

# INTERNATIONAL SUGAR TRADE COALITION, INC.

A Non-Profit Corporation  
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July 3, 2008

Hon. Ed Schafer  
Secretary  
U.S. Department of Agriculture  
1400 Independence Avenue, S.W.  
Washington, D.C. 20250

Re: OAQ Shortfall Reassignment

Dear Secretary Schafer:

We are writing to express our concerns regarding the Department of Agriculture's (USDA's) June 23, 2008 announcement reassigning the unused portion of the 2007-08 cane sugar overall allotment quantity (OAQ) to Mexico.

The International Sugar Trade Coalition (ISTC) is a non-profit association representing the sugar industries in developing countries from Africa, the Caribbean, Central and South America, Asia and the Pacific that have been traditional suppliers of sugar to the U.S. market under the tariff rate quota (TRQ), including: Barbados, Belize, the Dominican Republic, Ecuador, Fiji, Guyana, Haiti, Jamaica, Malawi, Mauritius, Mozambique, Panama, the Philippines, St. Kitts and Nevis, Swaziland, Trinidad and Tobago, and Zimbabwe. Our members are concerned that USDA's reassignment of the unused cane sugar OAQ exclusively to Mexico discriminates against their access to the U.S. sugar market.

As you are aware, 7 U.S.C. 1359ee(b)(1) requires that any deficit in the cane sugar OAQ should be reassigned in the following order: (i) to other cane sugar producers in the same State; (ii) to cane sugar producers in other States, (iii) to forfeited stocks held by the Commodity Credit Corporation; and (iv) "to imports." This provision was first enacted in the 2002 Farm Bill and was continued in the recently-enacted 2008 Farm Bill. Nothing in either the 2002 Farm Bill or the 2008 Farm Bill, however, indicates that Congress meant for cane sugar OAQ deficits to be reassigned exclusively to Mexico if not fully utilized as a result of the preceding reassignments. On the contrary, we believe that Congress intended, and that U.S. international obligations require, a different course of action.

When the provisions on reassignment of the cane sugar OAQ were first enacted in 2002, imports from Mexico were still subject to a TRQ under the North American Free Trade Agreement (NAFTA). USDA's regulations for implementation of the cane sugar OAQ reassignment provisions defined "imports" as "sugar originating in foreign countries or areas and entered, or to be entered, into the United States customs territory." 7 C.F.R. 1435.2 (2008). The language obviously intended to allow reassignment to more countries than Mexico, and USDA historically so applied it. For example, on several occasions in 2005 and 2006, USDA reassigned cane sugar OAQ shortfalls to imports under the raw sugar TRQ.

In the meantime, of course, NAFTA has been fully implemented, and Mexico now has unlimited access to the U.S. sugar market. When Congress renewed the OAQ deficit reassignment mechanism in the 2008 Farm Bill – which was enacted after Mexico’s sugar access under NAFTA became unlimited – it easily could have indicated if it intended that such reassignments should be made solely to Mexico. But Congress did not do so. Rather, the only change made to the OAQ reassignment provision in the 2008 Farm Bill was to add the words “of raw cane sugar” after the word “imports,” Pub. L. 110-246, Section 1403(e), thereby clarifying that cane sugar OAQ shortfalls were to be reassigned only to raw cane sugar imports, with no other restriction. Thus, the 2008 Farm Bill confirms that Congress’ intent remained unchanged, *i.e.*, that cane OAQ deficits should be reassigned to imported raw cane sugar generally, not just to Mexico.

The fact that Mexico has unlimited access to the U.S. sugar market does not supersede the rights of access of other suppliers of sugar to the United States under the TRQ. On the contrary, Article XXIV of GATT 1994 authorizes free trade agreements only insofar as they do not prejudice access by other suppliers. There can be no serious dispute that, but for NAFTA, USDA’s reassignment of the 2007-08 cane OAQ shortfall would have been made to the traditional suppliers under the TRQ, as USDA did in 2005 and 2006. USDA’s reassignment of the 2007-08 cane OAQ shortfall to Mexico, when Mexico already has unlimited access under NAFTA, is a sleight of hand the only purpose for which is to exclude the traditional quota holders from participating in growth in U.S. sugar imports. Accordingly, we have serious concerns that USDA’s decision to assign the 2007-08 OAQ shortfall exclusively to Mexico has prejudiced access to the U.S. sugar market by the traditional quota holders within the meaning of GATT Article XXIV.

The traditional suppliers of sugar under the TRQ have proven themselves to be reliable trading partners in times of need precisely because they represent numerous sugar-producing countries in various regions, thereby diversifying the sources of supply and the corresponding risks of shortfall. In the face of declining U.S. beet production as traditional beet acreage is diverted to more profitable grain crops and the unprecedented drop in Florida cane production that will result from the recently-announced sale of 187,000 acres by U.S. Sugar Corporation, USDA should recognize the value of this time-tested supply network and assign the 2007-08 cane OAQ shortfall in compliance with GATT Article XXIV to allow the traditional suppliers under the TRQ to participate in growth of U.S. sugar imports.

We would be happy to discuss this important issue further at your convenience.

Respectfully,

A handwritten signature in black ink, appearing to read "Paul Ryberg". The signature is written in a cursive style with a large, stylized "P" and "R".

Paul Ryberg  
President

cc: Charles F. Conner  
Mark Everett Keenum  
Michael W. Yost  
Ronald Lord  
James M. Murphy, Jr.