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DEPARTMENT OF COMMERCE

International Trade Administration

[C-201-846]

Sugar from Mexico: Initiation of Countervailing Duty Investigation

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

DATED: Effective Date: (INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*).

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SUPPLEMENTARY INFORMATION

The Petition

On March 28, 2014, the Department of Commerce (the Department) received a countervailing duty (CVD) petition concerning imports of sugar from Mexico, filed in proper form, on behalf of the American Sugar Coalition and its members (collectively, Petitioners).¹ The CVD Petition was accompanied by an antidumping duty (AD) petition with respect to Mexico.² Petitioners are domestic processors, millers, and refiners of sugar and growers of sugar cane and sugarbeets. On April 1, 2014, the Department requested information and clarification for certain portions of the CVD Petition.³ On April 2, 2014, the Department requested

¹ See Petition for the Imposition of Countervailing Duties on Imports of Sugar from Mexico, dated March 28, 2014 (CVD Petition or Petition).

² See Petition for the Imposition of Antidumping Duties on Imports of Sugar from Mexico, dated March 28, 2014 (AD Petition).

³ See Letter to Robert C. Cassidy, Jr. from Mark Hoadley, dated April 1, 2014 (CVD Supplemental Questions).

information and clarification for certain general portions of the AD and CVD Petitions.⁴

Petitioners filed their responses to these requests on April 7, 2014.⁵ In response to a phone conversation with the Department on April 9, 2014,⁶ Petitioners filed a second response supplementing the Petition on April 10, 2014.⁷ On April 14, 2014, Petitioners made another submission modifying the scope of the Petition.⁸

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (the Act), Petitioners allege that the Government of Mexico (the GOM) is providing countervailable subsidies (within the meaning of sections 701 and 771(5) of the Act) with respect to imports of sugar from Mexico, and that imports of sugar from Mexico are materially injuring, and threaten material injury to, the domestic industry producing sugar in the United States. The Department finds that Petitioners filed the Petition on behalf of the domestic industry because Petitioners are interested parties as defined in sections 771(9)(C), (E), (F), or (G) of the Act, and that Petitioners demonstrated sufficient industry support with respect to the initiation of the investigation Petitioners are requesting.⁹

Period of Investigation

The period of investigation (POI) is January 1, 2013, through December 31, 2013.

Scope of Investigation

The product covered by this investigation is sugar from Mexico. For a full description of the scope of this investigation, see “Scope of Investigation” at the Appendix of this notice.

⁴ See Letter to Robert C. Cassidy, Jr. from Mark Hoadley, dated April 2, 2014 (General Issues Supplemental Questions).

⁵ See Response to CVD Supplemental Questions, dated April 7, 2014 (CVD Supplement); Response to General Supplemental Questions, dated April 7, 2014 (General Issues Supplement).

⁶ See Phone Call with Petitioners Ex Parte Memorandum, dated April 9, 2014.

⁷ See Second General Issues Supplement to Petitions, dated April 10, 2014 (Second General Issues Supplement).

⁸ See Supplement to the Scope of the Petition, dated April 14, 2014 (Scope Supplement).

⁹ See “Determination of Industry Support for the Petition,” below.

Comments on Scope of Investigation

During our review of the Petition, the Department issued questions to, and received responses from, Petitioners pertaining to the proposed scope in order to ensure that the scope language in the Petition would be an accurate reflection of the products for which the domestic industry is seeking relief.¹⁰ As discussed in the Preamble to the regulations,¹¹ we are setting aside a period for interested parties to raise issues regarding product coverage. The period of scope comments is intended to provide the Department with ample opportunity to consider all comments and to consult with parties prior to the issuance of the preliminary determinations. All comments must be filed by 5:00 P.M. Eastern Daylight Time (EDT) on May 7, 2014, which is twenty calendar days from the signature date of this notice. Any rebuttal comments must be filed by 5:00 P.M. EDT on May 14, 2014. All such comments must be filed on the records of the CVD investigation, as well as the concurrent AD investigation.

Filing Requirements

All submissions to the Department must be filed electronically using Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS).¹² An electronically filed document must be received successfully in its entirety by the time and date noted above. Documents excepted from the electronic submission requirements must be filed manually (*i.e.*, in paper form) with Enforcement and Compliance's APO/Dockets Unit, Room 1870, Department of Commerce, 14th Street and Constitution

¹⁰ See General Issues Supplemental Questions; *see also* General Issues Supplement at 3-8; Phone Call with Petitioners Ex Parte Memorandum, dated April 9, 2014; Second General Issues Supplement at 1-4; Scope Supplement.

¹¹ See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997).

¹² For general filing requirements, *see* 19 CFR 351.303.

Avenue, NW, Washington, DC 20230, and stamped with the date and time of receipt by the established deadline.¹³

Consultations

Pursuant to section 702(b)(4)(A)(ii) of the Act, the Department invited representatives of the GOM for consultations with respect to the Petition.¹⁴ Consultations were held with the GOM on April 11, 2014.¹⁵

Determination of Industry Support for the Petition

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) if there is a large number of producers in the industry, the Department may determine industry support using a statistically valid sampling method to poll the industry.

¹³ See 19 CFR 351.303(b). For details regarding the Department's electronic filing requirements, see *Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures*, 76 FR 39263 (July 6, 2011). Information regarding IA ACCESS assistance can be found at <https://iaaccess.trade.gov/help.aspx>, and a handbook can be found at [https://iaaccess.trade.gov/help/Handbook%20on%20Electronic %20Filing%20Procedures.pdf](https://iaaccess.trade.gov/help/Handbook%20on%20Electronic%20Filing%20Procedures.pdf).

¹⁴ See Letter of Invitation Regarding Countervailing Duty Petition on Sugar from Mexico, dated April 1, 2014.

¹⁵ See Consultations with the Government of Mexico Ex Parte Memorandum, dated April 11, 2014 (Consultations Memorandum).

Section 771(4)(A) of the Act defines the “industry” as the producers as a whole of a domestic like product. In investigations involving processed agricultural products, such as the instant investigation, the Act allows the Department also to include growers or producers of the raw agricultural product within the definition of the industry upon satisfaction of certain conditions.¹⁶ Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The U.S. International Trade Commission (ITC), which is responsible for determining whether “the domestic industry” has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product,¹⁷ they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department’s determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.¹⁸

Section 771(10) of the Act defines the domestic like product as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.” Thus, the reference point from which the domestic like product analysis begins is “the article subject to an investigation” (*i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

¹⁶ See section 771(4)(E) of the Act. For a full discussion of this provision of the Act and the Department’s analysis, see Attachment II – Countervailing Duty Investigation Initiation Checklist: Sugar from Mexico (CVD Initiation Checklist) at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Sugar from Mexico. The CVD Initiation Checklist is dated concurrently with, and hereby incorporated into, this notice and on file electronically via IA ACCESS. Access to documents filed via IA ACCESS is also available in the Central Records Unit (CRU), Room 7046 of the main Department building.

¹⁷ See section 771(10) of the Act.

¹⁸ See *USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (C.I.T. 2001) (citing *Algoma Steel Corp., Ltd. v. United States*, 688 F. Supp. 639, 644 (C.I.T. 1988), *aff’d*, 865 F.2d 240 (Fed. Cir. 1989)).

With regard to the domestic like product, Petitioners do not offer a definition of domestic like product distinct from the scope of the investigation. Based on our analysis of the information submitted on the record, we determined that sugar, as defined in the scope of the investigation, constitutes a single domestic like product and we analyzed industry support in terms of that domestic like product.¹⁹

In determining whether Petitioners have standing under section 702(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the “Scope of Investigation” section above. To establish industry support, Petitioners provided their production of the domestic like product in crop year 2012/2013,²⁰ and compared this to the total production of the domestic like product for the entire domestic industry.²¹ We relied upon data Petitioners provided for purposes of measuring industry support.²²

On April 10, 2014, we received comments on industry support from the Grocery Manufacturers Association (GMA).²³ We also received comments on industry support from Archer Daniels Midland Company (ADM)²⁴ and Camara Nacional de Las Industrias Azucarera Y Al Alcoholera (Camara)²⁵ on April 11, 2014. Petitioners responded to the letters from GMA,

¹⁹ See CVD Initiation Checklist at Attachment II.

²⁰ Data on the domestic sugar industry are gathered and presented by the United States Department of Agriculture (USDA) on a crop year basis to reflect the annual cycle of planting, growing, harvesting, and processing sugar. The crop year begins on October 1 and ends on September 30. Petitioners contend that data on a crop year basis more accurately reflects the production of sugar than would data presented on a calendar year basis. In addition, Petitioners note that all producers of sugar report their data to USDA on a crop year basis. See General Issues Supplement at 12.

²¹ See Petition at Exhibit I-6; General Issues Supplement at 9-16, Exhibits II, and Exhibit III; and Second General Issues Supplement at Attachment IA.

²² See CVD Initiation Checklist at Attachment II.

²³ See Letter from the Grocery Manufacturers Association, dated April 11, 2014. We note that this letter is dated April 11, 2014; however, it was received by the Department on April 10, 2014.

²⁴ See Letter from Archer Daniels Midland Company, dated April 11, 2014.

²⁵ See Letter from Camara, dated April 11, 2014.

ADM, and Camara on April 15, 2014.²⁶ In its consultations with the Department, the GOM raised the issue of industry support.²⁷ On April 15, 2014, we received additional comments on industry support from the GMA.²⁸ For further discussion of these comments, *see* the CVD Initiation Checklist at Attachment II.

Based on information provided in the Petition, supplemental submissions, and other information readily available to the Department, we determine that Petitioners met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product.²⁹ Based on information provided in the Petition, the domestic producers (or workers) met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition. Accordingly, the Department determines that the Petition was filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act.³⁰

The Department finds that Petitioners filed the Petition on behalf of the domestic industry because they are interested parties as defined in sections 771(9)(C), (E), (F), or (G) of the Act and they demonstrated sufficient industry support with respect to the countervailing duty investigation that they are requesting the Department initiate.³¹

²⁶ *See* Letter from Petitioners, dated April 15, 2014.

²⁷ *See* Consultations Memorandum.

²⁸ *See* Letter from the Grocery Manufacturers Association, dated April 15, 2014.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

Injury Test

Because Mexico is a “Subsidies Agreement Country” within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from Mexico materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

Petitioners allege that imports of the subject merchandise are benefitting from countervailable subsidies and that such imports are causing, or threaten to cause, material injury to the U.S. industry producing the domestic like product. Petitioners allege that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.³²

Petitioners contend that the industry’s injured condition is illustrated by reduced market share, underselling and price depression or suppression, lost sales and revenues, forfeitures and USDA purchases that remove surpluses of domestically produced sugar from the market to stabilize prices, decline in payments to growers and farmers, and decline in financial performance.³³ We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation.³⁴

Initiation of Countervailing Duty Investigation

Section 702(b)(1) of the Act requires the Department to initiate a CVD investigation whenever an interested party files a CVD petition on behalf of an industry that: (1) Alleges the

³² See Petition at 31 and Exhibit I-15; *see also* General Issues Supplement at 17-18 and Exhibit VII.

³³ See Petition at 3-4, 19-20, 28-55, Exhibit I-3, Exhibit I-4, Exhibit I-13, and Exhibits I-15 through I-21; *see also* General Issues Supplement at 15-19, Exhibit I.A, and Exhibits VI through VIII; Second General Issues Supplement at 5-7 and Attachment 3; and Scope Supplement at 2 and Attachment 1.

³⁴ See CVD Initiation Checklist at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Sugar from Mexico.

elements necessary for an imposition of a duty under section 701(a) of the Act; and (2) is accompanied by information reasonably available to the petitioner supporting the allegations. In the Petition, Petitioners allege that producers/exporters of sugar in Mexico benefited from countervailable subsidies bestowed by the government. The Department examined the Petition and finds that it complies with the requirements of section 702(b)(1) of the Act. Therefore, in accordance with section 702(b)(1) of the Act, we are initiating a CVD investigation to determine whether manufacturers, producers, or exporters of sugar from Mexico receive countervailable subsidies from the government.

Based on our review of the Petition, we find that there is sufficient information to initiate a CVD investigation on certain alleged programs. For a full discussion of the basis for our decision to initiate or not initiate on each program, see the attached CVD Initiation Checklist.

A public version of the initiation checklist is available on IA ACCESS.

Respondent Selection

For this investigation, the Department intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports of subject merchandise during the POI under the following Harmonized Tariff Schedule of the United States (HTSUS) numbers: 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. We intend to release the CBP data under Administrative Protective Order (APO) to all parties with access to information protected by APO shortly after the announcement of this case initiation.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found at

<http://enforcement.trade.gov/apo/>. Interested parties may submit comments regarding the CBP data and respondent selection by 5:00 P.M. EDT on the seventh calendar day after publication of this notice. Comments must be filed in accordance with the requirements discussed above in the “Filing Requirements” section of this notice. If respondent selection is necessary, we intend to base our decision regarding respondent selection upon comments received from interested parties and our analysis of the record information within 20 days of publication of this notice.

Distribution of Copies of the Petition

In accordance with section 702(b)(4)(A)(i) of the Act and 19 CFR 351.202(f), a copy of the public version of the Petitions has been provided to the GOM via IA ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the Petition to each known exporter (as named in the Petition), as provided in 19 CFR 351.203(c)(2).

ITC Notification

We notified the ITC of our initiation, as required by section 702(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petition was filed, whether there is a reasonable indication that imports of sugar from Mexico are materially injuring, or threatening material injury to, a U.S. industry.³⁵ A negative ITC determination will result in the investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

Submission of Factual Information

On April 10, 2013, the Department published *Definition of Factual Information and Time Limits for Submission of Factual Information: Final Rule*, 78 FR 21246 (April 10, 2013), which modified two regulations related to AD and CVD proceedings: the definition of factual

³⁵ See section 703(a) of the Act.

information (19 CFR 351.102(b)(21)), and the time limits for the submission of factual information (19 CFR 351.301). The final rule identifies five categories of factual information in 19 CFR 351.102(b)(21), which are summarized as follows: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by the Department; and (v) evidence other than factual information described in (i)–(iv). The final rule requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct. The final rule also modified 19 CFR 351.301 so that, rather than providing general time limits, there are specific time limits based on the type of factual information being submitted. These modifications are effective for all segments initiated on or after May 10, 2013, and thus are applicable to this investigation. Please review the final rule, available at <http://enforcement.trade.gov/frn/2013/1304frn/2013-08227.txt>, prior to submitting factual information in this investigation.

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.³⁶ Parties are hereby reminded that the Department issued a final rule with respect to certification requirements, effective August 16, 2013. Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives. All segments of any AD or CVD

³⁶ See section 782(b) of the Act

proceedings initiated on or after August 16, 2013, including this investigation, should use the formats for the revised certifications provided at the end of the *Final Rule*.³⁷ The Department intends to reject factual submissions if the submitting party does not comply with the applicable revised certification requirements.

Extension of Time Limits

On September 20, 2013, the Department published *Extension of Time Limits, Final Rule*, 78 FR 57790 (September 20, 2013), which modified one regulation related to AD and CVD proceedings regarding the extension of time limits for submissions in such proceedings (19 CFR 351.302(c)). These modifications are effective for all segments initiated on or after October 21, 2013, and thus are applicable to this investigation. Please review the final rule, available at <http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm> prior to requesting an extension.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures*, 73 FR 3634 (January 22, 2008). Parties wishing to participate in this investigation should ensure that they meet the requirements of these procedures (e.g., the filing of letters of appearance as discussed at 19 CFR 351.103(d)).

³⁷ See *Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings*, 78 FR 42678 (July 17, 2013) (*Final Rule*); see also the frequently asked questions regarding the *Final Rule*, available at the following: http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: April 17, 2014.

Paul Piquado,
Assistant Secretary
for Enforcement and Compliance.

Appendix

Scope of the Investigation

The product covered by this investigation 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 $C_{12}H_{22}O_{11}$, 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 within the scope of this investigation 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 investigation 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 investigation 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 investigation. Specialty sugars, *e.g.*, rock candy, fondant, sugar decorations, are not within the scope of this investigation. Processed food products that contain sugar, *e.g.*, beverages, candy, cereals, are not within the scope of this investigation.

Merchandise covered by this investigation 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 investigation is dispositive.

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