

UNITED STATES COURT OF INTERNATIONAL TRADE

Before: Unassigned

CSC SUGAR LLC	
	Plaintiff,
v.	
UNITED STATES	
	Defendant

Court No. 20-00017

**COMPLAINT**

Plaintiff in the above captioned case, CSC Sugar LLC, a company headquartered in New Canaan, Connecticut ("CSC" or "Plaintiff"), seeks judicial review of the International Trade Administration, United States Department of Commerce's ("Commerce" or "DOC") decision in *Sugar from Mexico: Amendment to the Agreement Suspending the Countervailing Investigation* ("Suspension Agreement Determination"). The determination was published in the *Federal Register* on January 22, 2020 (85 Fed. Reg. 3613). By and through its attorneys, Plaintiff alleges and states as follows:

**JURISDICTION**

1. Plaintiff brings this action pursuant to section 516A(a)(2)(B)(iv) of the Tariff Act of 1930, as amended ("the Act") (19 U.S.C. § 1516a(a)(2)(B)(iv)) to seek judicial review of certain factual findings and legal conclusions set forth in the Suspension Agreement Determination, which was issued pursuant to 19 U.S.C. § 1673c.
2. The Court has jurisdiction pursuant to 28 U.S.C. § 1581(c) and 19 U.S.C. § 1516a(a)(2).

### **STANDING OF PLAINTIFF**

3. Plaintiff is both a U.S. producer, and an importer, of the subject merchandise. Plaintiff was a party to and participated in the underlying Commerce proceeding now being contested, and is an interested party pursuant to 19 U.S.C. §§ 1677(9)(A) and (C), and 1516a(1) and (2)(A). As such, Plaintiff has standing to bring this action under 19 U.S.C. § 1516a(d) and 28 U.S.C. § 2631(c).

### **TIMELINESS OF THIS ACTION**

4. Commerce published its notice of the Suspension Agreement Determination in the *Federal Register* on January 22, 2020. *See Sugar from Mexico: Amendment to the Agreement Suspending the Countervailing Duty Investigation*, 85 Fed. Reg. 3,613 (January 22, 2020). Plaintiff filed its Summons today, January 23, 2020, within the 30-day period provided by law pursuant to sections 516A(a)(2)(A)(i)(II) and 516A(a)(2)(B)(i) of the Act (19 U.S.C. §§ 1516a(a)(2)(A)(i)(II) and 1516a(a)(2)(B)(i)) and Rule 6(a) of this Court.

5. Plaintiff files this Complaint within the time specified in section 516A(a)(2)(A) of the Act (19 U.S.C. § 1516a(a)(2)(A)) and 28 U.S.C. § 2636(c), which is within 30 days of the filing of the Summons.

### **STATEMENT OF FACTS**

6. On March 28, 2014, the American Sugar Coalition and its members filed a petition with DOC and the U.S. International Trade Commission ("ITC") alleging that imports of sugar from Mexico were being sold at less than fair value and were being subsidized. As a result of that petition the ITC conducted an investigation as to whether there was a reasonable indication of material injury, or threat thereof, by reason of imports of such dumped or

subsidized sugar from Mexico. The ITC published its determination in *Sugar from Mexico*, Inv. Nos. 701-TA-513 and 731-TA-1249 (Preliminary), USITC Pub. 4467 (May 2014) ("ITC Prelim.").

7. The ITC stated (ITC Prelim. at 6) that:

Sugar within the scope of this investigation includes raw sugar (sugar with a sucrose content by weight in a dry state that corresponds to a polarimeter reading of less than 99.5 degrees) and estandar or standard sugar which is sometimes referred to as "high polarity" or "semi-refined" sugar (sugar with a sucrose content by weight in a dry state that corresponds to a polarimeter reading of 99.2 to 99.6 degrees). Sugar within the scope of this investigation includes refined sugar with a sucrose content by weight in a dry state that corresponds to a polarimeter reading of at least 99.9 degrees.

8. Following the ITC preliminary determination DOC determined that countervailable subsidies were being supplied to producers and exporters of sugar from Mexico. DOC published its preliminary determination on the countervailing duty case in *Sugar From Mexico: Preliminary Affirmative Countervailing Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination*, 79 Fed. Reg. 51,956 (September 2, 2014).

9. DOC also made a preliminary determination that sugar from Mexico was being sold, or likely to be sold, into the United States at less than fair value. *Sugar From Mexico: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 79 Fed. Reg. 65,189 (November 3, 2014).

10. Both the DOC's preliminary countervailing duty ("CVD") determination, published on September 2, 2014, and the antidumping determination ("AD"), published on November 3, 2014, defined sugar at less than a polarity of 99.5 as raw sugar and only sugar at a polarity of 99.5 and above as refined sugar.

11. Following those preliminary determinations, DOC and the Government of Mexico signed suspension agreements on December 19, 2014. Notices of the suspension agreements were published on December 29, 2014. *Sugar From Mexico: Suspension of Countervailing Duty Investigation*, 79 Fed. Reg. 78,044 (December 29, 2014) and *Sugar From Mexico: Suspension of Antidumping Investigation*, 79 Fed. Reg. 79,039 (December 29, 2014). Both agreements define "refined sugar" as sugar with polarity of 99.5 and above.

12. Notwithstanding the suspension agreements, at the request of the domestic sugar industry DOC continued the investigations and made final determinations in both the CVD and antidumping investigations. *Sugar From Mexico: Final Affirmative Countervailing Duty Determination*, 80 Fed. Reg. 57337 (September 23, 2015) and *Sugar From Mexico: Final Determination of Sales at Less Than Fair Value*, 80 Fed. Reg. 57341 (September 23, 2015). No changes with regard to the definition of "refined sugar" were made in those determinations.

13. Beginning in June 2016, DOC and the Government of Mexico started negotiations regarding changes to the suspension agreements based on certain concerns raised by certain U.S. producers. DOC claimed in its July 11, 2017, notices that one of the purposes of its negotiations and the revised agreement was to "... ensure that the AD [or CVD] Suspension Agreement meets all of the statutory requirements for a suspension agreement, e.g., that suspension of the investigation is in the public interest, including the availability of supplies of sugar in the U.S. market. . . ." *Sugar from Mexico: Amendment to the Agreement Suspending the Antidumping Duty Investigation*, 82 Fed. Reg. 31,945 (July 11, 2017) and *Sugar from Mexico: Agreement to the Agreement Suspending the Countervailing Duty Investigation*, 82 Fed. Reg. at 31942 (July 11, 2017).

14. On June 14, 2017, DOC and the Government of Mexico initialed draft suspension agreement amendments for both the antidumping and CVD investigations. On June 17, 2017, DOC released draft memoranda purporting to explain how the draft amendments to the suspension agreements met the statutory requirements. The draft amendments proposed, among other items, that the definition of "refined sugar" be changed to 99.2 from the 99.5 polarity that had been applied consistently as the definition of "refined sugar" by DOC and the ITC to all determinations in these investigations, since their beginning in 2014. The draft AD memorandum stated at page 12 that: "These changes, which move the dividing line between Refined and Other Sugar down to 99.2 from 99.5 degrees and add shipping conditions for Other Sugar, address the concern that a significant portion of Other Sugar is bypassing cane refiners for direct consumption or end use." (Emphasis added). The draft memorandum on the same page made explicit that the changes were designed to give a competitive advantage to one segment of the domestic industry, the U.S. refiners of cane sugar, saying:

The petitioner has asserted that the sale of Mexican "estandar, standard, or semi-refined sugar subject to the lower reference price of Other Sugar in the original Agreement hinders the competitiveness of the U.S. cane sugar refiners by diminishing the supply of Mexican sugar for their processing operations, supplanting their sales of refined sugar, and suppressing U.S. prices for refined sugar.

(Emphasis added).

15. The 2017 draft agreement included a provision requiring that "other sugar," *i.e.*, sugar not refined, be transported free-flowing in ocean vessels, thus making it unfit to go directly into consumption, due to the possibility of contamination.

16. The 2017 countervailing draft memorandum (at 8) claims, in discussing the effects of the draft agreement on the public interest, that: "Furthermore, . . . 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 will not be guaranteed with an antidumping duty order." However, in May 2014, the ITC had discussed the nature of the U.S. sugar industry in its preliminary injury determination and found that Plaintiff CSC, which produces liquid sugar from sugar imports, was part of the U.S. sugar industry. *Sugar from Mexico*, Inv. Nos. 701-TA-513 and 731-TA-1249 (Preliminary), USITC Pub. 4467 (May 2014) at 14-16. In asserting an assurance of "an adequate supply," in the 2017 DOC determination made no mention of the part of the U.S. industry producing liquid sugar, and only cane sugar refiners are mentioned as benefitting from the agreement. The countervailing draft memorandum also claims that the Agreement will enhance and not negatively impact, "the competitiveness of the domestic industry producing the like merchandise." But no mention is made, nor any analysis provided, of the competitiveness of the portion of that industry producing liquid sugar.

17. Following the above publications of 2017 Suspension Agreement, Plaintiff CSC filed a Summons and Complaint with this Court. Following the filing of the administrative record, Plaintiff filed a motion to complete the record, stating that Commerce had not met its obligation to file a complete administrative record with the Court as required by 19 U.S.C. §1516a(b)(2)(A)(i) and USCIT Rule 73.2(a). Plaintiff alleged that Commerce failed to memorialize certain *ex parte* communications between Commerce and interested parties as required by 19 U.S.C. §1677f(a)(3).

18. On June 1, 2018, the Court ordered Commerce to complete the administrative record by filing with the court the record of any such *ex parte* meetings during the course of the proceeding.

19. Following the supplementing of the record with two logs by Commerce, Plaintiff filed a motion for judgment on the on the agency record arguing that Commerce's failure during the suspension amendment negotiations to maintain contemporaneous *ex parte* meeting memoranda could not be adequately remedied by Commerce's incomplete supplementation of the record. Plaintiff argued that the appropriate remedy was to vacate the 2017 Amendment.

20. On October 18, 2019, this Court granted Plaintiff's motion for judgment on the agency record and ordered that the 2017 Amendment be vacated. *CSC Sugar LLC v. United States*, Slip Op. 19-131 (October 18, 2019).

21. Soon after the issuance of this Court's opinion on October 18, 2019, Commerce began "negotiations" with the Mexican government and the Mexican industry regarding a revised agreement. Commerce issued a memorandum to interested parties on November 6, 2019, along with supplemental questions on November 8, 2019. On November 14, 2019 CSC responded by filing comments with Commerce. Among other arguments, CSC explained the need to make a record on the public interest, in conformance with the statute, and the absence of any legitimate need to include both a bulk shipment provision and a change in the polarity standard. CSC noted that the bulk shipment and polarity standards in the "new" agreement had simply been copied from the 2017 amendment.

22. Simultaneously, while asking for comments on the "new" agreement, Commerce asked that this Court stay the enforcement of the Court's Order of October 18, 2019, by 90 days. The Court denied that stay motion on December 6, 2019.

23. Commerce continued to proceed with adopting the "new" agreement and in a Memorandum of December 4, 2019, Commerce invited comments from the interested parties on the Draft Amendments. CSC again filed comments on the Draft Amendments on December 16,

2019. CSC pointed out that the Draft Amendments provided no reason why the change of polarity was needed, in light of the bulk shipment requirement, which solved the problem (which all parties recognized) of certain shipments being sold directly into competition with refined sugar. CSC stated that the only reason for the polarity change is to stifle U.S. competition from CSC. CSC also noted that Commerce acknowledged in the Draft Agreements that it may not accept suspension agreements unless “it is satisfied that suspension of the investigation is in the public interest.”

24. On January 15, 2020, the agreement was signed. The agreement was made retroactive to October 1, 2019, just before this Court’s ruling on the 2017 Agreement on October 18, 2019. Following the signing of the agreement, Commerce released certain memoranda dated January 15, 2020, addressing comments filed regarding the amendments. The agreement was then published in the *Federal Register* on January 22, 2020.

## **STATEMENT OF THE CLAIMS**

### **Count One**

25. Paragraphs 1 – 24 are incorporated herein by reference.

26. The determination by Commerce regarding the countervailing duty amendments to the suspension agreements is not supported by substantial evidence and is contrary to law.

### **Count Two**

27. Paragraphs 1 - 26 are incorporated herein by reference.

28. The failure of Commerce to provide a reasoned explanation for the inclusion of both the bulk shipment provisions and the changes in the polarity standards in adopting the amendment renders the amendment unsupported by substantial evidence and contrary to law.

### **Count Three**



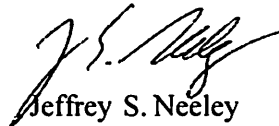
29. Paragraphs 1 - 28 are incorporated herein by reference.
30. The failure of Commerce to accept relevant information and properly analyze the public interest pursuant to 19 U.S.C. §1673c(a)(2)(B) in adopting the amendment renders the amendment unsupported by substantial evidence and contrary to law.

**PRAYER FOR RELIEF AND JUDGMENT**

WHEREFORE, Plaintiff respectfully requests that this Court:

- (A) Enter judgment in favor of Plaintiff;
- (B) Remand this proceeding to Commerce with instructions to vacate the amendment published on January 22, 2020, and
- (C) Grant Plaintiff such additional relief as the Court may deem just and proper.

Respectfully submitted,



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