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November 21, 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, NW  
Washington, DC 20230

Case Nos.: A-201-845  
C-201-846  
Total No. of Pages: 775  
AD/CVD Suspension Agreements  
E&C Office of Policy & Negotiations/BAU

**Public Version**

Business Proprietary Information Subject to  
Protective Order Removed from Brackets  
on Pages 3, 6, 7 and Exhibits 4 and 5.

**Re: Sugar from Mexico: Rebuttal Comments Regarding Proposed Amendments  
to Suspension Agreements**

Dear Secretary Ross:

On behalf of the American Sugar Coalition and its Members (collectively, “ASC”),<sup>1</sup> we  
hereby respond to the November 14, 2019, comments filed by CSC Sugar, LLC (“CSC”)<sup>2</sup> and

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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> *CSC Comments on the Agreement Suspending the Antidumping Duty and Countervailing Duty Investigations* (Nov. 14, 2019) (“CSC Comments”).

the Sweetener Users Association (“SUA”)<sup>3</sup> regarding the Proposed Amendments<sup>4</sup> to the Agreement Suspending the Countervailing Duty Investigation on Sugar from Mexico and the Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico.<sup>5</sup> As explained below, CSC and SUA misunderstand the law, and their comments are not supported by the record. Additionally, CSC’s and SUA’s arguments are not new. We include in **Exhibit 1** the *Rebuttal Comments of the American Sugar Coalition* (Jun. 26, 2017), which were filed during the negotiations for the 2017 Amendments.<sup>6</sup> We incorporate by reference those rebuttal comments, which address in detail many of CSC’s and SUA’s current arguments.

We note that the domestic industry as a whole, the Mexican Government, and the Mexican industry all support the Proposed Amendments, as they did the 2017 Amendments. The sole reason for this comment process is because it remedies the procedural error the Court

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<sup>3</sup> SUA *Draft Amendment to the Agreement Suspending the Antidumping Duty Investigation* (Nov. 14, 2019) (“SUA Comments”).

<sup>4</sup> See *Release of Draft Amendment to the Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico* (Nov. 6, 2019); *Release of Draft Amendment to the Agreement Suspending the Countervailing Duty Investigation on Sugar from Mexico* (Nov. 6, 2018) (together “Proposed Amendments”).

<sup>5</sup> *Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico*, 79 Fed. Reg. 78,039 (Dep’t of Commerce Dec. 29, 2014); *Agreement Suspending the Countervailing Duty Investigation on Sugar From Mexico*, 79 Fed. Reg. 78,044 (Dep’t of Commerce Dec. 29, 2014) (together “2014 Agreements”).

<sup>6</sup> See *Sugar From Mexico: Amendment to the Agreement Suspending the Antidumping Duty Investigation*, 82 Fed. Reg. 31,945 (Dep’t of Comm. Jul. 11, 2017) (Amendment to Susp. Agreement); *Sugar From Mexico: Amendment to the Agreement Suspending the Countervailing Duty Investigation*, 82 Fed. Reg. 31,942 (Dep’t of Comm. Jul. 11, 2017) (Amendment to Susp. Agreement) (together “the 2017 Amendments”).

determined existed in implementing the 2017 Amendments. The substance of Commerce's 2017 Amendments remains valid, the 2017 Amendments brought the 2014 Agreements into compliance with the law, and the record includes no evidence to the contrary. Indeed, no party has provided any new position that Commerce did not address fully in 2017. Consequently, it would be unreasonable for Commerce to change the terms of the Proposed Agreements. Ultimately, we are here because one company continues to demand access to dumped and subsidized sugar, which the Court has determined is not a valid argument under the law. Commerce should reject CSC's and SUA's arguments, and should implement the Proposed Amendments on December 6, 2019.

**I. CSC is Not Unique, Except That it is the Only Member of the Domestic Industry that Demands a Supply of Dumped and Subsidized Sugar**

Plaintiff's 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. . . . Plaintiff'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, or even within the segment to which Plaintiff belongs.<sup>7</sup>

The U.S. Court of International Trade's succinct and unambiguous explanation when it reviewed similar claims by another sugar refiner who also produces liquid sugar applies directly to CSC, and is the reason CSC's comments on the Proposed Agreements must be rejected. CSC argues that it is a unique disruptor in the industry, and will suffer [ ] from the

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<sup>7</sup> *Imperial Sugar Co. v. United States*, 181 F. Supp. 3d. 1284, 1299-1300 (Ct. Int'l Trade 2016) ("*Imperial Sugar*").

Proposed Amendments. However, CSC is just like other refiners and liquid sugar producers who compete in the market for inputs, and its desire to source dumped and subsidized sugar is not a remedy recognized by the law.

*First*, CSC is not unique. CSC is a liquid sugar producer,<sup>8</sup> and liquid sugar producers are common in the U.S. industry. In 2014, the U.S. International Trade Commission recognized that “there were approximately 20 companies operating 38 melt houses in the United States,” and that “{s}ome melt houses purify raw cane sugar or lower-quality refined sugar that may contain foreign matter using more involved processes such as filtration and ultraviolet light treatment.”<sup>9</sup> Additionally, as Commerce noted previously, CSC has testified that it can refine sugar at the same polarity levels as other domestic refiners.<sup>10</sup> There is nothing special about CSC’s production process or business model, and there are many domestic sugar producers, including several ASC members, that make the same product produced by CSC. The only difference is

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<sup>8</sup> See *Memorandum Addressing Comments on the Amendment to the Agreement Suspending the Countervailing Duty Investigation on Sugar from Mexico* (Aug. 7, 2017) (“*CVD Comments Memo*”) at Attachment 5, p. 207 (where CSC explains “{w}e are only set up as a liquid sugar producer”); *Memorandum Addressing Comments on the Amendment to the Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico* (Aug. 7, 2017) (“*AD Comments Memo*”) at Attachment 2, p. 207 (same). The *CVD Comments Memo* and the *AD Comments Memo* are provided at **Exhibit 2**.

<sup>9</sup> *Sugar from Mexico*, Investigation Nos. 701-TA-513 and 731-TA-1249 (Final), USITC Pub. 4577 (Nov. 2015) at I-13 (provided at **Exhibit 3**).

<sup>10</sup> Exhibit 2, *CVD Comments Memo* at 9-10; *AD Comments Memo* at 5-6.

that CSC is the sole producer that insists it has a right to source dumped and subsidized sugar from Mexico.

*Second*, even if CSC were unique, it is wrong that the statute requires Commerce to consider the effects of the Proposed Amendments on CSC individually. As CSC notes, the statute requires that Commerce consider “the relative impact of the competitiveness of the domestic industry producing the like merchandise. . .”<sup>11</sup> Under Section 777(4)(A) of the Act, the “domestic industry” means “the producers as a whole” of the domestic like product. Thus, as the Court explained in *Imperial Sugar*, the effect of the sugar suspension agreements on an individual company that is a member of the domestic sugar industry does not determine whether the agreement meets the requirements of the statute.<sup>12</sup> Therefore, the effects on CSC of no longer having the ability to source dumped and subsidized sugar is not a public interest factor Commerce may consider.

*Third*, even if CSC were unique, *and* even if the effects on CSC individually were relevant, the record does not support that the Proposed Amendments would have any effect on CSC except to level the playing field for all domestic producers. The record contains abundant data reflecting the failures of the 2014 Agreements, which is why Commerce implemented the

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<sup>11</sup> *CSC Comments* at 7 (citing Section 704 of the Tariff Act of 1930, as amended (the “Act”)).

<sup>12</sup> *Imperial Sugar* at 1299 (“The 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’”).

2017 Amendments.<sup>13</sup> In particular, that the 2014 Agreements resulted in (1) historically low prices for refined sugar in the U.S. market and (2) a shortage of raw sugar for refining in the United States that directly affected the operation of USDA sugar policy.

Conversely, the record contains no data indicating any effect on CSC other than restricting its ability to source dumped and subsidized sugar. To the contrary, the record indicates that CSC has prospered under the 2017 Amendments, [ ] during the first quarter of the crop year 2018/2019,<sup>14</sup> and running “at full capacity to cover {sugar} demand for over 3 months” in crop year 2017/2018.”<sup>15</sup> This is no surprise because, as CSC explained clearly, it can source inputs and produce sugar “the same as everybody else.”<sup>16</sup>

CSC claims only that [ ]<sup>17</sup> But CSC’s claimed [ ] appear to have no connection to the changes in the 2017 Amendments. Rather, they are [ ]

<sup>13</sup> See, e.g., ASC’s *Comments Regarding Proposed Amendments to Suspension Agreements* (Nov. 14, 2019) (“ASC’s Nov. 14 Comments”).

<sup>14</sup> Memoranda to File, *U.S. Department of Agriculture (USDA) Sugar Import Data* (Feb. 1, 2019) (provided at **Exhibit 4**); see also *ASC’s Opposition to CSC’s Proposed Changes to Suspension Agreements* (Feb. 6 2019) (provided at **Exhibit 5**).

<sup>15</sup> Letter from CSC to Commerce (Aug. 1, 2018) at 2 (provided at **Exhibit 6**); see also Exhibit 5.

<sup>16</sup> Exhibit 2, *CVD Comments Memo* at Attachment 5, p. 208; *AD Comments Memo* at Attachment 2, p. 208.

<sup>17</sup> *CSC Comments* at Attachment B. CSC’s [ ] are, of course, speculative.

The Honorable Wilbur L. Ross, Jr.  
November 21, 2019  
Page 7

**PUBLIC VERSION**

]. This [ ] cannot be attributed to the changes caused by the 2017 Amendments because, otherwise, [ ]. Regardless, CSC's [ ] because the 2017 Amendments restricted its ability to source dumped and subsidized sugar. That is, once the playing field was leveled, and all liquid sugar producers and sugar refiners were competing for Mexican sugar at the same level, CSC was required to operate at a [ ]. Nothing in the Proposed Amendments prohibits CSC from continuing to purchase its sugar inputs from Mexico or from domestic sources. The Proposed Amendments only require that it do so at a fair price. Again, the law does not recognize CSC's lost competitive advantage of sourcing dumped and subsidized sugar.<sup>18</sup>

In sum, CSC continues to argue without support that the Proposed Amendments are part of a conspiracy against it. The record demonstrates otherwise. CSC has been clear that it can refine sugar at the same polarity levels as other refiners, and has explained that it can source its sugar inputs from anywhere, including purchasing from Mexican and domestic suppliers.<sup>19</sup> The only effect the Proposed Amendments will have on CSC is to restrict its ability to source dumped and subsidized sugar. This is not a recognized consideration under the law, and Commerce should again reject CSC's arguments.

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<sup>18</sup> *Imperial Sugar* at 1299.

<sup>19</sup> See Letter from CSC to Commerce (Jun. 21, 2017) at 1 (provided at **Exhibit 7**) (“We buy and refine sugar from all sources, including Mexico and the U.S. producers”).

**CASSIDY LEVY KENT**

## **II. CSC and SUA Ignore that the 2014 Agreements Failed to Eliminate Completely the Injurious Effect of Mexican Imports, and that the Proposed Amendments Address Those Failures**

SUA argues that the 2014 Agreements should stand without amendment because there is no explanation for increasing reference prices, and the Proposed Amendments “contribute to an unnaturally wide spread” between refined and raw sugar.<sup>20</sup> Similarly, CSC argues that there is no explanation for revising the polarity-based definitions for “refined” and “other” sugar, and that such a revision is unnecessary in light of the requirement that “other” sugar be transported free-flowing in ocean vessels.<sup>21</sup> SUA and CSC are wrong because the record demonstrates that the 2014 Agreements failed to eliminate completely the injurious effect of Mexican imports, and the 2017 Amendments addressed those failures with provisions similar to those in the Proposed Amendments.

As explained in detail in our letter requesting termination of the 2014 Agreements<sup>22</sup> and in *ASC’s Nov. 14 Comments*, the 2014 Agreements caused the price for refined sugar to plummet to near forfeiture levels, caused the price for raw sugar to increase above the price for refined sugar, and caused raw sugar to bypass and starve refiners. Commerce determined previously that these conditions failed to eliminate injury to the domestic industry, and thus, the 2014

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<sup>20</sup> *SUA Comments* at 2.

<sup>21</sup> *CSC Comments* at 9-11.

<sup>22</sup> Provided at Attachment 1 of *ASC’s Nov. 14 Comments*.

Agreements cannot stand because they are unlawful under Sections 704(c) and 734(c) of the Act.<sup>23</sup>

As also demonstrated in *ASC's Nov. 14 Comments*, the 2014 Agreements turned on its head the traditional spread between refined and raw sugar when the price for raw sugar became higher than the price for refined sugar. This had severe consequences in the market, including depressing the price for refined sugar to near forfeiture levels. The record demonstrates that by effectively addressing the injury caused by low-priced dumped and subsidized Mexican sugar, the 2017 Amendments reintroduced the traditional spread between refined and raw sugar and stabilized the market.<sup>24</sup>

The revised polarity levels, ocean vessel requirement, and other provisions in the Proposed Amendments are each necessary and work together to combat the injury permitted under the 2014 Agreements. Without each provision, the injurious effect of dumped and subsidized imports would return, and the potential for circumvention would increase. This is why CSC is wrong that the change in polarity level is unnecessary because of the ocean vessel requirement. As Commerce explained previously, “{s}ugar that is under 99.2 degrees in polarity

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<sup>23</sup> See generally, Exhibit 2; see also, Memorandum, *U.S. Import Coverage, Existence of Extraordinary Circumstances, Public Interest, and Effective Monitoring Assessments* (Aug. 7, 2017) and Memorandum, *Existence of Extraordinary Circumstances, Public Interest, and Effective Monitoring Assessments* (Aug. 7, 2017) (both provided at **Exhibit 8**); Memorandum, *The Prevention of Price Suppression or Undercutting of Price Levels by the Amended Agreement* (Aug. 7, 2017) (provided at **Exhibit 9**).

<sup>24</sup> See *ASC's Nov. 14 Comments* at 5-6 and Attachment 2.

and shipped in bulk, freely flowing, *i.e.*, not in food-grade conditions, is likely to require further processing because of its lower purity and because it has not been packaged to protect it from contamination.”<sup>25</sup> Without both provisions, the likelihood that such sugar bypasses refiners at the lower reference price increases. Moreover, sugar imported in ocean going vessels can be, and is, transferred and delivered all over the United States.<sup>26</sup> Permitting higher polarity sugar to enter at the lower reference price, even free flowing in ocean vessels, invites circumvention and renewed injury. Both provisions working together are necessary to “ensure to the fullest extent possible that, under the amended AD and CVD Agreements, sugar entering subject to the lower reference price will be sold in the market segment of sugar that requires further processing.”<sup>27</sup>

CSC’s and SUA’s other arguments are similar to those we addressed previously in our June 26, 2017, comments, which as mentioned above, we have incorporated by reference herein.<sup>28</sup> Ultimately, SUA, like CSC, fails to understand that no entity has the right to purchase dumped and subsidized Mexican sugar without paying antidumping and countervailing duties or complying with terms of suspension agreements that eliminate completely the injurious effect of imports from Mexico.

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<sup>25</sup> Exhibit 2, *CVD Comments Memo* at 12; *AD Comments Memo* at 8.

<sup>26</sup> Exhibit 1 at 3.

<sup>27</sup> *Id.*

<sup>28</sup> *See* Exhibit 1.

### III. Conclusion

CSC and SUA continue to demand suspension agreements that do not comply with the law because they do not eliminate completely the injurious effect of Mexican imports. The record demonstrates that the 2014 Agreements were not working, and that the 2017 Amendments worked. Therefore, Commerce should implement the Proposed Amendments on December 6, 2019. If CSC and SUA continue to insist on suspension agreements that do not eliminate completely the injurious effect of Mexican imports, the alternative is to issue the outstanding antidumping and countervailing duty orders.

This submission contains factual information to rebut, clarify, or correct information submitted by CSC and SUA. Although the information attached is already part of this record, we resubmit it in accordance with Commerce's November 15, 2019, instructions.<sup>29</sup> Specifically, we attach the following factual information, and described above the purpose for its submission:

- Exhibit 1: *Rebuttal Comments of the American Sugar Coalition* (Jun. 26, 2017)
- Exhibit 2: *CVD Comments Memo and AD Comments Memo* (August 7, 2017)
- Exhibit 3: *Sugar from Mexico*, Investigation Nos. 701-TA-513 and 731-TA-1249 (Final), USITC Pub. 4577 (Nov. 2015)
- Exhibit 4: Memoranda to File, *U.S. Department of Agriculture (USDA) Sugar Import Data* (Feb. 1, 2019)
- Exhibit 5: *ASC's Opposition to CSC's Proposed Changes to Suspension Agreements* (Feb. 6 2019)
- Exhibit 6: Letter from CSC to Commerce (Aug. 1, 2018)
- Exhibit 7: Letter from CSC to Commerce (Jun. 21, 2017)

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<sup>29</sup> See Letter to Interested Parties, *Period for Rebuttal to Interested Party Comments on Proposed Amendments and Clarification on Record-keeping Procedures* (Nov. 15, 2019). We do not include a company certification because the factual information includes either Commerce memoranda or previously certified submissions.

The Honorable Wilbur L. Ross, Jr.  
November 21, 2019  
Page 12

**PUBLIC VERSION**

- Exhibit 8: Memorandum *Existence of Extraordinary Circumstances, Public Interest, and Effective Monitoring Assessments* (Aug. 7, 2017) and Memorandum, *U.S. Import Coverage, Existence of Extraordinary Circumstances, Public Interest, and Effective Monitoring Assessments* (Aug. 7, 2017).
- Exhibit 9: Memorandum, *The Prevention of Price Suppression or Undercutting of Price Levels by the Amended Agreement* (Aug. 7, 2017).

\* \* \*

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

Respectfully submitted,

/s/ Robert C. Cassidy, Jr.

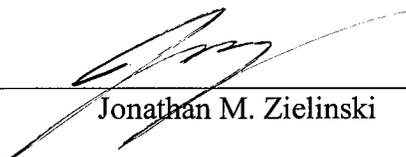
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**CASSIDY LEVY KENT**

## 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 "Rebuttal Comments Regarding Proposed Amendments to Suspension Agreements" filed on November 21, 2019, pursuant to the agreements suspending the antidumping and countervailing duty investigations of Sugar from Mexico (A-201-845, C-201-846). In my capacity as counsel, 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: \_\_\_\_\_

11-21-19

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

I hereby certify that on November 22, 2019, a copy of the foregoing submission is being served, via hand delivery or overnight FedEx(\*), on the following parties:

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# Exhibit 1

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June 26, 2017

The Honorable Wilbur Ross, Jr.  
Secretary of Commerce  
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APO Dockets Unit, Room 18022  
U.S. Department of Commerce  
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Case Nos. A-201-845 and C-201-846  
Total Pages: 14  
Suspension Agreements  
AD/CVD Operations Office VII; Office of  
Policy and Negotiations

**PUBLIC DOCUMENT**

Dear Secretary Ross,

**Re: Agreements Suspending the Antidumping and Countervailing Duty  
Investigations of Sugar from Mexico: Rebuttal Comments of the American  
Sugar Coalition**

On behalf of the American Sugar Coalition and its Members (“ASC”),<sup>1</sup> we respond to the invitations from the Department of Commerce (“Department”) to make rebuttal comments to comments submitted on the record of these proceedings.<sup>2</sup> ASC supports the proposed AD Amendment and CVD Amendment for two straightforward reasons. First, the current Agreement Suspending the Countervailing Duty Investigation of Sugar from Mexico and the Agreement Suspending the Antidumping Agreement on Sugar from Mexico<sup>3</sup> do *not* “eliminate completely the injurious effect” of the dumped and subsidized imports of sugar from Mexico.<sup>4</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> Memoranda from Department of Commerce to All Interested Parties (*Agreement Suspending the Antidumping Duty Investigation of Sugar from Mexico*, A-201-845 (the “AD Amendment”) and *Agreement Suspending the Countervailing Duty Investigation of Sugar from Mexico*, C-201-846 (the “CVD Agreement)), June 14, 2017 (the “June 14 Memoranda”).

<sup>3</sup> Collectively, the “Suspension Agreements.”

<sup>4</sup> Sections 704(c)(1) and 734(c)(1) of the Tariff Act of 1930 (the “Act”) (19 U.S.C. §§ 1671c(c)(1), 1673c(c)(1)).

Second, the proposed amended Suspension Agreements should eliminate those injurious effects if they are enforced actively and strongly.

Below, we address the major issues identified in comments regarding the proposed amendments. For the reasons we explain, opponents of the amendments ignore or misunderstand the fundamental purpose of the antidumping and countervailing duty statute and the AD and CVD Amendments.

### **Definition of Other Sugar**

Several comments criticize the proposed definitions of Refined Sugar and Other Sugar in the proposed amendments, collectively, the “Amendments”.<sup>5</sup> In general, comments criticizing the proposed definitions of Refined Sugar and Other Sugar start from a false assumption that the statute requires equal treatment of all companies purchasing sugar. This is wrong. The purpose of the antidumping and countervailing duty statute is to remedy material injury to an “*industry*” in the United States.<sup>6</sup> Section 777(4)(A) of the Act defines the term “*industry*” to mean “the producers as a whole” of the domestic like product<sup>7</sup> which, in these proceedings, is sugar. As the U.S. Court of International Trade explained in a ruling on an appeal in these proceedings, the effect of a suspension agreement on an individual company that is a member of that industry does not determine whether the agreement meets the requirements of the statute.<sup>8</sup>

The Sweetener Users Association (“SUA”) is concerned that the proposed definitions would inappropriately “limit the ability to import Other Sugar to only those companies with capacity to receive bulk shipments in ocean going vessels.”<sup>9</sup> SUA ignores the fact that sugar from Mexico is dumped and subsidized and is injuring the domestic sugar industry. No purchaser of sugar from Mexico, including a member of the domestic sugar industry, has a legal

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<sup>5</sup> The proposed definitions are set forth in the June 14 Memoranda at Sections II.F (Other Sugar) and H (Refined Sugar) of the AD Amendment and II.K (Other Sugar) and L (Refined Sugar) of the CVD Amendment.

<sup>6</sup> Sections 701 and 731 of the Act (19 U.S.C. §§ 1671 and 1673).

<sup>7</sup> Section 771(4) of the Act (19 U.S.C. §1677(4)).

<sup>8</sup> *Imperial Sugar Co. v. United States*, Slip Op. 16-91 at 27 (October 5, 2016) (hereinafter cited as “*Imperial Sugar*”)(“Plaintiff’s complaint about its individual injury is misplaced; the ITC reasonably determined to review the injurious effect on the entire domestic industry and not merely on Plaintiff’s individual injury.”).

<sup>9</sup> Sweeteners Users Association, A-201-845 and C-201 846 – Amendments to Agreements Suspending the Antidumping and Countervailing Duty Investigations of Sugar from Mexico (June 21, 2017)(hereinafter cited as “SUA Comment”), at 3.

Sugar from Mexico (A-201-845 & C-201-846)  
Suspension Agreement Amendments  
Rebuttal Comments of the American Sugar Coalition  
Page 3.

right to receive dumped and subsidized sugar without either paying antidumping and countervailing duties or complying with the terms of the Suspension Agreements. If the Suspension Agreements eliminate injury to the industry and cause a company that purchases large volumes of unfairly low priced sugar from Mexico to lose a commercial advantage, then the suspension agreements meet the requirements of the statute and are entirely appropriate.<sup>10</sup>

The SUA statement that the proposed Amendments would limit imports of sugar is wrong. The proposed Amendments permit the export of sugar from Mexico in any type of package, by any manner of shipment to any person in any location in the United States. The requirement that Other Sugar be exported in bulk by ocean vessel does not limit imports. Ocean going vessels can and do deliver bulk sugar directly to many places in the United States, including Detroit, Michigan, and Philadelphia, Pennsylvania. Ocean going vessels can and do unlade bulk sugar into barges that then carry the sugar to destinations all over the United States, including Chicago, Illinois via the Mississippi and Illinois Rivers. Ocean going vessels can and do unload bulk sugar on trucks and trains that can deliver the sugar to virtually any location in the United States. The Amendments will not prevent any person in the United States from receiving Other Sugar.

The requirement that Other Sugar be exported in bulk by ocean vessel is intended to eliminate the injurious effect of imports of sugar from Mexico. For the past two years, Mexico has exported high polarity sugar at the low raw sugar reference price, simultaneously depriving refiners of raw sugar throughput, capturing market share from the domestic industry and depressing refined sugar prices.<sup>11</sup> All cane sugar refiners, as defined by the U.S. Department of Agriculture (“USDA”),<sup>12</sup> can receive bulk sugar directly from ocean going vessels. Cane refiners, as a whole, are unquestionably members of the “domestic industry” that were materially injured by the Mexican Sugar imports.<sup>13</sup> The ocean vessel export requirement is intended to increase the probability that cane refiners will not be deprived of throughput. This requirement should, in part, eliminate the injurious effect of unfairly traded imports from Mexico. Without

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<sup>10</sup> *Imperial Sugar* at 26-27.

<sup>11</sup> See ASC, “Request to Terminate Suspension Agreements,” dated June 2, 2017, at 3 and Attachment 5 (hereinafter “ASC Request to Terminate”).

<sup>12</sup> 7 C.F.R. § 1435.2 Definitions (Cane Sugar Refiner).

<sup>13</sup> *Sugar from Mexico*, Inv. Nos. 701-TA-513 and 731-TA-1249 (Final), USITC Pub. 4577 at 11 (November 2015) (defining the domestic industry to include “sugarcane and beet growers as well as cane millers, cane refiners, and beet processors”); see also *Sugar from Mexico*, Inv. Nos. 701-TA-513 and 731-TA-1249 (Preliminary), USITC Pub. 4467 at 18-19 (May 2014); *Sugar from Mexico*, Inv. Nos. 704-TA-1 and 734-TA-1 (Review), USITC Pub. 4523 at 18 (April 2015).

Sugar from Mexico (A-201-845 & C-201-846)  
Suspension Agreement Amendments  
Rebuttal Comments of the American Sugar Coalition  
Page 4.

the ocean vessel export requirement, the Suspension Agreements do not satisfy Section 704(c)(1) or 734(c)(1) of the Act.

SUA also questions whether “favoring traffic that goes through certain ports of entry but disfavoring traffic through other ports” could raise questions under Article I, Section 9, Clause 6 of the U.S. Constitution, the “Port Preference Clause” (the “PPC”). The PPC prohibits the Federal Government from giving preference to the ports of one State over ports of another State.<sup>14</sup> Under the Amendments, Other Sugar may be exported to any port of entry. The Amendments do not regulate where sugar from Mexico may enter the United States.

There would be no violation of the PPC even if the Amendments did incidentally favor one port over another in order to achieve the objectives of the antidumping and countervailing duty statute. No federal court has ever relied on the PPC to rule a federal law is unconstitutional.<sup>15</sup> This is because the PPC is a very narrow prohibition which protects States, as opposed to individual ports or regions, from laws that intentionally discriminate against the ports of one State to the advantage of the ports of another State.<sup>16</sup> The proposed change in the definition of Other Sugar implements the antidumping and countervailing duty statute, a statute that is entirely within the scope of Congress’ power to regulate commerce with foreign countries. The proposed definition does not discriminate between the ports of one State to the benefit of the ports of another States. Indeed, the proposed definition does not discriminate among any ports. Other Sugar can be delivered to any port of entry in the United States.

CSC Sugar LLC (“CSC”) criticizes the proposed definitions of Other Sugar and Refined Sugar because they will “directly harm CSC.”<sup>17</sup> CSC argues that the Amendments agreed by the Department, the Government of Mexico and Mexican exporters are intended to “eliminate domestic cane refining competition by restricting access to Mexican raw sugar to certain ‘Preferred’ refiners.”<sup>18</sup> This argument has been rejected by the Court of International Trade. Injury to refiners that rely on low-priced imports as a raw material is not a relevant consideration under the antidumping and countervailing duty statute:

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<sup>14</sup> SUA Comments at 3.

<sup>15</sup> *Thompson Multimedia Inc. v. U.S.*, 219 F.Supp. 2d, 1322,1330 (Ct. Int’l Trade 2002)

<sup>16</sup> *Amoco Oil Co. v. U.S.*, 23 CIT 613,m 620 (Ct Int’l Trade 1999) citing *Penn. V. Wheeling & Belmont Bridge Co.*, 59 U.S. 421, 435 (1856).

<sup>17</sup> Letter from CSC Sugar to Department of Commerce (June 21, 2017)(hereinafter cited as the “CSC Comment”), at 1.

<sup>18</sup> *Id.*

Plaintiff's 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.... Plaintiff'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, or even within the segment to which Plaintiff belongs.<sup>19</sup>

As discussed above, the proposed Amendments ensure that the Suspension Agreements meet the requirements of the antidumping and countervailing duty statute.<sup>20</sup> The statute requires a suspension agreement to eliminate the injurious effect of dumped and subsidized imports on a domestic industry "as a whole."<sup>21</sup> The effect the suspension agreement may or may not have on one member of the relevant domestic industry does not determine whether the suspension agreement meets the requirements of the statute.<sup>22</sup>

Second, CSC's argument conflates its refining operations with its importing, reselling, and melting operations. Only CSC's *refining* operations are included in the "domestic industry" for purposes of the antidumping law.<sup>23</sup> Insofar as CSC simply imports and resells Mexican sugar without refining that sugar, those operations – whether by CSC or any other cane refiner – are not part of the "domestic industry."

To be sure, the Commission found that CSC was a refiner and a member of the domestic industry. The President of CSC testified, under oath, before the U.S. International Trade Commission (the "Commission") that CSC "can take sugar from a purity of 98% [98 polarity]

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<sup>19</sup> *Imperial Sugar* at 27, 28.

<sup>20</sup> DOC Memorandum, *Draft Amendment to the Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico: U.S. Import Coverage, Existence of Extraordinary Circumstances, Public Interest and Effective Monitoring Assessments*, A-201-845 (Suspension Agreement) (June 16, 2017). DOC Memorandum, *Draft Amendment to the Agreement Suspending the Countervailing Duty Investigation on Sugar from Mexico: Existence of Extraordinary Circumstances, Public Interest, and Effective Monitoring Assessments*, C-201-846 (Suspension Agreement) (June 16, 2017).

<sup>21</sup> Section 771(4)(A) of the Act (19 U.S.C. § 1677(4)(A)).

<sup>22</sup> *See Imperial Sugar* at 27 ("The 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>23</sup> *Sugar from Mexico*, Inv. Nos. 701-TA-513 and 731-TA-1249 (Final), USITC Pub. 4577 at 9-10 (November 2015).

Sugar from Mexico (A-201-845 & C-201-846)  
Suspension Agreement Amendments  
Rebuttal Comments of the American Sugar Coalition  
Page 6.

which is the standard type of sugar that comes into a cane refinery and I can take it to 99.9 the same as everybody else.”<sup>24</sup> CSC emphasized its capabilities in its Post-Conference Statement to the Commission by stating that “CSC’s U.S. facilities are ‘true refining operations’ that can take sugar with a polarimeter reading (purity) of 98.5% (*i.e.*, the standard type of sugar that comes into a cane refinery) and refine that input product until it reaches a purity level of over 99.9% (the standard applied to refined sugar).”<sup>25</sup> Based on this testimony, the Commission included CSC in the domestic industry.<sup>26</sup>

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<sup>24</sup> U.S.I.T.C. Transcript, Inv. Nos. 701-TA-513 and 731-TA-1249 (Preliminary) (April 18, 2014), at 208.

<sup>25</sup> USITC Inv. Nos. 701-TA-513 and 731-TA-1249 (Preliminary), *Sugar from Mexico – Post – Conference Statement of CSC Sugar LLC* (April 23, 2014) at 3-4.

<sup>26</sup> *Sugar from Mexico*, USITC Pub. 4577 at 9-10:

“The Commission [preliminarily] determined that CSC but not ADM engaged in sufficient activity to be considered a domestic producer. The Commission found that CSC was a refiner, capable of processing raw sugar unfit for human consumption into refined liquid sugar and invert sugar.... It also found that CSC’s refining operations required significant capital investment and a significant level of technical expertise, and employed a substantial number of workers. The Commission further found that, although it sourced most of its inputs from imports, CSC added value to the finished product. Accordingly, the Commission concluded that CSC engaged in sufficient production-related activities to be included in the domestic industry.”

“The Commission found that, although ADM described its operations as sweetener stations, they resembled “melt houses” because ADM processes refined sugar already fit for consumption into liquid sugar and invert syrup by melting the sugar and adding water. The Commission acknowledged that ADM’s capital investment had been substantial and that it employed an appreciable number of workers, but also found that its sweetener stations did not appear to require a significant level of technical expertise and that it added only minor value to sugar that had already been refined. As a result, the Commission concluded that ADM did not engage in sufficient production-related activities to be included in the domestic industry.”

Sugar from Mexico (A-201-845 & C-201-846)  
Suspension Agreement Amendments  
Rebuttal Comments of the American Sugar Coalition  
Page 7.

CSC is not only a refiner that processes raw sugar unfit for human consumption into refined liquid sugar and invert sugar.”<sup>27</sup> It also imports sugar and resells that sugar without any processing and it imports sugar fit for human consumption and processes that sugar.

CSC’s criticism of the proposed Amendments ignores this distinction between its own refining, melting and importing operations, and seeks a commercial advantage *for its importing, melting and reselling operations* that has no basis in the antidumping and countervailing duty law or the purpose of the Suspension Agreements. CSC argues that the proposed definition will force Mexico to ship “lower quality sugar than all other 39 countries that have access to the U.S. market.”<sup>28</sup> Allegedly, this requirement will “harm companies (including CSC Sugar LLC) that have processes designed for higher grade (higher polarization) raw sugar ...”<sup>29</sup> “Processing” “higher grade” sugar is not refining. The Commission has determined that users of “higher grade (higher polarization) raw sugar” imported from Mexico, melt houses like ADM, are not members of the domestic industry.<sup>30</sup> Stated differently, any harm to importers of “higher grade” sugar that do not engage in sugar refining is not an “injurious effect” relevant to the antidumping and countervailing duty suspension agreements.<sup>31</sup>

CSC further confuses the issue by arguing that the proposed amendment will force Mexico to ship a lower quality sugar than all other suppliers to the US market.<sup>32</sup> Yet, CSC itself says the standard raw sugar supplied to the U.S. market is 98.5 polarity, well below the 99.2 that is defined to be Other Sugar by the proposed Amendments. Indeed, the Intercontinental Exchange Rules for the Sugar No. 16 contract under which virtually all such sugar is sold for refining provides for increases in price for raw cane sugar up to but not above 99.0 polarity.<sup>33</sup> There is no economic incentive for any supplier to a refiner to process sugar above 99.0, well below the 99.2 standard in the proposed Amendments.

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<sup>27</sup> USITC Pub. 4577 at 9.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 2.

<sup>30</sup> *Sugar from Mexico*, USITC Pub. 4577 at 9-10 (quoted above).

<sup>31</sup> *Imperial Sugar at 26-27* (“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”).

<sup>32</sup> CSC Comment at 1.

<sup>33</sup> ICE Futures U.S., Inc., Sugar No. 16, Rule 29.12 (Polarization Allowances).  
[https://www.theice.com/publicdocs/rulebooks/futures\\_US/29\\_Sugar\\_16.pdf](https://www.theice.com/publicdocs/rulebooks/futures_US/29_Sugar_16.pdf).

Ultimately, the rationale for limiting Other Sugar to less than 99.2 polarity is based on the likelihood that imports of such Other Sugar from Mexico will be made available to the domestic industry. Cane refiners, including CSC, can and do use raw sugar below 99.2 polarity in their refining operations. Sugar above 99.2 polarity can be shipped directly to end-users, bypassing cane refiners. In fact, under the existing Suspension Agreements, Other Sugar is being sold at the raw sugar reference price to end users depriving refiners of throughput. As a consequence, USDA had to request an increase in the Export Limit for quantities of sugar from Mexico with *polarity of less than 99.2* on May 17, 2016.<sup>34</sup> The USDA 99.2 requirement increased the probability that the increased exports from Mexico would be made available to cane refiners.

CSC, all other companies in the domestic industry, and all processors and end users will be able to purchase the same quantity of sugar from Mexico under the proposed Amendments as they do under the existing Suspension Agreements. For the Export Limit Period beginning October 1, 2017, the limit on the quantity of Mexican sugar that can be sold to the United States under the proposed Amendments could be over 2 million tons, the largest quantity of sugar Mexico has ever exported to the United States.<sup>35</sup>

The CSC proposal that it be exempted permanently or for five years from the requirement that Other Sugar sold at the lower reference price must be less than 99.2 polarity has no basis in the antidumping and countervailing duty statute.<sup>36</sup> CSC is seeking time to invest in additional equipment to take advantage of the favorable production economics that result from a business model that relies on dumped and subsidized imports of raw materials. As did Imperial in its effort to undo the Suspension Agreements, CSC is attempting to secure a source of unfairly traded sugar for its own individual benefit.<sup>37</sup> Benefiting an importer, or even a destination refiner, is not the purpose of the antidumping and countervailing duty statute or the Suspension Agreements. CSC's proposal would defeat the purpose of the Suspension Agreements by permitting continuing injury to the domestic industry. Finally, why would CSC need such an

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<sup>34</sup> See "USDA Increases FY 2016 U.S. Sugar Overall Allotment Quantity and Raw Cane Sugar Import Access," USDA No. 0119.16 (May 17, 2016), (included in ASC Request to Terminate, Attachment 6).

<sup>35</sup> USDA, "World Agricultural Supply and Demand Estimates," WASDE – 566 - 16 (June 9, 2017) (based on which U.S. Needs could be 2,301,000 short tons raw value).  
<https://www.usda.gov/oce/commodity/wasde>.

<sup>36</sup> CSC Comment at 3.

<sup>37</sup> *Imperial Sugar* at 26-27.

Sugar from Mexico (A-201-845 & C-201-846)  
Suspension Agreement Amendments  
Rebuttal Comments of the American Sugar Coalition  
Page 9.

exemption when it can refine sugar with a polarity less than 99.2<sup>38</sup> and can get that sugar in large volumes from Mexico and the 39 other suppliers of raw cane sugar to the United States?

### Reference Prices

Various comments were filed regarding the reference prices in the proposed AD Amendment. Some commenters support the reference prices, such as the Corn Refiners Association (“CRA”): “The higher reference prices would continue eliminating completely the injurious price effect of subject imports [and yet] would permit subject imports to continue entering the market, which will allow for healthy competition and relatively less impact on prices for U.S. consumers.”<sup>39</sup> Other commenters, such as the SUA, protest that the revised reference prices “unnecessarily” raise sugar prices.<sup>40</sup> In fact, the amended reference prices are a critical component of the proposed AD Amendment. Without such an increase, Mexican producers and exporters can continue to dump sugar in the U.S. market in violation of the antidumping law.

At a fundamental level, the SUA ignores or misunderstands the purpose of the reference prices and, more broadly, the Suspension Agreements themselves. The Suspension Agreements are an alternative to antidumping and countervailing duties. The AD Suspension Agreement, by statute, must “eliminate completely the injurious effect of [dumped] imports.”<sup>41</sup> Eliminating injury is threshold requirement of the statute. It is not subject to balancing “the public interest.”<sup>42</sup>

To eliminate “completely” the injury caused by dumped imports, any suspension agreement must prevent “suppression or undercutting of price levels of domestic products by imports.”<sup>43</sup> In addition, any agreement must also ensure that dumping “will not exceed” 15 percent of the less-than-fair-value margins calculated in the original investigation.<sup>44</sup> In other

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<sup>38</sup> *Supra*, footnotes 24 and 25.

<sup>39</sup> “Comments by the Corn Refiners Association Regarding Amendments to the Agreements Suspending the Antidumping and Countervailing Duty Investigations on Imports of Sugar from Mexico,” dated June 21, 2017, at 18 (hereinafter “CRA Comment”).

<sup>40</sup> SUA Comment at 2.

<sup>41</sup> Section 734(c)(1) of the Tariff Act of 1930 (the “Act”)(19 U.S.C. § 1673c(c)(1)).

<sup>42</sup> Section 734(d)(1) of the Act (19 U.S.C. § 1673c(d)(1)). The “public interest” is an “Additional rule and condition” pursuant to subsection (d)(1). The “General Rule” in subsection (c) requires that the injurious effects of subject imports must be eliminated.

<sup>43</sup> Section 734(a)(1)(A) of the Act (19 U.S.C. § 1673c(a)(1)(A)).

<sup>44</sup> Section 734(a)(1)(B) of the Act (19 U.S.C. § 1677c(a)(1)(B)).

Sugar from Mexico (A-201-845 & C-201-846)  
Suspension Agreement Amendments  
Rebuttal Comments of the American Sugar Coalition  
Page 10.

words, the purpose of an antidumping suspension agreement, and of reference prices in particular, is to protect domestic producers against underselling by dumped imports and to prevent suppression of U.S. producer prices.<sup>45</sup>

Contrary to the SUA's comment, higher U.S. prices for Mexican sugar imports are not a "reward" to Mexican producers<sup>46</sup> Higher U.S. prices eliminate dumping, defined to be price discrimination between domestic Mexican prices and export prices. Higher U.S. prices for Mexican sugar should reduce or eliminate underselling of U.S. producer prices.

The current Antidumping Suspension Agreement is failing, in significant part, because the reference prices are not high enough to prevent dumping or to prevent imports from Mexico from undercutting U.S. producer prices. In fact, under the current Suspension Agreements, sugar from Mexico is being dumped by margins ranging as high as 51.3 percent.<sup>47</sup> Given continued dumping of Mexican sugar, U.S. wholesale prices for refined sugar have declined by roughly 20 percent since the current Suspension Agreements went into effect in December 2014.<sup>48</sup> By increasing the reference prices, the AD Amendment should increase the probability that the price of Mexican sugar imports will not continue to undercut and suppress domestic producers' prices.

The SUA Comment on reference prices asserts that the proposed AD Amendment would "take away the U.S. Department of Agriculture's authority over agricultural commodity prices."<sup>49</sup> This is absurd. The Department has exclusive statutory authority to negotiate Suspension Agreements under the antidumping and countervailing duty statute.<sup>50</sup> Despite SUA's rhetoric, that statute gives the Department authority to enter "an agreement to revise prices from

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<sup>45</sup> The U.S. International Trade Commission concluded that sugar from Mexico "had an injurious effect on the domestic industry because significant subject import underselling, combined with the significant increase in subject import volume, depressed domestic like product prices to a significant degree and also increased the domestic industry's ratio of COGS to net sales." *Sugar from Mexico*, Inv. Nos. 704-TA-1 and 734-TA-1 (Review), USITC Pub. 4523 at 22-23 (April 2015).

<sup>46</sup> SUA Comment at 5.

<sup>47</sup> See ASC, "Request to Terminate Suspension Agreements," dated June 2, 2017, Attachment 3 (estandar was sold in the U.S. market at an apparent dumping margin of 51.3% in February 2015) (hereinafter "ASC Request to Terminate").

<sup>48</sup> *Id.*, Attachment 1.

<sup>49</sup> SUA Comment at 4.

<sup>50</sup> SUA Comment at 4.

exporters” of *any product*, agricultural or not, that is subject to an antidumping investigation.<sup>51</sup> The Department’s statutory authority in the context of the antidumping law is unrestricted by, and independent of, USDA’s authority regarding agricultural commodity policies.

### **Unfilled Additional U.S. Needs**

The ASC agrees with comments by the SUA concerning one aspect of the Amendments. Specifically, the procedures for establishing and awarding “Additional U.S. Needs” entirely to Mexico do not address the consequences that may occur if Mexico fails to deliver the entire quantity of the sugar awarded under this provision or to ship that sugar in a timely manner.<sup>52</sup> SUA recommends that the Amendments should include “additional safeguards” and proposes that USDA should monitor imports of Additional U.S. Needs Sugar and “increase the TRQ” as needed.<sup>53</sup>

SUA’s specific proposal to increase the TRQ limits, does not impose a penalty or create any incentive for Mexico to ship the full quantity of Additional U.S. Needs Sugar. By the terms of Section V.B.4.b of the proposed CVD Amendment, the amount of Additional U.S. Needs Sugar is based on the volume that Mexico reports it is able to supply. If Mexico agrees to supply a specific quantity of Additional U.S. Needs Sugar, it should be required to export that quantity by July 31 of the Export Limit Period. Furthermore, if Mexico fails to supply the specific quantity by the due date, that failure should be considered to be a violation of the Suspension Agreements.

### **The 70/30 Split Applied to Additional Needs Before April 1**

The ASC also agrees with comments by the SUA concerning Section V.B.4.a of the CVD Amendment.<sup>54</sup> That text should be amended to make clear that USDA may request an increase in imports, prior to April 1, and such increase will not be subject to the requirement that up to 30 percent of the subject imports may be Refined Sugar. USDA should instead be permitted to

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<sup>51</sup> Section 734(c)(1) of the Act (19 U.S.C. § 1673c(c)(1)). Commerce has exercised its statutory authority to establish reference prices in past cases involving agricultural products, notably including *Fresh Tomatoes from Mexico*, 76 Fed. Reg. 14,967, 14,969 (March 8, 2013) (“each signatory individually agrees that, in order to prevent price suppression or undercutting, it will not sell in the United States, on and after the effective date of the Agreement, merchandise subject to the Agreement at prices that are less than the reference price.”)

<sup>52</sup> SUA Comment at 5.

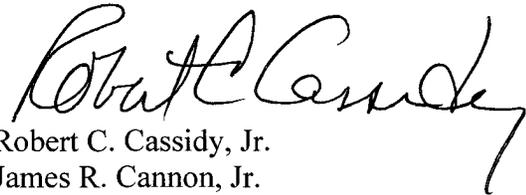
<sup>53</sup> *Id.*

<sup>54</sup> SUA Comment at 6.

Sugar from Mexico (A-201-845 & C-201-846)  
Suspension Agreement Amendments  
Rebuttal Comments of the American Sugar Coalition  
Page 12.

increase imports by specifying that additional imports above the Export Limit may be either  
Other or Refined Sugar or in the proportions needed to achieve the goals of the sugar program.

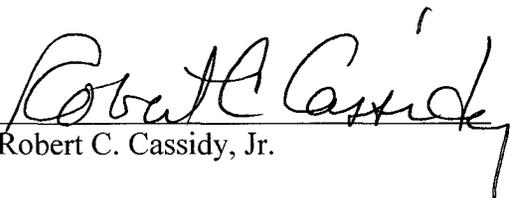
Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert C. Cassidy, Jr.", written in a cursive style.

Robert C. Cassidy, Jr.  
James R. Cannon, Jr.  
Charles S. Levy  
*Counsel to the ASC*

**Legal Representative Certification**

I, Robert C. Cassidy, Jr., with Cassidy Levy Kent (USA) LLP, counsel to the American Sugar Coalition and its members<sup>1</sup>, certify that I have read the attached submission dated June 26, 2017 regarding Rebuttal Comments of the American Sugar Coalition in the antidumping and countervailing duty suspension agreements on Sugar from Mexico (A-201-845 and C-201-846). 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.

Signature:   
Robert C. Cassidy, Jr.

Date: June 26, 2017

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<sup>1</sup> 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.

## PUBLIC CERTIFICATE OF SERVICE

I hereby certify on June 26, 2017, that a copy of the foregoing submission is being served, via email or first-class mail, postage prepaid\* on the following parties:

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# Exhibit 2





beginning of the fiscal year fall short of U.S. demand.”<sup>6</sup> ISTC asks that the USDA be able to allocate this quota to TRQ countries and that the 99.2 polarity standard be used for all “additional needs” sugar from Mexico.<sup>7</sup>

- Various other parties, such as the Australian Sugar Industry Alliance, the Government of Canada (Canada), and the Ambassadors of Barbados, Belize, Guyana, Jamaica and the Dominican Republic express concerns that Mexico’s right of first refusal of “additional needs” sugar limits their ability to supply such sugar.<sup>8</sup> In addition, Canada asserts that “delaying the announcement of TRQ refined increases limits Canada’s ability to supply requested sugar” and that “Canada has provided approximately 20 percent of additional U.S. refined sugar need when informed by the United States of such an opportunity.” Canada further requests that announcements opening the TRQ are “undertaken in a timely, predictable, and transparent manner.”<sup>9</sup>
- The Sweeteners Users Association (SUA) also expressed concerns that “additional needs” sugar will lower prospects for above minimum quota access for TRQ country holders.<sup>10</sup> Moreover, SUA argues that if Mexico is not shipping the amount it says it can ship, the USDA should increase the TRQ to supply the U.S. market. It argues all such sugar should arrive by July 31 and that the USDA’s authority to increase the WTO TRQ is not limited in any way by the Agreement or the draft amendment.<sup>11</sup>
- The SUA also argues that if the U.S. Department of Agriculture (USDA) requests that the Department increase imports prior to April 1, such an increase shall not be subject to the 70 percent raw and 30 percent refined sugar limitation.<sup>12</sup>

## Rebuttal Comments

- The American Sugar Coalition (ASC), the petitioner in this proceeding, agrees with SUA’s suggestion that Mexico should supply the additional sugar by July 31, and argues that if Mexico fails to do so, such failure should be considered a violation of the AD and

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<sup>6</sup> See “Comments on Amended Mexico Sugar Suspension Agreements,” submitted by ISTC (June 20, 2017) (ISTC Comments) at 3.

<sup>7</sup> See ISTC Comments at 4.

<sup>8</sup> See Letter to Secretary Ross *et al.* from the Ambassadors of Barbados, Belize, Dominican Republic, Guyana, and Jamaica, (June 6, 2017) filed on June 23, 2017.

<sup>9</sup> See Letter from the Government of Canada, (June 21, 2017) at 1.

<sup>10</sup> See Letter from SUA entitled “A-201-845 and C-201-846 – Amendments to Agreements Suspending the Antidumping and Countervailing Duty Investigations on Sugar from Mexico,” (June 21, 2017) (SUA Comments) at 2.

<sup>11</sup> *Id.* at 6.

<sup>12</sup> *Id.*

CVD Suspension Agreements.<sup>13</sup> ASC also agrees with SUA that additional needs requested by USDA prior to April 1 should not be subject to the 70 percent Other Sugar/30 percent Refined Sugar split.<sup>14</sup>

- Cámara Nacional de Las Industrias Azucarera y Alcoholera (Mexican Sugar Chamber or Cámara), notes that the amendments to the Agreement and the Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico (AD Agreement) include significant modifications to the suspension agreements and that Mexico accepted the significant modifications on the condition that Mexico be granted a right of first refusal to supply 100 percent of any “additional need” for sugar identified by USDA after April 1 of each year.<sup>15</sup> Mexico claims the amendments have eliminated injury and that it “is perfectly appropriate to grant Mexico the clear right of first refusal for additional needs that might develop.”<sup>16</sup> Cámara disputes that Mexico’s right of first refusal may be diminished by an increase in the TRQs as SUA claims, and asserts that “{s}uch interpretation, which would upend the central principle underpinning the entire amendments, is incorrect and obviously not what the parties intended.”<sup>17</sup>

## Department’s Position

The United States government, under statutory authority vested in USDA, manages the U.S. sugar market through the U.S. sugar program. The U.S. sugar program relies on “price supports, domestic marketing allotments, and tariff-rate quotas (TRQ) to influence the amount of sugar available to the U.S. market.”<sup>18</sup> Under the U.S. sugar program, the United States also establishes TRQ allotments for imports of raw cane sugar, refined sugars, sugar syrups, specialty sugar, and sugar-containing products.<sup>19</sup> The United States Trade Representative allocates the TRQs among various countries pursuant to the United States’ World Trade Organization (WTO) commitments.<sup>20</sup> In accordance with the terms of the North American Free Trade Agreement

<sup>13</sup> See ASC’s submission entitled “Agreements Suspending the Antidumping and Countervailing Duty Investigations of Sugar from Mexico: Rebuttal Comments of the American Sugar Coalition” (June 26, 2017) (ASC Rebuttal Comments) at 11.

<sup>14</sup> *Id.*

<sup>15</sup> See Cámara’s submission entitled, “Sugar from Mexico- Rebuttal Comments” (June 26, 2017) (Cámara’s Rebuttal Comments) at 1.

<sup>16</sup> *Id.* at 2.

<sup>17</sup> *Id.*

<sup>18</sup> See Attachment 1: USDA’s Economic Research Service (ERS), “Sugar & Sweeteners – Policy,” available at <http://www.ers.usda.gov/topics/crops/sugar-sweeteners/policy.aspx>.

<sup>19</sup> See Attachment 2: USDA’s Foreign Agricultural Service, “Sugar Import Program,” available at <http://www.fas.usda.gov/programs/sugar-import-program>; see also Attachment 3: USDA’s ERS, “Sugar & Sweeteners – Trade,” available at <http://www.ers.usda.gov/topics/crops/sugar-sweeteners/trade.aspx>; see also Attachment 4: United States Trade Representative, “Sugar,” available at <https://ustr.gov/issue-areas/agriculture/sugar>.

<sup>20</sup> See Attachment 4.

(NAFTA), imports of sugar from Mexico are not subject to quantitative limitations and thus Mexican imports are not subject to management through the U.S. sugar program.<sup>21</sup>

In the amended Agreement, consistent with the original Agreement, the GOM has agreed to limit Mexico's exports to the United States consistent with specific provisions that take into account USDA's demand forecasts in July through March and U.S. commitments to TRQ holders, thereby supporting the U.S. sugar program and respecting the United States' international obligations.<sup>22</sup> Furthermore, the amended Agreement, consistent with the original Agreement, allows for Mexico to supply additional sugar needs in the U.S. market, over and above the quantities allowed to enter under the calculated base export limit.<sup>23</sup> The amended Agreement introduces a presumption that Mexico will supply such additional sugar, subject to conditions such as Mexico's confirmation that it will supply 100 percent of the sugar already allocated to it and its demonstration that it can supply the sugar of the type and quantity required, with supporting documentation. The amended Agreement provides for monthly consultations, beginning in March, for this purpose. The Department and the Government of Mexico agreed to these provisions in consultation with USDA.

The Department does not agree that the amended Agreement limits USDA's ability to timely fulfill the sugar needs of the U.S. market--whether with supply from Mexico or, in the event Mexico is unable or ineligible to supply such sugar under the terms of the amended Agreement, with supply from the TRQ countries. Although the amended Agreement envisions that Mexico will be the first country consulted regarding additional needs, both before and after April 1, the amended Agreement does not override USDA's independent authority to manage the U.S. sugar program under the U.S. Farm Bill, including the ability to obtain the necessary types of sugar at the time such sugar is needed in the U.S. market.

Although several TRQ holders argue that the amended Agreement limits their ability to provide additional needs sugar, the amended Agreement in fact limits *Mexico's* ability to export sugar to the United States. The GOM has agreed to quantitative restrictions and other terms designed to completely eliminate the injurious effect of its sugar exports, in return for suspension of the countervailing duty investigation. Both the original Agreement and amended Agreement allow Mexico to be the residual supplier of the Target Quantity of U.S. Needs<sup>24</sup>; the amended Agreement, among other things, modifies procedures that apply after April 1 of each Export Limit Period and makes clear that Mexico will supply such sugar to the extent it has supply and

<sup>21</sup> Section 201(b) of the North American Free Trade Agreement Implementation Act, 19 U.S.C. 3331(b), authorized the President to proclaim accelerated schedules of duty elimination consistent with Article 302(3) of the NAFTA. See Presidential Proclamation 8180 of September 28, 2007, To Provide for Duty Elimination for Certain Goods of Mexico Under the North American Free Trade Agreement, 72 FR 56171 (October 2, 2007).

<sup>22</sup> See amended Agreement at Sections II.R, V.B.1-B.3.

<sup>23</sup> See amended Agreement at Sections II.U, V.B.4.

<sup>24</sup> See amended Agreement at Sections II.N, II.R, V.B.3.

retains eligibility.<sup>25</sup> The amended Agreement is consistent with the governing statute and regulations, and was devised in close coordination with USDA.

The Department notes that in the final amendment to the CVD Agreement, the Department and the Government of Mexico agreed that additional needs sugar would not be subject to the 70 percent Other Sugar/30 percent Refined Sugar split, as requested by ASC and SUA, or subject to the anti-bunching provisions.<sup>26</sup> However, the Department disagrees with SUA and the ASC that Mexico should be constrained to delivering such additional needs sugar by July 31 of a given Export Limit Period. Such an approach may not be feasible, depending on the timing of the Department's allocation of additional needs to Mexico, and would present administrative difficulties in that such additional sugar would be required to arrive on an accelerated timeline. Furthermore, Mexican producers and exporters should not be precluded from entering into contracts with customers who need delivery of additional sugar in the later months of a fiscal (crop) year. However, if Mexico fails to export the quantities of additional needs sugar that it has stated it has the ability to supply, and which the Department has allocated to Mexico, over and above the amount allowed to be exported pursuant to Section V.B.3 of the amended Agreement, then the Department can consider such failure in the context of any future additional sugar needs increases and in evaluating the continued viability of the suspension agreement.

The terms of the amended Agreement, thus, work in concert with not only the amended AD Agreement but also the U.S. sugar program. The amended Agreement limits supply from Mexico, while the U.S. sugar program manages supply from all other sources, including U.S. producers.

## Comment 2: Polarity Change for Refined Sugar and Other Sugar

- CSC Sugar LLC (CSC Sugar) asserts that “{t}he worldwide standard for identifying sugar as refined sugar is sugar with a polarization of 99.5 degrees or above, and raw sugar as anything below 99.5 degrees.”<sup>27</sup> The company further argues that the reason for the change in the split between Refined and Other Sugar in the draft amendment to 99.2 degrees polarity is “to harm CSC Sugar by increasing its cost of refining as compared to our competitors.”<sup>28</sup> CSC Sugar argues that refineries built as much as a century ago were designed to handle lower quality raw sugar, whereas newer facilities were designed to process higher quality raw sugar and will generally have higher processing costs than older refineries for low quality raw sugar.<sup>29</sup> CSC Sugar cites its investments since 2007 in refining equipment, the significant additional investment that it states will be needed

<sup>25</sup> See amended Agreement at Section V.B.4.

<sup>26</sup> See amended Agreement at Section V.B.4.

<sup>27</sup> See CSC Sugar's submission dated June 21, 2017 (CSC Comments) at 2.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 3.

for the company to process lower-quality raw sugar.<sup>30</sup> CSC Sugar asserts that it stands to lose its entire investment and eliminate all jobs in its refining division.<sup>31</sup>

- The company asks for a waiver from, or a phase-in for five years of, the terms of the amended Agreement that provide that Refined Sugar is 99.2 degrees polarity and above, rather than 99.5 degrees polarity, in order to allow the company time for investment in changes to its production facilities.<sup>32</sup>
- The SUA supports the portion of the “Other Sugar” definition which permits “Additional U.S. Needs Sugar” to enter at a polarity of less than 99.5.<sup>33</sup> They note that “this polarity is an international standard as a breakpoint between raw and refined sugar.”<sup>35</sup> It is, in SUA’s view, “incorporated in the Harmonized Tariff Schedules of the United States, so it is in fact the 99.2 breakpoint which constitutes an exception or special treatment.”<sup>36</sup> Although it does not specifically oppose the use of a 99.2 polarity Refined Sugar standard in this case, it states that “Additional U.S. Needs Sugar should be treated in a manner more consistent with international practice.”<sup>37</sup>

## Rebuttal Comments

- ASC cites to the holding of the Court of International Trade (CIT) that “injury to refiners that rely on low-priced imports as a raw material is not a relevant consideration under the antidumping and countervailing duty statute.”<sup>38</sup> They also note that “{t}he effect the suspension agreement may or may not have on one member of the relevant domestic industry does not determine whether the suspension agreement meets the requirements of the statute.”<sup>39</sup> ASC cites to CSC Sugar’s testimony before the U.S. International Trade Commission (ITC) that CSC Sugar “can take sugar from a purity of 98% (98 polarity) which is the standard type of sugar that comes into a cane refinery and {the company} can take it to 99.9 the same as everybody else.”<sup>40</sup> In the Post-Conference Statement to

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<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> “Other Sugar” and “Additional U.S. Needs Sugar” are terms defined in Section II.K and Section II.U, respectively, of the amendment to the CVD Agreement.

<sup>34</sup> See SUA Comments at 2.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> See ASC Rebuttal Comments at 7 (quoting *Imperial Sugar Co. v. United States*, Slip Op. 16-91 at 27 (October 5, 2016) (*Imperial Sugar*) at 27, 28.).

<sup>39</sup> *Id.* at 5.

<sup>40</sup> *Id.* at 6 (citing USITC Transcript, Inv. Nos. 701-TA-513 and 731-TA-1249 (Preliminary) (April 18, 2014), at 208) and at Attachment 5 to this Memorandum.

the ITC, CSC Sugar stated “CSC’s U.S. facilities are ‘true refining operations’ that can take sugar with a polarimeter reading (purity) of 98.5% (*i.e.*, the standard type of sugar that comes into a cane refinery) and refine that input product until it reaches a purity level of over 99.9% (the standard applied to refined sugar).”<sup>41</sup> ASC argues that this testimony led the ITC to conclude that CSC Sugar was a member of the domestic industry.

- ASC further claims that “CSC’s criticism of the proposed Amendments ignores this distinction between its own refining, melting and importing operations, and seeks a commercial advantage for its importing, melting and reselling operations that has no basis in the antidumping and countervailing duty law or the purpose of the Suspension Agreements.”<sup>42</sup> ASC claims that processing “higher grade” sugar is not refining and that the ITC determined that users of “higher grade (higher polarization) raw sugar’ imported from Mexico, melt houses like ADM, are not members of the domestic industry.”<sup>43</sup> ASC also disputes CSC Sugar’s claim on the 99.5 polarity as a world standard. ASC notes that CSC Sugar says the standard raw sugar supplied to the U.S. market is at a 98.5 polarity and that “the Intercontinental Exchange Rules for the Sugar No. 16 contract under which virtually all such sugar is sold for refining provides for increases in price for raw cane sugar up to but not above 99.0 polarity.”<sup>44</sup> ASC argues that cane refiners do use raw sugar below 99.2 polarity in their refining operations and that the domestic industry is more likely to have available other sugar from Mexico with such a polarity.<sup>45</sup> ASC notes the export limit shows increased quantities of Mexican sugar for the upcoming export limit period and that CSC Sugar’s proposal that it be exempted from the lower polarity provision has no basis in the statute.<sup>46</sup> ASC argues that “CSC is attempting to secure a source of unfairly traded sugar for its own individual benefit” and that CSC Sugar’s waiver proposal “would defeat the purpose of the Suspension Agreements by permitting continuing injury to the domestic industry.”<sup>47</sup> ASC also questions “why an exemption is needed when it claims CSC Sugar is on the record that it can refine sugar with a polarity less than 99.2.”<sup>48</sup>
- Zucarmex, which is a U.S. business with a liquefying operation in Tuscon, Arizona, asks that “to the extent any waiver, phase-in period or mitigating action is granted to CSC, or

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<sup>41</sup> *Id.* (citing USITC Inv. Nos. 701-TA-513 and 731-TA-1249 (Preliminary), *Sugar from Mexico – Post Conference Statement of CSC Sugar LLC* (April 23, 2014) at 3-4) and at Attachment 6 to this Memorandum.

<sup>42</sup> *Id.* at 7.

<sup>43</sup> *Id.* (citing *Sugar from Mexico*, Inv. Nos. 701-TA-513 and 731-TA-1249 (Final), USITC Pub. 4577 (November 2015) at 9-10).

<sup>44</sup> *Id.* at 7 (citing ICE Futures U.S., Inc., Sugar No. 16, Rule 29.12 (Polarization Allowances)).

<sup>45</sup> *Id.* at 8.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.* at 8-9.

any other party, we ask that it also apply to Zucrum Foods LLC.”<sup>49</sup>

### Department’s Position

The Department disagrees with CSC Sugar that the Department must follow what CSC Sugar characterizes as the “world-wide standard for identifying sugar as refined sugar is sugar with a polarization of 99.5 degrees or above, and raw sugar as anything below 99.5 degrees.”<sup>50</sup> The Department has consulted with stakeholders and has crafted a structure for the amended AD and CVD Agreements that includes lowering the dividing line between Refined Sugar and Other Sugar to ensure that sufficient supplies of Other Sugar are available for domestic producers’ operations. This structure also includes a requirement that such Other Sugar is transported freely-flowing, in ocean-going vessels. Specifically, the amended AD and CVD Agreements together are designed to alleviate the concerns regarding significant quantities of Other Sugar bypassing the cane refiners for direct consumption or end use. Sugar that is under 99.2 degrees in polarity and shipped in bulk, freely flowing, *i.e.*, not in food-grade conditions, is likely to require further processing because of its lower purity and because it has not been packaged to protect it from contamination. The change in the definition of Other Sugar in terms of polarity, and the requirement that Other Sugar is to be shipped in bulk, freely-flowing, ensure to the fullest extent possible that, under the amended AD and CVD Agreements, sugar entering subject to the lower reference price will be sold in the market segment of sugar that requires further processing. Together with enhanced monitoring and testing provisions in the amended AD and CVD Agreements, the 99.2 polarity division between Refined and Other Sugar will address one of the main issues raised by the U.S. domestic industry that is entitled to relief under the AD and CVD laws.<sup>51</sup>

The Department notes ASC’s quotation from the testimony of CSC Sugar that it “can take sugar from a purity of 98% (98 polarity) which is the standard type of sugar that comes into a cane refinery and {it} can take it to 99.9 the same as everybody else.” CSC Sugar also testified that

<sup>49</sup> See Zucarmex’s submission entitled “Sugar from Mexico – Rebuttal Comments on Draft Agreement Amendments” (June 26, 2017) at 2.

<sup>50</sup> See CSC Comments at 2.

<sup>51</sup> See Memorandum to Gary Taverman from P. Lee Smith entitled “Amendment to the Agreement Suspending the Countervailing Duty Investigation on Sugar from Mexico: Existence of Extraordinary Circumstances, Public Interest, and Effective Monitoring Assessments” (August 7, 2017) (CVD Statutory Memorandum); *see also* Memorandum to Gary Taverman from P. Lee Smith entitled “Amendment to the Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico: U.S. Import Coverage, Existence of Extraordinary Circumstances, Public Interest, and Effective Monitoring Assessments” (August 7, 2017) (AD Statutory Memorandum); *see also* Memorandum to Gary Taverman from P. Lee Smith entitled “Amendment to the Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico: The Prevention of Price Suppression or Undercutting of Price Levels by the Amended Agreement” (August 7, 2017) (Price Suppression Memorandum) for further details on how the amendment to the AD and CVD Agreements meet the statutory requirements.



Rather, the amended Agreement appears likely to bring the actual polarity of Mexican imports in-line with that of most TRQ imports, even though the dividing line between raw (Other) and refined sugar will differ.

Regarding CSC Sugar's request for a waiver from, or phase-in for five years of, the 99.2 polarity provision in order to allow the company time for investment in changes to its production facilities, the Department respectfully declines to implement such a request for CSC Sugar or any other company. 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. refiner and can secure sugar for its operations, albeit possibly at a higher price than the company desires.

For the reasons detailed above, the Department finds that the polarity division change from 99.5 to 99.2, as encompassed by the Refined and Other Sugar definition changes and other related requirements in the amendments to the AD and CVD Agreements, addresses the concerns that have been identified by ASC and ensures that the amended AD and CVD Agreements are brought into compliance with their respective statutory requirements.<sup>56</sup>

### Comment 3: Ocean-Going Vessels Requirement

- SUA "opposes the use of the definitions of Refined and Other Sugar to discriminate among individual cane refining companies."<sup>57</sup> SUA claims that "definitions limit the ability to import Other Sugar to only those companies with the capacity to receive bulk shipments in ocean-going vessels."<sup>58</sup> SUA believes that the change in the definitions for Refined and Other sugar "are designed to limit competition from inland refineries."<sup>59</sup> Moreover, they argue that "favoring traffic that goes through certain ports of entry but disfavoring traffic through other ports, may raise Constitutional issues."<sup>60</sup>

### Rebuttal Comments

- ASC argues that the "proposed Amendments permit the export of sugar from Mexico in any type of package, by any manner of shipment to any person in any location in the United States."<sup>61</sup> They further note that "{o}cean going vessels can and do unload bulk sugar into barges that then carry the sugar to destinations all over the United States,

<sup>56</sup> See AD Statutory Memorandum; see also Price Suppression Memorandum; see also CVD Statutory Memorandum.

<sup>57</sup> See SUA Comments at 3.

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> See ASC Rebuttal Comments at 3.

including Chicago, Illinois via the Mississippi and Illinois Rivers. Ocean going vessels can and do unload bulk sugar on trucks and trains that can deliver the sugar to virtually any location in the United States.”<sup>62</sup> ASC further argues that the inclusion of the ocean vessel requirement “is intended to eliminate the injurious effect of imports of sugar from Mexico,”<sup>63</sup> and that “without the ocean vessel export requirement, the Suspension Agreements do not satisfy Section 704(c)(1) or 734(c)(1) of the Act.”<sup>64</sup> ASC disputes the constitutional questions raised by SUA and notes that there is nothing in the amended Agreement limiting which ports can receive exported Other Sugar. They also note that the Port Preference Clause (the PPC) “is a very narrow prohibition which protects States, as opposed to individual ports or regions, from laws that intentionally discriminate against the ports of one State to the advantage of the ports of another State.”<sup>65</sup> Finally, they note that “{t}he proposed change in the definition of Other Sugar implements the antidumping and countervailing duty statute, a statute that is entirely within the scope of Congress' power to regulate commerce with foreign countries.”<sup>66</sup>

### Department’s Position

The Department disagrees with SUA’s contention that the design of the amendments is intended “to limit competition from inland refineries.” As ASC has pointed out, nothing prohibits ocean-going vessels from unloading sugar in bulk into barges, trucks, or railcars, and transporting it anywhere in the United States. The intent of the ocean-going vessels in bulk requirement is to “eliminate the injurious effect of imports of sugar from Mexico.” In establishing this criterion, the Department is not limiting the import of Other Sugar via specific named ports, thereby providing an advantage to a port located in one state versus another. Specifically, as detailed above, the amended Agreements together are designed to alleviate the supply concerns stemming from significant quantities of Other Sugar bypassing the traditional cane refiners for direct consumption or end use. Sugar that is under 99.2 degrees in polarity and shipped in bulk, freely flowing, *i.e.*, not in food-grade conditions, is likely to require further processing because of its lower purity and because it has not been packaged to protect from contamination. The change in the definition of Other Sugar in terms of polarity, and the requirement that Other Sugar is to be shipped in bulk, freely-flowing, ensure to the fullest extent possible that, under the amended Agreements, sugar entering subject to the lower reference price will be sold in the market segment of sugar that requires further processing. Under the amendments to the Agreements, Other Sugar is not precluded from entering the United States at a port accessed by land; rather, such sugar from Mexico is subject to the Refined Sugar reference price and its quantity will be counted against the amended CVD Agreement’s Export Limit in the percentage category of Refined Sugar.

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<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> *Id.* at 4.

<sup>66</sup> *Id.*

#### Comment 4: Other Comments

- The Corn Refiners Association supports the amended AD and CVD Agreements because they would continue eliminating completely the injurious effect of subject imports and are in the public interest.
- Archer Daniels Midland Company (ADM) “applauds the leadership of U.S. Department of Commerce Secretary, Wilbur Ross, and his team, for their commitment to pursuing an outcome that will benefit U.S. farmers and America’s agriculture communities that depend upon Mexico as a critical export market.”<sup>67</sup>
- Imperial Sugar Company (Imperial) “is cautiously optimistic about the proposed suspension agreement amendments”<sup>68</sup> but notes concerns that “other sugar” might continue to be shipped to end users and that “there is a critical shortage of raw sugar currently in the U.S. marketplace.”<sup>69</sup> Imperial also urges the Department to change the percentage split of the export limit to at least 77.5 percent Other Sugar/22.5 percent Refined Sugar to avoid a shortage of Other Sugar.<sup>70</sup>
- ASC believes the amendments to the AD and CVD Agreements “can be successful in eliminating the ongoing injurious effects caused by dumped and subsidized Mexican sugar under the Suspension Agreements in effect today if the Department of Commerce and USDA strongly and actively enforces the Amended Suspension Agreements.”<sup>71</sup>
- SUA expresses concerns about the implications of the change in the Export Limit from 70 percent to 50 percent of the Target Quantity of U.S. Needs.<sup>72</sup>
- SUA supports the requirement that no more than 30 percent, compared to the present 55 percent, of imports may be of Refined Sugar but argues that this “fix” is enough. They argue the further restriction of Other Sugar in Section II.F of the amended AD Agreement (*i.e.*, Section II.K of the amended Agreement) is unnecessary.<sup>73</sup>

<sup>67</sup> See ADM’s submission entitled “ADM Comments on 2017 Suspension Agreements on Sugar from Mexico” (January 21, 2017) at 1.

<sup>68</sup> See Imperial’s submission entitled, “Sugar from Mexico, Case Nos. C-201-846 and A-201-845- Comments on Draft Amendments to Suspension Agreements” (June 21, 2107) (Imperial Comments) at 1.

<sup>69</sup> *Id.* at 2.

<sup>70</sup> *Id.* at 4.

<sup>71</sup> See ASC Comments at 1.

<sup>72</sup> See SUA Comments at 5.

<sup>73</sup> *Id.* at 7.

- SUA points out that no *Federal Register* notice was issued for the draft amendments and that only seven calendar days were given for the public comment period. In SUA's view, this is not enough time for meaningful comments and provides an indication the Department is not interested in views of the public. SUA also argues that this comment period is exceptionally short and that industrial users and consumers have been excluded from the negotiations on the amendments to the AD and CVD Agreements.<sup>74</sup> SUA, in its comments on the draft statutory memoranda, claims "the proposed changes to the suspension agreements are sufficiently significant to be deemed a renegotiation of the current suspension agreements, which require the issuance of a *Federal Register* notice seeking public comment."<sup>75</sup>

### Rebuttal Comments

- Cámara opposes any such change to the terms which came about "after a long and arduous negotiation by the parties" and "reflect a significant compromise by Mexico" and specifically rejects Imperial's suggestion to change the split.<sup>76</sup>
- CSC Sugar also filed unsolicited rebuttal comments to the ASC's rebuttal comments on the segment of the AD proceeding, in which they argue that the only purpose of the amended AD and CVD Agreements is "to force Mexico to ship lower quality raw sugar than all other 39 TRQ countries," which serves "to unfairly target CSC Sugar by increasing its refining costs. We believe that this is illegal, and should be amended."<sup>77</sup>

### Department Position

Regarding SUA's statements on the time period allowed for comments, the Department notes that there are no statutory- or regulatory-mandated time periods or procedures for the issuance of amendments to a suspension agreement. In this case, no party requested an extension for additional time to submit comments, nor did any party indicate an inability to comment on the draft amendment or draft memoranda within the time periods provided. Furthermore, the time periods provided in this case are consistent with those provided by the Department in relation to amendments to other suspension agreements. For example, in the case of the Agreement Suspending the Antidumping Investigation on Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation (Russia Hot-Rolled Agreement),<sup>78</sup> which involved

<sup>74</sup> *Id.* at 7-8.

<sup>75</sup> See SUA Memoranda Comments at 3.

<sup>76</sup> See Cámara's Rebuttal Comments at 3.

<sup>77</sup> See CSC Sugar's "Reply to June 26, 2017 Rebuttal Comments of the American Sugar Coalition" (June 27, 2017) at 2.

<sup>78</sup> See *Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation; 2010-2011; Final Results of Administrative Review and Revision of Agreement Suspending Antidumping Duty Investigation*, (77 FR 72829 (December 6, 2012)).

both the final results of an administrative review and a revision to a suspension agreement, the Department issued a preliminary draft revision on November 15, 2012, with a request for comments by November 23, 2013, and no rebuttal period.<sup>79</sup> The Department issued its Issues and Decisions Memorandum on the revised Russia Hot-Rolled Agreement on November 30, 2012.<sup>80</sup> Thus, the Department's request for comments in the instant case followed a similar time line to that in the Russia Hot-Rolled Agreement case. Furthermore, the Department is issuing its final amendments in the instant case in a *Federal Register* notice, which, along with the comment and rebuttal comment periods that were established for the draft amendment, was sufficient to give interested parties notice of the amendment. Therefore, the Department disagrees with SUA's assertions that the draft amendments needed to be placed in the *Federal Register*, in order to seek public comment.

Finally, the Department stresses that while it has held meetings with SUA and received submissions from SUA regarding the issues related to the administrative reviews and the ongoing negotiations, SUA is not a domestic interested party within the statutory meaning of the term.<sup>81</sup> The Department has welcomed SUA's input throughout the process, but the Department's primary concern remains the elimination of the injurious effects and the elimination of dumping with respect to the domestic industry.

The Department welcomes the comments received from parties that signal support of the amendments to the AD and CVD Agreements. With regard to Imperial's call for the 70/30 split to be revised to 77.5/22.5 and SUA's concerns regarding the change in the initial calculation of the target quantity of U.S. needs from 70 percent to 50 percent, the Department reiterates that it has consulted extensively with stakeholders and thereby crafted a structure for the amended AD and CVD Agreements that aims to resolve the significant concerns raised by domestic producers regarding the functioning of the original CVD and AD Agreements. Specifically, the amendments lower the dividing line between Refined Sugar and Other Sugar to ensure that sufficient supplies of Other Sugar are available for domestic producers' operations and that refined sugar prices are not suppressed. Further, the amendments contain enhanced provisions and penalties to ensure the effective monitoring and enforcement of the amended AD and CVD Agreements.<sup>82</sup> Overall, the Department finds that the modified structures encapsulated in the amended AD and CVD Agreements will work together to ensure the elimination of the injurious effects of dumped and subsidized sugar from Mexico.

<sup>79</sup> See Issues and Decision Memorandum for the Final Results of Administrative Review and Revision to the Agreement Suspending the Antidumping Investigation on Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation (November 30, 2012), which is available in ACCESS.

<sup>80</sup> *Id.*

<sup>81</sup> See section 771(9)(C)-(G) of the Act; see also 19 CFR 351.102(17) and footnote 2 of this Memorandum.

<sup>82</sup> See e.g. Section VIII.B.4 of the amended Agreement and Sections VII.C.6 and VII.C.7 of the Amended AD Agreement.

# ATTACHMENT 1





Barcode:3005825-01 C-201-846 SUSP - Suspension Agreement -

Alcohol Program; and for any integrated processor and refiner, the movement of raw cane sugar into the refining process.

## Feedstock Flexibility Program

The Feedstock Flexibility Program operates to avoid sugar loan forfeitures to the CCC by requiring the diversion of sugar from food use to ethanol production. On September 1 (1 month before the end of the marketing year), the Secretary of Agriculture announces the amount of sugar (if any) for the CCC to purchase and to be made available for sale to ethanol producers. Raw, refined, and in-process sugars are eligible for purchase. Such sugar can be purchased from any marketer located in the United States. Sugar purchased from a sugarcane or sugar beet processor is counted against that processor's marketing allotment.

## Disposition of Sugar Owned by the CCC

The 2014 Farm Bill provides for specific ways to dispose of sugar owned by the CCC without increasing future forfeiture risk. Like the Farm Security Act of 2002 (2002 Farm Bill), and the 2008 Farm Bill, the 2014 Farm Bill includes the payment-in-kind (PIK) authority to transfer ownership of CCC sugar to processors in exchange for reductions in production through reduced sugar crop planting. For area already planted, the processor cannot commercially market the crop other than as a [bioenergy](#) feedstock.

The 2014 Farm Bill explicitly authorizes the sale of CCC sugar for the production of ethanol and for the buyback of certificates of quota entry (also referred to as certificates for quota eligibility, or CQEs) to reduce tariff-rate quota imports. To comply with the goal of preventing sugar forfeitures, the 2014 Farm Bill prohibits the sale of CCC sugar for domestic human consumption. (Such sales would seem to be permissible if they resulted from a reassignment of OAQ from a sugar processor to the CCC, as provided for under the 2002, 2008, and 2014 Farm Bills. In this instance, the likelihood of sugar forfeiture would seem to be minimal.)

## Sugar Tariff-Rate Quotas and Other Trade Measures

The United States establishes separate tariff-rate quotas (TRQs) for imports of raw cane sugar and refined sugar (also called "certain other sugars, syrups, and molasses"). Prior to the start of the fiscal year (October 1-September 30), the Secretary of Agriculture announces the quantity of sugar that may be imported at the preferential in-quota tariff rate during that fiscal year. There is no limit to the quantity that may be imported at the higher over-quota tariff rate.

Under the Uruguay Round [Agreement on Agriculture](#) (AoA), the United States agreed to make available for import a minimum quantity of raw and refined sugar each marketing year. This amount is equal to 1.139 million metric tons, raw value (MTRV), or 1.256 million STRV. Included in this amount is a commitment to import at least 22,000 MTRV, or 24,251 STRV, of refined sugar. The United States administers additional TRQs on imports of various sugar-containing products that originally had been subject to absolute quotas under Section 22 of the Agricultural Adjustment Act of 1933. There are four of these additional TRQs, none of which apply to Mexico under NAFTA.

According to the [Harmonized Tariff Schedule of the United States](#) (Ch.17, Additional U.S. Note 5 (a) (ii)), whenever the Secretary of Agriculture believes that domestic supplies of sugars may be inadequate to meet domestic demand at reasonable prices, the Secretary may modify any quantitative limitations that have previously been established, but not below the minimum quantities under the AoA.

The raw cane sugar TRQ is currently allocated by the [Office of the U.S. Trade Representative](#) (USTR) to 40 countries based on a representative period (1975-81) when trade was relatively unrestricted. The refined sugar tariff-rate quota is currently allocated to Canada and Mexico, and there is a quantity of

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refined sugar that is available to all countries on a first-come, first-served basis. Likewise, there is an allocation for specialty sugars, which is also on a first-come, first-served basis.

The in-quota tariff for sugar is equal to 0.625 cents per pound. Most countries have the low-tier tariff waived under either the Generalized System of Preferences (see page 3 of *Agricultural Trade Preferences and the Developing Countries*, link below), the Caribbean Basin Initiative, or under U.S. free trade agreements. The over-quota tariff is 15.36 cents per pound for raw sugar and 16.21 cents per pound for refined sugar. In addition to the over-quota tariffs, there are safeguard duties based on the value or quantity of the imported sugar. Currently, these duties are based on value.

## [Agricultural Trade Preferences and the Developing Countries](#)

### **Re-Export Programs**

The United States also operates two reexport programs, as well as a sugar-for-polyhydric alcohol import program, to help U.S. sugar refiners and manufacturers of sugar-containing products compete in world markets. The Refined Sugar Re-Export Program establishes a license against which a company can import sugar at world prices for refining and sale to replace sugar in the market that has been exported as refined sugar or as sugar in sugar-containing products. The Sugar-Containing Products Re-Export Program allows U.S. participants to buy sugar at world prices for use in products that will be exported onto the world market. Raw cane-sugar imports under these programs are not subject to the sugar TRQs. All refined sugars derived from either sugar beets or sugarcane are substitutable under these programs.

### **Dominican Republic-Central American Free Trade Agreement**

Under the Dominican Republic-Central American Free Trade Agreement (DR-CAFTA), there are specific provisions for trade in sugar. The United States establishes country-specific TRQs for the DR-CAFTA countries, starting at a total of 107,000 metric tons in 2006 (year 1) and growing to 151,140 metric tons in year 15, thereafter growing by 2,640 metric tons per year into perpetuity. A 2,000-metric-ton TRQ, with no growth, is established for Costa Rica for specialty sugar. Each country's duty-free access will be the lesser of its trade surplus or its TRQ for that year. Provisions have been agreed to allow alternative forms of compensation to be established to facilitate sugar stock management by the United States.

### **Suspension Agreements for Sugar Imported from Mexico**

Beginning in January 2015, sugar imports from Mexico are subject to the terms of two agreements suspending a 2014-initiated AD and CVD investigation conducted concurrently by the U.S. International Trade Commission and the Department of Commerce. Preliminary investigations found that sugar imported from Mexico had injured the domestic industry and that duties should be assessed against sugar imports from Mexico. The suspension agreements were signed between the Department of Commerce and the Government of Mexico in December 2014. The terms of the agreements included an Export Limit, primarily determined by a calculation of U.S. Needs that used a formula with USDA's World Agricultural Supply and Demand Estimates (WASDE) as the parameters. The terms also specified that sugar imported from Mexico was subject to Reference Prices, which were minimums for sugar shipped from Mexico to the United States.

The Reference Prices in the agreement were set at:

- 26 cents per pound by dry weight commercial value for refined sugar (polarity greater than or equal to 99.5), and
- 22.25 cents per pound by dry weight commercial value for raw sugar (polarity less than 99.5).

Filed By: [Erica J. Cassidy](#), Clerk of Court Date Filed: 7/17/2017 1:46 PM, Submitted: [Stephanie R. Approved](#)

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### Related Reports

Sugar and Sweeteners Outlook: July 2017Feed Outlook: July 2017Sugar & Sweeteners Outlook: June 2017Feed Outlook: June 2017Sugar & Sweeteners Outlook: May 2017See all

### Related Amber Waves Articles

Oil Prices and Ethanol Demand Drive Changes in Agricultural Commodity Production in Brazil  
U.S.-Cuba Agricultural Trade: Past, Present, and Possible FutureComplex Array of Factors Influence  
World Sugar PricesIndian Sugar Market More VolatileU.S. Sugar Program at a Crossroads

### Related Data

Sugar and Sweeteners Yearbook TablesAgricultural Baseline DatabaseForeign Agricultural Trade of the  
United States (FATUS)International Food Consumption Patterns

## ATTACHMENT 2

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## Foreign Agricultural Service

# Sugar Import Program

Imports of sugar into the United States are governed by tariff-rate quotas (TRQs), which allow a certain quantity of sugar to enter the country under a low tariff. TRQs apply to imports of raw cane sugar, refined sugar, sugar syrups, specialty sugars and sugar-containing products. Import restrictions are intended to meet U.S. commitments under the North American Free Trade Agreement (NAFTA) and the Uruguay Round Agreement on Agriculture (which resulted in the creation of the World Trade Organization).

USDA establishes the annual quota volumes for each federal fiscal year (beginning October 1) and the U.S. Trade Representative allocates the TRQs among countries. Sugar and related products paying a higher, over-quota tariff may enter the country in unlimited quantities.

More information about U.S. trade in sugar and sweeteners is available from USDA's Economic Research Service <<http://www.ers.usda.gov/topics/crops/sugar-sweeteners/trade.aspx>>.

## Regulations

15 CFR Part 2011 <<http://www.ecfr.gov/cgi-bin/text-idx?sid=62ee7a6324325d70f6ebe1b86af57331&nnode=15:3.2.1.7.10&rgn=div5>>

USDA also administers three re-export programs involving sugar.

- **The Refined Sugar Re-Export Program** is designed to facilitate use of domestic refining capacity to export refined sugar into the world market. The program establishes a license against which a refiner can: export domestically produced refined sugar and later import low-duty raw cane sugar; import low-duty raw cane sugar for refining and distribution to licensed U.S. manufacturers of sugar-containing products and/or licensed producers of polyhydric alcohol for non-food purposes; or import raw sugar, refine it and export it into the world market.
- **The Sugar-Containing Products Re-Export Program** is designed to put U.S. manufacturers of sugar-containing products on a level playing field in the world market. U.S. participants in the Sugar-Containing Products Re-Export Program may buy world-priced sugar from any licensed refiners for use in products to be exported to the world market.
- **The Sugar for the Production of Polyhydric Alcohol Program** is established to provide world-priced sugar to licensed U.S. manufacturers of polyhydric alcohols. Participating U.S. manufacturers purchase world-priced sugar from licensed refiners for use in the production of polyhydric alcohols, except polyhydric alcohols used as a substitute for sugar in human food consumption.

## Regulations

7 CFR Part 1530 - The Refined Sugar Re-Export Program, the Sugar Containing Products Re-Export Program, and the Polyhydric Alcohol Program <<http://www.ecfr.gov/cgi-bin/retrieveecfr?gp=1&sid=d18597eebea5031c0925ee4b22e26438&ty=html&h=l&n=7y10.1.3.4.2&r=part>>

Applying

## Specialty Sugar Certificate Application

Filed By: [Specialty Sugar Certificate Application](#), Filed Date: 7/17/2017 12:46 PM, Status: Submitted, Status: Approved

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- Global Specialty Sugar Certificate <<https://www.fas.usda.gov/programs/sugar-import-program/applying-specialty-sugar-certificate>>
- Panama Specialty Sugar Certificate <<https://www.fas.usda.gov/programs/sugar-import-program/applying-panama-specialty-sugar-certificate>>

**U.S. Sugar Re-Export Administration, Application and Reporting**

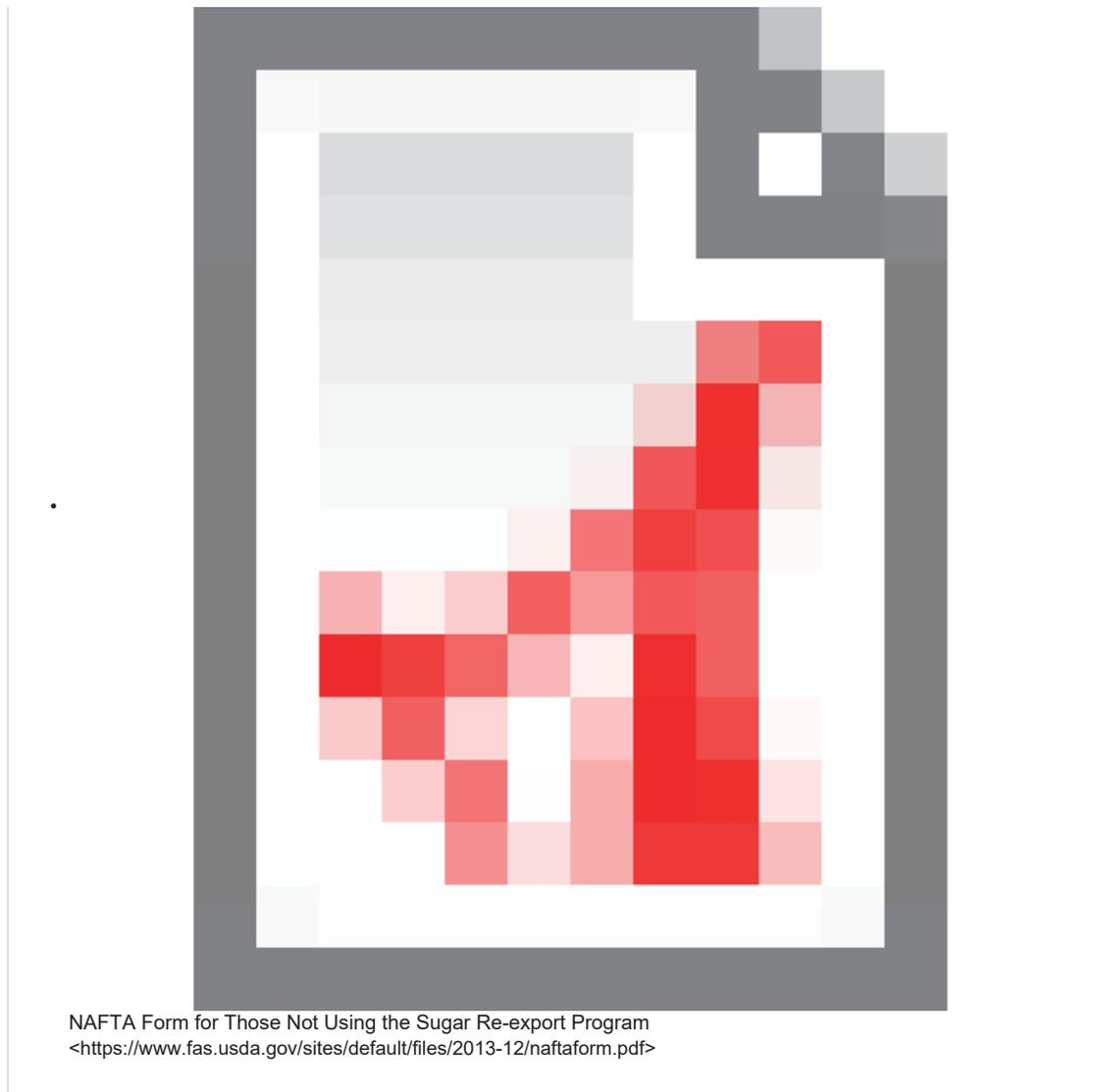
Re-Export Program Online Reporting System <<https://www.fas.usda.gov/sugars/fassugarshome.aspx>>

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- Reporting Format for Bonds <<https://www.fas.usda.gov/sites/default/files/2013-12/bond.templates.doc>>
- License Application Tips for Sugar Containing Products Re-Export Program <<https://www.fas.usda.gov/programs/sugar-import-program/license-application-tips-sugar-containing-products-re-export-program>>

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NAFTA Form for Those Not Using the Sugar Re-export Program  
<<https://www.fas.usda.gov/sites/default/files/2013-12/naftaform.pdf>>

## Data & Analysis

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Sugar Monthly Import and Re-Export Data <<http://fas.usda.gov/data/sugar-monthly-import-and-re-export-data-0>>  
July 12, 2017

India: Raw Sugar Export Subsidy Changed <<http://fas.usda.gov/data/india-raw-sugar-export-subsidy-changed>>  
August 25, 2014

## News

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USDA Announces Sugar TRQs for Fiscal Year 2018 <<http://fas.usda.gov/newsroom/usda-announces-sugar-trqs-fiscal-year-2018>>  
June 30, 2017

Filed By: [Basilios S. Golemy](#), Title: [Data Analyst](#), Date: [7/17/2017 6:25:01 PM](#), File #: [4618M](#), Submission Status: [Approved](#)

Barcode:3005825-01 C-201-846 SUSP - Suspension Agreement -

USDA Increases Fiscal Year 2017 Specialty Sugar TRQ <<http://fas.usda.gov/newsroom/usda-increases-fiscal-year-2017-specialty-sugar-trq>>

February 24, 2017

## Program Resources

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### Federal Register Notices

- Reallocation of Unused Fiscal Year 2016 Tariff-Rate Quota Volume for Raw Cane Sugar <<http://fas.usda.gov/programs/resources/reallocation-unused-fiscal-year-2016-tariff-rate-quota-volume-raw-cane-sugar>>
- Certificates of Quota Eligibility Pursuant to the Colombia and Panama Trade Agreements <<http://fas.usda.gov/programs/resources/certificates-quota-eligibility-pursuant-colombia-and-panama-trade-agreements>>
- Notice of a Request for Extension of a Currently Approved Information Collection: <<http://fas.usda.gov/programs/resources/notice-request-extension-currently-approved-information-collection>>
- Waivers Under the Refined Sugar Re-Export Program <<http://fas.usda.gov/programs/resources/waivers-under-refined-sugar-re-export-program>>

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### Program Notices

- CCC Announcement KCPBS2 - Purchase of Raw Cane or Refined Beet Sugar <<http://fas.usda.gov/programs/resources/ccc-announcement-kcpbs2-purchase-raw-cane-or-refined-beet-sugar>>

### Contact

#### Sugar Import Program

Email  
(202) 720-0638

## ATTACHMENT 3



United States Department of Agriculture  
Economic Research Service

United States Department of Agriculture  
Economic Research Service



## Trade

### Sugar Imports Under Tariff-Rate Quotas

The United States imports sugar under a system of tariff-rate quotas (TRQ). A TRQ is a two-tiered tariff for which the tariff rate charged depends on the volume of imports. A low-tier (in-quota) tariff is charged on imports within the quota volume. A high-tier (over-quota) tariff is charged on imports in excess of the quota volume. Almost all raw cane sugar, refined sugars and sugar syrups, and sugar-containing products are imported under TRQs for those products. (See the [Policy](#) page for more information on TRQs.)

Yearly imports under the raw and refined sugar TRQs since fiscal year (FY) 2000 have averaged 1.48 million short tons, raw value (STRV).

Most U.S. sugar imports are raw cane sugar. The raw cane sugar TRQ is allocated to 40 countries based on patterns established during the relatively unrestricted free trade period of 1975-81. The Dominican Republic, Brazil, and the Philippines hold the largest shares--approximately 17, 14, and 13 percent, respectively. Declines in the overall quantity of the quota have reduced imports from all suppliers with the exception of the 10 small suppliers whose allocations are limited to 7,258 metric tons, raw value (MTRV), a quantity considered to be equal to a minimum boatload of sugar.

As of January 1, 2008, sugar from Mexico enters the United States duty-free under the [North American Free Trade Agreement \(NAFTA\)](#) and is not subject to quota restrictions. Since 2015, however, imports from Mexico have been subject to terms of a [suspension agreement](#) that limits prices and volumes of trade flows due to the anti-dumping and countervailing duty investigation against sugar from Mexico.

### Imports and Exports Under the Sugar Re-Export Programs

USDA administers two re-export programs to help U.S. sugar refiners and manufacturers of sugar-containing products compete in world markets. The Refined Sugar Re-Export Program establishes a license against which a refiner can import world-priced sugar for refining and export as refined sugar or for sale to licensed manufacturers of sugar-containing products. The Sugar-Containing Products Re-Export Program allows U.S. participants to buy sugar from any of the refiner participants for use in products that will be exported onto the world market. Imports under the two programs are not subject to sugar TRQs.

USDA also administers the Polyhydric Alcohol Program, which provides world-priced sugar to U.S. manufacturers of polyhydric alcohols. Participating U.S. manufacturers purchase world-priced sugar from licensed refiners or their agents for use in the production of polyhydric alcohols, except polyhydric alcohols that are used as a substitute for sugar in human food consumption. U.S. sugar imports under the two Re-Export Programs and the Polyhydric Alcohol Program averaged 400,000 STRV in the 2000s.



## ATTACHMENT 4





## ATTACHMENT 5

# UNITED STATES INTERNATIONAL TRADE COMMISSION

In the Matter of:	)	Investigation Nos.
SUGAR FROM MEXICO	)	701-TA-513
	)	731-TA-1249 (PRELIMINARY)

**REVISED AND CORRECTED**

Pages: 1 - 287  
 Place: Washington, D.C.  
 Date: Friday, April 18, 2014

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1 forecasting that it will average 19 cents a pound, that is  
2 actually above the U.S. loan rate and indicates the  
3 likelihood of a world market price that is above our U.S.  
4 price support level. Normal variability around such averages, U.S.  
5 sugar producers will likely benefit from more upward spikes  
6 in prices while being protected from any downside risk by  
7 the sugars prices for the loan program which suggests that  
8 there is little if any, threat for future injury to the  
9 industry.

10           Let me turn to the quantitative impacts on the  
11 U.S. sugar balance. It's been demonstrated time and again  
12 that farmers respond to pricing as I've said. As others  
13 have commented, between 2008-09 and 2012 seasons, we saw a  
14 significant increase in the sugar production detailed in  
15 table 1. Acreage and production of beets and cane both  
16 rose. Beet share production increased 20%. Cane share went  
17 up about 18% and you might have seen a bigger expansion but  
18 we have capacity restraints, if I told you how much it cost  
19 to build a new plant, they just ran out of room to handle  
20 more beets and cane.

21           Since the next U.S. sugar markets were one and  
22 the same during this period as a result of NAFTA, Mexican  
23 sugar cane producers responded to the same price signals.  
24 They too expanded their production based on the higher  
25 prices as well as the availability of excess processing

1 capacity in that country.

2 U.S. market share of domestic sugar producers  
3 actually increased through this period, it only declined  
4 slightly in the current 2013-14 marketing year. This is  
5 illustrated in figure 4, which shows U.S. producers share of  
6 what I have described as new supplies to the market, i.e.,  
7 -- production plus imports.

8 That share increased from 68% in 2007-09 to  
9 almost 74% in 2012-13 and only declined modestly in the  
10 current market year to 73% according to USDA's latest  
11 estimates.

12 Figure 5 shows the broad composition of the sugar  
13 imports in recent years. It's actually four broad  
14 categories, you have the imports under the tariff rate  
15 quotas and free trade agreements which is the bottom blue  
16 part. You know the imports from Mexico, the next section.  
17 Other program imports which are special programs for  
18 re-export and poly hydrate alcohol and then normally  
19 negligible quantity of basically second-tier sugar where  
20 they pay a high duty.

21 You will see that one little blip in 2010 when  
22 people resorted to that.

23 Since 2010-11 imports have actually declined 15%  
24 in absolute terms and their share of new supplies to the  
25 market fell from 32% to an estimated 27% in the current

1 marketing year. While imports from Mexico in 2012-13 and  
2 the current marketing year are higher than during the  
3 previous three or four years, they have actually displaced  
4 other imports rather than domestic share of production,  
5 Thus one cannot claim that imports from Mexico reduced U.S.  
6 sugar production or the market share of the U.S. producers.

7 In fact the latest USDA sugar and sweetener  
8 outlook report stated that the growth in available sugar  
9 supply has come from domestic production, not from raw sugar  
10 TRQs or Mexican imports.

11 Turning to the question of prices, petitioners  
12 observe that U.S. sugar prices have been lower during the  
13 past year compared to prices in prior years, but as others  
14 have said we have just come off an extraordinary period  
15 where prices spiked higher due to the combination of the  
16 world sugar shortage and the more stringent provisions in  
17 the Farm Bill and the way that the administration actually  
18 administered the new provisions.

19 The world sugar supply tightened sharply in  
20 2008-09 and 2009-10 as you see in figure 6. This is due  
21 primarily to smaller -- small crops and sugar cane crops in  
22 India, Thailand and Brazil. The deficit proving consumption  
23 of production over those two seasons totaled more than 20  
24 million metric tons as illustrated in the chart and so world  
25 stocks fell by that amount and world market raw sugar prices



1 the two governments and working together. USDA spent a lot  
2 of money last year on the program. Mexico is exporting  
3 large volumes of sugar in the world market to reduce  
4 pressure on the U.S. market. These moves, coupled with the  
5 future grower response to lower prices in both countries is  
6 restoring balance to the market.

7 Prices respond and prices fall, just like they do  
8 when they rise. Suddenly where we are now is well within  
9 the parameters of how they rule the government, meaning that  
10 the U.S. sugar market normally behaves. It's important for  
11 the Commission to keep this broader context in mind as it  
12 considers the petitioners allegations. Thank you.

13 MR. ALTSCHULER: That concludes the respondents  
14 testimony this afternoon, we are happy to answer questions.

15 MS. DEFELIPPO: Thank you very much and thank you  
16 very much to all the members of the panel, it's always very  
17 helpful to have a good showing on the respondent's side to  
18 balance out everything and get a full picture of what's  
19 going on. I particularly would like to thank those of you  
20 that traveled here from Mexico. I know it is a religious  
21 holiday week and that complicated things, but we very much  
22 appreciate having you here and having you testify and be  
23 available for questions, so with that I will throw it down  
24 this side of the table to Miss Sherman.

25 MS. SHERMAN: Good afternoon, thank you all for

1 your very helpful testimony this afternoon. I think I'll  
2 start my questioning with getting some clarification on this  
3 -- the C what is it called -- Consultive Committee on  
4 Agriculture, the agreement between the United States and  
5 Mexico to remove 700,000 tons of sugar to be diverted  
6 elsewhere, do you know where those, Mr. Farmer, you had  
7 mentioned that you represented both of that going outside of  
8 North America, where is that going exactly?

9 MR. FARMER: A substantial part is going to North  
10 Africa, Ukraine, West Africa, some of it has even made its  
11 way to New Zealand, it's basically heading to many parts of  
12 the world.

13 MS. SHERMAN: And is this refined sugar or is  
14 this the estandar?

15 MR. FARMER: The purchase that our company made  
16 was standard sugar or in this case, raw sugar. And actually  
17 a lot of the sugar is also going to Canada, sorry.

18 MS. SHERMAN: And this morning the panel has  
19 suggested that this sugar would go into, that would be  
20 diverted into the world market would eventually end up back  
21 in the United States, can you comment on that?

22 MR. FARMER: Absolutely not correct.

23 MS. SHERMAN: Who is involved on this Committee,  
24 what players are there, I mean you have the governments on  
25 each side and then is it a collaboration of individual

1 companies? Can you explain more about how that exactly  
2 works?

3 MR. CORTINA: It's between both governments.

4 MR. ALTSCHULER: The person speaking is Carlos  
5 Vasquez, he is the Embassy of Mexico's Agriculture Minister  
6 and has first-hand knowledge of the CCA and if it is okay he  
7 probably has the best information for you and I will give  
8 him the mic.

9 MS. DEFILIPPO: If you could just introduce  
10 yourself and provide it through the mic, we can then capture  
11 it on the transcript, thank you.

12 MR. VASQUEZ: Sorry, my name is Carlos Vasquez,  
13 I am the Minister Chancellor for Agricultural Affairs.  
14 Basically their representative from the Mexican Department  
15 of Agriculture and in order to respond to your question,  
16 it's a co-share from the U.S. is USDA and USTR  
17 representative, at the level of under-secretaries. And from  
18 Mexico it is the same with the Minister of Economia and the  
19 Minister of Agriculture represented by the under-secretary  
20 of Agriculture, Jesus Padilla, and by the under-secretary --  
21 .

22 So from the U.S. it is the same, but it is  
23 government officials, only government officials.

24 MS. SHERMAN: Okay thank you very much.

25 MR. ALTSCHULER: That's why if it's okay,

1 because it is government to government, some of the  
2 information we have privy, we are privy too, but we would  
3 rather put it in the brief, where we can feel more  
4 comfortable going into detail.

5 MS. SHERMAN: Of course, thank you.

6 MS. DEFILIPPO: I just wanted to jump in with one  
7 comment, since it is an extremely large panel, if you could  
8 state your name it would be very helpful for the court  
9 reporter, thank you.

10 MS. SHERMAN: Okay, my next question is for you  
11 Mr. Farmer regarding your production of liquid sugar. You  
12 primarily produce liquid sugar, but you also produce  
13 granulated sugar you said?

14 MR. FARMER: Correct, we produce no granulated  
15 sugar.

16 MS. SHERMAN: Okay, if you were to produce  
17 granulated sugar, would it be possible to convert your  
18 equipment to produce granulated sugar or are you only set up  
19 as a liquid sugar producer?

20 MR. FARMER: We are only set up as a liquid sugar  
21 producer. Our refineries have basically a fraction of the  
22 equipment that a large cane refinery would have, but it has  
23 the same type of equipment so you might say that we have  
24 basically the middle part of the refinery, enough to take  
25 out the impurities and the color, if we choose to take out

1 the color, but we usually try not to.

2 But we don't have crystallization drying,  
3 packaging and so on because we decided to focus specifically on  
4 liquid sugar customers.

5 MS. SHERMAN: For example, if you were to convert  
6 to that entire refining process, how much of a capital  
7 investment would be required to do that?

8 MR. FARMER: It would entirely be depending on  
9 the size, so our process, we built many small plants so that  
10 we could service the customers where they are, whereas  
11 traditionally cane refineries are massive plants set on the  
12 water. It's just a different way of looking at it.

13 So the average plant for me cost ten million  
14 dollars and it can take sugar from a purity of 98% purity  
15 which is the standard type of sugar that comes into a cane  
16 refinery and I can take it to 99.9 the same as everybody  
17 else. The only difference is I am not doing a million tons  
18 in my refinery, I'm doing a hundred thousand tons at each  
19 refinery and I'm not granulating it, packaging it and doing  
20 all that.

21 But to our customers who receive it, the product  
22 is interchangeable with what they buy from any other cane  
23 refinery or beet sugar producer.

24 MS. SHERMAN: And are you aware of how many other  
25 liquid sugar producers, or melt houses there are in the



1 that correct?

2 MR. CUDDY: No ma'am, it's not our primary  
3 business.

4 MS. SHERMAN: Can you say about what percentage  
5 of your business or in your post-conference brief.

6 MR. CUDDY: Yes, post-conference is fine, but I  
7 mean we are a 90 billion dollar public company that deals in  
8 a lot of different commodities and sugar being one of them,  
9 but we can further define that for you.

10 MS. SHERMAN: Okay, thank you.

11 MR. CUDDY: You're welcome.

12 MS. SHERMAN: I have a few questions concerning  
13 the domestic-like product petitioners are arguing, or they  
14 state in their brief that high fructose corn syrup should  
15 not be included in the domestic-like product, do you agree  
16 with that?

17 MR. ALTSCHULER: Again this is Irwin Altschuler  
18 and as I said in my overview at the beginning, we have  
19 questions about the like product, you know and we have heard  
20 and read the same things and done our own research and we  
21 know that there are some precedents in other countries that  
22 if you have fructose and sugar as like products, we will  
23 address it more in our brief.

24 I guess what we feel is that this case is  
25 compelling as presented by the petitioners for a negative

1 role. So we will discuss the issue of like product but we  
2 don't think we need a detailed analysis in the preliminary  
3 for the Commission to vote negative, so that's kind of where  
4 we come out on it.

5 We will address it more, but we think even with a  
6 single like product, as defined ultimately, after four  
7 cracks at it by the Petitioner, we thinking take it on those  
8 terms, we should secure a negative vote.

9 MS. SHERMAN: Thank you and what about cane  
10 sugar. Sugar produced from sugar cane and sugar produced  
11 from sugar beets, I'm still confused a little bit about  
12 whether this can be used interchangeably your comments on  
13 that?

14 MR. FARMER: Yeah, this is Paul Farmer. I can  
15 comment that over the last five or six years there has been  
16 a growing sentiment or request by our customers and some  
17 today refuse to buy beet sugar because of its origin as GMO  
18 seed and I would say that that is growing. I can't tell you  
19 that that's a major wave, but I can tell you that it has  
20 already created a problem within our business because we  
21 also do occasionally buy beet sugar, right, but it is hard  
22 to segregate in our plants now so we prefer not to get it,  
23 because if a chocolate company, or drink company decides  
24 that they want a non-GMO I really can't have it in the same  
25 area at the same plant.

1 MS. SHERMAN: Besides GMO issues, are there any  
2 other quality differences or characteristics of the  
3 differences between the beet sugar and the cane sugar?

4 MR. JONES: Well speaking for my company only,  
5 I'm sorry, Tim Jones, Just Born. Speaking from my company  
6 only, we found that it doesn't react well with some of our  
7 products and I can talk about that a little bit more in the  
8 post brief or whatever, but I just know that it's, and as  
9 Paul stated, it is difficult when you can't intermingle it,  
10 you can't have it close by and we only have a few silos, so.  
11 It doesn't make sense for us to have them both there even  
12 though we could use it in some of our products, we can't use  
13 it in all of our products.

14 MS. SHERMAN: Thank you. I was hoping your  
15 could clear up or get a standard definition for me of  
16 estandar, what polarity would you define that as and can it  
17 be consumed. It's a raw sugar, but can it be consumer, or  
18 is it consumed in Mexico?

19 MR. CORTINA: Sure, Juan Cortina, from the Sugar  
20 Chamber. Estandar sugar is consumed in Mexico by ordinary  
21 consumers and by industry alike. It usually has a higher  
22 color than refined sugar, meaning that refined sugar usually  
23 has about 45 color, it's a measure and then  
24 standard sugar it's around four to five hundred.

25 So it's a darker color sugar, but it is open for

1 human consumption and long historically been consumed in  
2 Mexico.

3 MR. FARMER: And this is Paul Farmer again, in  
4 the United States I would tell you that most customers or  
5 companies would not use standard sugar for direct  
6 consumption because it has a higher quantity of foreign  
7 materials in it than would normally be accepted in the U.S.  
8 market, therefore the vast majority of it gets used,  
9 consumed as raw sugar and the sugar that gets consumed  
10 directly almost always goes for some kind of additional  
11 processing screening, magnets, whatever it is going to be.

12 So generally speaking, in the U.S. standard sugar  
13 is raw sugar and the pole can be anywhere from 99.3 to 99.7  
14 depending upon the mill, the production date, the weather,  
15 so it crosses between the refined sugar tariff code and raw  
16 sugar tariff code freely and nobody cares to keep track of  
17 it because there is no quota.

18 MR. ARMERO: I would like to add something. My  
19 name is Christophe Armero, I represent Beta San Miguel which  
20 is one of the larger sugar groups in Mexico and we produce  
21 three kinds of sugar. Refined sugar, which is equivalent to  
22 U.S. refined sugar. We produce a sugar which we call blanca  
23 which actually hasn't been mentioned, which is in between  
24 estandar and refined and then we produce estandar.

25 Without complicating things, it's easy to use in

1 number, the way sugar color is measured in sugar. Refined  
2 sugar tends to be a maximum of 45 icumsa units and that's  
3 brilliant white sugar, 20-25. Estandar sugar by law in  
4 Mexico cannot have more than 600 in color, most of it is  
5 350-450 and that's a sandy color, maybe like a manila folder  
6 and then blanca sugar we produce has between 150-180 color  
7 and you can't really tell it is not refined unless it is  
8 next to refined, because you put it on its own, it looks  
9 like refined.

10           When I go and visit customers and I show them  
11 that we have three different products to offer them, it  
12 would be akin to someone who has always had to buy a  
13 Rolls-Royce even though they didn't need it and find that  
14 actually they can buy a Volkswagen and maybe even a Chevy  
15 and the fact too is that the U.S. sugar industry has given  
16 everyone a choice of one type of sugar forever and now we  
17 are offering three types of sugar which are in many cases  
18 more suitable for the products that the industrial users  
19 want to make and we have industrial users that use estandar,  
20 we have industrial users that use blanca, we have industrial  
21 users that use refinado.

22           MR. ROSENTHAL: Paul Rosenthal, I'm from Kelley,  
23 Drye. The distinctions you are hearing between these  
24 different types of sugar cause us to be concerned about the  
25 pricing data and the price comparisons or the products that

1 were selected because we are not sure that everybody,  
2 despite the attempts at clear definitions in the  
3 questionnaire, everyone defines these products in the same  
4 way, so I would suggest that the data that you get from  
5 these questionnaires be looked at very carefully and taken  
6 with a grain of salt, if I can mix agricultural metaphors,  
7 and be very, very careful because I'm not sure that the  
8 match-ups work in this preliminary stage.

9 MS. SHERMAN: So is it the Mexican sugar that is  
10 imported to the United States, is that all estandar or is  
11 there some refined sugar as well?

12 MR. FARMER: This is Paul Farmer again, the vast  
13 majority is imported as standard sugar in bulk form, usually  
14 in vessels of ships, 25-30,000 tons but they are certainly  
15 of some refined sugar imports, I don't know the exact  
16 numbers.

17 MS. SHERMAN: Okay.

18 MR. ARMERO: One-third I would call direct  
19 consumption sugars, two-thirds what Paul calls raw sugar.  
20 But I think it's really important to state that at the point  
21 that if I'm selling, for example to Paul, I am delivering  
22 him a food grade product. He chooses to dump it into a  
23 vessel and it pains me a lot but at the point I deliver it  
24 to him it's a food grade product.

25 MS. SHERMAN: Thank you.

1 MR. ALTSCHULER: Chris, you didn't mean dump,  
2 you meant place.

3 (LAUGHTER).

4 MR. ARMERO: Inappropriate use of language.

5 MS. SHERMAN: Is the structure of the Mexican  
6 sugar refining industry different than that in the United  
7 States? For example, does it go directly from farmer to  
8 miller to refiner if necessary?

9 MR. CORTINA: This is Juan Cortina from the  
10 Sugar Chamber. All of the sugar mills in Mexico that have  
11 refineries have them in place where they mill the sugar cane  
12 there. There are some refineries here in the U.S. that are  
13 free-standing, meaning that they don't have land attached to  
14 them, like the ones Paul was mentioning near the ports.

15 Those refineries need the raw appeal of raw sugar  
16 to be able to operate. All of the refineries in Mexico, the  
17 raw material is sugar cane which they operate and produce  
18 refined sugar.

19 MS. SHERMAN: So can you comment on the groups,  
20 the Mexican groups, that provide or that were named in the  
21 petition, how is that set up?

22 MR. CORTINA: Well there is about 40% of Mexican  
23 sugar production is refined sugar and about 60% is standard  
24 sugar and about 13 industrial groups of the Mexican sugar  
25 industry, most of them have more than one mill and have

1 facilities in different states in Mexico.

2 In fact there are 15 states in Mexico where they  
3 have sugar production, all the way up north in the state of  
4 Sinaloa to all the way down south to Chiapas. The state of  
5 Vera Cruz is the one that has the most sugar mills in it.  
6 There's about close to 350,000 sugar cane growers in a  
7 country that supply sugar cane to the mills in Mexico and  
8 there is about 53 sugar mills operating in Mexico right now.

9 MS. SHERMAN: Is there a difference in the  
10 production process for Mexican-produced sugar versus that in  
11 the United States that you are aware of?

12 MR. CORTINA: Not at all, its the same.

13 MS. SHERMAN: Similar equipment?

14 MR. CORTINA: Similar equipment, similar  
15 everything.

16 MS. SHERMAN: Okay, I asked this this morning of  
17 the domestic industry. How do you define capacity and  
18 capacity utilization? Is it similar across all companies in  
19 the Mexican industry?

20 MR. CORTINA: Yes it is.

21 MS. SHERMAN: The growing season, is that  
22 different than in the United States?

23 MR. CORTINA: Different dates, Mexican harvest  
24 starts early November and usually finishes by late May,  
25 early June and from July to early November it's maintenance

1 season where the mills are basically taken apart, all of the  
2 equipment is maintained and then put back together to be  
3 ready for the next harvest season.

4 MR. FARMER: This is Paul Farmer, there is one  
5 significant difference that should not be overlooked and  
6 that is in the U.S. we have a stand-alone cane refining  
7 business where they don't produce the raw sugar themselves,  
8 or if they do it's in another place and they ship it there.

9 You can run a cane refinery, if twenty years ago  
10 everybody would have told you that you can't run a cane  
11 refinery more than say 280 days or something like that  
12 without having to shut it down for the rest of the period of  
13 time for maintenance, however, the peak periods of refined  
14 sugar, certain refineries would run 320 days, 340 days, so  
15 there is a huge difference between if a cane refinery is  
16 making money and they are run full out, all the way, as  
17 compared to when business kind of sucks and you are running  
18 the minimum.

19 I would tell you that today in the United States  
20 there are probably 7 million tons or a little more than 7  
21 million tons of cane refining capacity based on running  
22 about 300 days, which means you could probably ramp it up to  
23 7 and a half for 8 million tons, right, that's the problem  
24 in the industry today. That's why refined sugar prices are  
25 down, because there is too much fighting amongst the cane

1 sugar refiners driving price down.

2 MR. BRUNO: This is Philippe Bruno with Greenberg  
3 Traurig, I just want to add on this subject that you know  
4 that we are answering questions that you have with respect  
5 to our questionnaire responses on behalf of the Mexicans and  
6 I just want to mention that some of this issuing capacity is  
7 actually an important issue as you know, with respect to  
8 some of the periods that have been defined within the  
9 questionnaire.

10 MS. SHERMAN: Is liquid sugar produced in Mexico  
11 at all?

12 MR. CORTINA: There is two or three facilities  
13 for liquid sugar production in Mexico and it was mentioned  
14 earlier that most of them are close to customers and users  
15 that prefer to have liquid delivered to their plant because  
16 of the ease of use.

17 MS. SHERMAN: You've answered all of my  
18 questions, thank you very much.

19 MS. DEFELIPPO: Thank you Ms. Sherman. We will  
20 now turn to Mr. Szustakowski.

21 MR. SZUSTAKOWSKI: I also want to thank you all  
22 for being here today and taking the time to answer  
23 questions. I really appreciate it. Many of the  
24 questionnaire responses received from Mexican producers are  
25 Mexican producer groups, can somebody define what a group

1 is? Is it a company that owns several mills? Or just some  
2 sort of background.

3 MR. ARMERO: Yes, I think you basically answered  
4 your own question. This is Christophe Armero from Beta San  
5 Miguel. Our group for example, has a main shareholder and  
6 a holding company and owns six sugar mills, I would say your  
7 group is --

8 MR. SZUSTAKOWSKI: Is that rather typical of the  
9 industry?

10 MR. ARMERO: Yes, I would say the vast majority  
11 of production is represented by groups rather than  
12 individual mills.

13 MR. CORTINA: I concur with what Mr. Christophe  
14 Armero said.

15 MR. SZUSTAKOWSKI: This morning's panel was  
16 explaining that they don't produce estandar in the U.S. and  
17 that to do that basically their refining facility would have  
18 to be dedicated to just producing estandar, is that, Mr.  
19 Armero, you mentioned that you have multiple products, are  
20 these made in the same mill? Are they made in different  
21 mills?

22 MR. ARMERO: Chris Armero from Beta San Miguel.  
23 Without explaining how you build a watch, I just want to  
24 quickly run you through the sugar production process is  
25 separation of the sucrose from impurities and the earlier

1 you do it, the cheaper it is. So it is -- and one of the  
2 reasons that it's cheaper is that the sugar mills generate  
3 their own electricity from the bagasse which is in the cane,  
4 so most of our efficient sugar mills in Mexico not only do  
5 not use any fuels to run, they generate abstract electricity  
6 that they can sell to the grid.

7 So to the extent you can make a finished product  
8 in the mill, your energy cost is far lower than doing it in  
9 a port refinery like some of the Domino, for example, ASR,  
10 or Imperial who are stand-alone operating units that take  
11 raw sugar and turn it into refined sugar. We can make  
12 refined sugar in the mill, we use our own energy which we  
13 have generated ourselves so it's much cheaper.

14 It doesn't make sense for them to buy estandar,  
15 if they can buy estandar, basically estandar is a food-grade  
16 product, it doesn't make sense for them to produce it unless  
17 they are buying very, very poor quality raw sugar. But  
18 also, as they pointed out, it would mean they would maybe  
19 cannibalize some of their own sales of refined sugar and I  
20 think what's happened is you have these huge investments  
21 which they have repeatedly alluded to in these refineries,  
22 which maybe aren't where the market is going and that's what  
23 Mr. Farmer identified several years ago when he found that  
24 there are customers and we found that there are customers  
25 that don't need 99.9% purity refined sugar to make a brownie

1 and they have had to buy it because that's all there was,  
2 but they don't need it.

3 So you can make that product in Mexico at a far  
4 lower cost in terms of processing than at a port refinery  
5 and so there is no reason to use a massive instrument of  
6 processing to make a less processed sugar.

7 MR. CORTINA: Juan Cortina here, in a single  
8 mill you can either produce standard, blanca, or refined in  
9 the same facility, it is just how long it takes that sugar  
10 to be processed.

11 MR. SZUSTAKOWSKI: Does producing a less-refined  
12 product like estandar compared to refined sugar, does that  
13 increase your through put? Does it increase the volume of  
14 production? Does it free up capacity?

15 MR. CORTINA: Not at all, you have your facility  
16 built to a certain capacity and you have the ability to be  
17 able to produce whatever your customers need.

18 MR. SZUSTAKOWSKI: So your capacity can make a,  
19 you know, 100 tons of --

20 MR. CORTINA: Of refined sugar and another  
21 hundred tons of standard.

22 MR. SZUSTAKOWSKI: It's not like a hundred tons  
23 of refined sugar equals more estandar production.

24 MR. CORTINA: And you have the flexibility to be  
25 able to change that during the harvest, depending on what

1 your needs are.

2 MR. SZUSTAKOWSKI: I apologize if my notes are a  
3 mess from all of these, can you describe and has standar  
4 production increased in Mexico over the period of  
5 investigation that we are looking at?

6 MR. CORTINA: Mexico, during the POI has  
7 increased overall production. The share had more or less  
8 stayed the same 60% standard, 40% refined sugar.

9 MR. SZUSTAKOWSKI: Does Mexico export standar to  
10 other countries than the U.S.?

11 MR. FARMER: The answer is that for direct food  
12 consumption it would be miniscule quantities but as raw  
13 sugar going to other refineries in the world, yes.

14 MR. ARMERO: I just wanted to add, Chris Armero,  
15 we are not used to exporting to the world market. We  
16 started last year and this year we are exporting a lot more  
17 and next year we will export more depending on how things  
18 go, and we have exported food grade products in bags to  
19 certain end destination countries, but as Paul mentioned it  
20 is very small quantities in the scheme of things.

21 The easiest and quickest way to export large  
22 volumes of sugar is as bulk raws and that doesn't mean that  
23 we don't do bagged sugar to East African countries as well.

24 MR. CORTINA: Juan Cortina, and I think as time  
25 goes by and involvement between both governments, the way

1 things are going, Mexican industry is gearing up for more  
2 exports to the world market and the sugar groups in Mexico  
3 are preparing themselves for that because we meet certain  
4 specifications for the bags and for the quality of sugar  
5 received in different countries, so there is a whole process  
6 that we are learning and we are starting to do.

7 MR. SZUSTAKOWSKI: Why did Mexican production of  
8 sugar increase from, during the period of investigation?

9 MR. CORTINA: Juan Cortina from Sugar Chamber.  
10 Two-fold, first of all the big increase in 2013, a lot of it  
11 was weather related and this also had been in the past given  
12 the price signals from acreage increases in Mexico. Right  
13 now we are having the signal against it and we are seeing  
14 acreage disappearance, so to speak, and we are also feeling  
15 a drop in production this year given that weather wasn't as  
16 perfect as we had imagined.

17 We are having falling yields in land, in  
18 agriculture, sugar can land in Mexico.

19 MR. SZUSTAKOWSKI: And the increased production  
20 had to find a market and we saw an increase in the U.S. of  
21 Mexican sugar, is this pretty much not diverted, but sent  
22 to, the increased Mexican production, did the incremental  
23 increased production go to the U.S.?

24 MR. CORTINA: It has gone to three places,  
25 mainly. First of all, obviously to the U.S. to fill the



1 countries, maybe not, out of the 40 countries, probably 15  
2 import sugar so they are only going to export to the United  
3 States when the world price of raw sugar is so far down that  
4 they can import sugar and then export back their own  
5 production.

6           So if the difference between the world price and  
7 the U.S. price is 10 cents a pound then some of those are  
8 likely to ship, some of them just don't care anymore and  
9 some like Taiwan have given up their quota rights. In a  
10 year, like over the last few years, we had the world market  
11 relatively close to the U.S. market and today its 17 cents a  
12 pound, FOB anywhere in the world as compared to a U.S. FOB  
13 value or quota FOB value of more or less 21 -- 22 cents a  
14 pound, that's 4 cents a pound.

15           A country like the Philippines isn't going to  
16 ship anymore this year because they actually need it for  
17 themselves. They will ship some but not all. Other  
18 countries, it kind of depends on where the market is at that  
19 point in time, that's why the USDA's role of trying to  
20 figure out what's coming to the United States is extremely  
21 difficult, I mean they are on the phone to these people  
22 non-stop.

23           Are you going to ship or not ship? And some  
24 people won't tell them, some people say, you know we have no  
25 interest, so the actual shipments against the 1.2 million

1 quota they could be on average 900,000 tons but they could  
2 be 300,000 tons if the world price is close to the U.S.  
3 price.

4 MR. SZUSTAKOWSKI: Does Mexico have access to  
5 other markets in the U.S. that are similarly unfettered? In  
6 that there's -- are there tariff free quotas in place on  
7 Mexico's other export markets?

8 MR. FARMER: This is Paul Farmer again, my  
9 understanding is that there are no other preferential  
10 markets other than Switzerland that doesn't import.

11 MR. SZUSTAKOWSKI: I'm sorry Mr. Jasso you wanted  
12 to say something?

13 MR. JASSO: Yes, it's Humberto Jasso of the  
14 Sugar Chamber, the North African countries, you may know  
15 this, they have no tariffs on sugar because they refine it  
16 so there is a lot of access to third countries where there  
17 is a need for sugar, China, also imports.

18 MR. SZUSTAKOWSKI: The, this agreement where  
19 Mexico has agreed to ship 1.1 million metric tons to other  
20 export markets, you don't have to give us the details now,  
21 but you will be able to explain in the post-conference brief  
22 how that 1.1 -million ton number was derived?

23 MR. ALTSCHULER: We will explain that, the  
24 political process and the commercial process, including the  
25 contract.

1 MR. SZUSTAKOWSKI: In some of the prepared  
2 testimony that was framed as a regulation, are there  
3 enforcement mechanisms to ensure that this 1.1 million tons  
4 will go to other export markets?

5 MR. ALTSCHULER: Yeah I think we will be most  
6 comfortable kind of explaining it in the brief, you know,  
7 it's real, Secretary Vilsack has acknowledged it, traders  
8 have implemented it, whether we use the word co-regulation  
9 by the two governments, or coordination you know, we will  
10 explain it, rather than continuing to try exactly the right  
11 word for it, you know.

12 MR. SZUSTAKOWSKI: I just wanted to make sure  
13 that I asked if there was like an enforcement mechanism to  
14 ensure that it would happen.

15 MR. ALTSCHULER: Yeah.

16 MR. SZUSTAKOWSKI: That could be addressed, you  
17 know, in the post-conference brief.

18 MR. ALTSCHULER: And what I can say now is you  
19 will see there is such a course over many years of  
20 consultations and data exchange and requests for help in  
21 glut times and shortage times that you know, it will be  
22 clear I think.

23 MR. SZUSTAKOWSKI: Okay, thank you.

24 MR. FARMER: This is Paul Farmer, I could speak  
25 to that. The contract that I signed with Mr. Rello, sitting

1 next to me here, has specific terms that excludes  
2 destination in the United States. I am required to ship on  
3 that contract, a half million tons to countries other than  
4 the United States. It's like any other commercial contract.  
5 We live up to it, we do exactly what it says.

6 MR. ALTSCHULER: I guess Paul was willing to say  
7 that.

8 (LAUGHTER)

9 MR. SZUSTAKOWSKI: Thank you Paul.

10 MR. ARMERO: Can I just add something, the world  
11 market shipment would probably not be accompanied by a NAFTA  
12 certificate of origin which it would require to enter the  
13 U.S. so the shipments that Paul is going to make, he will  
14 not be given a NAFTA certificate of origin, he will be given  
15 a certificate of origin that he needs for Morocco or for  
16 Tunisia or wherever he is sending it and he won't have the  
17 documentary -- the documents that are required to enter it  
18 into the U.S., but we trust him anyway.

19 But the fact is that he can endure it.

20 (LAUGHTER)

21 MR. SZUSTAKOWSKI: Mr. Farmer and Mr. Cuddy, this  
22 morning the petitioners were talking about melt houses. Are  
23 your operations, are those melt houses?

24 MR. FARMER: We believe our plants are  
25 refineries because we can change the purity of the sugar

1 from say 98% which is the average, 98 or 98 1/2% purity,  
2 which is the average import of raw sugar into the United  
3 States to 99.99 whatever.

4           What's important for people to understand is  
5 because sugar may have, the typical sugar that I ship to  
6 Unilever for Breyers vanilla ice cream which is bright  
7 white, looks like maple syrup, it's got a color number of  
8 about 350, but its purity number is like 99.99, color is not  
9 an impurity, right.

10           Dirt, metal, cane fibers are impurities, color is  
11 not. So other companies that you would call melt houses  
12 don't have the availability to change the color or the  
13 impurities.

14           MR. SZUSTAKOWSKI: So there is a different level  
15 of operations as well, like okay, you just described another  
16 sort of operation at a different melt house.

17           MR. GRACE: This is David Grace of Covington &  
18 Burling. One important point on Mr. Farmer's operations, to  
19 re-emphasize what was in his testimony, is that there is a  
20 special U.S. refined sugar re-export program that is only  
21 available to companies or facilities that are found by the  
22 USDA to be refiners.

23           So USDA has come into his facilities, made a  
24 determination he is in fact a refiner and he is part of that  
25 program. There are only a limited number of refiners that

1 are in that program, including Imperial and Domino and some  
2 others. But his operations have already been audited and  
3 reviewed.

4 MR. SZUSTAKOWSKI: What about you Mr. Cuddy. All  
5 right, your operations are ADM's, are these melt houses  
6 different distinct from Mr. Farmer's or are they more as the  
7 petitioners describe them?

8 MR. CUDDY: I'm not that familiar with Mr.  
9 Farmer's operations, but the way that they described it this  
10 morning seemed like with a bathtub and a stick.

11 (LAUGHTER)

12 Our are big facilities that are very  
13 sophisticated, computer controlled, that bring in and out a  
14 lot of different raw materials and send out finished goods.

15 The cost figures -- we can put in the document,  
16 so that's what I would say about our facilities that we used  
17 to melt.

18 MR. SZUWSTAKOWSKI: In your facility, does that  
19 have the similar USDA certification that Mr. Farmer is  
20 discussing or is this something that can you convert raw  
21 sugar, like the petitioners group into the refined sugar, or  
22 do you have to start with the higher grade raw material  
23 input, like the estandar for the product?

24 MR. CUDDY: We don't currently buy any raw  
25 sugar, so again I'm not that familiar with this process, I

1 would have to know more about it to answer your question I  
2 believe.

3 MR. ARMERO: Chris Armero with Beta San Miguel, I  
4 would like to propose a definition of -- totally on my own  
5 here, I think Chris Cuddy from ADM, his plants are what you  
6 could describe as a melt station because he takes food grade  
7 refined sugar and makes food grade liquid sugar, and I think  
8 what the petitioners have done is they have tarred everyone  
9 with the same brush.

10 In the case of Mr. Farmer's process, he can take  
11 non-food grade sugar, the same TRQ raw sugar that the  
12 refiners buy and make it into food grade liquid sugar and  
13 the only difference between his facilities and one of the  
14 big refineries is that they are also in the dry sugar  
15 business which needs a hell of a lot more equipment and  
16 that's basically it.

17 For ten million dollars he said he could build  
18 the liquid part of a refinery, but then it takes another 140  
19 to build the ride part and I think that would be what I  
20 would suggest as the best definition. A melt house is  
21 someone who can take a food grade product, in this case  
22 refined sugar add water, melt it, ship it out. They are not  
23 really don't anything but liquefying and in some cases  
24 blending as ADM might do.

25 But in the case of Mr. Farmer's facility, he can

1 take a non-food grade product and make a food grade product,  
2 and that's I think, the key difference.

3 MR. SZUSTAKOWSKI: That was good, thank you.

4 MR. CONNELLY: This is Warren Connelly, I just  
5 want to add one thing. The fourth amended definition of the  
6 scope twice says that the like product, the imports include  
7 liquid sugar. If liquid sugar is part of the imports, then  
8 domestic liquid sugar producers are part of the domestic  
9 industry, by definition.

10 Now, maybe there is a doubt counting issue here,  
11 but if liquid sugar is within the scope, then domestic  
12 liquid sugar producers are domestic producers, there is no  
13 legal basis for excluding them.

14 MR. SZUSTAKOWSKI: I understand that you will be  
15 addressing that more in the post-conference brief.

16 MR. CONNELLY: Maybe, that's pretty much it.

17 (LAUGHTER)

18 MR. SZUSTAKOWSKI: Okay, let's see here, can  
19 someone describe for me the Mexican high fructose corn syrup  
20 consumption, what's happened let's say over the past five  
21 years or so, really since 2008 when the U.S. had unfettered  
22 access to it, to the Mexican market?

23 MR. CORTINA: Juan Cortina from the Sugar Chamber  
24 and I'm sure Chris can also comment. During the period of  
25 very high prices, there was a lot of substitution from sugar

1 to high fructose. As I said earlier, it peaked around 2012  
2 when Mexican consumption of high fructose reached around 1.8  
3 million tons equivalent to sugar.

4 This year and over the past two years, high  
5 fructose consumption has dropped in Mexico as sugar prices  
6 have also dropped. This year we are expecting consumption  
7 for high fructose in Mexico of close to 1.1 million tons of  
8 consumption so that is a significant drop from the peak and  
9 coincides with the fact that we have cheaper prices for  
10 sugar in Mexico.

11 MR. SZUSTAKOWSKI: You said that it was a 1.8  
12 million?

13 MR. CORTINA: 1.8 million ton consumption in  
14 Mexico in 2012.

15 MR. SZUSTAKOWSKI: 12/13?

16 MR. CORTINA: No, no, 11/12 which coincided with  
17 the peak in prices within the NAFTA region.

18 MR. SZUSTAKOWSKI: And what was that figure, what  
19 would that figure be back in 2010/2011, you are saying it is  
20 the peak, how much did it grow from?

21 MR. CORTINA: As soon as the market opened in  
22 2008, high fructose consumption in Mexico has started to  
23 increase because it was more competitive on pricing terms  
24 than sugar so especially the beverage manufacturers started  
25 substituting fructose for sugar. That peaked in 2011-2012

1 and since then, since sugar prices in the region have  
2 started to drop, there are some beverage companies that have  
3 come back to consume more sugar, given its competitiveness  
4 now.

5 MR. SZUSTAKOWSKI: How did Mexican sugar cane  
6 growers and the refiners, how did they respond to this  
7 competition from the high fructose corn syrup, did they,  
8 were they lowering their prices, were they shipping to the  
9 U.S.?

10 MR. CORTINA: You have to see the NAFTA market as  
11 a whole. The U.S. sends unfettered access to Mexican  
12 consumers of industrial consumers of high fructose, they  
13 send the high fructose without any duties, that displaces  
14 Mexican sugar and it in turn has been sent into the U.S.  
15 market so it is a two-way trade.

16 MR. SZUSTAKOWSKI: Mr. Cuddy, did you want to add  
17 anything?

18 MR. FARMER: No, I think he painted the picture,  
19 I have nothing to add. It makes sense to me.

20 MR. EARLEY: I could add something, Tom Earley,  
21 Agralytica. In the April situation from ERS, their updated  
22 figures on the annual consumption of HSCS and well under a  
23 million tons in 2009-10 to, I'm sorry, this is the imports  
24 from the U.S. so add about 500,000 tons, I'll just add that  
25 mentally here, and from 1.4 million tons in 2009-10 up to

1 almost 1.8 million tons in 2011-12 and it will be back down  
2 where it was in 2013-14 so there was a swing upwards and now  
3 it's coming back down.

4 MR. SZUSTAKOWSKI: Thank you.

5 MR. KAPLAN: I would just like to add that while  
6 there was some displacement in the beverage industry, the  
7 sugar you know has three uses, it could come to the United  
8 States, it could also go to the rest of the world and now it  
9 could go to ethanol. So it is not necessarily, a two-way  
10 trade situation because the volumes aren't pegged, it's a  
11 situation where a substitute enters and then there are  
12 various avenues it could go.

13 MR. SZUSTAKOWSKI: How big is the ethanol market  
14 and how big is the market for Mexican sugar used for  
15 ethanol?

16 MR. KAPLAN: I believe it is just starting up but  
17 I think --

18 MR. SZUSTAKOWSKI: Is it in its infant stages  
19 right now?

20 MR. RELLO: A project will start in May with the  
21 binding from PEMEX. This project will be around 119 million  
22 liters of ethanol yearly and it will start supplying some  
23 terminals to see whether it's appropriate to blend the  
24 ethanol with the PEMEX gasoline. This could be around 6%  
25 ethanol to 96% gasoline and this program is going to arise

1 during the future eight years to see whether we can  
2 substitute gasoline with a better product.

3 Ethanol will bring the gasoline produced for  
4 PEMEX Oxygen and more proliferation within the cities the  
5 Mexican cities to reduce contamination and also to look for  
6 the use of PEMEX.

7 MR. SZUSTAKOWSKI: Is this ethanol project, is  
8 this right now, is there an ethanol market in Mexico, or are  
9 there ethanol producers?

10 MR. RELLO: You have two ethanols. One which is  
11 close to alcohol and the ethanol anitras, it's the one that  
12 uses for gasoline. Right now we don't have any program with  
13 PEMEX. I am telling you that approval starts on May with  
14 the binding.

15 MR. SZUSTAKOWSKI: Thank you.

16 MR. ALTSCHULER: And we will be able to give you  
17 some more information about that as well.

18 MR. SZUSTAKOWSKI: I would appreciate that thank  
19 you. That concludes my questions, thank you very much.

20 MS. DEFILIPPO: Thank you Mr. Szustakowski, I  
21 will now turn to Mr. Von Schrilz for questions of this  
22 panel.

23 MR. VON SCHRILTZ: Thank you and thank you to  
24 everyone for coming here and answering our questions, it has  
25 been extremely helpful. I guess I would like to just



1 be very useful to the Commission's assessment of this issue  
2 but just having you lay it out in your post-conference  
3 briefs would be very helpful.

4 I have a question about the increase in subject  
5 imports in 2013. Now, you observed that subject's imports  
6 increased that year, non-subject imports declined. And so  
7 I'm wondering what was the, how did that happen? I mean how  
8 is it that subject imports increased by a million tons that  
9 year causing apparently non-subject imports to decline by a  
10 million short tons.

11 The petitioners argued this morning that well  
12 it's because of the low prices that were offered on sugar  
13 imported from Mexico. The low price being offered made it  
14 uneconomical for importers of non-subject sugar to enter the  
15 U.S. market because of the difference between world price and  
16 U.S. price just wasn't enough to make it worth their while.

17 How do you respond to that and explain exactly  
18 how the subject imports display such a large quantity of  
19 non-subject imports so quickly.

20 MR. FARMER: This is Paul Farmer, so during 2012  
21 when world sugar prices are very high. The highest since  
22 1980, I'm out there purchasing sugar from Mexico or from  
23 other countries to hedge my forward sales to Unilever, Dean  
24 Foods, you pick the company but I need some kind of  
25 supplying offset.

1           So I'm selling sugar for 2013 and 2014 at 35/40  
2 cents a pound and I need supply, right, so I go out to  
3 anybody that will sell me sugar to the United States and  
4 when I go to other countries like Dominic Republic, you can  
5 pick any one of the 40 countries that would have quota, half  
6 of them in that year basically said, you know the difference  
7 between the world market and the U.S. market is not enough  
8 to pay the freight because world prices were so high.

9           And that's the context you really have to  
10 understand is that we are talking about world prices being  
11 more than double what they were two years earlier and  
12 probably three times the price that they were on average for  
13 the previous ten years and they are there either because of  
14 the tightness of the world market or in my view, because of  
15 wild speculation from commodity funds.

16           So the reality is that sugar prices trade, raw  
17 sugar prices are trading at 30 cents in the world market,  
18 they don't want to come to the U.S. There is no need. So  
19 I end up buying Mexican sugar, that's why.

20           You look at the Dominican Republic sugar, it goes  
21 to the EU, you look at the Columbian sugar these days, its  
22 also going to the EU. Look at Guatemalan sugar, Central  
23 American sugar and this year a lot of it is going to the EU,  
24 and we are not the only country that has quotas that have  
25 opened up, so the game kind of changes as prices go up and

1 down but clearly simply because of high prices during the  
2 previous year, not low prices. At least that's in our  
3 experience.

4 MR. ROSENTHAL: Mr. Von Schrittz, this is Paul  
5 Rosental and that's why we don't accept the contention, and  
6 we are using the words displaced, Mexican sugar didn't  
7 displace the TRQ imports, it was the other way around, the  
8 TRQ imports decided to go elsewhere, or in some instances  
9 there wasn't enough supply and the Mexican imports were  
10 residual suppliers, because the TRQ imports weren't here, so  
11 the petitioners in this case are unfortunately confusing  
12 correlation with causation.

13 Yes the Mexican imports were here because they  
14 were available and the others were not.

15 MR. KAPLAN: As an economic point, you know, why  
16 did they displace the non-subject imports but yet the total  
17 imports declined? So, typically the Commission looks at who  
18 is increasing market share against imports in total, or  
19 losing share to imports in total when making those kinds of  
20 price distinctions that you were talking about in terms of  
21 causation.

22 I think there's another reason that -- I keep  
23 bringing up Paul, because I've learned everything from him,  
24 and he could -- maybe I'll remind him of what he told me and  
25 told me I'm wrong or expand on it, but I think there is some

1 vertically integrated and multi-national companies in this  
2 industry and some of those companies have control over their  
3 own stocks and where to send them and I believe he mentioned  
4 that some of these companies makes decisions to send it to  
5 other markets than the United States and it wasn't a trading  
6 decision.

7 Did I get that right?

8 (LAUGHTER)

9 MR. FARMER: That is correct but I don't want to  
10 talk about names.

11 MR. VON SCHRILTZ: Okay so in other words, your  
12 view is that it was the high prices, high global prices in  
13 2012 that made it unattractive for the TRQ countries to send  
14 their sugar to the U.S. market and so importers needed to go  
15 to Mexico to find a ready supply to fill contracts in 2013  
16 that otherwise might have used the TRQ sugar.

17 MR. FARMER: That is correct and I can tell you  
18 that so when the world price markets, world market starts to  
19 go up, the first phone call I get is from the USDA who wants  
20 to know if the world prices goes to a certain level, which  
21 countries are going to ship and I provide them the  
22 spreadsheet which shows the transportation that goes from  
23 each country.

24 And the transportation costs can be anything from  
25 2 cents a pound to 4 cents a pound and then on top of that

1 you have to add in whether or not their domestic is higher  
2 in that country or not and you estimate which country is  
3 going to ship.

4 From 2000 to more or less 2008, except for a  
5 brief point in time after Katrina, the world market was  
6 substantially below the U.S. market, say 10 cents below, or  
7 7 cents below or something like that, so even if you have 4  
8 cents in transportation costs, to get to the United States  
9 let's say from the Philippines, right, they are going to  
10 ship, because it's still better than the world market, that  
11 is if they have an exportable surplus which they don't  
12 always have.

13 When the world market goes up, it comes right up  
14 to the U.S. market, usually within a couple of cents, right,  
15 and then the Philippines is not going to ship, Brazil won't  
16 ship because there is a small duty on Brazil. You look at a  
17 bunch of different factors in there and all of a sudden your  
18 shipments under the regular quota plummet, that's the  
19 answer.

20 MR. VON SCHRILTZ: Why was Mexico willing to  
21 serve the U.S. market instead of selling its sugar into the  
22 world third country markets, where the prices were high and  
23 perhaps transportation costs were lower, maybe Central  
24 America, South America?

25 MR. FARMER: I can tell you that during most of

1 2012, we were paying virtually the same prices for world  
2 sugar and U.S. sugar because the raw sugar prices basically  
3 matched up with each other, because the world sugar price  
4 had more than doubled.

5 So when you get to that, and I think it was  
6 talked about earlier, I actually imported world sugar price  
7 at one point -- world sugar at one point in time, right, and  
8 paid the full tax because the refined sugar pricing in the  
9 United States had departed completely from the raw sugar  
10 price. Whereas normally it would be 6, 7 cents a pound  
11 higher than the raw sugar price, all of a sudden its 20  
12 cents a pound higher.

13 So 2009-2012 was an enormous disturbance in the  
14 market, it was a huge bonus for everybody but the reality is  
15 that's not a normal period of time of pricing and a lot of  
16 crazy things happened during that period of time.

17 MR. KAPLAN: And this was at a time when the USDA  
18 was predicting more sugar needed in the United States in  
19 2013 when Mr. Farmer was doing this in 2012 and I don't know  
20 if Tom Earley would expand on that, the details of the  
21 market.

22 MR. EARLEY: Well it's always hard to predict the  
23 future but I think another factor is that we in 2011-12, we  
24 had even before the April quota increase, we had a higher  
25 level of quota coming in. I think what you had though, part

1 of what you have to do is say what is going to happen over  
2 the next couple of years.

3 Are you going to see the same pattern or  
4 something different and this question that a quota fill rate  
5 is extremely important. I had mentioned the expectation  
6 that world share prices are going to remain higher than they  
7 have in the past and closer to U.S. levels and the reason is  
8 renewal fuel programs around the country here, in Europe and  
9 elsewhere for biodiesel and ethanol have resulted in a very  
10 close linkage between the petroleum price, sugar prices and  
11 corn prices so you basically have support going to the cane,  
12 the pricing in the sugar cane industry worldwide that is  
13 linked to energy, so if you have a situation where the world  
14 price is actually close to the U.S. price and the  
15 differentials are very narrow, we are going to have a  
16 continuing problem of getting normal quota holders to send  
17 sugar here.

18 As Paul mentioned, 25 of them no longer even  
19 export sugar, a lot of them are far away, it is a steadily  
20 declining percentage of the quota being filled each year and  
21 that is just going to continue to be happening which is why  
22 we need access to freely available Mexican sugar within a  
23 jointly government regulated market that tries to keep  
24 things in balance.

25 MR.VON SCHRILTZ: Well actually that's a nice

1 segway into my next question, I'm wondering why did the USDA  
2 ask the Mexican government to reduce its sugar exports to  
3 the U.S. market in mid-2013 if, as you are suggesting, the  
4 imports were needed to fill a gap left by the TRQ imports  
5 that were not being shipped?

6 MR. FARMER: The problem is you are always  
7 talking about a future point in time and what other people  
8 are going to do based on certain marketing conditions which  
9 are never certain, so when you look at the USDA increase in  
10 the quota of 400,000 tons the year before and then ended up  
11 with more than 400,000 tons of additional surplus, you know,  
12 things like that, they are never going to be exactly right.

13 I mean quite frankly it's amazing how well they  
14 have actually done over the years. You are trying to  
15 project forward for beet crops and cane crops that have  
16 easily swings of a half of a million tons each and if on any  
17 given year they happen to swing all one way, it goes bad,  
18 that's kind of what we have experienced.

19 I would like to point out one thing from a  
20 previous question. The prices that I pay for Mexican sugar,  
21 I would be thrilled to death if somebody at this table here  
22 would actually sell me sugar at a discount, they don't. I  
23 pay the same price for Mexican sugar as I do for Guatemalan  
24 sugar or Philippine sugar or anybody else, when you equalize  
25 the freight, right and I compete every day against a half a

1 dozen other trading companies as well as refineries like  
2 Imperial and Domino, so as far as I know, there's no discounted  
3 standard sugar or raw sugar that is hitting the U.S. market,  
4 it just doesn't exist.

5           If anything, I'm paying a premium right, in  
6 exchange maybe I get a little bit better quality because it  
7 is a little easier to find or maybe I have a little bit of  
8 better shipment terms or when I ship it or so on, but you  
9 are not talking about anything other than a few hundredths  
10 of a cent per pound.

11           MR. EARLEY: This is Todd Earley, going back to  
12 your question about 2013. 2011-12 in the spring, April of  
13 that year USDA was forecasting an ending stock ratio of  
14 about 8%, the target is about 15% so that's like a  
15 difference of 7 or 800,000 ton. Sweetener Users Association  
16 and others recommended very strongly that they increase the  
17 quota.

18           They didn't. They went part way, they increased  
19 it 400,000 tons in that April. Six months later, at the end  
20 of the year ending stocks were 1.1 million tons higher than  
21 projected in April so they increased the quota 400,000 tons,  
22 300,000 of TRQ sugar came in out of that. Another 800,000  
23 tons that showed up, 100,000 tons, they revised leaving  
24 stocks up because of misreporting by producers in the  
25 previous year.

1 Consumption went up 150,000 tons, domestic  
2 production went up, the exact number 100,000 tons and next  
3 the Mexican crop turned out better and they exported less,  
4 the consumption was lower, production was higher, so another  
5 300,000 tons from Mexico so it was a half a dozen things  
6 that should up.

7 So going to 2012-13, they asked about -- we  
8 started the year with 2 million tons of stocks which was you  
9 know a half million tons more than we needed, and U.S.  
10 production went up a half million tons so, compared to  
11 earlier, and we started with a million tons more stocks and  
12 domestic production in the system and that affected  
13 basically how people were looking at import requirements for  
14 that year.

15 MR. KAPLAN: I think another way to put this in  
16 the context, the cases that we usually see at the  
17 International Trade Commission, is that a steel company  
18 doesn't accidentally produce another three million tons of  
19 steel, but in agricultural markets, forecasts could be wrong  
20 and that could happen because the weather is good and so  
21 your point was why suddenly did you have to pull it out, is  
22 because there was this unexpected, this 1.1 million tons  
23 from the market, there was this unexpected year that the  
24 best forecasters, private and government didn't see coming  
25 and then you look at the charts and you go "my God that's

1 the best year ever".

2           And so now suddenly you have to act and in a  
3 normal unregulated market, what happens, you know the market  
4 adjusts, but here immediately, the governments get together  
5 and the governments take action. Now does the market adjust  
6 instantaneously to that? No. But it adjusts much, much  
7 faster than it would in a market without cooperation so  
8 unexpected events occur because it is agriculture and you  
9 have this system in place to try to ameliorate these  
10 unexpected events, which was what happened, so I hope that  
11 puts it in the context of other ITS cases.

12           All the facts here I think are perfectly in line  
13 with what actually did happen and then you are looking at it  
14 and saying boy this different than what we usually see.

15           MR. ALTSCHULER: And that's why we want to take  
16 time in the brief to explain to you the CCA, the  
17 Consultative Committee on Agriculture, the particular  
18 sweeteners working group, because you know the other side  
19 has tried to give you the impression that well this is just  
20 kind of a one-time thing and it wasn't such a big deal, but  
21 this is part of a really ongoing, bilateral effort to  
22 coordinate the market. There's the sugar program and then  
23 there's the removal of restrictions under NAFTA in 2008 but  
24 immediately they were replaced with this consultation  
25 mechanism and the sweeteners working group to exchange

## ATTACHMENT 6



COVINGTON & BURLING LLP

The Honorable Lisa R. Barton  
April 23, 2014  
Page 2

CSC Sugar business information. It has not been possible to prepare meaningful public summaries of these materials. *See* 19 U.S.C. § 1677f(b)(1)(A)(i).

CSC Sugar consents to the release of its business proprietary information under an appropriate Administrative Protective Order (“APO”).

Please do not hesitate to contact me if you have any questions.

Respectfully submitted,

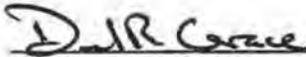
  
David R. Grace

COVINGTON & BURLING

**CERTIFICATION OF COUNSEL**

I, David R. Grace, of Covington & Burling, counsel to CSC Sugar, LLC, hereby certify pursuant to 19 C.F.R. § 201.6(b)(3)(iii) that information substantially identical to the information for which we are requesting proprietary treatment in the attached submission is not available to the general public.

Further, in accordance with 19 C.F.R. § 207.3(a), I hereby certify that (1) I have read the attached submission, (2) based on the information made available to me by CSC Sugar, LLC, I have no reason to believe that this submission contains any material misrepresentation or omission of fact.

  
\_\_\_\_\_  
David R. Grace

April 23, 2017  
Date



### CERTIFICATE OF SERVICE

I, David R. Grace, hereby certify that on this 23d day of April 2014, a copy of the attached submission was served by hand on the following:

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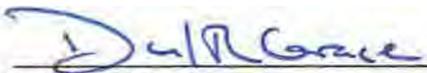
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April 23, 2014

PUBLIC VERSION

*Business Proprietary Information Deleted  
on pages 4-6 and 8-13*

UNITED STATES  
INTERNATIONAL TRADE COMMISSION

In the Matter of  SUGAR FROM MEXICO	) ) ) ) ) )	Inv. Nos. 701-TA-513 and 731-TA-1249 (P)
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POST-CONFERENCE STATEMENT  
OF  
CSC SUGAR, LLC

Counsel

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April 23, 2014

## INTRODUCTION

This Post-Conference Statement is submitted on behalf of CSC Sugar, LLC (“CSC” or “the Company”) to address a question from Mr. Von Schrittz at the Staff Conference. Mr. Von Schrittz requested that the Company provide a more detailed explanation as to why it qualifies as a member of the domestic industry in this proceeding. In particular, he requested that CSC address the six factors that the Commission generally considers when determining whether a company is engaged in a sufficient level of domestic production-related activity to qualify as a domestic producer. *See* Transcript at 238.

As discussed in detail below, CSC operates refineries in the United States that manufacture products that are identical to subject merchandise. Even under the standards proposed by petitioners, it is clear that the Company’s U.S. facilities are not “melt houses,” but rather, true refining operations. Moreover, they have been inspected by USDA and determined to constitute refineries for purposes of the U.S. Refined Sugar Re-Export Program. In addition, they easily satisfy the Commission’s traditional six-factor test.

## DISCUSSION

### **I. CSC’s U.S. Refineries Produce Liquid Sugar and Invert Syrup, Products that Are “Like” the Subject Imports.**

Of course, the starting point in any “domestic industry” analysis is the scope definition used to determine the merchandise subject to investigation (the “subject imports”). *See* 19 U.S.C. § 1677(4)(A). In this instance, that scope definition covers

- 2 -

Mexican “sugar derived from sugar cane or sugar beets.” Moreover, the scope definition expressly covers sugar in a variety of forms, including --

“...raw sugar (sugar with a sucrose content by weight in a dry state that corresponds to a polarimeter reading of less than 99.5 degrees) and *estandar* or standard sugar which is sometimes referred to as “high polarity” or “semi-refined” sugar (sugar with a sucrose content by weight in a dry state that corresponds to a polarimeter reading of 99.2 to 99.6 degrees). Sugar within the scope of these investigations also includes refined sugar with a sucrose content by weight in a dry state that corresponds to a polarimeter reading of at least 99.9 degrees. Sugar within the scope of these investigations includes brown sugar, liquid sugar (sugar dissolved in water), organic raw sugar and organic refined sugar.”

See Exhibit 1 (Scope Appendix from the Commerce Department Notice of Initiation) (emphasis added).

At the Staff Conference, Mr. Farmer, the President and CEO of CSC Sugar, testified that the Company operates refineries in the United States, which produce liquid sugar and invert syrup. Transcript at 183. Mr. Farmer further testified that these products were covered by the latest, revised scope definition proposed by the Petitioners. *Id.* That proposed definition was adopted in the Commerce Department’s initiation notice (quoted above). There does not appear to be any dispute that CSC produces sugar products in the United States that are “like” (identical to) certain subject imports.

## II. CSC’s U.S. Refineries Are Not “Melt Houses.”

The Petitioners are seeking (or were seeking at one point in time<sup>1</sup>) to exclude CSC from domestic industry definition on the ground that it constitutes a “melt

---

<sup>1</sup> In light of the testimony by Paul Farmer at the ITC Staff Conference concerning the nature and extent of CSC’s U.S. refining operations, it is not clear whether the Petitioners continue to take this position.

- 3 -

house” that engages in only a minor level of U.S. production-related activity. *See* Petition at 28, note 38 (Public Version).

To understand why Petitioners’ argument is wholly without merit, one need only compare Petitioners’ description of so-called “melt houses” with the refinery operations at the CSC facilities. In this regard, the Petitioners have stated that --

“Melt houses essentially mix Mexican sugar with water and then filter it in order to produce liquid sugar . . . Melt houses must obtain edible sugar -- refined or *estandar* -- from producers in the United States, mills in Mexico, or producers in other countries. Melt houses do not increase the purity of the sugar.”

Petition at 29 (Public Version) (emphasis added).

At the Staff Conference, Petitioners’ counsel drew the following distinction between refiners and “melt houses” --

“{Melt houses} take refined sugar or semi-refined sugar and liquefy it. Refiners take *estandar* as a semi-refined product, or raw sugar, as a less refined product, and produce refined sugar from both those feedstocks.”

Transcript at 82. Indeed, Mr. O’Malley, the President and CEO of Domino Foods, characterized the “melt houses” as mere “transfer stations” -- “they transfer bulk rail sugar to bulk trucks to customers, and also liquefy.” *Id.* at 63.

Whatever the Commission’s view on the status of such “melt houses,” it is not relevant to CSC because the Company’s U.S. refineries do far more than liquefy a refined or semi-refined sugar.

As Mr. Farmer testified, CSC’s U.S. facilities are “true refining operations” that can take sugar with a polarimeter reading (purity) of 98.5% (*i.e.*, the standard type of sugar that comes into a cane refinery) and refine that input product until

- 4 -

it reaches a purity level of over 99.9% (the standard applied to refined sugar). *See* Transcript at 183, 208. The resulting end-product is “interchangeable with what {CSC’s customers} buy from any other cane refinery or beet sugar producer.” *Id.* at 208.

At the Staff Conference, Mr. Framer testified that the CSC refineries use carbon, ion exchange resin, diatomaceous earth, and press filtration to purify raw sugar into its refined form. *Id.* at 183. There follows a more detailed description of the refining process at the CSC facilities.

As an initial matter, CSC receives inputs (raw sugar and estandar) via bulk vessel, rail and truck. [

]. It should be emphasized that the inputs (raw sugar and estandar) are not food grade products; they must be further refined. [

2

---

<sup>2</sup> CSC’s refinery facilities use [

]. CSC is one of the few companies in the sugar refining business that continues to innovate, rather than simply accept longstanding (and often out-of-date) industry practices.





- 7 -

Export Program. *See* Transcript at 184. Indeed, CSC has the exact same status under the program as Domino and Imperial. *Id.*

Under the Re-Export Program, qualified U.S. refiners are issued licenses to import raw sugar to be refined and re-exported in a refined form or in sugar-containing products. *Id.* Accordingly, USDA must be satisfied that an applicant has the ability to refine raw sugar in the United States. (Something well beyond the capacity of the “melt houses” described by Petitioners.)

In summary, the U.S. refineries operated by CSC are engaged in a complex refining process that takes raw sugar and semi-processed sugar (such as *estandar*) and improves the purity of the inputs to match that of the refined sugar produced by the refineries operated by the Petitioners. By Petitioners’ own testimony, this type of activity distinguishes “refineries” from “melt houses,” which are not capable of improving the purity of inputs. It is thus clear that the exclusion request in the Petition was based on a fundamental misunderstanding of the nature and extent of CSC’s U.S. refinery operations.

### **III. CSC’ U.S. Refinery Activities Are Sufficient to Constitute Domestic Production Under the Commission’s Traditional Six-Factor Analysis.**

Based on the preceding discussion, it is clear that CSC’s refining facilities are not “melt houses” and should not be excluded from the domestic industry on that basis. The following discussion of the Commission’s traditional six-factor analysis of domestic production-related activity only serves to confirm this conclusion.

- 8 -

In determining whether a company is engaged in a sufficient level of domestic production-related activity to qualify as a domestic producer, the Commission generally considers six factors:

1. the source and extent of the firm's capital investment;
2. the technical expertise involved in U.S. production activities;
3. the value added to the product in the United States;
4. U.S. employment levels;
5. the quantity, type and source of parts sourced in the United States; and
6. any other costs and activities in the United States directly leading to production of the like product.

*See Crystalline Silicon Photovoltaic Cells and Modules From China*, Inv. Nos. 701-TA-481 and 731-TA-1190 (Final), USITC Pub. 4360 at 12, note 94 (November 2012).

Each of the six factors is discussed in detail below. It should be emphasized that no single factor is determinative, and that the Commission may consider any other factors it deems relevant in light of the specific facts of the investigation. *Id.*

**1. CSC Has Made Significant Capital Investments in Its U.S. Refining Operations.**

CSC has invested over \$[ ] million in its refining operations over the past six (6) years, not including the cost of R&D, product development, and marketing. The source of funding for these investments is discussed in detail in CSC's questionnaire response. The Company has designed its refinery process specifically so as to cut out parts of the conventional dry sugar process that add no value to CSC or its customers. As



- 10 -

**2. The Company's Sugar Refining Operations Require Significant Technical Expertise.**

As discussed in detail above, the CSC refinery process involves a number of highly-technical steps that require constant monitoring and testing. [

] CSC remains at the forefront of the technological developments in the sugar refinery industry.

**3. Significant Value Is Added by the U.S. Processing.**

CSC purchases [

] -

CSC refines the raw sugar into a food grade product and sells it at levels competitive with other refiners. All of the processing takes place in the United States, using U.S. workers. CSC's refining costs are [



].<sup>4</sup>

**6. Other Costs and Activities in the United States Are Significant.**

As previously discussed, CSC [

]. CSC is

one of the few companies in the sugar refining business that continues to innovate, rather than simply accept longstanding (and often out-of-date) industry practices. Simply put, everyday CSC processes raw sugar that is not food grade by anyone’s standard, and refines it into finished product that is delivered to large first class food manufacturers who use it in the production of their products without hesitation. CSC’s products are used interchangeably with similar products sold by other cane refiners. [

].

However, equipment is only part of the refining process. Food safety, Good Manufacturing Practices (“GMP”), and employee health and safety are also integral components. In this latter regard, [

]. CSC’s facilities and

---

<sup>4</sup> Petitioners have previously taken the position that no U.S. refineries should be excluded from the domestic industry, [

]. See Petition at 25-27 (Public Version).

- 13 -

procedures have also been inspected and approved by many of the largest food companies in the United States, including [

].

CSC is regularly told by its customers that the Company's refineries are superior in all respects to those of its competitors.

### CONCLUSION

In summary, CSC Sugar, LLC operates refineries in the United States that manufacture products that are identical to subject merchandise. Even under the standards proposed by petitioners, it is clear that the Company's U.S. facilities are not "melt houses," but rather, true refining operations. Moreover, the USDA has determined that CSC owns and operates refineries for purposes of the U.S. Refined Sugar Re-Export Program. In addition, they easily satisfy the Commission's traditional six-factor test. Accordingly, CSC clearly qualifies as a member of the domestic industry in this proceeding.

Respectfully submitted,



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Counsel for CSC Sugar, LLC

# EXHIBIT 1

## Appendix

### Scope of the Investigation

The product covered by this investigation is sugar derived from sugar cane or sugar beets. Sucrose gives sugar its essential character. Sucrose is a nonreducing disaccharide composed of glucose and fructose linked via their anomeric carbons. The molecular formula for sucrose is  $C_{12}H_{22}O_{11}$ , the International Union of Pure and Applied Chemistry (IUPAC) International Chemical Identifier (InChI) for sucrose is 1S/C12H22O11/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,1-3H2/t4-,5-,6-,7-,8+,9-,10+,11-,12+/m1/s1, the InChI Key for sucrose is CZMRCDWAGMRECN-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 within the scope of this investigation includes raw sugar (sugar with a sucrose content by weight in a dry state that corresponds to a polarimeter reading of less than 99.5 degrees) and estandar or standard sugar which is sometimes referred to as "high polarity" or "semi-refined" sugar (sugar with a sucrose content by weight in a dry state that corresponds to a polarimeter reading of 99.2 to 99.6 degrees). Sugar within the scope of this investigation includes refined sugar with a sucrose content by weight in a dry state that corresponds to a polarimeter reading of at least 99.9 degrees. Sugar within the scope of this investigation includes brown sugar, liquid sugar (sugar dissolved in water), organic raw sugar and organic refined sugar.

Inedible molasses is not within the scope of this investigation. Specialty sugars, *e.g.*, rock candy, fondant, sugar decorations, are not within the scope of this investigation. Processed food products that contain sugar, *e.g.*, beverages, candy, cereals, are not within the scope of this investigation.

Merchandise covered by this investigation is typically imported under the following headings of the Harmonized Tariff Schedule of the United States (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, 1701.99.1025, 1701.99.1050, 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 investigation is dispositive.

## ATTACHMENT 7



Barcode:3805825-02 C-201-846 SUSP - Suspension Agreement -

Gabon 7,258,000 kg  
Guatemala 50,546,000 kg  
Guyana 12,636,000 kg  
Haiti 7,258,000 kg  
Honduras 10,530,000 kg  
India 8,424,000 kg  
Jamaica 11,584,000 kg  
Madagascar 7,258,000 kg  
Malawi 10,530,000 kg  
Mauritius 12,636,000 kg  
Mexico 7,258,000 kg  
Mozambique 13,690,000 kg  
Nicaragua 22,114,000 kg  
Panama 30,538,000 kg  
Papua New Guinea 7,258,000 kg  
Paraguay 7,258,000 kg  
Peru 43,175,000 kg  
Philippines 142,160,000 kg  
South Africa 24,220,000 kg  
St. Kitts & Nevis 7,258,000 kg  
Swaziland 16,849,000 kg  
Taiwan 12,636,000 kg  
Thailand 14,743,000 kg  
Trinidad-Tobago 7,371,000 kg  
Uruguay 7,258,000 kg  
Zimbabwe 12,636,000 kg

HTS NUMBERS:

Barcode:3805825-02 C-201-846 SUSP - Suspension Agreement -

First Tariff Field Second Tariff Field

Low Rate: (CQE required)

1701.13.1000 Blank

1701.14.1000

High Rate: (No CQE required)

9904.17.01 1701.13.5000 or 1701.14.5000

9904.17.02

9904.17.03

9904.17.04

9904.17.05

9904.17.06

Re-export Sugar

1701.13.2000 or 1701.14.2000

#### **REPORTING INSTRUCTIONS:**

Use entry type 02, 06, 07, 12, 23, 32, 38, or 52

All raw cane sugar, HTS numbers 1701.13.1000 or 1701.14.1000, must be sampled in accordance with Customs Directive 3820-001B, dated May 01, 2007.

Report in kilograms (kg)

#### **SPECIAL INSTRUCTIONS:**

An original certificate of quota eligibility (CQE) is required for raw cane sugar entry(s) with country specific allocations for the in-quota duty rate. The CQE must be transmitted electronically via the Automated Broker Interface (ABI). If the CQE has not been transmitted in ABI; the entry summary should be returned to the filer for corrective action. In addition, CQE number annotations in the quota module's remarks field or via the electronic note system in ACS are no longer needed.

Any country without a quantity allocation, which is not subject to a United States embargo, may export raw cane sugar, provided it is entered at the over-quota duty rate. These countries are not required to furnish a CQE.

Barcode:3805825-02 C-201-846 SUSP - Suspension Agreement -

Note: The quantity to be charged for quota purposes is based on a 98.8-degree polarity with a conversion factor of 1.04909. This is to ensure that the individual country quotas do not overfill when the final raw value becomes available. HQ Quota Branch will make the conversion.

### **DISTRIBUTION:**

Please ensure that this notice is passed to all port directors, assistant port directors (trade), import specialists, entry specialists, CBP officers, and other interested parties such as brokers and importers.

Questions from the importing community regarding this electronic message should be referred to the local CBP port. The port may refer their questions through email to [HQUOTA@cbp.dhs.gov](mailto:HQUOTA@cbp.dhs.gov) (mailto:HQUOTA@cbp.dhs.gov).

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**Tags:** Trade



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

August 7, 2017

MEMORANDUM FOR: 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 *PLS*  
Deputy Assistant Secretary  
for Policy & Negotiations  
Enforcement and Compliance

SUBJECT: Memorandum Addressing Comments on the Amendment to the  
Agreement Suspending the Antidumping Duty Investigation on  
Sugar from Mexico

**I. Background and Summary**

On December 14, 2014, the Department of Commerce (the Department) and a representative of the association comprised of producers/exporters accounting for substantially all imports of sugar from Mexico (Cámara Nacional de Las Industrias Azucarera y Alcoholera, the Mexican Sugar Chamber (Cámara)) signed the Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico (the Agreement).<sup>1</sup>

On June 6, 2017, the Department and the Government of Mexico, acting on behalf of the Mexican sugar industry, announced an agreement in principle to a draft amendment to the Agreement. On June 14, 2017, the Department and a representative of the Mexican sugar industry initialed a draft amendment to the Agreement (the draft amendment or, as integrated into the Agreement, the draft amended Agreement).

We invited interested parties to provide written comments on the proposed amendment by no later than the close of business on June 21, 2017, with an opportunity for rebuttal comments to be received no later than June 26, 2017. On June 17, 2017, the Department released draft statutory and price suppression memoranda and invited interested parties to provide written comments by no later than the close of business on June 23, 2017, with rebuttal comments due no later than the close of business on June 26, 2017.

<sup>1</sup> See *Sugar From Mexico: Suspension of Antidumping Investigation*, 79 FR 78039 (December 29, 2014) (the Agreement).





## II. Discussion of the Issues<sup>6</sup>

### Comment 1: Polarity change for Refined vs. Other Sugar

- CSC Sugar argues that “{t}he worldwide standard for identifying sugar as refined sugar is sugar with a polarization of 99.5 degrees or above, and raw sugar as anything below 99.5 degrees.”<sup>7</sup> CSC further argues that the reason for the change in the split between Refined and Other Sugar in the draft amendment to 99.2 degrees polarity is “to harm CSC Sugar by increasing its cost of refining as compared to our competitors.”<sup>8</sup> CSC Sugar argues that the traditional refineries depend on lower quality raw sugar and that the change will harm and limit domestic competition.<sup>9</sup> CSC Sugar cites to its investments and the enormous investment that will be needed to help the company survive.<sup>10</sup> The company asks for a waiver from, or a phase-in for five years of, the 99.2 polarity provision in order to allow the company time for investment in changes to its production facilities.<sup>11</sup>
- SUA supports the portion of the “Other Sugar”<sup>12</sup> definition which permits “Additional U.S. Needs Sugar” to enter at a polarity of less than 99.5.<sup>13</sup> They note that “this polarity is an international standard as a breakpoint between raw and refined sugar.”<sup>14</sup> It is, in their view, “incorporated in the Harmonized Tariff Schedules of the United States, so it is in fact the 99.2 breakpoint which constitutes an exception or special treatment.”<sup>15</sup> Although they do not specifically oppose the use of a 99.2 polarity standard in this case, they state that “Additional U.S. Needs Sugar should be treated in a manner more consistent with international practice.”<sup>16</sup>

### Rebuttal Comments

- ASC cites to the holding of the Court of International Trade (CIT) that “injury to refiners that rely on low-priced imports as a raw material is not a relevant consideration under the

<sup>6</sup> In many cases, interested parties submitted the same set of comments on the record of both the Agreement Suspending the Countervailing Duty Investigation on Sugar from Mexico and the Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico. The Department is addressing those comments in the context of the respective agreement to which they relate.

<sup>7</sup> See CSC Sugar’s submission dated June 21, 2017 (CSC Comments) at 2.

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

<sup>9</sup> *Id.* at 3.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> “Other Sugar” and “Additional U.S. Needs Sugar” are terms defined in Section II.F and Section II.O, respectively, of the amendment to the Agreement.

<sup>13</sup> See SUA’s submission entitled “A-201-845 and C-201-846 – Amendments to Agreements Suspending the Antidumping and Countervailing Duty Investigations on Sugar from Mexico” (June 21, 2017) (SUA Comments) at 2.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*



continuing injury to the domestic industry.”<sup>26</sup> ASC also questions “why an exemption is needed when it claims CSC Sugar is on the record that it can refine sugar with a polarity less than 99.2.”<sup>27</sup>

- Zucarmex, which is a U.S. business with a liquefying operation in Tucson Arizona, asks that “to the extent any waiver, phase-in period or mitigating action is granted to CSC, or any other party, we ask that it also apply to Zucrum Foods LLC.”<sup>28</sup>

### Department’s Position:

The Department disagrees with CSC Sugar that the Agreement must follow the “world-wide standard for identifying sugar as refined sugar is sugar with a polarization of 99.5 degrees or above, and raw sugar as anything below 99.5 degrees.”<sup>29</sup> The Department has consulted with stakeholders and has crafted a structure for the amended Agreement and amended CVD Agreement (together, the amended Agreements) that includes lowering the dividing line between Refined Sugar<sup>30</sup> and Other Sugar in order to ensure that sufficient supplies of Other Sugar are available for domestic producers’ operations. This structure also includes a requirement that such Other Sugar is transported freely-flowing, in ocean-going vessels. Specifically, the amended Agreements together are designed to alleviate the concerns regarding significant quantities of Other Sugar bypassing the traditional cane refiners for direct consumption or end use, thereby suppressing and/or undercutting prices of sugar refined by traditional cane refiners to above 99.5 degrees in polarity. Sugar that is under 99.2 degrees in polarity and shipped in bulk, freely flowing, *i.e.*, not in food-grade conditions, is likely to require further processing because of its lower purity and because it has not been packaged to protect from contamination. The change in the definition of Other Sugar in terms of polarity, and the requirement that Other Sugar is to be shipped in bulk, freely-flowing, ensure to the fullest extent possible that, under the amended Agreements, sugar entering subject to the lower reference price will be sold in the market segment of sugar that requires further processing. Together with enhanced monitoring and testing provisions in the amended Agreements, the 99.2 polarity division between Refined and Other Sugar will address one of the main issues raised by the U.S. domestic industry that is entitled to relief under the antidumping (AD) and countervailing duty statutes.<sup>31</sup>

The Department notes ASC’s quotation from the testimony of CSC Sugar that CSC Sugar “can

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 8-9.

<sup>28</sup> See Zucarmex’s submission entitled “Sugar from Mexico – Rebuttal Comments on Draft Agreement Amendments” (June 26, 2017) at 2.

<sup>29</sup> See CSC Comments at 2.

<sup>30</sup> “Refined Sugar” is a term defined in Section II.H of the amendment to the Agreement.

<sup>31</sup> See Memoranda to Gary Taverman from P. Lee Smith entitled “Amendment to the Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico: U.S. Import Coverage, Existence of Extraordinary Circumstances, Public Interest, and Effective Monitoring Assessments” (Statutory Memorandum) and “Amendment to the Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico: The Prevention of Price Suppression or Undercutting of Price Levels by the Amended Agreement,” (Price Suppression Memorandum) both dated August 7, 2017, for further details on how the amendment to the Agreement meets the statutory requirements.



compliance with their respective statutory requirements.<sup>34</sup>

## Comment 2: Ocean-Going Vessels Requirement

- SUA “opposes the use of the definitions of Refined and Other Sugar to discriminate among individual cane refining companies.”<sup>35</sup> SUA claims that “definitions limit the ability to import Other Sugar to only those companies with the capacity to receive bulk shipments in ocean-going vessels.”<sup>36</sup> SUA believes that the change in the definitions for Refined and Other sugar “are designed to limit competition from inland refineries.”<sup>37</sup> Moreover, they argue that “favoring traffic that goes through certain ports of entry but disfavoring traffic through other ports, may raise Constitutional issues.”<sup>38</sup>

## Rebuttal Comments

- ASC argues that the “proposed Amendments permit the export of sugar from Mexico in any type of package, by any manner of shipment to any person in any location in the United States.”<sup>39</sup> They further note that “{o}cean going vessels can and do unload bulk sugar into barges that then carry the sugar to destinations all over the United States, including Chicago, Illinois via the Mississippi and Illinois Rivers. Ocean going vessels can and do unload bulk sugar on trucks and trains that can deliver the sugar to virtually any location in the United States.”<sup>40</sup> ASC further argues that the inclusion of the ocean vessel requirement “is intended to eliminate the injurious effect of imports of sugar from Mexico,”<sup>41</sup> and that “without the ocean vessel export requirement, the Suspension Agreements do not satisfy Section 704(c)(1) or 734(c)(1) of the Act.”<sup>42</sup> ASC disputes the constitutional questions raised by SUA and notes that there is nothing limiting which ports can receive exported Other Sugar. They also note that the Port Preference Clause (the PPC) “is a very narrow prohibition which protects States, as opposed to individual ports or regions, from laws that intentionally discriminate against the ports of one State to the advantage of the ports of another State.”<sup>43</sup> Finally, they note that “{t}he proposed change in the definition of Other Sugar implements the antidumping and countervailing duty statute, a statute that is entirely within the scope of Congress' power to regulate commerce with foreign countries.”<sup>44</sup>

## Department’s Position

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<sup>34</sup> See Statutory Memorandum; see also Price Suppression Memorandum; see also Memorandum from Gary Taverman to P. Lee Smith entitled “Amendment to the Agreement Suspending the Countervailing Duty Investigation on Sugar from Mexico: Existence of Extraordinary Circumstances, Public Interest, and Effective Monitoring Assessments” (August 7, 2017) (CVD Statutory Memorandum).

<sup>35</sup> See SUA Comments at 3.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> See ASC Rebuttal Comments at 3.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.* at 4.

<sup>44</sup> *Id.*

The Department disagrees with SUA's contention that the design of the amendments is intended "to limit competition from inland refineries." As ASC has pointed out, nothing prohibits ocean-going vessels from unloading sugar in bulk into barges, trucks, or railcars, and transporting it anywhere in the United States. The intent of the ocean-going vessels in bulk requirement is to "eliminate the injurious effect of imports of sugar from Mexico." In establishing this criterion, the Department is not limiting the import of Other Sugar via specific named ports, thereby providing an advantage to a port located in one state versus another. Specifically, as detailed above, the amended Agreements together are designed to alleviate the supply concerns stemming from significant quantities of Other Sugar bypassing the traditional cane refiners for direct consumption or end use. Sugar that is under 99.2 degrees in polarity and shipped in bulk, freely flowing, *i.e.*, not in food-grade conditions, is likely to require further processing because of its lower purity and because it has not been packaged to protect from contamination. The change in the definition of Other Sugar in terms of polarity, and the requirement that Other Sugar is to be shipped in bulk, freely-flowing, ensure to the fullest extent possible that, under the amended Agreements, sugar entering subject to the lower reference price will be sold in the market segment of sugar that requires further processing. Under the amendments to the Agreements, Other Sugar is not precluded from entering the United States at a port accessed by land; rather, such sugar from Mexico is subject to the Refined Sugar reference price and its quantity will be counted against the amended CVD Agreement's Export Limit in the percentage category of Refined Sugar.

### Comment 3: Reference Prices

- SUA opposes the increase in reference prices for both Refined and Other Sugar. SUA contends that the United States Department of Agriculture (USDA) for improperly administering the sugar program during roughly the 2009-10 marketing year, starving the market of sugar and driving up prices. They argue that increasing prices is no solution to the ongoing distortions in the North American market.
- SUA argues that the reference prices, by underpinning Mexican selling prices, create a new floor price under the entire U.S. sugar market.
- The new reference prices, in SUA's view, "constitute a further stealth price support increase and further enshrines the U.S. market as one of the most expensive sugar markets in the world."<sup>45</sup> They argue that "the Commerce Department should not lay claim to authorities to set agricultural prices that Congress has never granted, nor should Commerce take away the U.S. Department of Agriculture's authority over agricultural commodity policies."<sup>46</sup>
- SUA questions the decision to raise reference prices and asks why the Department is rewarding Mexico's dumping and subsidization of sugar by increasing prices when, in

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<sup>45</sup> See SUA Comments at 4.

<sup>46</sup> *Id.*

SUA's view, "the AD and CVD laws exist to punish, not reward, anti-competitive behavior."<sup>47</sup>

- In their comments on the draft price suppression memorandum, SUA argues that the combination of the U.S. sugar program, the WTO tariff-rate quota program, and the Agreement serve to limit competition and to create artificially high prices in the U.S. sugar market.<sup>48</sup> SUA contends that the introduction of reference prices concurrent to the adoption of the original Agreement caused prices to rise and that further increases in the reference prices will cause further price distortions in the market. SUA further argues that the price analysis "does not consider the market-skewing effect that artificially high sugar prices have on sweetener choice by food and beverage companies."<sup>49</sup>
- SUA also commented on the draft statutory memorandum that the Department released. SUA argues that the increased reference prices are not in the public interest. SUA asserts that the price increases are unnecessary and argues that "each increase in reference prices will send more money to the U.S. and Mexican sugar industries at the expense of U.S. manufacturers and ultimately consumers."<sup>50</sup>
- In their comments on the draft statutory memorandum, SUA also criticizes the Department's public interest analysis focuses almost entirely on the benefits to the sugar industry, as though they were "the public." SUA claims that "from the beginning, benefits to the sugar industry have been identified with the public interest."<sup>51</sup> SUA argues "the amendments to the agreements clearly do not serve the interests of U.S. consumers, nor food companies who are forced to pay higher prices resulting from the implementation of a regressive sugar policy."<sup>52</sup>
- CRA supports the increased preference prices as they "would continue eliminating completely the injurious price effect of subject imports and subject import price effects."<sup>53</sup>

## Rebuttal Comments

- ASC argues that the amended reference prices are a critical component of the proposed AD Amendment. Without such an increase, "Mexican producers and exporters can

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<sup>47</sup> *Id.*

<sup>48</sup> See SUA's submission entitled "Draft Price Suppression and Statutory Memoranda to A-201-845 – Amendment to the Agreement Suspending the Antidumping Investigation on Sugar from Mexico" (June 23, 2017) (SUA Memoranda Comments) at 1-2.

<sup>49</sup> *Id.* at 2.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.* at 3.

<sup>52</sup> *Id.*

<sup>53</sup> See CRA's submission entitled "Comments by the Corn Refiners Association Regarding Amendments to the Agreements Suspending the Antidumping and Countervailing Duty Investigations on Imports of Sugar from Mexico" (June 21, 2017) (CRA Comments) at 6.

continue to dump sugar in the U.S. market in violation of the antidumping law.”<sup>54</sup>

- ASC claims that at a fundamental level, “the SUA ignores or misunderstands the purpose of the reference prices and, more broadly, the Suspension Agreements themselves.”<sup>55</sup> ASC argues that “{t}he Suspension Agreements are an alternative to antidumping and countervailing duties,” and that the “AD Suspension Agreement, by statute, must ‘eliminate completely the injurious effect of {dumped} imports.’”<sup>56</sup>
- ASC states that “{t}o eliminate ‘completely’ the injury caused by dumped imports, any suspension agreement must prevent ‘suppression or undercutting of price levels of domestic products by imports’”<sup>57</sup> and that “in addition, any agreement must also ensure that dumping ‘will not exceed 15 percent’ of the less-than-fair-value margins calculated in the original investigation.”<sup>58</sup> Thus, “the purpose of an antidumping suspension agreement, and of reference prices in particular, is to protect domestic producers against underselling by dumped imports and to prevent suppression of U.S. producer prices.”<sup>59</sup> ASC argues that “{h}igher U.S. prices eliminate dumping, defined to be price discrimination between domestic Mexican prices and export prices.”<sup>60</sup> ASC also contends that “higher U.S. prices for Mexican sugar should reduce or eliminate underselling of U.S. producer prices.”<sup>61</sup>
- Citing to record evidence, ASC asserts that the “current *{i.e., the original}* Antidumping Suspension Agreement is failing, in significant part, because the reference prices are not high enough to prevent dumping or to prevent imports from Mexico from undercutting U.S. producer prices.”<sup>62</sup>
- ASC claims SUA is wrong in its assertion that the Suspension Agreement somehow takes away the USDA’s authority over agricultural commodity prices and claims that “{t}he Department’s statutory authority in the context of the antidumping law is unrestricted by, and independent of, USDA’s authority regarding agricultural commodity policies.”<sup>63</sup>

## Department’s Position

The Department disagrees with SUA’s assertions with respect to the increase in the reference prices. With respect to SUA’s comments on the role of the Department and USDA in the U.S. sugar program, the Department notes that USDA has discretion regarding how to administer the

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<sup>54</sup> See ASC Rebuttal Comments at 9.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Id.* citing Section 734(a)(1)(A) of the Act.

<sup>58</sup> *Id.* citing Section 734(a)(1)(B) of the Act.

<sup>59</sup> *Id.* at 10.

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *Id.* at 11.

U.S. sugar program within its statutory authority.<sup>64</sup> Accordingly, the Department declines to opine on how USDA should exercise its discretion. Moreover, the Department has consulted with USDA, along with other parties, in determining the appropriate amended reference prices, and has set the reference prices pursuant to its own statutory authority to prevent “the suppression or undercutting of price levels of domestic products by imports of that merchandise.”<sup>65</sup> Thus, in setting the reference prices in the amended Agreement, the Department has neither exceeded its statutory authority nor improperly infringed on USDA’s management of the U.S. sugar program.

In any event, the Department found in its investigation in this proceeding that Mexican producers/exporters were selling sugar at less than fair value in the United States,<sup>66</sup> and that such sugar was receiving countervailable subsidies.<sup>67</sup> The systematic dumping and subsidization of sugar exported to the United States was found to have injured the domestic industry.<sup>68</sup> Thus, although SUA references price distortions in the sugar market, those distortions are in part the result of dumped and subsidized sugar.<sup>69</sup> Furthermore, prices were expected to rise with the imposition of the original Agreement’s reference prices, as the prices prior to the imposition of the original Agreement reflected dumped and subsidized sugar prices. The reference prices now set by the Department in the amended Agreement will help to ensure that prices for sugar from Mexico exported to the United States are fairly-traded prices (as compared to dumped and subsidized prices), thereby alleviating the injury to the sugar industry.<sup>70</sup>

Furthermore, SUA misstates the purpose of the dumping law when it claims that the reference price increases create artificially high prices in the U.S. market and reward Mexico’s dumping and subsidization of sugar. The amended Agreement is required by statute to completely eliminate the injurious effects to the domestic sugar industry, 85 percent of dumping, and the undercutting and suppression of domestic producers’ prices by imports of sugar from Mexico. The amended Agreement, like the original Agreement, contains price requirements designed to make this assurance, specifically increased reference prices of 23 cents per pound for Other Sugar and 28 cents per pound for Refined Sugar, as well as the continued requirement that Mexican producers’ prices for sugar sold to the United States eliminate 85 percent of the dumping found in the underlying investigation.<sup>71</sup> The reference prices will increase prices for Mexican sugar to ensure that such prices do not suppress or undercut domestically produced sugar, and because of the increased floor, are more likely to result in prices that reflect fairly-

<sup>64</sup> See Congressional Research Service Report entitled “U.S. Sugar Program Fundamentals” by Mark A. McMinimy, Analyst in Agricultural Policy, (April 6, 2016) available at <https://fas.org/sgp/crs/misc/R43998.pdf> and at Attachment 4 to this Memorandum.

<sup>65</sup> See section 734(c)(1) of the Act.

<sup>66</sup> See *Sugar From Mexico: Final Determination of Sales at Less Than Fair Value*, 80 FR 57341 (September 23, 2015).

<sup>67</sup> See *Sugar From Mexico: Final Affirmative Countervailing Duty Determination*, 80 FR 57337 (September 23, 2015).

<sup>68</sup> See *Sugar from Mexico, Inv. Nos. 701-TA-513 and 731-TA-1249 (Final)*, USITC Pub. 4577 (November 2015).

<sup>69</sup> *Id.*

<sup>70</sup> See Statutory Memorandum at 8-9.

<sup>71</sup> See *Sugar from Mexico: Amendment to the Agreement Suspending the Antidumping Duty Investigation*, 82 FR 31945, (July 11, 2017) at amended Appendix 1.

traded sugar, as compared to sugar sold at less than fair value (*i.e.* dumped sugar). Thus, any price increases resulting from the amended reference prices are remedying the injurious effects to the domestic industry caused by dumped sugar, in accordance with the trade law (whose purpose is remedial, not punitive<sup>72</sup>), and are not intended to either reward or punish Mexico for its unfair trading behavior.

SUA argues that the amended Agreement does not “serve the interests of U.S. consumers, nor food companies who are forced to pay higher prices resulting from the implementation of a regressive sugar policy.”<sup>73</sup> However, in evaluating whether a suspension agreement is in the public interest, the Department must evaluate factors beyond whether customers will pay higher prices. First, the purpose of the antidumping statute is to provide relief to the domestic producers who have been unfairly injured by dumped products. As discussed extensively in the Department’s concurrent memoranda, the reference prices will mitigate the influx of dumped Mexican sugar, thereby eliminating the injurious effects to the domestic industry and improving its competitiveness.<sup>74</sup> The competitiveness of the domestic industry is a factor under the statute that must be considered in the Department’s calculation of whether the amended Agreement is in the public interest.<sup>75</sup> Additionally, as the Department has extensively discussed in its concurrent memoranda, the amended Agreement serves the interests of U.S. consumers who will benefit from a stable and predictable sugar market, and a stable supply of sugar to the market.<sup>76</sup> Additionally, U.S. consumers will benefit from a decreased likelihood that USDA would need to purchase forfeited sugar, thereby avoiding increased public debt.<sup>77</sup> Finally, as discussed above, to the extent that “food companies ... are forced to pay higher prices” as a result of the amended Agreement, those prices will be higher because they are at fairly-traded levels, and such increased prices do not in themselves outweigh the other public interest factors weighing in favor of accepting the amended Agreement.<sup>78</sup> Therefore, while the Department carefully considered the comments submitted by all stakeholders—including SUA—while crafting the finalized amendment, the Department has fulfilled its duties under the antidumping law by increasing the reference prices in the amended Agreement and continuing to ensure that the agreement eliminates injurious effects to the domestic industry and at least 85 percent of the dumping.<sup>79</sup>

#### Comment 4: Other Comments

- CRA supports the amended AD and CVD Agreements because they would continue

<sup>72</sup> See *Guangdong Wireking Housewares & Hardware Co. v. United States*, 745 F.3d 1194, 1205 (Fed. Cir. 2014) (“It is well established that antidumping and countervailing duty laws are remedial in nature. Both the courts and Congress have consistently confirmed this understanding.”) (citations omitted).

<sup>73</sup> See SUA Memoranda Comments at 3.

<sup>74</sup> See Statutory Memorandum at 8.

<sup>75</sup> See section 734(a)(2)(B)(iii) of the Act (In making a decision regarding whether a suspension agreement is in the public interest, the Department “shall take into account ... the relative impact on the competitiveness of the domestic industry producing the like merchandise.”).

<sup>76</sup> See Statutory Memorandum at 8.

<sup>77</sup> *Id.*

<sup>78</sup> See Statutory Memorandum at 7-10.

<sup>79</sup> For more details on this issue see: Price Suppression Memorandum.

eliminating completely the injurious effect of subject imports and are in the public interest.

- ADM “applauds the leadership of U.S. Department of Commerce Secretary, Wilbur Ross, and his team, for their commitment to pursuing an outcome that will benefit U.S. farmers and America’s agriculture communities that depend upon Mexico as a critical export market.”<sup>80</sup>
- Imperial “is cautiously optimistic about the proposed suspension agreement amendments”<sup>81</sup> but notes concerns that “other sugar” might continue to be shipped to end users and that “there is a critical shortage of raw sugar currently in the U.S. marketplace.”<sup>82</sup>
- ASC believes the amendments to the AD and CVD Agreements “can be successful in eliminating the ongoing injurious effects caused by dumped and subsidized Mexican sugar under the Suspension Agreements in effect today if the Department of Commerce and Department of Agriculture (USDA) strongly and actively enforces the Amended Suspension Agreements.”<sup>83</sup>
- SUA points out that no *Federal Register* notice was issued for the draft amendments and that only seven calendar days were given for the public comment period. In SUA’s view, this is not enough time for meaningful comments and provides an indication the Department is not interested in views of the public. SUA also argues that this comment period is exceptionally short and that industrial users and consumers have been excluded from the negotiations on the amendments to the AD and CVD Agreements.<sup>84</sup> SUA, in its comments on the draft statutory memoranda, claims “the proposed changes to the suspension agreements are sufficiently significant to be deemed a renegotiation of the current suspension agreements, which require the issuance of a *Federal Register* notice seeking public comment.”<sup>85</sup>

## Rebuttal Comments

- Cámara opposes any such change to the terms which came about “after a long and arduous negotiation by the parties” and “reflect a significant compromise by Mexico.”<sup>86</sup>
- CSC Sugar also filed unsolicited rebuttal comments to the ASC’s rebuttal comments on

<sup>80</sup> See ADM’s submission entitled “ADM Comments on 2017 Suspension Agreements on Sugar from Mexico” (January 21, 2017) at 1.

<sup>81</sup> See Imperial’s submission entitled, “Sugar from Mexico, Case Nos. C-201-846 and A-201-845- Comments on Draft Amendments to Suspension Agreements” (June 21, 2107) (Imperial Comments) at 1.

<sup>82</sup> *Id.* at 2.

<sup>83</sup> See ASC’s submission entitled, “Sugar from Mexico: Comments Regarding Amended Suspension Agreements” (June 21, 2017) (ASC Comments) at 1.

<sup>84</sup> *Id.* at 7-8.

<sup>85</sup> See SUA Memoranda Comments at 3.

<sup>86</sup> See Cámara’s submission entitled, “Sugar from Mexico- Rebuttal Comments” (June 26, 2017) at 3.

the segment of the AD proceeding, in which they argue that the only purpose of the amended AD and CVD Agreements is “to force Mexico to ship lower quality raw sugar than all other 39 TRQ countries,” which serves “to unfairly target CSC Sugar by increasing its refining costs. We believe that this is illegal, and should be amended.”<sup>87</sup>

## Department Position

The Department welcomes the comments received from parties that signal support of the amended Agreement. The amended Agreement lowers the dividing line between Refined Sugar and Other Sugar in order to ensure that sufficient supplies of Other Sugar are available for domestic producers’ operations and that refined sugar prices are not suppressed.<sup>88</sup> Further, the amended Agreement contains enhanced provisions and penalties to ensure the effective monitoring and enforcement of the amended Agreements.<sup>89</sup> Overall, the Department finds that the modified structures encapsulated in the amended Agreements will work together to ensure the elimination of the injurious effects of dumped and subsidized sugar from Mexico.

Regarding SUA’s statements on the time period allowed for comments, the Department notes that there are no statutory- or regulatory-mandated time periods or procedures for the issuance of amendments to a suspension agreement. In this case, no party requested an extension for additional time to submit comments, nor did any party indicate an inability to comment on the draft amendment or draft memoranda within the time periods provided. Furthermore, the time periods provided in this case are consistent with those provided by the Department in relation to amendments to other suspension agreements. For example, in the case of the Agreement Suspending the Antidumping Investigation on Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation (Russia Hot-Rolled Agreement)<sup>90</sup>, which involved both the final results of an administrative review and a revision to a suspension agreement, the Department issued a preliminary draft revision on November 15, 2012, with a request for comments by November 23, 2013, and no rebuttal period.<sup>91</sup> The Department issued its Issues and Decisions Memorandum on the revised Russia Hot-Rolled Agreement on November 30, 2012.<sup>92</sup> Thus, the Department’s request for comments in the instant case followed a similar time line to that in the Russia Hot-Rolled Agreement case. Furthermore, the Department is issuing its final amendments in the instant case in a *Federal Register* notice, which, along with the comment and rebuttal comment periods that were established for the draft amendment, was sufficient to give interested parties notice of the amendment. Therefore, the Department

<sup>87</sup> See CSC Sugar’s “Reply to June 26, 2017 Rebuttal Comments of the American Sugar Coalition” (June 27, 2017) at 2.

<sup>88</sup> See Price Suppression Memorandum.

<sup>89</sup> See e.g. Section VIII.B.4 of the amended CVD Agreement and Sections VII.C.6 and VII.C.7 of the amended Agreement.

<sup>90</sup> See *Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation; 2010-2011; Final Results of Administrative Review and Revision of Agreement Suspending Antidumping Duty Investigation*, 77 FR 72829 (December 6, 2012).

<sup>91</sup> See Issues and Decision Memorandum for the Final Results of Administrative Review and Revision to the Agreement Suspending the Antidumping Investigation on Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation (November 30, 2012), which is available in ACCESS.

<sup>92</sup> *Id.*

disagrees with SUA's assertions that the draft amendments needed to be placed in the *Federal Register*, in order to seek public comment.

Finally, the Department stresses that while it has held meetings with SUA and received submissions from SUA regarding the issues related to the administrative reviews and the ongoing negotiations, SUA is not a domestic interested party in terms of the statutory meaning of the term.<sup>93</sup> The Department has welcomed SUA's input throughout the process, but the Department's primary concern remains the elimination of the injurious effects and the elimination of dumping with respect to the petitioning domestic industry.

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<sup>93</sup> See section 771(9)(C)-(G) of the Act; *see also* 19 CFR 351.102(17).

# ATTACHMENT 1

## ATTACHMENT 2

# UNITED STATES INTERNATIONAL TRADE COMMISSION

In the Matter of:	)	Investigation Nos.
SUGAR FROM MEXICO	)	701-TA-513
	)	731-TA-1249 (PRELIMINARY)

**REVISED AND CORRECTED**

Pages: 1 - 287  
 Place: Washington, D.C.  
 Date: Friday, April 18, 2014

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**MAY 15 2014**

1 forecasting that it will average 19 cents a pound, that is  
2 actually above the U.S. loan rate and indicates the  
3 likelihood of a world market price that is above our U.S.  
4 price support level. Normal variability around such averages, U.S.  
5 sugar producers will likely benefit from more upward spikes  
6 in prices while being protected from any downside risk by  
7 the sugars prices for the loan program which suggests that  
8 there is little if any, threat for future injury to the  
9 industry.

10 Let me turn to the quantitative impacts on the  
11 U.S. sugar balance. It's been demonstrated time and again  
12 that farmers respond to pricing as I've said. As others  
13 have commented, between 2008-09 and 2012 seasons, we saw a  
14 significant increase in the sugar production detailed in  
15 table 1. Acreage and production of beets and cane both  
16 rose. Beet share production increased 20%. Cane share went  
17 up about 18% and you might have seen a bigger expansion but  
18 we have capacity restraints, if I told you how much it cost  
19 to build a new plant, they just ran out of room to handle  
20 more beets and cane.

21 Since the next U.S. sugar markets were one and  
22 the same during this period as a result of NAFTA, Mexican  
23 sugar cane producers responded to the same price signals.  
24 They too expanded their production based on the higher  
25 prices as well as the availability of excess processing

1 capacity in that country.

2 U.S. market share of domestic sugar producers  
3 actually increased through this period, it only declined  
4 slightly in the current 2013-14 marketing year. This is  
5 illustrated in figure 4, which shows U.S. producers share of  
6 what I have described as new supplies to the market, i.e.,  
7 -- production plus imports.

8 That share increased from 68% in 2007-09 to  
9 almost 74% in 2012-13 and only declined modestly in the  
10 current market year to 73% according to USDA's latest  
11 estimates.

12 Figure 5 shows the broad composition of the sugar  
13 imports in recent years. It's actually four broad  
14 categories, you have the imports under the tariff rate  
15 quotas and free trade agreements which is the bottom blue  
16 part. You know the imports from Mexico, the next section.  
17 Other program imports which are special programs for  
18 re-export and poly hydrate alcohol and then normally  
19 negligible quantity of basically second-tier sugar where  
20 they pay a high duty.

21 You will see that one little blip in 2010 when  
22 people resorted to that.

23 Since 2010-11 imports have actually declined 15%  
24 in absolute terms and their share of new supplies to the  
25 market fell from 32% to an estimated 27% in the current



1 rose to their highest levels since 1980, the last major  
2 world shortage.

3           So this by itself, pushed up U.S. sugar prices,  
4 when world price gets to the U.S. price level, they move in  
5 tandem, they just go together. But the problem we have is  
6 that we didn't increase import quotas sufficiently and so  
7 the balance of power shifted to sellers and because there is  
8 a 16 cent second-tier duty, no one can get through without  
9 prices rising at least that much above where they actually  
10 ought to be in the U.S. market so this resulted in basically  
11 about a 20 cent gap between U.S. and world refined sugar  
12 prices, an extremely profitable period for U.S. producers.

13           And you can see that price gap in figure 7.

14           As you have heard from the other panelists, the  
15 pricing of sugar in the U.S. market is straight-forward and  
16 simple in ways but complicated in others due to forward  
17 pricing and other factors.

18           There is also the problem of how characteristics  
19 of different sugar products are actually tracked in  
20 government statistics as Paul mentioned. So the Commission  
21 will need to be very careful in its interpretation of the  
22 government data that you collect and make sure that it  
23 accords with commercial realities in the U.S. sweetener  
24 market.

25           Finally, we have heard a lot about the role of

1 the two governments and working together. USDA spent a lot  
2 of money last year on the program. Mexico is exporting  
3 large volumes of sugar in the world market to reduce  
4 pressure on the U.S. market. These moves, coupled with the  
5 future grower response to lower prices in both countries is  
6 restoring balance to the market.

7 Prices respond and prices fall, just like they do  
8 when they rise. Suddenly where we are now is well within  
9 the parameters of how they rule the government, meaning that  
10 the U.S. sugar market normally behaves. It's important for  
11 the Commission to keep this broader context in mind as it  
12 considers the petitioners allegations. Thank you.

13 MR. ALTSCHULER: That concludes the respondents  
14 testimony this afternoon, we are happy to answer questions.

15 MS. DEFELIPPO: Thank you very much and thank you  
16 very much to all the members of the panel, it's always very  
17 helpful to have a good showing on the respondent's side to  
18 balance out everything and get a full picture of what's  
19 going on. I particularly would like to thank those of you  
20 that traveled here from Mexico. I know it is a religious  
21 holiday week and that complicated things, but we very much  
22 appreciate having you here and having you testify and be  
23 available for questions, so with that I will throw it down  
24 this side of the table to Miss Sherman.

25 MS. SHERMAN: Good afternoon, thank you all for

1 your very helpful testimony this afternoon. I think I'll  
2 start my questioning with getting some clarification on this  
3 -- the C what is it called -- Consultive Committee on  
4 Agriculture, the agreement between the United States and  
5 Mexico to remove 700,000 tons of sugar to be diverted  
6 elsewhere, do you know where those, Mr. Farmer, you had  
7 mentioned that you represented both of that going outside of  
8 North America, where is that going exactly?

9 MR. FARMER: A substantial part is going to North  
10 Africa, Ukraine, West Africa, some of it has even made its  
11 way to New Zealand, it's basically heading to many parts of  
12 the world.

13 MS. SHERMAN: And is this refined sugar or is  
14 this the estandar?

15 MR. FARMER: The purchase that our company made  
16 was standard sugar or in this case, raw sugar. And actually  
17 a lot of the sugar is also going to Canada, sorry.

18 MS. SHERMAN: And this morning the panel has  
19 suggested that this sugar would go into, that would be  
20 diverted into the world market would eventually end up back  
21 in the United States, can you comment on that?

22 MR. FARMER: Absolutely not correct.

23 MS. SHERMAN: Who is involved on this Committee,  
24 what players are there, I mean you have the governments on  
25 each side and then is it a collaboration of individual

1 companies? Can you explain more about how that exactly  
2 works?

3 MR. CORTINA: It's between both governments.

4 MR. ALTSCHULER: The person speaking is Carlos  
5 Vasquez, he is the Embassy of Mexico's Agriculture Minister  
6 and has first-hand knowledge of the CCA and if it is okay he  
7 probably has the best information for you and I will give  
8 him the mic.

9 MS. DEFILIPPO: If you could just introduce  
10 yourself and provide it through the mic, we can then capture  
11 it on the transcript, thank you.

12 MR. VASQUEZ: Sorry, my name is Carlos Vasquez,  
13 I am the Minister Chancellor for Agricultural Affairs.  
14 Basically their representative from the Mexican Department  
15 of Agriculture and in order to respond to your question,  
16 it's a co-share from the U.S. is USDA and USTR  
17 representative, at the level of under-secretaries. And from  
18 Mexico it is the same with the Minister of Economia and the  
19 Minister of Agriculture represented by the under-secretary  
20 of Agriculture, Jesus Padilla, and by the under-secretary --  
21 .

22 So from the U.S. it is the same, but it is  
23 government officials, only government officials.

24 MS. SHERMAN: Okay thank you very much.

25 MR. ALTSCHULER: That's why if it's okay,

1 because it is government to government, some of the  
2 information we have privy, we are privy too, but we would  
3 rather put it in the brief, where we can feel more  
4 comfortable going into detail.

5 MS. SHERMAN: Of course, thank you.

6 MS. DEFILIPPO: I just wanted to jump in with one  
7 comment, since it is an extremely large panel, if you could  
8 state your name it would be very helpful for the court  
9 reporter, thank you.

10 MS. SHERMAN: Okay, my next question is for you  
11 Mr. Farmer regarding your production of liquid sugar. You  
12 primarily produce liquid sugar, but you also produce  
13 granulated sugar you said?

14 MR. FARMER: Correct, we produce no granulated  
15 sugar.

16 MS. SHERMAN: Okay, if you were to produce  
17 granulated sugar, would it be possible to convert your  
18 equipment to produce granulated sugar or are you only set up  
19 as a liquid sugar producer?

20 MR. FARMER: We are only set up as a liquid sugar  
21 producer. Our refineries have basically a fraction of the  
22 equipment that a large cane refinery would have, but it has  
23 the same type of equipment so you might say that we have  
24 basically the middle part of the refinery, enough to take  
25 out the impurities and the color, if we choose to take out



1 United States? This morning the domestic panel indicated  
2 there could be hundreds and somebody else said, fifteen, are  
3 you aware?

4 MR. FARMER: I have no idea what the actual  
5 number is.

6 MS. SHERMAN: Closer to 15 or is it in the  
7 hundred range?

8 MR. FARMER: Truly I have no idea. We have five  
9 plants in the United States that we have built in the last  
10 six or seven years. We sell sugar to another couple of  
11 companies that probably have combined total another seven or  
12 eight plants. Beyond that I actually have no idea but there  
13 are areas of the country that we don't trade, like in the  
14 northwest, so I wouldn't have any idea who was there or not.

15 MR. CUDDY: We run about, this is Chris Cuddy at  
16 ADM, we -- our sales have eight of similar type facilities,  
17 so if you add his and ours alone, you would probably get to  
18 at least your 15.

19 MS. SHERMAN: Okay, thank you. That was my, my  
20 next follow-up question was for you Mr. Cuddy. You answered  
21 my question from earlier what ADM is producing, it's liquid  
22 sugar and invert sugar, correct?

23 MR. CUDDY: That's correct.

24 MS. SHERMAN: How big of a business is this for  
25 you and this is not your primarily line of business, so is

1 that correct?

2 MR. CUDDY: No ma'am, it's not our primary  
3 business.

4 MS. SHERMAN: Can you say about what percentage  
5 of your business or in your post-conference brief.

6 MR. CUDDY: Yes, post-conference is fine, but I  
7 mean we are a 90 billion dollar public company that deals in  
8 a lot of different commodities and sugar being one of them,  
9 but we can further define that for you.

10 MS. SHERMAN: Okay, thank you.

11 MR. CUDDY: You're welcome.

12 MS. SHERMAN: I have a few questions concerning  
13 the domestic-like product petitioners are arguing, or they  
14 state in their brief that high fructose corn syrup should  
15 not be included in the domestic-like product, do you agree  
16 with that?

17 MR. ALTSCHULER: Again this is Irwin Altschuler  
18 and as I said in my overview at the beginning, we have  
19 questions about the like product, you know and we have heard  
20 and read the same things and done our own research and we  
21 know that there are some precedents in other countries that  
22 if you have fructose and sugar as like products, we will  
23 address it more in our brief.

24 I guess what we feel is that this case is  
25 compelling as presented by the petitioners for a negative

1 role. So we will discuss the issue of like product but we  
2 don't think we need a detailed analysis in the preliminary  
3 for the Commission to vote negative, so that's kind of where  
4 we come out on it.

5 We will address it more, but we think even with a  
6 single like product, as defined ultimately, after four  
7 cracks at it by the Petitioner, we thinking take it on those  
8 terms, we should secure a negative vote.

9 MS. SHERMAN: Thank you and what about cane  
10 sugar. Sugar produced from sugar cane and sugar produced  
11 from sugar beets, I'm still confused a little bit about  
12 whether this can be used interchangeably your comments on  
13 that?

14 MR. FARMER: Yeah, this is Paul Farmer. I can  
15 comment that over the last five or six years there has been  
16 a growing sentiment or request by our customers and some  
17 today refuse to buy beet sugar because of its origin as GMO  
18 seed and I would say that that is growing. I can't tell you  
19 that that's a major wave, but I can tell you that it has  
20 already created a problem within our business because we  
21 also do occasionally buy beet sugar, right, but it is hard  
22 to segregate in our plants now so we prefer not to get it,  
23 because if a chocolate company, or drink company decides  
24 that they want a non-GMO I really can't have it in the same  
25 area at the same plant.

1 MS. SHERMAN: Besides GMO issues, are there any  
2 other quality differences or characteristics of the  
3 differences between the beet sugar and the cane sugar?

4 MR. JONES: Well speaking for my company only,  
5 I'm sorry, Tim Jones, Just Born. Speaking from my company  
6 only, we found that it doesn't react well with some of our  
7 products and I can talk about that a little bit more in the  
8 post brief or whatever, but I just know that it's, and as  
9 Paul stated, it is difficult when you can't intermingle it,  
10 you can't have it close by and we only have a few silos, so.  
11 It doesn't make sense for us to have them both there even  
12 though we could use it in some of our products, we can't use  
13 it in all of our products.

14 MS. SHERMAN: Thank you. I was hoping your  
15 could clear up or get a standard definition for me of  
16 estandar, what polarity would you define that as and can it  
17 be consumed. It's a raw sugar, but can it be consumer, or  
18 is it consumed in Mexico?

19 MR. CORTINA: Sure, Juan Cortina, from the Sugar  
20 Chamber. Estandar sugar is consumed in Mexico by ordinary  
21 consumers and by industry alike. It usually has a higher  
22 color than refined sugar, meaning that refined sugar usually  
23 has about 45 color, it's a measure and then  
24 standard sugar it's around four to five hundred.

25 So it's a darker color sugar, but it is open for

1 human consumption and long historically been consumed in  
2 Mexico.

3 MR. FARMER: And this is Paul Farmer again, in  
4 the United States I would tell you that most customers or  
5 companies would not use standard sugar for direct  
6 consumption because it has a higher quantity of foreign  
7 materials in it than would normally be accepted in the U.S.  
8 market, therefore the vast majority of it gets used,  
9 consumed as raw sugar and the sugar that gets consumed  
10 directly almost always goes for some kind of additional  
11 processing screening, magnets, whatever it is going to be.

12 So generally speaking, in the U.S. standard sugar  
13 is raw sugar and the pole can be anywhere from 99.3 to 99.7  
14 depending upon the mill, the production date, the weather,  
15 so it crosses between the refined sugar tariff code and raw  
16 sugar tariff code freely and nobody cares to keep track of  
17 it because there is no quota.

18 MR. ARMERO: I would like to add something. My  
19 name is Christophe Armero, I represent Beta San Miguel which  
20 is one of the larger sugar groups in Mexico and we produce  
21 three kinds of sugar. Refined sugar, which is equivalent to  
22 U.S. refined sugar. We produce a sugar which we call blanca  
23 which actually hasn't been mentioned, which is in between  
24 estandar and refined and then we produce estandar.

25 Without complicating things, it's easy to use in



1 were selected because we are not sure that everybody,  
2 despite the attempts at clear definitions in the  
3 questionnaire, everyone defines these products in the same  
4 way, so I would suggest that the data that you get from  
5 these questionnaires be looked at very carefully and taken  
6 with a grain of salt, if I can mix agricultural metaphors,  
7 and be very, very careful because I'm not sure that the  
8 match-ups work in this preliminary stage.

9 MS. SHERMAN: So is it the Mexican sugar that is  
10 imported to the United States, is that all estandar or is  
11 there some refined sugar as well?

12 MR. FARMER: This is Paul Farmer again, the vast  
13 majority is imported as standard sugar in bulk form, usually  
14 in vessels of ships, 25-30,000 tons but they are certainly  
15 of some refined sugar imports, I don't know the exact  
16 numbers.

17 MS. SHERMAN: Okay.

18 MR. ARMERO: One-third I would call direct  
19 consumption sugars, two-thirds what Paul calls raw sugar.  
20 But I think it's really important to state that at the point  
21 that if I'm selling, for example to Paul, I am delivering  
22 him a food grade product. He chooses to dump it into a  
23 vessel and it pains me a lot but at the point I deliver it  
24 to him it's a food grade product.

25 MS. SHERMAN: Thank you.

1 MR. ALTSCHULER: Chris, you didn't mean dump,  
2 you meant place.

3 (LAUGHTER).

4 MR. ARMERO: Inappropriate use of language.

5 MS. SHERMAN: Is the structure of the Mexican  
6 sugar refining industry different than that in the United  
7 States? For example, does it go directly from farmer to  
8 miller to refiner if necessary?

9 MR. CORTINA: This is Juan Cortina from the  
10 Sugar Chamber. All of the sugar mills in Mexico that have  
11 refineries have them in place where they mill the sugar cane  
12 there. There are some refineries here in the U.S. that are  
13 free-standing, meaning that they don't have land attached to  
14 them, like the ones Paul was mentioning near the ports.

15 Those refineries need the raw appeal of raw sugar  
16 to be able to operate. All of the refineries in Mexico, the  
17 raw material is sugar cane which they operate and produce  
18 refined sugar.

19 MS. SHERMAN: So can you comment on the groups,  
20 the Mexican groups, that provide or that were named in the  
21 petition, how is that set up?

22 MR. CORTINA: Well there is about 40% of Mexican  
23 sugar production is refined sugar and about 60% is standard  
24 sugar and about 13 industrial groups of the Mexican sugar  
25 industry, most of them have more than one mill and have

1 facilities in different states in Mexico.

2 In fact there are 15 states in Mexico where they  
3 have sugar production, all the way up north in the state of  
4 Sinaloa to all the way down south to Chiapas. The state of  
5 Vera Cruz is the one that has the most sugar mills in it.  
6 There's about close to 350,000 sugar cane growers in a  
7 country that supply sugar cane to the mills in Mexico and  
8 there is about 53 sugar mills operating in Mexico right now.

9 MS. SHERMAN: Is there a difference in the  
10 production process for Mexican-produced sugar versus that in  
11 the United States that you are aware of?

12 MR. CORTINA: Not at all, its the same.

13 MS. SHERMAN: Similar equipment?

14 MR. CORTINA: Similar equipment, similar  
15 everything.

16 MS. SHERMAN: Okay, I asked this this morning of  
17 the domestic industry. How do you define capacity and  
18 capacity utilization? Is it similar across all companies in  
19 the Mexican industry?

20 MR. CORTINA: Yes it is.

21 MS. SHERMAN: The growing season, is that  
22 different than in the United States?

23 MR. CORTINA: Different dates, Mexican harvest  
24 starts early November and usually finishes by late May,  
25 early June and from July to early November it's maintenance

1 season where the mills are basically taken apart, all of the  
2 equipment is maintained and then put back together to be  
3 ready for the next harvest season.

4 MR. FARMER: This is Paul Farmer, there is one  
5 significant difference that should not be overlooked and  
6 that is in the U.S. we have a stand-alone cane refining  
7 business where they don't produce the raw sugar themselves,  
8 or if they do it's in another place and they ship it there.

9 You can run a cane refinery, if twenty years ago  
10 everybody would have told you that you can't run a cane  
11 refinery more than say 280 days or something like that  
12 without having to shut it down for the rest of the period of  
13 time for maintenance, however, the peak periods of refined  
14 sugar, certain refineries would run 320 days, 340 days, so  
15 there is a huge difference between if a cane refinery is  
16 making money and they are run full out, all the way, as  
17 compared to when business kind of sucks and you are running  
18 the minimum.

19 I would tell you that today in the United States  
20 there are probably 7 million tons or a little more than 7  
21 million tons of cane refining capacity based on running  
22 about 300 days, which means you could probably ramp it up to  
23 7 and a half for 8 million tons, right, that's the problem  
24 in the industry today. That's why refined sugar prices are  
25 down, because there is too much fighting amongst the cane