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November 7, 2006

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By Electronic Mail and Hand Delivery

Director
Dairy and Sweeteners Analysis Group
Farm Service Agency
United States Department of Agriculture
STOP 0516
1400 Independence Avenue, S.W.
Washington, D.C. 20250-0516

Re: Advance Notice of Proposed Rulemaking Concerning Sugar Program Definitions

To Whom It May Concern:

We are writing on behalf of the Anticircumvention Coalition, an ad hoc group representing the great majority of the domestic sugar producing industry, to urge the Commodity Credit Corporation (“CCC”) to issue a rule confirming that all marketings in the United States of sugar by sugar beet processors who hold marketing allotments under the Agricultural Adjustment Act of 1938 must be counted against those holders’ allotment limitations, regardless of whether the raw materials used to produce such sugar are derived from foreign or domestic sources. The language and purpose of the governing statute demands that sugar domestically produced by an allotment holder from imported sugar beet “thick juice” and marketed for human consumption in the United States count against that allotment holder’s existing allotment. Exempting such sugar from allotment requirements would fundamentally undermine the allotment program and invite

circumvention of rules designed to treat all domestic producers in a fair and evenhanded manner. It would do so, moreover, for no discernible reason, and conflict with the treatment of sugar produced by an allotment holder from imported sugar beets, which is subject to the allotment rules. Finally, precluding circumvention of the allotment rules by an allotment holder is fully consistent with the CCC's decision in the *Cargill* matter, which foreclosed similar efforts to "undermine the sugar allocation formula," and will not require a complicated re-formulation of the governing regulations. To the contrary, the loophole can be closed by merely specifying that all sugar beet processors with marketing allotments must count all sugar that they produce and market for human consumption in the United States against their allotment ceiling.

Failing to Count Allotment Holders' Marketings of Sugar Derived from Imported Thick Juice Against Allotment Limitations Frustrates Congress's Express Intent

The Anticircumvention Coalition ("Coalition") includes nearly all domestic sugar beet and sugarcane processors who are subject to the current market allotment system. *See* App. A. Coalition members' sales are directly harmed when other allotment holders are permitted to market sugar beyond their allocations, because such marketings increase the overall domestic sugar supply and drive down market prices. Accordingly, the Coalition requested action by the CCC more than a year ago after learning that a sugar beet processor with an allotment had begun importing sugar beet "thick juice" from Canada into the United States,^{1/} completing the

^{1/} Thick juice is an intermediate product derived from sugar beets that has no commercial use other than to be further processed into refined sugar. Specifically, it is formed by soaking

processing of that thick juice into refined sugar, and then marketing the sugar for domestic consumption without counting the marketings against its allotment. Because the sugar produced from this imported thick juice is not currently being subjected to either tariff-rate quotas or marketing allotment limitations, this marketing allotment holder is obtaining a substantial windfall as compared to all other sugar beet processors with marketing allotments.^{2/}

Permitting such activity to continue without counting it against allotment thwarts the express intent of Congress in enacting the marketing allotment program in 2002 to counter increasing turmoil in the domestic sugar market. *See* Farm Security & Rural Investment Act of 2002, Pub. L. No. 107-171, 116 Stat. 134 (May 13, 2002) (“the 2002 Act”). At that time, prices had reached 20-year lows due both to increased domestic production and increased imports under trade agreement obligations, seventeen beet and cane processing mills had closed or announced closures, and U.S. producers, for the first time in more than a decade, forfeited

sliced sugar beets in hot water to produce a juice, which is then treated with lime and carbon dioxide gas, filtered, and boiled to create a concentrated liquid. Thick juice is further filtered, boiled, and crystallized to form “white massecuite,” which in turn is mixed, spun, washed, dried, and cooled to produce refined sugar.

^{2/} Imports of sugar and sugar containing products are subject to tariff-rate quotas in the Harmonized Tariff Schedule of the United States (“HTS”). Thick juice is currently classified under HTS subheading 1702.90.40, which is not subject to tariff-rate quota. As a result, it is duty-free when it originates in Canada and subject to a duty of 0.35 cents per liter when it originates in most other countries. Customs and Border Protection is considering a petition for reclassification of imported thick juice to a classification that is subject to tariff-rate quota. 71 Fed. Reg. 53460 (Sept. 11, 2006).

significant amounts of sugar to the CCC in 2000 and 2001.^{3/} With the industry's support, Congress re-imposed marketing allotments after a six-year hiatus. The new program has three specific goals: (1) providing a comprehensive mechanism for regulating the entire domestic sugar supply consistent with trade agreement obligations, in order to bring production back into balance with domestic demand; (2) maintaining prices at a level sufficient to avoid forfeitures to the CCC's sugar loan program; and (3) affording sugar beet and sugar cane processors "an equitable opportunity to market sugar under an allotment."^{4/}

Accordingly, the 2002 Act features a series of carefully calibrated formulas designed to ensure that *all* annual projected domestic human consumption (other than that satisfied by certain baseline imports required under existing trade agreement obligations) is accounted for through

^{3/} See generally *The New Federal Farm Bill: Hearing before the Senate Committee on Agriculture, Nutrition, and Forestry* (hereinafter "New Federal Farm Bill Hearing"), 107th Cong. 28-53 (2001); *Federal Sugar Program: Hearing before the Senate Committee on Agriculture, Nutrition, and Forestry*, 106th Cong. (2000). In the period before the 2002 Act was enacted, the federal government spent more than \$400 million to purchase more than one million tons of sugar in an attempt to avoid forfeitures. Sugar forfeitures occur when price levels drop below the thresholds established in the nonrecourse sugar loan program, because producers will forfeit to the CCC sugar they have posted as collateral for a CCC loan if they cannot obtain a higher price in the market. National average CCC loan rates have been set at 18 cents per pound for raw sugarcane and 22.9 cents per pound for refined beet sugar for nearly two decades. See 7 U.S.C. § 7272(a), (b); 7 C.F.R. § 1435.101(a), (b).

^{4/} 7 U.S.C. § 1359dd(a); see also *id.* § 1359bb(a)(3), (b)(1); *id.* § 1359cc(b)(2), (g); *id.* § 7272(g); H.R. Rep. No. 107-424, at 447-48 (May 1, 2002) (conference report); S. Rep. No. 107-117, at 33-34, 100 (2001); 147 Cong. Rec. S13018-19 (daily ed. Dec. 12, 2001) (Sen. Craig); *New Federal Farm Bill Hearing, supra* note 3, at 29, 30-31 (Jack Roney, American Sugar Alliance).

the allotment system,^{5/} and to preserve the status quo among existing processors by using their production histories and capacities in the years leading up to the 2002 Act, with specified adjustments, to calculate individual allotments.^{6/} Allowing a sugar beet allotment holder to market sugar outside of the allotment system undermines the operation of the statute as Congress intended. Specifically, it frustrates all three purposes of the program by (1) increasing the domestic sugar supply contrary to the limitations imposed by Congress and the Department of Agriculture; (2) increasing the risk of forfeitures by driving down the domestic price of sugar; and (3) failing to treat all domestic sugar beet processors subject to allotments in a fair and equitable manner. Indeed, to the extent that other allotment holders are pressured to join in such activities to preserve their competitive positions, extra-allotment sales threaten exactly the kind of free-for-all environment that prompted the 2002 Act.

^{5/} Specifically, the overall allotment quantity is calculated annually by (1) estimating the quantity of sugar to be consumed domestically and needed for reasonable carryover stocks; (2) subtracting from that total any carry-in stocks held by the CCC and 1.532 million short tons, raw value, in accordance with the United States' existing trade agreement obligations; and (3) adjusting the total if necessary to keep prices high enough to avoid forfeitures. 7 U.S.C. §§ 1395bb(a), 1359bb(b)(1), 1359cc(b)(2); *New Federal Farm Bill Hearing, supra* note 3, at 139. Sugar produced for non-human consumption and exports is excluded from the allotment program. 12 U.S.C. § 1359bb(a)(2), (c)(1).

^{6/} The annual sugar beet allotments, for instance, are allocated among existing processors according to the percentage of the industry's "weighted average quantity" produced by each individual processor in the 1998, 1999, and 2000 crop years, with certain adjustments for the opening and closing of facilities and storage losses prior to 2001. 7 U.S.C. § 1359dd(b)(2)(C). New entrants who start processing sugar beets or revive older facilities that were not already subject to allotment limitations may receive a new allotment that reduces all existing allotment holders' limitations on a pro rata basis. *Id.* § 1359dd(b)(2)(H).

Furthermore, permitting allotment holders to market sugar processed from imported sugar beets, thick juice, or other intermediate beet products without counting such sugar against allotment limitations cannot be reconciled with the plain language of the statute. The 2002 Act specifically provides that “no processor of sugar beets or sugarcane shall market a quantity of sugar in excess of the allocation established for such processor, except to enable another processor to fulfill an allocation established for such other processor or to facilitate the exportation of such sugar.” 7 U.S.C. § 1359bb(c)(1); *see also id.* § 1359bb(c)(3) (defining marketing as “to sell or otherwise dispose of in commerce in the United States”). The Department itself has echoed this requirement in its existing regulations, which state that “[d]uring any crop year in which marketing allotments are in effect and allocated to processors, the quantity of sugar and sugar products that a processor markets shall not exceed the quantity of the processor’s allocation.” 7 C.F.R. § 1435.307(d). The plain language of these provisions applies categorically to *all* sales or disposals for human consumption in the United States by a sugar beet processor with an allotment.

The 2002 Act’s language regarding application of allotment limitations further confirms that sugar processed by allotment holders from foreign-grown sugar beets must be counted against such limitations. Specifically, Section 1359bb directs the Secretary to establish allotments limiting “marketing by processors of sugar processed . . . from *domestically produced* sugarcane,” while limiting “marketing by processors of sugar processed from sugar beets”

without regard for where the beets were grown. 7 U.S.C. § 1359bb(b)(1) (emphasis added).^{7/}

This language is a deliberate change from previous allotment programs, which had focused solely on sugars derived from domestically grown sugar beets and sugar cane,^{8/} in recognition of the fact that an existing sugar beet processor was producing sugar from Canadian sugar beets prior to enactment of the 2002 Act. That processor has properly counted all such sugar against its allotment limitations since 2002.

The express statutory language and underlying congressional intent to apply allotment limitations to sugar that allotment holders are processing in the United States from imported sugar beets extends equally to sugar that they are processing in the United States from imported

^{7/} Similarly, Section 1359cc provides that “[e]ach marketing allotment for beet sugar established under this section may only be filled with sugar *domestically processed* from sugar beets,” while “[e]ach marketing allotment for cane sugar established under this section may only be filled with sugar processed from *domestically grown* sugarcane.” *Id.* § 1359cc(d)(2) (emphasis added). Again, the Department has echoed this language in its regulations, which confirm that the allotment program applies to “[p]rocessor marketings of sugar *domestically processed* from sugar beets” and “[p]rocessor marketings of sugar processed from *domestically produced* sugarcane.” 7 C.F.R. § 1435.300(a) (emphasis added); *see also* 7 C.F.R. § 1435.302 (providing for the establishment of “allocations for processors marketing sugar *domestically processed* from sugar beets and *domestically produced* sugarcane” (emphasis added)). They also direct that sugar beet processors “may only use beet sugar to fill such allocation” and that sugar cane processors “may only use cane sugar to fill such an allocation.” 7 C.F.R. § 1435.305(c). Since “beet sugar” is defined as “sugar that is processed directly or indirectly from sugar beets or sugar beet molasses,” while “cane sugar” is defined as “sugar derived directly or indirectly from sugarcane *produced in the United States*,” this rule again confirms that domestically processed sugar derived from sugar beets is subject to allotment limitations without regard for whether the beets themselves were grown in the United States. 7 C.F.R. § 1435.2 (emphasis added).

^{8/} *See* Pub. L. No. 102-237, § 111, 105 Stat. 1818 (Dec. 13, 1991); Pub. L. No. 101-624, § 902, 104 Stat. 3359 (Nov. 28, 1990).

thick juice or other imported intermediate products. In both cases, the allotment holders are marketing “sugar processed from sugar beets” that were grown in Canada and imported into the United States in forms that are not subject to significant duties under the tariff-rate quotas for sugar contained in the Harmonized Tariff Schedule of the United States. And in both cases, marketing of the resulting sugar, if not subject to allotment limitations, would increase the overall domestic sugar supply, thereby driving down prices; increasing the sellers’ sales volume, market share, and revenues at the expense of their competitors; and undercutting the integrity and fairness of the marketing allotment system.

In short, those who oppose counting sugar produced and marketed by an allotment holder in the United States from imported thick juice against that allotment holders’ limits would turn a shield that was designed to protect domestic processors and to ensure that they receive a fair and sustainable price for the sugar they produce into a sword that favors one beet sugar allotment holder at the expense of all other allotment holders. The CCC should end this gamesmanship by issuing a rule that confirms that sugar beet processors with marketing allotments must count marketings of sugar they derive from imported sugar beets, thick juice, or other intermediate beet products, against their allotment limitations to effectuate the plain language of the 2002 Act and protect the integrity of the allotment system as Congress intended.

**Stopping Circumvention of the Allotment System Would Increase Its Fairness and Equity
Without Raising Any Complications for the Broader Program**

None of the concerns expressed in the questions posed by the CCC in its Advanced Notice of Proposed Rulemaking ("ANPR"), 71 Fed. Reg. 53,051 (Sept. 8, 2006), militates against modifying current regulations to clarify that marketings of sugar produced by an allotment holder from imported thick juice should count against that producer's allotment. Indeed, as discussed above, the current regulations already preclude the type of circumvention at issue here. Even if CCC concludes that it must change its regulations to clarify the anticircumvention rules, the regulations can be easily clarified without substantial revision, without calling the CCC's *Cargill* decision into question, without creating any inequity, and without raising any serious question under the United States' World Trade Organization and North American Free Trade Agreement obligations. To fail to count marketings of sugar produced by a sugar beet processor with a marketing allotment from imported thick juice against that processor's allotment, however, would undermine the allotment program and thwart Congress' manifest intent.

1. Imported "thick juice" is a source of sugar in the United States and, thus, CCC reduces the Overall Allotment Quantity (OAQ) determined under the 1938 Act to account for this supply. If such imports were curtailed in total, CCC would increase the OAQ and divide the OAQ between the sugarcane and sugar beet sectors as provided in that Act; sugarcane processors, in aggregate, would receive 45.65 percent of this increase and sugar beet processors 54.35 percent. Is this a desirable result?

Yes.

Sugar derived from imported thick juice is increasing the overall supply of sugar in the United States, thus driving down prices for processors of sugar beets and processors of sugarcane alike. Moreover, all processors' allocations would rise as a benefit from curtailing such imports. Even if that were not the case, Congress has already made a judgment as to the desirable allocation between the sugar beet and sugarcane industries by mandating what percentage of the OAQ is to be filled by each type of sugar. Counting sales of sugar produced from imported thick juice against an allotment holder's allocation would simply effectuate congressional intent and ensure that the allotment program is not undermined by permitting sugar beet processors with marketing allotments to sell sugar outside their allotments. Indeed, if sales of sugar produced from imported thick juice are not counted against the domestic processor's allotment, any domestic processor could, in effect, modify its allotment without CCC concurrence by simply shipping beets to Canada (or purchasing Canadian beets), producing thick juice from those beets, and then completing the processing of the thick juice into refined sugar in the United States. Such a result is far less desirable than an increase in the OAQ.

2. Is it equitable to regulate the sale of sugar derived from imported sugar beet thick juice, when USDA is prohibited, by statute, from regulating the sale of refined sugar derived from its cane counterparts, cane syrup, and cane molasses?

Yes.

As the ANPR recognizes, Congress draws a distinction between "sugar processed from sugar beets"—which applies regardless of whether the beets were grown or initially processed

domestically—and “sugar processed . . . from domestically produced sugarcane”—which applies only to sugarcane grown domestically. 7 U.S.C. § 1359bb(b)(1). The statutory distinction in the treatment of domestically produced beet and cane sugar reflects differences in the pattern of production. Sugarcane processing is divided into two distinct stages: First, cane millers process sugarcane into raw cane sugar. Second, refiners process the raw cane sugar into refined sugar and sugar products. Marketing allotments are applied exclusively to cane millers. Cane refiners must purchase raw sugar from domestic millers (who are subject to allotment limitations) or must purchase imported raw cane sugar (which is subject to a tariff-rate quota (“TRQ”)).

Therefore, the inputs into sugar cane refineries should be regulated either by marketing allotment or by TRQ. In contrast, beet sugar is normally produced in a single, continuous process from sugar beets to refined sugar. Marketing allotments are applied to sugar beet processors. Neither imported sugar beets nor imported thick juice is currently subject to TRQ because, historically, there has been no significant trade in beets or thick juice. Marketings of sugar produced by an allotment holder from domestic and imported beets is subject to allotment. At the moment, sugar produced by an allotment holder from imported thick juice is not subject to allotment. As a result, a loophole exists under current practice that has permitted at least one domestic producer of beet sugar that holds an allotment to circumvent the allotment rules. It would be inequitable, and contrary to congressional intent, to allow this circumvention of the sugar beet allotment rules to continue.

To the best of Coalition members' knowledge, parties who currently may be engaged in marketing of sugar derived from imported cane syrup and imported cane molasses are not affiliated with holders of allotments under the 2002 Act. These imports may be used in circumvention schemes and the Coalition welcomes the Department's interest in that problem. While such circumvention schemes can obviously undermine the marketing allotment system established by the 2002 Act, they do not frustrate Congress's intent to ensure fair and equitable treatment of allotment holders. Permitting one allotment holder to circumvent its allotment by marketing sugar made from imported thick juice outside that allotment is not fair or equitable and it does frustrate the intent of Congress.

3. As opposed to a total curtailment of the importation of "thick juice," CCC believes that it is more likely that any entity that is currently engaged in such imports and further processing will avail themselves of the provisions of the 1938 Act that allow a new entrant to the market for sugar derived from sugar beets to obtain a marketing allocation based upon their actions in processing this product over the past several years. This means that the sugar beet sector's 54.35 percent of the OAQ would be distributed among a larger number of beet processors. Previously, CCC has denied an entity's request for an allocation under these new entrant provisions based upon the determination by CCC that the entity was not processing sugar beets or related products, but simply engaged in the further refinement of sugar. Is this a desirable result?

Requiring a sugar beet processor who is a marketing allotment holder to count against its allotment all disposals of sugar it produces from imported inputs would not require CCC to re-examine its decision in the *Cargill* case. Rather, the *Cargill* decision simply requires that a sugar beet processor who is a marketing allotment holder count against its allotment all marketings of sugar it produces from domestic inputs. Rather than being in conflict, the two principles both

promote the integrity of the 2002 Act by ensuring that all domestic marketings of sugar produced using processing capacity that is subject to an allotment limitation count against the assigned allocation.

Indeed, the principal overlap between the question raised here and that raised in *Cargill* is that both matters involve efforts to circumvent the allotment rules. In *Cargill*, the Department correctly concluded that, where an existing allotment holder creates thick juice from domestically grown sugar beets and then transfers that thick juice to a non-allotment holder for final processing, that transfer of thick juice should be counted against the allotment holder's limitations and the downstream processor does not become eligible for an allotment by further processing a product that has already been counted against an existing marketing allotment. A contrary ruling, the Judicial Officer concluded would thwart Congress's expressed intent to create a process that is "fair and open and provides some certainty and predictability to the industry" by allowing allotment holders to create additional sugar production and sales out of capacity that is already subject to allotment ceilings. *In re Cargill, Inc.*, SMA Docket No. 03-0002 (Dec. 8, 2005) (quoting Sen. Conrad).

This principle can and should be extended to allotment holders' sales of sugar processed from imported thick juice, in order to ensure that the marketing allotment system remains "fair and open and provides some certainty and predictability to the industry." The fact that the Department considers thick juice produced from domestic beets by an allotment holder to be

“sugar” for purposes of the loan program^{9/} does not mean that sugar produced by an allotment holder from imported thick juice is not “sugar” for purposes of marketing allotments. It is clear the Department can protect the integrity of the allotment program by counting marketings of domestic thick juice and marketings of sugar made from imported thick juice equally as marketings against an allotment holder’s allocation.^{10/}

4. To the extent a rationale is developed by CCC, should CCC regulate the sale of sugar derived from imported sugar beet products, including thick juice, by considering these products to be a feedstock in the production of sugar and not a type of sugar as currently provided for in 7 CFR 1435.2? By making this change, sugar derived from these imported products would be charged against the processor's allocation when the product is marketed. But, domestically produced thick juice has been considered to be sugar for purposes of administration of the domestic sugar allotment program by CCC and not a feedstock. Accordingly, is there a rational basis to consider imported thick juice to be a feedstock and to consider domestically-produced thick juice as sugar, and is such rationale consistent with the obligations of the United States under WTO and NAFTA commitments, specifically those WTO provisions dealing with issues of national treatment?

^{9/} See 7 U.S.C. § 7272(a), (b); 7 C.F.R. § 1435.100(c).

^{10/} Although the ANPR states that the “CCC has viewed the first sale of sugar that is contained in thick juice produced by a Canadian processor as occurring when the product is sold in Canada to a buyer,” 71 Fed. Reg. at 53,052, such an interpretation does not preclude the Department from counting downstream sales of refined products against allotment holders’ limits. The Secretary has authority to “include sugar products, whose majority content is sucrose for human consumption, *derived from sugarcane, sugar beets, molasses, or sugar* in the allotments . . . if the Secretary determines it to be appropriate for purposes of this part.” 7 U.S.C. § 1359bb(b)(2) (emphasis added). The regulations already provide that “[d]uring any crop year in which marketing allotments are in effect and allocated to processors, the quantity of sugar and sugar products that a processor markets shall not exceed the quantity of the processors allocation.” 7 C.F.R. § 1435.307(d).

The term “feedstock” is not currently used in 7 C.F.R. Pt. 1435 and the Coalition does not believe that it is necessary to create a new classification under the sugar program. The Department’s prior classification of domestic thick juice as a form of “sugar” does not need to be revisited to address the circumvention at issue here. As for United States’ obligations under trade agreements, the Coalition’s proposal would *promote* national treatment and consistency under the 2002 Act. Imported thick juice and domestic thick juice will be treated exactly the same when they are sold to allotment holders: in both cases, marketings of sugar produced by an allotment holder in the United States from thick juice — whether domestic or imported — would be subject to the allotment rules. This is precisely what occurs when an allotment holder processes both domestic and imported sugar beets: all marketings of sugar produced by that allotment holder in the United States from sugar beets — whether domestic or imported — are subject to the allotment rules.

5. Should CCC redefine both domestically-produced and imported thick juice to be a feedstock in the production of sugar and not sugar for purposes of administering the 1938 Act? CCC believes, that under this approach, entities that further refine thick juice will avail themselves of the new entrant provisions of the domestic sugar allotment program in order to obtain a marketing allocation. This would likely diminish the marketing allocations of existing holders of marketing allocations because the quantity of domestic thick juice is significantly larger than the quantities of imported thick juice. Furthermore, this approach of changing the definition of domestically-produced thick juice from a type of sugar to a feedstock used in the production of sugar could be problematic in that CCC may need to adjust the marketing history of some of, or all of, those entities that produce refined beet sugar.

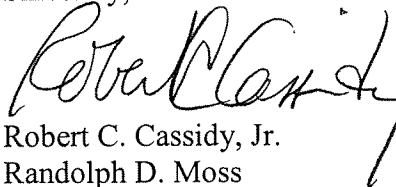
Director, Dairy and Sweeteners Analysis Group
Farm Service Agency
United States Department of Agriculture
November 7, 2006
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The Department's prior classification of domestic thick juice as a form of "sugar" does not need to be revisited, and allotment holders' marketing histories do not need to be revised, to address the circumvention behavior at issue here. To our knowledge, during the historic period on which allotments under the 2002 Act must be based, no sugar beet processor who has an allotment processed imported thick juice. For this reason, no adjustment need be made in allotments. To be treated as a sugar beet processor entitled to an allotment, a new entrant would need to satisfy all the statutory and regulatory requirements – including having the necessary facilities to process its sugar beets into sugar. The Coalition is not aware of any person who can meet these requirements who does not already have a marketing allotment.

Conclusion

For the foregoing reasons, the Coalition strongly urges the Department to issue a notice of proposed rulemaking to clarify and confirm that sugar beet processors with marketing allotments must count sugar they process from imported sugar beets, thick juice, or other intermediate beet products against their allotment limitations pursuant to the 2002 Act.

Sincerely,



Robert C. Cassidy, Jr.
Randolph D. Moss
Kelly Thompson Cochran

Enclosure

The Anticircumvention Coalition Members

American Sugar Cane League

Florida Sugar Cane League

Gay & Robinson, Inc.

Hawaiian Commercial & Sugar Company

Rio Grand Valley Sugar Growers

Sugar Cane Growers Cooperative of Florida

U.S. Beet Sugar Anticircumvention Coalition, which is composed of the following companies:

Amalgamated Sugar Company LLC

American Crystal Sugar Company

Michigan Sugar Company

Minn-Dak Farmers Cooperative

Sidney Sugars Incorporated

Western Sugar Cooperative

M.A. Patout & Son Ltd.

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PRODUCERS OF
SUGAR - MOLASSES - SYRUP

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ESTABLISHED 1825

November 7, 2006

Director, Dairy and Sweeteners Analysis Group
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United States Department of Agriculture
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Washington, D.C. 20250-0516

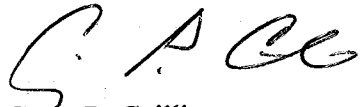
Re: Advance Notice of Proposed Rulemaking Concerning Sugar Program Definitions

To Whom It May Concern:

I am writing on behalf of M. A. Patout & Son, Ltd. to endorse the letter submitted recently by the Anticircumvention Coalition in response to the Department's recent Advanced Notice of Proposed Rulemaking, 71 Fed. Reg. 53,051 (Sept. 8, 2006). The failure of some sugar marketing allotment holders to count sugar they have processed and marketed from imported sugar beet "thick juice" against their allotment limitations is a concern to the entire sugar industry, both sugar beet and sugar cane producers alike. As a member of the Anticircumvention Coalition, M. A. Patout & Son, Ltd. believes that Department action is urgently needed to enforce the marketing allotment statutes as Congress intended.

Sincerely,

M. A. PATOUT & SON, LTD.



Craig P. Caillier
President/C.E.O.



Cajun Sugar Cooperative, Inc.

Manufacturers of Raw Sugar and Black Strap Molasses
P.O. Box 13940
New Iberia, Louisiana 70562-3940



FRANK MINVIELLE, PRESIDENT
ANTHONY JUDICE, V. PRESIDENT
DONALD SEGURA, SECRETARY
ALFRED LANDRY, TREASURER
GRADY BUBENZER, DIRECTOR
RICKY JUDICE, DIRECTOR

RAYMOND HEBERT, DIRECTOR
KERRY FREYOU, DIRECTOR
EDMOND BROUSSARD, DIRECTOR
BURT OUBRE, DIRECTOR
KEVEN GONSOULIN, DIRECTOR
TOMMY THIBODEAUX, GEN. MGR.

November 6, 2006

**DIRECTOR, DAIRY AND SWEETENERS ANALYSIS GROUP
FARM SERVICE AGENCY**

**UNITED STATES DEPARTMENT OF AGRICULTURE
1400 INDEPENDENCE AVENUE, S.W., STOP 0516,
WASHINGTON, D.C. 20250-0516**

**Reference: ADVANCE NOTICE OF PROPOSED RULEMAKING
CONCERNING SUGAR PROGRAM DEFINITIONS**

TO WHOM IT MAY CONCERN:

I AM WRITING ON BEHALF OF CAJUN SUGAR COOPERATIVE OF NEW IBERIA, LA. TO ENDORSE THE LETTER SUBMITTED TODAY BY THE ANTICIRCUMVENTION COALITION IN RESPONSE TO THE DEPARTMENT'S RECENT ADVANCED NOTICE OF THE PROPOSED RULEMAKING, 71 FED. REF. 53,051 (SEPT. 8, 2006). THE FAILURE OF SOME SUGAR MARKETING ALLOTMENT HOLDERS TO COUNT SUGAR THEY HAVE PROCESSED AND MARKETED FROM IMPORTED SUGAR BEET "THICK JUICE" AGAINST THEIR ALLOTMENT LIMITATIONS IS A CONCERN TO THE ENTIRE SUGAR INDUSTRY, BOTH SUGAR BEET AND SUGARCANE PRODUCERS ALIKE. AS A MEMBER OF THE ANTICIRCUMVENTION COALITION, CAJUN SUGAR COOPERATIVE BELIEVES THAT DEPARTMENT ACTION IS URGENTLY NEEDED TO ENFORCE THE MARKETING ALLOTMENT STATUTES AS CONGRESS INTENDED.

I REMAIN,

TOMMY THIBODEAUX, GM





**American Crystal
Sugar Company**

November 8, 2006

Director, Dairy and Sweeteners Analysis Group
Farm Service Agency
U.S. Department of Agriculture
14th and Independence Avenue, S.W., STOP 0516
Washington, DC 20250-0516

Re: Advance Notice of Proposed Rulemaking Concerning Sugar Program Definitions

To Whom It May Concern:

I am writing on behalf of American Crystal Sugar Company to convey support for the letter submitted by the Anticircumvention Coalition in response to the U.S. Department of Agriculture's Advanced Notice of Proposed Rulemaking, 71 Fed. Reg. 53,051 (Sept. 8, 2006) regarding Sugar Program Definitions. The failure of some sugar marketing allotment holders to count sugar they have processed and marketed from imported sugar beet "thick juice" against their allotment limitations is a concern to the entire sugar industry -- sugar beet and sugarcane growers, beet processors, cane millers and cane refiners. As a member of the Anticircumvention Coalition, American Crystal Sugar Company believes that USDA action is urgently needed to enforce the marketing allotment statutes as Congress intended by stopping circumvention by allotment holders who process imported thick juice.

Sincerely,

A handwritten signature in black ink that reads "James J. Horvath".

James J. Horvath
President & CEO



American Crystal
Sugar Company

November 8, 2006

Director, Dairy and Sweeteners Analysis Group
Farm Service Agency
U.S. Department of Agriculture
14th and Independence Avenue, S.W., STOP 0516
Washington, DC 20250-0516

Re: Advance Notice` of Proposed Rulemaking Concerning Sugar Program Definitions

To Whom It May Concern:

I am writing on behalf of Sidney Sugars, Incorporated to convey support for the letter submitted by the Anticircumvention Coalition in response to the U.S. Department of Agriculture's Advanced Notice of Proposed Rulemaking, 71 Fed. Reg. 53,051 (Sept. 8, 2006) regarding Sugar Program Definitions. The failure of some sugar marketing allotment holders to count sugar they have processed and marketed from imported sugar beet "thick juice" against their allotment limitations is a concern to the entire sugar industry -- sugar beet and sugarcane growers, beet processors, cane millers and cane refiners. As a member of the Anticircumvention Coalition, Sidney Sugars, Incorporated believes that USDA action is urgently needed to enforce the marketing allotment statutes as Congress intended by stopping circumvention by allotment holders who process imported thick juice.

Sincerely,

A handwritten signature in cursive script that reads "Joseph J. Talley".

Joseph J. Talley
Chief Operating Officer

GLADES SUGAR HOUSE

Sugar Cane Growers Cooperative of Florida



POST OFFICE BOX 666

33430-0666

BELLE GLADE, FLORIDA

VIA FEDERAL EXPRESS
VIA FACSIMILE

November 6, 2006

Director, Dairy and Sweeteners Analysis Group
Farm Service Agency
United States Department of Agriculture
1400 Independence Avenue, S.W., STOP 0516
Washington, D.C. 20250-0516

Re: Advance Notice of Proposed Rulemaking Concerning Sugar Program Definitions

To Whom It May Concern:

I am writing on behalf of the Sugar Cane Growers Cooperative of Florida to endorse the letter submitted today by the Anti-circumvention Coalition in response to the department's recent Advanced Notice of Proposed Rulemaking, 71 Fed. Reg. 53,051 (Sept. 8, 2006). The failure of some sugar marketing allotment holders to count sugar they have processed and marketed from imported sugar beet "thick juice" against their allotment limitations is a concern to the entire sugar industry, both sugar beet and sugarcane producers alike. As a member of the Anti-circumvention Coalition, the Sugar Cane Growers Cooperative of Florida believes that Department action is urgently needed to enforce the marketing allotment statutes as Congress intended.

Sincerely,

A handwritten signature in black ink, appearing to read "George H. Wedgworth". The signature is written in a cursive style with a long horizontal line extending from the end.

George H. Wedgworth
President & C.E.O.

GHW:TC:swd

G:\Shelley\2006AGHW\letters\GHW 10-07-06 to USDA.doc

Telephone (561) 996-5556

Fax No. (561) 996-4755

Domino Foods, Inc. **Domino**

November 7, 2006

Director, Dairy and Sweeteners Analysis Group
Farm Service Agency
United States Department of Agriculture
1400 Independence Avenue, S.W., STOP 0516,
Washington, D.C. 20250-0516

Re: Advance Notice of Proposed Rulemaking Concerning Sugar Program Definitions

To Whom It May Concern:

I am writing on behalf of Domino Foods, Inc. to endorse the letter submitted today by the Anticircumvention Coalition in response to the Department's recent Advanced Notice of Proposed Rulemaking, 71 Fed. Reg. 53,051 (Sept. 8, 2006). The failure of some sugar marketing allotment holders to count sugar they have processed and marketed from imported sugar beet "thick juice" against their allotment limitations is a concern to the entire sugar industry, both sugar beet and sugarcane producers alike. As a member of the Anticircumvention Coalition, Domino Foods, Inc. believes that Department action is urgently needed to enforce the marketing allotment statutes as Congress intended.

Sincerely,

Brian O'Malley
President



South Louisiana Sugars Cooperative, Inc.

P. O. Box 67 • 5354 St. James Coop. Street

St. James, LA 70086

Telephone (225) 265-4056 • Fax (225) 265-4060

November 6, 2006

Director, Dairy and Sweeteners Analysis Group
Farm Service Agency
United States Department of Agriculture
1400 Independence Avenue, S.W., Stop 0516
Washington, D.C. 20250-0516

RE: Advance Notice of Proposed Rulemaking Concerning Sugar Program Definitions

To Whom It May Concern:

I am writing on behalf of South Louisiana Sugars Cooperative, Inc. to endorse the letter submitted today by the Anticircumvention Coalition in response to the Department's recent Advanced Notice of Proposed Rulemaking, 71 Fed. Reg. 53,051 (Sept. 8, 2006). The failure of some sugar marketing allotment holders to count sugar they have processed and marketed from imported sugar beet "thick juice" against their allotment limitations is a concern to the entire sugar industry, both sugar beet and sugarcane producers alike. As a member of the Anticircumvention Coalition, South Louisiana Sugars Cooperative, Inc. believes that Department action is urgently needed to enforce the marketing allotment statutes as Congress intended.

Sincerely,

South Louisiana Sugars Cooperative, Inc.

A handwritten signature in blue ink, appearing to read "J.R. Hulett", is written over a printed name and title. The signature is fluid and cursive, with a large loop at the end.

J.R. Hulett
General Manager



November 7, 2006

Director, Dairy and Sweeteners Analysis Group
Farm Service Agency
United States Department of Agriculture
1400 Independence Avenue, S.W., STOP 0516,
Washington, D.C. 20250-0516

Re: Advance Notice of Proposed Rulemaking Concerning Sugar Program Definitions

Via Facsimile 202-690-1480

To Whom It May Concern:

I am writing on behalf of Florida Crystals Corporation to endorse the letter submitted today by the Anticircumvention Coalition in response to the Department's recent Advanced Notice of Proposed Rulemaking, 71 Fed. Reg. 53,051 (Sept. 8, 2006) about Sugar Program Definitions. The failure of some sugar marketing allotment holders to count sugar they have processed and marketed from imported sugar beet "thick juice" against their allotment limitations is a concern to the entire sugar industry -- sugar beet and sugarcane growers, beet processors, cane millers and cane refiners. As a member of the Anticircumvention Coalition, Florida Crystals Corporation believes that Department action is urgently needed to enforce the marketing allotment statutes as Congress intended by stopping circumvention by allotment holders who process imported thick juice.

Sincerely,

A handwritten signature in black ink that reads "Donald W. Carson".

Donald W. Carson
Executive Vice President

GAY & ROBINSON, INC.

P.O. BOX 156 KAUMAKANI, HAWAII 96747-0156
PHONE: (808) 335-3133 FAX: (808) 335-6424

November 7, 2006

Director, Dairy and Sweeteners Analysis Group
Farm Service Agency
United States Department of Agriculture
1400 Independence Avenue, S.W., STOP 0516,
Washington, D.C. 20250-0516

Re: Advance Notice of Proposed Rulemaking Concerning Sugar Program Definitions

To Whom It May Concern:

I am writing on behalf of Gay & Robinson, Inc. to endorse the letter submitted today by the Anti-circumvention Coalition in response to the Department's recent Advanced Notice of Proposed Rulemaking, 71 Fed. Reg. 53,051 (Sept. 8, 2006) about Sugar Program Definitions. The failure of some sugar marketing allotment holders to count sugar they have processed and marketed from imported sugar beet "thick juice" against their allotment limitations is a concern to the entire sugar industry.

Sugar beet and sugarcane growers, beet processors, cane millers and cane refiners who play by the rules are being damaged by those who are circumventing the rules. As a member of the Anti-circumvention Coalition, Gay & Robinson, Inc. believes that Department action is urgently needed to enforce the marketing allotment statutes as Congress intended by stopping circumvention by allotment holders who process imported thick juice.

Sincerely,



E. Alan Kennett

President & General Manager



W. R. COWLEY SUGAR HOUSE

RIO GRANDE VALLEY SUGAR GROWERS, INC.

(956) 636-1411 • FAX (956) 636-1449 • P.O. BOX 459 • SANTA ROSA, TEXAS 78593-0459

STEVE BEARDEN
President
Chief Executive Officer

November 7, 2006

Director, Dairy and Sweeteners Analysis Group
Farm Service Agency
United States Department of Agriculture
1400 Independence Avenue, S.W., STOP 0516,
Washington, D.C. 20250-0516

Re: Advance Notice of Proposed Rulemaking Concerning Sugar Program
Definitions

To Whom It May Concern:

I am writing on behalf of Rio Grande Valley Sugar Growers, Inc. (RGVSGI) to endorse the letter submitted today by the Anticircumvention Coalition in response to the Department's recent Advanced Notice of Proposed Rulemaking, 71 Fed. Reg. 53,051 (Sept. 8, 2006). The failure of some sugar marketing allotment holders to count sugar they have processed and marketed from imported sugar beet "thick juice" against their allotment limitations is a concern to the entire sugar industry, both sugar beet and sugarcane producers alike. As a member of the Anticircumvention Coalition, RGVSGI believes that Department action is urgently needed to enforce the marketing allotment statutes as Congress intended.

Sincerely,

Steve B. Bearden
President/CEO

SBB/myr



November 7, 2006

Director, Dairy and Sweeteners Analysis Group
Farm Service Agency
United States Department of Agriculture
1400 Independence Avenue, S.W., STOP 0516
Washington, DC 20250-0516

RE: Advance of Notice of Proposed Rulemaking Concerning Sugar Program
Definitions

To Whom It May Concern:

I am writing on behalf of Minn-Dak Farmers Cooperative (MDFC) in support of the letter submitted today by the Anticircumvention Coalition in response to the Department's recent Advance Notice of Proposed Rulemaking, 71 Fed. Reg. 53,051 (Sept. 8, 2006) about Sugar Program Definitions. The failure of some sugar marketing allotment holders to count sugar they have processed and marketed from imported sugarbeet "thick juice" against their allotment limitations is of significant concern to our company and our industry. As a member of the Anticircumvention Coalition, MDFC believes Department action is urgently needed to enforce the marketing allotment statutes as Congress intended by stopping circumvention by allotment holders who process imported thick juice. The submission by the Anticircumvention Coalition captures well the reasons for counting sugar from imported thick juice against a company's sugar allocation.

Sincerely,

David H. Roche,
President & CEO





Louisiana Sugar Cane Cooperative, Inc.

6092 Resweber Hwy. • St. Martinville, LA 70582
Phone: (337) 394-3255 Fax: (337) 394-3787

November 7, 2006

Director, Dairy and Sweeteners Analysis Group
Farm Service Agency
United States Department of Agriculture
1400 Independence Avenue, S.W., STOP 0516,
Washington, D.C. 20250-0516

Re: Advance Notice of Proposed Rulemaking Concerning Sugar Program Definitions

To Whom It May Concern:

I am writing on behalf of Louisiana Sugar Cane Cooperative, Inc. of St. Martinville, La. to endorse the letter submitted today by the Anticircumvention Coalition in response to the Department's recent Advanced Notice of Proposed Rulemaking, 71 Fed. Reg. 53,051 (Sept. 8, 2006). The failure of some sugar marketing allotment holders to count sugar they have processed and marketed from imported sugar beet "thick juice" against their allotment limitations is a concern to the entire sugar industry, both sugar beet and sugarcane producers alike. As a member of the Anticircumvention Coalition, Louisiana Sugar Cane Cooperative believes that Department action is urgently needed to enforce the marketing allotment statutes as Congress intended.

Sincerely,

Michael Comb

General Manager

US1DOCS 5900984v2

November 11, 2006
Director, Dairy and Sweeteners Analysis Group
Farm Service Agency
United States Department of Agriculture
1400 Independence Avenue, S.W., STOP 0516,
Washington, D.C. 20250-0516
Re: Advance Notice of Proposed Rulemaking Concerning Sugar Program Definitions

To Whom It May Concern:

I am writing on behalf of Florida Sugar Cane League, Inc, Rio Grande Valley Sugar Growers, Inc, and the Hawaiian Sugarcane Farmers to endorse the letter submitted today by the Anticircumvention Coalition in response to the Department's recent Advanced Notice of Proposed Rulemaking, 71 Fed. Reg. 53,051 (Sept. 8, 2006) about Sugar Program Definitions. The failure of some sugar marketing allotment holders to count sugar they have processed and marketed from imported sugar beet "thick juice" against their allotment limitations is a concern to the entire sugar industry -- sugar beet and sugarcane growers, beet processors, cane millers and cane refiners. As a member of the Anticircumvention Coalition, we believe that Department action is urgently needed to enforce the marketing allotment statutes as Congress intended by stopping circumvention by allotment holders who process imported thick juice .

Sincerely,

Dalton Yancey

Florida, Texas & Hawaiian Sugarcane Farmers
1301 Pennsylvania Ave, NW - Ste 401
Washington, DC 20004

Phone 202 785 4070
Fax 202 659 8581
DFLGator@AOL.com

American Sugar Refining, Inc.

November 7, 2006

Director, Dairy Sweeteners Analysis Group
Farm Service Agency
United States Department of Agriculture
1400 Independence Avenue, S.W., STOP 0516,
Washington, D.C. 20250 – 0516

Re: Advance Notice of Proposed Rulemaking Concerning Sugar Program Definitions

To Whom It May Concern:

I am writing on behalf of American Sugar Refining, Inc. to endorse the letter submitted today by the Anticircumvention Coalition in response to the Department's recent Advanced Notice of Proposed Rulemaking, 71.Fed. Re. 53,051 (Sept. 8, 2006) about Sugar Program Definitions. The failure of some domestic sugar marketing allotment holders to count sugar which they have processed and marketed from imported sugar beet "thick juice" against their allotment limitation is a concern to the entire sugar industry - sugar beet and sugarcane growers, beet processors, cane millers and cane refiners. As a member of the Anticircumvention Coalition, American Sugar Refining, Inc. believes that Department action is urgently needed to enforce the marketing allotment statutes as Congress intended by stopping circumvention by allotment holders who process imported thick juice. The processing and subsequent sale of sugar beet "thick juice" in the United States and failure to count this against the marketer's allotment limitations is contrary to the spirit and intent of the regulations. This practice places the rest of the domestic sugar industry at an unfair competitive disadvantage and needs to be corrected immediately.

Sincerely,



Donald Brainard
Vice President, Human Resources

DB/mg



1 Federal Street, Yonkers, NY 10702
Tel: (914) 963-2400 Fax: 963-1030

American Sugar Refining, Inc.
One North Clematis Street
Suite 200
West Palm Beach, FL 33401

November 7, 2006

Director, Dairy and Sweeteners Analysis Group
Farm Service Agency
United States Department of Agriculture
1400 Independence Avenue, S.W., STOP 0516,
Washington, D.C. 20250-0516

Re: Advance Notice of Proposed Rulemaking Concerning Sugar Program Definitions

Via Facsimile 202-690-1480

To Whom It May Concern:

I am writing on behalf of American Sugar Refining, Inc. to endorse the letter submitted today by the Anticircumvention Coalition in response to the Department's recent Advanced Notice of Proposed Rulemaking, 71 Fed. Reg. 53,051 (Sept. 8, 2006) about Sugar Program Definitions. The failure of some sugar marketing allotment holders to count sugar they have processed and marketed from imported sugar beet "thick juice" against their allotment limitations is a concern to the entire sugar industry -- sugar beet and sugarcane growers, beet processors, cane millers and cane refiners. As a member of the Anticircumvention Coalition, American Sugar Refining, Inc. believes that Department action is urgently needed to enforce the marketing allotment statutes as Congress intended by stopping circumvention by allotment holders who process imported thick juice.

Sincerely,



Luis J. Fernandez
Co-President



Craig Caillier
President

Jessie Breaux
Vice-President

James H. Simon
General Manager

November 2, 2006

Director
Dairy and Sweeteners Analysis Group
Farm Service Agency
United States Department of Agriculture
STOP 0516
1400 Independence Avenue, S.W.
Washington, D.C. 20250-0516

Re: Advance Notice of Proposed Rulemaking Concerning Sugar Program Definitions

To Whom It May Concern:

The American Sugar Cane League as a member of the Anticircumvention Coalition, an ad hoc group representing the great majority of the domestic sugar producing industry, supports the coalition's comments and urge the Commodity Credit Corporation ("CCC") to issue a rule confirming that all marketings in the United States of sugar by sugar beet processors who hold marketing allotments under the Agricultural Adjustment Act of 1938 must be counted against those holders' allotment limitations, regardless of whether the raw materials used to produce such sugar are derived from foreign or domestic sources.

The American Sugar Cane League represents all of the sugar cane processors in Louisiana and over 92 percent of our state's producers.

Sincerely,

James H. Simon
General Manager

American Sugar Cane League Of The U.S.A., Inc.

Mailing Address:
P. O. Drawer 938
Thibodaux, LA 70302-0938

206 East Bayou Rd.
Thibodaux, LA 70301

Phone: (985) 448-3707
Fax: (985) 448-3722
Web site: www.amscl.org



Robert E. Coker
Senior Vice President
Public Affairs

111 Ponce de Leon Avenue
Clewiston, FL 33440
Ph: 863-902-2461

November 14, 2006

Director
Dairy and Sweeteners Analysis Group
Farm Services Agency
U.S. Department of Agriculture
1400 Independence Avenue, SW, STOP 0516
Washington, DC 20250-0516

RE: Advance Notice of Proposed Rulemaking Concerning Sugar Program Definitions

Dear Director:

This letter is in response to the Advanced Notice of Proposed Rulemaking on Sugar Program Definitions published in the Federal Register 53,051 on September 8, 2006.

U.S. Sugar Corporation fully supports the Anticircumvention Coalition's letter in response to the USDA's proposed rulemaking. As one of the nation's largest cane sugar producers and refiners, we are deeply concerned that some sugar beet processors are not counting imported sugar beet "thick juice" against their sugar allotment limitations. This circumvention fundamentally undermines the allotment program and must not be allowed to continue.

As a member of the Anticircumvention Coalition, U.S. Sugar strongly urges the Department to take immediate action to enforce marketing allocations as intended by Congress and stop any allotment holders who circumvent the law by processing imported thick juice. This can be done by issuing a rule confirming that all marketings in the United States of sugar by sugar beet processors who hold marketing allotments under the Agricultural Adjustment Act of 1938 must be counted against those holders' allotment limitations, regardless of whether the raw materials used to produce such sugar are derived from foreign or domestic sources.

We appreciate your prompt consideration of this issue.

Sincerely,

A handwritten signature in black ink, appearing to be "R. E. Coker", written over a light blue horizontal line.

Robert E. Coker

MICHIGAN SUGAR COMPANY

Mark S. Flegenheimer
President and Chief Executive Officer

November 7, 2006

Director, Dairy and Sweeteners Analysis Group
Farm Service Agency
United States Department of Agriculture
1400 Independence Avenue, S.W., STOP 0516
Washington, D.C. 20250-0516

Via fax (202) 690-1480

Re: Advance Notice of Proposed Rulemaking Concerning Sugar Program Definitions

To Whom It May Concern:

I am writing on behalf of Michigan Sugar Company in support of the letter submitted today by the Anti-Circumvention Coalition in response to the Department's recent Advanced Notice of Proposed Rulemaking, 71 Fed. Reg. 53,051 (Sept. 8, 2006) about Sugar Program Definitions. The failure of some sugar marketing allotment holders to count sugar they have processed and marketed from imported sugar beet "thick juice" against their allotment limitations is not fair. We import beets from Canada and count the sugar we domestically produce against our allotment. Importation of beet thick juice should be treated the same. As a member of the Anti-Circumvention Coalition, Michigan Sugar Company believes that Department action is urgently needed to enforce the marketing allotment statutes as Congress intended.

Sincerely,



Mark S. Flegenheimer

/j/p



CORPORATE OFFICES
2600 S. EUCLID AVENUE, BAY CITY, MICHIGAN 48706
TELEPHONE (989) 686-0161 - DIRECT DIAL (989) 686-1549 EXT. 286
FAX (989) 686-3269

11/6/06 4:25 PM

Director, Dairy and Sweeteners Analysis Group

Farm Service Agency

By e-mail

Sugar Program Definitions: Comment on advance notice of proposed rulemaking

The advance notice of proposed rulemaking published on pages 53051-53052 of the September 8, 2006, edition of the Federal Register solicits comments on a proposal to revise regulations at 7 CFR part 1435 relating to the marketing of sugar derived from thick beet juice.

We represent producers who supply raw cane sugar to the U.S. market under a tariff-rate quota (TRQ). USDA determines the size of the quota by estimating U.S. sugar use and supply, reducing the quota as necessary to prevent a glut of supply from driving U.S. sugar prices below the targets established by law. U.S. obligations undertaken in the World Trade Organization, however, set a minimum size for the TRQ. If the TRQ is set at the minimum, and forecasts nevertheless indicate that prices may fall below mandated levels, USDA may reduce supply through allotments to sugarcane and sugar beet processors that limit the amount of sugar they may bring to the market.

Thick beet juice, which is turned into sugar, is imported solely to evade and undermine this system of supply controls. If unregulated, this added supply will inevitably depress U.S. prices, hurting domestic allotment holders who play by the rules and developing-country quota holders, who are deprived of revenue. We believe USDA has the authority to forestall this threat by ensuring that sugar derived from thick beet juice is treated as sugar nonetheless and made subject to appropriate controls, including domestic marketing allotments.

Sincerely,

For the Sugar Alliance of the Philippines

Harry Kopp

1627 K Street, NW, Suite 600

Washington, DC 20006

(202) 223-3096

hwk@harrykopp.com

For the Mauritius Sugar Syndicate:

Paul Ryberg

Ryberg and Smith, LLP

1054 31st Street NW, Suite 300

Washington, DC 20007

(202) 333-4000

Paulryberg@aol.com

For the Dominican Sugar Commission:
Robin Johnson
Balch & Bingham LLP
1275 Pennsylvania Avenue, NW, 10th floor
Washington, DC 20004
(202) 347-6000
rjohnson@balch.com

For the CBI Sugar Group:
R. Karl James
Vice President and Chairman
Sugar Association of the Caribbean
5 Trevennion Park Road
Kingston 5
Jamaica W. I.
(876) 929 - 6213
rkjjamsugar@cwjamaica.com



BALCH & BINGHAM LLP

Alabama • Georgia • Mississippi • Washington, D.C.

Robin Johnson
(202) 661-6366

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1275 Pennsylvania Avenue NW
Tenth Floor
Washington, DC 20004
(202) 347-6000
(202) 347-6001 Fax
www.balch.com

(888) 856-9542 (direct fax)
rjohnson@balch.com

November 7, 2006

BY EMAIL and FACSIMILE

Ms. Barbara Fecso
Dairy and Sweeteners Analysis Group
Farm Service Agency
United States Department of Agriculture
STOP 0516
1400 Independence Avenue, SW.
Washington, DC 20250-0516.

Re: Comments on Regulating the Marketing of Thick Beet Juice

Dear Ms. Fecso:

I am writing on behalf of The International Sugar Policy Coordinating Commission of the Dominican Republic (Dominican Sugar Commission)¹ in response to USDA's September 8, 2006, Federal Register Notice (71 Fed. Reg. 53051-53052) requesting comments on whether to revise the regulations at 7 CFR part 1435 for the purpose of regulating the marketing of sugar derived from imported beet thick juice².

¹ The International Sugar Policy Coordinating Commission of the Dominican Republic is an umbrella organization comprised of the sugar producers in the Dominican Republic. Its purpose is to communicate the views and analyses of its members on international issues that may affect the Dominican sugar industry, including Dominican sugar exports to the United States and other markets.

² "Thick beet juice" or "thick juice" as used in the Federal Register Notice refers to a product that is derived from sugar beets by concentrating purified sugar beet juice through evaporation prior to the crystallization phase in the production of refined sugar from sugar beets. Ultimately, "thick juice" is further refined and is, in most cases, refined to a point that it is considered refined sugar, for example, sugar of the type purchased in the grocery store for table use.

The September 8, 2006, Federal Register Notice seeks comments on various issues concerning the possible regulation of "thick beet juice" due to increased imports of the product from Canada and other countries. The context of the proposed revisions to 7 CFR part 1435 is that thick beet juice is defined and treated differently by USDA and the Customs Service.

The Dominican Sugar Commission wishes to advise USDA that it supports the regulation of imports of "thick beet juice" because such imports circumvent that Tariff Rate Quota (TRQ) to the detriment of traditional suppliers of raw sugar under the TRQ. Furthermore, "thick beet juice" imports harm the system of domestic marketing controls as well. The Dominican Sugar Commission strongly believes imports of "thick beet juice" should be regulated. However, in doing so the U.S. Government should be careful not impose any restrictions on the Dominican Republic's traditional exports of non-edible molasses classified under HTSUS 1703.10.50.

A. Interest of the Dominican Republic in the Integrity of the TRQ. The Dominican Republic is the largest exporter of raw sugar to the United States, holding 17.6 percent of the allocated TRQ. Clearly, the Dominican Republic is more affected than any other foreign supplier by imports that circumvent the quota. It was for this reason that the Dominican Sugar Commission worked closely with USDA and the Customs Service in the early 1980s in the United States' investigation of imports of liquid sugars and sugar-containing products from Canada.³ Again in the late 1990s the Dominican Sugar Commission supported the U.S. Governments' efforts to stop imports of "stuffed molasses", in the litigation that occurred and in legislative actions. A copy of our October 23, 2000, letter in support of S. 3116, a bill introduced by Senators John Breaux, Larry Craig and over twenty other cosponsors, designed to prevent circumvention of the sugar TRQ by imports of "stuffed molasses", is enclosed.

Increased imports of "thick beet juice" present a similar threat to the sugar quota program and to raw sugar exports from the Dominican Republic.

B. "Thick Beet Juice" and Non-Edible Cane Molasses. For purposes of regulating imports, it is essential to understand the difference between "thick beet juice" and non-edible cane molasses. "Thick beet juice" and cane molasses are two very different materials. Cane molasses are exhausted molasses from which it is almost impossible to extract more sugar while "thick beet juice" is an intermediate product in the production of beet

³ At that time the Dominican Sugar Commission advocated action under Section 22 against those imports from Canada, which were undermining the price-support program and the sugar quota. Unfortunately, Section 22 authority no longer exists.

sugar. In other words, it takes only a few more steps to go from "thick beet juice" to end up with refined beet sugar. "Thick beet juice" is currently classified by the Customs Service under HTSUS 1702.90.4000 while molasses made from cane sugar is properly classified under HTSUS 1703.10.50.

C. Tariff Misclassification of Dominican Molasses. For the past several years imports of non-edible molasses from the Dominican Republic have been subject to a tariff misclassification. Mistakes were made at the Port of San Juan, Puerto Rico, regarding the classification of non-edible cane molasses entered through that Port from the Dominican Republic, and perhaps Venezuela. Dominican molasses were misclassified as non-edible molasses made from beet sugar under HTSUS 1703.10.90. The Dominican Republic does not grow beet sugar or produce molasses from beet sugar; all the non-edible molasses the Dominican Republic exports to the United States is made from cane sugar, and is properly classified under HTSUS 1703.10.50.

This mistake in classification was brought to the attention of USTR, the International Trade Commission, and the Customs Service in July 2004, and on subsequent occasions. It appears that corrective action has finally been taken.

To emphasize, the only type of molasses exported from the Dominican Republic is the molasses from cane sugar which Central Romana Corporation, Ltd. ships to Bacardi for rum production in Puerto Rico.

D. Importance of Dominican Molasses Imports. To repeat, the correct HTS subheading for non-edible molasses made from cane sugar is 1703.10.50. In 2003 imports under this subheading were approximately \$51 million, with Guatemala being the main supplier with imports of about \$14 million. In 2004 imports under this subheading were approximately \$54 million, with Guatemala again being the main supplier with imports of about \$12 million. In 2005 imports under this subheading were approximately \$87.5 million, with Guatemala and Mexico being the main suppliers with imports of about \$19 million each. While Guatemala and Mexico are now the main suppliers of non-edible cane molasses, U.S. imports are very important to the Dominican Republic as well.

If Dominican molasses had been properly classified under HTSUS subheading 1703.10.50 in 2003, 2004, and 2005, corrected imports statistics would show that actual imports of non-edible cane molasses from the Dominican Republic were approximately \$10 million in 2003, \$12 million in 2004 and \$7.25 million in 2005. These shipments of molasses are important to the Dominican sugar industry. Accordingly, the Dominican Sugar Commission urges USDA not to restrict such imports in its worthy efforts to control imports of "thick beet juice".

We trust these comments have been constructive and will lead to appropriate controls on imports of "thick beet juice" without limiting or restricting the non-edible cane molasses exported from the Dominican Republic.

Please call me at 202-661-6366 if there are any questions.

Sincerely,

A handwritten signature in black ink that reads "Robert W. Johnson II". The signature is fluid and cursive, with a large initial "R" and "J".

Robert W. Johnson II
Balch & Bingham LLP
1275 Pennsylvania Ave., N.W.
10th Floor
Washington, D.C. 20004-2404
Tel: (202) 347-6000
Fax: (202) 347-6001
Email: rjohnson@balch.com

Washington Counsel

Enclosure: Oct. 23, 2000, letter to Jim Hecht
Chief Counsel
Office of Senate Majority Leader

JOHNSON, ROGERS & CLIFTON, L.L.P.

ATTORNEYS AT LAW

THE WATERGATE OFFICE BUILDING

SUITE 508

2600 VIRGINIA AVENUE N.W.

WASHINGTON, D.C. 20037-1905

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FAX: (202) 337-3462

BIRMINGHAM OFFICE

SUITE 100

728 SHADES CREEK PARKWAY

BIRMINGHAM, AL 35209-4453

TEL: (205) 870-9588

FAX: (205) 870-7288

ROBERT W. JOHNSON II

October 23, 2000

BY FAX (224-4639) AND HAND-DELIVERY

Mr. Jim Hecht
Chief Counsel
Office of the Senate Majority Leader
Room S-234, Capitol Building
Washington D.C. 20510-7020

Re: "Stuffed Molasses"

Dear Mr. Hecht:

I am writing on behalf of the International Sugar Policy Coordinating Commission of the Dominican Republic ("Dominican Sugar Commission")¹ to express our strong support for S. 3116, a bill introduced by Senators John Breaux, Larry Craig and over twenty other cosponsors, designed to prevent circumvention of the sugar Tariff Rate Quota (TRQ) by imports of "stuffed molasses." **We understand that the substance of the bill may be offered shortly as an amendment to a pending appropriations bill or some other suitable legislative vehicle.** We hope that the Majority Leader will give his strong support to this effort to correct an abusive situation that is harming traditional suppliers of raw sugar and the U.S. domestic industry as well.

Interests of the Dominican Republic

The Dominican Sugar Commission has long been concerned about

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increasing quantities of "stuffed molasses" being imported into the United States from Canada and elsewhere duty-free under HTS subheading 1702.90.4000. We believe that such increased imports were a substantial cause of the cancellation of the scheduled quota increase of 200,000 MT in January 1998.

The Dominican Republic is the largest exporter of raw sugar to the United States, holding 17.6 percent of the allocated Tariff Rate Quota (TRQ). Clearly, the Dominican Republic is more affected than any other foreign supplier by imports that circumvent the quota. It was for this reason that the Dominican Sugar Commission worked closely with USDA and the Customs Service in the early 1980s in the United States' investigation of imports of liquid sugars and sugar-containing products from Canada.

At that time the Dominican Sugar Commission advocated action under Section 22 against these imports from Canada, which were undermining the price-support program and the sugar quota. Unfortunately, Section 22 authority no longer exists. Nevertheless, increased imports of "stuffed molasses" present a similar threat to the sugar quota program and to exports from the Dominican Republic.

Harm to the Dominican Sugar Industry

Representatives of the Dominican Republic have emphasized the importance of sugar to the economy of the Dominican Republic in various submissions to Customs and other Executive Branch agencies and departments as well as to Congress. Historically, the sugar industry has been the nation's largest employer and the main source of the country's export earnings. From 1978-1987, sugar exports provided roughly 30 percent of the Dominican Republic's foreign exchange, which is needed to finance the purchase of the many essential imports that cannot be produced in the Dominican Republic. (The great bulk of manufactured items that the Dominican Republic imports are of U.S.-origin.) For example, the Dominican Republic's sugar exports to the United States averaged 805,000 tons per year during the 1975-1981 period, and under the Caribbean Basin Initiative it was contemplated that the Dominican Republic could export 859,794 tons (780,000 metric tons) per year duty-free.

Because of the operation of the U.S. sugar quota program, the Dominican Republic's sugar quota has steadily eroded. It is currently 190,657 metric tons for FY 1999.² Over the past decade

² On September 13, 1996, USDA announced a new approach for administering the sugar import quota because it was concerned about ensuring adequate deliveries of sugar into the U.S. market late in the quota year. Rather than announcing a lump sum quota before the start of the quota year and making later additions based on supply and demand forecasts, USDA announced an over-all FY 1997 TRQ of 2.5 million

the Dominican Republic has failed to realize more than \$2 billion in potential sales to the United States due to the shrinkage in its U.S. sugar quota.

This is a huge sum for a developing country, and as a result, the economy of the Dominican Republic has been in a precarious position for several years. Foreign debt service has been draining a large portion of the limited foreign exchange earnings, and the bilateral and commercial debt have had to be rescheduled to prevent default. While other offshore suppliers have not suffered as severely, their losses, too, have been significant.

It is estimated that imports of "stuffed molasses" have reached over 100,000 MT per year, causing an equivalent decrease in legitimate imports under the Tariff Rate Quota. Since the Dominican Republic holds a 17.6 % share of the TRQ, the severe damage to the Dominican sugar producers, and their customers in the United States, i.e., the refiners of raw cane sugar, caused by the huge volume of "stuffed molasses" flowing into the United States in a blatant effort to circumvent the TRQ, is obvious. Further damage to the Dominican sugar industry would be extremely harmful to the country and would also have an adverse impact on the U. S. refining industry.

Commercial Use of "Stuffed Molasses"

As far as the Dominican Republic Sugar Commission has been able to determine, there is no legitimate commercial use for "stuffed molasses" **in the condition in which they are imported**

MTRV, with 600,000 MTRV reserved by the U.S. Trade Representative (USTR) from any country-by-country allocations except if certain "trigger points" were reached.

The initial size of the quota was based on the most current forecast of domestic sugar supply and use. The "trigger points" were based on stocks-to-use ratios of 15.5 percent or less, as published in the January, March and May 1997 World Agricultural Supply and Demand Estimates (WASDE) reports. If the stocks-to-use ratio were to be less than or equal to 15.5 percent, the TRQ allocation would be increased by 200,000 MTRV.

If the stocks-to-use ratio were to be above the 15.5 percent trigger, the scheduled quota increase would be canceled for that month. In addition, USDA reserved the right to increase the TRQ at any other time in order to ensure sufficient sugar supplies in the U.S. market. USDA used the same system for FY 1998; in FY 1999 the "automatic" increases in the TRQ were lowered to blocks of 150,000 MTRV. The tranche system is not in effect for the FY 2001 TRQ.

apart from being used as a vehicle for the extraction of sugar. In fact, "stuffing," or mixing molasses and sugar, with water added to create a syrup, is contrary to normal commercial practice, which is to separate the sugar from the molasses or liquid phase.

Summary and Conclusion

The Dominican Republic has a long history of producing and shipping molasses products to the United States and is very familiar with legitimate products containing molasses; the "stuffed molasses" being imported from Canada is a "bogus" product with no real commercial application except for the extraction of sugar and was designed as a "scheme" or "device" to thwart the carefully-constructed sugar quota program.

Under the Tariff Schedules of the United States (TSUS) "stuffed molasses" would have been classified under TSUS 155.75 subject to the absolute quota. Under the HTS, "stuffing" molasses with sugar (or vice versa) is simply a "disguise or artifice" employed to circumvent the TRQ. This practice should be stopped.

Ending the virtual flood of imports of "stuffed molasses" is extremely important to the Dominican Republic and to the U.S. domestic industry. The amendment to be offered will cure this problem without harming imports of legitimate molasses products, such as those imported for animal feed and rum, which the Dominican Republic has traditionally supplied.

We hope that Senator Lott will give his strong support to this amendment.

Please call the undersigned if I can provide any more information or answer any questions.

Sincerely,



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