

## Mexican Sugar and U.S. Sweeteners

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*Mexico turns to NAFTA to resolve its dissatisfaction with the U.S. tariff rate quota for sugar. U.S. exporters of high-fructose corn syrup sweeteners and the U.S. Government turn to NAFTA and the WTO to challenge the legality of the steep antidumping duties Mexico imposed on imports of this product.*

### Overview

Mexican access to the U.S. sugar market and U.S. access to the Mexican high-fructose corn syrup (HFCS) market continue to be ongoing disputes of major proportion between the two countries. These are among the few stubborn issues that refuse to go away, against the background of the North American Free Trade Agreement (NAFTA), which proceeds smoothly in eliminating existing barriers to bilateral trade. HFCS is used primarily as a sweetener in soft drinks, but it is also an input in the bakery, fruit processing, fruit juice canning, and yogurt industries. Because sugar and HFCS have a high degree of substitutability, issues of their access to the partner's market are intimately linked.

Concerned about its surplus of sugar, Mexico sought for years to boost its domestic sugar consumption by limiting competition from cheaper, alternative sweeteners, both domestic and imported. In particular, Mexican sugar producers have been concerned that HFCS imported from the United States could replace domestically produced sugar for many uses. Mexico's concern with HFCS from the United States is also regarded as part of a negotiating strategy to gain increased access for Mexican sugar to the U.S. market.

Mexico is a net exporter of sugar, consumes much of the sugar it produces, and exports its surplus primarily to the United States. Mexico also produces HFCS, exports virtually none, and imports it primarily from the United States. Data on Mexico's HFCS output are not known, because Mexico does not release these data. Much of the corn used in Mexico HFCS production is imported from the United States under tariff-rate quotas (TRQs). The United States is a net exporter of HFCS and is the largest producer in the world; Mexico is the number one U.S. market for consumption.

<sup>1</sup> The views and conclusions expressed in this article are those of the author. They are not necessarily the views of the U.S. International Trade Commission as a whole or of any individual Commissioner.

In recent years, U.S. and Mexican officials have held several meetings addressing sugar and HFCS, but the parties also initiated formal dispute settlement procedures involving regional or global trade authorities. With respect to its sugar exports, Mexico recently turned to the NAFTA to settle the dispute concerning the TRQ it was allocated by the United States. With respect to HFCS, U.S. exporters and the U.S. Government turned to NAFTA and the World Trade Organization (WTO), respectively, challenging a resolution by Mexican authorities that HFCS imports from the United States constituted unfair trade, and that the imposition of antidumping duties was necessary.

### Sugar

The current NAFTA dispute arises from different interpretations by the United States and by Mexico of the sugar trade agreement under NAFTA. Between the United States and Mexico, access to one another's sugar markets is established in Section A of Annex 703.2 of NAFTA based on an 1993 "understanding" between Michael A. Kantor, the then-United States Trade Representative (USTR) and Jaime Serra Puche, the then-Mexican Secretary of Commerce and Industrial Development (SECOFI).<sup>2</sup> This understanding was generally referred to as "the side letter" and permitted Mexico to export more than the small historic amounts of its sugar exports to the United States, provided that Mexico qualified as a surplus provider as determined by its sugar production, less its consumption of sugar and HFCS.

However, the negotiations produced a number of versions of the side letter, and there is no agreement

<sup>2</sup> Letter of USTR Michael A. Kantor on Nov. 3, 1993, to Jaime Serra Puche, Mexico's Secretary of Commerce and Industrial Development, reprinted in 103d Congress, 1st Session, House Document 103-160, p. 98; see also *USITC, The Year in Trade: OTAP, 1997*, USITC publication 3103, May 1998, p. 111. SECOFI was renamed the Ministry of Economics under the new Administration of Vicente Fox.

today as to which was the final version.<sup>3</sup> The version that the United States considers valid limited U.S. imports from Mexico to a maximum of 250,000 metric tons per fiscal year (FY), beginning on November 1, 2000. On October 31, 2008, all barriers to sugar trade between NAFTA countries are to fall.

To date, Mexico regards this side letter as invalid.<sup>4</sup> Luis Fernandez de la Calle, Undersecretary of International Trade negotiations for Mexico under the former (Zedillo) Administration, has argued repeatedly that the side letter in question was not legally binding, and has questioned its validity again in a request for a formal NAFTA dispute panel.

On August 17, 2000, under NAFTA chapter 20 dispute settlement provisions, Mexico filed a formal challenge to the validity of the accord's sugar trade provisions, as interpreted by the United States. Legal recourse through the NAFTA has been the culmination of a dispute taking place between the two countries for years regarding Mexico's access to the U.S. sugar market. For each FY of 1994-99, the United States allocated TRQs for raw and refined sugar combined to Mexico in amounts up to 25,000 metric tons, in accordance with historical patterns of U.S. sugar imports and the pertinent NAFTA provisions currently under dispute.<sup>5</sup> If in any FY during this period, Mexico had not met the condition of being a "surplus producer," its quota would have been smaller still.

For FY 2000/01, the TRQ for Mexico surged to 116,000 metric tons, almost five times larger than before, but still smaller than the allocations of some other supplying countries.<sup>6</sup> In comparison, a quota of 185,346 metric tons of raw sugar was specified for the Dominican Republic, and 152,700 tons for Brazil, in accordance with historical patterns of U.S. sugar imports. The Mexican Government was disappointed by its sugar quota, contending that, Mexico was entitled to ship all of its sugar surplus (some 500,000-600,000 metric tons) to the United States, beginning October 1, 2000.

<sup>3</sup> United States-Mexico Chamber of Commerce, "U.S.-Mexico Agriculture: A Trade Success Story," March 1999, found at Internet address <http://www.usmoc.org/agriculture.html>, retrieved on Jan. 5, 2002.

<sup>4</sup> See also Magdolna Kornis, "Dispute Continues Over Access of Mexican Sugar to the United States and U.S. Access of High Fructose Corn Syrup to Mexico," *International Economic Review*, Nov.-Dec. 1998.

<sup>5</sup> USTR, "USTR Announces Allocation of the Refined Sugar and Sugar Containing Products Tariff-Rate Quotas for 1999-2000, Press Release 99-82, Oct. 1, 1999 and USTR, "USTR Announces Allocation of Raw Cane Sugar Tariff-Rate Quota for 1999-2000, Press Release (unnumbered), Nov. 2, 1999.

<sup>6</sup> TRQ for raw cane sugar and raw value of refined sugar combined. Source: USTR, "USTR Announces Allocation of the Raw Cane Sugar, Refined Sugar, and Sugar Containing Products Tariff-Rate Quotas for 2000/2001, Press Release 00-64, Sept. 21, 2000.

Sugar is one of the original Mexican industries that developed by Spanish colonizers, yet, prior to NAFTA Mexico was a net importer. As a result of privatization and technological modernization, sugar mills in Mexico sharply increased their output in the 1990s. By 1995, the country was not only capable of meeting domestic demand, but became a net exporter. Presently, Mexico's sugar industry faces excess capacity, almost no sources of credit, and cash flow problems. Not unlike the United States, Mexico has a protected sugar market, with prices well above the world market price. High U.S. sugar prices are one major reason why Mexico would prefer to sell all its surplus to the United States.

On the U.S. side, the sugar industry is distressed by its own problems, including record low world sugar prices and other factors complicating the world sugar picture. Subsidized production in several countries drives down world market prices of sugar, frequently below the cost of production. U.S. sugar policy maintains U.S. prices above the world-market price through administration of TRQs for raw and refined sugar. U.S. producers are concerned that the domestic sugar market could be flooded with Mexican sugar if Mexico were allowed to export its entire surplus.

## High Fructose Corn Syrup

In January 1998, SECOFI found that HFCS from the United States was being sold at less than fair value in the Mexican market, and that such imports were threatening the Mexican sugar industry with material injury. As a result of this finding, SECOFI imposed final antidumping duties ranging from \$63.75 to \$100.60 per metric ton on commercial product HFCS 42 and \$55.37 to \$175.50 per metric ton on commercial product HFCS 55, payable in addition to the regular 4-percent ad valorem duty.<sup>7</sup> Temporary antidumping duties had already been in effect at the time since June 1997.

Interested parties in the United States, as well as the U.S. Government, protested against the Mexican Government's action by initiating dispute settlement procedures under both the NAFTA and WTO, respectively. In February 1998, shortly after the imposition of final antidumping duties, the Corn Refining Association (CRA) requested dispute settlement proceedings on behalf of U.S. exporters of HFCS under Chapter 19 of NAFTA. U.S. exporters claimed that the duties were inconsistent with Mexican antidumping legislation. (A final NAFTA ruling is reportedly expected in May 2001). In May 1998, the U.S. Government initiated WTO dispute settlement procedures, claiming that "Mexico's antidumping action does not pass muster under WTO rules."

<sup>7</sup> These duties apply to the following HTS numbers: 1702.40.99, 1702.50.01, 1702.60.01, 1702.60.02, and 1702.60.99.

The tables below show U.S. exports of HFCS to all countries and U.S. exports to Mexico before and during the period of being subjected to Mexican antidumping duties. Table 1 shows that in both value and volume, Mexico's share in U.S. exports of HFCS 42 (classified under HTS subheading 1702.40) has been declining sharply and steadily during 1996-2000, except for a weak rebound in the year 2000. In 1996, the year before imposing temporary antidumping duties on this item, Mexico accounted for 66.2 percent of all U.S. exports by value; this share was 16.4 percent in 2000. For HFCS 55, table 2 shows that since 1996 Mexico's share in total U.S. exports has also been declining both in value and volume, even though there was a rebound in 1999. The decline continued in 2000.

Figure 1 illustrates Mexico's share in total U.S. exports of HFCS 55 in terms of volume since 1993. The chart shows the steep rise of this share in 1993-96; its decline immediately before and after Mexico imposed

temporary antidumping duties on these exports in June 1997, and some rebound in 1999, despite the permanent duties that have been imposed in January 1998. In 1993, Mexico accounted for 30.9 percent of all U.S. exports of this item; in 1996 Mexico's share peaked to almost 90 percent of the total; by 2000 it was lower but still over two thirds of the total.

On February 24, 2000, the WTO Dispute Settlement Body (DSB) ruled in the WTO case brought by the United States that the Mexican Government's 1998 imposition of antidumping duties on imports of HFCS from the United States was not in accordance with the WTO Antidumping Agreement.<sup>8</sup> The panel found that

<sup>8</sup> The U.S.-Mexican dispute over HFCS began in January 1997, when the Mexican National Chamber of Sugar and Alcohol Industries, an association of sugar producers in Mexico, filed a petition with SECOFI, alleging sales at less than fair value of HFCS imported from the United States.

**Table 1**  
**HFCS 42: Total U.S. Exports to all countries and to Mexico, 1996-2000<sup>1</sup>**

	1996	1997	1998	1999	2000
<i>(Thousands of dollars)</i>					
All countries .....	18274	7013	12087	12343	10370
Mexico .....	12098	3245	2368	1266	1698
Mexico, percent of total .....	66.20%	46.27%	19.59%	10.26%	16.37%
<b>1996</b> <b>1997</b> <b>1998</b> <b>1999</b> <b>2000</b>					
<i>(Metric tons)</i>					
All countries .....	42593	24203	49786	53608	43346
Mexico .....	25318	13694	8924	4247	6126
Mexico, percent of total .....	59.44%	56.58%	17.92%	7.92%	14.13%

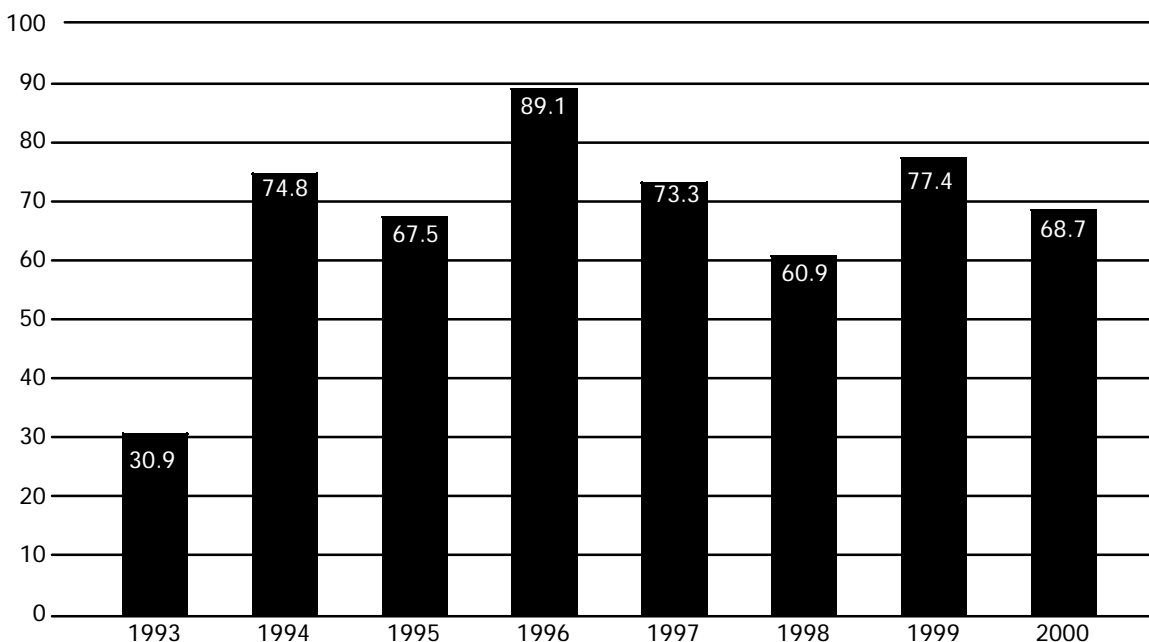
<sup>1</sup> HTS subheading 1702.40.

**Table 2**  
**HFCS 55:<sup>1</sup> Total U.S. Exports and Exports to Mexico, 1996-2000**

	1996	1997	1998	1999	2000
<i>(Thousands of dollars)</i>					
All countries .....	60268	94807	111006	91099	91128
Mexico .....	47553	59585	55764	53921	43333
Mexico, percent of total .....	78.90%	62.85%	50.24%	59.19%	47.55%
<b>1996</b> <b>1997</b> <b>1998</b> <b>1999</b> <b>2000</b>					
<i>(Metric tons)</i>					
All countries .....	177120	245243	340337	276381	275069
Mexico .....	157829	179825	207089	214024	188979
Mexico, percent of total .....	89.11%	73.33%	60.85%	77.44%	68.70%

<sup>1</sup> HTS subheading 1702.60.

**Figure 1**  
Mexico's share in all exports of HFCS 55, 1993-2000



Source: Compiled from official statistics of the U.S. Department of Commerce.

the decision to impose antidumping duties on the U.S. product was improper in several respects. One of these was that SECOFI did not adequately consider all economic factors affecting the Mexican sugar industry that were pertinent in determining whether a threat of material injury to that industry, indeed, existed. Another was that SECOFI did not consider a restraint agreement between Mexican sugar refiners and soft drink bottlers. In August 1997, Mexican producers had reportedly agreed to sell their sugar at discounted prices to local soft-drink companies for the next 3 years, provided these companies voluntarily restricted the imports of U.S.-made HFCS to specified levels. Mexico was given until September 22, 2000 to comply with the DSB recommendations.

This WTO recommendation was supposed to resolve a dispute that the United States initiated in protest against SECOFI's antidumping determination of January 28, 1998.<sup>9</sup> However, despite the WTO's find-

<sup>9</sup> "Mexico - Antidumping Investigation of High Fructose Corn Syrup (HFCS) from the United States," WT/DS132/R, Report of the Panel, adopted on Feb. 24, 2000; USTR, "WTO Adopts Panel Finding Against Mexican

ing being unfavorable to its case, Mexico decided on September 20, 2000 to uphold the duties it imposed in 1998 on HFCS from the United States. Authorities justified this action with a new analysis that takes into account the additional factors the WTO found missing in the earlier investigation. These new facts and their analysis led Mexican authorities to reinstate their original determination of early 1998 that HFCS imports from the United States posed a threat of material injury to the Mexican sugar industry.

On October 12, 2000, the United States requested that the DSB refer back the matter to the original WTO panel, arguing that the redetermination of injury by Mexican authorities rested on insufficient evidence, and the continuation of duties remains inconsistent with the WTO Antidumping Agreement.

<sup>9</sup>—Continued

Measure on High-Fructose Corn Syrup", *Press Release 00-14*, Feb. 28, 2000; Daniel Pruzin, "U.S., Mexico Near Agreement on Deadline for Corn Syrup Compliance," *BNA International Trade Daily*, Apr. 13, 2000.