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DATE: November 29, 2016

TO: Paul Piquado
Assistant Secretary for
Enforcement & 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 Countervailing Duty Investigation on Sugar from Mexico

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Summary

In response to requests from domestic interested parties Imperial Sugar Company (Imperial), AmCane Sugar LLC (AmCane) and the American Sugar Coalition and its Members[1] (Petitioners), the Department of Commerce (the Department) is conducting an administrative review of the current status of, and compliance with, the Agreement Suspending the Countervailing Duty Investigation on Sugar from Mexico (CVD Agreement) for the period December 19, 2014, through December 31, 2015.[2] 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 CVD Agreement, and further, that the CVD Agreement may no longer be meeting all of the statutory requirements, as set forth in sections 704(c) and (d) of the Tariff Act of 1930, as amended (the Act). The Department, therefore, needs to obtain additional information as to whether the Government of Mexico (GOM) – the signatory to the CVD Agreement – and the Mexican mills

[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.

[2] On March 16, 2016, the Department expanded the period of review for the CVD Agreement from December 19, 2014, through December 31, 2014, to include calendar year 2015. As such, the period of review for the instant review is December 19, 2014, through December 31, 2015. *See* Memorandum to Lynn Fischer Fox entitled "First Administrative Review of the Agreement Suspending the Countervailing Duty Investigation on Sugar from Mexico: Extending the Period of Review" (March 16, 2016).

subject to individual examination in this review are in compliance with the terms of the CVD Agreement, and whether the CVD Agreement continues to meet the relevant statutory requirements referenced above.

Scope of the CVD Agreement

The product covered by this CVD 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 $C_{12}H_{22}O_{11}$; 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 CVD Agreement.

The scope of the CVD 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 CVD 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 CVD 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 CVD Agreement is dispositive.

Period of Review (POR)

The POR is December 19, 2014, through December 31, 2015.[3]

[3] *See* Footnote 1.

Background

On December 19, 2014, the Department signed an agreement with the GOM under section 704(c) of the Act suspending the countervailing duty (CVD) investigation on sugar from Mexico. On January 8, 2015, Imperial and 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 CVD Agreement (a section 704(h) review).[4] On January 16, 2015, Imperial and AmCane also submitted timely requests for continuation of the CVD investigation.[5] On March 19, 2015, in a unanimous vote, the ITC found that the CVD Agreement eliminates completely the injurious effects of imports of sugar from Mexico.[6] 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.[7] On September 23, 2015, the Department issued a final affirmative determination in the CVD investigation.[8] On November 16, 2015, the ITC published its final affirmative finding that an industry in the United States is materially injured by reason of imports of sugar from Mexico found to be subsidized by the GOM.[9] Because the ITC determined that such injury did exist, consistent with section 734(f)(3)(B) of the Act, the CVD Agreement remained in force.[10]

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

The review of the CVD Agreement was initiated on February 9, 2015, for the December 19, 2014 through December 31, 2014, period but was extended on March 16, 2016, to include calendar year 2015.[13] On March 25, 2016, and April 28, 2016, the Department placed import data obtained

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

[5] *See id.*

[6] *See id.* at 25280.

[7] *See id.*

[8] *See Sugar from Mexico: Final Affirmative Countervailing Duty Determination*, 80 FR 57337 (September 23, 2015) (*Final CVD Determination*).

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

[10] *See Final CVD Determination*, 80 FR at 57339. Pursuant to section 704(f)(3)(B) of the Act, the CVD Agreement remains in force and the Department shall not issue an countervailing order so long as (i) the CVD Suspension Agreement remains in force, (ii) the CVD Suspension Agreement continues to meet the requirements of subsections 704(c) and 704(d) of the Act, and (iii) the parties to the CVD Suspension Agreement carry out their obligations under the CVD Suspension Agreement in accordance with its terms.

[11] *See* Letter from Imperial, "Sugar from Mexico, Inv. No. A-201-846 – Request for Administrative Review of the Agreement Suspending the Countervailing Duty Investigation and Request for Expansion of the Review Period," December 30, 2015; Letter from AmCane, "Sugar from Mexico: Request for Administrative Reviews," December 30, 2015.

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

13 *See* Memorandum to Lynn Fischer Fox entitled "First Administrative Review of the Agreement Suspending the Countervailing Duty Investigation on Sugar from Mexico: Extending the Period of Review" (March 16, 2016).

from U.S. Customs and Border Protection (CBP) on the record of the proceeding to assist in respondent selection. Interested parties filed comments on respondent selection for the CVD review.[14] On June 2, 2016, the Department selected mandatory respondents and issued its questionnaire to the GOM, the signatory to the CVD Agreement, and asked the GOM to send full questionnaires (Attachment 2) to two companies (and their respective affiliates): Central Motzorongo S.A. de C.V. (Motzorongo) and Fideicomiso Ingenio San Cristobal (San Cristobal) (selected respondents).[15] The Department also asked that the GOM forward a more limited questionnaire (Attachment 1) to all Mexican producers and exporters of sugar to whom the GOM issued an export license in the POR.

Motzorongo responded to the initial questionnaire (Attachment 1) on July 25, 2016. Camara Nacional de Las Industrias Azucarera y Alcoholera (Mexican Sugar Chamber) (Camara) and its affiliated companies submitted its response to the Department's Attachment 1 questionnaire on July 25, 2016. San Cristobal responded to the initial questionnaire (Attachment 1) on July 26, 2016. On July 28, 2016, and July 29, 2016, the GOM filed its responses to the GOM's section of the questionnaire.

The Department issued four supplemental questionnaires to the GOM on August 10, 2016, September 16, 2016, October 19, 2016 and November 18, 2016. To date, the GOM has filed supplemental questionnaire responses on August 24, 2016, October 4, 2016, and October 31, 2016. The Department issued four supplemental questionnaires to San Cristobal on August 10, 2016, September 15, 2016, October 19, 2016, and November 18, 2016. To date, San Cristobal has filed supplemental questionnaire responses on August 2, 2016, August 29, 2016, October 3, 2016, October 28, 2016, and November 3, 2016. The Department issued four supplemental questionnaires to Motzorongo on August 10, 2016, September 14, 2016, October 19, 2016, and November 18, 2016. To date, Motzorongo filed supplemental questionnaire responses on August 24, 2016, September 29, 2016, and October 31, 2016.

<u>Preliminary Results of Review</u>

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."[16] In this case, the Department, and the GOM signed the CVD Agreement suspending the underlying CVD investigation on December 19, 2014. Pursuant to the CVD Agreement, the GOM agreed

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[14] *See* Department Memorandum "Release of Customs Entry Data for Respondent Selection in the Administrative 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.

[15] *See* Questionnaire Regarding the Agreement Suspending the Countervailing Duty Investigation on Sugar from Mexico for the December 19, 2014 through December 31, 2015 Period of Review, dated June 2, 2016,

16 Section 751(a)(1)(C) of the Act also provides for a "review the amount of any net countervailable subsidy" that is "involved in the agreement." The Department has not reviewed the amount of any net countervailable subsidy in this administrative review because there is no net subsidy rate "involved" in this quantitative restriction agreement with the GOM. Unlike agreements under section 704(b) or 704(c) with foreign exporters, this agreement under 704(c) with a foreign government is not required to offset the amount of net countervailable subsidy, in whole (100%) or in part (85%).

that the subject merchandise would be subject to export limits as outlined in the CVD Agreement. The Government also agreed to other conditions including limits on Refined Sugar, *i.e.*, sugar with a polarity of 99.5 or above, the issuance of shipment-specific export licenses, and a prohibition on new or additional export or import substitution subsidies. In addition, in this review, the Department is reassessing whether suspension of the CVD 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 GOM and the selected respondents maintain that the information provided in the U.S. sales listings illustrates that all of their sales of sugar during the POR were made in compliance with the terms of the CVD Agreement. Specifically, the GOM and the selected respondents provided data and sales listings in which they reported sales made in the POR within the export limits established by the Agreement.[17] Pursuant to the Department's examination of the respondents' reported individual sales, questions have arisen as to whether the reported polarity of certain exports is reliable, thereby raising concerns as to whether the Agreement can be adequately monitored and enforced. Questions have also arisen as to how Mexican sugar exports were handled in the transition period before the licensing system was established, and how the quantities reported by the Mexican sugar mills reconcile with the quantities in the GOM reports. In addition, the CVD Agreement requires that the export licenses be shipment-specific, but information on the record indicates that, in certain cases, the licenses were not shipment-specific. It is not possible for the Department to make a finding with regard to the polarity of the reported exports and whether the export licenses are shipment-specific without receiving additional information from the GOM and the respondents. Consequently, on November 18, 2016, the Department issued supplemental questionnaires to the GOM, Motzorongo and San Cristobal (and their respective affiliates) requesting additional information regarding certain sales in or to the United States.[18] We have not yet received or had the opportunity to review the GOM's or 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 CVD Agreement. Therefore, absent the issuance of a revised suspension agreement, we intend to review the requested information and any requested supplemental information, and issue our post-preliminary findings on these issues as soon as practicable.

Based on the information received to date in the questionnaire responses, the Department also has concerns with respect to whether the CVD Agreement is currently meeting the relevant requirements established by the Act for such agreements. Specifically, the Department has concerns as to whether the CVD Agreement is still in the public interest, and in particular whether there is an adequate supply of raw sugar for domestic cane refiners and whether Mexican sugar imports "supplanted" U.S. producers' shipments for direct consumption. The Department's November 18, 2016, supplemental questionnaire to the GOM also addressed these specific public interest factors. Finally, the Department has additional concerns regarding whether effective

[17] *See, e.g.*, GOM July 28, 2016, questionnaire response at 7, 13Annex 3, 4, 6, 7, 8 and 9.; San Cristobal's July 26, 2016, questionnaire response at Exhibits 2 and 4, Motzorongo's July 25, 2016 response at Exhibits 2 and 6.
[18] *See* Letters to GOM Motzorongo and San Cristobal, "Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico; Supplemental Questionnaire" November 18, 2016 (collectively, November 18 supplemental questionnaires).

monitoring is practicable but we cannot, at this juncture, engage in the kind of examination necessary absent complete information with respect to whether sales have been made in accordance with the terms of the CVD Agreement, as discussed above.

As stated above, before the Department can reach a reliable judgment 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 CVD Agreement and that the CVD Agreement may no longer be meeting all of the statutory requirements, as set forth in sections 704(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.

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Agree Disagree

11/29/2016

X

Signed by: PAUL PIQUADO

Paul Piquado
Assistant Secretary for
Enforcement and Compliance