



A-201-845  
Suspension Agreement  
Public Document  
ITA/E&C/P&N/OP/BAU: DWC

TO ALL INTERESTED PARTIES

November 6, 2019

Re: Release of Draft Amendment to the Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico

The U.S. Department of Commerce (Commerce) has formally opened consultations with the Cámara Nacional de Las Industrias Azucarera y Alcohólica (Cámara)<sup>1</sup> with respect to a possible amendment to the Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico (AD Agreement).<sup>2</sup>

As part of these consultations, Commerce is releasing a draft amendment to the AD Agreement for the consideration of interested parties (*see* Attachment). The attached draft contains, among others, the following elements that would amend the AD Agreement:

- Revised definitions for Other Sugar and Refined Sugar;
- Revised Reference Prices;
- Revised procedures for polarity testing;
- Enhancements to monitoring and penalties for non-compliance.

This draft text represents the starting point in the consultation and renegotiation process. All of the provisions, terms, and definitions are open to discussion and will be fully considered for purposes of the negotiations to amend the AD Agreement. Interested parties are invited to submit comments on the text by **November 12, 2019**. In particular, Commerce would like to draw attention to and invite parties to comment on (1) what the effective date of any amendment should be, in the event the signatories to the original AD Agreement reach agreement; (2) whether the price spread between the Refined and Other Sugar references prices is appropriate; (3) whether the definitions of Refined and Other Sugar based on polarity should be adjusted; and (4) any other issues the parties wish to raise concerning the provisions, terms, and definitions contained in the draft text.

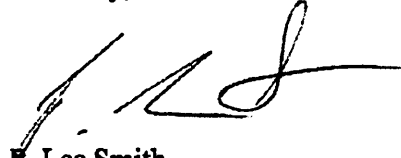
<sup>1</sup> See Letter to Cámara from P. Lee Smith, Deputy Assistant Secretary for Policy & Negotiations, "Consultations on Potential Amendment to the Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico" (November 4, 2019).

<sup>2</sup> See *Sugar From Mexico: Suspension of Antidumping Duty Investigation*, 79 FR 78039 (December 29, 2014).



If you have any questions regarding this matter, please contact me at (202) 482-6199 or Sally C. Gannon at (202) 482-0162.

Sincerely,

A handwritten signature in black ink, appearing to read 'F. Lee Smith', with a stylized flourish extending to the right.

**F. Lee Smith**  
Deputy Assistant Secretary  
for Policy & Negotiations  
Enforcement & Compliance

Attachment

## **AMENDMENT TO THE AGREEMENT SUSPENDING THE ANTIDUMPING DUTY INVESTIGATION ON SUGAR FROM MEXICO**

The Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico (Agreement) signed by the signatory producers and exporters of Sugar from Mexico (individually, Signatory; collectively, Signatories) and the United States Department of Commerce (Commerce) on December 19, 2014, is amended, as set forth below (Amendment).

If a provision of the Agreement conflicts with a provision of this Amendment, the provision of the Amendment shall supersede the provision of the Agreement to the extent of the conflict. All other provisions of the Agreement and their applicability continue with full force.

Commerce and the Signatories hereby agree as follows:

**Section II (“Definitions”) is amended as follows:**

**Section II.C is replaced with:**

“Effective Date of the Agreement” means the date on which Commerce and the Signatories signed the Agreement. Additionally, the “Effective Date of the Amendment” means the date on which Commerce and the Signatories sign the Amendment.

**Section II.F is replaced with:**

“Other Sugar” means

- a. Sugar at a polarity of less than 99.2, as produced and measured on a dry basis;
- b. Where such Sugar is Additional U.S. Needs Sugar, as defined in Section II.O, Sugar at a polarity of less than 99.5, as produced and measured on a dry basis; and,
- c. In the event that Section V.B.4.d of the amended CVD Agreement is exercised, Sugar at a polarity specified by USDA that is below 99.5, as produced and measured on a dry basis.

Such Other Sugar must be exported to the United States loaded in bulk and freely flowing (*i.e.*, not in a container, tote, bag or otherwise packaged) into the hold(s) of an ocean-going vessel. To be considered as Other Sugar, if Sugar leaves the Mexican mill in a container, tote, bag or other package (*i.e.*, is not freely flowing), it must be emptied from the container, tote, bag or other package into the hold of the ocean-going vessel for exportation. All other exports of Sugar from Mexico that are not transported in bulk and freely flowing in the hold(s) of an ocean-going vessel will be considered to be Refined Sugar for purposes of the Reference Prices, regardless of the polarity of that Sugar.

**Section II.H is replaced with:**

“Refined Sugar” means

- a. Sugar at a polarity of 99.2 and above, as produced and measured on a dry basis;
- b. Sugar considered to be Refined Sugar under Section II.F;

- c. Where such Sugar is Additional U.S. Needs Sugar as defined in Section II.O, Sugar at a polarity of 99.5 and above, as produced and measured on a dry basis; and
- d. In the event that Section V.B.4.d of the amended CVD Agreement is exercised, Sugar at a polarity specified by USDA that is 99.5 or above, as produced and measured on a dry basis.

**New Section II.N is added as follows:**

“Intermediary Customer” means trader, processor, or other reseller located outside of the United States who sells Sugar to an unaffiliated customer in the United States.

**New Section II.O is added as follows:**

“Additional U.S. Needs Sugar” means the quantity of Sugar allowed to be exported, over and above the Export Limit calculated under Section V.B.3 of the amended CVD Agreement, to fill a need identified by USDA in the U.S. market for a particular type and quantity of Sugar, and offered to Mexico pursuant to Section V.B.4.c of the amended CVD Agreement.

**Section VII (“Monitoring of the Agreement”) is amended as follows:**

**Section VII.B (“Compliance Monitoring”) is amended as follows:**

**Section VII.B.4—an additional sentence as follows is added to the end of paragraph 4:**

Commerce may verify polarity testing practices at any Mexican mill and request supporting documentation for polarity test results.

**Section VII.C (“Shipping and Other Arrangements”) is amended as follows:**

**Section VII.C.4 is replaced with the following, with the sentence in italics being added to the language:**

4. Not later than 30 days after the end of each quarter, each Signatory will submit a written statement to Commerce certifying that all sales during the most recently completed quarter were at net prices, after rebates, discounts, or other adjustments, at or above the Reference Prices in effect and were not part of or related to any act or practice which would have the effect of hiding the real price of the Sugar being sold. Further, each Signatory will certify in this same statement that all sales made during the relevant quarter were not part of or related to any bundling arrangement, discounts/free goods/ financing package, swap or other exchange where such arrangement is designed to circumvent the basis of the Agreement. *As part of the certification, each Signatory will submit a listing of the total quantity of Other Sugar and Refined Sugar that was exported during each quarter.*

Each Signatory that did not export Sugar to the United States during any given quarter will submit a written statement to Commerce certifying that it made no sales to the United States during the most recently completed quarter. Each Signatory agrees to permit full verification of

its certification as Commerce deems necessary. Failure to provide a quarterly certification may be considered a Violation of the Agreement.

**Section VII.C.5 is added as follows:**

5. For each sale made by a Signatory to an Intermediary Customer, the Signatory shall incorporate into its sales contract with the Intermediary Customer the obligation that such customers will abide by the terms of the Agreement, including selling the Sugar from Mexico to the first downstream unaffiliated U.S. customer in accordance with the terms of the Agreement. Further, for each sale made by a Signatory to an Intermediary Customer, the Signatory shall incorporate into its sales contract with the Intermediary Customer a provision requiring the Intermediary Customer to provide Commerce with all sales and other related information Commerce requests.

Further, Signatories and Intermediary Customers must retain evidence in their files to document that these contractual obligations were implemented. Commerce retains its authority to request the Signatory and/or Intermediary Customer to provide such documentation, and Commerce may verify such documentation. Where a Signatory does not have access to the documentation but has obligated the Intermediary Customer to provide it to Commerce, Commerce will request the Intermediary Customer to provide the documentation. Failure by a Signatory and/or Intermediary Customer to provide requested documentation may be considered a Violation under Section VIII of the Agreement.

**Section VII.C.6 is added as follows:**

6. Other Sugar may enter the Customs territory of the United States if the following conditions are met:

Exporters of Other Sugar are required to ensure, through inclusion of obligations in their sales contracts or otherwise, that importers of record of such Other Sugar agree to ensure that Other Sugar is tested for polarity by a laboratory approved by U.S. Customs and Border Protection (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 Commerce within 30 days of entry. Such polarity test reports must be filed on the official records of Commerce 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 Commerce and the Signatories, including the CBP requirement that the polarity level of an entry will be the average of the samples from that entry.

Commerce will request that CBP inform the importing public of the requirements for importation of Other Sugar set forth in this sub-section.

**Section VII.C.7 is added as follows:**

7. Penalties for Non-Compliance with Section VII.C.6:

- a. Where Commerce finds that exporters and importers of record of Other Sugar are not complying with Section VII.C.6, Commerce may consider this a Violation under Section VIII.D of the Agreement.
- b. If Commerce finds that issues with meeting the polarity requirements of the Agreement as required by Sections II.F, II.H, VII.C.6 and Appendix I continue to arise, Commerce can at any time terminate the Agreement under Section X.B. Apart from termination, Commerce may take additional steps to ensure compliance with the terms of this Agreement, including action under Section VIII.B.4 of the CVD Agreement.

**Section VIII (“Violations of the Agreement”) is amended as follows:**

**Section VIII.D is amended by adding new paragraphs 3 and 4, and moving paragraph 3 to paragraph 5:**

**D.3** Failure by Signatories and Intermediary Customers to provide the required documentation specified in Section VII.C.5.

**D.4** Failure by Signatories and importers of record to comply with the requirements under Section VII.C.6.

**Appendix I is amended as follows:**

**At Appendix I, the following will be changed:**

The FOB plant Reference Price for Refined Sugar is \$0.2800 per pound commercial value (whether freely flowing or in totes weighing one (1) MT or greater as the sugar leaves the mill), as produced and measured on a dry basis.

The FOB plant Reference Price for Other Sugar is \$0.2300 per pound commercial value (whether freely flowing or in totes weighing one (1) MT or greater as the sugar leaves the mill), as produced and measured on a dry basis.

**In addition, the following clause will be added to Appendix I when referencing the Reference Prices.**

Mexican Signatory producers/exporters must ensure that the delivered sales price for all Sugar from Mexico exported to the United States must include all expenses, *e.g.*, transportation, de-bagging, warehousing, handling, and packaging charges, in excess of the FOB plant Reference Price. As specified in Sections VII.B.1 and VII.B.2 of the Agreement, Commerce has the authority to request sales information, and to verify such information, which demonstrates compliance with the Reference Prices and terms of the Agreement.

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Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance  
U.S. Department of Commerce

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Date

The following party hereby certifies that the members of the Mexican sugar industry agree to abide by all terms of the Amendment to the Agreement:

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{Name}  
President  
Cámara Nacional de Las Industrias Azucarera y Alcohólera

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Date