




A-201-845
Admin Review: 12/19/14 – 11/30/15
Public Version
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DATE: November 29, 2016

TO: Paul Piquado
Assistant Secretary for
Enforcement and Compliance

FROM: Carole Showers 
Director
Office of Policy
Enforcement and Compliance

RE: Decision Memorandum for the Preliminary Results of Administrative Review of
the Agreement Suspending the Antidumping Duty Investigation on Sugar from
Mexico

Summary

In response to requests from domestic interested parties Imperial Sugar Company (Imperial), AmCane Sugar LLC (AmCane) and the American Sugar Coalition and its Members¹ (Petitioners), the Department of Commerce (the Department) is conducting an administrative review to review the current status of, and compliance with, the agreement suspending the antidumping duty investigation on sugar from Mexico (AD Agreement) for the period December 19, 2014, through November 30, 2015. For the reasons stated in this memorandum, the Department preliminarily finds, based upon the current record of this review, that there is some indication that certain individual transactions of subject merchandise may not be in compliance with the terms of the AD Agreement, and further that the AD Agreement may no longer be meeting all of the statutory requirements, as set forth in sections 734(c) and (d) of the Tariff Act of 1930 (the Act). The Department, therefore, needs to obtain additional information in order to confirm whether the Mexican signatories subject to individual examination in this review are in compliance with the terms of the AD Agreement, and whether the current AD Agreement continues to meet the relevant statutory requirements referenced above.

Scope of the AD Agreement

The product covered by this 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.

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, Hawaiian Commercial and Sugar Company, Rio Grande Valley Sugar Growers, Inc., Sugar Cane Growers Cooperative of Florida, and the United States Beet Sugar Association.



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 (InChI) for sucrose is 1S/C12H22O11/c13-1-4-6(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 InChI 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 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 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 AD Agreement is dispositive.

Period of Review (POR)

The POR is December 19, 2014, through November 30, 2015.

Background

On December 19, 2014, the Department signed an agreement under section 734(c) of the Tariff Act of 1930, as amended (the Act), with a representative of Mexican producers/exporters accounting for substantially all imports of sugar from Mexico, including Central Motzorongo S.A. de C.V. (Motzorongo) and Fideicomiso Ingenio San Cristobal (San Cristobal), suspending the antidumping duty (AD) investigation on sugar from Mexico. *See Sugar from Mexico: Suspension of Antidumping Duty Investigation*, 79 FR 78039 (December 29, 2014), at attachment (AD



Agreement).² On January 8, 2015, Imperial Sugar Company (Imperial) and AmCane Sugar LLC (AmCane) each notified the Department that they had petitioned the U.S. International Trade Commission (the ITC) to conduct a review to determine whether the injurious effects of imports of the subject merchandise are eliminated completely by the AD Agreement (a section 734(h) review).³ On January 16, 2015, Imperial and AmCane also submitted timely requests for continuation of the AD investigation.⁴ On March 19, 2015, in a unanimous vote, the ITC found that the AD Agreement eliminates completely the injurious effects of imports of sugar from Mexico.⁵ Subsequently, on April 24, 2015, the Department determined that AmCane and Imperial had standing to request continuation of this investigation and, as a result, published a continuation notice on May 4, 2015.⁶ On September 23, 2015, the Department issued a final affirmative determination in the AD investigation.⁷ On November 16, 2015, the ITC published its final affirmative finding that that an industry in the United States is materially injured by reason of imports of sugar from Mexico.⁸ Because the ITC determined that such injury did exist, consistent with section 734(f)(3)(B) of the Act, the AD Agreement remained in force.⁹

On December 30, 2015, Imperial and AmCane submitted requests for an administrative review of the AD Agreement pursuant to Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review, 80 FR 75058 (December 1, 2015).¹⁰ On December 31, 2015, the Petitioners filed a request for an administrative review of the AD Agreement.¹¹ On February 9, 2015, the Department initiated a review.¹²

On March 25, 2016, and April 28, 2016, the Department placed import data obtained from U.S. Customs and Border Protection (CBP) on the record of the proceeding to assist in respondent selection.¹³ Interested parties filed comments on respondent selection for the AD review.¹⁴ On

² See *Sugar from Mexico: Suspension of Antidumping Duty Investigation*, 79 FR 78039 (December 29, 2014), at Attachment, "Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico" (the AD Agreement).

³ See *Sugar from Mexico: Continuation of Antidumping and Countervailing Duty Investigations*, 80 FR 25278, 25279 (May 4, 2015) (Continuation Notice).

⁴ See *id.*

⁵ See *id.*, at 25280.

⁶ See *id.*

⁷ See *Sugar from Mexico: Final Determination of Sales at Less Than Fair Value*, 80 FR 57341 (September 23, 2015) (*Final LTVF Determination*).

⁸ See *Sugar from Mexico (Investigation Nos. 701-TA-513 and 731-TA-1249 (Final))*, 80 FR 70833 (November 16, 2015).

⁹ See also *Final LTVF Determination*, 80 FR at 57342. Pursuant to section 734(f)(3)(B) of the Act, the AD Agreement remains in force but the Department shall not issue an antidumping order so long as (1) the AD Suspension Agreement remains in force, (2) the AD Suspension Agreement continues to meet the requirements of subsections (c) and (d) of the Act, and (3) the parties to the AD Suspension Agreement carry out their obligations under the AD Suspension Agreement in accordance with its terms.⁴

¹⁰ See Letter from Imperial, "Sugar from Mexico, Inv. No. A-201-845 – Request for Administrative Review of the Agreement Suspending the Antidumping Duty Investigation," December 30, 2015; Letter from AmCane, "Sugar from Mexico: Request for Administrative Reviews," December 30, 2015.

¹¹ See Letter from American Sugar Coalition and its Members, "Sugar from Mexico: Request for Administrative Review," December 31, 2015.

¹² See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 81 FR 6832 (February 9, 2016).

¹³ See Department Memorandum "Release of Customs Entry Data for Respondent Selection in the Administrative



June 2, 2016, the Department selected two respondents for individual review¹⁵, the two largest signatories, Central Motzorongo S.A. de C.V. (Motzorongo) and Fideicomiso Ingenio San Cristobal (San Cristobal) and their respective affiliates, and issued its questionnaire to these two mandatory respondents.¹⁶ Motzorongo and San Cristobal submitted their responses to the original questionnaire on July 21, 2016, and July 26, 2016, respectively. The Department issued supplemental questionnaires to Motzorongo on August 2, 2016, September 13, 2016, and November 18, 2016. To date, Motzorongo has filed supplemental questionnaire responses on August 26, 2016, September 20, 2016, September 26, 2016. The Department issued supplemental questionnaires to San Cristobal on August 8, 2016, September 14, 2016, October 14, 2016, and November 18, 2016. To date, San Cristobal has filed supplemental questionnaire responses on August 29, 2016, October 3, 2016, and October 28, 2016.

Preliminary Results of Review

Section 751(a)(1)(C) of the Act specifies that the Department shall “review the current status of, and compliance with, any agreement by reason of which an investigation was suspended.” Pursuant to the Agreement, each signatory producer/exporter individually has agreed that it will not sell the subject merchandise at less than the reference prices established in Appendix I to the Agreement.¹⁷ Each signatory producer/exporter also individually agreed that, for each entry, 85 percent of the dumping determined in the investigation will be eliminated (*i.e.*, that, for each entry, 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).¹⁸ In addition, in this review, the Department is reassessing whether suspension of the AD Agreement is in the “public interest,” including the availability of supplies of sugar in the U.S. market, and whether “effective monitoring” is practicable.

In the original and supplemental questionnaire responses, the respondents maintain that the

Review of the Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico,” March 28, 2016; Department memorandum, “Re-Release of Customs Entry Data for Respondent Selection in the Administrative Review of the Agreement Suspending the Countervailing Duty Investigation on Sugar from Mexico and in the Administrative Review of the Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico,” April 28, 2016.

¹⁴ See Letter from Petitioners, “Sugar from Mexico: Comments on Respondent Selection,” April 18, 2016; Letter from Camara Nacional de Las Industrias Azucarera y Alcoholera (Mexican Sugar Chamber) (Camara), “Sugar from Mexico - Comments on CBP Data,” April 18, 2016; Letter from Petitioners, “Sugar from Mexico: Comments on Respondent Selection,” May 2, 2016; Letter from Camara, “Sugar from Mexico - Comments on CBP Data and Respondent Selection,” May 2, 2016; Letter from Camara, “Response to Petitioners’ Comments on Respondent Selection,” May 5, 2016; Letter from Petitioners, “Sugar from Mexico: Rebuttal Comments on Respondent Selection,” May 5, 2016.

¹⁵ See Department Memorandum, “First Administrative Review of the Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico: Questionnaire Issuance,” June 2, 2016.

¹⁶ See Letter from the Department to Motzorongo, “Agreement Suspending the Antidumping Investigation of Sugar from Mexico; Questionnaire for the December 19, 2014 through November 30, 2015, Period of Review: June 2, 2016; Letter from the Department to San Cristobal, “Agreement Suspending the Antidumping Investigation of Sugar from Mexico; Questionnaire for the December 19, 2014 through November 30, 2015, Period of Review: June 2, 2016.

¹⁷ See AD Agreement, 79 FR 78040, 78041.

¹⁸ See *id.*, at 78042.



information provided in the U.S. sales listings illustrates that all of the sales of sugar they made during the POR were made in compliance with the terms of the AD Agreement. Specifically, the respondents provided sales listings in which they reported sales made in the POR at or above the reference prices and which eliminate 85 percent of the dumping found in the investigation.¹⁹ However, the definition of the reference price in the AD Agreement is “the minimum price at which merchandise subject to this Agreement can be sold in the United States.”²⁰ In their U.S. sales listings, the respondents reported sales made to [

[²¹ the United States at or above the reference price and in accordance with the AD Agreement. Moreover, San Cristobal indicated that []²² Therefore, without further information on the subsequent [] it is not possible for the Department to make a finding with respect to these sales, such as [

[] Consequently, on November 18, 2016, the Department issued supplemental questionnaires to Motzorongo and San Cristobal (and their respective affiliates) requesting additional information regarding certain sales in or to the United States.²³

In the November 18, 2016, supplemental questionnaires, in addition to asking for information concerning [], the Department requested additional information concerning [

[]. This information is also necessary in order for the Department to make a preliminary finding with respect to whether sales were made at or above the applicable reference price and whether 85 percent of the dumping determined in the investigation is being eliminated. We have not yet received or had the opportunity to review the companies’ responses to the supplemental questionnaires and, until we have done so, cannot make a finding based on complete information with respect to whether all sales were made in accordance with the terms of the AD Agreement.

Based on the information received to date in the questionnaire responses, the Department also has concerns with respect to whether the AD Agreement is currently able to meet the relevant requirements of the Act for such agreements. Specifically, the Department has concerns as to whether the AD Agreement is still in the public interest and whether effective monitoring is practicable because we cannot, at this juncture, engage in the kind of examination necessary absent

¹⁹ See, e.g., Motzorongo’s July 21, 2016, questionnaire response at Exhibits 8 and 10; San Cristobal’s July 26, 2016, questionnaire response at Exhibits 7 and 9.

²⁰ AD Agreement at section II.G.

²¹ See, e.g., Motzorongo’s July 21, 2016, questionnaire response at Exhibit 8, []; San Cristobal’s July 26, 2016, questionnaire response at Exhibit 7 []].

²² San Cristobal October 28, 2016, supplemental questionnaire response at S3-4 – S3-5.

²³ See Letters to Motzorongo and San Cristobal, “Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico; Supplemental Questionnaire” November 18, 2016 (collectively, November 18 supplemental questionnaires).



complete information with respect to whether sales were made at or above the applicable reference prices and whether 85 percent of the dumping determined in the investigation was eliminated. As stated above, before the Department can reach a final decision on these key issues, additional information is needed from the respondents. Therefore, absent the issuance of a revised suspension agreement, we intend to review the requested information once it is submitted by the respondents, and any requested supplemental information.

Recommendation

We recommend preliminarily finding that, while there is some indication that certain individual transactions of subject merchandise may not be in compliance with the terms of the AD Agreement and that the AD Agreement may no longer be meeting all of the statutory requirements, as set forth in sections 734(c) and (d) of the Act, further information is needed. Further, we recommend, once the Department has obtained and reviewed the additional, necessary information, that a post-preliminary finding be released as soon as practicable, absent the issuance of a revised suspension agreement.

Agree

Disagree

11/29/2016

X *Paul Piquado*

Signed by: PAUL PIQUADO
Paul Piquado
Assistant Secretary for
Enforcement and Compliance

