UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
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Suspension Agreements
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Memorandum For: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

From: Lynn Fischer Fox LFF
Deputy Assistant Secretary
for Policy and Negotiations
Enforcement and Compliance

On Thursday, January 15, 2015, officials of the Department of Commerce (the Department) met with Salvador Behar of the Government of Mexico (GOM), Stephan Becker and Sanjay Mullick, counsel to the GOM for the negotiations, and Rosa Jeong and Philippe Bruno, counsel to exporters and producers of sugar from Mexico.[1] Present at the meeting for the Department were Judith Wey Rudman and Sally Craig Gannon of the Bilateral Agreements Unit of Enforcement & Compliance; and Rebecca Cantu, Devin Sikes and David Mason of the Office of Chief Counsel for Trade Enforcement & Compliance.

The GOM requested the meeting to discuss importers' liability for antidumping (AD) and countervailing (CVD) duties for the period in which the suspension agreements are in effect, but where the Department continues to suspend liquidation of imports of sugar from Mexico pursuant to sections 704(h)(3) and 734(h)(3) of the Tariff Act of 1930, as amended (the Act) (*i.e.*, during the 20-day period for requesting International Trade Commission (ITC) review of the suspension agreements on sugar, through publication of the ITC's final results, in the event the ITC were to institute such reviews).

Following the issuance of the suspension agreements, the Department adjusted the security required of importers of sugar from Mexico, under sections 704(f)(2)(B) and 734(f)(2)(B) of the Act, to reflect the effect of the agreements. The Department adjusted the AD cash deposit rate to zero for all imports of sugar from Mexico from producers and exporters who are signatories to

[1] Camara Nacional de Las Industrias Azucarera Y Alcoholera (Mexican Sugar Chamber) ("Camara"): Grupo Beta San Miguel, Grupo Azucarero Mexico, S.A. DE C.V., Grupo La Margarita, Grupo Motzorongo, Grupo Porres, Grupo Piasa Promotora Industrial Azucarera, S.A. DE C.V., Grupo Saenz, Grupo Azucarero Del Tropico, Grupo Garcia Gonzalez, Grupo Santos, Los Mochis, Puga, San Jose` De Abajo, San Nicolas, Panuco, El Molino, Azsuremex, San Gabriel, Fondo De Empresas Expropiadas Del Sector Azucarero ("FEESA"); and individually, FEESA and Ingenio Tala S.A. de C.V. ("Tala")

the AD suspension agreement, and subsequently for imports from any producers or exporters that have acceded to the AD Agreement following its inception. The Department also adjusted the CVD cash deposit rate to zero for all entries of sugar from Mexico.

At the meeting, the parties inquired whether the zero cash deposit rates represent the extent of importers' liability for AD and countervailing duties for entries made during this period, i.e., from the December 19, 2014, effective date of the agreements through the publication of the ITC's results of review. According to the parties, the current situation has created a high degree of uncertainty for importers of sugar from Mexico and is affecting their ability to export under the terms of the agreements.

As noted above, when the Department suspends an AD or CVD investigation by entering into a suspension agreement, sections 704(f)(2) and 734(f)(2) of the Act provide that the security required under sections 703(d)(1)(B) and 733(d)(1)(B) of the Act may be adjusted "to reflect the effect of the agreement." This was done in light of both the AD and CVD agreements on sugar from Mexico. Separately, sections 707(a) and 737(a) of the Act require that the Department disregard duties to the extent that the cash deposit established pursuant to sections 703(d)(1)(B) and 733(d)(1)(B) of the Act is lower than the duty determined pursuant to a CVD or AD order, respectively (i.e., the "cap"). The purpose of the provision is to provide importers with a measure of certainty as to the extent of their liability for AD and countervailing duties for the time between the issuance of preliminary determinations and the issuance of AD and CVD orders.

These provisions, taken together, establish that the amount of AD and countervailing duties that may be collected if the Department were to issue an AD and/or CVD order is limited to the adjusted cash deposit amount in place for imports of sugar from Mexico that entered the United States during this time period, i.e., during the 20-day period for requesting the review at the ITC and through publication of the ITC's results of the review.

In the Department's view, it is appropriate to collect zero cash deposits during this period while the suspension agreements are in effect. As noted above, the purpose of the "cap" is to provide importers with a measure of certainty as to the extent of their liability for AD and countervailing duties for the time between the issuance of preliminary determinations and the issuance of AD and CVD orders. That certainty cannot be sustained if the adjusted amount of the cash deposit does not establish the limit on the collection of AD and countervailing duties. The adjustment of the cash deposit requirement to zero in this case is sufficient. The critical element is the suspension of liquidation, as required under sections 704(h)(3) and 734(h)(3) of the Act. This is because the agreements and the suspension of liquidation, taken together, ensure that the domestic industry obtains the relief intended under the law. The agreements continue in force during this time period and, therefore, all signatories must abide by the terms of the agreements during this time period, including reference price requirements and quantitative restrictions established in the agreements. Moreover, to the extent there is a violation of the agreements, the suspension of liquidation enables the Department to address such instances through its authority to impose duties on the entries that were suspended at the zero cash deposit rate.

To be clear, if for any reason the suspension agreements are terminated during the ITC review or thereafter, the Department expects to impose cash deposit requirements as originally established in the preliminary determinations of these investigations on all future entries of sugar from Mexico, i.e., from the date of termination of the agreements forward. In addition, to the extent the Department determines that a violation of either agreement has occurred, the Department is authorized to take action to address such violations, including the imposition of duties for entries made during the period immediately before and during any ITC review.