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November 21, 2017

MEMORANDUM TO: P. Lee Smith
Deputy Assistant Secretary
for Policy and Negotiations
Enforcement and Compliance

FROM: Sally C. Gannon
Director for Bilateral Agreements
Office of Policy
Enforcement and Compliance

SUBJECT: Decision Memorandum on Polarity Testing Requirements under the Amended Agreements Suspending the Antidumping Duty and Countervailing Duty Investigations on Sugar from Mexico

Background

On December 19, 2014, the Department of Commerce (the Department) signed the Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico (the AD Agreement) and the Agreement Suspending the Countervailing Duty Investigation on Sugar from Mexico (the CVD Agreement) (collectively the Agreements).[1] On June 30, 2017, the Department signed finalized amendments to the Agreements (the amendments or, as integrated into the Agreements, the amended Agreements).[2]

On August 1, 2017, and August 17, 2017, the Department received letters of inquiry from Maloney Commodity Services (Maloney) regarding implementation of the polarity testing requirements. The Department placed these letters on the record and requested comments from interested parties.[3] Specifically, Maloney's August 1, 2017, letter requested clarification regarding dry basis testing issues, and its August 17, 2017, letter requested clarification

[1] *See Sugar from Mexico: Suspension of Antidumping Investigation*, 79 FR 78039 (December 29, 2014); *see also Sugar from Mexico: Suspension of Countervailing Duty Investigation*, 79 FR 78044 (December 29, 2014).
[2] *See Sugar From Mexico: Amendment to the Agreement Suspending the Antidumping Duty Investigation*, 82 FR 31945 (July 11, 2017) (amended AD Agreement); *see also Sugar From Mexico: Amendment to the Agreement Suspending the Countervailing Duty Investigation*, 82 FR 31942 (July 11, 2017) (amended CVD Agreement).
[3] *See* Memorandum for Interested Parties, "Amended Agreements Suspending the Antidumping and Countervailing Duty Investigations on Sugar from Mexico: Request for Comment" (August 2, 2017) (Maloney's August 1 Letter); *see also* Memorandum for Interested Parties, "Amended Agreements Suspending the Antidumping and Countervailing Duty Investigations on Sugar from Mexico: Request for Comment" (August 18, 2017) (Maloney's August 17 Letter).

regarding issues related to the timing of reporting polarity testing results of Other Sugar[4] to the Department.

We received comments from Cámara Nacional de Las Industrias Azucarcra y Alcoholera (Mexican Sugar Chamber) (Camara), the American Sugar Coalition (ASC), Imperial Sugar Company (Imperial), and the Government of Mexico (GOM) on each of the requests for comment. We have analyzed the comments received and recognize the need for guidelines clarifying the Department's intent with regard to implementation of the polarity testing requirements in the amended Agreements.

Discussion of the Issues

1. Dry Basis Testing

In its August 1 letter, Maloney requests clarification on language included in the amended Agreements; specifically, "the use of the word 'dry basis.'"[5] The amended Agreements define Other Sugar as "{s}ugar at a polarity of less than 99.2, as produced and measured on a dry basis."[6] Maloney asks whether the Department intended the "dry basis" language added to the definition of Other Sugar to refer to the industry technical specification of "dry basis polarization," or to refer to "sugar tested 'as-is' or 'as-presented' by {U.S. Customs and Border Protection (CBP)}."[7] Maloney notes that CBP currently tests for polarity using the International Commission for Uniform Methods of Sugar Analysis (ICUMSA) method GS1/2/3-2 (2009). Furthermore, Maloney states that this test produces polarization test results on a "wet basis" (*i.e.*, does not exclude moisture).[8] Maloney argues that, since CBP has used this one ICUMSA method for testing imported sugar for some time, it would be a departure from current practice to require additional tests for moisture content.

Camara's Comments

Camara states that "dry basis" is not defined in the amendments, nor was the meaning discussed during the negotiation period.[9] Camara, therefore, concludes that parties did not agree that the term "dry basis" requires use of the "dry basis polarization" method for determining polarity.[10] Camara notes that the amendments do not specify the particular testing methodology to be used and that inclusion of the term "dry basis" in the amendments is not intended to change the normal methodology for polarity testing. Camara understands that CBP uses the ICUMSA Method GS 1/2/3-2 (2009) for testing polarization and that the amendments do not indicate an intent to depart from this normal method used by CBP. Camara states that interpreting "dry basis" to mean using a methodology different than CBP's current practice means sugar from

[4] *See* Section II.F of the amended AD Agreement and Section II.K of the amended CVD Agreement define Other Sugar as "{s}ugar at a polarity of less than 99.2, as produced and measured on a dry basis."
[5] *See* Maloney's August 1 Letter.
[6] *See* Section II.F of the amended AD Agreement and Section II.K of the amended CVD Agreement.
[7] *See* Maloney's August 1 Letter.
[8] *Id*.
[9] *See* Camara's submission entitled "Sugar From Mexico – Comments on the Polarity Testing Provisions" (August 18, 2017) (Camara's Dry Basis Comments) at 2.
[10] *Id*.

Mexico will be tested differently from all other sugar imports and "lead to confusion and administrative difficulties for CBP, importers, and the Mexican sugar industry."[11]

ASC's Comments

ASC contends that polarity testing was included in the amendments to ensure that parties do not adulterate sugar so as to reduce the polarity of the sugar and, thereby, evade the amended Agreements.[12] ASC states the inclusion of "measured on a dry basis" in the definition of Other Sugar is a means to insure polarity test results would not be affected by adulteration or moisture changes during transit.[13] Dry basis polarity measurements, ASC argues, would also allow for accurate comparison of test results between the mill and the U.S. importer. ASC states that "dry basis" is a well-known commercial standard and is used interchangeably with "dry pol," "dry state," and "dry weight" by the industry.[14] According to ASC, Maloney incorrectly calculates dry basis polarization as wet polarization plus moisture content in the example provided in Maloney's letter, but this leads to an imprecise calculation, as moisture content should be deducted from the wet polarity. Rather than Maloney's calculation, ASC includes the following calculation for determining dry basis polarization: "Wet polarization ÷ (100 – Moisture content) x 100 = Dry basis polarization."[15] As standard industry practice, ASC notes that wet polarity and moisture content tests are required on most commercial contracts; therefore, information for calculating dry basis polarization is routinely available via standard commercial contracts. ASC argues that exporters and importers should specify in their contracts that polarity on a dry basis must be less than 99.2 degrees and that polarity and moisture content must be tested upon entry. Per ASC, CBP has approved laboratory methods for polarization and moisture content testing, and commercial labs also test for polarization and moisture content as required for No. 16 and Domino contracts.

GOM's Comments

The GOM states that, during negotiation of the amendments, there is no record of any party indicating usage of a polarity testing method other than the standard CBP test used for tariff-rate quota (TRQ) sugar.[16] The GOM contends that the "as produced" language included in the definition of Other Sugar in the amendments was added to clarify that polarity was of Other Sugar without later modification (adulteration).[17] The GOM notes that definitions provided in the Harmonized Tariff Schedule of the United States (HTSUS) and in CBP compliance documents of Other Sugar should lead to an interpretation of "dry basis" as sugar in a dry state (*i.e.* distinguishing solid sugar from liquid sugar). The GOM states that it understood from the Department's August 2nd letter (highlighting CBP testing and sampling methods as guidance)

[11] *Id.*
[12] *See* ASC's submission entitled "Agreements Suspending the Antidumping and Countervailing Duty Investigations of Sugar from Mexico: Comment on Dry Basis Testing" (August 18, 2017) (ASC's Dry Basis Comments) at 2.
[13] *Id.*
[14] *Id.*
[15] *Id.* at 3.
[16] *See* GOM's submission entitled "Sugar from Mexico: Comments on Polarity Testing Requirements" (August 18, 2017) (GOM's Dry Basis Comments) at 2.
[17] *Id.* at 2-3.

that the Department intended to use normal polarity testing in this case.[18] The GOM further notes that CBP measures polarity using ICUMSA Method GS 1/2/3-2 (2009), and that the GOM has not found any CBP ruling referring to "dry basis polarization."[19] The amendments, the GOM points out, include severe penalties for violating polarity requirements and thus provide strong incentive for Mexican exporters/U.S. importers to ensure polarity of shipped sugar will not violate the amended Agreements. The GOM argues that requiring an "unusual polarity test" unique to sugar from Mexico (and dissimilar to those used for TRQ sugar) will cause confusion.[20]

Imperial's Comments

Imperial states that "dry basis" is an accepted definition used by the trade and "was among the issues identified as being important to finding a new agreement that could be enforced."[21] Imperial notes that the polarity of sugar can be lowered with water and, thus, specifying polarity measurements of a "dry basis" in the language of the amendments is important for enforcement. The "dry basis" concept, Imperial states, is included in the HTSUS, in CBP's compliance documents, and in the U.S. Department of Agriculture's Foreign Agricultural Service refined sugar re-export program. Imperial points to a recent laboratory accreditation that "lists four CBP-approved ICUMSA methods."[22] Imperial argues that it previously identified polarity testing flaws in the original suspension agreements as the texts did not specify testing on a dry basis or wet basis. Imperial further contends that allowing a wet basis calculation, such as the ICUMSA GS1/2/3-2 (2009) method, has the potential to allow shipments of liquid refined sugar identified as Other Sugar to be entered for direct consumption. Imperial concludes that the "dry basis" definition does refer to "dry basis polarization" and that this language "was specifically and intentionally added to the agreement to give meaning to the polarity-based defined obligations of the agreements."[23]

Department's Position

The original Agreements defined Refined Sugar as sugar with a polarity of 99.5 degrees and above, and Other Sugar as sugar that did not meet the definition of Refined Sugar, without referencing any other distinguishing characteristics.[24] The amended Agreements, however, define Other Sugar as "{s}ugar at a polarity of less than 99.2, as produced and measured on a dry basis."[25] In addition to the changed definition of Other Sugar, the amended Agreements

[18] *See* Attachment 2: Letter from Sally C. Gannon to Aristeo López Sánchez, "Requirements Regarding Additional Needs Sugar from Mexico for the October 1, 2016 through September 30, 2017 Export Limit Period" (August 2, 2017) (Department's August 2 Letter).
[19] *See* GOM's Dry Basis Comments at 4.
[20] *Id*. at 5.
[21] *See* Imperial's submission entitled "Sugar from Mexico (A-201-845, C-201-846) – Comments on the Inquiry Regarding Polarity Testing Provisions from Maloney Commodity Services" (August 18, 2017) (Imperial's Dry Basis Comments) at 2.
[22] *Id*. at 3.
[23] *Id*. at 5.
[24] *See* Section II.F-G of the AD Agreement and Section II.K-L of the CVD Agreement.
[25] *See* Section II.F of the amended AD Agreement and Section II.K of the amended CVD Agreement.

establish a provision for polarity testing of imports of Other Sugar. Pursuant to Section VII.C.6 of the amended AD Agreement, importers of record of Other Sugar:

> . . . agree to ensure that Other Sugar is tested for polarity by a laboratory approved by {CBP} upon entry into the United States, with samples drawn in accordance with CBP standards, and that the importers of record agree to report the polarity test results for each entry to the Department within 30 days of entry. Such polarity test reports must be filed on the official records of the Department for both this Agreement and the CVD Agreement. For clarity, sampling will be done in accordance with CBP standards (e.g., CBP Directive No. 3820-001B), or its successor directive as agreed by the Department and the Signatories, including the CBP requirement that the polarity level of an entry will be the average of the samples from that entry.[26]

The letter of inquiry from Maloney on dry basis testing and the subsequent comments from interested parties raise issues regarding the definition of Other Sugar and the polarity tests to be used under the new polarity testing requirements in the amended Agreements. In their submissions, all parties note the inclusion of "dry basis" in the definition of Other Sugar. However, the parties differ in their interpretation of "dry basis" as a means to define the type of polarity testing required under the amended Agreements. The GOM states that "dry basis," as defined in the HTSUS and in CBP's sugar compliance document, is a means of distinguishing sugar in a solid state from sugar in a liquid state.[27] Camara states that the "term 'dry basis' is not defined in the amendments," nor was its specific meaning discussed during the negotiating period.[28] ASC and Imperial, however, conclude that the inclusion of "dry basis" in the definition of Other Sugar refers to a "dry basis polarization" calculation for testing polarity.[29] Furthermore, the GOM, ASC, and Imperial all state that the inclusion of the "as produced" and/or "dry basis" terms in the definition of Other Sugar were specifically included in the amended Agreements as a way to discourage the modification or adulteration of sugar (in which water is added after production in order to intentionally lower the polarity of the sugar).[30]

We agree with the GOM, ASC, and Imperial that the changed definition of Other Sugar to include the terms "dry basis" and "as produced" is intended to prevent modification or adulteration of sugar and enhance the enforcement of the polarity division of Other Sugar and Refined Sugar.[31] Based on comments from ASC and Imperial, the Department understands that there is a difference between "wet basis" polarity and "dry basis" polarity.[32] As discussed below, given that polarity can be measured on either a "wet basis" or a "dry basis," and that the amended Agreements define Other Sugar as having a "polarity of less than 99.2, as … measured on a dry basis," we find that polarity testing based on a "dry basis" calculation is consistent with the language of the amendments. Furthermore, it is our understanding that use of polarity

[26] *See* Section VII.C.6 of the amended AD Agreement.
[27] *See* GOM's Dry Basis Comments at 3-4.
[28] *See* Camara's Dry Basis Comments at 1.
[29] *See* ASC's Dry Basis Comments at 2 and Imperial's Dry Basis Comments at 5.
[30] *See* GOM's Dry Basis Comments at 2-3; *see also* ASC's Dry Basis Comments at 2; *see also* Imperial's Dry Basis Comments at 2.
[31] *See* Section II.H of the amended AD Agreement and Section II.L of the amended CVD Agreement, which define Refined Sugar as "{s}ugar at a polarity of 99.2 and above, as produced and measured on a dry basis."
[32] *See* ASC's Dry Basis Comments at 3; *see also* Imperial's Dry Basis Comments at 4-5.

measured on a dry basis will be key in preventing modification or adulteration of sugar in order to circumvent the terms of the amended Agreements. Therefore, we are recommending use of dry basis polarity testing, also known as a dry basis polarization calculation or the measured amount of sucrose on a dry basis, to fulfill the polarity testing requirements in the amended Agreements.

As ASC explains, dry basis polarization is a calculation to determine the polarity of sugar on a dry basis by deducting the moisture content from the polarization.[33] If follows that, in order to calculate dry basis polarization, sugar must be tested for both polarization and moisture content. In their submissions, all parties note that CBP currently uses an approved, standard test for polarization for TRQ sugar: ICUMSA Method GS 1/2/3-2 (2009). However, the GOM and Camara state that CBP uses only this one test for polarization and does not test for moisture content; therefore, they indicate that requiring an additional test for moisture content on sugar from Mexico is a non-standard practice and will cause such sugar to be treated differently than TRQ sugar. The GOM further argues that in the Department's August 2 Letter, the Department understood "that the normal polarity test would be used" and that "the Department states that CBP's testing and sampling methods provide guidance to Mexican exporters and their importers of record on the procedures that should be followed for Mexican sugar."[34] Since issuing the August 2 Letter, the Department has received the letters of inquiry from Maloney that raised questions about implementation of the polarity testing requirements and caused us to solicit comments. Therefore, although the Department issued guidance to the GOM regarding polarity testing for additional needs sugar in fiscal year 2017, the Department also stated in its August 2 Letter that the specific requirements for polarity testing in Section VII.C.6 of the amended AD Agreement were not in effect at the time the letter was issued. Considering the inquiry letters from Maloney and the subsequent comments received, we have determined that further elaboration on the previous guidance is needed, as the amended Agreements became effective on October 1, 2017, in order to effectively ensure compliance with the polarity division and polarity testing requirements under the amended Agreements.

ASC and Imperial state that CBP has approved testing methods not only for polarization but also for moisture content.[35] ASC further notes that "{t}esting for polarity and moisture content are both required by the most widely used commercial contracts for sugar."[36] The Department notes that on its website, CBP lists the approved CBP laboratory methods for testing sugars and sugar confectionery, and that ICUMSA tests for both polarization and moisture content are present in the list.[37] The polarity testing requirement in the amended AD Agreement simply states that testing will be done by a CBP-approved laboratory but does not otherwise indicate what the testing would entail. The Department, therefore, must rely on the definition of Other Sugar to inform the nature of polarity testing required by the amended AD Agreement, which states that Other Sugar must be measured "on a dry basis."

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[33] *See* ASC's Dry Basis Comments at 3.
[34] *See* GOM's Dry Basis Comments at 4, citing the Department's August 2 Letter at footnote 4.
[35] *See* ASC's Dry Basis Comments at 4 and at footnote 5; *see also* Imperial's Dry Basis Comments at 3 and footnote 8.
[36] *See* ASC's Dry Basis Comments at 3.
[37] *See* Attachment 3: CBP's Chapter 17 laboratory methods, available at: https://www.cbp.gov/trade/basic-import-export/labs-scientific-svcs/technical-documents/lab-methods/chap-17 (November 21, 2014).

It is clear from the comments submitted that the industry differentiates between dry basis polarization and wet basis polarization. Thus, when evaluating imports of sugar into the United States, there is an industry standard that establishes the difference between "dry basis" and "wet basis." Moreover, the amended AD Agreement specifically states that Other Sugar must be measured on a "dry basis," which would differentiate it from sugar measured on a wet basis. It is logical to conclude that as long as a CBP-accredited lab is using CBP-approved methods for both wet basis polarization and moisture content, the results of each of those tests can be used to calculate the dry basis polarization (*i.e.*, the measured amount of sucrose on a dry basis) using the standard industry formula (as cited by ASC in its comments): **Wet polarization ÷ (100 – Moisture content) x 100 = Dry basis polarization**. The standard industry definition for sucrose content, otherwise known as purity, states that the sugar content is a percentage of the dry substance content, not including water, and is expressed as polarization divided by total solids (or 100 – the percentage of moisture) multiplied by 100.[38]

It is not the Department's intent to impose non-commercial standards on importers of sugar or to deviate from standard commercial practices. Therefore, based on the availability of CBP-approved tests for both wet basis polarization and moisture content, the use of both tests in commercial practice, and the amended Agreements' specification that Other Sugar be measured on a dry basis, we recommend that the Department require importers of record to obtain both wet basis polarization results and moisture content results and report these results, along with results of the dry basis polarization calculation, to the Department. We have developed proposed guidelines on the implementation of the polarity testing requirements.[39] *See* Attachment 1: Department's Guidelines on Implementation of the Polarity Testing Requirements of the Amended Agreements Suspending the Antidumping Duty and Countervailing Duty Investigations on Sugar from Mexico.

2. Timing

In its August 17 letter, Maloney requests clarification as to the timing for reporting polarity test results of Other Sugar to the Department.[40] The amended AD Agreement, Maloney notes, requires importers of record to submit polarity test results to the Department "within 30 days of entry."[41] Maloney questions whether the entry date in the amended AD Agreement refers to the filing date of entry summary documents with CBP (*i.e.*, filing Customs Form 7501) or refers to the date sugar is discharged from a vessel and sampled. Maloney states that delays of up to 10 days are possible between a vessel's arrival and its ability to complete the discharge of sugar due to circumstances such as wait times at the pier, weather, vessel size, and mechanical problems.[42] Furthermore, Maloney notes that sugar sampling cannot take place until discharge, per CBP sampling standards. Maloney argues that the vessel discharge may occur "two to three weeks or more" after the 7501 form is filed.[43] Maloney concludes that importers of record would not have

[38] *See* Attachment 4: excerpt from Chung Chi Chou, *Handbook of Sugar Refining: A Manual for the Design and Operation of Sugar Refining Facilities* (2000) at 7; *see also* Attachment 5: excerpt from *George P. Meade, Cane Sugar Handbook: A Manual for Cane Sugar Manufacturers and Their Chemists, 9th Edition* (1963) at 551.
[39] The Department reserves the right to reconsider and revise these guidelines in the future, as necessary.
[40] *See* Maloney's August 17 Letter.
[41] *See* amended AD Agreement at Section VII.C.6.
[42] *See* Maloney's August 17 Letter.
[43] *Id.*

sufficient time to report polarity testing results to the Department if the 30-day reporting window were to begin at the time of a 7501 form filing. Instead, Maloney believes setting the start of the 30-day reporting window at the completion of discharging the vessel would allow test results to be available within 30 days.

Camara's Comments

Camara argues that interpreting the timing of the polarity testing reporting requirement to start 30 days from the filing of a 7501 form could make it difficult for importers to comply with deadlines as, per Maloney, it is common for there to be a two to three week lag between the date of the 7501 filing and the date of the vessel discharge/testing availability.[44] Camara notes that starting the 30-day reporting window at the time of the filing of the entry summary would also create administrative burdens for the Department vis-à-vis requests for extension on the reporting requirement. Camara understands the "within 30 days of entry" language included in the amended Agreements to allow for a full period of 30 days to complete testing and submit reports to the Department.[45] Camara urges the Department to clarify that the 30-day reporting window begins on the latter date of the 7501 form's filing or completion of vessel discharge.

ASC's Comments

ASC states that the amended Agreements require submission of polarity testing results within 30 days of entry, not within 30 days of discharge.[46] ASC argues that prompt reporting of testing results is essential in order to enforce and to ensure compliance with the amended Agreements. ASC states that their members who are sugar importers indicate "that a substantial number of vessels will be able to unload their sugar cargo in time to meet the 30 day reporting deadline" even if the 7501 form is filed at the time of physical entry to the port.[47] Per ASC, the 30-day reporting window depends on when sugar is entered for Customs purposes. ASC notes that an importer of record has a 15-day window after sugar is landed from a vessel in which to file the entry with CBP, and that importers can elect to delay filing. Polarity testing, ASC points out, is a condition of entry for importers, thus a "prudent importer" should account for the 30-day reporting window when considering when to file their Customs entry summary documentation.[48] ASC states that long delays between entry and testing may be unavoidable, especially at certain times of year. Therefore, ASC recommends that the Department establish procedures for processing extension requests for polarity test reporting and should grant extensions when importers provide documented reasons for the reporting delays. ASC argues that the Department should not establish the start of the 30-day reporting window at time of discharge; rather, polarity test results must be submitted 30 days after filing of the 7501 form. ASC notes that importers of record must account for reporting deadline when determining when to file their entry summary documents with CBP.

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[44] *See* Camara's submission entitled "Sugar From Mexico – Comments on the Polarity Testing Provisions" (August 28, 2017) (Camara's Timing Comments) at 1-2.
[45] *Id*. at 2.
[46] *See* ASC's submission entitled "Agreements Suspending the Antidumping and Countervailing Duty Investigations of Sugar from Mexico: Comments on Polarity Test Reporting" (August 28, 2017) (ASC's Timing Comments) at 1-2.
[47] *Id*. at 2.
[48] *Id*. at 2-3.

GOM's Comments

The GOM notes that, per CBP sampling methods indicated in the text of the amended Agreements, samples cannot be drawn until sugar is removed from the vessel.[49] The GOM also points out that, per Maloney, there could be a two to three week lag between the date of the 7501 form's filing and vessel discharge. In practice, the GOM states, importers may only have one to two weeks to obtain polarity test results and report those results to the Department (if the 30-day reporting window begins at the 7501 form filing). The GOM argues that the term "entry" should be interpreted in a generic sense; not as the legal definition of entry for CBP purposes.[50] The GOM notes that the regulatory definition of "time of entry" can mean: 1) physical entry; 2) entry summary; or 3) withdrawal from a foreign trade zone. The GOM states its intent was to allow importers to have a full 30 days to obtain and submit test results to the Department. If sugar sampling cannot be completed until after discharge, and if lags occur between entry and discharge, the GOM argues that importers should have 30 days after discharge to submit results. With only one CBP-approved testing company, and with CBP's own laboratories not required to test sugar from Mexico, the GOM states that importers will have no control over timing. The GOM cites to an April 12, 2016 letter from ASC to the Department indicating that CBP has taken up to 6 months or more to complete polarity testing.[51] The GOM argues that the Department should expect to routinely grant extensions if the polarity test result reporting period starts at the time of the 7501 filing.

Imperial's Comments

Imperial argues that the 30-day reporting window should start upon completion of discharge rather than on the 7501 form's filing date.[52] Imperial notes that the text of the amended AD Agreement requires the use of CBP sampling standards (CBP Directive No. 3820-001B) which in turn state that samples shall be sent to a laboratory for testing by the next business day after discharge. Imperial agrees with Maloney's claim that discharge can take two or more weeks after the 7501 form's filing. Therefore, Imperial argues that it is reasonable to interpret the 30-day reporting window as starting at discharge in order to grant sufficient time for testing.

Department's Position

Included in the polarity testing provision for Other Sugar in the amended AD Agreement is a requirement that importers of record report the test results to the Department. Specifically, "the importers of record agree to report the polarity test results for each entry to the Department within 30 days of entry. Such polarity test reports must be filed on the official records of the

[49] *See* GOM's submission entitled "Sugar from Mexico: Comments on Definition of 'Entry'" (August 28, 2017) (GOM's Timing Comments) at 2.
[50] *Id*. at 3.
[51] *Id*. at 4, citing Letter to Secretary Pritzker from Cassidy Levy Kent LLP, "Sugar from Mexico: Request for Comprehensive Statistical Testing by U.S. Customs and Border Protection Across All Modes of Transportation" (April 12, 2016) at 4.
[52] *See* Imperial's submission entitled "Sugar from Mexico (A-201-845, C-201-846)- Comments on the Inquiry Regarding Timing of Reporting Polarity Test Results from Maloney Commodity Services" (August 28, 2017) (Imperial's Timing Comments) at 2.

Department for both this Agreement and the CVD Agreement."[53] At issue, and as raised in Maloney's August 17, 2017, letter, is the timing of the "within 30 days of entry" clause. Maloney raises the concern as to what constitutes the "entry" date that will serve as the beginning of the 30-day reporting window.

In their respective submissions, Camara, the GOM, and Imperial argue against using the date of entry summary (*i.e.*, the 7501 form) as the beginning of the 30-day reporting window. They each note that imported sugar is not available to be sampled until it is discharged, or unladed, from a vessel and that discharge may occur weeks after the sugar is considered as entered for CBP purposes. ASC argues that the 30-day reporting window should begin "when the sugar on a vessel is entered for customs purposes" and that importers of record should take into account the timing between entry for customs purposes and unlading and sampling the sugar in order to meet the 30-day deadline.[54]

We agree with ASC's assessment that the 30-day reporting window should begin at entry for "customs purposes." The amended AD Agreement states that "Other Sugar may enter the Customs territory of the United States" if importers of record of such Other Sugar "agree to report the polarity test results for each entry to the Department within 30 days of entry."[55] The plain language of the amended AD Agreement does not define "entry," or provide for how to determine the date of entry. Although the AD/CVD law does define "entry," this definition also does not provide for how to determine the date of entry,[56] and the Department's regulations are similarly silent regarding this issue. CBP's regulations define "entry" as the documentation required to secure release of merchandise from CBP or the act of filing such documentation.[57] Furthermore, once entry documentation is filed, CBP provides for multiple designations for the "time of entry," *inter alia*: 1) the time CBP authorizes the release of the merchandise; 2) the time entry documents are filed; (3) the time entry summary is filed; or 4) the time the merchandise arrives at the port.[58] We have considered CBP's regulations, comments submitted from interested parties, and the administrability of the polarity testing requirements (*i.e.*, the extent of the information that the Department would have access to for monitoring purposes, such as type of information available in CBP import data that the Department routinely requests in its proceedings). Accordingly, for purposes of the amended AD Agreement and for purposes of determining the date of entry that would mark the beginning of the 30-day reporting window, we recommend that the Department define "entry" as the act of securing the release of imported merchandise from CBP or the act of filing of entry summary documentation with CBP. Specifically, we recommend that the 30-day reporting window for importers of record to file polarity testing results with the Department begin at the latter of the release date (*i.e.*, the date the goods are released into the Customs territory of the United States) or the entry summary date (*i.e.*, the date the entry summary documentation is submitted to CBP). As noted above, we have developed guidelines on the implementation of the polarity testing requirements.[59] *See* Attachment 1.

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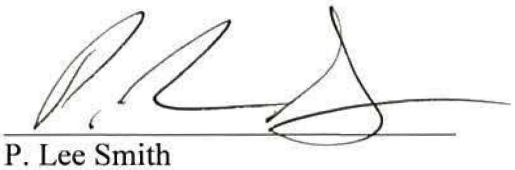
[53] *See* Section VII.C.6 of the amended AD Agreement.
[54] *See* ASC's Timing Comments at 2-3.
[55] *See* amended AD Agreement at VII.C.6.
[56] *See* section 771(23) of the Tariff Act of 1930, as Amended.
[57] *See* 19 CFR §141.0a(a).
[58] *See* 19 CFR §141.68.
[59] The Department reserves the right to reconsider and revise these guidelines in the future, as necessary.

We recommend that you approve the positions presented above.

X
Agree

_____
Disagree



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

11/21/17
Date

Attachment 1

Guidelines on Implementation of the Polarity Testing Requirements of the Amended Agreements Suspending the Antidumping Duty and Countervailing Duty Investigations on Sugar from Mexico

(November 21, 2017)

In recognition of the need for guidelines clarifying the Department's intent with regard to the implementation of the polarity testing requirements of the amended Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico and the amended Agreement Suspending the Countervailing Duty Investigation on Sugar from Mexico, the Department is issuing the following guidelines with respect to the test results required and the timing of submitting the test results to the Department.

1. When Other Sugar enters the Customs territory of the United States, the importer of record, in accordance with Section VII.C.6 of the amended AD Agreement, must ensure that Other Sugar is tested for wet basis polarization and moisture content by a CBP-approved laboratory, using CBP-approved sampling and testing standards.

2. The importer of record, or its representative, must file the polarity test results to the Department within 30 days of the latter of the release date (*i.e.*, the date the goods are released into the Customs territory of the United States) or the entry summary date (*i.e.*, the date the entry summary documentation is submitted to CBP).

3. At a minimum, the importer of record must report, and provide supporting documentation for, the following to the Department:
    - Date of entry (*e.g.*, supporting documentation may include the 7501 form or the entry summary screen from the Automated Commercial Environment (ACE))
    - Entry number
    - Export license number
    - Polarity test results, including:
        - Result of wet basis polarization test
        - Result of moisture content test
        - Results of dry basis polarization calculation

4. Test results and supporting documentation should be submitted electronically using Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) on the records of both the antidumping and countervailing duty agreements (A-201-845 and C-201-846). An electronically-filed document must be received successfully in its entirety by the Department's electronic records system, ACCESS, by 5 p.m. Eastern Time (ET) on its due date.

Attachment 2

Barcode:3643958-01 C-201-846 SUSP - Suspension Agreement

C-201-846
Suspension Agreement
Public Document
ITA/E&C/P&N/OP/BAU: dwc

August 2, 2017

Mr. Aristeo López Sánchez
Legal Counsel for International Trade
Embassy of Mexico
1911 Pennsylvania Ave. N.W.
Washington, D.C. 20006

Re: Requirements Regarding Additional Needs Sugar from Mexico for the October 1, 2016 through September 30, 2017 Export Limit Period

Dear Mr. López Sánchez:

We are writing to you concerning the Department of Commerce's (the Department) increase of the Export Limit with respect to "additional needs sugar" for the period October 1, 2016 through September 30, 2017, under the Agreement Suspending the Countervailing Duty Investigation on Sugar from Mexico (CVD Agreement).[1] *See* the Department's Memorandum entitled "Agreement Suspending the Countervailing Duty Investigation on Sugar from Mexico: Increase of the Export Limit for the October 1, 2016, through September 30, 2017 Export Limit Period, Effective July 21, 2017" (July 21, 2017) (the Memorandum).

In the Memorandum, the Department stated:

> "Based on {United States Department of Agriculture} USDA's current request, the Department is increasing the Export Limit for Sugar from Mexico, for the October 1, 2016, through September 30, 2017 Export Limit Period, by a total of 103,932 STRV of certain Other Sugar, of which 28,932 STRV shall be limited to a polarity of less than 99.2 degrees (*i.e.*, the remaining 75,000 STRV may be of a polarity of less than 99.5 degrees)" and "{t}he revised Export Limit applicable through September 30, 2017, for sugar from Mexico is 1,253,482 STRV. Pursuant to section V.C.3 of the CVD Agreement, Refined Sugar may account for no more than 53 percent of the 1,149,550 STRV Export Limit that applied prior to the instant increase."

The Department is hereby requesting that, in its monthly export reports,[2] the Government of Mexico (GOM) **clearly identify in a separate column** the export licenses applicable to the

[1] *See Sugar From Mexico: Suspension of Antidumping Investigation*, 79 FR 78039 (December 29, 2014); *see also* the Department's Memorandum entitled "Agreement Suspending the Countervailing Duty Investigation on Sugar from Mexico: Increase of the Export Limit for the October 1, 2016, through September 30, 2017 Export Limit Period, Effective July 21, 2017" (July 21, 2017) (the Memorandum).
[2] *See* the Agreement, at Appendix II.

additional 75,000 STRV quantity with a polarity of less than 99.5 degrees and the additional 28,932 STRV quantity with a polarity of less than 99.2 degrees. The Department is also requesting that the GOM report each month a cumulative total licensed volume of 1) the additional 75,000 STRV of sugar with a polarity of less than 99.5 degrees and 2) the additional 28,932 STRV of sugar with a polarity of less than 99.2 degrees.

In addition, in the Memorandum, the Department required, based on USDA's request, that the "additional 103,932 STRV: 1) enter in bulk and freely flowing (*i.e.*, not in a container, tote, bag or otherwise packaged) in the hold(s) of an ocean-going vessel, and 2) be tested for polarity by a laboratory approved by CBP {*i.e.*, U.S. Customs and Border Protection} upon entry into the United States, with samples drawn in accordance with CBP standards, and that the importer of record agree to report the polarity test results for each entry to the Department of Commerce within 30 days of entry."[3]

With respect to the requirement that polarity be tested "by a laboratory approved by CBP," the Department clarifies that, in addition to CBP laboratories (which by definition are "approved by CBP"), CBP maintains a list of CBP-approved gaugers and accredited laboratories that can perform measurements and analyses for Customs purposes; this list specifically indicates the laboratory currently approved for HTSUS Chapter 17 ("Sugar and sugar confectionary") products. This list can be found on the public CBP.gov website at: https://www.cbp.gov/document/forms/cbp-approved-gaugers-and-accredited-laboratories-list. At this time, the only CBP-approved laboratory for HTSUS Chapter 17 is R. Markey & Sons, Inc. (Markan Laboratories). Further, in accordance with the Memorandum, the "additional needs sugar" samples to be tested for polarity must be drawn in accordance with CBP standards, as practiced by the CBP-approved laboratory (*e.g.*, sampling in accordance with CBP Directive No. 3820-001B).[4]

All other obligations of the Agreement apply to any exports made pursuant to the additional sugar needs quantities granted by the Department in the Memorandum.

If you have any questions on this matter, please contact me at (202) 482-0162 or David Cordell at (202) 482-0408.

Sincerely,

Sally C. Gannon

Sally C. Gannon
Director for Bilateral Agreements
Office of Policy
Enforcement and Compliance

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[3] *See* the Memorandum, at 2.

[4] *See Amendment to the Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico*, 82 FR 31945 (July 11, 2017), at Section VII.C.6. Although the specific requirements of Section VII.C.6 are not in effect for the "additional needs sugar" approved for the current Export Limit Period, these requirements provide guidance to Mexican exporters and their importers of record with respect to the relevant CBP sampling and testing standards.

Attachment 3

Trade

- Basic Import and Export
- Jones Act Waiver Request
- ACE and Automated Systems
- Border Interagency Executive Council
- Programs and Administration
- Priority Trade Issues
- Rulings and Legal Decisions
- Stakeholder Engagement

Chapter 17

CBPL methods do not include proprietary information such as ASTM Standards.

CBPL Method Request

Sugars and sugar confectionery

17-01
Polarisation of Raw Sugar (ICUMSA GS 1/2/3-1)

17-02
The Braunschweig Method for the Polarisation of White Sugar by Polarimetry (ICUMSA GS 2/3-1)

17-03
Sucrose in Sugars and Sirups: Polarimetric Methods (AOAC 925.46)

17-04
Sucrose in Sugars and Sirups: Polarimetric Method Before and After Inversion with Invertase (AOAC 925.47)

17-05
Sucrose in Sugars and Sirups: Polarimetric Method Before and After Inversion with Hydrochloric Acid (AOAC 925.48)

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  - Trade Facilitation

Trade Facilitation and Trade Enforcement Act

17-06
Caramel in Wines (AOAC 948.07)

17-07
Sugar Moisture by Loss on Drying (ICUMSA GS 2/1/3-15)

17-08
Sucrose, Glucose and Fructose in Cane Molassess by HPLC (ICUMSA GS 7-23)

17-09
Purity of Lactose: Liquid Chromatographic Method (AOAC 984.22)

17-10
Dry Substance and Moisture in Molasses by Vacuum Oven Drying on Sand (ICUMSA GS 4/7-11)

17-11
Refractometric Dry Substance (RDS%) of Molasses (ICUMSA GS 4-13)

17-12
Solids in Sirups (AOAC 932.14 C)

17-13
Apparent Sucrose in Molasses by a Double Polarisation Method (ICUMSA GS 4/7-1)

17-14
The Determination of Sucrose by Gas Chromatography (GC) in Factory Products and Cane Juice (ICUMSA GS 3/5/7/8-3)

17-15
The Determination of Reducing Sugars in Cane Molasses and Certain Refined Syrups by the Lane & Eynon Constant Volume Procedure (ICUMSA GS 4/3-3)

17-16
Total Sugars in Molasses as Invert Sugar: Lane-Eynon Constant Volume Volumetric Method (AOAC 968.28)

17-17
Total Reducing Sugars in Molasses After Hydrolysis by the Lane & Eynon Constant Volume Procedure (ICUMSA GS 4/3-7)

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17-18
Total Reducing Sugars in Molasses After Hydrolysis of the Luff Schoorl Procedure (ICUMSA GS 4/3-9)

17-19
Reducing Sugars in Beet Molasses by the Lane & Eynon Constant Volume Procedure (ICUMSA GS 4-5)

17-20
The Determination of the Polarisation of Raw Sugar without Wet Lead Clarification (ICUMSA GS 1/2/3-2)

17-21
Guidelines for the Determination of Sugar Content in Prepared Food: HPLC Method

17-22
General Analytical Guidelines for Differentiating Various Sugar Syrups and Syrups from Molasses

17-23
Ash of Sugars and Syrups: Sulfated Ash (AOAC 900.02C)

Last published: November 21, 2014

Attachment 4

Molassed dried pulp Commercial term under feedstuff regulations for a mixture of dried pressed pulp and molasses.

Mother liquor Liquid phase remaining after a crystallization; often refers to syrup between the crystals of a massecuite.

Nonsucrose Substances contained in raw material and its products except sucrose and water.

Nonsugar Common overall term for substances contained in the raw materials and products of the sugar industry, except sugar and water.

Nonsugar content Difference between dry substance and sugar content.

Nucleation Generation and development of small crystals (protocrystal aggregates) capable of growth.

Pan Vacuum evaporator used in the sugar industry to boil and crystallize sugar from liquor or syrup.

Phosphatation Clarification using phosphoric acid and lime, in which certain nonsugar content is removed by flotation.

Polarization Term customarily used in sugar analysis for the optical rotation of a sugar industry product, measured under conditions defined by the International Commission for Uniform Methods of Sugar Analysis (ICUMSA), as a percentage of the rotation of pure sucrose measured under the same conditions.

Precipitated calcium carbonate (PCC) Carbonation slurry after concentration with filter press to about 70% dry solids.

Pressure Roughly defined as the force bearing down on something (such as the weight of a pallet of sugar sitting on the floor) or the force required to hold something inside a container (such as air inside a tire). Pressure is measured with a pressure gauge. The reading is in pounds per square inch (lb/in^2 gauge, or psig). Normal air pressure is defined as 0 psig.

Propinquity Relative proximity of crystals in a massecuite.

Purity Sugar content as percent of dry substance content. The solids consist of sugar plus impurities, such as invert, ash, and colorants. The measurement does not include water. Since sugar can be expressed as polarization on sucrose and dry solid as Brix, refractometer solid, and so on, the purity can be expressed as apparent purity, refractometer purity, and so on.

Raw juice Juice obtained from cane after extraction, pressing, or milling.

Reducing sugars Generally referred to and/or interpreted as invert sugar.

Refining Purification of sugar through recrystallizing and chemical and physical methods.

Refractometric dry substance (RDS) Measurement of total solids in a sugar liquor or syrup using a refractometer. For solutions containing only sugar and water, % RDS = Brix = % sugar. The temperature is usually controlled to 20°C (68°F).

Remelt Massecuite or centrifuged sugar boiled from syrups (both filtered and unfiltered) which are too low in purity and/or dark in color to yield the white granulated sugar of commerce. All remelt referred to in the book is derived from affination syrup or last white sugar strike syrup and concentrated low-purity sweetwater.

Attachment 5

30.15 Analysis of Clarified Juice. The analysis of the clarified juice is made by the same methods as that of the mixed juice. If the carbonation process is used (see Chapter 8), the juice must receive an additional treatment with carbonic acid, after the first carbonation and before the analysis, to precipitate all the lime it contains.

Turbidity determinations in clarified juice are prescribed in Hawaii and Australia. (See Sec. 27.28 on turbidity measurement.)

30.16 Purity of Juices. The purity of clarified juice and other juices is a calculated figure. Given the pol of the juice (Sec. 30.6) and the true sucrose by Clerget (Sec. 30.7), the Brix (Sec. 30.2), refractometer solids (Sec. 30.3), and total solids by drying, the following figures may be obtained, depending on the basis of control (sucrose or pol): (1) (pol ÷ Brix) × 100 = apparent purity; (2) (sucrose ÷ Brix) × 100 = gravity purity; (3) (sucrose ÷ total solids) × 100 = true purity. If refractometer solids are used instead of Brix, the figures become (1) apparent refractometer purity and (2) gravity refractometer purity; (3) true purity remains as above (see Sec. 38.34 for detailed discussion of purity).