensuring that the marketplace has access to a corresponding ("adequate") amount of sugar. If certain intervening steps do not eliminate the deficit, then "the Secretary shall reassign the remainder to imports of raw cane sugar."

In actual practice, USDA has frequently negated this final step by simply saying that the deficit would be made up by sugar imports that had already occurred or were already anticipated. But this approach is not consistent with the plain wording of the statute, and even if it were, there is nothing in the statutory language that would *prevent* the more intuitive approach of simply increasing imports, i.e., the TRQ. We believe that USDA should do exactly that.

Conclusion

USDA's authority to manage imports is actually more extensive than commonly believed. SUA respectfully urges the Department to conduct the analyses outlined above, and use the available legal authorities to increase the raw sugar TRQ in an amount sufficient to provide adequate supplies at reasonable prices. SUA has conducted its own analysis and strongly urges USDA to take immediate action to increase the raw TRQ by at least 380,000 tons to meet domestic demand needs that are now clearly apparent after the release of the December WASDE. This number is based on our traditional recommendation of a 15.5% S/U ratio target, the need to offset the resulting lower amount that Mexico could send to the United States, and an allowance for additional shortfalls associated with the TRQ increase. Specifically, an appropriate TRQ increase is likely to reduce Mexico's quota under the suspension agreements by approximately 133,000 tons, while we conservatively estimate a shortfall of at least 15% in any TRQ increase. These considerations argue for a TRQ increase of about 380,000 tons.

We would appreciate the opportunity to meet with you and your staff at an early convenient date to discuss these matters further.

Sincerely,

Perry Cerminara

Perry Cerminara
Chairman

Attachment