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December 16, 2019

Case No. A-201-845, C-201-846
Total Pages: 12
Suspension Agreement
E&C: Operations

PUBLIC DOCUMENT

Honorable Wilbur Ross
Secretary of Commerce
U.S. Department of Commerce
Attention: Enforcement and Compliance
Central Records Unit, Room 1870
14th Street and Constitution Avenue, N.W.
Washington, D.C. 20230

Re: ***Sugar from Mexico: Comments on Draft Suspension Agreement***

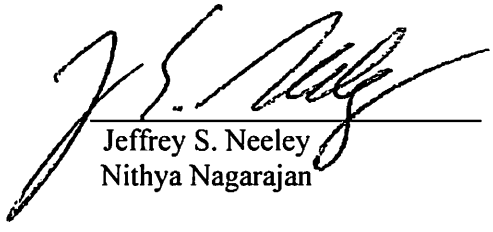
Dear Secretary Ross:

On behalf of CSC Sugar LLC ("CSC") we hereby submit our comments in response to the Department's memorandum to interested parties dated December 4, 2019, seeking comments on the Draft Amendments to the Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico and the Draft Amendments to the Agreement Suspending the Countervailing Duty Investigation on Sugar from Mexico.

Please contact us if you have any questions regarding this submission, or require additional information.

Respectfully submitted,

HUSCH BLACKWELL



Jeffrey S. Neeley
Nithya Nagarajan

PUBLIC SERVICE LIST
Sugar from Mexico
Case No. C-201-846
Suspension Agreement

I, Jeffrey S. Neeley, hereby certify that a copy of the foregoing submission was served in accordance with the Public Service List, published by the U.S. Department of Commerce on December 12, 2019. Service was made on the following parties on December 16, 2019.

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UNITED STATES DEPARTMENT OF COMMERCE

INTERNATIONAL TRADE ADMINISTRATION

In the Matter of Sugar from Mexico	)	Case Number: C-201-846, A-201-845
	)	Suspension Agreement
	)	E&C: Operations

COMMENTS ON DRAFT AMENDMENTS TO THE AGREEMENT ON BEHALF OF CSC SUGAR LLC

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December 16, 2019

I. INTRODUCTION

These comments are being filed on behalf of CSC Sugar LLC ("CSC"), a U.S. refiner and member of the domestic industry, in response to the Department's memorandum to interested parties dated December 4, 2019, seeking comments on the Draft Amendments to the Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico and the Draft Amendments to the Agreement Suspending the Countervailing Duty Investigation on Sugar from Mexico. These comments are being filed in a timely manner consistent with the announced deadline of December 16, 2019.

CSC has both substantive and procedural comments regarding the announced amendments. Both sets of comments are filed in the context of appeals in the U.S. Court of International Trade in *CSC Sugar LLC v. United States,* Court No. 17-00214 and 17-00215. Two opinions were issued by the U.S. Court of International Trade ("CIT") on October 18, 2019, *CSC Sugar LLC v. United States,* Slip Op. 19-131, and *CSC Sugar LLC v. United States,* Slip Op. 19-132. In those Opinions the Court granted plaintiff CSC's Motions for Judgment on the Agency Record and also issued Judgments vacating both the Antidumping and CVD suspension agreement amendments of 2017. The Department announced the vacating of those 2017 suspension agreement amendments on December 6, 2019, with an effective date of December 7, 2019. 84 Fed. Reg. 67711 and 67718 (December 11, 2019). The essence of the Court's reasons for vacating the 2017 suspension agreement amendments was that the Department failed to make a complete record in the administrative proceedings and thus failed to conform with the statutory provisions of 19 U.S.C. §1516a(b)(2)(A)(i), and that this failure was prejudicial to CSC.

The government then sought a 90 day stay from the Court in both appeals. On December 6, 2019, the Court denied both requests for stays. In doing do the Court noted: "Plaintiff has

demonstrated that it continues to suffer substantial economic harm as a result of the contested amendment to the suspension agreement that the court vacated in its judgment." Memorandum and Order in Court No. 17-00214 at 3. The Court also stated on the same page: "Defendant, for its part, does not appear to dispute that Plaintiff will suffer harm as a result of a stay." In footnote 1 on page 4 of the Memorandum and Order, the Court also expresses concern on the disparity of explanations as to why the stay was needed, with the government of Mexico indicating that the reason was to conclude negotiations quickly.

CSC is deeply concerned about the possibility of the current process being nothing but a rubber stamp of the 2017 amendment, done quickly and with no meaningful ability to make a new record. We remind the Department that the 2017 amendments now have been vacated because of a faulty record. To have the Department now rubber stamp the very same terms, with no real review and no real record, and with only conclusory statements, borders on the contumacious. We trust that the Department will not go down that path and ignore the court's directives.

II. THERE IS NO REASON PROVIDED FOR THE CHANGE IN POLARITY

The amendments placed on the record by the Department on December 4, 2019, are identical to the 2017 amendments that were just vacated. Likewise, the memorandum of the Department on the statutory requirements appears to largely to have been cut and pasted from the 2017 memoranda from the 2017 amendments. For the reasons discussed below, that discussion of the Department does not suffice to support the current proposed amendments.

All of the parties, including CSC, agree for the need for the bulk shipment requirement on Other Sugar. But none of the discussions of the Department answers the fundamental issue that CSC has raised – why do the agreements have both a requirement of shipments in bulk and a

change in the polarity requirements? Neither the Department nor any of the other parties has been able to come up with an answer to this question. Instead of answering it, all we see is a repeat of the same mantra that the 2019 proposed amendments protect the U.S. industry from the problems of the 2014 agreements. But the answer to this assertion is simple – the bulk shipment requirement alone is sufficient to make the shipments being sold directly into consumption unsalable because they are contaminated. There is no legitimate reason for the polarity change. The only reason for the polarity change is to stifle U.S. competition from CSC. Below we refer to the Statutory Requirements Memorandum in the Antidumping Case, but the comments apply equally to the CVD Statutory Requirements Memorandum.

The language used for the reasons that the Department is proposing to change both the polarity requirement and to require shipment in bulk for other sugar polarity slides right past the distinction between the two very different requirements. At times the descriptions appear almost disingenuous. For example, the last paragraph on page 5 of the Memorandum leads with the sentence: "The draft Agreement further eliminates the injurious effects of exports of Mexican sugar to the United States by redefining Sugar and Other Sugar." But then, several sentences later, the paragraph shifts gears and admits what the agreement actually does: "These changes, which move the dividing line between Refined and Other Sugar down to 99.2 from 99.5 degrees and add shipping conditions to Other Sugar, address the concern that a large portion of Other Sugar has been bypassing cane refiners for direct consumption or end use." [Emphasis added]

On page 6 of Memorandum the Department admits the crucial fact: "Semi-refined sugar of a polarity under, but near 99.5 degrees, when packaged to avoid contamination, may be fit for human consumption without any processing to increase its polarity." Bulk shipments plainly are not packaged to avoid contamination and thus the problem that the Department identifies is

solved. Thus, this statement of the Department later in the same paragraph simply is false: "The change in the definition of Other Sugar in terms of polarity, and the requirement that Other Sugar is to be shipped in bulk, free-flowing, ensure to the fullest extent possible under the draft amended Agreements that sugar that enters subject to the lower reference price is sold in the market segment of sugar that requires further processing." The fact is, however, that making sure that the "semi-refined" sugar that enters requires further processing is accomplished completely by bulk shipment requirement (and which CSC supports). Moreover, all other sugar entering the U.S. under re-export provisions or tariff rate quotas will enter in bulk and subject to the long-established cutoff for refined sugar at 99.5 polarity. This 99.5 polarity has been the standard used for decades without any alleged detrimental effect on U.S. refining operations. Yet a new standard now is being proposed for Mexico to undercut the business model of a U.S. domestic competitor. The Department does not make any attempt to defend the need for the additional change in polarity.

Finally, it is noteworthy that no other party -- neither the Mexican government, the Mexican producers, nor other U.S. refiners -- has put any facts on the record to support the contention that the change in polarity is also necessary, due to the bulk shipment provision's failure to address the "circumvention" concerns.

III. THE PUBLIC INTEREST MUST BE FULLY ANALYZED

The Department acknowledges that the statute requires that it may not accept a suspension agreement unless "it is satisfied that suspension of the investigation is in the public interest." The public interest review of the Department, like other parts of its determination, must be based on information on the record. The Department already has failed once to make a proper record in these suspension agreements, and should not once again fail to make a record,

this time based on a failure to fully consider the public interest. We note that in a letter of November 21, 2019, from the Sweetener Users Association (SUA") to the Department, SUA strongly supported a full briefing of the public interest by itself and other members of the public.

The Department (on page 9 of its Memorandum) cites to *Report of the Senate Finance Committee* to provide context to the public interest provision, with Senate Finance Committee stating that "{t}he committee intends that investigations be suspended only when that action serves the interest of the public and the domestic industry affected." We note the use of the word "and" rather than "or." Both the statutory language and the Senate committee made crystal clear that both the interests of public and the interests of the domestic industry must be considered.

Despite this clear distinction between the public interest and the interest of the domestic industry, the Department conflates the two interests in its discussion. Indeed, throughout its discussion on page 9 of the Memorandum the Department in reality only discusses the interests of the domestic industry (or at least the interests of the part of the domestic industry that is politically powerful) as if those interests are identical to the public interest. To the extent that the Department discusses polarity at all, it gives it the back of its hand, almost as a subcategory of interests of the powerful sugar refiner interests. The Department makes statements such as: "Ensuring adequate supply for U.S. cane refiners not only benefits those refiners, but also the general public." But how does the Department connect that statement to the public interest issue at hand, which is the need for the polarity change, in light of its devastating effect on CSC and on competition among domestic refiners? The answer is that there is no connection whatsoever. There is not one word about how the polarity change is necessary to serve even any of the "public interest" elements that the Department identifies, much less the issue of the public interest and competition.

On page 11 of Memorandum the Department purports to refute the need for the full economic report that CSC argues for. But that attempt at a refutation in fact shows exactly why such a report is necessary to determine the effects of the proposed amendments on the public interest. The Department states: "Commerce's public interest analysis, as explained above, includes consideration of the relative impact of the competitiveness of the domestic industry as a whole, of which CSC Sugar comprises only a small part." This statement speaks volumes. It conflates so-called "competitiveness" of the oligopoly producers with competition. By "competitiveness" it is apparent that the Department means the financial health of the oligopoly producers. But, as discussed above, it is apparent that the Department must take into account the public interest, which in this case (where CSC has shown that the polarity change is unnecessary to achieve the stated goals of the Department) includes the effects on competition and not just on so-called "competitiveness," or making more profits for the oligopoly. Moreover, a disruptor in a market can have an effect on competition, and to give CSC the back of the hand on the issue, with absolutely no economic analysis by the Department, because CSC is only a "small portion" of the U.S. industry has it backwards. Apparently the notion is that CSC cannot challenge the oligopoly's proposed polarity change on the public interest because the oligopoly is so overwhelmingly large that CSC can have no effect on competition. Even if one believed that this notion could possibly be true, it would require thorough economic evidence and a detailed record to come to that conclusion. A conclusory statement by the Department, with no citation to any economic analysis, will not suffice.

The Department's attempt to dismiss CSC's request, on legal grounds, that it seek economic analysis in considering the public interest in this case, also fails. The Department states (at 11) that: "CSC Sugar's objections based on the structure of the U.S. sugar refining

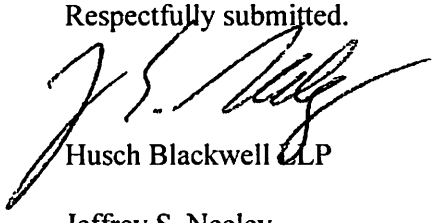
industry are beyond the scope of Commerce's draft amended Agreement, which must eliminate the injurious effect of exports to the United States." The error in this statement, which is similar to the errors of the Department discussed above, is that it effectively reads the public interest standard out of the statute. Eliminating the injurious effects of dumped or subsidized imports does not answer the question of whether a particular agreement is in the public interest. Only by conflating the public interest with the interests of the majority of the domestic industry can the Department reach its apparently pre-determined conclusion.

Finally, as to what the Department apparently thinks is a *coup de grâce,* it cites (at 12) to an ASC statement 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 effects of imports from Mexico." Nice rhetoric. But also a sentence unrelated to the issues before the Department. As noted repeatedly, CSC does not want to see the loopholes in the 2014 continue any more than does ASC. Nor does it want to purchase dumped or subsidized product. However, the abuses of the 2014 agreements were rectified by the bulk shipment provision. ASC has not stated why the polarity change also is necessary, nor has the Department. This change is critical to competition within the U.S. industry and to the public interest. The Department cannot evade its duty to conduct a full investigation of the public interest, including an economic assessment to determine the effect of the proposed agreements on competition.

IV. CONCLUSION

For the reasons discussed above, the Department should reject the proposed amendments and immediately conduct a full analysis of all of the statutory factors, including the public interest, as required by law. The 2017 amendments have been vacated and the Department must conduct a new proceeding to consider the public interest, in compliance with the Court's rulings and the statute.

Respectfully submitted.



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December 16, 2019