

## SUPPLEMENTAL ATAC LETTER ON USMCA

The Honorable Robert E. Lighthizer  
United States Trade Representative  
Executive Office of the President  
Washington, D.C. 20508

October 23, 2018

Dear Ambassador Lighthizer:

I am pleased to transmit the attached addendum on the U.S. – Mexico – Canada Agreement (USMCA) to the report submitted on 9/27/18, in accordance with section 105(b)(4) of the Bipartisan Congressional Trade Priorities and Accountability Act of 2015, and section 135(e) of the Trade Act of 1974, as amended, by the Agricultural Technical Advisory Committee on Sweeteners and Sweetener Products, reflecting both the consensus and advisory opinions on the USMCA.

A handwritten signature in cursive script that reads "Don Phillips".

Sincerely,

Don Phillips

Chair

Sweeteners and Sweetener Products ATAC

## ADDENDUM

After reviewing the text of the USMCA, reflecting the modifications agreed as a result of the negotiations concluded on September 30, 2018, it is now the unanimous view of the Committee members that the Agreement promotes the economic interests of the United States and achieves the applicable overall and principle negotiating objectives set forth in the Bipartisan Congressional Trade Priorities and Accountability Act of 2015. These views reflect our recognition of the broad benefits to the U.S. business and agricultural community expected to result from the modernization and improvement of the provisions contained in the original NAFTA governing trade and investment between the U.S., Mexico, and Canada

While members have varying views concerning certain aspects of the Agreement, which are spelled out subsequently, none are of the view that the results of the negotiation are inconsistent with the goals of sectoral equity and reciprocity.

In its report of 9/27/18, the Committee urged the Administration to continue its intensive negotiations with Canada with a view towards fully incorporating Canada into the Agreement; thus, we are pleased that this path was successfully pursued. We also commend our negotiators for ensuring that there will be no impediment to the use of the U.S. sugar re-export program to export sugar-containing products (SCPs) to Canada.

However, we regret that the U.S. was not able to reach agreement with Mexico and Canada on its proposed Annex on Pre-Packaged Foods and Non-Alcoholic Beverages, which the Committee strongly supported. We urge the Administration to continue to work with those countries to advance the concepts in that Annex.

The arrangements agreed with Canada on sugar and SCPs in the negotiations subsequent to the conclusion of the 8/31/18 agreement with Mexico are the changes of most direct interest to most of the Members of the Committee. These can be summarized as follows: Canada was given a 9,600 MT TRQ for refined sugar from domestic beets; a 9,600 MT TRQ for SCPs, covering all of the products in our existing WTO TRQs for SCPs -- imported sugar can be used in the production of these products; and 20% of additional refined sugar needs as determined by USDA, which can be produced from imported raw sugar. These provisions, incidentally, are the same as those agreed in TPP. For products entering in excess of these TRQs, MFN tariff rates will be charged.

In addition, the existing country-specific TRQs for Canada—10, 300 MT TRQ for refined sugar from domestic beets; 59, 520 MT for an SCP category—will be incorporated into USMCA.

The views of various Members on these arrangements and other aspects of the Agreement are spelled out below:

## **Sugar Beet and Sugar Cane growers and affiliated processors and refiners (Cervantes, Henneberry, Lewis, Markwart, Pettus, Phillips, Price, and Sanchez)**

Our views are based on the fundamental belief that sugar is an essential and strategic commodity for our nation's food security. It is important to maintain an efficient, vibrant and competitive industry that is geographically diverse in order to provide reliable supplies of the highest quality products to American consumers.

These views are shaped by the deplorable state of the world sugar market, which is generally acknowledged to be the most distorted commodity market in the world. It is a market characterized by pervasive government subsidization and chronic dumping, where prices have often averaged less than half world average production costs. Moreover, the level of such support and subsidization seems clearly on the increase. The U.S. sugar import policy was developed to buffer U.S. producers against the disastrous impact of such dumped and subsidized competition.

Moreover the U.S. has already made extensive market access commitments in the WTO, NAFTA, and other FTA's –commitments which have put the Farm Bill's no-cost sugar policy mandated by Congress at risk. The threat that our existing trade commitments pose to U.S. sugar policy was made manifest in 2013 and 2014 when dumped and subsidized sugar from Mexico flooded the U.S. market and, for the first time in over a decade, U.S. government expenditures were required in one year to sustain market prices in accordance with the provisions of the 2008 Farm Bill. This was a sharp and unfortunate departure for U.S. sugar policy, which was designed by Congress with the clear expectation that it would operate at no cost to the American taxpayer. The devastating impact to American sugar farmers and refiners was only brought under control by the determinations made by the Department of Commerce and the U.S. International Trade Commission that Mexican subsidies and dumping were causing injury to our industry and were finally addressed by the revised Suspension Agreements negotiated with Mexico in June 2017.

Thus, understandably, the industry views the negotiation of any new trade agreement with a wary eye. Our strong preference is that no additional market access for sugar be granted in any such agreement. As Canada imports 93 percent of the sugar needed for their domestic market, relying on imports of raw sugar from the world dump market, there is virtually no justification for their additional access to the U.S. market. Moreover, our existing trade in sugar and SCPs is already unbalanced. They export a substantial amount of refined sugar into our market while we have been unable to ship any sugar into Canada for the past 25 years due to prohibitive anti-dumping duties. . In addition, Canada's Ontario sugarbeet growers are solely dependent on a US factory to process their sugarbeets and refine their sugar, but their sugar is not allowed to be sold back into the Canadian sugar market and must be absorbed into the US domestic market. Moreover, Canadian exports of SCPs into our market greatly exceed our exports of SCPs into their market.

While we do not object to the incorporation of Canada's country-specific refined sugar and SCP TRQs into the USMCA, we are concerned about the increase in imports of SCPs and the use of world dump

market sugar in their production. These imports may be aimed at circumventing our TRQs and we urge the Administration to play close attention to this development.

That being said, our negotiating team made clear to us that the Administration would need some flexibility regarding access to our market as part of its broader effort to close out the negotiations. Given the overriding importance to the U.S. agricultural community and the North American economy of achieving an agreement, we worked closely and constructively with our negotiators to achieve an acceptable outcome that would not jeopardize the operation of our no-cost sugar program. Our willingness to do so should not, however, be seen as precedent for future negotiations. We commend Ambassador Lighthizer and the U.S. negotiating team for their tireless work, their diligent communication with our industry, their understanding of the sensitivities surrounding the grossly distorted world sugar market, and their strenuous effort to achieve an acceptable outcome.

We would also like to reiterate the appreciation expressed to our negotiators in our earlier report for taking no actions that would interfere with the operation of the Antidumping and Countervailing Suspension Agreements, which are necessary to prevent harm to our producers from unfair trade practices and, so far, appear to be working well. Effective enforcement and continuation of these agreements with Mexico is critical to the success of the new USMCA.

#### **Sweetened Product Manufacturers and Market Analysts (Cermirara, Earley, Krause and Steed)**

Our views are based on the belief that the United States economy benefits from freer and more open trade. The excessive degree of protection that current domestic sugar policies provide to our sugar producers results in unnecessarily high sugar prices that make our sweetened food and beverage products more expensive for our U.S. customers and less competitive in world export markets. We also consider it vitally important to maintain a viable cane sugar refining industry as a shock absorber in years when sugar beet crops are poor. The United States is a large net importer of sugar, mostly raw cane sugar, and it is critical that domestic refiners have sufficient regular access to supplies from efficient world producers of raw sugar. FTAs with sugar exporting countries are an important means of insuring that refiners receive the raw material they require.

Canada does not produce raw cane sugar, just refined beet sugar. But Canada has some amount of excess refining capacity that could help serve U.S. food manufacturers in our more northern states. Our WTO sugar quota for Canada is less than one-tenth of one percent of U.S. sugar use. The USMCA agreement would roughly double Canadian access to our market, but it is still a tiny amount of sugar. We are disappointed that there was not more progress towards integration of the two markets, but we nevertheless appreciate the confirmation of our ability to use re-export sugar in products sold to Canadian customers and the agreement that some in-quota imports of sugar and SCPs can include refined cane sugar.

#### **Views expressed by Cassandra Kuball, Corn Refiners Association:**

The corn sweeteners industry thanks the Administration for conserving our zero-duty market access for corn sweeteners trade with Mexico and Canada. Mexico and Canada are our two largest and most valuable markets for corn sweeteners.

In addition to expanding market access, free trade agreements are a tool for ensuring stability and predictability in a trade and investment relationship. The corn refining industry is concerned that one particular element of the U.S.-Mexico-Canada Agreement may limit the stability and predictability provided through mechanisms in the original NAFTA agreement - the erosion of investor-state dispute settlement (ISDS).

While NAFTA entered force in 1994, tariffs on U.S. high-fructose corn syrup (HFCS) remained in place as the U.S. and Mexico disputed over bilateral market access for sweeteners, before eventually opening their markets in 2008. During this period, Mexico erected several trade barriers, which severely limited U.S. HFCS imports and cost the U.S. corn refining industry billions in sales. The U.S. corn refining industry was able to successfully utilize dispute settlement provisions provided under NAFTA, including ISDS, to contest illegal and discriminatory actions against a U.S. export.

In 2002, Mexico levied a 20% tax on beverages not sweetened with cane sugar, thus targeting HFCS. U.S. corn refiners challenged the action under NAFTA's ISDS statute and won all cases with breeches found in the areas of national treatment, performance requirements, and fair and equitable treatment, recovering \$160 million in restitution. Most importantly, ISDS not only supported domestically produced HFCS, but also millions of dollars of U.S. corn and HFCS exports.

We greatly appreciate that ISDS was not fully scrapped with Mexico due to our historical use of the mechanism, but we would like to emphasize that it is most affective if we have a robust set of ISDS provisions for all sectors.

Finally, we would like to thank the Administration for including provisions for anti-dumping (AD) and countervailing duty (CVD) reviews. These provisions were also utilized by the corn refining industry under the NAFTA, saving the industry from an illegal application of AD duties.

## **VI. Membership of Committee**

Perry J. Cerminara, The Hershey Company

Jennifer Cervantes, Rio Grande Sugar Cane Growers

Thomas Earley, Agralytica, Inc.

Patrick Henneberry, Imperial Sugar Company

Roland E. Hoch, Global Organics Ltd.

Keith Krause, McKee Foods Corporation

Cassandra Kuball, Corn Refiners Association

Eddie Lewis, Eddie Lewis Cane Farms

Luther Markwart, American Sugar Beet Growers Association

Jack Pettus, American Sugarcane League of the USA, Inc.

Donald Phillips, American Sugar Alliance

Kevin Price, American Crystal Sugar Company

Judy Sanchez, U.S. Sugar Corporation

Paul Steed, Sweetener User Association

John Yonover, Indiana Sugars, Inc