INTERNATIONAL SUGAR TRADE COALITION, INC.

A Non-Profit Corporation
1054 Thirty-First Street, N.W. Suite 540 Washington, DC 20007
Phone: (202) 965-3449 Fax: (202) 965-4432
www.sugarcoalition.org istc@sugarcoalition.org

August 19, 2008

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

Re: Refined TRQ Increase

Dear Secretary Schafer:

We are writing to express our concerns regarding the Department of Agriculture's (USDA's) August 6, 2008 increase in the 2007-08 refined sugar tariff rate quota (TRQ) and, in particular, the extension of the delivery period to December 31, 2008.

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 raw sugar 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. ITC's members represent approximately one-half of the raw sugar TRQ allocations.

ISTC's members are concerned that USDA's increase in the 2007-08 refined TRQ is inconsistent with Congress' intent, as expressed in the TRQ administration provisions of the 2008 Farm Bill, and discriminates against their legitimate access to the U.S. sugar market.

As you are aware, the TRQ administration provisions of the 2008 Farm Bill require that the raw and refined TRQs must be set at the bound minimum level and not increased prior to April 1 of each quota year in the absence of an emergency shortage of sugar caused by "war, flood, hurricane, or other natural disaster, or other similar event . . . ." 7 U.S.C. 1359k. These provisions also require that, in the event of an emergency shortage of sugar, USDA must first increase the raw TRQ, and only if such increased raw imports are insufficient to eliminate the shortage may USDA increase the refined TRQ above the minimum level. *Id.*

Although these provisions do not become effective until October 1, 2008, USDA's decision to extend the period for delivery under the 2007-08 refined TRQ to December 31, 2008, raises serious questions of compliance with the TRQ administration requirements of the 2008 Farm Bill. By increasing the amount of refined sugar that can enter during October 1-December 31, 2008, without first increasing the raw TRQ for that period above the bound minimum level, USDA has done an end-run around the intent of Congress, thereby *de facto* achieving what Congress *de jure* prohibited.

USDA's increase in the refined TRQ for the period October 1-December 31, 2008, represents the third time in a little over a month that it has disregarded the legitimate rights of the traditional suppliers of sugar under the TRQ. On June 23, 2008, USDA reassigned the cane sugar overall allotment quantity (OAQ) shortfall exclusively to Mexico, ignoring the TRQ holders. ISTC wrote to you on July 3, 2008, expressing concern that both the intent of Congress and the WTO obligations of the United States require that the TRQ holders participate in any such OAQ shortfall reassignment. These concerns were disregarded when, on July 10, 2008, USDA increased the OAQ to unblock domestic beet stocks and again assigned resulting cane sugar OAQ shortfall exclusively to Mexico.

Although Mexico now has unlimited access to the U.S. sugar market pursuant to NAFTA, Mexico's NAFTA rights do not supersede the WTO rights of the traditional suppliers under the TRQ. Rather, 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 reassignments of the 2007-08 cane OAQ shortfalls would have been made to the traditional suppliers under the raw sugar TRQ, as USDA did in 2005 and 2006. We continue to have serious concerns that USDA's decision to assign the 2007-08 OAQ shortfalls exclusively to Mexico has prejudiced access to the U.S. sugar market by the traditional quota holders within the meaning of GATT Article XXIV.

That prejudice is compounded by USDA's recent increase in the amount of refined sugar access during October 1-December 31, 2008. 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 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,

Paul Ryberg
President

cc: Chairman Collin Peterson
Chairman Tom Harkin
Charles F. Conner
Mark Everett Keenum
Michael W. Yost
Ronald Lord
James M. Murphy, Jr.