UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

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

TO ALL INTERESTED PARTIES

December 4, 2019

Re: Draft Amendment to the Agreement Suspending the Countervailing Duty Investigation on Sugar from Mexico and Draft Statutory Memorandum

On December 4, 2019, the U.S. Department of Commerce (Commerce) and the Government of Mexico (GOM) initialed a draft amendment to the Agreement Suspending the Countervailing Duty Investigation on Sugar from Mexico (*see* Attachment 1). In addition, Commerce is placing its corresponding draft statutory memorandum on the record (*see* Attachment 2). We invite interested parties to comment on the attached draft amendment and draft memorandum. Comments are due to Commerce no later than the close of business on **December 16, 2019**.

Please submit your comments electronically using Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). An electronically-filed document must be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5:00 p.m. Eastern Time (ET) on the due date. Likewise, documents excepted from the electronic submission requirements must be filed manually (*i.e.*, in paper form) with the APO/Dockets Unit in Room 18022 and stamped with the date and time of receipt by 5:00 p.m. ET on the due date.

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

Sincerely,

Sally C. Gannon

Sally C. Gannon
Director for Bilateral Agreements
Office of Policy
Enforcement & Compliance

Attachments

ATTACHMENT 1

DRAFT AMENDMENT DATED DECEMBER 4, 2019

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. The Amendment applies to all contracts for Sugar from Mexico exported from Mexico on or after October 1, 2019.

Section II.G.1 is replaced with:

1. "Initial Export Limit Period" covers entries of Sugar entered, or withdrawn from warehouse for consumption, between October 1, 2019 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 882,530 short tons raw value. The restrictions in Section V.C.1 and, as set forth below, in Sections V.C.2 and V.C.3 shall apply to only an amount of 782,530 short tons raw value. The Export Limit for the Initial Export Limit Period shall be re-calculated in December 2019 in accordance with Section V.B.2. The restrictions in Sections V.C.2 and V.C.3 below shall apply to only the calculated amount less 100,000 short tons raw value. 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

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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.

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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.

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

For the U.S. Department of Commerce:

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

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Date

For the Government of Mexico:

____
Luz María de la Mora Sánchez
Subsecretaria de Comercio Exterior
Secretaría de Economía

____
Date

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ATTACHMENT 2

UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

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

December 4, 2019

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

FROM: P. Lee Smith
Deputy Assistant Secretary
for Policy & Negotiations
Enforcement and Compliance

SUBJECT: Draft 2019 Amendment to the Agreement Suspending the Countervailing Duty Investigation on Sugar from Mexico: Existence of Extraordinary Circumstances, Public Interest, and Effective Monitoring Assessments

Statutory Requirements

On December 19, 2014, the U.S. Department of Commerce (Commerce) and the Government of Mexico (GOM) signed the Agreement Suspending the Countervailing Duty (CVD) Investigation on Sugar from Mexico (Agreement).[1] On June 30, 2017, Commerce and the GOM signed the amendment to the Agreement (the Amendment).[2] On October 18, 2019, the Court of International Trade (CIT) found that Commerce failed to act in accordance with the recordkeeping requirements of section 773(a)(3) of the Tariff Act of 1930, as amended (the Act), and, as a result, vacated the Amendment to the Agreement.[3]

On November 4, 2019, Commerce issued a letter that formally opened consultations to renegotiate an amendment to the Agreement.[4] On November 6, 2019, Commerce released a proposed amendment to the Agreement and invited interested parties to submit comments on

[1] *See Sugar from Mexico: Suspension of Countervailing Duty Investigation*, 79 FR 78044 (December 29, 2014) (the Agreement).
[2] *See Sugar From Mexico: Amendment to the Agreement Suspending the Countervailing Duty Investigation*, 82 FR 31942 (July 11, 2017) (the Amendment).
[3] *See Sugar From Mexico: Notice of Court Decision Regarding Amendment to the Agreement Suspending the Countervailing Duty Investigation*, 84 FR 58136 (October 30, 2019).
[4] *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).

November 12, 2019.[5] CSC Sugar LLC requested an extension of two days[6] which Commerce granted.[7] Five parties submitted comments on November 14, 2019.[8] On November 21, 2019, six parties submitted rebuttal comments.[9]

On December 4, 2019, Commerce and the Government of Mexico (GOM) initialed a draft Amendment to the Agreement Suspending the Countervailing Duty Investigation on Sugar from Mexico[10] (draft 2019 Amendment or, collectively, the draft amended Agreement).

In accordance with sections 704(c)(1) and 704(c)(3) of the Tariff Act of 1930, as amended (the Act), the draft amended Agreement continues to be a quantitative restriction agreement with a foreign government, designed to eliminate completely the injurious effect of sugar exports to the United States by restricting the volume of imports of subject merchandise into the United States.[11]

Section 704(c)(1) of the Act indicates that extraordinary circumstances must be present for Commerce to suspend an investigation under this section of the law. At the time of the original suspension of the CVD investigation, Commerce found suspension of the investigation to be more beneficial to the domestic industry than continuation of the investigation, and the investigation to be complex, consistent with section 704(c)(4)(A).[12] Commerce also found that suspension of the investigation would be in the public interest and that effective monitoring of the Agreement was practicable, consistent with section 704(d)(1).[13] In accordance with section 704(c)(4)(A) of the Act, Commerce continues to find that extraordinary circumstances exist with respect to this draft amended Agreement. Further, Commerce is satisfied that the draft amended Agreement is in the public interest and can be monitored effectively, as required under section 704(d)(1) of the Act and addressed below in this memorandum.

As explained below, the draft amended Agreement accounts not only for the broad and varied

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[5] *See* Letter to All Interested Parties from P. Lee Smith, Deputy Assistant Secretary for Policy & Negotiations, "Release of Draft Amendment to the Agreement Suspending the Countervailing Duty Investigation on Sugar from Mexico," (November 6, 2019) (Commerce's November 6 Draft 2019 Amendment).

[6] *See* Letter from CSC Sugar LLC, "Sugar from Mexico: Request of Time to File Comments on Draft Amendment to the Agreement Suspending the Antidumping and Countervailing Duty Investigation," (November 7, 2019).

[7] *See* Memorandum to All Interested Parties, "Extension of the Deadline for Submitting Comments Regarding the Draft Amendments to the Agreements Suspending the Antidumping and Countervailing Duty Investigations on Sugar from Mexico," (November 8, 2019).

[8] The following parties submitted comments: the American Sugar Coalition (ASC); the Government of Mexico (GOM); CSC Sugar LLC (CSC); Imperial Sugar Company (Imperial); The Sweeteners Users Association (SUA); and the International Sugar Trade Coalition (ISTC).

[9] The following parties submitted rebuttal comments: the American Sugar Coalition (ASC); the Government of Mexico (GOM); CSC Sugar LLC (CSC); Imperial Sugar Company (Imperial); and the International Sugar Trade Coalition (ISTC).

[10] *See* Letter to the GOM "Draft Amendment to the Agreement Suspending the Countervailing Duty Investigation on Sugar from Mexico" (December 4, 2019).

[11] *See* amended Agreement at Section V.B

[12] *See* Agreement at Section IV.

[13] *Id.*

interests of the petitioning U.S. industry (which includes sugar cane and beet growers, sugar cane refiners, and other members of the domestic industry), but is also in the interests of the general public.

Comments from Interested Parties

Commerce normally considers parties' comments on the initialed draft text and addresses them in final statutory memos and through modifications reflected in the final text. However, Commerce has taken the opportunity to address certain comments to the proposed draft 2019 Amendment at points throughout this memo.[14]

Extraordinary Circumstances

Subsections 704(c)(4)(A)(i) and (ii) of the Act define the term "extraordinary circumstances" as circumstances in which the suspension of the investigation will be more beneficial to the domestic industry than continuation of the investigation and in which the investigation is complex.

Continued Suspension is More Beneficial to the Domestic Industry Than Termination

Commerce finds that the draft 2019 Amendment will resolve the issues that have arisen since the signing of the Agreement and maintains that continued suspension of the countervailing duty investigation on sugar from Mexico will be more beneficial to the domestic industry than issuance of the countervailing duty order.[15] As explained in detail below, the draft amended Agreement eliminates the injurious effects of exports of sugar from Mexico, provides market stability, and establishes effective relief from the injurious effects of exports by redefining "Refined Sugar" and "Other Sugar".

First, the draft amended Agreement will benefit domestic producers by eliminating the injurious effects, as defined by section 704(c)(1) of the Act, of exports of the subject merchandise to the United States. Specifically, the draft amended Agreement limits the amount of sugar that Mexico can export to the United States during each Export Limit Period,[16] allowing only what is necessary to fulfill the identified needs in the U.S. market for that particular period of time. By limiting the volume of Mexican exports to the needs of the U.S. market, the draft amended Agreement ensures that the public demand has been satisfied while significantly reducing the likelihood that subsidized sugar from Mexico will oversupply the U.S. market and, thus, cause injury to the U.S. industry. Moreover, by significantly reducing the likelihood of oversupply, the draft amended Agreement supports the U.S. sugar program[17] and reduces the possibility of

[14] *See* Commerce's November 6 Draft 2019 Amendment.
[15] Note that the provision refers to "continuation of the investigation," but that in this case, because the investigation was completed, in the event the agreement was terminated, Commerce would issue the CVD Order.
[16] *See* amended Agreement at Section II.G.
[17] *See* Congressional Research Service Report entitled "U.S. Sugar Program Fundamentals" by Mark A. McMinimy Analyst in Agricultural Policy, (U.S. Sugar Program Fundamentals) (April 6, 2016) available at https://fas.org/sgp/crs/misc/R43998.pdf and at Attachment 1 to this Memorandum.

forfeitures of sugar by the U.S. industry under that program. By limiting the supply of Mexican sugar, the draft amended Agreement also works to counteract any overproduction created by the bestowal of countervailable subsidies.

In particular, the draft 2019 Amendment provides that the initial Export Limit of an Export Limit Period is calculated in July of each year based on fifty percent, rather than seventy percent, of the Target Quantity of U.S. Needs.[18] The U.S. Department of Agriculture's (USDA) July projections, prior to the start of the harvest season, are subject to significant revisions. This draft 2019 Amendment provides additional protection that the Export Limit will not oversupply the market if market conditions change between July and September, by conservatively setting the Export Limit to only fifty percent of the Target Quantity of U.S. Needs in July.[19]

Second, the draft amended Agreement provides a more stable and predictable environment for the U.S. industry than would a countervailing duty order. Under an order, duty rates can be adjusted, potentially every year, through administrative reviews. In addition, given the unique parameters of the U.S. sugar market, the issuance of a countervailing duty order has the potential to destabilize the U.S. sugar market, and potentially cause shortages of sugar in the United States.

The draft 2019 Amendment further enhances stability by defining procedures that apply when USDA identifies additional needs for sugar in the U.S. market. Prior to April 1 of each Export Limit Period, USDA may request in writing that Commerce increase the Export Limit to address shortages of the type and quantity of sugar that USDA specifies. Under the new Section V.B.4, starting in March of each year, Commerce is to consult with USDA and the GOM each month regarding a potential increase to the Export Limit on or after April 1. Upon receiving notice from USDA in writing of a need in the U.S. market for a particular type and quantity of Sugar that Mexico has indicated it can supply,[20] Commerce will, upon receiving written confirmation from the GOM that Mexico can supply 100 percent of the Target Quantity of U.S. Needs, increase the Export Limit. Any such action is subject to the requirements of section 704(c) of the Act that the draft amended Agreement completely eliminate the injurious effect of sugar imported from Mexico. These procedures will enhance the ability to obtain more sugar for the U.S. market on or after April 1, specific to the type and quantity USDA indicates, when additional needs arise.

Furthermore, an additional provision of the draft 2019 Amendment provides flexibility throughout a given Export Limit Period for circumstances that are extraordinary and unforeseen, and that seriously threaten the economic viability of the U.S. sugar refining industry. At such times, USDA may specify the polarity of the amount of additional sugar needed to rectify the extraordinary and unforeseen circumstances, upon consulting with the GOM and interested parties to the extent possible and consistent with the limitations of Sections II.K.c and II.L.d.

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[18] *See* amended Agreement at Sections II.F, II.G, and II.N (for respective definitions).
[19] *See* amended Agreement at Section V.B.
[20] *See* amended Agreement at Section II.M.

Third, the draft 2019 Amendment helps to ensure elimination of the injurious effects of exports of Mexican sugar to the United States by redefining Refined Sugar and Other Sugar. The Agreement, as originally written, differentiated between "Refined Sugar" at a polarity of 99.5 degrees and above, and "Other Sugar" at a polarity less than 99.5 degrees. The draft 2019 Amendment redefines "Refined Sugar" as sugar at a polarity of 99.2 degrees and above, and "Other Sugar" as sugar at a polarity less than 99.2 degrees and shipped in bulk and freely flowing in an ocean-going vessel. The revised polarity levels and shipping requirement for "Other Sugar" work together to reconcile the injury experienced by the domestic industry under the 2014 Agreements.[21] In its rebuttal comments, the American Sugar Coaltion and its Members (ASC) states, "{w}ithout both provisions, the likelihood that such sugar bypasses refiners at the lower reference price increases."[22]

The essential problem, as described by the ASC, was that the 2014 Agreements resulted in declining prices for "Refined Sugar" (as defined in the 2014 Agreements), but rising prices for "Other Sugar."[23] Petitioners further explained that the large volume of imports of "Refined Sugar" from Mexico "depressed U.S. market prices to the point that the market price for raw sugar – the major raw material used by U.S. refiners – was higher than the price for fully refined sugar."[24] This problem was a result of the imbalanced volume of "Refined Sugar" and "Other Sugar" allowed under the 2014 Agreements, as well as the level of polarity that defined "Refined Sugar" to be sold to end users and less pure "Other Sugar" to be sold to refiners. In particular, the level of polarity defining "Refined" and "Other Sugar" permitted semi-refined sugar to be sold to end users at the lower reference price for "Other Sugar" while the export limit on "Refined Sugar" permitted excessive quantities of refined sugar into the market, putting further pressure on refined sugar prices in the U.S. market.[25]

The lower polarity threshold discourages "estandar," or "semi-refined" sugar, from being sold directly for end use and without further processing, thereby supplanting refined sugar sales in the U.S. market. Sugar that is under 99.2 degrees in polarity and shipped in bulk and freely flowing – *i.e.*, not in food grade conditions – is extremely likely to require further processing, because of its lower purity and because it has not been packaged to protect from contamination. 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. Indeed, information on the record indicates Mexican "estandar" or "standard sugar" is fit for such use, and has a minimum polarity of 99.4 degrees.[26] Such semi-refined sugar functions as the market

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[21] *See* Letter from the American Sugar Coalition, "Sugar from Mexico: Rebuttal Comments Regarding Proposed Amendments to Suspension Agreements," (November 21, 2019) (ASC's Rebuttal Comments) at 9.
[22] *Id*. at 10.
[23] *Id*. at Attachment 1, Letter from the American Sugar Coalition, "Sugar from Mexico: Request to Terminate Suspension Agreements" (June 2, 2017) (ASC's June 2, 2017 Letter) at 6 in which the petitioner discusses proprietary export data provided by the GOM in its October 4, 2016 questionnaire response.
[24] *See* Letter from the American Sugar Coalition, "Sugar from Mexico: Comments Regarding Proposed Amendments to Suspension Agreements," (November 14, 2019) (ASC's November 14 Comments) at 2.
[25] *Id*. at 2-3.
[26] *See* Secretaria de Economia, "Sugar Industry Specifications, NMX-F-084-SCFI-2004" at Sections 3.1 & 5.1

equivalent of Refined Sugar, but was permitted under the original terms of the AD Agreement to enter at the lower price for Other Sugar.[27] By both changing the polarity division and requiring that Other Sugar be shipped in bulk and freely-flowing in an ocean-going vessel, the draft 2019 Amendment ensures that sugar that enters subject to the lower reference price is sold in the market segment of sugar that requires further processing and that an adequate supply of raw sugar reaches cane refiners.[28]

Availability of raw sugar is a concern for U.S. sugarcane refiners in the market because access to sugar for further processing from countries other than Mexico is restricted by U.S. tariff-rate quotas (TRQs). Short of requesting that the USDA take action to permit additional sugar imports, U.S. refiners may not have an economically viable alternative source of input sugar if Mexican "Other Sugar" is sold for direct consumption.

In May 2016, in response to a shortage of sugar for further processing, USDA requested that Commerce increase the Export Limit and stated that "to ensure that this is the type of sugar for which there is an increasing demand in the U.S. market, and which also requires further processing, this additional sugar must have a polarity of less than 99.2 degrees."[29] Thus, in USDA's view, 99.2 degrees was the appropriate cut-off to ensure that the imported sugar required further processing and met the needs of the U.S. market. The draft amended Agreement adopts that standard for all Other Sugar, recognizing that although Commerce permitted a small quantity of additional sugar with a polarity below 99.2 degrees, based on USDA's May 2016 request, the ending stocks of cane refiners for the 2015/16 season were still lower than the historical average and shortages of sugar for further processing have persisted.[30] Requiring all Other Sugar to have a polarity under 99.2 degrees is likely to address these shortages.

In the draft amended Agreement, the polarity division between Refined Sugar and Other Sugar that is not Additional U.S. Needs Sugar, 99.2 degrees and above versus below 99.2 degrees, respectively, differs from the 99.5 polarity division between refined and raw sugar (99.5 and above versus below 99.5, respectively) contemplated by the Harmonized Tariff Schedule of the United States (HTSUS).[31] Since the original agreement was signed, it has not been apparent that any other country exports or has historically exported to the United States significant quantities of sugar below 99.5 degrees polarity that is also fit for direct consumption, whereas under the

(2004) at Attachment 2 to this Memorandum.
[27] *See* ASC's June 2 Letter at Attachment 4 at 18-20; *see also* ASC's Comments at 2-3.
[28] *See* Letter from Imperial Sugar Company, "*Sugar from Mexico*, Case Nos. C-201-846 and A-201-845, Rebuttal to Interested Party Comments on Proposed Amendments to the Suspension Agreements," (November 21, 2019) (Imperial's Rebuttal Comments) at 10.
[29] *See* Letter from Alexis M. Taylor, Deputy Under Secretary, USDA, "Sugar from Mexico and Request for Increase in Mexican Sugar Export Limit" (May 16, 2016).
[30] *See* ASC's June 2 Letter at Attachment 5.
[31] *See* U.S. International Trade Commission's Harmonized Tariff Schedule of the United States (HTSUS) (2019), "Chapter 17: Sugars and Sugar Confectionary," at 17-1. For the purposes of importation into the United States, the HTSUS classifies raw sugar as "sugar whose content of sucrose by weight, in the dry state, corresponds to a polarimeter reading of less than 99.5 degrees."

original Agreement Mexico exported to the United States significant quantities of "estandar" sugar that may fall under 99.5 degrees but is fit for direct consumption.[32] Thus, there is reason to apply a different threshold for shipments of raw "Other Sugar" from Mexico in the context of these agreements that must completely eliminate the injurious effects of sugar imports from Mexico. However, the draft 2019 Amendment retains the 99.5 degrees polarity dividing line between "Refined" and "Other Sugar" for Additional U.S. Needs Sugar[33] that is offered to Mexico on or after May 1 of any Export Limit Period. Mexico has indicated it may be unable to provide sufficient sugar below a polarity of 99.2 degrees because such sugar is not produced for its domestic market. As noted above, Mexican "estandar" or "standard sugar" contains a polarity of at least 99.4 degrees, and by May 1, Mexico's harvest season has concluded. The shipping conditions of "Other Sugar," however, continue to apply, and thus any additional "Other Sugar" that is allowed to be exported on or after May 1 is likely to require further processing even if it is of a semi-refined polarity.

In addition to the changes in definitions, the draft amended Agreement changes the proportion of "Refined Sugar" to "Other Sugar", decreasing from a maximum of 53 percent to a maximum of 30 percent of "Refined Sugar". This change substantially decreases the proportion of "Refined Sugar" thereby ensuring that there is sufficient sugar for further processing available in the U.S. market.

In sum, by amending the Agreement to set the threshold polarity between "Other Sugar" and "Refined Sugar" at 99.2, and by requiring that "Other Sugar" be shipped in bulk and freely flowing in ocean-going vessels, the draft amended Agreement will help ensure an adequate supply of input material to the U.S. industry for further processing, a crucial benefit that could not be guaranteed with a countervailing duty order.

The Investigation is Complex

Regarding whether the countervailing duty investigation of sugar from Mexico is complex, section 704(c)(4)(B) of the Act defines the term "complex" as an investigation involving: (1) a large number of alleged countervailable subsidy practices, and the practices are complicated; (2) novel issues; or (3) a large number of exporters. All three of these circumstances existed in the countervailing duty investigation on sugar from Mexico. These circumstances, which Commerce determined existed as of the effective date of the Agreement, continue to exist. Specifically, the investigation: (1) covered a large number of alleged countervailable subsidy practices (*i.e.*, 29 alleged countervailable subsidy practices were under investigation), including allegations involving a price support scheme for sugar cane operated by the GOM and debt restructurings dating back to 1995; (2) raised complex issues, including how the investigation would impact, and be impacted by, the USDA's sugar program, as well as the TRQs

[32] *See* Letter to Wilbur Ross, Secretary of Commerce, from the American Sugar Coalition and Its Members, "Sugar from Mexico: Comments Regarding Proposed Amendments to Suspension Agreements" at Attachment 4 (November 14, 2019) (ASC's Comments) ("In other words, through September 2015, Mexican exports {*i.e.* direct consumption imports} that bypassed refiners were increasing.").
[33] *See* amended Agreement at Section II.U.

administered by the U.S. Trade Representative; and (3) concerned nearly 50 producers/exporters of sugar from Mexico.

Thus, based on the factors discussed above, we find that extraordinary circumstances exist, in accordance with section 704(c)(4) of the Act.

Public Interest

The statute provides that Commerce shall not accept a subsection 704(c) suspension agreement unless "it is satisfied that suspension of the investigation is in the public interest."[34] The statute explains further that, under any quantitative restriction agreement under section 704(c) of the Act, Commerce shall take into account the following factors after consulting with the appropriate consuming industries, producers, and workers identified in section 704(a)(2)(C) of the Act, as well as other factors deemed necessary or appropriate: (1) whether, based upon the relative impact on consumer prices and the availability of supplies of the merchandise, the agreement would have greater adverse impact on United States consumers than the imposition of countervailing duties; (2) the relative impact on the international economic interests of the United States; and (3) the relative impact on the competitiveness of the domestic industry producing the like merchandise, including any such impact on employment and investment in that industry.[35]

Commerce's analysis demonstrates that the draft amended Agreement establishes effective relief and, in a number of respects, has distinct advantages when compared to a countervailing duty order, such that suspension of the countervailing duty investigation remains in the public interest. As discussed above, the draft amended Agreement benefits domestic producers by eliminating the injurious effects of exports of the subject merchandise to the United States. Under the terms of the draft amended Agreement, the GOM continues to restrict the volume of exports of subject merchandise to the United States, tying exports of sugar to the residual needs of the U.S. market, and thereby eliminating completely the injurious effect of exports to the United States of that merchandise.[36] The draft amended Agreement supports price stability and predictability for consumers by guarding against an oversupply of Mexican sugar in the United States. By continuing to calculate the Export Limit based on U.S. needs, the draft amended Agreement ensures the availability of sugar to the United States for U.S. sugar processors, as well as the general public. If oversupply occurred, the U.S. industry might have been forced to forfeit sugar that it produced, causing sugar prices to fluctuate dramatically. Since the effective date of the Agreement, there have been no forfeitures of sugar.[37] Therefore, by limiting the supply of

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[34] *See* section 704(d)(1)(A) of the Act. A review of the legislative history reveals that Congress stated that "[t]he committee intends that investigations be suspended only when that action serves the interest of the public and the domestic industry affected." *See* Report of Senate Finance Committee, S. Rep. 96-249 at 54; *see also id.* at 71 (discussing similar provision in antidumping context).

[35] *See* sections 704(a)(2)(B) and (d)(1) of the Act.

[36] *See* amended Agreement at Section V.

[37] *See* USDA's Dairy and Sweeteners Analysis, "Forfeitures and Purchases Fiscal Year 2001 - Fiscal Year 2016" (June 16, 2017), available at: https://www.fsa.usda.gov/programs-and-services/economic-and-policy-analysis/dairy-

Mexican sugar, and revising the ratio of "Other Sugar" and "Refined Sugar", the draft amended Agreement will work to counteract any subsidies that incentivized Mexican overproduction and will support price stability and predictability for consumers in the United States. Additionally, the impact of either the draft amended Agreement or the imposition of countervailing duties would be to bring consumer prices for subject merchandise to fairly-traded market prices and the draft amended Agreement does not, therefore, have a greater adverse impact on United States customers than the imposition of duties.[38]

Moreover, as discussed above, the amended definitions of "Refined Sugar" and "Other Sugar" will ensure an adequate supply of input material to the U.S. industry for further processing, a crucial benefit that could not be guaranteed with a countervailing duty order. Ensuring the availability of supply for cane refiners is especially important because the U.S. market for sugar is restricted by the USDA's sugar program, which caps the amount of sugar imported from holders of TRQs and accordingly cane refiners may not have alternative sources of supply.

In addition, the draft amended Agreement will protect the international economic interests of the United States. Working in concert with the sugar program administered by USDA, the draft amended Agreement will significantly reduce the likelihood that significant shortages of sugar will arise in the U.S. market, or alternatively, that USDA would need to purchase forfeited sugar, thereby avoiding increased public debt. Furthermore, relative to the imposition of countervailing duties, the draft amended Agreement serves U.S. international economic interests because the continued suspension of the investigation strengthens the U.S. bilateral trade relationship with Mexico, while making appropriate adjustments to ensure that the Agreement continues to eliminate completely the injurious effect of Mexico's subsidies.

The draft amended Agreement will enhance the competitiveness of the domestic industry producing the like merchandise, and employment and investment in that industry. The draft amended Agreement works in concert with the USDA sugar program, which, under the 2014 Farm Bill, regulates the supply of sugar to maintain prices above forfeiture levels and adequate supplies of raw and refined sugar in the U.S. market.[39] The draft amended Agreement both ensures Mexico's continued participation as a key supplier of sugar to the U.S. market and bases Mexico's Export Limit, in part, on demand estimates that USDA updates throughout the year. These benefits for the domestic industry could not be achieved if Commerce were to impose a countervailing duty order.

In addition, the draft 2019 Amendment addresses the concerns of U.S. cane refiners that were negatively impacted by the original Agreement.[40] As discussed above, except where additional needs sugar is allocated on or after May 1, or in the event of extraordinary and unforeseen

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and-sweeteners-analysis/index and at Attachment 4 to this Memorandum.

[38] *See* section 704(a)(2)(B)(i) of the Act.

[39] *See* 7 U.S.C. §§ 1359bb, 1359cc.

[40] *See* ASC's June 2 Letter at Attachment 4 at 18-20; *see also* Letter from Imperial Sugar Company, "*Sugar from Mexico*, Case Nos. C-201-846 and A-201-845, Comments on the Draft Amendments to the Suspension Agreements," (November 14, 2019) (Imperial's Comments) at 2-3.

circumstances within the meaning of Section V.B.4.d, the draft amended Agreement revises the definitions of "Refined" and "Other Sugar" such that Mexico's semi-refined "estandar" sugar will be categorized as "Refined Sugar", minimizing the possibility that Mexican "Other Sugar" competes with U.S.-produced refined sugar. In addition, the draft amended Agreement introduces shipping conditions for "Other Sugar" that ensures that "Other Sugar" requires further processing and is therefore available for refining in the United States. Moreover, the ratio of Refined Sugar to Other Sugar has been decreased significantly, from a maximum of 53 percent "Refined Sugar" to a maximum of 30 percent "Refined Sugar", which will further increase the availability of sugar for further processing. Finally, changes to the reference prices in the amended AD Agreement are addressing the petitioner's concerns that Mexican exports were undercutting U.S. prices.

As noted above, the Agreement has provided a more stable and predictable environment for the U.S. industry than would a countervailing duty order, and the draft amended Agreement will continue to provide stability and predictability for the U.S. industry, which is in the public interest. Under an order, duty rates can be adjusted, potentially every year, through administrative reviews. Further, given the unique parameters of the U.S. sugar market, the issuance of a countervailing duty order has the potential to destabilize the U.S. sugar market, and cause shortages of sugar in the United States. The draft 2019 Amendment will increase the supply of "Other Sugar" available to U.S. cane refiners for further processing, and reduce the competition between Mexican semi-refined sugar and domestically-refined sugar. Under a countervailing duty order, there could be no mandate of the type of sugar imported into the United States; the only remedy available to the U.S. industry would be a duty and there would be no means to increase the likelihood of a steady supply of "Other Sugar" for further processing. Furthermore, the draft amended Agreement allows Commerce additional flexibility to adjust the amount of sugar, and the type of sugar, that can be imported from Mexico, based on requests from USDA. This will provide additional means to increase the likelihood that adequate supplies of sugar are maintained throughout the year. In sum, the draft amended Agreement will prevent disruptions and uncertainties in the market to the benefit of traders and consumers alike, by allowing Mexican sugar producers and exporters to have continued access to the U.S. market while ensuring that such access is consistent with requirements of section 704(c) of the Act.

CSC Sugar argues that the public interest requirement should "include a full economic report, including an analysis of the oligopolistic structure of the U.S. sugar refining industry, and the consequent effect on the competitive nature of the U.S. industry, consumers, and consumer prices of accepting an agreement that is designed to drive a new domestic entrant out of the U.S. market."[41] CSC Sugar argues that a "severely weakened or devastated CSC affects the competitiveness of the U.S. industry and employment and investment, which the Department is compelled by law to consider."[42] Commerce disagrees with the premise of CSC Sugar's arguments, *i.e.*, that Commerce has failed to consider the impact on the competitiveness of the domestic industry. Commerce has considered the relative impact on the competitiveness of the

[41] *See* Letter from CSC Sugar, "Sugar from Mexico: Comments on the Agreement Suspending the Antidumping Duty and Countervailing Duty Investigation" (November 14, 2019) (CSC Sugar's Comments) at 8.
[42] *Id*. at 9.

domestic industry as a whole, of which CSC Sugar comprises only a small portion. A large majority of the domestic industry, as well as the signatories as represented by Cámara, support the draft 2019 Amendment. Thus, we find that CSC Sugar's objections do not outweigh the support of the rest of the domestic industry. Further, the public interest requirement of the Act does not require Commerce to undertake the kind of economic report that CSC Sugar suggests in its comments. 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.

CSC Sugar also argues that any renegotiation must procedurally and factually ensure that the fundamental issue of polarity and the public interest be properly addressed.[43] On this point, Commerce agrees with Imperial Sugar and ASC that "Commerce has put in place a process that addresses the procedural issues identified by the Court, and this process is consistent with the statute and regulations."[44] We also agree with ASC's 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 effect of imports from Mexico."[45] Commerce believes that the draft 2019 Amendment addresses the underlying issues with the original 2014 Agreement, and therefore proposes that the draft 2019 Amendment change the polarity dividing line from 99.5 to 99.2.

Finally, CSC Sugar opposes the proposed change of the polarity dividing line from 99.5 to 99.2, asserting that it is unnecessary and aimed at harming CSC Sugar relative to other members of the domestic industry.[46] CSC argues that there is no explanation or any argument from the domestic industry as to the "validity or necessity of maintaining this unnecessary 99.2 polarity requirement"[47] and that there is "hard data that demonstrates the significant hardship faced by CSC."[48] As noted above, sugar that is under 99.2 degrees in polarity and shipped in bulk and 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. 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. Mexican "estandar" or "standard sugar" is fit for such use, and has a minimum polarity of 99.4 degrees.[49] Such semi-refined sugar functions as the market equivalent of Refined Sugar, but is

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[43] *See* Letter from CSC Sugar, "Sugar from Mexico: Rebuttal Comments on the Agreement Suspending the Antidumping Duty and Countervailing Duty Investigations," (November 21, 2019) (CSC Sugar's Rebuttal Comments) at 2.
[44] *See* Imperial's Rebuttal Comments at 4.
[45] *See* Letter from ASC, "Sugar from Mexico: Rebuttal Comments Regarding Proposed Amendments to Suspension Agreements" (November 21, 2019) (ASC's Rebuttal Comments) at 10.
[46] *See* CSC Sugar's Comments at 9-11.
[47] *See* CSC Sugar's Rebuttal Comments at 2.
[48] *See* CSC Sugar's Rebuttal Comments at 3; *see also* CSC Sugar's Comments at Attachment B.
[49] *See* Secretaria de Economia, "Sugar Industry Specifications, NMX-F-084-SCFI-2004" at Sections 3.1 & 5.1 (2004) at Attachment 2 to this Memorandum.

permitted under the AD Agreement to enter at the lower price for Other Sugar.[50] By both changing the polarity division and requiring that Other Sugar be shipped in bulk and freely-flowing in an ocean-going vessel, the draft 2019 Amendment ensures that sugar that enters subject to the lower reference price is sold in the market segment of sugar that requires further processing and that an adequate supply of raw sugar reaches cane refiners.[51]

Practicability of Effective Monitoring

We find that the draft 2019 Amendment, in conjunction with the draft 2019 Amendment to the Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico (AD Agreement) (together, the draft 2019 Amendments or draft amended Agreements), can be administered and enforced by Commerce. As part of the original 2014 CVD and AD Agreements (together, the Agreements), the GOM and the Mexican producers/exporters agreed to supply Commerce with all information that the Commerce deems necessary to ensure full compliance with the price, polarity, export limits, and other terms and conditions of the Agreements, and that Commerce has the authority to verify that information.[52] Among other provisions, the Agreements specify that Commerce would monitor and review the operation of the Agreements.[53] To do so, the 2014 AD Agreement required Mexican producers/exporters to regularly certify to their compliance with the AD Agreement,[54] and to provide, at Commerce's request, documentation confirming the price received on any sale subject to the Agreement.[55] Similarly, the GOM was required to collect and, at the Commerce's request, provide to Commerce certain information regarding exports of sugar to the United States.[56]

Further, the Agreements permitted Commerce to "conduct verifications of persons or entities handling Signatory merchandise," under the AD Agreement,[57] and to conduct verification of all information related to the administration of the CVD Agreement.[58] If Commerce were to determine that sales were made at prices inconsistent with the AD Agreement, Commerce could undertake consultations with the Mexican producer/exporter responsible, and take certain actions to prevent circumvention of the Agreement.[59] Similarly, if Commerce were to determine that sugar from Mexico entered the United States in excess of the Export Limit or without a valid export license, Commerce could undertake consultations with the GOM and request that the Government reduce the export allocation for the producer/exporter involved by twice the volume

[50] *See* ASC's June 2 Letter at Attachment 4 at 18-20; *see also* ASC's Comments at 2-3..
[51] *See* Letter from Imperial Sugar Company, "*Sugar from Mexico*, Case Nos. C-201-846 and A-201-845, Rebuttal to Interested Party Comments on Proposed Amendments to the Suspension Agreements," (November 21, 2019) (Imperial's Rebuttal Comments) at 10.
[52] *See*, *e.g.*, Sections VIII.B.1 and VIII.B.2 and Appendix II of the CVD Agreement; Sections VII. and VIII.C of the AD Agreement.
[53] *See* Sections VII.A and VIII.B.3 of the AD Agreement; Sections VIII.A and VIII.B of the CVD Agreement.
[54] *See* Section VIII.C.4.
[55] *See* Section VII.B of the AD Agreement.
[56] *See* Section VIII.B of the CVD Agreement.
[57] *See* Section VII.B.4.
[58] *See* Section VIII.B.2.
[59] *See* Section VIII.E of the AD Agreement.

of the entry.[60] The Agreements provided for Commerce to take certain enforcement actions should Commerce find that there had been a violation of the Agreements.[61] The original Agreement also required the GOM to take certain enforcement action against Mexican exporters that were found to have circumvented the Agreements.[62]

The draft 2019 Amendments have substantially reworked these mechanisms to ensure compliance with the terms of the Agreements, and to strengthen Commerce's ability to fully evaluate the performance of the Agreements throughout the course of Commerce's administration of the amended Agreements.

Additional Monitoring of Producers/Exporters and Their Customers

The draft 2019 Amendments provide for additional monitoring and verification of the information provided by the GOM and Mexican producers, exporters, and customers of Mexican producers/exporters. The original Agreements did not specify whether Commerce had the authority to request or verify certain information from resellers or traders of sugar. Nor was it clear that resellers' or traders' sales of sugar from Mexico into the United States were subject to the terms of the Agreements. The draft 2019 Amendments to the Agreements specifically address Commerce's ability to monitor and verify compliance with the Agreements under these circumstances, *i.e.*, when sugar is not sold directly from the Mexican producer/exporter to the first unaffiliated customer in the United States.

In particular, the amended AD Agreement will require Mexican producers/exporters to include certain provisions in their sales contracts to customers (such as traders, processors, or resellers) who are not the first unaffiliated purchasers in the United States. Those contractual provisions will require that each purchaser abide by the terms of the amended AD Agreement, as though the purchaser were a signatory producer/exporter. Moreover, the amended AD Agreement will require all Mexican producers/exporters (and their purchasers, through contractual provision) to retain evidence in their files to document their compliance with the amended AD Agreement. Accordingly, the draft 2019 Amendments substantially strengthen the ability of Commerce to monitor and verify compliance with the Agreements when sugar is not sold directly from the Mexican producer/exporter to the first unaffiliated purchaser in the United States.

Strengthened Monitoring of Polarity of Specific Sugar Shipments

The draft amended Agreement includes certain enhanced monitoring and compliance mechanisms, including the GOM's commitment to issue export licenses through its export licensing system that are specific to a contract, rather than shipment-specific. These draft 2019 Amendments will strengthen Commerce's ability to precisely tie certain sales to export licenses issued by the GOM, thereby enabling Commerce to more accurately monitor and verify

[60] *See* Sections V.D and VIII.D.2 of the CVD Agreement.
[61] *See* Section VIII of the AD Agreement; Section IX of the CVD Agreement.
[62] *See* Section VII of the CVD Agreement.

compliance with the provisions of the draft amended Agreement. Moreover, under the original Agreement, the GOM is required to specify, on export licenses, whether or not exported "Other Sugar" is intended for further processing in the United States.[63] The draft amended Agreement will additionally require the GOM to specify, if known, the identity of the entity that is further processing the "Other Sugar". This added requirement will improve Commerce's ability to track sales of sugar as it monitors signatories' compliance with the draft amended Agreements, including whether sales have been made at the correct reference price under the amended AD Agreement.

Additional mechanisms also ensure that the amended Agreements can be effectively monitored and enforced. Under the original language of the Agreement, the export license was required to include the polarity of the exported sugar,[64] but the Agreement was silent regarding whether testing to confirm the polarity listed on the export license was to occur before or after importation, or the specific testing protocols to be followed. The draft 2019 Amendments to include critical elements that specify imports of "Other Sugar" must arrive in the United States in bulk and freely flowing, on ocean-going vessels, and must be tested for polarity by a CBP-approved laboratory upon entry into the United States. With the addition of the testing requirements, Commerce will be able to determine, with greater certainty, when specific sales or shipments exceed the polarity for "Other Sugar" (and, thus, evaluate whether the sale occurred at or above the correct minimum reference price). Further, pursuant to the amendment to the AD Agreement, importers must report the polarity test results for every entered shipment to Commerce within 30 days of entry and exporters must ensure compliance by importers in the context of contractual clauses.[65] These new requirements will enable Commerce to act quickly to identify episodes of non-compliance, and impose penalties on non-compliant shipments, thereby creating a substantial deterrent against non-compliant conduct.

Enhanced Enforcement of Polarity and Price Requirements

Pursuant to the draft 2019 Amendment, Commerce can enforce compliance with the polarity limits for "Other Sugar". Under the original language of the Agreement, if Commerce were to determine that Sugar from Mexico entered the United States in excess of the Export Limit or without a valid export license, Commerce could undertake consultations with the GOM and request that the Government reduce the export allocation for the producer/exporter involved by twice the volume of the entry.[66] If the entry could not be tied to a specific producer/exporter, Commerce could reduce the Export Limit by twice the volume of the entry.[67]

The draft 2019 Amendment enhances this penalty: where Commerce finds that polarity test results are not compliant with the draft amended Agreement's applicable definition of "Other Sugar" (and therefore, under the draft amended AD Agreement, the Sugar was sold at below the

[63] *See* Appendices I and II to the CVD Agreement.
[64] *Id*.
[65] *See* Section VII.C.6 of the AD Agreement.,
[66] *See* Section V.D of the CVD Agreement.
[67] *Id*.

applicable reference price), the draft amended Agreement provides for penalties that significantly reduce the quota amount Mexico is permitted to export to the United States under the draft amended Agreement. Specifically, where Commerce determines that a shipment that entered the United States as "Other Sugar" has a polarity of above the polarity limit for "Other Sugar", Commerce will reduce Mexico's Export Limit by double the quantity of the non-compliant shipment. Accordingly, under the draft amended Agreement, the Export Limit reduction will follow from any shipment that fails to comply with the draft amended Agreements' polarity requirements. Further, the GOM will deduct double the quantity of the non-compliant shipment from the export limit allocation of the specific producer(s)/exporter(s) responsible for the shipment. Finally, if Commerce has penalized the GOM for polarity non-compliance in a given Export Limit Period, Mexico may not be eligible to fill any additional need for sugar in the U.S. market. These are enhanced penalties designed to encourage compliance with the polarity limits for "Other Sugar" in both draft 2019 Amendments, and to enable Commerce to effectively enforce the polarity requirements in both of the draft amended Agreements.

Furthermore, if Commerce determines that these provisions are not sufficient to ensure compliance with the polarity requirements of the draft amended Agreements, the draft Amendments further specify that Commerce may increase the penalty for non-compliance by deducting triple the amount of the non-compliant shipments from Mexico's Export Limit or may terminate the draft amended Agreements.

The draft 2019 Amendment to the AD Agreement specifically requiring polarity testing upon import, in conjunction with the draft 2019 Amendment to the Agreement penalizing Mexico and the producer(s)/exporter(s) responsible for shipments with polarity that is not compliant with the draft amended Agreements by reducing Mexico's Export Limit, will encourage compliance with the polarity provisions of the draft amended Agreements, and enable Commerce to effectively identify and address non-compliance with those provisions.

Based on the terms of the draft amended Agreements, Commerce's experience and expertise in monitoring and enforcing suspension agreements, and the commitment from the GOM and the Mexican producers/exporters to abide by the terms of the draft amended Agreements, effective monitoring and enforcement of the draft amended Agreement is practicable.

ATTACHMENT 1

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U.S. Sugar Program Fundamentals

Mark A. McMinimy
Analyst in Agricultural Policy

April 6, 2016

Congressional Research Service
7-5700
www.crs.gov
R43998

CRS REPORT
Prepared for Members and
Committees of Congress

Summary

The U.S. sugar program provides a price guarantee to producers of sugar beets and sugarcane and to the processors of both crops. The U.S. Department of Agriculture (USDA), as program administrator, is directed to administer the program at no budgetary cost to the federal government by limiting the amount of sugar supplied for food use in the U.S. market. To achieve both objectives, USDA uses four tools—as reauthorized without change by the 2014 farm bill (P.L. 113-79) and found in chapter 17 of the Harmonized Tariff Schedules of the United States—to keep domestic market prices above guaranteed levels. These are:

- price support loans at specified levels—the basis for the price guarantee;
- marketing allotments to limit the amount of sugar that each processor can sell;
- import quotas to control the amount of sugar entering the U.S. market;
- a sugar-to-ethanol backstop—available if marketing allotments and import quotas are insufficient to prevent a sugar surplus from developing, which in turn could result in market prices falling below guaranteed levels.

To supplement these policy tools in supporting sugar prices above government loan levels, while avoiding costly loan forfeitures, important administrative changes were adopted in late 2014. These included imposing limits on U.S. imports of Mexican sugar and establishing minimum prices for Mexican sugar imports, actions that fundamentally recast the terms of bilateral trade in sugar. Two U.S. sugar refiners have initiated a legal challenge to the U.S. government's finding that these changes have eliminated the harm to the U.S. sugar industry, so although this new regime is in effect, a measure of uncertainty about its future remains.

Under the U.S. sugar program, nonrecourse loans that may be taken out by sugar processors, not producers themselves, provide a source of short-term, low-cost financing until a raw cane sugar mill or beet sugar refiner sells sugar. The "nonrecourse" feature of these loans means that processors—to meet their repayment obligation—can exercise the legal right to forfeit sugar offered as collateral to USDA to secure the loan, if the market price is below the effective support level when the loan comes due.

Sugar marketing allotments limit the amount of domestically produced sugar that processors can sell each year. In a 2008 farm bill provision, retained by the 2014 farm bill, USDA each year must set the overall allotment quantity (OAQ) at not less than 85% of estimated U.S. human consumption of sugar. The OAQ is intended to ensure that permitted sales of domestic sugar, when added to imports under U.S. trade commitments, do not depress market prices below loan forfeiture levels for refined beet sugar and raw cane sugar.

The United States imports sugar in order to meet total food demand. The amount of foreign sugar supplied to the U.S. market reflects U.S. commitments made under various trade agreements. The most significant import obligation is the World Trade Organization (WTO) quota commitment, which requires the United States to allow not less than 1.256 million tons of sugar (almost all raw cane) to enter the domestic market from 40 countries. The United States also grants much smaller import quotas to nine countries covered by four free trade agreements. At the same time, a 2008 farm bill provision, also retained in the 2014 farm bill, directs USDA to manage overall U.S. sugar supply, including imports, so that market prices do not fall below effective support levels.

If market prices fall below levels guaranteed by the sugar program, USDA must administer a sugar-for-ethanol program in which it buys domestically produced sugar from the market and sells it to ethanol producers as feedstock for fuel ethanol. A source of controversy over the sugar program is the balance it strikes between the interests of the sugar industry and sugar users.

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Sugar Policy Overview

The U.S. sugar program is singular among major agricultural commodity programs in that it combines a floor price guarantee with a supply management structure that encompasses both domestic production for human use and sugar imports. The sugar program provides a price guarantee to the processors of sugarcane and sugar beets, and by extension, to the producers of both crops. The U.S. Department of Agriculture (USDA) is directed to administer the program at no budgetary cost to the federal government by limiting the amount of sugar supplied for food use in the U.S. market. To achieve both objectives, USDA uses four tools to keep domestic market prices above guaranteed levels. Measures one through three below were reauthorized through crop year 2018 without change by the 2014 farm bill (P.L. 113-79). The fourth measure is found in long-standing trade law. The four are:

1. price support loans at specified levels—the basis for the price guarantee;
2. marketing allotments to limit the amount of sugar that each processor can sell;
3. a sugar-to-ethanol (feedstock flexibility) backstop—available if marketing allotments and import quotas fail to prevent a price-depressing surplus of sugar from developing (i.e., fail to keep market prices above guaranteed levels);
4. import quotas to control the amount of sugar entering the U.S. market.

In addition to the foregoing policy tools, two agreements signed by the U.S. Department of Commerce (DOC) in late 2014—one with the government of Mexico and another with Mexican sugar producers and exporters—impose annual limits on Mexican sugar exports to the United States and establish minimum prices for imported Mexican sugar.

The current sugar program has its roots in the Agriculture and Food Act of 1981 (P.L. 97-98), according to the USDA.[1] The sugar program that Congress enacted in the 1981 farm bill required the Secretary of Agriculture to support prices of U.S. sugarcane and sugar beets at minimum levels—initially through purchases of processed sugar, and subsequently by offering nonrecourse loans. The legislation also encouraged the President to impose duties, fees or quotas on foreign sugar to prevent domestic prices from moving below established support levels to avoid imposing budgetary costs on the government. In its report on the 1981 farm bill, the Senate Committee on Agriculture, Nutrition and Forestry cited the importance of sugar imports to U.S. sugar supplies, pointing out that volatile world market prices of sugar contributed to sharp fluctuations in U.S. sugar prices, while adding that the United States was alone among sugar producing nations in being without an effective government price support program.[2]

The sugar program has long been a source of political controversy over the degree of government support and market intervention it involves with sharply differing perspectives on the balance of benefits and drawbacks to the program. Critics of the program, including the Coalition for Sugar Reform, which represents consumer, trade and commerce groups, manufacturing associations and food and beverage companies that use sugar, argue the sugar program acts to keep domestic prices far above world sugar prices. In so doing, the Coalition contends the sugar program imposes a hidden tax on consumers and has led to the loss of jobs in the food manufacturing sector by encouraging imports of sugar-containing products and by providing manufacturers with an incentive to move facilities abroad to gain access to lower priced sugar. The American Sugar Alliance, consisting of sugarcane and sugar beet producers, including farmers, processors,

[1] USDA, ERS Sugar & Sweeteners at http://www.ers.usda.gov/topics/crops/sugar-sweeteners/policy.aspx.

[2] Report of the Senate Committee on Agriculture, Nutrition, and Forestry to accompany S. 884, May 27, 1981.

refiners, suppliers and sugar workers, is a leading advocate for the U.S. sugar program. It points out that the price support feature of the sugar program fosters a reliable supply of sugar at reasonable prices at no cost to the government. The sugar program, it argues, is necessary to shield the domestic sugar industry from unfair competition from sugar imports at world market prices that it contends are distorted by heavily subsidized foreign sugar that is dumped on the world market at prices that are below production costs (see "Sugar Program Draws Sharply Differing Views" below).

For background on sugar policy debate, see CRS Report R42551, *Sugar Provisions of the 2014 Farm Bill (P.L. 113-79)*, by Mark A. McMinimy.

Price Support Loans

Nonrecourse loans taken out by a processor of a sugar crop, not producers themselves, provide a source of short-term, low-cost financing until a raw cane sugar mill or beet sugar refiner sells sugar. The "nonrecourse" feature means that processors—to meet their loan repayment obligation—can exercise the legal right to forfeit sugar offered as collateral to USDA to secure the loan, if the market price is below the effective support level when the loan comes due. **Figure 1** and **Figure 2** illustrate the repayment options available to raw cane sugar mills and beet sugar refiners, respectively, and show loan rates and effective support levels for FY2016.

The price levels at which processors can take out loans are referred to as "loan rates." The 2014 farm bill made no changes in the sugar program, so the current rates date from the 2008 farm bill, P.L. 110-246. The raw cane sugar loan rate (18.75¢/lb) is lower than the refined beet sugar loan rate (24.09¢/lb) to reflect its unprocessed state. The raw sugar loan rate is lower because raw sugarcane must be further processed by a cane refinery to have the same value and characteristics as refined beet sugar for food use. These loan rates are national averages. Actual loan rates are adjusted by region to reflect marketing cost differentials.

The minimum market price that a processor wants to receive in order to remove the incentive to forfeit sugar and instead repay a price support loan, though, is higher than the loan rate. This "effective support level," also called the loan forfeiture level, represents all of the costs that processors need to offset to make it economically viable to repay the loan. These costs equal the loan rate, *plus* interest accrued over the nine-month term of the loan, *plus* certain marketing costs. The effective support level for 2015-crop (FY2016) of raw cane sugar is 20.87¢/lb; for refined beet sugar, it ranges from 24.4¢ to 26.04¢/lb, depending on the region.

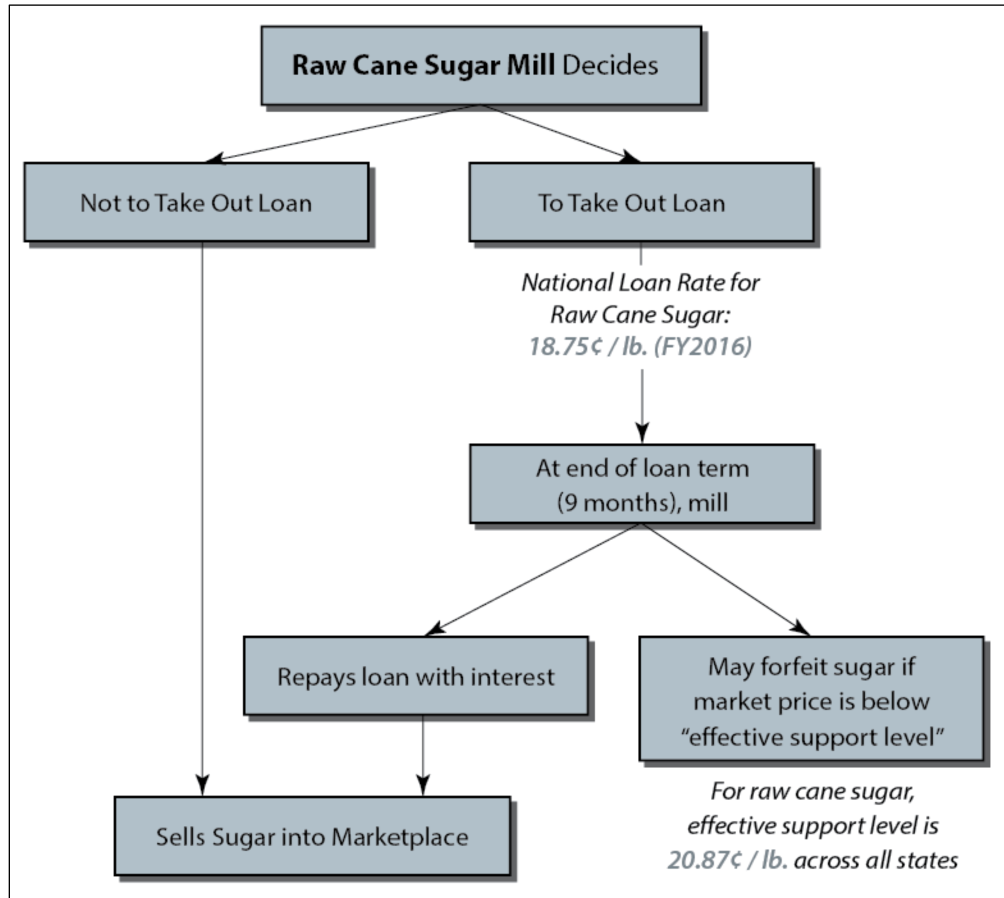
If market prices are below these loan forfeiture levels when a price support loan usually comes due (i.e., July to September), and a processor hands over sugar earlier pledged to obtain this loan rather than repaying it, USDA records a budgetary expense (i.e., an outlay). If this occurs, USDA gains title to the sugar and is responsible for disposing of this asset.

Two suspension agreements the DOC signed in December 2014—one with the Government of Mexico and another with Mexican sugar producers and exporters—have substantially modified the terms for importing sugar from Mexico and may have the practical effect of raising the effective support level.[3] For one, Mexican sugar is an important source of the U.S. sugar supply, with imports of Mexican sugar averaging 15% of the sum of U.S. production plus imports during

[3] See Agreement Suspending the Countervailing Duty Investigation on Sugar from Mexico at http://enforcement.trade.gov/agreements/sugar-mexico/CVD-Agreement.pdf; also, Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico at http://enforcement.trade.gov/agreements/sugar-mexico/AD-Agreement.pdf.

the three marketing years prior to the onset of the suspension agreements from 2011/2012 to 2013/2014.[4] Imports of sugar from Mexico in 2014/2015, the year the suspension agreements took effect, represented 11% of the total of U.S. production plus imports.[5] The agreements (see "Suspension Agreements Recast Sugar Trade with Mexico" below) establish minimum prices for Mexican sugar imports that are at, or above, effective U.S. support levels. These minimum prices are calculated at Mexican plants, so transportation costs to the U.S. processor or end user would add several cents per pound to the delivered cost of Mexican sugar. As a result, prices of imported Mexican sugar should track well above levels that would encourage U.S. loan forfeitures.

Figure 1. Price Support Loan Making Process for Raw Cane Sugar

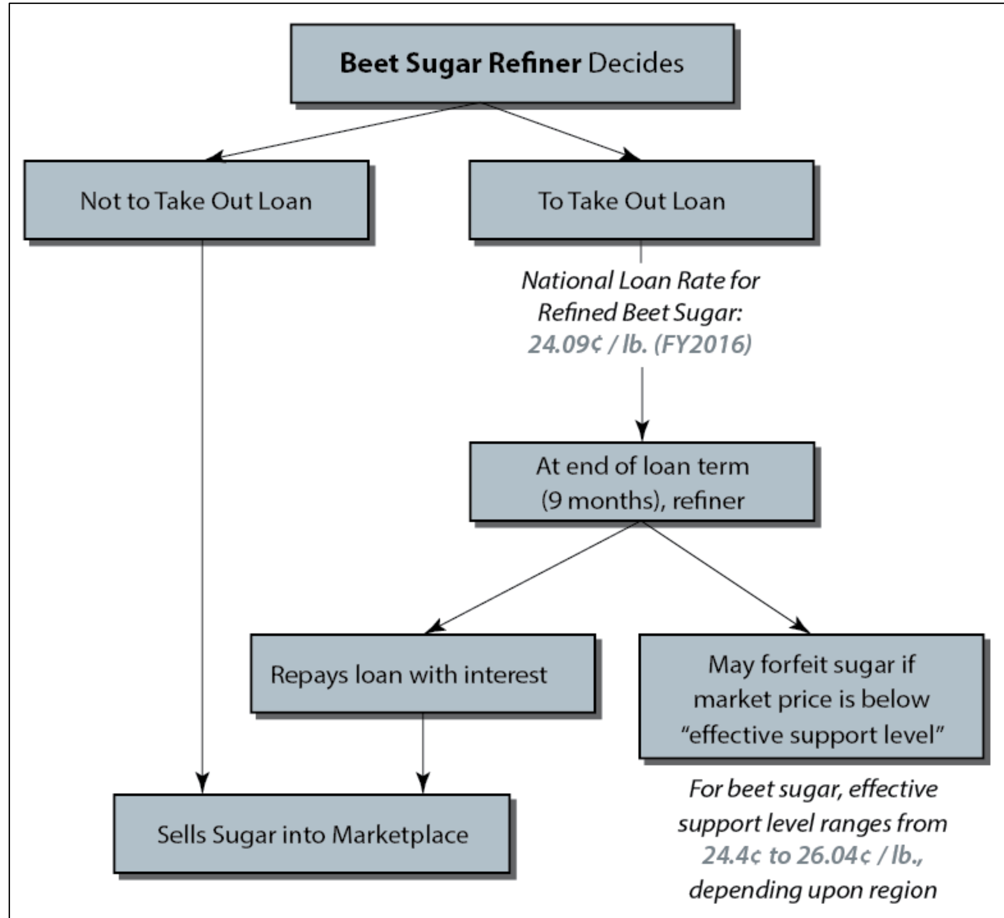


Note: As of March 30, 2016, USDA data indicates that mills that process sugarcane had 509,255 short tons of 2015-crop raw cane sugar under loan valued at $195.9 million. This represented 13.6% of USDA's March 2016 estimate of raw cane sugar production from the 2015 sugarcane crop.

[4] The marketing year for U.S. sugar is the same as the U.S. government's fiscal year: October1-September 30.

[5] USDA, Economic Research Service, *Sugar and Sweeteners Outlook*, March 15, 2016.

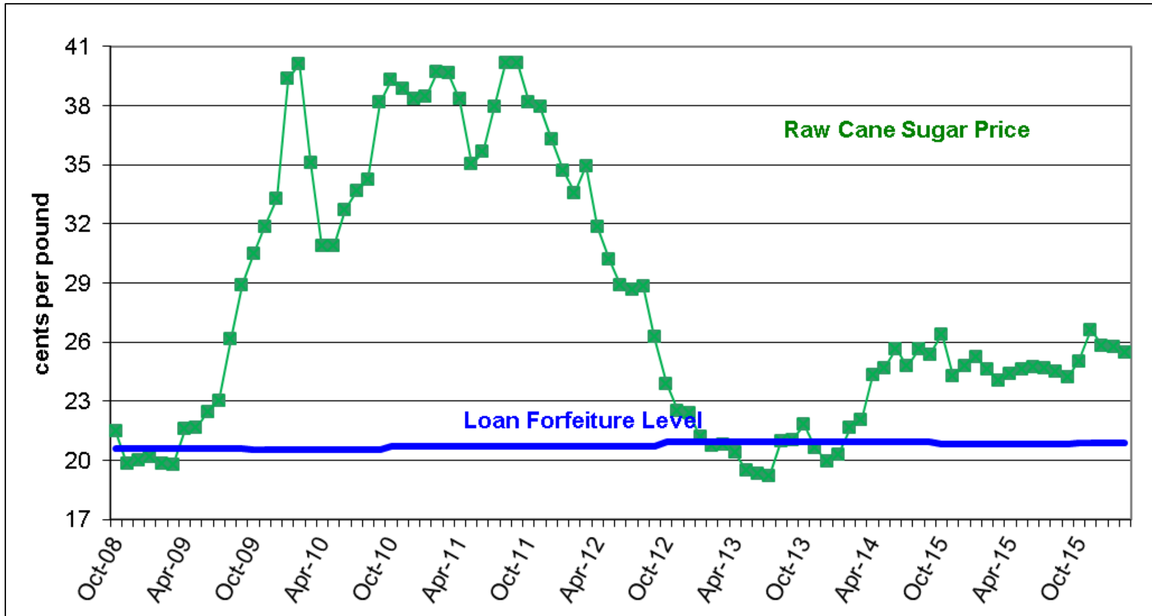
Figure 2. Price Support Loan Making Process for Refined Beet Sugar



Note: As of March 30, 2016, USDA indicates that processors of sugar beets had 1,129,250 short tons of 2015 crop beet sugar and in-process beet sugar under loan valued at $500 million. This represented 23% of USDA's March 2016 estimate of refined beet sugar production from the 2015 sugar beet crop.

Market prices for raw cane sugar and refined beet sugar since the 2008 farm bill provisions took effect were higher than loan forfeiture levels until mid-year 2013 (**Figure 3** and **Figure 4**, respectively). Toward the end of FY2013, market prices that were below these effective support levels prompted processors to forfeit, or hand over, to USDA 381,875 tons of sugar (4.3% of FY2013 U.S. sugar output valued at almost $172 million). USDA actions taken to avert these forfeitures, and then to dispose of sugar acquired as a result of these forfeitures, are detailed below in "Sugar Purchases and Exchanges for Import Rights" and "Feedstock Flexibility Program for Bioenergy Producers."

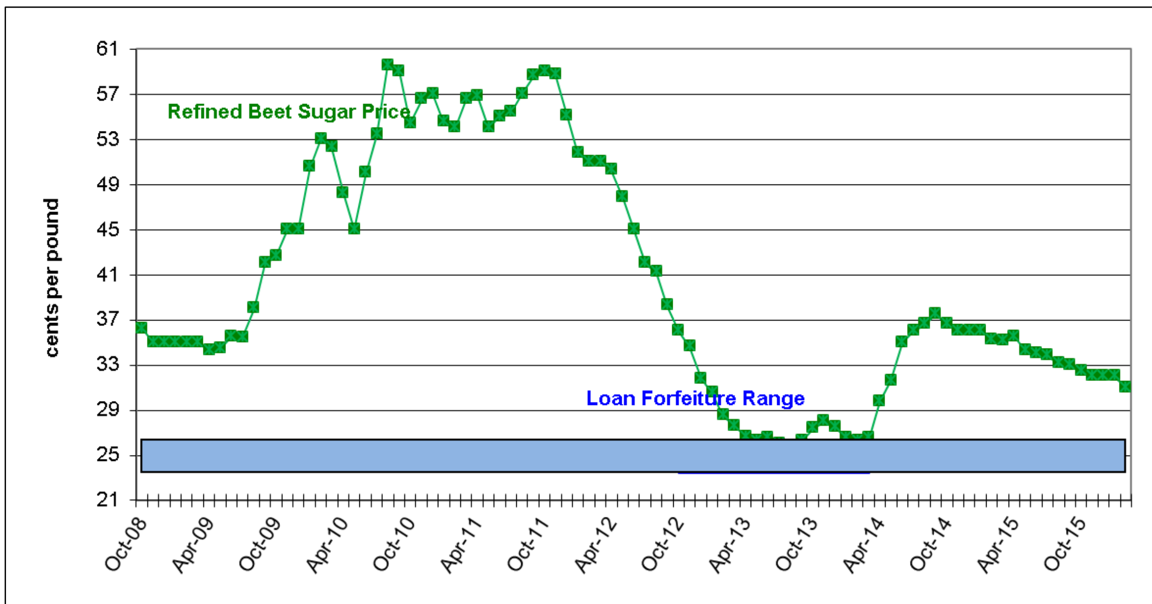
Figure 3. Raw Cane Sugar Prices Have Been Above Loan Forfeiture Level Since the 2008 Farm Bill Except in Early FY2009, Late FY2013, and Early FY2014



Source: USDA, Economic Research Service, for price data; USDA, Farm Service Agency, for loan forfeiture level.

Note: Raw cane sugar market price is the average futures price for the nearby month contract for domestic #16, traded in New York City on the Intercontinental Exchange (ICE).

Figure 4. Refined Beet Sugar Prices Have Stayed Above Loan Forfeiture Range Since the 2008 Farm Bill Until February 2016



Source: USDA, Economic Research Service, for price data; USDA, Farm Service Agency, for loan forfeiture range.

Note: The market price for refined beet sugar is the quoted price for wholesale refined beet sugar in Midwest markets, as published by *Milling and Baking News*.

Tools for Balancing Supplies and Supporting Prices

The government sets annual limits on the quantity of domestically produced sugar that can be sold for human use. It also restricts the level of imports that may enter the domestic market through tariff-rate quotas and via an import limitation agreement with Mexico. This is done to avoid costs during times when an imbalance between sugar supplies and demand could lead to low prices and sugar forfeitures under the loan program.

Marketing Allotments

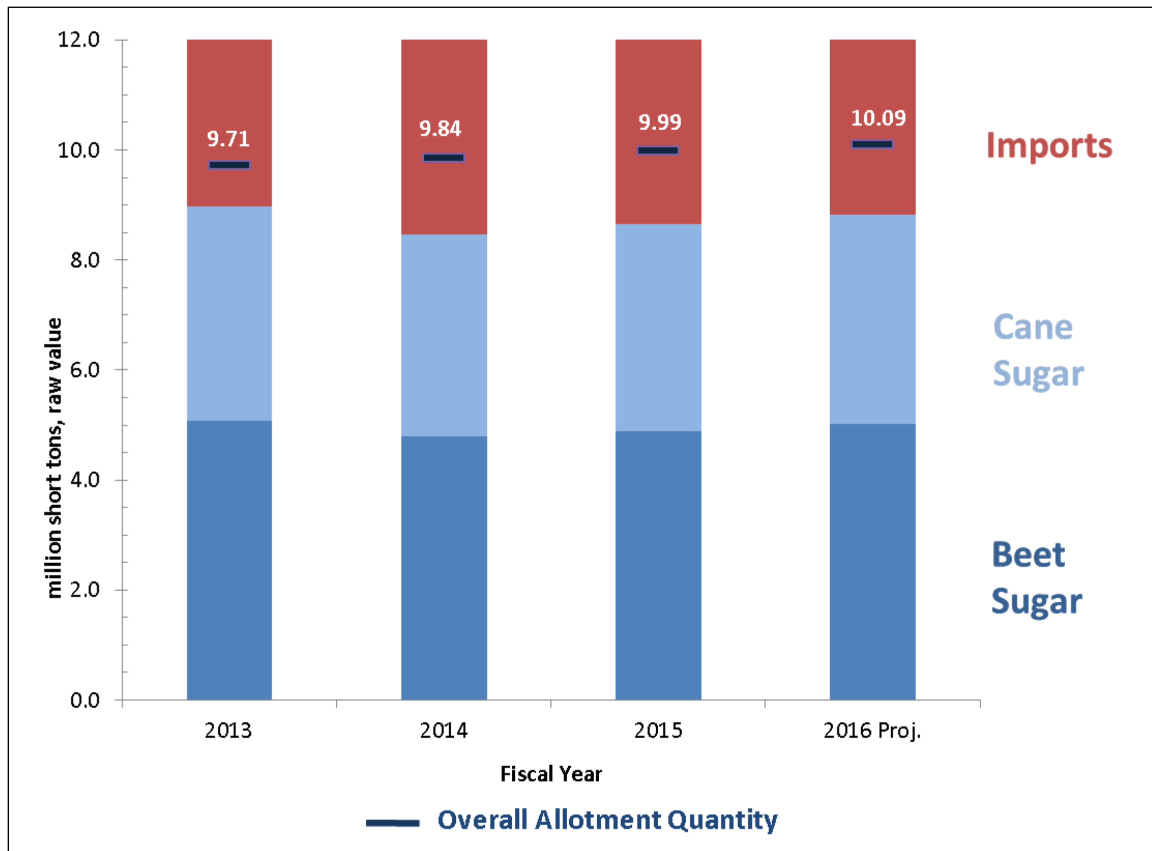
Sugar marketing allotments limit the amount of domestically produced sugar that processors can sell each year. They do not, however, limit how much beet and cane farmers can produce, nor do they limit how much sugar beets and sugarcane that beet refiners and raw sugar mills can process. In a 2008 farm bill provision that was retained in the 2014 farm bill, USDA is required each year to set the overall allotment quantity (OAQ) at not less than 85% of estimated U.S. human consumption of sugar for food. This task is carried out by the USDA's Commodity Credit Corporation (CCC) at the beginning of each fiscal year. The OAQ is intended to ensure that permitted sales of domestic sugar, when added to imports under U.S. trade commitments, do not depress market prices below loan forfeiture levels for refined beet sugar and raw cane sugar. Sugar production that is in excess of a processors' marketing allotment may not be sold for human consumption except to allow another processor to meet its allocation or for export.

In recent years, U.S. sugar production has consistently fallen short of the OAQ, averaging 88% of the OAQ threshold during the most recent three completed years from FY2013 through FY2015. Over this same period, U.S. sugar production has amounted to 74% of U.S. human use of sugar.

Figure 5 illustrates the persistent gap between domestic sugar production, the higher levels of the OAQ, and U.S. domestic consumption for human use. Substantial quantities of sugar have been imported to cover the shortfall between domestic output and human consumption. For this reason, market participants view USDA's decisions on setting import quotas rather than marketing allotments as having more of an impact on market price levels (see "Import Quotas").

The national OAQ is split between the beet and cane sectors and then allocated to processing companies based on previous sales and production capacity. If either sector is not able to supply sugar against its allotment, USDA has authority to reassign such a "shortfall" to imports.

Figure 5. Overall Allotment Quantity Compared to Total U.S. Sugar Supply



Source: Derived by CRS from USDA sugar program announcements and USDA's World Agricultural Supply and Demand Estimates reports.

Note: Imports shown occur under terms of U.S. trade commitments and are discussed in more detail in the next section.

Import Quotas

The United States imports sugar in order to meet total food demand. From FY2013 through FY2015, imports accounted for 30% of U.S. sugar used in food and beverages. The amount of foreign sugar supplied to the U.S. market reflects U.S. commitments made under various trade agreements. At the same time, a 2008 farm bill provision—one retained in the 2014 farm bill—directs USDA to manage overall U.S. sugar supply, including imports, so that market prices do not fall below effective support levels. The most significant import limit is the World Trade Organization (WTO) quota commitment, which requires the United States to allow not less than 1.256 million tons, raw value, of sugar (almost all raw cane) to enter the domestic market from 40 countries (equivalent to 1.139 million metric tons, raw value [MTRV]). The raw cane sugar tariff-rate quota (TRQ), representing 98% of the WTO minimum quota commitment of the United States, is allocated based on trade in sugar from 1975 to 1981, years during which this trade was relatively unrestricted.

The United States also grants much smaller import quotas to the six countries covered by the Dominican Republic-Central American Free Trade Agreement (DR-CAFTA), and to Colombia, Panama, and Peru under separate free trade agreements (FTAs). For calendar year 2016, the TRQ

under these FTAs totals 140,580 MTRV for the DR-CAFTA countries, 53,000 tons for Colombia, 7,325 tons for Panama, and 2,000 tons for Peru.

Beyond these defined import commitments, unrestricted, duty-free access to Mexican sugar under the North American Free Trade Agreement (NAFTA) introduced uncertainty over how much sugar Mexico would ship north in any year. To illustrate, U.S. imports of Mexican sugar since 2008 have ranged from a low of about 800,000 tons in FY2010 to a high of almost 2.1 million tons in FY2013. This variability (**Figure 6**) in part reflects large swings in the amount of Mexican sugar available for export in any year, depending on the impact of drought in some years in Mexico's sugarcane-producing regions, and the degree to which U.S. exports of cheaper high-fructose corn syrup displace Mexican consumption of Mexican-produced sugar.

During the three most recently completed marketing years, FY2013-FY2015, Mexico was by far the largest source of U.S. sugar imports, supplying 55% of total U.S. sugar imports on average over this period. Reflecting Mexico's unique status as an unrestricted supplier up until December 2014, its annual shipments varied from a high of 2.1 million short tons, raw value (STRV)[6], comprising 66% of U.S. sugar imports in FY2013, to a low of 1.5 million STRV, comprising 43% of U.S. imports in FY2015. Sugar entering the United States under tariff-rate quota programs during these three years amounted to 36% of all imports, with DR-CAFTA countries supplying a subtotal of nearly 4% of total U.S. sugar imports (**Figure 6**).

To address the market uncertainty expected from imports of Mexican sugar once it achieved unrestricted access in 2008, the 2008 farm bill introduced a new policy to regulate imports, and this policy was retained by the 2014 farm bill. The farm bill directed that at the beginning of each marketing year (October 1) USDA was required to set the WTO quotas for raw cane and refined sugar at the minimum level—1.256 million STRV—necessary to comply with this trade commitment (**Figure 6**). In case of an emergency shortfall of sugar prior to April 1, due to either weather or war, USDA was directed to increase these quotas. After April 1 (the midpoint of the marketing year), USDA may increase the WTO raw sugar quota consistent with the dual objectives of maintaining sugar prices above loan forfeiture levels and providing for adequate supplies of raw and refined sugar in the domestic market. Any increase in the import quota is temporary in that it applies only until the next marketing year, which begins on October 1.

TPP Agreement and U.S. Sugar Imports

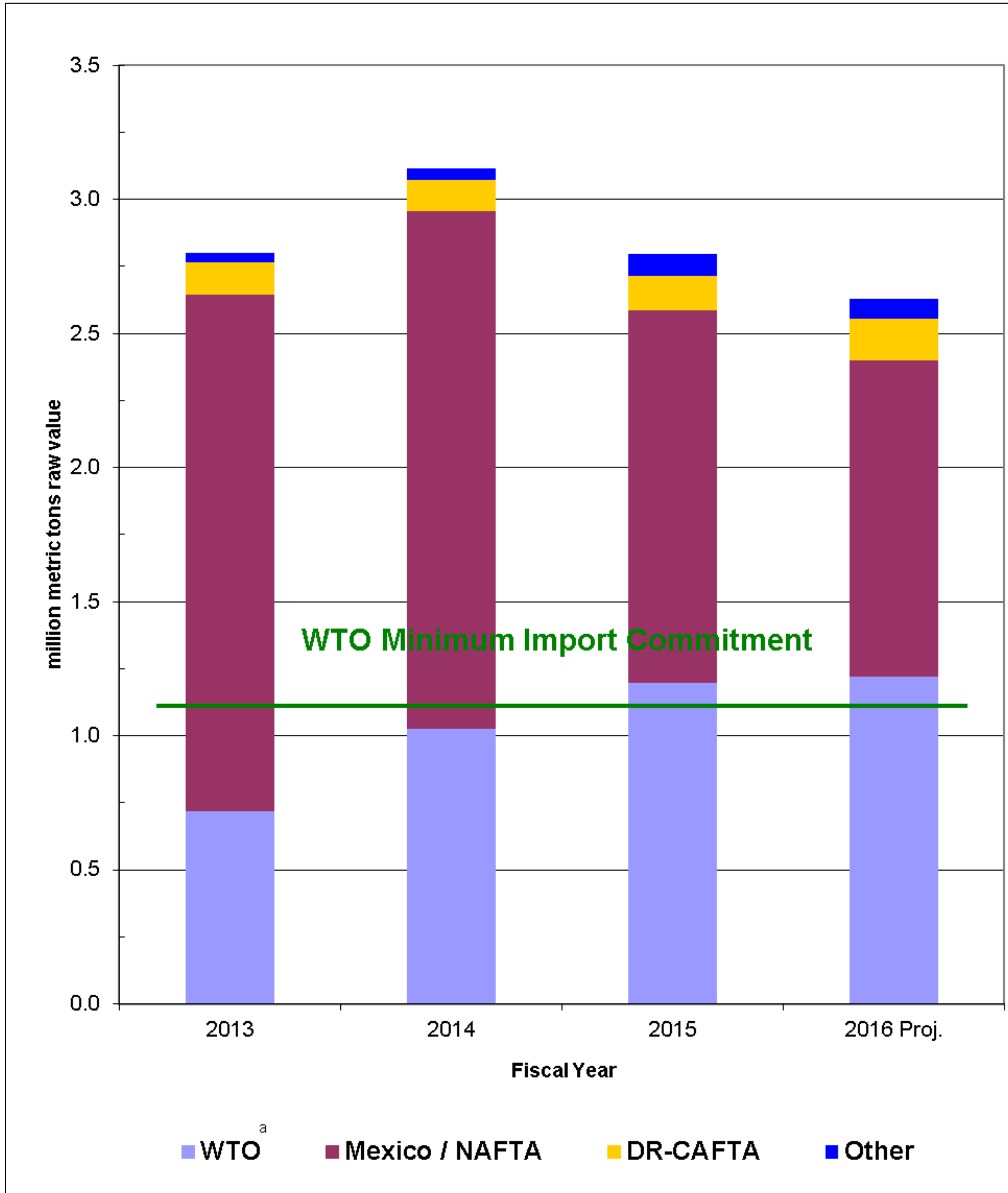
The Trans-Pacific Partnership (TPP) is a regional FTA that the United States concluded with 11 other Pacific Ocean–facing nations in October 2015 and was signed by the participating governments in February 2016. Among its provisions, the United States agreed to make available additional amounts of TRQ sugar exports to five countries. The total quantity involved amounts to 86,300 metric tons (MT) of sugar and sugar-containing products. Recipients of the additional TRQ sugar are Australia (65,500 MT), Canada (19,200 MT), Vietnam (1,500 MT), Malaysia (500 MT), and Japan (100 MT). If the agreement is implemented, this additional TRQ sugar would represent about 3% of U.S. sugar imports in FY2014/2015. Any additional sugar imports under TPP would not be expected to increase the likelihood of forfeitures under the U.S. sugar program; more likely, they would displace a portion of Mexican sugar exports to the United States. The reason for this outcome is that under the U.S.-Mexico bilateral suspension agreements of December 2014, Mexico has, in effect, become the "swing" (or residual) supplier of sugar to the U.S. market, so additional TRQ sugar would be expected to displace shipments of Mexican sugar. Importantly, the TPP agreement will not have the force of law for the United States unless Congress enacts implementing legislation.[7]

[6] A short ton is equivalent to 2,000 pounds. Raw value is a factor of 1.07 of refined value, according to USDA, except for Mexican sugar for which raw value is a factor of 1.06 of the actual weight of the shipped product.

[7] For additional background on the TPP agreement, see CRS Report R44278, *The Trans-Pacific Partnership (TPP): In Brief*, by Ian F. Fergusson, Mark A. McMinimy, and Brock R. Williams.

Figure 6. U.S. Sugar Imports, by Trade Agreement

Raw Cane and Refined Sugar



Source: USDA Economic Research Service, Foreign Agricultural Service, and World Agricultural Outlook Board.

Notes: Imports for domestic food/beverage use only; excludes sugar imported for the sugar re-export program.

a. Imports under the WTO commitment have typically fallen short of the quantity of sugar that eligible countries with a quota can sell to the U.S. market. For FY2016, USDA projects a shortfall of 27,956 tons as of March 2016. The projected shortfall compares with actual shortfalls of 65,682 tons in FY2015, 214,859 tons in FY2014, and 515,441 tons in FY2013.

Suspension Agreements Recast Sugar Trade with Mexico

While the 2014 farm bill reauthorized the sugar program intact for five years through 2018 crops, events since enactment of the farm bill have materially altered the program. A major change with substantial repercussions for the U.S. sugar program in late 2014 concerned the treatment of imported sugar from Mexico. From 2008 until December 2014, Mexican sugar exports were accorded unrestricted, duty-free access to the U.S. market under NAFTA. Two suspension agreements that the U.S. government signed with the Government of Mexico and with Mexican sugar producers and exporters in December 2014 have fundamentally altered trade in sugar with Mexico while creating ripple effects for the sugar program and for sugar users. The two suspension agreements stem from parallel countervailing duty (CVD) and antidumping (AD) investigations initiated in the spring of 2014 by the International Trade Commission (ITC) and the International Trade Administration (ITA) of the DOC in response to a petition filed by the American Sugar Coalition (ASC). The ASC represents sugarcane and sugar beet producers, processors, refiners, and sugar workers. Sections 704 and 734 of the Tariff Act of 1930 (19 U.S.C. §1671(c) and §1673(c)), as amended, provide the legal authority for the CVD and AD suspension agreements.

Preliminary findings in the CVD investigation determined that the Mexican government was subsidizing Mexican sugar exports.[8] The AD investigation concluded as a preliminary matter that Mexican sugar was being dumped into the U.S. market, that is, sold at less than fair value—defined as below the sale price in Mexico, or below the cost of production.[9] The investigations determined these actions had injured the U.S. sugar industry, and based on these preliminary findings, the DOC imposed cumulative duties on U.S. imports of Mexican sugar to be deposited by U.S. importers of sugar, ranging from 2.99% to 17.01% under the CVD order, and from 39.54% to 47.26% under the AD order.

In December 2014, the U.S. Department of Commerce (DOC) entered into suspension agreements with the Government of Mexico and with Mexican sugar industry interests.[10] Under the CVD agreement that DOC entered into with the Government of Mexico and the AD order that DOC signed with Mexican sugar producers and exporters, the DOC agreed to suspend both the CVD and AD investigations and to remove the duties it had imposed on imports of Mexican sugar. In return, the Government of Mexico agreed to relinquish the unrestricted access to the U.S. sugar market it had negotiated under NAFTA. Further, the Mexican government and Mexican producer groups and exporters also agreed to observe the certain restrictions on Mexican sugar exports to the United States.

The two suspension agreements have substantially recast U.S. sugar trade with Mexico by imposing three fundamental changes on Mexican sugar exports to the United States.

- Mexico's previously unlimited sugar exports to the U.S. market are henceforth limited to an assessment of U.S. needs, defined as the residual of projected U.S. human use less domestic production and imports from tariff-rate quota countries.

[8] See U.S. Department of Commerce Fact Sheet of August 26, 2014, at http://enforcement.trade.gov/download/factsheets/factsheet-mexico-sugar-ad-prelim-082614.pdf.

[9] See U.S. Department of Commerce Fact Sheet of October 27 at http://enforcement.trade.gov/download/factsheets/factsheet-mexico-sugar-ad-prelim-102714.pdf.

[10] For the text of the two agreements suspending countervailing duties and antidumping duties, see http://enforcement.trade.gov/agreements/sugar-mexico/index.html.

- Refined sugar exports from Mexico are limited to 53% of Mexico's allowable quantity in any given marketing year (October 1 to September 30), whereas previously no such restriction was in place.
- Mexican sugar is subject to minimum reference prices of $0.26 per pound for refined sugar and $0.2225 for all other sugar.[11] Prior to the agreements, no floor price was imposed.

To determine the quantity of Mexican sugar that may be imported into the United States in a given marketing year under the suspension agreements, DOC is tasked with making an initial calculation of the domestic requirement for Mexican sugar in July. This quantity is subject to a recalculation in September, December, and March that may result in increases in quantity from the initial calculation. The agreement with the government of Mexico suspending countervailing duties states that Mexico's export limit is determined according to a calculation of U.S. needs that is based on a U.S. sugar carryover of 13.5%.[12] The carryover, or stocks-to-use ratio (SUA), is the quantity of sugar available at the end of the marketing year (September 30) expressed as a percentage of annual usage. This formula has been a point of concern for some U.S. sugar users. The Sweetener Users Association, for one, has argued that an SUA of 13.5% is too restrictive of supplies and runs the risk of creating shortages in the domestic sugar market.[13] In commenting on the draft suspension agreements, the Sweetener Users Association contended that an SUA of at least 14.5%, if not 15.5%, would be a more appropriate level.

In addition to imposing limits on the quantity of Mexican sugar that may be imported into the U.S. market, the agreements limit the concentration of Mexican sugar imports over the course of the marketing year to not more than 30% of the assessment of U.S. needs from October 1 through December 31 and not more than 55% from October 1 through March 31. For instance, in the wake of the agreement the initial export limit on Mexican sugar of 1,162,604.75 metric tons raw value for the 2014/2015 marketing year was subsequently increased to 1,383,969.68 metric tons raw value, which became effective on March 30, 2015.

Potential Effects on Government Outlays and Sugar Prices

In practice, the changes ushered in by the suspension agreements should greatly facilitate the USDA's task of operating the sugar program at no cost to the government, as Congress directed in the 2014 farm bill. Prior to the suspension agreements, imports of sugar from Mexico represented the only unmanaged source of supply under the sugar program. The USDA's ability to administer the sugar program at no net cost has been at issue since the 2012/2013 crop year, when net government outlays for the sugar program spiked to $259 million. That year, large quantities of domestic sugar under loan were forfeited in the face of excess supplies and low market prices. This obligated USDA to dispose of the forfeited sugar at a significant loss under the Feedstock Flexibility Program (FFP) and via exchanges in which the agency provided swapped forfeited domestic sugar for the right to import certain quantities of sugar.[14]

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[11] Prices are based on dry weight, commercial value, f.o.b. at Mexican plants.

[12] See agreement suspending countervailing duties at http://enforcement.trade.gov/agreements/sugar-mexico/index.html.

[13] See "Comments of Sweetener User Association on Draft Agreements Suspending Antidumping and Countervailing Duty Investigations on Sugar from Mexico of November 18, 2014," http://sugarreform.org/wp-content/uploads/2014/11/SUA-Comments-re-Draft-Agreements.pdf,

[14] See U.S. International Trade Commission publication 4467, Sugar from Mexico, p. 27, http://usitc.gov/publications/701_731/pub4467.pdf.

In an analysis issued in March 2015, the Food and Agricultural Policy Institute (FAPRI) at the University of Missouri projected net government outlays for the sugar program under two scenarios: with the suspension agreements, and without them. FAPRI concluded that under the suspension agreements net government outlays for sugar would be zero over marketing years 2016 through 2024. Without the agreements, FAPRI projected that annual outlays would average $16 million a year during marketing years 2016 through 2018, declining to $8 million a year on average from 2019 through 2024.[15]

In its March 2015 Baseline for Farm Programs, the Congressional Budget Office (CBO) projects government outlays for the sugar program at zero over the period FY2015 through FY2019. From FY2020 through FY2025 CBO projects outlays totaling $115 million, reflecting a likely re-examination of the agreement after five years and the potential for policy uncertainty over Mexican sugar imports thereafter.[16] The USDA projects no sugar program costs through FY2026 based on the *USDA Agricultural Projections to 2025* analysis, which assumes no changes in government agricultural policies and that existing trade arrangements remain in place.[17]

Assessing the potential for the suspension agreements to add to costs borne by sugar-using industries and consumers, the Coalition for Sugar Reform, representing consumer, trade, and commerce groups; manufacturing associations; and food and beverage companies that use sugar, contends that the suspension agreements will result in higher sugar prices for U.S. users and consumers. Following the signing of the suspension agreements in December 2014, the Coalition asserted, "These agreements will ensure that any Mexican sugar needed to adequately supply the U.S. market must be priced well above world market prices—prices that are even higher than mandated by the U.S. sugar program."[18] The American Sugar Alliance, a coalition of sugar producers, including farmers, processors, refiners, sugar suppliers and workers, has expressed support for the agreements, contending they will foster free and fair trade in sugar, while benefiting U.S. sugar farmers, workers, consumers, and taxpayers.[19]

Considering that Mexican sugar is a significant source of U.S. sugar supplies that can vary in quantity from one year to the next, and considering also that minimum prices of Mexican sugar are at U.S. loan levels, or above them, without including transportation costs to U.S. destinations, it is evident that pricing on Mexican sugar should be well above U.S. loan levels as long as the suspension agreements remain in effect. Transportation from Mexican mills adds several cents per pound to the cost of sugar delivered to U.S. plants—as much as $0.03 to $0.06 per pound, according to FAPRI.

Two Sugarcane Refiners Challenging Suspension Agreements

Whether the new framework around trade in Mexican sugar imposed by the suspension agreements will remain in effect is not entirely certain. The agreements have no termination date, but the signatories may terminate them at any time. The suspended CVD and AD investigations

[15] Impacts of the U.S.-Mexico Antidumping and Countervailing Duty Suspension Agreement, FAPRI, March 27, 2015, at http://www.fapri.missouri.edu/wp-content/uploads/2015/03/FAPRI-MU-Bulletin-07-15.pdf.

[16] Telephone conversation of April 1, 2015, with Dave Hull, Congressional Budget Office.

[17] See USDA, Economic Research Service, *Sugar and Sweeteners Outlook, March 15, 2016*, http://www.ers.usda.gov/media/2030300/sss-m-331-mar2016-final.pdf.

[18] Coalition for Sugar Reform press release of December 22, 2014, at http://sugarreform.org/wp-content/uploads/2011/07/CSR-AD-CVD-Agreements-Signed-12-22-14-FINAL.pdf.

[19] American Sugar Alliance press release of March 19, 2015, at http://www.sugaralliance.org/itc-suspension-agreements-remove-the-injury-caused-by-unfairly-traded-mexican-sugar-5245/.

are subject to a review after five years. More immediately, two U.S. sugarcane refiners—Imperial Sugar Company and AmCane Sugar LLC—are challenging the agreements. In January 2015, the two companies petitioned the U.S. International Trade Commission (ITC), contending the agreements do not eliminate completely the injurious effect of sugar imports from Mexico as the law permitting such agreements requires.[20] In a unanimous decision issued in March 2015, the ITC concluded the agreements do eliminate entirely the injurious effect of Mexican sugar imports.[21] In the wake of the ITC's determination, the two cane refiners filed petitions with the U.S. Court of International Trade, contending that the ITC's determination was not supported by the evidence and was not in accordance with the governing statute. The complaints have been consolidated by the court and were under review as of the end of March 2016.

On a separate track, the two cane refining companies also petitioned the DOC to continue the CVD and AD investigations to final determinations. In early May 2015, the DOC determined the two sugar-refining companies had standing under the law to make such a petition and announced it would resume the CVD and AD investigations.[22] Pending final determinations in these investigations, the terms of the suspension agreements remained in force. In September 2015, the DOC issued its final determinations, affirming its preliminary findings that, prior to the entry into force of the suspension agreements, Mexican sugar exports were being subsidized by the government and dumped into the U.S. market at prices below their fair market value. The DOC found that dumping margins on Mexican sugar ranged from 40.48% to 42.14%, depending on the producer/exporter, and that government subsidies on exported sugar ranged from 5.78% to 43.93%. Following these determinations, the ITC reaffirmed its earlier finding that the U.S. sugar industry was injured as a result of these practices.[23] As a consequence, the suspension agreements remain in force pending a decision by the U.S. Court of International Trade.

Mechanisms Aimed at Countering Low Prices

In addition to domestic marketing allotments and import quotas and limits, USDA has two policy mechanisms to help prevent prices from slipping below effective loan forfeiture levels, thereby limiting program costs that might otherwise accrue to the government as a result of substantial loan forfeitures. These include offering CCC sugar to processors in exchange for surrendering rights to import tariff-rate quota sugar; purchasing sugar from processors in exchange for surrendering tariff-rate quota sugar; and removing sugar from the human food market by purchasing sugar from processors for resale to ethanol producers for fuel ethanol production.

Sugar Purchases and Exchanges for Import Rights

To dispose of sugar owned by CCC without increasing the risk of loan forfeitures, the farm bill authorizes USDA to transfer ownership of CCC-owned sugar in exchange for rights to purchase tariff-rate quota sugar, or certificates of quota entry, which carry a low tariff rate or zero tariff. From July to September 2013, USDA completed four sugar "exchanges" in an effort to bolster market prices and forestall loan forfeitures of some 2012 crop sugar. Two exchanges involved

[20] CVD: 19U.S.C. §1671c(c); AD: 19 U.S.C. §1673c(c).

[21] See U.S. ITC press release of March 19, 2015, at http://www.usitc.gov/press_room/news_release/2015/er0319ll436.htm.

[22] Federal Register notice of May 4, 2015, at https://www.federalregister.gov/articles/2015/05/04/2015-10253/sugar-from-mexico-continuation-of-antidumping-and-countervailing-duty-investigations.

[23] See ITC, *Sugar from Mexico*, https://www.usitc.gov/publications/701_731/pub4577.pdf.

bids made by refiners and brokers for sugar acquired by USDA from processors as a result of loan forfeitures in return for surrendering import rights. Two other exchanges involved USDA purchasing sugar from processors, which then was exchanged for import rights that cane refiners and brokers surrendered to USDA. The latter two initiatives were taken to reduce the amount of sugar expected to be supplied to the U.S. market and were implemented by USDA using 1985 farm bill authority. This cost reduction provision authorizes USDA to purchase a supported commodity deemed to be in surplus if such action results in program savings.

Feedstock Flexibility Program for Bioenergy Producers

If market prices fall to levels that threaten to result in loan forfeitures, the Secretary of Agriculture may purchase surplus sugar and sell it to bioenergy producers to avoid forfeitures. In the event that forfeitures of sugar loans do occur, the Secretary is required to administer a sugar-for-ethanol program using domestic sugar intended for food use. The objective of this Feedstock Flexibility Program (FFP) is to permanently remove sugar from the market for human consumption by diverting it into a non-food use—ethanol. When the Secretary activates this program, USDA will purchase surplus and other sugar acquired from processors and then sell that sugar to bioenergy producers for processing into fuel-grade ethanol and other biofuels. Competitive bids would be used by USDA to purchase sugar from processors and also to sell that sugar (together with any sugar forfeited by processors) to ethanol producers. An exception to the requirement to activate this program is that forfeited sugar may be sold back into the market for human food use in the event of an emergency shortfall of sugar. In August and September 2013, USDA activated this program as remaining loans came due and sugar prices headed below effective support levels (**Figure 3** and **Figure 4**).

Sugar Program Draws Sharply Differing Views

The sugar program has long been the subject of controversy, both among lawmakers and among competing interests within the sugar market. In part, disagreement over the sugar program has centered on whether it strikes the right balance between government support for the domestic sugar industry in the face of subsidized foreign sugar and the cost this support may impose on sugar users and consumers in the form of marketplace distortions and potentially higher sugar prices than might otherwise prevail.

From one side of this controversy, the American Sugar Alliance (ASA), representing U.S. sugar industry interests, asserts that even though U.S. sugar producers are among the most efficient in the world, they cannot compete with foreign subsidies that encourage the production of surpluses that are dumped onto the world market at prices that are often below the cost of production.[24] As to the competitiveness of U.S. sugar prices, ASA issued the results of a study from 2015 that indicated that U.S. retail prices of sugar in 2014 were below the average for developed countries and also below the average retail price in some major exporting countries, including Brazil and Australia.[25]

The Sugar Users Association, representing companies that use sweeteners in their business operations, has a very different perspective on this issue, contending that the sugar program is

[24] See testimony of Jack Roney, American Sugar Alliance, before the House Committee on Agriculture, October 21, 2015, at http://agriculture.house.gov/uploadedfiles/10.21.15_roney_testimony.pdf.

[25] See *Global Retail Sugar Prices*, July 2015, https://sugaralliance.org/wp-content/uploads/2015/08/SIS-Global-Sugar-Price-Survey-2015-Summary.pdf.

poorly designed. In particular, it argues that TRQ allocations are dated and that this has the effect of restricting export quotas to certain countries that in some cases either cannot fill their entire quotas or may not ship any sugar to the United States. As such, it asserts the TRQ program tends to distort and destabilize the U.S. sugar market, which it argues has led to job losses in sugar-using food industries.[26]

As to whether the sugar program harms consumers through higher sugar prices, an analysis issued in 2013 by the Center for Agricultural and Rural Development at Iowa State University concluded that eliminating the U.S. sugar program—including marketing allotments and import quotas and tariffs that restrict the availability of sugar for domestic human use—would increase U.S. consumers' welfare by between $2.9 billion and $3.5 billion each year while also supporting a modest increase in employment in the U.S. food processing industry.[27] The paper was commissioned by the Sweetener Users Association.

The ITC took a narrower approach to this question in a report from 2013 that analyzed the potential effects of removing only the existing restrictions on U.S. sugar imports.[28] The ITC concluded that removing sugar import restrictions would result in a meaningful decline in U.S. sugar production and employment within the sugar production and processing sectors in tandem with a substantial expansion in total U.S. sugar imports. As for sugar prices, the report projected that the elimination of import restrictions would produce welfare gains for U.S. consumers amounting to $1.66 billion over the period 2012-2017, equating to a yearly benefit of $277 million.

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[26] See Thomas Earley, oral statement on behalf of the Sweetener Users Association to the U.S. International Trade Commission, March 19, 2013, http://www.sweetenerusers.org/Tom%20Earley%20ITC%20SUA%20Oral%20statement%20-%203-19-13%20FINAL.pdf.

[27] See *The Impact of the Sugar Program Redux*, 2013, at http://www.card.iastate.edu/publications/synopsis.aspx?id=1183.

[28] See *The Economic Effects of Significant U.S. Import Restraints* (Publication 4440) at http://www.usitc.gov/publications/332/pub4440.pdf.

Administrative Year in the Sugar Program

The text box below sets out specific dates, and calendar windows, for undertaking key administrative actions that are integral to managing the U.S. sugar program.

U.S. Sugar Program Calendar of Administrative Actions

In July, DOC is to calculate the "export limit" for Mexican sugar for the U.S. market for the upcoming marketing year (October-September), which is to be 70% of the projection of the "target quantity of U.S. needs" for Mexican sugar based on the USDA's July World Agricultural Supply and Demand Estimates (WASDE) report. The export limit becomes effective October 1.

On September 1, the Secretary of Agriculture is to announce the amount of sugar (if any) that the Commodity Credit Corporation (CCC) is to purchase prior to the end of the current marketing year (September 30) to avoid loan forfeitures. Any purchases are to be resold for ethanol production under the Feedstock Flexibility Program (FFV).

In September, a subsequent calculation of the target quantity of U.S. needs is to be carried out based on the September WASDE with the export limit to remain at 70% of the target quantity. The new export limit quantity cannot be below the export limit announced in July.

By September 30, USDA must announce sugar loan rates for the year beginning October 1.

By October 1, USDA is to establish domestic human consumption of sugar for the new marketing year (October-September) and also establish domestic marketing allotments for sugarcane and sugar beet processors.

By October 1, the Secretary of Agriculture sets initial sugar import quotas for the new marketing year (October-September) at the minimum levels that are required to comply with international trade agreements, except for refined sugar.

By October 1, USDA is to announce the amount of sugar, if any, the CCC is to purchase in current crop year that is to be made available for sale under the FFV, and to re-estimate this amount and provide notice by Jan. 1, April 1, and July 1.

From October 1 to March 31, the Secretary of Agriculture may increase the import quota for refined sugar, but only in the event of war or natural disaster.

In December, DOC is to recalculate the target quantity for Mexican sugar for the current marketing year based on the December WASDE report. The export limit is to be raised to 80% of target quantity as of January 1. The new export limit quantity cannot be below the September export limit.

In March, DOC is to recalculate the target quantity for Mexican sugar based on the March WASDE report. The export limit is to be raised to 100% of target quantity as of April 1. The new export limit quantity cannot be below the December export limit.

Prior to April 1, DOC may increase the export limit on Mexican sugar to address potential shortages in the U.S. market.

From April 1, the Secretary may increase the Overall Allotment Quota and the tariff rate quotas that restrain imports of sugar in the event of an emergency shortfall of sugar.

From April 1, tariff rate quotas on imported sugar may be increased as long as doing so will not threaten to result in forfeitures under the sugar loan program.

After April 1, DOC may increase the export limit on Mexican sugar in response to a written request from USDA citing the need for additional imports of Mexican sugar.

Author Contact Information

Mark A. McMinimy
Analyst in Agricultural Policy
mmcminimy@crs.loc.gov, 7-2172

ATTACHMENT 2

NMX-F-084-SCFI-2004

INDUSTRIA AZUCARERA - AZÚCAR ESTÁNDAR - ESPECIFICACIONES (CANCELA A LA NMX-F-084-1991)

SUGAR INDUSTRY - SUGAR STANDAR - SPECIFICATIONS

PREFACIO

En la elaboración de la presente norma mexicana participaron las siguientes empresas e instituciones:

- ASOCIACIÓN DE TÉCNICOS AZUCAREROS DE MÉXICO, A.C.
- CÁMARA NACIONAL DE LAS INDUSTRIAS AZUCARERA Y ALCOHOLERA
- COMITÉ DE LA AGROINDUSTRIA AZUCARERA
- COMITÉ TÉCNICO DE NORMALIZACIÓN NACIONAL DE LA INDUSTRIA AZUCARERA
- CONSORCIO AZUCARERO ESCORPIÓN, S.A. DE C.V.
- FIDEICOMISO DE EMPRESAS EXPROPIADAS DEL SECTOR AZUCARERO
- FONDO DE EMPRESAS EXPROPIADAS DEL SECTOR AZUCARERO
- GRUPO AZUCARERO MÉXICO, S.A. DE C.V.
- GRUPO BETA SAN MIGUEL, S.A. DE C.V.
- INGENIO CENTRAL MOTZORONGO, S.A.
- INGENIO LA GLORIA, S.A.
- INGENIO LOS MOCHIS, S.A. DE C.V.
- INGENIO PLAN DE AYALA, S.A.
- INGENIO PUGA, S.A.
- INGENIO SAN NICOLÁS, S.A.
- INGENIO TAMAZULA, S.A. DE C.V.

- JUNTA DE CONTROVERSIAS AZUCARERAS
- PROMOTORA INDUSTRIAL AZUCARERA, S.A. DE C.V. (PIASA)
- SECRETARÍA DE AGRICULTURA, GANADERÍA, DESARROLLO RURAL, PESCA Y ALIMENTACIÓN
- SECRETARÍA DE SALUD
  Dirección de Normalización Sanitaria.
- SERVICIO DE ADMINISTRACIÓN Y ENAJENACIÓN DE BIENES UNIÓN NACIONAL DE CAÑEROS, CNPR
- UNIÓN NACIONAL DE CAÑEROS, CNPR
- UNION NACIONAL DE PRODUCTORES DE CAÑA DE AZÚCAR, C.N.C.
- UNIVERSIDAD NACIONAL AUTÓNOMA DE MÉXICO
  Facultad de Química.

CDU: 644.11
CANCELA A LA
NMX-F-084 -1991

NMX-F-084-SCFI-2004

INDUSTRIA AZUCARERA - AZÚCAR ESTÁNDAR - ESPECIFICACIONES (CANCELA A LA NMX-F-084-1991)

SUGAR INDUSTRY - SUGAR STANDAR - SPECIFICATIONS

1 OBJETIVO Y CAMPO DE APLICACIÓN

Esta norma mexicana establece las especificaciones de calidad que debe cumplir el azúcar (sacarosa) estándar que se comercializa en territorio nacional.

2 REFERENCIAS

Para la correcta aplicación de esta norma mexicana se deben consultar las siguientes normas oficiales mexicanas y normas mexicanas vigentes o las que las sustituyan:

NOM-051-SCFI-1994 Especificaciones generales de etiquetado para alimentos y bebidas no alcohólicas preenvasados, publicada en el Diario Oficial de la Federación el 24 de enero de 1996.

NOM-092-SSA1-1994 Bienes y servicios. Método para la cuenta de bacterias aerobias en placa, publicada en el Diario Oficial de la Federación el 12 de diciembre de 1995.

NOM-110-SSA1-1994 Bienes y servicios. Preparación y dilución de muestras de alimentos para su análisis microbiológico, publicada en el Diario Oficial de la Federación el 16 de octubre de 1995.

NOM-111-SSA1-1994	Bienes y servicios. Método para la cuenta de mohos y levaduras en alimentos, publicada en el Diario Oficial de la Federación el 13 de septiembre de 1995.
NOM-112-SSA1-1994	Bienes y servicios. Determinación de bacterias coliformes. Técnica del número más probable, publicada en el Diario Oficial de la Federación el 19 de octubre de 1995.
NOM-114-SSA1-1994	Bienes y servicios. Método para la determinación de salmonella en alimentos, publicada en el Diario Oficial de la Federación el 22 de septiembre de 1995.
NOM-117-SSA1-1994	Bienes y servicios. Método de prueba para la determinación de cadmio, arsénico, plomo, estaño, cobre, fierro, zinc y mercurio en alimentos, agua potable y agua purificada por espectrometría de absorción atómica, publicada en el Diario Oficial de la Federación el 16 de agosto de 1995.
NOM-120-SSA1-1994	Bienes y servicios. Prácticas de higiene y sanidad para el proceso de alimentos y bebidas no alcohólicas, publicada en el Diario Oficial de la Federación el 28 de agosto de 1995.
NOM-145-SSA1-1995	Productos cárnicos troceados y curados – Productos cárnicos, troceados y madurados – Disposiciones y especificaciones sanitarias, publicada en el Diario Oficial de la Federación el 13 de diciembre de 1999.
NMX-EE-048-SCFI-2003	Industria azucarera - Sacos de polipropileno, sacos con liner de polietileno y sacos laminados para envasar azúcar - Especificaciones y métodos de prueba.
NMX-EE-223-1991	Industria del plástico - Envase y embalaje - Sacos de polietileno para uso industrial - Especificaciones. Declaratoria de vigencia publicada en el Diario Oficial de la Federación el 17 de enero de 1992.

NMX-F-079-1986	Azúcar - Determinación de la polarización A 293 K (20°C). Declaratoria de vigencia publicada en el Diario Oficial de la Federación el 16 de diciembre de 1986.
NMX-F-082-1986	Ingenios azucareros - Cenizas sulfatadas en azúcares - Método gravimétrico. Declaratoria de vigencia publicada en el Diario Oficial de la Federación el 30 de diciembre de 1986.
NMX-F-253-1977	Cuenta de bacterias mesofílicas aerobias. Declaratoria de vigencia publicada en el Diario Oficial de la Federación el 8 de marzo de 1977.
NMX-F-255-1978	Método de conteo de hongos y levaduras en alimentos. Declaratoria de vigencia publicada en el Diario Oficial de la Federación el 3 de marzo de 1978.
NMX-F-286-1992	Alimentos - Preparación y dilución de muestras de alimentos para análisis microbiológicos. Declaratoria de vigencia publicada en el Diario Oficial de la Federación el 5 de junio de 1992.
NMX-F-294-1986	Industria azucarera - Determinación de humedad en muestras de azúcares. Declaratoria de vigencia publicada en el Diario Oficial de la Federación el 3 de noviembre de 1986.
NMX-F-304-1977	Método general de investigación de salmonella en alimentos. Declaratoria de vigencia publicada en el Diario Oficial de la Federación el 8 de marzo de 1977.
NMX-F-308-1992	Alimentos - Cuenta de organismos coliformes fecales. Declaratoria de vigencia publicada en el Diario Oficial de la Federación el 5 de junio de 1992.
NMX-F-495-1986	Industria azucarera - Determinación de reductores directos en azúcares. Declaratoria de vigencia publicada en el Diario Oficial de la Federación el 15 de diciembre de 1986.

NMX-F-498-1987	Ingenios azucareros - Determinación de arsénico en muestreo de azúcares blancos. Declaratoria de vigencia publicada en el Diario Oficial de la Federación el 20 de julio de 1987.
NMX-F-499-1987	Ingenios azucareros - Determinación de plomo en azúcares blancos y azúcar mascabado (crudo). Declaratoria de vigencia publicada en el Diario Oficial de la Federación el 21 de agosto de 1987.
NMX-F-501-1987	Ingenios azucareros - Determinación de dióxido de azufre en muestras de azúcares blancos. Declaratoria de vigencia publicada en el Diario Oficial de la Federación el 21 de agosto de 1987.
NMX-F-526-1992	Industria azucarera - Determinación de color por absorbancia en azúcares blancos - Método de prueba. Declaratoria de vigencia publicada en el Diario Oficial de la Federación el 20 de marzo de 1992.

3 DEFINICIONES

Para los efectos de esta norma, se establece la definición siguiente:

3.1 Azúcar estándar

Es el producto sólido derivado de la caña de azúcar, constituido esencialmente por cristales sueltos de sacarosa, en una concentración mínima de 99,40 % de polarización.

Este tipo de azúcar se obtiene mediante proceso similar al utilizado para producir azúcar crudo (mascabado), aplicando variantes en las etapas de clarificación y centrifugación, con el fin de conseguir la calidad del producto deseada.

4 CLASIFICACIÓN

El producto que refiere la presente norma, se clasifica por su grado de calidad en azúcar estándar.

5 ESPECIFICACIONES

Para facilitar las especificaciones establecidas en esta norma, es recomendable que en la elaboración del azúcar (sacarosa) estándar, se industrialice materia prima de buena calidad, se apliquen técnicas adecuadas en su proceso y se cuenten con instalaciones higiénicas.

5.1 Fisicoquímicas

El azúcar estándar producto del objeto de la aplicación de esta norma debe cumplir con las especificaciones establecidas en la tabla 1.

TABLA 1.- Especificaciones fisicoquímicas

Parámetros de calidad	Unidad	Valores	Nivel	Método de prueba
Polarización	%	99,40	Mínimo	NMX-F-079
Color	U.I.	600	Máximo	NMX-F-526; inciso 10.4
Cenizas (sulfatadas/conductividad)	%	0,25	Máximo	NMX-F-082; incisos 10.5 y 10.6
Humedad	%	0,06	Máximo	NMX-F-294
Azúcares reductores directos	%	0,10	Máximo	NMX-F-495
Dióxido de azufre (sulfitos)	ppm	20,00	Máximo	NMX-F-501; inciso 10.9
Materia insoluble	ppm	N.A.		
Plomo	ppm	0,50	Máximo	NMX-F-499
Arsénico	ppm	1,00	Máximo	NMX-F-498
Partículas metálicas (hierro)	ppm	10,00	Máximo	OPCIONAL
Granulometría:				
Tamaño medio de grano	mm	N.A.		

UI Unidades ICUMSA.
NA No aplica.

5.2 Materia extraña

El producto objeto de la aplicación de esta norma, deberá estar libre de impurezas, que se derivan de su almacenamiento, tales como fragmentos de vidrio, plástico, metal, hilos de costal; así como cualquier otro contaminante de origen animal, vegetal o mineral.

5.3 Microbiológicas

El azúcar estándar producto del objeto de esta norma debe cumplir con las especificaciones establecidas en la tabla 2.

TABLA 2.- Especificaciones microbiológicas

Parámetro	Unidad	Límite	Método de prueba
Mesofilos aerobios	UFC/g	MÁXIMO 20	NMX-F-253; NOM-092-SSA1
Hongos	UFC/g	< 10	NMX-F-255; NOM-111-SSA1
Levaduras	UFC/g	< 10	NMX-F-255; NOM-111-SSA1
Salmonella sp	-----	AUSENTE EN 25 g	NMX-F-304; NOM-114-SSA1
Escherichia coli	NMP/g	AUSENTE	NOM-112-SSA1 NOM-145-SSA1

UFC Unidades formadoras de colonias.
NMP Número más probable.

5.4 Sensoriales

El azúcar estándar producto del objeto de esta norma debe cumplir con las especificaciones establecidas en la tabla 3.

TABLA 3.- Especificaciones sensoriales

Aspecto	Granulado uniforme
Sabor	Dulce
Color	Marfil Variando el tono del claro al obscuro
Olor	Característico del producto

6 ALMACENAMIENTO

Después de envasado el producto objeto de esta norma, para evitar su contaminación, se debe almacenar en lugares cerrados, frescos, con ventilación, secos, libres de polvo, higiénicos y que estén protegidos contra insectos, roedores, etc.

Vida de anaquel.- estando en condiciones adecuadas de almacenamiento se garantiza dos años la vida de anaquel.

7 MÉTODOS DE PRUEBA

Para verificar las especificaciones de calidad, fisicoquímicas y microbiológicas establecidas en la presente norma, se deben aplicar los métodos de prueba indicados en el capítulo de referencias o en su caso, utilizar los métodos del ICUMSA que se indican en el capítulo de bibliografía.

8 MARCADO Y ENVASADO

8.1 Marcado en el envase

Cada saco o envase individual debe llevar en impresión permanente, legible e indeleble, los datos indicados en la norma oficial mexicana NOM-051-SCFI (ver 2 Referencias) que se establecen a continuación:

- Denominación del producto conforme a la clasificación de esta norma;
- El “contenido neto” de acuerdo con las disposiciones de la Secretaría de Economía (ver inciso 9.1);
- Nombre o razón social y domicilio fiscal del fabricante;
- Serie y número progresivo de fabricación y zafra correspondiente (debe estar impreso en la parte inferior de los sacos);
- Identificación del lote, y
- La leyenda “Hecho en México”.

Los caracteres deben estar impresos en parte visible en todo momento.

8.2 Marcado en el embalaje

Se deben anotar los datos señalados en el inciso 8.1 para identificar el producto y además los concernientes para prever accidentes en el manejo y uso de los embalajes.

8.3 Envase

8.3.1 Envase en sacos de 50 kg

El producto objeto de esta norma se debe envasar en sacos que cumplan con la norma mexicana NMX-EE-048-SCFI (ver 2 Referencias).

8.3.2 Envase en sacos menores de 50 kg

El producto objeto de esta norma se debe envasar en un material resistente e inocuo, para garantizar la estabilidad del mismo, evitar su contaminación y no alterar la calidad ni sus especificaciones sensoriales.

8.4 Embalaje

Para el embalaje del producto, se deben usar cajas de cartón o contenedores de algún otro material apropiado, con la debida resistencia para proteger el producto, facilitar su manejo en el almacenamiento y distribución y no exponer la integridad de las personas encargadas de su manipulación (ver inciso 9.2).

9 APÉNDICE NORMATIVO

9.1 la leyenda ”contenido neto” debe ir seguida de los datos cuantitativo y del símbolo de la unidad correspondiente, de acuerdo al sistema general de unidades de medida, expresada en minúsculas, sin pluralizar y sin punto abreviatorio; debe presentarse en el ángulo inferior derecho o centrada en la parte inferior, de manera clara y ostensible, en un tamaño que guarde proporción con el texto mas sobresaliente de la información y en contraste con el fondo de la etiqueta. Este dato debe aparecer libre de cualquier otra referencia que le reste importancia.

9.2 las especificaciones de envase y embalaje que deben aplicarse para cumplir con los inciso 8.2 y 8.4, serán las correspondientes a las normas mexicanas de envase y embalaje especificas para cada presentación del producto.

10 BIBLIOGRAFÍA

10.1	NOM-008-SCFI-2002	Sistema General de Unidades de Medida, publicada en el Diario Oficial de la Federación el 27 de noviembre de 2002.
10.2	NMX-F-084-1991	Industria azucarera - Azúcar estándar - Especificaciones. Declaratoria de vigencia publicada en el Diario Oficial de la Federación el 17 de enero de 1992.
10.3	NMX-Z-013-1977	Guía para la redacción, estructuración y presentación de las normas mexicanas. Declaratoria de vigencia publicada en el Diario Oficial de la Federación el 31 de octubre de 1977.
10.4	GS1/3-7 (2000)	Determinación de color en azúcar morena.
10.5	GS1/3/4/7/8-11	Determinación de cenizas sulfatadas en azúcar morena.
10.6	GS1/3/4/7/8-13	Determinación de cenizas por conductividad en azúcar morena.
10.7	GS2/3-1 (1994)	Determinación de la polarización del azúcar blanco.
10.8	GS2/1/3-15 (1994)	Determinación de humedad en azúcares por desecación.
10.9	GS2-33 (1994)	Determinación de sulfitos en azúcar blanco.
10.10	GS2-37 (1994)	Determinación de la distribución del tamaño de partícula en azúcar blanco.
10.11	GS2/3-19 (1994)	Determinación de sólidos insolubles en azúcar blanco.
10.12	GS2/3-43 (1994)	Determinación de bacterias mesófilas totales en azúcar refinado.

10.13 GS2/3-47 (1994) Determinación de levaduras y hongos en azúcar refinado.

10.14 ICUMSA.- Publications Department c/o British Sugar Technical Centre Norwich Research Park; Colney Norwich nr4 7ub, England.

10.15 Cane sugar handbook, - meade chen- 11 th. Ed. John wiley & sons, inc. New York isbn 0-471-86650-4, versión en español 1991, 1991, ed. Limusa primera edición: 1991 isbn-968-18-3662-6. Impreso en México.

10.16 Sugar cane factory control - john h. Payne, 5 th. Ed., elsevier publishing co., Amsterdam 1968.

10.17 Methods book (1994) with first (1998) and second (2000) supplements.- international commission for uniform methods of sugar analysis (ICUMSA).

10.18 Dirección de investigaciones de salud – Secretaría de Salud - Técnicas para el muestreo y análisis microbiológicos de alimentos.

11 CONCORDANCIA CON NORMAS INTERNACIONALES

Esta norma mexicana no es equivalente a ninguna norma internacional por no existir referencia alguna al momento de su elaboración.

México D.F., a

MIGUEL AGUILAR ROMO
DIRECTOR GENERAL

RCG/DLR/MRG.

ATTACHMENT 3

U.S. Customs and Border Protection (/)

QB 15-131 2016 Raw Sugar

COMMODITY:

Raw cane sugar as provided for in Chapter 17, Additional U.S. Note 5

QUOTA PERIOD:

October 1, 2015 through September 30, 2016

OPENING DATE:

Thursday, October 1, 2015

RESTRAINT LEVEL:

Argentina 45,281,000 kg

Australia 87,402,000 kg

Barbados 7,371,000 kg

Belize 11,584,000 kg

Bolivia 8,424,000 kg

Brazil 152,691,000 kg

Colombia 25,273,000 kg

Congo 7,258,000 kg

Costa Rica 15,796,000 kg

Cote d'Ivoire 7,258,000 kg

Dominican Republic 185,335,000 kg

Ecuador 11,584,000 kg

El Salvador 27,379,000 kg

Fiji 9,477,000 kg

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:

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.

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 HQQUOTA@cbp.dhs.gov (mailto:HQQUOTA@cbp.dhs.gov).

Last published: September 14, 2015
Tags: Trade

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ATTACHMENT 4

	FY02	FY03	FY04	FY05	FY06	FY07	FY08	FY09	FY10	FY11	FY12	FY13	FY14	FY15	FY16
Raw cane loan rate	$ 0.1798	$ 0.1799	$ 0.1793	$ 0.1793	$ 0.1800	$ 0.1800	$ 0.1800	$ 0.1800	$ 0.1800	$ 0.1850	$ 0.1875	$ 0.1875	$ 0.1875	$ 0.1875	$ 0.1875
Refined beet loan rate	$ 0.2282	$ 0.2254	$ 0.2288	$ 0.2288	$ 0.2300	$ 0.2300	$ 0.2300	$ 0.2300	$ 0.2300	$ 0.2377	$ 0.2409	$ 0.2409	$ 0.2409	$ 0.2409	$ 0.2409
							actual pounds								
Forfeitures (pounds):	16,659,699		32,000,000	48,000,000								170,750,000	593,000,000		
Cane Sugar	-		-	-								140,750,000	90,000,000		
Beet Sugar	16,659,699		32,000,000	28,000,000								30,000,000	463,000,000		
In Process Beet Sugar				20,000,000								-	40,000,000		
							total dollars								
Forfeitures (dollars) :	3,678,462		7,616,000	9,675,200								34,568,950	138,799,500		
Cane Sugar	-		-	-								27,389,950	17,514,000		
Beet Sugar	3,678,462		7,616,000	6,157,200								7,179,000	111,965,500		
In Process Beet Sugar				3,518,000								-	9,320,000		
							actual pounds								
Purchases (pounds):												521,611,462			
Cane Sugar												155,316,600			
Beet Sugar												366,294,862			
							total dollars								
Purchases (dollars):												120,196,018			
Cane Sugar												30,665,968			
Beet Sugar												89,530,050			