

# **SWEETENER USERS ASSOCIATION**

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June 23, 2017

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Case No. A-201-845  
Suspension Agreement  
OP, BAU Office  
Total No. of Pages: 6  
PUBLIC DOCUMENT

## **VIA ACCESS ELECTRONIC FILING**

The Honorable Wilbur R. Ross  
Secretary  
U.S. Department of Commerce  
Attn: Enforcement & Compliance  
14<sup>th</sup> Street & Constitution Avenue, NW  
Washington, DC 20230

### **RE: Draft Price Suppression and Statutory Memoranda to A-201-845 – Amendment to the Agreement Suspending the Antidumping Investigation on Sugar from Mexico**

The Sweetener Users Association (SUA) appreciates the opportunity to comment on the draft memoranda on price suppression and the statutory analysis of the proposed amendment to the antidumping (AD) agreement on the investigation of sugar from Mexico. SUA's members are food and beverage companies that use sugar and other caloric sweeteners in manufacturing their products, as well as trade associations representing these companies.

SUA commends the Department of Commerce for releasing these draft memoranda that provide insight into the Department's analysis of several of the key issues surrounding the amending process. However, there are a number of aspects of these analyses that do not fully take into account all of the elements involved in the subject matter. These comments will focus on two of those aspects – issues of price and the public interest.

### **Price Analysis**

The analysis suggests that reference prices have been set in the amended AD agreement to prevent price suppression in the U.S. sugar market. The analysis, however, ignores the most

fundamental truth of the U.S. sugar market. Since the adoption of the original suspension agreements, it is a totally closed market. Every pound of sugar sold in the U.S. is controlled by restrictions in the domestic sugar program, prescribed tariff-rate quotas and the limits imposed in the suspension agreements with Mexico. When one million tons of Mexican imported sugar is priced at artificially high levels, and total volumes of available sugar are limited to levels insufficient to allow for competition, the effect is simply to further raise the price of all sugar in the U.S. market to an artificially high level.

That is precisely what happened after the 2014 adoption of the original suspension agreements. The suspension agreement's floor prices were set substantially above the U.S. government sugar support price contained in the 2014 farm bill, and the price of all sugar in the U.S. immediately rose above those levels. At no point was there any risk that sugar of a type comparable to Mexican imported sugar would be forfeited. In fact, the creation of higher reference prices almost insured that sugar could not be forfeited under the U.S. sugar program.

The price analysis provided in these memoranda does not provide a justification why further reference price increases are necessary. Such reference price increases will only serve to increase domestic market prices and cause even greater distortions in the marketplace. Each 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. Ironically, a decision meant to punish the Mexican sugar industry for dumping in our domestic market is going to increase the price of the sugar Mexico exports into a U.S. market that must buy it (since the U.S. is a net importer of sugar and totally reliant on imports to adequately supply our domestic market).

Additionally, the price analysis does not take into account the market-skewing effect that artificially high sugar prices have on sweetener choice by food and beverage companies. The high prices forced by government actions have contributed to a move of food and beverage producers away from using sugar in their formulations and toward high fructose corn syrup (HFCS). In contrast to sugar, U.S. producers of HFCS benefit from a fairly liberal regulatory environment, and their products have found strong markets at home and abroad.

## **The Public Interest**

The Department of Commerce discussion of why the proposed amendment to the AD agreement is in the public interest focuses almost entirely on the benefits to the sugar industry, as though they were "the public." There are only three scant mentions of U.S. consumers and all of those identify the interests of the consumer with the sugar industry. There is no mention of the annual \$460 million in added costs to be borne by consumers that are imposed by the proposed amendments, which is above and beyond the \$790 million increase in consumer costs that the agreements initially generated.

Basic logic must be suspended to believe the following comment in the Draft Memorandum (i.e., the first full sentence on the top of page 8):

“...by setting higher minimum reference prices for Other Sugar and Refined Sugar, in conjunction with amended polarity threshold and shipping requirements for Other Sugar

and Refined Sugar, the draft amended Agreement *will prevent significant shortages of sugar in the United States, thereby ensuring a stable supply of sugar for United States consumers.*”

*(Emphasis added).*

How does raising floor prices in the domestic market and adding new restrictions on much-needed sugar imports in the domestic market benefit U.S. consumers?

It appears that the public interest is very narrowly defined by the stability provided by the complex regulation of limited trade with Mexico. This stability is lauded and detailed in more than three pages of memorandum text with passing references that benefits to the industry will also benefit consumers. This is asserted as though stability, regardless of consumer cost, was an end in itself for the general public.

The narrow scope of the public interest discussion reveals a fundamental flaw in the entire approach to the amendments and the underlying agreements themselves. From the beginning, benefits to the sugar industry have been identified with the public interest. There have been very limited opportunities for participation in the process by U.S. parties representing those who work in the food processing industry or the consuming public. As an example, the comment process provides only five working days to read, analyze and respond to these price suppression and statutory memoranda, and it is widely assumed that the amended agreements will be signed within days of the end of the comment period.

Indeed, market prices for refined beet sugar have already risen to the 31-33.5 cent per pound range according to the most recent Sosland Sweetener Report – up 9 percent from where they started the year. Domestic refined beet prices are now about 80 percent higher than world refined prices and domestic raw cane sugar prices are more than double world raw prices. The 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.

While we have been afforded the opportunity to submit these comments, we believe the terms of the proposed changes to the suspension agreements are sufficiently significant to be deemed a renegotiation of the current suspension agreements, which require the issuance of a *Federal Register* notice seeking public comment, so the public interest is appropriately considered.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Richard E. Pasco". The signature is fluid and cursive, with a long horizontal stroke at the end.

Richard E. Pasco  
President & General Counsel  
Sweetener Users Association

## **REPRESENTATIVE CERTIFICATION**

I, Richard E. Pasco, with McLeod, Watkinson & Miller, general counsel to the Sweetener Users Association and its Members, certify that I have read the attached submission, “Draft Price Suppression and Statutory Memoranda to A-201-845 – Amendment to the Agreement Suspending the Antidumping Investigation on Sugar from Mexico” dated June 23, 2017. In my capacity as counsel to the Sweetener Users Association and its Members, 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 and CVD proceedings, the U.S. Department of Commerce may preserve this submission for purposes of determining the accuracy of the certification. I certify that a copy of this signed certification will be filed with this submission to the U.S. Department of Commerce.

A handwritten signature in black ink, appearing to read "Richard E. Pasco". The signature is written in a cursive, flowing style.

**PUBLIC CERTIFICATE OF SERVICE**

**Sugar from Mexico  
DOC Case No. A-201-845**

I hereby certify that on June 23, 2017, copies of the foregoing public submission were served on the following by first class mail, postage prepaid mail.

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