

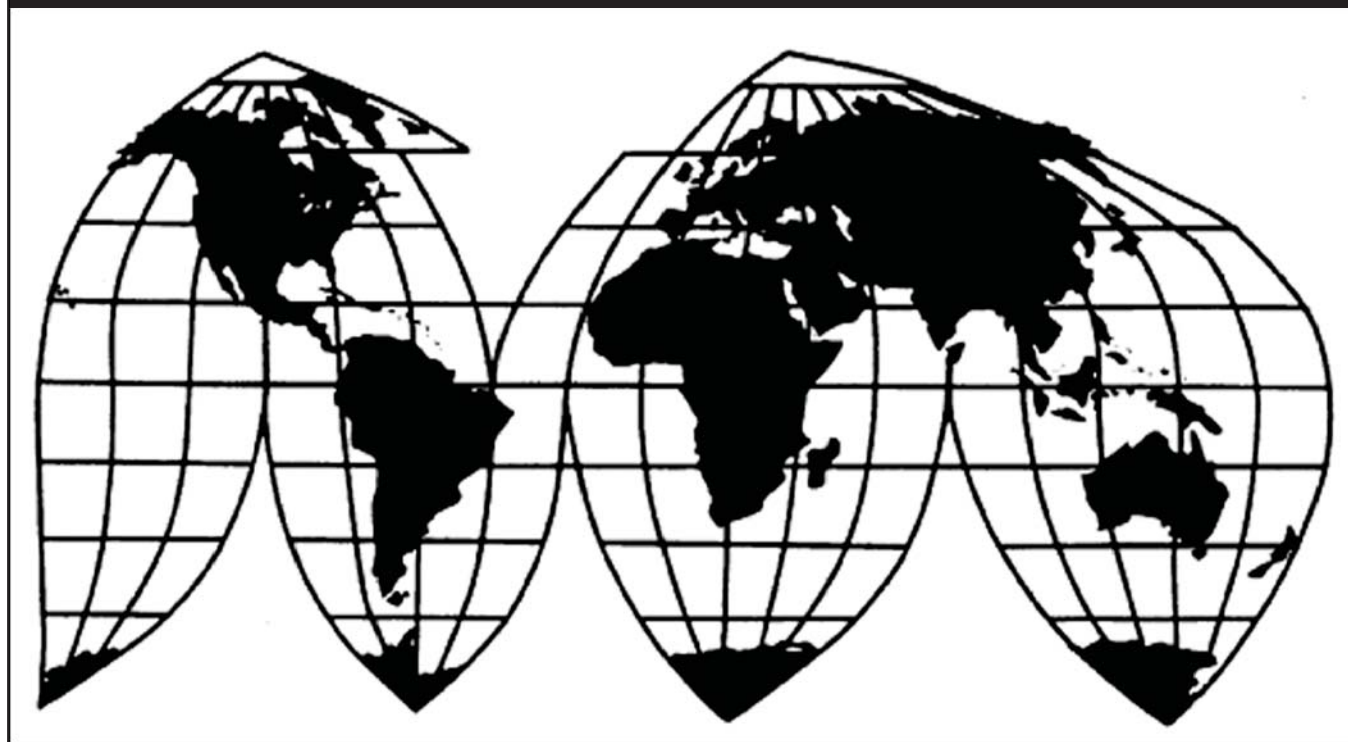
# Sugar from Mexico

Investigation Nos. 704-TA-1 and 734-TA-1 (Review)

Publication 4523

April 2015

**U.S. International Trade Commission**



Washington, DC 20436

# U.S. International Trade Commission

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# U.S. International Trade Commission

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# UNITED STATES INTERNATIONAL TRADE COMMISSION

## Investigation Nos. 704-TA-1 and 734-TA-1 (Review)

### Sugar from Mexico

#### Determinations

On the basis of the record<sup>1</sup> developed in the subject reviews, the United States International Trade Commission (“Commission”) determines, pursuant to sections 704(h) and 734(h) of the Tariff Act of 1930 (19 U.S.C. §§ 1671c(h) and 1673c(h)) (“the Act”), that agreements the U.S. Department of Commerce (“Commerce”) has entered into with Mexican exporters of sugar and the government of Mexico suspending antidumping and countervailing duty investigations concerning sugar from Mexico eliminate completely the injurious effect of subject imports.<sup>2</sup>

#### Background

The Commission instituted these investigations effective January 8, 2015, following receipt of a petition filed with the Commission by Imperial Sugar Company (“Imperial”), Sugar Land, Texas and AmCane Sugar LLC (“AmCane”), Taylor, Michigan. The Commission determined that Imperial and AmCane are interested parties who were parties to the underlying investigations at the time the petitions were filed, and consequently are appropriate petitioning parties. Notice of the scheduling of these reviews and of a public oral presentation to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* on January 26, 2015 (80 FR 3977). The oral presentation was held in Washington, DC, on February 19, 2015, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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<sup>1</sup> The record is defined in sec. 207.2(f) of the Commission’s Rules of Practice and Procedure (19 CFR 207.2(f)).

<sup>2</sup> All six Commissioners voted in the affirmative.



## Views of the Commission

Based on the record in these reviews, we determine under sections 704(h) and 734(h) of the Tariff Act of 1930, as amended (“the Tariff Act”), that the agreements that the U.S. Department of Commerce (“Commerce”) has entered into suspending the antidumping duty (“AD”) and countervailing duty (“CVD”) investigations concerning sugar from Mexico eliminate completely the injurious effect of subject imports.

### I. Background

On March 28, 2014, the American Sugar Coalition<sup>1</sup> (“Sugar Coalition” or “Coalition”) filed AD and CVD petitions with Commerce and the Commission concerning imports of sugar from Mexico.<sup>2</sup> The Commission subsequently made preliminary affirmative determinations on May 12, 2014.<sup>3</sup> On September 2, 2014, Commerce issued an affirmative preliminary determination in the CVD investigation and aligned the final CVD determination with the final determination in the companion AD investigation.<sup>4</sup> On October 27, 2014, Commerce announced its affirmative preliminary determination in the AD investigation.<sup>5</sup>

Also on October 27, 2014, Commerce announced that, pursuant to sections 704(c) and 734(c) of the Tariff Act,<sup>6</sup> it had initialed a draft agreement with the Mexican government to suspend the CVD investigation and that it had initialed a draft agreement with representatives of producers/exporters from Mexico to suspend the AD investigation. Commerce consulted with the Sugar Coalition and subsequently invited interested parties to provide comments on the agreements within a 30-day period. On December 19, 2014, Commerce announced that it

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<sup>1</sup> The American Sugar Coalition’s members are American Sugar Cane League, Thibodaux, LA; American Sugarbeet Growers Association, Washington, DC; American Sugar Refining, Inc., West Palm Beach, FL; Florida Sugar Cane League, Washington, DC; Hawaiian Commercial and Sugar Company, Puunene, HI; Rio Grande Valley Sugar Growers, Inc., Santa Rosa, TX; Sugar Cane Growers Cooperative of Florida, Belle Glade, FL; and United States Beet Sugar Association, Washington, DC. Confidential Report INV-NN-012 (“CR”) at I-2 n.3; Public Report (“PR”) at I-1 n.3.

<sup>2</sup> Sugar from Mexico; Institution of Antidumping and Countervailing Duty Investigations and Scheduling of Preliminary Phase Investigations, 79 Fed. Reg. 18697 (Apr. 3, 2014).

<sup>3</sup> *Sugar from Mexico*, Inv. Nos. 701-TA-513 and 731-TA-1249 (Preliminary), USITC Pub. 4467 (May 2014) (“preliminary determinations”); 79 Fed. Reg. 28550 (May 16, 2014). A more detailed discussion of the Commission’s preliminary determinations is provided in section IV of these views.

<sup>4</sup> Sugar from Mexico: Preliminary Affirmative Countervailing Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination, 79 Fed. Reg. 51956 (Sept. 2, 2014).

<sup>5</sup> Sugar from Mexico: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 79 Fed. Reg. 65189 (Nov. 3, 2014).

<sup>6</sup> 19 U.S.C. §§ 1671c(c), 1673c(c).

had finalized the agreements and suspended both the AD and CVD investigations.<sup>7</sup> The finalized agreements incorporated several changes from the initial draft agreements to reflect comments that Commerce received from interested parties, including a revision of the definitions of “refined sugar” and “other sugar,” a decrease in refined sugar’s permitted share of total exports, and adjustments to the reference prices, including increasing the absolute prices as well as the price differential between the refined and other sugar.<sup>8</sup>

The AD suspension agreement sets minimum price levels at which sugar from Mexico must be sold in the United States, and the CVD suspension agreement provides for multiple volume limitations that will control both the total amount of sugar imported from Mexico as well as the specific volume of refined sugar imports from Mexico that will be allowed into the United States.

**Parties to the Reviews.** Suspension agreements that Commerce enters under sections 704(c) and 734(c) of the Tariff Act are subject to review by the Commission under sections 704(h) and 734(h) of the Tariff Act, respectively, upon petition by certain domestic interested parties when the petitioning party “is a party to the investigation.”<sup>9</sup> On January 8, 2015, Imperial Sugar Co. (“Imperial”) and AmCane Sugar LLC (“AmCane”) (collectively “petitioning refiners”), domestic producers of sugar which describe themselves as “destination refiners,”<sup>10</sup> filed petitions with the Commission for review under sections 704(h) and 734(h).<sup>11</sup>

The Commission instituted these reviews on January 21, 2015.<sup>12</sup> In its notice of institution, the Commission stated that it “determined that Imperial and AmCane are interested parties who were parties to the underlying investigations at the time the petitions were filed, and consequently are appropriate petitioning parties.”<sup>13</sup> Petitioning refiners submitted a joint

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<sup>7</sup> *Sugar from Mexico Suspension of Antidumping Investigation*, 79 Fed. Reg. 78039 (Dec. 29, 2014) (“AD suspension agreement”); *Sugar from Mexico Suspension of Countervailing Duty Investigation*, 79 Fed. Reg. 78044 (Dec. 29, 2014) (“CVD suspension agreement”) (collectively “suspension agreements”).

<sup>8</sup> The final suspension agreements are discussed in greater detail in section II of these views.

<sup>9</sup> 19 U.S.C. §§ 1671c(h)(1), 1673c(h)(1). The legal standard of these provisions of the statute are discussed in greater detail in section III of these views.

<sup>10</sup> Imperial states that ““destination refineries do not rely on locally- or regionally-grown sugar cane as feedstock[; r]ather they rely on their proximity to major ports to source raw sugar from foreign suppliers (and to a lesser extent, from domestic suppliers) that is refined in their facilities.” Imperial’s Second Written Submission at Exhibit 3, p. 3. *See also* Oral Proceeding (“OP”) Tr. at 44 (Gorrell) (“destination refineries, particularly, a refinery like Imperial, is largely dependent on imported sugar”). Besides itself and AmCane, Imperial identifies American Sugar Refining (“ASR”) as a destination refiner; ASR opposes the petition in these proceedings. Imperial’s Second Written Submission at 7-8; *see generally* Sugar Coalition’s First and Second Written Submissions.

<sup>11</sup> These are the first petitions that the Commission has ever received under sections 704(h) and 734(h) of the Tariff Act.

<sup>12</sup> 80 Fed. Reg. 3977 (Jan. 26, 2015).

<sup>13</sup> 80 Fed. Reg. at 3977. Prior to issuing its notice instituting these reviews, the Commission received arguments from Cámara Nacional de las Industrias Azucarera y Alcoholera (“Mexican Sugar Chamber”) (Continued...)

first written submission and each submitted second written submissions and appeared at the oral proceeding the Commission conducted on February 19, 2015.

Several entities opposed to the petitions for review of the suspension agreements participated in these reviews. Participating in the oral proceeding and filing two written submissions were the Sugar Coalition; Cámara Nacional de las Industrias Azucarera y Alcoholera (the “Mexican Sugar Chamber”), consisting of Mexican producers and exporters of subject merchandise; and CSC Sugar, LLC (“CSC”), which is a domestic sugar refiner and importer of subject merchandise. Batory Foods, which is a wholesaler in the United States of the domestic

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that petitioning refiners were not the type of interested parties eligible to file petitions under sections 704(h) and 734(h). See Letter from Mexican Sugar Chamber to Secretary Lisa Barton (Jan. 13, 2015); Mexican Sugar Chamber’s First Written Submission at 16-20; see also Batory Foods’ First Written Submission at 2-3 (incorporating by reference the arguments in Mexican Sugar Chamber’s Jan. 13, 2015 letter). Specifically, they argue that neither petitioning refiner qualifies as “an interested party which is a party to the investigation” under sections 704(h) and 734(h) because “parties to the investigations” are limited to those parties that actively participate in the investigations, pursuant to Commerce regulation 19 C.F.R. § 351.102(a)(36), and to those parties that Commerce is obliged to notify about the proposed suspension agreements pursuant to 19 U.S.C. §§ 1671c(e)(1) and 1673c(e)(1).

We reject these arguments. Sections 704(h)(1) and 734(h)(1) refer to requests for reviews directed to the Commission. We therefore construe the phrase “interested party which is a party to the investigation” as it appears in these sections, particularly because the term “investigation” is framed in the singular, as pertaining to an investigation before the Commission rather than Commerce. Commission investigations are governed by procedural regulations that are separate and distinct from those used by Commerce. See generally 19 C.F.R. §§ 201.7-201.16, 19 C.F.R. Part 207. We therefore find the arguments based on Commerce regulations not to be pertinent to our inquiry under sections 704(h)(1) and 734(h)(1).

The Commission’s regulations do not require any particular level of participation during a particular phase of the investigation for a party to be a “party to the investigation.” Imperial qualifies as a party to the Commission investigations because it filed a notice of appearance with the Commission on December 9, 2014, establishing that it qualified as an interested party within the meaning of 19 U.S.C. §§ 1677(9)(A) and (C) and stating that it would participate fully in the investigations. EDIS Doc. No. 547598. This is sufficient to establish party status under Commission regulations. See 19 C.F.R. § 201.11(a). AmCane filed a notice of appearance on January 2, 2015 and similarly established party status under Commission regulations prior to the time it filed its petitions.

We find unavailing the arguments that petitioning refiners are not parties to the Commission’s investigations because they filed entries of appearance in the final phase rather than preliminary phase investigations and, in the case of AmCane, did so after the suspension agreements came into effect. See Mexican Sugar Chamber’s First Written Submission at 19-20. Although the Mexican Sugar Chamber is correct that we have not incorporated the factual record of the suspended final phase of the investigations into the record for these reviews, we do not draw a distinction between entries of appearance for purposes of determining whether an interested party is a party to “the investigation.” Consequently, because both Imperial and AmCane filed entries of appearance in the underlying investigations that were accepted by the Commission, we found in our notice of institution that they were proper petitioning parties under sections 704(h) and 734(h).

like product, filed two written submissions but did not participate in the oral proceeding. The Government of Mexico filed a written submission and appeared at the oral proceeding.

The United States Department of Agriculture (“USDA”) submitted written comments on the suspension agreements. In addition, after these reviews were instituted, Commerce issued a memorandum addressing the prevention of price suppression and undercutting of price levels by the AD suspension agreement.<sup>14</sup> Commerce also submitted an additional memorandum that it had placed on the record in its investigations.<sup>15</sup>

## **II. The Suspension Agreements Under Review**

### **A. Agreement Suspending the Antidumping Duty Investigation<sup>16</sup>**

On December 19, 2014, Commerce and signatory producers/exporters accounting for substantially all imports of sugar from Mexico signed a final agreement suspending the antidumping duty investigation on sugar from Mexico pursuant to Section 734(c) of the Tariff Act.<sup>17</sup> The basis for the agreement was a commitment by each signatory producer/exporter to revise its prices to eliminate completely the injurious effect of exports of the subject merchandise to the United States.<sup>18</sup> Commerce determined that extraordinary circumstances were present to justify the agreement on the grounds that suspension of the investigation would be more beneficial to the domestic industry than its continuation and because the investigation was complex.<sup>19</sup> It also determined that the suspension of the investigation was in the public interest and that effective monitoring of the agreement by the United States was practicable.<sup>20</sup>

The agreement has no scheduled termination date and the suspended investigations are subject to five-year reviews, through which they may be terminated.<sup>21</sup> Either Commerce or the Mexican signatories may terminate the agreement at any time.<sup>22</sup>

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<sup>14</sup> Memorandum to Paul Piquado from Lynn Fischer Fox (Feb. 6, 2015) (“February 6 Commerce Memorandum”).

<sup>15</sup> Memorandum to Paul Piquado from John McInerney (Feb. 10, 2015) (“February 10 Commerce Memorandum”).

<sup>16</sup> The full text of the agreements and statutory requirements memoranda are presented in CR/PR Appendix D.

<sup>17</sup> 79 Fed. Reg. at 78040. *See also* 19 U.S.C. § 1673c(c). Commerce may at any time during the period of the suspension agreement require additional producers/exporters in Mexico to accede to the agreement to ensure that not less than substantially all imports into the United States are subject to it. AD suspension agreement, section VI, 79 Fed. Reg. at 78041-42.

<sup>18</sup> 79 Fed. Reg. at 78040 & AD suspension agreement, section VI, 79 Fed. Reg. at 78041-42.

<sup>19</sup> AD suspension agreement, section V, 79 Fed. Reg. at 78041. As described below in section III.A. of these views, Commerce is required to make a finding that “extraordinary circumstances” exist prior to entering into an agreement under section 734(c).

<sup>20</sup> AD suspension agreement, section V, 79 Fed. Reg. at 78041.

<sup>21</sup> AD suspension agreement, section X.A., 79 Fed. Reg. at 78043.



### *Reference prices*

The AD suspension agreement establishes reference prices, or minimum prices, to guard against undercutting or suppression of U.S. prices.<sup>23</sup> These minimum prices are \$0.26 per pound by dry weight commercial value for refined sugar and \$0.2225 per pound by dry weight commercial value for all other sugar.<sup>24</sup> “Refined sugar” is defined as sugar with at least 99.5 percent polarity or above.<sup>25</sup> “Other sugar” is sugar that does not meet the definition of refined sugar.<sup>26</sup> Additionally, each signatory individually agrees that for each entry the amount by which the estimated normal value exceeds the export price (or the constructed export price) will not exceed 15 percent of the weighted average amount by which the estimated normal value exceeded the export price (or constructed export price) for all less-than-fair-value entries of the producer/exporter examined during the course of the investigation.<sup>27</sup>

### **B. Agreement Suspending the Countervailing Duty Investigation**

On December 19, 2014, Commerce and the Mexican government signed a final agreement suspending the countervailing duty investigation on sugar from Mexico.<sup>28</sup> The Mexican government agreed not to provide any new or additional export or import substitution subsidies on the subject merchandise and to restrict the volume of direct and indirect exports to the United States of sugar from all Mexican producers/exporters in order to eliminate

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<sup>22</sup> AD suspension agreement, section X.B., 79 Fed. Reg. at 78043.

<sup>23</sup> AD suspension agreement, section VI, 79 Fed. Reg. at 78041-42.

<sup>24</sup> AD suspension agreement, appendix I, 79 Fed. Reg. at 78044. The original draft AD suspension agreement established reference prices for refined sugar at \$0.2357 per pound and for all other sugar at \$0.2075 per pound. See Commerce Memorandum to All Interested Parties re: Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico (Oct. 27, 2014), draft AD suspension agreement at appendix I.

<sup>25</sup> AD suspension agreement, section II.H., 79 Fed. Reg. at 78041. The original draft AD suspension agreement defined “refined sugar” as “sucrose content by weight in a dry state that corresponds to a polarimeter reading of at least 99.9 degrees.” See Commerce Memorandum to All Interested Parties re: Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico (Oct. 27, 2014), draft AD suspension agreement at section I.

<sup>26</sup> AD suspension agreement, section II.F., 79 Fed. Reg. at 78041.

<sup>27</sup> AD suspension agreement, section VI, 79 Fed. Reg. at 78042, appendix II, 79 Fed. Reg. at 78044. The agreement also addresses enforcement and monitoring. Commerce and the relevant Mexican government agencies agreed to establish information exchanges and consultative processes in relation to the operation and enforcement of the agreement. Commerce will monitor import entries and publicly available information in consultation with U.S. Customs and Border Protection (“CBP”) and USDA to determine whether there have been imports that are inconsistent with the provisions of the agreement. Commerce may also conduct reviews and verifications as appropriate. AD suspension agreement, sections VII & VIII, 79 Fed. Reg. at 78042-43.

<sup>28</sup> 79 Fed. Reg. at 78045.

completely the injurious effect of exports of this merchandise to the United States.<sup>29</sup> Commerce determined that extraordinary circumstances were present to justify the agreement on the grounds that suspension of the investigation would be more beneficial to the domestic industry than its continuation and because the investigation was complex.<sup>30</sup> It also determined that the suspension of the investigation is in the public interest and that effective monitoring of the agreement by the United States is practicable.<sup>31</sup>

The agreement has no scheduled termination date and the suspended investigations are subject to five-year reviews, through which they may be terminated.<sup>32</sup> Either Commerce or the Mexican government may terminate the agreement at any time.<sup>33</sup>

### *Export limits*

The CVD suspension agreement contains provisions to prevent an oversupply of sugar in the U.S. market. Specifically, Commerce will calculate an Export Limit for Mexico based on U.S. Needs as calculated by USDA (U.S. Needs is essentially the portion of the U.S. market that USDA determines will not be served by other sources, including domestic production and other imports, assuming a stocks-to-use ratio of 13.5 percent).<sup>34</sup> The CVD suspension agreement applies that Export Limit, which may be adjusted several times a year; establishes restrictions on shipping patterns to prevent imports from being concentrated during certain times of the year; and limits refined sugar's share of total sugar imports from Mexico.<sup>35</sup>

The initial Export Limit Period is between December 19, 2014 and September 30, 2015, and subsequent export limit periods will correspond with the sugar crop year ("CY"), which is October 1 through September 30 of the following calendar year.<sup>36</sup> The Export Limit can be adjusted upwards as follows:

- The initial Export Limit is set at 70 percent of the U.S. needs calculated from the July WASDE, effective at the start of the new crop year, October 1.

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<sup>29</sup> CVD suspension agreement, section V, 79 Fed. Reg. at 78047-48, section XII, 79 Fed. Reg. at 78050.

<sup>30</sup> CVD suspension agreement, section IV, 79 Fed. Reg. at 78047. As described below in section III.A. of these views, Commerce is required to make a finding that "extraordinary circumstances" exist prior to entering into an agreement under section 704(c).

<sup>31</sup> CVD suspension agreement, section IV, 79 Fed. Reg. at 78047.

<sup>32</sup> CVD suspension agreement, section XI.A., 79 Fed. Reg. at 78050.

<sup>33</sup> CVD suspension agreement, section XI.B., 79 Fed. Reg. at 78050.

<sup>34</sup> CVD suspension agreement, section V, 79 Fed. Reg. at 78047-48. U.S. Needs are calculated using USDA data published in the World Agricultural Supply and Demand Estimates Report ("WASDE") per the following formula: (Total Use\*1.135) - Beginning Stocks - Production - TRQ Imports - Other Program Imports - Other (including other high-tier and other). The WASDE is published monthly and includes estimates of inventories, production, imports, and human consumption for the current and subsequent crop year.

<sup>35</sup> CVD suspension agreement, section V, 79 Fed. Reg. at 78047-48.

<sup>36</sup> CVD suspension agreement, section II.G.1., 79 Fed. Reg. at 78046, section V, 79 Fed. Reg. at 78047.

- The initial Export Limit may be increased if U.S. needs calculated from the September WASDE increases. Accordingly, effective October 1, the Export Limit is set to the largest of the following values: 70 percent of U.S. Needs calculated from the July WASDE or 70 percent of U.S. Needs calculated from the September WASDE.
- Effective January 1, the Export Limit will be set to the maximum of the following values: 70 percent of U.S. Needs calculated from the July WASDE; 70 percent of U.S. Needs calculated from the September WASDE; or 80 percent of U.S. Needs calculated from the December WASDE.
- Effective April 1, the Export Limit will be set to the maximum of the following values: 70 percent of U.S. Needs calculated from the July WASDE; 70 percent of U.S. Needs calculated from the September WASDE; 80 percent of U.S. Needs calculated from the December WASDE; or 100 percent of U.S. Needs calculated from the March WASDE.
- Commerce may increase the export limit upon USDA's written request at any time during the Export Limit Period.<sup>37</sup>

The agreement caps exports of refined sugar at 53 percent of total exports from Mexico to the United States during any given Export Limit period.<sup>38</sup> The definitions of "refined sugar" and "other sugar" are the same in the CVD suspension agreement as in the AD suspension agreement.<sup>39</sup>

Restrictions on shipping patterns are established as follows: 1) no more than 30 percent of U.S. Needs calculated in each July based on the July WASDE and effective October 1 may be exported during the period October 1 through December 31; and 2) no more than 55 percent of U.S. Needs calculated in each December based on the December WASDE and effective January 1 may be exported during the period October 1 through March 31.<sup>40</sup>

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<sup>37</sup> CVD suspension agreement, section V.B., 79 Fed. Reg. at 78047.

<sup>38</sup> CVD suspension agreement, section V.C.3., 79 Fed. Reg. at 78047. The original draft CVD suspension agreement capped exports of refined sugar at 60 percent of total exports during any given Export Limit period. See Commerce Memorandum to All Interested Parties re: Agreement Suspending the Countervailing Duty Investigation on Sugar from Mexico (Oct. 27, 2014), draft CVD suspension agreement at section V.C.3.

<sup>39</sup> CVD suspension agreement, sections II.L. & II.K., 79 Fed. Reg. at 78046. As with the original draft AD suspension agreement, the original draft CVD suspension agreement also defined "refined sugar" as "sucrose content by weight in a dry state that corresponds to a polarimeter reading of at least 99.9 degrees." See Commerce Memorandum to All Interested Parties re: Agreement Suspending the Countervailing Duty Investigation on Sugar from Mexico (Oct. 27, 2014), draft CVD suspension agreement at section I.

<sup>40</sup> CVD suspension agreement, section V.c.1 & V.c.2, 79 Fed. Reg. at 78047. The agreement also addresses enforcement and monitoring. The Mexican government will ensure compliance with all the (Continued...)

### III. Legal Standards

#### A. The Statute

These reviews arise under portions of the Tariff Act that are separate from those governing the determinations the Commission makes in original investigations. As explained below, these provisions specify distinct legal standards.

Sections 704 and 734 of the Tariff Act set forth the statutory scheme that provides Commerce with the authority to suspend countervailing duty and antidumping duty investigations by entering into suspension agreements.<sup>41</sup> Sections 704(b) and 734(b) permit Commerce to enter into agreements to eliminate or offset completely the countervailable subsidies at issue or to eliminate completely sales at less than fair value, or to cease exports altogether.<sup>42</sup> Alternatively, pursuant to sections 704(c) and 734(c), Commerce may enter into suspension agreements that do not eliminate completely the countervailable subsidies at issue or eliminate completely sales at less than fair value, but instead eliminate the injurious effect of subject imports.

With respect to suspending countervailing duty investigations, section 704(c) of the Tariff Act provides as follows:

(c) Agreements eliminating injurious effect

(1) General rule

If the administering authority determines that extraordinary circumstances<sup>43</sup> are present in a case, it may suspend an

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provisions of the CVD suspension agreement. It agreed to ensure that no sugar is exported from Mexico for entry into the United States during any Export Limit Period in excess of the Export Limit for that period. The Mexican government also agreed to establish an Export Limit licensing and enforcement program to allocate the amount of sugar that each Mexican sugar producer/exporter can export to the United States. Sugar from Mexico will not be able to enter the United States if it is not accompanied by an export license. The export license should include a complete description of the merchandise including the applicable HTS category and the polarity of the product. Producers/exporters are also required to indicate whether the sugar is being imported for further processing in the United States by a USDA-recognized cane refiner. The Mexican government agreed to monitor exports to ensure compliance and will provide export data and other information to Commerce. Commerce may also conduct reviews and verifications, as appropriate. Specific procedures are set for consultations between Commerce and the Mexican government regarding implementation, compliance, anti-circumvention, and operations. CVD suspension agreement, sections VII & VIII, 79 Fed. Reg. at 78048-49.

<sup>41</sup> 19 U.S.C. § 1671c and 19 U.S.C. § 1673c.

<sup>42</sup> 19 U.S.C. § 1671c(b) and 19 U.S.C. § 1673c(b).

<sup>43</sup> 19 U.S.C. § 1671c(c). Section 704(c)(4)(A) defines extraordinary circumstances as circumstances in which “(i) suspension of an investigation will be more beneficial to the domestic industry than continuation of the investigation, and (ii) the investigation is complex.” 19 U.S.C. § 1671c(c)(4)(A). See (Continued...)

investigation upon the acceptance of an agreement from a government described in subsection (b) of this section, or from exporters described in subsection (b) of this section, if the agreement will completely eliminate the injurious effect of exports to the United States of the subject merchandise.

(2) Certain additional requirements

Except in the case of an agreement by a foreign government to restrict the volume of imports of the subject merchandise into the United States, the administering authority may not accept an agreement under this section unless –

- (A) the suppression or undercutting of price levels of domestic products by imports of that merchandise will be prevented, and
- (B) at least 85 percent of the net countervailable subsidy will be offset.

(3) Quantitative restrictions agreements

The administering authority may accept an agreement with a foreign government under this subsection to restrict the volume of imports of subject merchandise into the United States, but it may not accept such an agreement with exporters.<sup>44</sup>

The CVD agreement under review here is a quantitative restriction agreement that Commerce and the Mexican government entered into under section 704(c)(3).<sup>45 46</sup>

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(...Continued)

*also* Memorandum to Paul Piquado from Lynn Fischer Fox (Dec. 19, 2014) (finding that “extraordinary circumstances” exist for CVD suspension agreement).

<sup>44</sup> 19 U.S.C. § 1671c(c).

<sup>45</sup> See 79 Fed. Reg. at 78044. The quantitative restriction is based on percentages of U.S. Needs, as described above in section II.B.

<sup>46</sup> Because Commerce entered into a quantitative restriction agreement, we view any arguments by petitioning refiners that Commerce failed to offset directly the alleged subsidies in the suspension agreements to be largely inapposite. See, e.g., AmCane’s Second Written Submission at 16 & Responses to Commission Questions at 13; Imperial’s Second Written Submission at 13. As demonstrated above, the statute does not require agreements suspending CVD investigations to offset alleged subsidies when that agreement is entered into with a foreign government and restricts the quantity of subject imports. Thus, as explained further below, the inquiry at hand is whether the agreements as drafted eliminate completely the injurious effect of subject imports, not whether Commerce should have entered into a different type of agreement.

The statutory scheme under section 734(c) of the Tariff Act that applies to the suspension of antidumping duty investigations is substantially similar, except that it does not provide for quantitative restriction agreements:

(c) Agreements eliminating injurious effect

(1) General rule

If the administering authority determines that extraordinary circumstances<sup>47</sup> are present in a case, it may suspend an investigation upon the acceptance of an agreement to revise prices from exporters of the subject merchandise who account for substantially all of the imports of that merchandise into the United States, if the agreement will eliminate completely the injurious effect of exports to the United States of that merchandise and if –

- (A) the suppression or undercutting of price levels of domestic products by imports of that merchandise will be prevented, and
- (B) for every entry of each exporter the amount by which the estimated normal value exceeds the export price (or the constructed export price) will not exceed 15 percent of the weighted average amount by which the estimated normal value exceeded the export price (or the constructed export price) for all less-than-fair-value entries of the exporter examination during the course of the investigation.<sup>48</sup>

Both statutory provisions further provide that Commerce may not enter into a suspension agreement unless it is satisfied that the suspension of the investigations is in the public interest and that effective monitoring is practicable.<sup>49</sup> These restrictions on Commerce's authority reflect the concern that these provisions could be abused to the detriment of the domestic industry.<sup>50</sup>

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<sup>47</sup> Subsection (c)(2)(A) contains the same definition of extraordinary circumstances as 19 U.S.C. § 1671c(c)(4)(A). 19 U.S.C. § 1673c(c)(2)(A). *See also* Memorandum to Paul Piquado from Lynn Fischer Fox (Dec. 19, 2014) (finding that “extraordinary circumstances” exist for AD suspension agreement).

<sup>48</sup> 19 U.S.C. § 1673c(c).

<sup>49</sup> 19 U.S.C. § 1671c(d); 19 U.S.C. § 1673c(d). Commerce addressed these requirements in the same memoranda addressing “extraordinary circumstances” cited above.

<sup>50</sup> These concerns are illustrated by the legislative history. *See* Cong. Rec. S10,314-15 (Sen. Heinz) “It is the intent of the committee that such cases be rare and exceptional, and that each of the qualifying tests be demonstrably met.... [W]ith the kind of safeguards and restraints built into this section and (Continued...)”

In addition, the statute provides for the Commission to review whether the suspension agreements eliminate the injurious effect of subject imports. When Commerce enters into a subsection (c) agreement, sections 704(h) and 734(h) provide that, upon request, the Commission shall conduct a review:

(h) Review of suspension

(1) In general

Within 20 days after the suspension of an investigation under subsection (c) of this section, an interested party which is a party to the investigation and which is described in subparagraph (C), (D), (E), (F), or (G) of section 1677(9) of this title may, by petition filed with the Commission and with notice to the administering authority, ask for a review of the suspension.

(2) Commission investigation

Upon receipt of a review petition under paragraph (1) the Commission shall, within 75 days after the date on which the petition is filed with it, determine whether the injurious effect of imports of the subject merchandise is eliminated completely by the agreement. If the Commission's determination under this subsection is negative, the investigation shall be resumed on the date of publication of notice of such determination as if the affirmative preliminary determination under section 1671b(b) of this title had been made on that date.<sup>51</sup>

Although sections 704(h) and 734(h) refer to "an agreement" in the singular, we conclude that it is appropriate for us to review the suspension agreements in tandem for

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(...Continued)

with the clear understanding that extraordinary circumstances are to be the rare exception rather than the rule, the provision is tolerable."). *See also* H.R. Rep. No. 96-317 at 53-55, 63 (1979). ("[T]he Committee is equally concerned that the authority to suspend investigations be exercised within the carefully circumscribed limits set forth in the bill.... Because the grant of authority to suspend investigations which eliminate only the injurious effect of the subsidized imports was the subject of great concern and debate within the Committee and the private sector, the Committee intends that a determination of extraordinary circumstances shall be made rarely and only upon a compelling showing.").

<sup>51</sup> 19 U.S.C. § 1671c(h)(1)-(2). 19 U.S.C. § 1671c(h)(3), which is not quoted above, governs suspension of liquidation of entries while the Commission conducts its review. 19 U.S.C. § 1673c(h) is substantially the same except that it cross-references 19 U.S.C. § 1673b(b), 19 U.S.C. § 1673b(d)(2), and 1673b(d)(1)(B).

purposes of these reviews. This approach is consistent with Commerce’s express intention that the agreements work together to eliminate the injurious effect of subject imports,<sup>52</sup> as well as with our analysis in the preliminary determinations in which we considered subsidized and less-than-fair-value imports of sugar from Mexico collectively. All parties also agree that the agreements should be reviewed together.<sup>53</sup>

## **B. Construction of the Statutory Language**

As described above, the statute provides only that the Commission “shall, within 75 days after the date on which the petition is filed with it, determine whether the injurious effect of imports of the subject merchandise is eliminated completely by the agreement,” without further elaboration.<sup>54</sup> The Senate Report explained that “{t}he standard for the injurious effect determination by the ITC . . . is lower than the material injury standard defined in section 771(7) {19 U.S.C. § 1677(7)}” and that “{c}omplete elimination of the injurious effect requires that there be no discernible injurious effect by reason of any net subsidy amount {or dumping margin} remaining under the agreement.”<sup>55</sup> The parties agree that the injurious effect at issue is that identified by the Commission in its preliminary determinations,<sup>56</sup> and that the Commission must consider whether the agreements eliminate completely the injurious effect of subject imports on the domestic industry as a whole.<sup>57</sup> The parties also agree that the term “injurious effect” refers to all injurious effects identified by the Commission and not a single type of effect.<sup>58</sup> The parties disagree, however, on the analytical approach the Commission should take in considering whether the suspension agreements eliminate completely the injurious effect of subject imports.

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<sup>52</sup> February 6 Commerce Memorandum at 11-12; February 10 Commerce Memorandum at 8-9.

<sup>53</sup> Imperial’s Second Written Submission, Responses to Commission Questions at 2-4; Sugar Coalition’s Second Written Submission; Responses to Commission Questions at 16-17, 27-29; Mexican Sugar Chamber’s Second Written Submission, Annex 1; Batory Foods’ Second Written Submission at 7, n.19; CSC’s Second Written Submission, Attachment 1 at 8-9.

<sup>54</sup> 19 U.S.C. §§ 1671c(h)(2), 1673c(h)(2).

<sup>55</sup> S. Rep. No. 96-249 at 54, 71 (1979). The House Report merely paraphrased the legal standard, stating that “{t}he ITC is required to determine within 75 days whether the agreement will eliminate completely the injurious effect of the dumped imports.” H.R. Rep. No. 96-317 at 66.

<sup>56</sup> See Imperial’s Second Submission at 5 (stating that the parties agree that the preliminary determinations should be the starting point of the Commission’s analysis); AmCane’s Second Written Submission, Exhibit 1 at 6-7 (arguing that the Commission should focus on whether the agreements completely eliminate the injurious effects identified by the Commission in the preliminary determinations); American Sugar Coalition’s Second Submission at 5; Mexican Sugar Chamber’s Second Submission at 8; CSC Sugar’s Second Submission at 1-2.

<sup>57</sup> See OP Tr. at 41-42 (Spak); Imperial’s Second Submission at 5; AmCane’s Second Submission at 2-3; Sugar Coalition’s First Submission at 7; Sugar Coalition’s Second Submission at 8.

<sup>58</sup> See Imperial’s Second Submission at 5; AmCane’s Second Written Submission, Exhibit 1 at 6-7; American Sugar Coalition’s First Submission at 6; Mexican Sugar Chamber’s Second Submission at 8, 16; CSC Sugar’s Second Submission at 1-2.



## 1. Period of Review

We initially observe that the statute does not unambiguously state what time period is appropriate for our analysis. The statutory provisions use the present tense term “is” (“is eliminated completely”), but do not contemplate, much less require, that the Commission make a new determination of material injury by reason of subject imports. Instead, as the parties agree, the Commission should reference its preliminary determinations, which pertain to the effects of subject imports on the domestic industry during a prior period. However, we do not agree with the parties opposing the petitions for review that we are limited to conducting a retrospective analysis under the statute; it is appropriate to also conduct a prospective analysis of likely conditions when the volume and price of subject imports will be determined by the operation of the agreements. Nor do we agree with the petitioning refiners that consideration of the effects of the suspension agreements, had they been effective during the preliminary phase period of investigation, is irrelevant; such an analysis is also appropriate under the statute. We conclude that, for the purposes of these reviews, it is appropriate for us to analyze the data from our prior determinations as well as consider what is likely to occur prospectively through crop year 2014/15, which is the only prospective period for which we have data.

## 2. Injurious Effect

We next consider the terms “injurious effect of imports of the subject merchandise.” We agree with the parties that this refers to the injury identified by the Commission in the preliminary determinations. Although the statute does not define the term “injurious effect,” a convention of statutory construction is that each part or section of a statute should be construed in connection with every other part or section to produce a harmonious whole.<sup>59</sup> The statute grants Commerce exclusive authority to negotiate suspension agreements that eliminate completely the injurious effect of subject imports but no authority to make injury determinations, which are the exclusive preserve of the Commission.<sup>60</sup>

Commerce may not accept a suspension agreement that eliminates completely the injurious effect of subject imports until after the Commission has issued an affirmative preliminary injury determination, which will specify that there is a reasonable indication that the subject imports have had some “injurious effect” on the domestic industry or have

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<sup>59</sup> See, e.g., *Food and Drug Admin. v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 130 (2000) (“It is a ‘fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme. A court must therefore interpret the statute ‘as a symmetrical and coherent regulatory scheme,’ and ‘fit, if possible, all parts into an harmonious whole.’”) (citations omitted). See also generally Norman J. Singer & J.D. Shambie Singer, *Sutherland Statutes and Statutory Construction* § 46:5 (7<sup>th</sup> ed. 2012).

<sup>60</sup> See 19 U.S.C. §§ 1671b(a)(1) and 1673b(a)(1) (granting the Commission authority to make preliminary injury determinations), 1671c(b) and (c), 1673c(b) and (c) (granting Commerce authority to negotiate suspension agreements).

threatened the domestic industry with some “injurious effect.”<sup>61</sup> Thus, at the time the Commission reviews a suspension agreement pursuant to sections 704(h) or 734(h), the only “injurious effect of subject merchandise” that has been established under the statute is that which the Commission identified in its preliminary injury determinations.<sup>62</sup> We therefore conclude that the term “injurious effect” means the various injurious effects identified in the preliminary determinations.

Because the Commission itself issued the preliminary determinations, we rely on our own identification of the injurious effects discussed in those determinations, which are described in section IV of these views, as opposed to those that were identified by Commerce in its memoranda justifying the issuance of the suspension agreements. We further observe that sections 704(c) and 734(c), as discussed above, require Commerce, before it enters a suspension agreement, to make several findings in addition to the finding that the agreement eliminates completely the injurious effect of the subject imports.<sup>63</sup> Sections 704(h) and 734(h) state that the Commission’s review concerns whether an agreement eliminates completely the injurious effect of the subject imports, and do not reference these additional findings that sections 704(c) and 734(c) require Commerce to make. Accordingly, we have not reviewed the additional findings of Commerce, nor have we examined how Commerce negotiated the suspension agreements.

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<sup>61</sup> The statute requires that Commerce make an affirmative preliminary determination if it accepts a suspension agreement, 19 U.S.C. §§ 1671c(f)(1)(A), 1673c(f)(1)(A), and Commerce may not make an affirmative preliminary determination until after the Commission has made an affirmative preliminary injury determination. 19 U.S.C. §§ 1671b(b)(1), 1673b(b)(1)(A).

<sup>62</sup> In light of the many factors the Commission must consider in making injury determinations, 19 U.S.C. § 1677(7), we do not view the statute’s reference to a singular “injurious effect” as limiting to a single factor the Commission’s analysis of whether the suspension agreements eliminate completely the “injurious effect” of subject imports. Further support for this construction of the statute is found in Congress’ use of the term “material injury,” rather than “material injuries,” to describe the multi-factor analysis the Commission is required to undertake in antidumping and countervailing duty investigations. See 19 U.S.C. § 1677(7).

<sup>63</sup> See 19 U.S.C. § 1671c(c)(2)-(4), (d)(1), 19 U.S.C. § 1673c(c)(1)(A)-(B), (c)(2), (d).

### 3. Eliminate Completely

Pursuant to sections 704(h)(2) and 734(h)(2) of the Act, we are charged with determining whether the injurious effect on the domestic industry as a whole is “eliminated completely” by the suspension agreements. We adopt the plain meaning of the words “eliminate completely.”<sup>64</sup>

We agree with the parties that the Commission must consider whether the agreements eliminate completely the injurious effect of subject imports on the domestic industry as a whole. The statute pertaining to Commission review of suspension agreements does not contain the term “industry,” much less define the domestic industry for purposes of such reviews.<sup>65</sup> For the Commission’s determinations in original investigations, however, the statute defines the term “industry” to mean “the producers as a whole of a domestic like product . . . .”<sup>66</sup> Reading the statute as a whole,<sup>67</sup> and consistent with our determination that we are to consider the injurious effects identified in the preliminary determinations, our analysis here focuses on the injurious effect of the subject imports on the domestic industry defined in the preliminary determinations. In those determinations, the Commission defined a single domestic industry encompassing “all producers of sugar within the scope of the investigations,” including growers, millers, cane refiners, and beet processors.<sup>68</sup>

Petitioning refiners argue that the statutory term “eliminate completely” requires the Commission to reach a negative determination when the injurious effect continues for only an individual segment or members of the industry.<sup>69</sup> In reaching its preliminary determinations, the Commission considered effects on the domestic industry as a whole, and in doing so it analyzed growers, beet processors, cane millers, and cane refiners.<sup>70 71</sup> We take the same approach to our analysis of whether the agreements “eliminate completely” the injurious effect

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<sup>64</sup> Congress’ modification of the verb “eliminate” with the adverb “completely” did not serve to create a new substantive standard, and presumably was intended to communicate the strictness of the standard. See S. Rep. No. 96-249 at 54, 71 (stressing that “complete elimination of the injurious effect requires that there be no discernible injurious effect” by reason of any remaining dumping and subsidization under the suspension agreements). The dictionary definition of “eliminate” is to cast out, remove, expel, exclude, drop, oust, to cause the disappearance of, to get rid of. Webster’s Third New International Dictionary, Unabridged (1981) at 736. The dictionary definition of “completely” is so as to be complete, full, to a complete degree, entirely. *Id.* at 465.

<sup>65</sup> 19 U.S.C. §§ 1671c(h), 1673c(h).

<sup>66</sup> 19 U.S.C. § 1677(4)(A).

<sup>67</sup> See *Food and Drug Admin.*, 529 U.S. at 130; *Sutherland Statutes and Statutory Construction* § 46:5.

<sup>68</sup> *Sugar from Mexico*, USITC Pub. 4467 at 22.

<sup>69</sup> Imperial’s Second Written Submission at 8-9; AmCane’s Second Written Submission at 4-6.

<sup>70</sup> The Commission did not identify destination refiners as a distinct segment of the market.

<sup>71</sup> In cases such as this one with vertically integrated production (and in this case, with two different production streams based on beet and cane sugar), we cannot always consolidate all the domestic industry into one data set, and in such instances consider data for the various industry sectors that are part of the industry as a whole.

to the domestic industry: we do not limit our analysis to Imperial and AmCane,<sup>72</sup> but instead consider the injurious effect of subject imports on the domestic industry as a whole, including all sectors that are part of the domestic industry.<sup>73</sup> In doing so we reject petitioning refiners'

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<sup>72</sup> Imperial and AmCane accounted for \*\*\* percent of the total refined sugar production in the United States during October 2010-December 2013. CR/PR at Table I-3.

<sup>73</sup> *Altx, Inc. v. United States*, 167 F. Supp. 2d 1353, 1369-70 (Ct. Int'l Trade 2001) (holding that when one industry segment benefits from dumped imports while another segment is harmed "the statute does not permit the ITC to . . . focus [] exclusively on the segment . . . that is harmed."). Petitioning refiners contend that the Commission has in past cases found that injury to one segment of an industry is sufficient to find injury to an industry as a whole. Imperial's Second Submission at 6-7 (citing *Tropicana Prods., Inc. v. United States*, 484 F.Supp.2d 1330, 1341 (Ct. Int'l Trade 1988); *Phthalic Anhydride from Venezuela*, Inv. No. 731-TA-668 (Final), USITC Pub. 2809 (Sep. 1994) at 39 n.101); see also AmCane's Second Submission at 5.

The Court of International Trade's holding in *Tropicana* and the Commission's analysis in *Phthalic Anhydride from Venezuela* do not support the proposition that a relatively minor portion of the domestic industry, in isolation, can drive the Commission's injury analysis. Imperial suggests that the court in *Tropicana* sustained the Commission's decision to focus its injury analysis on orange juice processors to the exclusion of growers, even though the domestic industry was defined to include both processors and growers. See *id.* at 6. On the contrary, the Court rejected the plaintiffs' argument "ask[ing] the court to direct the Commission to segment the domestic industry into growers and processors and to conduct a separate analysis for each segment of the industry" and held that "the [Commission] d[oes] not err in basing its determination on data representing the experience of the domestic industry as a whole . . ." *Tropicana*, 484 F.Supp.2d at 1341. Moreover, the court approved of the Commission's decision "to rely heavily on data from processors rather than the small amount of data from growers" because "the [Commission] may give greater weight to one or the other group within the industry, in proportion to their relative importance" and processors "were the direct producers of the end domestic like product." *Id.* The Court also stressed the Commission's finding that "the economic interests of the growers coincide with those of the processors." *Id.*

The facts of these reviews are distinguishable from those in *Tropicana* because the petitioning refiners here account for a minor proportion of domestic refined sugar production, CR/PR at Table I-3 (\*\*\* percent of refined sugar production during October 2010-December 2013), and their economic interests in these reviews are distinct from those of the American Sugar Coalition, which represents producers accounting for most domestic refined sugar production. Specifically, "destination refiners" such as the petitioning refiners purchase the raw sugar used as an input in their operations from unrelated suppliers and therefore prefer lower raw sugar prices, all else being equal. See OP Tr. at 44 (Gorrell) ("the destination refineries, particularly refineries like Imperial, is largely dependent on imported {raw} sugar."). By contrast, the American Sugar Coalition includes growers, millers, integrated millers, and refiners, and a refiner partially owned by growers and millers, which benefit from higher raw sugar prices to varying degrees. See CR at 2 n. 3; PR at I-1 n.3 CR/PR at Table I-3 (refiner American Sugar Holdings is \*\*\*).

In *Phthalic Anhydride from Venezuela*, the Commission based its negative determinations on an analysis of the domestic industry as a whole. USITC Pub. 2809 at I-20. The Commission also found that subject imports had no significant adverse impact on the domestic industry segment that competed most directly with subject imports. *Id.* at I-19-20.

argument that the Commission must render negative determinations in these reviews based solely on the injurious effects that destination refiners will allegedly suffer under the terms of the suspension agreements.<sup>74</sup> Such a construction of the statute, in our view, is inconsistent with the manner in which the Commission conducted its analysis in the preliminary determinations, which focused on all sectors on the U.S. sugar industry. Instead, we construe the statutory provisions to direct the Commission to consider whether the injurious effects of subject imports on the domestic industry as a whole, as defined in the preliminary determinations, are eliminated completely by the suspension agreements.<sup>75</sup>

Petitioning refiners also argue that the suspension agreements themselves will have an injurious effect on them as destination refiners, such as restricting the volume of imports of raw sugar and raising its price.<sup>76</sup> We disagree that this alleged effect is an appropriate consideration in the context of these reviews.<sup>77</sup> In assessing this argument, we are again mindful of our obligation to construe each section of the relevant statutory provisions to produce a harmonious whole as well as our distinct role in the overall statutory scheme concerning suspension agreements. As set forth above, the findings in our preliminary determinations provide the basis for the “injurious effect” established under the statute for purposes of reviews pursuant to sections 704(h) and 734(h). Therefore, our findings in the preliminary determinations, which are based on whether the domestic industry as a whole was injured by reason of subject imports, are the appropriate focus in these reviews.<sup>78</sup>

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<sup>74</sup> Assuming *arguendo* that the Commission could base its determinations on the injurious effect of subject imports on a segment of the domestic industry, as noted above, the Commission never explicitly identified or analyzed a “destination refiner” segment of the industry in the preliminary phase of the investigations. See *Sugar from Mexico*, USITC Pub. 4467 at 19 (defining “the domestic industry to include sugarcane and beet growers as well as cane millers, cane refiners, and beet processors”), 35-38 (analyzing the performance of domestic growers, domestic millers, and domestic processors/refiners). The Commission had no reason to specifically consider a destination refiner segment in the preliminary phase of the investigations because no party raised the issue. Neither Imperial nor AmCane participated in the staff conference or filed postconference briefs. See *id.* at 3-4. We observe that Imperial and AmCane are not the only “destination refiners.”

<sup>75</sup> See *Altx*, 167 F. Supp. 2d at 1369-70.

<sup>76</sup> Imperial’s Second Written Submission at 9-11; AmCane’s Second Written Submission at 14-15 & Responses to Commission Questions at 6-7.

<sup>77</sup> Chairman Broadbent, Vice Chairman Pinkert, and Commissioner Kieff do not join this sentence. They note that the effects alleged by the petitioning refiners, including the reduction of raw sugar imports from Mexico and the enhancement of prices for such imports are, along with the reduction of refined sugar imports from Mexico and the enhancement of prices for such imports, of a type that antidumping and countervailing duty relief is intended to foster and are thus not the type of effects that the statute intends for the Commission to consider in this proceeding. They need not, and do not, address the legal relevance of other types of effects of subject imports that may be alleged to result from future suspension agreements.

<sup>78</sup> Commissioners Williamson, Johanson, and Schmidlein do not believe that alleged injurious effects that arise after those determinations, solely as a result of the suspension agreements, are appropriately part of our analysis.

A particular difficulty with several of petitioning refiners' arguments in this regard is that the specific injurious effects they allege would be caused by the agreements stem from the very provisions of the agreements that operate to eliminate the injury we found in the preliminary investigations. As described in greater detail below, the petitioning refiners argue that destination refiners such as themselves will suffer injurious effects under the suspension agreements because the agreements reduce the annual volume of raw sugar imported from Mexico and increase the price of such sugar, relative to the volume and price of such imports in crop year 2012/13.<sup>79</sup> However, both the statute and the legislative history make clear that suspension agreements under sections 704 and 734 operate by reducing subject import volume and/or increasing subject import prices so as to eliminate completely the injurious effect of subject imports.<sup>80</sup> Accordingly, petitioning refiners' argument, in this regard, is not that the agreements fail to serve the intended purpose. In our view, sections 704(h) and 734(h) do not provide a vehicle for remedying any commercial disadvantage the petitioning refiners may incur insofar as the agreements eliminate the benefits petitioning refiners received by the availability of low-priced raw sugar from Mexico.

As set forth above, we have construed the statutory provisions at issue to direct us to assess whether the injurious effect on the domestic industry as a whole, as identified and defined in our preliminary determinations, is eliminated completely by the suspension agreements. We discuss below the basis for our conclusion in these reviews that the agreements, in fact, eliminate completely that injurious effect.

#### **IV. The Injurious Effect of Imports of the Subject Merchandise Is Eliminated Completely by the Suspension Agreements**

##### **A. The Injurious Effect of Subject Imports**

As discussed in section III above, we must determine in these reviews whether the suspension agreements eliminate completely the injurious effect of subject imports that the Commission identified in its affirmative preliminary determinations.<sup>81</sup> In the discussion below

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<sup>79</sup> See Imperial's Second Submission at 10-11, 13; AmCane's Second Submission at 14-15, 16. We note that crop year 2012/13 was at the core of the Commission's preliminary injury determinations, and it is the conditions that existed at that time that the suspension agreements were intended to remedy.

<sup>80</sup> See 19 U.S.C §§ 1671c(c)(1) (providing that CVD suspension agreements, to eliminate the injurious effect of subject imports, must either "restrict the volume of imports of the subject merchandise" or prevent "the suppression or undercutting of price levels of domestic products" and offset "at least 85 percent of the net countervailable subsidy"), 1673c(c)(1) (providing that AD suspension agreements, to eliminate the injurious effect of subject imports, must prevent "the suppression or undercutting of price levels of domestic products" and eliminate 85 percent of the dumping margin); see *also* H.R. Rep. No. 96-317 at 64-65; S. Rep. No. 96-249 at 51, 68.

<sup>81</sup> Although the Commission's findings from the preliminary phase of the investigations are relevant to our consideration of the injurious effect of subject imports in these reviews, we note that additional information will be available to the Commission in any continued final phase of the investigations, and (Continued...)

we describe the considerations that led the Commission to find a reasonable indication that the domestic industry was materially injured by reason of subject imports of sugar from Mexico.<sup>82</sup>

First, the Commission found that the volume of subject imports and the increase in that volume was significant during the period of investigation.<sup>83</sup> Specifically, subject import volume declined from 1,650,000 short tons in CY2010/11 to 1,062,000 short tons in CY2011/12 before increasing to 2,066,000 short tons in CY2012/13, a level 25.2 percent higher than in CY2010/11.<sup>84</sup> Subject import volume was 573,000 short tons in interim CY2013/14, up 110.3 percent from 272,000 short tons in interim CY2012/13.<sup>85</sup> As a share of apparent U.S. consumption, subject imports declined from 15.4 percent in CY2010/11 to 9.9 percent in CY2011/12 before increasing to 17.7 percent in CY2012/13.<sup>86</sup> Subject import market share was 18.5 percent in interim CY2013/14, up from 10.0 percent in interim CY2012/13.<sup>87</sup>

Second, the Commission found subject import underselling to be significant during the period of investigation.<sup>88</sup> Reported pricing data showed that subject imports undersold domestically produced sugar in 104 of 158 monthly price comparisons, or 65.8 percent of the time, at margins ranging from 0.6 to 30.3 percent.<sup>89</sup> The Commission further found that subject import underselling, coupled with the significant increase in subject import volume, depressed domestic prices to a significant degree during the period of investigation.<sup>90</sup> Domestic prices for all seven pricing products declined between October 2011 and December 2013, as did the

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thus the preliminary determinations do not control the Commission's conclusions in any final determinations.

<sup>82</sup> The Commission defined the domestic industry as "all producers of sugar within the scope of the investigations," including "sugarcane and beet growers as well as cane millers, cane refiners, and beet processors." *Sugar from Mexico*, USITC Pub. 4467 at 19, 22; Confidential Views, *Sugar from Mexico*, Inv. Nos. 701-TA-513 and 731-TA-1249 (Preliminary) ("Confidential Views"), EDIS Doc. No. 550566, at 28, 32.

<sup>83</sup> *Sugar from Mexico*, USITC Pub. 4467 at 32; Confidential Views at 48. The Commission recognized that the increase in subject import volume and market share during the period of investigation was accompanied by a greater decline in nonsubject import volume and market share, resulting in an increase in the domestic industry's U.S. shipments and market share. *Id.*

<sup>84</sup> *Sugar from Mexico*, USITC Pub. 4467 at 32; Confidential Views at 47. The Commission's period of investigation encompassed crop years ("CY") 2010/11, 2011/12, 2012/13 and an interim period consisting of October-December of CY2012/13 and CY2013/14. *Sugar from Mexico*, USITC Pub. 4467 at 4; Confidential Views at 5. The U.S. crop year for sugar begins on October 1 and ends on September 30 of the following year. *Sugar from Mexico*, USITC Pub. 4467 at 4 n.8; Confidential Views at 5 n.8.

<sup>85</sup> *Sugar from Mexico*, USITC Pub. 4467 at 32; Confidential Views at 47.

<sup>86</sup> *Sugar from Mexico*, USITC Pub. 4467 at 32; Confidential Views at 47-48.

<sup>87</sup> *Sugar from Mexico*, USITC Pub. 4467 at 32; Confidential Views at 48.

<sup>88</sup> *Sugar from Mexico*, USITC Pub. 4467 at 33; Confidential Views at 49.

<sup>89</sup> *Sugar from Mexico*, USITC Pub. 4467 at 33; Confidential Views at 49. Subject imports oversold the domestic like product in the remaining 54 monthly comparisons, at margins ranging from 0.7 to 54.0 percent. *Id.*

<sup>90</sup> *Sugar from Mexico*, USITC Pub. 4467 at 33; Confidential Views at 50.

average unit value of net sales reported by growers, millers, and processors/refiners.<sup>91</sup> The Commission also noted that the ratio of cost of goods sold (“COGS”) to net sales increased for millers between CY2010/11 and CY2012/13 and during the last interim period and for processors/refiners during the last interim period.<sup>92</sup> These increases in the COGS to net sales ratio for domestic producers were not due to rising costs, but rather to a greater decline in their unit net sales value than in their unit COGS.

Finally, the Commission found that for purposes of its preliminary determinations, subject imports had a significant adverse impact on the domestic industry.<sup>93</sup> As the Commission explained, “{s}ubject import underselling depressed domestic prices, the domestic industry’s ratio of COGS to net sales increased, and lower prices and unit values led to the declining financial performance of millers and processors/refiners toward the end of the period of investigation.”<sup>94</sup> In particular, the millers’ operating income as a share of net sales was \*\*\* percent in CY2010/11 and CY2011/12 but declined to \*\*\* percent in CY2012/13 and a loss of \*\*\* percent in interim CY2013/14, as compared to a positive \*\*\* percent in interim CY2012/13.<sup>95</sup> Similarly, domestic processors and refiners’ operating income as a share of net sales declined from \*\*\* percent in CY2010/11 to \*\*\* percent in CY2011/12 and \*\*\* percent in CY2012/13, and was \*\*\* percent in interim CY2013/14, down from \*\*\* percent in interim CY2012/13.<sup>96</sup> For these and other reasons, the Commission concluded that there was a reasonable indication of material injury by reason of subject imports.<sup>97</sup>

In sum, the Commission found that subject imports had an injurious effect on the domestic industry because significant subject import underselling, combined with the

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<sup>91</sup> *Sugar from Mexico*, USITC Pub. 4467 at 33-34; Confidential Views at 50. The average unit value of net sales reported by growers, millers, and processors/refiners declined by \*\*\*, \*\*\*, and \*\*\* percent, respectively, between CY2010/11 and CY2012/13. *Id.* The average unit value of net shipments reported by millers and processors/refiners was lower in interim CY2013/14 than in interim CY2012/13 by \*\*\* and \*\*\* percent, respectively. *Id.*

<sup>92</sup> *Sugar from Mexico*, USITC Pub. 4467 at 34; Confidential Views at 51. The COGS to net sales ratio for domestic millers increased from \*\*\* percent in CY2010/11 to \*\*\* percent in CY2012/13, and was \*\*\* percent in interim CY2013/14, up from \*\*\* percent in interim CY2012/13. *Id.* This same ratio for domestic processors/refiners was \*\*\* percent in CY2010/11, \*\*\* percent in CY2011/12, and \*\*\* percent in CY2012/13, but \*\*\* percent in interim CY2013/14, up from \*\*\* percent in interim CY2012/13. *Id.*

<sup>93</sup> *Sugar from Mexico*, USITC Pub. 4467 at 35; Confidential Views at 56.

<sup>94</sup> *Sugar from Mexico*, USITC Pub. 4467 at 37-38; Confidential Views at 56. The Commission recognized that interim data covered a single quarter, and therefore attached less weight to these data. *Sugar from Mexico*, USITC Pub. 4467 at 28 n.185; Confidential Views at 41 n.185.

<sup>95</sup> *Sugar from Mexico*, USITC Pub. 4467 at 37; Confidential Views at 54-55.

<sup>96</sup> *Sugar from Mexico*, USITC Pub. 4467 at 37; Confidential Views at 55.

<sup>97</sup> *Sugar from Mexico*, USITC Pub. 4467 at 39; Confidential Views at 58. The Commission found further support for its finding that the domestic industry encountered difficulties during the latter portion of the period of investigation in the U.S. government’s expenditure of \$258.7 million to remove 1 million short tons of domestically produced sugar from the U.S. market for human consumption in CY2012/13, through a combination of forfeitures and purchases. *Sugar from Mexico*, USITC Pub. 3367 at 37; Confidential Views at 55-56. We discuss the U.S. Sugar Program in Section IV.C.1 below.



significant increase in subject import volume, depressed domestic like product prices to a significant degree and also increased the domestic industry's ratio of COGS to net sales. As a result, the domestic industry's financial performance declined markedly toward the end of the period of investigation. We explain below that this injurious effect is eliminated completely by the suspension agreements, that the injurious effect claimed by the petitioning refiners is not an injurious effect of the subject imports, and that, in any event, the record does not support the factual premise of the injurious effect claimed by the petitioning refiners.

**B. Restraints on Subject Imports Imposed by the Suspension Agreements Are Not an Injurious Effect of Subject Imports**

Before we address generally whether the suspension agreements serve to eliminate completely the injurious effect of subject imports that the Commission found in its preliminary determinations, we first consider the principal specific challenge to the agreements that the petitioning refiners have asserted. They argue that the suspension agreements fail to eliminate completely the injurious effect of subject imports in part because the agreements restrict the supply and increase the price of raw sugar imported from Mexico, which destination refiners have asserted they require as an input in the production of refined sugar. As discussed below, we find that any injurious effect resulting from restrictions imposed on subject imports by the suspension agreements is not an injurious effect of subject imports, and also that the record does not support the petitioning refiners' argument.

**1. The Petitioning Refiners' Argument Concerning the Effect of Restraints on Subject Imports**

The petitioning refiners argue that the suspension agreements will continue and exacerbate the injurious effect of subject imports on the destination refiner segment by reducing the volume and increasing the price of raw sugar imported from Mexico. Specifically, the petitioning refiners claim that the suspension agreements will worsen the capacity utilization rate of destination refiners by depriving them of adequate supplies of raw sugar imported from Mexico, which they argue is required for use as an input in the production of refined sugar.<sup>98</sup> They project that the CVD suspension agreement will reduce imports of raw sugar from Mexico from 1.15 million short tons in crop year 2012/13 to at most 750,000 short tons in the first year of the agreement.<sup>99</sup>

The petitioning refiners further argue that the suspension agreements will exacerbate the cost-price squeeze experienced by destination refiners by increasing the cost of raw sugar,

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<sup>98</sup> Imperial's Second Submission at 12-13; AmCane's Second Submission at 15-16; OP Tr. at 19-20 (Gorrell).

<sup>99</sup> Petitioning Refiners' First Submission at 18; Imperial's Second Submission at 13; AmCane's Second Submission at 16.

which accounted for over 70 percent of the COGS reported by refiners in CY2012/13.<sup>100</sup> Because Mexico will account for nearly a third of raw sugar imports in CY2014/15, they claim the reference price for raw sugar of 22.25 cents per pound under the AD suspension agreement will establish a new price floor for raw sugar in the U.S. market of 24.50 to 25.60 cents per pound, which petitioning refiners calculated as the delivered price of raw sugar purchased at the reference price.<sup>101</sup> For this reason, they assert that the agreements will drive up the cost of raw sugar purchased by destination refiners by 4 to 5 cents per pound relative to the cost of raw sugar in CY2012/13, which was 21.00 cents per pound.<sup>102</sup> These cost increases will increase the destination refiners' ratio of COGS to net sales, they contend, because the suspension agreements are unlikely to increase the destination refiners' net sales.<sup>103</sup>

## 2. Analysis

As petitioning refiners frame these arguments, the injurious effect of restrictions imposed on raw sugar imported from Mexico by the suspension agreements is not based on the continuation of any injurious effect of imports of the subject merchandise identified by the Commission in the preliminary determinations. Rather, these arguments are based on injurious effects allegedly resulting from the suspension agreements by eliminating the benefits destination refiners received from the availability of low-priced raw sugar from Mexico and by establishing minimum prices.<sup>104</sup> For the reasons discussed in section III.B of these views, this is not the type of "injurious effect" that sections 704(h) and 734(h) direct the Commission to consider.

Even if this alleged injurious effect were relevant to our analysis, Imperial and AmCane have not established that it is applicable to any other domestic producer. Assuming arguendo that Imperial and AmCane would be somewhat worse off under the suspension agreements than they were in CY2012/13 in regards to the price of raw sugar, this cannot control our analysis, in part because the record does not indicate that they sustained the injurious effects that subject imports were causing to the domestic industry toward the end of the period examined in the preliminary phase of the investigations. Indeed, neither Imperial nor AmCane reported \*\*\*, and their financial performance was \*\*\* in CY2012/13, when subject import

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<sup>100</sup> Petitioning Refiners' First Submission at 21.

<sup>101</sup> Petitioning Refiners' First Submission at 21; Imperial's Second Submission at 10; AmCane's Second Submission at 14-15.

<sup>102</sup> Imperial's Second Submission at 10, Exhibit 1 at 19-20 (Mexico accounted for 40 to 50 percent of total imports of raw sugar for further processing in crop years 2012/13 and 2013/14), 35-36; AmCane's Second Submission at 15.

<sup>103</sup> Petitioning Refiners' First Submission at 22-23; Imperial's Second Submission at 11; AmCane's Second Submission at 13-14.

<sup>104</sup> The petitioning refiners essentially argue that the higher volumes and lower prices of raw sugar imported from Mexico in CY2012/13 were *less* injurious to destination refiners than the likely lower volumes and higher prices of raw sugar to be imported from Mexico under the suspension agreements.

volume peaked, than in CY2010/11 and CY2011/12.<sup>105</sup> Unit COGS for both millers and processors/refiners fluctuated but declined overall from CY2010/11 to CY2012/13 and declined in the interim periods.<sup>106</sup>

Moreover, as discussed in section III.B above, our analysis cannot stop with Imperial and AmCane but must concern the injurious effect of subject imports on the domestic industry as a whole. In its preliminary determinations, the Commission found that subject imports had a significant adverse impact on the domestic industry as a whole in CY2012/13.<sup>107</sup> Indeed, in that crop year, the miller segment of the domestic industry, which competed most directly with raw sugar imported from Mexico, suffered a much steeper decline in its financial performance than the processor/refiner segment.<sup>108</sup> Thus, the volumes and prices of raw sugar imported from Mexico in CY2012/13, which the petitioning refiners regard as favorable, accounted for much of the injurious effect of subject imports that the Commission identified in the preliminary determinations.<sup>109</sup> We find that the suspension agreements eliminate completely the injurious effect of subject imports in part by making it impossible for subject import volumes and prices to return to the injurious levels that prevailed in CY2012/13, as further discussed in section IV.C below.

Finally, contrary to the petitioning refiners' argument, the record indicates that domestic cane refineries, including destination refineries, will have access to sufficient supplies of raw sugar at economical prices under the suspension agreements. Most raw sugar processed into refined sugar by domestic cane refineries during the period examined in the preliminary phase investigations was from sources other than Mexico, including domestic millers and nonsubject imports from Tariff Rate Quota ("TRQ") countries.<sup>110</sup> If raw sugar

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<sup>105</sup> Domestic Producers' Questionnaire Responses of AmCane and Imperial at Question III-18; CR/PR at Table D-2 (AmCane and Imperial reported \*\*\* in CY2010/11 and CY2011/12, when the refining segment as a whole was profitable, and \*\*\* in CY2012/13, when the refining segment as a whole experienced a decline in operating income). Imperial \*\*\* the petitions, \*\*\* AmCane \*\*\*. CR/PR at Table I-3. As stated above, the Commission made no explicit finding in the preliminary determinations that a destination refiner segment suffered injurious effects from subject imports because the Commission did not identify or analyze such an industry segment on its own.

<sup>106</sup> Preliminary Confidential Staff Report ("PCR")/Sugar from Mexico, USITC Pub. 4467 at Table C-2.

<sup>107</sup> Sugar from Mexico, USITC Pub. 4467 at 37; Confidential Views at 56.

<sup>108</sup> See Sugar from Mexico, USITC Pub. 4467 at 34, 37; Confidential Views at 51, 54-55. U.S. millers process sugarcane into raw cane sugar, which is then sold or transferred to cane refineries for further processing into refined cane sugar. Sugar from Mexico, USITC Pub. 4467 at 10, I-10; Confidential Views at 14; CR at I-13-14; PR at I-10. Subject producers reported that 64.2 percent of their export shipments to the United States in CY2012/13 were of sugar with a polarity of 97.0 degrees or greater intended for further processing by cane refiners. Sugar from Mexico, USITC Pub. 4467 at 7; Confidential Views at 9.

<sup>109</sup> We note that the petitioning refiners were themselves responsible for \*\*\* percent of the increase in subject import volume between CY2011/12 and CY2012/13. See PCR/Sugar from Mexico, USITC Pub. 4467 at Tables III-11, III-15, IV-2.

<sup>110</sup> See CR/PR at Table C-1 (subject imports from Mexico, including both imports of raw sugar processed into refined sugar into the United States and imports of refined sugar, accounted for \*\*\* to \*\*\* percent of apparent U.S. consumption during the period of investigation); see also Memorandum (Continued...)

supplies from all sources prove insufficient, the CVD suspension agreement permits Commerce to increase the export limit on imports of sugar from Mexico to address potential shortages or additional needs identified by the USDA.<sup>111</sup> The USDA may also increase the TRQs to alleviate short supply conditions in the U.S. market occurring on or after April 1, and before April 1 in the event of an emergency.<sup>112</sup> Further, contrary to the petitioning refiners' suggestion that a 34.8 percent reduction in imports of raw sugar from Mexico under the suspension agreements would result in injurious effects on the domestic industry, the 35.6 percent decline in subject imports from Mexico between CY2010/11 and CY2011/12 was accompanied by fairly stable domestic industry profitability.<sup>113</sup> Indeed, the petitioning refiners' own rate of capacity utilization was significantly higher in CY2010/11 and CY2011/12, when they \*\*\*, than in CY2012/13 or interim CY2013/14, when \*\*\*.<sup>114</sup> Petitioning refiners were not dependent on imports of raw sugar from Mexico for their operations during the period examined in the preliminary phase investigations.

The record also indicates that raw sugar prices will remain at an economical level for cane refiners under the suspension agreements. As discussed in Section IV.C.2 below, the suspension agreements will foster not just higher prices for raw sugar, which will benefit domestic millers, but also higher prices for refined sugar, which support domestic refining margins.<sup>115</sup>

In sum, we find that the restraining effect of the suspension agreements on imports of sugar from Mexico supports our conclusion, explained further below, that the agreements eliminate completely the injurious effect of subject imports.

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INV-NN-013 (Mar. 12, 2015) (noting that Table C-1 was incorrectly numbered as the first Table C-2 in the staff report). TRQs have been in place since October 1990 and are required under the World Trade Organization ("WTO") Agreement. PCR at I-17; *Sugar from Mexico*, USITC Pub. 4467 at I-13. Additional quotas have been granted under various free trade agreements ("FTA"), but these do not account for a significant volume of nonsubject imports. See PCR at I-20; *Sugar from Mexico*, USITC Pub. 4467 at I-14.

<sup>111</sup> CR at Appendix D, CVD Suspension Agreement at 5 ("Prior to April 1 of any Export Limit Period, the Department may increase the Export Limit to address potential shortages in the U.S. market that are identified by USDA, in writing. After April 1, if USDA informs the Department, in writing, of any additional need for Sugar from Mexico, the Department may increase the Export Limit based upon USDA's request.").

<sup>112</sup> *Sugar from Mexico*, USITC Pub. 4467 at 28; Confidential Views at 41.

<sup>113</sup> See *Sugar from Mexico*, USITC Pub. 4467 at 37; Confidential Views at 54-55; CR/PR at Table C-1.

<sup>114</sup> Imperial and AmCane relied on raw sugar from sources other than Mexico, \*\*\*, as an input for \*\*\* percent of their refined sugar production in CY2010/11, \*\*\* percent of their refined sugar production in CY2011/12, \*\*\* percent of their refined sugar production in CY2012/13, and \*\*\* percent of their refined sugar production in interim CY2013/14. Domestic Producers' Questionnaire Responses of Imperial and AmCane at Question II-9. Their rate of capacity utilization was significantly higher in CY2010/11 and CY2011/12, when they \*\*\*, than in CY2012/13 or interim CY2013/14. *Id.*

<sup>115</sup> The approximate refining margin is the difference between the delivered cost of raw sugar and the f.o.b. price of refined sugar. See OP Tr. at 28-29 (Rosenzweig).

### **C. The Suspension Agreements Eliminate Completely the Injurious Effect of Subject Imports**

We find that the suspension agreements eliminate completely the injurious effect of subject imports on the domestic industry identified by the Commission in the preliminary phase of the investigations. As the Commission explained in its preliminary determinations, the significant increase in subject import volume, coupled with significant subject import underselling, depressed domestic prices to a significant degree, which resulted in an increase in the domestic industry's ratio of COGS to net sales and led to a significant decline in the industry's financial performance toward the end of the period of investigation.<sup>116</sup> We explain below how the suspension agreements eliminate completely these injurious effects.

#### **1. The Suspension Agreements Eliminate Completely the Injurious Effect of Subject Import Volume**

We find that the CVD suspension agreement eliminates completely the injurious effect identified by the Commission in the preliminary determinations due to the significant increase in subject import volume. This is accomplished by effectively extending the quantitative restrictions of the U.S. Government Sugar Program to imports of sugar from Mexico. In the preliminary phase of the investigations, subject import volume from Mexico increased 94.5 percent between CY2011/12 and CY2012/13 and was 110.3 percent higher in interim CY2013/14 than in interim CY2012/13.<sup>117</sup> The Commission found these increases contributed to the significant depression of domestic prices, and thus to the injurious effect of subject imports on the domestic industry.<sup>118</sup> The surge in subject import volume in CY2012/13 and interim CY2013/14 was only possible because the North American Free Trade Agreement ("NAFTA") exempted Mexican sugar producers and exporters from the U.S. Sugar Program as of January 1, 2008, granting them free access to the U.S. market. By re-integrating subject imports into the U.S. Sugar Program, the suspension agreements eliminate completely the possibility of a future increase in subject import volume to injurious levels.

Under the U.S. Sugar Program, the U.S. Government utilizes three principal mechanisms to align domestic sugar supply with domestic sugar demand.<sup>119</sup> The USDA regulates the quantity of sugar supplied by domestic producers to the U.S. market by assigning marketing allotments to cane millers and beet processors on a firm-specific basis, with the overall allotment set at 85 percent of projected U.S. human consumption of sugar in a given crop year.<sup>120</sup> In addition, cane millers and beet processors may receive nonrecourse loans from the

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<sup>116</sup> See Section IV.A above.

<sup>117</sup> CR/PR at Table C-1.

<sup>118</sup> See *Sugar from Mexico*, USITC Pub. 4467 at 32-33, 37-38; Confidential Views at 47, 50, 56.

<sup>119</sup> *Sugar from Mexico*, USITC Pub. 4467 at 27 n.173; Confidential Views at 40 n.173.

<sup>120</sup> *Sugar from Mexico*, USITC Pub. 4467 at 26-27; Confidential Views at 38-39. The USDA apportions 54.35 percent of the overall allotment to beet processors and 45.65 percent of the overall allotment to (Continued...)

USDA Commodity Credit Corporation and may forfeit the sugar pledged as collateral in lieu of repaying the loans if prices fall below the base sugar loan rates of 18.75 cents per pound for raw cane sugar and 25.09 cents per pound for refined beet sugar, thereby removing additional quantities of sugar from the market for human consumption during periods of oversupply.<sup>121</sup> Finally, the USDA, in cooperation with the Office of the U.S. Trade Representative (“USTR”), regulates imports of sugar from nonsubject import sources using TRQs, which are set at the minimum level permitted under the WTO Agreement on October 1 of each crop year – 1,231,484 short tons raw value of raw sugar and 24,251 short tons raw value of refined sugar – and allocated by USTR on a country-specific basis.<sup>122</sup>

The CVD suspension agreement effectively integrates Mexico into the U.S. Sugar Program by limiting the volume of sugar exports from Mexico in a given crop year to residual U.S. Needs, as calculated by USDA based upon its monthly WASDE.<sup>123</sup> Through the U.S. Needs calculation, Commerce imposes an annual limit on the volume of sugar exports from Mexico equal to projected U.S. demand that is not satisfied by beginning stocks and projected domestic production, TRQ imports, other program imports (such as imports required under Free Trade Agreements), and other imports (such as high-tier imports), leaving ending stocks equivalent to 13.5 percent of U.S. demand.<sup>124</sup> Under the CVD suspension agreement, Commerce incrementally increases the annual export limit at the beginning of three periods corresponding to October 1-December 31, January 1-March 31, and April 1-September 31 of a given crop year.<sup>125</sup> Annual sugar exports from Mexico are limited to 70 percent of U.S. Needs as of October 1, 80 percent of U.S. Needs as of January 1, and 100 percent of U.S. Needs as of April 1, assuming the calculated U.S. Needs changes little or increases over the course of a crop year.<sup>126</sup>

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cane millers. *Id.* Cane millers and beet processors that produce in excess of their allotments must either store the excess or sell it for purposes other than human consumption. *Id.*

<sup>121</sup> *Sugar from Mexico*, USITC Pub. 4467 at 27; Confidential Views at 39-40. Cane millers and beet processors will generally forfeit sugar when market prices fall below the applicable sugar loan rates, plus interest and costs. *Id.* In CY2012/13, the USDA effectively removed 1,047,490 short tons of domestically produced sugar from the market for human consumption at a net cost of \$258,716,027 through a combination of re-export credit swaps and sales of forfeited and purchased sugar to ethanol producers. *Id.*

<sup>122</sup> *Sugar from Mexico*, USITC Pub. 4467 at 27-28; Confidential Views at 40-41. In-quota imports are subject to minimum “tier I” tariffs but imports in excess of the applicable quotas are subject to much higher “tier II” tariffs, which are normally prohibitive. *Id.* The USDA may increase the TRQs to alleviate short supply conditions but not before April 1, except in the event of emergencies that reduce domestic sugar supplies. *Id.*

<sup>123</sup> CR at 7 & n.10; PR at I-6 & n.10.

<sup>124</sup> CR at 7 n.10; PR at I-6 & n.10. USDA utilizes the following formula to calculate U.S. Needs: (Total Use\*1.135) - Beginning Stocks – Production – TRQ Imports – Other Program Imports – Other Imports. *Id.*

<sup>125</sup> CR at 8; PR at I-6.

<sup>126</sup> CR at 8; PR at I-6. On October 1, the annual export limit is set to the larger of either 70 percent of U.S. Needs calculated from the July WASDE or 70 percent of U.S. Needs calculated from the September WASDE. *Id.* On January 1, the annual export limit is set to the larger of either 70 percent of U.S. Needs (Continued...)

If the calculated U.S. Needs declines during a crop year, as when domestic production is larger or demand lower than expected, then annual exports from Mexico may be limited to 70 or 80 percent of the higher level of U.S. Needs calculated during an earlier period.<sup>127</sup> The periodic adjustment of the annual limit on sugar exports from Mexico under the CVD suspension agreement ensures that the volume of exports from Mexico during a crop year cannot significantly exceed actual U.S. Needs during that crop year.<sup>128</sup>

The CVD suspension agreement also includes an anti-surge mechanism. Specifically, the agreement provides that exports from Mexico during the October 1-December 31 period may not exceed 30 percent of U.S. Needs calculated using the July WASDE.<sup>129</sup> Exports from Mexico during the October 1-March 31 period may not exceed 55 percent of U.S. Needs calculated using the December WASDE.<sup>130</sup> In other words, Mexican producers and exporters may only satisfy up to 30 percent of the annual export limit during October 1-December 31 of a given crop year and up to 55 percent of the annual export limit during October 1-March 31 of the crop year. In this way, the CVD suspension agreement ensures that Mexican producers and exporters satisfy their annual export limit with exports spread across a crop year rather than concentrated in a particular quarter, potentially creating short-term conditions of excess supply.

Finally, the CVD suspension agreement provides that exports of refined sugar from Mexico, defined as sugar with a polarity of 99.5 degrees or greater, may account for no more than 53 percent of total exports from Mexico in any given export limit period.<sup>131</sup> Conversely, at least 47 percent of total exports from Mexico must consist of “other sugar,” defined as sugar with a polarity of under 99.5 degrees. This provision of the agreement counteracts the incentive created by the annual export limit for Mexican producers and exporters to maximize their revenues by exporting predominantly higher value refined sugar instead of lower value “other sugar.” A substantial portion of sugar imported from Mexico as “other sugar” under the

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calculated from the July WASDE, 70 percent of U.S. Needs calculated from the September WASDE, or 80 percent of U.S. Needs calculated from the December WASDE. *Id.* On April 1, the annual export limit is set to the largest of either 70 percent of U.S. Needs calculated from the July WASDE, 70 percent of U.S. Needs calculated from the September WASDE, 80 percent of U.S. Needs calculated from the December WASDE, or 100 percent of U.S. Needs calculated from the March WASDE. *Id.*

<sup>127</sup> CR at 8; PR at I-6.

<sup>128</sup> See U.S. Department of Commerce Memorandum, Agreement Suspending the Countervailing Duty Investigation on *Sugar from Mexico*: Calculation of the Export Limit for the Initial Export Limit Period, Effective April 1, 2015 (Mar. 12, 2015) (“Mar. 12, 2015 Export Limit Memo”), EDIS Doc. No. 553377; see also Mexican Sugar Chamber’s First Submission, Attachment 24 at 1-2 (explaining how Commerce would have adjusted the annual export limit over the course of CY2012/13).

<sup>129</sup> CR at 8; PR at I-6.

<sup>130</sup> CR at 8-9; PR at I-6-7.

<sup>131</sup> CR at 8; PR at I-6.

CVD suspension agreement will likely be purchased by cane refiners for further processing into refined sugar.<sup>132</sup>

We find that the CVD suspension agreement eliminates completely the possibility of the recurrence of the injurious effect of subject import volume that occurred toward the end of the period of investigation in the preliminary phase. Had subject imports been limited to U.S. Needs during that period, calculated in accordance with the CVD suspension agreement, subject import volume would have been 912,000 short tons instead of 2,066,000 short tons in CY2012/13,<sup>133</sup> and would have declined 14.1 percent between CY2011/12 and CY2012/13 instead of increasing by 94.5 percent during the period.<sup>134</sup> Subject imports of refined sugar would have been limited to 53 percent of the export limit in CY2012/13, or 483,000 short tons, which is 42 percent less than the actual volume of reported subject exports for direct

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<sup>132</sup> In the preliminary phase of the investigations, subject producers reported that 64.2 percent of their export shipments to the United States in CY2012/13 were of sugar with a polarity of 97.0 degrees or greater intended for further refinement. *Sugar from Mexico*, USITC Pub. 4467 at 7; Confidential Views at 9.

The record of the preliminary phase of the investigations showed some degree of substitutability between domestically produced refined sugar, with a polarity of 99.9 degrees, and so-called *estandar* imported from Mexico, with a polarity of 99.2 to 99.6 degrees, in certain end use products for which the darker color of *estandar* was not an issue, such as chocolate ice cream and brownies. *See Sugar from Mexico*, USITC Pub. 4467 at 7 & n.24; Confidential Views at 9 & n.24.

Nevertheless, a representative for CSC, a major importer of raw sugar from Mexico, testified in the proceeding that “the vast majority of sugar we ship from Mexico is not fit for human consumption . . . and goes for further refining.” OP Tr. at 215 (Farmer). As the same representative explained in the preliminary phase, “most customers or companies would not use standard sugar {i.e., *estandar*} for direct consumption because it has a higher quantity of foreign material in it than would normally be accepted in the U.S. market, therefore the vast majority of it gets used, consumed as raw sugar . . .” Preliminary Conference Tr. at 213 (Farmer). CSC was the \*\*\* largest importer of sugar from Mexico during the period examined in the preliminary phase of the investigations, and also supplied raw sugar imported from Mexico to the \*\*\* and \*\*\* largest importers during the period. *See* PCR, EDIS Doc. No. 550562, at Table IV-1 (CSC accounted for \*\*\* percent of total subject imports during the period examined); Importers’ Questionnaire of CSC at Question II-4 (\*\*\*); OP Tr. at 249 (Farmer) (stating that CSC “will move probably 7 or 800,000 tons of” sugar imported from Mexico in the first year of the suspension agreement and “most of that, quite frankly, goes to ASR and Imperial.”). The record does not therefore support the petitioning refiners’ argument that a substantial portion if not all “other sugar” imported from Mexico under the suspension agreements, with a polarity at the lower end of the range covering *estandar*, will be for direct human consumption. Petitioning Refiners’ First Submission at 19-20.

<sup>133</sup> Memorandum EC-NN-003 (Mar. 13, 2015) at 4; CR/PR at Table C-1; *see also* Mexican Sugar Chamber’s First Submission at Attachment 24.

<sup>134</sup> CR/PR at Table C-1. The American Sugar Coalition concedes that the CVD suspension agreement would not have reduced subject import volume in CY2011/12. *See* Sugar Coalition’s First Submission, Ex. 1 at 21.



consumption that year.<sup>135</sup> Under the disciplining effect of the CVD suspension agreement, there would have been no significant increase in subject import volume that could have contributed to the depression of domestic like product prices in CY2012/13.<sup>136</sup> It is also noteworthy that the 1,154,000 short ton reduction in subject import volume in CY2012/13 under the CVD suspension agreement would have been greater than the 1,047,490 short tons of domestically produced sugar that the USDA actually removed from the U.S. market that year to alleviate conditions of oversupply.<sup>137</sup>

We recognize that the annual export limit in the first year of the suspension agreements, 1,525,565 short tons as of April 1, 2015, will permit a volume of refined sugar imports from Mexico in CY2014/15, 808,549 short tons, that approaches the volume of subject imports of refined sugar in CY2012/13.<sup>138</sup> Contrary to the petitioning refiners' argument, however, we do not find that this volume of refined sugar imported from Mexico would continue the injurious effect of subject import volume found in the preliminary determinations.<sup>139</sup> As an initial matter, much of the injurious effect of subject imports on the domestic industry in CY2012/13 was sustained by millers in competition with subject imports destined for further processing, rather than by processors/refiners in competition with subject imports destined for consumption.<sup>140</sup> Furthermore, the surging volume of subject imports in CY2012/13 contributed to price depression by creating conditions of oversupply – subject

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<sup>135</sup> PCR at Table VII-4; *Sugar from Mexico*, USITC Pub. 4467 at Table VII-4.

<sup>136</sup> See Section IV.A. above.

<sup>137</sup> *Sugar from Mexico*, USITC Pub. 4467 at 27; Confidential Views at 40.

<sup>138</sup> The export limit on refined sugar imported from Mexico in CY2014/15 is 808,549 short tons, or 53 percent of the annual export limit, whereas Mexican producers reported exports to the United States of sugar not intended for further refining of 833,000 short tons in CY2012/13. PCR at Table VII-4; *Sugar from Mexico*, USITC Pub. 4467 at Table VII-4; see also Petitioning Refiners' First Submission at 15, Exhibit 2 (estimating that subject imports of refined sugar were approximately 950,000 short tons in CY2012/13).

We note that the annual export limit for refined sugar imports from Mexico in CY2014/15 approaches the level of actual subject imports of refined sugar in CY2012/13 due to a substantial increase in U.S. Needs in CY2014/15 relative to CY2012/13. Specifically, the annual export limit applicable to CY2014/15 is 67.3 percent higher than the annual export limit that would have applied to CY2012/13 because the U.S. Needs calculation indicates a larger gap between projected total use and the sum of beginning stocks, projected domestic production, and projected nonsubject imports in CY2014/15 than in CY2012/13. *Compare* Mar. 12, 2015 Export Limit Memo to Memorandum EC-NN-003 (Mar. 13, 2015) at 4. This larger gap is partly a function of the lower domestic production and higher total use projected in CY2014/15 relative to CY2012/13. *Compare* Mar. 12, 2105 Export Limit Memo (projecting domestic production of 8.6 million short tons and total use of 12.2 million short tons in CY2014/15) to CR/PR at Table C-1 (showing domestic production of \*\*\* short tons and apparent U.S. consumption of 11.7 million short tons in CY2012/13).

<sup>139</sup> See Petitioning Refiners' First Submission at 15-16.

<sup>140</sup> See *Sugar from Mexico*, USITC Pub. 4467 at 37; Confidential Views at 54-55 (between CY2011/12 and CY2012/13, the millers' operating income margin declined from \*\*\* percent to \*\*\* percent, whereas the processor/refiners' operating income margin declined from \*\*\* percent to \*\*\* percent).

imports of refined sugar were 72.5 percent higher that year than they would have been if limited to 53 percent of U.S. Needs under the CVD suspension agreements. By limiting imports of sugar from Mexico to U.S. Needs and preventing import surges, the CVD suspension agreement ensures that imports of sugar from Mexico, including imports of refined sugar, cannot create conditions of oversupply that might adversely affect sugar prices.<sup>141</sup> Indeed, the petitioning refiners themselves concede that the volume of refined sugar imports permitted under the suspension agreements will account for too small a share of apparent U.S. consumption to influence market prices for refined sugar.<sup>142</sup> Should unforeseen circumstances create conditions of oversupply that adversely affect sugar prices, the AD suspension agreement would operate to reduce sugar supplies and stabilize prices by prohibiting exports of sugar from Mexico at prices lower than the minimum reference prices of \$0.2225 per pound for raw sugar and \$0.26 per pound for refined sugar.

In sum, we find that the injurious effect of increasing subject import volumes identified by the Commission in the preliminary determinations is eliminated completely by the suspension agreements.

## **2. The Suspension Agreements Eliminate Completely the Injurious Effect of Subject Import Prices**

We find that the AD suspension agreement works in concert with the CVD suspension agreement to eliminate completely the adverse price effects of subject imports identified by the Commission in the preliminary determinations. In the preliminary phase of the investigations, the Commission found that significant subject import underselling, coupled with the significant increase in subject import volume, depressed domestic prices to a significant degree and increased the domestic industry's ratio of COGS to net sales, resulting in a decline in the domestic industry's financial performance toward the end of the period of investigation.<sup>143</sup> The suspension agreements eliminate the incentive to undersell and establish minimum prices for imports of raw and refined sugar from Mexico. As a result, with the agreements in place, there will not be subject import underselling that could have the effect of depressing or suppressing domestic like product prices.

The CVD suspension agreement will prevent the recurrence of the adverse price effects found in the preliminary determinations in two ways. First, as already discussed, the CVD suspension agreement will preclude any increase in subject import volume sufficient to

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<sup>141</sup> Parties on both sides agree that the stocks-to-use ratio of 13.5 percent targeted by the CVD suspension agreement is consistent with sugar supplies that are tight or in balance with sugar demand. See OP Tr. at 39, 71 (Gorrell), 174 (Farmer).

<sup>142</sup> Petitioning Refiners' First Submission at 22-23; Imperial's Second Submission at 11. The volume of refined sugar permitted under the CVD suspension agreement in CY2014/15 is equivalent to only 6.6 percent of projected total use that year. See Mar. 12, 2015 Export Limit Memo. Thus, if the price of refined sugar in the U.S. market is unsatisfactory to petitioning refiners, it will not be due to the relatively small volume of refined sugar imports from Mexico.

<sup>143</sup> See Section IV.A above.

adversely affect sugar prices. Second, by imposing an annual limit on sugar exports from Mexico and preventing exports from surging in any given quarter, the CVD suspension agreement eliminates the primary incentive for Mexican producers and exporters to undersell the domestic like product: to rapidly increase their penetration of the U.S. market. Mexican producers and exporters would have little incentive to undersell the domestic like product under the agreement because doing so would reduce their revenues with no compensatory increase in sales volume or market penetration over the levels dictated by the annual export limit and anti-surge mechanism under the agreement.<sup>144</sup> Indeed, the CVD suspension agreement creates an incentive for Mexican producers and exporters to maximize their revenues within the confines of the annual export limit by maximizing exports of higher-value products and minimizing the extent of underselling. In recognition of this incentive, the CVD suspension agreement limits higher-value refined sugar exports from Mexico to 53 percent of total exports from Mexico in any export limit period.

At the same time, the AD suspension agreement will prevent the recurrence of the adverse price effects found in the preliminary determinations by establishing minimum reference prices for raw and refined sugar exported from Mexico and by eliminating at least 85 percent of the calculated dumping margins. Specifically, the AD suspension agreement prohibits Mexican producers from exporting raw sugar at less than \$0.2225 per pound and refined sugar at less than \$0.26 per pound.<sup>145</sup> Each Mexican producer and exporter that signed the AD suspension agreement also agreed that the calculated dumping margin for any shipment of subject merchandise that enters the United States will not exceed 15 percent of the dumping margin for that producer calculated by Commerce in its preliminary determinations, potentially increasing the minimum export price above the reference prices for any given period.<sup>146</sup> Thus, the AD agreement will serve to substantially reduce instances of underselling due to the establishment of minimum prices for Mexican exports. We note that the Commission did not find underselling itself to be an injurious effect, but instead found it to be a cause of price depression. As discussed above, the CVD agreement ensures that price depression identified in the preliminary determinations is eliminated, as prices will be considerably higher without the effects of oversupply, even if some instances of underselling continue to occur.<sup>147</sup>

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<sup>144</sup> See CR/PR at Appendix D, U.S. Department of Commerce Memo, The Prevention of Price Suppression or Undercutting of Price Levels by the Agreements Suspending the Antidumping Duty Investigation on Sugar from Mexico (Feb. 6, 2015) at 12.

<sup>145</sup> CR at 5-6; PR at I-4-5.

<sup>146</sup> CR at 6; PR at I-5. The Mexican producers and exporters that signed the AD suspension agreement accounted for substantially all of the merchandise imported into the United States. See CR/PR at Appendix D, AD Suspension Agreement at 3.

<sup>147</sup> Chairman Broadbent agrees that the quantitative restrictions and reference prices established under the agreements will result in higher U.S. prices for both raw and refined sugar, thereby working in concert to eliminate adverse price effects for the industry as a whole even if some mixed underselling by subject imports may continue to occur. However, these higher prices may have a range of possible effects on destination refiners' COGS to net sales ratio, as the cost of raw sugar could increase to a (Continued...)

The delivered price calculations placed on the record by CSC show that the delivered prices of domestic refined sugar made from raw sugar imported from Mexico at the reference price would be lower than the delivered prices of refined sugar imported from Mexico at the reference price for sales to the same five major urban markets.<sup>148</sup> We find these delivered price comparisons credible because they include all relevant packaging and delivery costs and exclude delivered prices from domestic refineries to distant markets they could not serve economically.<sup>149</sup> Moreover, the delivered prices were calculated by CSC based on its experience both as a major U.S. importer of sugar from Mexico and as a domestic producer of refined sugar.<sup>150</sup> Thus, the record evidence indicates that the reference prices established by the AD suspension agreement afford domestic refiners a delivered price advantage over refined sugar imported from Mexico, making significant subject import underselling of refined sugar unlikely.<sup>151</sup>

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(...Continued)

greater or lesser extent than the increase in the price of refined sugar. Destination refiners operating under a higher cost structure under these agreements may continue to face an increase in their COGS to net sales ratio, even while selling refined sugar at a higher price than during the preliminary period of investigation. However, this is a unique phenomenon for destination refiners, as beet processors and cane millers, for example, will primarily experience a benefit from the rising price of refined sugar or raw sugar, respectively.

<sup>148</sup> See CSC's Second Submission, Attachment 1 at 6-7. CSC calculates that U.S. refiners enjoy a delivered price advantage of 0.03 to 2.53 cents per pound relative to refined sugar imported from Mexico at the reference price. *Id.*

<sup>149</sup> See OP Tr. at 168-72 (Farmer); CSC's Second Submission, Attachment 1 at 5-7. We are unpersuaded by the delivered price comparisons presented by the petitioning refiners. See Petitioning Refiners' First Submission at 23-24, Exhibit 21; Imperial's Second Submission, Exhibit 1 at 12-13, 19; OP Tr., Petitioning Refiners' OP Exhibit 5. These delivered price comparisons inappropriately compare the delivered price of domestic refined sugar, including packaging costs and delivery to the U.S. end customer, to a price for refined sugar imported from Mexico that excludes packaging costs and the cost of delivery from U.S. distributors to their end customers. CSC's Second Submission, Attachment 1 at 3; OP Tr. at 169-70 (Farmer). The petitioning refiners' comparisons also include delivered prices from Imperial to customers in distant markets that would be uneconomical to serve from its refinery in Savannah, GA. CSC's Second Submission, Attachment 1 at 4-5; OP Tr. at 170-71 (Farmer).

<sup>150</sup> See CR/PR at Table I-3. CSC was the \*\*\* largest importer of sugar from Mexico during the period examined in the preliminary phase investigations, and also supplied raw sugar imported from Mexico to the \*\*\* and \*\*\* largest importers during the period. See PCR at Table IV-1; Importers' Questionnaire of CSC at Question II-4; OP Tr. at 249 (Farmer).

<sup>151</sup> The record also indicates that Mexican producers and exporters of "other sugar" intended for further processing are unlikely to undersell domestically produced raw sugar in a manner that would lead to injurious effects. CSC estimates that the delivered price of raw sugar imported from Mexico at the reference price to the East Coast is 25.70 cents per pound, which is higher than the delivered prices of raw sugar from all sources during the period in which the suspension agreements have been in effect, as reported by *Baking & Milling News*. CR/PR at Table I-7. Thus, the reference price for "other sugar" established by the AD suspension agreement, coupled with transportation costs, would have placed Mexican producers and exporters of raw sugar at a cost disadvantage in much of the U.S. market during the recent period, reinforcing the disincentive for Mexican producers and exporters to undersell (Continued...)

To corroborate our findings concerning the effect of the reference prices, we have also considered the raw and refined sugar price data on the record.<sup>152</sup> These data show that domestic cane refiners experienced improved refining margins during the period in which the suspension agreements have been in effect. Specifically, these data show that the average refining margin during the period in which the suspension agreements have been in effect, 30.0 percent, was substantially higher than the average refining margins during CY2012/13 and interim CY2013/14, at 27.2 and 24.7 percent, respectively, and approached the level achieved in CY2011/12, 34.0 percent, when domestic processors/refiners performed well.<sup>153</sup> At 10.70 cents per pound, the average refining margin during the suspension agreements period was more than double the lowest refining margin during the period examined in the preliminary phase investigations, 4.53 cents per pound in September 2013, and is at the upper end of the rolling five year average U.S. bulk refining margins during the April 2003-October 2014 period calculated by the petitioning refiners.<sup>154</sup> It is also higher than the refining margin of 6.5 cents

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(...Continued)

domestically produced raw sugar created by the CVD suspension agreement. The latest available raw sugar futures data suggest that this cost disadvantage will continue through April-June 2016. *Milling & Baking News*, March 17, 2015, at 54, EDIS Doc. No. 553362.

<sup>152</sup> Chairman Broadbent does not join this discussion of refining margins based on a comparison of recent raw and refined U.S. wholesale prices. The U.S. price of raw sugar is based on raw cane sugar delivered to the refiner, whereas imports of “raw sugar” from Mexico during the preliminary period of investigation were primarily imports of *estandar*, otherwise known as “high-polarity” or “semi-refined” sugar. *Sugar from Mexico*, USITC Pub. 4467 at 6. In its preliminary determinations, the Commission noted a variety of arguments concerning the lack of interchangeability and price comparability between *estandar* and both raw and refined sugar, and expressed an intention to seek additional information on these issues within any final phase. *Sugar from Mexico*, USITC Pub. 4467 at 30 n.205, 33 n.229. While the Commission has received substantial testimony concerning likely refining costs based on subject imports of “other sugar,” the Commission has not received estimates concerning refining costs based on wholesale raw cane sugar, which may be higher given that most raw sugar is reported to be of a lower polarity than *estandar*. See CSC Postconference Brief at 3 (defining the standard sugar that enters a cane refinery as 98.5 percent polarity); Sweetener Users Association Postconference Brief at 22 (defining raw sugar as sugar with a polarity less than 99.0 percent, and defining *estandar* as sugar with a polarity between 99.0 and 99.8 percent).

<sup>153</sup> CR/PR at Tables I-6-7, C-1. The difference between the delivered price of raw sugar and the f.o.b. price of refined sugar as reported on a bi-weekly basis by *Milling & Baking News* approximates the refining margin realized by domestic cane refiners. We recognize that the U.S. sugar market continues to adjust to the suspension agreements, which came into effect on December 19, 2014. Nevertheless, the latest available raw sugar futures data indicate that delivered raw sugar prices are expected to remain between 24.00 and 24.60 cents per pound through April-June 2016. *Milling & Baking News*, March 17, 2015, at 54, EDIS Doc. No. 553362. Further, the CVD suspension agreement eliminates any incentive for Mexican producers and exporters to undersell the domestic like product and limits exports of refined sugar from Mexico to a level insufficient to set market prices.

<sup>154</sup> CR/PR at Tables I-6-7; OP Tr., Petitioning Refiners’ Exhibit 2.

per pound that AmCane considers “fair to the destination refining segment.”<sup>155</sup> Thus, the record contradicts the petitioning refiners’ claim that the AD suspension agreement will foster a refining margin of 3.75 cents per pound.<sup>156</sup>

Chairman Broadbent, Vice Chairman Pinkert, and Commissioner Kieff find further support for the Commission’s analysis in the comparative static model run by Commission staff, which examined the possible effects of the suspension agreements on the U.S. sugar market, adjusting for lower volumes of subject imports and taking into consideration minimum reference prices.<sup>157</sup> These Commissioners considered the two modeling simulations incorporating the high degree of substitutability between the subject imports from Mexico and the domestic like product found by the Commission in its preliminary determinations.<sup>158</sup> They find that the results of the modeling, which generally show that domestic prices and revenues would have been higher in CY2012/13 if the agreements had been in place, provide further

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<sup>155</sup> AmCane’s Second Submission, Ex. 1 at 7-8. The petitioning refiners argued that the difference between the reference prices for raw sugar and refined sugar under the AD suspension agreement would dictate the refining margin. OP Tr. at 28 (Rosenzweig), Petitioning Refiners’ Exhibit 2.

<sup>156</sup> See OP Tr. at 28 (Rosenzweig), Petitioning Refiners’ Exhibit 2.

<sup>157</sup> Memorandum EC-NN-003 (Mar. 13, 2015). Commission staff concluded that the minimum reference prices imposed by the AD suspension agreement would have raised Mexican prices by 19.0 percent in CY2012/13, in the event that the quantitative limits imposed by the CVD suspension agreement did not increase Mexican prices by more than 19.0 percent. *Id.* at 7.

<sup>158</sup> *Sugar from Mexico*, USITC Pub. 4467 at 30; Confidential Views at 44. The first model, Model 1B, imposes a quota of 1.6 million STRV on imports from Mexico, according to a calculation by the Mexican government in its February 11, 2015 sugar export quota announcement for total entries of Mexican sugar during CY2014/15. Memorandum EC-NN-003 (Mar. 13, 2015) at 4 & n.9. This annual export limit was subsequently reduced to 1,525,565 short tons in Commerce’s Mar. 12, 2015 Export Limit Memo. The second model, Model 2B, imposes a quota of 912,000 STRV on imports from Mexico, reflecting the volume of subject imports that would have occurred if the U.S. Needs formula had been in effect in CY2012/13. Memorandum EC-NN-003 (Mar. 13, 2015) at 4 & n.10. Chairman Broadbent, Vice Chairman Pinkert and Commissioner Kieff did not accord any weight to Models 1A, 2A, 1C, or 2C because those models do not incorporate the Commission’s finding in its preliminary determinations of high substitutability between the subject imports from Mexico and the domestic like product. They also attach more weight to the model results based on a U.S. sugar supply elasticity of 0.1, indicating that domestic producers are unable to respond to changes in price with large changes in supply, which reflects the upper end of the U.S. sugar supply elasticity range calculated by the General Accounting Office in a 2000 study. Memorandum EC-NN-003 (Mar. 13, 2015). This U.S. sugar supply elasticity is consistent with the domestic industry’s inability to increase its U.S. shipments beyond the 85 percent share of apparent U.S. consumption reserved for the industry under the U.S. Sugar Program during the period examined in the preliminary phase of the investigations. CR/PR at Table C-1 (the industry’s market share ranged from \*\*\* to \*\*\* percent during the period). Indeed, the domestic industry’s market share and rate of capacity utilization was lower in CY2010/11, when sugar prices were high, than in CY2012/13, when sugar prices collapsed. *Id.* A low U.S. sugar supply elasticity is also consistent with the highly regulated nature of the domestic industry, which limits the ability of U.S. producers to adjust output in response to price changes. PCR at II-3-4; *Sugar from Mexico*, USITC Pub. 4467 at II-3.

corroboration that the injurious effect of subject imports, particularly the adverse price effect, is eliminated completely by the suspension agreements, acting in concert with each other.

In sum, we find that the injurious effect of subject import prices identified by the Commission in the preliminary determinations is eliminated completely by the suspension agreements.

### **3. The Suspension Agreements Eliminate Completely the Injurious Effect of Subject Imports on the Domestic Industry**

We have found that the CVD suspension agreement eliminates completely the adverse effects of the significant volume of subject imports on the domestic industry by limiting the annual volume of subject imports to U.S. Needs, preventing subject import surges, and limiting subject imports of refined sugar to 53 percent of total subject import volume in any export limit period. We have also found that the CVD suspension agreement in concert with the AD suspension agreement eliminate completely the adverse effects of subject import underselling on the domestic industry by eliminating the incentive for Mexican producers and exporters to undersell the domestic like product in an attempt to gain market share, and by establishing minimum reference prices that discourage significant underselling. As a result of the volume and price restrictions in the suspension agreements, the record indicates that domestic sugar producers will be able to charge higher prices in CY2014/15 than they did when price levels fell in CY2012/13 and interim CY2013/14. As a result, the revenues the domestic industry will achieve in CY2014/15 will be greater than those it recorded toward the end of the period investigated in the preliminary determinations. Because of greater revenues, the poor and declining financial performance that the domestic industry experienced toward the end of the period investigated in the preliminary determinations will not recur under the suspension agreements. In sum, because the suspension agreements eliminate completely the injurious effects of subject import volume and prices identified by the Commission in the preliminary determinations, we conclude that the agreements eliminate completely the injurious effect of subject imports on the domestic industry.

## **V. Conclusion**

For all of the foregoing reasons, we determine that the injurious effect of imports of sugar from Mexico is eliminated completely by the suspension agreements that Commerce has entered.





# INFORMATION OBTAINED IN THE REVIEW

## INTRODUCTION

These reviews result from petitions filed with the U.S. International Trade Commission (“Commission” or “USITC”) on January 8, 2015, by Imperial Sugar Company (“Imperial”), Sugar Land, Texas and AmCane Sugar LLC (“AmCane”), Taylor, Michigan, requesting that the Commission initiate an investigation to review the suspension agreements accepted by the Department of Commerce (“Commerce”) concerning sugar from Mexico.

Effective January 8, 2015, the U.S. International Trade Commission (“Commission” or “USITC”) gave notice, pursuant to sections 704(h) and 734(h) of the Tariff Act of 1930, as amended (“the Act”),<sup>1</sup> that it had instituted reviews of the suspension agreements that the United States Department of Commerce has entered in antidumping duty and countervailing duty investigations of sugar from Mexico.<sup>2</sup>

The following tabulation presents information relating to the background and schedule of this proceeding:

<b>Effective date</b>	<b>Action</b>
January 8, 2015	Petitions filed with the Commission; institution of Commission investigations (80 FR 3977, January 26, 2015)
February 19, 2015	Commission’s oral presentation
March 19, 2015	Commission’s vote
March 24, 2015	Commission’s determinations

## BACKGROUND

On March 28, 2014, the American Sugar Coalition<sup>3</sup> filed a petition with the Commission alleging that an industry in the United States is materially injured and threatened with material injury by reason of subsidized and less-than-fair-value (“LTFV”) imports of sugar from Mexico. On May 12, 2014, the Commission made preliminary affirmative determinations (79 FR 28550, May 16, 2014). On September 2, 2014, Commerce issued an affirmative preliminary determination in the CVD investigation and aligned the final CVD determination with the final

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<sup>1</sup> 19 U.S.C. § 1671c(h) and 1673c(h).

<sup>2</sup> *Sugar from Mexico; Institution of Reviews of Agreements Suspending Antidumping Duty and Countervailing Duty Investigations*, 80 FR 3977, January 26, 2015.

<sup>3</sup> The American Sugar Coalition’s members are American Sugar Cane League, Thibodaux, LA; American Sugarbeet Growers Association, Washington, DC; American Sugar Refining, Inc., West Palm Beach, FL; Florida Sugar Cane League, Washington, DC; Hawaiian Commercial and Sugar Company, Puunene, HI; Rio Grande Valley Sugar Growers, Inc., Santa Rosa, TX; Sugar Cane Growers Cooperative of Florida, Belle Glade, FL; and United States Beet Sugar Association, Washington, DC.

determination in the companion AD investigation of sugar from Mexico (79 FR 51956). On October 27, 2014, Commerce announced its affirmative preliminary determination in the AD investigation (79 FR 65189, November 3, 2014).

On the same day, Commerce also announced that it had initialed draft agreements with the Government of Mexico and Mexican sugar exporters that would suspend the antidumping and countervailing duty investigations of imports of Mexican sugar. Following a 30-day public comment period, Commerce announced on December 19, 2014 that it had finalized the agreements to immediately suspend both the AD and CVD investigations (79 FR 78039, 78044, December 29, 2014).<sup>4</sup>

## STATUTORY CRITERIA

Sections 704(h) and 734(h) of the Tariff Act of 1930 (“the Act”) (19 U.S.C. §§ 1671c(h) and 1673c(h)) provides that—

*(1) In general*

*Within 20 days after the suspension of an investigation under subsection (c) of this section, an interested party which is a party to the investigation and which is described in subparagraph (C), (D), (E), (F), or (G) of section 1677(9) of this title may, by petition filed with the Commission and with notice to the administering authority, ask for a review of the suspension.*

*(2) Commission investigation*

*Upon receipt of a review petition under paragraph (1), the Commission shall, within 75 days after the date on which the petition is filed with it, determine whether the injurious effect of imports of the subject merchandise is eliminated completely by the agreement. If the Commission’s determination under this subsection is negative, the investigation shall be resumed on the date of publication of notice of such determination as if the affirmative preliminary determination under section 1671b(b) or 1673b(b) of this title had been made on that date.*

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<sup>4</sup> The finalized agreements incorporate several changes from the draft suspension agreements that Commerce initialed on October 27, 2014. The changes, which include a revised definition of refined sugar and adjustments to the reference price, reflect comments that were submitted by interested parties in response to the Department’s request for public comment on the draft agreements.

## THE PRODUCT

### Commerce's scope

In its suspension agreements, Commerce has defined the subject merchandise as:<sup>5</sup>

*The product covered by this agreement is raw and refined sugar of all polarimeter readings derived from sugar cane or sugar beets. The chemical sucrose gives sugar its essential character. Sucrose is a nonreducing disaccharide composed of glucose and fructose linked by a glycosidic bond via their anomeric carbons. The molecular formula for sucrose is C<sub>12</sub>H<sub>22</sub>O<sub>11</sub>; the International Union of Pure and Applied Chemistry (IUPAC) International Chemical Identifier (InChI) for sucrose is 1S/C12H22O11/c13-l-4-6(16)8(18)9(19)11(21-4)23-12(3-15)10(20)7(17)5(2-14)22-12/h4-11,13-20H,1-3H2/t4-,5-,6-,7-,8+,9-,10+,11-,12+/m1/s1; the InChI Key for sucrose is CZMRCDWAGMRECN-UGDNZRGBSA-N; the U.S. National Institutes of Health PubChem Compound Identifier (CID) for sucrose is 5988; and the Chemical Abstracts Service (CAS) Number of sucrose is 57-50-1.*

*Sugar described in the previous paragraph includes products of all polarimeter readings described in various forms, such as raw sugar, estandar or standard sugar, high polarity or semirefined sugar, special white sugar, refined sugar, brown sugar, edible molasses, desugaring molasses, organic raw sugar, and organic refined sugar. Other sugar products, such as powdered sugar, colored sugar, flavored sugar, and liquids and syrups that contain 95 percent or more sugar by dry weight are also within the scope of these investigations.*

*The scope of these investigations does not include (1) sugar imported under the Refined Sugar Re-Export Programs of the U.S. Department of Agriculture;<sup>6</sup> (2) sugar products produced in Mexico that contain 95 percent or more sugar by dry weight that originated outside of Mexico; (3) inedible molasses (other than inedible desugaring molasses noted above); (4) beverages; (5) candy; (6) certain specialty sugars; and (7) processed food products that contain sugar (e.g., cereals). Specialty sugars excluded from the scope of these investigations are limited to the*

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<sup>5</sup> *Sugar From Mexico: Suspension of Antidumping Investigation*, 79 FR 78039, December 29, 2014.

<sup>6</sup> This exclusion applies to sugar imported under the Refined Sugar Re-Export Program, the Sugar-Containing Products Re-Export Program, and the Polyhydric Alcohol Program administered by the U.S. Department of Agriculture.

*following: caramelized slab sugar candy, pearl sugar, rock candy, dragees for cooking and baking, fondant, golden syrup, and sugar decorations.*

*Merchandise covered by these investigations is typically imported under the following headings of the HTSUS: 1701.12.1000, 1701.12.5000, 1701.13.1000, 1701.13.5000, 1701.14.1000, 1701.14.5000, 1701.91.1000, 1701.91.3000, 1701.99.1010, 1701.99.1025, 1701.99.1050, 1701.99.5010, 1701.99.5025, 1701.99.5050, and 1702.90.4000. The tariff classification is provided for convenience and customs purposes; however, the written description of the scope of these investigations is dispositive.*

## **THE SUSPENSION AGREEMENTS<sup>7</sup>**

### **Agreement suspending the antidumping duty investigation**

On December 19, 2014, Commerce and signatory producers/exporters accounting for substantially all imports of sugar from Mexico<sup>8</sup> signed an agreement suspending the antidumping investigation on sugar from Mexico. The basis for the agreement was a commitment by each signatory producer/exporter to revise its prices to eliminate completely the injurious effect of exports of the subject merchandise to the United States. Commerce determined that extraordinary circumstances are present in this investigation because the suspension of the investigation will be more beneficial to the domestic industry than the continuation of the investigation and because the investigation is complex. It also determined that the suspension of the investigation is in the public interest and that effective monitoring of the agreement by the United States is practicable.

The agreement has no scheduled termination date and the suspended investigations are subject to five-year reviews, through which they may be terminated. Either Commerce or the Mexican signatories may terminate the agreement at any time.

### ***Reference prices***

The AD suspension agreement establishes reference prices, or minimum prices, to guard against undercutting or suppression of U.S. prices. These minimum prices are \$0.26/pound by

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<sup>7</sup> The full text of the agreements and statutory requirements memorandums are presented in Appendix D.

<sup>8</sup> Commerce may at any time during the period of the suspension agreement require additional producers/exporters in Mexico to accede to the agreement to ensure that not less than substantially all imports into the United States are subject to this agreement.

dry weight commercial value for refined sugar and \$0.2225/pound by dry weight commercial value for all other sugar. “Refined sugar” is defined as sugar with at least 99.5 percent polarity or above. “Other sugar” is sugar that does not meet the definition of refined sugar.

Additionally, each signatory individually agrees that for each entry the amount by which the estimated normal value exceeds the export price (or the constructed export price) will not exceed 15 percent of the weighted average amount by which the estimated normal value exceeded the export price (or constructed export price) for all less-than-fair-value entries of the producer/exporter examined during the course of the investigation.<sup>9</sup>

### ***Monitoring and enforcement***

Commerce and the relevant Mexican government agencies have agreed to establish information exchanges and consultative processes in relation to the operation and enforcement of the agreement. Commerce will monitor import entries and publically-available information in consultation with U.S. Customs and Border Protection (CBP) and the U.S. Department of Agriculture (USDA) to determine whether there have been imports that are inconsistent with the provisions of the agreement. Commerce may also conduct reviews and verifications as appropriate.

### **Agreement suspending the countervailing duty investigation**

On December 19, 2014, Commerce and the Government of Mexico (“GOM”) signed an agreement suspending the countervailing duty investigation on sugar from Mexico. The basis for this action is the agreement by the Government of Mexico not to provide any new or additional export or import substitution subsidies on the subject merchandise and to restrict the volume of direct or indirect exports to the United States of sugar from all Mexican producers/exporters in order to eliminate completely the injurious effect of exports of this merchandise to the United States. Commerce determined that extraordinary circumstances are present in this investigation because the suspension of the investigation will be more beneficial to the domestic industry than the continuation of the investigation and because the investigation is complex. It also determined that the suspension of the investigation is in the public interest and that effective monitoring of the agreement by the United States is practicable.

The agreement has no scheduled termination date and the suspended investigations are subject to five-year reviews, through which they may be terminated. Either Commerce or the GOM may terminate the agreement at any time.

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<sup>9</sup> The antidumping duty suspension agreement was reached under Section 734(c) of the Tariff Act (19 U.S.C. § 1673c(c)).

## **Export limits**

The CVD suspension agreement contains provisions to prevent an oversupply of sugar in the U.S. market. Specifically, Commerce will calculate an annual export limit for Mexico based on 100 percent of U.S. Needs as calculated by USDA.<sup>10</sup> The CVD suspension agreement will also prevent imports from being concentrated during certain times of the year, and will limit the amount of refined sugar that may enter the U.S. market from Mexico.

The initial export period is between December 19, 2014 and September 30, 2015, and subsequent export limit periods will correspond with the sugar crop year which is October 1 through September 30 of the following calendar year. The export limit can be adjusted upwards as follows:

- At the start of the new crop year, October 1, the export limit will be set to the largest of the following values: 70 percent of U.S. Needs calculated from the July WASDE or 70 percent of U.S. Needs calculated from the September WASDE.
- Effective January 1, the export limit will be set to the maximum of the following values: 70 percent of U.S. Needs calculated from the July WASDE; 70 percent of U.S. Needs calculated from the September WASDE; or 80 percent of U.S. Needs calculated from the December WASDE.
- Effective April 1, the export limit will be set to the maximum of the following values: 70 percent of U.S. Needs calculated from the July WASDE; 70 percent of U.S. Needs calculated from the September WASDE; 80 percent of U.S. Needs calculated from the December WASDE; or 100 percent of U.S. Needs calculated from the March WASDE.
- After April 1, Commerce may increase the export limit upon USDA's request.

The agreement caps exports of refined sugar at 53 percent of total exports to Mexico from the United States during any given export limit period. For purposes of this agreement, "refined sugar" is defined as sugar with a polarity of 99.5 percent or greater. "Other sugar" is sugar that does not meet the definition of refined sugar.

General shipping patterns are established as follows: 1) no more than 30 percent of U.S. Needs calculated in each July based on the July WASDE and effective October 1 may be exported during the period October 1 through December 31; and 2) no more than 55 percent of

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<sup>10</sup> U.S. Needs are calculated using USDA data published in World Agricultural Supply and Demand Estimates Report (WASDE) reports per the following formula: (Total Use\*1.135) - Beginning Stocks - Production - TRQ Imports - Other Program Imports - Other (including other high-tier and other). The WASDE is published monthly and includes estimates of inventories, production, imports and human consumption for the current and subsequent crop year.

U.S. Needs calculated in each December based on the December WASDE and effective January 1 may be exported during the period October 1 through March 31.

### ***Monitoring and enforcement***

The GOM has agreed to ensure compliance with all the provisions of the CVD suspension agreement. It agreed to ensure that no sugar is exported from Mexico for entry into the United States during any export limit period in excess of the export limit for that period. The GOM also agreed to establish an export limit licensing and enforcement program to allocate the amount of sugar that each Mexican sugar producer/exporter can export to the United States. Sugar from Mexico will not be able to enter the United States if it is not accompanied by an export license. The export license should include a complete description of the merchandise including the applicable HTS category and the polarity of the product. Producers/exporters are also required to indicate whether the sugar is being imported for further processing in the United States by a USDA-recognized cane refiner. The GOM agreed to monitor exports to ensure compliance and will provide export data and other information to Commerce. Commerce may also conduct reviews and verifications, as appropriate. Specific procedures are set for consultations between Commerce and the GOM regarding implementation, compliance, anti-circumvention, and operations.

### **SUMMARY DATA**

Tables I-1 through I-7 present select data on the U.S. sugar program and on U.S. and Mexican sugar production, through the most recent year where data was available. Additional selected data drawn from the preliminary phase staff report are presented in Appendix C.

**Table I-1**  
**U.S. raw sugar TRQ WTO allocations and entries, FY 2014**

Country	Entries final (metric tons raw value)	TRQ <sup>1</sup> (metric tons raw value)	Final shortfalls (metric tons raw value)	Entries' share of TRQ (percent)
Argentina	21,021	49,804	28,783	42.2
Australia	94,350	96,132	1,782	98.1
Belize	7,794	12,741	4,947	61.2
Bolivia	0	9,265	9,265	0.0
Brazil	167,374	167,942	568	99.7
Colombia	26,800	27,797	997	96.4
Costa Rica	17,374	17,374	0	100.0
Dominican Republic	110,619	203,847	93,228	54.3
Ecuador	12,207	12,741	534	95.8
El Salvador	29,986	30,114	128	99.6
Fiji	10,424	10,424	0	100.0
Guatemala	53,908	55,595	1,687	98.0
Guyana	11,800	13,898	2,098	85.0
Honduras	11,464	11,582	118	99.0
India	0	9,265	9,265	0.0
Jamaica	11,499	12,741	1,242	90.3
Malawi	3,003	3,000	-3	100.0
Mauritius	2,149	6,318	4,169	34.0
Mexico <sup>2</sup>	0	7,258	7,258	0.0
Mozambique	15,057	15,057	0	100.0
Nicaragua	24,323	24,323	0	100.0
Panama	23,589	33,588	9,999	70.2
Paraguay	2,812	7,258	4,446	38.7
Peru	44,888	47,487	2,599	94.5
Philippines	128,536	156,359	27,823	82.2
South Africa	24,220	26,639	2,419	90.9
Swaziland	18,532	18,532	0	100.0
Thailand	13,419	16,216	2,797	82.8
Zimbabwe	12,394	13,898	1,504	89.2
Total	899,542	1,117,195	217,653	80.8

<sup>1</sup> In September 2013, USDA set the raw sugar TRQ at the minimum level to which the United States is committed in the Uruguay Round Agreement on Agriculture. In July 2014, USTR reallocated 99,290 MTRV of unused TRQ.

<sup>2</sup> All sugar from Mexico currently enters the United States under NAFTA access provisions.

Note.—The federal fiscal year begins on October 1 and ends on September 30.

Source: Source: Compiled from USDA Sugar and Sweeteners Yearbook, table 57e, retrieved on March 10, 2015 at <http://www.ers.usda.gov/data-products/sugar-and-sweeteners-yearbook-tables.aspx>.



Table I-2

Sugar: Beet processors and cane processors marketing allocations, Federal fiscal years 2012-2015

Firm	Final FY 2012	Final FY 2013	Final FY 2014	Initial FY 2015
<b>Quantity (STRV)</b>				
<b>Beet Processors' Marketing Allocations:</b>				
Amalgamated Sugar Co.	1,125,852	1,130,074	1,039,693	1,162,220
American Crystal Sugar Co.	1,803,354	1,940,762	1,913,912	1,996,116
Michigan Sugar Co.	667,314	545,095	659,618	560,601
Minn-Dak Farmers Co-op.	363,119	366,556	447,778	376,983
So. Minn Beet Sugar Co-op.	560,227	712,371	605,200	732,635
Western Sugar Co.	604,965	539,013	546,050	554,200
Wyoming Sugar Growers, LLC	42,360	44,194	37,421	45,451
Subtotal, beet processors	5,167,190	5,278,064	5,249,671	5,428,206
<b>Cane Processors' Marketing Allocations:</b>				
Florida Crystals	747,151	719,606	690,330	954,615
Growers Co-op of Florida	378,773	365,335	341,100	417,076
U.S. Sugar Corp	800,734	820,863	818,521	946,876
Louisiana Sugar Cane Products, Inc.	1,070,902	1,164,218	1,131,388	1,245,224
M.A. Patout & Sons	483,620	560,747	516,131	548,448
Rio Grande Valley	170,745	171,480	170,860	201,557
Gay & Robinson, Inc. <sup>1</sup>	22,637	n/a	n/a	n/a
Hawaiian Commercial & Sugar Company	245,499	230,936	275,000	245,499
Subtotal, cane processors	3,920,060	4,033,186	3,943,330	4,559,294
Reassignment to imports	517,750	400,000	650,000	n/a
<b>Total</b>	<b>9,605,000</b>	<b>9,711,250</b>	<b>9,843,000</b>	<b>9,987,500</b>

<sup>1</sup> Gay & Robinson stopped harvesting sugarcane in 2010. *Sugar era ending on Kauai as Gay & Robinson pulls out*, Honolulu Advertiser, September 11, 2008, <http://the.honoluluadvertiser.com/article/2008/Sep/11/In/hawaii809110380.html>. In FY 2014, the Commodity Credit Corporation ("CCC") determined that the Hawaiian cane processor, Gay and Robinson Inc., permanently terminated operations because it had not processed sugarcane for two consecutive crop years. The Gay and Robinson, Inc. FY 2012 allocation of 73,145 STRV was reassigned to the State of Hawaii and then further reassigned to the mainland sugarcane-producing states, because Hawaii is not expected to use all of its cane sugar allotment.

Note.—The federal fiscal year begins on October 1 and ends on September 30.

Source: *USDA Increases and Reassigns Fiscal Year 2012 Overall Allotment Quantity and Increases Fiscal Year 2012 Raw Sugar Tariff-Rate Quota*, 77 FR 23450, April 19, 2012; *USDA Announces Final Fiscal Year 2012 Beet Sugar Marketing Allotments*, September 24, 2012, found at [http://www.fsa.usda.gov/FSA/newsReleases?area=newsroom&subject=landing&topic=ner&newstype=newsrel&type=detail&item=nr\\_20120924\\_rel\\_0189.html](http://www.fsa.usda.gov/FSA/newsReleases?area=newsroom&subject=landing&topic=ner&newstype=newsrel&type=detail&item=nr_20120924_rel_0189.html); [http://www.fsa.usda.gov/Internet/FSA\\_File/sugar\\_allot\\_allocs\\_fy2013.pdf](http://www.fsa.usda.gov/Internet/FSA_File/sugar_allot_allocs_fy2013.pdf); [http://www.fsa.usda.gov/Internet/FSA\\_File/fy\\_2014\\_overall\\_beet.pdf](http://www.fsa.usda.gov/Internet/FSA_File/fy_2014_overall_beet.pdf); and *USDA Announces 2014-Crop Sugar Loan Rates and FY 2015 Sugar Program Provisions*, September 26, 2014, found at [http://www.fsa.usda.gov/FSA/newsReleases?area=newsroom&subject=landing&topic=ner&newstype=newsrel&type=detail&item=nr\\_20140926\\_rel\\_0152.html](http://www.fsa.usda.gov/FSA/newsReleases?area=newsroom&subject=landing&topic=ner&newstype=newsrel&type=detail&item=nr_20140926_rel_0152.html).

**Table I-3**

**Sugar: U.S. producers, their position on the AD/CVD petition and 704/734 review, ownership and related firms, production location(s), and share of reported production, October 2010 through December 2013**

<b>Firm</b>	<b>Position on AD/CVD petition</b>	<b>Position on 704/734 review</b>	<b>Ownership and related firms</b>	<b>Production location(s)</b>	<b>Share of raw sugar production (percent)</b>	<b>Share of refined sugar production (percent)</b>
<b>Cane Millers</b>						
Alma Plantation	Petitioner	Oppose	***	Lakeland, LA	***	***
Cajun Sugar Cooperative	Petitioner	Oppose	***	New Iberia, LA	***	***
Cora Texas	Petitioner	Oppose	***	White Castle, LA	***	***
Florida Crystals Corporation	Petitioner	Oppose	***	South Bay, FL Pahokee, FL	***	***
Lafourche Sugars	Petitioner	Oppose	***	Thibodaux, LA	***	***
Louisiana Sugar Cooperative ("LASUCA")	Petitioner	Oppose	***	St. Martinsville, LA	***	***
Lula-Westfield	Petitioner	Oppose	***	Paincourtville, LA	***	***
M. A. Patout & Son	Petitioner	Oppose	***	Jeanerette, LA Raceland, LA Franklin, LA	***	***
Rio Grande Valley Sugar Growers	Petitioner	Oppose	***	Santa Rosa, TX	***	***
St. Mary Sugar Cooperative	Petitioner	Oppose	***	Jeanerette, LA	***	***
Sugar Cane Growers Cooperative of Florida	Petitioner	Oppose	***	Belle Glade, FL	***	***
<b>Integrated Cane Millers &amp; Refiners</b>						
Hawaiian Commercial & Sugar	Petitioner	Oppose	***	Puunene, HI	***	***
United States Sugar Corporation	Petitioner	Oppose	***	Clewiston, FL	***	***

Table continued on next page.

**Table I-3--Continued**

**Sugar: U.S. producers, their position on the petition, ownership and related firms, production location(s), and share of reported production, October 2010 through December 2013**

<b>Firm</b>	<b>Position on AD/CVD petition</b>	<b>Position on 704/734 review</b>	<b>Ownership and related firms</b>	<b>Production location(s)</b>	<b>Share of raw sugar production (percent)</b>	<b>Share of refined sugar production (percent)</b>
<b>Cane Refiners<sup>1</sup></b>						
AmCane Sugar	***	Support	***	Taylor, MI	***	***
American Sugar Holdings	Petitioner	Oppose	***	Yonkers, NY Arabi, LA Baltimore, MD Crockett, CA South Bay, FL	***	***
Imperial Sugar Company	***	Support	***	Wentworth, GA Gramercy, LA Ludlow, KY Wilton, CT	***	***
Louisiana Sugar Refining	***	***	***	Gramercy, LA	***	***
<b>Beet Processors</b>						
Amalgamated Sugar Company	Petitioner	Oppose	***	Boise, ID	***	***
American Crystal Sugar Company	Petitioner	Oppose	***	Moorhead, MN	***	***

Table continued on next page.

**Table I-3--Continued**

**Sugar: U.S. producers, their position on the petition, ownership and related firms, production location(s), and share of reported production, October 2010 through December 2013**

<b>Firm</b>	<b>Position on AD/CVD petition</b>	<b>Position on 704/734 review</b>	<b>Ownership and related firms</b>	<b>Production location(s)</b>	<b>Share of raw sugar production (percent)</b>	<b>Share of refined sugar production (percent)</b>
<b>Beet Processors--Continued</b>						
Michigan Sugar Company	Petitioner	Oppose	***	Bay City, MI Caro, MI Crosswell, MI Sebewaing, MI	***	***
Minn-Dak Farmers Coop	Petitioner	Oppose	***	Wahpeton, ND	***	***
Southern Minnesota Beet Sugar Cooperative	Petitioner	Oppose	***	Renville, MN Brawley, CA	***	***
Western Sugar Cooperative	Petitioner	Oppose	***	Billings, MT Fort Morgan, CO Lovell, WY Scottsbluff, NE Torrington, WY	***	***
Wyoming Sugar Growers	Petitioner	Oppose	***	Worland, WY	***	***
<b>Refiners that primarily produce liquid sugar</b>						
Archer Daniels Midland <sup>2</sup>	Oppose	***	***	Decatur, IL (headquarters)	***	***
CSC Sugar	Oppose	Oppose	***	New Canaan, CT	***	***

<sup>1</sup> Also known as “destination refiners.” At the Commission’s hearing, Imperial Sugar named AmCane, Imperial, ASR, and CSC Sugar as “destination refiners.” Hearing transcript, pp. 88-89 (Gorrell). Imperial and AmCane also identified Louisiana Sugar Refining as a destination refiner in its second written submission. Imperial Sugar’s Second Written Submission, pp. 7-8; AmCane’s Second Written Submission, p. 7. Imperial Sugar and AmCane have filed submissions indicating that the identification of Louisiana Sugar Refining as a destination refiner in their respective second submissions was an error.

<sup>2</sup> In the preliminary phase investigations, the Commission found that Archer Daniels Midland did not engage in sufficient production-related activities to be deemed a domestic producer. *Sugar from Mexico, Inv. No. 701-TA-513 and 731-TA-1249 (Preliminary)*, USITC Publication 4467, May 2014, p. 17.

Source: Compiled from data submitted in response to Commission questionnaires in the preliminary phase investigations.

**Table I-4**

**Sugar: U.S. sugar production, crop years 2001/02 – 2012/13, and forecast for 2013/14 – 2014/15**

Crop year	Production (1,000 STRV)			Share (percent)	
	Beet sugar	Cane sugar	Total	Beet sugar	Cane sugar
2000/01	4,680	4,089	8,769	53.4	46.6
2001/02	3,915	3,985	7,900	49.6	50.4
2002/03	4,462	3,964	8,426	53.0	47.0
2003/04	4,692	3,957	8,649	54.3	45.7
2004/05	4,611	3,265	7,876	58.5	41.5
2005/06	4,444	2,955	7,399	60.1	39.9
2006/07	5,008	3,438	8,445	59.3	40.7
2007/08	4,721	3,431	8,152	57.9	42.1
2008/09	4,166	3,318	7,484	55.7	44.3
2009/10	4,575	3,400	7,975	57.4	42.6
2010/11	4,659	3,172	7,831	59.5	40.5
2011/12	4,900	3,588	8,488	57.7	42.3
2012/13	5,078	3,904	8,982	56.5	43.5
2013/14 <sup>1</sup>	4,794	3,663	8,457	56.7	43.3
2014/15 <sup>1</sup>	4,870	3,740	8,610	56.6	43.4

<sup>1</sup> Forecast made by USDA's Interagency Commodity Estimates Committee for sugar.

Source: Compiled from USDA Sugar and Sweeteners Yearbook, table 16, retrieved on January 21, 2015 at <http://www.ers.usda.gov/data-products/sugar-and-sweeteners-yearbook-tables.aspx>.

**Table I-5**

**Sugar: U.S. production, imports, and consumption, crop years 2010/11 through 2013/14, and estimated crop year 2014/15**

Item	Crop year				
	2010/11	2011/12	2012/13	2013/14 <sup>1</sup>	2014/15 <sup>2</sup>
	<b>Quantity (1,000 STRV)</b>				
Beginning stocks	1,498	1,378	1,979	2,158	1,796
U.S. production:					
Beet sugar	4,659	4,900	5,076	4,794	4,870
Cane sugar	3,172	3,588	3,905	3,663	3,740
Total production	7,831	8,488	8,981	8,457	8,610
U.S. imports:					
Mexico	1,708	1,071	2,124	2,130	1,602
Other non-program imports	18	14	7	5	10
TRQ imports	1,721	1,883	957	1,302	1,492
Other program imports	291	664	136	305	400
Total imports	3,738	3,632	3,224	3,742	3,504
Total U.S. supply	13,067	13,498	14,185	14,357	13,910
U.S. shipments:					
Food & beverage	11,193	11,141	11,511	11,828	11,859
Other <sup>3</sup>	229	173	265	428	135
Total shipments	11,422	11,313	11,776	12,255	11,994
U.S. exports	248	269	274	306	250
Ending stocks	1,378	1,979	2,158	1,796	1,666
	<b>Ratio (percent)</b>				
Stocks to use ratio	11.79	17.18	17.95	14.30	13.60
	<b>Ratio to total U.S. shipments (percent)<sup>4</sup></b>				
U.S. production	68.56	75.03	76.27	69.01	72.60
U.S. imports	32.73	32.10	27.38	30.53	29.21

<sup>1</sup> Estimated.

<sup>2</sup> Projected.

<sup>3</sup> Includes sugar transferred to sugar-containing products and alcohols, intended for re-export, as well as sugar intended for nonhuman consumption (e.g., animal feed).

<sup>4</sup> Due to the presence of sugar stocks (or inventories), total U.S. shipments of sugar may exceed (or be less than) the sum of U.S. sugar production and U.S. sugar imports.

Note.--Due to rounding and statistical adjustments in the original data, items may not add to the totals shown.

Source: Compiled from USDA Sugar and Sweeteners Yearbook, table 24a, retrieved on January 22, 2015 at <http://www.ers.usda.gov/data-products/sugar-and-sweeteners-yearbook-tables.aspx>; and World Agricultural Supply and Demand Estimates, U.S. Department of Commerce, February 10, 2015, p.16.

Table I-6

Sugar: U.S. raw and refined prices, by month, October 2011 – February 2015

Period	Raw sugar <sup>1</sup>	Refined sugar <sup>2</sup>
	Price (cents per pound)	
<b>2011:</b>		
October	38.19	59.00
November	37.92	58.75
December	36.32	55.10
<b>2012:</b>		
January	34.69	51.75
February	33.57	51.00
March	34.94	51.00
April	31.87	50.25
May	30.20	47.81
June	28.89	45.00
July	28.68	42.00
August	28.84	41.20
September	26.27	38.25
October	23.89	36.00
November	22.52	34.60
December	22.41	31.75
<b>2013:</b>		
January	21.20	30.50
February	20.72	28.50
March	20.82	27.60
April	20.38	26.63
May	19.51	26.30
June	19.31	26.50
July	19.22	26.00
August	20.97	25.50
September	21.05	26.25
October	21.82	27.38
November	20.61	28.00
December	19.95	27.50
<b>2014:</b>		
January	20.27	26.50
February	21.65	26.25
March	22.03	26.50
April	24.33	29.75
May	24.66	31.60
June	25.65	35.00
July	24.78	36.00
August	25.64	36.60
September	25.36	37.50

Table continued on next page.

**Table I-6--Continued****Sugar: U.S. raw and refined prices, by month, October 2011 – February 2015**

Period	Raw sugar <sup>1</sup>	Refined sugar <sup>2</sup>
	Price (cents per pound)	
October	26.41	36.60
November	24.26	36.00
December	24.81	36.00
<b>2015:</b>		
January	25.24	36.00
February	24.62	35.50

<sup>1</sup> Contract No. 14/16, duty fee paid New York. Average of nearest futures month for which an entire month of prices will be available.

<sup>2</sup> U.S. wholesale refined beet sugar price, Midwest markets. Simple average of the lower end of the range of quotations for days in that month. Quotations are weekly.

Source: Compiled from USDA Sugar and Sweeteners Yearbook, tables 4 and 5, retrieved on March 9, 2015 at <http://www.ers.usda.gov/data-products/sugar-and-sweeteners-yearbook-tables.aspx>.

**Table I-7****Sugar: U.S. raw and refined prices, biweekly, December 19, 2014 through February 27, 2015**

Date	Raw cane <sup>1</sup>	Midwest refined <sup>2</sup>
	Price (cents per pound)	
December 19, 2014	25.30	36.00
January 2, 2015	25.10	36.00
January 16, 2015	25.45	36.00
January 30, 2015	25.00	36.00
February 13, 2015	24.50	35.00
February 27, 2015	24.50	35.00

<sup>1</sup> Delivered refiner.

<sup>2</sup> Beet sugar, f.o.b. plant.

Source: Milling & Baking News, March 3, 2015, p. 38; found at [http://www.nextbook.com/sosland/mbn/mbn/2015\\_03\\_03/#/38](http://www.nextbook.com/sosland/mbn/mbn/2015_03_03/#/38).



**Table I-8****Sugar: Mexican production of sugarcane, harvested area, production of refined sugar, and production of alcohol from sugar, crop years 2011/12 through 2013/14**

Item	Crop year		
	2011/12	2012/13	2013/14
Sugarcane:			
Harvested area ( <i>acres</i> )	1,739,029	1,928,047	1,953,318
Sugarcane crushed, gross ( <i>short tons</i> )	50,961,207	67,724,395	59,887,514
Sugarcane crushed, net ( <i>short tons</i> )	49,023,383	65,048,930	57,592,257
Sugarcane crushed per acre ( <i>short tons per acre</i> )	28.2	33.7	29.5
Sugar production:			
Refinada sugar production ( <i>short tons</i> )	1,725,136	2,297,750	1,813,337
Estandar sugar production ( <i>short tons</i> )	3,524,829	4,942,249	4,428,603
Blanca especial sugar production ( <i>short tons</i> )	264,304	382,164	308,436
Muscovado sugar production ( <i>short tons</i> )	50,714	66,237	86,962
Total sugar production ( <i>short tons</i> )	5,564,984	7,688,400	6,637,338
Alcohol:			
Alcohol production ( <i>gallons</i> )	4,044,278	4,407,964	4,651,502

Source: CONADESUCA, Sistema Infocaña, Resumen Historico Años, available at <http://www.campomexicano.gob.mx/azcf/reportes/reportes.php?tipo=OTROS> (accessed January 22, 2015).

**Table I-9****Sugar: Mexican production and supply, crop years 2009/10-2014/15**

Item	Crop year					
	2009/10	2010/11	2011/12	2012/13	2013/14 <sup>1</sup>	2014/15 <sup>1</sup>
	Quantity (1,000 STRV)					
Beginning stocks	687	1,073	888	1,129	1,706	971
Production	5,638	6,057	5,898	8,149	7,036	7,188
Imports	949	338	557	254	151	224
Total supply	7,275	7,467	7,343	9,531	8,895	8,383
Exports	828	1,717	1,086	2,305	2,934	1,982
Human domestic consumption	5,087	4,615	4,832	5,009	4,788	4,907
Other disappearance	287	247	297	511	202	378
Total use	6,202	6,579	6,215	7,825	7,924	7,268
Ending stocks	1,073	888	1,128	1,706	971	1,115
Ending stocks/human consumption ( <i>percent</i> )	21.1	19.2	23.3	34.1	20.3	22.7
Ending stocks/ total use ( <i>percent</i> )	17.3	13.5	18.2	21.8	12.3	15.3

<sup>1</sup> Forecast.

Source: Compiled from USDA Sugar and Sweeteners Yearbook, table 56, retrieved on March 10, 2015 at <http://www.ers.usda.gov/data-products/sugar-and-sweeteners-yearbook-tables.aspx>.



**APPENDIX A**

***FEDERAL REGISTER NOTICES***



The Commission makes available notices relevant to its investigations and reviews on its website, [www.usitc.gov](http://www.usitc.gov). In addition, the following tabulation presents, in chronological order, *Federal Register* notices issued by the Commission and Commerce during the current proceeding.

Citation	Title	Link
79 FR 78039 December 29, 2014	<i>Sugar From Mexico: Suspension of Antidumping Investigation</i>	<a href="https://federalregister.gov/a/2014-30396">https://federalregister.gov/a/2014-30396</a>
79 FR 78044 December 29, 2014	<i>Sugar From Mexico: Suspension of Countervailing Duty Investigation</i>	<a href="https://federalregister.gov/a/2014-30392">https://federalregister.gov/a/2014-30392</a>
80 FR 3977 January 26, 2015	<i>Sugar from Mexico; Institution of Reviews of Agreements Suspending Antidumping Duty and Countervailing Duty Investigations</i>	<a href="https://federalregister.gov/a/2015-01264">https://federalregister.gov/a/2015-01264</a>



**APPENDIX B**

**CALENDAR OF THE PUBLIC ORAL PRESENTATIONS**





**CALENDAR OF PUBLIC ORAL PRESENTATIONS**

Those listed below appeared as witnesses at the United States International Trade Commission’s oral presentations:

**Subject:** Sugar from Mexico  
**Inv. Nos.:** 704-TA-1 and 734-TA-1 (Review)  
**Date and Time:** February 19, 2015 - 9:30 a.m.

Sessions were held in connection with these investigations in the Main Hearing Room (room 101), 500 E Street, SW, Washington, DC.

**EMBASSY WITNESSES:**

**Embassy of Mexico  
Washington, DC**

**Kenneth Smith Ramos, Head of the Trade and NAFTA Office of the Ministry  
of Economy**

**Salvador Behar, Legal Counsel for International Trade of the Trade and NAFTA  
Office of the Ministry of Economy**

**In Favor of the 704/734 Petitions:**

TRADEWINS LLC  
Washington, DC  
on behalf of

AmCane Sugar LLC

**David Rosenzweig, Chief Executive Officer,  
AmCane Sugar LLC**

**John Magnus** )  
 ) – OF COUNSEL  
**Sheridan S. McKinney** )

**In Favor of the 704/734 Petitions (continued):**

White & Case LLP  
Washington, DC  
on behalf of

Imperial Sugar Company (“Imperial Sugar”)

**Michael A. Gorrell**, President *and* Chief Executive Officer,  
Imperial Sugar

**Patrick Henneberry**, Senior Vice President, Imperial Sugar

**Gregory J. Spak** )  
**Kristina Zissis** ) – OF COUNSEL  
**Ron Kendler** )

**In Opposition to the 704/734 Petitions:**

Cassidy Levy Kent (USA) LLP  
Washington, DC  
on behalf of

The American Sugar Coalition and its members

**Dr. Colin A. Carter**, Distinguished Professor of Agricultural and  
Resource Economic, University of California-Davis

**Robert C. Cassidy** )  
**John D. Greenwald** )  
 ) – OF COUNSEL  
**Jennifer A. Hillman** )  
**James R. Cannon, Jr.** )

**In Opposition to the 704/734 Petitions (continued):**

Greenberg Traurig LLP  
Washington, DC  
on behalf of

Cámara Nacional De Las Industrias Azucarera Y Alcohólera  
("Mexican Sugar Chamber")

**Juan Cortina Gallardo**, President, Ingenio Tala de C.V. ("Tala")  
and its cross-owned affiliates, (collectively, "GAM")

**Humberto Jasso Torres**, Director, General, Mexican Sugar Chamber

**Christophe Armero**, Director, International Business and Strategy  
Beta San Miguel SA de CV

**Dr. Seth T. Kaplan**, Senior Economic Advisor, Capital Trade, Inc.

**Oscar Cruz**, Counsel, Cruz Advogados

**Irwin P. Altschuler** )  
**Philippe M. Bruno** ) – OF COUNSEL  
**Rosa S. Jeong** )

Covington & Burlington LLP  
Washington, DC  
on behalf

CSC Sugar LLC

**Paul J. Farmer**, President *and* Chief Executive Officer, CSC  
Sugar LLC

**David R. Grace** )  
 ) – OF COUNSEL  
**James McCall Smith** )

**REBUTTAL:**

In Favor of the 704/734 Petitions (**John Magnus**, TRADEWINS LLC)



**APPENDIX C**  
**SUMMARY DATA**



Table C-1

Sugar: Summary data concerning the U.S. market excluding ADM, crop years 2010-11 through 2012-13, Oct-Dec 2012-13, and Oct-Dec 2013-14

(Quantity=short tons raw value; Value=1,000 dollars; Unit values, unit labor costs, and unit expenses=dollars per short ton raw value; Period changes=percent--exceptions noted)

	Report data					Period changes			
	Crop year			October to December		Full crop year comparisons			Partial year comparison
	2010-11	2011-12	2012-13	2012-13	2013-14	2010-11 to 2012-13	2010-11 to 2011-12	2011-12 to 2012-13	2012-13 to 2013-14
<b>U.S. consumption quantity:</b>									
Amount.....	10,738	10,719	11,659	2,727	3,093	8.6	(0.2)	8.8	13.4
Producers' share (fn1):									
Included producers.....	***	***	***	***	***	***	***	***	***
Excluded producers.....	***	***	***	***	***	***	***	***	***
All producers.....	70.4	72.8	74.6	77.6	75.4	4.2	2.5	1.8	(2.3)
Importers' share (fn1):									
Subject.....	15.4	9.9	17.7	10.0	18.5	2.4	(5.5)	7.8	8.5
Nonsubject.....	14.3	17.3	7.7	12.4	6.1	(6.6)	3.0	(9.6)	(6.3)
Total imports.....	29.6	27.2	25.4	22.4	24.6	(4.2)	(2.5)	(1.8)	2.3
<b>U.S. consumption value:</b>									
Amount.....	7,990,761	8,482,828	7,720,911	2,008,710	1,820,562	(3.4)	6.2	(9.0)	(9.4)
Producers' share (fn1):									
Included producers.....	***	***	***	***	***	***	***	***	***
Excluded producers.....	***	***	***	***	***	***	***	***	***
All producers.....	70.6	74.7	80.1	80.9	81.1	9.4	4.1	5.4	0.1
Importers' share (fn1):									
Subject.....	15.8	10.0	13.5	8.8	14.1	(2.3)	(5.8)	3.5	5.3
Nonsubject.....	13.6	15.3	6.4	10.3	4.8	(7.1)	1.7	(8.9)	(5.4)
Total imports.....	29.4	25.3	19.9	19.1	18.9	(9.4)	(4.1)	(5.4)	(0.1)
<b>Additional domestic value added as a ratio to the value of apparent U.S. consumption on:</b>									
Subject imports.....	***	***	***	***	***	***	***	***	***
Nonsubject imports.....	***	***	***	***	***	***	***	***	***
Total imports.....	***	***	***	***	***	***	***	***	***
<b>U.S. imports from--</b>									
Subject sources:									
Quantity.....	1,650	1,062	2,066	272	573	25.2	(35.6)	94.5	110.3
Value.....	1,261,924	849,049	1,042,185	176,964	256,880	(17.4)	(32.7)	22.7	45.2
Unit value.....	\$765	\$799	\$504	\$650	\$448	(34.0)	4.5	(36.9)	(31.0)
Ending inventory quantity.....	101	156	186	109	192	84.3	54.4	19.3	76.2
Nonsubject sources:									
Quantity.....	1,532	1,850	895	338	189	(41.6)	20.8	(51.6)	(44.1)
Value.....	1,086,181	1,298,815	497,767	206,235	87,963	(54.2)	19.6	(61.7)	(57.3)
Unit value.....	\$709	\$702	\$556	\$611	\$466	(21.6)	(1.0)	(20.8)	(23.7)
Ending inventory quantity.....	133	241	109	124	58	(18.2)	81.0	(54.8)	(53.1)
Total imports:									
Quantity.....	3,183	2,912	2,962	610	762	(6.9)	(8.5)	1.7	24.9
Value.....	2,348,105	2,147,864	1,539,952	383,199	344,843	(34.4)	(8.5)	(28.3)	(10.0)
Unit value.....	\$738	\$737	\$520	\$628	\$453	(29.5)	(0.0)	(29.5)	(27.9)
Ending inventory quantity.....	234	397	295	233	250	26.0	69.5	(25.7)	7.3
<b>U.S. processors' and refiners:</b>									
Average capacity quantity.....	***	***	***	***	***	***	***	***	***
Production quantity.....	***	***	***	***	***	***	***	***	***
Capacity utilization (fn1).....	***	***	***	***	***	***	***	***	***
Share of U.S. production using:									
Domestic raw sugar/sugar crop inputs.....	***	***	***	***	***	***	***	***	***
Mexican raw sugar/estandar inputs.....	***	***	***	***	***	***	***	***	***
Nonsubject raw sugar inputs.....	***	***	***	***	***	***	***	***	***
Imported raw sugar/estandar inputs.....	***	***	***	***	***	***	***	***	***
<b>U.S. shipments produced from domestic raw sugar/sugar crop sources:</b>									
Quantity.....	***	***	***	***	***	***	***	***	***
Value.....	***	***	***	***	***	***	***	***	***
Unit value.....	***	***	***	***	***	***	***	***	***
<b>U.S. shipments produced from imported raw sugar/estandar from Mexico:</b>									
Quantity.....	***	***	***	***	***	***	***	***	***
Value.....	***	***	***	***	***	***	***	***	***
Unit value.....	***	***	***	***	***	***	***	***	***
of which estimated domestic value.....	***	***	***	***	***	***	***	***	***
of which estimated subject import value.....	***	***	***	***	***	***	***	***	***
<b>U.S. shipments produced from imported raw sugar from nonsubject sources:</b>									
Quantity.....	***	***	***	***	***	***	***	***	***
Value.....	***	***	***	***	***	***	***	***	***
Unit value.....	***	***	***	***	***	***	***	***	***
of which estimated domestic value.....	***	***	***	***	***	***	***	***	***
of which estimated nonsubject import value.....	***	***	***	***	***	***	***	***	***
<b>Total U.S. shipments:</b>									
Quantity.....	***	***	***	***	***	***	***	***	***
Value.....	***	***	***	***	***	***	***	***	***
Unit value.....	***	***	***	***	***	***	***	***	***
<b>Export shipments:</b>									
Quantity.....	***	***	***	***	***	***	***	***	***
Value.....	***	***	***	***	***	***	***	***	***
Unit value.....	***	***	***	***	***	***	***	***	***
Ending inventory quantity.....	***	***	***	***	***	***	***	***	***
Inventories/total shipments (fn1).....	***	***	***	***	***	***	***	***	***
Production workers.....	***	***	***	***	***	***	***	***	***
Hours worked (1,000s).....	***	***	***	***	***	***	***	***	***
Wages paid (\$1,000).....	***	***	***	***	***	***	***	***	***
Productivity (short tons raw value per 1,000 hours).....	***	***	***	***	***	***	***	***	***
Unit labor costs.....	***	***	***	***	***	***	***	***	***

Table C-1--Continued

Sugar: Summary data concerning the U.S. market, crop years 2010-11 through 2012-13, Oct-Dec 2012-13, and Oct-Dec 2013-14

(Quantity=short tons raw value; Value=1,000 dollars; Unit values, unit labor costs, and unit expenses=dollars per short ton raw value; Period changes=percent--exceptions noted)

	Report data					Period changes			Partial year comparison 2012-13 to 2013-14
	Crop year		October to December			Full crop year comparisons			
	2010-11	2011-12	2012-13	2012-13	2013-14	2010-11 to 2012-13	2010-11 to 2011-12	2011-12 to 2012-13	
Net Sales:									
Quantity.....	***	***	***	***	***	***	***	***	***
Value.....	***	***	***	***	***	***	***	***	***
Unit value.....	***	***	***	***	***	***	***	***	***
Cost of goods sold (COGS).....	***	***	***	***	***	***	***	***	***
Gross profit of (loss).....	***	***	***	***	***	***	***	***	***
SG&A expenses.....	***	***	***	***	***	***	***	***	***
Operating income or (loss).....	***	***	***	***	***	***	***	***	***
Capital expenditures.....	***	***	***	***	***	***	***	***	***
Unit COGS.....	***	***	***	***	***	***	***	***	***
Unit SG&A expenses.....	***	***	***	***	***	***	***	***	***
Unit operating income or (loss).....	***	***	***	***	***	***	***	***	***
COGS/sales (fn1).....	***	***	***	***	***	***	***	***	***
Operating income or (loss)/sales (fn1).....	***	***	***	***	***	***	***	***	***
U.S. millers':									
Average capacity quantity.....	***	***	***	***	***	***	***	***	***
Production quantity.....	***	***	***	***	***	***	***	***	***
Capacity utilization (fn1).....	***	***	***	***	***	***	***	***	***
U.S. shipments:									
Quantity.....	***	***	***	***	***	***	***	***	***
Value.....	***	***	***	***	***	***	***	***	***
Unit value.....	***	***	***	***	***	***	***	***	***
Export shipments:									
Quantity.....	***	***	***	***	***	***	***	***	***
Value.....	***	***	***	***	***	***	***	***	***
Unit value.....	***	***	***	***	***	***	***	***	***
Ending inventory quantity.....	***	***	***	***	***	***	***	***	***
Inventories/total shipments (fn1).....	***	***	***	***	***	***	***	***	***
Production workers.....	***	***	***	***	***	***	***	***	***
Hours worked (1,000s).....	***	***	***	***	***	***	***	***	***
Wages paid (\$1,000).....	***	***	***	***	***	***	***	***	***
Productivity (short tons raw value per 1,000 hours).....	***	***	***	***	***	***	***	***	***
Unit labor costs.....	***	***	***	***	***	***	***	***	***
Net Sales:									
Quantity.....	***	***	***	***	***	***	***	***	***
Value.....	***	***	***	***	***	***	***	***	***
Unit value.....	***	***	***	***	***	***	***	***	***
Cost of goods sold (COGS).....	***	***	***	***	***	***	***	***	***
Gross profit of (loss).....	***	***	***	***	***	***	***	***	***
SG&A expenses.....	***	***	***	***	***	***	***	***	***
Operating income or (loss).....	***	***	***	***	***	***	***	***	***
Capital expenditures.....	***	***	***	***	***	***	***	***	***
Unit COGS.....	***	***	***	***	***	***	***	***	***
Unit SG&A expenses.....	***	***	***	***	***	***	***	***	***
Unit operating income or (loss).....	***	***	***	***	***	***	***	***	***
COGS/sales (fn1).....	***	***	***	***	***	***	***	***	***
Operating income or (loss)/sales (fn1).....	***	***	***	***	***	***	***	***	***

fn1.--Report data are in percent and period changes are in percentage points.



**Table C-2**

**Sugar: \*\*\* purchases of imports and production from imported inputs, crop years 2010/11 through 2012/13, Oct-Dec 2012/13, and Oct-Dec 2013/14**

\* \* \* \* \*

**Table C-3**

**Sugar: \*\*\* imports and production from imports, crop years 2010/11 through 2012/13, Oct-Dec 2012/13, and Oct-Dec 2013/14**

\* \* \* \* \*

**Table C-4**

**Sugar: \*\*\* purchases of imports and production from imported inputs, crop years 2010/11 through 2012/13, Oct-Dec 2012/13, and Oct-Dec 2013/14**

\* \* \* \* \*

**Table C-5**

**Sugar: \*\*\* imports and production from imports, crop years 2010/11 through 2012/13, Oct-Dec 2012/13, and Oct-Dec 2013/14**

\* \* \* \* \*

**Table C-6**

**Sugar: \*\*\* imports and production from imports, crop years 2010/11 through 2012/13, Oct-Dec 2012/13, and Oct-Dec 2013/14**

\* \* \* \* \*

**Table C-7**

**Sugar: \*\*\* imports, purchases of imports and production from imported inputs, crop years 2010/11 through 2012/13, Oct-Dec 2012/13, and Oct-Dec 2013/14**

\* \* \* \* \*

**Table C-8**

**Sugar: \*\*\* imports and production from imports, crop years 2010/11 through 2012/13, Oct-Dec 2012/13, and Oct-Dec 2013/14**

\* \* \* \* \*

**Table C-9**

**Sugar: \*\*\* purchases of imports and production from imported inputs, crop years 2010/11 through 2012/13, Oct-Dec 2012/13, and Oct-Dec 2013/14**

\* \* \* \* \*

**Table C-10**

**Sugar: \*\*\* purchases of imports and production from imported inputs, crop years 2010/11 through 2012/13, Oct-Dec 2012/13, and Oct-Dec 2013/14**

\* \* \* \* \*

**Table C-11**

**Sugar: Estimated value added of U.S. shipments of U.S. refining operations, by source, crop years 2010/11 through 2012/13, Oct-Dec 2012/13, and Oct-Dec 2013/14**

\* \* \* \* \*

**PRICE DATA**

In the preliminary phase of these investigations, the Commission requested that U.S. producers and importers provide quarterly data for the total quantity and f.o.b. value of the following sugar products shipped to unrelated U.S. customers from October 2011 to December 2013.

**Product 1**-- Raw cane sugar or estandar sold to sugar refiners.

**Product 2**-- Refined sugar or estandar sold to industrial producers of food, beverages or other sugar-containing-products (e.g., General Mills, Mars, Coca-cola, Kraft).

**Product 3**-- Refined sugar sold in packages of 50 lbs. or less to grocery chains (e.g., Safeway, Harris Teeter, Walmart, Costco).

**Product 4**-- Refined sugar sold in packages of 50 kgs. (110.23 lbs.) or less to institutional and/or food service providers (e.g., Sysco, restaurant chains, bakeries, schools, hospitals, prisons).

**Product 5**-- Refined sugar sold in bulk to institutional and/or food service providers (e.g., restaurant chains, bakeries, schools, hospitals, prisons).

**Product 6.-- Refined sugar or estandar sold in packages of 50 kgs. (110.23 lbs.) or less to distributors (i.e., companies such as Batory Foods that buy sugar to resell to the industrial trade for use as an ingredient).**

**Product 7.-- Refined sugar or estandar sold in bulk to distributors (i.e., companies such as Batory Foods that buy sugar to resell to the industrial trade for use as an ingredient).**

**Table C-12**

**Sugar: Instances of underselling/overselling and the range and average of margins, by country, October 2011-December 2013**

Source	Underselling			Overselling		
	Number of instances	Range (percent)	Average margin (percent)	Number of instances	Range (percent)	Average margin (percent)
Product 1	1	2.3 to 2.3	2.3	7	4.6 to 54.0	33.9
Product 2	11	1.1 to 12.4	6.3	16	1.4 to 15.4	7.8
Product 3	27	1.5 to 30.3	15.8	0	-	-
Product 4	27	2.2 to 26.5	13.5	0	-	-
Product 5	6	9.9 to 28.4	15.6	9	7.5 to 21.0	14.1
Product 6	18	0.6 to 18.8	10.5	9	2.5 to 7.3	4.7
Product 7	14	3.0 to 21.7	11.7	13	0.7 to 20.8	9.8
Total	104	0.6 to 30.3	12.6	54	0.7 to 54.0	12.2

Source: Preliminary phase staff report, Table V-11. Compiled from data submitted in response to Commission questionnaires.

**Table C-13**

**Sugar: Results of operations of U.S. processors and refiners, by firm, 2012/13 years 2010/11 through 2012/13, October-December 2012/13, and October-December 2013/14**

Firm	Crop years			October to December	
	2010/11	2011/12	2012/13	2012/13	2013/14
<b>Net Sales Quantity (1,000 STRV)</b>					
AmCane Sugar	***	***	***	***	***
American Crystal	***	***	***	***	***
American Sugar Holdings	***	***	***	***	***
Archer Daniels Midland	***	***	***	***	***
CSC Sugar	***	***	***	***	***
Hawaiian Commercial & Sugar Co.	***	***	***	***	***
Imperial Sugar	***	***	***	***	***
Louisiana Sugar Refining	***	***	***	***	***
Michigan Sugar Co.	***	***	***	***	***
Minn-Dak Farmers Coop	***	***	***	***	***
So.Minnesota Beet Sugar Coop	***	***	***	***	***
Amalgamated Sugar	***	***	***	***	***
Western Sugar Coop	***	***	***	***	***
U.S. Sugar Corp. <sup>1</sup>	***	***	***	***	***
Wyoming Sugar Growers	***	***	***	***	***
All firms	10,704	10,800	11,451	2,720	2,923
All firms excluding melt houses	***	***	***	***	***
<b>Net Sales Value (\$1,000)</b>					
AmCane Sugar	***	***	***	***	***
American Crystal	***	***	***	***	***
American Sugar Holdings	***	***	***	***	***
Archer Daniels Midland	***	***	***	***	***
CSC Sugar	***	***	***	***	***
Hawaiian Commercial & Sugar Co.	***	***	***	***	***
Imperial Sugar	***	***	***	***	***
Louisiana Sugar Refining	***	***	***	***	***
Michigan Sugar Co.	***	***	***	***	***
Minn-Dak Farmers Coop	***	***	***	***	***
So.Minnesota Beet Sugar Coop	***	***	***	***	***
Amalgamated Sugar	***	***	***	***	***
Western Sugar Coop	***	***	***	***	***
U.S. Sugar Corp. <sup>1</sup>	***	***	***	***	***
Wyoming Sugar Growers	***	***	***	***	***
All firms	8,485,821	9,066,487	8,407,088	2,203,559	1,895,682
All firms excluding melt houses	***	***	***	***	***

Table continued on the next page.

**Table C-13--Continued**

**Sugar: Results of operations of U.S. processors and refiners, by firm, 2012/13 years 2010/11 through 2012/13, October-December 2012/13, and October-December 2013/14**

Firm	Crop years			October to December	
	2010/11	2011/12	2012/13	2012/13	2013/14
<b>Total COGS (\$1,000)</b>					
AmCane Sugar	***	***	***	***	***
American Crystal <sup>2</sup>	***	***	***	***	***
American Sugar Holdings	***	***	***	***	***
Archer Daniels Midland	***	***	***	***	***
CSC Sugar	***	***	***	***	***
Hawaiian Commercial & Sugar Co.	***	***	***	***	***
Imperial Sugar	***	***	***	***	***
Louisiana Sugar Refining	***	***	***	***	***
Michigan Sugar Co.	***	***	***	***	***
Minn-Dak Farmers Coop	***	***	***	***	***
So.Minnesota Beet Sugar Coop	***	***	***	***	***
Amalgamated Sugar	***	***	***	***	***
Western Sugar Coop	***	***	***	***	***
U.S. Sugar Corp. <sup>1</sup>	***	***	***	***	***
Wyoming Sugar Growers	***	***	***	***	***
All firms	6,961,673	7,525,414	6,904,107	1,796,396	1,666,458
All firms excluding melt houses	***	***	***	***	***
<b>Gross profit or (loss) (\$1,000)</b>					
AmCane Sugar	***	***	***	***	***
American Crystal	***	***	***	***	***
American Sugar Holdings	***	***	***	***	***
Archer Daniels Midland	***	***	***	***	***
CSC Sugar	***	***	***	***	***
Hawaiian Commercial & Sugar Co.	***	***	***	***	***
Imperial Sugar	***	***	***	***	***
Louisiana Sugar Refining	***	***	***	***	***
Michigan Sugar Co.	***	***	***	***	***
Minn-Dak Farmers Coop	***	***	***	***	***
So.Minnesota Beet Sugar Coop	***	***	***	***	***
Amalgamated Sugar	***	***	***	***	***
Western Sugar Coop	***	***	***	***	***
U.S. Sugar Corp.	***	***	***	***	***
Wyoming Sugar Growers	***	***	***	***	***
All firms	1,524,148	1,541,073	1,502,981	407,163	229,224
All firms excluding melt houses	***	***	***	***	***

Table continued on the next page.

Table C-13--Continued

Sugar: Results of operations of U.S. processors and refiners, by firm, 2012/13 years 2010/11 through 2012/13, October-December 2012/13, and October-December 2013/14

Firm	Crop years			October to December	
	2010/11	2011/12	2012/13	2012/13	2013/14
<b>SG&amp;A expenses (\$1,000)</b>					
AmCane Sugar	***	***	***	***	***
American Crystal	***	***	***	***	***
American Sugar Holdings	***	***	***	***	***
Archer Daniels Midland	***	***	***	***	***
CSC Sugar	***	***	***	***	***
Hawaiian Commercial & Sugar Co.	***	***	***	***	***
Imperial Sugar	***	***	***	***	***
Louisiana Sugar Refining	***	***	***	***	***
Michigan Sugar Co.	***	***	***	***	***
Minn-Dak Farmers Coop	***	***	***	***	***
So.Minnesota Beet Sugar Coop	***	***	***	***	***
Amalgamated Sugar	***	***	***	***	***
Western Sugar Coop	***	***	***	***	***
U.S. Sugar Corp.	***	***	***	***	***
Wyoming Sugar Growers	***	***	***	***	***
All firms	784,773	832,990	869,445	260,282	200,941
All firms excluding melt houses	***	***	***	***	***
<b>Operating income or (loss) (\$1,000)</b>					
AmCane Sugar	***	***	***	***	***
American Crystal <sup>2</sup>	***	***	***	***	***
American Sugar Holdings	***	***	***	***	***
Archer Daniels Midland	***	***	***	***	***
CSC Sugar	***	***	***	***	***
Hawaiian Commercial & Sugar Co.	***	***	***	***	***
Imperial Sugar	***	***	***	***	***
Louisiana Sugar Refining	***	***	***	***	***
Michigan Sugar Co.	***	***	***	***	***
Minn-Dak Farmers Coop	***	***	***	***	***
So.Minnesota Beet Sugar Coop	***	***	***	***	***
Amalgamated Sugar	***	***	***	***	***
Western Sugar Coop	***	***	***	***	***
U.S. Sugar Corp.	***	***	***	***	***
Wyoming Sugar Growers	***	***	***	***	***
All firms	739,375	708,083	633,536	146,881	28,283
All firms excluding melt houses	***	***	***	***	***

Table continued on the next page.

Table C-13--Continued

Sugar: Results of operations of U.S. processors and refiners, by firm, 2012/13 years 2010/11 through 2012/13, October-December 2012/13, and October-December 2013/14

Firm	Crop years			October to December	
	2010/11	2011/12	2012/13	2012/13	2013/14
<b>Raw material costs as a ratio to net sales (percent)</b>					
AmCane Sugar	***	***	***	***	***
American Crystal	***	***	***	***	***
American Sugar Holdings	***	***	***	***	***
Archer Daniels Midland	***	***	***	***	***
CSC Sugar	***	***	***	***	***
Hawaiian Commercial & Sugar Co.	***	***	***	***	***
Imperial Sugar	***	***	***	***	***
Louisiana Sugar Refining	***	***	***	***	***
Michigan Sugar Co.	***	***	***	***	***
Minn-Dak Farmers Coop	***	***	***	***	***
So.Minnesota Beet Sugar Coop	***	***	***	***	***
Amalgamated Sugar	***	***	***	***	***
Western Sugar Coop	***	***	***	***	***
U.S. Sugar Corp.	***	***	***	***	***
Wyoming Sugar Growers	***	***	***	***	***
All firms	60.5	61.9	58.2	59.3	61.2
All firms excluding melt houses	***	***	***	***	***
<b>Direct labor costs as a ratio to net sales (percent)</b>					
AmCane Sugar	***	***	***	***	***
American Crystal	***	***	***	***	***
American Sugar Holdings	***	***	***	***	***
Archer Daniels Midland	***	***	***	***	***
CSC Sugar	***	***	***	***	***
Hawaiian Commercial & Sugar Co.	***	***	***	***	***
Imperial Sugar	***	***	***	***	***
Louisiana Sugar Refining	***	***	***	***	***
Michigan Sugar Co.	***	***	***	***	***
Minn-Dak Farmers Coop	***	***	***	***	***
So.Minnesota Beet Sugar Coop	***	***	***	***	***
Amalgamated Sugar	***	***	***	***	***
Western Sugar Coop	***	***	***	***	***
U.S. Sugar Corp.	***	***	***	***	***
Wyoming Sugar Growers	***	***	***	***	***
All firms	3.8	3.0	3.7	3.8	5.1
All firms excluding melt houses	***	***	***	***	***

Table continued on the next page.

Table C-13--Continued

Sugar: Results of operations of U.S. processors and refiners, by firm, 2012/13 years 2010/11 through 2012/13, October-December 2012/13, and October-December 2013/14

Firm	Crop years			October to December	
	2010/11	2011/12	2012/13	2012/13	2013/14
<b>Other factory costs as a ratio to net sales (percent)</b>					
AmCane Sugar	***	***	***	***	***
American Crystal <sup>2</sup>	***	***	***	***	***
American Sugar Holdings	***	***	***	***	***
Archer Daniels Midland	***	***	***	***	***
CSC Sugar	***	***	***	***	***
Hawaiian Commercial & Sugar Co.	***	***	***	***	***
Imperial Sugar	***	***	***	***	***
Louisiana Sugar Refining	***	***	***	***	***
Michigan Sugar Co.	***	***	***	***	***
Minn-Dak Farmers Coop	***	***	***	***	***
So.Minnesota Beet Sugar Coop	***	***	***	***	***
Amalgamated Sugar	***	***	***	***	***
Western Sugar Coop	***	***	***	***	***
U.S. Sugar Corp.	***	***	***	***	***
Wyoming Sugar Growers	***	***	***	***	***
All firms	17.8	18.1	20.2	18.5	21.6
All firms excluding melt houses	***	***	***	***	***
<b>COGS as a ratio to net sales (percent)</b>					
AmCane Sugar	***	***	***	***	***
American Crystal <sup>2</sup>	***	***	***	***	***
American Sugar Holdings	***	***	***	***	***
Archer Daniels Midland	***	***	***	***	***
CSC Sugar	***	***	***	***	***
Hawaiian Commercial & Sugar Co.	***	***	***	***	***
Imperial Sugar	***	***	***	***	***
Louisiana Sugar Refining	***	***	***	***	***
Michigan Sugar Co.	***	***	***	***	***
Minn-Dak Farmers Coop	***	***	***	***	***
So.Minnesota Beet Sugar Coop	***	***	***	***	***
Amalgamated Sugar	***	***	***	***	***
Western Sugar Coop	***	***	***	***	***
U.S. Sugar Corp.	***	***	***	***	***
Wyoming Sugar Growers	***	***	***	***	***
All firms	82.0	83.0	82.1	81.5	87.9
All firms excluding melt houses	***	***	***	***	***

Table continued on the next page.



Table C-13--Continued

Sugar: Results of operations of U.S. processors and refiners, by firm, 2012/13 years 2010/11 through 2012/13, October-December 2012/13, and October-December 2013/14

Firm	Crop years			October to December	
	2010/11	2011/12	2012/13	2012/13	2013/14
<b>SG&amp;A expenses as a ratio to net sales (percent)</b>					
AmCane Sugar	***	***	***	***	***
American Crystal	***	***	***	***	***
American Sugar Holdings	***	***	***	***	***
Archer Daniels Midland	***	***	***	***	***
CSC Sugar	***	***	***	***	***
Hawaiian Commercial & Sugar Co.	***	***	***	***	***
Imperial Sugar	***	***	***	***	***
Louisiana Sugar Refining	***	***	***	***	***
Michigan Sugar Co.	***	***	***	***	***
Minn-Dak Farmers Coop	***	***	***	***	***
So.Minnesota Beet Sugar Coop	***	***	***	***	***
Amalgamated Sugar	***	***	***	***	***
Western Sugar Coop	***	***	***	***	***
U.S. Sugar Corp.	***	***	***	***	***
Wyoming Sugar Growers	***	***	***	***	***
All firms	9.2	9.2	10.3	11.8	10.6
All firms excluding melt houses	***	***	***	***	***
<b>Operating income or (loss) as a ratio to net sales (percent)</b>					
AmCane Sugar	***	***	***	***	***
American Crystal	***	***	***	***	***
American Sugar Holdings	***	***	***	***	***
Archer Daniels Midland	***	***	***	***	***
CSC Sugar	***	***	***	***	***
Hawaiian Commercial & Sugar Co.	***	***	***	***	***
Imperial Sugar	***	***	***	***	***
Louisiana Sugar Refining	***	***	***	***	***
Michigan Sugar Co.	***	***	***	***	***
Minn-Dak Farmers Coop	***	***	***	***	***
So.Minnesota Beet Sugar Coop	***	***	***	***	***
Amalgamated Sugar	***	***	***	***	***
Western Sugar Coop	***	***	***	***	***
U.S. Sugar Corp.	***	***	***	***	***
Wyoming Sugar Growers	***	***	***	***	***
All firms	8.7	7.8	7.5	6.7	1.5
All firms excluding melt houses	***	***	***	***	***

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Table C-13--Continued

Sugar: Results of operations of U.S. processors and refiners, by firm, 2012/13 years 2010/11 through 2012/13, October-December 2012/13, and October-December 2013/14

Firm	Crop years			October to December	
	2010/11	2011/12	2012/13	2012/13	2013/14
<b>Unit net sale value (dollars per STRV)</b>					
AmCane Sugar	***	***	***	***	***
American Crystal	***	***	***	***	***
American Sugar Holdings	***	***	***	***	***
Archer Daniels Midland	***	***	***	***	***
CSC Sugar	***	***	***	***	***
Hawaiian Commercial & Sugar Co.	***	***	***	***	***
Imperial Sugar	***	***	***	***	***
Louisiana Sugar Refining	***	***	***	***	***
Michigan Sugar Co.	***	***	***	***	***
Minn-Dak Farmers Coop	***	***	***	***	***
So.Minnesota Beet Sugar Coop	***	***	***	***	***
Amalgamated Sugar	***	***	***	***	***
Western Sugar Coop	***	***	***	***	***
U.S. Sugar Corp.	***	***	***	***	***
Wyoming Sugar Growers	***	***	***	***	***
All firms	793	839	734	810	649
All firms excluding melt houses	***	***	***	***	***
<b>Unit raw material costs (dollars per STRV)</b>					
AmCane Sugar	***	***	***	***	***
American Crystal	***	***	***	***	***
American Sugar Holdings	***	***	***	***	***
Archer Daniels Midland	***	***	***	***	***
CSC Sugar	***	***	***	***	***
Hawaiian Commercial & Sugar Co.	***	***	***	***	***
Imperial Sugar	***	***	***	***	***
Louisiana Sugar Refining	***	***	***	***	***
Michigan Sugar Co.	***	***	***	***	***
Minn-Dak Farmers Coop	***	***	***	***	***
So.Minnesota Beet Sugar Coop	***	***	***	***	***
Amalgamated Sugar	***	***	***	***	***
Western Sugar Coop	***	***	***	***	***
U.S. Sugar Corp.	***	***	***	***	***
Wyoming Sugar Growers	***	***	***	***	***
All firms	479	520	428	480	397
All firms excluding melt houses	***	***	***	***	***

Table continued on the next page.

Table C-13--Continued

Sugar: Results of operations of U.S. processors and refiners, by firm, 2012/13 years 2010/11 through 2012/13, October-December 2012/13, and October-December 2013/14

Firm	Crop years			October to December	
	2010/11	2011/12	2012/13	2012/13	2013/14
<b>Unit direct labor costs (dollars per STRV)</b>					
AmCane Sugar	***	***	***	***	***
American Crystal	***	***	***	***	***
American Sugar Holdings	***	***	***	***	***
Archer Daniels Midland	***	***	***	***	***
CSC Sugar	***	***	***	***	***
Hawaiian Commercial & Sugar Co.	***	***	***	***	***
Imperial Sugar	***	***	***	***	***
Louisiana Sugar Refining	***	***	***	***	***
Michigan Sugar Co.	***	***	***	***	***
Minn-Dak Farmers Coop	***	***	***	***	***
So.Minnesota Beet Sugar Coop	***	***	***	***	***
Amalgamated Sugar	***	***	***	***	***
Western Sugar Coop	***	***	***	***	***
U.S. Sugar Corp.	***	***	***	***	***
Wyoming Sugar Growers	***	***	***	***	***
All firms	30	25	27	31	33
All firms excluding melt houses	***	***	***	***	***
<b>Unit other factory costs (dollars per STRV)</b>					
AmCane Sugar	***	***	***	***	***
American Crystal	***	***	***	***	***
American Sugar Holdings	***	***	***	***	***
Archer Daniels Midland	***	***	***	***	***
CSC Sugar	***	***	***	***	***
Hawaiian Commercial & Sugar Co.	***	***	***	***	***
Imperial Sugar	***	***	***	***	***
Louisiana Sugar Refining	***	***	***	***	***
Michigan Sugar Co.	***	***	***	***	***
Minn-Dak Farmers Coop	***	***	***	***	***
So.Minnesota Beet Sugar Coop	***	***	***	***	***
Amalgamated Sugar	***	***	***	***	***
Western Sugar Coop	***	***	***	***	***
U.S. Sugar Corp.	***	***	***	***	***
Wyoming Sugar Growers	***	***	***	***	***
All firms	141	152	148	149	140
All firms excluding melt houses	***	***	***	***	***

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Table C-13--Continued

Sugar: Results of operations of U.S. processors and refiners, by firm, 2012/13 years 2010/11 through 2012/13, October-December 2012/13, and October-December 2013/14

Firm	Crop years			October to December	
	2010/11	2011/12	2012/13	2012/13	2013/14
<b>Unit COGS (dollars per STRV)</b>					
AmCane Sugar	***	***	***	***	***
American Crystal	***	***	***	***	***
American Sugar Holdings	***	***	***	***	***
Archer Daniels Midland	***	***	***	***	***
CSC Sugar	***	***	***	***	***
Hawaiian Commercial & Sugar Co.	***	***	***	***	***
Imperial Sugar	***	***	***	***	***
Louisiana Sugar Refining	***	***	***	***	***
Michigan Sugar Co.	***	***	***	***	***
Minn-Dak Farmers Coop	***	***	***	***	***
So.Minnesota Beet Sugar Coop	***	***	***	***	***
Amalgamated Sugar	***	***	***	***	***
Western Sugar Coop	***	***	***	***	***
U.S. Sugar Corp.	***	***	***	***	***
Wyoming Sugar Growers	***	***	***	***	***
All firms	650	697	603	660	570
All firms excluding melt houses	***	***	***	***	***
<b>Unit gross income or (loss) (dollars per STRV)</b>					
AmCane Sugar	***	***	***	***	***
American Crystal	***	***	***	***	***
American Sugar Holdings	***	***	***	***	***
Archer Daniels Midland	***	***	***	***	***
CSC Sugar	***	***	***	***	***
Hawaiian Commercial & Sugar Co.	***	***	***	***	***
Imperial Sugar	***	***	***	***	***
Louisiana Sugar Refining	***	***	***	***	***
Michigan Sugar Co.	***	***	***	***	***
Minn-Dak Farmers Coop	***	***	***	***	***
So.Minnesota Beet Sugar Coop	***	***	***	***	***
Amalgamated Sugar	***	***	***	***	***
Western Sugar Coop	***	***	***	***	***
U.S. Sugar Corp.	***	***	***	***	***
Wyoming Sugar Growers	***	***	***	***	***
All firms	142	143	131	150	78
All firms excluding melt houses	***	***	***	***	***

Table continued on the next page.

Table C-13--Continued

Sugar: Results of operations of U.S. processors and refiners, by firm, 2012/13 years 2010/11 through 2012/13, October-December 2012/13, and October-December 2013/14

Firm	Crop years			October to December	
	2010/11	2011/12	2012/13	2012/13	2013/14
	<b>Unit SG&amp;A expenses (dollars per STRV)</b>				
AmCane Sugar	***	***	***	***	***
American Crystal	***	***	***	***	***
American Sugar Holdings	***	***	***	***	***
Archer Daniels Midland	***	***	***	***	***
CSC Sugar	***	***	***	***	***
Hawaiian Commercial & Sugar Co.	***	***	***	***	***
Imperial Sugar	***	***	***	***	***
Louisiana Sugar Refining	***	***	***	***	***
Michigan Sugar Co.	***	***	***	***	***
Minn-Dak Farmers Coop	***	***	***	***	***
So.Minnesota Beet Sugar Coop	***	***	***	***	***
Amalgamated Sugar	***	***	***	***	***
Western Sugar Coop	***	***	***	***	***
U.S. Sugar Corp.	***	***	***	***	***
Wyoming Sugar Growers	***	***	***	***	***
All firms	73	77	76	96	69
All firms excluding melt houses	***	***	***	***	***
	<b>Unit operating income or (loss) (dollars per STRV)</b>				
AmCane Sugar	***	***	***	***	***
American Crystal	***	***	***	***	***
American Sugar Holdings	***	***	***	***	***
Archer Daniels Midland	***	***	***	***	***
CSC Sugar	***	***	***	***	***
Hawaiian Commercial & Sugar Co.	***	***	***	***	***
Imperial Sugar	***	***	***	***	***
Louisiana Sugar Refining	***	***	***	***	***
Michigan Sugar Co.	***	***	***	***	***
Minn-Dak Farmers Coop	***	***	***	***	***
So.Minnesota Beet Sugar Coop	***	***	***	***	***
Amalgamated Sugar	***	***	***	***	***
Western Sugar Coop	***	***	***	***	***
U.S. Sugar Corp.	***	***	***	***	***
Wyoming Sugar Growers	***	***	***	***	***
All firms	69	66	55	54	10
All firms excluding melt houses	***	***	***	***	***

Notes continued on the next page.

**Notes to table C-13:**

<sup>1</sup> \*\*\*.

<sup>2</sup> Includes \*\*\*.

Note.—Changes to \*\*\* to the questionnaire response of \*\*\* were received too late to be used. These changes would have no effect on the industry presentation.

Source: Preliminary phase staff report, Table D-2. Compiled from data submitted in response to Commission questionnaires.

**APPENDIX D**  
**SUSPENSION AGREEMENTS**





## AGREEMENT SUSPENDING THE ANTIDUMPING DUTY INVESTIGATION ON SUGAR FROM MEXICO

Pursuant to the requirements of section 734(c) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. § 1673c(c)) and 19 C.F.R. § 351.208, and in satisfaction of the requirements of those provisions, the U.S. Department of Commerce (the Department) and the signatory producers and exporters of Sugar from Mexico (the Signatories) enter into this agreement suspending the antidumping duty investigation of Sugar from Mexico (Agreement), as follows:

### I. Product Coverage

The product covered by this Agreement is raw and refined sugar of all polarimeter readings derived from sugar cane or sugar beets. The chemical sucrose gives sugar its essential character. Sucrose is a nonreducing disaccharide composed of glucose and fructose linked by a glycosidic bond via their anomeric carbons. The molecular formula for sucrose is  $C_{12}H_{22}O_{11}$ ; the International Union of Pure and Applied Chemistry (IUPAC) International Chemical Identifier (InChI) for sucrose is 1S/C12H22O11/c13-1-4-6(16)8(18)9(19)11(21-4)23-12(3-15)10(20)7(17)5(2-14)22-12/h4-11,13-20H,1-3H2/t4-,5-,6-,7-,8+,9-,10+,11-,12+/m1/s1; the InChI Key for sucrose is CZMRCDWAGMRECN-UGDNZRGBSA-N; the U.S. National Institutes of Health PubChem Compound Identifier (CID) for sucrose is 5988; and the Chemical Abstracts Service (CAS) Number of sucrose is 57-50-1.

Sugar described in the previous paragraph includes products of all polarimeter readings described in various forms, such as raw sugar, estandar or standard sugar, high polarity or semi-refined sugar, special white sugar, refined sugar, brown sugar, edible molasses, desugaring molasses, organic raw sugar, and organic refined sugar. Other sugar products, such as powdered sugar, colored sugar, flavored sugar, and liquids and syrups that contain 95 percent or more sugar by dry weight are also within the scope of this Agreement.

The scope of the Agreement does not include (1) sugar imported under the Refined Sugar Re-Export Programs of the U.S. Department of Agriculture;<sup>1</sup> (2) sugar products produced in Mexico that contain 95 percent or more sugar by dry weight that originated outside of Mexico; (3) inedible molasses (other than inedible desugaring molasses noted above); (4) beverages; (5) candy; (6) certain specialty sugars; and (7) processed food products that contain sugar (*e.g.*, cereals). Specialty sugars excluded from the scope of this Agreement are limited to the following: caramelized slab sugar candy, pearl sugar, rock candy, dragees for cooking and baking, fondant, golden syrup, and sugar decorations.

Merchandise covered by this Agreement is typically imported under the following headings of the HTSUS: 1701.12.1000, 1701.12.5000, 1701.13.1000, 1701.13.5000, 1701.14.1000,

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<sup>1</sup> This exclusion applies to sugar imported under the Refined Sugar Re-Export Program, the Sugar-Containing Products Re-Export Program, and the Polyhydric Alcohol Program administered by the U.S. Department of Agriculture.

1701.14.5000, 1701.91.1000, 1701.91.3000, 1701.99.1010, 1701.99.1025, 1701.99.1050, 1701.99.5010, 1701.99.5025, 1701.99.5050, and 1702.90.4000. The tariff classification is provided for convenience and customs purposes; however, the written description of the scope of this Agreement is dispositive.

## **II. Definitions**

For purposes of the Agreement, the following definitions apply:

- A. "Anniversary Month" means the month in which the Agreement becomes effective.
- B. "Date of Export" means the date on which the product is exported from Mexico to the United States.
- C. "Effective Date" means the date on which the Department and the signatory producers/exporters sign the Agreement.
- D. "Interested Party" means any person or entity that meets the definitions provided in section 771(9) of the Act.
- E. "Mexico" means the customs territory of the United Mexican States and foreign trade zones located within the territory of Mexico.
- F. "Other Sugar" means Sugar that does not meet the definition of Refined Sugar under this Agreement.
- G. "Reference Price" means the minimum price at which merchandise subject to this Agreement can be sold in the United States.
- H. "Refined Sugar" means Sugar with a polarity of 99.5 and above.
- I. "Sugar" means the product described under Section I, "Product Coverage," of the Agreement.
- J. "Substantially all" of the subject merchandise means exporters and producers that have accounted for not less than 85 percent by value or volume of the subject merchandise.
- K. "United States" means the customs territory of the United States of America (the 50 States, the District of Columbia and Puerto Rico) and foreign trade zones located within the territory of the United States.
- L. "USDA" means the United States Department of Agriculture.

M. "Violation" means noncompliance with the terms of the Agreement, whether through an act or omission, except for noncompliance that is inconsequential or inadvertent, and does not materially frustrate the purposes of the Agreement.

Any term or phrase not defined by this section shall be defined using either a definition provided in the Act for that term or phrase, or the plain meaning of that term, as appropriate.

### **III. Suspension of Investigation**

As of the Effective Date, in accordance with section 734(c) of the Act and 19 C.F.R. § 351.208, the Department will suspend its antidumping duty investigation on Sugar from Mexico initiated on April 17, 2014. *See Sugar from Mexico: Initiation of Antidumping Duty Investigation*, 79 FR 22795 (April 24, 2014).

### **IV. U.S. Import Coverage**

In accordance with section 734(c)(1) of the Act, the Signatories are the producers and exporters in Mexico which account for substantially all of the subject merchandise imported into the United States. The Department may at any time during the period of the Agreement require additional producers/exporters in Mexico to accede to the Agreement to ensure that not less than substantially all imports into the United States are subject to this Agreement.

### **V. Statutory Conditions for the Agreement**

In accordance with section 734(c)(2) of the Act, the Department has determined that extraordinary circumstances are present in this investigation because the suspension of the investigation will be more beneficial to the domestic industry than the continuation of the investigation and that the investigation is complex.

In accordance with section 734(d) of the Act, the Department determines that the suspension of the investigation is in the public interest and that effective monitoring of the Agreement by the United States is practicable. Section 734(a)(2)(B) of the Act provides that the public interest includes the availability of supplies of the merchandise and 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. Accordingly, if a domestic producer requests an administrative review of the status of, and compliance with, the Agreement, the Department will take these factors into account in conducting that review. If the Department finds that the Agreement is not working as intended in this regard, the Department will explore all appropriate measures, including renegotiation of the terms of the Agreement to resolve the problem or measures under section 751(d)(1) of the Act.

## **VI. Price Undertaking**

Each Signatory individually agrees that, to prevent price suppression or undercutting, it will not sell in the United States, on or after the Effective Date, Sugar at prices that are less than the Reference Prices, established in Appendix I to the Agreement.

Each Signatory individually agrees that for each entry the amount by which the estimated normal value exceeds the export price (or the constructed export price) will not exceed 15 percent of the weighted average amount by which the estimated normal value exceeded the export price (or constructed export price) for all less-than-fair-value entries of the producer/exporter examined during the course of the investigation, in accordance with the Act and the Department's regulations and procedures, including but not limited to the calculation methodologies described in Appendix II of this Agreement.

## **VII. Monitoring of the Agreement**

### **A. Import Monitoring**

1. The Department will monitor entries of Sugar from Mexico to ensure compliance with section VI of this Agreement.
2. The Department will review publicly available data and other official import data, including, as appropriate, records maintained by U.S. Customs and Border Protection (CBP), to determine whether there have been imports that are inconsistent with the provisions of this Agreement. The Department also intends to consult with the USDA regarding monthly information submitted by processors, refiners, and importers of Sugar from Mexico.
3. The parties to this Agreement acknowledge that the Signatories intend to establish a joint industry-Government-of-Mexico working group ("Working Group") that will regularly monitor and reconcile Mexican export data and identify and address any inconsistencies or irregularities. The Working Group will refer any alleged violations (either those discovered during its monitoring exercises or those reported by the Department) to the Government of Mexico ("GOM") for appropriate action. For further information, please see information provided in the links provided at the Department's web page, <http://enforcement.trade.gov/agreements/index.html>.
4. The Department will review, as appropriate, data it receives from the Working Group and through any data exchange program between U.S. and GOM agencies to determine whether there have been imports that are inconsistent with the provisions of this Agreement.



## **B. Compliance Monitoring**

1. The Department may require, and each Signatory agrees to provide confirmation through documentation provided to the Department, that the price received on any sale subject to this Agreement was not less than the established Reference Prices. The Department may require that such documentation be provided and be subject to verification.
2. The Department may require, and each Signatory agrees to report in the prescribed format and using the prescribed method of data compilation, each sale of Sugar, either directly or indirectly to unrelated purchasers in the United States, including each adjustment applicable to each sale, as specified by the Department. The information to be reported may include, for example, F.O.B. sales value, unit price, date of sale, sales order number(s), importer of record, trading company, customer, customer relationship, destination, as well as any other information deemed by the Department to be relevant. Each Signatory agrees to permit review and on-site inspection of all information deemed necessary by the Department to verify the reported information.
3. The Department may initiate administrative reviews under section 751(a) of the Act in the month immediately following the Anniversary Month, upon request or upon its own initiative, to ensure that exports of Sugar from Mexico satisfy the requirements of sections 734(c)(1)(A) and (B) of the Act. The Department may conduct administrative reviews under sections 751(b) and (c), and 781 of the Act, as appropriate. The Department may perform verifications pursuant to administrative reviews conducted under section 751 of the Act.
4. At any time it deems appropriate, and without prior notice, the Department will conduct verifications of persons or entities handling Signatory merchandise to determine whether they are selling Signatory merchandise in accordance with the terms of this Agreement. The Department will also conduct verifications at locations and times it deems appropriate to ensure compliance with the terms of this Agreement.

## **C. Shipping and Other Arrangements**

1. All Reference Prices will be expressed in U.S. Dollars (\$) per pound (lb.) by dry weight commercial value, in accordance with Appendix I of this Agreement.
2. The parties to this Agreement acknowledge that under Mexican regulations, Mexican Sugar producers and exporters exporting to the United States will need to become Signatories to the Agreement. Signatories will fully comply with all requirements of Mexican regulations issued by the relevant Mexican authorities.

For further information please see information in the links provided at the Department's web page, <http://enforcement.trade.gov/agreements/index.html>.

3. Signatories agree not to take any action that would circumvent or otherwise evade, or defeat the purpose of, this Agreement. Signatories agree to undertake any measures that will help to prevent circumvention.
4. Not later than 30 days after the end of each quarter, each Signatory will submit a written statement to the Department certifying that all sales during the most recently completed quarter were at net prices, after rebates, discounts, or other adjustments, at or above the Reference Prices in effect and were not part of or related to any act or practice which would have the effect of hiding the real price of the Sugar being sold. Further, each Signatory will certify in this same statement that all sales made during the relevant quarter were not part of or related to any bundling arrangement, discounts/free goods/financing package, swap or other exchange where such arrangement is designed to circumvent the basis of the Agreement. Each Signatory that did not export Sugar to the United States during any given quarter will submit a written statement to the Department certifying that it made no sales to the United States during the most recently completed quarter. Each Signatory agrees to permit full verification of its certification as the Department deems necessary. Failure to provide a quarterly certification may be considered a violation of the Agreement.

#### **D. Rejection of Submissions**

The Department may reject: (1) any information submitted after the deadlines set forth in this Agreement; (2) any submission that does not comply with the filing, format, translation, service, and certification of documents requirements under 19 C.F.R. § 351.303; (3) submissions that do not comply with the procedures for establishing business proprietary treatment under 19 C.F.R. § 351.304; and (4) submissions that do not comply with any other applicable regulations, as appropriate. If information is not submitted in a complete and timely fashion or is not fully verifiable, the Department may use facts otherwise available for the basis of its decision, as it determines appropriate, consistent with section 776 of the Act.

#### **E. Consultations**

##### **1. Compliance Consultations**

- a. When the Department identifies, through import or compliance monitoring or otherwise, that sales may have been made at prices inconsistent with section VI of this Agreement, or that the sales are otherwise in circumvention of this Agreement, the Department will notify each Signatory which it believes is responsible or, if applicable,

notify the Signatory's representative. The Department will consult with each such party for a period of up to 60 days to establish a factual basis regarding sales that may be inconsistent with section VI of this Agreement.

- b. During the consultation period, the Department will examine any information that it develops or which is submitted, including information requested by the Department under any provision of this Agreement.
- c. If the Department is not satisfied at the conclusion of the consultation period that sales by such Signatory are being made in compliance with section VI of this Agreement, or that the sales are not circumventing this Agreement, the Department may evaluate under section 351.209 of its regulations, or section 751 of the Act whether this Agreement is being violated, as defined in section VIII of this Agreement, by such Signatory.

If the Department concludes that sales by a Signatory have been made at prices inconsistent with section VI of this Agreement, or that sales are circumventing the Agreement, the Department shall take action, as warranted. The provisions of this section do not supersede the provisions of paragraphs VIII.A-VIII.C if the Department determines that the entries were made at prices inconsistent with section VI of this Agreement.

## **2. Operations Consultations**

- a. The Department will consult with the Signatories regarding the operation of this Agreement. A party to the Agreement may request such consultations, as necessary.
- b. Notwithstanding the previous paragraph, the parties may agree to revise the Reference Prices subject to consultations.

## **VIII. Violations of the Agreement**

- A. If the Department determines that there has been a violation of the Agreement or that the Agreement no longer meets the requirements of section 734(c) or (d) of the Act, the Department shall take action it determines appropriate under section 734(i) of the Act and the Department's regulations.
- B. Pursuant to section 734(i) of the Act, the Department will refer to CBP any violations of the Agreement that appear to be intentional. Any person who intentionally commits a violation of the Agreement shall be subject to a civil penalty assessed in the same amount, in the same manner, and under the same procedures as the penalty

imposed for a fraudulent violation of section 592(a) of the Act. A fraudulent violation of section 592(a) of the Act is punishable by a civil penalty in an amount not to exceed the domestic value of the merchandise. For purposes of the Agreement, the domestic value of the merchandise will be deemed to be not less than the Reference Prices, as the Signatories agree to not sell the subject merchandise at prices that are less than the Reference Price and to ensure that sales of the subject merchandise are made consistent with the terms of the Agreement.

- C. In addition, the Department will examine the activities of Signatories and any other party to a sale subject to the Agreement to determine whether any activities conducted by any party aided or abetted another party's violation of the Agreement. If any such parties are found to have aided or abetted another party's violation of the Agreement, they shall be subject to the same civil penalties described in section VIII.B above. Signatories to this Agreement consent to release of all information presented to or obtained by the Department during the conduct of verifications with CBP and/or the USDA.
- D. The following activities shall be considered violations of the Agreement:
  - 1. Sales that are at net prices (after rebates, back-billing, discounts, and other claims) that are below the Reference Prices.
  - 2. Any act or practice which would have the effect of hiding the real price of the Sugar being sold.
  - 3. Any other material violation or breach, as determined by the Department.

## **IX. Disclosure and Comment**

This section provides the terms for disclosure and comment following consultations or during segments of the proceeding not involving a review under section 751 of the Act.

- A. The Department may make available to representatives of each Interested Party, pursuant to and consistent with 19 C.F.R. §§ 351.304-351.306, any business proprietary information submitted to and/or collected by the Department pursuant to section VII of this Agreement, as well as the results of the Department's analysis of that information.
- B. If the Department proposes to revise the Reference Price(s) as a result of consultations under this Agreement, the Department will disclose the preliminary Reference Price(s), including any calculation methodology, not less than 30 days before the date on which the price(s) would become final and effective.
- C. Interested Parties shall file all communications and other submissions made pursuant to section VII of the Agreement via the Department's Antidumping and Countervailing



Duty Centralized Electronic Service System (ACCESS), which is available to registered users at <https://access.trade.gov> and to all parties at the following address:

U.S. Department of Commerce  
Central Records Unit, Room 7046  
1401 Constitution Ave., NW  
Washington, D.C. 20230

Such communications and submissions shall be filed consistent with the requirements provided in 19 C.F.R. § 351.303.

**X. Duration of the Agreement**

A. This Agreement has no scheduled termination date. Termination of the suspended investigation shall be considered in accordance with the five-year review provisions of section 751(c) of the Act, and section 351.218 of the Department's regulations.

B. The Signatories or the Department may terminate this Agreement at any time. Termination of the Agreement shall be effective no later than 60 days after the date written notice of termination is provided to the Department or the Signatories, respectively.

C. Upon termination, the Department shall follow the procedures outlined in section 734(i)(1) of the Act.

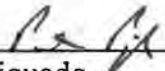
D. The Department will terminate this Agreement in the event that Signatories accounting for a significant proportion of exports of Sugar from Mexico request continuation of the antidumping investigation of Sugar from Mexico, or the GOM requests continuation of the countervailing duty investigation of Sugar from Mexico.

**XI. Other Provisions**

A. Upon request, the Department will advise any Signatory of the Department's methodology for calculating its export price (or constructed export price) and normal value in accordance with the Act and the Department's regulations and procedures, including but not limited to, the calculation methodologies described in Appendix II of this Agreement.

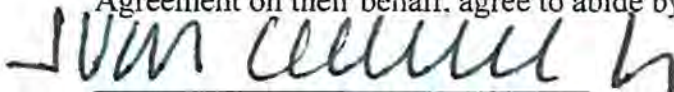
B. By entering into the Agreement, the Signatories do not admit that exports of Sugar from Mexico are having or have had an injurious effect on Sugar producers in the United States, have caused the suppression or undercutting of prices, or have been sold at less than fair value.

C. As of the Effective Date, the Department shall instruct CBP to refund any cash deposits collected as a result of the antidumping duty investigation on sugar from Mexico. The Department shall instruct CBP to terminate the suspension of liquidation consistent with section 734(f)(2)(B) of the Act.


  
\_\_\_\_\_  
Paul Piquado  
Assistant Secretary for Enforcement and Compliance  
U.S. Department of Commerce

19 DECEMBER 2014  
Date

The following parties hereby certify that the producers and exporters of Sugar from Mexico that are members of their organization, and which have authorized the undersigned to sign this Agreement on their behalf, agree to abide by all terms of the Agreement:

  
\_\_\_\_\_  
Juan Cortina Gallardo  
President  
Cámara Nacional de Las Industrias Azucarera y Alcohólera

12/19/2014  
Date

  
\_\_\_\_\_  
Humberto Jasso Torres  
Director General  
Cámara Nacional de Las Industrias Azucarera y Alcohólera

Dec. 19<sup>th</sup> 2014  
Date

**Appendix I – Suspension of Antidumping Investigation – Sugar from Mexico – Reference Prices**

Consistent with the requirements of section 734(c) of the Act, to eliminate completely the injurious effect of exports to the United States and to prevent the suppression or undercutting of price levels of domestic sugar, the Reference Prices are as follows:

The FOB plant Reference Price for Refined Sugar is \$0.2600 per pound by dry weight commercial value.

The FOB plant Reference Price for all Other Sugar is \$0.2225 per pound by dry weight commercial value.

## **Appendix II – Suspension of Antidumping Investigation – Sugar from Mexico – Analysis of Prices at Less Than Fair Value**

### **A. Normal Value**

The cost or price information reported to the Department that will form the basis of the normal value (NV) calculations for purposes of the Agreement must be comprehensive in nature and based on a reliable accounting system (e.g., a system based on well-established standards and can be tied either to the audited financial statements or to the tax return filed with the Mexican government).

#### **1. Based on Sales Prices in the Comparison Market**

When the Department bases normal value on sales prices, such prices will be the prices at which the foreign like product is first sold for consumption in the comparison market in the usual commercial quantities and in the ordinary course of trade. Also, to the extent practicable, the comparison shall be made at the same level of trade as the export price (EP) or constructed export price (CEP).

Calculation of NV:  
Gross Unit Price  
+/- Billing Adjustments  
- Movement Expenses  
- Discounts and Rebates  
- Direct Selling Expenses  
- Commissions  
- Home Market Packing Expenses  
= Normal Value (NV)

#### **2. Constructed Value**

When normal value is based on constructed value, the Department will compute constructed values (CVs), as appropriate, based on the sum of each respondent's costs, plus amounts for selling, general and administrative expenses (SG&A), U.S. packing costs, and profit. The Department will collect this cost data in order to determine the accurate per-unit CV.

Calculation of CV:  
+ Direct Materials  
+ Direct Labor  
+ Factory overhead  
= Cost of Manufacturing  
+ Home Market SG&A\*  
= Cost of Production

+ U.S. Packing  
+ Profit\*  
= Constructed Value (CV)

\* SG&A and profit are based on home-market sales of the foreign like product made in the ordinary course of trade. SG&A includes financing but not movement expenses.

#### B. Export Price and Constructed Export Price

EP and CEP refer to the two types of calculated prices for merchandise imported into the United States. Both EP and CEP are based on the price at which the subject merchandise is first sold to a person not affiliated with the foreign producer or exporter.

##### Calculation of EP:

Gross Unit Price  
- Movement Expenses  
- Discounts and Rebates  
+/- Billing Adjustments  
+ Packing Expenses  
+ Rebated Import Duties  
= Export Price (EP)

##### Calculation of CEP:

Gross Unit Price  
- Movement Expenses  
- Discounts and Rebates  
+/- Billing Adjustments  
- Direct Selling Expenses  
- Indirect Selling Expenses that relate to commercial activity in the United States  
- The cost of any further manufacture or assembly incurred in the United States  
- CEP Profit  
+ Rebated Import Duties  
- Commissions  
= Constructed Export Price (CEP)

#### C. Fair Comparisons

To ensure that a fair comparison with EP or CEP is made, the Department will make adjustments to normal value. The Department will adjust for physical differences between the merchandise sold in the United States and the merchandise sold in the home market. For EP sales, the

Department will add in U.S. direct selling expenses, U.S. commissions<sup>2</sup> and packing expenses. For CEP sales, the Department will subtract the amount of the CEP offset, if warranted, and add in U.S. packing expenses.

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<sup>2</sup> If there are not commissions in both markets, then the Department will apply a commission offset.



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

A-201-845  
Suspension Agreement  
Public Document  
EC/OP/BAU: SCG

December 19, 2014

MEMORANDUM FOR: Paul Piquado  
Assistant Secretary for  
Enforcement and Compliance

FROM: Lynn Fischer Fox *LFF*  
Deputy Assistant Secretary  
for Policy and Negotiations  
Enforcement and Compliance

SUBJECT: Agreement Suspending the Antidumping Duty Investigation on  
Sugar from Mexico: U.S. Import Coverage, Existence of  
Extraordinary Circumstances, Public Interest, and Effective  
Monitoring Assessments

Statutory Requirements

On December 19, 2014, the U.S. Department of Commerce (“the Department”) and producers/exporters accounting for substantially all imports of sugar from Mexico signed the Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico (“the Agreement”). In accordance with section 734(c)(1) of the Tariff Act of 1930, as amended (“the Act”), the Agreement is designed to completely eliminate the injurious effect of exports to the United States, prevent the suppression or undercutting of price levels of domestic products by imports of that merchandise. In addition, for each entry of each exporter the amount by which the estimated normal value exceeds the export price (or constructed export price) will not exceed 15 percent of the weighted-average amount by which the estimated normal value exceeded the export price (or constructed export price) for all less-than-fair-value entries of the producer/exporter examined during the course of the investigation (see section VI (“Price Undertaking”) of the Agreement).

In accordance with section 734(c)(1) of the Act and section 351.208(b) of the Department’s regulations, the Department may suspend an investigation when signatory exporters, collectively accounting for substantially all of the imports of the subject merchandise, agree to revise their prices to eliminate completely the injurious effect of exports to the United States of that merchandise, as described above. Section 351.208(c) of the Department’s regulations provides that “substantially all” under section 734 of the Act means “exporters and producers that have accounted for not less than 85 percent by value or volume of the subject merchandise during the period for which the Secretary is measuring dumping or countervailable subsidization in the





investigation or such other period that the Secretary considers representative.” The Department finds that the U.S. import coverage requirement is met, as detailed below.

Section 734(c) of the Act indicates that extraordinary circumstances must be present for the Department to suspend an investigation under this section of the law. In accordance with section 734(c)(2) of the Act, the Department finds, as detailed below, that extraordinary circumstances exist with respect to this Agreement. Furthermore, the Department is satisfied that the Agreement is in the public interest and can be monitored effectively, as required under section 734(d) of the Act and addressed below in this memorandum.

### U.S. Import Coverage

In a November 25, 2014, letter, counsel to the signatory producers/exporters indicated that a representative of Cámara Nacional de Las Industrias Azucarera y Alcohólica (Mexican Sugar Chamber) (“Cámara”) would sign the Agreement on behalf of the Mexican sugar industry. Counsel stated that Cámara was authorized to sign on behalf of Mexican sugar producers/exporters representing over 97 percent of exports of sugar from Mexico to the United States. See Letter to the Honorable Penny Pritzker, Secretary of Commerce, from Greenberg Traurig, re “Investigation of Sugar from Mexico; Representation of Mexican Sugar Producers/Exporters” (November 25, 2014) (“Signatory Submission”). By reviewing U.S. Customs and Border Protection (“CBP”) data on imports of sugar from Mexico during the period of investigation (“POI”) (i.e., January 1 – December 31, 2013), the Department has confirmed that the producers/exporters of sugar to Mexico listed in the Signatory Submission (at Attachment) account for at least 85 percent of the imports of subject merchandise into the United States during the POI. See Memorandum to the File regarding “Release of Customs Entry Data for Respondent Selection in the Antidumping and Countervailing Duty Investigations of Sugar from Mexico,” April 25, 2014 (CBP Entry Data Memorandum). We find the CBP data to be reliable and, accordingly, hereby determine that Cámara represents the signatory Mexican sugar producers/exporters accounting for substantially all of the imports during the POI. See Section IV of the Agreement. Therefore, we find that the requirement of section 734(c) of the Act concerning agreement by “substantially all” exporters, as defined in section 351.208(c) of the Department’s regulations, has been satisfied.

### Extraordinary Circumstances

Subsections 734(c)(2)(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.

As for whether the suspension of the antidumping duty investigation on sugar from Mexico will be more beneficial to the domestic industry than continuation of the investigation, the Agreement establishes effective relief and, in several respects, has distinct advantages when compared with



an antidumping duty order. First, the Agreement benefits domestic producers by eliminating the injurious effects of exports of the subject merchandise to the United States, eliminating price suppression or undercutting, and eliminating 85 percent of dumping, as required by section 734(c)(1) of the Act. See Section VI (“Price Undertaking”) of the Agreement. Second, the arrangement is more stable and predictable than an antidumping duty order, under which Mexican sugar producers and exporters could engage in dumping until requested administrative reviews potentially adjusted the antidumping duty margins. Third, it is anticipated that the increase in market certainty and price stability that will result from the Agreement will aid the domestic industry in their production planning and sales/contracting activities for the upcoming season. Finally, the domestic industry can put the resources that they would have otherwise devoted to completing the investigation to other uses.

Regarding whether the antidumping duty investigation on sugar from Mexico is complex, section 734(c)(2)(B) of the Act defines the term “complex” as an investigation involving: (1) a large number of transactions to be investigated or adjustments to be considered; (2) novel issues; or (3) a large number of firms. All three of these circumstances exist in the antidumping duty investigation on sugar from Mexico. Specifically, this investigation: (1) covers transactions totaling more than 350 million dollars of sales in the U.S. market, and cost of production figures for 12 mills involving numerous adjustments; (2) raises complex issues, including how the investigation will impact, and be impacted by, the U.S. Department of Agriculture’s sugar program and the tariff rate quotas administered by the U.S. Trade Representative; and (3) there are currently close to 50 entities producing/exporting sugar from Mexico.

Thus, based on the factors discussed above, we find that extraordinary circumstances exist, in accordance with section 734(c)(2) of the Act.

### Public Interest

The statute provides that the Department shall not accept a subsection 734(c) suspension agreement unless “it is satisfied that suspension of the investigation is in the public interest.” See section 734(d)(1) of the Act. A review of the legislative history reveals that Congress did not elaborate on the definition of public interest, stating only 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 71; see also *id.* At 54 (discussing similar provision in countervailing duty context). Clearly, neither the statute nor the legislative history defined the term “public interest” as it is used in this context.<sup>1</sup> Therefore, Congress conferred broad discretion upon the Department in making this assessment.<sup>2</sup>

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<sup>1</sup> “As stated by the Supreme Court, “[w]here Congress uses terms that have accumulated settled meaning under either equity or the common law, a court must infer, unless the statute otherwise dictates, that Congress means to incorporate the established meaning of these terms.” NSK Ltd. v. United States, 115 F.3d 965, 974 (Fed. Cir. 1997) (quoting NLRB v. Amax Coal Co., 435 U.S. 322, 329 (1981)). Here, the established meaning of the word “satisfied” refers to a highly-subjective state of mind. See Merriam-Webster’s Collegiate Dictionary 1038 (10th ed. 1999) (defining “satisfy” as “to make happy: PLEASE”).

<sup>2</sup> The Federal Circuit has explained that the Department’s “interpretation governs in the absence of unambiguous statutory language to the contrary or unreasonable resolution of language that is ambiguous.” Ad Hoc Shrimp Trade Action

The Agreement establishes effective relief and, in a number of respects, has distinct advantages when compared to an antidumping duty order. For example, the Agreement benefits domestic producers by eliminating the injurious effects of exports of the subject merchandise to the United States. Under the terms of the Agreement, the signatory producers/exporters of the subject merchandise who account for substantially all of the imports of that merchandise, as described above, have agreed to revise their prices to eliminate completely the injurious effect of exports to the United States of that merchandise. See Sections IV and VI, and Appendices I and II, of the Agreement. As such, the Agreement will benefit U.S. producers by ensuring that imports of the subject merchandise are fairly-traded at prices at or above the reference prices and should not, therefore, negatively impact the competitiveness of the domestic industry. This arrangement is more stable and predictable than conditions under an order, whereby Mexican sugar producers and exporters could engage in dumping until requested administrative reviews potentially adjusted the antidumping duty margins.

Because the Agreement has been signed, the Department and the other participants in this proceeding can redirect resources that would have otherwise been devoted to completing the investigation. Furthermore, this Agreement prevents 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 734(c) of the Act. Finally, as a result of the signing of the Agreement, in accordance with section 734(h)(3) of the Act, we will instruct U.S. Customs and Border Protection to terminate the suspension of liquidation on imports of the subject merchandise, and importers will not be subject to contingent antidumping duty liabilities, consistent with the statute.

#### Practicability of Effective Monitoring

The Agreement can be administered and enforced by the Department. The signatory producers/exporters have agreed to supply the Department with all information that the Department deems necessary to ensure full compliance with the reference prices and other terms and conditions of the Agreement. See, e.g., Sections VII.B and VII.C.4 the Agreement. The Agreement provides for monitoring and verification. See Section VII of the Agreement. Further, the Agreement includes certain enhanced monitoring and compliance mechanisms, including the following: consultation with the U.S. Department of Agriculture regarding monthly information submitted by processors, refiners, and importers of sugar from Mexico; establishment of a joint industry-Government-of-Mexico working group; and an acknowledgement by the signatories that Mexican regulations stipulate that Mexican sugar producers and exporters exporting to the

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Committee v. United States, 596 F.3d 1365, 1368 (Fed. Cir. 2010) (“Ad Hoc Shrimp”) (quoting United States v. Eurodif S.A., 555 U.S. 305, 316 (2009)). Similarly, the Federal Circuit has reasoned that, under Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984), a court must accept the Department’s reasonable interpretation of a statute when the statute is silent regarding a specific issue, even if the court would have preferred a different interpretation. SKF USA, Inc. v. United States, 537 F.3d 1373, 1379 (Fed.Cir.2008) (citing Koyo Seiko Co. v. United States, 36 F.3d 1565, 1570 (Fed. Cir. 1994); see also Ad Hoc Shrimp, 596 F.3d at 1369).

United States will become signatories to the Agreement. See Sections VII.A.2, VII.A.3 and VII.C.2, respectively, of the Agreement. The Agreement also addresses circumvention and possible violations. See Sections VII.C.3 and VIII, respectively, of the Agreement. Based on the terms of the Agreement, the Department's experience and expertise in monitoring and enforcing suspension agreements, and the commitment from the signatory producers/exporters to abide by the terms of the Agreement, we find that effective monitoring of the Agreement is practicable.





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

A-201-845  
 Suspension Agreement  
 Public Document  
 ITA/EC/OP/BAU: SCG

February 6, 2015

Memorandum To: Paul Piquado  
 Assistant Secretary  
 for Enforcement and Compliance

From: Lynn Fischer Fox *LF*  
 Deputy Assistant Secretary  
 for Policy and Negotiations

Subject: The Prevention of Price Suppression or Undercutting of Price Levels by the Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico

## SUMMARY

On December 19, 2014, the U.S. Department of Commerce (“Department”) and Mexican sugar producers/exporters signed the Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico (“AD Suspension Agreement”). See Sugar from Mexico: Suspension of Antidumping Investigation, 79 FR 78039 (December 29, 2014) (“AD Suspension Agreement”). The AD Suspension Agreement establishes mechanisms to ensure that the agreement eliminates completely the injurious effect of unfairly traded exports to the United States. Among other things, the AD Suspension Agreement mandates that for each entry of each exporter of subject merchandise, the amount by which the estimated normal value exceeds the export price (or constructed export price) will not exceed 15 percent of the weighted-average amount by which the estimated normal value exceeded the export price (or constructed export price) for all entries of the producer/exporter examined during the course of the investigation. See Appendix II of the AD Suspension Agreement. In addition, the AD Suspension Agreement establishes reference prices for the sale of subject merchandise to ensure that the suppression or undercutting of price levels of domestic products by imports of subject merchandise is prevented. This memorandum addresses the prevention of the suppression or undercutting of price levels of domestic products by imports of Mexican sugar, based on the reference prices contained in Appendix I of the AD Suspension Agreement.

## LEGAL STANDARD

Pursuant to section 734(c) of the Tariff Act of 1930, as amended (“the Act”), the Department may enter into a suspension agreement with producers/exporters representing substantially all<sup>1</sup> of the

<sup>1</sup> See 19 CFR 351.208(c) (defining “substantially all” as “exporters and producers that have accounted for not less than 85 percent by volume or value of the subject merchandise”).



imports of subject merchandise if such an agreement eliminates completely the injurious effects of dumping. As the antidumping duty law is intended to remedy sales at “less than fair value,”<sup>2</sup> the Department ensures that injurious effects are remedied through an agreement to revise prices in such a way that price suppression and undercutting will be prevented.<sup>3</sup> Neither the Act nor the Department’s regulations contain a definition of price “suppression” or “undercutting.” Moreover, the legislative history of this provision does not contain any discussion of the terms “suppression” or “undercutting.” Because the Act is ambiguous, the Department has discretion as to how these terms may reasonably be interpreted. *See, e.g., United States v. Eurodif S.A.*, 555 U.S. 305, 306 (2009) (holding that the Department’s “interpretation governs in the absence of unambiguous statutory language to the contrary or unreasonable resolution of language that is ambiguous”); *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843-44 (1984) (requiring deference to an agency’s reasonable interpretation of an ambiguous statute it is charged with administering).

In determining how best to interpret the terms within the context of the AD Suspension Agreement, guidance can be drawn from canons of statutory construction, which provide that “all parts of a statute { } are construed together.”<sup>4</sup> Norman J. Singer, *Sutherland Stat. Const.* § 51:1 (7th ed. revised 2012). Moreover, “{i}dential words used in different parts of the same, or a similar, statute usually have the same meaning.”<sup>5</sup> Norman J. Singer, *Sutherland Stat. Const.* § 46:6 (7th ed. revised 2014). Accordingly, in developing a reasonable definition of price suppression or undercutting, it is instructive to examine section 771(7) of the Act, which references price suppression and undercutting in setting out the procedures that the United States International Trade Commission (“ITC”) must follow in making its material injury determinations.

The statute directs the ITC to consider various factors, including price, when determining whether a domestic industry is materially injured by imports of merchandise subject to an investigation. Specifically, Section 771(7)(C) of the Act provides that:

- (ii) Price -- In evaluating the effect of imports of such merchandise on prices, the {ITC} shall consider whether --

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<sup>2</sup> See Section 731 of the Act.

<sup>3</sup> Agreements also require that exporters make entries consistent with section 734(c)(1)(B) of the Act, which requires elimination of 85 percent of dumping.

<sup>4</sup> In addition, “each part or section should be construed in connection with every other part or section to produce a harmonious whole.” Norman J. Singer, *Sutherland Stat. Const.* § 46:5 (7th ed. revised 2014); *see also* Norman J. Singer, *Sutherland Stat. Const.* § 51.03 (6th ed. 2000) (“each section of a law which deals with the same subject matter must be read *in pari materia* with other sections on the same subject.”).

<sup>5</sup> *See also* Norman J. Singer, *Sutherland Stat. Const.* § 46:6 (7th ed. 2007) (“the same words used twice in the same act are presumed to have the same meaning”).



- (I) there has been significant price underselling by the imported merchandise as compared with the price of like products of the United States, and
- (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.

Section 771(7)(C) of the Act (emphasis added). Similarly, when the ITC analyzes the threat of material injury, it considers, among other factors, “whether imports of the subject merchandise are entering {the United States} at prices that are likely to have a significant depressing or suppressing effect on domestic prices, and are likely to increase demand for further imports . . . .” Section 771(7)(F)(i)(IV) of the Act (emphasis added).

Assuming that subsections 771(7)(C)(ii) and (7)(F)(i)(IV) of the Act were intended to be parallel, a comparison of the phrase “depressing or suppressing” in subsection 771(7)(F)(i)(IV) to “depresses prices . . . or prevents price increases which otherwise would have occurred” in subsection 771(7)(C)(ii) indicates that the term price “suppression” can reasonably be interpreted as generally encompassing import pricing practices that depress prices or prevent price increases that otherwise would have occurred. The legislative history to section 771(7)(C) supports such an interpretation. The Senate Report, for example, states that the ITC “would consider whether there has been significant price undercutting . . . and whether such imports have depressed or suppressed such prices to a significant degree.” S. Rep. 96-249 at 87, reprinted in 1979 U.S.C.C.A.N. 381, 473 (1979).

If a reasonable interpretation of the term “suppression” in section 734(c) of the Act is the “prevent {ion of} price increases which otherwise would have occurred,” it follows that the Department may enter into a section 734(c) suspension agreement if it determines that imports of the subject merchandise under the agreement will not prevent price increases or undercut price levels of the affected domestic products. Finally, as noted above, because section 734(c) of the Act, the Department’s regulations, and the pertinent legislative history do not contain any discussion of the terms “suppression” or “undercutting,” the interpretation and application of these terms is committed to the Department’s discretion.

The Department recognizes that the requirement to prevent price suppression and undercutting is by definition forward looking based upon the terms of section 734(c)(1)(A). Determining whether an agreement successfully meets that standard therefore would require an examination of some time period after the agreement is in place. Given the temporal nature of section 734(c)(1)(A), the Department draws upon section 771(7)(C)(ii) of the Act in its interpretative analysis. That provision states that the ITC in its price analysis “shall consider whether there has been significant price underselling by the imported merchandise as compared with the price of like products of the United States,” and whether “the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.” By contrast, section 734(c)(1)(A) of the Act allows for such agreements if price suppression or undercutting “will be prevented.”

## ANALYSIS

### Summary of Factors Examined

Based on the analysis detailed in this memorandum, the Department determines that the AD Suspension Agreement, and the reference prices contained therein, fulfill the statutory requirement set forth in section 734(c)(1)(A) that the agreement prevent the suppression or undercutting of price levels of domestic products by imports of sugar from Mexico. In determining what reference prices should be established to prevent price suppression and undercutting, the Department analyzed how possible reference prices compared to other pricing of sugar in the U.S. market. Further, the Department analyzed possible reference prices in relation to several other significant factors, as discussed below. As a result of these analyses, the Department is satisfied that the reference prices stipulated in the AD Suspension Agreement meet the statutory obligation to prevent price suppression and undercutting.

In determining the appropriate floor or reference prices to set for imports of sugar from Mexico entering the United States, the Department considered a variety of factors that affect price formation in the U.S. market. Among other things, the Department considered the state of the industry, market conditions that affect price (such as the U.S. sugar program), and in particular, the loan forfeiture prices of sugar for U.S. producers under the U.S. sugar program. In addition, the Department examined historical pricing patterns for sugar by U.S. producers selling in the U.S. market and the differences between pricing of sugar at different polarity levels. Further, the Department examined the reference prices in relation to the AD Suspension Agreement's requirement that signatory producers/exporters of Mexican sugar eliminate 85 percent of the dumping for each entry of sugar from Mexico. See AD Suspension Agreement, 79 FR at 78042. The Department also considered provisions of the Agreement Suspending the Countervailing Duty Investigation on Sugar from Mexico ("CVD Suspension Agreement"), which limit the quantity of imports into the United States, based upon forecasts provided by the United States Department of Agriculture ("USDA"). See Sugar from Mexico: Suspension of Countervailing Duty Investigation, 79 FR 78044 (December 29, 2014) ("CVD Suspension Agreement"). Based upon the Department's examination of these factors, the Department established floor prices that ensure the prevention of price suppression and price undercutting by imports of sugar from Mexico under the terms of the AD Suspension Agreement.

### State of the Industry

The Department's analysis with respect to the AD Suspension Agreement's reference prices, and their ability to prevent price suppression and undercutting in the domestic market, is informed in a critical way by the current structure of the U.S. sugar market and how that market operates under statutory programs administered by the U.S. government. Importantly, the United States government, under statutory authority vested in USDA, carefully manages the U.S. sugar market through the U.S. sugar program. The U.S. sugar program relies on ". . . price supports, domestic marketing allotments, and tariff-rate quotas (TRQs) to influence the amount of sugar available to the U.S. market." See Attachment 1: "Sugar & Sweeteners – Policy," issued at



<http://www.ers.usda.gov/topics/crops/sugar-sweeteners/policy.aspx>. The U.S. sugar program was created by Congress in the Agriculture and Food Act of 1981 and has been reauthorized with some modifications in successive legislation. *Id.* Importantly, the program is required to operate, to the maximum extent possible, at no cost to the Federal Government by avoiding loan forfeitures to the Commodity Credit Corporation (“CCC”), a Federal corporation within USDA that was created in part to stabilize, support, and protect farm income and prices. *See* Attachment 2: “FSA: About the Commodity Credit Corporation,” issued at <http://www.fsa.usda.gov/FSA/webapp?area=about&subject=landing&topic=sao-cc>.

*Price Supports:* Under the U.S. sugar program, USDA provides domestic price support by means of its Sugar Loan Program, which provides nonrecourse loans to processors of domestically-grown sugarcane and sugar beets. The Agricultural Act of 2014 (2014 Farm Bill) provides USDA’s Farm Service Agency (“FSA”) with the authority to administer these nonrecourse loans for the 2011 through 2018 crops on behalf of the CCC. *See* Attachment 3: “2014 Farm Bill Fact Sheet: Sugar Loan Program, Sugar Marketing Allotments and Feedstock Flexibility Program,” issued by USDA’s FSA (March 2014) (“2014 Farm Bill Fact Sheet”), at [http://www.fsa.usda.gov/Internet/FSA\\_File/sugar\\_loan\\_2014.pdf](http://www.fsa.usda.gov/Internet/FSA_File/sugar_loan_2014.pdf). Such loans provide U.S. sugar producers with interim financing at harvest time to meet cash flow needs which might otherwise require them to sell their commodities when market prices are typically at harvest-time lows. This allows producers to store production at harvest, thereby facilitating more orderly marketing throughout the crop year. *Id.*; *see also* Attachment 1. Specifically, the 2014 Farm Bill requires the Secretary of Agriculture to provide nonrecourse loans to processors of domestically-grown sugarcane and sugar beets at specified rates, or “forfeiture prices”, for raw cane and refined beet sugar, respectively. The program gives sugar processors the right to retire these loans by forfeiting the in-process sugar and syrup used as collateral.<sup>6</sup> This “forfeiture price” effectively establishes a floor under the price of sugar produced in the United States. *See* Attachment 3.

*Quantitative Limits:* In addition to setting a price floor on domestic sugar via price supports, the U.S. sugar program regulates the sugar market through quantitative limits on both domestic supply and imports. USDA establishes domestic marketing allotments for sugar sold in the United States

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<sup>6</sup> The 2014 Farm Bill Fact Sheet on the sugar loan program states:

In-process sugar forfeiture: The law authorizes CCC to accept forfeiture of in-process sugar and syrup loan collateral as full loan repayment if the processor converts them within one month after loan maturity into raw cane sugar or refined beet sugar of acceptable grade and quality for sugar eligible for the loans. If forfeited in-process sugars are not converted into raw cane sugar or refined beet sugar of suitable quality and transferred to CCC within one month, CCC may charge liquidated damages.  
([http://www.fsa.usda.gov/Internet/FSA\\_File/sugar\\_loan\\_2014.pdf](http://www.fsa.usda.gov/Internet/FSA_File/sugar_loan_2014.pdf))

The web page of USDA’s Economic Research Service explains that: “When a loan matures, USDA must accept sugar pledged as collateral as payment in full, in lieu of cash repayment of the loan, at the discretion of the processor. ‘In-process’ sugar and syrups must be converted into raw cane or refined beet sugar at no cost to the CCC before being eligible for forfeiture. The processor is not required to notify USDA of the intention to forfeit the sugar under loan.” (<http://www.ers.usda.gov/topics/crops/sugar-sweeteners/policy.aspx>)

for domestic human consumption by domestic sugar beet and sugarcane processors. As USDA has explained, “the overall allotment quantity (OAQ) is determined subject to two conditions: 1) domestic sugar prices remain above forfeiture levels and 2) the OAQ is at least 85 percent of estimated deliveries for domestic human consumption for the marketing year (October to September).” See Attachment 1.

Under the U.S. sugar program, the United States also establishes TRQ allotments for imports of raw cane sugar, refined sugars, sugar syrups, specialty sugar, and sugar-containing products. See Attachment 4: “Sugar Import Program,” issued at <http://www.fas.usda.gov/programs/sugar-import-program>; Attachment 5: “Sugar & Sweeteners – Trade,” issued at <http://www.ers.usda.gov/topics/crops/sugar-sweeteners/trade.aspx>; and Attachment 6: “Sugar,” issued at <https://ustr.gov/issue-areas/agriculture/sugar>. Pursuant to the Uruguay Round Agreements Act, USDA establishes for each federal fiscal year (beginning October 1) the TRQ volumes that govern the amount of imports of raw cane sugar, refined sugar, sugar syrups, specialty sugars and sugar-containing products that may enter the United States, allowing a certain quantity of sugar to enter the country under a low tariff.<sup>7</sup> Id. The United States Trade Representative allocates the TRQs among various countries pursuant to the United States’ World Trade Organization (“WTO”) commitments. See Attachment 6. According to USDA, these import restrictions are intended to fulfill U.S. commitments under the various international agreements. See Attachment 4. In accordance with the terms of the North American Free Trade Agreement, imports of sugar from Mexico are not subject to quantitative limitations<sup>8</sup>

As part of this process, USDA’s World Agricultural Outlook Board (“WAOB”) coordinates, reviews, and approves the monthly *World Agricultural Supply and Demand Estimates* (“WASDE”) report, available at <http://www.usda.gov/oce/commodity/wasde/>, that includes data on “U.S. Sugar Supply and Use.” See, e.g., Attachment 7: *World Agricultural Supply and Demand Estimates*, WASDE – 537 (January 12, 2015) at 16.

### **Price Restriction**

The statute directs that an AD suspension agreement that eliminates injurious effect do so by means of the price restriction contained in the agreement. See Section 734(c)(1) of the Act. Toward that end, the AD Suspension Agreement contains reference prices below which the signatory producers/exporters agree not to sell the subject merchandise (*i.e.*, floor prices). The AD Suspension Agreement defines refined sugar as having a polarity of 99.5 degrees or above, and sets a reference price for that sugar at \$0.2600, or 26.00 cents per pound. For sugar below 99.5 degrees polarity, the reference price is \$0.2225, or 22.25 cents/lb. See AD Suspension

<sup>7</sup> Sugar and related products paying a higher, over-quota tariff may enter the country in unlimited quantities.

<sup>8</sup> Section 201(b) of the North American Free Trade Agreement Implementation Act, 19 U.S.C. 3331(b), authorized the President to proclaim accelerated schedules of duty elimination consistent with Article 302(3) of the NAFTA. See Presidential Proclamation 8180 of September 28, 2007, To Provide for Duty Elimination for Certain Goods of Mexico Under the North American Free Trade Agreement. 72 FR 56171 (October 2, 2007).

Agreement, at Appendix I (79 FR at 78044). Both prices are on an F.O.B. plant basis. Thus when setting their sales prices the producers/exporters of Mexican sugar must account for all costs and expenses incurred up until delivery to the first unaffiliated customer in the United States, in addition to the noted reference prices.

In the Department's analysis determining that the AD Suspension Agreement meets the statutory public interest criterion, in accordance with section 734(d)(1) of the Act, the Department determined that the reference prices in the agreement will ensure that sugar imports from Mexico are fairly-traded. Specifically, the Department stated the following:

Under the terms of the Agreement, the signatory producers/exporters of the subject merchandise who account for substantially all of the imports of that merchandise, as described above, have agreed to revise their prices to eliminate completely the injurious effect of exports to the United States of that merchandise. See Sections IV and VI, and Appendices I and II, of the Agreement. As such, the Agreement will benefit U.S. producers by ensuring that imports of the subject merchandise are fairly-traded at prices at or above the reference prices and should not, therefore, negatively impact the competitiveness of the domestic industry.

See Memorandum for Paul Piquado, Assistant Secretary for Enforcement and Compliance, from Lynn Fischer Fox, Deputy Assistant Secretary for Policy and Negotiations, Enforcement and Compliance, re "Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico: U.S. Import Coverage, Existence of Extraordinary Circumstances, Public Interest, and Effective Monitoring Assessments" (December 19, 2014).

In determining what reference prices should be established in the AD Suspension Agreement for refined and all other sugar to prevent price suppression and undercutting, consistent with section 734(c)(1)(A) of the Act, the Department analyzed how possible reference prices compared to other pricing of sugar in the U.S. market.

First, the Department compared possible reference prices to the 2014 Farm Bill forfeiture prices for the various sugar-producing regions of the United States. See Attachment 3. As described above, the 2014 Farm Bill requires the Secretary of Agriculture to provide nonrecourse loans to processors of domestically-grown sugarcane and sugar beets at specified rates for raw cane and refined beet sugar, respectively. Id. Specifically, for each of the 2011 through 2018 crop years, the 2014 Farm Bill specifies the national-average loan rates for raw cane sugar as 18.75 cents/lb. and for refined beet sugar as 24.09 cents/lb. These loan rates are adjusted to reflect the processing location of the sugar pledged as collateral. Thus, the regional 2013-crop loan rates for raw cane sugar range from 17.95 cents/lb. to 19.61 cents/lb. The regional 2013-crop loan rates for refined beet sugar range from 23.58 cents/lb. to 25.47 cents/lb. Id. As noted previously, the forfeiture prices represent floor prices at which U.S. producers may forfeit their in-process sugar and syrup loan collateral instead of selling their sugar in the market. The loan forfeiture prices provide an important benchmark for determining effective reference prices aimed at eliminating price suppression and undercutting of sugar prices in the U.S. market. Forfeiture prices represent floor

prices established by Congress to provide price support to U.S. producers. Ensuring that the reference prices for refined and all other sugar are above the respective forfeiture prices will contribute to maintaining U.S. sugar prices at a sufficiently high level to avoid forfeitures by U.S. producers. In this way, the AD Suspension Agreement's reference prices operate in a manner consistent with the U.S. sugar program to maintain the program's Congressionally-mandated price support and ensure loans are not forfeited under the program. See Attachment 1.

The AD Suspension Agreement's reference price of 26.00 cents/lb. for refined sugar is 1.91 cents/lb., or eight percent, higher than the 2014 Farm Bill's national-average loan rate of 24.09 cents/lb. Further, the refined sugar reference price is higher than the highest regional loan rate for refined beet sugar of 25.47 cents/lb. for Michigan and Ohio. Id. The AD Suspension Agreement's reference price of 22.25 cents/lb. for all other sugar is 3.50 cents/lb., or 19 percent, higher than the 2014 Farm Bill's national-average loan rate of 18.75 cents/lb. Further, the reference price for all other sugar is higher than the highest regional loan rate for raw cane sugar of 19.61 cents/lb. for Louisiana. Id. In addition, as noted above, the reference prices in the AD Suspension Agreement are stated on an F.O.B. Mexican plant basis, meaning that the actual sales prices in the United States will be even higher, once the transportation and other costs are added to result in delivered prices in the United States. Thus, the reference prices mandated in the AD Suspension Agreement will result in prices for sugar imports from Mexico into the United States that are well above the 2014 Farm Bill loan forfeiture prices.

The U.S. petitioners in this proceeding alleged the following in the petition:

The U.S. sugar program had operated for more than a decade at no net cost to the taxpayers, as USDA had been able to keep supply (from U.S. production, Mexico and all other TRQ countries) and demand in close enough balance to maintain prices that were at or above the loan forfeiture prices. The flood of low-priced imports of sugar from Mexico has completely upset that balance and pushed prices below the forfeiture rates set for the sugar program. As a result, the U.S. government has been forced to expend over \$278 million in the last year under the sugar program.

See "Petitions for the Imposition of Antidumping Duties and Countervailing Duties on Imports of Sugar from Mexico" before the International Trade Administration of the United States Department of Commerce and the United States International Trade Commission, on behalf of the American Sugar Coalition and its Members: American Sugar Cane League, American Sugarbeet Growers Association, American Sugar Refining, Inc., Florida Sugar Cane League, Hawaiian Commercial and Sugar Company, Rio Grande Valley Sugar Growers, Inc., Sugar Cane Growers Cooperative of Florida and the United States Beet Sugar Association (March 28, 2014), at page 52 (public version).

The reference prices for refined and all other sugar are above the respective loan forfeiture prices. Thus, the AD Suspension Agreement ensures that Mexican sugar import prices will not fall below those forfeiture prices, as petitioners assert happened just prior to the filing of the petition. In this way, the reference prices provide support for prices in the U.S. market. The reference prices



ensure that prices for sugar imports from Mexico will not contribute to price declines in the U.S. market that may lead to forfeitures by U.S. producers. The reference prices in the AD Suspension Agreement thus work in concert with the U.S. sugar program to prevent the suppression or undercutting of U.S. domestic price levels for sugar.

In determining reference prices for refined and all other sugar, the Department also considered how these prices compared to U.S. prices for raw and refined sugar as compiled by USDA's Economic Research Service ("ERS"). Specifically, the Department compared the AD Suspension Agreement's reference price for refined sugar of 26.00 cents/lb. to U.S. wholesale prices for refined beet sugar in Midwest markets, as compiled by ERS for the period from 1986 through 2014. See Attachment 8: Excerpt from "Table 5 - U.S. wholesale refined U.S. beet sugar price. . ." at <http://www.ers.usda.gov/data-products/sugar-and-sweeteners-yearbook-tables.aspx>. Using a publicly-available transportation cost estimate of 3.00 cents/lb. for refined sugar, and assuming other add-ons to the F.O.B. plant reference price such as interest and storage charges, the Department finds that the resulting estimated price for refined sugar is in the range of, and on par with, the historical U.S. prices shown for refined sugar in Attachment 8. *Id.*; see also Attachment 9: Excerpt from "Economic Effects of the Sugar Program Since the 2008 Farm Bill & Policy Implications for the 2013 Farm Bill," issued by Agralytica (June 3, 2013), at page 3 (for transportation cost estimate), available at: <http://sugarreform.org/wp-content/uploads/2013/06/AgralyticaEconomicEffectsPaperJune2013.pdf>. Specifically, an estimated price of 29.00 cents/lb. (26.00 cents reference price + 3.00 cents transportation cost) is above the average U.S. price for refined sugar shown for 2013 and the prices shown for the first three months of 2014, prior to the initiation of the underlying investigation in April 2014. See Attachment 8. The estimated price of 29.00 cents/lb. is also essentially equivalent to the calendar-year average U.S. price of 29.61 cents/lb. for the 1986-2014 period, which that can be calculated using the ERS data. *Id.*

Similarly, the Department compared the AD Suspension Agreement's reference price for all other sugar of 22.25 cents/lb. to U.S. prices for raw sugar, duty-fee paid, New York, as compiled by ERS for the period from 1986 through 2014. See Attachment 10: Excerpt from "Table 4 - U.S. raw sugar price. . ." at <http://www.ers.usda.gov/data-products/sugar-and-sweeteners-yearbook-tables.aspx>. Using the same publicly-available transportation cost estimate of 3.00 cents/lb., and assuming other add-ons to the F.O.B. plant reference price such as interest and storage charges, the Department finds that the resulting estimated price for all other sugar is in the range of, and on par with, the historical U.S. prices shown for raw sugar in Attachment 10. *Id.*; see also Attachment 9. Specifically, an estimated price of 25.25 cents/lb. (22.25 cents reference price + 3.00 cents transportation cost) is above the U.S. raw sugar prices shown for each month in 2013 and for the first three months of 2014, prior to the initiation of the underlying investigation in April 2014. See Attachment 10. This estimated price of 25.25 cents/lb. is also greater than the calendar-year average U.S. price of 23.08 cents/lb. for the 1986-2014 period, which can be calculated using the ERS data. *Id.*

The reference prices in the AD Suspension Agreement establish floor prices above which imported sugar from Mexico must be sold. Those prices are thus above not only the statutorily-established

forfeiture prices, but also are consistent with historical average prices prior to the alleged dumping. Thus, as required by the Act, the AD Suspension Agreement will prevent the suppression and undercutting of U.S. domestic sugar prices.

Finally, we note that both reference prices were increased substantially, and that the differential between the prices for refined and all other sugar was also increased, between the date that the draft AD suspension agreement was initialed on October 27, 2014, and the date the finalized AD Suspension Agreement was signed on December 19, 2014. See AD Suspension Agreement, at Appendix I (79 FR at 78044). See also “Memorandum to All Interested Parties” and “Draft Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico,” dated October 27, 2014. These modifications to the reference prices were in part the result of comments filed with the Department after the Department sought comment on the draft agreement. See, e.g., Letter to the Honorable Penny Pritzker, from Tradewins LLC, on behalf of AmCane LLC, re “Sugar from Mexico: Comments on Draft Suspension Agreements” (November 18 2014) (stating that the original spread between the refined sugar price and the other sugar price did not adequately reflect the true costs between selling refined sugar and non-food grade “other” sugar to a U.S. buyer). Specifically, the reference price for refined sugar increased from 23.57 to 26.00 cents/lb., or by over 10 percent, while the reference price for all other sugar increased from 20.75 to 22.25 cents/lb., or by over seven percent.<sup>9</sup> The higher reference prices set higher floor prices for each category of sugar and, thus, will prevent downward pressure on prices in the U.S. market by sales of Mexican sugar. The increased reference prices for refined and all other sugar in the finalized AD Suspension Agreement address concerns regarding the prevention of price suppression and/or undercutting in the U.S. market by supporting domestic price levels.

Further, the differential between the prices for refined and all other sugar was increased by 33 percent, from 2.82 cents/lb. to 3.75 cents/lb. between the draft and finalized agreements.<sup>10</sup> In addition, because the polarity benchmark for refined sugar was expanded to include all imports of sugar from 99.5 degrees polarity and above, such sugar from Mexico will be subject to the higher reference price for refined sugar. Id.; see also “Memorandum to All Interested Parties” and “Draft Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico,” dated October 27, 2014. These changes were also made in part in response to comments filed with the Department after the Department solicited comments on the draft agreement. Among other things, the polarity change ensures that imports of higher polarity sugar that might compete with U.S.-produced refined sugar, are subject to the higher reference price. Thus, this change further contributes to the prevention of suppression and undercutting of domestic price levels.

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<sup>9</sup> In the draft AD suspension agreement, refined sugar was defined in the “Product Coverage” section to be sugar at a polarity of at least 99.9 degrees.

<sup>10</sup> We note that, in addition to the estimated transportation cost from the Mexican sugar mill to a U.S. refinery, the sales price build-up for refined sugar will also include the transportation cost from the U.S. refinery to the U.S. end-user; as noted above, the AD Suspension Agreement’s reference price for refined sugar (as well as for all other sugar) is on an F.O.B. Mexican mill basis. In addition, the reference price for refined sugar reflects a refining margin (i.e., for the processing of raw sugar into refined sugar).

## **Other Factors**

### **Requirement to Eliminate 85 Percent of Dumping**

Under the AD Suspension Agreement, each signatory producer/exporter of sugar from Mexico agrees that, for each entry of sugar from Mexico, the amount by which the estimated normal value exceeds the export price (or constructed export price, as applicable) will not exceed fifteen percent of the weighted-average amount by which the estimated normal value exceeded the export price (or constructed export price) for all less-than-fair-value entries of the producer/exporter examined during the course of the underlying AD investigation, in accordance with the antidumping duty laws, regulations, and procedures. See AD Suspension Agreement, 79 FR at 78042. The Department preliminarily determined weighted-average AD margins ranging from 39.54 to 47.26 percent in the underlying investigation. See Sugar From Mexico: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 79 FR 65189 (November 3, 2014). The agreement also points to calculation methodologies for normal value, export price and constructed export price, as detailed in Appendix II to the AD Suspension Agreement. See AD Suspension Agreement, 79 FR at 78044. Therefore, under the AD Suspension Agreement, signatory producers/exporters agree not only to make their sales at or above the applicable reference prices stated in Appendix I, they also agree to eliminate 85 percent of the dumping, in accordance with the terms of the agreement. In other words, in pricing their sugar for the U.S. market, Mexican producers/exporters must take into account not only the reference prices but also the requirement to eliminate 85 percent of the dumping in accordance with the AD Suspension Agreement's guidance.

### **Volume Restriction**

When the AD Suspension Agreement entered into force, on December 19, 2014, the related CVD Suspension Agreement also became effective. Section V of the CVD Suspension Agreement instituted export limits that restrict the amount of sugar that Mexico exports to the United States. See CVD Suspension Agreement (79 FR 78044, 78047). In addition, the CVD Suspension Agreement imposes certain restrictions on shipping patterns to prevent oversupply during particular periods of the crop year. See id. In the Department's analysis of whether the CVD Suspension Agreement meets the statutory public interest criterion, the Department indicated that the volume restrictions will support price stability in the U.S. market. Specifically, the Department stated the following:

Under the terms of the Agreement, the Government of Mexico has agreed to restrict the volume of imports of subject merchandise into the United States, tying exports of sugar to U.S. needs, and thereby eliminating completely the injurious effect of exports to the United States of that merchandise. See Section V of the Agreement. Specifically, the Agreement addresses the availability of the supplies of sugar to the United States for U.S. sugar cane refiners, as well as the general public. In turn, by addressing oversupply, the Agreement will support price stability and predictability for consumers.

See Memorandum for Paul Piquado, Assistant Secretary for Enforcement and Compliance, from Lynn Fischer Fox, Deputy Assistant Secretary for Policy and Negotiations, Enforcement and Compliance, re “Agreement Suspending the Countervailing Duty Investigation on Sugar from Mexico: Existence of Extraordinary Circumstances, Public Interest, and Effective Monitoring Assessments” (December 19, 2014).

The export limits mandated by the CVD Suspension Agreement are designed to ensure a consistent and adequate supply of sugar in the U.S. market while preventing an oversupply that could negatively impact prices. The CVD Agreement thus buttresses the AD Suspension Agreement terms aimed at preventing price suppression and undercutting of sugar prices in the U.S. market. The CVD Suspension Agreement’s export limits reflect the basic economic tenet that a seller with limited quantitative access to a market will seek to obtain the highest price possible for such goods, in order to maximize revenue; in a market with quantitative limits, lower prices cannot lead to increased market share, only less revenue. Thus, similar to the Congressionally-mandated U.S. sugar program, the AD and CVD Suspension Agreements work together by establishing volume restrictions and price supports that will prevent price declines. In crafting the law with regard to suspension agreements, Congress recognized that the conditions of trade, competition, and development in a particular industry will determine the effects of specific volumes on prices. As no “specific numerical standard” exists for what level of imports would be price suppressive, each suspension agreement must be tailored to the circumstances of the market and industry. See Torrington Co. v. United States, 790 F. Supp. 1161, 1171 (CIT 1992), citing H. Rep. No. 100-40 at 131 (1987).

In this case, the AD Suspension Agreement and the CVD Suspension Agreement will foster stability in the U.S. sugar market by means of reference prices and export limits, respectively. While the specific terms of the AD Suspension Agreement ensure the prevention of the suppression and/or undercutting of domestic sugar price levels, the CVD Suspension Agreement’s quantitative restriction will create a market condition that furthers the AD Suspension Agreement’s objectives through export limits.<sup>11</sup>

The terms of the CVD Suspension Agreement, thus, work in concert with the AD Suspension Agreement terms and with the existing features of the U.S. sugar program. The CVD Suspension Agreement limits supply from Mexico, while the U.S. sugar program manages supply from all other sources, including U.S. producers. With the advent of these agreements, the U.S. sugar market is regulated in terms of both a floor price and supply limitations from all sources, creating market conditions that prevent price suppression or price undercutting. Thus, the AD Suspension Agreement’s provisions will effectively eliminate the injurious effects of exports of sugar from Mexico and prevent price suppression and undercutting.

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<sup>11</sup> As noted, the CVD Suspension Agreement creates a market condition that facilitates one of the critical aims of the AD Suspension Agreement, which is to prevent price suppression and undercutting. In the event the CVD Suspension Agreement is terminated while the AD Suspension Agreement remains in force, the Department expects to re-examine the issue of price suppression and undercutting. To the extent that the Department finds price suppression and undercutting cannot be prevented, the Department will seek to amend or terminate the AD Suspension Agreement, as necessary.



## **Cooperation with USDA**

As noted above, USDA has historically played a key role in managing the U.S. sugar market. The Department closely consulted with USDA while finalizing these suspension agreements to understand (1) how the U.S. sugar program and market operate and (2) how any suspension agreements would be harmonized with the requirements of the U.S. sugar program to stabilize the market and avoid shortages of sugar for U.S. consumers. The Department intends to continue to consult with USDA during the implementation of the suspension agreements, and both agreements contain provisions under which information will be shared between the Department and USDA. See AD Suspension Agreement, 79 FR at 78042 and 78043; CVD Suspension Agreement, 79 FR at 78047 and 78049. In particular, a key component of the export limit calculation in the CVD Suspension Agreement is calculated using information from USDA's WASDE reports. See CVD Suspension Agreement, 79 FR at 78047.

## **Compliance of the AD Suspension Agreement with Requirements of Section 734(c)**

The Department finds that the reference prices for refined and all other sugar instituted in the AD Suspension Agreement will prevent the suppression and/or undercutting of domestic price levels. As detailed above, the reference prices in the finalized AD Suspension Agreement increased significantly from the prices contained in the initialed draft agreement. When transportation and other costs are accounted for (*i.e.*, added on to the reference prices), the F.O.B. plant-based reference prices will result in sales prices in the U.S. market that are well above the 2014 Farm Bill loan forfeiture prices, thereby providing an assurance that sugar imports from Mexico will not contribute to price declines that may lead to forfeitures in the U.S. market. These reference prices also compare favorably to U.S. market prices as compiled by USDA's ERS, indicating that the selling prices for sugar from Mexico under the terms of the AD Suspension Agreement will be on par with U.S. sugar market prices and, thus, will not undercut or suppress domestic price levels. As also described above, the AD Suspension Agreement requires further that Mexican sugar producer's/exporter's sales prices take into account not only the relevant reference price but also ensure that the dumping margin for that sale (if any) does not exceed 15 percent of the applicable AD margin determined in the underlying AD investigation. In addition, the companion CVD Suspension Agreement contains provisions that limit the supply of Mexican sugar into the U.S. market, thereby fostering stability and preventing oversupply, which could lead to declining prices for sugar in the U.S. market. Thus, the CVD Suspension Agreement's features will support the AD Suspension Agreement's ability to prevent the suppression or undercutting of domestic sugar price levels. Therefore, based on the analysis detailed in this memorandum, the Department determines that the AD Suspension Agreement meets its statutory obligation under section 734(c)(1) to eliminate completely the injurious effect of sugar exports to the United States from Mexico.

# ATTACHMENT 1

1/20/2015

USDA ERS - Sugar &amp; Sweeteners Policy

United States Department of AgricultureEconomic Research Service**Policy**

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**Note:** This topic page may contain material that has not yet been updated to reflect the new Farm Act, signed into law on February 7. ERS has published [highlights and some implications](#) of the Act's new programs and provisions. Sign up for the ERS [Farm Bill e-newsletter](#) to receive notices of topic page updates and other new Farm Bill-related materials on the ERS website.

[Domestic Price Support](#)[Flexible Marketing Allotments](#)[Disposition of Sugar Owned by the CCC](#)[Sugar Tariff-Rate Quotas and Other Trade Measures](#)[Re-Export Programs](#)[Dominican Republic-Central American Free Trade Agreement](#)

The U.S. sugar program uses price supports, domestic marketing allotments, and tariff-rate quotas (TRQs) to influence the amount of sugar available to the U.S. market. The program supports U.S. sugar prices above comparable levels in the world market. The origin of the program can be traced to legislation in the Agriculture and Food Act of 1981 (1981 Farm Act). The program has been reauthorized with some modifications in succeeding Farm Acts. An important aspect of the program is that it operates, to the maximum extent possible, at no cost to the Federal Government by avoiding

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loan forfeitures to USDA's Commodity Credit Corporation (CCC).

A new measure introduced in the Food, Conservation, and Energy Act of 2008 (2008 Farm Act) to help avoid loan forfeitures is the Feedstock Flexibility Program (FFP). The FFP will divert sugar in excess of domestic food consumption requirements to ethanol production. The main challenge to the program comes from sugar imports from Mexico that now enter duty-free under the terms of the North American Free Trade Agreement (NAFTA).

## Domestic Price Support

The 2008 Farm Act provides for USDA to make loans available to processors of domestically grown sugarcane and to domestic processors of sugar beets at set loan rate levels for fiscal years (FY) 2009-13. Loans are taken for a maximum term of 9 months and must be liquidated along with interest charges by the end of the fiscal year in which the loan was made. Unlike most other commodity programs, the sugar program makes loans to processors and not directly to producers. The reason is that sugarcane and sugar beets, being bulky and very perishable, must be processed into sugar before they can be traded and stored. To qualify for loans, processors must agree to provide payments to producers that are proportional to the value of the loan received by the processor for sugar beets and sugarcane delivered by producers. USDA has the authority to establish minimum producer payment amounts.

The loans are nonrecourse. When a loan matures, USDA must accept sugar pledged as collateral as payment in full, in lieu of cash repayment of the loan, at the discretion of the processor. "In-process" sugar and syrups must be converted into raw cane or refined beet sugar at no cost to the CCC before being eligible for forfeiture. The processor is not required to notify USDA of the intention to forfeit the sugar under loan. The loan rates for raw cane and beet sugar are set in the 2008 Farm Act.

The loan rate for raw cane sugar is:

- 18 cents per pound in FY 2009,
- 18.25 cents per pound in FY 2010,
- 18.50 cents per pound in FY 2011, and
- 18.75 cents per pound in FY 2012-13.

The loan rate for refined beet sugar is:

- 22.9 cents per pound in FY 2009 and
- 128.5 percent of the loan rate for raw cane sugar in FY 2010-13.

The 2008 Farm Act allows processors to obtain loans for in-process sugar and syrups at 80 percent of the loan rate.

## Flexible Marketing Allotments

Sugar sold in the United States for domestic human consumption by domestic sugar beet and sugarcane processors is subject to marketing allotments, as a way to guarantee the sugar loan program operates at no cost to the Federal Government. The overall allotment quantity (OAQ) is determined subject to two conditions: 1) domestic sugar prices remain above forfeiture levels and 2) the OAQ is at least 85 percent of estimated deliveries for domestic human consumption for the marketing year (October to September). Allotments are in effect the entire year; there are no criteria for suspension. During the course of the marketing year, USDA is required to adjust allotment

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USDA ERS - Sugar &amp; Sweeteners Policy

quantities to avoid the forfeiture of sugar to CCC.

OAQ allocations are divided between refined beet sugar at 54.35 percent of the overall quantity and raw cane sugar at 45.65 percent of the overall quantity. For cane sugar, Hawaii is allotted 325,000 short tons, raw value (STRV). The allocations for the mainland cane sugar-producing States (Florida, Louisiana, and Texas) are assigned based on the States' and processors' production in crop years 1999-2003. Beet sugar processors are assigned allotments based on their sugar production in crop years 1998-2000. The 2008 Farm Act sets out allocation conditions for new entrants and for the effect of sale of factories between processors.

The 2008 Farm Act provides for a number of contingencies that could require reassignment of allotments during the crop year. If a cane processor that has been allocated an OAQ share cannot market the share, it is reassigned to the other processors within the same State, taking into account their ability to make up the deficit and also the interests of producers served by the processors. If the deficit cannot be eliminated by this step, then the remainder is allocated to the other cane-producing States, and then to the processors in those States. If the deficit still is not eliminated, it is assigned to the CCC for sale from CCC inventories. If CCC inventories are insufficient to cover the deficit, then the deficit is assigned to imports. The procedure for a beet sugar processor deficit is similar, except there is no reassignment based on States where processing takes place. There is no provision for cane sugar OAQ deficits to be reassigned to beet sugar processors, or for beet sugar OAQ deficits to be reassigned to cane sugar processors.

The 2008 Farm Act explicitly states that sugar forfeited to the CCC counts against marketing allotments made in the year in which the loan to the processor was made. This clarification reinforces that sugar in excess of a processor's allotment at the end of the marketing year cannot be forfeited. Other marketings counting against allotments include a sale of sugar under the FFP; export of sugar from the U.S. Customs Territory eligible to receive credits under re-export programs for refined sugar or sugar-containing products administered by USDA's Foreign Agricultural Service (FAS); sale of sugar eligible to receive credit for the production of polyhydric alcohol under the FAS-administered Polyhydric Alcohol Program; and for any integrated processor and refiner, the movement of raw cane sugar into the refining process.

## Feedstock Flexibility Program

The Feedstock Flexibility Program operates to avoid sugar loan forfeitures to the CCC by requiring the diversion of sugar from food use to ethanol production. On September 1 (1 month before the end of the marketing year), the Secretary of Agriculture announces the amount of sugar (if any) for the CCC to purchase and to be made available for sale to ethanol producers. Raw, refined, and in-process sugars are eligible for purchase. Such sugar can be purchased from any marketer located in the United States. As mentioned previously, sugar purchased from a sugarcane or sugar beet processor is counted against that processor's marketing allotment.

## Disposition of Sugar Owned by the CCC

The 2008 Farm Act provides for specific ways to dispose of sugar owned by the CCC without increasing future forfeiture risk. Like the Farm Security Act of 2002 (2002 Farm Act), the 2008 Farm Act includes the payment-in-kind (PIK) authority to transfer ownership of CCC sugar to processors in exchange for reductions in production through reduced sugar crop planting. For area already planted, the processor cannot commercially market the crop other than as a bioenergy feedstock.

The 2008 Farm Act explicitly authorizes the sale of CCC sugar for the production of ethanol and for the buyback of certificates of quota entry (also referred to as certificates for quota eligibility, or CQEs) to reduce tariff-rate quota imports. To comply with the goal of preventing sugar forfeitures, the 2008 Farm Act prohibits the sale of CCC sugar for domestic human consumption. (Such sales would seem to be permissible if they resulted from a reassignment of OAQ from a sugar processor to the CCC, as provided for under the 2002 and 2008 Farm Acts. In this instance, the likelihood of sugar forfeiture would seem to be minimal.)



## Sugar Tariff-Rate Quotas and Other Trade Measures

The United States establishes separate tariff-rate quotas (TRQs) for imports of raw cane sugar and refined sugar (also called "certain other sugars, syrups, and molasses"). Prior to the start of the fiscal year (October 1-September 30), the Secretary of Agriculture announces the quantity of sugar that may be imported at the preferential in-quota tariff rate during that fiscal year. There is no limit to the quantity that may be imported at the higher over-quota tariff rate.

Under the Uruguay Round [Agreement on Agriculture](#) (AoA), the United States agreed to make available for import a minimum quantity of raw and refined sugar each marketing year. This amount is equal to 1.139 million metric tons, raw value (MTRV), or 1.256 million STRV. Included in this amount is a commitment to import at least 22,000 MTRV, or 24,251 STRV, of refined sugar. The United States administers additional TRQs on imports of various sugar-containing products that originally had been subject to absolute quotas under Section 22 of the Agricultural Adjustment Act of 1933. There are four of these additional TRQs, none of which apply to Mexico under NAFTA.

According to the [Harmonized Tariff Schedule of the United States](#) (Ch.17, Additional U.S. Note 5 (a) (ii)), whenever the Secretary of Agriculture believes that domestic supplies of sugars may be inadequate to meet domestic demand at reasonable prices, the Secretary may modify any quantitative limitations that have previously been established, but not below the minimum quantities under the AoA.

The raw cane sugar TRQ is currently allocated by [Office of the U.S. Trade Representative](#) (USTR) to 40 countries based on a representative period (1975-81) when trade was relatively unrestricted. The refined sugar tariff rate quota is currently allocated to Canada and Mexico, and there is a quantity of refined sugar that is available to all countries on a first-come, first-served basis. Likewise, there is an allocation for specialty sugars, which is also on a first-come, first-served basis.

The in-quota tariff for sugar is equal to 0.625 cents per pound. Most countries have the low-tier tariff waived under either the Generalized System of Preferences (see [Agricultural Trade Preferences and the Developing Countries](#), page 3, for more information), the Caribbean Basin Initiative, or under U.S. free trade agreements. The over-quota tariff is 15.36 cents per pound for raw sugar and 16.21 cents per pound for refined sugar. In addition to the over-quota tariffs, there are safeguard duties based on the value or quantity of the imported sugar. Currently, these duties are based on value.

## Re-Export Programs

The United States also operates two re-export programs, as well as a sugar-for-polyhydric alcohol import program, to help U.S. sugar refiners and manufacturers of sugar-containing products compete in world markets. The Refined Sugar Re-Export Program establishes a license against which a company can import sugar at world prices for refining and sale to replace sugar in the market that has been exported as refined sugar or as sugar in sugar-containing products. The Sugar-Containing Products Re-Export Program allows U.S. participants to buy sugar at world prices for use in products that will be exported onto the world market. Raw cane sugar imports under these programs are not subject to the sugar TRQs. All refined sugars derived from either sugar beets or sugarcane are substitutable under these programs.

## Dominican Republic-Central American Free Trade Agreement

Under the Dominican Republic-Central American Free Trade Agreement (DR-CAFTA), there are specific provisions for trade in sugar. The United States establishes country-specific TRQs for the DR-CAFTA countries, starting at a total of 107,000 metric tons in 2006 (year 1) and growing to 151,140 metric tons in year 15, thereafter growing by 2,640 metric tons per year, into perpetuity. A 2,000-metric-ton TRQ, with no growth, is established for Costa Rica for specialty sugar. Each country's duty-free access will be the lesser of its trade surplus or its TRQ for that year. Provisions have been agreed to allow alternative forms of compensation to be established to facilitate sugar stock management by the United States.

# ATTACHMENT 2



United States Department of Agriculture  
Farm Service Agency



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## About FSA

### About the Commodity Credit Corporation

#### Background

The Commodity Credit Corporation (CCC) is a Government-owned and operated entity that was created to stabilize, support, and protect farm income and prices. CCC also helps maintain balanced and adequate supplies of agricultural commodities and aids in their orderly distribution.

CCC was incorporated October 17, 1933, under a Delaware charter with a capitalization of \$3 million. It was initially managed and operated in close affiliation with the Reconstruction Finance Corporation, which funded its operations.

On July 1, 1939, CCC was transferred to the United States Department of Agriculture (USDA). It was reincorporated on July 1, 1948, as a Federal corporation within USDA by the [Commodity Credit Corporation Charter Act](#) (62 Stat.1070; 15 U.S.C. 714). As amended through the [Presidential Appointment Efficiency and Streamlining Act of 2011, P.L. 112-166](#), Enacted August 10, 2012.

#### Basic Responsibilities

The CCC Charter Act, as amended, aids producers through loans, purchases, payments, and other operations, and makes available materials and facilities required in the production and marketing of agricultural commodities.

The CCC Charter Act also authorizes the sale of agricultural commodities to other government agencies and to foreign governments and the donation of food to domestic, foreign, or international relief agencies. CCC also assists in the development of new domestic and foreign markets and marketing facilities for agricultural commodities.

The 1996 Farm Bill significantly changed U.S. agricultural policy. Earlier, USDA made deficiency payments to producers of wheat, feed grains, cotton, and rice to make up the differences between target prices and seesawing market prices. The 1996 Farm Bill capped spending for the first time, guaranteeing farmers a series of fixed but declining "production flexibility contract" payments.

#### Organization

CCC is managed by a Board of Directors, subject to the general supervision and direction of the Secretary of Agriculture, who is an ex-officio director and chairperson of the Board. The Board consists of seven members, in addition to the Secretary, who are appointed by the President of the United States by and with the advice and consent of the Senate. All members of the Board and Corporation officers are USDA officials.

CCC has no operating personnel. Its price support, storage, and reserve programs, and its domestic acquisition and disposal activities are carried out primarily through the personnel and facilities of the Farm Service Agency (FSA).

#### Related Topics

- [About the CCC](#)
- [Current Interest Rates](#)
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# ATTACHMENT 3



UNITED STATES DEPARTMENT OF AGRICULTURE  
FARM SERVICE AGENCY

# 2014 Farm Bill

## FACT SHEET

March 2014

### Sugar Loan Program, Sugar Marketing Allotments and Feedstock Flexibility Program

#### OVERVIEW

The Sugar Loan Program provides nonrecourse loans to processors of domestically grown sugarcane and sugar beets. Generally, loan programs provide producers interim financing at harvest time to meet cash flow needs without having to sell their commodities when market prices are typically at harvest-time lows. Allowing producers to store production at harvest facilitates more orderly marketing of commodities throughout the year. The Agricultural Act of 2014 (2014 Farm Bill) provides the Farm Service Agency (FSA) the authority to administer nonrecourse loans for the 2011 through 2018 crops on behalf of the Commodity Credit Corporation (CCC).

#### LOAN ELIGIBILITY

Sugar and in-process sugar loans are available beginning October 1 each fiscal year and mature at the earlier of:

- (1) The end of the nine-month period beginning on the first day of the first month after the month in which the loan is made, or
- (2) The end of the fiscal year in which the loan is made.

In the case of a loan made in the last three months of a fiscal year (July, August and September), the processor may re-pledge the sugar as collateral for a second loan (referred to as a supplemental loan) in the subsequent fiscal year. The supplemental loan is made at the loan rate in effect at the time the initial loan was made, and matures in nine months less the quantity of time that the initial loan was in effect.

To be eligible, processors must:

- Process sugar from domestically grown sugar beets or sugarcane from producers who are in compliance with both highly erodible and wetlands regulations;

- Agree to all terms and conditions in the loan application;
- Execute a note, a security agreement and a storage agreement with CCC.

#### LOAN RATE

The 2014 Farm Bill requires the Secretary of Agriculture to provide nonrecourse loans to processors of domestically grown:

- (1) Sugarcane at a rate equal to 18.75 cents per pound for raw cane sugar for each of the 2011 through 2018 crop years, and
- (2) Sugar beets at a rate equal to 24.09 cents per pound for refined beet sugar for each of the 2011 through 2018 crop years.

Loan rates are adjusted to reflect the processing location of the sugar pledged as collateral. (See the tables under National Average Loan Rates by Crop Year).

The in-process sugar loan rate equals 80 percent of the loan rate applicable to raw cane sugar or refined beet sugar, as determined by the Secretary on the basis of the source material for the in-process sugar and syrups. In-process sugars and syrups do not include raw sugar, liquid sugar, invert sugar or syrup, or other finished products otherwise eligible for sugar loans.

- In-process sugar forfeiture: The law authorizes CCC to accept forfeiture of in-process sugar and syrup loan collateral as full loan repayment if the processor converts them within one month after loan maturity into raw cane sugar or refined beet sugar of acceptable grade and quality for sugar eligible for the loans. If forfeited in-process sugars are not converted into raw cane sugar or refined beet sugar of suitable quality and transferred to CCC within one month, CCC may charge liquidated damages.
- In-process sugar crystallization: If the processor does not forfeit the collateral, but instead

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## FACT SHEET

### 2014 Sugar Loan Program

March 2014

further processes the in-process sugar into raw cane sugar or refined beet sugar and repays the loan, the processor may obtain a loan at the higher rate for the raw cane sugar or refined beet sugar. The term of a loan made for an in-process sugar, when combined with the term of a loan made for raw cane sugar or refined beet sugar derived from in-process sugars, may not exceed nine months.

#### National Average Loan Rates by Crop Year

Crop Year	2013
(Cents Per Pound)	
Raw Cane Sugar	18.75
Refined Beet Sugar	24.09

#### Regional 2013-crop Loan Rates of Raw Cane Sugar

Crop Year	2013
(Cents Per Pound)	
Florida	18.19
Hawaii	17.95
Louisiana	19.61
Texas	18.36
Sugar processed in Hawaii but placed under loan on the United States mainland	18.75

#### Regional 2013-crop Loan Rates of Refined Beet Sugar

Crop Year	2013
(Cents Per Pound)	
Mich. & Ohio	25.47
Minn. & E ½ N.D.	23.82
NE ¼ Colo., Neb., SE ¼ Wyo.	24.40
Mont. & NW ¼ Wyo., & W ½ N.D.	24.17
Idaho, Oregon, & Washington	23.58
California	24.89

### MINIMUM PRICE SUPPORT FOR SUGARCANE

As a condition to receive CCC sugar loans, sugarcane processors are required to pay their growers at least the minimum payments as specified in the annual CCC loan rate news release and available in their FSA county office.

### SUGAR BEET MINIMUM PAYMENT

Sugar beet grower minimum payments are the amount specified in the grower/processor contract.

### MARKETING ALLOTMENTS

At the beginning of each fiscal year, CCC will estimate the domestic human consumption of sugar and establish marketing allotments for sugar sold for domestic human consumption that has been processed from sugarcane, sugar beets or in-process beet sugar. The Secretary will strive to establish an overall allotment quantity that results in no forfeitures of sugar to CCC under the sugar loan program and assigns domestic producers at least 85 percent of the market share of domestic human consumption for the crop year. The Secretary shall make estimates of sugar consumption, stocks, production and imports for a crop year as necessary, but not later than the beginning of each of the second through fourth quarters of the crop year.

- **Beet Sugar:** Beet sugar's allotment is derived by multiplying the overall allotment quantity for the crop year by 54.35 percent. This allotment may only be filled with sugar domestically processed from sugar beets or in-process beet sugar.
- **Cane Sugar:** Cane sugar's allotment is derived by multiplying the overall allotment by 45.65 percent. Offshore states receive an allocation of 325,000 short tons, raw value, of cane sugar. Remaining cane sugar is allotted to individual mainland cane sugar states. Cane sugar's allotment may only be filled with sugar processed from domestically grown sugarcane.

CCC establishes cane state allotments and sugarcane processor allocations as mandated by regulation. A state cane sugar allotment may be filled only with sugar processed from sugarcane grown in the state covered by the allotment.

If a sugarcane processor is unable to market its allocation, CCC will reassign the estimated quantity of the deficit to other processors within that state. If after reassignment, the deficit cannot be eliminated, CCC will reassign the deficit proportionately to

## FACT SHEET

### 2014 Sugar Loan Program

March 2014

allotments for other cane sugar states. If this deficit cannot be eliminated, CCC will reassign the deficit to CCC for sale of CCC sugar inventory unless such sales would have a significant effect on the price of sugar. If the deficit still has not been eliminated, CCC will reassign the remainder to raw cane sugar imports. Likewise, if a sugar beet processor is unable to market its allocation, CCC will reassign the deficit to other sugar beet processors, then to CCC, and then to raw cane sugar imports.

During any crop year or portion thereof for which marketing allotments have been established, no sugar beet or sugarcane processor shall market a quantity of sugar for human consumption in excess of the allocation established for such processor, except to enable another processor to fulfill an allocation or for export. Processors knowingly violating their allocation shall be liable to CCC for a civil penalty in an amount equal to three times the U.S. market value at the time of the commission of the violation of that quantity of sugar involved in the violation.

### FEEDSTOCK FLEXIBILITY PROGRAM

The 2014 Farm Bill also provides authority for CCC to purchase surplus sugar and sell it to bioenergy producers in order to forestall loan forfeitures.

If forfeitures do occur, the Secretary can dispose of the inventory through sale to bioenergy producers, operate a payment-in-kind program, or purchase certificates of quota eligibility, or any use permitted for CCC sugar before the 2014 Farm Bill was enacted; however, unless there is an emergency shortage of sugar for human consumption, the sugar cannot be sold in a manner that increases the supply of sugar available for human consumption.

Other requirements apply. Check with a local FSA county office or online at [www.fsa.usda.gov](http://www.fsa.usda.gov) for details.

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Sugar Monthly Import and Re-Export Data

January 12, 2015

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The United States imports sugar under a system of tariff-rate quotas (TRQ). A TRQ is a two-tiered tariff for which the tariff rate charged depends on the volume of imports. A low-tier (in-quota) tariff is charged on imports within the quota volume. A high-tier (over-quota) tariff is charged on imports in excess of the quota volume. Almost all raw cane sugar, refined sugars and sugar syrups, and sugar-containing products are imported under TRQs for those products. (See the [Policy](#) page for more information on TRQs.)

Yearly imports under the raw and refined sugar TRQs since fiscal year (FY) 2000 have averaged 1.48 million short tons, raw value (STRV). USDA has established TRQs at lower levels in recent years to offset increasing domestic production. ERS projects that TRQ imports through 2015 will continue mostly at levels that are consistent with U.S. commitments under international agreements.

Most U.S. sugar imports are raw cane sugar. The raw cane sugar TRQ is allocated to 40 countries based on patterns established during the relatively unrestricted free trade period of 1975-81. The Dominican Republic, Brazil, and the Philippines hold the largest shares--approximately 17, 14, and 13 percent, respectively. Declines in the overall quantity of the quota have reduced imports from all suppliers with the exception of the 10 small suppliers whose allocations are limited to 7,258 metric tons, raw value (MTRV), a quantity considered to be equal to a minimum boatload of sugar.

As of January 1, 2008, sugar from Mexico enters the United States duty-free under the [North American Free Trade Agreement \(NAFTA\)](#) and is not subject to quota restrictions.

## Imports and Exports Under the Sugar Re-Export Programs

USDA administers two re-export programs to help U.S. sugar refiners and manufacturers of sugar-containing products compete in world markets. The Refined Sugar Re-Export Program establishes a license against which a refiner can import world-priced sugar for refining and export as refined sugar or for sale to licensed manufacturers of sugar-containing products. The Sugar-Containing Products Re-Export Program allows U.S. participants to buy sugar from any of the refiner participants for use in products that will be exported onto the world market. Imports under the two programs are not subject to sugar TRQs.

USDA also administers the Polyhydric Alcohol Program, which provides world-priced sugar to U.S. manufacturers of polyhydric alcohols. Participating U.S. manufacturers purchase world-priced sugar from licensed refiners or their agents for use in the production of polyhydric alcohols, except polyhydric alcohols that are used as a substitute for sugar in human food consumption. U.S. sugar imports under the two Re-Export Programs and the Polyhydric Alcohol Program averaged 400,000 STRV in the 2000s.

The Refined and Sugar-Containing Products Re-Export Programs are the chief source of U.S. sugar exports. During the 2000s, the Refined Sugar Re-Export Program averaged 214,000 STRV of exports annually, and deliveries to domestic food manufacturers under the Sugar-Containing Products Re-Export Program averaged 137,000 STRV a year.

For current data on imports and exports of sugar and sweeteners, see the [Sugar and Sweeteners Yearbook](#) tables.

# ATTACHMENT 6

## Sugar

The United States maintains tariff-rate quotas (TRQs) for imports of raw cane sugar, refined sugar, specialty sugar, and sugar-containing products (SCPs). Pursuant to the Uruguay Round Agreements Act, USDA establishes the total in-quota quantity of the TRQs for raw, refined, and specialty sugar for each fiscal year, while USTR is responsible for allocating the TRQs pursuant to the United States' WTO commitments. In the case of the WTO raw sugar TRQ, USTR allocates the in-quota volume among certain supplying countries based on the countries' historical shipments to the United States and consultations with quota-holding countries. USTR is also responsible for allocating any increase in the in-quota amounts and/or reallocating unused quota volumes to quota-holding countries.

Several free trade agreements (FTAs), including the CAFTA-DR and agreements with Chile, Colombia, Morocco, Panama, and Peru provide TRQs for a basket of sugar and syrup goods and SCPs, provided that the respective FTA partner has a trade surplus in these goods based on the most recent data available. In any calendar year, the size of our FTA partners' TRQs for sugar and syrup goods and SCPs is the lesser of (i) the country's global trade surplus in these goods, or (ii) the quantity specified in the FTA for that year. Each year, USTR determines and publishes in the Federal Register the amount (if any) of each FTA partner's trade surplus.

# ATTACHMENT 7

January 2015

## WASDE - 537 - 16

## U.S. Sugar Supply and Use 1/

	2012/13	2013/14 Est.	2014/15 Proj. Dec	2014/15 Proj. Jan
	<i>1,000 Short Tons, Raw Value</i>			
Beginning Stocks	1,979	2,158	1,796	1,796
Production 2/	8,982	8,457	8,610	8,610
Beet Sugar	5,076	4,794	4,870	4,870
Cane Sugar	3,906	3,663	3,740	3,740
Florida	1,867	1,759	1,915	1,915
Hawaii	179	168	180	180
Louisiana	1,686	1,591	1,520	1,520
Texas	173	145	125	125
Imports	3,224	3,742	3,513	3,504
TRQ 3/	957	1,302	1,479	1,492
Other Program 4/	136	305	400	400
Other 5/	2,131	2,135	1,634	1,612
Mexico	2,124	2,130	1,624	1,602
Total Supply	14,184	14,357	13,919	13,910
Exports	274	306	250	250
Deliveries	11,752	12,255	11,994	11,994
Food 6/	11,487	11,828	11,859	11,859
Other 7/	265	427	135	135
Miscellaneous	0	0	0	0
Total Use	12,026	12,561	12,244	12,244
Ending Stocks 8/	2,158	1,796	1,675	1,666
Stocks to Use Ratio	17.9	14.3	13.7	13.6

1/ Fiscal years beginning Oct 1. Historical data are from FSA "Sweetener Market Data" (SMD). 2/ Production projections for 2013/14 and 2014/15 are based on Crop Production and processor projections where appropriate. 3/ For 2014/15, WTO raw sugar TRQ shortfall (99). For 2013/14, WTO raw sugar TRQ shortfall (237). 4/ Includes sugar under the re-export and polyhydric alcohol programs. 5/ For 2012/13, other high-tier (7) and other (0). For 2013/14, other high-tier (5) and other (0). For 2014/15, other high-tier (10) and other (0). 6/ Combines SMD deliveries for domestic human food use and SMD miscellaneous uses. 7/ Transfers to sugar-containing products for reexport, and for nonedible alcohol, feed, and ethanol. 8/ For 2012/13, includes 316,415 short tons, raw value, of stocks held by the Commodity Credit Corporation.

## Mexico Sugar Supply and Use and High Fructose Corn Syrup Imports 1/

		Beginning Stocks	Production	Imports	Domestic 2/	Exports	Ending Stocks
		<i>1,000 Metric Tons, Actual Weight</i>					
Sugar	2013/14 Est.	1,460	6,021	131	4,271	2,511	831
	Dec	1,460	6,021	131	4,271	2,511	831
2014/15 Proj.	Jan	831	6,140	192	4,524	1,715	924
	Dec	831	6,151	192	4,524	1,696	955

1/ HFCS imports by Mexico (1,000 metric tons, dry basis): Oct-Sep 2013/14 = 913, Oct-Nov 2013 = 159, Oct-Nov 2014 = 156. Footnote source: Comité Nacional para el Desarrollo Sustentable de la Cana de Azúcar. 2/ Includes domestic consumption, Mexico's products export program (IMMEX), and any residual statistical discrepancies. IMMEX: 2013/14 (324 est), 2014/15 (324 proj). Statistical Adjustment: 2013/14 (-151), 2014/15 (0).



# ATTACHMENT 8

**EXCERPT FROM**

Table 5--U.S. wholesale refined beet sugar price, Midwest markets, monthly, quarterly, and by calendar and fiscal year

Year	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sep.	Oct.	Nov.	Dec.	1st Q.	2nd Q.	3rd Q.	4th Q.	Calendar	Fiscal
1986	23.45	23.31	23.25	23.50	23.30	23.00	23.25	24.10	24.19	23.50	22.81	22.88	23.34	23.27	23.85	23.06	23.38	23.30
1987	23.30	23.50	23.50	23.50	24.15	24.31	24.50	24.50	24.00	22.85	22.50	22.55	23.43	23.99	24.33	22.63	23.60	23.70
1988	22.75	22.75	22.75	23.45	24.19	25.25	27.10	27.75	27.50	27.25	26.75	27.80	22.75	24.30	27.45	27.27	25.44	24.28
1989	28.75	29.00	29.50	29.50	29.50	29.30	28.81	28.76	28.45	27.63	28.00	30.50	29.08	29.43	28.67	29.04	29.06	28.61
1990	30.50	30.50	30.50	30.50	30.50	30.50	30.50	30.50	29.13	28.60	27.38	30.50	30.50	30.50	30.50	30.50	29.97	30.14
1991	26.88	26.50	26.50	26.13	26.00	25.75	25.50	25.50	25.00	24.94	24.60	24.50	26.63	25.96	25.33	24.68	25.65	26.57
1992	25.40	26.50	26.50	26.50	26.40	26.00	25.00	25.00	25.00	24.90	24.13	23.90	26.13	26.30	25.00	24.31	25.44	25.53
1993	23.25	23.00	23.00	23.50	23.50	23.50	25.50	27.75	27.50	27.50	27.25	26.50	23.08	23.50	26.92	27.08	25.15	24.45
1994	25.75	25.50	25.50	24.50	24.75	25.25	25.00	25.00	24.70	25.00	25.38	25.50	25.58	24.83	24.90	25.29	25.15	25.60
1995	25.50	25.50	25.50	25.50	25.13	25.10	24.75	24.75	25.50	25.75	28.13	28.85	25.50	25.24	25.00	27.58	25.83	25.26
1996	28.69	29.00	29.00	29.50	29.70	29.50	29.50	29.00	29.00	29.00	29.00	29.00	29.06	29.57	29.17	29.00	29.20	28.84
1997	29.00	29.00	28.13	28.00	28.00	27.50	27.00	26.65	26.38	24.90	25.00	25.50	28.71	27.83	26.68	25.13	27.09	28.06
1998	25.50	25.50	25.50	25.50	26.00	26.00	26.00	26.00	26.50	26.90	27.00	27.00	25.50	25.83	26.17	26.97	26.12	25.66
1999	27.20	27.13	27.00	27.00	27.00	27.00	27.00	27.00	27.00	26.00	26.00	25.20	27.11	27.00	27.00	25.73	26.71	27.02
2000	23.38	22.25	21.50	21.00	19.75	19.00	19.00	19.00	20.70	21.25	21.00	21.80	22.38	19.92	19.57	21.35	20.80	21.90
2001	23.13	22.75	22.00	20.50	21.38	21.90	22.50	22.50	24.63	25.75	26.20	26.50	22.63	21.26	23.21	26.15	23.31	22.11
2002	26.75	26.00	25.95	24.63	24.50	24.00	24.00	25.40	26.25	26.75	27.40	27.88	26.23	24.38	25.22	27.34	25.79	25.49
2003	27.80	26.50	27.13	27.63	28.00	28.00	27.63	25.50	24.00	24.70	23.94	23.63	27.14	27.88	25.71	24.09	26.21	27.02
2004	23.70	23.50	23.50	23.50	23.50	23.50	23.50	23.50	23.50	23.50	23.38	23.20	23.57	23.50	23.36	23.48	23.66	23.66
2005	34.50	36.50	37.10	36.38	35.00	35.00	35.00	34.50	31.20	28.75	27.19	26.10	36.03	35.46	33.57	27.35	33.10	36.01
2006	25.50	25.00	24.90	25.00	25.00	25.00	25.38	25.60	25.38	25.00	24.50	24.50	25.13	25.00	25.45	24.67	25.06	25.73
2007	24.13	26.40	28.00	28.00	29.60	33.25	38.00	38.40	38.50	36.20	35.00	35.00	26.18	30.28	38.30	35.40	32.54	29.86
2008	35.00	35.00	35.00	34.25	34.40	35.50	35.40	38.00	42.00	42.60	45.00	45.00	35.00	34.72	38.47	44.20	36.10	35.90
2009	50.50	53.00	52.25	48.20	45.00	50.00	53.40	59.50	59.00	54.40	56.50	57.00	51.92	47.73	57.30	55.97	53.23	50.29
2010	54.50	54.00	56.50	56.80	54.00	55.00	55.40	57.00	58.60	59.00	58.75	55.10	55.00	55.27	57.00	57.62	56.22	55.81
2011	51.75	51.00	51.00	50.25	47.81	45.00	42.00	41.20	38.25	36.00	34.60	31.75	51.25	47.69	40.48	34.12	43.38	49.26
2012	30.50	28.50	27.60	26.63	26.30	26.50	26.00	25.50	26.25	27.38	28.00	27.50	28.87	26.48	25.92	27.63	27.22	28.84
2013	26.50	26.25	26.50	29.75	31.60	35.00	36.00	36.60	37.50	36.60	36.00	36.00	26.42	32.12	36.70	36.20	32.86	30.72
2014	26.50	26.25	26.50	29.75	31.60	35.00	36.00	36.60	37.50	36.60	36.00	36.00	26.42	32.12	36.70	36.20	32.86	30.72

Source: Milling & Baking News. Simple average of the lower end of the range of quotations for days in that month. Quotations are weekly. Last updated: 12/31/2014

# ATTACHMENT 9



June 3, 2013

## Economic Effects of the Sugar Program Since the 2008 Farm Bill & Policy Implications for the 2013 Farm Bill

### Overview

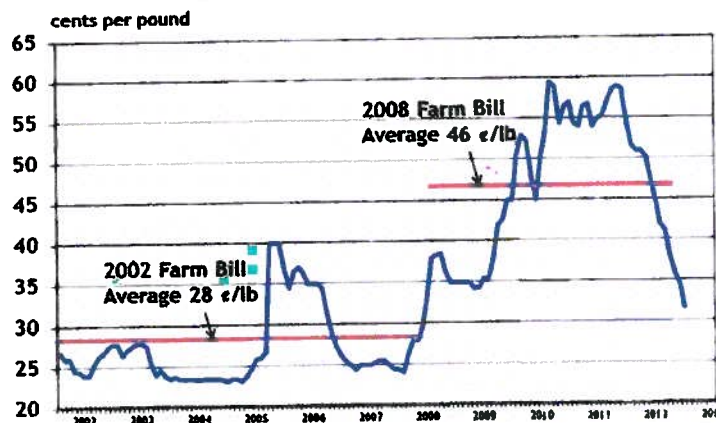
Changes to the sugar program in the 2008 farm bill made a bad program even worse and have destabilized the US sugar market. The bill increased price supports, restricted USDA's ability to adjust import quotas, and guaranteed that taxpayers would subsidize the disposal of any surpluses that arose by converting them to fuel ethanol.

US sugar prices rose to record levels during the first four years of the 2008 bill. The extra cost to consumers averaged \$3.7 billion per year. To date, prices have averaged 46 cents per pound compared to 28 cents under the 2002 farm bill. Consequently, employment in sugar-using food and beverage industries (which compete against imported products made with cheaper world-market sugar) has continued to decline, with nearly 127,000 jobs lost since 1997.

US and Mexican sugar producers have responded to the record high prices in the US market by expanding production about 20-25 percent, and now we have a surplus that is putting downward pressure on prices and may force USDA to spend up to \$250 million to deal with it.

While the new farm bill will cut support programs for most crops, the sugar industry seeks to be the lone exception and keep its sweet deal. If we are to get off this sugar price roller coaster, reform of the sugar program is required. We need a sugar policy that rolls back the changes made in the 2008 bill and strikes a fair balance between the interests of consumers and the interests of producers.

### Wholesale Refined Sugar Prices



333 N. Fairfax Street, Suite 202, Alexandria, VA 22314 • 703 739 9090 • 703 739 9098 • [www.agralytica.com](http://www.agralytica.com)

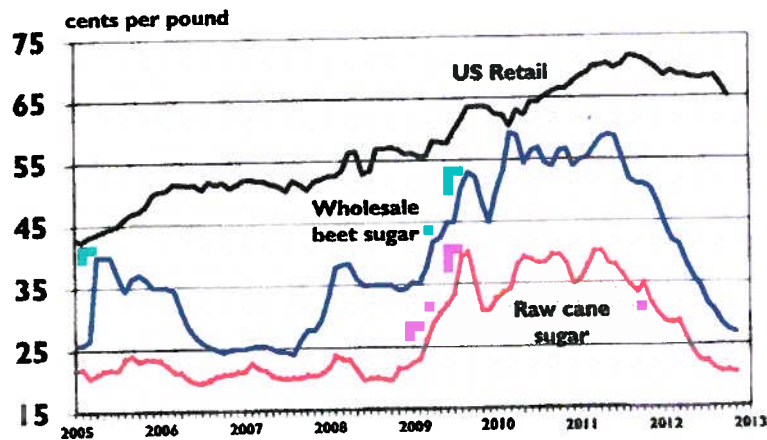
### Changes to the sugar program in the 2008 farm bill

Sugar producers got Congress to increase their support price, keep marketing allotments in place for domestic processors, impose new restrictions on the Secretary of Agriculture's ability to adjust import quotas, and add a program to divert any surplus sugar to production of fuel ethanol. More specifically:

- The price support loan rates were increased from 18 to 18.75 cents per pound for raw cane sugar, and from 22.9 to 24.09 cents for refined beet sugar.
- USDA was required to set the total marketing allotments for beet and cane sugar at no less than 85 percent of domestic human consumption, in effect reserving that portion of the market for US-produced supplies - a de facto domestic content requirement.
- The Secretary was required to set the import quotas at the WTO minimum of 1.26 million short tons and keep them at that level for the first six months of the marketing year (i.e. until April 1) unless there was an "emergency shortage" of sugar.
- The bill established a new program requiring USDA to estimate anticipated sugar surpluses quarterly, and then buy the surplus sugar and sell it to fuel ethanol producers at a discounted price. This new taxpayer-funded subsidy is called the Feedstock Flexibility Program (FFP).

The result of these changes was an extremely tight supply of sugar from 2009 through most of 2012. Retail sugar prices and the price of wholesale refined beet sugar were forced to record levels, as shown in the chart below. The traditional five-pound bag of sugar that sold for \$2.50 in 2008 was selling for \$3.50 by 2012. (So much for the sugar lobby's claims that their program does not cost consumers.)

### US Sugar Prices



### Sugar program impact on consumers

US wholesale refined sugar prices were also much higher than the world market price at which we could have imported refined sugar - 64 to 92 percent higher over the past four calendar years. Refined sugar is what food manufacturers actually purchase; they cannot use raw sugar in

the foods and beverages they make. Therefore, the wholesale refined sugar price is the most relevant way to look at how the sugar program is affecting the food industry and retail consumers.

The table below shows the refined price difference year by year under both the 2002 and 2008 farm bills, and calculates the extra cost to consumers by multiplying the price difference times the millions of tons consumed each year. Under the 2002 farm bill the price difference averaged 11.4 cents per pound and the extra cost to consumers averaged \$2.2 billion per year. During the first four years under the 2008 farm bill, the price difference averaged 18.2 cents per pound and the extra cost to consumers averaged \$3.7 billion per year.

Comparison of Consumer Cost of US Sugar Policy Under 2002 and 2008 Farm Bills

2002 Farm Bill		2002/03	2003/04	2004/05	2005/06	2006/07	2007/08	Average
cents per pound								
A	US wholesale refined price	27.0	23.7	25.6	36.0	25.7	29.9	28.0
B	World refined price	10.1	10.3	12.5	18.3	14.9	15.5	13.6
C	Transport cost	3.0	3.0	3.0	3.0	3.0	3.0	3.0
D	Delivered to US	B+C	13.3	15.5	21.3	17.9	18.5	16.6
E	Price difference	A-D	10.4	10.2	14.7	7.8	11.3	11.4
million short tons								
F	US consumption: raw	10.0	10.2	10.0	10.2	9.9	10.5	10.1
G	US consumption: refined	F/1.07	9.5	9.4	9.5	9.3	9.8	9.5
billion dollars								
H	Consumer cost difference	E*.02*G	1.98	1.90	2.79	1.45	2.22	2.16
2008 Farm Bill		2008/09	2009/10	2010/11	2011/12	2012/13	Oct-Mar	4-year Average
cents per pound								
A	US wholesale refined price	35.9	50.3	55.8	49.2	31.4		47.8
B	World refined price	18.9	26.5	33.5	27.7	23.4		26.6
C	Transport cost	3.0	3.0	3.0	3.0	3.0		3.0
D	Delivered to US	B+C	29.5	36.5	30.7	26.4		29.6
E	Price difference	A-D	20.8	19.3	18.5	5.0		18.2
million short tons								
F	US consumption: raw	10.4	10.9	11.2	11.1	11.5		10.9
G	US consumption: refined	F/1.07	10.2	10.5	10.4	10.7		10.2
billion dollars								
H	Consumer cost difference	E*.02*G	4.24	4.04	3.84	1.07	0.00	3.70

Source: Agralytica analysis of USDA price and consumption data

These calculations are consistent with the results of a [study](#) of the impact of the sugar program by Iowa State University researchers John Beghin and Amani Elobeid. That study found that the

sugar program costs consumers \$3.5 billion per year and that the domestic sugar industry would actually survive quite well without the current US sugar program.<sup>1</sup>

#### Sugar program impact on food industry jobs

The sugar program has also resulted in significant job losses in the industries producing sugar-containing products. The table below shows US Census Bureau data on employment in two groups of food and beverage industries - those that use sugar and those that do not. Between 1997 and 2011, US sugar-using industries lost nearly 127,000 jobs while employment in the other industries actually increased. Increased imports of sugar-containing products from countries with access to cheaper sugar were responsible for much of that job loss. The Beghin-Elobeid study referred to above found that sugar program reform would add back up to 20,000 American jobs.

Employment in U.S. Food and Beverage Industries				
Industry	1997	2011	Absolute change	% change
<b>Sugar-using industries</b>				
Breakfast cereal mfg	14,396	11,510	-2,886	-20.0%
Choc. & confec. Mfg. from cacao beans	9,946	7,297	-2,649	-26.6%
Confec. Mfg from purchased choc.	32,871	26,385	-6,486	-19.7%
Nonchocolate confectionary mfg.	25,512	18,526	-6,986	-27.4%
Frozen food mfg.	94,192	85,457	-8,735	-9.3%
Fruit & veg canning, pickling, & drying	97,384	75,413	-21,971	-22.6%
Ice cream & frozen desert mfg.	19,786	18,901	-885	-4.5%
Bread & bakery product mfg.	222,596	187,202	-35,394	-15.9%
Cookie, cracker & pasta mfg	64,401	47,356	-17,045	-26.5%
Snack food mfg	46,609	42,177	-4,432	-9.5%
Flavoring syrup & concentrate mfg	6,243	6,718	475	7.6%
Soft drink & ice mfg	83,256	63,727	-19,529	-23.5%
<b>Sub-total</b>	<b>717,192</b>	<b>590,669</b>	<b>-126,523</b>	<b>-17.6%</b>
<b>Other food &amp; beverage</b>				
Animal food mfg.	46,651	43,104	-3,547	-7.6%
Flour milling & malt mfg	17,877	15,554	-2,323	-13.0%
Starch & veg fats & oils mfg	26,970	23,435	-3,535	-13.1%
Dairy product (except frozen) mfg	112,082	111,889	-193	-0.2%
Animal slaughtering & processing	464,991	474,400	9,409	2.0%
Seafood product prep & packaging	40,763	29,686	-11,077	-27.2%
Tortilla mfg	11,303	14,421	3,118	27.6%
Coffee & tea mfg	12,895	12,934	39	0.3%
Seasoning and salad dressing mfg	26,055	31,171	5,116	19.6%
All other food mfg	56,886	62,237	5,351	9.4%
Breweries	34,251	23,061	-11,190	-32.7%
Wineries	18,193	33,737	15,544	85.4%
Distilleries	6,417	5,657	-760	-11.8%
<b>Sub-total</b>	<b>875,334</b>	<b>881,286</b>	<b>5,952</b>	<b>0.7%</b>
<b>Sugar manufacturing</b>				
Sugar manufacturing	16,547	12,803	-3,744	-22.6%
<b>Total food &amp; beverage</b>	<b>1,609,073</b>	<b>1,484,758</b>	<b>-124,315</b>	<b>-7.7%</b>

Source: U.S. Census Bureau, Economic Census & Annual Survey of Manufactures

<sup>1</sup> The full study is available at the following link: <http://sugarreform.org/wp-content/uploads/2011/11/The-Impact-of-the-U.S.-Sugar-Program-Beghin-Elobeid-Report-11.17.11.pdf>

# ATTACHMENT 10



EXCERPT FROM  
Table 4--U.S. raw sugar price, duty fee paid, New York, monthly, quarterly, and by calendar and fiscal year 1/

Year	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sep.	Oct.	Nov.	Dec.	1st Q.	2nd Q.	3rd Q.	4th Q.	Calendar	Fiscal
1986	20.67	21.01	20.95	20.85	20.88	20.99	20.97	20.87	20.87	21.08	21.17	21.12	20.88	20.91	20.90	21.12	20.95	20.46
1987	21.50	21.76	21.76	21.81	22.01	22.06	22.07	21.88	21.88	21.69	21.75	21.76	21.67	21.96	21.94	21.73	21.83	21.68
1988	21.83	22.11	22.16	22.16	22.13	22.54	23.03	23.57	23.50	23.14	23.24	22.84	22.02	22.58	23.54	23.07	22.81	22.49
1989	21.88	22.07	22.12	22.30	22.45	22.99	23.56	23.27	23.23	23.29	23.15	22.47	23.21	23.57	23.31	22.97	23.26	23.29
1990	23.11	22.93	23.58	23.81	23.58	23.33	23.42	23.27	23.23	23.29	23.15	21.50	21.58	21.31	21.71	21.67	21.57	21.89
1991	21.86	21.42	21.46	21.23	21.29	21.42	21.25	21.83	22.06	21.76	21.75	21.60	21.43	21.11	21.33	21.37	21.31	21.39
1992	21.38	21.38	21.38	21.38	21.04	20.92	21.10	21.34	21.55	21.61	21.39	21.11	21.43	21.11	21.33	21.37	21.31	21.39
1993	20.76	21.16	21.56	21.76	21.36	21.42	21.89	21.85	21.97	21.80	21.87	22.00	21.16	21.51	21.90	21.89	21.62	21.49
1994	22.00	21.95	21.95	22.08	22.18	22.44	22.72	23.18	23.21	22.67	22.60	22.63	22.60	22.98	23.62	22.63	22.96	22.76
1995	22.65	22.69	22.46	22.76	23.10	23.09	24.47	23.18	23.21	22.67	22.60	22.63	22.60	22.98	23.62	22.63	22.96	22.76
1996	22.39	22.68	22.57	22.71	22.62	22.48	21.80	22.51	22.38	22.37	21.90	21.93	21.92	21.70	22.18	22.03	21.96	22.50
1997	21.88	22.07	21.81	21.79	21.70	21.62	22.04	22.21	22.30	22.27	21.90	21.93	21.92	21.70	22.18	22.03	21.96	22.00
1998	21.85	21.79	21.74	22.14	22.31	22.42	22.66	22.19	21.92	21.67	21.83	22.19	21.79	22.29	22.26	21.90	22.06	22.09
1999	22.41	22.38	22.55	22.57	22.65	22.61	22.61	21.24	20.10	19.50	17.45	17.87	22.45	22.61	21.32	18.27	21.16	22.07
2000	17.70	17.24	18.46	19.43	19.12	19.31	17.64	18.12	18.97	21.15	21.39	20.56	17.80	19.29	18.24	21.03	19.09	18.40
2001	20.81	21.18	21.40	21.51	21.19	21.04	20.64	21.10	20.87	20.90	21.19	21.43	21.13	21.25	20.87	21.17	21.11	21.07
2002	21.03	20.69	19.92	19.73	19.52	19.93	20.86	20.91	21.65	21.94	22.22	22.03	20.55	19.73	21.14	22.06	20.87	20.65
2003	21.62	21.91	22.14	21.87	21.80	21.62	21.32	21.26	21.34	20.92	20.91	20.37	21.89	21.76	21.31	20.73	21.42	21.76
2004	20.54	20.57	20.86	20.86	20.69	20.03	20.14	20.10	20.47	20.31	20.40	20.55	20.66	20.53	20.24	20.42	20.46	20.54
2005	20.57	20.36	20.54	21.21	21.96	21.89	21.94	20.49	21.10	21.71	21.83	21.74	20.49	21.69	21.18	21.76	21.28	20.94
2006	23.61	24.05	23.10	23.56	23.48	23.32	22.44	21.38	21.27	20.22	19.66	19.59	23.59	23.45	21.70	19.82	22.14	22.62
2007	20.03	20.59	20.85	20.91	21.27	21.33	22.72	21.80	21.42	20.56	20.25	20.12	20.49	21.17	21.98	20.31	20.99	20.87
2008	20.24	20.21	20.65	20.54	20.83	21.80	23.76	23.15	23.10	21.46	19.83	20.00	20.37	21.06	23.34	20.43	21.30	21.27
2009	20.15	19.83	19.75	21.58	21.64	22.47	23.02	26.18	28.91	30.48	31.86	33.30	19.91	21.90	26.04	31.88	24.93	22.07
2010	39.36	40.13	35.11	30.86	30.89	32.73	33.66	34.24	38.17	39.30	38.84	38.35	38.20	31.49	35.36	38.83	35.97	34.23
2011	38.46	39.69	39.65	38.32	35.04	35.65	37.93	40.16	40.15	38.19	37.92	36.32	39.27	36.34	39.41	37.48	38.12	38.46
2012	34.69	33.57	34.94	31.87	30.20	28.89	28.68	28.84	26.27	23.89	22.52	22.41	34.40	30.32	27.93	22.94	28.90	32.53
2013	21.20	20.72	20.82	20.38	19.51	19.31	19.22	20.97	21.05	21.82	20.61	19.95	20.91	19.73	20.41	20.79	20.46	21.00
2014	20.27	21.65	22.03	24.33	24.66	25.65	24.78	25.64	25.36	26.41	24.26	24.81	21.32	24.88	25.26	25.16	24.15	23.06

1/ Contract No. 14416, duty fee paid New York. Average of nearest futures month for which an entire month of prices will be available. For example, April 2001's price average of 21.51 cents is the average of closes for the July 2001 futures during the month of April since there was not a full month of May 2001 futures in April (the May 2001 futures expired April 10th, July 2001 became the nearest futures, so July 2001 was used for the entire month of April).  
Source: Intercontinental Exchange.  
Last Updated: 1/5/2015



## **AGREEMENT SUSPENDING THE COUNTERVAILING DUTY INVESTIGATION ON SUGAR FROM MEXICO**

Pursuant to the requirements of section 704(c) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. § 1671c(c)) and 19 C.F.R. § 351.208, and in satisfaction of the requirements of those provisions, the U.S. Department of Commerce (the Department) and the Government of Mexico (GOM), through the Secretaria de Economía, enter into this agreement suspending the countervailing duty investigation of Sugar from Mexico (Agreement), as follows:

### **I. Product Coverage**

The product covered by this Agreement is raw and refined sugar of all polarimeter readings derived from sugar cane or sugar beets. The chemical sucrose gives sugar its essential character. Sucrose is a nonreducing disaccharide composed of glucose and fructose linked by a glycosidic bond via their anomeric carbons. The molecular formula for sucrose is  $C_{12}H_{22}O_{11}$ ; the International Union of Pure and Applied Chemistry (IUPAC) International Chemical Identifier (InChI) for sucrose is 1S/C12H22O11/c13-1-4-6(16)8(18)9(19)11(21-4)23-12(3-15)10(20)7(17)5(2-14)22-12/h4-11,13-20H,1-3H2/t4-,5-,6-,7-,8+,9-,10+,11-,12+/m1/s1; the InChI Key for sucrose is CZMRCDWAGMRECNUGDNZRGSAN; the U.S. National Institutes of Health PubChem Compound Identifier (CID) for sucrose is 5988; and the Chemical Abstracts Service (CAS) Number of sucrose is 57-50-1.

Sugar described in the previous paragraph includes products of all polarimeter readings described in various forms, such as raw sugar, estándar or standard sugar, high polarity or semi-refined sugar, special white sugar, refined sugar, brown sugar, edible molasses, desugaring molasses, organic raw sugar, and organic refined sugar. Other sugar products, such as powdered sugar, colored sugar, flavored sugar, and liquids and syrups that contain 95 percent or more sugar by dry weight are also within the scope of this Agreement.

The scope of the Agreement does not include (1) sugar imported under the Refined Sugar Re-Export Programs of the U.S. Department of Agriculture;<sup>1</sup> (2) sugar products produced in Mexico that contain 95 percent or more sugar by dry weight that originated outside of Mexico; (3) inedible molasses (other than inedible desugaring molasses noted above); (4) beverages; (5) candy; (6) certain specialty sugars; and (7) processed food products that contain sugar (e.g., cereals). Specialty sugars excluded from the scope of this Agreement are limited to the following: caramelized slab sugar candy, pearl sugar, rock candy, dragees for cooking and baking, fondant, golden syrup, and sugar decorations.

Merchandise covered by this Agreement is typically imported under the following headings of the HTSUS: 1701.12.1000, 1701.12.5000, 1701.13.1000, 1701.13.5000, 1701.14.1000, 1701.14.5000, 1701.91.1000, 1701.91.3000, 1701.99.1010, 1701.99.1025, 1701.99.1050, 1701.99.5010, 1701.99.5025, 1701.99.5050, and 1702.90.4000. The tariff classification is

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<sup>1</sup> This exclusion applies to sugar imported under the Refined Sugar Re-Export Program, the Sugar-Containing Products Re-Export Program, and the Polyhydric Alcohol Program administered by the U.S. Department of Agriculture.

provided for convenience and customs purposes; however, the written description of the scope of this Agreement is dispositive.

## **II. Definitions**

For purposes of the Agreement, the following definitions apply:

- A. "Anniversary Month" means the month in which the Agreement becomes effective.
- B. "Base Export Limit" means the amount of Sugar allocated to producers and exporters of Sugar in Mexico at the beginning of each Export Limit Period.
- C. "Date of Export" means the date on which the product is exported from Mexico to the United States.
- D. "Effective Date" means the date on which the Department and the GOM sign the Agreement.
- E. "Export License" means the document issued by the GOM's export license issuing authority, pursuant to Section VI of the Agreement.
- F. "Export Limit" means the quantity of Mexican Sugar permitted to be exported, based on the Date of Export, during a given Export Limit Period.
- G. "Export Limit Period" means one of the following periods:
  - 1. "Initial Export Limit Period" covers entries of Sugar entered, or withdrawn from warehouse for consumption, between the Effective Date and September 30, 2015.
  - 2. "Subsequent Export Limit Period" covers entries of Sugar entered, or withdrawn from warehouse for consumption, in each subsequent period from October 1 through September 30.
- H. "Interested Party" means any person or entity that meets the definitions in section 771(9) of the Act.
- I. "Indirect Exports" means exports of Sugar from Mexico to the United States through one or more Third Countries, whether or not such exports are further processed, provided that the further processing does not result in a substantial transformation or a change in the country of origin, as determined by the Department.
- J. "Mexico" means the customs territory of the United Mexican States and foreign trade zones located within the territory of Mexico.

- K. "Other Sugar" means Sugar that does not meet the definition of Refined Sugar under this Agreement.
- L. "Refined Sugar" means Sugar with a polarity of 99.5 and above.
- M. "Sugar" means the product described under Section I, "Product Coverage," of the Agreement.
- N. "Target Quantity of U.S. Needs" means 100 percent of U.S. Needs, as defined below.
- O. "Third Country" or "Third Countries" mean any country other than the United States or Mexico, including any customs territory or free trade zone administered, governed, or controlled by such country.
- P. "United States" means the customs territory of the United States of America (the 50 States, the District of Columbia and Puerto Rico) and foreign trade zones located within the territory of the United States.
- Q. "USDA" means the United States Department of Agriculture.
- R. "U.S. Needs" is calculated based on information in the WASDE published by USDA and means:  
  

$$(\text{Total Use} * 1.135) - \text{Beginning Stocks} - \text{Production} - \text{TRQ Imports} - \text{Other Program Imports} - (\text{Footnote 5 for "other high tier"} + \text{"other"})$$
- S. "Violation" means noncompliance with the terms of the Agreement, whether through an act or omission, except for noncompliance that is inconsequential or inadvertent, and does not materially frustrate the purposes of the Agreement.
- T. "WASDE" means the "World Agriculture Supply and Demand Estimates" published by the USDA.

Any term or phrase not defined by this section shall be defined using either a definition provided in the Act for that term or phrase, or the plain meaning of that term, as appropriate.

### **III. Suspension of Investigation**

As of the Effective Date, in accordance with section 704(c)(1) and (3) of the Act and 19 C.F.R. § 351.208, the Department will suspend its countervailing duty investigation on Sugar from Mexico initiated on April 17, 2014. *See Sugar from Mexico: Initiation of Countervailing Duty Investigation*, 79 Fed. Reg. 22,790 (Apr. 24, 2014).

### **IV. Statutory Conditions for the Agreement**



In accordance with section 704(c)(1) and (4) of the Act, the Department has determined that extraordinary circumstances are present in this investigation because the suspension of the investigation will be more beneficial to the domestic industry than the continuation of the investigation and the investigation is complex.

In accordance with section 704(d)(1) of the Act, the Department has determined that the suspension of the investigation is in the public interest and that effective monitoring of the Agreement by the United States is practicable. Section 704(a)(2)(B) of the Act provides that the public interest includes the availability of supplies of the merchandise and 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. Accordingly, if a domestic producer requests an administrative review of the status of, and compliance with, the Agreement, the Department will take these factors into account in conducting that review. If the Department finds that the Agreement is not working as intended in this regard, the Department will explore all appropriate measures, including renegotiation of the terms of the Agreement to resolve the problem or measures under Section 751(d)(1) of the Act.

## **V. Export Limits**

No Sugar covered by the Agreement, whether exported directly or indirectly from Mexico, shall be entered into the United States unless, when cumulated with all prior entries of Sugar exported from Mexico during the Export Limit Period in which the Sugar was exported, it does not exceed the applicable Export Limit set forth below. All exports of Sugar from Mexico that enter the United States will be counted against the Export Limit established for the applicable Export Limit Period.

- A. The Export Limit for the Initial Export Limit Period shall be calculated using the formula provided in Section V.B, beginning with the December allocation in Section V.B.2. The restriction in Section V.C.2 below shall apply, and the March allocation in Section V.B.3 applies.
- B. The Export Limit for each Subsequent Export Limit Period will be seventy (70) percent of the Target Quantity of U.S. Needs as calculated based on the July WASDE preceding the beginning of the Export Limit Period. The Export Limit will be effective October 1. The Export Limit may be increased in the following manner:
  1. In September of each Subsequent Export Limit Period, the Department will determine if there is a need for additional Sugar in the U.S. market beyond the Export Limit calculated in July. The Department will calculate the Target Quantity of U.S. Needs based on information in the September WASDE. Effective October 1, the Export Limit shall be revised to equal seventy (70) percent of the Target Quantity of U.S. Needs, unless that amount is less than or equal to the Export Limit announced in July, in which case the Export Limit shall not change.

2. In December of each Subsequent Export Limit Period, the Department will determine if there is a need for additional Sugar in the U.S. market beyond the Export Limit calculated in September. The Department will calculate the Target Quantity of U.S. Needs based on information in the December WASDE. Effective January 1, the Export Limit shall be revised to equal eighty (80) percent of the Target Quantity 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.
  3. In March of each Subsequent Export Limit Period, the Department will determine if there is a need for additional Sugar in the U.S. market beyond the Export Limit calculated in December. The Department will calculate the Target Quantity of U.S. Needs based on information in the March WASDE. Effective April 1, the Export Limit shall be revised to equal 100 percent of the Target Quantity of U.S. Needs, unless the amount is less than or equal to the Export Limit announced in December, in which case the Export Limit shall not change.
  4. Prior to April 1 of any Export Limit Period, the Department may increase the Export Limit to address potential shortages in the U.S. market that are identified by USDA, in writing. After April 1, if USDA informs the Department, in writing, of any additional need for Sugar from Mexico, the Department may increase the Export Limit based upon USDA's request.
- C. The following restrictions on shipping patterns for exports of Sugar from Mexico to the United States shall also apply.
1. No more than 30 percent of U.S. Needs calculated in each July and effective October 1 may be exported to the United States during the period October 1 through December 31.
  2. No more than 55 percent of U.S. Needs calculated in each December and effective January 1 may be exported to the United States during the period October 1 through March 31.
  3. Refined Sugar may account for no more than 53 percent of the exports during any given Export Limit Period.
- D. If any Sugar from Mexico is entered into the United States in excess of the Export Limit established for the relevant Export Limit Period or without a valid Export License, the Department shall consult with the GOM and request that the GOM reduce the export allocation for the producer/exporter involved by twice the volume of the entry. If the export allocation has been reached for the producer/exporter for the relevant Export Limit Period, twice the volume of the entry will be subtracted from the producer/exporter's allocation in the next Export Limit Period. If the entry cannot be tied to a specific producer/exporter, the Department may reduce the Export Limit that is effective April 1 by twice the volume of the entry.

- E. Subsequent to the publication of the March WASDE but prior to March 31 of each Export Limit Period, the GOM will inform the Department if there is any amount of U.S. Needs that exporters of Sugar from Mexico will be unable to supply during the second half of the Export Limit Period. The Department will adjust the Export Limit downward by any amount that Mexico cannot supply. Mexico agrees that, if it cannot satisfy Mexico's needs using Mexican production, it will not supply those needs with imports from a Third Country or Countries for the purpose of filling the Export Limit with Sugar from Mexico. If the Department receives information that Mexico may have imported Sugar from a Third Country or Countries for this purpose during any Export Limit Period, the Department will hold consultations with the GOM in determining appropriate action, as warranted.
- F. The GOM and the Department shall hold consultations regarding the GOM's compliance with the provisions of this section consistent with Section VIII.D.2 of the Agreement.

## **VI. Implementation**

- A. On and after 60 days from the Effective Date, presentation of a shipment-specific Export License is required as a condition for entry of Sugar from Mexico into the United States. Pursuant to 19 CFR 351.208(i), the Department will instruct U.S. Customs and Border Protection (CBP) to prohibit the entry of any Sugar from Mexico not accompanied by an Export License.
- B. Export Licenses will be shipment-specific and must contain the information identified in Appendix I. Additional information may be included on the Export License or, if necessary, a separate page attached to the Export License. If the bills of lading for each shipment establish that the actual imports into the United States under that license were less than the total volume listed on the license, the GOM shall notify the Department in writing that the GOM intends to issue a new Export License in the same Export Limit Period authorizing additional exports equal in volume to the volume of the undershipment.
- C. The GOM will ensure compliance with all of the provisions of the Agreement. To ensure such compliance, the GOM will take the following measures:
  - 1. Ensure that no Sugar is exported from Mexico for entry into the United States during any Export Limit Period that exceeds the Export Limit for that Export Limit Period.
  - 2. Establish an Export Limit licensing and enforcement program for all direct and indirect exports of Sugar from Mexico to the United States no later than 60 days after the Effective Date. Export Licenses shall contain all information described in Appendix I of the Agreement.



3. Require that applications for Export Licenses contain all of the information listed in Appendix I of the Agreement.
  4. Refuse to issue an Export License to any applicant that does not permit full verification and reporting under the Agreement of all of the information in the application.
  5. Issue Export Licenses sequentially, charged against the Export Limit for the relevant Export Limit Period, and reference any notice of the Export Limit allocation for the relevant Export Limit Period. Export Licenses shall remain valid for entry into the United States for 90 days. The Department and the GOM may agree to an extension of the validity of the Export License in extraordinary circumstances.
  6. Permit full verification of all information related to the administration of the Agreement on an annual basis or more frequently, as deemed necessary.
  7. Ensure compliance with all procedures established to effectuate the Agreement by any official Mexican institution, chamber, or other authorized Mexican company, and any Mexican producer, exporter, broker, and trader of Sugar.
  8. Impose strict measures, such as prohibition from participation in the Export Limit allocation allowed by the Agreement, in the event that any Mexican company does not comply in full with the requirements established by the GOM pursuant to the Agreement.
- D. The GOM and the Department shall hold consultations regarding the GOM's compliance with the provisions of this section consistent with Section VIII.D.1 of the Agreement.

## **VII. Anti-Circumvention**

- A. The GOM will take all necessary measures to prevent circumvention of the Agreement. These measures shall include requiring that all Mexican exporters of Sugar agree, as a condition of receiving any Export License under the Agreement, not to export directly or indirectly to the United States Sugar that is not accompanied by an Export License issued pursuant to the Agreement and that each such Mexican exporter provide the GOM with a certification that it has required all of its customers to agree, as part of the terms of sale, not to engage in any circumvention activities specified by this Agreement. Circumvention activities may include exporting Sugar from Mexico: (1) in excess of the Export Limit in any given Export Limit Period; (2) without an Export License; and (3) in a manner that requires Mexico to satisfy its needs with imports of sugar from a Third Country or Countries. Circumvention activities may also include, but are not limited to, any bundling arrangement, swap or other exchange where such arrangement is designed to circumvent the basis of the Agreement.

1. If the GOM receives an allegation that circumvention has occurred, including an allegation from the Department, the GOM shall promptly initiate an inquiry, normally complete the inquiry within 45 days and notify the Department of the results of the inquiry within 15 days after the conclusion of the inquiry.
  2. If the GOM determines that a Mexican company has participated in a transaction circumventing the Agreement, the GOM shall impose penalties upon such company including, but not limited to, denial of access to an Export License for Sugar under the Agreement.
  3. If the GOM determines that a Mexican company has participated in the circumvention of the Agreement, the GOM shall count against the Export Limit for the Export Limit Period in which the circumvention took place an amount of Sugar equivalent to the amount involved in such circumvention and shall immediately notify the Department of the amount deducted. If a sufficient amount is not available in the current Export Limit Period, then the remaining amount shall be deducted from the subsequent Export Limit Period or Periods.
- B. The Department will investigate any allegations of circumvention which are brought to its attention both by asking the GOM to investigate such allegations and by itself gathering relevant information. The GOM will respond to requests from the Department for information relating to such allegations. In distinguishing normal arrangements from those which would result in the circumvention of a given Export Limit established by the Agreement, the Department will take the following factors into account, as deemed appropriate:
1. Existence of any verbal or written agreement leading to circumvention of the Agreement;
  2. Existence and function of any subsidiaries or affiliates of the parties involved;
  3. Existence and function of any historical and traditional patterns of production and trade among the parties involved, and any deviation from such patterns;
  4. Existence of any payments unaccounted for by previous or subsequent deliveries, or any payments to one party for Sugar delivered or swapped by another party;
  5. Sequence and timing of the arrangements; and
  6. Any other information relevant to the transaction or circumstances.
- C. The GOM and the Department shall hold consultations regarding anti-circumvention consistent with Section VIII.D.3 of the Agreement.

## **VIII. Monitoring of the Agreement**

#### **A. Import Monitoring**

1. The Department will monitor entries of Sugar from Mexico to ensure compliance with Section V of the Agreement.
2. The Department will review publicly available data and other official import data, including, as appropriate, records maintained by CBP, to determine whether there have been imports that are inconsistent with the provisions of the Agreement. The Department also intends to consult with USDA regarding monthly information submitted by processors, refiners, and importers of Sugar from Mexico.
3. The Department will review, as appropriate, data it receives through any data exchange program between U.S. and Mexican government agencies, to determine whether there have been imports that are inconsistent with the provisions of the Agreement.
4. The Department agrees to discuss with CBP additional mechanisms that may be established and administered by CBP to monitor entries of Sugar.

#### **B. Compliance Monitoring**

1. The GOM will collect and provide to the Department such information as is necessary and appropriate to monitor the implementation of, and compliance with, the Agreement, including the following:
  - a. Within 30 days following the date that the GOM allocates the Export Limit for any Export Limit Period, the GOM shall notify the Department of each allocation recipient and the volume granted to each recipient. The GOM also shall inform the Department of any changes in the volume allocated to individual recipients within 30 days of the date on which such changes become effective.
  - b. The GOM shall collect and provide to the Department information on exports to the United States in the format in Appendix II to the Agreement and, if requested, on the aggregate quantity and value of exports of Sugar to Third Countries. This information will be provided on a monthly basis as specified in Appendix II, and will be provided no later than 60 days following the end of each month, beginning on February 1, 2015 (for the period from the Effective Date through December 31, 2015). If the Department has concerns with the shipments of a particular exporter, upon request, the GOM will provide information related to that exporter on an expedited basis.
  - c. The GOM and the Department recognize that the effective monitoring of the Agreement may require the GOM to provide information in addition to that

identified in the Agreement. Accordingly, after consulting with the GOM, the Department may request additional reporting requirements consistent with U.S. law and regulations during the course of the Agreement. The GOM shall also collect and provide to the Department, generally within 60 days of the request, any such additional information requested by the Department.

2. The Department has the authority to verify all information related to the administration of the Agreement, including all information relating to potential circumvention of the Agreement, annually or more frequently as deemed necessary. The Department will conduct verifications at locations and times it deems appropriate to ensure compliance with the terms of the Agreement.
3. The Department may initiate administrative reviews under section 751(a) of the Act in the month immediately following the Anniversary Month, upon request, or upon its own initiative, to ensure that exports of Sugar from Mexico satisfy the requirements of section 704(c)(1) and (3) of the Act. The Department may conduct administrative reviews under sections 751(b) and (c), and 781 of the Act, as appropriate. The Department may perform verifications pursuant to administrative reviews conducted under section 751 of the Act.

#### **C. Rejection of Submissions**

The Department may reject: (1) any information submitted after the deadlines set forth in the Agreement; (2) any submission that does not comply with the filing, format, translation, service, and certification of documents requirements under 19 C.F.R. § 351.303; (3) submissions that do not comply with the procedures for establishing business proprietary treatment under 19 C.F.R. § 351.304; and (4) submissions that do not comply with any other applicable regulations, as appropriate. If information is not submitted in a complete and timely fashion or is not fully verifiable, the Department may use facts otherwise available for the basis of its decision, as it determines appropriate, consistent with section 776 of the Act.

#### **D. Consultations**

##### **1. Implementation Consultations**

- a. If the GOM notifies the Department in writing, or the Department otherwise determines, that the GOM for any reason has not satisfied the implementation obligations in Section VI of the Agreement, the Department will consult with the GOM for a period of up to 60 days to ensure that the GOM complies with those obligations within those 60 days.
- b. If the Department is not satisfied at the conclusion of the consultation period that exports of Sugar from Mexico are entering the United States in amounts consistent with the Agreement, or entered with a valid Export License, the Department may evaluate under section 351.209 of its regulations, or section



751 of the Act, whether the Agreement is being violated, as defined in Section IX of the Agreement.

## **2. Compliance Consultations**

- a. When the Department identifies, through import or compliance monitoring or otherwise, that exports of Sugar from Mexico may have entered the United States in volumes inconsistent with Section V of the Agreement, or without an Export License, the Department will notify the GOM. The Department will consult with the GOM for a period of up to 60 days to establish a factual basis regarding exports that may be inconsistent with Section V of the Agreement.
- b. During the consultation period, the Department will examine any information that it develops or which is submitted, including information requested by the Department, under any provision of the Agreement.
- c. If the Department is not satisfied at the conclusion of the consultation period that exports of Sugar from Mexico are entering the United States in amounts consistent with the Agreement, or entered with a valid Export License, the Department may evaluate under section 351.209 of its regulations, or section 751 of the Act whether the Agreement is being violated, as defined in Section IX of the Agreement.

## **3. Anti-Circumvention Consultations**

- a. If the GOM determines that a company from a Third Country has circumvented the Agreement and the Department and the GOM agree that no Mexican company participated in or had knowledge of such activities, then the Department and the GOM shall hold consultations for the purpose of sharing information regarding such circumvention and reaching mutual agreement on the appropriate measures to be taken to eliminate such circumvention. If the Department and the GOM are unable to reach mutual agreement within 45 days, then the Department may take appropriate measures, such as deducting the amount of Sugar involved in such circumvention from the Export Limit for the current Export Limit Period or a subsequent Export Limit Period. Before taking such measures, the Department will notify the GOM of the facts and reasons constituting the basis for the Department's intended action and will afford the GOM 15 days in which to comment. Alternatively, the Department may evaluate under section 351.209 of its regulations, or section 751 of the Act whether the Agreement is being violated, as defined in Section IX of the Agreement.
- b. In the event that the Department determines that a Mexican company has participated in a transaction circumventing the Agreement, the Department and the GOM shall hold consultations for the purpose of sharing evidence regarding such circumvention and reaching mutual agreement on an

appropriate resolution of the problem. If the Department and the GOM are unable to reach mutual agreement within 60 days, the Department may take appropriate measures, such as deducting the amount of Sugar involved in such circumvention from the Export Limit for the current Export Limit Period (or, if necessary, the subsequent Export Limit Period) or instructing U.S. Customs and Border Protection to deny entry to any Mexican Sugar sold by the company found to be circumventing the Agreement. Before taking such measures, the Department will notify the GOM of the basis for the Department's intended action and the GOM will comment within 30 days. The Department will enter its determinations regarding circumvention into the record of the Agreement. Alternatively, the Department may evaluate under section 351.209 of its regulations or section 751 of the Act whether the Agreement is being violated, as defined in Section IX of the Agreement.

#### **4. Operations Consultations**

The Department will consult with the GOM regarding the operation of the Agreement. The Department or the GOM may request such consultations at any time, including consultations to revise the formula to establish the Export Limit.

### **IX. Violations of the Agreement**

- A. If the Department determines that there has been a violation of the Agreement or that the Agreement no longer meets the requirements of section 704(c) or (d) of the Act, the Department shall take action it determines appropriate under section 704(i) of the Act and the Department's regulations.
- B. The following activities shall be considered violations of the Agreement:
  - 1. Exports of Sugar from Mexico in amounts greater than the Export Limit established in the relevant Export Limit Period.
  - 2. A significant amount (*i.e.*, 5 percent or more of the Export Limit for the relevant Export Limit Period) of Sugar from Mexico exported to the United States without an Export License that is not reported by the GOM to the Department.
  - 3. Any other material violation or breach, as determined by the Department.

### **X. Disclosure and Comment**

This section provides the terms for disclosure and comment following consultations or during segments of the proceeding not involving a review under section 751 of the Act.

- A. The Department may make available to representatives of each Interested Party, pursuant to and consistent with 19 C.F.R. §§ 351.304-351.306, business proprietary

information submitted to and/or collected by the Department pursuant to the Agreement, as well as the results of the Department's analysis of that information.

- B. Under this section, the GOM and any other Interested Party shall file all communications and other submissions via the Department's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS), which is available to registered users at <http://access.trade.gov> and to all parties at the following address:

U.S. Department of Commerce  
Central Records Unit, Room 7046  
1401 Constitution Ave., NW  
Washington, D.C. 20230

Such communications and submissions shall be filed consistent with the requirements provided in 19 C.F.R. § 351.303.

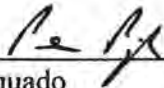
## **XI. Duration of the Agreement**

- A. The Agreement has no scheduled termination date. Termination of the suspended investigation shall be considered in accordance with the five-year review provisions of section 751(c) of the Act, and section 351.218 of the Department's regulations.
- B. The GOM or the Department may terminate the Agreement at any time. Termination of the Agreement shall be effective no later than 60 days after the date written notice of termination is provided to the Department or the GOM, respectively.
- C. Upon termination, the Department shall follow the procedures outlined in section 704(i)(1) of the Act.
- D. The Department will terminate the Agreement in the event that the GOM requests continuation of the countervailing duty investigation of Sugar from Mexico, or Signatories accounting for a significant proportion of exports of Sugar from Mexico request continuation of the antidumping investigation of Sugar from Mexico.

## **XII. Other Provisions**

- A. By entering into the Agreement, the GOM does not admit that exports of Sugar from Mexico are having or have had an injurious effect on Sugar producers in the United States or that the GOM has provided countervailable subsidies to sugar producers and exporters in Mexico. The GOM agrees that it will not provide any new or additional export or import substitution subsidies on Sugar.

- B. As of the Effective Date, the Department shall instruct U.S. Customs and Border Protection to refund any cash deposits collected as a result of the countervailing duty investigation on Sugar from Mexico. The Department shall instruct CBP to terminate the suspension of liquidation consistent with section 704(f)(2)(B) of the Act.

  
\_\_\_\_\_  
Paul Piquado  
Assistant Secretary for Enforcement and Compliance  
U.S. Department of Commerce

19 DECEMBER 2014  
Date

  
\_\_\_\_\_  
Francisco de Rosenzweig Mendialdua  
Undersecretary for Foreign Trade  
Ministry of Economy  
Government of Mexico

12/19/2014  
Date



## **Appendix I – Information To Be Contained In Export Licenses**

The GOM will issue shipment-specific Export Licenses to Mexican entities that shall contain the following fields:

1. **Export License Number:** Indicate the Export License number for the shipment.
2. **Name of the Licensee:** Indicate the name of the Licensee, and the name of the mill, if different from the Licensee.
3. **Name of the Exporter:** Indicate the name of the broker/trader or mill, as applicable.
4. **Complete Description of Merchandise:** Include the applicable Harmonized Tariff Schedule category and the polarity of the product.
5. **Processing:** Indicate “YES” if the Sugar is being imported for further processing in the United States by a USDA-recognized cane refiner and “NO” if it is not.
6. **Quantity:** Indicate in metric tons raw value and short tons raw value.
7. **Date of Export License:** Date that the Export License is issued.
8. **Date of Expiration of the Export License:** Indicate the date that the Export License expires.
9. **Port of Export:** Indicate the port of export.
10. **Allocation to Mill:** Indicate the total amount of the Export Limit allocated to the individual mill during the relevant Export Limit Period.
11. **Allocation Remaining:** Indicate the remaining amount available under the allocation to the individual mill during the relevant Export Limit Period.

## **Appendix II – Information On Exports of Sugar From Mexico**

In accordance with the established format, the GOM's license issuing authority shall collect and provide to the Department all information necessary to ensure compliance with the Agreement. This information will be provided to the Department on monthly basis. The GOM's license issuing authority will collect and maintain data on exports to the United States on a continuous basis. Data for exports to countries other than the United States will be reported upon request. The GOM's license issuing authority may provide a narrative explanation to substantiate all data collected in accordance with the following formats.

The GOM's license issuing authority will provide a report or summary regarding all Export Licenses issued to entities, which shall contain the following information unless the information is unknown to the licensing authority and the licensee. Upon request, the GOM will provide copies of any Export License to the Department.

1. **Export License Number:** Indicate the Export License number for the shipment.
2. **Name of the Licensee:** Indicate the name of the Licensee, and the name of the mill, if different from the Licensee.
3. **Name of the Exporter:** Indicate the name of the broker/trader or mill, as applicable.
4. **Complete Description of Merchandise:** Include the applicable Harmonized Tariff Schedule category and the polarity of the product.
5. **Processing:** Indicate "YES" if the Sugar is being imported for further processing in the United States by a USDA-recognized cane refiner and "NO" if it is not.
6. **Quantity:** Indicate in metric tons raw value and short tons raw value.
7. **Date of Export License:** Date that the Export License is issued.
8. **Date of Expiration of the Export License:** Indicate the date that the Export License expires.
9. **Port of Export:** Indicate the port of export.
10. **Allocation to Mill:** Indicate the total amount of the Export Limit allocated to the individual mill during the relevant Export Limit Period.
11. **Allocation Remaining:** Indicate the remaining amount available under the allocation to the individual mill during the relevant Export Limit Period.



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

C-201-846  
Suspension Agreement  
Public Document  
EC/OP/BAU: SCG

December 19, 2014

MEMORANDUM FOR: Paul Piquado  
Assistant Secretary for  
Enforcement and Compliance

FROM: Lynn Fischer Fox *LFF*  
Deputy Assistant Secretary  
for Policy and Negotiations  
Enforcement and Compliance

SUBJECT: 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 (“the Department”) and the Government of Mexico signed the Agreement Suspending the Countervailing Duty Investigation on Sugar from Mexico (“the Agreement”). In accordance with sections 704(c)(1) and 704(c)(3) of the Tariff Act of 1930, as amended (“the Act”), the Agreement is a quantitative restriction agreement with a foreign government, which is 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. See Section V of the Agreement.

Section 704(c)(1) of the Act indicates that extraordinary circumstances must be present for the Department to suspend an investigation under this section of the law. In accordance with section 704(c)(4) of the Act, the Department finds, as detailed below, that extraordinary circumstances exist with respect to this Agreement. Furthermore, the Department is satisfied that the 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 Agreement accounts for the broad and varied interests of the petitioning U.S. industry, which includes sugar cane and beet growers and sugar cane refiners and, also the general public.



### 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.

As for whether the suspension of the countervailing duty investigation on sugar from Mexico will be more beneficial to the domestic industry than continuation of the investigation, the Agreement establishes effective relief and, in several respects, has distinct advantages when compared with a countervailing duty order. The 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. *Id.* Specifically, the Agreement will limit the amount of sugar Mexico can export to the United States during each export limit period, 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 U.S. needs, the Agreement will ensure that the public demand is satisfied while significantly reducing the likelihood that 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 Agreement supports the U.S. sugar program and reduces the possibility of forfeitures of sugar by the U.S. industry under that program. By limiting the supply of Mexican sugar, the Agreement will work to counteract any overproduction created by the bestowal of countervailable subsidies.

The Agreement also will provide 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 cause shortages of sugar in the United States.

Further, it is anticipated that the increase in market certainty and price stability that will result from the Agreement will aid the domestic industry in its production planning and sales/contracting activities for the upcoming season. Finally, the domestic industry and the Department can put the resources that they would have otherwise devoted to completing the investigation to other uses.

Regarding whether the countervailing duty investigation on 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 exist in the countervailing duty investigation on sugar from Mexico. Specifically, this investigation: (1) covers a large number of alleged countervailable subsidy practices (*i.e.*, 29 alleged countervailable subsidy practices are under investigation), including allegations involving a price support scheme for sugar cane operated by the Government of Mexico and debt restructurings dating back to

1995; (2) raises complex issues, including how the investigation will impact, and be impacted by, the U.S. Department of Agriculture's sugar program, as well as the tariff rate quotas administered by the U.S. Trade Representative; and (3) concerns 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 the Department shall not accept a subsection 704(c) suspension agreement unless "it is satisfied that suspension of the investigation is in the public interest." See section 704(d)(1)(A) of the Act.<sup>1</sup> The statute explains further that, under any quantitative restriction agreement under section 704(c) of the Act, the Department 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. See section 704(a)(2)(B) and (d)(1) of the Act.

The Department's analysis of these factors demonstrates that the Agreement is in the public interest. First, based upon the relative impact on consumer prices and the availability of supplies of the merchandise, the Agreement would not have a greater adverse impact on United States consumers than would the imposition of countervailing duties. The Agreement establishes effective relief and, in a number of respects, has distinct advantages when compared to a countervailing duty order. For example, the Agreement benefits domestic producers by eliminating the injurious effects of exports of the subject merchandise to the United States. Under the terms of the Agreement, the Government of Mexico has agreed to restrict the volume of imports of subject merchandise into the United States, tying exports of sugar to U.S. needs, and thereby eliminating completely the injurious effect of exports to the United States of that merchandise. See Section V of the Agreement. Specifically, the Agreement addresses the availability of the supplies of sugar to the United States for U.S. sugar cane refiners, as well as the general public. In turn, by addressing oversupply, the Agreement will support price stability and predictability for consumers. If oversupply occurred, the U.S. industry may be forced to forfeit sugar that it produced, causing sugar prices to fluctuate dramatically. See Section V of the

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<sup>1</sup>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).

Agreement. In limiting the supply of Mexican sugar, the Agreement works to counteract any subsidies that incentivize overproduction.

Second, the Agreement protects the international economic interests of the United States. Working in concert with the sugar program administered by USDA, the Agreement significantly reduces the possibility of oversupply in the U.S. market and the need for USDA to purchase forfeited sugar, thereby avoiding increased public debt. Moreover, by limiting imports of sugar from Mexico to U.S. needs, the Agreement works to provide a stable supply of sugar for domestic consumers, thereby reducing the likelihood that significant shortages would arise in the United States.

Third, the Agreement should enhance, not negatively impact, the competitiveness of the domestic industry producing the like merchandise or employment and investment in that industry. The Agreement ensures an adequate supply of refined and other sugar – *i.e.*, no more than 53 percent refined sugar in any given export limit period. Through this allocation, the Agreement addresses input supply concerns for domestic sugar cane refiners and at the same time addresses the concerns that imports of other sugar do not supplant the domestic like product. The export limit in the Agreement, working in concert with the sugar program administered by the U.S. Department of Agriculture, should enhance the domestic industry's competitiveness.

Moreover, other factors demonstrate that the Agreement is in the public interest. As noted above, the Agreement will provide 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. Further, given the unique parameters of the U.S. sugar market, the issuance of a CVD order has the potential to destabilize the U.S. sugar market and cause shortages of sugar in the United States. Because the Agreement has been signed, the Department and the other participants in this proceeding can redirect resources that would have otherwise been devoted to completing the investigation. Furthermore, this Agreement prevents 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.

Finally, as a result of the signing of the Agreement, in accordance with section 704(f)(2)(A)(ii) of the Act, we will instruct U.S. Customs and Border Protection to terminate the suspension of liquidation on imports of the subject merchandise, and importers will not be subject to contingent countervailing duty liabilities, consistent with the statute.

#### Practicability of Effective Monitoring

The Agreement can be administered and enforced by the Department. The Government of Mexico has agreed to supply the Department with all information that the Department deems necessary to ensure full compliance with the export limits and other terms and conditions of the



Agreement. See, e.g., Sections VIII.B.1.a and VIII.B.1.b and Appendix II of the Agreement. The Agreement provides for monitoring and verification. See Sections VIII.A and VIII.B of the Agreement. Further, the Agreement includes certain enhanced monitoring and compliance mechanisms, including the following: establishment by the Government of Mexico of an export licensing system and the requirement that such export licenses are presented as a condition of entry for sugar from Mexico to enter the United States; and consultation with the U.S. Department of Agriculture regarding monthly information submitted by processors, refiners, and importers of sugar from Mexico. See Sections VI and Appendix I and Section VIII.A.2, respectively, of the Agreement. The Agreement also addresses circumvention and possible violations. See Sections VII and VIII.D.3 and Section IX, respectively, of the Agreement. Based on the terms of the Agreement, the Department's experience and expertise in monitoring and enforcing suspension agreements, and the commitment from the Government of Mexico to abide by the terms of the Agreement, we find that effective monitoring of the Agreement is practicable.

