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December 16, 2019

Case Nos. A-201-845 and C-201-846  
Total Pages: 12  
Suspension Agreement  
AD/CVD Operations, Office VII  
**PUBLIC DOCUMENT**

BY ELECTRONIC FILING

The Honorable Wilbur L. Ross, Jr.  
Secretary of Commerce  
Attention: Enforcement & Compliance  
APO/Dockets Unit, Room 18022  
U.S. Department of Commerce  
14th Street and Constitution Avenue, NW  
Washington, DC 20230

Re: *Sugar from Mexico*, Case Numbers A-201-845 and C-201-846, Comments on the 2019  
Draft Amendments to the Suspension Agreements

Dear Secretary Ross:

On behalf of Imperial Sugar Company (“Imperial Sugar” or “Imperial”), pursuant to the  
request of the Department of Commerce (“Commerce”),<sup>1</sup> we hereby submit comments on the draft

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<sup>1</sup> Letter from Commerce, “Draft Amendment to the Agreement Suspending the Countervailing Duty Investigation on Sugar from Mexico and Draft Statutory Memorandum,” Dec. 4, 2019 (the letter, draft amendment dated December 4, 2019 and the draft statutory memorandum contained therein are referenced hereinafter as “Commerce Dec. 4 CVD Letter,” “2019 Draft CVD Amendment,” and “Draft CVD Statutory Memorandum,” respectively); Letter from Commerce, “Draft Amendment to the Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico and Draft Statutory Memorandum,” Dec. 4, 2019 (the letter, draft amendment dated December 4, 2019 and the draft statutory memorandum contained therein are referenced hereinafter as “Commerce Dec. 4 AD Letter,” “2019 Draft AD Amendment,” “Draft AD Statutory Memorandum,” respectively).

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initialed amendments and draft memoranda to the Agreement Suspending the Countervailing Duty Investigation on Sugar from Mexico (“CVD Agreement”) and the Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico (“AD Agreement”) (collectively, the “2014 unamended agreements”).<sup>2</sup> These comments are timely in accordance with Commerce’s deadline.<sup>3</sup>

## I. INTRODUCTION

The Court of International Trade (“CIT” or “the Court”) vacated the 2017 amendments to the 2014 unamended agreements due to procedural defects.<sup>4</sup> The result is that, as of December 7, 2019, Commerce terminated the 2017 amendments consistent with the Court’s order and the 2014 unamended agreements are again in effect.<sup>5</sup> Commerce and the Government of Mexico have initialed a draft amendment to the CVD Agreement (“2019 Draft CVD Amendment”) and Commerce and representatives for the Mexican sugar producers/exporters have initialed a draft amendment to the AD Agreement (“2019 Draft AD Amendment”) (collectively, the “2019 draft amendments”).<sup>6</sup> Commerce also issued draft statutory memoranda concurrently with the 2019 draft amendments addressing the statutory requirements for suspension agreements to eliminate injurious effect.<sup>7</sup>

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<sup>2</sup> See *Sugar from Mexico: Suspension of Countervailing Duty Investigation*, 79 Fed. Reg. 78044 (Dec. 29, 2014); *Sugar from Mexico: Suspension of Antidumping Duty Investigation*, 79 Fed. Reg. 78039 (Dec. 29, 2014).

<sup>3</sup> See Commerce Dec. 4 CVD Letter at 1; Commerce Dec. 4 AD Letter at 1.

<sup>4</sup> See *CSC Sugar LLC v. United States*, Ct. No. 17-00215, Slip Op. 19-132 (Ct. Int’l Trade Oct. 18, 2019); *CSC Sugar LLC v. United States*, Ct. No. 17-00214, Slip Op. 19-131 (Ct. Int’l Trade Oct. 18, 2019).

<sup>5</sup> See *Sugar from Mexico: Notice of Termination of Amendment to the Agreement Suspending the Countervailing Duty Investigation*, 84 Fed. Reg. 67718 (Dec. 11, 2019); *Sugar from Mexico: Notice of Termination of Amendment to the Agreement Suspending the Antidumping Duty Investigation*, 84 Fed. Reg. 67711 (Dec. 11, 2019).

<sup>6</sup> See 2019 Draft CVD Amendment; 2019 Draft AD Amendment.

<sup>7</sup> See Draft CVD Statutory Memorandum; Draft AD Statutory Memorandum.

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As discussed in Section (II) below, Imperial Sugar supports the 2019 draft amendments, which are consistent with the terms of the 2017 amendments. The 2017 amendments were a significant improvement over the 2014 unamended agreements because, unlike the 2014 unamended agreements, they included revised terms to ensure an adequate supply of imports of raw sugar to cane refiners such as Imperial Sugar.<sup>8</sup> In addition, as discussed in Section (III) below, Commerce's draft memoranda supporting the 2019 draft amendments demonstrate that they satisfy the statutory criteria for suspension agreements. Finally, as discussed in Section (IV) below, Commerce's process for negotiating the 2019 draft amendments, including the placement of documents related to the negotiations on the record, is free from any procedural defects that the Court identified regarding the negotiation of the 2017 amendments.<sup>9</sup> Therefore, Imperial Sugar requests that Commerce take the necessary actions to bring into force and effect the 2019 draft amendments.

## II. IMPERIAL SUGAR SUPPORTS THE 2019 DRAFT AMENDMENTS

Imperial Sugar supports Commerce's 2019 draft amendments in their current form. When the unamended 2014 agreements were in effect, they caused harm to cane refiners such as Imperial.<sup>10</sup> The terms of the 2019 draft amendments address the deficiencies with the unamended 2014 agreements and will ensure that the cane refiners, including Imperial, have access to an adequate supply of imported raw sugar.

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<sup>8</sup> See Letter on behalf of Imperial Sugar Company, "*Sugar from Mexico*, Case Nos. C-201-846 and A-201-845, Comments on the Draft Amendments to the Suspension Agreements," at 2-3, Exhibits 1-2, Nov. 14, 2019 ("Imperial's Nov. 14, 2019 Comments").

<sup>9</sup> See Letter on behalf of Imperial Sugar Company, "*Sugar from Mexico*, Case Nos. C-201-846 and A-201-845, Rebutal to Interested Party Comments on Proposed Amendments to the Suspension Agreements," at 3-5, Nov. 21, 2019.

<sup>10</sup> See Imperial's Nov. 14, 2019 Comments at 2-3, Exhibits 1-2.



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Imperial Sugar already has demonstrated that the terms of the unamended 2014 agreements that are now reinstated failed to provide for an adequate supply of raw sugar to refiners and caused cane sugar refining margins to collapse, resulting in the cane refiners operating at low levels of capacity utilization.<sup>11</sup> Although the 2017 amendments did not contain all of the changes from the 2014 agreements that Imperial Sugar had requested when they were negotiated,<sup>12</sup> they represented a major improvement from the 2014 agreements, and the 2017 amendments brought relative stability to the U.S. sugar market during the past two years. The 2017 amendments increased access to raw sugar supply for the cane refiners, resulting in improved operating performance and the capacity to keep the U.S. market supplied with refined cane sugar. The 2019 draft amendments are consistent with the 2017 amendments, and, therefore, should again result in a relatively stable U.S. sugar market.

Accordingly, Imperial Sugar remains opposed to the unamended 2014 agreements and supports giving immediate effect to the 2019 draft amendments. The 2019 draft amendments resolve the key deficiencies in the unamended 2014 agreements and should be brought into force and effect without delay.

### **III. COMMERCE'S MEMORANDA CONFIRM THAT THE 2019 DRAFT AMENDMENTS MEET THE STATUTORY REQUIREMENTS**

Commerce placed on the record for comment memoranda that explain the terms in the 2019 draft amendments and address the applicable statutory requirements that apply to AD and CVD suspension agreements to eliminate injurious effect. As discussed below, Commerce issued a memorandum that demonstrates that the 2019 Draft AD amendment meets the statutory

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<sup>11</sup> See *id.* at Exhibits 1-2.

<sup>12</sup> See *id.* at Exhibit 1 at 4.

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requirements for an AD suspension agreement to eliminate injurious effect (“Draft AD Statutory Memorandum”) and a memorandum that demonstrates that the 2019 Draft CVD amendment meets the statutory requirements for a CVD suspension agreement to eliminate injurious effect (“Draft CVD Statutory Memorandum”).<sup>13</sup> Consistent with Imperial Sugar’s request that the 2019 draft amendments be given immediate effect, the draft memoranda that support the amendments should be finalized.

First, in the Draft AD Statutory Memorandum, Commerce confirmed that the Mexican Sugar Chamber (Cámara) signed the 2019 Draft AD amendment on behalf of the Mexican sugar industry, thereby satisfying the requirement that the exporters accepting the agreement account for at least 85 percent, or “substantially all” of the imports of subject merchandise.<sup>14</sup>

Second, in the draft memoranda, Commerce found that “extraordinary circumstances” exist such that the suspension of the investigation on the basis of the 2019 draft amendments is more beneficial than termination. In the case of the 2019 Draft AD Amendment, Commerce stated that it will benefit domestic producers by eliminating the injurious effects of exports of the subject merchandise to the United States, price suppression or undercutting, and at least 85 percent of the dumping.<sup>15</sup> Commerce also noted that the higher minimum reference prices in the 2019 Draft AD Agreement, compared to the unamended 2014 agreement in conjunction with the limits on volume imposed in the 2019 Draft CVD Amendment, reduce the likelihood that prices can be set so low that they cause injury to the U.S. industry.<sup>16</sup>

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<sup>13</sup> See Draft CVD Statutory Memorandum; Draft AD Statutory Memorandum; see also 19 U.S.C. § 1671c(c); 19 U.S.C. § 1673c(c).

<sup>14</sup> See Draft AD Statutory Memorandum at 4; 19 U.S.C. § 1673c(c)(1); 19 C.F.R. § 351.208(c).

<sup>15</sup> See Draft AD Statutory Memorandum at 5; 19 U.S.C. § 1673c(c)(1), (2).

<sup>16</sup> See Draft AD Statutory Memorandum at 5.

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In the case of the 2019 Draft CVD Amendment, Commerce stated that it will benefit domestic producers by limiting the amount of refined sugar that Mexico can export to the United States. At the same time, it will ensure sufficient sugar for further processing by refiners by establishing 99.2 as the threshold polarity between “Other Sugar” and “Refined Sugar,” requiring that “Other Sugar” be shipped in bulk and flowing in ocean-going vessels, and decreasing the proportion of “Refined Sugar” to a maximum of 30 percent.<sup>17</sup>

Third, Commerce determined in the draft memoranda that the investigation is “complex,” as defined by the statute, because it covers U.S. sales transactions with a value of more than \$350 million, raises issues regarding USDA’s sugar program and the tariff rate quotas administered by the U.S. Trade Representative, and concerns nearly 50 entities producing/exporting sugar in Mexico.<sup>18</sup>

Fourth, Commerce explained that the 2019 Draft CVD Amendment and the 2019 Draft AD Amendment are in the “public interest,” because they establish effective relief and have distinct advantages compared to a CVD order and an AD order.<sup>19</sup> Notably, in this context, Commerce rejected CSC Sugar’s claim that “the public interest requirement should include a full economic report to examine the structure of and competition within the U.S. sugar refining industry.”<sup>20</sup>

Commerce stated:

CSC Sugar does not explain what such an economic report would entail, nor does it cite to support for its claim that the public interest requirement of the Act requires that Commerce undertake the kind of economic report that it suggests. Commerce’s public interest analysis, as explained above, includes consideration of the relative

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<sup>17</sup> See Draft CVD Statutory Memorandum at 3-7.

<sup>18</sup> See *id.* at 7-8; 19 U.S.C. § 1671c(c)(4)(A)(ii); Draft AD Statutory Memorandum at 8; 19 U.S.C. § 1673c(c)(4)(A)(ii).

<sup>19</sup> See Draft CVD Statutory Memorandum at 8-12; 19 U.S.C. § 1671c(d)(1); Draft AD Statutory Memorandum at 9-13; 19 U.S.C. § 1673c(d)(1).

<sup>20</sup> See Draft AD Statutory Memorandum at 11; *see also* Draft CVD Statutory Memorandum at 10.



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impact on the competitiveness of the 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, have expressed support for provisions that are now in the draft 2019 Amendment.<sup>21</sup>

Commerce also addressed CSC's objections to changing the polarity dividing line from 99.5 to 99.2 based on its claim that "it is unnecessary and aimed at harming CSC relative to other members of the domestic industry."<sup>22</sup> In response, Commerce stated that:

By both changing the polarity division and requiring that Other Sugar be shipped in bulk and freely-lowing 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.<sup>23</sup>

Imperial Sugar agrees with Commerce that these provisions are critical to ensure an adequate supply of raw sugar to cane refiners like Imperial.

Finally, Commerce explained in the draft memoranda that the draft 2019 amendments can be administered and enforced by Commerce, in accordance with the statutory requirement that "effective monitoring of the agreement ... is practicable."<sup>24</sup>

Commerce's draft memoranda demonstrate that the 2019 amendments are consistent with the statute and have the support of nearly all of the domestic industry. Furthermore, the record demonstrates that the original agreements had serious flaws, justifying Commerce's decision to enter into negotiations leading to the 2019 Amendments. The Department should proceed expeditiously to implement the 2019 Amendments.

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<sup>21</sup> See Draft AD Statutory Memorandum at 11; see also Draft CVD Statutory Memorandum at 10-11.

<sup>22</sup> See Draft AD Statutory Memorandum at 12; Draft CVD Statutory Memorandum at 11.

<sup>23</sup> Draft AD Statutory Memorandum at 12; Draft CVD Statutory Memorandum at 12.

<sup>24</sup> See Draft CVD Statutory Memorandum at 12-15; 19 U.S.C. § 1671c(d)(1)(B)); Draft AD Statutory Memorandum at 13-17; 19 U.S.C. § 1673c(d)(2).

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#### IV. COMMERCE HAS ADDRESSED THE PROCEDURAL ISSUES OF CONCERN TO THE COURT WHEN NEGOTIATING THE 2010 DRAFT AMENDMENTS

The Court stated that Commerce “violat{ed} § 1677f(a)(3) when it failed to contemporaneously memorialize ex parte meetings,” and that it “violat{ed} § 1516a(b)(2)(A)(i) and 19 C.F.R. § 351.104 when it failed to maintain and provide a complete administrative record . . . .”<sup>25</sup> Because of this finding, the Court vacated the 2017 amendments.<sup>26</sup> The negotiation process for the 2019 draft amendments addresses the procedural issues of concern that provided the sole basis for the Court to vacate the 2017 amendments. Accordingly, the 2019 draft amendments should be finalized and enter into force without further delay.

During the current negotiations, the record confirms Commerce corrected the procedural deficiencies identified by the Court by maintaining a record of *ex parte* communications and a complete administrative record. In the AD Memorandum, Commerce lists all *ex parte* meetings and cites to the corresponding *ex parte* memoranda created to memorialize the meetings.<sup>27</sup> In addition, Commerce describes its request for comments and factual information, and it provides citations to these requests and to the comments and factual information received in response.<sup>28</sup> Therefore, Commerce has conducted the negotiation process for the 2019 draft amendments consistent with the recordkeeping requirements in the statute and Commerce’s regulations.

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<sup>25</sup> *CSC Sugar LLC v. United States*, No. 17-00214, Slip. Op. 19-131 at 10 (Ct. Int’l Trade Oct. 18, 2019); *CSC Sugar LLC v. United States*, No. 17-00215, Slip. Op. 19-132 at 10 (Ct. Int’l Trade Oct. 18, 2019).

<sup>26</sup> *CSC Sugar LLC v. United States*, No. 17-00214, Slip. Op. 19-131 at 12 (Ct. Int’l Trade Oct. 18, 2019); *CSC Sugar LLC v. United States*, No. 17-00215, Slip. Op. 19-132 at 12 (Ct. Int’l Trade Oct. 18, 2019).

<sup>27</sup> Draft AD Statutory Memorandum at 1-2 & nn.4-7, 11, 19.

<sup>28</sup> *Id.* at 2-3 & nn.8-10, 12-18, 20-26.



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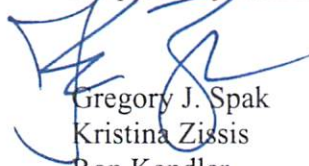
**V. CONCLUSION**

Imperial Sugar supports the 2019 draft amendments. The 2019 draft amendments meet the statutory requirements for suspension agreements to eliminate injurious effect and will ensure that cane refiners like Imperial Sugar can obtain an adequate volume of raw sugar in order to supply the refined sugar needs of the U.S. market. Moreover, the 2019 draft amendments are the result of a negotiation process that is consistent with statutory recordkeeping requirements, and, therefore, addresses the concerns of the CIT. Imperial Sugar emphasizes the importance of bringing the 2019 draft amendments into force and effect in place immediately in order to avoid any disruption to the raw sugar supply for the cane refiners and to restore stability to the U.S. sugar market.

\* \* \*

Please contact the undersigned if you have any questions regarding this submission.

Respectfully submitted,



Gregory J. Spak  
Kristina Zissis  
Ron Kendler

*Counsel to Imperial Sugar Company*

I, Michael A. Gorrell, President and Chief Executive Officer of Imperial Sugar Company, certify that I prepared or otherwise supervised the preparation of the attached submission of Comments on the 2019 Draft Amendments to the Suspension Agreements, filed on December 16, 2019, under the Suspended Antidumping and Countervailing Duty Investigations of Sugar from Mexico (Case Numbers A-201-845 and C-201-846). I certify that the public information and any business proprietary information of Imperial Sugar Company contained in this submission is accurate and complete to the best of my knowledge. I am aware that the information contained in this submission may be subject to verification or corroboration (as appropriate) by the U.S. Department of Commerce. I am also aware that U.S. law (including, but not limited to, 18 U.S.C. § 1001) imposes criminal sanctions on individuals who knowingly and willfully make material false statements to the U.S. Government. In addition, I am aware that, even if this submission may be withdrawn from the record of the antidumping proceeding or the countervailing duty proceeding, the U.S. Department of Commerce may preserve this submission, including a business proprietary submission, for purposes of determining the accuracy of this certification. I certify that a copy of this signed certification will be filed with this submission to the U.S. Department of Commerce.

Signature:



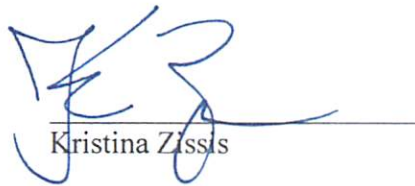
Michael A. Gorrell

Date: December 16<sup>th</sup>, 2019

CERTIFICATION OF LEGAL COUNSEL

I, Kristina Zissis, with the law firm of White & Case LLP, counsel to Imperial Sugar Company, certify that I have read the attached submission of Comments on the 2019 Draft Amendments to the Suspension Agreements, filed on December 16, 2019, under the Suspended Antidumping and Countervailing Duty Investigations of Sugar from Mexico (Case Numbers A-201-845 and C-201-846). In my capacity as counsel for this submission, I certify that the information contained in this submission is accurate and complete to the best of my knowledge. I am aware that U.S. law (including, but not limited to, 18 U.S.C. § 1001) imposes criminal sanctions on individuals who knowingly and willfully make material false statements to the U.S. Government. In addition, I am aware that, even if this submission may be withdrawn from the record of the antidumping proceeding or the countervailing duty proceeding, the Department may preserve this submission, including a business proprietary submission, for purposes of determining the accuracy of this certification. I certify that a copy of this signed certification will be filed with this submission to the U.S. Department of Commerce.

Signature:



Kristina Zissis

Date:

December 16, 2019



**PUBLIC CERTIFICATE OF SERVICE**

**A-201-845 – Sugar from Mexico Suspension Agreement and  
C-201-846 – Sugar from Mexico Suspension Agreement**

I, Kristina Zissis, of White & Case LLP, hereby certify that copies of the attached submission were served by hand,\*\* by overnight courier,\*\*\* or by first-class mail, postage prepaid, this 16<sup>th</sup> day of December 2019 upon the following persons\*:

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Kristina Zissis

\* The Office of SANCHEZ DANIELS & HOFFMAN LLP requested that they not be served with any submissions in these proceedings.