Sugar Re-export Program Proposed Rule
Listing of Public Comments

#	Name	Address	Date
1	Ryberg and Smith, L.L.P.	Canal Sq., 1054 31st Street, N.W. Washington, D.C.	1/31
2	Ruth DeGennaro	Yonkers, NY	2/15
3	Sturm Foods Inc.	215 Center Street Manawa, WI	3/15
4	United States Beet Sugar Assoc. Am. Sugar Beet Growers Assoc.	1156 15`h Street N.W. Washington, D.C.	3/16
5	Blommer Chocolate Company	Chicago, IL	3/18
6	Pisani & Roll	1875 Century Park East Los Angeles, CA	3/21
7	Nestle Business Services		3/21
8	Batory de Mexico	2100 Col. Fracc. Industrial del Nte. H. Matamoros, Tam. Mexico	3/21
9	C&H Sugar Company, Inc.	2300 Contra Costa Blvd. Pleasant Hill, CA	3/21
10	American Sugar Refining, Inc.	One Federal Street Yonkers, NY	3/22
11	Streamline Foods Ltd.	2140 Winston Park Drive Oakville, Ontario	3/22
12	Chicago Sweeteners	1700 Higgins Road Des Plaines, IL	3/22
13	Sweetener Users Assoc.	One Massachusetts Ave. N.W. Washington, D.C.	3/22
14	Imperial Sugar Company	8016 Highway 90A Sugar Land, TX	3/22
	Federal Register Deadline	**March 22, 2005**	
15	First Food Company	4561 Leston Street Dallas, TX	3/22
16	Am. Cane Sugar Refiners' Assoc.	70 Remsen Street Brooklyn, NY	3/23
17	Food Concept Developers, Inc.	1925 Holmes Rd. Elgin, IL	3/28
18	Sqwincher Corporation	Columbus, MS	3/28
19	Pinnacle Priority Group	750 Oakwood Rd. Lake Zurich, IL	3/29
20	Associated Brands		4/11

RYBERG AND SMITH, L.L.P.

CANAL SQUARE
1054 THIRTY-FIRST STREET, N.W.
WASHINGTON, DC 20007

(202) 3,3.3•-4000

FAX: (202) 965-3445

PAUL RYBERG, JR.
(202) 965-0144
EMAIL: PR@HIS.COM

January 31, 2005

Mr. Ron Lord
Director, Import Policies and Programs
Foreign Agricultural Service
U.S. Department of Agriculture
Room 5531, USDA South Building
1400 Independence Avenue, S.W.
AgStop 1021
Washington, D.C. 20250-1021

Re: Comments on Sugar Re-Export Program Regulations

Dear Ron:

We are writing to submit comments in response to the notice published in the January 21, 2005 edition of the Federal Register, 70 Fed. Reg. 3150, concerning proposed revisions to the regulations governing the sugar-containing products re-export program, the sugar re-export program, and the polyhydric alcohol program. These comments propose that the sugar-containing products re-export program should be expanded to permit the extra-quota importation of certified organic sugar for use in manufacturing sugar-containing products for re-export.

The organic food market is the fastest growing sector of the U.S. food industry, growing by approximately 20% every year for the past 10 years and is forecast to be worth $20 billion during 2005. Processed organic foods account for about 50% of sales, and the vast majority of these products require an organic sweetener, irf which organic sugar is by far the most preferred. As major mainstream food manufacturers have launched products into the fast-growing organic market during the past few years, the demand for organic sugar has begun to accelerate much faster than the overall 20% growth in the organic food sector. Moreover, processed organic foods are becoming a significant export opportunity for the United States, but these products require increasing supplies of organic sugar if the U.S. organic foods industry is to be able to take advantage of this rapidly developing export market.

Domestic production of organic sugar is only a tiny fraction of U.S. consumption requirements. Accordingly, it is necessary to import the vast majority of the organic sugar that is consumed within the United States or re-exported in sugar-containing processed organic foods. Although organic sugar is technically eligible for entry under either the raw sugar TRQ or the specialty sugar TRQ, depending on the polarity of the

As you know, Paraguay is the largest supplier of certified organic sugar to the United States, providing more than 50% of the total supply of organic sugar in the U.S. market. Paraguay has been a dependable and reliable source for high quality organic sugar over the past decade, increasing its production of organic sugar as the demand in the United States has grown.

Organic sugar production is an important sector of the Paraguayan economy, providing one of the few employment opportunities in the impoverished rural areas. Organic sugar is the second largest category of exports from Paraguay to the United States, accounting for 16.6% of Paraguay's total exports to the United States. As Paraguay struggles to cope with the ongoing economic crisis in South America, organic sugar represents one of the few stable export sectors. Accordingly, Paraguay's organic sugar exports to the United States are becoming ever more important to Paraguay's economic survival.

Expanding the sugar-containing products re-export program to include organic sugar and processed organic food products would both create a self-implementing mechanism for meeting a portion of the demand for organic sugar in the U.S. market, while at the same time provide a remunerative export market for an increased volume of Paraguay's production of organic sugar.

For all these reasons, we respectfully recommend that USDA should consider expanding the sugar-containing products re-export program to include organic sugar and processed organic food products. We appreciate your consideration of our views on this important issue. Please let me know if you have questions or require additional information.

Sincerely,

Paul Ryberg
Legal Counsel to the
Sugar Association of Paraguay

cc: H.E. J. Spalding
Mr. Raul Hoeckle

sugar, the fastest growing demand for organic sugar is for drier and lighter products with a higher polarity that can only be imported under the specialty TRQ. Accordingly, the vast majority of organic sugar is today imported under the specialty TRQ. .

As the demand for organic sugar in the U.S. market has grown, USDA has gradually increased the specialty TRQ. For 2004-05, the specialty TRQ was increased to 22,656 metric tons (MT), its highest level ever. While this increase in the specialty TRQ is much appreciated, the truth is that the specialty TRQ is woefully inadequate to accommodate the level of demand for organic sugar, both for domestic consumption and for re-export in processed organic foods. The extent to which demand has outstripped supply is best illustrated by the fact that approximately 12,000 MT of organic sugar was tendered for entry under the 1,656 MT first tranche of this year's specialty TRQ. Likewise, when the 7,000 MT second tranche opened on November 16, 2004, a total of roughly 37,000 MT of organic sugar was tendered - more than five times the size of the tranche.

Despite repeated requests from the organic foods industry, USDA has been unwilling or unable to set the specialty TRQ at a level commensurate with demand for organic sugar, presumably because of concern that any increase in sugar imports – including imports of sugar products not produced in the United States – will spawn political opposition. In these circumstances, expanding the sugar-containing products re-export program to encompass organic sugar and processed organic food products provides a means to meet a portion of the growing demand for organic sugar that is not currently satisfied without generating political controversy. Because organic sugar imported under the re-export program would by definition be re-exported in the form of processed organic food products, no net increase in the supply of sugar in the U.S. market would occur. Accordingly, there would be no threat of undermining the U.S. sugar price support program.

No reliable industry-wide statistics currently exist concerning the volume of demand for organic sugar for use in processed organic food products. It is clear, however, that processed organic food products are the fastest growing segment of the organic foods industry and that the demand in this sector is already substantial. Unlike the current specialty TRQ, the proposed re-export program does not require setting an import limit based on estimates of the level of demand. Rather, the re-export program would be self-balancing in the sense that it would be able to accommodate whatever level of demand exists, provided only that the volume of imported organic sugar must be balanced by the re-export of processed organic food products containing an equivalent volume of organic sugar.

Under the proposed organic sugar re-export program, manufacturers of processed organic food products would apply for and receive licenses to import organic sugar and would be responsible for documenting that they had re-exported processed organic food products containing an equivalent volume of organic sugar.

USDA

'"iced States
■artment of
_riculture

Farm and Foreign
Agricultural
Services

Foreign
Agricultural
Service

1400 Independence
Avenue, SW
AgStop 1021
Washington, DC
20250-1021

Record of phone comment on Sugar Re-Export Program Proposed Rule

2/15/2004:

Ruth DeGennaro of American Sugar Refining called to ask about the Proposed Rule. The nature of the Class B refiner's license was the primary concern. IPPD staff described the nature of the Class B license, which would only permit receipt transfers of program sugar from Class A refiners, and permit giving transfers of program sugar to SCP or Polyhydric license holders. American Sugar Refining will have to consider as to whether they would support the proposal for the new Class B refiner's license.

FAX TRANSMISSION. SHEET

Sturm Foods Inc.

215 Center St
P. 0 Box 287
Manawa, WI 54949

Telephone: **920-596-5164**
Fax: **920-596-3040**
E-Mail: **rspear@sturminc.com**

Date: 15 March, 2005

To: Ron Lord

Company: USDA

From: Rob Spear

Subject: "The Sugar Re-Export Program, the Sugar Containing Products Re-Export Program, and the Polyhydric Alcohol Program: Proposed Rule"

You should receive 2 page(s) **including this cover sheet.**

COMMENTS:

Director, Import Policies and Programs Division
Foreign Agricultural Service
U.S. Department of Agriculture
1400 Independence Ave., SW
Stop 1021
Washington, DC 20250-1021

Dear Mr. Lord:

I am contacting you to express my point of view regarding "The Sugar Re-Export Program, the Sugar Containing Products Re-Export Program, and the Polyhydric Alcohol Program: Proposed Rule"

Proposed Section 1530.107 creates a definition of "substantial transformation" under which a substantial transformation occurs if the terms of General Note 12 of the Harmonized Tariff Schedule (HTS) are satisfied. We oppose the proposed definition because it will prevent U.S. sugar companies participating in the sugar re-export program from obtaining credits on sugar provided to companies in Canada and Mexico who manufacture certain sugar containing products for import into the United States. These include products that we have an interest in purchasing. Our opposition is based upon the following:

1. The proposed definition of "substantial transformation" is inconsistent with U.S. Customs practices and regulations. For trade among the three NAFTA countries, U.S. Customs uses the origin rules contained in 19 C.F.R. § 102, not General Note 12 of the HTS, to establish the specific origin of a product.

2. Re-export sugar is clearly permissible under the NAFTA. To restrict the use of re-export sugar in products manufactured in Mexico which are then sold in the United States can only aggravate attempts to resolve the ongoing sweetener dispute with Mexico.

3. While our interest in purchasing sugar-containing products from Mexico and Canada will continue, our suppliers will have fewer competitive options to obtain acceptable sugar for the products we need. At a minimum, this will undoubtedly increase the cost of their raw materials and hence increase the manufacturers' price to us. Even more importantly, we could see a complete disruption of our supply from these companies.

4. Under the proposal our suppliers will need to manage their sugar inventories in a much more cumbersome manner. Re-export sugar is authorized in some of the products of interest to us while not in others. The cost of this increasing administrative burden will undoubtedly be reflected in the prices vendors charge us.

5. Sugar-containing products prohibited under the proposed rule, will continue to be imported at preferential NAFTA duty rates. However, U.S. refiners who apply for credits will be unable to compete for this business. This unfairly discriminates against these companies.

In summary, the U.S. sugar companies participating in the sugar re-export program should be allowed to compete for this business, and that the definition of "substantial transformation" should be consistent with the rules of origin used by Customs for determining whether a good is of U.S., Mexican or Canadian origin. Without a source of supply under the current program, my company would be at a distinct competitive disadvantage.

UNITED STATES BEET SUGAR ASSOCIATION
1156 FIFTEENTH STREET, N. W.
WASHINGTON, D.C. 20005

(202) 296-4820

JAMES W. JOHNSON
PRESIDENT

March 16, 2005

Mr. Robert Curtis
Director, Import Policies and Programs Division
Foreign Agricultural Service
U.S. Department of Agriculture, Stop 1021
1400 Independence Avenue, SW.
Washington, DC 20250-1021

Re: Docket No. RIN 0551—AA65: The Proposed Rule to Modify the Regulations Governing the Sugar Re-Export Program, the Sugar-Containing Products Re-Export Program, and the Polyhydric Alcohol Program

Dear Sir:

On behalf of the United States Beet Sugar Association and the American Sugarbeet Growers Association, these comments are submitted in response to the proposed rule to modify the regulations governing the Sugar Re-Export Program, the Sugar-Containing Products Re-Export Program, and the Polyhydric Alcohol Program that was published in the *Federal Register* on January 21, 2005 (70 Fed. Reg. 3150-3155).

We generally support the changes in the regulations, but would like to make comments on some of the issues.

1. We fully agree with the proposal to allow the use of beet sugar by the licensees on a fully substitutable basis.

The proposal would amend the General Statement in 7 C.F.R. § 1530.100 to add the following sentence:

> "All refined sugar (whether derived from sugar beets or sugarcane) marketed in the United States may qualify as program sugar."

This general statement would permanently implement a waiver of the FAS Licensing Authority issued on January 14, 2002 and a provision of the 2002 farm bill.

As you know, the farm bill provided for the full substitutability of cane and beet sugar under the re-export programs for refined sugar and sugar-containing products and the polyhydric alcohol program as follows:

> "SUBSTITUTION OF REFINED SUGAR.—For purposes of Additional U.S. Note 6 to chapter 17 of the Harmonized Tariff Schedule of the United States and the reexport programs and polyhydric alcohol program administered by the Secretary, all refined sugars (whether derived from sugar beets or sugarcane) produced by cane sugar refineries and beet sugar processors shall be fully substitutable for the export of sugar and sugar-containing products under those programs."

See section 156(i) of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. § 7272(i)).

This proposed general statement would implement a waiver of the former regulatory definition of refined sugar as sugar refined from raw cane sugar. The waiver defined "refined sugar" to mean "sugar whose content of sucrose by weight, in a dry state, corresponds to a polarimeter reading of 99.5 degrees or more, or any brown sugar regardless of polarity manufactured from refined sugar." The proposed rule contains no definition for the term "refined sugar."

The beet sugar industry fully supports the substitutability of beet sugar for cane sugar for the purposes of the polyhydric alcohol and re-export programs. The proposed general statement should be helpful. This objective should be further implemented by defining "refined sugar" as either sugar derived from sugarcane or sugar beets and intended for human consumption, and the final rule should re-establish a provision on substitution that would specify that beet sugar is fully substitutable for cane sugar preferably using the statutory language.

2. We support the prevention of a re-export licensee getting license credits for the exportation of blocked stocks of domestic sugar.

The proposed rule purports to prohibit refiners from claiming program credits for exports of blocked stocks of domestically produced sugar. The proposed General Statement of policy is as follows:

> "Stocks of sugar blocked by domestic marketing allotments are disqualified from participation in the programs of this part." 7 C.F.R. § 1530.100

This statement does not directly address the issue of whether credits on a license can be obtained by exporting blocked stocks of domestic sugar. Moreover, the statement is anthropomorphous in that it addresses disqualifying a product (sugar) from "participating" in a program. Presumably this statement means that FAS will not recognize credits for exports of blocked stocks, but this should be made much clearer in the sections addressing license credits.

3. We urge that beet sugar processors be made eligible to obtain re-export licenses.

The proposed rule would create a new class of licenses for companies that produce ingredients from sugar for the food industry under the new Class B Refined Sugar Re-export Program license and would allow licensed refiners to obtain licenses under the "Sugar-Containing Product Re-export Licenses." While we support these proposals, we believe that beet sugar processors should be eligible for a new class of Refined Sugar Re-export Program license that would allow such processors either to export or transfer refined sugar and sell the credits to licensed refiners of imported raw sugar. Inasmuch as the proposed rule's provisions will prohibit credits for exports of blocked sugar and will allow the transfer of export credits, there is no reason to deny eligibility to established beet sugar processors to enable them to have another means to stay profitable in times of distressed prices on the domestic market and to gain experience dealing on the world market.

In a comments submitted June 2, 2003, to USDA-FAS regarding the advance notice of proposed rulemaking on the sugar re-export programs, published in the *Federal Register* on May 1, 2003 (68 Fed. Reg. 23230), we addressed this matter in some detail. It is unsatisfactory that the pending proposed rule fails to provide evenhanded treatment to the U.S. beet sugar processing industry in this regard. As we pointed out 21 months ago, beet processors are in a disadvantaged position relative to cane refiners in serving the needs of industrial customers active in the export of sugar-containing products. Therefore, allowing beet sugar producers to participate under licenses in the re-export programs would be equitable and could allow the expansion of the programs to the benefit of all suppliers. The ability to participate in the re-export program would create a useful tool to allow beet sugar processors to better manage their inventories and cash flows. This change also would benefit industrial sugar users who are licensed under the sugar-containing products re-export program because it would expand availability of supply and create increased competition among suppliers of refined sugar. The maximum credit balance for beet sugar processors should be the same as the maximum credit balance for cane sugar refiners. Further we strongly urge that licenses, whether for cane refiners or beet processors, be available only to the parent company in cases where subsidiary operations are involved, and that licenses continue to be limited to one per eligible company.

4. We support the transferability of export credits between re-export licensees if beet sugar processor are made eligible to participate in the refined sugar re-export program.

The preamble of the proposed rule addressed allowing the transfer of export credits between refined sugar re-export licensees, but this concept did not appear to be implemented by the proposed rules. We would support the concept if it were made available to licensed beet sugar processors.

We do not object to other new provisions of the proposed rule and wish to thank you for taking our comments under consideration in this rule-making process.

Sincerely,

J~ ies W. Johnson, Jr.
President
United States Beet Sugar Association

Lut er A. Markwart
Executive Vice President
American Sugarbeet Growers Association

4LgAyA CHOCOLATE COMPANY

Chicago, lllinois Union City, California • East Greenville, Pennsylvania

March 18, 2005

Director, Import Policies and Programs Division
Foreign Agricultunal Service
U.S. Department of Agriculture
1400 **Independence** Ave., SW
Stop 1021
Washington, DC 20250-1021

Attn: Ron Lord

Re: "The Seger Re-Export Program, the Sugar Containing Products Re-Export Program, and the PolyhydreAlcohol Program: Proposed Rule"

Dear Mr. Lord:

We are writing to i;omment on the above **proposed** rule.

Proposed Section 1530.107 creates a definition of "substantial transformation" under which a substantial transferrnation *occurs if* the *terms of* General *Note 12 of the* Harmonized Tariff Schedule *(HTS)* are satisfied. We oppo;ee the proposed definition because it will prevent U.S. sugar companies participating in the sugar re-export program from obtaining credits on sugar provided to companies in Canada and Mexico who manufacture certain sugar containing products for import into the United States. These include products that *we have an interest in* purchasing. *Our* opposition *is based upon the* following:

1. The proposed *'Jelin tion of* "substantial transformation" *is* inconsistent *with* U.S. Customs practices *and* regulations. For trade among the three NAFTA countries, U.S. Customs uses the origin rules contained in 19 C.F.R. § 102, riot General Note 12 of the HTS, to establish the specific origin of a product.

2. Re-export sugar is clearly permissible under the NAFTA. To restrict the use of re-export sugar in products manufactured in Mexico which are then sold in the United States can only aggravate attempts to resolve the ongoing sweetener dispute with Mexico.

3. While *our interest ire* purchasing sugar-containing products *from Mexico* and Canada will *continue, our* suppliers will have few3r competitive options to obtain acceptable sugar for the products we need. At a *minimum, this* wilt undoubtedly *increase the cost of* their *raw* materials *and hence increase the* manufacturers' *puce to us. Even more* importantly, *we could see a* complete disruption *of our* supply *from* these companies.

4. Under the proposal our suppliers will need to manage their sugar inventories in a much more cumbersome mar ner. Re-export sugar is authorized in some of the products of Interest to us while not in others. The cost of this increasing administrative burden will **undoubtedly** be reflected in the prices vendors charge us.

5. Sugar-containing products prohibited *under the* proposed *rule,* will continue *to* be imported *at* preferential NAFTA duty rates. However, U.S. refiners who apply for credits will be unable to compete for this business. This unfairly discr minates against these companies.

In sum, we **believe** that the U.S. sugar companies participating in the sugar re-export program should be allowec to compete for this business, and that the definition of "substantial transformation" should be consistent with the'ules of origin used by Customs for determining whether a good is of U.S., Mexican or Canadian origin.

Sincerely,

Allen Hargu
Blommer Chocolate Company

PISANI & ROLL

Attorneys at Law

Robert J. Pisani*
Michael E. Roll**

*Admitted in DC
**Admitted in CA

1875 Century Park East, Suite 600
Los Angeles, CA 90067
310.477.4410 (t)
877.674.5789 (f)
www.worldtradelawyers.com

1717 K Street NW, suite 600
Washington, DC 20036
202.466.0960 (t)
877.674.5789 (f)

Michael E. Roll

March 21, 2005

VIA EMAIL AND FEDERAL EXPRESS

Director, Import Policies and Programs Division
Foreign Agricultural Service
U.S. Department of Agriculture
1400 Independence Ave., SW
Stop 1021
Washington, DC 20250-1021

Attn: Ron Lord

Re: "The Sugar Re-Export Program, the Sugar Containing Products Re-Export Program, and the Polyhydric Alcohol Program: Proposed Rule", 70 Fed. Reg. 3150 (Jan. 21, 2005)

Dear Mr. Lord:

On behalf of our various clients that import products into the United States, we are writing to comment on the above proposed rule.

Proposed Section 1530.107 requires licensees to file quarterly reports with the Foreign Agricultural Service ("FAS") to provide FAS with certain information about the licensees activity each quarter. Among the items required to be provided to FAS by the licensee, if the licensee exports to Mexico, is a statement confirming that the licensee's customer has confirmed to the licensee in writing that the products sold to that customer by the licensee will be "substantially transformed" in Mexico as defined by General Note 12 of the HTS.

While we believe it is desirable to provide some guidance with respect to what constitutes a substantial transformation, General Note 12 does not constitute the proper legal test for deteianining the origin of a good under the North American Free Trade Agreement. Indeed, reliance on General Note 12 for the definition of substantial transformation is inconsistent. with how U.S. Customs and Border Protection and the US. Court of International Trade have applied the NAFTA origin provisions. Moreover, by defining substantial. transformation to mean whether the terms of General Note 12 are satisfied FAS would disrupt the role of Customs in maintaining an orderly process for advising interested parties on the determinations of whether goods qualify as having Mexican origin.

As you probably. are. aware, Customs issues advance rulings which importers and exporters are entitled to rely upon for purposes of entering products into the United States.. On the basis of such rulings, companies make investments in building facilities and developing markets. If a different agency in a different department of the federal government begins applying different rules and standards for determining whether goods are of Mexican origin, the value of advance rulings by Customs and the role. of Customs in making such determinations will be seriously undermined, depriving businesses of predictability, reliability and consistency in their terms of trading. Thus, instead of making its own determinations of country of origin, FAS should instead rely upon the decisions about country of origin which are. made by the agency with the expertise and delegated responsibility for such determinations.

Importantly, while General Note 12 is an origin test,. Customs does not use it for determining the <u>specific</u> origin of a good under the NAFTA. Rather, it is only used to determine whether a good is of North American origin or not. Put another way, General Note 12 only indicates whether a good originates in the territory of a NAFTA party;. it does not indicate the specific country in North America in which the good originates. Thus, if U.S. origin sugar is shipped to Canada or Mexico to be further processed and returned to the United States, General Note 12 does not provide the answer to whether the product returned to the United States is a U.S_ or Canadian product It only confirms that the product returned to the United States is of North American origin.

The NAFTA rules for determining. the specific origin of a good, i.e., whether the good is a good of Canada, Mexico or the United States, are those set forth in 19 C.F.R. § 102. Thus, if. a U.S. product were sent to Canada or Mexico for processing, the rules that would determine whether that product were of Canadian, Mexican or U.S. origin are the Part 102 rules, not General Note 12. Indeed, under the NAFTA and General Note 12, it is not sufficient for an importer to know that its good is of North American origin. HTSUS, General Note 12(a); HQ 5594[21], dated September 16, 1996. Instead, the good also must qualify as a Mexican or Canadian origin_good .to receive NAFTA duty benefits.

Based on the above, if FAS seeks to require that the substantial transformation test be satisfied, it is. clear that FAS should utilize the Part 102 rules, not General Note 12. In fact, as FAS may be aware, in the mid-199os, U.S. Customs and

Border Protection proposed utilizing the rules set forth in 19 C.F.R. § 102 for all origin purposes, not just for trade among NAFTA countries. In so proposing, Customs indicated that the 19 C.F.R. § 102 rules codified the substantial transformation concept. The 1994 proposal stated:

> *This document proposes toamend the interim- regulationsas set forth in part 102 of the Customs Regulations, published elsewhere in today's issue of the Federal Register, to make them uniformly applicable to all merchandise imported into the United States. The background section of the interim regulations as well as the regulatory text of part 102, is applicable to this document. This-document proposes to amend § 102.0 to set forth the scope of areas for which the rules of origin set forth in part 102 are proposed to be used to make country oforigin determinations. These proposed rules of origin will be applicable for all purposes for which the 'product of' or "country of origin" criterion is prescribed by statute. As this position would be consistent (except in the case of waste and scrap which are treated as if they originated as raw materials) with the position Customs has always taken regarding the concept of goods "wholly grown, produced or manufactured" in one country, including under preferential trade arrangements, such as the Generalized System of Preferences (GSP) and Caribbean Basin Initiative (CBI) statutes and regulations, Customs proposes that this definition apply for all purposes under the Customs and related laws and the navigation laws of the United States (for example, for duty assessment and country of origin marking purposes). Consequently, this document proposes- to amend all provisions where the phrase, "wholly the growth, product or manufacture", or "wholly obtained or produced" or a similar phrase, is used in the current regulations-for origin purposes, by including cross-references to the definition of "wholly obtained or produced in a country" set forth in the proposed § 102.1(8).*
>
> *Moreover, since the new rules of origin include specific tariff rules (tariff classification change and/or specific operations) which codify the "substantial transformation" rule, i.e., the criteria for determining whether a good has become a "new and different article of commerce" as a result of a manufacturing process in a given country, and provide the results that would be reached under a case-by-case application of the substantial transformation rule, the new rules would apply for all purposes where "substantial transformation" currently is specified in the Customs Regulations as the test for determining origin under Customs law. This does not include origin determinations under antidumping, countervailing duty, or government procurement statutes, although the authorities responsible for promulgating determinations under those statutes may avail themselves of these rules if they so choose. The proposed amendments to part 1S4 concerning country of origin marking also clarify that the substantial transformation rule currently used for identifying an ultimate purchaser is the same rule that is used for determining the country of origin of a foreign article imported into the United States. Proposed changes were also made to parts 4, 10, 12, and 177, Customs Regulations (19 CFR parts 4,10,12, and 177).*

"Rules Applicable to Imported Merchandise," 59 Fed. R,eg. 141, 142 (January 3, 1994) (Notice of Proposed Rulemaking).

In a 1995 clarification to the 1994 proposal, Customs again stated:

> *Based on an apparent misunderstanding reflected in some of the comments received in response to the January 3, 1994, notice of proposed rulemaking, Customs believes further clarification of the propose of the development of these rules is for all non-preference country of origin purposes is needed. This misunderstanding most probably*

> *stemmed from the following statement made in the Background portion of that document: "The change in tariff classification standard was specifically developed as an alternative to the traditional substantial transformation rule above in order to obviate the problems described above." This statement referred only to the distinction in format between the proposed rulemaking, which defines substantial transformation on the basis of published rules, and the traditional application of the substantial transformation principle. Customs was not proposing that the criteria for origin determination be based on a new standard; quite to the contrary, Customs intended that the same standard, substantial transformation, be applicable. As stated in the Discussion of Proposals portion of the January 3,1994, notice of proposed rulemaking, the new Part 102 rules, which are proposed to be used for all non preference country of origin determinations, are specifically intended to "codify," rather than constitute an alternative to the substantial transformation rule, i.e., "the criteria for determining tvhether a good has become a `new and different article of commerce' as a result of a manufacturing process in a given country and to 'provide the results that would be reached under the case by case application of the substantial transformation rule."'*
>
> ***The interim Part102rules, which Customs proposes to use for all non-preference country of origin determinations, are in fact specifically designed to implement the principles of the substantial transformation standard. In this regard, it should be noted that Customs views as relevant all court decisions involving substantial transformation for purposes of countru of oriain determination, regardless of the purpose for which the origin determination is being made. As favorably noted by the Court of International Trade in Target Sportswear. Inc. v. United States, Slip op.05-7(Jarman'23,1995), the purpose of these rules is "to add more certaintu and uniformitu to the substantial transformation test."***

"Rules for Determining the Country of Origin of a. Good for Purposes of Annex 311 of the North American Free Trade Agreement; Rules of Origin Applicable to Imported Merchandise," 6o Fed. Reg. 22312, 22313-22314 (May 5, 1995) (Notice of Proposed Rulemaking) (emphasis added).

Further support for use of the Part 102 rules is the U.S, Court of International Trade's decision in Cummins Engine v. United States, 83 F. Supp. 1366 (CIT 1999). In that case, the. CIT instructed that General Note.12 itself requires use of the Part 102 Rules:

> *The statute expressly directs that the [Part 102 Rules] be employed in determining whether to accord goods NAFTA preferential duty treatment. See General Note 12(a)(ii), HTSUS ("Goods that originate in the territory of a NAFTA party ... and that qualms to be marked as goods of Mexico under the terms of the marking rules as set forth in regulations issued by the Secretary ofthe Treasury are eligible for [NAFTA] duty rate[.]"). Therefore, the statute authorizes the use of the tar ff shift test, instead of the substantial transformation test, for goods not wholly produced in one country.*

83 F. Supp. At 1380.

Finally, we also believe thatto the extentthat.astatement is required for shipments to another NAFTA country, the statement should be required for shipments to both Mexico and Canada,. not just Mexico.. To require the statement only for shipments to Mexico would discriminate against operations in Mexico.

In sum, should FAS desire to define the substantial transformation test, it should do so in a manner that is consistent with how Customs and the Court of International Trade determine the specific country of origin of a good under the NAFTA origin rules.

Sincerely,

Michael E. Roll

THE SCHWINCHER CORPORATION P.O BOX 8250 • COLUMBUS, MS 39705-8250 • 1-800-654-1920 FAX 662-327-7827

March 18, 2005

Director, import Policies and Programs Division
Foreign Agricultural Service
U.S. Department of Agriculture
1400 Independence Ave., SW
Stop 1021
Washington, DC 20250-1021

Attn: Ron Lord

Re: "The Sugar Re-Export Program, the Sugar Containing Products Re-Export Program, and the Polyhydric Alcohol Program: Proposed Rule"

Dear Mr. Lord:

We are writing to comment on the above proposed rule.

Proposed Section 1530.107 creates a definition of "substantial transformation" under which a **substantial** transformation occurs if the **terms of General Note** 12 of the Harmonized Tariff Schedule (HTS) are satisfied. We oppose the proposed definition because it will prevent U.S. sugar companies participating in the sugar re-export program from obtaining credits on sugar provided to companies in Canada and Mexico who manufacture certain sugar containing products for import into the United States. These include products that we have an interest in purchasing. Our opposition is based upon the following:

1. The proposed definition of "substantial transformation" is inconsistent with U.S. Customs practices and regulations. For trade among the three NAFTA countries, U.S. Customs uses the origin rules contained in 19 C.F.R. 102, not General Note 12 of the HTS, to establish the specific origin of a product.

2. Re-export sugar is clearly permissible under the NAFTA. To restrict the use of re-export sugar in products manufactured in Mexico which are then sold in the United States can only aggravate attempts to resolve the ongoing sweetener dispute with Mexico.

3. While our interest in purchasing sugar-containing products from Mexico and Canada will continue, our suppliers will have fewer competitive options to obtain acceptable sugar for the products we need. At a minimum, this will undoubtedly increase the cost of their raw materials and hence increase the manufacturers' price to us. Even more importantly, we could see a complete disruption of our supply from these companies.

4. Under the **proposal** our suppliers will need to manage their sugar inventories in a much more cumbersome manner. Re-export sugar is authorized in some of the products of interest to us while not in others. The cost of this increasing administrative burden will undoubtedly be reflected in the prices vendors charge us.

5. Sugar-containing products prohibited under the proposed rule, will continue to be imported at preferential NAFTA duty rates. However, U.S. refiners who apply for credits will be unable to compete for this business. This unfairly discriminates against these companies.

In sum, we believe that the U.S. sugar companies participating in the sugar re-export program should be allowed to compete for this business, and that the definition of "substantial transformation" should be consistent with the rules of origin used by Customs for determining whether a good is of U.S., Mexican or Canadian origin.

Sincerely,

Tommy Howard
President/CEO

TH:mbw

P'innac%

PRIORITY 6ROUP

March 21, 2005

Mr. Ron Lord
Director, Import Policies and Programs Division
Foreign Agricultural service
U.S. Department of Agriculture
1400 Independence Ave., SW, Stop 1021
Washington, DC 20250-1021

Re: "The Sugar Re-Export Program, the Sugar Containing Products Re-Export Program, and the Polyhydric Alcohol Program: Proposed Rule"

Dear Mr. Lord:

We are writing to comment on the above proposed rule.

Proposed Section 1530.107 creates a definition of "substantial transformation" under which a substantial transformation occurs if the terms of General Note 12 of the Harmonized Tariff Schedule (HTS) are satisfied. We oppose the proposed definition because it will prevent U.S. sugar companies participating in the sugar re-export program from obtaining credits on sugar provided to companies in Canada and Mexico who manufacture certain sugar containing products for import into the United States. These include products that we have an interest in purchasing. Our opposition is based upon the following:

1. The proposed definition of "substantial transformation" is inconsistent with U.S. Customs practices and regulations. For trade among the three NAFTA countries, U.S. Customs uses the origin rules contained in 19 C.F.R. § 102, not General Note 12 of the HTS, to establish the specific origin of a product.

2. We understand that re-export sugar is clearly permissible under the NAFTA. To restrict the use of re-export sugar in products manufactured in Mexico which are then sold in the United States can only aggravate attempts to resolve the ongoing sweetener dispute with Mexico.

3. While our interest in purchasing sugar-containing products from Mexico and Canada will continue, our suppliers will have fewer competitive options to obtain acceptable sugar for the products we need. At a minimum, this will undoubtedly increase the cost of their raw materials and hence increase the manufacturers' price to us. Even more importantly, we could see a complete disruption of our supply from these companies.

4. Under the proposal our suppliers will need to manage their sugar inventories in a much more cumbersome manner. Re-export sugar is authorized in some of the products of interest to us while not in others. The cost of this increasing administrative burden will undoubtedly be reflected in the prices vendors charge us.

5. Sugar-containing products prohibited under the proposed rule, will continue to be imported at preferential NAFTA duty rates. However, U.S. refiners who apply for credits will be unable to compete for this business. This unfairly discriminates against these companies.

In sum, we believe that the U.S. sugar companies participating in the sugar re-export program should be allowed to compete for this business, and that the definition of "substantial transformation" should be consistent with the rules of origin used by Customs for determining whether a good is of U.S., Mexican or Canadian origin.

Sincerely,

Ray Medi
Director of Operations

Pinnacle Food Products, Inc. Priority Food Processing, inc.

750 Oakwood Road ª Lake Zurich, IL 60047 ª 847-438-1598 o Fax: 847-438-1236

Associated

Director, import Policies and Programs Division
Foreign Agricultural Service
U.S. Department of Agriculture
1400 Independence Ave., SW
Stop 1021
Washington, DC 20250-1021

Attn: Ron Lord

Re: "The Sugar Re-Export Program, the Sugar Containing Products Re-Export Program, and The Polyhydric Alcohol Program: Proposal Rule"

Dear Mr. Lord:

We are writing to comment on the above proposed rule.

Proposed Section 1530.107 creates a definition of "substantial transformation" under which a substantial transformation occurs if the terns of General Note 12 of the Harmonized Tariff Schedule (HTS) are satisfied. We oppose the proposed definition because it will prevent U.S. sugar companies participating in the sugar re-export program from obtaining credits on sugar provided to companies in Canada and Mexico who manufacture certain sugar containing products for import into the United States. These include products that we have an interest in purchasing. Our opposition is based upon the following:

1. The proposed definition of "substantial transformation" is inconsistent with U.S. Customs practices and regulations. For trade among the three NAFTA countries, U.S. Customs uses the origin rules contained in 19 C.F.R. § 102, not General Note 12 of the HIS, to establish the specific origin of a product.

2. Re-export sugar is clearly permissible under the NAFTA. To restrict the use of re-export sugar in products manufactured in Mexico which are then sold in the United States can only aggravate attempts to resolve the ongoing sweetener dispute with Mexico.

3. While our interest in purchasing sugar-containing products from Mexico and Canada will continue, our suppliers will have fewer competitive options to obtain acceptable sugar for the products we need. At a minimum, this will undoubtedly increase the cost of their raw materials and hence increase the manufacturers' price to us. Even more importantly, we could see a complete distribution of our supply from these companies.

4. Under the proposal our suppliers will need to manage their sugar inventories in a much more cumbersome manner, Re-export sugar is authorized in some of the products of interest to us while not in others. The cost of this increasing administrative burden will undoubtedly be reflected in the prices vendors charge us.

5. Sugar-containing products prohibited under the proposed rule, will continue to be imported at preferential NAFTA duty rates. However, U.S. refiners who apply for credits will be unable to compete for this business. This unfairly discriminates against these companies.

In sum, we believe that the U.S. sugar companies participating in the sugar re-export program should be allowed to compete for this business, and that the definition of "substantial transformation" should be consistent with the rules of origin used by Customs for determining whether a **good** is U.S., **Mexican or Canadian origin.**

Ron Bondarenko

R. Bondarenko

V.P Sourcing & Procurement

Nestle Business Services

NOW

March 21, 2005

Director, Import Policies and Programs Division
Foreign Agricultural Service
U.S. Department of Agriculture
1400 Independence Ave., SW
Stop 1021
Washington, DC 20250-1021

Attn: Ron Lord

Re: "The Sugar Re-Export Program, the Sugar Containing Products Re-Export Program, and the Polyhydric Alcohol Program: Proposed Rule"

Dear Mr. Lord:

We are writing to comment on the above proposed rule.

Proposed Section 1530.107 creates a definition of "substantial transformation" under which a substantial transformation occurs if the terms of General Note 12 of the Harmonized Tariff Schedule (FITS) are satisfied.. We oppose the proposed definition because it will prevent U.S. sugar companies participating in the sugar re-export program from obtaining credits on sugar provided to companies in Canada and Mexico who manufacture certain sugar containing products for import into the United States. These include products that we have an interest in purchasing. Our opposition is based upon the following:

1. The proposed definition of "substantial transformation" is inconsistent with U.S. Customs practices and regulations. For trade among the three NAFTA countries, U.S. Customs uses the origin rules contained in 19 C.F.R. § 102, not General Note 12 of the HTS, to establish the specific origin of a product.

2. Re-export sugar is clearly permissible under the NAFTA. To restrict the use of re-export sugar in products manufactured in Mexico which are then sold in the United States can only aggravate attempts to resolve the ongoing sweetener dispute with Mexico.

3. While our interest in purchasing sugar-containing products from Mexico and Canada will continue, our suppliers will have fewer competitive options to obtain acceptable sugar for the produete we need. At a minimum, this will undoubtedly increase the cost of their raw materials and hence increase the manufacturers' price

Batory de Mexico,
S . de R.L. de C.V.

Tel. (868) 810-1414
810-1424
810-1077
Fax. 810-0865

March 21, 2005

Director, Import Policies and Programs Division
Foreign Agricultural Service
U.S. Department of Agriculture
1400 Independence Ave., SW
Stop 1021
Washington, DC 20250-1021

Attn: Ron Lord

FAX: 202-720-0876

Re: "The Sugar Re-Export Program, the Sugar Containing Products Re-Export Program, and the Polyhydric Alcohol Program: Proposed Rule"

Dear Mr. Lord:

We are writing to comment on the above proposed rule.

Proposed Section 1530.107 creates a definition of "substantial transformation" under which a substantial transformation occurs if the terms of General Note 12 of the Harmonized Tariff Schedule (HTS) are satisfied. We oppose the proposal because it will prevent U.S. sugar companies participating in the sugar re-export program from obtaining credits on sugar provided to companies such as ours in Mexico who manufacture certain sugar containing products for import into the United States.

The proposed definition of "substantial transformation" is inconsistent with U.S. Customs practices, regulations and binding rulings. For trade among the three NAFTA countries, U.S. Customs uses the origin rules contained in 19 C.F.R. § 102, not General Note 12 of the HTS, to establish the specific origin of a product.

The United States and Mexico are attempting to resolve the ongoing sweetener trade dispute under the NAFTA. We view this restriction as an attempt to impose USDA will on the negotiations and are confident that the Mexican task force will feel likewise. We have invested capital in Mexico and have employed Mexican citizens to manufacture a wide variety of food products based in large part upon the goals of free trade under the NAFTA. This provision can only aggravate attempts to resolve the ongoing sweetener dispute with Mexico.

We will continue to source sugar to manufacture sugar-containing products for import into the United States. However, instead of re-export sugar, we will obtain sugar originating from foreign sources, including Canada and Mexico, or U.S.

Ave. Las Torres y Ave. Taansformacion No. 2100 Cal. Fracc, Industrial del Nte, 3a. Etapa, C.P. 87316
H. Matamoros, Tam. Mexico

Batory de México,
S. de R.L. de C.V.

Tel. (868) 810-1414
810-1424
810-1077
Fax. 810-0865

origin sugar for which re-export credits are not being claimed. The effect will be to remove one competitive source of raw materials, thereby increasing our costs which we must pass on to U.S. customers. Furthermore, it will deny U.S. refiners who apply for credits the right to compete for this business which will only increase the costs of operating their facilities. Customers and producers are clearly hurt by this rule.

While we will still be allowed to use re-export sugar in certain of our products, the administrative burden involved in segregating this sugar will discourage us from using any re-export sugar. This will only further hurt U.S. sugar refineries,

The reporting requirement unfairly discriminates against products manufactured in Mexico for importation into the United States. No other country, whether NAFTA or otherwise has any such requirement.

In sum, we believe that the U.S. sugar companies participating in the sugar re-export program should be allowed to compete for this business, and that the definition of "substantial transformation" should be consistent with the rules of origin used by Customs for determining whether a good is of U.S., Mexican or Canadian origin.

Lore - ' . rrillo
Q.A **and Technical** Director

C&H SUGAR COMPANY, INC,

Import Policies and Programs Division
Foreign Agricultural Service
ATTN: Mr. Ron Lord
U.S. Department of Agriculture
1400 Independence Ave., SW
Stop 1021
Washington, DC 20250-1021

Re: "The Sugar Re-Export Program, the Sugar Containing Products Re-Export Program, and the Polyhydrie Alcohol Program: Proposed Rule"

Dear Mr. Lord,

This letter is intended *as comment* to the above mentioned rule.

We oppose any rule that would restrict U.S. Sugar companies, participating in the sugar re-export program, from obtaining credits on sugar provided to companies in Canada and Mexico who manufacture certain sugar containing products for import into the United States. Our opinion is based on the following:

1. The **proposed** rule creates a definition for "substantial transformation" that is in conflict with US Customs *policies. US Customs uses the origin rules* contained *in 19 C.F.R. 102 to* establish the specific origin of a product, not General Note 12 of the HTS.

2. The proposed rule will not solve the problem of certain sugar containing products, that the PAS is seeking to remove from the re-export program, from continuing to be imported at preferred NAFTA **duty** rates. However, instead of re-export sugars, sugars from foreign sources, including Canada *and Mexico,* will be used in the manufacturing of these products_

3. The **proposed** rule places extra **burden** on the holders of Class A **Refined** Sugar **Re-Export** Program licenses and Sugar-containing Products *Program* Re-Export licenses to police the Export program. This rule will place additional reporting demands, as well as, additional costs on US Sugar companies that are already at a cost and price disadvantage by not being able to use re-export credits for certain sugar containing products imported into the United States.

In conclusion, we feel that U.S. sugar companies which are a part of the re-export sugar program should be allowed to compete for any and all business in Mexico and that the proposed rule regarding "substantial transformation" be consistent with US Customs policies regarding rules of origin to determine *whether a good is* of U.S., *Mexican or* Canadian *in origin.*

Best regards,

Kevin Williams
C&FZ Sugar Company

2300 Contra Costa Boulevard
Suits 600
Pleasant Hill, CA 94523
www.chsugascom/prufessionsl

Tel 925 688 1720
Fax 925 688 1743

to us. Even more importantly, we could see a complete disruption of our supply from these companies.

4. Under the proposal our suppliers will need to **manage** their sugar inventories in a *much more* cumbersome manner. Re-export sugar **is** authorized in some of the products of interest to us while not in others. The cost of this increasing administrative burden will undoubtedly be reflected in the prices vendors charge us.

5. Sugar-containing products prohibited under the proposed rule, will continue to be imported at preferential NAFTA duty rates. **However,** U.S. refiners who apply for credits will be unable to compote for this business. This unfairly discriminates against these companies.

In sum, we believe that the U.S. sugar companies participating in the sugar re-export program should be allowed to compete for this business, and that the definition of "substantial transformation" should be consistent with the rules of origin used by Customs for determining whether a good is of U.S., Mexican or Canadian origin.

Sincerely,

Kevin Petrie
Head of Purchasing
• Commodities/Brands

AMERICAN SUGAR REFINING, INC.
ONE FEDERAL STREET
YONKERS, NEW YORK 10702

TELEPHONE:914-709-8000 FAx -914-709-8360

March 22, 2005

Via Facsimile 202-720-0876
and Federal Express

Mr. Robert Curtis, Director
Import Policies and Programs Division
Foreign Agricultural Service
United States Department of Agriculture
1400 Independence Ave, SW
Stop 1021
Washington, DC 20250-2916

Re: Comments on Proposed Changes to 7 CFR Part 1530, Sugar Re-Export Program, Sugar Containing Product Re-Export Program, and the Polyhydric Alcohol Re-Export Program (the "Programs").

Dear Mr. Curtis:

American Sugar Refining, Inc. ("ASR") is a holder of a sugar re-export license granted to it by the USDA and applying to both ASR and its affiliate, Okeelanta Corporation. ASR operates sugar refineries in Yonkers, Baltimore, and New Orleans, and Okeelanta operates a refinery in South Bay, Florida. Together, they produce in excess of 40,000,000 cwt of refined sugar products each year. We have carefully reviewed the proposed changes to 7 CFR Part 1530, with consideration being given as to the effect the changes would have on the Program, our business operations, and our customers. With that in mind, we offer the following comments.

In General

We agree with the proposed changes/additions to allow the transfer of export credit between refined sugar re-export licenses, to allow refiners to hold sugar containing product re-export licenses, to allow third party export transactions, and to allow toll refining by licensed refiners for licensed manufacturers of sugar-containing products. We believe these changes further the original objectives of the Programs. We oppose the change concerning producers of polyhydric alcohol and are impartial to the creation of Class B licenses.

Proposed Section 1530.107(c)(6)

We have concerns, however, with the proposed new requirement contained in Section 1530.107(c)(6). This section requires, in the case of exports of Program sugar to Mexico, that a licensee request its customers to provide annual written certifications that the Program sugar will be "substantially transformed" in Mexico, as defined by General Note 12 of the HTS.

The reference to General Note 12 of the HTS is confusing in that General Note 12 does not provide a definition of substantial transformation, but rather sets forth the rules that must be met to obtain preferential NAFTA tariff treatment.

More importantly, this requirement will unduly restrict our customers' use of Program sugar and will result in the substitution of Program sugar with sugar from other sources such as sugar from the Mexican PITEX program. This result would be contrary to the Programs' objectives of maintaining capacity utilization for domestic refiners and permitting domestic refiners to compete with foreign refiners. The proposed rule will not stop the importation of any particular finished product; its only effect will be that manufacturers will use non-Program sugar, rather than Program sugar, to make the particular finished product. Accordingly, in order to achieve the goals of the USDA and keeping with the intent of the Sugar Program, we propose that the section be re-drafted to read as follows:

> (6) In the case of program sugar exports to Mexico, the following signed statement: "the customer has provided written certification that the program sugar will not be exported to the United States for importation under HTSUS subheading 1701.99."

This approach would not undermine the purpose of the Programs or result in loss of customer base for domestic refiners, but instead would foster better utilization of the capacities of domestic refining facilities and enhance the viability the domestic sugar industry.

Definition of Refiner

We believe that the definition of "Refiner" should be modified in two respects. First, that "or" in the proposed definition be changed to "and" as indicated in bold below:

> Refiner means any person who owns and operates a facility in the U.S. Customs Territory that refines raw cane sugar through affination or defecation, clarification, and further purification by absorption **and**

crystallization.

Second, we believe that the definition needs to include a requirement that the refiner is refining raw cane sugar as required by the definition for a significant amount of its production. Our concern is that a person could meet the definition of refiner for 1% of its production and be entitled for a license when in reality, it is not a refiner within the original intent of the Program.

Maximum License Balance

We recommend that the maximum license balance for refiner licenses be increased by at least 10,000 metric tons, to 60,000 metric tons. FAS has noted that recent developments, including consolidation in the refining industry and the re-imposition of domestic marketing allotments, have altered trading conditions applicable to sugar; hence, the proposed changes to 7 CFR Part 1530. Industry consolidation has actually reduced the aggregate positive tonnage permitted on refiner licenses. Increasing each license by 10,000 tons would not overburden the Program as the increased license amounts would still be less than the total amount in the earlier years of the Programs.

Thank you for your consideration of our comments. If you require any additional information, please do not hesitate to contact me at 914-709-8022.

Very truly yours,

John H. Gebhard
Vice President

CC: Celestino Ruiz
Armando A. Tabernilla
Ron Lord - USDA

2140 Winston Park Drive | Suite 210
Oakville, Ontario LOH 5V5
Phone: 1-905-829-2471
Fax: 1-905-829-2510

STREAMLINE FOODS LTD.

Fax

To:	Ron Lord	From:	Dan Hill
Fax:	202-720-0876	Pages:	2 incl. cover
Phone:		Date:	March 21, 2005

❑ Urgent   O For Review   0 Please Comment   ❑ Please Reply   GI Please Recycle

Comments:

Ron.

/2.-te,a„L)e

~J Ri(/,

Streamline Foods, nc.

Director, Import Policies and Programs Division
Foreign Agricultural Service
U.S. Department of Agriculture
1400 Independence Ave., SW
Stop 1021
Washington, DC 20250-1021

Attn: Ron Lord

Re: *"The Sugar* Re-Export *Program, the Sugar Containing Products* Re-Export *Program,* and the Polyhydric Alcohol Program: Proposed Rule"

Dear Mr. Lord:

I am writing to comment on the above proposed rule.

Proposed Section 1530.107 creates a possible ambiguity over the definition of "substantial transformation" under which a substantial transformation occurs if the terms of General Note 12 of the Harmonized Tariff Schedule (HTS) are satisfied. This ambiguity may lead to difficulties with respect to activities regularly done with customs classifications.

Streamline Foods has an interest in purchasing products that may be impacted by its ambiguity. Streamline Foods would, therefore, request that any ambiguity be clarified in the final rule to insure that current trade can continue under competitive circumstances.

Currently there are US Customs and Border Protection rulings on goods produced in Mexico with US sugar that are commercially advantageous to US producers. This re-export sugar has been imported in the form of SCP's under the NAFTA for several years, Should the proposed regulations change that practice, sugar that is currently allowed into the US as Mexican product might be impacted, which I believe would be an unintended consequence of the proposed regulations.

In order to retain our interest in purchasing sugar-containing products from Mexico and Canada, it is important that our suppliers have competitive options to obtain acceptable sugar for the products we need. A change in the current practice could increase the cost of their raw materials and hence increase the manufacturers' price to us.

Sugar-containing products that might be negatively affected by the regulation will continue to be imported at preferential NAFTA duty rates. However, if U.S. refiners who apply for credits are unable to compete for this business it would unfairly discriminates against these companies.

In sum, I believe that the U.S. sugar companies participating in the sugar re-export program should be allowed to compete for this business in the same manner as they have done under the current practice and urge USDA to include this clarification in the final regulations.

Sincerely,

Don Hill
President & CEO

Chicago Sweeteners Incorporated

1700 Higgins Road Suite 610 Des Plaines, Illinois 60018
Phone: 847/299-1999 Fax: 847-299-1669 800/367-6975

March 22, 2005

Director, Import Policies and Programs Division.
Foreign Agricultural Service
U.S. Department of Agriculture
1400 Independence Ave., SW
Stop 1021
Washington, DC 20250-1021

ATTN: Ron Lord

By Fax: 202-720-0876

Re: The Proposed Rule to Modify the Regulations Governing the Sugar Re-Export Program, the Sugar-Containing Products Re-Export Program, and the Polyhydric Alcohol Program: No. RIN 0551-AA65

Dear Mr. Lord:

We are writing to comment on the proposed rule regarding the Sugar Re-Export Program, the Sugar-Containing Products Re-Export Program, and the Polyhydric Alcohol Program as published in the Federal Register on January 21, 2005.

Proposed *Section* 1530.107 creates *a* definition of "substantial transformation" under which a substantial transformation occurs if *the* terms of General *Note* 12 of the Harmonized Tariff Schedule (HTS) are satisfied. This proposed provision provides as follows:

> In the case of program sugar exports to Mexico, the following signed statement: "The customer has provided written certification that the program sugar will be substantially transformed in Mexico, as defined by General Note 12 of the HTS."

See proposed section 1530.107(C) (6)

We oppose this proposal because it is contrary to existing law, it will undermine existing binding rulings by the Customs Service, and it will prevent U.S. sugar companies participating in the sugar re-export program from competing for the business of companies in Mexico who manufacture certain sugar containing products for import into the United States.

The proposed definition of "substantial transformation" is inconsistent with existing law embodied in the regulations promulgated by the Bureau of Customs and Border Protection, U.S. Customs practices, and rulings by the Court of International Trade. For *trade among* the three NAFTA countries, U.S. Customs uses the origin rules contained in 19 C.F.R. Part 102, not General Note 12 of the HTSUS, to establish the specific origin of a product. See also Rules for Determining the *Country of Origin of a Good for Purposes* of Annex 311 of the North American Free Trade Agreement. 61 Fed. Reg. 28932-01 (June 6, 1996). These regulations are applied for the specific purposes of determining the country of origin for marking and for the rate of duty and staging category applicable to goods imported from Mexico. See 19 C.F.R. § 102.0.

Moreover, the statutory law provides that 19 C.F.R. § 102 promulgated by the Secretary of the Treasury, rather than the substantial transformation test, governs the determinations regarding country of origin. The law abandons the former substantial transformation test for determining whether Mexico is the country of origin of goods, and delegates authority to the Secretary of Treasury to determine country of origin for purposes of the NAFTA (note: the Bureau of Customs and Border Protection is now located in the Dept. of Homeland Security). As the Court of International Trade has ruled:

> *[F]or the* purpose *of* determining whether a good should be marked with a NAFTA territory as the country of origin, the NAFTA Marking Rules have displaced the substantial transformation test. The regulations at 19 C.F.R. § 134.1(b) provide that, "for a good of a NAFTA country, the NAFTA Marking Rules will determine the country of origin." "The 'NAFTA Marking Rules' are the rules promulgated for purposes of determining whether a good is a good of a NAFTA country." 19 C.F.R. § 134.1(j), The Secretary of the Treasury promulgated the NAFTA Marking Rules to be applied in the United States at 19 C.F.R. Part 102.... The NAFTA Marking Rules do not mention the substantial transformation test in instructing how to determine the country of origin. The statute expressly directs that the NAFTA Marking Rules be employed in determining whether to accord goods NAFTA preferential duty treatment.

Cummins Engine Co. v. U.S., 23 C.I.T. 1019, 83 F.Supp.2d 1366, 1380 (CIT, 1999)

The proposal would usurp not only the legal authority of Customs but also the role of the Customs in maintaining an orderly process for advising interested parties on the determinations of whether goods qualify as having Mexican origin. Customs issues advance rulings which companies are entitled to rely upon for purposes of entering products into the United States. On the basis of such rulings, companies make investments in building facilities and developing markets. If a different agency in a different department of the federal government begins applying different rules and standards for determining whether goods are of Mexican origin, the value of advance rulings by Customs and the role of Customs in making such determinations will be seriously undermined, depriving businesses of predictability, reliability and consistency in their terms of trading. Instead of making its own determinations of country of origin, FAS should instead rely upon the decisions about country of origin which are made by the agency with the expertise and delegated responsibility for such determinations.

Even if the proposed rule is adopted as a final rule, the sugar-containing products FAS may be seeking to remove from the scope of re-export program will continue to be imported at preferential NAFTA duty rates. However, instead of re-export sugar, sugar originating from foreign sources, including Canada and Mexico, or U.S. origin sugar for which re-export credits are not being claimed, will be used in the manufacture of these products. The result is that U.S. refiners who apply for re-export credits will be unable to compete for this business, thereby reducing the efficiencies of running the factories and raising their operating unit costs. This unfairly discriminates against these companies.

It appears that the underlying purpose of the proposed definition of substantial transformation is to undermine the elimination of tariffs and quantitative restrictions already achieved by the NAFTA. The dual determinations by FAS and Customs could mean that products determined by Customs to be products of Mexico eligible to enter duty and quota free would nevertheless face prohibitively high penalties by a *contrary* decision by FAS. This would deter the investment and trading that was the central purpose of the NAFTA.

The reporting requirement imposes an additional burden on U.S. sugar refiners to police the ultimate use of their re-export sugar, including requiring certifications of their customers in Mexico. This in turn will require their customers to add administrative costs within their organizations to insure that this sugar is being used only in authorized products. The effect could well *be that* re-export sugar becomes unattractive to these companies for all of their needs, including for products not targeted under this definition.

The reporting requirement is clearly discriminatory in that it applies only to imports coming from Mexico. Sugar-containing products using re-export sugar *are* imported into the United States from other countries, including Canada, yet the requirement does not exist. It is also unclear if imports from countries other than Mexico simply do not trigger the reporting requirement or if these imports in fact do not fall under the same proposed substantial transformation definition. If the latter is the case, the proposed rule would be particularly unfair to Mexico.

Finally, restricting the use of re-export sugar in products manufactured in Mexico which are then sold in the United States can only aggravate attempts to resolve the ongoing sweetener disputes with Mexico. The sugar industries of both countries have been discussing this issue for many months. The **unilateral approach in *the* proposed rule** could disadvantage the U.S. negotiators in these talks by forfeiting the position of the

U.S. refiners without any corresponding concessions from Mexico. This issue should be left to the trade negotiators and the sugar industry representatives rather than taking the unilateral disarmament approach,

In sum, we believe that the U.S. sugar companies participating in the sugar re-export program should be allowed to compete for this business, and that the definition of "substantial transformation" should be consistent with the rules of origin used by Customs for determining whether a good is of Mexican origin.

Sincerely,

Robert V. Tinkham
Executive Vice President

SWEETENER USERS .ASSOCIATION
ONE MASSACHUSETTS AVE. NW • SUITE 800 • WASHINGTON, DC 20001 • (202) 842-2345 • (202) 408-7763 FAX

March 22, 2005

Director, Import Policies and Programs Division
Foreign Agricultural Service
U.S. Department of Agriculture
1400 Independence Avenue, S.W.
Stop 1021
Washington, D.C. 20250-1021

ATTN: Ron Lord

RE: Proposed Rule on the Sugar Re-Export Program, the Sugar-Containing Products Re-Export Program, and the Polyhydric Alcohol Program

Dear Mr. Lord:

The Sweetener Users Association appreciates the opportunity to comment on the Foreign Agricultural Service's proposed rule on the various sugar re-export programs, as published in the *Federal Register of* January 21, 2005 (Vol. 70, No. 13). SUA's members comprise the companies that use nutritive sweeteners in their business operations, including confectionery, beverages, food manufacturing and dairy products, as well as trade associations representing these companies.

Need for the Proposed Rule

The need to re-write the re-export program rules has been apparent for several years. FAS recognized disparities between the existing rules and normal commercial practices in January 2002, when the agency granted three waivers from the rules. These waivers permitted the substitution of beet sugar for cane sugar in re-exports; allowed toll refining arrangements; and permitted exports by third parties, e.g., brokers or distributors, who are not themselves license-holders. SUA strongly commended FAS's action at that time, and wishes to repeat its praise now.

Congress has also recognized the need to update the re-export programs. The Farm Security and Rural Investment act of 2002 (P.L. 107-171) specifically permitted "all refined sugars (whether derived from sugar beets or sugarcane)" to be "fully substitutable" for the export of sugar and sugar-containing products. This provision (7 U.S.C. 7272) codified the waiver previously granted by FAS.

General Comments

SUA finds most provisions of the proposed rule to be prudent, thoughtful and well-designed. We commend FAS's desire to make the important re-export programs conform to commercial practice, render their operations transparent, and assure program integrity.

We strongly object to two aspects of the proposed rule: an unnecessary and confusing change in program operations with respect to Mexico, and an overly broad grant of authority to the agency that would, if adopted, do violence to the clarity, predictability and common sense that otherwise characterize both the proposed rule and the actual operation of the program. We will comment on both of these provisions later in this document.

SUA also wishes to commend FAS for what is *not* in the proposed rule. The proposed rule does not establish a raw-for-raw re-export program. Nor does it reflect some of the more extreme proposals with respect to Mexico that FAS contemplated in early 2002, and to which SUA and other interested parties (including many producers) vociferously objected. In comments on FAS's earlier Advance Notice of Proposed Rulemaking (attached), SUA explained at length its views on these and other concepts to which the organization objected.

Licenses

The proposed rule creates two classes of licenses under the Refined Sugar Re-export Program. A Class A license would be held by refiners, while a Class B license would be held by ingredient producers, who could neither import nor export, but only receive transfers of program sugar and, in turn, transfer ingredients to manufacturers of sugar-containing products. This bifurcation of licenses under the refined program appears aimed at recognizing those companies that perform important functions intermediate between the refining of sugar and the final manufacture of finished sugar-containing products. The proposed rule makes clear that a license-holder under the Sugar-Containing Products Re-export Program may receive transfers of program sugar from either a Class A or a Class B license-holder. SUA supports the revisions in the structure of licenses, which recognize common commercial practices.

The powers granted to license-holders under the Sugar-Containing Products Re-export Program include the ability to enter into toll-refining arrangements. SUA supports this codification of the 2002 toll-refining waiver. Similarly, the proposed rule permits third-party exports, again a codification of one of the 2002 waivers, and SUA likewise supports this provision. Finally, the proposed rule establishes, and SUA supports, the substitutability of beet sugar in export transactions, in compliance with the 2002 legislation mentioned above.

The proposed rule would permit refiners to hold licenses under the Sugar-Containing Products Re-export Program. However, the rule does not appear to permit manufacturers to hold licenses under the Refined Sugar Re-export Program. It is unclear to SUA why this disparate treatment is being proposed. However, SUA also notes that the proposed rule maintains a 50,000 metric ton combined license balance for refiners, which is defined to include balances pursuant to both refined and sugar-containing product licenses. Therefore, we would not expect the provision to effect major changes in program operation or in the relationships between buyers and sellers in the two re-export programs.

Generally, the proposed rule retains maximum license balances at their existing levels. However, the proposed rule appears to eliminate a provision in the current rules that provides for a "manufacturer's or a producer's consolidated license balance, or the sum of a parent company and wholly-owned subsidiary license balances if held separately, ... not [to] exceed a license balance of 25,000 short tons, refined value for the sum of all charges and credits." (7 CFR § 1530.105(i)) FAS has not provided a rationale for eliminating this provision, nor has the agency attempted to explain the implications of doing so. In the absence of such a rationale, SUA believes that the existing provision should be retained in the final rule. If FAS believes the provision should be eliminated or modified, then FAS should provide a rationale and the opportunity to comment.

Blocked Stocks

The introduction to the proposed rule states that FAS is proposing to "[p]rohibit refiners from claiming program credits for exports of domestically produced sugar that has not been reported to the Farm Service Agency as having been marketed during periods when marketing allotments are in effect." The preamble goes on to note that "prohibition would prevent the circumvention of domestic marketing allotments."

SUA opposes marketing allotments in general, but understands that USDA must enforce the law, under which these allotments are mandatory. Therefore, USDA understandably wishes to maximize program integrity and achieve the stated goals of the marketing allotment statute. Among these goals is to place the burden of carrying surplus stocks on processors, not the government. To the extent this burden is artificially relieved through another government program, the intended economic signal may not be sent or received: Stockholding should provide an incentive for production restraint, but such restraint may not occur if it is easy to dispose of surplus or "blocked" stocks.

From this perspective, FAS's proposed prohibition is an appropriate measure. However, as we discuss in the following section, FAS has crafted an overly broad, extremely general provision to grant itself the authority it seeks. FAS should achieve its objective through a straightforward denial of a re-export credit for the export of blocked stocks. If there is a question whether the re-export program rules are the appropriate place in the Code of Federal Regulations for such a prohibition, then the provision should be proposed by the Farm Service Agency as an amendment to rules for the domestic sugar program. In any case, there is no good reason for the dangerously vague language in the proposed rule.

Conditions, Limitations and Restrictions

As noted above, the proposed rule makes a significant change in the existing grant of authority to the licensing authority to "impose ... conditions, limitations or restrictions on program transactions." Under the current regulation (7 CFR § 1530.105(m)), this power is to be used "to achieve the purposes of the relevant program." (Here, the "relevant program" would be one of the three re-export and alcohol programs.)

However, under the proposed rule, the same power is granted, but only "to prevent circumvention of the domestic sugar program." This vague, ambiguous and easily abused change is unnecessary, arbitrary and contrary to the goals of running a transparent, predictable program.

From our review, we cannot identify any reference to the term "circumvention" in the statutes creating the domestic sugar regime or in the Presidential proclamation under which the re-export program was created. The term "circumvention" is also not contained in the implementing regulations for either the domestic sugar regime or the re-export programs.

Even if there is some underlying authority for the concept of circumvention, how will FAS judge whether "circumvention" has occurred, since it does not operate the domestic sugar program? Will it simply defer to the judgment of the Farm Service Agency? If so, under what authority is the FSA able to make binding decisions about a program administered by FAS? If not, what authority permits FAS to make a judgment about "circumvention" of a program it does not administer?

The underlying purpose of the re-export programs has always been to strengthen the U.S. cane refining industry, in recognition of the negative impact of the U.S. sugar program on cane refiners. This purpose will be frustrated to the extent that the program is administered to prevent "circumvention" of a domestic program not even administered by the Foreign Agricultural Service.

In short, the agency is proposing an administrative structure ripe for abuse, liable to arbitrary interpretation, and apt for capricious decisions.

SUA urges FAS in the strongest terms to eliminate the reference to circumvention and to retain the existing language which references the programs covered by the proposed rule. SUA strongly opposes the language of proposed 7 CFR §1530.105(f).

As noted in the preceding section, if the reference to circumvention is intended to prohibit a re-export credit for the export of blocked stocks, then FAS should simply adopt a straightforward ban and eliminate this vague, broad reference to circumvention.

Discriminatory Treatment of Exports to Mexico

The proposed rule contains a requirement (proposed Sec. 1530.107(c)(6)) that FAS receive a "signed statement" with respect to any exports to Mexico, which is to read as follows: "The customer has provided written certification that the program sugar will be substantially transformed in Mexico, as defined by General Note 12 of the [Harmonized Tariffs Schedules of the United States (]HTS[)]."

SUA opposes this requirement, and urges FAS instead to maintain current regulations and policy. We do so for several reasons:

- Comments on the ANPR overwhelmingly opposed any changes to the re-export programs with respect to Mexico – yet this proposal represents a requirement not contained in the existing regulations, and applying to Mexico alone among all the countries in the world.
- FAS has provided absolutely no explanation of why the requirement is necessary, nor any justification for singling out Mexico – a nation with which the United States has a free trade agreement – and treating that country less favorably than all other potential destinations for re-exported sugar.
- The certification of substantial transformation requirement for Mexico – and only Mexico – imposes a paperwork burden on buyers in that nation that the proposed rule does not apply to purchasers in any other country. This arbitrary treatment of Mexico, in a manner less favorable than the terms available to all other countries, could be argued to violate U.S. MFN commitments to Mexico.
- The proposed certification requirement represents an export restriction, which would appear to be in conflict with Article 309 of the North American Free Trade Agreement (NAFTA).
- Since Mexico has the undoubted authority under the NAFTA to apply the MFN rate of duty to re-export sugar if it chooses, any further restrictions appear unnecessary. SUA supports the requirement to notify Mexico that exported sugar is the subject of a credit pursuant to the re-export program. This information should be sufficient for Mexico to decide, as a sovereign nation and NAFTA party, whether to apply the NAFTA duty or the MFN duty.

In addition to potentially violating NAFTA, SUA believes that the export certification FAS is proposing would unnecessarily complicate the program. Instead, SUA strongly urges FAS to retain the present requirement that license-holders notify the agency upon discovery that program sugar exports "were re-entered into the U.S. Customs Territory without substantial transformation." We believe this existing requirement is more sensible than what FAS has proposed:

- The existing requirement does not discriminate against Mexico, a partner in a free trade agreement. It applies the requirement to all destinations. The imposition of additional paperwork requirements, which add no substantive value to the current regulatory regime, can only be seen as an effort to discourage the use of the re-export program vis-a-vis Mexico.
- The existing requirement applies only if products are re-entered into the United States. By contrast, the proposed rule would apparently apply even if program sugar exports remained in Mexico or were exported to a third country. It is not clear why U.S. policy would concern itself with cases where no subsequent imports occurred.
- The existing requirement has not been shown to be inadequate – FAS presents no evidence to this effect, and indeed does not even mention, in its introductory material, the significant change it proposes with respect to Mexico. Licensees can and do impose contractual requirements on customers that they substantially transform program sugar, if

it is to be re-entered into the U.S. in a sugar-containing product. Absent some evidence that the current regulation needs to be changed, it is sensible to leave it intact.

In sum, SUA believes FAS has made a proposal which discriminates against Mexico, appears to violate NAFTA, has no apparent rationale, and raises difficult questions involving not only the HTS but also applicable regulations, as previously described. It is unclear why FAS would want to go down this particular road when the clear message from commenters on the ANPR – producers and users alike – was to leave any Mexico-related changes to bilateral, government-to-government negotiations. We urge FAS to listen to the public comments it received.

Conclusion

With respect to the majority of provisions, FAS has done a good job of updating the re-export program rules. The agency is to be commended for the majority of the proposed rule.

Nevertheless, two proposed provisions – an overly broad and largely undefined grant of authority to modify any program provisions to avoid sugar program circumvention, and a new regulation that discriminates against Mexico – are highly objectionable. SUA urges FAS to delete these problematic proposals from the final rule.

Thank you for the opportunity to comment on these important proposals.

Sincerely,

1a/

Lee McConnell, Chairman

ND: 4837-7473-2288, Ver 1

Imperial Sugar
COMPANY

IMPERIAL SUGAR COMPANY
P.O. Box 9 * 8016 HIGHWAY 90A
SUGAR LAND, TEXAS 77487
281-491-9181

22 March 2005

Mr. Robert Curtis
Director, Import Policies and Programs Division
Foreign Agricultural Service
U.S. Department of Agriculture
1400 Independence Avenue, S.W.
Stop 1021
Washington, D.C. 20250-1021

VIA FACSIMILE

RE: Proposed Rule on the Sugar Re-Export Program, the Sugar-Containing Products Re-Export Program, and the Polyhydric Alcohol Program

Dear Mr. Curtis:

We at Imperial Sugar Company (Imperial) first wish to thank the Department for the opportunity to comment on the Foreign Agricultural Service's proposed rule on the sugar re-export program, as published in the *Federal Register* of January 21, 2005 (Vol, 70, No. 13). Imperial is one of two independent (non-integrated) refiners in the United States and is a major supplier of refined sugars to industrial users and consumers. Imperial operates two cane refineries (Gramercy, LA and Savannah, GA) and two beet plants in California (Brawley and Mendota) as well as several distribution facilities throughout the country. Imperial is a current holder of a refiner re-export license.

<u>The purpose of the re-export program</u> is to assist cane refiners:

Imperial emphasizes that it is important to remember the original justification for the creation of the re-export program: **to assist the U.S. cane refining industry to remain competitive in world markets and to maintain refining volume in a shrinking domestic marketplace.** The re-export program remains an important tool in maintaining operating volumes for cane refiners. Refineries need to have a supply of raw sugar outside of TRQ imports to ensure an orderly supply when the inefficiencies of the current TRQ would otherwise make that difficult. In that regard, we applaud the Department for the continued interest in the program and for dropping the proposal to allow beet sugar processors to obtain licenses. It is also very important that cane sugar refiners' licenses be the only licenses upon which raw sugar imports may be entered. This allows the cane sugar refiner to retain the originally intended benefit of maintaining refining volume.

As summarized below, Imperial supports much of the proposed rule because it increased refiner flexibility in accord with existing, efficient trade practices. However, there are aspects of the proposal that unnecessarily detour from trade practices and others that threaten to impose impractical burdens—some to the point of impossibility—on refiners, which very much need to be revised or deleted in toto.

Comment on specific issues raised in the proposed rule:

Imperial understands the desire of the Department to operate the re-export program in a manner that facilitates the operation of other sugar program policies, notably the marketing allocation program. Consequently, Imperial favors prohibiting the export of blocked stocks as a program credit on a license during periods when domestic marketing allotments are in effect. Imperial feels, however, that the wording of the rule in 1530.100 is rather cumbersome and unclear, and would benefit from added clarity.

Imperial favors allowing all refined sugar, whether derived from sugarcane or sugar beets, marketed in the United States to qualify as program sugar.

Imperial supports allowing the transfer of export credits between refined sugar re-export licenses. This will simplify many current, efficient trade practices and allow for the explicit purchase and sale of credits as needed.

Imperial does not object to allowing the producers of polyhydric alcohol the ability to purchase sugar with a polarity below 99.5 degrees **as long as any sugar with a polarity below 99.5 degrees may only be entered on a cane refiner's license (Class A license) and any subsequent sales of products be made by the cane refiner.**

Imperial favors the proposal to allow holders of refined sugar re-export licenses to also hold a sugar containing product re-export license. The additional flexibility that may allow in the future is appreciated.

Similarly, Imperial supports allowing license holders to utilize third party exporters. This should facilitate the export process and allows the license holder the flexibility to use third parties as may be convenient.

Imperial favors allowing licensed manufacturers of sugar containing products the ability to buy raw sugar on the world market, pay a licensed refiner to enter it into the United States, and refine it to contract specifications with eventual transfer it to their license. **We favor this with the proviso that only cane refiners (Class A licensees) be allowed to enter raw sugar on their licenses.**

Imperial supports the creation of a Class B refined sugar re-export license as a means of increasing the flexibility allowed to manufacturers of sugar containing products in facilitating their production process and participation in the program.

In Sec 1530.104 (b) (2) the Department requires official documents generated by the U.S., Canadian or Mexican governments as necessary to confirm the entry of raw cane sugar and the export of program sugar and sugar containing products. As more and more customs operations are automated or transferred to licensed customs brokers, government documents are often no longer generated except by special request, which puts a burden on the exporter and on the customs officials at the port of import or export. There is always a form generated or a customs entry number reference generated and Imperial encourages the Department to re-word this requirement to enable commonly generated forms to be sufficient for the documentation of imports or exports. This change would insure that current commercial practices are incorporated into the letter of the regulation.

Due to the continued consolidation of the cane refining industry the total amount of program sugar that could be open on all refiner's licenses has declined over the years. Imperial encourages the Department to expand the maximum balance any refiner may have open on a license to be **75,000 tons.**

As the export business has changed over the years and exports of vessel-sized quantities have declined, being largely replaced by deliveries by rail and truck, it is increasingly difficult to ensure the export of program sugars within 90 days of the imports. **Imperial urges the Department to lengthen the time period limit for exports on a refiner license from the current 90 days to 180 days.** We do not believe the additional time would have any adverse impact on the operation of the re-export program or the domestic sugar program.

In section 1530.105 (f) the Department proposes that it may impose conditions, limitations or restrictions on program transactions at such time and in such manner as the Licensing Authority determines to be necessary or appropriate to prevent the circumvention of the domestic sugar program. While Imperial supports the Department in an orderly operation of the domestic sugar program, this rule appears overly vague (for example, circumvention is not defined) and open to potentially arbitrary interpretations. **Imperial opposes this language and encourages the Department to drop paragraph (0.**

Imperial supports the change in reporting program transactions as outlined in section 1530.107 (a). This allows more time to ensure the reporting is accurate.

Imperial objects to the certification of substantial transformation requirement for Mexico. This provision would impose a very significant and unfair paperwork burden on buyers in that nation which does not apply to purchasers in any other country. This arbitrary treatment of Mexico, in a manner less favorable than the terms available to all other countries, could be argued to violate U.S. MFN commitments to Mexico. Requiring certification by buyers is overly burdensome to the licensee, as it requires ongoing monitoring of a fungible product by the licensee after the sale. This is exacerbated by the positive requirement to withdraw credits if it is known that sugar is returning to the U.S. without substantial transformation. These are excessive burdens on the seller and should be withdrawn.

As the market has evolved so have the uses of sugar by buyers across both our national borders. Many finished goods and intermediate blends are coming back into the U.S. Given the size and diversity of buyers' businesses in this international marketplace, it is simply impossible for a domestic refiner to know whether sugar containing products coming across the border meet the burden of substantial transformation. The same product made with Mexican or Canadian sugar would meet the standard and this gives an unfair advantage to those sugar suppliers. Given the diversity of re-export sellers, it is impossible to know whether the sugar in any product is from your facility or a competitor's facility. Since it is impossible to decipher where the fungible product originated it is likewise difficult to determine which refiner must reduce credits — if any. The Department must understand that it is impossible for a license holder to compile this information or even estimate it with any degree of accuracy. Imperial strongly suggests that the U.S. government should decide which customs line items may come back into the U.S. and which may not, and allow Customs to oversee and govern this process.

We thank the Department for the chance to comment on these regulations and remain ready to assist in any way the Department may deem necessary.

Sincerely,

Patrick D Henneberry

Patrick Henneberry
Senior Vice-President
Commodities Management and Industrial Sales

FIRST FOOD CO..
4561 Leston Street Dallas, TX 75247
(800) 527-1866 Fax (214) 905-0605

March 14, 2005

Director, Import Policies and Programs Division
Foreign Agricultural Service
U.S. Department of Agriculture
1400 Independence Ave., SW
Stop 1021
Washington, DC 20250-1021

Attn: Ron Lord

Re: "The Sugar Re-Export Program, the Sugar Containing Products Re-Export Program, and the Polyhydric Alcohol Program: Proposed Rule"

Dear Mr. Lord:

We are writing to comment on the above proposed rule.

Proposed Section 1530.107 creates a definition of "substantial transformation" under which a substantial transformation occurs if the terms of General Note 12 of the Harmonized Tariff Schedule (HTS) are satisfied. We oppose the proposed definition because it will prevent U.S. sugar companies participating in the sugar re-export program from obtaining credits on sugar provider] to companies in Canada and Mexico who manufacture certain sugar containing products for import into the United States. These include products that we have an interest in purchasing. Our opposition is based upon the following:

1. The proposed definition of "substantial transformation" is inconsistent with U.S. Customs practices and regulations. For trade among the three NAFTA countries, U.S. Customs uses the origin rules contained in 19 C.F.R. § 102, not General Note 12 of the HTS, to establish the specific origin of a product.

2. Re-export sugar is clearly permissible under the NAFTA. To restrict the use of re-export sugar in products manufactured in Mexico which are then sold in the United States can only aggravate attempts to resolve the ongoing sweetener dispute with Mexico.

3. While our interest in purchasing sugar-containing products from Mexico and Canada will continue, our suppliers will have fewer competitive options to obtain acceptable sugar for the products we need. At a minimum, this will undoubtedly increase the cost of their raw materials and hence increase the manufacturers' price to us. Even more importantly, we could see a complete disruption of our supply from these companies.

4. Under the proposal our suppliers will need to manage their sugar inventories in a much more cumbersome manner. Re-export sugar is authorized in some of the products of interest to us while not in others. The cost of this increasing administrative burden will undoubtedly be reflected in the prices vendors charge us.

5. Sugar-containing products prohibited under the proposed rule, will continue to be imported at preferential NAFTA duty rates. However, U.S. refiners who apply for credits will be unable to compete for this business. This unfairly discriminates against these companies.

In sum, we believe that the U.S. sugar companies participating in the sugar re-export program should be allowed to compete for this business, and that the definition of "substantial transformation" should be consistent with the rules of origin used by Customs for determining whether a good is of U.S., Mexican or Canadian origin.

Regards,

Brooke Hogan
President

American Cane Sugar Refiners' Association

70 Remsen Street Brooklyn, NY 11201 718.254.9335 phone/fax

Margaret Blamberg, Ph.D.
Executive Director
718.490.4113 mobile

March 21, 2005

Mr. Robert Curtis
Director,
Import Policies and Programs Division
Foreign Agricultural Service
U.S. Department of Agriculture
1400 Independence Avenue, S.W.
Stop 1021
Washington, DC 20250-1021

Dear Mr. Curtis:

RE: Comments on Proposed Rule 7 CFR Part 1530, Sugar Re-Export Program, Sugar Containing Product Re-Export Program, and the Polyhydric Alcohol Re-Export Program.

The following are the comments of the member companies of the American Cane Sugar Refiners' Association. Together, we represent about 90% of the US cane refining industry and are the holders of the majority of the sugar re-export licenses. You may be receiving additional comments from the individual member companies.

First of all, let me commend the Department for recounting the reasons for the creation of these three programs: namely, the need to allow refiners to remain competitive in world markets after the imposition of GATT-mandated restrictive import quotas in 1982; and to maintain refining volume in light of a shrinking domestic market. These two rationales need to be kept in mind whenever changes to the re-export programs as considered.

Comments on the proposed rule (in the order points listed in the Federal Register):

1) **We agree that the exportation of blocked stocks under these programs not be allowed;**
2) **We agree to the transfer of export credits between refined sugar re-export licenses;**

3) We agree that polyhydric alcohol license holders be allowed to purchase sugar that is less than 99.5 degrees, as long as this sugar can only be accessed through a cane refiner;

4) We agree that refiners be allowed to hold sugar containing product re-export licenses as well, and welcome the flexibility that this would give us;

5) We agree that third party exports be allowed, under which license holders would register such exporters on their licenses. This would make documentation procedures simpler for refiners;

6) We agree with permitting toll refining by manufacturers of sugar-containing products, with the proviso that refiners be permitted to retain control contractually of the quantity and quality of sugar charged to their licenses;

7) We agree to the creation of a "Class B Refined Sugar Re-Export Program License," as long as it is carefully monitored to preclude imports and exports by the holders of these licenses.

8) We recommend that refiner licenses be increased by 10,000 stry each, to 60,000 strv. In the Background section of the proposed rule, FAS cites industry consolidation as one of the reasons necessitating a revision of the rules. Such consolidation has actually reduced the aggregate positive tonnage permitted on refiner licenses. Increasing each license by 10,000 tons would still amount to less than the total amount in the earlier years of the program.

Furthermore, we strongly suggest that the definition of *refiner,* as described under 1530.101, be revised more narrowly. We recommend that the present definition be amended to read "absorption *and* crystallization," instead of the current "absorption *or* crystallization."

Thank you for taking these comments into consideration. Please contact me if you wish additional information or clarification.

Sincerely yours,

Mar_ lamberg

od
oncept
Developers, Inc.

A Unique Approach For The Food Industry

Director, Import Policies and Programs Division
Foreign Agricultural Service
U.S. Department of Agriculture
1400 Independence Ave., SW
Stop 1021
Washington, DC 20250-1021

Attn: Ron Lord

Re: "The Sugar Re-Export Program, the Sugar Containing Products Re-Export Program, and the Polyhydric Alcohol Program: Proposed Rule"

Dear Mr. Lord:

We are writing to comment on the above proposed rule.

Proposed Section 1530.107 creates a definition of "substantial transformation" under which a substantial transformation occurs if the terms of General Note 12 of the Harmonized Tariff Schedule (HTS) are satisfied. We oppose the proposed definition because it will prevent U.S. sugar companies participating in the sugar re-export program from obtaining credits on sugar provided to companies in Canada and Mexico who manufacture certain sugar containing products for import into the United States. These include products that we have an interest in purchasing. Our opposition is based upon the following:

1. The proposed definition of "substantial transformation" is inconsistent with U.S. Customs practices and regulations. For trade among the three NAFTA countries, U.S. Customs uses the origin rules contained in 19 C.F.R. § 102, not General Note 12 of the HIS, to establish the specific origin of a product.

2. Re-export sugar is clearly permissible under the NAFTA. To restrict the use of re-export sugar in products manufactured in Mexico which are then sold in the United States can only aggravate attempts to resolve the ongoing sweetener dispute with Mexico.

3. While our interest in purchasing sugar-containing products from Mexico and Canada will continue, our suppliers will have fewer competitive options to obtain acceptable sugar for the products we need. At a minimum, this will undoubtedly increase the cost of their raw materials and hence increase the manufacturers' price to us. Even more importantly, we could see a complete disruption of our supply from these companies.

4. Under the proposal our suppliers will need to manage their sugar inventories in a much more cumbersome manner. Re-export sugar is authorized in some of the products of interest to us while not in others. The cost of this increasing administrative burden will undoubtedly be reflected in the prices vendors charge us.

5. Sugar-containing products prohibited under the proposed rule, will continue to be imported at preferential NAFTA duty rates. However, U.S. refiners who apply for credits will be unable to compete for this business. This unfairly discriminates against these companies.

In sum, we believe that the U.S. sugar companies participating in the sugar re-export program should be allowed to compete for this business, and that the definition of "substantial transformation" should be consistent with the rules of origin used by Customs for determining whether a good is of U.S., Mexican or Canadian origin.

Regards,

Bryan Rea
President

1925 Holmes Road • Elgin, IL 60123 • 847-622-1803 • FAX: 847-622-1713