



Southern Minnesota Beet Sugar Cooperative
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Director
Dairy and Sweeteners Analysis Group
Farm Service Agency
U.S. Department of Agriculture
STOP 0516
1400 Independence Avenue, S.W.
Washington, D. C. 20250-0516

**Re: USDA ANPR on Sugar Program Definitions
Vol. 71 Federal Register, Page 53051 (September 8, 2006)**

Dear Sir:

I submit these comments in response to the above-cited Advance Notice of Proposed Rulemaking ("the ANPR") on behalf of the Southern Minnesota Beet Sugar Cooperative ("SMBSC"), a beet sugar processor that is wholly owned by 565 producers of sugar beets farming in 17 counties in the region west of Minneapolis and extending to the South Dakota border.

SMBSC was formed by producers in 1973 after the decision of the American Crystal Sugar Company to close its factory in Chaska, Minnesota, rather than to modernize it and upgrade its environmental controls. SMBSC's producers and their ancestors had delivered their crop to the Chaska factory since 1911 and American Crystal's decision to close it left them with nowhere to process their sugar beets. SMBSC built a processing plant for its producer/shareholders in Renville, Minnesota, in 1975. In 1999, the cooperative began construction to replace that factory on the same site with a new, larger, more efficient and environmentally compliant processing plant. The present factory at Renville is arguably the largest and most efficient beet sugar processing facility in the world.

The ANPR asks for comments related to the question whether the Commodity Credit Corporation ("CCC") of the United States Department of Agriculture ("USDA") should change its regulations under the Agriculture Adjustment Act of 1938, as amended by Section 1403 of the Farm Security and Rural Investment Act of 2002 ("the Farm Bill") so that the marketing of sugar in the United States that is derived from imported sugar beet thick juice should be subjected to the limitations of the Farm Bill's sugar marketing allotment system.

The portion of the domestic sugar industry that has asked the CCC to change its rules to restrict such marketings are the same interests who wrote the sugar subtitle of the Farm bill in 2001 and convinced the Senate to adopt it without hearings as a floor amendment in February of 2002. On the eve of the writing by Congress of the 2007 Farm Bill, they now want USDA to change the rules.

SMBSC has no appetite to participate in this latest controversy. We would much prefer to work with our industry and the Congress to fix the sugar program's problems in the next farm bill. However, we are forced to respond to the ANPR since we are obviously the target of those who have pressed USDA hardest to act on this narrow matter. Many of our producer/share-



holders find it hard to believe that some of our larger competitors continue to overreach, still pressing their predatory, anticompetitive agenda, five years after they wrote the exact language that Congress adopted in the Farm Bill. That subtitle in the Farm Bill, as interpreted by USDA with the aggressive intervention of the largest processors, has threatened SMBSC's very existence by shortchanging us in the marketing allotment allocation formula.

Our original factory was built because the American Crystal Sugar Company abandoned our growing region, leaving our producers with nowhere to deliver their crop. We do not now intend to go quietly into obscurity and allow a competitor to significantly disadvantage our cooperative by applying financial stress. SMBSC has a sound business plan and has every reason to prosper. But that business plan has been interfered with by the relentless anticompetitive behavior of others. CCC should not allow itself to be a tool in that endless campaign to kill competition and seek the last bit of advantage in the marketplace.

Summary of Key Points

Among the key points that USDA should keep in mind regarding any possible rulemaking on this subject are the following:

- A. While couched as a measure of general interest, this proposal, in fact, is aimed at one country – Canada, our closest neighbor and trading partner.
- B. This proposed change is aimed domestically at one processor in the United States – the Southern Minnesota Beet Sugar Cooperative – and at Cargill, Incorporated, an importer and refiner.
- C. The quantity of sugar produced in the United States from Canadian beet thick juice has been miniscule.
- D. Canada's beet thick juice production capacity is extremely small and represents no future threat to the U.S. market.
- E. Sugar beet thick juice bears no resemblance to "stuffed molasses" for purposes of trade policy.
- F. At more than four years into the current Farm Bill and with a new Farm Bill already on the drawing board on Capitol Hill, this is no time to change USDA's regulations.

Explanation of Key Points

A. Canada is the One Foreign Target

As a practical matter, shipping beet thick juice into the United States is only possible if it comes from Canada. While the complaints giving rise to this ANPR are couched as a desire for consistency in USDA and Customs definitions as applied broadly, the fact is that they are really

aimed only at Canada. The cost and logistics of transportation in the beet sugar industry are such that it would be virtually impossible for this change of policy to affect exports to the United States from any other country. Outside of the United States and Canada, sugar beets are raised in northern Europe, Asia, the Middle East, North Africa, and South America. The cost of ocean shipping of thick juice, followed by rail tanker transport to a U.S. factory would be so high as to make it inconceivable from a practical business standpoint.

B. SMBSC is the One U.S. Processor Being Targeted

The design of the beet sugar marketing allotment allocation formula in the current Farm Bill results in an allocation to SMBSC that is smaller than it needs to operate efficiently. For that reason, SMBSC has looked for creative, legal ways to use its excess factory capacity. The further processing of beet thick juice into refined sugar on a contract basis is one way it can attempt to be more profitable, improving the return to its producer-shareholders and enabling it to repay its considerable capital debt. To our knowledge, SMBSC is the only processor with an allocation that has engaged in this activity. Other U.S. beet sugar processors are not as restricted by the Farm Bill allotment allocation formula and therefore apparently are not in need of such creative solutions. Those processors expanded their production prior to 1998 and then lobbied Congress to adopt a 1998-2000 baseline of past production in order to determine what allocation of the marketing allotment each processor would receive under the 2002 Farm Bill. Most of SMBSC's increased production from its new factory came on line after the baseline period. Its allocation of the marketing allotment fits its old, smaller factory, not its new, larger factory.

C. The Quantity of Sugar in Question is Miniscule

As explained in the ANPR, the quantity of sugar in question here is about 35,000 tons per year. The current beet sugar allotment for Fiscal Year 2006 is 4,776,380 tons. The combined beet sugar and cane sugar allotment is 7,758,000 tons. Thus, the sugar in question here amounts to seven-tenths of one percent of the total beet sugar marketing allotment, and forty-five one-hundredths of one percent of the combined beet and cane sugar allotment.

D. Canada's Capacity to Export Thick Juice to the United States is Small

Only one sugar beet processing factory exists in Canada – the Rogers Sugar Ltd. plant at Taber, Alberta. The Taber plant has a capacity of only 6,000 tons per day, about one-third the size of the SMBSC plant at Renville, Minnesota. All of the beet sugar processing capacity in Canada could supply less than one and one-half percent of the demand for sugar in the United States, even assuming that all of the Canadian beet sugar production was exported to this country. Therefore, the argument that current law creates a dangerous loophole that threatens the U.S. market is entirely bogus.

E. Importation of Sugar Beet Thick Juice from Canada is Not Another Case of "Stuffed Molasses"

All processors produce sugar beet thick juice as the first of two major steps in making sugar from beets. When beets enter a factory, they are washed and sliced. The sugar in the sliced beets is then extracted from the slices in a hot water diffuser. Juice from the diffuser is then clarified and concentrated into thick juice. At that point, the thick juice may be stored in tanks for a substantial period of time, it may be transported to another location, or it may be further processed at the same location, going through a crystallization and evaporation process that results in refined white sugar. Sugar beet thick juice is not a product specially invented to circumvent any law or regulation. Rather, it is the standard substance that exists at the halfway point in the processing of sugar beets into marketable sugar. It simply happens to be the case that the first half of the processing can occur on the Canadian side of the border and the second half can occur on the U.S. side of the border.

F. Proponents of Changing USDA's Regulations Here Should Take Their Complaint to Congress

Late 2006 and early 2007 is hardly the time for USDA to address by rulemaking a complaint about the current Farm Bill. The language now in the law that is the subject of complaints giving rise to this ANPR was written by the very interests raising the complaint. These interests will have their opportunity to seek changes to the current sugar program within a few months. Indeed, the House and Senate Agriculture Committees have already held numerous hearings in preparation for writing the next farm bill less than a year from now.

CCC's Five Issues for Comment

SMBSC appreciates CCC's request for comments from interested parties on the five issues it has identified in the ANPR. Following are comments from SMBSC on each issue:

CCC Issue No. 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?*

SMBSC has two comments on this issue. First, it is difficult to imagine, under current U.S. law and U.S. trade obligations how such imports could be curtailed in total, although they certainly could be curtailed to a great extent by expanding the coverage of the marketing allotment rules, using what would appear to be a domestic regulatory change to accomplish what in practical fact is an import restriction. Second, assuming such imports were curtailed in total, the current Farm Bill's requirement that CCC observe the "beet/cane split" would mean that the effects would fall unevenly on the industry. Beet processors would give up the potential to use their factories to process a certain quantity of sugar, while those processors would receive only about half (54.35 percent) of that quantity in potential sales of additional sugar due to an increase in the OAQ.

CCC Issue No. 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?*

SMBSC believes that it is obviously not equitable to do so. It is difficult to see a policy basis for exaggerating this inequity, beyond what is already written into an imperfect Farm Bill. Throughout the history of the sugar industry in the United States, various intermediate products have been imported and further processed into refined sugar by both cane and beet sugar processors. These include raw cane sugar, concentrated cane juice, high purity molasses, beet thick juice, and other impure syrups, as well as Mexican *estandar*.

U.S. beet sugar processors and their owners should benefit from having the same flexibility that exists for cane processors. Such flexibility allows us to respond in a businesslike manner to the constant changes that occur in the price of sugar, the cost of transportation, the sizes of crops and the demands of customers. Since beet-processing facilities in the United States are held by farmer-owned cooperatives, such flexibility does, in the end, benefit the producers, who should be among the primary beneficiaries of the Farm Bill.

CCC Issue No. 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?*

As the question suggests, an action by CCC to regulate sugar made from imported thick juice would logically lead to a request for new entrant status. Cargill applied for new entrant status three years ago under different facts and was denied. The same processors who are pressing CCC to take action in the present situation took strong steps at that time to oppose Cargill's new entrant application, formally intervening in opposition to Cargill's appeal before a USDA Administrative Law Judge.

At a CCC hearing held on June 16, 2003, to consider Cargill's request for an allocation of the marketing allotment, the proponents of this ANPR testified in opposition. The Chief Executive Officer of the American Crystal Sugar Company, the dominant U.S. beet sugar processor, said:

Cargill should not be considered a sugar beet processor because the only activity Cargill would engage in under its proposal is to refine thick beet juice—a product that is sugar for the purposes of the farm bill programs—into refined sugar. This is not substantially different than processing granulated sugar into liquid sugar—it does not

change the total amount of sugar produced, only the form. All of the work involved in processing sugar beets—that is, collecting, storing, slicing and processing the sugar beets into thick beet juice—would be done by Southern Minnesota Beet Sugar Cooperative, a company that has already been assigned an allocation under the flexible allotment program. Statement of James Horvath, American Crystal Sugar Company, on the Petition of Cargill, Inc., June 16, 2003. Certified Record, *In re: Cargill, Inc., Petitioner*, SMA Docket No. 03-0002, at page 44.

This is too narrow a vision of the beet sugar processing industry. SMBSC cannot understand why beet processors should not have the same options and flexibility as cane refiners. If the supply of thick juice needs to be controlled, it would appropriately be controlled with the Tariff Rate Quota. However, such control has not been agreed to in our trade relationship with Canada, so the product is excluded from such control. There is little difference here from the agreements that the United States has reached with Mexico, under which sugar will enter this country duty-free in 2008. This is a trade issue and it has already been decided. CCC should not use the domestic marketing allotment system to regulate what are legal and permissible imports.

In USDA's final decision on Cargill's new entrant application, the Department's Judicial Officer, speaking on behalf of the Secretary, wrote:

I find the clear language of the Agricultural Adjustment Act of 1938, the legislative history, and the Sugar Program regulations mandate the conclusions that Cargill is not entitled to new entrant status and the Executive Vice President properly denied Cargill's request. When one reads the requirements for determining the quantity of beet sugar allocations in conjunction with the new entrant provisions, the conclusion that an individual or entity must be a full-scale sugar beet processor, in order to achieve new entrant status, is inescapable. Construing the new entrant provisions to allow Cargill's Amended Petition for Review would undercut the detailed and balanced allocation system devised by Congress. *In re: Cargill, Inc., Petitioner*, SMA Docket No. 03-0002, Decision and Order of the Judicial Officer, Dec. 8, 2005, at page 26.

It is true that the necessity of allowing new entrants is the obvious point that leaps out from any call for regulating the marketing of sugar made from imported thick juice. But it is clear that there will be no new entrants. USDA has spoken and the door is closed. Certainly, at least any notion that an entity in the United States could process Canadian beet thick juice into refined sugar and be allowed to sell it under an allotment allocation as a new entrant is hopeless. The Judicial Officer has said, speaking for the Secretary, that such an entity "must be a full-scale sugar beet processor." He said that conclusion is "inescapable." To our knowledge, there are no candidates who could qualify as new entrants. To the extent anyone holds out the prospect for new entrants as part of the justification for regulating the sale of sugar made from imported juice, they are simply holding out a myth.

Implicit in the Judge's decision was his recognition that a refiner, who only changes the form of what is already sugar, does not need a domestic marketing allotment allocation.

CCC Issue No. 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?*

SMBSC believes it is obvious that the only basis for such a distinction is to keep out the nearly insignificant quantity of potential imports from Canada.

CCC Issue No. 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.*

Refining sugar beet thick juice is like refining raw sugar. No one should need a marketing allotment allocation to do it. Thick juice is a feedstock, but it is also sugar, just like raw cane sugar is a feedstock for a cane refiner. Both are just transforming one type of sugar into another type of sugar. The place to address this is in the Tariff Rate Quota or in the original determination of a company's status as a processor. Beet sugar processors should be allowed to augment their activities for sound business reasons, without putting at risk their limited and valuable marketing allotment allocations.

Thank you for considering our comments on this ANPR. We would be happy to answer any further questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "John Richmond", with a large, stylized flourish at the end.

John Richmond
President & CEO



November 6, 2006

Director
Dairy and Sweeteners Analysis Group
Farm Service Agency
United States Department of Agriculture
1400 Independence Avenue, SW
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Re: Comments on Advanced Notice of Proposed Rule, Sugar Program Definitions
Marketing of Sugar Derived from Imported Beet Thick Juice
RIN 0560-AH53

Dear Sir:

This letter offers comments from Cargill, Incorporated ("Cargill") in response to the advanced notice of proposed rulemaking and solicitation of comments and views on whether to revise regulations at 7 CFR part 1435 for the purpose of regulating the marketing of sugar derived from imported beet thick juice.

In general, Cargill does not support proposals for the Commodity Credit Corporation ("CCC") to make the marketing of sugar produced from imported thick beet juice subject to the provisions of the Agricultural Adjustment Act of 1938 ("1938 Act") that restrict the marketing of sugar by sugar beet processors. We believe the CCC lacks statutory authority to regulate imported thick beet juice in this manner and that it was not the intent of Congress, when it passed the Farm Security and Rural Investment Act of 2002 ("2002 Farm Bill") to restrict thick beet juice imports or to apply such imported thick beet juice to a processor's marketing allocation.

The advanced notice requests comments on five specific questions. Those questions, and Cargill's responses, are provided as follows:

- 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?*

A resulting increase in the OAQ from curtailment of imports of thick juice would have little impact on current beet and cane processors in the U.S. Historic volumes of domestically-processed sugar from imported thick beet juice have been miniscule in relation to the total amount of sugar processed in the United States.

The CCC should not contemplate a total curtailment of imported thick beet juice. Imports of thick beet juice have occurred under the existing sugar program largely as a response to favorable market conditions, depending on supply and demand and market prices. Thick beet juice imports provide needed product to the marketplace when supplies are tight. A total curtailment of thick beet juice would reduce the flexibility available to the USDA and CCC in regulating our current sugar program. As recent events and market conditions have shown,

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the current sugar program requires as much flexibility as absolutely possible to meet user needs and maintain a viable market for producers.

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?*

It is not equitable to treat sugar derived from thick juice differently than sugar derived from cane counterparts. There is no compelling reason to treat sugar derived from one source differently than that derived from another source. Allowing cane-derived products while disallowing beet-derived products would place beet processors at a disadvantage as compared to cane.

We agree that the USDA does not have discretion to regulate the imported cane intermediary products, namely cane syrup and cane molasses. Nor do we believe that current law gives the USDA authority to regulate the marketing of sugar derived from beet thick juice as proposed by certain portions of the domestic sugar industry. We believe the CCC is obligated by law to strictly apply and regulate the marketing of sugar under the 1992 Farm Bill and the 1938 Act. Fundamentally, the CCC must administer the sugar program as set out by statute and by regulations promulgated within the agency's authority. By promulgating regulations restricting the marketing of sugar from imported beet thick juice, the CCC would be acting improperly and outside that statutory authority.

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?*

As the entity that was denied its request for an allocation under the new entrant provisions as referenced in the question, we obviously believe that new entrant status would not only be desirable, but would be the legally correct result as well. The decision of the CCC to deny Cargill's request was incorrect and the petition for new entrant status should have been granted. The CCC, however, denied the petition and in doing so, effectively decided that the beet sector's percent of the OAQ would not be diluted by those processing thick beet juice. The miniscule amount of sugar processed from imported thick juice is not diluting the beet sector's percent of the OAQ today, nor is it having an adverse effect on the ability of processors to market their product, whether they are beet or cane processors.

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?*

Historically, thick juice has been considered to be sugar for purposes of the allotment program and not a feedstock. There is no compelling reason for the CCC to now consider beet thick juice to be a feedstock when it has not done so since enactment of the 2002 Farm Bill.

Restricting imports of thick beet juice could very well be inconsistent with the obligations of the U.S. under NAFTA and the WTO. Restricting the importation of thick beet juice or the sale of sugar derived from it could have the effect of denying U.S. market opportunities for importing countries and potentially could be inconsistent with U.S. international trade obligations.

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 allocation of exiting 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.*

The definitions of domestically-produced and imported thick juice should not be changed by regulation. Regardless of whether entities that are further refining thick juice from domestically-grown beets or from juice that is imported, a change in definition would only serve to further confuse the obligations of importers, processors and marketers and is not necessary.

A marketing allocation scheme for domestic beet sugar processors already exists under the current sugar program. It does not make sense at this stage to redefine thick beet juice, whether domestic or imported, nor does it make sense to now begin regulating the marketing of sugar derived from imported thick beet juice as contemplated by CCC.

We thank the department and CCC for their consideration of our comments in this matter and would certainly be available for further consultation if necessary.

Sincerely,



Martin A. Muenzmaier
Director, Federal Government Relations

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November 4, 2006

Director, Dairy and Sweeteners Group
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Re: Advance Notice of Proposed Rulemaking on Sugar Program Definitions, Vol. 71, No. 174, September 8, 2006, pp. 53051-53052

RIN 0560-AH53

Dear Sir:

These comments provide the views of the Sweetener Users Association on the Advance Notice of Proposed Rulemaking (ANPR) published by the Commodity Credit Corporation (CCC) in the *Federal Register* of September 8, 2006. This ANPR requests 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 juice. SUA's members are companies in the food and beverage industries that use nutritive sweeteners in their business operations, as well as the trade associations that represent those companies.

Because of the many legitimate questions that surround this issue, SUA commends CCC for publishing an ANPR rather than a proposed rule. In SUA's view, an ANPR is the appropriate regulatory step at this stage.

SUA opposes regulating the marketing of sugar derived from imported beet thick juice. Subjecting imported beet thick juice to marketing allocations is a bad idea for many different reasons.

- On the heels of a year when short supplies severely disrupted the U.S. refined sugar market, it makes no sense to move toward additional restrictions on available supplies of refined sugar.
- The amount of sugar in question is small and cannot conceivably depress or even materially affect U.S. prices, and so there is no justification for acting against imported beet thick juice on the basis of balancing markets.

- Any action to subject beet thick juice to marketing allocations would single out one farmer-owned cooperative for punitive treatment. CCC has provided no rationale for taking an action which could materially and differentially affect the competitive position of individual firms in the beet sugar sector, which has seen substantial concentration in recent years.
- By reversing the regulatory treatment of a product that is being legally imported in reliance upon a ruling of the Bureau of Customs and Border Protection, CCC may cause the United States to violate a number of trade obligations, including national treatment and previously granted tariff concessions.

In particular, SUA believes CCC should seriously consider the following consequences and implications of any rulemaking to subject beet thick juice to marketing allocations:

- One, and only one, sugar beet processor would be adversely affected by a decision to subject sugar beet thick juice to marketing allocations. This processor has acted in reliance on USDA's existing regulations, which have *not* subjected thick juice to allocations. For the Department to change its policy at this point, in a manner that would single out a particular farmer cooperative for punitive action, raises serious questions. Why would USDA change its regulatory structure in a way that will harm the competitiveness of one beet seller to the advantage of others? The answer is that there is no good reason to take such an action, and the Department ought not do so.
- The contemplated regulatory action would single out the product of a single nation – Canada – and subject its product to treatment that is different from the regulatory treatment of domestically produced thick juice, as CCC points out in the fourth question it raises for comment. Thus, an obvious national treatment issue would arise. In addition, by taking an action that would likely lead to the curtailment of imports, USDA may also be acting in a way that nullifies and impairs a tariff concession previously granted to Canada. Needless to say, the government of the United States should not consciously flout its trade obligations.
- There is no equity in treating sugar beet thick juice differently than the analogous products of the cane sector, cane syrup and molasses. Sellers of cane sugar already have access to some supplies – imported raw cane sugar – that are not subject to marketing allotments. It is inequitable to deprive sellers of beet sugar of access to thick beet juice when no corresponding action can legally be taken in the cane sector.
- By subjecting thick juice to marketing allocations, USDA will in effect be taking away part of the resulting allotment from the beet sector, and giving it to the cane sector. There is no justification for such an arbitrary transfer of marketing power from one industry to the other, any more than a similar transfer from cane to beets would be justified. That the quantity is small does not diminish the inequity.

SUA's comments on the specific issues raised in the ANPR follow.

CCC Issue No. 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?*

No. The result would be that relatively less sugar than at present would be marketed by the beet sector, as compared to the cane sector (since sugar presently marketed by the beet sector includes all of the sugar refined from imported thick juice, but would include only 54.35% of that amount if the thick juice were made subject to allocations). The OAQ would be larger, but 45.65% of the increase would be given to sugarcane processors. Already, the cane sector (1) is not subject to marketing allocations as to raw sugar that it imports and, through its owned refineries, refines and markets; and (2) can also temporarily increase its marketable supplies by utilizing the refined sugar re-export program. There is no reason to further disadvantage the beet sector.

CCC Issue No. 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?*

No. To do so is to single out one segment of the sugar industry – a segment almost completely grower-owned – for adverse treatment. If USDA sees a need to regulate the sale of sugar derived from imported sugar beet thick juice, the Department should seek a statutory change. Better yet, the Department should signal its refusal to accept a new farm bill that continues the inequities that are inherent in the current marketing allotment system.

CCC Issue No. 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?*

SUA’s understanding of prior USDA actions, and related litigation, is that it may be questionable whether new entrant status could be granted under the conditions described in the ANPR. However, USDA may wish to consider whether making any change now to the status of imported sugar beet thick juice would require revisiting – and perhaps reversing – previous decisions that were affirmed upon appeal. Perhaps the relevant question is not to the public, but to USDA itself: Would that be a desirable result?

CCC Issue No. 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 C.F.R. 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?

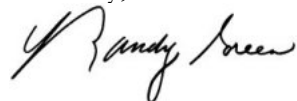
No, there is not a rationale for considering imported thick juice a feedstock but considering domestic thick juice sugar. If these are “like products” – and it is difficult to see how they are not – then an obvious national treatment issue under both WTO and NAFTA commitments arises. Imported thick juice is imported thick juice – like imported sugar, a product that *is* subject to the Harmonized Tariff Schedules of the United States, but is *not* subject to marketing allotments. This product has been properly classified in a tariff line that is not subject to import quotas, imports of the product have a natural limit and only one logical country of origin, and the imports are and will remain minuscule in relation to total sugar imports and the total U.S. sugar market. No action on CCC’s part is necessary or appropriate.

CCC Issue No. 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.*

SUA believes CCC should leave the sugar program regulations as they are, avoiding the complications raised in issue #5, as well as other unforeseen consequences that would no doubt arise. In a way, CCC has answered its own question: Of course the federal government should not take a step that would make the marketing allotment system operate in a manner even more arbitrary, illogical and inequitable than it already does. This issue also begs the question why CCC would consider a significant change to its rules when Congress is about to write a new farm bill. Only one more crop of sugar beets will be planted under provisions of the current farm bill. USDA itself has pointed out on several occasions – including before Congress – that free trade with Mexico will render the current sugar program inoperable, and require substantial modification. With major changes ahead, CCC should expend its limited resources in developing workable new sugar policies for the next decade, not in creating new complications in an already arcane system.

SUA appreciates the opportunity to submit these comments and again urges CCC not to take any action that would apply marketing allocations to imported beet thick juice.

Sincerely,



Randy Green, President

November 6, 2006

Director
Dairy and Sweeteners Analysis Group
Farm Service Agency
US Department of Agriculture
Independence Avenue, SW
Washington, DC 20250-0516

Dear Sir:

**Re: Comments on the Advanced Notice of Proposed Rulemaking for
Imported Beet Thick Juice**

This letter is in response to the advance notice of proposed rulemaking published in the US Federal Register of September 8, 2006 regarding potential revisions to the regulations for the marketing of sugar derived from imported beet thick juice.

The Government of Alberta is strongly opposed to any changes in the way the Commodity Credit Corporation administers the domestic sugar allotment system that could potentially constrain, reduce or eliminate imports of beet thick juice from Canada.

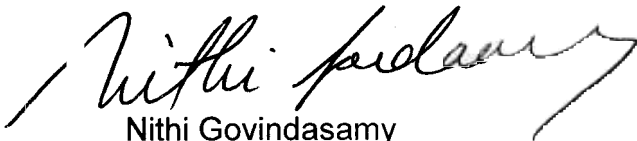
In the fiscal year 2005, Canada exported 35,680 metric tonnes of beet thick juice to the US. Thick beet juice is a legitimate commercial product, and these exports are important for maintaining the viability of the Alberta sugar beet industry. However, this exported volume is insignificant compared to the total US market.

Although Alberta fully recognizes the right of the US to operate its domestic sugar regime, there is little doubt that the objective of the proposed changes to the US sugar program is to effectively eliminate the importation of beet thick juice from Canada.

This protectionist approach is contrary to the intent and spirit of Canada-US trade relations. It also undermines the efforts of governments and industry on both sides of the border to create an expanded, predictable and secure market for agricultural goods in both countries. More importantly, it appears to be inconsistent with the US obligations and commitments under the World Trade Organization and the North American Free Trade Agreement.

The Government of Alberta is opposed to any regulatory changes that could constrain Canadian exports of beet thick juice to the US. In drafting a proposed rule for the treatment of juice under the domestic marketing allotment program, we expect the US to comply fully with its international trade obligations and commitments. We strongly urge the USDA to maintain the current definition of sugar beet thick juice for the purpose of administering the US sugar program.

Sincerely,

A handwritten signature in black ink, appearing to read "Nithi Govindasamy". The signature is fluid and cursive, with a long horizontal stroke at the end.

Nithi Govindasamy
Director, Policy Secretariat

COFFIELDLAW

666 Eleventh Street, N.W., Suite 315
Washington, D.C. 20001

Shirley A. Coffield
Attorney at Law

Direct Line: (202) 331-3097
e-mail: coffieldlaw@yahoo.com

November 7, 2006

Director
Dairy and Sweeteners Analysis Group (DSAG)
Farm Service Agency (FSA)
United States Department of Agriculture
STOP 0516, 1400 Independence Avenue, SW
Washington, DC 20250-0516

RE: RIN 0560-AH53: Sugar Program Definitions
Notice of Proposed Rulemaking: Commodity Credit Corporation¹

COMMENTS ON BEHALF OF THE CANADIAN SUGAR INSTITUTE

These comments are submitted on behalf of the Canadian Sugar Institute, an association representing sugar beet processors and refiners of cane sugar in Canada. We oppose any action taken under the CCC that will serve to restrict access of products resulting from the processing of Canadian sugar beets. The measures contemplated point out the complexities of this system and the potential for major violations of US obligations under the NAFTA and the WTO. Given the very small volume of imports of the product targeted by these import restricting alternatives, it serves no rational purpose to make any of the proposed changes.

The Adverse Impact on the Canadian Processor and Growers

The contemplated NAFTA and WTO-inconsistent measures will adversely impact Canadian sugar beet processing and sugar beet production directly equivalent to the volume of shipments or potential shipments that is curtailed. Irrespective of their form or implementation, the contemplated measures will deny US market opportunities to Canadian sugar beet thick juice. This will cause immediate and direct harm to Canada's sole producer and exporter of thick juice and sugar beet producers in Taber, Alberta.

The Impact on the Administration of the US Sugar Program

Compared to the size of the US refined sugar market and to the volume of imports of other sugar products into the US, imports of sugar beet thick juice are *de minimis*. Imports of sugar beet thick juice from Canada have ranged up to a maximum of 36,000 mtrv (39,700 strv) in the past

¹ Federal Register, Vol. 71, No. 174, September 8, 2006, pp. 53051-53052

four fiscal years compared to the US 9.5 million mtrv (10.5 million strv) sugar market and to US total imports of sugar, syrups and sugar-containing products (see chart below). In considering the contemplated measures, US authorities should weigh the substantial problems that the measures will create in the administration of the US sugar program (discussed below) against this *de minimis* volume. Balancing these considerations militates against taking any of the contemplated actions.

United States Imports Sugar, Syrups and Sugar In Sugar-Containing Products

	2004/05	2005/06	2006/07 (proj)
	1,000 short tons (raw value)		
Tariff rate quota imports	1,408	2,588	1,821
Other program imports (re-export and polyhydric)	500	349	325
Non-program - high tier imports	107	450	50
Non program - syrups and molasses	85	60	10
Estimated sugar in sugar-containing products	1,205	1,350	NA
Total imports sugar, syrups, SCP's	3,305	4,797	NA

Source: USDA

Specific Comments on the CCC Questions

- 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?**

This question contemplates a complete curtailment of imports of sugar beet thick juice from Canada. Since the sugar program does not provide for the curtailment of imports of this product, a new measure will have to be introduced outside of the sugar program framework.

On its face, any such measure will be a restriction on the importation of thick juice that *prima facie* will be inconsistent with the United States’ obligations under the NAFTA and the WTO.

- 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?**

This question illustrates some of the complexities that will be encountered if imports of sugar beet thick juice are regulated. Aside from the NAFTA and WTO-inconsistencies, it is inequitable to regulate in this manner because some market participants (i.e., producers of refined cane sugar) will be placed at an advantage over others (i.e., producers of beet sugar).

To the extent that the “regulation” contemplated in this question pertains to *imported* sugar beet thick juice, cane syrup and cane molasses, such importations should not be regulated. Any form of such regulation will either restrict imports or, as discussed in the comments below, limit their market opportunities vis-à-vis US like products and thereby run afoul of the United States’ obligations under the NAFTA and the WTO.

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?**

This question illustrates additional complexities that will be encountered in the administration of the sugar program. Examples include:

Will the OAQ assigned to the sugar beet sector be increased prior to this redistribution in an amount equal to the volume of thick juice imports? If so, how will this be done given that any increases in the OAQ must be divided between the sugarcane and sugar beet sectors?

How will any entity currently engaged in processing such imports qualify under the new entrant provisions? For example, does the language in the relevant provisions of the Farm Bill referring to “processing sugar beets” encompass processing sugar beet thick juice?

The nature of the inconsistencies with the United States’ obligations under the NAFTA and the WTO will vary depending on how this scenario is implemented.

Any form of restriction “on the importation of” thick juice will be inconsistent with the NAFTA and WTO, whether it restricts imports in whole or in part.

Alternatively, any form of regulation of the sale, offering for sale or purchase of imported sugar beet thick juice that is not implemented “on the importation” of that product will be inconsistent with the national treatment obligations in the NAFTA and the WTO. Although the inclusion of imported sugar beet thick juice under domestic marketing allotments may appear to grant formally equal treatment on the sale, offering for sale or purchase of imported and domestic sugar beet thick juice, it will *de facto* eliminate or substantially reduce the market for the imported product while enhancing market opportunities for the like domestic product.

The US sugar market is regulated, the production and processing of sugar beets is highly integrated, and all or almost all domestically produced thick juice is internally consumed by US sugar beet processors. In such circumstances, marketing allotments inherently favor US-grown sugar beets and, consequently, US sugar beet thick juice. The imposition of marketing allotments on imported sugar beet thick juice will create a substantial disincentive to purchasing and processing the imported product, and a corresponding incentive to fill any new allocations by processing more US sugar beet thick juice. In this sense, the national treatment obligation will be violated because the conditions of competition will be modified in favor of the like domestic product.

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?**

This question contemplates a measure that is inconsistent with the national treatment obligations under the NAFTA and WTO.

To the extent that imported sugar beet thick juice is treated as feedstock and domestic like product as sugar, the latter product can be used to secure loans under the "in process sugar" provisions of the 2002 Farm Bill while the former cannot. Accordingly, imported sugar beet thick juice is formally being treated less favourably than domestic like product and the national treatment obligation is *de jure* violated.

If both imported and domestic sugar beet thick juice are formally treated equally (i.e., both either as a feed stock or as sugar), the *de facto* discrimination described in the comment to question 3 (above) exists and the national treatment obligation is violated.

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.**

In addition to the complexities the contemplated measure will introduce to the administration of the sugar program, the *de facto* discrimination described in the comment to question 3 (above) exists and the national treatment obligation is violated.

In conclusion, we reiterate that the contemplated changes to the program outlined in the Advanced Notice of Proposed Rulemaking cannot be justified domestically or internationally. To implement any of the proposals would require yet further changes to an already complicated program for no discernable reason.

Respectfully Submitted,
Shirley A. Coffield
US Counsel
Canadian Sugar Institute

Canadian Embassy



Ambassade du Canada

501 Pennsylvania Avenue, NW
Washington, DC 20001

November 6, 2006

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

RIN 0560-AH53

Reference: Government of Canada Comments on September 8 *Federal Register* Notice (Sugar Program Definitions)- Advance notice of proposed rule making

Dear Mr. Colacicco,

The Government of Canada is opposed to any changes to the way the Commodity Credit Corporation administers the domestic sugar allotment system with respect to imported sugar beet thick juice, aimed at reducing or eliminating trade in this product. While this advance notice of rulemaking does not provide a detailed proposal, it does make clear that any potential changes target Canada specifically and go against bilateral efforts to improve our trade relations.

In fiscal year 2005, Canada exported 35,680 metric tonnes of sugar beet thick juice, which was valued at C\$17.2 million. These exports all originate from Canada's single sugar beet processing facility in Taber, Alberta. Exports of sugar beet thick juice from this plant help maintain its viability, and therefore the viability of the Canadian sugar beet industry.

While these exports are of great significance to Canada's sugar beet industry, they are very small in the context of the American sugar market. The 2005 exports were equivalent to only 0.4 per cent of the total 2005 U.S. sugar market. These figures demonstrate that the legitimate importation of sugar beet thick juice from Canada is insignificant relative to the total U.S. sugar market.

Canada fully recognizes the right of the United States to operate its domestic sugar regime. At issue in the advance notice is the proposal that the rules under which the program has been administered, and with which the Canadian exporter and its U.S. client have complied in good faith, will be changed in such a manner as to effectively eliminate Canadian exports.

This *de facto* restriction of legitimate trade between Canada and the United States is certainly in violation of the spirit of our trading relationship, and also raises questions related to its compliance with the United States' obligations under the WTO and NAFTA. Again, Canada cannot offer detailed comments in the absence of a specific proposal, but within the context of market and regulatory structures in the U.S. sugar sector, it seems clear that any changes being considered would have the effect of conferring an advantage to domestically produced sugar beet thick juice as compared to imports, and thus potentially violate the United States' national treatment obligations. The potential changes, moreover, significantly alter long-standing rules under which companies on both sides of the borders could reasonably have expected to operate, and on which business decisions have been made.

One possible scenario in the advance notice suggests that the current definition of sugar beet thick juice be maintained for domestic thick juice while the definition for imported thick juice would be changed. In Canada's view, such a scenario would violate the United States' national treatment obligations under the WTO and NAFTA, particularly as the stated policy objective of the change in treatment for the imported goods is to eliminate their import.

The advance notice highlights a number of potential issues the proposed change in definition would raise in terms of the functioning of the sugar program for U.S. producers and processors of sugar beet and sugarcane. The Government of Canada does not propose to comment on the potential redistributive impacts of the changes to U.S. domestic interests. However, the proposed changes could have negative impacts on the U.S. domestic industry and the efficient functioning of the sugar program, as well as to Canadian export interests. Thus, the proposal raises more concerns for all stakeholders than it addresses, given the extremely low levels of imports of sugar beet thick juice into the United States.

The proposed changes to the definition of sugar beet thick juice in the Commodity Credit Corporation's administration of the sugar program would cause significant harm to the Canadian sugar beet industry's export interests. In addition to the harm caused to Canadian exporters to the United States, who had a reasonable expectation that the rules applying to the import and treatment of sugar beet thick juice would remain constant and equitable, the proposed measure could have significant negative implications for U.S. domestic sugar beet and sugarcane producers and processors. As such, and given the low levels of imports of this product, we would urge the Commodity Credit Corporation to maintain its current definition of sugar beet thick juice for the purposes of administering the sugar program.

Sincerely,



Claude Carrière
Minister (Economic) and
Deputy Head of Mission

SENATE



SÉNAT

STANDING SENATE COMMITTEE
ON AGRICULTURE
AND FORESTRY

COMITÉ SÉNATORIAL PERMANENT
DE L'AGRICULTURE
ET DES FORÊTS

November 2, 2006

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

Reference: RIN 0560-AH53 - Sugar Program Definition

Dear Mr. Colacicco,

Please find below the Senate of Canada's Standing Committee on Agriculture and Forestry's comments in response to the proposed change to make sugar produced from imported sugar beet thick juice count against an individual processor's marketing allocation.

Because of the importance of these proposed changes to the sugar beet industry in Canada, the Committee held hearings on this topic in October 2006. The Committee heard from representatives of Canadian sugar beet producers, the Canadian Sugar Institute and Rogers Sugar Canada.

The Rogers Sugar plant located in Taber, Alberta, is the only sugar beet processing plant in Canada. This plant started exporting sugar beet thick juice to the United States in 2004 in order to diversify its markets and maintain its volume of production. Sugar beet thick juice is an intermediate product of the manufacture of sugar from sugar beets. Export of sugar beet thick juice is critical to the sustainability of this plant. In the past three years, sales of thick juice represented 20 to 30% of the total Taber plant production. Losing the ability to export could mean the closure of the plant leaving the 250 sugar beet producers without their main market. In other words, this could be the end of sugar beet production in southern Alberta.

Canada has a minimal share of the U.S. sugar market – a 10,300-ton quota of refined sugar in the 10-million ton U.S. sugar market. In addition, Canadian exports of sugar beet thick juice are extremely small in relation to the size of the U.S. market; they represent only 0.4% of the total U.S. sugar production.



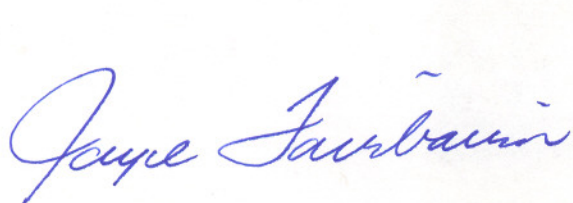
The presence of a sugar beet processing plant in Canada also has some importance to the United States. Following Hurricane Katrina and the subsequent shortage of sugar in the United States, the U.S. government opened up import quotas of sugar at four different times. One of them, a Canada specific quota of 25,000 tonnes, could be supplied only by the Taber plant. This is further evidence that Canada plays an important role in ensuring the security of the U.S. food supply.

Currently, the Commodity Credit Corporation (CCC) does not make the marketing of sugar derived from imported sugar beet thick juice count against an individual processor's marketing allocation. As a sovereign country, the United States has the right to operate its domestic sugar program, and Rogers Sugar and its U.S. client have complied in good faith to the rules under which the program has been administered. The proposal to change the rules, however, would effectively eliminate Canadian exports.

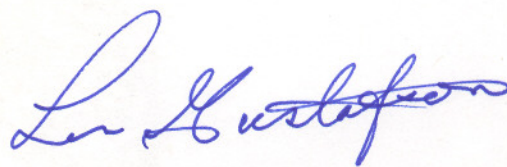
This *de facto* restriction of legitimate trade between Canada and the United States is certainly in violation of the spirit of our trading relationship, and also raises questions related to its compliance with the United States' obligations under the WTO and NAFTA. It seems clear that any changes being considered would have the effect of conferring an advantage to domestically produced sugar beet thick juice as compared to imports, and thus potentially violate the United States' national treatment obligations. Furthermore, the potential changes significantly alter long-standing rules under which companies on both sides of the borders could reasonably have expected to operate, and on which business decisions have been made.

The advance notice highlights a number of potential issues the proposed change in definition would raise in terms of the functioning of the sugar program for U.S. producers and processors of sugar beet and sugarcane. It is the Committee's view that the proposal raises more concerns for all stakeholders than it addresses, given the extremely low levels of imports of sugar beet thick juice into the United States. Therefore, the Standing Senate Committee on Agriculture and Forestry, in support of the government of Canada's position, would urge the CCC to maintain its current definition of sugar beet thick juice for the purposes of administering the sugar program.

Sincerely,



The Honourable Joyce Fairbairn
Senator
Chair of the Committee



The Honourable Leonard J. Gustafson
Senator
Deputy Chair of the Committee