

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;¹ (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,

¹ 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.

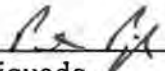
D. The Department will terminate this Agreement in the event that Signatories accounting for a significant proportion of exports of Sugar from Mexico request continuation of the antidumping investigation of Sugar from Mexico, or the GOM requests continuation of the countervailing duty investigation of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

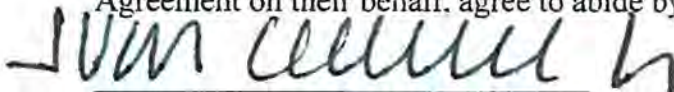
C. As of the Effective Date, the Department shall instruct CBP to refund any cash deposits collected as a result of the antidumping duty investigation on sugar from Mexico. The Department shall instruct CBP to terminate the suspension of liquidation consistent with section 734(f)(2)(B) of the Act.



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. 19th 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. commissions² 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.

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