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The Honorable Penny S. Pritzker
Secretary of Commerce
Attention: Enforcement and Compliance
Room 1870
U.S. Department of Commerce
14th Street and Constitution Avenue, N.W.
Washington, DC 20230

Re: Sugar from Mexico: Reply to Imperial's and AmCane's Responses to Petitioners' Opposition to Standing to Request Continuation of Suspended Investigations

Dear Secretary Pritzker:

On behalf of the American Sugar Coalition and its members[1] ("Petitioners"), we hereby reply to the responses filed by Imperial Sugar Company ("Imperial") and AmCane Sugar LLC ("AmCane") on January 27 and 28, respectively, to our opposition to their standing to request the continuation of the suspended antidumping and countervailing duty investigations of sugar from

[1] 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.

Mexico.[2] Imperial's and AmCane's interpretation of the phrase "party to the investigation" in the context of Sections 704(g) and 734(g) of the Tariff Act of 1930, as amended ("the Act"), ignores agency regulations and the statute. Contrary to their view, the Department must follow the statute and the regulations, and the statute and regulations do not permit Imperial or AmCane to request continuation under Sections 704(g) and 734(g) of the Act because neither is a party to the investigation.

I. Imperial And AmCane Ignore The Department's Regulations, Which Establish That They Are Parties Only To The Suspension Agreement Segment Of The Proceeding And Are Not Parties To The Investigation

In our opposition to Imperial's and AmCane's standing, we explained that the Department's regulations rely upon section 516A of the Act to define an investigation as one segment of a proceeding and a suspension agreement as another segment. We also demonstrated that, because Imperial and AmCane only entered an appearance and participated in the proceeding in response to the Department's request for comments on the draft suspension agreements, they are parties only to the suspension agreement segment and not the investigation segment. Imperial and AmCane make no mention of the Department's regulatory definition of what constitutes different segments of a proceeding. Instead, they create their own definition that directly contradicts the Department's regulations and the statutory framework.[3]

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[2] *See* Response to Opposition to Standing of Imperial Sugar Company to Request Continuation of Suspended Investigations (Jan. 27, 2015) ("Imperial Response"); Response to Letter Disputing Standing of AmCane Sugar LLC to Request Continuation of Suspended Investigations (Jan. 28, 2015) ("AmCane Response").

[3] Both Imperial and AmCane mention the International Trade Commission's ("ITC") one-sentence statement that they are "parties to the investigation." As Imperial notes, the ITC gives

First, Imperial and AmCane cite the regulatory definition of an investigation to argue correctly that it "starts with initiation and ends with termination, rescission, or an antidumping or countervailing duty order."[4] However, they then unreasonably conclude that the investigation segment "includes everything that the agencies do in between" and that "any decision to accept a suspension agreement is part of the 'investigation'"[5] There is no dispute that the investigation segment has not yet ended. However, Imperial's and AmCane's interpretation means that there can be no such thing as a suspension agreement segment of a proceeding because suspension agreements occur between the beginning and end of investigations. The problem with this argument is that it ignores completely the Department's regulation that defines segments of a proceeding as portions of a proceeding that are reviewable by the U.S. Court of International Trade under section 516A of the Act. Plainly, section 516A(a)(2)(B)(iv) addresses "{a} determination by the administering authority, under section 1671c or 1673c of this title, to suspend an antidumping or a countervailing duty investigation."

Imperial and AmCane later contradict their definition of the investigation segment of a proceeding by admitting that a suspension agreement segment can exist before the end of an investigation segment. However, they argue that the suspension agreement segment began on or after December 19, 2014, when the suspension agreements were signed.[6] Again, though,

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no explanation for this sentence. The Department should give no weight to the ITC's mistake.

[4] Imperial Response at 5; AmCane Response at 7.

[5] *Id.*

[6] Imperial Response at 10; AmCane Response at 5.

Imperial and AmCane ignore the Department's regulations. Pursuant to those regulations, any issue involving the Department's decision to suspend the investigations is part of the suspension agreement segment because it is reviewable under Section 516A(a)(2)(B)(iv) of the Act.[7] Such issues would include whether the Department followed the requirements set forth in sections 704(e) and 734(e) of the Act to, among other things, notify the petitioner of the intention to suspend the investigation, provide copies of the proposed agreement with an explanation of implementation and enforcement, and permit interested parties to submit comments. In this case, the Department satisfied the statutory directive regarding notification prior to December 19, 2014. Imperial and AmCane cannot seriously contend that the Department's failure to meet any of the proscribed statutory requirements could only be challenged under section 516A(a)(2)(B)(i) (appeal of an investigation) rather than section 516A(a)(2)(B)(iv) (appeal of a suspension agreement).

Imperial's and AmCane's comments on the draft suspension agreements, which were their only participation in this proceeding,[8] are clearly part of the *suspension agreement segment* of the proceeding which is reviewable under Section 516A(a)(2)(B)(iv) of the Act. Imperial and AmCane have not participated in anything reviewable as part of the investigation segment of the proceeding. Imperial and AmCane do not dispute this fact, but instead Imperial dismisses it as

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[7] 19 CFR 351.102(a)(47).

[8] Imperial suggests that its response to an ITC questionnaire makes it a party to the investigation. However, this ignores the ITC's regulations, which state that "{m}ere participation in an investigation without an accepted entry of appearance ***does not confer party status***." 19 CFR 201.2(i) (emphasis supplied).

being "hypothetical."[9] This is not hypothetical. This is how the Department defines the segments of its proceedings and this is the main reason why neither Imperial nor AmCane are a "party to the investigation."[10]

II. The Department Defined The Parties To The Investigation When It Notified Those Parties About The Draft Suspension Agreements Pursuant To Sections 704(e)(1) and 734(e)(1)

In our opposition to Imperial's and AmCane's standing we explained that the distinction between an "interested party" and a "party to the investigation" stems from the statute's notice requirements before the Department may suspend an investigation. Thus, the Department determines the "parties to the investigation" at the time it must provide its notice of the draft suspension agreements pursuant to Sections 704(e)(1) and 734(e)(1) of the Act. Imperial and AmCane argue that the phrase "parties to the investigation" in Sections 704(e) and 734(e) of the Act have nothing to do with the identical phrase in Sections 704(g) and 734(g) of the Act. Instead, Imperial and AmCane contend that the 30-day notice requirement of Sections 704(e)(1) and 734(e)(1) of the Act is a one-time right that is extinguished immediately thereafter.[11]

This is wrong. The entire point of Sections 704(e)(1) and 734(e)(1) of the Act, other than the requirement to consult with petitioners, is to define who is a "party to the investigation," and

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[9] Imperial Response at 10.

[10] Nor is it relevant that the Department created a separate segment identification in ACCESS after the agreements were signed. The Department's ministerial actions in creating identifiers for filing purposes cannot override the regulatory definitions of a segment. If there were a judicial challenge to the Department's suspension agreement segment, surely the documents filed prior to December 19, 2014 would be part of that administrative record.

[11] Imperial Response at 9; AmCane Response at 4.

to require the Department to provide those "parties to the investigation" with 30-days advance notice before a suspension agreement becomes effective. There would be no reason for Congress to grant rights to notice for "parties to the investigation" if that designation as "party to the investigation" and those rights ceased after the initial notice was given. It is unreasonable to conclude, as Imperial and AmCane do, that Congress' concerns regarding adequate notice to "parties to the investigation" only applied to certain "parties to the investigation" and not others. This phrase was intended to be read consistently through the statute.[12] Accordingly, only those parties so designated as "parties to the investigation," and no other parties, may request continuation under Sections 704(e)(1) and 734(e)(1) of the Act. Imperial and AmCane fall short.

III. Conclusion

Neither Imperial nor AmCane is a "party to the investigation." At most, they are eleventh-hour interlopers with no relationship to the investigations that the Department, the Government of Mexico, and the parties to the investigations worked so hard to suspend. Imperial and AmCane chose not to be "parties to the investigations" when they chose not to participate in those investigations. As a result, Imperial's and AmCane's only permissible remedy is to challenge the suspension agreements at the U.S. Court of International Trade pursuant to section 516A(a)(2)(B)(iv) of the Act. Requesting continuation under Sections 704(g) and 734(g) of the Act is not an option for them.

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[12] *SKF USA, Inc. v. United States*, 263 F.3d 1369, 1382 (Fed. Cir. 2001) (stating that Commerce must provide an explanation for its failure to interpret identical statutory terms consistently).

Please do not hesitate to contact the undersigned with any questions.

Yours sincerely,

/s/ Robert C. Cassidy, Jr.

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REPRESENTATIVE CERTIFICATION

I, Jonathan M. Zielinski, of Cassidy Levy Kent (USA) LLP, counsel to the American Sugar Coalition and its members, certify that I have read the attached submission of "Reply to Imperial's and AmCane's Responses to Petitioners' Opposition to Standing to Request Continuation of Suspended Investigations" dated January 29, 2015, pursuant to the suspended Less Than Fair Value and Countervailing Duty Investigations of Sugar from Mexico (A-201-845 and C-201-846). In my capacity as counsel to the American Sugar Coalition and its members, I certify that the information contained in this submission is accurate and complete to the best of my knowledge. I am aware that U.S. law (including, but not limited to, 18 U.S.C. 1001) imposes criminal sanctions on individuals who knowingly and willfully make material false statements to the U.S. Government. In addition, I am aware that, even if this submission may be withdrawn from the record of the AD/CVD proceedings, the U.S. Department of Commerce may preserve this submission, including a business proprietary submission, for purposes of determining the accuracy of this certification. I certify that a copy of this signed certification will be filed with this submission to the U.S. Department of Commerce.

Signed: _____
Jonathan M. Zielinski

Dated: 1-29-15

PUBLIC CERTIFICATE OF SERVICE

I hereby certify that on January 29, 2015, a copy of the foregoing document was served via U.S. mail upon the following parties:

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***Party has waived service.*