Before the
United States International Trade Commission

Sugar From Mexico
ITC Investigation Nos. 701-TA-513 and 731-TA-1249 (Preliminary)

Post-Hearing Statement of the International Sugar Trade Coalition

During the Commission's April 18, 2014 preliminary injury conference in this proceeding, misleading and incomplete information was presented by witnesses for the Respondents concerning the U.S. tariff rate quota (TRQ) on raw sugar[1] and its alleged impact on the conditions in the U.S. sugar market in 2012-13. This information seems intended to create the misimpression that the quota holders diverted sugar away from the U.S. market in 2012-13, thereby creating a need for additional sugar imports from Mexico. In fact, quite the opposite is true: surging imports of low-priced sugar from Mexico squeezed TRQ sugar out of the market. The International Sugar Trade Coalition (ISTC) feels compelled to file this Post-Hearing Statement to set the record straight.

ISTC is a non-profit, member-supported association of sugar industries in developing countries that export sugar to the United States under the TRQ. 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.

I. The Structure and Operation of the U.S. TRQ on Raw Sugar.

Information provided by the Respondents at the preliminary injury conference implied that the TRQ is opaque, unpredictable and unreliable. Nothing could be further from the truth. The current raw sugar TRQ was created in 1982 and has remained in effect, with relatively minor changes, ever since. Access under the TRQ has always been allocated among 39 traditional suppliers[2] in compliance with the requirements of GATT

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[1] The United States maintains tariff rate quotas on raw sugar, refined sugar and specialty sugar, as well as certain sugar-containing products. The United States also has quotas allowing relatively small additional volumes of sugar imports under free trade agreements with Colombia, the Dominican Republic and Central American countries, Panama, and Peru. Imports under these FTA quotas are not further discussed herein because they were essentially unchanged in 2012-13 (149,44 metric tons (MT)) from 2011-12 (150,928 MT). Unless otherwise indicated, all references herein to the TRQ are limited to the raw sugar TRQ.

[2] There were originally 40 quota holders, including Mexico, which was assigned the smallest possible allocation of just 7,258 MT because it had not been a traditional sugar exporter. With the full implementation of NAFTA in 2008, giving it unlimited access to the U.S. sugar market, Mexico is sometimes dropped from the list of quota holders because it has unlimited access outside the TRQ.

Article XIII based on historic market share.[3] Almost all of the quota holders are developing countries for which sugar exports to the United States are an important source of export revenues. [4]

In 1995, the United States bound a minimum TRQ of 1,117,195 metric tons (MT) under the WTO Uruguay Round Agreements. Since that time, the TRQ quota holders' rights of access under the WTO have had the same legal standing as Mexico's access rights under the North American Free Trade Agreement (NAFTA).

Since 1995, the TRQ has always been set no lower than the bound minimum level. The U.S. Department of Agriculture (USDA) administers the TRQ and has discretion to increase the TRQ above the bound minimum level as market conditions may require.[5] For example, in April 2012, USDA increased the 2011-12 raw TRQ by 381,018 MT to 1,498,213 MT.

USDA also has the authority to reallocate TRQ shortfall among other quota holders that are able to supply additional sugar. For example, in 2011-12 USDA reallocated 73,446 MT of shortfall, thereby *de facto* increasing imports under the TRQ by that amount. When market conditions do not warrant additional imports, USDA also has the discretion not to reallocate shortfall.

II. The TRQ Holders Have Been a Reliable Source of Supply for the U.S. Market.

Respondents alleged at the April 18, 2014 conference – without any proof – that the TRQ has a low and declining fill rate, implying that the TRQ is an unreliable source of supply. The facts prove the contrary. The TRQ has historically filled to a level of nearly 90% on average.[6] In 2010-11, 1,437,562 MT entered under the TRQ of 1,520,892 MT, for a fill level of 94.5%. 1,263,083 MT entered under the 2011-12 TRQ of

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[3] It was suggested by Respondents' witnesses at the April 18, 2014 conference that TRQ allocations have been assigned for political reasons. As noted above, the TRQ allocations were based on historic market share during a representative base period. The allocation to South Africa was suspended from 1986 to 1991 under the Comprehensive Anti-Apartheid Act of 1986 and pursuant to U.N. resolutions. The allocation to Nicaragua was suspended from 1982 to 1990, and that to Panama between 1987 and 1990, both for reasons of national security. There have been no similar actions for the past 23 years. Unlike the raw TRQ, the refined TRQ is not allocated on a country-by-country basis. Rather, the refined TRQ is globalized and access is first-come, first-served.

[4] Among the quota holders, only Australia and Taiwan are not developing countries.

[5] Under legislation adopted in 2008, except in emergency circumstances, USDA may increase the TRQ only after April 1 of each year, *i.e.*, half way through the quota year.

[6] USDA's official records of TRQs and imports are in the public record and are available on the internet at USDA's website at:http://usda.mannlib.cornell.edu/MannUsda/viewDocumentInfo.do?documentID=1891.

1,498,212 MT, for a fill level of 84.3%. In 2012-13, the fill level dropped significantly below traditional levels, but for unique reasons as explained in detail below.[7]

III. Surging Imports from Mexico Overwhelmed USDA's Efforts To Reduce the Oversupply in 2012-13.

Respondents alleged at the April 18, 2014 conference that the increase in imports from Mexico in 2012-13 simply offset a corresponding drop in TRQ imports. Imports from Mexico virtually doubled, increasing by 954,600 MT from 971,859 MT in 2011-12 to 1,926,459 MT in 2012-13. At the same time, imports under the raw TRQ fell by 661,329 MT from 1,263,083 MT in 2011-12 to 601,754 MT in 2012-13. In addition, refined TRQ imports also fell by 117,546 MT from 234,764 MT in 2011-12 to 117,218 MT in 2012-13. Taken together, imports under the raw and refined TRQs fell by 778,875 MT. Ignoring the fact that imports from Mexico increased by 23% more than raw and refined TRQ imports declined, Respondents seek to infer a cause-effect relationship. But in reality, no such causal link exists. This is because Respondents ignore the role that USDA played in decreasing TRQ imports in 2012-13 in attempting to mitigate the surging imports from Mexico.

The impending oversupply in the U.S. sugar market became evident early in the 2012-13 quota year. USDA's November 2012 World Agricultural Supply and Demand Estimates (WASDE) report, which was released on November 9, 2012, predicted a serious oversupply in the U.S. market for 2012-13, with a stocks-to-use ratio of 18.7 percent, up from 13.1 percent in the previous month's report and well above the equilibrium level.[8]

In response to this serious oversupply situation, USDA's first action was to leave the 2012-13 raw TRQ at the bound minimum level of 1,117,195 MT. As noted above, USDA had increased the 2011-12 TRQ by 381,018 MT above the bound minimum level. USDA also has the authority to reallocate TRQ shortfall to *de facto* increase imports without raising the TRQ. It did so in 2011-12, allowing another 73,446 MT to enter to the U.S. market. But facing a serious oversupply the following year, USDA did not reallocate TRQ shortfall. USDA also set the 2012-13 refined TRQ 117,546 MT much lower than the 2011-12 refined TRQ of 234,764 MT.[9] Together, these three regulatory

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[7] Witnesses for Respondents suggested at the April 18, 2014 conference that 15 quota holders never perform except when they can profitably arbitrage against the world market. While some quota holders have not shipped often or in recent years, the number is much smaller than suggested. Nine quota holders, representing a mere 6 percent of the TRQ, fit into this category: Barbados, Congo, Cote d'Ivoire, Gabon, Haiti, Madagascar, Papua New Guinea, St. Kitts & Nevis, and Trinidad & Tobago.

[8] USDA's WASDE reports are in the public record and are available on the internet at USDA's website at: http://www.usda.gov/oce/commodity/wasde.

[9] USDA initially set the 2011-12 refined TRQ at 112,718 MT. Increases in the refined TRQ are rare. Rather, when the market requires additional sugar, USDA typically relies on raw TRQ increases. In response to urging by the Sweetener Users Association (SUA) that the U.S. market was undersupplied and that additional refined imports were needed, however, USDA increased the 2011-12 refined TRQ by 128,613 MT to 234,764 MT in April 2012. A witness for the SUA testified at the April 18, 2014

actions reduced raw and refined TRQ imports by 572,010 MT, which represents 73 percent of the drop in imports in 2012-13 compared to 2011-12.

In addition, beginning in December 2012 and continuing throughout the quota year, officials from USDA and the Office of the U.S. Trade Representative (USTR) engaged in a series of communications with quota holders to discuss the market oversupply situation. In particular, meetings were held by Under Secretary of Agriculture Michael Scuse with representatives of various ISTC member quota holders on April 10, 2013, and again on May 7, 2013, during which the Under Secretary requested the quota holders' cooperation in reducing the oversupply. The undersigned attended both meetings and the foregoing is based upon first-hand knowledge. USTR officials also provided written assurances in January 2013 to the quota holders with which Secretary Scuse met that their future access to the U.S. sugar market would not be prejudiced if they did not fill their TRQ allocations for 2012-13.

In response, the quota holders with which Secretary Scuse had met reduced their raw TRQ exports to the United States for 2012-13 by 182,001 MT. ISTC assumes but cannot prove that the lower than normal imports from other quota holders may also have been motivated by similar requests for cooperation by USDA.

Significantly, the combination of (1) USDA's decision to leave the 2012-13 raw TRQ at the bound minimum level (381,017 MT lower than the prior year); (2) USDA's decision not to reallocate shortfall (73,446 MT the previous quota year); (3) USDA's decision to set the 2012-13 refined TRQ 117,546 MT lower than the previous year; and (4) reduced raw TRQ shipments by ISTC members in response to USDA's requests for cooperation (totaling at least 182,001 MT), succeeded in reducing imports by 754,009 MT, which accounts for 97% of the 778,875 MT drop in TRQ imports in 2012-13 from 2011-12.

At the April 18, 2014 conference, Respondents alleged that the TRQ holders diverted sugar from the United States to Europe and the world market to take advantage of relatively high prices in those markets. That assertion, however, ignores the facts and turns the actual causal connection on its head. USDA actions – both TRQ reductions and requests for voluntary quota holder cooperation – reduced TRQ imports by at least 754,009 MT. But these efforts to maintain market stability were overwhelmed by a 954,600 MT surge in imports from Mexico.[10]

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conference that the U.S. market was oversupplied in 2012-13 because of the very same TRQ increases his organization had requested in 2011-12.

[10] As has been detailed in various filings in this proceeding, USDA also cancelled certificates of quota eligibility (CQEs) under the Colombia FTA, acquired re-export credits, purchased sugar for use as ethanol feedstock, and acquired forfeited domestic stocks, all at considerable expense.

IV. Conclusion.

In summary, the TRQ quota holders have played a critical role in supplying sugar needed by the U.S. market for the past 32 years. When supplies in the U.S. market have been tight and the TRQ has been increased, the quota holders have done their best to supply the additional volumes needed by U.S. consumers, often on short notice and with significant practical difficulty. More recently, when surging imports from Mexico have threatened to overwhelm the U.S. market, the TRQ quota holders voluntarily reduced their exports to assist USDA's efforts to maintain market stability. These efforts came at considerable cost to the TRQ quota holders, both in terms of lower volumes of exports and sharply lower prices. It adds insult to injury, therefore, for Respondents to assert that declining imports under the TRQ somehow caused the surge in imports from Mexico. The facts prove the contrary: surging imports from Mexico squeezed TRQ imports out of the market and drove down the market price.

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