OTTAWA, June 30, 2010

RR-2009-003
4366-27

STATEMENT OF REASONS

Concerning determinations under paragraph 76.03(7)(*a*) of the *Special Import Measures Act* regarding

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

AND

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

On June 17, 2010, pursuant to paragraph 76.03(7)(*a*) of the *Special Import Measures Act*, the President of the Canada Border Services Agency determined that the expiry of the orders made by the Canadian International Trade Tribunal on November 2, 2005, in Review No. RR-2004-007, in respect of refined sugar originating in or exported from the United States of America, Denmark, the Federal Republic of Germany, the Netherlands, the United Kingdom and the European Union, was likely to result in the continuation or resumption of dumping of the goods into Canada from United States of America, Denmark, the Federal Republic of Germany, the Netherlands and the United Kingdom and was likely to result in the continuation or resumption of subsidizing of the goods from the European Union.

Cet *Énoncé des motifs* est également disponible en français. Veuillez consulter la section "Information."
This *Statement of Reasons* is also available in French. Please refer to the "Information" section.

TABLE OF CONTENTS

SUMMARY

[1] On February 17, 2010, the Canadian International Trade Tribunal (Tribunal), pursuant to subsection 76.03(3) of the *Special Import Measures Act* (SIMA), initiated an expiry review of its orders made on November 2, 2005, in Review No. RR-2004-007 (the orders), continuing, with amendment, its orders made on November 3, 2000, in Review No. RR-99-006 continuing with amendment, its findings made on November 6, 1995, in Inquiry No. NQ-95-002, concerning the dumping of refined sugar, refined from sugar cane or sugar beets, in granulated, liquid and powdered form, originating in or exported from the United States of America (United States), Denmark, the Federal Republic of Germany (Germany), the Netherlands and the United Kingdom, and the subsidizing of refined sugar, refined from sugar cane or sugar beets, in granulated, liquid and powdered form, originating in or exported from the European Union. The orders are scheduled to expire on November 1, 2010.

[2] Following the Tribunal's notice, on February 18, 2010, the Canada Border Services Agency (CBSA) commenced an investigation to determine whether the expiry of the orders in respect of refined sugar is likely to result in the continuation or resumption of dumping and/or subsidizing of the goods.

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

[4] The Ontario Sugarbeet Growers' Association (OSGA) provided information on behalf of its members in support of its position that the expiry of the order is not likely to result in the continuation or resumption of dumping and/or subsidizing of refined sugar from the named countries.

[5] The United States Beet Sugar Association (USBSA) provided information on behalf of its members in support of its position that the expiry of the order concerning the dumping of refined sugar from the United States is not likely to result in the continuation or resumption of dumping.

[6] The European Commission (E.C.) provided comments on the CBSA's expiry review investigation, but did not specifically provide evidence or argument with respect to the likelihood of continued or resumed dumping and/or subsidizing should the Tribunal's orders be allowed to expire.

[7] The CBSA also received a response to the ERQ from one exporter and one importer of subject goods from the United States and from one importer of non-subject goods.

[8] With respect to goods from the United States, an analysis of the information on the record concerning the likelihood of continued or resumed dumping of refined sugar shows that:

- the subject goods were dumped while the order was in effect and the price differential between domestic prices in the U.S. and Canada indicates that the dumping is expected to continue;
- the low volume of imports since anti-dumping duties were imposed indicates that subject sugar cannot compete in the Canadian market without dumping;
- the U.S. sugar industry has substantial inventories and has the capacity to increase production, given the level of unutilized capacity;
- the opening of the U.S. market to Mexico is causing uncertainty in the U.S. market; and
- forecasts point to a return to a global sugar surplus.

[9] With respect to goods from Denmark, Germany, the Netherlands and the United Kingdom, an analysis of the information on the record concerning the likelihood of continued or resumed dumping of refined sugar shows that:

- the subject goods from some of the named countries were dumped while the order was in effect and the price differential between domestic prices the European Union (E.U.) and Canada indicates that the dumping is expected to continue;
- the low volume of imports since the order has been in effect indicates an inability to sell to Canada without dumping;
- the E.U. continues to produce surplus sugar;
- the E.U. is losing traditional export markets, and
- forecasts point to a return to a global sugar surplus.

[10] An analysis of the information on the record concerning the likelihood of continued or resumed subsidizing of refined sugar from the E.U. shows that:

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

[11] On June 17, 2010, the President of the CBSA (President), having considered the relevant information on the record and the foregoing factors, determined pursuant to paragraph 76.03(7)(*a*) of SIMA, that:

- the expiry of the order in respect of the dumping of refined sugar originating in or exported from the United States is likely to result in the continuation or resumption of dumping of the goods into Canada;
- the expiry of the order in respect of the dumping of refined sugar originating in or exported from Denmark, Germany, the Netherlands and the United Kingdom is

likely to result in the continuation or resumption of dumping of the goods into Canada, and

- the expiry of the order in respect of the subsidizing of refined sugar from the E.U. is likely to result in the continuation or resumption of subsidizing of the goods into Canada.

BACKGROUND

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

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

[14] On October 5, 1995, final determinations of dumping and subsidizing were made with respect to the subject goods. On November 6, 1995, the Tribunal found that the dumping and/or subsidizing of the subject goods had not caused, but was threatening to cause injury to the domestic industry. The Tribunal found that the dumping of refined sugar from the Republic of Korea had not caused and was not threatening to cause injury to the domestic industry. The Tribunal also excluded a number of specialty sugar products from the findings.

[15] There have been two previous expiry reviews since the original investigation. On November 3, 2000, and on November 2, 2005, the Tribunal issued orders continuing the findings with amendments to exclude additional refined sugar products.

[16] On December 29, 2009, pursuant to subsection 76.03(2) of SIMA, the Tribunal issued a notice of expiry of the November 2, 2005 orders. Based on the available information and the information submitted by the interested parties, the Tribunal decided that an expiry review of the orders was warranted and on February 17, 2010, pursuant to subsection 76.03(3) of SIMA, the Tribunal initiated an expiry review (RR-2009-003).

[17] On February 18, 2010, the CBSA initiated its expiry review investigation to determine whether the expiry of the orders is likely to result in the continuation or resumption of dumping and/or subsidizing of the subject goods from the named countries.

PRODUCT DESCRIPTION

[18] For purposes of this expiry review, the subject goods are defined as refined sugar, refined from sugar cane or sugar beets, in granulated, liquid and powdered form originating in or exported from the United States of America, Denmark, Germany, the Netherlands, and the United Kingdom, with regard to dumping, and the E.U., with regard to subsidy.

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

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

CLASSIFICATION OF IMPORTS

[21] The subject goods are normally imported into Canada under the following Harmonized System (HS) classification numbers:[1]

Number	Description
1701.91.90.11	Brown sugar put up for retail sale
1701.91.90.19	Other
1701.91.90.21	Powders for the preparation of lemonade and the like put up for retail sale
1701.91.90.29	Other
1701.91.90.91	Other put up for retail sale
1701.91.90.99	Other

[1] Exhibit 9 (NC) Customs Tariff – Schedule.

Number	Description
1701.99.90.10	Icing sugar
1701.99.90.21	Granulated, not cubed, put up for retail sale
1701.99.90.28	Other, beet sugar
1701.99.90.29	Other, cane sugar
1701.99.90.90	Other
1702.90	Invert sugar and other sugar syrups containing after inversion, reducing sugars weighing 75% or more of the total solid weight and in receptacles where the gross weight exceeds 27 kg:
1702.90.11.00	containing reducing sugars after inversion not exceeding 65% by weight of the total syrup
1702.90.12.00	containing reducing sugars after inversion exceeding 65% but not exceeding 70% by weight of the total syrup
1702.90.13.00	containing reducing sugars after inversion exceeding 70% but not exceeding 71% by weight of the total syrup
1702.90.14.00	containing reducing sugars after inversion exceeding 71% but not exceeding 72% by weight of the total syrup
1702.90.15.00	containing reducing sugars after inversion exceeding 72% but not exceeding 73% by weight of the total syrup
1702.90.16.00	containing reducing sugars after inversion exceeding 73% but not exceeding 74% by weight of the total syrup
1702.90.17.00	containing reducing sugars after inversion exceeding 74% but not exceeding 75% by weight of the total syrup
1702.90.18.00	containing reducing sugars after inversion exceeding 75% by weight of the total syrup
1702.90.69.00	Other sucrose sugars
1702.90.89.10	Other invert sugars and other sugar syrups - cane or beet

Notwithstanding the classification numbers noted above, the product definition is the authoritative determinant of subject goods.

PERIOD OF REVIEW

[22] The CBSA's period of review is January 1, 2007 to December 31, 2009.

CANADIAN INDUSTRY

[23] The CSI is a trade association comprised of the Canadian producers of the like goods. Its address is: WaterPark Place, Suite 620-10 Bay Street, Toronto, Ontario, M5J 2R8.

[24] The Canadian industry is currently comprised of two Canadian producers of refined sugar: Lantic Inc. (Lantic) and Redpath Sugar Ltd. (Redpath).

[25] Since the 2005 orders of the Tribunal, there have been changes in the ownership and production facilities of the Canadian producers.

[26] At the time of the last expiry review in 2005, Lantic Sugar Limited and Rogers Sugar Ltd. operated as subsidiaries of the Rogers Sugar Income Fund. On June 30, 2008, Lantic Sugar Limited and Rogers Sugar Ltd. merged into Lantic Inc., with the Rogers Sugar Income Fund as the parent company. Lantic currently operates sugar refineries in Montreal, Quebec, and Vancouver, British Columbia, a beet processing factory in Taber, Alberta, a distribution centre in Toronto, Ontario, and a blending facility in Scarborough, Ontario. The company continues to use the trademarks of "Lantic" and "Rogers."

[27] In 2005, Redpath operated as Tate and Lyle Canada, Ltd., a wholly-owned subsidiary of the United Kingdom-based Tate and Lyle PLC. In 2007, Redpath was acquired by American Sugar Refining (ASR) and became a wholly-owned subsidiary of that company. In addition to its cane refinery in Toronto, Redpath owns and operates a blending operation in Niagara Falls, Ontario. The "Redpath" brand name has remained constant throughout the name and ownership changes.

CANADIAN MARKET

[28] The following table contains data concerning the apparent Canadian market for refined sugar during the period of review. The size of the Canadian market for refined sugar was provided by the CSI and the Canadian producers, based on Statistics Canada data.[2]

TABLE 1
Total Canadian Market – Metric tonnes (MT)

	2005	2006	2007	2008	2009
Total Shipments [i]	1,289,700	1,306,720	1,214,940	1,262,329	1,163,347
Total Imports [ii]	59,887	47,365	43,830	40,649	41,068
Total Exports	25,919	73,918	34,704	64,534	37,162
Canadian Market [iii]	1,323,668	1,280,167	1,224,066	1,238,444	1,167,253

[i] Domestic production including exports
[ii] All countries
[iii] Total shipments plus imports minus exports

[2] Exhibit 26 (NC) and s31 (NC) - Response of the CSI, Appendix A19(n) and paragraph 40.

CASE ENFORCEMENT

Dumping – United States of America

[29] The United States domestic market for sugar is regulated in a manner that results in high prices for sugar cane, sugar beets, raw cane sugar, refined sugar and sugar-containing products. Accordingly, at the time of the final determination, the normal values reflected these high supported prices and, when compared to the lower export price to Canada, resulted in a weighted average margin of dumping of 78%.

[30] During the course of the original investigation, four exporters in the United States were requested to provide submissions and were provided with specific normal values. The normal values were established pursuant to section 15 of SIMA, based on profitable sales in the domestic market, or section 19 of SIMA, based on the cost of production, plus an amount for administrative, selling and all other costs, plus an amount for profits. Normal values for all other exporters were established on the basis of the export price plus 78%, which was the weighted average margin of dumping of all subject goods found for exporters that provided complete information.

[31] Subsequent to the Tribunal findings in 1995, up until its review in 2000, some U.S. exporters requested normal values and were provided with Requests for Information to complete. Four exporters submitted sufficient information to obtain specific normal values. Since then, no U.S. exporters have requested specific normal values.

Dumping - Denmark, Germany, the Netherlands, and the United Kingdom

[32] The normal values for exports from Denmark, Germany, the Netherlands, and the United Kingdom are determined by ministerial specification as, at the time of the original investigation, no submissions were received from exporters that were requested to provide information. Accordingly, normal values for goods of exporters that chose not to provide submissions were based on the export price of the goods plus the highest amount by which the normal value exceeded the export price on an individual transaction of any subject goods (180%, expressed as a percentage of the export price) found for any exporter in the United States that provided complete information. For goods of all other exporters (i.e. those that were not required to provide submissions), normal values were based on the export price of the goods plus the weighted average margin of dumping found for exporters in the United States that provided complete information (78%, expressed as a percentage of the export price).

[33] From the time of the original investigation, the E.U. has provided extensive support to the sugar industries, resulting in sugar prices well above world levels. Accordingly, a re-investigation of normal values has not been conducted, as any specific normal values would be based on high support prices. The only exception concerns one exporter from the Netherlands that has requested and obtained a specific normal value for one product since the original finding. No other European exporter has expressed any interest in obtaining specific normal values.

Subsidy – European Union

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

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

[36] On January 29, 2010, the CBSA concluded the most recent re-investigation of the amount of subsidy. The revised amount of subsidy was determined pursuant to a ministerial specification, using information from the E.C., the CSI and other sources.[3]

[37] As a result of this re-investigation, the CBSA revised the amount of countervailing duty applicable on subject goods. A countervailing duty equal to EUR 22.13/100 kg is currently applied to all imports of subject goods originating in or exported from the E.U. This represents a decrease from the previous rate of countervailing duty of EUR 34.632/100 kg.

ENFORCEMENT DATA

[38] Imports of the subject goods from the United States and the E.U., for domestic consumption in Canada, virtually ceased after the injury findings in November 1995. In 2007 and 2008, most of the subject sugar imported from the United States was imported under the duty deferral program by manufacturers of sugar-containing products for eventual export. The imports from the E.U. are mostly non-subject sugar or specialty sugars for which a normal value has been issued.

[39] The following table contains a summary of the enforcement data from the Customs Commercial System (CCS) for refined sugar during the period of review.[4] The figures reveal that over CAD$20 million of anti-dumping and countervailing duties were assessed on subject goods during this period. Of this amount, approximately CAD$17.8 million was accounted for under the duty deferral program. Under the provisions of this program, any applicable anti-dumping duties are accounted for at the time of entry into Canada, but payment of these duties is deferred, pending future exportation of the goods, usually in the form of sugar-containing products. The anti-dumping duties only become payable if the goods remain in Canada.

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[3] Exhibit s15 (NC) Refined Sugar from the European Union – Results of Re-investigation, January 29, 2010, CBSA

[4] Exhibit 7 and s7 (NC) CBSA Import and Enforcement Statistics for Refined Sugar (2007 – 2009)

TABLE 2 Value for Duty of Imports and SIMA duty* (CAD$)							
	2007		2008		2009		3 years
COUNTRY	Value for Duty	SIMA Paid	Value for Duty	SIMA Paid	Value for Duty	SIMA Paid	Total SIMA
European Union							
Denmark	0	0	0	0	0	0	0
Germany	131	107	151	122	3,999	3,164	3,393
Finland	3,796	1,361	32,363	13,250	1,590	403	15,015
France	217,662	52,698	231,414	51,785	125,905	28,775	133,259
Great Britain	9,997	214	1,727	760	988	843	1,816
Italy	2,101	102	2,818	783	2,263	495	1,379
Netherlands	2,484	1,843	2,847	1,963	3,882	2,623	6,429
Other E.U.	3,574	122	570	125	671	17	264
Total European Union	**239,745**	**56,447**	**271,890**	**68,788**	**139,298**	**36,320**	**161,555**
USA							
U.S.	1,042,071	809,661	879,378	701,418	1,337,556	1,050,766	2,561,845
U.S. – Duty Deferral	16,443,098	12,508,316	7,405,068	5,265,296	74,490	58,103	17,831,715
Total USA	**17,485,169**	**13,317,978**	**8,284,446**	**5,966,714**	**1,412,047**	**1,108,868**	**20,393,560**
U.S. Duty Deferral as a % of U.S. Imports	**94.0%**		**89.4%**		**5.3%**		**87.4%**
Total - all countries subject to SIMA duty	**17,724,913**	**13,374,425**	**8,556,336**	**6,035,502**	**1,551,345**	**1,145,188**	**20,555,115**

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

PARTICIPANTS

[40] On February 17, 2010, the Expiry Review Questionnaire (ERQ) and the Tribunal's expiry review notice were sent to all known Canadian producers, importers and exporters of the subject goods as well as to other interested parties.

[41] The ERQs requested information needed to evaluate the factors, as listed in subsection 37.2(1) of the *Special Import Measures Regulations* (SIMR). Any person or government having an interest in this investigation was also invited to provide a submission regarding the likelihood of the continuation or resumption of dumping and/or subsidizing of the goods should the orders be allowed to expire.

[42] The CSI and its members (Lantic and Redpath) provided responses to the producer ERQ and extensive additional evidence for the administrative record. Case arguments and a reply submission were also received from the CSI claiming that the dumping and/or subsidizing from all named countries would likely continue or resume should the orders be allowed to expire.

[43] The OSGA, whose members are exclusively sugar beet growers in Ontario involved with sugar beet processing companies in the United States, submitted a case argument and a reply submission objecting to the continuation of the orders for dumping and subsidizing.

[44] The USBSA, a trade association of the companies which manufacture refined sugar in the United States by processing sugar beets, made a submission supporting the expiry of the order on refined sugar from the United States.

[45] Only two importers, International Sugars Inc., an importer of non-subject sugars, and Trillium Health Care Products Inc., provided information in response to the importer ERQ. One exporter, ASR, provided a response to the exporter ERQ. Another exporter, Starbucks Coffee Company provided some statistical data on exports to Canada.

[46] The E.C. provided comments regarding the CBSA's initiation of the expiry review investigation, but did not specifically provide evidence or argument as part of the expiry review proceeding as to whether continued or resumed dumping of subject goods from Denmark, Germany, the Netherlands and the United Kingdom and/or whether continued or resumed subsidizing of subject goods from the European Union is likely should the orders be allowed to expire. The E.C. made representations regarding subsidy as part of a recent CBSA subsidy re-investigation. These representations were included in the administrative record for the expiry review investigation.

INFORMATION USED BY THE PRESIDENT

Administrative Record

[47] The information used and considered by the President for purposes of this expiry review investigation is contained on the administrative record. The administrative record includes the exhibits listed on the CBSA's Exhibit Listings, which are comprised of the Tribunal's administrative record at initiation of the expiry review, CBSA exhibits and information submitted by interested persons, including information which they believe is relevant to the decision as to whether dumping and/or subsidizing is likely to continue or resume if the orders expire. This information may consist of expert analysts' reports, excerpts from trade magazines and newspapers, orders and findings issued by authorities of Canada or of a country other than Canada, responses to the ERQs and any other information contained on the administrative record.

[48] The CBSA sets a date after which no "new" information may be placed on the administrative record. This is referred to as the "closing of the record date". For this investigation, the administrative record closed on April 8, 2010. This allowed participants time to prepare their case arguments and reply submissions based on the information that was on the administrative record as of the closing of the record date.

POSITION OF THE PARTIES

1. Parties Contending that Continued or Resumed Dumping and/or Subsidizing is Likely

1.1 Canadian Sugar Institute (CSI)

Position of the CSI regarding the United States

[49] The CSI presented case arguments in support of its position that the continued or resumed dumping is likely should the orders be allowed to expire and noted that the conditions that lead to the dumping in 1995, and continued in 2000 and 2005, still exist. Accordingly, the CSI contends that anti-dumping measures should remain in place. The CSI's position is based on the following factors:

- the continued dumping on sales to Canada due to U.S. government price support;
- the volume of imports of dumped U.S. refined sugar should the order expire;
- the unutilized cane refining capacity;
- the opening of the U.S. market to Mexico;
- the increased production of beet sugar; and
- the world market for sugar and Canada's position as an open market.

Continued Dumping on Sales to Canada

[50] The CSI argued that the dumping of U.S. sugar is continuing and demonstrated this through a substantiated analysis of average wholesale prices of refined beet sugar in the United States mid-west markets, and compared this with the average import value of bulk granulated sugar entering Canada for the calendar year 2008. Using this data, the CSI analysis resulted in an estimated margin of dumping of 44%.[5]

[51] The CSI relayed that the United States supports its sugar industry, resulting in high domestic prices providing an incentive to increase its domestic sugar production. Consequently, when the surplus U.S. sugar is imported into Canada it must compete at the lower Canadian prices. It is, therefore, priced lower than the like goods sold in the United States and thus is dumped.

[5] Exhibit 39 (NC), CSI Case Argument, paragraph 50

The Volume of Imports of U.S. refined sugar

[52] The CSI explained that most dumped imports of refined sugar from the United States are presently entering Canada as a result of exclusions to or exceptions from, the application or collection of the anti-dumping duties. However, the volume of these imports is still small in comparison to the volume of imports prior to the imposition of the anti-dumping duties in 1995. Imports were further reduced in 2009 due to atypical conditions in the U.S. market, such as the after-effects of an explosion at Imperial Sugar's Savannah refinery in 2008.[6]

[53] The CSI used CBSA enforcement statistics during the period of review to support its position that most of the importations to which anti-dumping duties applied entered under the Canadian Duty Deferral Program. These importations would not have occurred outside the program because they would not have been competitive in the Canadian market without being sold at prices that were dumped.

[54] The CSI noted that the members of the OSGA have shares in a large U.S. beet sugar producer, the Michigan Sugar Company. The OSGA has argued that the anti-dumping order restricts their ability to market U.S. refined sugar in Canada and this would be remedied by the elimination of the Tribunal's order.[7] Furthermore, the CSI notes that many buyers for Canadian sugar are multinationals with operations in both Canada and the United States and have existing relationships with U.S. sugar producers which will encourage refined sugar shipments from the United States to Canada. It is the position of the CSI that other U.S. producers will look for sales opportunities in Canada if the Tribunal's order expires.

[55] The CSI contends that the U.S. government's sugar program supports U.S. domestic sugar prices above world and Canadian price levels, restricts imports, generates unutilized cane refining capacity and beet sugar surpluses and has features, in particular the Refined Sugar Re-export Program, that are specifically designed to encourage exports. Given Canada's proximity to the United States and the number of industrial and consumer markets that are close to the border, Canada is an obvious and desirable target for U.S. sugar in the absence of the order.

[56] It is the CSI's position that, in the absence of the order, the restrictions on dumped U.S. imports will be removed and such imports will resume at the high levels that existed prior to 1995 and possibly higher.

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[6] Exhibit 26 (NC), – Producer Submission – Canadian Sugar Institute, paragraph 49.
[7] Exhibit 8 (NC) Public Version of the Tribunal's Administrative Record, OSGA submission, page 6

Unutilized Refining Capacity

[57] The CSI claimed that there is significant unutilized cane sugar refining capacity in the U.S. market and the amount of unutilized capacity is expected to increase with the full restoration of the Imperial Sugar's Savannah refinery and the commencement of operation of the new Gramercy refinery in Louisiana.

[58] The CSI provided an explanation of the United States Refined Sugar Re-Export Program, which is designed to enable U.S. refiners to maximize the capacity utilization of their refineries by matching of exports of refined sugar to the world market, including Canada, with imports of an equivalent amount of world-priced raw cane sugar for processing in a U.S. refinery and sale in the U.S. market.[8]

[59] With unutilized refining capacity in the United States and available markets to ship to, it is economically rational to export U.S. beet sugar and refined cane sugar using this program. Since there is unutilized refining capacity in the United States, the CSI claimed that there will be exports of U.S. cane and beet sugar to Canada.

[60] The CSI stated that the need to export U.S. refined sugar is greater when there are surplus stocks of sugar in the U.S. market. However, any unutilized cane refining capacity provides an economic incentive to export both refined cane and beet sugar.

[61] It is the CSI's position that the ability to export beet sugar under the program is particularly problematic for Canada because U.S. beet sugar production is located along the Canada-U.S. border making Canada the logical destination for such exports.

[62] The CSI cited unpredictable fluctuations in the production of both beet and cane sugar as a cause of uncertainty in the financial performance of the United States sugar industry both now and in the future, supporting a determination that the expiry of the order is likely to result in continued or resumed dumping.

Opening of the U.S. market to Mexico

[63] According to the CSI, since January 1, 2008, Mexican sugar can be imported into the U.S. duty-free without restriction. Tariff rate quotas (TRQs) on imports of raw and refined sugar continue to limit imports into the United States from all countries except Mexico. The CSI expressed concern that Mexico can import world market sugar at lower world prices and then export its domestic production to the United States. As per the CSI, the difficulty in predicting the volume of exports from Mexico to the United States makes it much more difficult for the USDA to balance the U.S. sugar supply with demand, so the raw cane sugar available to U.S. refineries has been limited by conservative TRQs. The CSI believes that this will perpetuate and potentially increase unutilized refining capacity of American producers given the increase of supply from Mexico. Mexican imports also

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[8] Exhibit 26 (NC)– Producer Submission – Canadian Sugar Institute, paragraphs 135-136

have the potential to create a surplus in the U.S. market, which increases the likelihood of continued or resumed dumping into Canada.

Increased Production of Beet Sugar

[64] The CSI notes that production of beet sugar continues to vary as the volume of production can fluctuate widely from year-to-year depending on many factors including weather and the price of alternative crops to sugar beets. On the one hand, ideal weather conditions can result in increased crops and surpluses. Further, in times of high sugar prices like those prevailing today, there is a strong financial incentive for sugar beet growers to plant more sugar beets, again resulting in increased production and possible surplus conditions.

[65] The CSI presented evidence that the USDA is currently projecting an increase in beet sugar production in excess of 300,000 short tons raw value (STRV) in fiscal year 2009/2010 compared to the previous fiscal year.[9]

[66] The CSI speculates that the anticipated increases in beet sugar production may very well have prompted U.S. beet sugar producers to participate in this review. It may have also prompted the shareholders of a large U.S. beet sugar producer (the Michigan Sugar Company) to relay to the CBSA that marketing their U.S. processed sugar in Canada is unnecessarily restrictive and would be remedied by the elimination of the Tribunal's orders.[10]

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

[67] The CSI provided forecasts for the 2010/11 fiscal year predicting a return to a global sugar surplus of about 4 million MT.[11] This will reduce market opportunities for exported refined sugars and increase the attractiveness of the Canadian market if the orders are allowed to expire. As per the CSI, Canadian sugar prices are lower than those in the United States but are above world prices and, consequently, present an attractive export market opportunity for U.S. sugar exporters if the orders are rescinded.

[68] The CSI argued that the Canadian market remains one of the few sugar markets in the developed world that is open to refined sugar imports and that does not have a government-regulated sugar program. Thus, it claimed that in the absence of the Orders, it will be one of the few open markets for U.S. and E.U. refined sugar.

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[9] Exhibit 39 (NC) CSI Case Argument, paragraph 107
[10] Exhibit 39 (NC) CSI Case Argument, paragraph 107
[11] Exhibit 26 (NC) – Producer Submission – Canadian Sugar Institute, paragraph 78

Position of the Canadian Sugar Institute Regarding the European Union

[69] The CSI presented evidence and case arguments in support of its position that the anti-dumping and/or subsidizing measures should remain in place. Many of the arguments noted below are relevant to the continuation or resumption of both dumping and subsidizing. The CSI's position is based on the following factors:

Dumping from Denmark, Germany, the Netherlands and the United Kingdom:

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

Subsidizing from the E.U.:

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

Continued Dumping of Refined Sugar

[70] The CSI presented evidence and arguments in support of its position that the E.U. sugar program supports refined sugar prices above both the world market refined sugar prices and the prices of refined sugar in Canada. Refined sugar is a commodity product that competes mainly on price. Consequently, imports of refined sugar from the E.U.'s protected market could only compete with Canadian refined sugar if sold at a dumped price, which supports a determination that the expiry of the dumping order is likely to result in a continuation or resumption of dumping of the subject goods.

[71] While dumping continued throughout the entire period of review, the CSI noted that the combined application of anti-dumping and countervailing duties has substantially restricted imports from the four countries producing goods that are subject to anti-dumping duties.

[72] The small volume of imports from Germany, the United Kingdom and the Netherlands and the cessation of imports of subject goods from Denmark is a strong indicator that dumping would continue or resume in the absence of the orders. Should the Tribunal's orders expire, the CSI claimed Canada would be an attractive market for refined sugar from Denmark, Germany, the Netherlands and the United Kingdom.

Production of Refined Sugar in the European Union

[73] The CSI provided evidence that E.U. sugar production, since sugar reform, is now concentrated in 18 member states as opposed to 23. Nearly 70% of sugar production is in the seven countries with the highest sugar yield, including Germany, the United Kingdom and the Netherlands. Furthermore, some producers, including producers in the United Kingdom, Germany and Poland are planning to refine cane sugar in addition to processing beet sugar as a result of sugar reform incentives.

European Union Surplus Sugar Production

[74] The CSI provided evidence that the E.U. has surplus sugar and is a net exporter of refined sugar and addresses the statements to the contrary in the E.C.'s submission and that of the OSGA, which both claim that the E.U. is a net importer of sugar. The CSI stated that the E.U. is a net importer of sugar when raw sugar is taken into account; however the expiry review concerns refined sugar. The majority of E.U. imports are of raw sugar, which is not subject to the order, whereas almost all exports are refined sugar.[12]

[75] The CSI also addresses the statement made by the OSGA that there have been large decreases in the quantity of refined sugar produced in the E.U. The CSI notes that production of quota sugar has decreased due to the reductions in the quotas. However, the CSI presented evidence to demonstrate that the volume of E.U. out-of-quota production (i.e., production in excess of the assigned quota volume) in marketing year 2008/2009 was approximately twice the volume of the entire Canadian market. During this period, the four countries subject to the dumping portion of the order had out-of-quota production that was close to the volume of the entire Canadian market. Out-of-quota production for the current marketing year (2009/2010) is forecast to be almost four times the volume of the entire Canadian market.[13]

Quantity of Exports

[76] The CSI presented evidence of refined sugar exports which showed that the E.U. continues to export a substantial quantity of refined sugar. As was the case in 2005, all four of the E.U. member states that are subject to antidumping duties continue to export refined sugar to the world market.

[77] According to the CSI, as a consequence of the World Trade Organization (WTO) challenge of the E.U. sugar program in 2005, E.U. refined sugar exports of non-quota or surplus sugar are now subject to a WTO limitation of 1.35 million MT. In February 2010, the amount of exports was increased a further 500,000 MT above this limit, attracting wide criticism.

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[12] Exhibit 39(NC) CSI argument, paragraph 97
[13] Exhibit 39(NC) CSI argument, paragraph 110

Loss of Traditional Export Markets

[78] The CSI noted that the above-noted WTO limitation caused exports of refined sugar to decline significantly since 2005. The E.U. has also had fewer opportunities for sales in some traditional export markets, primarily the Middle East, Africa and Asia, as these markets develop their own refining capacity. Since 2005, 11 million MT of new refining capacity have been added to these former large markets, an additional 7 million MT of refining capacity is being constructed and a further 5 million MT of refining capacity is planned. This reduces the opportunities for sales in these former markets and increases the likelihood of sales to Canada in the event the current anti-dumping and countervailing duty protection is removed.

The Likelihood of Canada as a Target for Dumped and/or Subsidized European Union Sugar in the Absence of the Orders

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

Continued Subsidization of Refined Sugar

[80] The CSI argued that the nature of the E.U. subsidies supports its position on the likelihood of continued subsidizing of E.U. refined sugar. The CSI noted that the CBSA concluded a re-investigation of the amount of subsidy on January 29, 2010, at which time the amount of subsidy was determined to be EUR 22.13 per 100 kg. In its reply brief, the CSI also disputes the position of the OSGA that the amount of subsidization of E.U. sugar is negligible, given the results of the recent CBSA re-investigation.

[81] The CSI noted that CBSA compliance statistics show that subsidizing continued throughout the entire period of review. A significant level of subsidization will continue into the foreseeable future. Evidence on the administrative record confirms that the current price support for refined sugar will remain until 2015 when all price support will end.[14]

[82] The CSI also addressed the submission made by the E.C. regarding the amount of subsidy determined by the CBSA during the most recent re-investigation. CSI cites evidence on the record that supports the CBSA's results and notes that the Commission has not provided any further evidence to the contrary.

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[14] Exhibit s20 (NC) Government of the European Union Response to CBSA Subsidy Request for Information – Annex IR - Council Regulation EC No. 1234/2007, Article 204, paragraph 3

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

2.1 Ontario Sugarbeet Growers' Association (OSGA)

Position of the OSGA regarding the United States

[83] The OSGA presented a case argument and reply brief in support of its position that continued or resumed dumping of refined sugar from the United States is not likely based on the following factors:

- changes to the Allocation Marketing Program;
- increased demand and flat production; and
- decreased U.S. exports to Canada.

Changes to the Allocation Marketing Program

[84] The OSGA states that the new provisions of the 2008 Farm Bill[15] guarantee U.S. producers of refined sugar a larger percentage of the U.S. domestic market. These provisions require the USDA to set the overall allotment quantity of sugar that producers can sell without penalty in the United States at no less than 85% of estimated domestic sugar consumption.

[85] U.S. sugar policies also maintain domestic sugar prices above both world price and Canadian market price, making the United States an attractive market for U.S. producers. Accordingly, the OSGA's position is that the dumping of refined sugar from the U.S. is unlikely and volumes would be negligible, as only volumes above the overall allotment quantity would be exported.

Increased Demand and Flat Production

[86] The OSGA maintains that U.S. demand for refined sugar is increasing due to population growth and the substitution of refined sugar for high-fructose corn syrup by food and beverage manufacturers. The OSGA points to information on the record that demonstrates that production of refined sugar in the U.S. is not increasing as much as domestic demand.[16] It is unlikely that significant quantities of U.S. refined sugar will be available for export in the foreseeable future.

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[15] Food, Conservation and Energy Act of 2008 (the 2008 Farm Bill)
[16] Exhibit 26(NC) – Producer Submission – Canadian Sugar Institute, Appendix A-23US(c)

Decreased U.S. Exports to Canada

[87] The OSGA referred to the CBSA import statistics[17] to demonstrate that imports of refined sugar from the U.S. represented only 7% of the total value of refined sugar imported into Canada in 2009. This is a substantial decrease from 2007 and 2008 at which time U.S. imports represented 67% and 48%, respectively, of all imports. It is the OSGA's position that recent decreases in imports are not attributable to the anti-dumping duties, but are a result of high prices, increased consumption, overall allotment quantity guarantees, and flat production in the U.S. market.

[88] The OSGA further submits that the market share of imports from non-subject countries went from 32% of the total value of imports in 2007 to 92% in 2009, which would discourage U.S. exports to Canada.

Position of the OSGA Regarding the European Union

[89] The OSGA presented a case argument and reply brief in support of its position that continued or resumed dumping and/or subsidizing of refined sugar from the E.U. is not likely based on the following factors:

Dumping from Germany, the United Kingdom, the Netherlands and Denmark:

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

Subsidizing by the European Union:

- the insignificant amount of subsidization of E.U. sugar since reform of the sugar sector.

Decreased Production

[90] The OSGA notes that there have been large decreases in the quantity of refined sugar produced in the E.U. as a result of the reduction of production quotas under the E.U.'s sugar reform.

[91] It is OSGA's position that there is no excess sugar in the E.U. market and E.U. producers will, therefore, sell their production in the E.U. where sugar prices are high, rather than sell to Canada at dumped prices.

[17] Exhibit 6 and s6 (NC) – CBSA - Import Statistics (2007 – 2009) for Refined Sugar

Decreased Exports to Canada and E.U.'s Status as a Net Importer

[92] The OSGA cites the CBSA's import statistics in noting that imports from the E.U. represent an extremely small proportion of the total value of refined sugar imported into Canada and that imports decreased from 2007 to 2009. It is the position of the OSGA that the low volumes of dumped and/or subsidized sugar are a consequence of current market conditions in the E.U. and are not attributable to high normal values and/or countervailing duty rates.

[93] The OSGA claims that the E.U. has recently become a net importer of refined sugar, citing net imports of 2.3 million MT in 2006/07.

Subsidization of E.U. Sugar since Reform

[94] The OSGA claims that E.U. reform of the sugar sector has resulted in significant changes to market conditions since 2005 to the point that the amount of subsidization is negligible.[18]

[95] The OSGA notes that the E.U. did not pay export refunds in the 2008/09 marketing year, although the regulations for the refunds have not been repealed.[19] The price support subsidy has decreased by 36% over the course of reform and most other subsidies will be eliminated by 2009/10.

[96] It is the OSGA's position that, while some subsidies remain, others have been reduced to such an extent that the amount of subsidization will be insignificant.

2.2 United States Beet Sugar Association (USBSA)

Position of the USBSA Regarding the United States

[97] The USBSA presented a case argument in support of its position that continued or resumed dumping of refined sugar from the United States is not likely is based on the following factors:

- the low quantities of refined sugar exported to Canada from the United States;
- the changes in the U.S. sugar program;
- the full implementation of the North American Free Trade Agreement (NAFTA); and
- the high Canadian sugar prices.

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[18] Exhibit s043, Case Brief, Ontario Sugarbeet Growers Association, paragraph 3

[19] Exhibit s20 (NC) Government of the European Union Response to CBSA Subsidy Request for Information – Annex IV R - Council Regulation No. 318/2006

Low Quantities of Refined Sugar Exported To Canada from the United States

[98] The USBSA claims that the United States was the world's second-largest importer of sugar during the past three years and domestic production has not met domestic demand for the past two centuries.

[99] According to the USBSA, the United States has never been a significant exporter of refined beet sugar to Canada and, during the past three years, only the Michigan Sugar Company has exported low volumes of beet sugar to Canada. This company buys sugar beets from farmers in Ontario.

[100] The USBSA argues that the Michigan Sugar Company could have exported greater quantities, and it is highly unlikely that the expiration of the orders would have any effect on exports to Canada by the Michigan Sugar Company.

Changes in the U.S. Sugar Program

[101] The USBSA offered an explanation of legislative modifications to the U.S. sugar program in the 2008 Farm Bill that it claims will discourage exports of refined beet sugar to Canada and, therefore, virtually eliminate the likelihood of a resumption of dumping, should the orders be allowed to expire. Under the program, overall marketing allotment quantities are set and adjusted for domestic market sales and the Secretary of Agriculture can limit domestic supplies on the U.S. market. The law now establishes a minimum overall allotment quantity of not less than 85% of the estimated quantity of sugar to be used for domestic human consumption for the crop year.[20]

[102] The USBSA claims that this minimum overall allotment quantity for domestic sales will increase the likelihood that U.S. producers will be able to market their sugar in the U.S. market and reduce the likelihood that excess supplies, known as blocked stocks, will be created and subsequently exported. The incentive to export would be very small, as a processor would likely be able to market its excess sugar on the domestic market in the next year.

[103] The new Farm Bill provisions prevent exports of blocked stocks of refined beet sugar from being used as the basis for claiming credit under the refined sugar re-export program. The USBSA submits that the financial incentive for exporting blocked stocks of refined beet sugar has been eliminated.

[104] The Farm Bill added a Feedstock Flexibility Program to remove excess sugar from the market for human consumption and use such sugar to produce ethanol or other bioenergy products. The USBSA states that this mechanism should eliminate any inventory of surplus sugar that could be used for exports and greatly reduce the likelihood of refined sugar exports.

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[20] Exhibit 037 (NC) USBSA submission page 3

Full Implementation of the NAFTA

[105] On January 1, 2008, under the terms of NAFTA, both the United States and Mexico eliminated all tariffs on sugar trade, resulting in duty-free treatment for refined beet sugar originating in the United States and exported to Mexico. The USBSA argues that Mexico would be a preferred market for U.S. exports of refined sugar as Mexican sugar prices have been equal to or higher than those in the United States and substantially higher than those in Canada.[21] The USBSA notes, however, that refined sugar prices at the time of presenting its brief are all at similar levels.

High Canadian Sugar Prices

[106] It is the position of the USBSA that Canada has had extraordinarily high prices for refined sugar over the past three years due to the recovery of world market, the lack of domestic competition and the protection of anti-dumping and countervailing duties. The USBSA questions whether any dumping would occur with the expiry of the order because the very high prices for refined sugar in Canada at present indicate that U.S. sugar could be sold at normal value.

2.3 European Commission

[107] The E.C. provided comments on the CBSA's expiry review investigation, but did not specifically provide evidence or argument with respect to the likelihood of continued or resumed dumping and/or subsidizing should the Tribunal's orders be allowed to expire.

[108] The E.C.'s comments primarily related to the re-investigation of the amount of subsidy concluded by the CBSA on January 29, 2010. The E.C. alleges that the amount of subsidy determined by the CBSA for various subsidy programs were either unwarranted or not reflective of the present situation in the sugar market.

[109] The E.C. believes that the CBSA initiated the expiry review investigation primarily on the basis of the results of the recent re-investigation, for which the information on the record did not constitute sufficient evidence to justify the initiation of this proceeding.

[110] The E.C. claims that the changes that have occurred since the reform of the Common Agricultural Policy in the European Union should be thoroughly investigated and all substantial facts taken into account.

[111] The Commission also requests that a duly substantiated likelihood analysis regarding the recurrence or continuation of dumping, subsidization and injury be performed.

[21] Exhibit 037(NC) USBSA submission, page 5, Table 1

[112] In October 2009, at the time of the CBSA re-investigation of E.U. sugar subsidy, the Delegation of the European Commission to Canada made representations on the likely developments in the future concerning subsidy. The representations noted that the subsidy programs that were in effect in 2005 have been either suspended or repealed, thus there is no longer a basis to impose countervailing duties.

THE CBSA'S CONSIDERATION AND ANALYSIS

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

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

Dumping – United States:

- the continued dumping while the order was in effect;
- the low volume of imports since anti-dumping duties were imposed, indicating that subject sugar cannot compete in the Canadian market without dumping;
- the past and likely future performance of the exporters in respect of the production, capacity utilization and inventories;
- the opening of the U.S. market to Mexico; and
- the outlook for a return to a global sugar surplus.

Dumping – Denmark, Germany, the Netherlands and the United Kingdom:

- the continued dumping by some of the named countries while the order was in effect;
- the low volume of imports since anti-dumping duties were imposed, indicating that subject sugar cannot compete in the Canadian market without dumping;
- the past and likely future performance of the exporters in respect of the production and pricing;
- loss of traditional export markets for E.U. exporters; and
- the outlook for a return to a global sugar surplus.

Subsidizing – European Union:

- the continued subsidizing while the order was in effect.

1. Likelihood of Continued or Resumed Dumping

1.1 United States:

[115] Current U.S. sugar policy, administered by the USDA, maintains domestic sugar prices above the world market price and is structured to protect domestic sugar cane and sugar beet producers and processors. Sugar prices are supported through the U.S. sugar program under the authority of the Food, Conservation and Energy Act of 2008 (2008 Farm Bill), which amended the 2002 Farm Bill, and covers the sugar marketing years through to 2012-2013. The legislation continues the essential elements of the previous sugar program that were factors in the original 1995 finding and the Tribunal's reviews in 2000 and 2005.

Continued Dumping while the Order was in Effect

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

[117] As noted previously, U.S. exporters have not been re-investigated since the final determination, nor have they asked for a re-investigation, as the provisions of the U.S. sugar program ensure high domestic prices, and consequently normal values that are much higher than the Canadian pricing level. As a result, most imports of subject goods from the United States are assessed anti-dumping duties in accordance with the ministerial specification.

[118] Subject goods from the United States continue to be dumped. Table 2 shows that approximately CAD 20.4 million in SIMA duty was assessed on U.S. imports during the period of review, with goods imported under the duty deferral program accounting for 87% of the duties.

[119] The USBSA argued that high Canadian prices in the recent months make it questionable whether any dumping would occur if the orders expired. The record contains evidence that compares wholesale bulk refined sugar prices for U.S. beet sugar, the world refined sugar price and Canadian imports of bulk granulated sugar from the United States:[22] Canadian prices track world prices. Although they are higher than world prices, they have historically been much lower than U.S. prices. As such, it is reasonable to conclude that export sales of U.S. refined sugar would have to be dumped in order to sell into the Canadian market. In addition, the fact that Canadian prices are higher than world prices provides an incentive for U.S. producers to export their surplus sugar to Canada before seeking other international markets in which U.S. sugar must compete with world priced sugar.

[22] Exhibit 26(NC) – Producer Submission – Canadian Sugar Institute, Appendix A19(q)

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

[120] Imports into Canada have declined substantially since anti-dumping duties were first imposed and low volumes of subject goods continued to be imported during the period of review. This low volume of imports is likely a direct consequence of the high normal values in comparison to the lower Canadian market price, due to the effect of the price support system in the United States, resulting in dumping and in the assessment of anti-dumping duties generally equal to 78% of the export price.

[121] An analysis of the CBSA Compliance Statistics (shown above in Table 2) reveals that most of the subject sugar imported into Canada during the period of review was imported under the Duty Deferral Program. The statistics show that approximately 94% of U.S. subject sugar in 2007 and 89% in 2008 entered Canada under the provisions of the Duty Deferral Program. However, in 2009 only 5% of U.S. imports of subject sugar were imported under the program. This drop in imports coincided with the closure of large sugar-containing product manufacturing facilities in Canada[23] and clarification by the USDA that products containing U.S. re-export sugar must undergo substantial transformation to re-enter the United States.[24] While these factors may have affected imports for 2009, the small volume of imports since the anti-dumping duties were imposed is an indicator that U.S. refined sugar cannot be sold into the Canadian market without dumping.

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

Performance of the Exporters

Sugar Production

[123] A significant increase in the production level of refined sugar is expected in 2010, compared to the previous year. Imperial Sugar is aiming to return to normal operations in 2010, for the first time since the 2008 explosion at its refinery in Savannah, Georgia, which eliminated approximately 15% of U.S. refining capacity.[25] Furthermore, the USDA is currently projecting that sugar beet production will be more than 300,000 short tons raw

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[23] Exhibit 26(NC) – Producer Submission – Canadian Sugar Institute, Appendix A19(h)
[24] Exhibit 26(NC) – Producer Submission – Canadian Sugar Institute, Appendix A19(i)
[25] Exhibit 26(NC) – Producer Submission – Canadian Sugar Institute, Appendix A19(l)

value (STRV) greater than the previous year.[26]

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

Unutilized Capacity of U.S. Sugar Refiners

[125] Through the Refined Sugar Re-Export Program, U.S. refiners can maximize the capacity utilization of their refineries by exporting refined cane or beet sugar to the world market, and then import an equivalent amount of world-priced raw cane sugar outside of the tariff rate quotas, for processing in a U.S. refinery and subsequent sale in the U.S. market. The program allows producers to increase the capacity utilization of their cane refineries without increasing the supply of refined sugar in the U.S. market which could consequently destabilize the sugar price support program.

[126] The sugar re-export program was a major consideration by the Tribunal at the time of the finding in 1995 and again during the expiry reviews of 2000 and 2005 at which time the Tribunal was of the view that the re-export program is one of the major means by which, in the absence of the orders, considerable volumes of refined sugar from the United States would enter Canada.[27] The program was expanded in 2002 to make sugars refined from cane and beet substitutable under the program, which is more conducive for exports to Canada, given the proximity of beet processing facilities to the Canadian border. Accordingly, the benefits of the re-export program provide incentives to export refined sugar to Canada at prices that are significantly lower that U.S. domestic supported prices, should the order be rescinded.

[127] Since 2005, sugar produced in excess of a producer's market allotment, or blocked stocks, cannot be used for credit under the re-export program. However, beet sugar producers can create a credit by exporting allotment sugar and subsequently sell the credit to a refiner, allowing the refiner to import world-priced raw cane sugar for refining, thus increasing capacity utilization, and then selling the sugar in the U.S. domestic market at the supported domestic price. Evidence on the record shows that all sugar exported from the United States for 1996/97 through to 2008/09 has benefited from the Re-export Program, which supports the conclusion that the re-export program continues to provide an incentive to export dumped sugar.

[26] Exhibit 26(NC) – Producer Submission – Canadian Sugar Institute, paragraph 161
[27] Exhibit 11 NC, CITT Order and Statement of Reasons RR-2004-007, paragraph 88

[128] Further there is evidence on the record showing that U.S. refineries currently have approximately 600,000 STRV of available capacity. When Imperial Sugar returns to full operation this year, another 800,000 STRV will be added to U.S. production capacity. Further, in 2011/12, Louisiana Sugar Refining will open a new refinery with an additional 400,000 STRV in refining capacity.[28] This provides evidence that the U.S. producers have the capacity and the incentive to increase their production, which will be available for increased exports to Canada, made possible by existing unused capacity and upcoming increases in production capacity.

Inventories (ending stocks) of Refined Sugar

[129] The administrative record contains information on historical production and projections for future production of United States refined cane and beet sugar.[29] It should be noted that the sugar ending stocks for 2009/10 are significant, representing approximately 78% of the total Canadian market in 2009.[30]

Future Performance of Exporters

[130] U.S. exporters continue to indicate an interest in the Canadian market. The involvement of these parties in the current proceeding suggests an interest in participating in the Canadian market.

[131] The USBSA and the OSGA have both filed arguments in support of allowing the expiry of the orders. These parties did not participate in the 2005 expiry review. Both associations refer to the future involvement in the Canadian market of Michigan Sugar Company, a sugar beet processing cooperative, should the order expire. OSGA members own shares in Michigan Sugar and are contractually bound to produce sugar beets that are then sold to Michigan Sugar for processing. Accordingly, the OSGA is interested in eliminating the anti-dumping duties for the purpose of marketing U.S. refined sugar in Canada.[31]

[132] The record contains evidence indicating the most recently reported tariffs, sugar policies and import restrictions of developed countries on refined sugar for selected WTO member countries.[32] Canada is a well-developed industrial and consumer market in close proximity to the U.S. border, enabling convenient supply arrangements with United States refiners and beet processors. In the absence of anti-dumping duties, Canada would be attractive for United States exporters because Canada remains one of the few open markets for refined sugar and the only country in North and South America without government intervention and import restrictions on refined sugar.

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[28] Exhibit 26(NC) – Producer Submission – Canadian Sugar Institute, paragraphs 142 - 144
[29] Exhibit 26(NC) – Producer Submission – Canadian Sugar Institute, Appendix A23 US(z), page 13
[30] Exhibit 26(NC) – Producer Submission – Canadian Sugar Institute, Table 1, Canadian market 1,167,000 MT in 2009. 1,075 STRV * .8478 = 911 MT, representing approx. 78% of 1,167
[31] Exhibit 041 (NC) – OSGA Reply Brief, paragraph 4
[32] Exhibit 26(NC) – Producer Submission – Canadian Sugar Institute, Appendix A-22(a), pages 6 - 9

The Opening of the U.S. Market to Mexico

[133] Since January 1, 2008, in accordance with NAFTA, Mexico can now sell unrestricted amounts of sugar into the United States. This causes difficulties for estimating sugar supply and demand in the U.S. market, which is the basis for setting marketing allotments and TRQs.

[134] Evidence on the record shows that Mexico can import sugar for its own consumption at low world prices, and then ship its domestic production to the United States at a higher price. In 2008/09, Mexico exported 1.4 million MT of sugar to the United States.[33]

[135] Increased imports from Mexico, therefore, have the potential to increase the amount of sugar in the United States and create a surplus in the market, thus creating additional pressure for U.S. producers to export U.S. sugar into Canada at dumped prices.

Outlook for a return to a Global Sugar Surplus

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

[137] Forecasts for 2010/11 are for a return to a global sugar surplus of about 4 million MT.[34] With the return of a global surplus, Canada will be an attractive market for U.S. refined sugar in the absence of the anti-dumping order.

Determination Regarding Likelihood of Continued or Resumed Dumping – United States

[138] Based on the evidence on the record in respect of: continued dumping into Canada of the subject goods while the order was in effect; the price differentials between the U.S. and Canada; the inability to sell to Canada without dumping; substantial inventories and the capacity to increase production; the opening of the U.S. market to Mexico; and a forecast return to a global sugar surplus the President determined that the expiry of the order is likely to result in the continuation or resumption of dumping of refined sugar originating in or exported from the United States.

[33] Exhibit 26(NC) – Producer Submission – Canadian Sugar Institute., Appendix A23 US(u)
[34] Exhibit 26(NC) – Producer Submission – Canadian Sugar Institute, Appendix A-22(m)

1.2 Denmark, Germany, the Netherlands and the United Kingdom:

[139] Sugar producers in the European Union are supported by a sugar regime that is administered as part of the Common Agricultural Policy by the Commission of the European Communities.

[140] Since the last expiry review, there have been changes in the E.U. sugar regime due, in part, to the successful WTO challenge of certain aspects of the sugar program. Key elements of sugar policy reform were a 36% cut in the guaranteed minimum price, and cuts in the sugar quota, leading to decreased production and exports. Implementation of the reforms started on July 1, 2006, and is scheduled to end on September 30, 2010.

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

- continued dumping by some of the named countries while the order was in effect;
- the decline in the volume of imports, indicating an inability to sell to Canada without dumping;
- performance of the exporters in respect of the production and pricing;
- loss of traditional export markets for E.U. exporters; and
- outlook for a return to a global sugar surplus.

[142] The following analysis addresses factors affecting the continuation or resumption of dumping by the four countries subject to the anti-dumping measures that are located in the E.U. A country-by-country analysis is not included, as exporters in the named countries have never provided any information to the CBSA, even at the time of the original investigation.

Continued Dumping while the Order was in Effect

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

[144] The Tribunal's anti-dumping order concerns subject goods from Germany, Denmark, the Netherlands and the United Kingdom. Lack of response from the exporters at the time of the original investigation resulted in dumping margins ranging from 78% to 180%, in accordance with the ministerial specification.

[145] During the period of review, imports of subject sugar from Germany, the Netherlands and the United Kingdom were minimal. Imports from Denmark have ceased. This can be attributed to the anti-dumping duties and, as discussed below, countervailing

duties that have been in place while the order was in effect. Nevertheless, the fact that the duties were assessed indicates that the subject goods from those countries were dumped while the order was in effect.

[146] The four named countries in the anti-dumping order accounted for 38% of quota sugar production of the E.U. and 39% of refined sugar exports in 2008/09.[35] It should also be noted that the same four countries also account for 44% of E.U. out-of-quota sugar production, which must be either exported or carried over. The likelihood of future exports to Canada's open market from these countries in the absence of the order is a strong possibility.

[147] As long as the E.U. sugar regime continues to support prices within the E.U., exports of refined sugar cannot compete in the Canadian market without dumping, given that domestic E.U. prices are so much higher than Canadian prices. The current price support will remain stable until 2015.[36] Consequently, all E.U. exports to Canada of refined sugar are dumped within the meaning of SIMA, including exports from Denmark, Germany, the Netherlands and the United Kingdom.

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

[148] In general, imports of the subject goods from the E.U. for domestic consumption in Canada have all but ceased since the injury finding. This can be attributed to the high anti-dumping duties, as well as the countervailing duties, that are currently in place. CBSA import statistics show that most of the refined sugar being imported from the E.U. is non-subject sugar.[37] Accordingly, this can be an indication that the producers from Denmark, Germany, the Netherlands and the United Kingdom are unable to export to Canada at selling prices equivalent to those in their domestic markets without dumping. Without anti-dumping duty in place, these exporters would, therefore, have to resume dumping in order to generate sales in the Canadian market.

Performance of the Exporters

Surplus Sugar Production within the European Union

[149] The reforms have altered the market structure for E.U. sugar producers, resulting in more significant reductions in the less favorable areas for sugar production (i.e., Mediterranean and Eastern European countries) while leaving productions quotas in

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[35] Exhibit 26 and s31 (NC) – Producer Submission – Canadian Sugar Institute, paragraph 184 and Appendix EU A23(d)

[36] Exhibit s020 (NC) – Government of the European Union – Response to RFI Re-investigation (Subsidy) Annex1R 1234/2007, Article 204, paragraph 3

[37] Exhibit 7(NC) – Import Statistics (2007 – 2009).

most productive areas more or less intact (i.e., Germany and France).[38] Annual production for 2009/10 is estimated to be approximately 17 million MT, up from approximately 15 million MT in 2008/2009.[39]

[150] The E.U. continues to produce surplus sugar and evidence on the record demonstrates that the E.U. is a net exporter of refined sugar.[40] The E.U. was the world's largest exporter of refined sugar at the time of the last expiry review. As a result of sugar reform, exports have decreased; however, in 2008 the E.U. was still one of the top five exporters of refined sugar, exporting approximately 1.5 million MT that year.[41]

[151] As a consequence of sugar policy reform in the European Union, E.U. exports of out-of-quota sugar are subject to WTO limitations. The original limit set by the E.U. for the 2009/10 marketing year was 650,000 MT, however, concerns with a large quantity of sugar to carry forward due to a favorable beet harvest caused this amount to be increased in November 2009 to 1.35 million MT.[42] Given the large surplus of sugar on the E.U. market, and the fact that applications for export licenses exceeded the previous limit, on February 3, 2010, the limit was increased a further 500,000 MT to a total of 1.85 million MT,[43] which is approximately 1.6 times the Canadian market.

[152] This action was criticized internationally and was cited as the reason for the 8¢ per pound (USD) world price collapse in February 2010.[44] In addition the E.U.'s action was seen as providing an incentive for beet producers to increase their production and undermining the changes made to the E.U. sugar regime since 2006. The E.U. chose to allow the export of the surplus sugar in view of the high world market price at the time, rather than carry it forward.

[153] In marketing year 2008/2009, out-of-quota production (i.e., surplus production) amounted to 2,497,089 MT.[45] This surplus was twice the volume of the entire Canadian market. Out-of-quota production for the current marketing year (2009/2010) is forecast to be 4,640,833 million MT[46]. This surplus will be almost four times the volume of the entire Canadian market. For 2010/2011, a surplus of approximately 3 million MT is forecast.[47] In the absence of the dumping and subsidy orders, and given the action of the E.U. in

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[38] Exhibit s19 (NC) Appendix 1 USDA, Sugar Impact of the E.U. sugar reform on Sugar Exporters from ACP and LDCs, GAIN Report E49042, 5/13/2009, page 2
[39] Exhibit 26 and s30 (NC) Producer Submission – Canadian Sugar Institute, Appendix A22 (k), page 179.
[40] Exhibit 39 (NC), Argument – CSI, paragraph 97
[41] Exhibit 26 and s30 (NC) Producer Submission – Canadian Sugar Institute, Appendix A22 (g), page 672
[42] Exhibit 26 and s30 (NC) Producer Submission – Canadian Sugar Institute Commission Regulation (EC) No. 1044/2009, November 4, 2009, EU A23(f)
[43] Exhibit 26 and s30 (NC) Producer Submission – Canadian Sugar Institute Commission Regulation (EC) No. 94/2010, February 3, 2010, EU A23(g)
[44] Exhibit 26 and s30 (NC) – Producer Submission – Canadian Sugar Institute, Appendix EU A-23(h)
[45] Exhibit 26 and s30 (NC) – Producer Submission – Canadian Sugar Institute, Appendix EU A-23(d)
[46] Exhibit 26 and s30 (NC) – Producer Submission – Canadian Sugar Institute, Appendix EU A-23(e)
[47] Exhibit 26 and s30 (NC) – Producer Submission – Canadian Sugar Institute, Appendix EU A-23(d)

relation to sugar surpluses, it is likely that Canada's open market would be a target for exports of such sugar from the named countries located in the E.U.

Pricing

[154] In its submission, the E.C. stated that the E.U. internal price had now reached the world market price, and was possibly even below world price. Evidence on the record does not support this claim. World prices peaked at a 25-year high in February 2010, before falling by over 40% in March 2010.[48] As of the 2009/10 marketing year, the E.U. reference price is EUR 404 per MT, which, by regulation, will apply until the end of marketing year 2014/15.[49] As of April 2010, the future prices for world refined sugar were the equivalent of EUR 357.59 for May 2010, decreasing to EUR 322.77 in October 2010.[50]

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

Loss of Traditional Export Markets for E.U. Exporters

[156] The WTO limitations on exports of E.U. sugar have resulted in significant declines in export volume. However, it should also be noted that new refineries in the Middle East, Africa, Asia and European counties outside of the E.U. have added approximately 11 million MT of refining capacity since 2005, with another 12 million MT either under construction or planned.[51] This reduces the opportunities for sales to these former markets, thus increasing the likelihood of sales of dumped goods to Canada by the named countries located in the E.U., in the absence of the orders.

Outlook for a return to a Global Sugar Surplus

[157] As noted in the discussion of U.S. sugar, forecasts of a global sugar surplus increase the concern that Canada would be an attractive market for dumped and/or subsidized sugar from the European Union if the orders are not in effect.

[158] As noted in the discussion of exports from the United States, widespread government intervention and import restrictions by countries other than Canada make Canada a likely target for dumped sugar. Evidence has been provided summarizing the sugar policies and import restrictions of developed countries,[52] which would make an unprotected Canadian market a likely target for exports of refined sugar from the E.U. Given the E.U. sugar surplus and the import restrictions on imports of sugar in other

[48] Exhibit 26 and s30 (NC) – Producer Submission – Canadian Sugar Institute, paragraph 85
[49] Exhibit s020 (NC) – Government of the European Union – Response to RFI Re-investigation (Subsidy) Annex1R 1234/2007, October 22, 2007, Article 204, section 3
[50] Exhibit 39 and s42 (NC), Argument – CSI, paragraphs 75, 76
[51] Exhibit 26 and s30 (NC) – Producer Submission – Canadian Sugar Institute, Appendix EU A-23(j)
[52] Exhibit 26 and s30 (NC) – Producer Submission – Canadian Sugar Institute, Appendix A-22(a), pages 6-9

countries, there is a very real possibility of diversion of E.U. refined sugar exports to Canada, in the absence of the Tribunal's orders, including diversion of sugar from Denmark, Germany, the Netherlands, and the United Kingdom.

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

[159] Based on the evidence on the record in respect of: continued dumping into Canada of the subject goods from some of the named countries while the order was in effect; the price differentials between the European Union and Canada resulting in the inability to sell to Canada without dumping; continued production of surplus sugar; the loss of traditional export markets; and a forecast return to a global sugar surplus, the President determined that the expiry of the order is likely to result in the continuation or resumption of dumping of refined sugar originating in or exported from Denmark, the Federal Republic of Germany, the Netherlands and the United Kingdom.

2. Likelihood of Continued or Resumed Subsidizing

2.1 European Union:

[160] As mentioned above, sugar producers in the E.U. are supported by a sugar regime that is administered as part of the Common Agricultural Policy by the Commission of the European Communities. Since the last expiry review, there have been changes in the E.U. sugar regime due, in part, to the successful WTO challenge of certain aspects of the sugar program. Key elements of sugar policy reform were a 36% cut in the guaranteed minimum price, and cuts in the sugar quota, leading to decreased production and exports. Implementation of the reforms started on July 1, 2006, and is scheduled to end on September 30, 2010.

[161] Guided by the factors in the SIMR and based on the documentation submitted by the various participants and the consideration of the information on the administrative record, the CBSA concluded that there has been subsidizing of goods while the order has been in effect, and this subsidization is continuing. In arriving at this conclusion, the CBSA relied on information on the administrative record, primarily the information received during its recent reinvestigation of the amount of subsidy for E.U. refined sugar. It should be noted that many of the factors discussed above are also relevant to the likelihood of continued or resumed subsidization of refined sugar from the E.U.

Continued Subsidizing while the Order was in Effect

[162] The CBSA concluded a subsidy re-investigation on January 29, 2010, which updated the amount of subsidy applicable on refined sugar from the E.U. in view of E.U. sugar reform. This amount of countervailing duty is currently set at EUR 22.13 per 100 kilograms, which, while lower than the amount of subsidy in effect at the time of the last expiry review, still represents a substantial deterrent to exports to Canada from the E.U.

[163] The OSGA argues that the amount of subsidy for E.U. sugar is insignificant and thus is not likely to continue or resume in absence of the order. The CBSA's recent re-investigation found that significant subsidies continue to be part of the sugar regime. The composition of the subsidies has changed and the new measures are intended to rationalize inefficient production and to enable the industry to further invest in remaining facilities.

[164] The E.C. is of the opinion that the results of the CBSA re-investigation are erroneous and that reforms should be thoroughly investigated.

[165] The expiry review investigation is not for the purpose of determining the amount of subsidy, as this was the purpose of the re-investigation completed on January 29, 2010. However, as the E.C. has raised several issues of concern, these will be briefly addressed.

[166] The E.C. noted that the subsidy programs that were previously in effect are now either suspended or repealed. The CBSA agrees, however, notes that sugar reform in the E.U. has resulted in other subsidy programs, and consequently significant countervailing duties, currently reflected by the results of the recent re-investigation.

[167] The E.C. claimed that the E.U. sugar price is now below world price, accordingly there is no longer any price support. World prices peaked in February 2010, however, this was temporary. By March 2010, there had been a market correction and prices fell by over 40%, with world price well below the E.U. price.[53] The price support subsidy is still existent and likely to continue.

[168] The E.C. argued that certain restructuring subsidies that were determined by the CBSA to be countervailable subsidies are payments funded by industry. Evidence is on the record that shows that the payments at issue come directly from the E.U.'s accounts and not from the sugar industry, which contradicts the E.C.'s position.[54]

[169] The E.C. claimed that payments under the Single Payment Income Support Scheme are decoupled and, therefore, non-specific. The CBSA notes that such payments can, in practice, be de facto specific if they are limited to certain enterprises, groups of enterprises,

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[53] Exhibit s042 (NC)CSI Case Argument , paragraphs 72-77
[54] Exhibit s19 (NC), Documents submitted by CSI – E.U. subsidy re-investigation, paragraph 26.

industries, or groups of industries. While evidence on the record suggests that these payments may be de facto specific, the E.C. did not provide information that would suggest otherwise. For this reason, the CBSA considered these payments to be de facto specific and are, therefore, specific.

[170] The CBSA used information from the E.C., the CSI and other sources in determining the amount of subsidy in this re-investigation. The E.C. provided substantial general information about the E.U. sugar program, however, sufficient information was not been provided or was not otherwise available to enable the determination of the amount of subsidy in the prescribed manner pursuant to SIMA. Accordingly, the revised amount of subsidy was determined pursuant to a ministerial specification, based on the best information available to the CBSA, which included public information and the information provided by the Commission. Furthermore, given that E.U. sugar reform is near the end of its transition phase (2006 – 2010) and, according to the E.C., will be in a new market equilibrium phase from 2010 to 2015, there is every likelihood that the subsidy that is currently in effect will continue.

Determination Regarding Likelihood of Continued or Resumed Subsidizing – European Union

[171] Based on the evidence on the record in respect of the continued subsidizing of the subject goods while the order was in effect and the fact that subsidy programs still exist and are likely to continue in the future, the President determined that the expiry of the order is likely to result in the continuation or resumption of subsidizing of refined sugar originating in or exported from the E.U..

CONCLUSION

[172] For purposes of making determinations in this expiry review investigation, the CBSA conducted its analysis within the scope of the factors set forth in subsection 37.2(1) of the SIMR. Based on the foregoing consideration of pertinent factors and analysis of evidence on the record, on June 17, 2010, pursuant to paragraph 76.03(7)(*a*) of SIMA, the President determined that:

- the expiry of the order in respect of refined sugar originating in or exported from the United States of America, RR-2004-007 issued by the Tribunal on November 2, 2005, is likely to result in the continuation or resumption of dumping of the goods to Canada;

- the expiry of the order in respect of refined sugar originating in or exported from Denmark, the Federal Republic of Germany, the Netherlands and the United Kingdom, RR-2004-007 issued by the Tribunal on November 2, 2005, is likely to result in the continuation or resumption of dumping of the goods to Canada.

- the expiry of the order in respect of refined sugar originating in or exported from the European Union, RR-2004-007 issued by the Tribunal on November 2, 2005, is likely to result in the continuation or resumption of subsidizing of the goods imported into Canada.

FUTURE ACTION

[173] On June 18, 2010, the Tribunal commenced its inquiry to determine whether the expiry of the orders in respect of these goods is likely to result in injury or retardation to the domestic industry. According to the Tribunal's schedule, it will make its decision by November 1, 2010.

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

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

INFORMATION

[176] For further information, please contact the officers listed below:

Mail: SIMA Registry and Disclosure Unit
Anti-dumping and Countervailing Directorate
Canada Border Services Agency
100 Metcalfe Street, 11th Floor
Ottawa, Ontario K1A 0L8, Canada

Telephone: Karen Humphries 613-954-7176
Ron McTiernan 613-954-7271

Fax: 613-948-4844

Email : simaregistry-depotlmsi@cbsa-asfc.gc.ca

Web site: www.cbsa-asfc.gc.ca/sima-lmsi/menu-eng.html

Daniel Giasson
Director General
Anti-dumping and Countervailing Directorate

APPENDIX

PRODUCT DEFINITION AND EXCLUSIONS

The subject goods are defined as:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Additional Exclusions as of November 3, 2000

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

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

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

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

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

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

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

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

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

Additional Exclusion as of November 2, 2005

25. Individually wrapped rectangular cane sugar tablets.