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DEPARTMENT OF COMMERCE

International Trade Administration

C-201-846

Sugar from Mexico: Notice of Termination of Amendment to the Agreement Suspending the Countervailing Duty Investigation

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

SUMMARY: On October 18, 2019, the United States Court of International Trade (CIT) issued a final judgment in *CSC Sugar LLC v. United States*, Ct. No. 17-00214, Slip Op. 19-131 (CIT October 18, 2019) (*CSC Sugar II*), vacating the 2017 amendment to the Agreement Suspending the Countervailing Duty Investigation on Sugar from Mexico. Commerce is now terminating the amendment consistent with the Court's order.

DATES: Applicable December 7, 2019.

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

SUPPLEMENTARY INFORMATION:

Background

On December 19, 2014, Commerce and the Government of Mexico (GOM) signed the Agreement Suspending the Countervailing Duty Investigation on Sugar from Mexico (CVD

Agreement).[1] Subsequent to this date, between June 2016 and June 2017, Commerce and the GOM held consultations to address concerns raised by the domestic industry and to ensure that the CVD Agreement met all of the statutory requirements for a suspension agreement, *e.g.*, that suspension of the investigation was in the public interest, including the availability of supplies of sugar in the U.S. market, and that effective monitoring was practicable. The consultations resulted in Commerce and the GOM signing the amendment to the CVD Agreement on June 30, 2017, and it was subsequently published in the *Federal Register*.[2]

CSC Sugar LLC (CSC Sugar) challenged Commerce's determination to amend the CVD Agreement by contending that Commerce did not meet its obligation to file a complete administrative record.[3] 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 Tariff Act of 1930, as amended (the Act).[4]

The CIT agreed with CSC Sugar and ordered Commerce to supplement the administrative record with any *ex parte* communications regarding the *CVD Amendment*.[5] CSC Sugar subsequently filed a motion for judgment on the agency record arguing that Commerce's failure, during the consultations period, to maintain contemporaneous *ex parte* communication memoranda, in accordance with section 777(a)(3) of the Act, could not be adequately remedied by Commerce's delayed and incomplete supplementation of the record.[6]

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[1] *See Sugar From Mexico: Suspension of Countervailing Duty Investigation*, 79 FR 78044 (December 29, 2014) (CVD Agreement).
[2] *See Sugar From Mexico: Amendment to the Agreement Suspending the Countervailing Duty Investigation*, 82 FR 31942 (July 11, 2017) (*CVD Amendment*).
[3] *See CSC Sugar II* at 4.
[4] *Id.*
[5] *Id.* (citing *CSC Sugar LLC v. United States*, 317 F. Supp. 3d 1322, 1326 (CIT 2018)).
[6] *See CSC Sugar II* at 4.

The CIT found that Commerce's failure to follow the recordkeeping requirements of Section 777 of the Act cannot be described as "harmless."[7] The CIT found that this recordkeeping failure substantially prejudiced CSC Sugar.[8] On that basis, the CIT stated that the *CVD Amendment* must be vacated.[9]

<u>Termination of *CVD Amendment*</u>

Consistent with the CIT's ruling in *CSC Sugar II*, Commerce is terminating th*e CVD Amendment* prospectively.[10] Accordingly, as of December 7, 2019, the unamended CVD Agreement[11] is in force and effective, and the *CVD Amendment* has no force or effect.

Dated: December 6, 2019.

/s/ Jeffrey I. Kessler

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

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[7] *Id.* at 11-12.
[8] *Id.* at 12.
[9] *Id.*
[10] Commerce is terminating the *CVD Amendment*, effective December 7, 2019. Because suspension of liquidation does not occur while the CVD Agreement is in force, termination of the *CVD Amendment* shall be prospective in effect. Accordingly, the CVD Agreement, as signed on December 19, 2014, applies to all contracts for sugar from Mexico exported from Mexico on or after December 7, 2019.
[11] *See* CVD Agreement.

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