INTERNATIONAL SUGAR TRADE COALITION, INC.

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November 18, 2014

Hon. Paul Piquado
Assistant Secretary for Enforcement and Compliance
International Trade Administration
U.S. Department of Commerce
14th Street and Constitution Avenue, N.W.
Washington, D.C. 20230

Re: Proposed Settlement of Mexican Sugar Proceedings, A-201-845, C-201-846

Dear Assistant Secretary Piquado:

We are writing to comment on the proposed settlement of the above-referenced countervailing duty (CVD) and antidumping (AD) cases brought against Mexican sugar exported to the United States. Although we support settlement of these cases, we are concerned that the terms of the proposed settlement agreements do not adequately respect the legitimate interests of the quota holders in access to the U.S. sugar market.

The International Sugar Trade Coalition (ISTC) is a non-profit, member-supported association of sugar industries in developing countries that are traditional suppliers of sugar to the United States under the U.S. tariff rate quota (TRQ) on raw sugar. The members of ISTC are the sugar industries of: Barbados, Belize, the Dominican Republic, Fiji, Guyana, Jamaica, Malawi, Mauritius, Panama, the Philippines, Swaziland and Zimbabwe. Together, the members of ISTC account for roughly half of the TRQ.

The U.S. International Trade Commission (ITC) issued a preliminary determination on May 9, 2014, that sugar imported from Mexico is injuring the domestic sugar industry. The Department of Commerce subsequently issued preliminary determinations that sugar from Mexico is both subsidized and dumped. Although the quota holders lack legal standing under U.S. trade remedy laws, the quota holders have nonetheless also been injured by Mexico's unfair trade practices. The flood of unfairly traded sugar from Mexico has both reduced the quota holders' access to the U.S. market and slashed the revenue earned on those exports. The proposed settlement agreements do not adequately address this injury to the quota holders.

The proposed agreement to settle the CVD case would establish a quota (the "Export Limit") linking Mexico's exports to U.S. sugar requirements. Mexico would be allowed to supply all U.S. sugar import requirements above the bound minimum TRQ and the FTA quotas. Except when Mexico's production is inadequate to supply U.S. import requirements, the quota holders would be locked into the bound minimum TRQ and would be prevented from supplying any additional sugar import requirements. But GATT Article XXIV protects the quota holders' right to participate in U.S. requirements for additional imports:

> *Members . . . Reaffirming* that the purpose of such agreements [FTAs] should be to facilitate trade between the constituent territories and not to raise barriers to the trade of other Members with such territories; and that in their formation or enlargement the parties to them <u>should to the greatest possible extent avoid creating adverse effect on the trade of other Members</u>. (Emphasis added.)

It could be argued that the quota holders are already *de facto* limited to the bound minimum quota because NAFTA gives Mexico unlimited access to the U.S. market. On the contrary, NAFTA only gives Mexico the right to export fairly traded sugar. Mexico is not entitled by NAFTA to export subsidized or dumped sugar. Yet the proposed settlement agreements would for the first time permit Mexico's unfairly trade exports – within the proposed quota limit - but doing so would contravene the rights of the quota holders.

In order to redress the injury to the quota holders caused by Mexico's unfair trade practices and to protect their access to the U.S. market, *we urge that Mexico's access under the proposed agreement settling the CVD case should be subject to the following additional conditions*:

First, the proposed CVD settlement agreement should be revised to specify that *any shortfall in TRQ imports should be assigned only to the other quota holders that are able to perform, and should not be assigned to Mexico*.

Second, Section V.E. of the proposed CVD agreement prohibits Mexico from importing world market sugar to meet its domestic consumption requirements in order to enable it to export to the United States. Otherwise, Mexico would be able to arbitrage world market sugar, which would be inconsistent with the legitimate interests of the quota holders in supplying volumes beyond the bound minimum TRQ that may be required by the U.S. market. Every U.S. FTA subsequent to NAFTA that contains a provision on sugar includes a "net surplus producer" requirement precisely to prevent such arbitrage. The provision prohibiting such arbitrage is critical to the integrity of the proposed settlement, but it is unclear how it would be enforced. To ensure that such arbitrage does not occur, *the proposed CVD settlement agreement should be revised to provide that any volume of sugar imported by Mexico will automatically be deducted from the Export Limit it is allowed to export to the United States*.

Third, two revisions should be made to Sections V.B.1.b. and c., which provide for Mexico's access to the U.S. market to increase from 70% of the Target Quantity to 80% and then 100% on January 1 and April 1, respectively, when the Department determines the U.S. market requires additional sugar imports. First, the effective date for increasing Mexico's access from 80% to 100% of the Target Quantity should be moved to a date after April 1. This change is necessary because the Farm Bill prohibits USDA from increasing the TRQ above the bound minimum level before April 1 absent an emergency shortage of sugar. By moving the effective date for this increase in access to a date after April 1, USDA and the Department would have greater flexibility to assign a portion of the increase to the TRQ holders, including (but not limited to) circumstances in which Mexico may not be able to supply the additional imports. It is recommended that *the quota holders should ordinarily be given the opportunity to participate in supplying such additional quantities that are required by the U.S. market*. It would not be a difficult or complicated process to assign a fair portion of the final tranche to the quota holders. On the contrary, it is already USDA's standard practice to poll the quota holders prior to April 1 of each year to determine whether they will be able to fulfill their quota allocations. The assignment of additional import requirements proposed above would consist of only a modest expansion of USDA's current practice.

Fourth, whenever it is determined that the U.S. market requires additional imports beyond the Target Quantity, such additional imports should first be assigned to the quota holders. Only if and to the extent that the quota holders are not able to supply such additional volumes, should the additional access be provided to Mexico.

Finally, we are also concerned that the definitions of the products covered by the proposed settlement agreements do not reflect the definitions used in the trade and in the Harmonized Tariff Schedule (HTS), which governs the TRQ and the FTA quotas. This discrepancy could lead to confusion and create opportunities for quota evasion. We respectfully suggest that the *product definitions used in the settlement agreements should be the same as those in the HTS, i.e., raw sugar has polarity of less than 99.5 degrees, and refined sugar has polarity of 99.5 degrees or higher*.

We would be happy to meet to discuss these proposals further and/or to provide any additional information you may require. We appreciate your attention to the interests of the quota holders in finalizing the settlement proposals.

Sincerely,

Paul Ryberg
President

cc: Hon. Michael Scuse