Canada Border Services Agency | Agence des services frontaliers du Canada

RR-2014-006
4366-63
4366-64

OTTAWA, July 3, 2015

STATEMENT OF REASONS

Concerning an expiry review determination under paragraph 76.03(7)(*a*) of the *Special Import Measures Act* regarding

THE DUMPING OF REFINED SUGAR ORIGINATING IN OR EXPORTED FROM THE UNITED STATES OF AMERICA, DENMARK, THE FEDERAL REPUBLIC OF GERMANY, THE NETHERLANDS AND THE UNITED KINGDOM

AND

THE SUBSIDIZING OF REFINED SUGAR ORIGINATING IN OR EXPORTED FROM THE EUROPEAN UNION

DECISION

On June 18, 2015, pursuant to paragraph 76.03(7)(*a*) of the *Special Import Measures Act*, the President of the Canada Border Services Agency determined that the expiry of the orders made by the Canadian International Trade Tribunal on November 1, 2010, in Expiry Review No. RR-2009-003, as amended by its order made on September 28, 2012, in Expiry Review No. RR-2009-003R, would likely result in the continuation or resumption of dumping of refined sugar into Canada from the United States of America, Denmark, the Federal Republic of Germany, the Netherlands and the United Kingdom and would likely result in the continuation or resumption of subsidizing of the goods from the European Union.

Cet *Énoncé des motifs* est également disponible en français.
This *Statement of Reasons* is also available in French.

Canada

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SUMMARY

[1] On February 18, 2015, the Canadian International Trade Tribunal (Tribunal), pursuant to subsection 76.03(3) of the *Special Import Measures Act* (SIMA), initiated an expiry review of its orders made on November 1, 2010, in Expiry Review No. RR-2009-003, as amended by its order made on September 28, 2012, in Expiry Review No. RR-2009-003R, concerning the dumping of refined sugar, refined from sugar cane or sugar beets, in granulated, liquid and powdered form (refined sugar), originating in or exported from the United States of America (U.S.), Denmark, the Federal Republic of Germany (Germany), the Netherlands and the United Kingdom and the subsidizing of refined sugar originating in or exported from the European Union (E.U.).

[2] As a result of the Tribunal's notice, on February 19, 2015, the Canada Border Services Agency (CBSA) commenced an investigation to determine whether the expiry of the orders in respect of refined sugar is likely to result in the continuation or resumption of dumping and/or subsidizing of the goods.

[3] The Canadian Sugar Institute (CSI) and its member producers provided responses to the Expiry Review Questionnaire (ERQ), and additional information in support of their position that continued dumping and subsidizing of refined sugar from the named countries are likely if the orders are rescinded.

[4] The European Commission (E.C.) provided a response to the government ERQ stating its position that the rescindment of the orders is not likely to result in the continuation or resumption of dumping from Denmark, Germany, the Netherlands and the United Kingdom; and is not likely to result in the continuation or resumption subsidizing of refined sugar from the E.U.

[5] The CBSA received a response to the exporter ERQ from one exporter located in the U.S. and one exporter located in Germany. The exporter located in the U.S. did not express an opinion on the likelihood of continued or resumed dumping of the subject goods. The exporter located in Germany stated its position that the rescindment of the orders is not likely to result in the continuation or resumption of dumping from Denmark, Germany, the Netherlands and the United Kingdom; and is not likely to result in the continuation or resumption subsidizing of refined sugar from the E.U.

[6] The CBSA also received responses to the importer ERQ from two importers of subject goods from the U.S. and from two importers of non-subject goods. None of the importers expressed an opinion on the likelihood of continued or resumed dumping and/or subsidizing of subject goods, should the orders be rescinded.

[7] With respect to the goods from the U.S., an analysis of the information on the record shows that:

- the subject goods were dumped during the period of review (POR) and the price differential between the U.S. and Canada indicates exports will continue to be at prices lower than their normal values;
- the low volume of imports since the order has been in effect indicates an inability to sell to Canada without dumping;
- the U.S. sugar industry has substantial inventories and has the capacity to increase production, given the level of unutilized capacity;
- the anti-dumping and countervailing suspension agreements between U.S. and Mexico is causing uncertainty in the U.S. market; and
- the production forecasts point to continued global sugar surplus.

[8] With respect to the goods from Denmark, Germany, the Netherlands and the United Kingdom, an analysis of the information on the record shows that:

- the subject goods from the named countries were dumped during the POR and the price differential between the named E.U. countries and Canada indicates exports will continue to be at prices lower than their normal values;
- the low volume of imports since the order has been in effect indicates an inability to sell to Canada without dumping;
- the named E.U. countries continue to produce surplus sugar;
- the named E.U. countries are losing traditional export markets; and
- the production forecasts point a to continued global sugar surplus.

[9] With respect to refined sugar from the E.U., an analysis of the information on the record shows that:

- there has been subsidizing of the subject goods while the order has been in effect, and this subsidizing is continuing.

[10] For the foregoing reasons, the President of the Canada Border Services Agency (President), having considered the relevant information on the record, determined on June 18, 2015, under paragraph 76.03(7)(*a*) of SIMA that the expiry of the orders:

- in respect of refined sugar originating in or exported from the U.S. is likely to result in the continuation or resumption of dumping of the goods into Canada;
- in respect of refined sugar originating in or exported from Denmark, Germany, the Netherlands and the United Kingdom is likely to result in the continuation or resumption of dumping of the goods into Canada; and
- in respect of refined sugar originating in or exported from the E.U. is likely to result in the continuation or resumption of subsidizing of the goods into Canada.

BACKGROUND

[11] On March 17, 1995, in response to a complaint filed by the CSI, the Deputy Minister of National Revenue (now the President of the CBSA) initiated investigations respecting the alleged injurious dumping of refined sugar, originating in or exported from the U.S., Denmark, Germany, the Netherlands, the United Kingdom and the Republic of Korea, and the alleged subsidizing of refined sugar, originating in or exported from the U.S. and the E.U.

[12] A preliminary determination of dumping was made on July 7, 1995, with respect to the subject goods from all the named countries and a preliminary determination of subsidizing was made on the same date with respect to subject goods from the E.U. At the same time, the subsidy investigation with respect to refined sugar from the U.S. was terminated.

[13] On October 5, 1995, final determinations of dumping and subsidizing were made with respect to the subject goods. On November 6, 1995, the Tribunal issued findings that the dumping of refined sugar originating in or exported from the U.S., Denmark, Germany, the Netherlands, and the United Kingdom and the subsidizing of such goods from the E.U. threatened to cause injury. The Tribunal found no injury respecting the dumping of refined sugar from the Republic of Korea. The Tribunal also excluded a number of specialty sugar products from the findings.

[14] There have been three previous expiry review orders since the original investigation. On November 3, 2000, the Tribunal issued orders continuing the findings with amendments to exclude additional refined sugar products. On November 2, 2005, the Tribunal continued its orders, again with certain amendments.

[15] On November 1, 2010, the Tribunal continued its order in respect of the dumping of refined sugar, originating in or exported from the U.S. and rescinded its order in respect of the dumping of refined sugar originating in or exported from Denmark, Germany, the Netherlands and the United Kingdom, and the subsidizing of refined sugar originating in or exported from the E.U.

[16] On June 18, 2012, further to a judgment of the Federal Court of Appeal which set aside the November 10, 2010 Tribunal order rescinding its order in respect of the dumping of refined sugar originating in or exported from Denmark, Germany, the Netherlands and the United Kingdom, and the subsidizing of refined sugar originating in or exported from the E.U., the Tribunal recommenced the expiry review of its order in respect of the dumping of refined sugar originating in or exported from Denmark, Germany, the Netherlands and the United Kingdom, and the subsidizing of refined sugar originating in or exported from the E.U.

[17] On September 28, 2012, the Tribunal having reconsidered the matter, continued its order in respect of the dumping of refined sugar originating in or exported from Denmark, Germany, the Netherlands and the United Kingdom, and the subsidizing of refined sugar originating in or exported from the E.U.

[18] On December 29, 2014, pursuant to subsection 76.03(2) of SIMA, the Tribunal issued a notice of expiry of the orders made on November 1, 2010, in Expiry Review No. RR-2009-003, as amended by its order made on September 28, 2012, in Expiry Review No. RR-2009-003R. Based on the available information and the information submitted by the interested parties, the Tribunal decided that an expiry review of the orders was warranted. Therefore, on February 18, 2015, pursuant to subsection 76.03(3) of SIMA, the Tribunal initiated an expiry review of its orders.

[19] On February 19, 2015, the CBSA commenced an expiry review investigation to determine whether the expiry of the orders is likely to result in the continuation or resumption of dumping and/or subsidizing of the subject goods from the named countries.

PRODUCT DESCRIPTION

[20] The subject goods are defined as:

> **Dumping** – Refined sugar, refined from sugar cane or sugar beets, in granulated, liquid, and powdered form, originating in or exported from the United States of America, Denmark, the Federal Republic of Germany, the Netherlands and the United Kingdom.
>
> **Subsidy** – Refined sugar, refined from sugar cane or sugar beets, in granulated, liquid, and powdered form, originating in or exported from the European Union.

[21] Refined sugar is sold as white granulated, liquid and specialty sugars. Granulated sugar comes in a range of grain fractions (e.g., medium, fine and extra fine). Liquid sugar includes invert sugar. Specialty sugars include soft yellow sugar, brown sugar, icing sugar, Demerara sugar and others and may be sold in granulated, liquid or powdered form. Refined sugar is sold in a broad range of shipping and packaging configurations. These include 2, 4, 10, 20 and 40 kilogram bags, and in bulk by rail-car, truckload or one metric tonne (MT) intermediate bulk containers. Liquid sugar is sold by rail-car, truckload, drum and pail.

[22] At the time of the original findings, the Tribunal excluded certain brand name specialty sugar products. In 1997, the Governor-in-Council, on the recommendation of the Minister of Finance, issued Remission Order P.C.1997-1523 for anti-dumping and countervailing duties on more generic specialty products that were not identified by specific brand names. Another Remission Order (P.C. 1998-1889) came into effect on October 22, 1998, respecting charitable food donations by a non-resident of Canada to a registered charity. In 2000, the Tribunal continued the 1995 findings, with an amendment to exclude further specialty sugar products, including products covered by the 1997 remission order. The Tribunal made an additional exclusion with the continuation of the orders in 2005. A full list of product exclusions is included in the Appendix.

CLASSIFICATION OF IMPORTS

[23] The subject goods are normally, but not exclusively, classified under the following Harmonized System (HS) classification numbers:

1701.91.10.00	1701.91.90.91	1701.99.90.21	1702.90.11.00	1702.90.16.00
1701.91.90.11	1701.91.90.99	1701.99.90.27	1702.90.12.00	1702.90.17.00
1701.91.90.19	1701.99.10.00	1701.99.90.28	1702.90.13.00	1702.90.18.00
1701.91.90.21	1701.99.90.10	1701.99.90.30	1702.90.14.00	1702.90.69.00
1701.91.90.29	1701.99.90.20	1701.99.90.90	1702.90.15.00	1702.90.89.10

[24] This listing of HS codes is for convenience of reference only. Refer to the product definition for authoritative details regarding the subject goods.

PERIOD OF REVIEW

[25] The Period of Review (POR) for the CBSA's expiry review investigation is from January 1, 2012 to December 31, 2014.

CANADIAN INDUSTRY

[26] The CSI is a trade association comprised of Canadian producers of the like goods. Its address is:

WaterPark Place
Suite 620-10 Bay Street
Toronto, Ontario M5J 2R8

[27] The Canadian industry is currently comprised of three Canadian producers of refined sugar: Lantic Inc. (Lantic), Redpath Sugar Ltd. (Redpath) and Sucro Can Inc. (Sucro Can).

Lantic Inc.

[28] Lantic is a subsidiary of Rogers Sugar Inc. Lantic operates cane sugar refineries in Montréal, Quebec and Vancouver, British Columbia, a sugar beet factory in Taber, Alberta, a distribution centre in Toronto, Ontario, and a dry blend facility in Toronto, Ontario for sugar and non-sugar blended products. It continues to use the trademarks "Lantic" and "Rogers".[1]

[1] Exhibit 75 (NC) – Producer Response – CSI, para. 46.

Redpath Sugar Ltd.

[29] Redpath is a wholly-owned subsidiary of ASR Canada Holding Company, LLC. The ASR group of companies are private companies ultimately owned by Florida Crystals Corp. and Sugar Cane Growers Cooperative of Florida. Redpath operates a sugar refinery in Toronto, Ontario. It also operates a facility located in Belleville, Ontario, that specializes in custom blending and packaging of sugar-containing products. In 2014, Redpath closed its Niagara Falls, Ontario blending and packaging plant. It continues to use the trademark "Redpath".[2]

Sucro Can Inc.

[30] In 2014, Sucro Can opened two "melt station" production facilities in Trois-Rivières, Québec and Hamilton, Ontario. These facilities produce liquid sugar from imported sugar.

CANADIAN MARKET

[31] The apparent Canadian market for refined sugar during the POR is indicated in **Table 1** (value) below:[3]

TABLE 1
Apparent Canadian Market
Refined Sugar (Value in CAD)

Imports:	**2012**	**2013**	**2014**
Germany	153	257	67
Denmark	41,907	1,143	781
Netherlands	-	93	290
United Kingdom	-	-	20
Other E.U. Member States	11,252	110,979	209,224
Total E.U.	**53,312**	**112,472**	**210,382**
Total United States	3,297,087	2,954,328	2,502,784
Other countries[4]	27,848,937	21,397,289	16,040,608
Total Imports	**31,199,336**	**24,464,089**	**18,753,774**
Domestic Production	1,419,295,673	1,357,641,650	1,300,108,035
Total Canadian Market	**1,450,495,009**	**1,382,105,739**	**1,318,861,809**

[2] Exhibit 75 (NC) – Producer Response – CSI, para. 47.
[3] Exhibit 14 (P) and Exhibit 79 (P) – Import and Enforcement Statistics (2012-2014).
[4] Exhibit 14 (P) and Exhibit 79 (P) – Import and Enforcement Statistics (2012-2014).

[32] **Table 2** (volume) contains data concerning the apparent Canadian market for refined sugar during the POR. The size of the Canadian market for refined sugar was provided by the CSI, based on Statistics Canada data.[5]

TABLE 2 **Apparent Canadian Market** **Refined Sugar (Metric Tonnes)**			
	2012	**2013**	**2014**
Total Shipments [A]	1,121,213	1,175,219	1,153,858
Total Imports [B]	46,168	38,502	29,824
Total Exports	49,193	31,701	25,703
Total Canadian Market [C]	**1,118,188**	**1,182,020**	**1,157,979**

[A] Domestic production plus exports
[B] All countries
[C] Total shipments **plus** Total imports **minus** Total exports

Canadian Industry

[33] The data in **Table 1** reveals that, overall, the Canadian producers' share of the apparent Canadian market in terms of value increased from 97.8% to 98.6% during the POR. Similarly, in terms of volume, the Canadian producers' share of the apparent Canadian market increased from 95.9% to 97.4% during the POR.

Imports

[34] The data in **Table 1** reveals that the value of subject goods imported from the E.U. and the U.S. current represented 0.2% of the value of the Canadian market in 2014, while imports from all other countries accounted for 1.2%.[6]

[35] The data in **Table 2** reveals that the volume of refined sugar imported from all countries represented 2.6% of the volume of the Canadian market in 2014.

[36] The data in **Table 1** and **Table 2** reveals that the Canadian market for refined sugar decreased in value but increased in volume during the POR.

[5] Exhibit 75 (NC) – Producer Response – CSI, para. 50, 56, & 59.
[6] Exhibit 14 (P) and Exhibit 79 (P) – Import and Enforcement Statistics (2012-2014).

CASE ENFORCEMENT

Dumping – United States of America

[37] The U.S. domestic market for sugar is regulated in a manner that results in high prices for sugar cane, sugar beets, raw cane sugar, refined sugar and sugar-containing products. Accordingly, at the time of the final determination in 1995, the normal values reflected these high supported prices and, when compared to the lower export price to Canada, resulted in a weighted average margin of dumping of 79%.

[38] During the course of the original investigation, four exporters in the U.S. were requested to provide submissions and were provided with specific normal values. The normal values were established pursuant to section 15 of SIMA, based on profitable sales in the U.S. domestic market, or section 19 of SIMA, based on the cost of production, plus an amount for administrative, selling and all other costs, plus an amount for profits. Normal values for all other exporters were established in accordance with a ministerial specification pursuant to subsection 29(1) of SIMA on the basis of the export price plus 79%, which was the weighted average margin of dumping of all subject goods found for exporters that provided complete information.

[39] Subsequent to the Tribunal findings in 1995, up until the review in 2000, four U.S. exporters requested and obtained specific normal values. Since then, no U.S. exporters have requested specific normal values.

[40] On September 4, 2014, the CBSA concluded the re-investigation of the normal values and export prices on refined sugar from the U.S. As a result of the re-investigation, the CBSA established specific normal values for two exporters located in the U.S. In addition, normal values for all other exporters located in the U.S. are determined in accordance with a ministerial specification based on the export price of the goods advanced by 180%, which represents the highest amount by which the normal value exceeded the export price on an individual transaction for an exporter which provided a complete response to the exporter Request for Information (RFI) during the original investigation.

Dumping – Denmark, the Federal Republic of Germany, the Netherlands and the United Kingdom

[41] At the time of the final determination, the normal values for exports from Denmark, Germany, the Netherlands, and the United Kingdom were determined by ministerial specification as no submissions were received from exporters that were requested to provide information. Accordingly, normal values for goods of exporters that were requested to respond and chose not to provide submissions were based on the export price of the goods plus the highest amount by which the normal value exceeded the export price on an individual transaction (180%, expressed as a percentage of the export price) found for an exporter in the U.S. that provided complete information. For goods of all other exporters (i.e. those that were not requested to provide submissions), normal values were based on the export price of the goods plus the weighted average margin of dumping (79%) found for exporters that provided complete information.

[42] From the time of the original investigation, the E.U. has provided extensive support to the E.U. sugar industry, resulting in sugar prices well above world levels. Accordingly, a re-investigation of normal values and export prices has never been requested, as any specific normal values would be based on high support prices. The only exception concerns one exporter from the Netherlands that has requested and obtained a specific normal value for one product since the original finding. No other European exporter has expressed any interest in obtaining specific normal values.

[43] The CBSA did conduct a re-investigation of the normal values and export prices on refined sugar from Denmark, Germany, the Netherlands, and the United Kingdom in 2014. On September 4, 2014, the CBSA concluded this re-investigation. No exporters located in the named E.U. countries provided a response to the CBSA dumping RFI. As a result of the re-investigation, normal values for all exporters located in the named countries continue to be determined in accordance with a ministerial specification based on the export price of the goods advanced by 180%.

Subsidy – European Union

[44] Sugar producers in the E.U. are supported by a sugar regime that is administered as part of the Common Agricultural Policy by the E.C. This regime guarantees sugar producers in the member countries a price for sugar that is higher than the world price.

[45] At the time of the original investigation, the E.C. made a complete submission regarding subsidy programs, however, none of the exporters of the subject goods responded. Accordingly, the amount of subsidy for each E.U. country was determined by ministerial specification under subsection 30.4(2) of SIMA. Since that time, the CBSA has conducted three re-investigations of the amount of subsidy on refined sugar from the E.U.

[46] On September 4, 2014, the CBSA concluded the most recent re-investigation of the amount of subsidy on refined sugar from the E.U. The E.C. provided substantial general information about the E.U. sugar programs including aggregate spending on the programs (i.e., the E.C. provided the total spending as opposed to providing the amount of support to specific producers, or to producers in specific Member States). Nevertheless, sufficient information was not provided or was not otherwise available to enable the determination of the amount of subsidy in the prescribed manner pursuant to SIMA. Accordingly, the amount of subsidy was determined pursuant to a ministerial specification, using information from the E.C., the CSI and other sources.

[47] As a result of this re-investigation, the CBSA revised the amount of subsidy applicable on subject goods. A countervailing duty equal to EUR 24.39/100 kg is currently applied to all imports of subject goods originating in or exported from the E.U. This represents a 10% increase from the previous rate of countervailing duty of EUR 22.13/100 kg.

ENFORCEMENT DATA

[48] Imports of the subject goods from the U.S. and the E.U., for domestic consumption in Canada, virtually ceased after the injury findings in November 1995. The imports from the U.S. and E.U. are mostly non-subject sugar or specialty sugars for which a normal value had been previously issued.

[49] In the enforcement of the Tribunal's orders during the POR, as detailed in **Table 3** below, the total amount of anti-dumping and countervailing duties collected on subject imports from the U.S. and the E.U. was approximately CAD $6.7 million. By comparison, the value for duty on all subject imports from the U.S. and the E.U. during the POR was around CAD $9.1 million[7], which represents less than 1% of the value of the Canadian market.

TABLE 3
SIMA Duties Collected
Refined Sugar (Value in CAD)

Country	2012	2013	2014	2012-2014
Belgium	-	193.60	-	193.60
Germany	81.04	105.96	35.42	222.42
Denmark	-	1,085.99	746.43	1,832.42
Finland	-	2,230.70	8,370.85	10,601.55
France	924.19	7,560.96	13,064.05	21,549.20
United Kingdom	-	-	15.73	15.73
Italy	158.68	95.79	899.56	1,154.03
Netherlands	-	74.62	415.51	490.13
Poland	-	100.62	1,071.66	1,172.28
Portugal	156.80	352.23	956.77	1,465.80
Total E.U.*	**1,320.71**	**11,800.47**	**25,575.98**	**38,697.16**
U.S.	**2,352,079.85**	**2,140,491.24**	**2,160,144.04**	**6,652,717.13**
Total SIMA Duty – All named countries	**2,353,400.56**	**2,152,291.71**	**2,185,720.02**	**6,691,414.29**

* SIMA duty includes both anti-dumping and countervailing duties, where both apply.

[7] Exhibit 14 (P) and Exhibit 79 (P) – Import and Enforcement Statistics (2012-2014).

PARTIES TO THE PROCEEDINGS

[50] On February 19, 2015, the ERQ and Notice of Expiry Review Investigation were sent to all known Canadian producers[8], importers and exporters of the subject goods. A notice and the government ERQ were also sent to the E.C.

[51] The ERQs requested information needed to evaluate the expiry review factors, as listed in subsection 37.2(1) of the *Special Import Measures Regulations* (SIMR).

[52] The CSI and its members (Lantic and Redpath) provided responses to the producer ERQ and supplemental evidence for the administrative record. A case brief was also received from the CSI claiming that the dumping and/or subsidizing from all named countries would likely continue or resume should the orders be rescinded.

[53] The E.C. provided a response to the government ERQ stating its position that the rescindment of the orders is not likely to result in the continuation or resumption of dumping and/or subsidizing of refined sugar from the E.U. The E.C. did not submit a case argument or reply submission in response to the CSI's case brief.

[54] Two importers of subject goods, Maplehurst Bakeries, LLC. And Viva Pharmaceutical Inc. and two importers of non-subject goods, Trillium Health Products and Unipex Solutions Canada Inc. provided a response to the importer ERQ. None of the importers expressed an opinion on the likelihood of continued or resumed dumping and/or subsidizing of subject goods. The companies did not submit case briefs or reply submissions in response to the CSI's case brief.

[55] One exporter located in the U.S., American Sugar Refining, Inc. (ASR) provided a response to the exporter ERQ but did not express an opinion on the likelihood of continued or resumed dumping and/or subsidizing of subject goods. One exporter located in Germany, Südzucker AG (Südzucker), provided a response to the exporter ERQ stating its position that the rescindment of the orders is not likely to result in the continuation or resumption of dumping and/or subsidizing of refined sugar from the E.U. None of the exporters submitted case briefs or reply submissions in response to the CSI's case briefs.

[8] At the initiation of the expiry review investigation, one of the Canadian producers, Sucro Can, which opened in 2014, was not sent a producer ERQ as the CBSA was not aware of the existence of the company until after deadline for submissions. However, the CBSA's notice of expiry review investigation advised that any domestic producers, importers or exporters that have not received a letter with the accompanying questionnaire and wish to provide a response to the questionnaire were advised to contact the CBSA.

INFORMATION CONSIDERED BY THE PRESIDENT

Administrative Record

[56] The information used and considered by the President for purposes of this expiry review investigation is contained on the administrative record. The record includes the exhibits listed on the CBSA's Listing of Exhibits and Information, which is comprised of the Tribunal's administrative record at the initiation of the expiry review, CBSA exhibits, and information submitted by interested persons, including information which they believe is relevant to the decision as to whether dumping is likely to continue or resume, if the orders are rescinded. This information may consist of expert analysts' reports, excerpts from trade magazines and newspapers, orders and findings issued by authorities in Canada, documents from international trade organizations such as the World Trade Organization (WTO) and responses to the ERQs submitted by Canadian producers, exporters, importers and governments.

[57] For purposes of an expiry review investigation, the CBSA sets a date after which no "new" information submitted by interested parties may be placed on the administrative record or considered as part of the CBSA's investigation. This is referred to as the "closing of the record date" and is set to allow participants time to prepare their case briefs and reply submissions based on the information that is on the administrative record as of the closing of the record date. For the CBSA's expiry review investigation, the administrative record closed on April 9, 2015.

Procedural Issues

[58] The President will normally not consider any new information submitted by participants subsequent to the closing of the record date. However, in certain exceptional circumstances, it may be necessary to permit new information to be submitted. The President will consider the following factors in deciding whether to accept new information submitted after the closing of the record date:

a. the availability of the information prior to the closing of the record date;
b. the emergence of new or unforeseen issues;
c. the relevance and materiality of the information;
d. the opportunity for other participants to respond to the new information; and
e. whether the new information can reasonably be taken into consideration by the President in making the determination.

[59] Participants wishing to file new information after the closing of the record date, either separately or in case briefs or reply submissions, must identify this information so that the President can decide whether it will be included in the record for purposes of the determination.

[60] No new information was submitted after the closing of the record date.

POSITION OF THE PARTIES - DUMPING

1. Parties Contending that Continued or Resumed Dumping is Likely

1.1. Canadian Sugar Institute

Position of the Canadian Sugar Institute regarding the United States of America

[61] The CSI presented evidence and a case brief in support of its position that the continued or resumed dumping is likely should the orders be rescinded and noted that the conditions that led to the dumping in 1995, and continued in 2000, 2005 and 2010 still exist. Accordingly, the CSI contends that anti-dumping measures should remain in place. The CSI's position is based on the following factors:

- the continued dumping on sales to Canada due to U.S. government price support;
- the volume of imports of U.S. refined sugar;
- the unutilized cane refining capacity;
- the anti-dumping and countervailing suspension agreements between U.S. and Mexico is causing uncertainty in the U.S. market;
- the increased production of beet sugar; and
- the world market for sugar and Canada's position as an open market.

Continued Dumping on Sales to Canada

[62] The CSI relayed that the U.S. government's sugar program is the dominant structural influence on the U.S. sugar market. It supports U.S. domestic sugar prices above world and Canadian price levels, restricts imports, generates unutilized cane refining capacity and beet sugar surpluses and encourages exports, particularly, through the Refined Sugar Re-export Program (RSRP). Since Canada is contiguous to the U.S., the substantial majority of the industrial and consumer markets are close to the border, and corporate supply and buying relationships cross the border, Canada is an obvious and desirable target for U.S. sugar.[9]

[63] The CSI conveyed that the U.S. government's support of its sugar industry, results in high domestic prices, which provides an incentive to increase its domestic sugar production. Consequently, when the surplus U.S. sugar is imported into Canada it must compete at the lower Canadian prices. It is, therefore, priced lower than the like goods sold in the U.S. and thus is dumped.[10]

[9] Exhibit 75 (NC) – Producer Response – CSI, para. 99.
[10] Exhibit 75 (NC) – Producer Response – CSI, para. 30.

[64] The CSI emphasized that refined sugar is a fully substitutable commodity product that competes mainly on the basis of price. The CSI argued that in order to re-enter the Canadian market, particularly in competition with well-established domestic suppliers in a well-supplied market, U.S. suppliers will need to offer prices that are more advantageous than those offered by domestic refiners. The commodity nature of the subject goods supports a determination that the continuation of dumping of refined sugar is likely.[11]

The Volume of Imports of United States refined sugar

[65] According to the CSI, due to the high anti-dumping duties applicable during the POR, refined sugar imports entered Canada primarily under product exclusions from the Tribunal's orders which effectively limit the volume that can be imported. It is the CSI's position that, if the Tribunal's orders are rescinded, the entire Canadian market will be opened to imports of refined sugar from the U.S.[12]

[66] The CSI argued that the small volume of imports since the anti-dumping duties were imposed indicates that U.S. refined sugar cannot be sold into the Canadian market without dumping.[13]

[67] The CSI noted that in the absence of the Tribunal's orders, the dumping of U.S. refined sugar into Canada will continue but at much higher volumes than observed in the CBSA enforcement data during the POR.[14]

Unutilized Refining Capacity

[68] According to the CSI, since the 2010 expiry review, a new cane sugar refinery was opened by a new company, Louisiana Sugar Refining LLC, which substantially increased refining capacity in the U.S. industry. In addition, the Imperial Sugar Company refinery in Port Wentworth, Georgia, which was extensively damaged in an explosion in 2008, was rebuilt in 2010 and is now back in full production. Thus, the temporary reduction of cane refining capacity that prevailed during the previous expiry review no longer exists.[15]

[69] The CSI claimed that there is significant unutilized cane sugar refining capacity in the U.S. market and the amount of unutilized capacity is expected to increase. The CSI submitted information for the 2012/2013 crop year, which indicates that approximately 17% or 2.3 million short ton raw value (STRV) or 1.95 million MT of U.S. cane refining capacity was unutilized. This amount of unutilized cane refining capacity is greater than the size of the entire Canadian market.[16]

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[11] Exhibit 75 (NC) – Producer Response – CSI, para. 33-35 & Exhibit 81 (NC) – Case Brief – CSI, para. 23.
[12] Exhibit 75 (NC) – Producer Response – CSI, para. 156.
[13] Exhibit 81 (NC) – Case Brief – CSI, para. 31.
[14] Exhibit 81 (NC) – Case Brief – CSI, para. 31.
[15] Exhibit 75 (NC) – Producer Response – CSI, para. 92.
[16] Exhibit 75 (NC) – Producer Response – CSI, para. 145-146.

[70] The CSI also cited the U.S. National Confectioners Association which estimates that U.S. cane refinery capacity utilization will drop below 75% in the 2014/2015 crop year.[17]

[71] The CSI provided an explanation of the RSRP, which is designed to enable refiners in the U.S. to maximize the capacity utilization of their refineries through the exportation of refined sugar to the world market, including Canada. Exports are matched against imports of an equivalent amount of world-priced raw cane sugar for processing in a U.S. refinery and sale in the U.S. market, thus increasing capacity utilization at U.S. cane refineries without increasing the supply of refined sugar in the U.S. market, which would destabilize the U.S. sugar price support program.[18]

[72] With unutilized refining capacity in the U.S. and available markets to ship to, it is economically rational to export U.S. refined sugar using the RSRP. Since there is unutilized refining capacity in the U.S., the CSI claimed that there will be exports of U.S. refined sugar to Canada.[19]

[73] It is the CSI's position that the ability to export refined sugar under the RSRP is particularly problematic for the Canadian industry because of the geographic proximity of U.S. sugar processing plants and refineries to the major Canadian sugar markets close to the U.S. border.[20]

U.S.-Mexico Anti-dumping and Countervailing Suspension Agreements

[74] The CSI submitted information regarding suspension agreements involving the U.S. anti-dumping and countervailing duty investigations of sugar from Mexico. On April 18, 2014, the United States Department of Commerce (USDOC) announced the initiation of anti-dumping duty and countervailing duty investigations of importations of sugar from Mexico. On December 29, 2014, the USDOC suspended the investigations as a result of suspension agreements entered into with Mexican producers/exporters and the Mexican government. These suspension agreements limit the amount of Mexican sugar that can be imported into the U.S. and require that imports be priced substantially higher than the prices prevailing in the U.S. market.[21]

[75] The CSI noted the unsuccessful challenge of two U.S. refiners against the suspension agreements, which would reduce the volume of raw sugar from Mexico available to these U.S. refiners for further processing. The CSI asserts that if these refiners are not able to obtain sufficient raw cane sugar that can be refined and sold in the U.S. market, they will have no choice but to use the RSRP in order to improve the capacity utilization of their refineries.[22]

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[17] Exhibit 75 (NC) – Producer Response – CSI, para. 147.
[18] Exhibit 76 (NC) – Producer Response – CSI, para. 133, 149-150.
[19] Exhibit 76 (NC) – Producer Response – CSI, para. 150.
[20] Exhibit 76 (NC) – Producer Response – CSI, para. 154.
[21] Exhibit 75 (NC) – Producer Response – CSI, para. 170-172.
[22] Exhibit 75 (NC) – Producer Response – CSI, para. 148, 170-172.

Increased Production of Beet Sugar

[76] The CSI explained that U.S. beet sugar processors are subject to marketing allotments that limit the amount of sugar that U.S. beet processors can sell in the U.S. market. Production of surplus beet sugar in excess of the allotments is referred to as "blocked stocks" because the sugar is "blocked" from sale in the U.S. One way to avoid blocked stocks is by ploughing under excess sugar beets rather than processing them into sugar. It is the position of the CSI that if the Tribunal's order was rescinded, U.S. beet sugar processors would not plough under the sugar beets but would rather process them into blocked stocks and then export that surplus sugar to Canada.[23]

[77] The CSI noted that the members of the Ontario Sugarbeet Growers' Association (OSGA) have shares in a large U.S. beet sugar producer, the Michigan Sugar Company (MSC). The CSI expressed concerns that the OSGA requested a remission order that would enable MSC to export up to 46,300 MT of blocked stocks to Canada on an annual basis. The CSI argued that, like MSC, all U.S. beet sugar producers have an incentive to export excess production to Canada rather than plough under sugar beets.[24]

[78] The CSI recalled that in the 2010 review the President found that the volume of production of beet sugar is dependent on many factors including weather and the price of alternative crops to sugar beets. Under ideal weather conditions increased crops and surpluses can occur. Further, in times of high sugar prices there is a strong financial incentive for sugar beet growers to plant more sugar beets, again resulting in increased production and possible surplus conditions.[25]

[79] The CSI re-iterated that in the 2010 review the Tribunal similarly found that U.S. sugar beet processors normally plant additional, precautionary acres of sugar beets in order to ensure marketing allotments are fulfilled, in case poor weather conditions adversely affect yields. The CSI highlighted that the Tribunal went further to conclude that, if the order was rescinded and there was access to the Canadian market, there would be less need for U.S. sugar beet growers to plough under their excess sugar beet crop and, instead, they would dispose of the surplus beet sugar in the Canadian market.[26]

[80] The CSI presented evidence that beet sugar production for 2014/2015 is estimated to be 4.87 million short tons raw value (STRV) (i.e., 4.13 million MT), which is above the level of production during the 2010 review (approximately 4.66 million STRV or 3.95 million MT in 2010/2011). Total ending stocks for 2014/2015 are expected to be 1.65 million STRV (i.e., 1.4 million MT), an amount greater than the size of the entire Canadian market.[27]

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[23] Exhibit 75 (NC) – Producer Response – CSI, para. 160.
[24] Exhibit 75 (NC) – Producer Response – CSI, para. 159.
[25] Exhibit 75 (NC) – Producer Response – CSI, para. 18.
[26] Exhibit 75 (NC) – Producer Response – CSI, para. 19.
[27] Exhibit 81 (NC) – Case Brief – CSI, para. 33.

The World Market for Sugar and Canada's Position as an Open Market

[81] The CSI provided evidence that demonstrates the Canadian market remains one of the few sugar markets in the developed world that is open to refined sugar imports and that does not have a government-regulated sugar program.[28] Thus, it claimed that in the absence of the Tribunal's orders, Canada will be one of the few open markets for U.S. refined sugar.

[82] The CSI also presented information reported by the International Sugar Organization (ISO) on the world sugar balance during the POR. It noted that the world sugar market has been in surplus for four consecutive seasons (from 2010/2011 to 2013/2014). The world sugar supply has been increasing and inventory stocks have accumulated to high levels (i.e., 77 million MT). Although earlier projections by the ISO estimated a modest statistical deficit in 2014/2015, the estimates have shifted to a balanced or even surplus market as global production exceeds demand for the fifth consecutive fiscal year.[29]

[83] The situation described above will reduce market opportunities for exported refined sugars and increase the attractiveness of the Canadian market if the Tribunal's orders are rescinded. As per the CSI, Canadian sugar prices are lower than those in the U.S. but are above world prices and, consequently, present an attractive export market opportunity for U.S. sugar exporters if the Tribunal's orders are rescinded.[30]

Position of the Canadian Sugar Institute Regarding Denmark, the Federal Republic of Germany, the Netherlands and the United Kingdom

[84] The CSI presented evidence and a case brief in support of its position that the continuation or resumption of dumping of refined sugar originating in or exported from Denmark, Germany, the Netherlands and the United Kingdom is likely based on the following factors:

- the continued dumping due to the E.U. sugar program which supports refined sugar prices above world prices and Canadian prices;
- a concentration of production since the E.U. sugar reform, including production in the countries subject to dumping action;
- the surplus sugar production within the E.U.;
- the quantity of exports of E.U. refined sugar;
- the loss of traditional export markets for E.U. refined sugar; and
- the likelihood of Canada as a target for subject goods from the E.U. in the absence of the orders.

[28] Exhibit 75 (NC) – Producer Response – CSI, para. 68-77.
[29] Exhibit 75 (NC) – Producer Response – CSI, para. 88-89.
[30] Exhibit 75 (NC) – Producer Response – CSI, para. 60-67 & Exhibit 81 (NC) – Case Brief – CSI, para. 28.

Continued Dumping of Refined Sugar

[85] The CSI presented evidence and arguments in support of its position that the E.U. sugar program, despite completion of the recent reforms (which lead to a system consisting of production quota management, a reference price and a minimum guaranteed price to growers, and trade measures), continues to support refined sugar prices in the domestic market. Refined sugar is a commodity product that competes mainly on price. Consequently, imports of refined sugar from the E.U.'s protected market could only compete with Canadian refined sugar if sold at a dumped price, which supports a determination that the expiry of the dumping order is likely to result in a continuation or resumption of dumping of the subject goods.[31]

[86] The CSI argued that the E.U. sugar program supports refined sugar prices above both world refined sugar prices and refined sugar prices in Canada. As a consequence, all E.U. sugar exports to Canada, including exports from Denmark, Germany, the Netherlands and the United Kingdom, will be considered "dumped" within the meaning of SIMA.[32]

[87] The CSI observed that imports of sugar from the E.U. into Canada have been minimal because of the anti-dumping and countervailing duties and largely limited to specialty sugar falling within one of the exclusions from the Tribunal's order. If the Tribunal's orders are rescinded imports of non-specialty refined sugar from the E.U. will resume.[33]

Concentration of Production of Refined Sugar in the European Union

[88] The CSI provided evidence that E.U. sugar production, since the completion of the sugar reform, is now concentrated in six Member States as opposed to 18 found during the last expiry review. Nearly 80% of sugar production is now concentrated in France, Germany, Poland, the United Kingdom, the Netherlands and Belgium.[34] Furthermore, approximately 40% of E.U. sugar production is in the four Member States that are the subject of the Tribunal's orders with respect to dumped imports.[35]

[89] The CSI noted that sugar production in 2014/2015 is the E.U.'s second largest sugar production output since the 2005/2006 fiscal year before the impact of the 2006 reform.[36]

[31] Exhibit 75 (NC) – Producer Response – CSI, para. 33-35, 173-176.
[32] Exhibit 75 (NC) – Producer Response – CSI, para. 198.
[33] Exhibit 75 (NC) – Producer Response – CSI, para. 190.
[34] Exhibit 75 (NC) – Producer Response – CSI, para. 178.
[35] Exhibit 75 (NC) – Producer Response – CSI, para. 179.
[36] Exhibit 75 (NC) – Producer Response – CSI, para. 184.

European Union Surplus Sugar Production

[90] The CSI provided evidence showing that all six Member States continue to produce above production quotas and are therefore creating substantial quantities of out-of-quota surplus sugar. In fact, total forecasted production in 2014/2015 is estimated at approximately 6.4 million MT above quota. The quantity of surplus E.U. sugar has increased significantly from the quantity of surplus of 2.7 million MT found in the 2010 review.[37]

[91] According to the CSI, in regards to the four Member States subject to the Tribunal's orders with respect to dumped imports, production is substantially above quota, with total out-of-quota production amounting to 2.7 million MT, approximately double the size of the Canadian market.[38]

[92] Using the projections reported by the E.C, the CSI notes that after accounting for subsidized exports allowed under the WTO maximum (1.374 million MT) and use for industrial purposes, the E.C. forecasts surplus stocks of 2.6 million MT to be carried forward into fiscal year 2015/2016. This is 18 times larger than the carry forward in 2010/2011 (150,000 MT).[39] The CSI submits that the E.U. sugar market is likely to remain significantly over-supplied next season given the very high carry-over stocks from 2014/2015.[40]

Quantity of Exports

[93] The CSI presented evidence which showed that the E.U. continues to export a substantial quantity of refined sugar. E.U. sugar exports include both quota and out-of-quota exports. Out-of-quota sugar production, which was found by the WTO to be subsidized, can be exported up to the WTO export subsidy limit of 1.374 million MT[41]; used for industrial purposes or stored and carried-forward to the next marketing year. The CSI noted that the E.U. exceeded its export subsidy limit in 2009/2010 and again in 2011/2012 which resulted in a number of complaints that the E.U. had breached its WTO export subsidy commitment, and produced a negative effect on world market conditions. The CSI concluded that given the sugar surplus in 2014/2015, there is likelihood that the E.U. may again exceed its WTO commitment.[42]

[37] Exhibit 75 (NC) – Producer Response – CSI, para. 183.
[38] Exhibit 75 (NC) – Producer Response – CSI, para. 180.
[39] Exhibit 75 (NC) – Producer Response – CSI, para. 183.
[40] Exhibit 75 (NC) – Producer Response – CSI, para. 184.
[41] Exhibit 75 (NC) – Producer Response – CSI, para. 185.
[42] Exhibit 75 (NC) – Producer Response – CSI, para. 185.

Loss of Traditional Export Markets

[94] The CSI noted that there has been tremendous expansion in the world sugar refining industry in the last ten years. This is now meeting a large share of sugar demand in the world's major import markets. The growth in refineries located in traditional export markets have occurred principally in the Middle East, North Africa, the Asia Pacific region, the Indian Subcontinent, and in Equatorial and Sub-Saharan Africa. The E.U. continues to lose opportunities for sales in these traditional export markets as these markets develop their own refining capacity.[43]

[95] In addition to the reduction in the number of traditional export markets, the CSI observed that the global sugar market is carrying large stocks of raw sugar which are being held at both origin and destination. There is an economic incentive to refine these stocks in the local market rather than import refined sugar. Governments in many importing countries are seeking to exert more control over imports to stem the inflow of sugar of the past recent years and support domestic prices.[44]

[96] The CSI expressed concerns that the above factors further restrict exports of refined sugar to the E.U.'s traditional markets and increases the likelihood of sales to Canada in the event the Tribunal's orders are rescinded.[45]

The Likelihood of Canada as a Target for Refined Sugar from the European Union in the Absence of the Orders

[97] According to the CSI, the Canadian market remains one of the few developed country sugar markets in the world that is open to refined sugar imports and that does not have a government regulated sugar program. Thus, in the absence of the Tribunal's orders, it will be one of the few open markets for E.U. refined sugar.[46]

[98] As per the CSI, given the spread between the world price of refined sugar and the price prevailing in the Canadian market, it is much more profitable for surplus E.U. sugar to be exported to Canada than to the world market.[47]

[43] Exhibit 75 (NC) – Producer Response – CSI, para. 84-87.
[44] Exhibit 75 (NC) – Producer Response – CSI, para. 68-77, 188.
[45] Exhibit 75 (NC) – Producer Response – CSI, para. 189.
[46] Exhibit 75 (NC) – Producer Response – CSI, para. 68-77.
[47] Exhibit 75 (NC) – Producer Response – CSI, para. 66.

2. Parties Contending that Continued or Resumed Dumping is Not Likely

2.1. European Commission

Position of the European Commission regarding Denmark, the Federal Republic of Germany, the Netherlands and the United Kingdom

[99] The E.C. provided a response to the government ERQ and referred to its submission to the Tribunal's administrative record with respect to the pre-initiation stage of the expiry review. The E.C. stated its position that continued or resumed dumping of refined sugar from the E.U. is not likely based on the following factors:

- the decreased prices of sugar in the E.U. market;
- the decreased production in the E.U. market; and
- the decreased exports to Canada and the E.U.'s status as a net importer.

Decreased Prices of Sugar in the European Union

[100] According to the E.C., following the 2006 sugar reform, E.U. sugar prices have aligned closer to world levels. The E.C. explained that in 2011 E.U. prices started to deviate from world market levels and increased to a peak of 738 EUR/MT in January 2013. Consequently, measures were taken to increase supply in the E.U. market. Between December 2011 and June 2013, a total of 1.25 million MT of out-of-quota sugar were released into the market at reduced surplus levy (penalty for selling out-of-quota sugar in the E.U. market) and some 950,000 MT of imports were allowed at reduced duty. The E.C. stated that, after January 2013, E.U. prices have gradually decreased and have continued to go down despite the rather normal level of stocks at the start of the 2014/2015 marketing year. In December 2014, E.U. prices reached a record low 435 EUR/MT.[48]

Decreased Production in the European Union Market

[101] The E.C. claims that the European sugar industry has been restructured and production capacity has reduced significantly, i.e. by approximately 30% as compared to the 2005 level. As a result, E.U. production is now well below E.U. consumption.[49]

[102] The E.C. stated that the E.U. has 13.5 million MT of sugar production quotas, while consumption is approximately 16.5 – 17 million MT.[50]

[48] Exhibit 65 (NC) – Government Response – E.C. – Page 11. – question 2.
[49] Exhibit 65 (NC) – Government Response – E.C. – Page 11. – question 2.
[50] Exhibit 65 (NC) – Government Response – E.C. – Page 11. – question 2.

Decreased Exports to Canada and the European Union's Status as a Net Importer

[103] According to the E.C., sugar exports from the E.U. to Canada have been limited to around 500 MT per year over the past few years. The E.C. believes that it is unlikely that exports would resume in significant quantities if the Tribunal's orders are rescinded. Further, the E.C argued that, as a result of the sugar reform, the E.U. has become a net importer of sugar.[51]

2.2. Südzucker AG

Position of Südzucker AG regarding Denmark, the Federal Republic of Germany, the Netherlands and the United Kingdom

[104] Südzucker submitted a response to the CBSA exporter ERQ and provided evidence in support of its position that continued or resumed dumping of refined sugar from Denmark, Germany, the Netherlands and the United Kingdom is not likely based on the following factors:

- the decreased prices of sugar in the E.U.;
- the decreased production in the E.U. market;
- the E.U.'s status as a net importer;
- the decreased exports to Canada; and
- the increased exports to E.U. traditional markets.

Decreased Prices of Sugar in the European Union

[105] According to Südzucker, as a result of the 2006 sugar reform, E.U. prices are at their lowest since reporting began in 2006, at 433 EUR/MT for quota sugar and 350 EUR/MT for out-of-quota sugar in December 2014. The E.U. price for quota sugar is still somewhat higher than the world market price although the difference has narrowed substantially, while the average price for out-of-quota sugar is similar to the world market price. These prices are expected to remain low in the next 18 to 24 months.[52]

Decreased Production in the European Union market

[106] According to Südzucker, the 2006 sugar reform has led to a reduction in production quota for sugar. The cut in quota induced restructuring and a significant reduction of production capacity in the E.U. sugar industry, i.e. by around 30% as compared to the 2005 level. Südzucker noted that 149 factories (60% of the E.U. total) were closed since 2000. Closing of factories accelerated with the 2006 reform with an average of 28 factories per year between 2006 and 2008.[53]

[51] Exhibit 17 (NC) – Tribunal Administrative Record – LE-2014-005-04.02 - para. 2.
[52] Exhibit 64 (NC) – Exporter Response – Südzucker – question 20.
[53] Exhibit 64 (NC) – Exporter Response – Südzucker – question 17.

The European Union's Status as a Net Importer

[107] Südzucker argued that the 30% decrease in the quota has created a deficit situation in the E.U. market. Production in the E.U. is now well below E.U. consumption and meets 83% of the E.U.'s needs on average (2010/2011 to 2014/2015). The E.U. has gone from being a net exporter to a net importer as a result of the reforms. Südzucker cited the ISO which reported that the E.U. was the world's fourth largest net-importer of sugar in 2013.[54]

Decreased Exports to Canada

[108] Südzucker provided evidence which showed that exports from the E.U. to Canada peaked at 1,145 MT in 2012. Südzucker argued that the volume of exports from the E.U. to Canada, at an average of 0.06% of the total volume of imports of refined sugar from all countries from 2007 to 2013, is negligible.[55]

[109] Südzucker claimed that currently the E.U. does not have a large exportable surplus since out-of-quota sugar can only be exported within the WTO limit of 1.374 million MT. In addition, since September 2008, export refunds in the sugar sector are no longer granted by the E.C.[56]

Increased Exports to European Union Traditional Markets

[110] Südzucker submitted evidence indicating the volume of E.U. exports to traditional markets has increased as a percentage of total exports over the last four years (2010 to 2013) from 71 to 91%.

CONSIDERATION AND ANALYSIS – DUMPING

[111] In establishing whether the expiry of the orders is likely to result in the continuation or resumption of dumping of the goods, the President may consider any factor specifically identified in subsection 37.2(1) of the SIMR, including any other factors relevant under the circumstances when rendering a determination pursuant to paragraph 76.03(7)(*a*) of SIMA.

[54] Exhibit 64 (NC) – Exporter Response – Südzucker – question 17.
[55] Exhibit 64 (NC) – Exporter Response – Südzucker – question 29.
[56] Exhibit 64 (NC) – Exporter Response – Südzucker – question 17.

[112] Guided by the factors in the SIMR and based on the documentation submitted by the various participants and the consideration of the information on the administrative record, the following list represents a summary of the factors considered most relevant to the analysis with respect to the likelihood of continued or resumed dumping:

Dumping – United States of America:

- the continued dumping of refined sugar during the POR;
- the decline in the volume of imports;
- the past and likely future performance of the exporters in respect of production, capacity utilization and inventories;
- the anti-dumping and countervailing suspension agreements between the U.S. and Mexico is causing uncertainty in the U.S. market; and
- the outlook for a continued global sugar surplus.

Dumping – Denmark, the Federal Republic of Germany, the Netherlands and the United Kingdom:

- the continued dumping of refined sugar during the POR;
- the decline in the volume of imports;
- the past and likely future performance of the exporters in respect of production and pricing;
- the loss of traditional export markets for E.U. exporters; and
- the outlook for a continued global sugar surplus.

Likelihood of Continued or Resumed Dumping – United States of America

[113] Current U.S. sugar policy, administered by the U.S. Department of Agriculture, maintains domestic sugar prices above the world market price and is structured to protect domestic sugar cane and sugar beet producers and processors. Sugar prices are supported through the U.S. sugar program under the authority of the *Agricultural Act of 2014*, which amended *the Food, Conservation and Energy Act of 2008*, and covers the sugar marketing years through to 2017/2018. The legislation continues the essential elements of the previous sugar program that were factors in the original 1995 findings and the Tribunal's reviews in 2000, 2005 and 2010.

Continued Dumping of Refined Sugar during the POR

[114] The U.S. government's sugar program supports U.S. domestic sugar prices above world and Canadian price levels; consequently, when U.S. sugar is imported into Canada at the lower Canadian prices, it is priced lower than the like goods sold in the U.S. and thus is dumped.

[115] As noted previously, a re-investigation of U.S. normal values has only been conducted once since the final determination, as the provisions of the U.S. sugar program ensure high domestic prices, and consequently normal values that are much higher than the Canadian pricing levels. As a result, during the POR most imports of subject goods from the U.S. were assessed anti-dumping duties in accordance with the ministerial specification.

[116] **Table 3** shows that approximately CAD $6.7 million in anti-dumping duties were assessed on U.S. imports during the POR. The anti-dumping duties represent approximately 76% of the value for duty of U.S. imports, which indicates that most imports do not have specific normal values and thus were assessed 79% anti-dumping rate as per the ministerial specification that was in effect until September 4, 2014. Accordingly, subject goods from the U.S. continued to be dumped during the POR.

[117] A simple comparison of U.S. and Canadian price levels provide an additional indication that the goods have been dumped during the POR.

[118] The record contains evidence that compares wholesale bulk refined sugar prices for U.S. beet sugar, the world refined sugar price and Canadian imports of bulk granulated sugar from the U.S.[57]

TABLE 4
Comparison of U.S., World, and Canadian Import Wholesale Prices
(Values in USD per MT)

Year	U.S. Domestic Wholesale Price – Refined Beet Sugar [1]	World Price – Refined Sugar [2]	Canadian Import Price – U.S. Granulated Sugar [3]	Difference between U.S. and Canadian Prices [1] – [3]	Price Differential (as a % of [3])
2012	$956.46	$611.86	$707.96	$248.50	35.1%
2013	$600.14	$503.55	$569.86	$30.28	5.3%
2014	$724.40	$457.09	$519.33	$205.07	39.5%

[119] As can be seen in **Table 4**, when the U.S. wholesale price for refined beet sugar is compared to the average price of bulk granulated sugar imported into Canada during the POR, the difference ranges from 30.28 to 248.50 USD/MT, representing price differentials ranging from 5.3% to 39.5%. As such, it is reasonable to conclude that export sales of U.S. refined sugar would have to be dumped in order to sell into the Canadian market, as imports must compete with Canadian prices, which are substantially lower than the supported prices in the U.S.

[57] Exhibit 75 (NC) – Producer Response – CSI, Appendix 21(k).

[120] It is important to note that in 2013, U.S domestic wholesale prices were abnormally depressed by the over-supply of sugar due to importations of sugar from Mexico. The price erosion and suppression in the U.S. market resulted in the anti-dumping and countervailing investigation against Mexico.

[121] In addition, as can be seen in **Table 4**, the fact that Canadian prices are higher than world prices provides an incentive for U.S. producers to export their surplus sugar to Canada before seeking other international markets. More so, the price differentials may be even higher if U.S. sugar imports must compete with world refined sugar, which are historically priced lower than Canadian domestic sugar during the POR.

Decline in the Volume of Imports Indicates Subject Goods Cannot Compete in the Canadian Market without Dumping

[122] Imports into Canada have declined substantially since anti-dumping duties were first imposed and low volumes of subject goods continued to be imported during the POR. Evidence on the record indicates that the volume of subject goods from the U.S. represents less than 1% of the total Canadian market in each year during the POR.[58] This low volume of imports is likely a direct consequence of the high normal values in comparison to the lower Canadian market price and the assessment of anti-dumping duties of 79% of the export price. The small volume of imports since the anti-dumping duties were imposed is an indicator that U.S. refined sugar cannot be sold into the Canadian market without dumping.

[123] In view of this conclusion, the focus of the CBSA's analysis centres on the likely performance of U.S. exporters in the near and medium term. The performance of U.S. exporters with respect to their level of sugar production, the capacity utilization rates of sugar refiners, the level of inventories (ending stocks) of refined sugar and their export opportunities are all factors that will likely influence the pricing and volume of imports of refined sugar into Canada, and thus, factors that affect the likelihood that subject goods will be dumped into Canada in the near to medium term.

Performance of the Exporters

Sugar Production

[124] In February 2008, an explosion at Imperial Sugar's refinery in Port Wentworth, Georgia, eliminated approximately 15% of U.S. refining capacity. The refinery completed rebuilding in 2010 and has returned to normal operations. Thus, the temporary reduction of cane refining capacity that prevailed during the previous review no longer exists within the current POR.[59]

[58] Exhibit 75 (NC) – Producer Response – CSI, para. 50, 56, & 59.
[59] Exhibit 75 (NC) – Producer Response – CSI, para. 92.

[125] Information on the record indicates that Louisiana Sugar Refining LLC, located in Gramercy, Louisiana, opened a sugar refinery which has increased the total refining capacity in the U.S. industry.[60] In addition, since the last review, CSC Sugar LLC, a refiner of imported raw cane sugar, has added approximately 300,000 tons of capacity to the U.S. market.[61] Since the last expiry review, the total production capacity in the U.S industry has increased significantly. The total production capacity of U.S. sugar producers is estimated to be approximately 13.5 million STRV or 11.5 million MT.[62] For comparative purpose, as can be seen in **Table 2**, the total production capacity of U.S. producers is about ten times larger than the total Canadian market which is approximately 1.2 million MT.

[126] As noted earlier, beet sugar production can be unpredictable, depending on such factors as weather and the price of alternative crops. Under good conditions, or when there is a financial incentive to plant sugar beets, surpluses may build up. Canadian sugar markets are in close geographic proximity to the U.S. border and to U.S. sugar processing plants and refineries; therefore, as production levels rise there is a greater likelihood of dumped sugar entering Canada in the absence of the Tribunal's order.

Capacity Utilization of United States of America Sugar Refiners

[127] Through the RSRP, U.S. refiners can maximize the capacity utilization of their refineries by exporting refined cane or beet sugar to the world market, and then import an equivalent amount of world-priced raw cane sugar outside of the Tariff-Rate Quotas, for processing in a U.S. refinery and sale in the U.S. market. The program allows producers to increase the capacity utilization of their cane refineries without increasing the supply of refined sugar in the U.S. market which could consequently destabilize the sugar price support program.

[128] It is important to note that the program was expanded in 2002 to allow sugars refined from cane and beet to be substitutable under the program, which is more conducive for exports to Canada, given the proximity of beet processing facilities to the Canadian border. Accordingly, the benefits of the RSRP provide incentives to export refined sugar to Canada at prices that are significantly lower that U.S. domestic supported prices, should the Tribunal's orders be rescinded.

[129] Since 2005, sugar produced in excess of a producer's market allotment, or "blocked stocks", cannot be used for credit under the RSRP. However, beet sugar producers can create a credit by exporting allotment sugar and subsequently selling the credit to a refiner, allowing the refiner to import world-priced raw cane sugar for refining, thus increasing capacity utilization, and then selling the sugar in the U.S. domestic market at the supported domestic price. The combination of the selling price of the sugar in the world market and the revenue from the sale of the credit make the exportation profitable.[63]

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[60] Exhibit 75 (NC) – Producer Response – CSI, para. 92.
[61] Exhibit 75 (NC) – Producer Response – CSI, para. 94.
[62] Exhibit 75 (NC) – Producer Response – CSI, para. 145.
[63] Exhibit 75 (NC) – Producer Response – CSI, para. 137-138.

[130] Given that all the major U.S. sugar refiners and marketers currently hold licenses[64] to participate in the RSRP, it is reasonable to conclude that all sugar exported from the U.S. during the POR has benefited from the RSRP. This supports the conclusion that the RSRP continues to provide an incentive to export dumped sugar into Canada.

[131] For the 2012/2013 marketing year, U.S. refineries had approximately 17% of unutilized capacity which represents about 1.95 million MT.[65] Further there is evidence on the record which estimates that unutilized capacity will increase to 25% or 2.3 million MT in 2014/2015.[66] It should be noted that this amount of unutilized cane refining capacity is greater than the size of the entire Canadian market. It is reasonable to conclude that the U.S. producers have the capacity and the incentive to increase their production, which will be available for increased exports to Canada, made possible by existing unused capacity.

Inventories (Ending Stocks) of Refined Sugar

[132] The administrative record contains information on historical production and projections for future production of U.S. refined cane and beet sugar. This information indicates that the sugar ending stocks for 2014/2015 is estimated to be approximately 1.65 million STRV or 1.4 million MT.[67] This is significant compared to the total Canadian market of approximately 1.2 million MT, as reported in **Table 2**.

Future Performance of Exporters

[133] U.S. exporters continue to indicate an interest in the Canadian market. The involvement of a U.S. exporter in the current expiry review investigation and two U.S. exporters in the recent 2014 re-investigation suggests an interest in participating in the Canadian market.

[134] ASR is the only U.S. exporter that provided a response to the exporter ERQ. Based in Yonkers, New York, ASR is a leading producer of refined sugar in the U.S. and operates four sugar refineries.[68] In addition, ASR has associated companies which are involved in the supply, production, and/or marketing of raw or refined sugar.[69] According to its submission, ASR produces both refined and specialty sugar products.[70] ASR is currently producing below 100% capacity.[71]

[64] Exhibit 75 (NC) – Producer Response – CSI, para. 135.
[65] Exhibit 75 (NC) – Producer Response – CSI, para. 145.
[66] Exhibit 75 (NC) – Producer Response – CSI, para. 146.
[67] Exhibit 75 (NC) – Producer Response – CSI, para. 112.
[68] Exhibit 69 (NC) – Exporter Response – ASR, question 9.
[69] Exhibit 69 (NC) – Exporter Response – ASR, question 6.
[70] Exhibit 69 (NC) – Exporter Response – ASR, question 9.
[71] Exhibit 69 (NC) – Exporter Response – ASR, question 41, Appendix 1.

[135] ASR claims that Canada has historically been an important market and is continuing to explore business opportunities in Canada.[72] Given its significant unutilized capacity, it is reasonable to conclude that ASR has the incentive to increase its production, which will be available for exports to Canada, in order to benefit from the RSRP.

[136] Evidence on the record indicates that the Mexican Government has proposed to end the provisions of its special import zone (IMMEX) which permit sugar-containing product producers to import U.S.-origin sugar duty-free if that sugar is exported to Mexico under the U.S. RSRP.[73] If this change is made in the IMMEX rules U.S. exporters of refined cane sugar to importers in the IMMEX zone in Mexico could lose a significant export market for their refined sugar. As a result, this would reduce demand for sugar and the capacity utilization of sugar refiners in the U.S. This will create additional pressure for U.S. producers to export U.S. sugar into Canada at dumped prices.

[137] The record contains evidence indicating the most recently reported tariffs, sugar policies and import restrictions of developed countries on refined sugar for selected WTO member countries.[74] Canada is a well-developed industrial and consumer market in close proximity to the U.S. border, enabling convenient supply arrangements with U.S. refiners and beet processors. In the absence of the Tribunal's orders, Canada would be attractive for U.S. exporters because Canada remains one of the few open markets for refined sugar and the only country in North and South America without government intervention and import restrictions on refined sugar.

Uncertainty in the U.S. Market Resulting from the Anti-dumping and Countervailing Suspension Agreements between United States of America and Mexico

[138] Since January 1, 2008, in accordance with NAFTA, Mexico was allowed to sell unlimited amounts of sugar into the U.S. Importations of sugar from Mexico to the U.S. nearly doubled from 1.0 million MT in 2011/2012 to 1.9 million MT in 2012/2013.

[139] In April 2014, a coalition of U.S. sugar producers filed anti-dumping and countervailing duty petitions against sugar from Mexico. The complaints were filed in response to the sharp rise in dumped and subsidized importations of sugar from Mexico which destabilized the U.S. price support program and caused the collapse of sugar prices in the U.S. market.[75] This price erosion and suppression that occurred in the U.S. market in 2013 can be observed in **Table 4**.

[72] Exhibit 69 (NC) – Exporter Response – ASR, question 34.
[73] Exhibit 69 (NC) – Exporter Response – ASR, question 33.
[74] Exhibit 75 (NC) – Producer Response – CSI, para. 68-77.
[75] Exhibit 69 (NC) – Exporter Response – ASR, question 33.

[140] In December 2014, the U.S. Government, the Government of Mexico and Mexican sugar exporters finalized agreements to suspend the anti-dumping and countervailing duty investigations. This is similar to an undertaking under SIMA. These agreements are in effect but some U.S. producers have requested that the investigations continue notwithstanding the agreements. If the investigations are continued, the suspension agreements could either be terminated or maintained depending on the outcome of the continued investigations.[76] The situation presents uncertainty regarding Mexican sugar exports to the U.S. in 2014/2015 and the future.

[141] Evidence on the record indicates that under the suspension agreement, the limit on exports from Mexico to the U.S. during the 2014/2015 marketing year will be 1.4 million MT of sugar to be exported from Mexico to the U.S. Although this export limit is lower than the 2012/2013 Mexican import quantities (1.9 million MT), the export limit represents a significant increase from the 1.1 million MT levels of imports from Mexico during 2011/2012.[77] This increase has the potential of reducing the sales of U.S. producers in the U.S. market and therefore reducing refinery capacity utilization. This may create additional pressure for U.S. producers to export U.S. refined sugar into Canada at dumped prices.

Outlook for a Continued Global Sugar Surplus

[142] The world sugar market has recently gone through significant supply and price swings. It is affected by weather conditions, the global financial situation and crop prices, which can affect plantings and stocks when prices for other crops cause producers to switch crops.

[143] Evidence on record indicates the world sugar market has been in surplus for four consecutive seasons (from 2010/2011 to 2013/14). The world sugar supply has been increasing and inventory stocks have accumulated to high levels (i.e., 77 million MT) relative to the stock levels in 2009/2010 (i.e., 57 million MT).[78]

[144] The data in **Table 1** and **Table 2** reveals that the Canadian market for refined sugar decreased in value but increased in volume during the POR, suggesting a reduction in per unit prices for refined sugar in the Canadian market which is in line with global production output and rising sugar stocks during the POR.

[145] Earlier projections of a modest statistical deficit in 2014/2015 have shifted to a balanced or even a surplus market as global production exceeds demand for the fifth consecutive year. As such, Canada will continue to be an attractive market for U.S. refined sugar in the absence of the Tribunal's orders.[79]

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[76] Exhibit 69 (NC) – Exporter Response – ASR, question 33.
[77] Exhibit 69 (NC) – Exporter Response – ASR, question 33.
[78] Exhibit 75 (NC) – Producer Response – CSI, para. 88-90.
[79] Exhibit 75 (NC) – Producer Response – CSI, para. 89.

Determination Regarding Likelihood of Continued or Resumed Dumping – United States of America

[146] Based on the information on the record in respect of: the continued dumping into Canada of the subject goods during the POR; the decline in the volume of imports; the past and likely future performance of the exporters in respect of production, capacity utilization and inventories; the U.S.-Mexico anti-dumping and countervailing suspension agreements; and the outlook for a continued global sugar surplus, the President determined that the expiry of the order is likely to result in the continuation or resumption of dumping of refined sugar originating in or exported from the U.S.

Likelihood of Continued or Resumed Dumping - Denmark, the Federal Republic of Germany, the Netherlands and the United Kingdom

[147] Sugar producers in the E.U. are supported by a sugar regime that is administered as part of the Common Agricultural Policy (CAP) by the E.C. The current E.U. sugar regime is set out in a number of regulations under the single Common Market Organization of a number of agricultural sectors. Council Regulation (E.C.) No. 1234/2007, which governed the program during the 2010 review, was replaced as of January 1, 2014, by Regulation (E.U.) No. 1308/2013.[80]

[148] On June 26, 2013, an agreement was reached on the CAP reform, including the extension of the current sugar market provisions until 2016/2017.[81] On October 1, 2017, E.U. sugar and isoglucose production quotas will be abolished, along with the minimum beet prices.[82]

[149] Price supports and subsidies continue to be part of the sugar regime. The composition of the subsidies has changed and the new measures are intended to rationalize inefficient production and to enable the industry to further invest in remaining facilities.

[150] The following analysis, addressing the above-noted factors, pertains to all four named countries located in the E.U. A country-by-country analysis is not included, as exporters in the named countries have not previously provided any information to the CBSA, even at the time of the original investigation. Although the CBSA considered the response received from one exporter, Südzucker, headquartered in Germany, as part of the current expiry review investigation, the company has operations located throughout the E.U. In addition, the information submitted by Südzucker pertains to its entire operations in the E.U and its views generally apply to the entire E.U.

[80] Exhibit 75 (NC) – Producer Response – CSI, para. 174.
[81] Exhibit 75 (NC) – Producer Response – CSI, para. 193.
[82] Exhibit 75 (NC) – Producer Response – CSI, para. 194.

Continued Dumping of Refined Sugar during the POR

[151] The E.U. sugar regime guarantees sugar producers in the member countries a price for refined sugar that is effectively higher than both the world price of refined sugar and the refined sugar price in Canada. Import tariffs and production quotas help maintain minimum prices for quota sugar sold within the E.U. Sugar produced in excess of the domestic quotas must be carried over to the next marketing year or sold outside of the E.U. at world prices.

[152] The Tribunal's order concerns subject goods from Germany, Denmark, the Netherlands and the United Kingdom. A lack of responses from the exporters at the time of the investigation resulted in dumping margins ranging from 42% to 180%, in accordance with a ministerial specification. As stated previously, a re-investigation was conducted in 2014. None of the exporters in Germany, Denmark, the Netherlands, or the United Kingdom participated in the re-investigation. As such, following the conclusion of the re-investigation on September 4, 2014, all imports of subject goods from Denmark, Germany, Netherlands and the United Kingdom are subject to 180% anti-dumping duty rate, in accordance with the revised ministerial specification.

[153] During the POR, imports of subject goods from Denmark, Germany, the Netherlands and the United Kingdom were minimal, totaling approximately CAD $45,000, on which CAD $2,600 of SIMA duties (both anti-dumping and countervailing duty) were assessed, as shown in **Table 1** and **Table 3**. Imports from all of the named countries in the E.U. have virtually ceased since the original investigation. This can be attributed to the high normal values and amount of subsidy that have been in effect during the POR. Nevertheless, the fact that the duties were assessed indicates that the subject goods from those countries were dumped during the POR.

[154] It should be noted that the four named E.U. countries accounted for 39% of the quota sugar production of the E.U.[83] It should also be noted that the same four countries also account for 2,704,580 MT or 42.3 % of E.U. out-of-quota sugar production[84], which must be either exported or carried over. The likelihood of future exports to Canada's open market from these countries in the absence of the Tribunal's order is a strong possibility.

[155] As long as the E.U. sugar regime continues to support prices within the E.U., exports of refined sugar cannot compete in the Canadian market without dumping, given that domestic E.U. prices are higher than Canadian prices. As mentioned earlier, the current E.U. sugar program will remain effective until October 1, 2017, at which time sugar production quotas will be abolished, along with the minimum beet prices. However, other trade-distorting program provisions will remain intact, including the domestic market reference threshold/price for white sugar, private storage aid, and import tariff protection for all but preferential suppliers.[85] Consequently, all exports to Canada of refined sugar from Denmark, Germany, the Netherlands and the United Kingdom are dumped.

[83] Exhibit 75 (NC) – Producer Response – CSI, para. 179.
[84] Exhibit 75 (NC) – Producer Response – CSI, para.180.
[85] Exhibit 75 (NC) – Producer Response – CSI, para. 194.

Decline in the Volume of Imports Indicates Subject Goods Cannot Compete in the Canadian Market without Dumping

[156] In general, imports of the subject goods from the E.U. for domestic consumption in Canada have all but ceased since the injury findings. This can be attributed to the high anti-dumping and countervailing duties that are currently in place. CBSA import statistics show that most of the refined sugar being imported from the E.U. is non-subject sugar.[86] Accordingly, this can be an indication that the producers from Denmark, Germany, the Netherlands and the United Kingdom are unable to export to Canada at non-dumped prices. Without anti-dumping duty in place, these exporters would therefore have to resume dumping in order to generate sales in the Canadian market.

Performance of the Exporters

Surplus Sugar Production within the European Union

[157] The 2006 sugar reforms have altered the market structure for E.U. sugar producers. Presently, approximately 80% of sugar production is concentrated in six Member States as opposed to 70% of production concentrated in the seven Member States during the previous review.[87] In addition, approximately 40% of E.U. sugar production is concentrated in the four E.U. Member States subject to the Tribunal's orders.[88]

[158] Total E.U. annual production for 2014/2015 is estimated to be approximately 19.6 million MT, up from approximately 15.8 million MT in 2010/2011.[89] In fact, production in 2014/2015 is the E.U.'s second largest output since 2005/2006, the marketing year before the impact of the 2006 reform.[90]

[159] The E.U. continues to produce surplus sugar and is a net exporter of refined sugar. The E.U. is among the top five exporters[91] and one of the world's leading producers of high quality refined sugar.[92] According to the E.C. and Südzucker, the E.U. is now a net importer of sugar. Information available on the record indicates that the E.U. exported 1.5 million MT of refined sugar and imported 1.1 million MT of refined sugar in 2013/2014. Further, information on the record also indicates that the majority of E.U. imports are of raw sugar, in the form of raw cane sugar for refining.[93] Raw sugar is not subject to the order. Evidence on the record clearly demonstrates that the E.U. is a net exporter of refined sugar.

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[86] Exhibit 14 (P) and Exhibit 79 (P) – Import and Enforcement Statistics (2012-2014).
[87] Exhibit 75 (NC) – Producer Response – CSI, para. 178.
[88] Exhibit 75 (NC) – Producer Response – CSI, para. 179.
[89] Exhibit 75 (NC) – Producer Response – CSI, para. 183.
[90] Exhibit 75 (NC) – Producer Response – CSI, para. 184.
[91] Exhibit 75 (NC) – Producer Response – CSI, para. 83.
[92] Exhibit 75 (NC) – Producer Response – CSI, para. 79.
[93] Exhibit 76 (NC) – CBSA Research – E.C. - Agriculture and Rural Development – Sugar.

[160] As a consequence of sugar reform, E.U. exports of out-of-quota sugar are subject to WTO limitations. Out-of-quota sugar production, which was found by the WTO to be subsidized, can be exported up to the WTO export subsidy limit of 1.374 million MT, used for industrial purposes or stored and carried-forward to the next marketing year.[94] Evidence available on the record indicates that the E.U. exceeded its export subsidy limit in 2009/2010 and again in 2011/2012.[95]

[161] In marketing year 2012/2013, out-of-quota production (i.e., surplus production) was 4,187,246 MT.[96] This surplus is 3.5 times the volume of the entire Canadian market. Out-of-quota production for the current marketing year (2014/2015) is forecast to be 6,394,563 MT.[97] This surplus will be almost five times the volume of the entire Canadian market. In the absence of the Tribunal's order, and given the action of the E.U. in relation to sugar surpluses in the past, it is likely that Canada's open market would be a target for dumped (and subsidized) exports of such sugar from the named countries subject to the Tribunal's orders.

[162] On October 1, 2017, the E.U. will undergo further reforms in the sugar sector. One of the consequences of the 2017 reform of the E.U. sugar regime is the potential threat coming from high fructose syrup, known in the E.U. as isoglucose, a sugar substitute consumed by industrial users and produced mainly from corn or wheat starch.[98] Once E.U. sugar and isoglucose production quotas are abolished some market analysts estimate that up to 30% of the E.U.'s sugar consumption could be substituted by isoglucose.[99] As such, there will be additional pressures for sugar producers in the E.U. to export surplus sugar as a result of competition from isoglucose. Should the Tribunal's order be rescinded, Canada's open market is a likely target for dumped exports of this surplus sugar from the named countries subject to the Tribunal's orders.

Price Levels in the European Union Market

[163] As previously noted, in their submissions, both the E.C. and Südzucker claim that the E.U. domestic prices have aligned closer to world price levels since the 2006 sugar reform. The evidence on the record does not support this claim. Since 2009/2010, the E.U. sugar reference threshold has been set at 404.4 EUR/MT for refined sugar. Furthermore, the E.U. market price for white sugar has been above the reference price since 2010, albeit in a wide range from 453 to 738 EUR/MT.[100] The CBSA notes that although the refined sugar prices in the E.U. have narrowed substantially in comparison to the world price, E.U. sugar prices remain higher than world prices. In January 2015, E.U. prices averaged 433 EUR/MT compared to the average world price of 350 EUR/MT.[101]

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[94] Exhibit 75 (NC) – Producer Response – CSI, para. 185.
[95] Exhibit 75 (NC) – Producer Response – CSI, para. 185.
[96] Exhibit 75 (NC) – Producer Response – CSI, para. 183.
[97] Exhibit 75 (NC) – Producer Response – CSI, para. 183.
[98] Exhibit 78 (NC) – Supplemental Response – CSI, Appendix 27(EU)*p*.
[99] Exhibit 78 (NC) – Supplemental Response – CSI, Appendix 27(EU)*p*.
[100] Exhibit 75 (NC) – Producer Response – CSI, para. 175.
[101] Exhibit 76 (NC) – CBSA Research – E.C Sugar Price Reporting (February 26, 2015).

[164] As long as the E.U. sugar regime supports prices above both the world refined sugar prices and the refined sugar prices in Canada, exports to Canada of subject goods will most likely be dumped.

Loss of Traditional Export Markets for European Union Exporters

[165] The WTO limitations on exports of E.U. sugar have resulted in significant declines in export volume. At the same time, markets in the Middle East, North Africa, and the Asia Pacific region, the Indian Subcontinent, and in Equatorial and Sub-Saharan Africa that have traditionally imported from the E.U. have experienced growth in sugar refining capacity. Evidence on the record indicates that 19.6 million MT were added in these markets within the last ten years.[102] Furthermore, in the upcoming years, about five million MT of additional refining capacity is projected for countries in the Middle East and North Africa, the Far East, Equatorial and Sub-Saharan Africa and the Indian Subcontinent.[103] This reduces the opportunities for sales to these former markets, thus increasing the likelihood of sales of dumped goods to Canada by the named countries located in the E.U., in the absence of the Tribunal's orders.

[166] Südzucker argued that E.U. exports continue to be directed to the E.U.'s traditional markets and the volume of E.U. exports to traditional markets has increased as a percentage of total exports over the last four years (2010 to 2013) from 71 to 91%.[104] However, based on the information submitted by Südzucker, in terms of volume, exports of refined sugar to its traditional export markets decreased from 1,533,914 MT in 2010 to 1,279,727 MT in 2013.

Outlook for a Continued Global Sugar Surplus

[167] As noted in the discussion of U.S. sugar, forecasts of a global sugar surplus increase the concern that Canada would be an attractive market for dumped sugar from the named E.U. countries if the Tribunal's order is rescinded. Widespread government intervention and import restrictions by countries other than Canada make Canada a likely target for dumped sugar. Evidence has been provided summarizing the sugar policies and import restrictions of developed countries[105], which would make the Canadian market a likely target for exports of refined sugar from the named E.U. countries if anti-dumping measures were not in place. Given the E.U. sugar surplus and the import restrictions on imports of sugar in other countries, there is a likelihood of diversion of E.U. refined sugar exports to Canada from Denmark, Germany, the Netherlands and the United Kingdom, in the absence of the Tribunal's order.

[102] Exhibit 75 (NC) – Producer Response – CSI, para. 84.
[103] Exhibit 75 (NC) – Producer Response – CSI, para. 85.
[104] Exhibit 64 (NC) – Exporter Response – Südzucker – question 34.
[105] Exhibit 75 (NC) – Producer Response – CSI, para. 68-77.

Determination Regarding Likelihood of Continued or Resumed Dumping – Denmark, the Federal Republic of Germany, the Netherlands and the United Kingdom

[168] Based on the information on the record in respect of: the continued dumping into Canada of refined sugar during the POR; the decline in the volume of imports; the past and likely future performance of the exporters in respect of production and pricing; the loss of traditional export markets; and the outlook for a continued global sugar surplus, the President determined that the expiry of the order is likely to result in the continuation or resumption of dumping of refined sugar originating in or exported from Denmark, the Federal Republic of Germany, the Netherlands and the United Kingdom.

POSITION OF THE PARTIES – SUBSIDIZING

1. Parties Contending that Continued or Resumed Subsidizing is Likely

1.1. Canadian Sugar Institute

Position of the Canadian Sugar Institute regarding the European Union

[169] The CSI presented evidence and a case brief in support of its position that the countervailing duty measures should remain in place. The CSI's position is based on the following factor:

- the continued subsidization of refined sugar from the E.U. while the order has been in effect.

Continued Subsidization of Refined Sugar

[170] The CSI argued that the nature of the E.U. subsidies supports its position on the likelihood of continued subsidizing of E.U. refined sugar. The CSI noted that the CBSA concluded a subsidy re-investigation on September 4, 2014, at which time the amount of subsidy was determined to be 24.39 EUR/100kg. This amount of subsidization is higher than the 22.13 EUR/100kg that applied during the previous expiry review.[106]

[106] Exhibit 75 (NC) – Producer Response – CSI, para. 197.

2. Parties Contending that Continued or Resumed Subsidizing is Not Likely

2.1. European Commission

Position of the European Commission regarding the European Union

[171] The E.C. provided a response to the government ERQ and referred to its submission to the Tribunal's administrative record with respect to the pre-initiation stage of the expiry review. The E.C. stated its position that continued or resumed subsidizing of refined sugar from the E.U. is not likely based on the following factors:

- the elimination of subsidization of E.U. sugar since reform of the sugar sector.

Elimination of Subsidization in the European Union Sugar Sector

[172] The E.C. explained that the E.U. agricultural policy has undergone reforms resulting in a system consisting of production quota management, a reference price and a minimum guaranteed price to sugar beet growers, and trade measures. Since September 26, 2008 export refunds in the sugar sector have been eliminated. The E.C. noted that the full implementation of the reform of the E.U. sugar sector will lead to the elimination of the E.U. sugar quota regime in 2017.[107]

[173] The E.C. provided comments related to the CBSA's subsidy re-investigation that concluded on September 4, 2014. The E.C. argues that the Single Payment Scheme is in line with WTO commitments and qualifies for inclusion in the green box (i.e. it is not trade distortive) as defined in Annex 2 of the WTO Agreement on Agriculture, and in particular, the income support system is now decoupled from production.[108]

[174] The E.C. provided additional information in regards to the Programmes of Options Specifically Relating to Remoteness and Insularity (POSEI). The E.C. explains that production volumes of refined sugar in the outermost regions of the E.U. are very small compared to global production levels (around 2%).[109] The E.C. claims that most of the refined sugar production in the outermost regions is intended for consumption inside the outermost regions or the continental E.U.[110]

[107] Exhibit 17 (NC) – Tribunal Administrative Record – LE-2014-005-04.02 – para. 2.
[108] Exhibit 17 (NC) – Tribunal Administrative Record – LE-2014-005-04.02 – para. 2.
[109] Exhibit 17 (NC) – Tribunal Administrative Record – LE-2014-005-04.02 – para. 3.
[110] Exhibit 17 (NC) – Tribunal Administrative Record – LE-2014-005-04.02 – para. 4.

2.2. Südzucker AG

Position of Südzucker AG regarding the European Union

[175] Südzucker submitted a response to the CBSA exporter ERQ and provided arguments in support of its position that continued or resumed subsidizing of refined sugar from the E.U. is not likely based on the following factors:

- the elimination of subsidization of E.U. sugar since reform of the sugar sector.

Elimination of Subsidization in the European Union Sugar Sector

[176] Südzucker noted that since September 2008 export refunds in the sugar sector are no longer been granted by the E.C. In addition, the Single Payment Scheme, as part of the system in the sugar reform is in line with WTO commitments and qualify for inclusion in the green box (i.e. it is not trade distortive) as defined in Annex 2 of the WTO Agreement on Agriculture. Südzucker argues that there is no reason for applying anti-dumping and countervailing duties on sugar imports to Canada coming from the E.U.[111]

[177] It is Südzucker's position that after 2017 the E.U. will be one of the most liberal sugar markets in the world. In addition, as a result Comprehensive Trade and Economic Agreement that concluded between Canada and the E.U. in 2014, the E.U. has committed to not granting export refunds to sugar destined for Canada.[112]

CONSIDERATION AND ANALYSIS – SUBSIDIZING

[178] In making a determination under paragraph 76.03(7)(*a*) of SIMA whether the expiry of the order in respect of goods from the E.U. is likely to result in the continuation or resumption of subsidizing of the goods, the President may consider factors identified in subsection 37.2(1) of the SIMR, as well as any other factors relevant in the circumstances.

[179] Guided by the factors in the SIMR and based on the documentation submitted by the various participants and the consideration of the information on the administrative record, the following list represents a summary of the factors considered most relevant to the analysis with respect to the likelihood of continued or resumed subsidizing:

- the continued subsidizing of refined sugar during the POR.

[111] Exhibit 64 (NC) – Exporter Response – Südzucker – question 20.
[112] Exhibit 64 (NC) – Exporter Response – Südzucker – question 20.

Likelihood of Continued or Resumed Subsidizing – European Union

[180] Guided by the factors in the aforementioned subsection 37.2(1) of the SIMR and having considered the information on the administrative record, the CBSA concluded that there has been subsidizing of the goods while the order has been in effect, and this subsidization is continuing. In arriving at this conclusion, the CBSA relied primarily on the information received during its recent re-investigation of the amount of subsidy for E.U. refined sugar.

[181] As mentioned previously, sugar producers in the E.U. are supported by a sugar regime that is administered as part of the CAP by the Commission of the European Communities. The E.U. sugar policy currently in effect is outlined in Regulation (E.U.) No 1308/2013 of the European Parliament and of the Council of December 17, 2013 establishing a common organization of the markets in agricultural products. The regulation came into effect on January 1, 2014 and the provisions related to sugar will apply until the 2016/2017 marketing year. On October 1, 2017, E.U. sugar and isoglucose production quotas will be abolished, along with the minimum beet prices.[113]

Continued Subsidizing of Refined Sugar during the POR

[182] The CBSA concluded a subsidy re-investigation on September 4, 2014, which updated the amount of subsidy applicable on refined sugar from the E.U. in view of E.U. sugar reform. This amount of countervailing duty is currently set at 24.39 EUR/100kg, which is higher than the amount of subsidy in effect at the time of the last expiry review.

[183] Both the E.C. and Südzucker argued in their submissions that export refunds have been suspended since the 2006 reforms.[114] The CBSA agrees with the position stated by the E.C. and Südzucker and notes that the overall amount of subsidy determined in the last re-investigation did not include export refunds. The CBSA also notes that the sugar reform in the E.U. has resulted in additional subsidy programs, leading to an increase in the overall amount of subsidy determined in the most recent subsidy re-investigation.

[184] Both the E.C. and Südzucker asserted that Single Payment Scheme is in line with WTO commitments and argue that the Single Payment Scheme is decoupled from the production of sugar.[115] The CBSA agrees with the position stated by the E.C. and Südzucker and an amount of subsidy for the Single Payment Scheme was not included in the 2014 subsidy re-investigation calculation of the overall amount of subsidy for the E.U.

[113] Exhibit 75 (NC) – Producer Response – CSI, para. 194.
[114] Exhibit 17 (NC) – Tribunal Administrative Record – LE-2014-005-04.02 - para. 2 & Exhibit 64 (NC) – Exporter Response – Südzucker – question 20.
[115] Exhibit 17 (NC) – Tribunal Administrative Record – LE-2014-005-04.02 – para. 2 & Exhibit 64 (NC) – Exporter Response – Südzucker – question 20.

[185] The E.C. provided information with respect to the POSEI income support provided to the outermost regions of the E.U. The E.C. stated that production in the outermost regions were small compared to global production levels and is intended for consumption in the outermost regions or the continental E.U.[116] The CBSA notes that as the 2014 subsidy re-investigation was conducted on an aggregate basis, an amount of subsidy of 24.39 EUR/100kg applies to subject goods. Generally, the amount of subsidy will vary according to the Member State, producer or exporter. However, due to the proximity of the E.U. countries, cross-border ownership of production facilities and the fungible nature of sugar, it is difficult to know if the sugar is beet or cane sugar, or even in which production facility the sugar was produced. Hence, the CBSA conducted its 2014 subsidy re-investigation on an aggregate basis.

[186] The CBSA acknowledges that E.U. sugar prices have aligned closer to the world price levels; however, the price support subsidy is still existent and likely to continue in the future despite the full implementation of E.U. sugar reform in late 2017. After the 2017 reform, other trade-distorting program provisions will remain intact, including the domestic market reference threshold/price for white sugar, private storage aid, and import tariff protection for all but preferential suppliers. Should the gap between the E.U sugar price and the world price decrease further, the difference will be reflected in the calculation of the amount of subsidy in a future subsidy re-investigation.

Determination Regarding Likelihood of Continued or Resumed Subsidizing – European Union

[187] Based on the information on the record in respect of the continued subsidizing of the subject goods during the POR and the fact that subsidy programs still exist and are likely to continue in the future, the President determined that the expiry of the order is likely to result in the continuation or resumption of subsidizing of refined sugar originating in or exported from the EU.

[116] Exhibit 17 (NC) – Tribunal Administrative Record – LE-2014-005-04.02 – para. 3,4.

CONCLUSION

[188] For purposes of making determinations in this expiry review investigation, the CBSA conducted its analysis within the scope of the factors set forth in subsection 37.2(1) of the SIMR. Based on the foregoing consideration of pertinent factors and analysis of evidence on the record, on June 18, 2015, pursuant to paragraph 76.03(7)(*a*) of SIMA, the President determined that:

- the expiry of the order in respect of refined sugar originating in or exported from the United States of America, in RR-2009-003 issued by the Tribunal on November 1, 2010, is likely to result in the continuation or resumption of dumping of the goods to Canada.

- the expiry of the order in respect of refined sugar originating in or exported from Denmark, the Federal Republic of Germany, the Netherlands and the United Kingdom, in RR-2009-003 issued by the Tribunal on November 1, 2010, and as amended by its order made on September 28, 2012, in Expiry Review No. RR-2009-003R, is likely to result in the continuation or resumption of dumping of the goods to Canada.

- the expiry of the order in respect of refined sugar originating in or exported from the European Union, in RR-2009-003 issued by the Tribunal on November 1, 2010, and as amended by its order made on September 28, 2012, in Expiry Review No. RR-2009-003R, is likely to result in the continuation or resumption of subsidizing of the goods to Canada.

FUTURE ACTION

[189] On June 19, 2015, the Tribunal commenced its inquiry to determine whether the expiry of the orders in respect of these goods is likely to result in injury to the domestic industry. According to the Tribunal's schedule, it will make its decision by October 30, 2015.

[190] If the Tribunal determines that the expiry of the orders is likely to result in injury, the orders will be continued in respect of those goods, with or without amendment. If this is the case, the CBSA will continue to levy anti-dumping and/or countervailing duty on dumped and/or subsidized importations of the subject goods.

[191] If the Tribunal determines that the expiry of the orders is unlikely to result in injury, the orders will be rescinded in respect of those goods. Anti-dumping and/or countervailing duty would no longer be levied on importations of the subject goods.

INFORMATION

[192] For further information, please contact the officer listed below:

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Brent McRoberts
Director General
Trade and Anti-dumping Programs Directorate

APPENDIX - PRODUCT DEFINITION AND EXCLUSIONS

The subject goods are defined as:

> "Refined sugar, refined from sugar cane or sugar beets, in granulated, liquid, and powdered form."

Refined sugar is sold as white granulated, liquid and specialty sugars. Granulated sugar comes in a range of grain fractions (e.g., medium, fine, and extra fine). Liquid sugar includes invert sugar. Specialty sugars include soft yellow sugar, brown sugar, icing sugar, demerara sugar and others and may be sold in granulated, liquid, or powdered form.

Exclusions by the Canadian International Trade Tribunal (as of November 6, 1995)

1. Co-crystallized products – For greater clarity, these products are comprised of sugar syrups or liquid sucrose blends and one or more non-sucrose ingredients combined through a co-crystallization process to form a dry solid structure in granulated or powder form.

2. Pearl sugar – For greater clarity, pearl sugar is hard granulated sugar, pellet-formed by subjecting sugar syrup to intense heat. The pellet, which is the size of a pea, is shaped like a football. It is coarser than coarse sugar, i.e. confectioners' sugar.

3. Bottler's floc-free beet sugar – Imported by McNeil Consumer Products Company for use in pharmaceutical preparations.

4. Lyle's Golden Syrup – Produced by Tate & Lyle PLC.

5. Lyle's Pouring Syrup – Produced by Tate & Lyle PLC.

6. Daddy brand wrapped sugar dominoes in 1-kg boxes – For greater clarity, these are sugar cubes which are wrapped in illustrated paper wrappings, each of which contains two sugar cubes.

7. Daddy brand wrapped sugar cubes in 5-kg boxes containing 960 portions – For greater clarity, each portion contains two sugar cubes which are wrapped in illustrated paper wrappings.

8. Saint Louis brand pre-cut brown cane sugar lumps in 1-kg boxes – For greater clarity, these are rough-shaped sugar lumps comprised of brown cane sugar.

9. Daddy brand shaped white sugar pieces in 500-g boxes – For greater clarity, these sugar pieces are pre-cut into diamond, heart, spade and club shapes.

10. Daddy brand brown or blond "Vergeoise" sugar in 500-g cases.

11. Comptoir du Sud brand brown and white sugar pieces in 1-kg and 500-g boxes.

12. Daddy brand brown coffee sugars in 500-g box packets – For greater clarity, this is a large granule brown sugar.

13. Demerara sugar cubes – Produced by Tate & Lyle PLC.

14. Amber sugar crystals – Produced by Tate & Lyle PLC. For greater clarity, these are large sugar crystals in varying shades of brown.

15. Low-colour liquid sucrose with a colour no higher than 10 maximum ICUMSA (International Commission for Uniform Methods of Sugar Analysis) colour units and distiller's grade liquid sucrose imported by Gilbey Canada Inc. for use as ingredients in its production process.

Additional Exclusions as of November 3, 2000

16. Bottler's floc-free beet sugar imported for use in pharmaceutical preparations where it is established by the importer that floc-free beet sugar from Canadian sources does not meet the applicable product specifications.

17. Golden, pouring and other table syrups imported in retail-ready packaging in containers not exceeding 3 litres.

18. Subject to the exception below, specialty wrapped sugar cubes, each individual wrapping containing not more than 3 sugar cubes, imported in retail-ready packages not exceeding 5 kg in weight. This exclusion does not include generic wrapped white sugar cubes (i.e. where the illustration consists of primarily a trade-mark, trade name, company name or other commercial identification as opposed to a unique illustration).

19. Pre-cut specialty shaped sugar pieces, imported in retail-ready packaging, in packages not exceeding 1 kg in weight – For greater clarity, these include diamond-, heart-, spade- and club-shaped sugar but do not include cube- or domino- (i.e. rectangular) shaped sugar.

20. Rough-shaped lumps and pieces, in lumps or pieces weighing between 3 and 10 grams on average, imported in retail-ready packaging, in individual packages not exceeding 1 kg in weight.

21. Very large crystal sugar, in crystals exceeding 0.05 g in weight on average, imported in retail-ready packaging, in individual packages not exceeding 1 kg in weight.

22. Specialty sugar cubes and dominoes (i.e. rectangles), made from demerara, brown, yellow or any other non-white sugar, imported in retail-ready packaging, in packages not exceeding 1 kg in weight – For greater clarity, this does not include any sugar cube or domino made from white granulated sugar.

23. Low-colour liquid sucrose with a colour no higher than 10 ICUMSA colour units and distiller's grade liquid sucrose imported for use in the production of distilled spirits where it is established by the importer that low-colour liquid sucrose and distiller's grade liquid sucrose from Canadian sources do not meet the applicable product specifications.

24. Organic sugar meeting the requirements of the Canadian General Standards Board standard No. CAN/CGSB-32.310-99 (Organic Agriculture), the U.S. *Federal Organic Foods Production Act of 1990* or any rules adopted under that act, or the European Union EN2092/94 (Organic Regulation), where it is accompanied by a transaction certificate affirming compliance with the standard signed by an ISO Guide 65 accredited certifying authority.

Additional Exclusion as of November 2, 2005

25. Individually wrapped rectangular cane sugar tablets.