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DEPARTMENT OF COMMERCE

International Trade Administration

C-201-846

Suspension Agreement on Sugar from Mexico; Administrative Review of the Agreement Suspending the Countervailing Duty Investigation on Sugar from Mexico

AGENCY: Enforcement & Compliance, International Trade Administration, Department of Commerce

DATES: Effective (INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER.)

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the Agreement Suspending the Countervailing Duty Investigation of Sugar from Mexico (the CVD Agreement) for the period December 19, 2014, through December 31, 2015 (CVD review). Based upon the current record of this review, there is some indication that certain individual transactions of subject merchandise may not be in compliance with the CVD Agreement, and further, that the CVD Agreement may no longer be meeting all of the statutory requirements, as set forth in sections 704(c) and (d) of the Tariff Act of 1930, as amended (the Act). The Department, therefore, needs to obtain additional information in order to confirm whether the Government of Mexico (GOM) – the signatory to the CVD Agreement - is in compliance with the terms of the CVD Agreement, and whether the current CVD Agreement continues to meet the relevant statutory requirements referenced above. The preliminary results are set forth in the section titled “Methodology and Preliminary Results,” *infra*. Absent the issuance of a revised suspension agreement, we intend to issue a post-preliminary finding on

these issues as soon as practicable. In addition, we expect to issue the final results of review within 120 days after publication of these preliminary results in the *Federal Register*.

FOR FURTHER INFORMATION CONTACT: Sally C. Gannon or David Cordell, Enforcement & Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482-0162 or (202) 482-0408.

SUPPLEMENTAL INFORMATION:

Scope of Review

Merchandise covered by this CVD 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, 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 CVD Agreement is dispositive.¹

Methodology and Preliminary Results

On December 19, 2014, the Department signed an agreement under section 704(c) of the Act, with the GOM, suspending the countervailing duty investigation on sugar from Mexico.²

On January 8, 2015, Imperial Sugar Company (Imperial) and AmCane Sugar LLC (AmCane) each notified the Department that they had petitioned the U.S. International Trade Commission

¹ For a complete description of the Scope of the Order, see Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, from Carole Showers, Director, Office of Policy, “Decision Memorandum for Preliminary Results of Administrative Review of the Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico,” dated concurrently with and adopted by this notice (“Preliminary Decision Memorandum”).

² See *Agreement Suspending the Countervailing Duty Investigation on Sugar from Mexico*, 79 FR 78044 (December 29, 2014), at Attachment, “Agreement Suspending the Countervailing Duty Investigation on Sugar from Mexico” (the CVD Agreement).

(the ITC) to conduct a review to determine whether the injurious effects of imports of the subject merchandise are eliminated completely by the CVD Agreement (a section 704(h) review).³ On January 16, 2015, Imperial and AmCane also submitted timely requests for continuation of the CVD investigation.⁴ On March 19, 2015, in a unanimous vote, the ITC found that the CVD Agreement eliminates completely the injurious effects of imports of sugar from Mexico.⁵ Subsequently, on April 24, 2015, the Department determined that AmCane and Imperial had standing to request continuation of this investigation and, as a result, published a continuation notice on May 4, 2015.⁶ On September 23, 2015, the Department issued a final affirmative determination in the CVD investigation.⁷ On November 16, 2015, the ITC published its final affirmative finding that an industry in the United States is materially injured by reason of imports of sugar from Mexico found to be subsidized by the GOM.⁸ Because the ITC determined that such injury did exist, consistent with section 704(f)(3)(B) of the Act, the CVD Agreement remained in force.⁹

³ See Letter from Imperial, “Sugar from Mexico – Notice of Filing of Petition for Review of Suspension Agreements to Eliminate the Injurious Effect of Subject Imports,” January 8, 2015; *see also* Letter from AmCane, “Sugar from Mexico: Notice of Petition for Review of Suspension Agreements,” January 8, 2015.

⁴ See Letter from Imperial, “Sugar from Mexico, Inv. Nos. A-201-845 and C-201-846 – Request for Continuation of Investigations,” January 16, 2015; *see also* Letter from AmCane, “Sugar from Mexico: Request for Continuation of Investigations,” January 16, 2015.

⁵ See Department Memorandum, “Requests to Continue the Antidumping and Countervailing Duty Investigations on Sugar from Mexico,” March 19, 2015.

⁶ *See id.*

⁷ See *Sugar from Mexico: Final Affirmative Countervailing Duty Determination*, 80 FR 57337 (September 23, 2015).

⁸ See *Sugar from Mexico* (Investigation Nos. 701–TA–513 and 731–TA–1249 (Final)), 80 FR 70833 (November 16, 2015).

⁹ See *Final CVD Determination*, 80 FR at 57339. Pursuant to section 704(f)(3)(B) of the Act, the CVD Agreement remains in force and the Department shall not issue an countervailing order so long as (i) the CVD Suspension Agreement remains in force, (ii) the CVD Suspension Agreement continues to meet the requirements of subsections 704(c) and 704(d) of the Act, and (iii) the parties to the CVD Suspension Agreement carry out their obligations under the CVD Suspension Agreement in accordance with its terms.

On December 30, 2015, Imperial and AmCane submitted requests for an administrative review of the CVD Agreement.¹⁰ On December 31, 2015, the American Sugar Coalition and its Members¹¹ (Petitioners) filed a request for an administrative review of the CVD Agreement.¹²

The review of the CVD Agreement was initiated on February 9, 2015,¹³ for the December 19, 2014 through December 31, 2014, period of review (POR) but was extended on March 16, 2016, to include calendar year 2015.¹⁴ On June 2, 2016, the Department selected mandatory respondents¹⁵ and issued its questionnaire to the GOM, the signatory to the CVD Agreement, and asked the GOM to send full questionnaires (Attachment 2) to two companies (and their respective affiliates): Central Motzorongo S.A. de C.V. (Motzorongo) and Fideicomiso Ingenio San Cristobal (San Cristobal). The Department also asked that the GOM forward a more limited questionnaire (Attachment 1) to all Mexican producers and exporters of sugar to whom the GOM issued an export license in the POR.¹⁶

The Department has conducted this review in accordance with section 751(a)(1)(C) of the Act, which specifies that the Department shall “review the current status of, and compliance

¹⁰ See Letter from Imperial, “Sugar from Mexico, Inv. No. C-201-846 – Request for Administrative Review of the Agreement Suspending the Countervailing Duty Investigation,” December 30, 2015; Letter from AmCane, “Sugar from Mexico: Request for Administrative Reviews,” December 30, 2015.

¹¹ The members of the American Sugar Coalition are as follows: American Sugar Cane League, American Sugarbeet Growers Association, American Sugar Refining, Inc., Florida Sugar Cane League, Hawaiian Commercial and Sugar Company, Rio Grande Valley Sugar Growers, Inc., Sugar Cane Growers Cooperative of Florida, and the United States Beet Sugar Association.

¹² See Letter from American Sugar Coalition and its Members, “Sugar from Mexico: Request for Administrative Review,” December 31, 2015.

¹³ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 81 FR 6832 (February 9, 2016).

¹⁴ On March 16, 2016, the Department expanded the period of review for the CVD Agreement from December 19, 2014, through December 31, 2014, to include calendar year 2015. As such, the period of review for the instant review is December 19, 2014, through December 31, 2015. See Memorandum to Lynn Fischer Fox entitled “First Administrative Review of the Agreement Suspending the Countervailing Duty Investigation on Sugar from Mexico: Extending the Period of Review” (March 16, 2016).

¹⁵ See Department Memorandum, “First Administrative Review of the Agreement Suspending the Countervailing Duty Investigation on Sugar from Mexico: Questionnaire Issuance,” June 2, 2016.

¹⁶ See Questionnaire Regarding the Agreement Suspending the Countervailing Duty Investigation on Sugar from Mexico for the December 19, 2014 through December 31, 2015 Period of Review, dated June 2, 2016.

with, any agreement by reason of which an investigation was suspended.” Pursuant to the CVD Agreement, the GOM agreed that the subject merchandise would be subject to export limits as outlined in the CVD Agreement.¹⁷ The Government also agreed to other conditions including limits on Refined Sugar¹⁸ and the issuance of shipment-specific export licenses.¹⁹ In addition, in this review, the Department is reassessing whether suspension of the CVD Agreement is in the “public interest,” including the availability of supplies of sugar in the U.S. market, and whether “effective monitoring” is practicable.²⁰

After reviewing the information received to date from the respondent companies in their questionnaire responses, there is some indication that certain individual transactions of subject merchandise may not be in compliance with the CVD Agreement and that the CVD Agreement may no longer be meeting all of the statutory requirements, as set forth in sections 704(c) and (d) of the Tariff Act of 1930 (the Act). However, based on the Department’s review to date of the record information, we do not yet find a sufficient basis to make a reliable judgment as to whether the GOM and the Mexican respondent mills have adhered to the terms of the CVD Agreement and whether the CVD Agreement continues to meet the relevant requirements of the Act for such agreements. As detailed above, the Department found it necessary, late in the review, to seek additional information, *i.e.*, in supplemental questionnaires issued to the GOM and to its two selected mill respondents on November 18, 2016, in order to reach a determination as to whether the Agreement is functioning as intended, is in the public interest and whether it

¹⁷ See Agreement, 79 FR 78040, 78047 at Export Limits.

¹⁸ See *id.*, 79 FR 78046-78047 at Definitions and Export Limits.

¹⁹ See *id.*, 79 FR 78048 at Export Limits and Implementation.

²⁰ See Memorandum to Paul Piquado entitled “Agreement Suspending the Countervailing Duty Investigation on Sugar from Mexico: Existence of Extraordinary Circumstances, Public Interest, and Effective Monitoring Assessments) (December 19, 2014) at pages 3-5.

can be effectively monitored. For a full description of the methodology underlying our conclusions, see Preliminary Decision Memorandum, dated concurrently with these results and hereby adopted by this notice. The Preliminary Decision Memorandum is a public document and is made available via Enforcement & Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov> and in the Department's Central Records Unit, located in room 18022 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be found on the Internet at <http://www.trade.gov/enforcement>. The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content.

Public Comment

As discussed above, the Department needs additional information before making a definitive preliminary finding. Therefore, absent the issuance of a revised suspension agreement, we intend to issue our post-preliminary finding on these issues as soon as practicable. The comment period on these preliminary results as well as the post-preliminary results will be stated with the release of the post-preliminary results. At that time interested parties will have the opportunity to submit case and rebuttal briefs.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via 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 within 30 days after the date of the issuance of the

post-preliminary results. Requests should contain: (1) the party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. The Department intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Paul Piquado
Assistant Secretary for
Enforcement and Compliance

November 29, 2016

Date
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