



A-201-845

Suspension Agreement – Admin Review

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May 29, 2019

**MEMORANDUM TO:** Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance

**FROM:** P. Lee Smith *PLS*  
Deputy Assistant Secretary  
for Policy and Negotiations

**SUBJECT:** Issues and Decision Memorandum for the Final Results of the Administrative Review of the Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico, as Amended, for the period October 1, 2017, through November 30, 2017

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## SUMMARY

We have analyzed the comments of interested parties in response to the preliminary results of the administrative review of the Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico, as amended on June 30, 2017 (amended AD Agreement),<sup>1</sup> for the period October 1, 2017, through November 30, 2017. As a result of our analysis stated in this memorandum, we maintain our preliminary determination that the respondents selected for individual examination are in compliance with the amended AD Agreement and that the amended AD Agreement is meeting the statutory requirements under sections 734(c) and (d) of the Tariff Act of 1930, as amended (the Act). The following is a list of the issues in this memorandum:

1. Alleged Violations of Amended AD Agreement
2. Enforcement of the Amended AD Agreement

## SCOPE OF THE REVIEW

The product covered by this amended 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. Sucrose is a nonreducing disaccharide composed of glucose and fructose

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<sup>1</sup> See *Sugar from Mexico: Suspension of Antidumping Investigation*, 79 FR 78039 (December 29, 2014); see also *Sugar from Mexico: Amendment to the Agreement Suspending the Antidumping Duty Investigation*, 82 FR 31945 (July 11, 2017) (amended AD Agreement).



linked by a glycosidic bond via their anomeric carbons. The molecular formula for sucrose is C<sub>12</sub>H<sub>22</sub>O<sub>11</sub>; the International Union of Pure and Applied Chemistry (IUPAC) International Chemical Identifier (InChI) for sucrose is 1S/C<sub>12</sub>H<sub>22</sub>O<sub>11</sub>/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,1-3H<sub>2</sub>/t4-,5-,6-,7-,8+,9-,10+,11-,12+/m1/s1; the InChI Key for sucrose is CZMRCDWAGMREC�-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 amended AD Agreement.

The scope of the amended 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 amended 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 amended 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 amended AD Agreement is dispositive.

## BACKGROUND

On December 20, 2018, Commerce published the *Preliminary Results* of the 2017 administrative review of the amended AD Agreement.<sup>2</sup> Commerce gave interested parties an opportunity to comment on the *Preliminary Results*. On March 4, 2019, Commerce received a case brief from the American Sugar Coalition and its Members<sup>3</sup> (collectively, the petitioners).<sup>4</sup> On March 15, 2019, Commerce received a rebuttal brief from Camara Nacional de Las Industrias Azucarera y Alcoholera (Mexican Sugar Chamber), Grupo Zucarmex, and Grupo Beta San Miguel

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<sup>2</sup> See *Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico (as Amended); Preliminary Results of 2017 Administrative Review*, 83 FR 65343 (December 20, 2018) (*Preliminary Results*).

<sup>3</sup> 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>4</sup> See Petitioners' Case Brief, "The Administrative Review of the Suspended Antidumping Investigation on Sugar from Mexico," dated March 4, 2019 (Petitioners' Case Brief).

(collectively, the respondents).<sup>5</sup> Also on March 15, 2019, Commerce received a rebuttal brief from the Government of Mexico (GOM).<sup>6</sup>

Both the petitioners and respondents submitted briefs that contain discussion concerning business proprietary information on the record. The following discussion of the issues is a summary of their public arguments.

## **DISCUSSION OF THE ISSUES**

### **Issue 1: Alleged Violations of the Amended AD Agreement**

#### **A. Alleged Violations with Respect to Certain Sales**

##### *Comments of Petitioners*

- Petitioners claim there are questions concerning certain sales made by Zucarmex that they believe show “unclear prices.”<sup>7</sup>

##### *Comments of Respondents*

- Respondents point out that the sales in question are “miniscule quantities of sales”<sup>8</sup> and that Zucarmex did not exclude any sales in its U.S. sales listing, as such sales were included in the U.S. sales listing submitted with the supplemental questionnaire response. In addition, respondents argue that “only sales in the ordinary course of trade are considered in the Department’s analysis is inherent in all AD proceedings even if the scope of the AD proceeding does not specifically address or exclude sales made outside of the ordinary course.”<sup>9</sup>

#### **B. Erroneous Categorizations of Sales**

##### *Comments of Petitioners*

- Petitioners argue that Ingenio San Miguel del Naranjo, S.A. de C.V. and its affiliates under Beta San Miguel, S.A. de C.V. (collectively, Grupo Beta San Miguel) have miscategorized several sales transactions in their home market sales listing.

##### *Comments of Respondents*

- Respondents argue that the sales transactions referenced by the petitioners are properly classified as home market sales for the purposes of Commerce’s proceeding.

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<sup>5</sup> See Respondents’ Rebuttal Brief, “Sugar from Mexico - Rebuttal Brief,” dated March 15, 2019 (Respondents’ Rebuttal Brief).

<sup>6</sup> See GOM’s Rebuttal Brief, “Sugar from Mexico: Rebuttal Brief of the Government of Mexico,” dated March 15, 2019 (GOM’s Rebuttal Brief).

<sup>7</sup> See Memorandum entitled “Proprietary Discussion of Issues in the Issues and Decisions Memorandum for the Final Results of the Administrative Review for the Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico, as Amended, for the period October 1, 2017, through November 30, 2017,” (Business Proprietary Memorandum) dated concurrently with this memorandum.

<sup>8</sup> See Respondents’ Rebuttal Brief at 3.

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

### C. Compliance with Mathematical Requirements in the Amended AD Agreement

#### *Comments of Petitioners*

- Petitioners claim that data submitted by the respondents are not adequate for determining whether the 85 percent of the dumping has been eliminated. They assert that neither respondent explained the criteria used to select the home market sales used to calculate the normal value, nor did they explain why those sales are comparable to their export sales.
- Petitioners assert Zucarmex stated only that the sales are contemporaneous and have a polarity level above 99.2,<sup>10</sup> while Grupo Beta San Miguel stated that the sales of Refined Sugar are as defined by the suspension agreement and are contemporaneous to the U.S. sales.<sup>11</sup>
- Petitioners argue that home market comparison sales should have the same physical characteristics (CONNUMs) as the export sales being evaluated. Given the definitions of Refined and Other Sugar, this requires a match with respect to polarity. Petitioners find that the submitted evidence is insufficient to determine the basis on which to conclude that the selected home market sale is comparable to the reported U.S. export sale.
- Petitioners argue that the respondents' finding that 85 percent of dumping was eliminated is based upon vague comparisons between sales of sugar that do not meet the requirements for calculating sales at less than fair value. Therefore, it is unclear whether Zucarmex and Grupo Beta San Miguel have properly satisfied the requirement to eliminate 85 percent of the dumping.

#### *Comments of Respondents*

- Respondents claim that Zucarmex and Grupo Beta San Miguel have responded fully to all of Commerce's request to demonstrate that they have eliminated 85 percent of dumping and the information demonstrates unequivocally that the respondents have gone above and beyond to meet the amended AD Agreement's requirements.
- Respondents argue that most of the petitioners' complaints are based on assumptions that go beyond the obligations imposed by the amended AD Agreement. They note that the objective of the review is to confirm compliance with the suspension agreement, rather than to calculate a dumping margin through the type of detailed margin analysis conducted in a review of an antidumping duty order.
- Respondents assert that the calculations provided are fully compliant with Appendix II of the amended AD Agreement, which does not require the type of model-matching analysis used in reviews of antidumping duty orders. The only product distinction included in the amended AD Agreement is whether the sugar is Refined or Other Sugar.

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<sup>10</sup> See Petitioner's Case Brief at 5 (citing Supplemental Questionnaire Response from Zucarmex, re: "Sugar from Mexico – *Supplemental Questionnaire Response*," dated September 17, 2018 at 15 and Zucarmex Response to Petitioners' Comments at 4-5).

<sup>11</sup> *Id.* (citing Grupo Beta San Migeul's Response to Petitioners' Comments, re: "Sugar from Mexico – *Response to Petitioners' Comments dated September 28, 2018*," dated October 5, 2018 at 5).

## Commerce's Position

Commerce disagrees with the petitioners' allegation that there may be violations and agrees with respondents that the record evidence indicates the selected respondents have thoroughly answered Commerce's initial and supplemental questionnaires. Based on these responses, we agree with the respondents that the sales representing the alleged violations represent "miniscule quantities of sales."<sup>12</sup> Therefore, we continue to find, consistent with our preliminary determination, that these sales do not present a compliance issue.<sup>13</sup> Therefore, in the final analysis, Commerce has determined that the miniscule quantities involved in these transactions do not materially frustrate the purposes of the amended AD Agreement. Commerce agrees with respondents that sales have been correctly classified and that respondents have provided reasonable explanations.<sup>14</sup> Commerce will continue to examine these issues as it monitors the amended AD Agreement and conducts any requested reviews.

Commerce finds that evidence submitted by the respondents (worksheets based on information contained in the invoices for sample sales), adequately demonstrates that 85 percent of the dumping has been eliminated.<sup>15</sup> Commerce agrees with the respondents that the calculations provided by the respondents comply with Appendix II of the amended AD Agreement, which does not specify the type of model-matching analysis used in reviews of antidumping duty orders, and only specifies that "When the Department bases normal value on sales prices, such prices will be the prices at which the foreign like product is first sold for consumption in the comparison market in the usual commercial quantities and in the ordinary course of trade."<sup>16</sup> We also agree that the respondents responded to the questions asked by Commerce in this review. Finally, we note that both respondents selected home market sales that are reasonably similar to U.S. sales (*i.e.*, at the same or similar polarity), as well as contemporaneous.<sup>17</sup> However, Commerce notes that administrative reviews of suspension agreements have until recently been relatively uncommon and that we will continue to examine this issue in future reviews to evaluate the appropriate comparison methodology in the context of suspension agreements to ensure that the review evaluates whether there is compliance with the elimination of 85 percent of dumping criterion.

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<sup>12</sup> See Business Proprietary Memorandum at 4.

<sup>13</sup> See Preliminary Results at 5; *see also* Memorandum to Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, from P. Lee Smith, Deputy Assistant Secretary for Policy and Negotiations, "Memorandum with Respect to Sales Observations reported by Grupo Zucarmex," dated December 14, 2018.

<sup>14</sup> For further discussion, which involves a discussion of business proprietary info, *see* Business Proprietary Memorandum.

<sup>15</sup> See Zucarmex Initial Questionnaire Response dated July 11, 2018 at Exhibit AD-12; Zucarmex's Supplemental Questionnaire Response, dated September 17, 2018 at S-11 and S-15; Beta San Miguel's Initial Questionnaire Response dated July 12, 2018 at AD-13 and AD-14; Beta San Miguel's Supplemental Questionnaire Response, dated September 13, 2018 at S-9.

<sup>16</sup> See Appendix II at A.1.

<sup>17</sup> See Zucarmex Initial Questionnaire Response dated July 11, 2018 at 26 and Exhibit AD-12; Zucarmex's Supplemental Questionnaire Response, dated September 17, 2018 at 14 and S-11 and S-15; Beta San Miguel's Initial Questionnaire Response dated July 12, 2018 at 23 and Exhibits AD-13 and 14; Beta San Miguel's Supplemental Questionnaire Response, dated September 13, 2018 at 10 and S-9. Respondents' Rebuttal Brief at 4.

## **Issue 2: Enforcement of the Amended AD Agreement**

### *Comments of Petitioners*

- Petitioners agree that, overall, “the AD Agreement is functioning as intended”<sup>18</sup> during the period of review. However, they urge that Commerce should not endorse the respondents’ reporting methodology for home market comparison sales, which is proprietary in nature and is addressed in detail in the accompanying memorandum.<sup>19</sup>
- Petitioners also urge that Commerce should state in its final results of review that Commerce intends to continue its robust enforcement to ensure full compliance with the amended AD Agreement.

### *Comments of Respondents and the GOM*

- Respondents recognize that Commerce and all parties to the amended AD Agreement must continue to ensure compliance with the terms of the amended AD Agreement.
- Respondents urge Commerce to resist the petitioners’ efforts to impose burdens that go beyond the requirements of the amended AD Agreement.
- The GOM urges Commerce to note that even if there were any errors, it is not surprising that they would be immaterial and not affect the operation of the amended AD Agreement as a whole.”<sup>20</sup> The GOM urges Commerce to “reject claims of alleged ‘possible violations’ made by ASC, and continue to find that the mandatory respondents have adhered to the terms of the amended AD Agreement, that the amended AD Agreement is functioning as intended, and that it continues to meet the statutory requirements under sections 734(c) and (d) of the Tariff Act.”<sup>21</sup>

## **Commerce’s Position**

Commerce finds, based upon the record evidence, that the Mexican exporters and producers subject to review are in compliance with the amended AD Agreement and have eliminated 85 percent of dumping. Commerce agrees with respondents that concerns raised by the petitioners with respect to possible violations relate to sales representing miniscule quantities and have been addressed by the selected respondents in their questionnaire responses.

Commerce will continue with its robust enforcement to ensure full compliance with the amended AD Agreement, which will lead to the continued success of the amended AD Agreement to the benefit of all parties.

## **Recommendation**

Based on the record evidence discussed above, we recommend determining that the respondents have been in compliance with the amended AD Agreement and that the amended AD Agreement

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<sup>18</sup> See Petitioner’s Case Brief at 1.

<sup>19</sup> See Business Proprietary Memorandum at 2 and Petitioners’ Case Brief at 2-4.

<sup>20</sup> See GOM’s Rebuttal Brief at 7.

<sup>21</sup> *Id.* at 8.

continues to meet the statutory requirements under sections 734(c) and (d) of the Act. If this recommendation is accepted, we will publish the final results of review in the *Federal Register*.

\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

5/29/2019

X



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Signed by: JEFFREY KESSLER

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Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance