

DEPARTMENT OF COMMERCE**International Trade Administration**

[A-201-845]

Sugar From Mexico: Final Determination of Sales at Less Than Fair Value

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) determines that imports of sugar from Mexico are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The period of investigation is January 1, 2013, through December 31, 2013. The final weighted-average dumping margins are listed below in the section entitled “Final Determination Margins.”

DATES: *Effective Date:* September 23, 2015.

FOR FURTHER INFORMATION CONTACT:

David Lindgren, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-3870.

SUPPLEMENTARY INFORMATION:**Background**

On November 3, 2014, the Department published in the **Federal Register** the *Preliminary Determination* of sales at LTFV in the antidumping duty investigation of sugar from Mexico.¹ The following events occurred since the *Preliminary Determination* was issued. Between December 3 and 16, 2014, we conducted sales and cost verifications of the two respondents in this investigation, FEESA² and the GAM Group.³ The verification reports were issued between January 29 and March 31, 2015.

On December 19, 2014, the Department and a representative of the

¹ See *Sugar From Mexico: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 79 FR 65189 (November 3, 2014) (*Preliminary Determination*).

² Fondo de Empresas Expropiadas del Sector Azucarero (FEESA) consists of FEESA and the following sugar mills: Fideicomiso Ingenio El Modelo, Fideicomiso Ingenio San Cristobal, Fideicomiso Ingenio Plan De San Luis, Fideicomiso Ingenio San Miguelito, Fideicomiso Ingenio La Providencia, Fideicomiso Ingenio Atencingo, Fideicomiso Ingenio Casasano, Fideicomiso Ingenio El Potrero, and Fideicomiso Ingenio Emiliano Zapata.

³ The GAM Group consists of the following sugar mills: Ingenio Tala S.A. de C.V.; Ingenio El Dorado S.A. de C.V.; and Ingenio Lazaro Cardenas S.A. de C.V.

producers/exporters accounting for substantially all imports of sugar from Mexico, the Camara Nacional de Las Industrias Azucarera y Alcoholera, signed a suspension agreement in this investigation.⁴ On January 8, 2015, Imperial Sugar (Imperial) and AmCane Sugar LLC (AmCane) each notified the Department that they had petitioned the International Trade Commission (ITC) to conduct a review to determine whether the injurious effects of the imports of the subject merchandise are eliminated completely by the AD Suspension Agreement (a section 734(h) review).⁵ Additionally, on January 16, 2015, AmCane and Imperial submitted timely requests for the continuation of the instant investigation.⁶ On March 19, 2015, in a unanimous vote, the ITC found that the AD Suspension Agreement eliminated completely the injurious effects of imports of sugar from Mexico. On the same day, the Department announced that it would issue a decision regarding continuation of the investigations promptly after the ITC made its views and findings available.⁷ On March 24, 2015, the ITC notified the Department of its determination, and on April 10, 2015, provided a report of its views and findings to the Department.⁸ Subsequently, on April 24, 2015, the Department determined that AmCane and Imperial had standing to request continuation of this investigation and, as a result, published a continuation notice on May 4, 2015.⁹ Accordingly, on May 4, 2015, the Department announced the briefing schedule. Consistent with the schedule, case briefs were filed on May 29, 2015, and rebuttal briefs on June 12, 2015.

Scope of the Investigation

The product covered by this investigation is sugar from Mexico. Since the *Preliminary Determination*, the Department has updated the scope of the investigation. For a discussion of these changes, see “Scope Comments” section of the Issues and Decision

⁴ See *Sugar From Mexico: Suspension of Antidumping Investigation*, 79 FR 78093 (December 29, 2014) (*AD Suspension Agreement*).

⁵ See *Sugar From Mexico: Continuation of Antidumping and Countervailing Duty Investigations*, 80 FR 25278, 25279 (May 4, 2015) (*Continuation Notice*).

⁶ *Id.*

⁷ See *Continuation Notice*, 80 FR at 25280.

⁸ *Id.*

⁹ See Memorandum to the Files regarding “Standing of Imperial Sugar and AmCane Sugar to Request Continuation of the AD and CVD Investigations on Sugar from Mexico,” dated April 24, 2015; see also *Continuation Notice*, 80 FR at 25278.

Memorandum¹⁰ and, for a complete description of the scope of the investigation, see Appendix I to this notice.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties in this investigation are addressed in the Issues and Decision Memorandum, which is hereby adopted by this notice. A list of the issues raised is attached to this notice as Appendix II. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance’s Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov> and it is available to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/>. The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Determination

Based on our analysis of the comments received and our findings at verification, we made certain changes to the margin calculations. For a discussion of these changes, see the “Margin Calculations” section of the Issues and Decision Memorandum.

Verification

As provided in section 782(i) of the Act, in December, 2014, we verified the sales and cost information submitted by FEESA and the GAM Group for use in our final determination. We used standard verification procedures including an examination of relevant accounting and production records, and original source documents provided by the two respondents.¹¹

¹⁰ See Memorandum to Ronald K. Lorentzen, Acting Assistant Secretary for Enforcement and Compliance from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Issues and Decision Memorandum for the Final Affirmative Determination in the Less than Fair Value Investigation of Sugar from Mexico” (Issues and Decision Memorandum), which is dated concurrently with and hereby adopted by this notice.

¹¹ See Memorandum to the File regarding “Verification of the Cost Response of Ingenio Tala de C.V. and its affiliates Ingenio Lazaro Cardenas S.A. de C.V. and Ingenio El Dorado S.A. de C.V. in the Antidumping Duty Investigation of Sugar from Mexico,” dated January 29, 2015; see also Memorandum to the File regarding “Verification of the Cost Response of Fondo de Empresas Expropiadas del Sector Azucarero in the Less-Than-

Final Determination Margins

The weighted-average dumping margins are as follows:

Exporter/Producer	Weighted-average dumping margin (%)
FEESA	40.48
Ingenio Tala S.A. de C.V. and certain affiliated sugar mills of Grupo Azucarero Mexico S.A. de C.V. (collectively, the GAM Group)	42.14
All-Others	40.74

Section 735(c)(5)(A) of the Act provides that the estimated “all-others” rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely under section 776 of the Act. As we calculated weighted-average dumping margins for both mandatory respondents that are above *de minimis* and which are not based on total facts available, they are the basis for the “all others” rate. However, a weighted average would reveal proprietary information regarding the respondents’ sales information. As such, we have calculated the weighted-average “all others” rate by relying on publicly-ranged information reported by FEESA and the GAM Group.¹²

Disclosure

We will disclose the calculations performed within five days of any public announcement of this notice in accordance with 19 CFR 351.224(b).

Termination of Suspension of Liquidation

As noted above, on December 19, 2014, the Department signed the AD Suspension Agreement. Pursuant to section 734(h)(3) of the Act, suspension of liquidation ordered in the *Preliminary Determination* continued to be in effect pending the ITC’s section 734(h) review. Following the ITC’s affirmative determination, *i.e.*, that the AD Suspension Agreement completely eliminated the injurious effects of imports of sugar from Mexico, on March 27, 2015, the Department, in accordance with section 734(h)(3) of the Act, instructed U.S. Customs and Border Protection (CBP) to terminate the suspension of liquidation of all entries

of sugar from Mexico and refund all cash deposits. Pursuant to the requests for continuation discussed above, we have continued and completed the investigation in accordance with section 734(g) of the Act. We found the antidumping duty margins noted above in the “Final Determination Margins” section.

The Department will not instruct CBP to suspend liquidation or collect cash deposits calculated herein unless the AD Suspension Agreement is terminated and the Department issues an antidumping duty order.¹³ In the event that Department issues an order, consistent with sections 735(c)(1) and 736(a) of the Act, as well as 19 CFR 351.210(d) and 351.211, we will instruct CBP to suspend liquidation and require a cash deposit equal to the weighted-average amount by which normal value exceeds U.S. price, as indicated in the chart above, as follows: (1) The rate for FEESA, when adjusted for export subsidies, is 40.33 percent; (2) the rate for the GAM Group, when adjusted for export subsidies, is 41.97 percent; (3) if the exporter is not a firm identified in this investigation, but the producer is, then the rate will be the rate established for the producer of the subject merchandise; (4) the rate for all other producers or exporters, when adjusted for export subsidies, will be 40.59 percent.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we will notify the ITC of our final determination. Because our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threatening material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material

injury does not exist, the AD Suspension Agreement shall have no force or effect, and the investigation shall be terminated.¹⁴ If the ITC determines that such injury does exist, the AD Suspension Agreement shall remain in force but the Department shall not issue an antidumping order so long as (1) the AD Suspension Agreement remains in force, (2) the AD Suspension Agreement continues to meet the requirements of subsections (c) and (d) of the Act, and (3) the parties to the AD Suspension Agreement carry out their obligations under the AD Suspension Agreement in accordance with its terms.¹⁵

Return or Destruction of Proprietary Information

This notice will serve as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction or APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination and notice in accordance with sections 735(d) and 777(i) of the Act.

Dated: September 16, 2015.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix I—Scope of the Investigation

The product covered by this investigation is raw and refined sugar of all polarimeter readings derived from sugar cane or sugar beets. The chemical sucrose gives sugar its essential character. Sucrose is a nonreducing disaccharide composed of glucose and

Fair-Value Investigation of Sugar from Mexico,” dated January 30, 2015; Memoranda to the File regarding “Verification of the Sales and Subsidy Responses of FEESA in the Antidumping and Countervailing Duty Investigations of Sugar from Mexico,” and “Verification of the Sales and

Subsidy Responses of the GAM Group in the Antidumping and Countervailing Duty Investigations of Sugar from Mexico,” both dated March 31, 2015.

¹² For more detail on this calculation, see Memorandum to the File regarding “Antidumping

Duty Investigation of Sugar from Mexico: Final Determination Calculation for the “All-Others” Rate,” dated September 16, 2015.

¹³ See section 734(f)(3)(B) of the Act.

¹⁴ See section 734(f)(3)(A) of the Act.

¹⁵ See section 734(f)(3)(B) of the Act.

fructose linked by a glycosidic bond via their anomeric carbons. The molecular formula for sucrose is $C_{12}H_{22}O_{11}$; the International Union of Pure and Applied Chemistry (IUPAC) International Chemical Identifier (InChI) for sucrose is 1S/C12H22O11/c13-1-4-6(16)8(18)9(19)11(21-4)23-12(3-15)10(20)7(17)5(2-14)22-12/h4-11,13-20H,1-3H2/t4-,5-,6-,7-,8+,9-,10+,11-,12+/m1/s1; the InChI Key for sucrose is CZMRCDWAGMREC-N-UGDNZRGBSA-N; the U.S. National Institutes of Health PubChem Compound Identifier (CID) for sucrose is 5988; and the Chemical Abstracts Service (CAS) Number of sucrose is 57-50-1.

Sugar described in the previous paragraph includes products of all polarimeter readings described in various forms, such as raw sugar, estandar or standard sugar, high polarity or semi-refined sugar, special white sugar, refined sugar, brown sugar, edible molasses, desugaring molasses, organic raw sugar, and organic refined sugar. Other sugar products, such as powdered sugar, colored sugar, flavored sugar, and liquids and syrups that contain 95 percent or more sugar by dry weight are also within the scope of this investigation.

The scope of the investigation does not include (1) sugar imported under the Refined Sugar Re-Export Programs of the U.S. Department of Agriculture;¹⁶ (2) sugar products produced in Mexico that contain 95 percent or more sugar by dry weight that originated outside of Mexico; (3) inedible molasses (other than inedible desugaring molasses noted above); (4) beverages; (5) candy; (6) certain specialty sugars; and (7) processed food products that contain sugar (e.g., cereals). Specialty sugars excluded from the scope of this investigation are limited to the following: caramelized slab sugar candy, pearl sugar, rock candy, dragees for cooking and baking, fondant, golden syrup, and sugar decorations.

Merchandise covered by this investigation is typically imported under the following headings of the HTSUS: 1701.12.1000, 1701.12.5000, 1701.13.1000, 1701.13.5000, 1701.14.1000, 1701.14.5000, 1701.91.1000, 1701.91.3000, 1701.99.1010, 1701.99.1025, 1701.99.1050, 1701.99.5010, 1701.99.5025, 1701.99.5050, 1702.90.4000 and 1703.10.3000. The tariff classification is provided for convenience and customs purposes; however, the written description of the scope of this investigation is dispositive.

Appendix II—List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Scope Comments
- IV. Scope of the Investigation
- V. Margin Calculations
- VI. Discussion of the Issues
 1. Imperial and AmCane's Standing to Request Continuation of the Investigation
 2. Use of Revised Scope for Final Determination

¹⁶ This exclusion applies to sugar imported under the Refined Sugar Re-Export Program, the Sugar-Containing Products Re-Export Program, and the Polyhydric Alcohol Program administered by the U.S. Department of Agriculture.

3. Selection of FEESA as a Mandatory Respondent
4. Treatment of Certain FEESA Employee Expenses
5. FEESA's G&A and Financial Expenses Denominator
6. FEESA's Sales and Cost Verification Minor Corrections
7. FEESA Cost Changes Based on Verification Information
8. FEESA's Depreciation Expenses
9. Calculation of the GAM Group's Electricity Expenses
10. Offsets for Sugar Mills' Interest Income
11. Exclusion of Seedling Costs from ITLC's Cost of Production
12. The GAM Group's Final Sugar Cane Prices
13. Adjustments to Administrative Services Provided by ESOSA
14. Adjusting the GAM Group's G&A for Certain Affiliated Company Costs Recommendation

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XE205

Atlantic Coastal Fisheries Cooperative Management Act Provisions; American Eel Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of determination of non-compliance; declaration of a moratorium.

SUMMARY: In accordance with the Atlantic Coastal Fisheries Cooperative Management Act (Act), NMFS, upon a delegation of authority from the Secretary of Commerce (Secretary), has determined that the State of Delaware has failed to carry out its responsibilities under the Atlantic States Marine Fisheries Commission's (Commission) Interstate Fishery Management Plan for American Eel (Plan) and that the measures Delaware has failed to implement and enforce are necessary for the conservation of the American eel resource. This determination is consistent with the findings of the Commission on August 6, 2015. Pursuant to the Act, a Federal moratorium on fishing, possession, and landing of all American eel is hereby declared and will be effective on March 18, 2016. The moratorium will be withdrawn by NMFS when Delaware is found to have come back into compliance with the Commission's Plan for American Eel.

DATES: Effective March 18, 2016.

ADDRESSES: Alan Risenhoover, Director, Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Room 13362, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Derek Orner, Fishery Management Specialist, NMFS Office of Sustainable Fisheries, (301) 427-8567.

SUPPLEMENTARY INFORMATION:

Non-Compliance Statutory Background

The Atlantic Coastal Act, 16 U.S.C. 5101 *et seq.*, sets forth a non-compliance review and determination process that is triggered when the Commission finds that a State has not implemented measures specified in an Interstate Fishery Management Plan (ISFMP) and refers that determination to the Secretary for review and potential concurrence.

The Atlantic Coastal Act's non-compliance process involves two stages of decision-making. In the first stage, the Secretary (delegated to the AA) must make two findings: (1) Whether the State in question has failed to carry out its responsibility under the Commission's ISFMP; and if so (2) whether the measures that the State failed to implement and enforce are necessary for the conservation of the fishery in question. These initial findings must be made within 30 days after receipt of the Commission's non-compliance referral and consequently, this first stage of decision-making is referred to as the 30-Day Determination.

A positive 30-Day Determination triggers the second stage of Atlantic Coastal Act non-compliance decision-making, which occurs contemporaneous with the first decision. That is, if the AA determines non-compliance in the first stage, the Act mandates that a moratorium on fishing in State waters in the fishery in question occur. The timing of the moratorium, however, is at the discretion of the AA, so long as it is implemented within six (6) months of the 30-Day Determination. In other words, although the implementation of the moratorium is non-discretionary, the AA has the discretion to decide when the moratorium will be implemented subject to the Act's six (6) month deadline.

Commission Referral of Non-Compliance

On August 6, 2015, the Commission found that the State of Delaware is out of compliance with the Commission Plan. Specifically, the Commission found that Delaware has not implemented regulations that are necessary to rebuild the depleted