



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

June 14, 2017

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

TO ALL INTERESTED PARTIES:

On June 14, 2017, the Department of Commerce (“the Department”) and a representative for Mexican sugar producers/exporters initialed a draft amendment to the antidumping duty (“AD”) suspension agreement on sugar from Mexico.¹ We invite interested parties to comment on the draft amendment. Comments are due to the Department no later than the close of business on **June 21, 2017**. Rebuttal comments, limited to rebutting comments submitted on or before June 21, 2017, are due to the Department no later than the close of business on **June 26, 2017**.

Please submit your comments electronically using Enforcement and Compliance’s Antidumping and Countervailing Duty Centralized Electronic Service System (“ACCESS”). An electronically-filed document must be received successfully in its entirety by the Department’s electronic records system, 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 18022 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 amendment to the AD which we are uploading to ACCESS along with draft memoranda. If you have questions, please contact me at (202) 482-0162.

Sincerely,

Sally C. Gannon
Director for Bilateral Agreements
Office of Policy

Enclosure

¹ The Department will also issue draft statutory memoranda in the near future.



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**AMENDMENT TO AGREEMENT SUSPENDING THE ANTIDUMPING DUTY
INVESTIGATION ON SUGAR FROM MEXICO**

The Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico (Agreement) signed by the United States Department of Commerce (the Department) and the signatory producers and exporters of Sugar from Mexico (the Signatories) on December 19, 2014, is amended, as set forth below (Amendment).

If a provision of the Agreement conflicts with a provision of this Amendment, the provision of the Amendment shall supersede the provision of the Agreement to the extent of the conflict. All other provisions of the Agreement and their applicability continue with full force.

The Department and the Signatories hereby agree as follows:

Section II (“Definitions”) is amended as follows:

Section II.C is replaced with:

“Effective Date of the Agreement” means the date on which the Department and the Signatories signed the Agreement. Additionally, the “Effective Date of the Amendment” means the date on which the Department issues its next calculation pursuant to Section V.B of the Agreement Suspending the Countervailing Duty Investigation on Sugar from Mexico (CVD Agreement) and, as such, means that the Amendment applies to all contracts for Sugar from Mexico for the October 1, 2017 through September 30, 2018 Export Limit Period (as defined in the CVD Agreement), and to all contracts for Sugar from Mexico (regardless of Export Limit Period) exported from Mexico on or after October 1, 2017.

Section II.F is replaced with:

“Other Sugar” means

- a. Sugar at a polarity of less than 99.2, as produced and measured on a dry basis; and,
- b. Where such Sugar is Additional U.S. Needs Sugar, as defined in Section II.O,
 1. Sugar at a polarity of less than 99.5, as produced and measured on a dry basis; or,
 2. In the event that Section V.B.4.c.ii of the CVD Agreement is exercised, Sugar at a polarity specified by USDA (if other than a polarity of less than 99.5), as produced and measured on a dry basis.

Such Other Sugar must be exported to the United States loaded in bulk and freely flowing (*i.e.*, not in a container, tote, bag or otherwise packaged) into the hold(s) of an ocean-going vessel. To

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be considered as Other Sugar, if Sugar leaves the Mexican mill in a container, tote, bag or other package (*i.e.*, is not freely flowing), it must be emptied from the container, tote, bag or other package into the hold of the ocean-going vessel for exportation. All other exports of Sugar from Mexico that are not transported in bulk and freely flowing in the hold(s) of an ocean-going vessel will be considered to be Refined Sugar for purposes of the Reference Prices, regardless of the polarity of that Sugar.

Section II.H is replaced with:

“Refined Sugar” means

- a. Sugar at a polarity of 99.2 and above, as produced and measured on a dry basis;
- b. Sugar considered to be Refined Sugar under Section II.F; and,
- c. Where such Sugar is Additional U.S. Needs Sugar as defined in Section II.U,
 1. Sugar at a polarity of 99.5 and above, as produced and measured on a dry basis, or
 2. In the event that Section V.B.4.c.ii of the CVD Agreement is exercised, Sugar at a polarity specified by USDA (if other than a polarity of 99.5 and above), as produced and measured on a dry basis.

New Section II.N is added as follows:

“Intermediary Customer” means trader, processor, or other reseller located outside of the United States who sells Sugar to an unaffiliated customer in the United States.

New Section II.O is added as follows:

“Additional U.S. Needs Sugar” means the quantity of Sugar allowed to be exported, over and above the Export Limit calculated under Section V.B.3 of the amended CVD Agreement, to fill a need identified by USDA in the U.S. market for a particular type and quantity of Sugar, and offered to Mexico pursuant to Section V.B.4.c of the amended CVD Agreement.

Section VII (“Monitoring of the Agreement”) is amended as follows:

Section VII.B (“Compliance Monitoring”) is amended as follows:

Section VII.B.4—an additional sentence as follows is added to the end of paragraph 4:

The Department may verify polarity testing practices at any Mexican mill and request supporting documentation for polarity test results.

Section VII.C (“Shipping and Other Arrangements”) is amended as follows:

Section VII.C.4 is replaced with the following, with the sentence in italics being added to the language:

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. *As part of the certification, each Signatory will submit a listing of the total quantity of Other Sugar and Refined Sugar that was exported during each quarter.*

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.

Section VII.C.5 is added as follows:

5. For each sale made by a Signatory to an Intermediary Customer, the Signatory shall incorporate into its sales contract with the Intermediary Customer the obligation that such customers will abide by the terms of the Agreement, including selling the Sugar from Mexico to the first downstream unaffiliated U.S. customer in accordance with the terms of the Agreement. Further, for each sale made by a Signatory to an Intermediary Customer, the Signatory shall incorporate into its sales contract with the Intermediary Customer a provision requiring the Intermediary Customer to provide the Department with all sales and other related information the Department requests.

Further, Signatories and Intermediary Customers must retain evidence in their files to document that these contractual obligations were implemented. The Department retains its authority to request the Signatory and/or Intermediary Customer to provide such documentation, and the Department may verify such documentation. Where a Signatory does not have access to the documentation but has obligated the Intermediary Customer to provide it to the Department, the Department will request the Intermediary Customer to provide the documentation. Failure by a Signatory and/or Intermediary Customer to provide requested documentation may be considered a violation under Section VIII of the Agreement.

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Section VII.C.6 is added as follows:

6. Other Sugar may enter the Customs territory of the United States if the following conditions are met:

Exporters of Other Sugar are required to ensure, through inclusion of obligations in their sales contracts or otherwise, that importers of record of such Other Sugar agree to ensure that Other Sugar is tested for polarity by a laboratory approved by U.S. Customs and Border Protection (CBP) upon entry into the United States, with samples drawn in accordance with CBP standards, and that the importers of record agree to report the polarity test results for each entry to the Department within 30 days of entry. Such polarity test reports must be filed on the official records of the Department for both this Agreement and the CVD Agreement. For clarity, sampling will be done in accordance with CBP standards (*e.g.*, CBP Directive No. 3820-001B), or its successor directive as agreed by the Department and the Signatories, including the CBP requirement that the polarity level of an entry will be the average of the samples from that entry.

The Department will request that CBP inform the importing public of the requirements for importation of Other Sugar set forth in this sub-section.

Section VII.C.7 is added as follows:

7. Penalties for Non-Compliance with Section VII.C.6.a:

- a. Where the Department finds that exporters and importers of record of Other Sugar are not complying with Section VII.C.6.a, the Department may consider this a violation under Section VIII.D of the Agreement.
- b. If the Department finds that issues with meeting the polarity requirements of the Agreement as required by Sections II.F, II.H, VII.C.6 and Appendix I continue to arise, the Department can at any time terminate the Agreement under Section X.B. Apart from termination, the Department may take additional steps to ensure compliance with the terms of this Agreement, including action under Section VIII.B.4 of the CVD Agreement.

Section VIII (“Violations of the Agreement”) is amended as follows:

Section VIII.D is amended by adding new paragraphs 3 and 4, and moving paragraph 3 to paragraph 5:

D.3 Failure by Signatories and Intermediary Customers to provide the required documentation specified in Section VII.C.5.

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D.4 Failure by Signatories and importers of record to comply with the requirements under Section VII.C.6.

Appendix I is amended as follows:

At Appendix I, the following will be changed:

The FOB plant Reference Price for Refined Sugar is \$0.2800 per pound commercial value (whether freely flowing or in totes weighing one (1) MT or greater as the sugar leaves the mill), as produced and measured on a dry basis.

The FOB plant Reference Price for Other Sugar is \$0.2300 per pound commercial value (whether freely flowing or in totes weighing one (1) MT or greater as the sugar leaves the mill), as produced and measured on a dry basis.

In addition, the following clause will be added to Appendix I when referencing the Reference Prices.

Mexican Signatory producers/exporters must ensure that the delivered sales price for all Sugar from Mexico exported to the United States must include all expenses, *e.g.*, transportation, de-bagging, warehousing, handling, and packaging charges, in excess of the FOB plant Reference Price. As specified in Sections VII.B.1 and VII.B.2 of the Agreement, the Department has the authority to request sales information, and to verify such information, which demonstrates compliance with the Reference Prices and terms of the Agreement.

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Signed in Washington, D.C., on XX, 2017.

Wilbur L. Ross
Secretary of the U.S. Department of Commerce

Date

The following party hereby certifies that the members of the Mexican sugar industry agree to abide by all terms of the Amendment to the Agreement:

Juan Cortina Gallardo
For Mexican Sugar Industry

Date

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