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

A-201-845
Investigation
Public Document
ITA/EC/OP: SCG

October 27, 2014

RE: Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico

TO ALL INTERESTED PARTIES:

On October 27, 2014, the Department of Commerce ("the Department") and a representative for Mexican sugar producers/exporters initialed a draft antidumping duty ("AD") suspension agreement on sugar from Mexico. We invite interested parties to comment on the draft AD suspension agreement. Comments are due to the Department no later than the close of business on **November 10, 2014.** Parties should also note that the scope of the draft suspension agreement is identical to the scope of the underlying AD investigation; should any scope clarifications be made in the context of the underlying investigation, such modifications would also apply to the scope of any finalized suspension agreement.

Please submit your comments electronically using Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System ("IA ACCESS"). An electronically-filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by 5 p.m. Eastern Time ("ET") on its due date. Likewise, documents excepted from the electronic submission requirements must be filed manually (i.e., in paper form) with the APO/Dockets Unit in Room 1870 and stamped with the date and time of receipt by 5 p.m. ET on the due date.

We have enclosed a copy of the draft AD agreement. If you have questions, please contact me at (202) 482-0162 or Judy Rudman at (202) 482-0192.

Sincerely,

Sally C. Gannon

Sally C. Gannon
Director for Bilateral Agreements
Office of Policy

Enclosure

INTERNATIONAL TRADE ADMINISTRATION

DRAFT
October 27, 2014

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. § 1673(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 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 sugar derived from sugar cane or sugar beets. Sucrose gives sugar its essential character. Sucrose is a nonreducing disaccharide composed of glucose and fructose linked via their anomeric carbons. The molecular formula for sucrose is $C_{12}H_{22}0_{11}$, the International Union of Pure and Applied Chemistry (IUPAC) International Chemical Identifier (InChl) 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 InChl 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 within the scope of this Agreement includes raw sugar (sugar with a sucrose content by weight in a dry state that corresponds to a polarimeter reading of less than 99.5 degrees) and estandar or standard sugar which is sometimes referred to as "high polarity" or "semi-refined" sugar (sugar with a sucrose content by weight in a dry state that corresponds to a polarimeter reading of 99.2 to 99.6 degrees). Sugar within the scope of this Agreement includes refined sugar with a sucrose content by weight in a dry state that corresponds to a polarimeter reading of at least 99.9 degrees. Sugar within the scope of this Agreement includes brown sugar, liquid sugar (sugar dissolved in water), organic raw sugar and organic refined sugar.

Inedible molasses is not within the scope of this Agreement. Specialty sugars, *e.g.*, rock candy, fondant, sugar decorations, are not within the scope of this Agreement. Processed food products that contain sugar, *e.g.*, beverages, candy, cereals, are not within the scope of this Agreement.

Merchandise covered by this Agreement is typically imported under the following headings of the Harmonized Tariff Schedule of the United States (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, 1701.99.1025, 1701.99.1050, 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. "Reference Price" means the minimum price at which merchandise subject to this Agreement can be sold in the United States.

G. "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.

H. "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.

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

III. Suspension of Investigation

Effective [DATE OF SIGNATURE], 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 sign 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 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.

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 of this Agreement, merchandise subject to the Agreement at prices that are less than the Reference Price, 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, to determine whether there have been imports that are inconsistent with the provisions of this Agreement.

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 Mexican Government for appropriate action. For further information, please see information provided at: [[Link to ITA page that will include links to the Government of Mexico's regulations (e.g., published in the Diario Oficial, Sistema Integral, etc.) and a summary of the Mexican Export Scheme for Sugar.]]

4. The Department will review, as appropriate, data it receives from the Working Group and 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 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 price. 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 the merchandise subject to this Agreement, 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 parties 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. $/lb. in accordance with Appendix I of this Agreement.

2. The parties to this Agreement acknowledge that in accordance with Mexican regulations, Mexican sugar producers and non-producer exporters exporting to the United States will 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 provided at: [[Link to ITA page that will include links to the Government of Mexico's regulations and summary of Mexican Export Scheme for Sugar.]]

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. 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, unless the Department determines that Section VIII applies.

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, 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 this Agreement, the Department may evaluate under 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 this 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 U.S. Customs and Border Protection 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 price, as the signatories agree not to sell the subject merchandise at prices that are less than the reference price or 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 U.S. Customs and Border Protection and/or the U.S. Department of Agriculture.

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 price.

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
1401 Constitution Ave., NW
Room 7046
Washington, D.C. 20230

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

D. For all purposes hereunder, the Department and the Signatories shall be represented by, and all communications and other submissions shall be addressed to:

The Department:

Assistant Secretary for Enforcement and Compliance
International Trade Administration
U.S. Department of Commerce

[[Signatories]]:

XXX

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 withdrawal, 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 any party requests continuation of either the antidumping or 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 U.S. Customs and Border Protection to reimburse any cash deposits collected as a result of the antidumping duty investigation on sugar from Mexico.

_____

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

_____

Date

The following parties hereby certify that the members of their organization agree to abide by all terms of the Agreement:

_____

(Name and Title of Certifying Official)

_____

(Signature of Certifying Official)

For [[COMPANY/ASSOCIATION]]

_____

Date

_____

Appendix I – Suspension of Antidumping Investigation – Sugar from Mexico – Reference Price

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 Department and the signatory producer/exporters of the subject merchandise hereby agree to adopt the following reference prices:

The FOB plant reference price for refined sugar is $0.2357 per pound. The FOB plant reference price for all other sugar is $0.2075 per pound.

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[1] 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.

[1] If there are not commissions in both markets, then the Department will apply a commission offset.