

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

## TO ALL INTERESTED PARTIES

November 6, 2019

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

The U.S. Department of Commerce (Commerce) has formally opened consultations with the Government of Mexico (GOM)<sup>1</sup> with respect to a possible amendment to the Agreement Suspending the Countervailing Duty Investigation on Sugar from Mexico (CVD Agreement).<sup>2</sup>

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

- Revised definitions for Other Sugar and Refined Sugar;
- Change to the allotment of Refined Sugar under the Export Limit;
- Revised procedures for consultations with the GOM and the U.S. Department of Agriculture for increasing the Export Limit;
- Contract-specific Export Licenses;
- Enhancements to monitoring and penalties for non-compliance;
- Setting a new Export Limit for the Initial Export Limit Period.

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

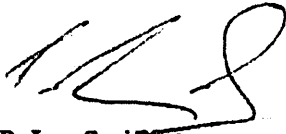
<sup>1</sup> See Letter to the Government of Mexico from P. Lee Smith, Deputy Assistant Secretary for Policy & Negotiations, "Consultations on Potential Amendment to the Agreement Suspending the Countervailing Duty Investigation on Sugar from Mexico" (November 4, 2019).

<sup>2</sup> See *Sugar From Mexico: Suspension of Countervailing Duty Investigation*, 79 FR 78044 (December 29, 2014).



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

Sincerely,

A handwritten signature in black ink, appearing to read 'P. Lee Smith', with a stylized flourish at the end.

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

Attachment

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

The Agreement Suspending the Countervailing Duty Investigation on Sugar from Mexico (Agreement) signed by the United States Department of Commerce (Commerce) and the Government of Mexico (GOM) on December 19, 2014, is amended, as set forth below (Amendment).

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

Commerce and the GOM hereby agree as follows:

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

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

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

**Section II.G.1 is replaced with:**

1. “Initial Export Limit Period” covers entries of Sugar entered, or withdrawn from warehouse for consumption, between the Effective Date of the Amendment and September 30, 2020.

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

“Other Sugar” means

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

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

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

“Refined Sugar” means

- a. Sugar at a polarity of 99.2 and above, as produced and measured on a dry basis;
- b. Sugar considered to be Refined Sugar under Section II.K;
- c. Where such Sugar is Additional U.S. Needs Sugar as defined in Section II.U, Sugar at a polarity of 99.5 and above, as produced and measured on a dry basis; and
- d. In the event that Section V.B.4.d is exercised, Sugar at a polarity specified by USDA that is 99.5 or above, as produced and measured on a dry basis.

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

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

**Section V (“Export Limits”) is amended as follows:**

**Section V.A is replaced with the following:**

A. The Export Limit for the Initial Export Limit Period shall be 782,530 short tons raw value. The restrictions in Section V.C.1 and, as set forth below, in Section V.C.2 shall apply. The Export Limit for the Initial Export Limit Period shall be re-calculated beginning with the December allocation in Section V.B.2. The restriction in Section V.C.2 below shall apply, and the March allocation in Section V.B.3 applies.

**Section V.B - the first sentence of the first paragraph is amended as follows (changes in italics):**

The Export Limit for each Subsequent Export Limit Period will be *fifty (50)* percent of the Target Quantity of U.S. Needs as calculated based on the July WASDE preceding the beginning of the Export Limit Period.

**Section V.B.4 is replaced with the following:**

**4. Increases to the Export Limit**

- a. Prior to April 1 of any Export Limit Period, if USDA notifies Commerce, in writing, of any additional need for Sugar, Commerce shall, consistent with 704(c) of the Act, increase the Export Limit to address potential shortages in the U.S. market based on USDA’s request.
- b. Starting in March, within 10 days following the publication of each WASDE report during a given Export Limit Period, Commerce agrees that it shall consult with USDA and the GOM regarding any potential increase in the Export Limit on or after

April 1. Following each consultation with the GOM, the GOM will notify Commerce within 10 days of (1) the extent to which the GOM has issued export licenses for Other Sugar and Refined Sugar to fulfill 100 percent of the Target Quantity of U.S. Needs; (2) the quantity of Other Sugar and Refined Sugar that has been exported under such licenses, and (3) the nature and quantity of the Sugar that Mexico can supply, with supporting documentation for the foregoing, and Commerce shall notify USDA.

- c. Pursuant to such consultations, and upon receiving notice from USDA in writing of a need in the U.S. market for a particular type and quantity of additional Sugar that Mexico has indicated it can supply, Commerce shall: (1) request written confirmation from the GOM that Mexico can and will supply 100 percent of the Target Quantity of U.S. Needs (as calculated pursuant to Section V.B.3 based on the March WASDE); and (2) upon receiving such confirmation, increase the Export Limit, consistent with 704(c) of the Act, by an amount equal to 100 percent of such particular type and quantity of sugar identified by USDA (hereinafter "Additional U.S. Needs Sugar"). When such Additional U.S. Needs Sugar is requested by USDA, and in turn offered to Mexico by Commerce, the definitions for Other Sugar and Refined Sugar in Section II.K.a and Section II.L.a, respectively, shall apply prior to May 1 of any Export Limit Period, and, on or after such date, the definition in Section II.K.b and Section II.L.c, respectively, shall apply. Such Additional U.S. Needs Sugar shall comply with the applicable definitions and requirements in the Agreement, for Other Sugar and Refined Sugar, respectively.
- d. In the event of an extraordinary and unforeseen circumstance that seriously threatens the economic viability of the U.S. sugar refining industry, USDA may specify the polarity of the amount of additional Sugar specifically needed to rectify such extraordinary and unforeseen circumstance. To the extent possible under the circumstances, USDA will consult with the GOM and other interested parties. When such additional Sugar is requested by USDA under this Section V.B.4.d, and in turn offered to Mexico by Commerce, the definitions for Other Sugar and Refined Sugar in Section II.K.c and Section II.L.d, respectively, shall apply.
- e. If Commerce has imposed penalties for polarity non-compliance under Section VIII.B.4 in a given Export Limit Period, Mexico may not be eligible for Additional Needs U.S. Sugar.
- f. Any additional Sugar may be limited to Other Sugar or Refined Sugar, or any combination thereof, as specified by USDA. For greater certainty, Section V.C does not apply to any additional Sugar exported by Mexico pursuant to this Section V.B.4.

**Section V.C is amended as follows:**

**Section V.C.2 is amended as follows (changes in italics):**

No more than 55 percent of U.S. Needs calculated in each *September* and effective January 1 may be exported to the United States during the period October 1 through March 31, *unless that*

*amount is less than or equal to the amount calculated under Section V.C.1, in which case the amount calculated under Section V.C.1 will continue to apply until March 31.*

**Section V.C.3 is amended as follows (changes in italics):**

Refined Sugar may account for no more than 30 percent of the exports during any given Export Limit Period.

**Section VI (“Implementation”) is amended as follows:**

**Section VI.A - the following sentences are added at the end of the paragraph:**

On the Effective Date of the Amendment, presentation of an Export License is required as a condition for entry of Sugar from Mexico into the United States. The GOM will issue amended regulations to implement the Amendment, as necessary.

**Section VI.B – the first sentence is amended as follows (changes in italics) and a new sentence is inserted after the first sentence (in italics):**

Export Licenses will be *contract-specific* and must contain the information identified in Appendix I. *Export Licenses issued by the GOM must, in addition to specifying whether or not exported Other Sugar is for further-processing, also specify the identity of the entity that is further processing the Other Sugar, if known.*

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

**Section VIII.B.4 is added as follows:**

**4. Penalties for Polarity Non-Compliance of this Agreement and/or Price Non-Compliance of the Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico (AD Agreement):** Commerce will review documentation regarding polarity testing that is placed on the record of this Agreement, in accordance with Section VII.C.6 of the AD Agreement, to determine whether there have been imports that are inconsistent with the provisions of this Agreement and Sections II.F, II.H, VII.C.6 and Appendix I of the AD Agreement. Where Commerce finds that polarity test results of an entry of Sugar are not compliant with the Agreement’s or AD Agreement’s applicable definition of Other Sugar or Sugar was sold at prices that are less than the Reference Prices established in Appendix I of the AD Agreement: (1) Commerce shall deduct two (2) times the quantity of that entry from Mexico’s Export Limit, and (2) the GOM will, in turn, deduct that same quantity from the specific producer’s/exporter’s Export Limit allocation.

- a. The penalty will be applied on the date Commerce notifies the GOM in writing of such non-compliance.
- b. If Other Sugar that enters during the period from October 1 through the day before the publication of the July WASDE tests at or above 99.2 polarity (or at or above 99.5 or

other polarity in the case of Additional U.S. Needs Sugar), then Commerce will reduce Mexico's current Export Limit by two (2) times the quantity of that entry. The Export Limit determined under Section V.B.2 and V.B.3 will be correspondingly reduced by the same amount. At the time of the March WASDE when the Target Quantity of U.S. Needs is determined, and up to the day before the publication of the July WASDE, USDA may exercise its authority to seek to fill from other countries the particular type and quantity of sugar needed in the U.S. market to address the penalty amount by which Mexico's *current-year* Export Limit was reduced.

- c. If Other Sugar that enters during the period from the day of the publication of the July WASDE through September 30 tests at or above 99.2 polarity (or at or above 99.5 or other polarity in the case of Additional U.S. Needs Sugar), then Commerce will reduce the Export Limit for the next Export Limit Period by two (2) times the quantity of that entry. That reduction will be applied to each revision of the Export Limit under Section V.B.1, V.B.2 and V.B.3. If Mexico's *next fiscal year* Export Limit is reduced, USDA may exercise its authority to seek to fill from other countries the particular type and quantity of sugar needed in the U.S. market to address the penalty amount by which Mexico's Export Limit was reduced.
- d. If Commerce finds that issues with meeting the polarity, testing, or compliance requirements of this Agreement continue to arise, Commerce can at any time terminate the Agreement under Section XI.B. Apart from termination, Commerce may take additional steps to ensure compliance with the terms of this Agreement and the AD Agreement as appropriate, including reducing the Export Limit up to three (3) times the quantity of entries that do not comply with this Agreement or the AD Agreement.

**Appendix I is amended as follows (changes in italics):**

**The GOM will issue *contract-specific* Export Licenses to Mexican entities that shall contain the following fields:**

**At Appendix I, the following will be added to the Export License:**

12. Contract Identification Information: Indicate the contract identification information with which the license is associated.

**At Appendix II, the following will be added to the information reported to Commerce:**

12. Contract Identification Information: Indicate the contract identification information with which the license is associated.

13. Date of Export: Indicate the date of export of the Sugar from Mexico to the United States.

It is acknowledged that reported information may need to be updated from time to time to reflect corrected information from customs authorities.

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

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Date

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

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{Name}  
{Title}  
Ministry of Economy, Government of Mexico

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Date