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Suspension Agreement
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December 14, 2021

Ms. Sally C. Gannon
Director for Bilateral Agreements
Office of Policy
Enforcement & Compliance
International Trade Administration
U.S. Department of Commerce
Washington, DC 20230

RE: Sugar from Mexico: Export Limit Calculation

Dear Ms. Gannon:

These comments respond to your memorandum of December 8, 2021, with respect to the December calculation of the Export Limit under Section V.B of the Agreement Suspending the Countervailing Duty Investigation on Sugar from Mexico, as amended. The Sweetener Users Association (SUA) comprises company that use sugar in food and beverage manufacturing. Our members are directly affected by government policy actions that affect the supply of sugar in the United States, including sugar imported from Mexico.

SUA Support Commerce's Initial Determination

SUA appreciates the Commerce Department's recent identification of additional U.S. needs and the accompanying increase in the Export Limit of 150,000 short tons, raw value (STRV), as requested by the U.S. Department of Agriculture. As explained further below, this action was both welcome and necessary. In the present case, SUA strongly agrees with Commerce's initial determination that if the December Export Limit calculation results in a figure that is less than

the September Export Limit or less than the revised November Export Limit, the December Export Limit should be maintained "at the level of the revised November Export Limit."

To do otherwise would defeat the purpose of the November increase, which recognized the need for more supplies of raw sugar in the U.S. market. The suspension agreement would be incoherent and self-contradictory if it contemplated, first, identifying the need to take special steps to increase supplies, and then, short weeks later, using a mechanical formula to decrease supplies in the face of the market's continuing need for sugar.

Commerce's Initial Determination Reflects a Correct Reading of the Agreement

The only reason this issue arises, we presume, is that Section V.B.2 provides that the December U.S. Needs calculation is to result in an Export Limit equal to 80 percent of U.S. Needs, "unless that amount is less than or equal to the Export Limit announced in September, in which case the Export Limit shall not change." The potentially ambiguous phrase is "announced in September," and the agreement does not specify in so many words what is to be done if the Export Limit has changed in the interim.

However, common sense suggests that Commerce's preliminary determination is correct. Section V.B provides that as part of both the September and December calculations, Commerce is to "determine if there is a need for additional Sugar in the U.S. market." Moreover, Section V.B.4 provides for identifying additional needs at any time during the year, not just on the occasion of the formal Export Limit calculations. It defies logic that the agreement would create this power but then immediately take it back by ignoring the resulting increases in Export Limits in the subsequent calculations and determinations.

Clearly, the proper interpretation is this: An Export Limit is "announced in September." That Export Limit, whether in the quantity initially announced or as augmented by additional needs, governs until the calculation of the next Export Limit in December. If it is subsequently increased, it does not become a different Export Limit; it is still the Export Limit announced in September, but its quantity has been adjusted in full conformity with the terms of the agreement and must be utilized in the subsequent, December calculation.

Current Market Conditions Support Commerce's Initial Determination

Current market conditions make this conclusion still more obvious. Ongoing constraints on the U.S. sugar supply have resulted from insufficient action by the federal government to allow adequate imports. In fact, imports have been constrained to such a degree that cane refiners have been forced to pay what is supposed to be a prohibitive over-quota tariff of 15 cents per pound just to have raw sugar to run refineries and meet domestic demand. Cane refiners should not be put in the position of having no other choice than to pay the high-tier duty to meet domestic needs.

The marketplace provides vivid evidence that raw sugar supplies are excessively tight. Domestic raw sugar futures are over 37 cents per pound, whereas the policy regime embodied in the suspension agreements should result in a price in the range of 25 to 26 cents per pound. That is a difference of 48 percent.

As a result of inadequate raw sugar supplies, sugar users are paying historically high prices for refined sugar, as much as 55 cents per pound compared to the world refined sugar price of approximately 23 cents per pound, with pricing for calendar year 2022 at 49 cents per pound.

Sugar refiners and users are experiencing supply chain problems similar to those faced by other industries, including clogged ports, rail delays, and truck and truck driver shortages causing ongoing bottlenecks. But in the case of sugar, refiners and users also face additional and onerous supply-chain challenges that are created by the federal government through excessively tight sugar policies – challenges which can also be eased by government action.

Commerce would contribute to reducing supply-chain problems throughout the food industry by affirming the preliminary determination in your December 8 memorandum. We strongly urge the Department to do exactly that. Your recent decision to supply an additional 150,000 STRV to the market was an important if partial step – indeed, the market likely will need an additional 200,000-250,000 STRV during the course of the current year – and it would be highly counterproductive to negate that positive step in calculating the December Export Limit.

Thank you for your consideration of SUA's views.

Sincerely,

Richard Pasco
President