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VIA ACCESS ELECTRONIC FILING
The Honorable Wilbur L. Ross
Secretary
U.S. Department of Commerce
Attention: Enforcement & Compliance
14th Street & Constitution Avenue, NW
Washington, DC 20230

RE: Comments on the Draft Amendments Suspending the Countervailing Duty and Antidumping Duty Investigations on Sugar from Mexico and Draft Statutory Memoranda

Dear Mr. Secretary:

These comments are submitted on behalf of the Sweetener Users Association (SUA) in regard to proposed amendments to the 2014 agreements between the United States and Mexico suspending antidumping (AD) and countervailing duty (CVD) investigations into sugar imports from Mexico. As detailed below, SUA supports the proposed amendments in part and strongly opposes other aspects of the proposals.

The Policy Background

Both the 2014 agreements and subsequent amendments need to be considered in light of the heavy-handed, protectionist and anti-consumer policy regime that governs trade in U.S. sugar. Under the sugar policies adopted by Congress, the ability of consuming industries to access sugar is severely constrained by domestic market allotments that establish a system that

resembles a government-mandated cartel among U.S. sellers of sugar, to the detriment of competition, as well as by import quotas that set country-by-country limits on the quantity of sugar that can be imported from 40 different countries.

Under the terms of the North American Free Trade Agreement, sugar from Mexico was not subject to import restrictions, but open trade was introduced only after a lengthy 14-year transition period. Despite 14 years' notice, the U.S. sugar industry was unwilling or unable to adapt to open trade with Mexico, in contrast to virtually every other industry in America. As a result, the industry persuaded Congress in 2008 to enact a convoluted set of new subsidies and market distortions aimed at the flow of Mexican sugar – notably, a legislative mandate that the federal government purchase excess sugar and sell it to ethanol plants at a loss to taxpayers, belying the U.S. sugar lobby's constant claim that its program operates at no net cost.

A few years later, Mexico had an unusually good crop on top of expanded acreage. Given its access to a market (the United States) where prices are artificially maintained at about twice the world level, it is hardly surprising that Mexico expanded planted acreage. SUA does not seek to re-litigate the AD and CVD cases here; we simply note the irony that the overproduction and consequent high shipments from Mexico of which the U.S. industry complained were in many ways a direct result of policies that Congress adopted at the behest of the same industry.

SUA Views on Proposed Amendments

Now the Department of Commerce finds itself required to again amend the 2014 agreements because of its failure, at least according to the Court of International Trade, to follow appropriate procedures the first time around. As noted, SUA does not oppose amending the 2014 agreements, as falsely stated in earlier comments from the American Sugar Coalition. The original agreements resulted in harm to traditional cane refiners and needed to be changed. In that regard, we continue to support the allocation of shares of refined and other sugar as provided in the 2017 amendments.

By contrast, we strongly oppose the higher reference prices in the 2017 amendments, as compared to the 2014 agreements.

- These higher reference prices are not even remotely necessary to prevent forfeitures of sugar under the price support programs; forfeiture-equivalent market prices are well under the reference prices when the latter are adjusted to U.S. location, as they must be for a fair comparison.

- If there is a need to increase the implicit refining margin in the original 2014 reference prices, this could have been done just as effectively by reducing the reference price for "other sugar" (i.e., raw sugar) as by raising both reference prices. In fact, the reference price for other sugar from Mexico could be established well below the 22.25 cents per

pound in the 2014 amendments and still be above the loan level set forth in the farm bill to avoid loan forfeitures.

- Commerce appears to have given no consideration to the impact of higher reference prices on consumers, businesses or even the future demand for U.S. sugar produced by the petitioners. And yet in the years since the reference prices put a permanently higher floor under U.S. sugar prices, the net imports of sugar-containing products has risen to well over one million short tons, raw value. This represents demand directly taken away from the U.S. sugar industry as a result of the uncompetitive policy regime – including the 2017 amendments – that was demanded by that same industry.

- The higher reference prices have served no other purpose than to inflate market prices. Since July 2017, when the amendments were signed, domestic raw sugar futures have been above 25 cents per pound for 103 out of 118 weeks, including the latest 69 weeks. By contrast, the support price for raw cane sugar legislated by Congress is 19.75 cents per pound.

For these reasons, Commerce should include revisions to reference prices in its final amendments. We recommend a reference price of 20.75 cents per pound for other sugar, with the reference price for refined sugar set 5 cents per pound above that, to reflect the implicit refining margin in the 2017 reference prices. We do not oppose this 5-cent spread, but believe that the other sugar reference price is unnecessarily high in both the 2017 amendments and the 2014 agreement, the latter of which reflect a change from the original results of negotiations. The recommended reference price is a full 1 cent above the U.S. loan rate for raw cane sugar in the farm bill, and since it is established ex-mill, adding typical transportation costs would result in a landed price that should avoid any danger of forfeitures under the sugar loan program.

SUA believes that Commerce is missing an opportunity, as it also did in 2017, to correct additional problems in the original 2014 agreements. In particular, we urge Commerce to increase the stocks-to-use target of 13.5 percent to at least 14.5 percent and preferably 15.5 percent, to better reflect historical domestic sugar supply-demand experience and USDA's traditional policy target range. We recommend a 15.5 percent target in part because the reference prices in the 2014 agreements – let alone the unreasonably higher prices in the 2017 amendments – virtually remove any possibility of forfeitures under the price support program, as consultation with the U.S. Department of Agriculture would confirm.

Finally, we note the irony that Commerce has proposed amendments that are, in substance, identical to those approved in 2017. Given that the CIT found that Commerce did not conduct the original proceeding in accord with law, we would think that the Department would want to go to extraordinary lengths to ensure the propriety, transparency and fairness of the present amendment process. Commerce should not treat the process triggered by the CIT's decision as the legal equivalent of a mulligan. Rather, the Department should expeditiously but thoroughly

consider the merits of various potential amendments and not simply rubberstamp the demands of the U.S. sugar lobby.

SUA Comments on Commerce Memoranda

SUA appreciates the opportunity that Commerce has provided to comment on certain points made in its memoranda in support of the proposed 2019 Draft Amendments.

By placing severe restrictions on sugar from Mexico, Commerce has contributed to an unnecessarily tight supply situation that assures the U.S. consumers and food companies will pay more than twice the world price for sugar and still be subject to supply shortages. Given this reality over the last few years, it is difficult to fathom how Commerce could say that the "draft amended Agreement ensures the public demand has been satisfied".

It is our understanding that the Government of Mexico is out of the sugar milling business with its two remaining government-owned mills put up for auction in 2016. Apparently, one mill was sold and the other was closed because it was deemed too small by industry standards. Since Mexico's government-owned sugar mills represented most of the basis of the countervailing duty investigations, it is unclear why the draft Amendments need to unduly limit "the supply of Mexican sugar" to the U.S. market to any significant extent if the formerly "countervailable subsidies" are now minimal.

In summary, SUA agrees that it is necessary to amend the 2014 agreements. We neither seek nor support a return to those agreements. But we oppose with equal vigor a process that rushes toward a predetermined result without any real consideration of public comments.

Sincerely,

Richard E. Pasco
President & General Counsel

PUBLIC CERTIFICATE OF SERVICE

Sugar from Mexico

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I hereby certify that on December 16, 2019, copies of the foregoing public submission were served on the following by first class mail, postage prepaid mail.

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