

MEMORANDUM TO: Joseph A. Spetrini  
Acting Assistant Secretary  
for Import Administration

FROM: Barbara E. Tillman  
Acting Deputy Assistant Secretary  
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Full Sunset Review of the  
Countervailing Duty Finding on Sugar from the European Community:  
Final Results

### Summary

We analyzed the comments of interested parties in the full sunset review of the countervailing duty (“CVD”) finding on sugar from the European Community (“the Community”). We recommend that you approve the positions we have developed in the “Discussion of the Issues” section of this memorandum. Below is the complete list of the issues in this full sunset review:

1. Likelihood of continuation or recurrence of countervailable subsidies
2. Net countervailable subsidy likely to prevail
3. Nature of Subsidy

### History of the Finding

On March 25, 2005, the Department of Commerce (“the Department”) published a notice of preliminary results of full sunset review pursuant to section 751(c) of the Tariff Act of 1930, as amended (“the Act”). See Sugar From the European Community; Preliminary Results of Full Sunset Review of the Countervailing Duty Finding, 70 FR 15293 (March 25, 2005) (“Preliminary Results”), and accompanying Issues and Decision Memorandum for the Five-Year (“Sunset”) Review of the Countervailing Duty Finding on Sugar from the European Community; Preliminary Results (“Preliminary Issues Memo”).<sup>1</sup> The Department preliminarily determined that revocation of the CVD finding would likely lead to continuation or recurrence of countervailable subsidies. Specifically, the Department preliminarily found that the export restitution program, the program found countervailable in the original investigation, has not been terminated. Additionally, relying on the average export refunds for the most recent five marketing years, the Department preliminarily determined that 21.62 cents per pound is the net

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<sup>1</sup> A complete history of this finding is contained in the Preliminary Issues Memo.

countervailing subsidy rate likely to prevail if the finding were revoked.

The Department received a case brief from the United States Beet Sugar Association, the American Cane Sugar Refiners' Association, the American Sugar Cane League, the Sugar Cane Growers Cooperative of Florida, the Florida Sugar Cane League, Rio Grande Valley Sugar Growers, Inc., Hawaii Sugar Farmers, and the American Sugarbeet Growers Association (collectively "domestic interested parties"). We did not receive any comments from the Community.

### Discussion of the Issues

In accordance with section 751(c)(1) of the Act, the Department is conducting this review to determine whether revocation of the countervailing duty finding would be likely to lead to continuation or recurrence of a countervailable subsidy. Section 752(b) of the Act provides that, in making this determination, the Department shall consider the net countervailable subsidy determined in the investigation and subsequent reviews, and whether any change in the program which gave rise to the net countervailable subsidy has occurred that is likely to affect that net countervailable subsidy. Pursuant to section 752(b)(3) of the Act, the Department shall provide to the International Trade Commission ("ITC") the net countervailable subsidy likely to prevail if the finding were revoked. In addition, consistent with section 752(a)(6) of the Act, the Department shall provide to the ITC information concerning the nature of the subsidy and whether the subsidy is a subsidy described in Article 3 or Article 6.1 of the 1994 WTO Agreement on Subsidies and Countervailing Measures ("Subsidies Agreement").

Below we address the issues and comments in this review.

#### 1. Likelihood of Continuation or Recurrence of Countervailing Subsidy

The domestic interested parties expressed their support for the Department's preliminary finding that because the export restitution payment program continues to exist, revocation of this CVD finding would likely result in the continuation of a countervailable subsidy. We received no other comments. Therefore, as described in the Preliminary Results and Preliminary Issues Memo, we find that revocation would likely result in the continuation or recurrence of a countervailable subsidy.

#### 2. Net Countervailing Subsidy

### Interested Party Comments

The domestic interested parties requested that the Department reconsider the amount of the net countervailable subsidy likely to prevail if the finding were revoked. Specifically, the domestic interested parties urged the Department to rely upon the most recent marketing year data (2003-2004) as opposed to the average of the export refunds for the five-year period 1999-2004. They claimed that for the reasons contained in their earlier submissions and discussed in the Preliminary Issues Memo, the net countervailable subsidy likely to prevail is 27.474 cents per pound.

## Department's Position

We continue to disagree that it is appropriate to rely on the export refunds for only the most recent year as the predictor of the net subsidy rate likely to prevail. We note that over the 1999 - 2004 time period, the average export refund varied from year to year and we do not have a basis to select one year over the other as the most probative rate. Because we must provide the ITC with the rate likely to prevail in the future based upon past experience, we continue to determine that an average of the marketing year refunds for the five years 1999 - 2004 is an appropriate representation of the net countervailable subsidy likely to prevail if the finding were revoked. This selection is consistent with our determination in the first sunset review of this finding.<sup>2</sup> On this basis, we find that the net countervailable subsidy likely to prevail were the order revoked is 21.73 cents per pound of sugar. See Memo to File: Re: EC Sugar Conversions, July 28, 2005.

### 3. Nature of Subsidy

Consistent with section 782(a)(6) of the Act, the Department will provide to the ITC information concerning the nature of the subsidy and whether it is a subsidy described in Article 3 or Article 6.1 of the Subsidies Agreement. We did not receive any comments with respect to the nature of the subsidy. Therefore, as we did in the Preliminary Results and the Preliminary Issues Memo, we note that Article 6.1 of the Subsidies Agreement expired effective January 1, 2000. Further, export restitution payments on sugar fall within the definition of an export subsidy under Article 3.1(a) of the Subsidies Agreement.

### 4. Clerical Errors in the Preliminary Results

## Interested Parties' Comments

The domestic interested parties identified alleged clerical errors related to the scope of the finding and the calculation of the net countervailable subsidy. Recognizing that the HTS classification numbers do not control the scope of the finding, the domestic interested parties nonetheless request that the Department correct the scope language to reflect HTS subheading 1701.91.30 as opposed to 1701.90.30 and to delete reference to subheadings 1701.99.10000 and 1701.99.5000, because they do not exist in the 2005 HTS Schedule.

Additionally, referring to marketing year 2003 - 2004, the domestic interested parties note that the correct result of the equation  $50.89 \times 1/.840195 / 2.2046$  is \$27.474 per 100 lbs; not \$26.93 per 100 lbs. As a consequence of correcting the 2003-2004 figure, the five-year average increases to 21.73 cents per pound.

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<sup>2</sup> See Final Results of Full Sunset Review, 64 FR 49464 (Sept. 13, 1999).

Department's Position

We agree that it is the written description of the scope that is dispositive. We have, nonetheless, made the corrections to the HTS subheadings contained in the scope language of the notice of final results of full sunset review. We note that we are not adding a new HTS subheading to the scope; we are merely correcting a typographical error and deleting HTS subheadings that no longer exist. In addition, we agree with petitioners that we made a mathematical error in our calculation of the equation  $50.89 \times 1/.840195 / 2.2046$  and we have made the mathematical correction to our calculations. See Memo to File: Re: Sugar from the EC - Conversions, July 28, 2005.

Final Results of Review

As a result of this review, the Department finds that revocation of the countervailing duty finding would be likely to lead to continuation or recurrence of a countervailable subsidy. Further, we find the net countervailable subsidy likely to prevail if the finding is revoked is 21.73 cents per pound.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of review in the Federal Register.

Agree \_\_\_\_\_

Disagree \_\_\_\_\_

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Joseph A. Spetrini  
Acting Assistant Secretary  
for Import Administration

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(Date)