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DEPARTMENT OF COMMERCE

International Trade Administration

[A-201-845]

Sugar from Mexico: Amendment to the Agreement Suspending the Antidumping Duty Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable January 15, 2020.

SUMMARY: The Department of Commerce (Commerce) and a representative of the signatory sugar producers/exporters accounting for substantially all imports of sugar from Mexico have signed an amendment to the Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico (AD Agreement). The amendment to the AD Agreement modifies the definitions for sugar from Mexico, revises the reference prices for the applicable sugar from Mexico, and provides for enhanced monitoring and enforcement mechanisms.

FOR FURTHER INFORMATION CONTACT: Sally C. Gannon or David Cordell at (202) 482-0162 or (202) 482-0408, respectively; Bilateral Agreements Unit, Office of Policy, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTAL INFORMATION:

Background

On April 17, 2014, Commerce initiated an antidumping duty investigation under section 732 of the Tariff Act of 1930, as amended (the Act), to determine whether imports of sugar from

Mexico are being, or are likely to be, sold in the United States at less than fair value (LTFV).¹

On October 24, 2014, Commerce preliminarily determined that sugar from Mexico is being, or is likely to be, sold in the United States at LTFV, as provided in section 733 of the Act, and postponed the final determination in this investigation until no later than 135 days after the date of publication of the preliminary determination in the *Federal Register*.²

Commerce and a representative of the signatory producers/exporters accounting for substantially all imports of sugar from Mexico signed the AD Agreement on December 19, 2014.³

On January 8, 2015, Imperial Sugar Company (Imperial) and AmCane Sugar LLC (AmCane) each notified Commerce that they had petitioned the International Trade Commission (ITC) to conduct a review of the AD Agreement under section 734(h) of the Act, to determine whether the injurious effects of the imports of the subject merchandise are eliminated completely by the AD Agreement. On March 24, 2015, in a unanimous vote, the ITC found that the AD Agreement eliminated completely the injurious effects of imports of sugar from Mexico.⁴ As a result of the ITC's determination, the AD Agreement remained in effect, and on March 27, 2015, Commerce, in accordance with section 734(h)(3) of the Act, instructed U.S. Customs and Border Protection (CBP) to terminate the suspension of liquidation of all entries of sugar from Mexico and refund all cash deposits.

Notwithstanding issuance of the AD Agreement, pursuant to requests by domestic interested parties, Commerce continued its investigation and made an affirmative final

¹ See *Sugar from Mexico: Initiation of Antidumping Duty Investigation*, 79 FR 22795 (April 24, 2014).

² See *Sugar from Mexico: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 79 FR 65189 (November 3, 2014).

³ See *Sugar From Mexico: Suspension of Antidumping Investigation*, 79 FR 78039 (December 29, 2014) (AD Agreement).

⁴ See *Sugar from Mexico; Determinations*, 80 FR 16426 (March 27, 2015).

determination of sales at LTFV.⁵ In its *Final Determination*, Commerce calculated weighted-average dumping margins of 40.48 percent for Fondo de Empresas Expropiadas del Sector Azucarero (FEESA), 42.14 percent for Ingenio Tala S.A. de C.V. and certain affiliated sugar mills of Grupo Azucarero Mexico S.A. de C.V. (collectively, the GAM Group), and 40.74 percent for all other Mexican producers/exporters. Commerce stated in its *Final Determination* that it would “not instruct CBP to suspend liquidation or collect cash deposits calculated herein unless the AD Suspension Agreement is terminated and the Department issues an antidumping duty order,” and, in that case, it would “instruct CBP to suspend liquidation and require a cash deposit equal to the weighted-average amount by which normal value exceeds U.S. price,” and adjusted for export subsidies.⁶ The ITC subsequently made an affirmative determination of material injury to an industry in the United States by reason of imports of sugar from Mexico.⁷

In June 2016, Commerce and representatives of the Mexican sugar producers/exporters began consultations regarding the AD Agreement to address concerns raised by the domestic industry and to ensure that the AD Agreement continued to meet all of the statutory requirements for a suspension agreement, *e.g.*, that suspension of the investigation is in the public interest, including the availability of supplies of sugar in the U.S. market, and that effective monitoring is practicable. The consultations resulted in Commerce and a representative of the signatory producers/exporters accounting for substantially all imports of sugar from Mexico initialing a draft amendment to the AD Agreement on June 14, 2017, and subsequently signing a finalized

⁵ See *Sugar From Mexico: Continuation of Antidumping and Countervailing Duty Investigations*, 80 FR 25278 (May 4, 2015); *Sugar From Mexico: Final Determination of Sales at Less Than Fair Value*, 80 FR 57341 (September 23, 2015) (*Final Determination*).

⁶ *Final Determination*, 80 FR at 57342.

⁷ See *Sugar From Mexico*, 80 FR 70833 (November 16, 2015) (*Final ITC Determination*).

amendment on June 30, 2017.⁸

CSC Sugar LLC (CSC Sugar) challenged Commerce’s determination to amend the AD Agreement by contending that Commerce did not meet its obligation to file a complete administrative record.⁹ Specifically, CSC Sugar argued that Commerce failed to memorialize and include in the record *ex parte* communications between Commerce officials and interested parties (including the domestic sugar industry and representatives of Mexico), as required by section 777(a)(3) of the Act.¹⁰ The CIT agreed with CSC Sugar and ordered Commerce to supplement the administrative record with any *ex parte* communications regarding the 2017 AD Amendment.¹¹

Ultimately, the CIT found that Commerce’s failure to follow the recordkeeping requirements of Section 777 of the Act cannot be described as “harmless.”¹² The CIT found that this recordkeeping failure substantially prejudiced CSC Sugar.¹³ On that basis, the CIT stated that the 2017 AD Amendment must be vacated.¹⁴ Consistent with CIT’s ruling in *CSC Sugar II*, on December 6, 2019, Commerce terminated the 2017 AD Amendment prospectively – and accordingly, as of December 7, 2019, the unamended AD Agreement has been in force and effective, and the 2017 AD Amendment has had no force or effect.¹⁵

⁸ See *Sugar From Mexico: Amendment to the Agreement Suspending the Antidumping Duty Investigation*, 82 FR 31945 (July 11, 2017) (2017 AD Amendment).

⁹ See *CSC Sugar LLC v. United States*, Ct. No. 17-00215, Slip Op. 19-132 (CIT October 18, 2019) (*CSC Sugar II*) at 4.

¹⁰ *Id.*

¹¹ *Id.* (citing *CSC Sugar LLC v. United States*, 317 F. Supp. 3d 1322, 1326 (CIT 2018)).

¹² *Id.* at 11-12.

¹³ *Id.* at 12.

¹⁴ See *Sugar From Mexico: Notice of Court Decision Regarding Amendment to the Agreement Suspending the Antidumping Duty Investigation*, 84 FR 58129 (October 30, 2019).

¹⁵ See *Sugar From Mexico: Notice of Termination of Amendment to the Agreement Suspending the Antidumping Duty Investigation*, 84 FR 67711, 67712 (December 11, 2019).

On November 4, 2019, Commerce formally opened consultations to renegotiate an amendment to the AD Agreement.¹⁶ On November 6, 2019, Commerce released a proposed amendment to the AD Agreement and invited parties to provide written comments on the proposed amendment by November 12, 2019.¹⁷ On December 4, 2019, Commerce and a representative of the signatory producers/exporters initialed a draft amendment to the AD Agreement, and Commerce released corresponding draft statutory memoranda.¹⁸ Interested parties were invited to provide comments on the draft amendment and draft memoranda by December 16, 2019.

Scope of Agreement

See Section I, Product Coverage, of the AD Agreement.

Analysis of Comments Received

We received comments on the draft amendment and draft statutory memoranda from CSC Sugar; the petitioners, American Sugar Coalition and its members;¹⁹ Imperial Sugar Company; Cámara Nacional de Las Industrias Azucarera y Alcohólera (Cámara); the Sugar Users Association (SUA); the International Sugar Trade Coalition, Inc.; and the Corn Refiners Association. In reaching a final amendment to the AD Agreement, Commerce has taken into account all comments submitted on the record of the suspension agreement proceeding and has

¹⁶ *See* Letter to Cámara Nacional de Las Industrias Azucarera y Alcohólera from P. Lee Smith, Deputy Assistant Secretary for Policy & Negotiations, “Consultations on Potential Amendment to the Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico” (November 4, 2019).

¹⁷ *See* Letter to All Interested Parties from P. Lee Smith, Deputy Assistant Secretary for Policy & Negotiations, “Release of Draft Amendment to the Agreement Suspending the Countervailing Duty Investigation on Sugar from Mexico” (November 6, 2019).

¹⁸ *See* Letter to All Interested Parties from Sally C. Gannon, Director for Bilateral Agreements, “Draft Amendment to the Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico and Draft Statutory Memoranda” (December 4, 2019).

¹⁹ The petitioners are the American Sugar Coalition and its individual members: American Sugar Cane League, American Sugar Refining, Inc., American Sugarbeet Growers Association, Florida Sugar Cane League, Rio Grande Valley Sugar Growers, Inc., Sugar Cane Growers Cooperative of Florida, and United States Beet Sugar Association.

made changes, where warranted, to the December 4, 2019 draft AD amendment based upon those comments.

Amendment to AD Agreement

Commerce consulted with the Mexican sugar producers/exporters and domestic interested parties and has considered the comments submitted by interested parties with respect to the draft amendment to the AD Agreement. On January 15, 2020, after consideration of the interested party comments received, Commerce and a representative of sugar producers/exporters accounting for substantially all imports of sugar from Mexico, signed a finalized amendment to the AD Agreement. The 2020 Amendment, as integrated with the AD Agreement (the amended AD Agreement), allows for exports of Mexican sugar to the United States in accordance with the collective terms therein.

In accordance with section 734(c) of the Act, we have determined that extraordinary circumstances, as defined by section 734(c)(2)(A) of the Act, exist with respect to the amended AD Agreement. We have also determined that the amended AD Agreement will eliminate completely the injurious effect of exports to the United States of the subject merchandise and prevent the suppression or undercutting of price levels of domestic sugar by imports of that merchandise from Mexico, as required by section 734(c)(1) of the Act. We have also determined that the amended AD Agreement is in the public interest and can be monitored effectively, as required under section 734(d) of the Act.

For the reasons outlined above, we find that the amended AD Agreement meets the criteria of section 734(c) and (d) of the Act.

The terms and conditions of the amended AD Agreement, signed on January 15, 2020, are set forth in the 2020 Amendment to the AD Agreement, which is attached in Annex 1 to this

notice.

Administrative Protective Order Access

The administrative protective order (APO) Commerce granted in the suspension agreement segment of this proceeding remains in place and effective for the amended AD Agreement. All new parties requesting access to business proprietary information submitted during the administration of the amended AD Agreement, under the APO currently in effect, must submit an APO application in accordance with the Commerce's regulations currently in effect.²⁰

We are issuing and publishing this notice in accordance with section 734(f)(1)(A) of the Act and 19 CFR 351.208(g)(2).

Dated: January 15, 2020.

Jeffrey I. Kessler,
Assistant Secretary
for Enforcement and Compliance.

²⁰ See section 777(c)(1) of the Act; 19 CFR 351.103, 351.304, 351.305, and 351.306.

ANNEX 1: AMENDMENT TO THE 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 signatory producers and exporters of Sugar from Mexico (individually, Signatory; collectively, Signatories) and the United States Department of Commerce (Commerce) 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.

Commerce 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 Commerce and the Signatories signed the Agreement. Additionally, the “Effective Date of the Amendment” means the date on which Commerce and the Signatories sign the Amendment.

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;
- b. Where such Sugar is Additional U.S. Needs Sugar, as defined in Section II.O, Sugar at a polarity of less than 99.5, as produced and measured on a dry basis; and,
- c. In the event that Section V.B.4.d of the Agreement Suspending the Countervailing Duty Investigation on Sugar from Mexico (CVD Agreement) is exercised, Sugar at a polarity specified by USDA that is below 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 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;
- c. Where such Sugar is Additional U.S. Needs Sugar as defined in Section II.O, Sugar at a polarity of 99.5 and above, as produced and measured on a dry basis; and
- d. In the event that Section V.B.4.d of the CVD Agreement is exercised, Sugar at a polarity specified by USDA that is 99.5 or 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 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:

Commerce 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 Commerce 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 Commerce 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 Commerce 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 Commerce with all sales and other related information Commerce requests.

Further, Signatories and Intermediary Customers must retain evidence in their files to document that these contractual obligations were implemented. Commerce retains its authority to request the Signatory and/or Intermediary Customer to provide such documentation, and Commerce may verify such documentation. Where a Signatory does not have access to the documentation but has obligated the Intermediary Customer to provide it to Commerce, Commerce 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.

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 Commerce within 30 days of entry. Such polarity test reports must be filed on the official records of Commerce 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 Commerce and the Signatories, including the CBP requirement that the polarity level of an entry will be the average of the samples from that entry.

Commerce 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. Where Commerce finds that exporters and importers of record of Other Sugar are not complying with Section VII.C.6, Commerce may consider this a Violation under Section VIII.D of the Agreement.
- b. If Commerce 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, Commerce can at any time terminate the Agreement under Section X.B. Apart from termination, Commerce 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.

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, Commerce has the authority to request sales information, and to verify such information, which demonstrates compliance with the Reference Prices and terms of the Agreement.

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance
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
President of the Board
Cámara Nacional de Las Industrias Azucarera y Alcohólera (Mexican Sugar Chamber)

Date

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