

February 6, 2019

**VIA ELECTRONIC FILING**

The Honorable Wilbur L. Ross, Jr.  
Secretary of Commerce  
Attention: Enforcement and Compliance  
APO/Dockets Unit, Room 18022  
U.S. Department of Commerce  
14<sup>th</sup> Street and Constitution Avenue, N.W.  
Washington, DC 20230

Case Nos.: A-201-845; C-201-846  
Total No. of Pages: 8  
AD/CVD Suspension Agreements  
E&C Office of Policy & Negotiations/BAU

**PUBLIC VERSION**

Attention: Sally C. Gannon  
Jill A. Buckles  
David C. Cordell

*Business Proprietary Information  
Removed from Brackets on Page 4.*

**Re: Sugar from Mexico: Opposition to CSC's Proposed Changes to Suspension Agreements**

Dear Secretary Ross:

On behalf of the American Sugar Coalition and its Members,<sup>1</sup> we oppose the changes CSC Sugar LLC ("CSC") proposes<sup>2</sup> to the agreements suspending the antidumping and countervailing duty investigations on sugar from Mexico, as amended.<sup>3</sup>

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<sup>1</sup> 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, Rio Grande Valley Sugar Growers, Inc., Sugar Cane Growers Cooperative of Florida, and the United States Beet Sugar Association.

<sup>2</sup> See Letter from CSC, *Proposals for Potential Amendment to Suspension Agreement* (Sep. 19, 2018) ("CSC Proposal").

<sup>3</sup> See *Amendment to the Agreement Suspending the Antidumping Duty Investigation*, 82 Fed. Reg. 31,945 (Dep't of Commerce Jul. 11, 2017) (amendment to susp. agreement); *Amendment to*

CSC proposes to change the definition of “Other Sugar” from sugar with a polarity less than 99.2 to sugar with a polarity less than 99.5. In the alternative, CSC proposes to make the same change to the definition of Other Sugar but only for sugar imported by CSC and only for 5 years.<sup>4</sup>

CSC is proposing to undo the amendments that were necessary to eliminate the injurious effects of dumped and subsidized imports of sugar from Mexico. CSC does not give any reason for the proposed changes but the obvious reason is to give CSC access to higher-polarity sugar at the lower reference price. As Commerce explained unambiguously in 2017 when it rejected these same proposals by CSC:

*{It is not the obligation of the AD/CVD laws to ensure a low-priced supply of input for the U.S. industry.}*<sup>5</sup>

There has been no change in the law or the facts since then. Moreover, the U.S. Court of International Trade (“CIT”) has recognized that the statutory standard for a suspension agreement applies to the “industry as a whole,” not to any single domestic producer standing

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*the Agreement Suspending the Countervailing Duty Investigation*, 82 Fed. Reg. 31,942 (Dep’t of Commerce Jul. 11, 2017) (amendment to susp. agreement) together “*Amended Suspension Agreements*”).

<sup>4</sup> See, generally, *CSC Proposal*.

<sup>5</sup> Memorandum from P. Lee Smith to Gary Taverman, *Memorandum Addressing Comments on the Amendment to the Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico* (Aug. 7, 2017) (“*Comments Memo*”) at 6.

alone.<sup>6</sup> Here, the amendments to the suspension agreements are essential to prevent the injurious effects of dumped and subsidized imports of sugar from Mexico on the domestic sugar producers, “as a whole.” Undoing the amendments to address issues alleged by a single domestic producer would inevitably cause all the injurious effects to resume and would soon imperil the domestic industry as a whole.

Commerce should therefore reject CSC’s proposed changes.

**I. CSC Is Not Entitled To Low-Priced Sugar That Would Harm The Domestic Industry As A Whole**

CSC’s proposed changes have only one purpose, *i.e.*, to permit CSC to import sugar with a polarity of up to 99.5 at the lower reference price (currently applicable only to sugar with a polarity up to 99.2).<sup>7</sup> CSC’s proposal ignores one of the primary purposes for amending the agreements, *i.e.*, to prevent the injurious effects of imports of dumped and subsidized sugar from Mexico with a polarity up to 99.5 at the lower reference price.<sup>8</sup> Commerce changed the upper polarity limit of “Other Sugar” from 99.5 to 99.2 precisely to eliminate this injurious effect. CSC’s proposal to erase this amendment would reintroduce injury to the domestic industry as a

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<sup>6</sup> *Imperial Sugar Co. v. United States*, 181 F. Supp. 3d 1284, 1299 (Ct. Int’l Tr. 2016) (“*Imperial Sugar*”) (noting that “when analyzing public interest factors, Commerce must assess the relative impact of the agreement on the competitiveness of the ‘domestic industry producing the like merchandise’”).

<sup>7</sup> *CSC Proposal* at 1.

<sup>8</sup> *Comments Memo* at 5.

whole, which is the exact opposite of what Sections 704(c)(1) and 734(c)(1) of the Tariff Act of 1930 require.

When it rejected the same proposal by CSC in 2017, Commerce explained that the *Amended Suspension Agreements* ensure “that a level playing field exists for U.S. domestic producers who are the intended recipients of this trade relief.”<sup>9</sup> CSC is a domestic producer, but the law does not allow it to un-level the playing field by reintroducing injury to the domestic industry, as a whole, solely for the benefit of CSC. As the CIT held when rejecting a similar argument by another sugar refiner, “{t}he suspension statutes ... do not contemplate injury to a particular segment of an industry caused by losing ‘a competitive advantage with respect to their U.S. competitors.’”<sup>10</sup> CSC must participate with all other members of the domestic industry on that same level playing field.

CSC clearly has the ability to do just that. According to USDA data on the record in this segment of this proceeding, CSC imported more than [

] during the first quarter of the crop year 2018/2019.<sup>11</sup>

CSC has the ability to refine sugar below 99.2 just like all other U.S. refiners, and nothing in the

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<sup>9</sup> *Id.* at 6.

<sup>10</sup> *Imperial Sugar* at 1299.

<sup>11</sup> See Memoranda to File, “U.S. Department of Agriculture (USDA) Sugar Import Data,” dated February 1, 2019.

*Amended Suspension Agreements* precludes it from doing so.<sup>12</sup> Indeed, CSC noted recently that three of its plants “ran at full capacity to cover {sugar} demand for over 3 months” in crop year 2017/2018.<sup>13</sup>

That CSC would have preferred that these mills run at full capacity refining lower-priced sugar is of no relevance under the statute because, as the CIT has said, one company’s (CSC in this case) “loss of its commercial advantage of large volumes of low priced subject imports as a result of the Agreements is neither a harm that the statute contemplates nor a harm shared by all of the destination refining segment . . .” One company’s “narrow interest in a low cost input, which is a lost benefit under the Agreements, is not shared by the industry as a whole . . .”<sup>14</sup>

## **II. The Law Does Not Allow A Five-Year Waiver For CSC**

CSC also proposes that, if Commerce does not revoke the amended polarity levels for all exporters, it should create a special rule allowing CSC to buy sugar with a polarity less than 99.5 at the lower reference price for a period of five years.<sup>15</sup> Commerce rejected this proposal the last time CSC made it:

The Department does not have authority to waive the application of the AD or CVD laws to a company or group of companies, either for purposes of AD and CVD orders or for suspension agreements. Further, the proposal for a waiver or exception is not necessary given that CSC Sugar meets the definition of a U.S.

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<sup>12</sup> *Comments Memo* at 6.

<sup>13</sup> Letter from CSC (Aug. 1, 2018) at 2.

<sup>14</sup> *Imperial Sugar* at 1299, 1300.

<sup>15</sup> *CSC Proposal* at 2.

refiner and can secure sugar for its operations, albeit possibly at a higher price than the company desires.

There has been no change in the law and there is no need for CSC's proposed waiver.

### III. Conclusion

CSC proposes to reverse Commerce's accomplishments in the *Amended Suspension Agreements* for reasons it raised, and Commerce rejected, in 2017. There is no reason for Commerce to reconsider CSC's proposal. Commerce should state that it has already explained fully its reasons for not permitting CSC to benefit from imports of dumped and subsidized Mexican sugar at the lower reference price while the injurious effects of those imports affect the domestic industry as a whole. CSC is entitled only to the protections afforded to the domestic industry as a whole, nothing more.

\* \* \*

This document contains in brackets information that Commerce has designated previously as business proprietary in this segment of the proceeding.

Please contact the undersigned if you have any questions about this submission.

Respectfully submitted,

/s/ Robert C. Cassidy, Jr.

Robert C. Cassidy, Jr.  
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CASSIDY LEVY KENT

## REPRESENTATIVE CERTIFICATION

I, Jonathan M. Zielinski, of Cassidy Levy Kent (USA) LLP, counsel to the American Sugar Coalition and its members, certify that I have read the attached submission of "Opposition to CSC's Proposed Changes to Suspension Agreements" filed on February 6, 2019, pursuant to the agreements suspending the antidumping and countervailing duty investigations of Sugar from Mexico, as amended (A-201-845, C-201-846). In my capacity as counsel to the American Sugar Coalition 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/CVD proceedings, the U.S. Department of Commerce may preserve this submission, including a business proprietary submission, for purposes of determining the accuracy of this certification. I certify that a copy of this signed certification will be filed with this submission to the U.S. Department of Commerce.

Signed: \_\_\_\_\_

  
Jonathan M. Zielinski

Dated: \_\_\_\_\_

2-6-19

**U.S. DEPARTMENT OF COMMERCE**  
**PUBLIC CERTIFICATE OF SERVICE**

I hereby certify on February 6, 2019, that a copy of the foregoing submission is being served, via hand delivery or first-class mail\*, on the following parties:

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