A-201-845
Suspension Agreement – Admin Review
POR: 12/1/17-11/30/2018
Public Document
ITA/E&C/P&N/OP/BAU: dwc

October 21, 2020

MEMORANDUM TO: Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

FROM: Joseph A. Laroski Jr.
Deputy Assistant Secretary
for Policy and Negotiations
Enforcement and Compliance

SUBJECT: Issues and Decision Memorandum for the Final Results of the Administrative Review of the Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico, for the period December 1, 2017 through November 30, 2018

I. SUMMARY

The Department of Commerce (Commerce) has analyzed the case and rebuttal briefs submitted by interested parties and, consistent with the *Preliminary Results*, continues to determine that the selected respondents, Ingenious Adolfo López Mateos, S.A. de C.V. and its affiliates Ingenio Tres Valles, S.A. de C.V. and Piasa Ingenio Plan de San Luis, S.A. de C.V. (collectively, Grupo PIASA) and Ingenio Pánuco, S.A.P.I. de C.V. (Pánuco) (Respondents), were in compliance with the amended AD Agreement in effect during the period of review, December 1, 2017, through November 30, 2018, and that the amended AD Agreement is meeting the statutory requirements under sections 734(c) and (d) of the Tariff Act of 1930, as amended (the Act). We recommend that you approve the position described in the "Discussion of the Issue" section of this memorandum. Below is a list of the issues for which we received comments from interested parties:

Comment 1: Alleged Possible Violations of the Amended AD Agreement
Comment 2: Status of, and Compliance with, Amended AD Agreement

II. SCOPE OF THE AGREEMENT

The product covered by this amended AD Agreement is raw and refined sugar of all polarimeter readings derived from sugar cane or sugar beets. The chemical sucrose gives sugar its essential character. Sucrose is a nonreducing disaccharide composed of glucose and fructose linked by a glycosidic bond 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 (InChl) for sucrose is 1S/C12H22O11/c13-l-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 InChl 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 described in the previous paragraph includes products of all polarimeter readings described in various forms, such as raw sugar, estandar or standard sugar, high polarity or semi-refined sugar, special white sugar, refined sugar, brown sugar, edible molasses, desugaring molasses, organic raw sugar, and organic refined sugar. Other sugar products, such as powdered sugar, colored sugar, flavored sugar, and liquids and syrups that contain 95 percent or more sugar by dry weight are also within the scope of this amended AD Agreement.

The scope of the amended AD Agreement does not include (1) sugar imported under the Refined Sugar Re-Export Programs of the U.S. Department of Agriculture; (2) sugar products produced in Mexico that contain 95 percent or more sugar by dry weight that originated outside of Mexico; (3) inedible molasses (other than inedible desugaring molasses noted above); (4) beverages; (5) candy; (6) certain specialty sugars; and (7) processed food products that contain sugar (e.g., cereals). Specialty sugars excluded from the scope of this AD Agreement are limited to the following: caramelized slab sugar candy, pearl sugar, rock candy, dragees for cooking and baking, fondant, golden syrup, and sugar decorations.

Merchandise covered by this amended AD Agreement 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, 1701.14.1020, 1701.14.1040,1701.14.5000, 1701.91.1000, 1701.91.3000, 1701.99.1010, 1701.99.1015, 1701.99.1017, 1701.99.1025, 1701.99.1050, 1701.99.5010, 1701.99.5015, 170.99.5017, 1701.99.5025, 1701.99.5050, and 1702.90.4000.[1] The tariff classification is provided for convenience and customs purposes; however, the written description of the scope of this amended AD Agreement is dispositive.

III. BACKGROUND

On February 6, 2020, Commerce published the *Preliminary Results* of this administrative review.[2] On February 20, 2020, Commerce issued second supplemental questionnaires to the respondents, Ingenio Pánuco, S.A.P.I. de C.V. (Pánuco) and Ingenio Adolfo Lopez Mateos S.A.

[1] Since the *Preliminary Results*, Commerce has updated the HTSUS classifications in the scope, to reflect the most up-to-date tariff classifications. The following HTS classification codes have been added to the HTS system effective January 2020: 1701.14.1020, 1701.14.1040, 1701.99.5015, and 1701.99.5017. *See* https://hts.usitc.gov/view/Change Record?release=2020HTSABasicB for information on the addition of new codes effective on January 1, 2020. The following codes were added in July 2016; 1701.99.1015, 1701.99.1017. *See* https://hts.usitc.gov/view/Change Record?release=Chapter99 for information on the addition of new codes effective on July 1, 2016.

[2] *See Suspension Agreement on Sugar From Mexico; 2018 Administrative Review of the Agreement Suspending the Antidumping Duty Investigation on Sugar From Mexico (as Amended)*, 85 FR 6894 (February 6, 2020) (*Preliminary Results*).

de C.V. and its affiliates[3] (Grupo PIASA).[4] Pánuco and Grupo PIASA each filed responses on March 20, 2020.[5] On March 6, 2020, the petitioner in the case, the American Sugar Coalition and its Members (ASC),[6] requested a hearing, which they later withdrew.[7] On June 24, 2020, Commerce set the briefing schedule for the final results of this review.[8] On July 6, 2020, both the respondents and ASC filed briefs.[9] On July 13, 2020, the respondents filed a rebuttal brief.[10]

On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days.[11] On July 14, 2020, Commerce extended the deadline for the final results of this review by 30 days.[12] On July 21, 2020, Commerce tolled all deadlines in administrative reviews by an additional 60 days.[13] As a result, the final results of this administrative review are due no later than October 23, 2020.

For its final analysis, Commerce considered briefs and rebuttal briefs from interested parties that commented on the *Preliminary Results*.

[3] Ingenio Adolfo López Mateos, S.A. de C.V. and its affiliates Ingenio Tres Valles, S.A. de C.V. and Piasa Ingenio Plan de San Luis, S.A. de C.V. (collectively, Grupo PIASA.)
[4] *See* Letters to Pánuco and Grupo PIASA, "Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico: 2018 Administrative Review — Second Supplemental Questionnaire," dated February 20, 2020.
[5] *See* "Sugar from Mexico – Grupo PIASA's Second Supplemental Questionnaire Response," and "Sugar from Mexico – Pánuco's Supplemental Questionnaire Response," both dated March 20, 2020.
[6] The Members of the ASC are as follows: American Sugar Cane League, American Sugarbeet Growers Association, American Sugar Refining, Inc., Florida Sugar Cane League, Rio Grande Valley Sugar Growers, Inc., Sugar Cane Growers Cooperative of Florida, and the United States Beet Sugar Association.
[7] *See* Petitioners' Letter, "Sugar from Mexico: Request for Hearing," dated March 6, 2020; *see also* "Sugar from Mexico: Withdrawal of Request for a Hearing," dated July 16, 2020.
[8] *See* Memorandum, "Establishment of Briefing Schedule for the 2017- 2018 Administrative Reviews of the Agreement Suspending the Antidumping Investigation on Sugar from Mexico and the Agreement Suspending the Countervailing Duty Investigation on Sugar from Mexico," dated June 24, 2020.
[9] *See* Cámara Nacional de Las Industrias Azucarera y Alcoholera (Cámara) Case Brief, "Sugar from Mexico – Case Brief" (Respondents Case Brief) and ASC Case Brief, "Case Brief filed by the American Sugar Coalition and its Members" (ASC Case Brief), both dated July 6, 2020.
[10] *See* " Sugar from Mexico – Rebuttal Brief," (Rebuttal Brief) dated July 13, 2020.
[11] *See* Memorandum to the Record, from Jeffrey I. Kessler, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID-19," dated April 24, 2020.
[12] *See* Memorandum to Joseph A. Laroski Jr., Deputy Assistant Secretary for Policy & Negotiations, "Extension of Deadlines for Final Results of the Administrative Review of the Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico and for Final Results of the Administrative Review of the Agreement Suspending the Countervailing Duty Investigation on Sugar from Mexico," dated July 14, 2020.
[13] *See* Memorandum to the Record, from Jeffrey I. Kessler, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews," dated July 21, 2020.

IV. DISCUSSION OF THE ISSUES

Comment 1: Alleged Possible Violations of the Amended AD Agreement

Certain Sales in the Home Market

ASC's Comments

- ASC argues that Section 734(c)(1) of the Tariff Act of 1930, as amended (the Act), requires, *inter alia*, that a suspension agreement "will eliminate completely the injurious effect of exports" of the margins determined by the investigation.[14]
- ASC further argues that "{s}ection 734(c)(1)(B) of the Act and the AD Agreement require that respondents demonstrate they have eliminated dumping by 85% of the margins determined in the investigation, *i.e.*, that their normal value does not exceed their export price by more than 15% of those margins (85% test)."[15] Because much of the information submitted by ASC with respect to this issue involves business proprietary information, we provide additional details in a separate, business proprietary memorandum.[16]
- ASC wants Commerce to signal that the sales in question should no longer be allowed for the measurement of the elimination of 85 percent of the dumping.

Respondents' Rebuttal Comments[17]

- Respondents argue that the sales in question are "normal." Furthermore, they cite to Commerce's practice to determine whether sales are usable under its "ordinary course of trade" practice. To determine whether sales are outside the ordinary course of trade, Commerce looks to "all of the circumstances particular to the sales in question" to determine whether "such sales or transactions have characteristics that are extraordinary for the market in question."[18]
- Respondents argue that Commerce correctly concluded that the characteristics of the sales in question simply reflect sales made to a different segment of the Mexican market rather than sales with "extraordinary" characteristics.[19]
- Respondents argue that "ASC cites to no factual or legal basis to warrant a departure from the Department's longstanding practice and the preliminary determination."[20]

---

[14] *See* ASC Case Brief at 2.
[15] *Id.*
[16] *See* Memorandum to the File from David Cordell, through Sally C. Gannon, Director for Bilateral Agreements, "Proprietary Discussion of Issues for the Final Results of the Administrative Review of the Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico, for the period December 1, 2017 through November 30, 2018," dated concurrently with this memorandum (Proprietary Memorandum).
[17] Respondents are: Camara Nacional de Las Industrias Azucarera y Alcoholera (Mexican Sugar Chamber) (Camara); Ingenio Adolfo López Mateos, S.A. de C.V. and its affiliates Ingenio Tres Valles, S.A. de C.V. and Piasa Ingenio Plan de San Luis, S.A. de C.V. (collectively, Grupo PIASA) and Ingenio Pánuco, S.A.P.I. de C.V. (Pánuco) (Respondents).
[18] *See* Rebuttal Brief at 2 citing 19 C.F.R. 351.102(b)(35).
[19] *Id.* citing Memorandum to the File from Jesse Montoya, "Analysis of Proprietary Information and Argument Regarding Ingenio Pánuco, S.A.P.I. de C.V.," dated January 31, 2020 (PIASA Analysis Memorandum) at 6; Memorandum to the File from Jesse Montoya, "Analysis of Proprietary Information and Argument Regarding Ingenio Pánuco, S.A.P.I. de C.V.," dated January 31, 2020 (Pánuco Analysis Memorandum) at 6-7.
[20] *See* Rebuttal Brief at 2.

Respondents cite to business proprietary information in their rebuttal comments, and as a result we provide additional details and analysis in a separate, business proprietary memorandum.[21]

- Respondents believe Commerce should continue to find that the sales in question are home market sales made in the ordinary course of trade and may be used as basis for normal value.

Sales for Home Market Calculation

ASC's Comments

- ASC argues that"{u}nlike a typical administrative review, Commerce did not require respondents to report all home-market sales during the period of review (POR) to calculate normal value." [22]
- ASC claims that in an effort to "reduce the respondents' administrative burden, Commerce requested that the respondents self-select only two home-market sales from each POR month to calculate the normal value."[23]
- ASC states that "{i}n response, respondents reported home-market sales with aberrational low prices, to produce artificially low dumping margins and misleadingly indicate they eliminated dumping by 85%."[24]
- While acknowledging that "the purpose of an administrative review of a suspension agreement is to ensure compliance with the terms of the suspension agreement, not to calculate margins," ASC argues that "compliance requires the proper calculation of normal value to ensure respondents are not dumping by more than 15% of the investigation margins."[25]
- ASC is opposed to Commerce allowing the respondent to self-select sales and asks that in future reviews, "Commerce should require that parties base their normal value on a complete set of valid home market sales."[26]
- ASC asks Commerce to "state in its final results of review that the record reflects possible violations, that it will further consider its method for conducting administrative reviews in this proceeding taking into account the issues described above, and that it INTENDS to continue its robust enforcement to ensure full compliance with the AD Agreement." [27]

Respondents' Rebuttal Comments

- Respondents claim that "this is not a 'typical' administrative review" and "the objective of these reviews is to confirm compliance with the suspension agreement, rather than to calculate a dumping margin through the type of detailed margin analysis conducted in a review of an antidumping duty order."[28]

---

[21] *See* Proprietary Memorandum.
[22] *See* ASC Case Brief at 6.
[23] *Id*.
[24] *Id.*
[25] *Id.* at 7.
[26] *Id.*
[27] *Id.*
[28] *See* Rebuttal Brief at 4.

- Respondents point out that "requiring the respondents to report a full home market sales database would impose an unnecessary and inappropriate burden – and one that is not required by the AD Agreement – on the respondents and the Department. For the respondents, such a burdensome requirement would defeat a major reason for the respondents' participation in the suspension agreement and erode support for the agreements."[29]
- Respondents state that "both respondents have responded fully to all of the Department's requests related to this issue and the information they provided demonstrates unequivocally that the respondents have gone above and beyond to meet the AD Agreement's requirements."[30]
- They further argue that "the calculations provided by the respondents are fully compliant with Appendix II of the AD Agreement, which does not require the type of model-matching analysis used in reviews of antidumping duty orders" and that "the only product distinction included in the AD Agreement is whether sugar is Refined or Other Sugar."[31]
- Respondents note that the sales chosen were contemporaneous sales and similar to sales in the U.S. market. [32]
- Respondents also showed that they added product characteristics fields as requested by Commerce and claim that "the practice to use samples of sales to demonstrate compliance with Section IV of the AD Agreement has been used consistently throughout all administrative reviews of the AD Agreement and there has been no finding of violation or other issues related to enforcement."[33]
- Respondents conclude that "the information on the record does not show any instances of possible violation of the AD Agreement or any need to increase reporting burdens on the respondents." They go on to state that "the record illustrates that the respondents have expended tremendous efforts in ensuring full compliance with all terms of the AD Agreement" and that "Commerce should continue to find that the respondents have complied with the AD Agreement and that the Agreement is functioning as intended."[34]
- Finally, Respondents point out that "imposing unreasonable burdens, such as requiring a complex and unnecessary dumping analysis, would be wholly inconsistent with the terms and the spirit of the Agreement" and that Commerce "should resist ASC's efforts to impose upon the Mexican sugar mills burdens that go beyond the requirements of the Agreement."[35]

Commerce's Position

With respect to ASC's allegations on the use of certain sales in the home market, Commerce addresses many of these issues in the Proprietary Memorandum as the information is business proprietary in nature. With respect to ASC's point concerning the methodology to be applied in future administrative reviews of this AD Agreement, we note that each administrative review

[29] *Id*.
[30] *Id*.
[31] *Id.* at 4-5.
[32] *Id.* at 5.
[33] *Id.*
[34] *Id.*
[35] *Id.* at 6.

stands on its own, and that where an interested party raises an issue for consideration, such as the use of certain sales in the home market, we will fully consider and examine the issue, as relevant, as we do for all issues raised by interested parties. In this instance, we agree with Grupo PIASA's comments submitted during the course of the review,[36] that "{b}ased on the Department's normal practice, and as confirmed by the Court of International Trade, merchandise consumed in one country to manufacture non-subject merchandise is treated as a sale in that country even if the downstream product is later exported."[37]

With respect to ASC's comments that Commerce should require respondents to report all home market sales for purposes of determining normal value in the context of this review, we disagree. As discussed below, the statute provides Commerce with discretion in this context for determining the estimated normal value for purposes of determining whether prices associated with imports of sugar from Mexico during the period of review entered into the United States consistent with the terms of the AD Agreement. In this review, Commerce reasonably exercised its discretion in that regard. Section 734(c)(1)(B) of the Act provides that "for each entry of each exporter the amount by which the estimated normal value exceeds the export price (or the constructed export price) will not exceed 15 percent of the weighted average amount by which the estimated normal value exceeded the export price (or the constructed export price) for all less-than-fair-value entries of the exporter examined during the course of the investigation."

This same language was expressly provided in the AD Agreement, stating that "in accordance with 734(c)(1) of the Act, that the subject merchandise will be sold at or above the established reference price and, for each entry of each exporter, the amount by which the estimated normal value exceeds the export price (or constructed export price) will not exceed 15 percent of the weighted-average amount by which the estimated normal value exceeded the export price (or constructed export price) for all less-than-fair-value entries of the producer/exporter examined during the course of the investigation."[38] The AD Agreement also specifies that "{e}ach Signatory individually agrees that for each entry the amount by which the estimated normal value exceeds the export price (or the constructed export price) will not exceed 15 percent of the weighted average amount by which the estimated normal value exceeded the export price (or constructed export price) for all less-than-fair-value entries of the producer/exporter examined during the course of the investigation, in accordance with the Act and the Department's regulations and procedures, including but not limited to the calculation methodologies described in Appendix II of this Agreement."[39]

---

[36] *See* "Sugar from Mexico – Response to Petitioners' Comments dated July 11, 2019, (July 18, 2019) (Grupo PIASA's July 18, 2019 Comments) at 3.

[37] *Id.* citing *Tung Mung Dev. Co. v. United States,* 25 C.I.T. 752, 783 (2001) ("Merchandise sold in the home market, even if ultimately destined for export, is 'consumed' in the home market if it is used there to produce non-subject merchandise prior to exportation.") (citing *Final Determination of Sales at Less Than Fair Value: Certain Hot Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate From Korea*, 58 FR 37176 (July 9, 1993); *Final Determination of Sales at Less Than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above From the Republic of Korea,* 58 FR 15467 (March 23, 1993)).

[38] *See Sugar From Mexico: Suspension of Antidumping Investigation*, 79 FR 78039, 78040 (December 29, 2014) (AD Agreement).

[39] *Id.* at 78042.

With respect to administrative reviews of a suspension agreement, the Act directs Commerce to "review the current status of, and compliance with, any agreement by reason of which an investigation was suspended, and review the amount of any net countervailable subsidy or dumping margin involved in the agreement."[40] Notably, the Act also specifies that for reviews of antidumping duty orders, Commerce shall determine "(i) the normal value and export price (or constructed export price) of each entry of the subject merchandise, and (ii) the dumping margin for each such entry."[41]

Commerce's regulations state that "the United States has a 'retrospective' assessment system under which final liability for antidumping and countervailing duties is determined after merchandise is imported. Although duty liability may be determined in the context of other types of reviews, the most frequently used procedure for determining final duty liability is the administrative review procedure under section 751(a)(1) of the Act."[42] The only specific reference to suspension agreements is "{i}f during an administrative review the Secretary determines or has reason to believe that a signatory has violated a suspension agreement or that the agreement no longer meets the requirements of section 704 or section 734 of the Act (whichever is applicable), the Secretary will take appropriate action under section 704(i) or section 734(i) of the Act and Section 351.209."[43]

The SAA[44] does not address the administrative review of a suspension agreement. Indeed, the only reference to administrative reviews is in the context of the administrative reviews of antidumping duty orders. For example, the SAA states at 872: "Commerce attempts to calculate individual dumping margins for all producers and exporters of merchandise who are subject to an antidumping investigation or for whom an administrative review is requested."[45] The SAA also states that "section 751(a)(3)(B) requires liquidation of entries following the completion of an administrative review, to the greatest extent practicable, within ninety days after the issuance of liquidation instructions to Customs." There is no reference in the SAA or the regulations on how precisely Commerce is to conduct administrative reviews of suspension agreements.

As noted earlier, the AD Agreement provides that "in accordance with 734(c)(1) of the Act, the subject merchandise will be sold at or above the established reference price **and,** for each entry of each exporter, the amount by which the **estimated** normal value exceeds the export price (or constructed export price) will not exceed 15 percent of the weighted-average amount by which the estimated normal value exceeded the export price (or constructed export price) for all less-than-fair-value entries of the producer/exporter examined during the course of the investigation."[46]

---

[40] *See* Section 751(a)(1)(C) of the Act.
[41] *Id.* at 752(a)(2)(A).
[42] *See* Section 351.213 of Commerce's Regulations.
[43] *Id.* at 351.213(i).
[44] Consistent with the Statement of Administrative Action accompanying H.R. 5110 (H.R. Doc. No. 316, Vol. 1, 103d Cong., 2d Sess. (1994) (SAA), under section 102(d) of the Uruguay Round Agreement Act (URAA), the SAA constitutes an authoritative expression concerning the interpretation and application of the provisions of the URAA, including those provisions relating to antidumping and countervailing duties.
[45] *See Statement of Administrative Action (SAA), H.R. Doc. No. 103-316, vol. 1 (1994), the House Report, H. Rep. No. 103-826, pt. 1* (1994) (*House Report*), and the *Senate Report*, *S. Rep. No. 103-412* (1994) (*Senate Report*),
[46] *See* AD Agreement at 78040 (emphasis added).

The reference prices in the amended AD Agreement are minimum prices at or above which products must be sold in the United States and, when making sales in the United States, Mexican sugar producers/exporters' prices to the first unaffiliated customers must also eliminate at least 85 percent of the applicable dumping margin from the original investigation. Section 734(c)(2)(B) and the amended AD Agreement speak in terms of "estimated" normal value, which provides Commerce with some discretion in the methodology it may adopt to estimate the normal value for purposes of this provision. By contrast, for administrative reviews of antidumping duty orders, section 751(a)(1)(C) of the Act makes no reference to "estimated" normal value, nor does section 734(b) pertaining to administrative reviews of suspension agreements aimed at eliminating completely sales at less than fair value. Moreover, neither the Act nor the regulations prescribe how Commerce is to measure the elimination of the 85 percent of the dumping. Therefore, we have chosen a reasonable means by which to measure this factor to ensure compliance with the amended AD Agreement.

In a review of an order, it is critical to have a precise comparison of the "Normal Value" as compared to the Export Price or Constructed Export Price. Without a full and complete home market sales database, it would be impossible to calculate a fair and precise measure of dumping. However, in the context of a suspension agreement, the elimination of dumping can be measured in different ways, including by the use of a selection of sales to review compliance with this aspect of the amended AD Agreement, as Commerce employed in this review. Commerce requested that respondents in this review provide calculations for sales of their own choosing from each month of the POR, to demonstrate that sales are being sold at prices that eliminate at least 85 percent of dumping from the original investigation, as we did in a prior review of the AD Agreement.[47] Commerce's approach in this review is a reasonable exercise of its discretion in light of the statute, the facts and circumstances in this review, and the terms of the AD Agreement as a whole. In particular, the AD Agreement is comprised of a series of limitations, express requirements, and monitoring provisions designed to ensure the complete elimination of the injurious effect of exports to the United States. In addition to the reference price limitation, the companion CVD Agreement restricts the quantity of exports to the United States, which incentivizes exporters to obtain higher prices. Additionally, numerous monitoring provisions and penalties were implemented in the 2017 Amendment. While elimination of 85 percent of the estimated dumping from the original investigation is an important component of the AD Agreement, it must be examined in the context of the requirements and limitations of the AD Agreement as a whole, and whether any facts or circumstance indicate a more detailed examination of home market sales is warranted. In such a case, Commerce may determine to vary its approach to ensure full compliance with the amended AD Agreement. This could include additional sales selected by Commerce and/or the respondent,[48] or if Commerce finds circumstances warrant it, a request that respondents provide a full and complete home market sales database to allow for a complete comparison between all U.S. sales and all home market sales. Such an approach was not warranted in this case.

[47] *See, e.g.*, Ingenio San Cristobal's Supplemental Questionnaire Response, "Sugar from Mexico -Supplemental Questionnaire Response," dated August 29, 2016 at S-17.
[48] *Id*.

Notwithstanding the above analysis, as we state in the Proprietary Memorandum, signatories continue to be on notice that the requirement of the AD Agreement, as amended, is that for "each entry of each exporter, the amount by which the estimated normal value exceeds the export price (or constructed export price) will not exceed 15 percent of the weighted-average amount by which the estimated normal value exceeded the export price (or constructed export price) for all less-than-fair-value entries of the producer/exporter examined during the course of the investigation."[49] Thus, it is in the interest of all interested parties and other stakeholders—for purposes of maintaining the market stability and certainty to the North American sweetener industry resulting from entering into the suspension agreement--that signatories continue to monitor not only their compliance with the reference prices and other requirements of the AD Agreement, as amended, but that they be mindful of the statutory requirement to eliminate at least 85 percent of the dumping margin found in the underlying investigation, whenever an entry is made.

Regarding ASC's assertions that there have been "possible violations," ASC fails to identify what those "possible violations" are. Commerce has examined the issues, as detailed in this and the business proprietary memorandum.[50] Based on this examination, we found no violations of the amended AD Agreement.

ASC also asks that Commerce further consider its method for conducting administrative reviews in the future. Commerce will continue to conduct each requested administrative review in a manner that is consistent with the statute, regulations and our practice, and, as noted above, Commerce expects to consider the method for conducting such reviews in the future, as requested.

Comment 2: Status of, and Compliance with, Amended AD Agreement

ASC's Comments

- ASC asks that Commerce state that "it intends to continue its robust enforcement to ensure full compliance with the AD Agreement."[51]

Respondents' Comments

- Respondents argue that the *Preliminary Results* as well as information collected after the Preliminary Results reinforce Respondents' full compliance with the AD Agreement and cooperation in this proceeding and that "the Department should continue to find that the Mexican sugar industry is in full compliance with the AD Agreement."[52]
- Respondents also claim that after protracted litigation, the Court of International Trade has "confirmed that the AD Agreement is in accordance with law" and "the AD Agreement, as amended and approved by the CIT, has brought a long-awaited stability to the North American sweetener market."[53]

[49] *See* AD Agreement at 78040 citing 734(c)(i) and 78042 at Section VI.
[50] *See* Proprietary Memorandum,
[51] *See* ASC Case Brief at 7.
[52] S*ee* Respondents Case Brief at 2.
[53] *Id.*

Commerce's Position

ASC's request that Commerce state that "it intends to continue its robust enforcement to ensure full compliance with the AD Agreement" is unnecessary. Commerce has implemented all of the express monitoring and enforcement mechanisms in the AD Agreement and has been actively monitoring and enforcing the amended AD Agreement, *e.g.*, by ensuring placement of United States Customs and Border Patrol and United States Department of Agriculture data and information on the record of both the AD and CVD Agreements[54] and closely monitoring polarity testing submissions. As a result of our active monitoring and enforcement, and our analysis based on the record of this review, we find that the amended AD Agreement was being effectively monitored and was functioning as intended during the POR.

Finally, as we determined in the Preliminary Results, we continue to find that the amended AD Agreement meets the other requirements of the statute, including the prevention of price suppression or undercutting and the public interest requirement, during the POR. No interested parties commented on these issues on the record of this review. We conclude, therefore, that we did not find any evidence on the record of this review indicating that the amended AD Agreement failed to meet the statutory requirements during the POR.

[54] *See e.g.* Memorandum to the File, "Release of Customs Entry Data for Monitoring the Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico and the Agreement Suspending the Countervailing Duty Investigation on Sugar from Mexico"(February 14, 2018) and Memorandum to the File, "Agreement Suspending the Countervailing Duty Investigation on Sugar from Mexico and Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico: U.S. Department of Agriculture (USDA) Sugar Import Data" (February 27, 2018). *See also, e.g.,* Memorandum to the File, "Placing U.S. Entry Documents from CBP on the record of the Agreements Suspending the Antidumping and Countervailing Duty Investigations on Sugar from Mexico (AD and CVD Agreements)" (February 15, 2018).

RECOMMENDATION

Based on the discussion above, we recommend determining that the respondents were in compliance with the reference price provisions, the requirement to ensure the elimination of at least 85 percent of the dumping found in the underlying investigation, and the polarity testing provisions of the amended AD Agreement. We also recommend determining that the amended AD Agreement is preventing price suppression or undercutting and can be effectively monitored and that there have been no violations of the amended AD Agreement during the POR. Finally, we recommend determining that the amended AD Agreement is meeting the statutory requirements under sections 734(c) and (d) of the Act. If this recommendation is accepted, we will publish the final results of the review in the *Federal Register*.

☒	☐
Agree	Disagree

10/21/2020

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance