



SUG 2020 ER

OTTAWA, March 16, 2021

STATEMENT OF REASONS

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

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

AND

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

DECISION

On March 1, 2021, pursuant to paragraph 76.03(7)(a) of the *Special Import Measures Act*, the Canada Border Services Agency determined that the expiry of the orders made by the Canadian International Trade Tribunal on October 30, 2015, in Expiry Review No. RR-2014-006:

- i. is likely to result in the continuation or resumption of dumping of refined sugar originating in or exported from the United States of America;
- ii. is likely to result in the continuation or resumption of dumping of refined sugar originating in or exported from Denmark, Germany, the Netherlands and the United Kingdom; and
- iii. is likely to result in the continuation or resumption of subsidizing of refined sugar originating in or exported from the European Union.

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

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EXECUTIVE SUMMARY

[1] On October 2, 2020, the Canadian International Trade Tribunal (CITT), pursuant to subsection 76.03(3) of the *Special Import Measures Act* (SIMA), initiated an expiry review of its orders made on October 30, 2015, in Expiry Review No. RR-2014-006, continuing its orders made on November 1, 2010, in Inquiry No. RR-2009-003, as amended by its order made on September 28, 2012, in Expiry Review No. RR-2009-003R, continuing its orders made on November 2, 2005, in Expiry Review No. RR-2004-007, continuing, with amendment, its orders made on November 3, 2000, in Expiry Review No. RR-99-006, continuing, with amendment, its findings made on November 6, 1995, in Inquiry No. NQ-95-002 (Original Inquiry), concerning the dumping of refined sugar, refined from sugar cane or sugar beets, in granulated, liquid and powdered form (refined sugar), originating in or exported from the United States of America (U.S.), Denmark, the Federal Republic of Germany (Germany), the Netherlands and the United Kingdom (U.K.) and the subsidizing of refined sugar originating in or exported from the European Union (E.U.).

[2] As a result of the CITT's notice of expiry review, on October 5, 2020, the Canada Border Services Agency (CBSA) initiated an expiry review investigation to determine, pursuant to paragraph 76.03(7)(a) of SIMA, whether the expiry of the orders is likely to result in the continuation or resumption of dumping and/or subsidizing of the subject goods.

[3] In the original refined sugar subsidy case and the most recent re-investigation in 2014, the U.K was under E.U. jurisdiction. The period of review for this expiry review investigation is January 1, 2017 to March 31, 2020. Although the U.K. left the E.U. on January 31, 2020, the country was still a member of the E.U. customs union and single market during the transition period, which ended January 1, 2021.¹ Therefore, it was necessary to regard the U.K. as a member of the E.U for purposes of this Expiry Review.

[4] The CBSA received a response to its Canadian Producer Expiry Review Questionnaire (ERQ) from the Canadian Sugar Institute (CSI) and its member producers². The CSI also provided additional evidence³, a case brief⁴ and a reply submission⁵ supporting its position that continued dumping and subsidizing of refined sugar from the named countries are likely if the orders are rescinded. In addition, the CBSA received ERQ responses from Lantic Inc. (Lantic)⁶, Redpath Sugar Ltd (Redpath)⁷ and Sucro Can Sourcing, LLC (Sucro Can)⁸. These companies collectively are referred to as “the Canadian producers” in this report.

¹ Exhibit 24 (NC) – Producer Response – CSI, Exhibit CSI-69 – EPAM – Continued Lack of Progress (27 Aug 2020).

² Exhibit 23 (PRO) & 24 (NC) – ERQ Response from CSI.

³ Exhibit 34 (PRO) & 35 (NC) – Additional information from CSI.

⁴ Exhibit 38 (PRO) & 39 (NC) – Case brief filed from CSI.

⁵ Exhibit 41 (PRO) & 42 (NC) – Reply submission from CSI.

⁶ Exhibit 21 (PRO) & 22 (NC) – ERQ Response from Lantic Inc.

⁷ Exhibit 17 (PRO) & 18 (NC) – ERQ Response from Redpath Sugar Ltd.

⁸ Exhibit 19 (PRO) & 20 (NC) – ERQ Response from Sucro Can Sourcing, LLC.

[5] The European Commission (E.C.) provided a response to the Foreign Government ERQ expressing its position that continued or resumed dumping of refined sugar from Denmark, Germany, the Netherlands and the U.K. is unlikely if the CITT Orders are rescinded. Without making a clear statement on their position on the continued subsidizing of the subject goods if the CITT Orders are rescinded, the E.C. provided arguments and information that support its contention that the continuation or resumption of subsidizing of refined sugar from the E.U. is not likely.⁹

[6] The CBSA received a response to the ERQ from two exporters located in the U.S. and one exporter located in Germany. The exporters located in the U.S., American Sugar Refining (ASR)¹⁰ and Michigan Sugar Company¹¹, did not express an opinion on the likelihood of continued or resumed dumping of the subject goods if the CITT Orders are rescinded. The exporter located in Germany, Südzucker AG¹², stated that the criteria for finding a likelihood of resumption of dumping and subsidization of refined sugar from the E.U are not met.

[7] The CBSA also received a response to the ERQ from two foreign producers located in the Netherlands and the U.K. The exporter located in the Netherlands, Cosun Beet Company, stated its position that there is no reason to have continued dumping or subsidizing measures against sugar originating from the E.U. and more specifically, the Netherlands.¹³ Although the exporter in the U.K., British Sugar PLC, did not express an opinion on the likelihood of continued or resumed dumping or subsidization of the subject goods, they stated that they did not export to Canada nor have the intention (or available volume) to export substantial volumes of sugar from the U.K.

[8] No importers in Canada, nor exporters or producers located in the subject countries, provided a case brief or reply submission.

[9] Finally, the CBSA received a case brief and reply submission from the Comité Européen des Fabricants de Sucre (CEFS)¹⁴. In both submitted documents, the CEFS included arguments supporting their position that the rescindment of the CITT Orders are not likely to result in a continuation or resumption of dumping or subsidizing of the subject goods from the E.U. or from any of the subject countries of the EU.

⁹ Exhibit 12 (NC) – ERQ Response from European Commission.

¹⁰ Exhibit 15 (PRO) & 16 (NC) – ERQ Response from American Sugar Refining, Inc.

¹¹ Exhibit 29 (PRO) & 30 (NC) – ERQ Response from Michigan Sugar Company.

¹² Exhibit 27 (PRO) & 28 (NC) – ERQ Response from Südzucker AG.

¹³ Exhibit 13 (PRO) & 14 (NC) – ERQ Response from Cosun Beet Company, at Q52.

¹⁴ Exhibit 36 (PRO) & 37 (NC) – Case brief filed on behalf of Comité Européen des Fabricants de Sucre.

[10] Analysis of information on the administrative record indicates a likelihood of continued or resumed dumping into Canada of refined sugar originating in or exported from the U.S. should the CITT's orders be rescinded. This analysis relied upon the following factors:

- Continued dumping while the orders were in effect
- Small volume of imports
- Production, capacity and demand
- Trade measures in other jurisdictions
- Outlook for a continued global sugar surplus
- Proximity of the U.S. industry to the Canadian market

[11] With respect to refined sugar from Denmark, Germany, the Netherlands and the U.K., an analysis of the information on the record indicates a likelihood of continued or resumed dumping into Canada, should the CITT's orders be rescinded. This analysis relied upon the following factors:

- Continued dumping while the orders were in effect
- Decline in the volume of imports
- Removal of production quotas and export limits
- Production within the E.U.
- Price levels in the E.U.
- Loss of traditional export markets for E.U. exporters
- Outlook for a continued global sugar surplus

[12] With respect to the likelihood of continued or resumed subsidizing of refined sugar from the E.U., an analysis of the information on the record shows that there has been subsidizing of refined sugar in the E.U. while the orders have been in effect, and this subsidizing is continuing.

[13] For the foregoing reasons, the CBSA, having considered the relevant information on the record, determined on March 1, 2021, pursuant to paragraph 76.03(7)(a) of SIMA, that the expiry of the orders:

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

BACKGROUND

[14] On March 17, 1995, in response to a complaint filed by the CSI, the Deputy Minister of National Revenue initiated an investigation respecting the alleged injurious dumping of refined sugar, originating in or exported from the U.S., Denmark, Germany, the Netherlands, the U.K. and the Republic of Korea, and the alleged subsidizing of refined sugar, originating in or exported from the U.S. and the E.U.

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

[16] On October 5, 1995, final determinations of dumping and subsidizing were made with respect to the subject goods. On November 6, 1995, the CITT issued findings of future injury with respect to the dumping and/or subsidizing of the subject goods. The CITT found no injury respecting refined sugar from the Republic of Korea. The CITT also excluded a number of specialty sugar products from the findings.

[17] There have been four previous expiry reviews of the orders since the original investigation. On November 3, 2000 and November 2, 2005, the CITT issued orders reaffirming the findings with amendments to exclude additional refined sugar products.

[18] On November 1, 2010, the CITT continued its orders in respect of the dumping of refined sugar, originating in or exported from the U.S. and rescinded its orders in respect of the dumping of refined sugar originating in or exported from Denmark, Germany, the Netherlands and the U.K., and the subsidizing of refined sugar originating in or exported from the E.U.

[19] On June 18, 2012, further to a judgment of the Federal Court of Appeal which set aside the November 1, 2010 CITT orders where the CITT rescinded its orders in respect of the dumping of refined sugar originating in or exported from Denmark, Germany, the Netherlands and the U.K., and the subsidizing of refined sugar originating in or exported from the E.U., the CITT recommenced the expiry review of its orders in respect of the dumping of refined sugar originating in or exported from Denmark, Germany, the Netherlands and the U.K., and the subsidizing of refined sugar originating in or exported from the E.U.

[20] On September 28, 2012, the CITT, having reconsidered the matter continued its orders in respect of the dumping of refined sugar originating in or exported from Denmark, Germany, the Netherlands and the U.K., and the subsidizing of refined sugar originating in or exported from the E.U.

[21] On December 29, 2014, pursuant to subsection 76.03(2) of SIMA, the CITT issued a notice of expiry of the orders made on November 1, 2010, in Expiry Review No. RR-2009-003, as amended by its order made on September 28, 2012, in Expiry Review No. RR-2009-003R. Based on the available information and the information submitted by the interested parties, the CITT decided that an expiry review of the orders was warranted and on February 18, 2015, pursuant to subsection 76.03(3) of SIMA, the CITT initiated an expiry review (No. RR-2014-006).

[22] On October 30, 2015, the CITT issued orders reaffirming the orders with amendment to exclude additional refined sugar products.

[23] On October 2, 2020, the CITT initiated an expiry review of its orders pursuant to subsection 76.03(3) of SIMA.

[24] On October 5, 2020, 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 DEFINITION

[25] The goods subject to this expiry review investigation are defined as:

Dumping – “Refined sugar, refined from sugar cane or sugar beets, in granulated, liquid, and powdered form, originating in or exported from the United States of America, Denmark, Germany, the Netherlands and the United Kingdom”

Subsidy – “Refined sugar, refined from sugar cane or sugar beets, in granulated, liquid, and powdered form, originating in or exported from the European Union”

[26] The subject goods are described 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.

[27] At the time of the original findings, the CITT 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 CITT continued the 1995 findings, with an amendment to exclude further specialty sugar products, including products covered by the 1997 remission order. The CITT made an additional exclusion with the continuation of the findings in 2005 and 2015. A full list of product exclusions is provided in the **Appendix**.

CLASSIFICATION OF IMPORTS

[28] The subject goods are usually classified under the following Harmonized System (HS) classification numbers:

1701.91.10.00	1701.99.10.00	1702.90.12.00	1702.90.17.00
1701.91.90.21	1701.99.90.20	1702.90.13.00	1702.90.18.00
1701.91.90.29	1701.99.90.30	1702.90.14.00	1702.90.69.00
1701.91.90.91	1701.99.90.90	1702.90.15.00	1702.90.89.10
1701.91.90.99	1702.90.11.00	1702.90.16.00	

[29] This listing of tariff classification numbers is for convenience of reference only. The tariff classification numbers provided may include goods that are not subject goods and subject goods may be imported into Canada under tariff classification numbers other than those provided.

PERIOD OF REVIEW

[30] The period of review (POR) for the CBSA's expiry review investigation is from January 1, 2017 to March 31, 2020.

CANADIAN INDUSTRY

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

277 Wellington Street West
Toronto, Ontario
M5V 3E4

[32] The CSI, which was the complainant in the initial investigation and represented the domestic industry in the 2000, 2005, 2010 and 2015 Reviews, is a trade association comprised of the principal Canadian producers of the subject goods, namely their members: Lantic and Redpath. They produce approximately 1.3 million Metric Tonnes (MT) of refined sugar annually.¹⁵

¹⁵ Exhibit 2 (NC) – CITT's Administrative Record Number RR-2020-003-02.02 Public Submission from CSI, para.16.

[33] The wholesaler Sucro Can Sourcing, located in Florida, U.S, responded to the importer questionnaire on behalf of one more minor sugar producer in Canada, Sucro Can Canada Inc. (Sucro Can), but has not provided information concerning the latter's sales in Canada of domestically produced goods.¹⁶ However, information submitted by CSI indicates that Sucro Can has an estimated production capacity of 120,000 MT.¹⁷

[34] Thus, information on the administrative record of this expiry review investigation indicates that the three responding Canadian producers, Lantic, Redpath and Sucro Can, are the only companies producing like goods in Canada for consumption in the domestic market.

[35] The record further indicates that the collective production of Lantic and Redpath constitutes approximately 92% of Canadian production, which represents a "major proportion" of total domestic production of the like goods within the meaning of subsection 2(1) of SIMA.

[36] As such, based on the information on the record, the CBSA has based its estimates of domestic production on the combined production information of Lantic and Redpath.

Lantic Inc. (Lantic)

[37] Lantic operates two cane sugar refineries, one in Montréal, Quebec and the other in Vancouver, British Columbia, a sugar beet factory in Taber, Alberta, a distribution centre in Toronto, Ontario and a blending facility in Scarborough, Ontario for sugar and non-sugar blended products. On June 30, 2008, Lantic Sugar Limited and Rogers Sugar Ltd. merged into a new operating entity now known as Lantic. Since the amalgamation, it continues to use the trademarks under "Rogers" in Western Canada (Manitoba to British-Columbia), and under "Lantic" in Eastern Canada (Newfoundland to Ontario).¹⁸

Redpath Sugar Ltd. (Redpath)

[38] Redpath is a wholly-owned subsidiary of ASR Canada Holding Company, LLC. The ASR group of companies are private companies ultimately owned by Florida Crystals Corp. and Sugar Cane Growers Cooperative of Florida. In 2014, Redpath closed its Niagara Falls blending and packaging plant. Redpath operates a sugar refinery in Toronto, Ontario.¹⁹ It also owns and operates a dry blending and co-packing facility located in Belleville, Ontario that specializes in custom blending and packaging of sugar-containing products.²⁰

¹⁶ Exhibit 20 (NC) - ERQ Response from Sucro Can Sourcing, LLC.

¹⁷ Exhibit 2 (NC) – CITT's Administrative Record Number RR-2020-003-02.02 Public Submission from CSI, para.17.

¹⁸ Exhibit 22 (NC) – Producer Response – Lantic Inc., at Q10.

¹⁹ Exhibit 24 (NC) – Producer Response – CSI, para. 62.

²⁰ Exhibit 18 (NC) – Producer Response – Redpath Sugar Ltd., at Q5.

Sucro Can Canada Inc. (Sucro Can)

[39] In 2014, Sucro Can opened two “melt station” production facilities in Trois-Rivières, Quebec and Hamilton, Ontario. These facilities produce liquid sugar from imported sugar. In June 2019, Sucro Can completed a small granular sugar refinery and crystallization facility located in Hamilton, Ontario, allowing them to begin refining sugar.²¹ Sucro Can is an affiliated company of Sucro Can Sourcing LLC which was founded in 2014 and is based in Coral Gables, Florida. Sucro Can Sourcing LLC is a wholesaler of raw, refined, and liquid cane sugar, both organic and conventional. Its clients include sugar distributors and industrial users in the food and beverage sector.²²

CANADIAN MARKET

[40] The imports of refined sugar during the POR are presented in **Table 1** below. The CBSA cannot release specific data respecting the value of Canadian production of refined sugar sold for domestic consumption as it would lead to the disclosure of confidential information.

TABLE 1				
Imports of Refined Sugar during the POR				
Value (\$)				
Imports:²³	2017	2018	2019	January 1 - March 31, 2020
Germany	291	915	133,178	-
Denmark	-	27,621	23	-
Netherlands	15,657	40,172	34,851	6,637
United Kingdom	380	-	4,217	3,296
Other E.U. Member States	345,385	1,050,432	959,298	31,525
Total European Union²⁴	361,714	1,119,139	1,131,567	41,458
Total United States	1,771,205	5,557,929	3,526,220	871,652
Other countries	16,695,691	11,684,367	10,995,961	4,522,482
Total Imports²⁵	18,828,609	18,361,435	15,653,748	5,435,593

* Totals may vary from row-by-row addition due to rounding

²¹ Exhibit 20 (NC) – Importer Response – Sucro Can Sourcing, LLC, at Q9 and Q17.

²² Exhibit 20 (NC) – Importer Response – Sucro Can Sourcing, LLC, at Q4.

²³ Exhibit 31 (PRO) – Final Import and Market Statistics.

²⁴ For purposes of this Expiry Review, the CBSA considered the U.K. to be a member of the E.U given the POR and, therefore, U.K. import data have been captured under the “Total European Union”

²⁵ Exhibit 31 (PRO) – Final Import and Market Statistics.

[41] In the above table, market statistics that divide imports into subject and non-subject goods are expressed by value only, since the import data regarding volume collected by the CBSA does not reflect consistent units of measurement. In light of the wide variety of products included in the product definition, the import quantities shown on the CBSA import documents were often expressed in different units of measure, such as metric tonnes or number of packages. Accordingly, the CBSA data could not be used to calculate total volume or perform any meaningful calculations of unit value.

[42] The inconsistency in units of measure used to report volume was reflected when comparing CBSA import data with the domestic market information submitted by the CSI as part of their submissions to the CITT in LE-2020-003 and their ERQ response. The import volume presented by the CSI, based on Statistics Canada data, was significantly different than the import volume presented below in **Table 2**, based on CBSA data.²⁶

[43] The information regarding the volume of domestic production in **Table 2** was provided by the CSI.

TABLE 2				
Apparent Canadian Market				
Metric Tonnes (MT)				
	2017	2018	2019	January 1 - March 31, 2020
Domestic production ²⁷	1,187,756	1,225,753	1,260,131	309,588
Total Imports ²⁸	47,947	26,439	87,642	16,756
Total Market	1,235,703	1,252,192	1,347,773	326,344

Canadian Production

[44] The data in **Table 2** reveals that, in terms of volume, the Canadian producers' share of the apparent Canadian market was fairly stable, and decreased slightly from 96.1% to 94.9% over the POR.

Imports

[45] The data in **Table 1** reveals that the value of subject goods imported currently represents 16.8% of the value of all imports.

²⁶ Exhibit 2 (NC) – CITT's Administrative Record Number RR-2020-003-02.02 Public Submission from CSI, paras. 41 and 54; Exhibit 24 (NC) – Producer Response – CSI, para. 65.

²⁷ Exhibit 24 (NC) – Producer Response – CSI, para. 65.

²⁸ Exhibit 32 (NC) – Import and Enforcement Statistics.

[46] Since the period of investigation (POR) of the last expiry review (2012 to 2014), total imports dropped by over 49.8% in terms of value, from \$31 million in 2012, to less than \$16 million in 2019. This decrease coincided with a 32.1% decrease in the size of the apparent market between 2012 and 2019. Conversely, the total subject imports increased by 39.0% during the same period of time. A major rise of 213% of subject goods imported from the named countries was observed between 2017 and 2018, but this was at the expense of imports from other countries as the total imports was practically unchanged. The rise was followed by a drop of about one third of the value of subject imports in 2019.

[47] Still, imports from other countries decreased faster than the Canadian market during the POR. In this regard, imports from countries other than the E.U. and the U.S. decreased by 34.1% between 2017 and 2019 in terms of value vs. 11.0% for the total market.

[48] The data in **Table 2** reveals that the volume of refined sugar imported from all countries most recently from January 1 to March 31, 2020, represents 5.1% of the volume of the Canadian market.

Market Projections

[49] Generally speaking, both responding Canadian producers are expecting to operate fully while continuing their extensive COVID-19 protection measures, which involved additional incremental costs. Despite this, the Canadian producers contend that the food service sector remains under pressure and there is still economic uncertainty during the pandemic. Demand was lower for industrial segment and liquid sugar, while the demand was stronger for both refined sugar and maple products.²⁹

[50] Information on the record shows that the COVID-19 pandemic has also reduced apparent sugar consumption in 2019/20, which has resulted in the first contraction in global demand since 1980/81. While this may be a short-term trend, sugar consumption in certain countries is being adversely affected by product re-formulation, particularly in countries which have introduced taxes on sugar-sweetened beverages.³⁰ As a result, the domestic demand for sugar is expected to increase modestly over the decade, as use by a growing global population is offset by lower per capita consumption of refined sugar and total caloric sweeteners.³¹

[51] As widespread government intervention in the sugar sector globally continues to limit market access for refined sugar and as the world sugar balance continues to realize more surplus years than deficit years, the CBSA expects increased competition in the foreseeable future.³² Further, on the basis of the CBSA's compilation of the producers' data, the domestic industry has significant unused capacity.

²⁹ Exhibit 2 (NC) – CITT's Administrative Record Number RR-2020-003-02 – Appendix 12 – Rogers sugar Inc., p.563.

³⁰ Exhibit 24 (NC) - ERQ Response - CSI, para. 101.

³¹ Exhibit 24 (NC) - ERQ Response - CSI, attachment CSI-41 at p.33.

³² Exhibit 24 (NC) - ERQ Response - CSI, paras. 99 and 112.

[52] Overall, if the CITT's orders on refined sugar remain in place, the CBSA expects the Canadian market balance to remain relatively stable in the foreseeable future.

CASE ENFORCEMENT

[53] On June 18, 2015, the CBSA concluded the most recent expiry review and the CBSA determined that the expiry of the orders made by the CITT would likely result in the continuation or resumption of dumping of refined sugar into Canada from the United States, Denmark, Germany, Netherlands and the U.K. and would likely result in the continuation or resumption of subsidizing of the goods from the European Union. Following the CBSA's determination, on October 30, 2015, the CITT determined that the orders will be continued.

Dumping – U.S.

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

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

[56] Subsequent to the CITT findings and up until its review in 2000, some exporters located in the U.S. requested normal values and were provided with Requests for Information (RFI) to complete. However, only four exporters submitted sufficient information to obtain specific normal values. Since that time, the CBSA has conducted one re-investigation of the normal values and export prices on refined sugar from the U.S, which was concluded on September 4, 2014. As a result of the re-investigation the CBSA established specific normal values for two exporters located in the U.S. Normal values for all other exporters located in the U.S. were determined in accordance with a ministerial specification based on the export price of the goods advanced by 180%, which represents the highest margin of dumping found during the original investigation.

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

[57] The normal values for exports from Denmark, Germany, the Netherlands, and the U.K. 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 exporters that were requested to provide submissions, and those not to, were based on the highest margin of dumping (180%) found for exporters in the U.S. that provided complete information. For all other exporters (i.e. those that were not required to provide submissions), normal values were based on the weighted average margin of dumping (79%) found for exporters in the U.S. that provided complete information.

[58] From the time of the original investigation, the E.U. has provided extensive support to the sugar industry, resulting in sugar prices well above world levels. Accordingly, a re-investigation of normal values and export prices has never been requested. This is because any specific normal values would be based on elevated support prices, which were significantly higher than the Canadian price level, thus effectively preventing the exporters from competing in Canada even with normal values. The only exception concerns one exporter from the Netherlands that has requested and obtained a specific normal value for one product since the original findings. No other exporters located in the E.U. have expressed interest in obtaining specific normal values.

[59] In 2014, the CBSA conducted a re-investigation of the normal values and export prices on refined sugar from Denmark, Germany, the Netherlands, and the U.K. However, none of the exporters located in the named countries provided a response to the CBSA dumping RFI. As a result of the re-investigation normal values for all exporters located in the named countries continue to be determined in accordance with a ministerial specification based on the export price of the goods advanced by 180%.

Subsidy – European Union

[60] On September 4, 2014, the CBSA concluded the most recent re-investigation of the amount of subsidy on refined sugar from the E.U. The E.C. provided substantial general information about the E.U. sugar program including aggregate spending on the program. The amount of support to specific producers, or to producers in specific Member States, was not provided. As such, sufficient information was not provided or was not otherwise available to enable the determination of the amount of subsidy in the prescribed manner pursuant to subsection 30.4(1) of SIMA.

[61] Accordingly, the amount of subsidy was determined pursuant to a ministerial specification according to subsection 30.4(2) of SIMA, whereby the CBSA revised the amount of countervailing duty applicable on subject goods. A countervailing duty equal to 24.39 EUR per 100kg is currently applied to all imports of subject goods originating in or exported from the E.U. This represents a 10% increase from the previous rate of countervailing duty of 22.13 EUR per 100kg.

ENFORCEMENT DATA

[62] As shown in **Table 3** below, the total amount of anti-dumping and countervailing duty collected on subject imports during the POR was approximately \$9.4 million. As a percentage of the total value for duty of subject imports, the combined anti-dumping and countervailing duties assessed during the POR were equal to 65.1%.

[63] By comparison, the value for duty on all subject imports of refined sugar during the POR was around \$14.4 million.³³ Nonetheless, imports of subject goods represented about 24.7% of the total imports during the POR, in terms of value.

TABLE 3				
Enforcement Data – Imports of Subject Goods				
Anti-dumping and Countervailing Duties Collected during the POR (\$)*				
Country	2017	2018	2019	January 1, 2020- March 31, 2020
Austria		537	-	-
Belgium	4,134	125,891	487,246	-
Czech Republic	-	-	36	-
Denmark	-	2,504	41	-
Great Britain	622	-	7,682	225
Finland	7,825	3,567	-	-
France	106,296	426,408	13,008	2,699
Germany	541	1,326	83,108	-
Greece	6,879	-		-
Italy	494	695	93	5
Latvia	-	245	41	-
Netherlands	37,850	74,615	64,432	12,254
Poland	1,515	2,271	4,337	664
Portugal	1,237	980	1,084	-
Slovakia	-	-	6	-
Sweden	-	1	51	-
Total E.U.*	167,393	639,041	661,165	15,848
U.S.	841,815	4,807,417	1,422,021	804,595
Total SIMA Duty – All named countries	1,009,209	5,446,458	2,083,186	820,443

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

³³ Exhibit 31 (PRO) – Final import and market statistics

PARTIES TO THE PROCEEDINGS

[64] On October 5, 2020, the CBSA sent notice of the initiation of an expiry review investigation, as well as an ERQ to Canadian producers, and to potential importers and exporters of the subject goods. The U.S. embassy, as well as all of the embassies for E.U. countries, were sent the notice of expiry review, while the government ERQ was sent to the E.C.

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

[66] The CSI and its members (Lantic and Redpath) provided responses to the producer ERQ. Supplementary documents were also filed on behalf of CSI in an additional submission prior to the closing of the record. A case brief and 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 rescinded.

[67] The E.C. provided a response to the government ERQ stating that if the orders were to be rescinded, it is unlikely that the subject goods from the three E.U. subject countries would be dumped. The E.C. also made arguments that support the position that the rescindment of the orders is not likely to result in the continuation or resumption of subsidizing of refined sugar from the E.U. The E.C. did not submit a case argument or reply submission in response to the CSI's case brief.

[68] Sucro Can Sourcing LLC., a non-resident importer of subject and non-subject goods, and their associated company, Sucro Can Canada Inc., provided a response to the importer ERQ. They did not express an opinion on the likelihood of continued or resumed dumping and/or subsidizing of subject goods. The company did not submit case briefs or reply submissions in response to the CSI's case brief.

[69] One exporter located in the U.S., American Sugar Refining, Inc. (ASR), provided a response to the exporter ERQ but did not express an opinion on the likelihood of continued or resumed dumping of subject goods. One exporter located in Germany, Südzucker AG, provided a response to the exporter ERQ stating its position that the criteria for finding a likelihood of resumption of dumping and subsidizing are not met and that there is no evidence of recurrence of dumping and or subsidizing of refined sugar from the E.U.³⁴ One exporter located in the Netherlands, Cosun Beet Company, provided a response to the exporter ERQ stating that they see no reason to have continued dumping or subsidizing measures against sugar originating from the E.U. and more specifically the Netherlands.³⁵ None of the exporters submitted case briefs or reply submissions in response to the CSI's case brief.

³⁴ Exhibit 28 (NC) – Exporter Response – Südzucker, at Q51.

³⁵ Exhibit 14 (NC) – Exporter ERQ Response from Cosun Beet Company, at Q52.

INFORMATION CONSIDERED BY THE CBSA

Administrative Record

[70] The information considered by the CBSA for purposes of this expiry review investigation is contained in the administrative record. The administrative record includes the information on the CBSA's Exhibit Listing, which is comprised of the CITT's administrative record relating to the initiation of the expiry review, the CBSA exhibits and information submitted by interested parties, including information which the interested parties feel is relevant to the decision as to whether dumping and subsidizing are likely to continue or resume, if the CITT's orders are allowed to 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, documents from international trade organizations such as the World Trade Organization (WTO) and responses to the ERQs submitted by Canadian producers, exporters, importers, and governments.

[71] For purposes of an expiry review investigation, the CBSA sets a date after which no new information submitted by interested parties will be placed on the administrative record or considered as part of the CBSA's investigation. This is referred to as the "closing of the record date." This allows participants time to prepare their case briefs and reply submissions based on the information that is on the administrative record as of the closing of the record date. For this investigation, the administrative record closed on December 9, 2020.

POSITION OF THE PARTIES – DUMPING

Parties Contending that Continued or Resumed Dumping is Likely

Position of the Canadian Sugar Institute (CSI) regarding the United States

[72] The CSI presented evidence, a case brief and a reply submission in support of its position that the continued or resumed dumping is likely should the orders be rescinded and noted that the conditions that lead to the dumping in 1995, and continued in 2000, 2005, 2010 and 2015, still exist. Accordingly, the CSI contends that anti-dumping measures should remain in place.

[73] The main arguments made by the CSI relate to:

- Continued dumping due to U.S. government price support
- Decline in volume of imports
- Unutilized cane sugar refining capacity
- IMMEX program
- Surplus production of beet sugar
- World market for sugar and Canada's position
- Geographic proximity of Canada

Continued Dumping Due to U.S. Government Price Support

[74] The CSI relayed that the U.S. government's sugar program has a dominant structural influence on the U.S. sugar market. It supports U.S. domestic sugar prices that are above world and Canadian price levels, restricts imports through the tariff rate quotas (TRQs), generates unutilized cane refining capacity and beet sugar surpluses and encourages exports, particularly, through the Refined Sugar Re-export Program (RSRP).³⁶ Since Canada is adjacent to the U.S. with the substantial majority of the industrial and consumer markets lying close to the border, and because corporate supply and purchase relationships cross the border, Canada is an obvious and desirable target for U.S. sugar.³⁷

[75] The CSI highlighted that the U.S. sugar program expressly "*uses price supports*" to maintain "*U.S. sugar prices above comparable levels in the world market*".³⁸ Among other U.S. sugar programs outlined by the CSI, the current Farm Bill has maintained the price support program through non-recourse loan programs and TRQs which continue to limit imports and help maintain U.S. prices at levels sufficient to prevent forfeiture.³⁹

[76] The CSI also alleged that the high U.S. domestic prices, which are above the world and Canadian levels, and a number of U.S. policy measures continue to provide strong incentives to maintain its domestic sugar production. More specifically, the CSI conveyed that the RSRP is designed to enable domestic refiners to maximize the capacity utilization of their refineries by exporting to the world market (including Canada) refined sugar and selling U.S. beet sugar below the U.S. domestic price.⁴⁰

[77] The CSI emphasized that refined sugar is a fully substitutable commodity product that competes mainly on the basis of price.⁴¹ Thus, the CSI argued that in order to re-enter the Canadian market, particularly in competition with well-established domestic suppliers in a well-supplied market, U.S. suppliers will need to offer prices that are more advantageous than those offered by domestic refiners.⁴² The commodity nature and the fact that price is a key driving factor in capturing sales of the subject goods support a determination that the continuation of dumping of refined sugar from the U.S. is likely.⁴³

³⁶ Exhibit 24 (NC) – Producer Response – CSI, para.141.

³⁷ *Ibid.*

³⁸ Exhibit 24 (NC) – Producer Response – CSI, para.145 and, at attachment CSI-2-A: USDA Economic Research Service, "*Sugar & Sweeteners – Policy*" (April 7, 2020).

³⁹ Exhibit 24 (NC) – Producer Response – CSI, paras. 145 and 148.

⁴⁰ Exhibit 24 (NC) – Producer Response – CSI, paras.106-108,141 and 164.

⁴¹ Exhibit 24 (NC) – Producer Response – CSI, para. 47

⁴² Exhibit 24 (NC) – Producer Response – CSI, para. 49

⁴³ Exhibit 24 (NC) – Producer Response – CSI, para. 47-50 & Exhibit 39 (NC) – Case Brief – CSI, para. 50.

Decline in Volume of Imports

[78] According to the CSI, observations from the 2015 expiry review are still valid as the small volume of imports since the anti-dumping duties were imposed indicates that U.S. refined sugar cannot be sold in the Canadian market without dumping.⁴⁴ It is the CSI's position that, if the CITT's orders are rescinded, the entire Canadian market will be opened to imports of refined sugar from the U.S. at dumped prices and will create an untenable situation of one-way trade.⁴⁵

[79] The CSI argued that if the SIMA measure expires, substantial volumes of exports of dumped U.S. refined sugar to Canada are undeniable.⁴⁶ According to the CSI, without the CITT's orders, the U.S. exporters will be able to price into the Canadian market without fear at residual price levels exerting substantial dumping margins.⁴⁷

Unutilized Cane Sugar Refining Capacity

[80] According to the CSI, since the 2015 expiry review, U.S. refiner capacity utilization ranged between 80% and 87%, with unutilized capacity of 991,000 to 1.541 million short tons, raw value (STRV), or 841,000 to 1.307 million tonnes refined value, which represents a considerable unutilized cane sugar refining capacity. In addition, every year since the previous expiry review, except for fiscal year 2019/20 where there was a significant reduction in the sugar beet crop due to extreme adverse weather, the excess U.S. cane refining capacity could have generated exports that would fill the entire Canadian market.⁴⁸

[81] The CSI provided an explanation of the Refined Sugar Re-export Program (RSRP), which is designed to enable refiners in the U.S. to maximize the capacity utilization of their refineries through the exportation of refined sugar to the world market, including Canada.⁴⁹ Exports are matched against imports of an equivalent amount of world-priced raw cane sugar for processing in a U.S. refinery and sale in the U.S. market, thus increasing capacity utilization at U.S. cane refineries without increasing the supply of refined sugar in the U.S. market.⁵⁰ If the Orders expire, U.S. refiners will use the RSRP to increase their capacity utilization through exports to Canada.

[82] The CSI argues that with unutilized refining capacity in the U.S., if the CITT's orders are permitted to expire, the RSRP would be leveraged to export U.S. beet sugar and refined cane to Canada, an obvious market for this surplus capacity.⁵¹

⁴⁴ Exhibit 39 (NC) – Case Brief – CSI, para. 50.

⁴⁵ Exhibit 24 (NC) – Producer Response – CSI, para. 52.

⁴⁶ Exhibit 39 (NC) – Case Brief – CSI, para.195.

⁴⁷ Exhibit 39 (NC) – Case Brief – CSI, para.41.

⁴⁸ Exhibit 24 (NC) – Producer Response – CSI, para. 194 & Exhibit 39 (NC) – Case Brief – CSI, para.55.

⁴⁹ Exhibit 24 (NC) – Producer Response – CSI, para.179.

⁵⁰ Exhibit 24 (NC) – Producer Response – CSI, para. 179, 185-189.

⁵¹ Exhibit 24 (NC) – Producer Response – CSI, para. 191 and 194.

IMMEX Program

[83] The CSI submitted information regarding the modification of the Promotion of the Manufacturing, Maquiladora, and Export Services (IMMEX) program by Mexico in January 6, 2016. The revised IMMEX program, which is used by the U.S. to export sugar to Mexico for purposes of being incorporated into other products and then re-exported, now specifically forbids U.S. sugar to benefit from the RSRP.⁵² The CSI argues that this modification considerably decreased the use of the RSRP, which could be approximately 250,000 MT annually. According to the CSI, the credit opened through RSRP are valuable to a U.S. refiner because it allows a refiner to import world-priced raw cane sugar, refine it and increase capacity utilization, and then sell the resulting refined sugar into the U.S. domestic market at the supported price.⁵³

[84] Thus, the loss of this market has reduced U.S. cane sugar refining capacity utilization and the U.S. domestic refiners will seek other export markets where they can generate credits under the RSRP program to maximize capacity utilization.⁵⁴ In the absence of Canada's anti-dumping duty protection, Canada would be an obvious market to use the RSRP for this surplus capacity.⁵⁵

Surplus Production of Beet Sugar

[85] The CSI explained that U.S. beet sugar processors are subject to marketing allotments that limit the amount of refined beet sugar that U.S. sugar beet processors can sell in the U.S. market but do not impose any limits on sugar production. Production of surplus refined beet sugar producer's allotment is referred to as "blocked stocks" because this excess of refined beet sugar cannot be sold in the U.S. market and therefore must be stored, exported (e.g., to Canada) or used for non-food purposes.⁵⁶ The CSI noted that, based on a LMC International⁵⁷ report, when companies in the U.S. exceed their domestic marketing allotments (blocked stocks), it results either in ploughing of surplus beets, paying to store surplus or exporting the sugar.⁵⁸

[86] The CSI presented evidence that, despite the decline in U.S. sugar production in 2018/19 and 2019/20 due to adverse weather conditions, the beet sugar production for 2020/21 is projected to be 5.206 million STRV, an increase of 21% from 4.293 million STRV in 2019/20.⁵⁹ Further, the CSI provided information concerning the total ending stocks for 2020/21 which are forecasted by the U.S. Department of Agriculture (USDA) to be 1.622 million MT raw value (1.2 million tonnes refined value), an amount comparable to the size of the entire Canadian market.⁶⁰

⁵² Exhibit 24 (NC) – Producer Response – CSI, para. 190-191

⁵³ Exhibit 24 (NC) – Producer Response – CSI, para. 184.

⁵⁴ Exhibit 24 (NC) – Producer Response – CSI, para.179.

⁵⁵ Exhibit 24 (NC) – Producer Response – CSI, para.191.

⁵⁶ Exhibit 24 (NC) – Producer Response – CSI, para. 161.

⁵⁷ LMC International is a large independent economic consulting firms specialising in global agricultural commodity and agribusiness sectors.

⁵⁸ Exhibit 24 (NC) – Producer Response – CSI, para. 28 and Attachment CSI-6.

⁵⁹ Exhibit 39 (NC) – Case Brief – CSI, para. 51.

⁶⁰ Exhibit 39 (NC) – Case Brief – CSI, para. 52.

[87] The CSI reiterated that in the 2010 review, the CITT found that sugar beet processors normally plant additional precautionary acres of sugar beets in order to ensure marketing allotments are fulfilled, in case poor weather conditions adversely affect yields. The CSI also highlighted that the CITT went further to conclude that, if the orders were rescinded, there would be less need for U.S. sugar beet growers to plough under their excess sugar beet crop and, instead, they would dispose of the surplus in the Canadian market.⁶¹ The CSI also recalled that in the 2015 review the CITT recognized that it is important to sell refined sugar as soon as possible because of the high cost of storing surplus stocks.⁶²

[88] The CSI recalled that in the 2015 review the CBSA found that 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 beet sugar production levels rise, there is a greater likelihood of dumped sugar entering Canada in the absence of the CITT's orders.⁶³

[89] As per the CSI, U.S. beet sugar producers who have consistently had the capacity to produce substantial volumes of surplus sugar since the original investigation in 1995, have announced capacity expansions amounting to 225,900 tonnes.⁶⁴ The CSI argued that the existence of permanent marketing allotments under the 2008, 2014 and 2018 Farm Bills has not changed the incentive to export blocked stocks of beet sugar to Canada.⁶⁵

World Market for Sugar and Canada's Position

[90] The CSI provided evidence indicating the Canadian market is highly valued by exporters and remains one of the few developed country sugar markets that is open to sugar imports and that is not protected by a government-regulated sugar program.⁶⁶ If the CITT's orders are rescinded, at the same time as the U.S. sugar programs continue to create incentives to export refined sugar and tightly limit imports of Canadian sugars, this will create an open market where the price advantage caused by the dumping of refined sugar from the U.S. is not offset, and will materially injure the Canadian industry.⁶⁷

[91] The CSI argued that if the orders expire, Canada will not have import barriers other than a relatively small import tariff of \$30.86 per tonne, in comparison to the U.S. import tariff of US \$357.40 per tonne (equivalent to approximately \$470 per tonne).⁶⁸

⁶¹ Exhibit 24 (NC) – Producer Response – CSI, para. 27.

⁶² Exhibit 24 (NC) – Producer Response – CSI, para 28.

⁶³ Exhibit 24 (NC) – Producer Response – CSI, para.26 and Exhibit 39 (NC) – Case Brief – CSI, para. 35.

⁶⁴ Exhibit 39 (NC) – Case Brief – CSI, para. 11.

⁶⁵ Exhibit 24 (NC) – Producer Response – CSI, para.167.

⁶⁶ Exhibit 24 (NC) – Producer Response – CSI, para. 20.

⁶⁷ Exhibit 24 (NC) – Producer Response – CSI, para. 19.

⁶⁸ Exhibit 39 (NC) – Case brief from CSI, para. 24.

[92] The world sugar balance over the last decade has seen more surplus years than deficit years.⁶⁹ The surpluses are getting larger, while the deficits are getting smaller. The inventory stocks have accumulated to the current high levels of 71.6 million MT, representing 38.88% of global consumption.⁷⁰

[93] As per the CSI, Canadian prices continue to track at a premium compared to residual world refined sugar prices but trend lower than the supported prices in the U.S. As such, the Canadian market presents an attractive export market opportunity for U.S. sugar exporters.⁷¹

[94] According to the CSI, if the SIMA protection is removed, the Canadian market would be a desirable destination for U.S. refined sugar exports, and the prices of the U.S. refined sugar will undercut the price of Canadian refined sugar almost immediately.⁷²

Geographic proximity of Canada

[95] The CSI argued that the geographic proximity of the major Canadian sugar markets to the U.S. border as well as the numerous U.S. sugar processing plants and refineries is an important factor to be considered.

[96] The CSI also recalled that in the 2015 review the CBSA recognized that the geographic proximity with the U.S. border and U.S. sugar processing plants and refineries, represent a greater risk, as production level rise, of dumped sugar entering Canada in the absence of the CITT orders.⁷³

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

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

- Decline in volume of imports
- Increased production
- E.U. sugar prices
- Unutilized capacity of E.U. cane sugar refiners
- Unutilized capacity of E.U. beet sugar producers
- Limited opportunities for exports to other markets
- Implications of the U.K.'s withdrawal from the E.U.

⁶⁹ Exhibit 24 (NC) – Producer Response – CSI, para. 97.

⁷⁰ Exhibit 24 (NC) – Producer Response – CSI, at attachment CSI-26.

⁷¹ Exhibit 24 (NC) – Producer Response – CSI, paras 59 and 87 & Exhibit 37 (NC) – Case Brief – CSI, para. 28.

⁷² Exhibit 24 (NC) – Producer Response – CSI, para. 94.

⁷³ Exhibit 24 (NC) – Producer Response – CSI, para. 26 & Exhibit 37 (NC) – Case Brief – CSI, para. 35.

Decline in Volume of Imports

[98] The CSI noted that imports of refined sugar from the four E.U. countries appear to be only high-priced, non-subject sugar, and that imports of subject refined sugar have ceased almost completely since the anti-dumping and countervailing measures were put into place in 1995.⁷⁴

[99] The CSI referenced the CBSA's *Statement of Reasons* from the 2015 expiry review, where the CBSA observed that since the injury finding, imports of subject refined sugar from the four E.U. countries had all but ceased, which could be attributed to the high anti-dumping and countervailing duties in place. The CSI further referenced the CBSA's conclusion that this indicates that exporters were unable to export to Canada at non-dumped prices. The CSI argues that this conclusion is still applicable, and further indicates that dumping is likely to be continued or resumed should the Orders expire.⁷⁵

Increased Production

[100] The CSI presented evidence to support that the E.U. continues to be the world's third largest sugar producer, and over the past five years, total sugar production increased 16%, from 14.9 million MT in 2015/2016 to a projected 17.4 million MT in 2019/2020. The CSI further noted that production increased significantly in 2017/2018, following the abolition of E.U. production quotas. The CSI argued that this increase shows the producers' abilities to expand capacity utilization and exports.⁷⁶ The CSI submitted that Denmark, Germany, the Netherlands and the U.K. account for 40% of E.U. sugar production, and noted that total production in these four countries has increased by 38.5% since the 2015 review. The CSI noted that Germany's production increased the greatest, having grown by 46.5%.⁷⁷

[101] The CSI further noted that poor weather conditions and beet disease outbreaks in 2018/2019 and 2019/2020 caused decreased sugar production in the E.U. However, production is still on average 7% higher than it was before the October 2017 reform, and the area cultivated with sugar beet is 11% greater on average.⁷⁸ The CSI argues that the increased production in the E.U. indicates that dumping is likely to continue or resume if the Orders expire.⁷⁹

E.U. Sugar Prices

[102] The CSI acknowledged that due to the increased production and strong competition in the E.U. market, domestic sugar prices in the E.U. decreased following the removal of the domestic quotas, and that the decrease was intensified by the surplus and declining prices in the world market. At the same time, the CSI noted that E.U. sugar prices have since begun to recover, and are projected to continue increasing.⁸⁰

⁷⁴ Exhibit 39 (NC) – Case Brief – CSI – para. 131.

⁷⁵ Exhibit 39 (NC) – Case Brief – CSI – para. 132.

⁷⁶ Exhibit 24 (NC) – Producer Response – CSI – paras. 208-209.

⁷⁷ Exhibit 39 (NC) – Case Brief – CSI – para. 137.

⁷⁸ Exhibit 24 (NC) – Producer Response – CSI – para. 213.

⁷⁹ Exhibit 39 (NC) – Case Brief – CSI – para. 139.

⁸⁰ Exhibit 24 (NC) – Producer Response – CSI – para. 206-207.

[103] The CSI provided evidence in support of its claims that the four countries exported sugar at dumped prices. The CSI noted that the data demonstrated significant quantities exported to unprotected markets at prices below the E.U. domestic prices. The CSI further noted that the average prices of exports are skewed by high-priced exports to countries such as Switzerland, Norway and Iceland. The CSI argued that should the orders expire, sugar would similarly be exported into the Canadian market at dumped prices.⁸¹

[104] The CSI also referenced submissions by sugar producers in the four countries, which indicated that they have incurred losses on their domestic sales of sugar during the POR, meaning domestic sales have been made at prices below cost. The CSI further stated that these unprofitable domestic prices cannot, therefore, be used as a benchmark for normal values.⁸²

Unutilized Capacity of E.U. Cane Sugar Refiners

[105] The CSI provided evidence relating to the capacity of E.U. cane sugar refiners, noting that there is a significant amount of unutilized cane refining capacity in the E.U. market.⁸³

[106] The CSI further noted that in the 2010 expiry review, the CITT found that there was a likelihood that E.U. sugar refiners with unutilized capacity would use the Inward Processing Relief (IPR) Program to export refined sugar to Canada, if the orders were to be rescinded. The CSI submits that this is still likely. The CSI further referenced the CITT's *Order and Statement of Reasons* from the 2015 expiry review in which the CITT referred to the IPR program, and stated that evidence demonstrated that there had been, and would likely continue to be, excess refining capacity and sugar surpluses in the E.U.⁸⁴

Unutilized Capacity of E.U. Beet Sugar Producers

[107] The CSI argued that the significant increase in production during the 2017/2018 marketing year shows the ability of E.U. beet sugar producers to increase capacity utilization and exports. The CSI referenced Südzucker's ERQ response, which stated that after the abolition of the beet quotas, minimum prices and export restrictions, Südzucker took the opportunity to utilize existing capacities through longer campaigns, which led to an "expansion of low-margin third-country sugar exports." The CSI further noted that while weather events and disease outbreaks temporarily reduced sugar production and exports in marketing years 2018/2019 and 2019/2020, surplus production of approximately 3.1 million MT is expected under normal conditions. The CSI argued that this will lead to more low-margin sugar exports, including to Canada, should the orders be rescinded.⁸⁵

⁸¹ Exhibit 39 (NC) – Case Brief – CSI – para. 143-144.

⁸² Exhibit 39 (NC) – Case Brief – CSI – para. 145-152.

⁸³ Exhibit 39 (NC) – Case Brief – CSI – para. 153.

⁸⁴ Exhibit 39 (NC) – Case Brief – CSI – para. 154.

⁸⁵ Exhibit 39 (NC) – Case Brief – CSI – paras. 155-157.

Limited Opportunities for Exports to Other Markets

[108] The CSI referenced the CITT's *Order and Statement of Reasons* from the 2015 expiry review, in which the CITT found that the E.U. lacked traditional export market opportunities due to increased refining capacity in those markets. The CITT further stated that this could lead E.U. producers to find new markets to export its surplus sugar to countries such as Canada. The CSI argued that this has not changed, stating that since the last review, no other markets for E.U. refined sugar exports have developed. The CSI further argued that should the orders expire, Canada will be a target for E.U. refined sugar exports.⁸⁶

Implications of the U.K.'s Withdrawal from the E.U.

[109] The CSI noted that following the U.K.'s withdrawal from the E.U., the U.K. Global Tariff (UKGT) came into force on January 1, 2021. Under the UKGT, a customs duty will be applicable on imports of refined sugar from countries without preferential access, at a rate of 350 GBP per tonne. The CSI argued that depending on whether a free trade agreement is implemented between the U.K. and the E.U., or whether the U.K. gives preferential access to imports of refined sugar from the E.U., the historical trade of E.U. refined sugar into the U.K. could be disrupted. The CSI noted that this could cause between 400,000 and 500,000 MT of E.U. sugar to return to the E.U. market, increasing competition in the E.U. and potentially increasing exports.⁸⁷

[110] The CSI further noted that the U.K. has a 260,000 MT duty-free quota of raw sugar, which could increase the raw sugar available for refining, and as a result, increase the utilization of the Tate & Lyle refinery, which is currently underutilized. The CSI quoted a beet sugar refiner, British Sugar PLC, who is opposed to the raw cane sugar quota because there is "no scarcity of sugar available in the U.K." The CSI also noted that the U.K. implemented a program similar to the E.U. IPR program, which will incentivize exports, should the orders expire.⁸⁸

Parties Contending that Continued or Resumed Dumping is Not Likely

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

[111] The E.C. provided a response to the CBSA government ERQ and provided arguments in support of its position that continued or resumed dumping of refined sugar from Denmark, Germany, the Netherlands and the U.K. is not likely based on the following factors:

- Absence of anti-dumping investigations against the E.U.
- Exports from the E.U. are not dumped
- Decreased prices of sugar in the E.U.
- Decreased production in the E.U.

⁸⁶ Exhibit 39 (NC) – Case Brief – CSI – para. 158.

⁸⁷ Exhibit 39 (NC) – Case Brief – CSI – para. 159.

⁸⁸ Exhibit 39 (NC) – Case Brief – CSI – para. 160.

Absence of Anti-Dumping Investigations Against the E.U.

[112] The E.C. notes that no other anti-dumping investigation has been initiated against sugar from the E.U. since Canada's first investigation. The E.C. argues that this indicates that the likelihood of the recurrence of dumping of sugar from E.U. exporters is low.⁸⁹

Exports from the E.U. are not Dumped

[113] The E.C. claims that exports from the named countries are not being dumped. To support this, the E.C. provided ex-works regional E.U. domestic prices and export prices from Denmark, Germany and the Netherlands to third countries for 2019 and 2020.⁹⁰ For Region 1, the E.C. compared the average E.U. prices (329 EUR per MT in 2019 and 380 EUR per MT in 2020) to the export prices from Denmark (477 EUR per MT in 2019, and 468 EUR per MT in 2020). For Region 2, the E.C. compared the average E.U. prices (312 EUR per MT in 2019 and 363 EUR per MT in 2020) to the export prices from Germany and the Netherlands (327 EUR per MT in 2019, and 527 EUR per MT in 2020). The E.C. submits that exports from these countries to foreign markets were priced above domestic prices, and therefore are on average not dumped. The E.C. further claims that this indicates that should the measures expire, exports to Canada from these countries would likely not be dumped.⁹¹

Decreased Prices of Sugar in the E.U.

[114] According to the E.C., following the abolition of the sugar quota, E.U. sugar prices have aligned closer to the world market, and were below the world market price in some periods. The E.C. explained that during the first year without quotas (marketing year 2017/2018), E.U. sugar production increased, fostered by optimal weather conditions. The increased production also increased exports, which the E.C. explained caused the E.U. prices to decrease and align with the world market. The E.C. notes that the E.U. average sugar price decreased from 490 EUR per MT in September 2017 to 347 EUR per MT the next year. In January 2019, E.U. price reached an unprecedented low of 312 EUR per MT. The E.C. further stated that the price recovered slowly, following the world trend, and reached an average price of 379 EUR per MT in June 2020, in line with the world market price.⁹² The E.C. argues that the alignment of E.U. prices to world prices indicates that it is very unlikely that exports to Canada would be dumped.⁹³

⁸⁹ Exhibit 12 (NC) – Government Response – E.C., page 4, at Q6.

⁹⁰ There are three regions in the E.U., the first region consists of Austria, Czech Republic, Denmark, Finland, Hungary, Lithuania, Poland, Sweden, and Slovakia. The second region consists of Belgium, Germany, France, the U.K., and the Netherlands. The third region consists of Bulgaria, Croatia, Greece, Italy, Portugal, Romania and Spain.

⁹¹ Exhibit 12 (NC) – Government Response – E.C. – pages 5-6, at Q6.

⁹² Exhibit 12 (NC) – Government Response – E.C. – page 2, at Q2.

⁹³ Exhibit 12 (NC) – Government Response – E.C. – page 6, at Q6.

Decreased Production in the E.U.

[115] The E.C. claims that although production increased in marketing year 2017/2018 following the abolition of quotas, production reduced by nearly 4 million MT in marketing year 2018/2019, and a further 1.7% in marketing year 2019/2020, to 17.36 million MT. The E.C. further states that the sugar beet area sown reduced by 5.5% in marketing year 2019/2020. The E.C. noted exports decreased due to reduced production, causing the E.U. to become a net importer in 2019/2020.⁹⁴

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

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

- Decreased price of sugar in the E.U.
- Decreased production in the E.U. market
- The E.U.'s status as a net importer
- Low exports to Canada

Decreased Prices of Sugar in the E.U.

[117] Südzucker provided evidence which showed that prices of sugar in the E.U. have decreased as a result of the elimination of the E.U. sugar quota regime and the removal of minimum beet prices. Südzucker added that the production surplus and strong competition in the domestic market have contributed to the sharp decrease in prices. Südzucker further noted that E.U. prices have aligned with world prices, and are expected to remain in line with the world market, with average prices in the range of 400 EUR per MT.⁹⁵

Decreased Production in the E.U. market

[118] According to Südzucker, although the E.U.'s production increased in the year following the abolition of the quotas (2017/2018), production decreased significantly in the following years. Südzucker further noted that production is forecasted to remain around 17 to 18 million MT for the E.U. and the U.K. combined, until 2030, closely following consumption levels. Although forecasts for the E.U. predict a 3% decrease in beet area between 2020 and 2030, stable beet output is also predicted as the average beet yield has increased in 2020. Südzucker also noted that production of sugar in the E.U. could decrease from 15.9 million MT in 2020 to 15.6 million MT in 2023.⁹⁶

⁹⁴ Exhibit 12 (NC) – Government Response – E.C. – pages 2-3, at Q2.

⁹⁵ Exhibit 28 (NC) – Exporter Response – Südzucker – pages 15-16, at Q34.

⁹⁶ Exhibit 28 (NC) – Exporter Response – Südzucker – page 16, at Q34.

[119] Südzucker further indicated that factory closures were announced due to the production surplus and competition in the E.U., as well as the decline of world market prices. Four factories in France and two in Germany shut down in 2020, with combined total processing capacity of approximately 800,000 MT of sugar. In addition, one factory in Poland closed in 2019. Südzucker noted that companies intend to run existing factories at capacity to maximize efficiency and increase competitiveness while reducing fixed costs.⁹⁷

The E.U.'s status as a net importer

[120] Südzucker noted that although the E.U. was a net exporter in 2017/2018 as a result of the increased production following the abolition of the quotas, production of E.U. beet sugar declined significantly in the three following years. This caused exports to decrease and the E.U. became a stable net importer. Südzucker further noted that by the end of July 2020, the trade deficit had already more than tripled from the previous year.⁹⁸

Low Exports to Canada

[121] Südzucker provided evidence which showed that exports of refined sugar from the E.U. to Canada peaked at 2,306 MT in 2018/2019. Südzucker argued that the volume of exports from the E.U. to Canada, at an average of less than 0.1% of the total volume of imports of refined sugar from all countries from 2017 to 2020, is negligible. Südzucker further states that E.U. exports to traditional markets will continue, and that the volumes have stabilized in the last decade.⁹⁹ Südzucker also notes that based on the E.U.'s status as a net importer, and the production predictions, it is unlikely that exports to Canada will resume in significant quantities that could cause injury to the Canadian producers.¹⁰⁰

Position of the Comité Européen des Fabricants de Sucre (CEFS) regarding Denmark, Germany, the Netherlands and the United Kingdom

[122] The CEFS submitted a case brief and reply submission in response to the case brief submitted by the CSI. The CEFS provided arguments in support of its position that continued or resumed dumping of refined sugar from Denmark, Germany, the Netherlands and the U.K. is not likely based on the following factors:

- Decreased price of sugar in the E.U.
- Lack of evidence of dumping
- Higher prices in the Canadian Market
- E.U.'s status as a net importer
- Unlikelihood of exports being directed to Canada
- Absence of trade actions targeting E.U. sugar exports

⁹⁷ Exhibit 28 (NC) – Exporter Response – Südzucker – page 17, at Q34.

⁹⁸ Exhibit 28 (NC) – Exporter Response – Südzucker – page 15, at Q34.

⁹⁹ Exhibit 28 (NC) – Exporter Response – Südzucker – page 18, at Q35.

¹⁰⁰ Exhibit 28 (NC) – Exporter Response – Südzucker – page 16, at Q34.

Decreased Prices of Sugar in the E.U.

[123] The CEFS provided evidence to support that prices in the E.U. have decreased following the abolition of the E.U. quota regime in October 2017. The CEFS further noted that the E.U. prices have aligned with the world market prices, which demonstrates the competitive nature and free-market operation of the E.U. market.¹⁰¹

Lack of Evidence of Dumping

[124] The CEFS referred to the information submitted in the E.C.'s ERQ response to support its claim that there is currently no dumping from Germany, the Netherlands and Denmark. The CEFS specifically referred to the comparison of regional average E.U. prices and average export prices of the three countries submitted by the E.C., which showed that the export prices were higher and therefore showed no dumping from these countries.¹⁰²

[125] The CEFS further noted that the Canadian industry provided no evidence to support its claim of continued dumping.¹⁰³

Higher Prices in the Canadian Market

[126] The CEFS notes that the Canadian prices of sugar appear to be on average higher than E.U. domestic prices. The CEFS referred to information submitted by both the CSI and the E.C. to support its claim. The CEFS submits that since the E.U. prices are below Canadian prices, E.U. producers would not need to lower prices below domestic prices in order to compete in the Canadian market. The CEFS further states that the higher price in the Canadian market would incentivise E.U. producers to sell to Canada above their domestic prices, rather than at dumped prices.¹⁰⁴

E.U.'s Status as a Net Importer

[127] The CEFS notes that the E.U. has been a net importer for 9 of the past 10 years, with the exception being 2017. The CEFS argues that the year 2017 should not be considered as a relevant indicator as the abolishment of the Sugar Quota Regime and exceptionally favourable weather conditions lead to an exceptional year of exports. The CEFS states that if any excess volumes would be available, the volumes would not pose a risk of injury, nor induce the E.U. producers into dumping in order to get sales. The CEFS further notes that only small quantities are forecasted to be available for export by 2030.¹⁰⁵

¹⁰¹ Exhibit 37 (NC) – Case brief filed on behalf of Comité Européen des Fabricants de Sucre, paras. 28-29.

¹⁰² Exhibit 37 (NC) – Case brief filed on behalf of Comité Européen des Fabricants de Sucre, para. 27.

¹⁰³ Exhibit 37 (NC) – Case brief filed on behalf of Comité Européen des Fabricants de Sucre, para. 25.

¹⁰⁴ Exhibit 37 (NC) – Case brief filed on behalf of Comité Européen des Fabricants de Sucre, paras. 36-38.

¹⁰⁵ Exhibit 37 (NC) – Case brief filed on behalf of Comité Européen des Fabricants de Sucre, paras. 47-50.

Unlikelihood of Exports Being Directed to Canada

[128] The CEFS submits that should there be an increase in export volumes, it is unlikely that the exports would be directed towards the Canadian market. The CEFS notes that since the E.U. has been excluded from the Canadian market for 25 years, it would be more favourable for exporters to continue to export to the MENA (Middle East/North Africa) region using existing trading relationships, rather than establish new trading relationships in Canada. The CEFS further notes that E.U. exporters have expressed that they have no plans to alter their trading patterns or distribution channels, and as such will continue to direct exports mainly towards the MENA region.¹⁰⁶

Absence of Trade Actions Targeting E.U. Sugar Exports

[129] The CEFS notes that since the initiation of Canada's investigation, no other anti-dumping investigations have been initiated concerning exports of sugar from the E.U. The CEFS submits that this indicates that sugar exporters from the E.U. do not apply a commercial policy using dumping practices, and that the recurrence of dumping practices is unlikely.¹⁰⁷

[130] The CEFS further indicates that the only trade remedy measures in place concerning sugar from the E.U. during the period under investigation have been import bans or safeguard measures, which are not related to anti-dumping. The CEFS adds that these measures concern all imports of sugar, regardless of their origin, and do not exclusively target exports from the E.U. The CEFS argues that the existence of these measures does not indicate that E.U. exporters would continue or resume dumping practices.¹⁰⁸

CONSIDERATION AND ANALYSIS - DUMPING

[131] In making a determination under paragraph 76.03(7)(a) of SIMA whether the expiry of the orders is likely to result in the continuation or resumption of dumping of the goods, the CBSA may consider factors identified in subsection 37.2(1) of the SIMR, as well as any other factors relevant in the circumstances.

[132] Guided by these aforementioned factors, the CBSA conducted its review based on the documentation submitted by the various participants and its own research, all of which can be found on the administrative record. The following list represents a summary of the CBSA's analysis conducted in this expiry review investigation with respect to dumping:

¹⁰⁶ Exhibit 37 (NC) – Case brief filed on behalf of Comité Européen des Fabricants de Sucre, paras. 52-54.

¹⁰⁷ Exhibit 37 (NC) – Case brief filed on behalf of Comité Européen des Fabricants de Sucre, para. 63.

¹⁰⁸ Exhibit 37 (NC) - Case brief filed on behalf of Comité Européen des Fabricants de Sucre, para. 64.

Dumping – United States:

- Continued dumping while the orders were in effect
- Small volume of imports
- Production, capacity and demand
- Trade measures in other jurisdictions
- Outlook for a continued global sugar surplus
- Proximity of the U.S. industry to the Canadian market

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

- Continued dumping while the orders were in effect
- Decline in the volume of imports
- Removal of production quotas and export limits
- Production within the E.U.
- Price levels in the E.U.
- Loss of traditional export markets for E.U. exporters
- Outlook for a continued global sugar surplus

Likelihood of Continued or Resumed Dumping – United States

[133] The 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 *Agricultural Improvement Act of 2018* (2018 Farm Bill), covering sugar marketing since the 2019 crop year. This Act amended the *Agricultural Act of 2014* (2014 Farm Bill), which applied through the 2018 crop year. The current legislation continues the main elements of the previous sugar program that were factors in the original 1995 findings and the CITT's reviews in 2000, 2005, 2010 and 2015. Indeed, the 2018 Farm Bill has continued the sugar program provisions in the 2014 Farm Bill that were in force during the previous expiry review, with the only change being a 5% increase in the non-recourse marketing assistance loan rates for raw cane sugar and refined beet sugar.¹⁰⁹

Continued Dumping while the Orders were in Effect

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

¹⁰⁹ Exhibit 24 (NC) – Producer Response – CSI, Attachment CSI-45, *Farm Commodity Provisions in the 2018 Farm Bill* (May 21, 2019), at p. 23

[135] As noted previously, only one re-investigation of U.S. normal values has been conducted since the final determination, and as the provisions of the U.S. sugar program ensure high domestic prices, it results in normal values that were much higher than the Canadian pricing levels.

[136] As shown above in **Table 3**, approximately \$7.9 million in SIMA duty was assessed on U.S. imports during the POR. The SIMA duties represent approximately 62.2% of the value for duty, which indicates that subject goods from the U.S. continued to be dumped.

[137] 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 refined sugar prices from the U.S.¹¹⁰ A simple comparison of U.S. and Canadian price levels provide a reasonable indication of the potential magnitude of the margins of dumping as shown in Table 4 below.

TABLE 4				
Comparison of U.S., World, and Canadian Import Wholesale Refined Sugar Prices				
(Values in USD per MT)				
Year	U.S. Domestic Wholesale Refined Beet Sugar	World Refined Sugar	Canadian Imports of U.S. Granulated	Difference between U.S. and Canadian prices
2017	690.73	474.93	547.62	143.11
2018	783.61	350.66	377.72	405.89
2019	796.70	335.93	436.21	360.49

[138] As can be seen in **Table 4**, when the U.S. wholesale price for refined beet sugar is compared to the average price of bulk granulated sugar imported into Canada during the POR, the U.S. pricing is higher ranging from USD 143.11 per MT to USD 405.89 per MT. As such, it is reasonable to conclude that export sales of U.S. refined sugar would be sold at dumped prices in the Canadian market, in order to compete with Canadian prices, which are substantially lower than the supported prices in the U.S.

[139] In addition, as can be observed in **Table 4** above, the fact that Canadian import prices are higher than world refined sugar prices provides an incentive for the U.S. to export their surplus sugar to Canada, being geographically close, before seeking other international markets. As a result, because of the relative price differences between the U.S. domestic price and the export price to Canada, exports of refined sugar from U.S. will likely be at dumped prices if the CITT's orders are rescinded.

¹¹⁰ Exhibit 24 (NC) – Producer Response – CSI, Appendix CSI-21.

Small Volume of Imports

[140] Imports into Canada have remained low during the POR and were comparable, in terms of value, to those found in the last expiry review in 2015. As shown in **Table 1**, the value of subject goods from the U.S. represents a relatively small proportion of the total Canadian market in each year during the POR; i.e., less than 1%.¹¹¹ This low volume of imports is likely a direct consequence of the high normal values in place, when compared to the lower Canadian market price and the assessment of anti-dumping duties of 180% of the export price. The small volume of imports since the anti-dumping duties were imposed is an indicator that U.S. refined sugar cannot be sold in the Canadian market at non-dumped prices.

Production, Capacity and Demand

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

Sugar Production

[142] As further described below, the U.S. refining sugar capacity has increased during the POR. The Canadian market by comparison is much smaller and similar in size to the surplus production capability in U.S. Indeed, the total ending U.S. stocks for 2020/21 are forecasted to be 1.622 million MT raw value, or 1.2 million tonnes refined value.¹¹²

[143] Although U.S. sugar production was reduced in 2018/2019 and 2019/2020 due to adverse weather conditions, production is projected to go up for 2020/2021, based on increased acreage and yield forecasts for sugar beet and sugarcane crops.¹¹³ In this regard, USDA data indicates that U.S. beet sugar production in 2020/2021 increased to 5.206 million STRV, a 21.3% increase from 4.293 million STRV in 2019/2020. A similar trend was reported by the USDA for cane sugar production which is projected to reach 4.062 million STRV, an increase of 5.9% from 2019/2020 production and 4.6% above the five year average.¹¹⁴

[144] USDA agricultural projections to 2029 predict that U.S. sugar demand will increase modestly, despite a decrease in consumption of refined sugar and caloric sweeteners, driven by population growth. In addition, U.S. sugar production is projected to increase at a higher rate than domestic supplies which indicates surplus production throughout the decade.¹¹⁵

¹¹¹ Refer to Table 1, page 7.

¹¹² Exhibit 39 (NC) – Case Brief – CSI, para. 52.

¹¹³ Exhibit 39 (NC) – Case Brief – CSI, para. 51.

¹¹⁴ Exhibit 24 (NC) – Producer Response – CSI, Appendix CSI-39, page 3.

¹¹⁵ Exhibit 24 (NC) – Producer Response – CSI, Appendix CSI-41, page 27.

[145] Information on the record indicates that U.S. cane sugar producers have continued to expand their operations in the U.S. since the CBSA's last expiry review. Imperial Sugar Company, located in Savannah, Georgia, made improvements to their facility. In addition, Imperial Sugar Company announced in the first half of 2020 that they will be investing in new sugar refining machinery for their sugar refining plant, adding further capacity to the U.S. market.¹¹⁶

[146] Since the last expiry review in 2015, Michigan Sugar Co. initiated a \$65 million capital upgrade project in 2016 to increase its Crowell, Michigan plant's sugar beet processing capacity by 50%.¹¹⁷ In addition, SC Sugar LLC, located in Gramercy, Louisiana, established a new packaging and distribution facility in 2017. The information on the record indicates that total production capacity in the U.S. industry has increased significantly since the last expiry review, which was estimated at the time to be 13.5 million STRV (11.5 million MT), while as of September 2020 it is estimated, according to the USDA outlook report, to have increased to 13.9 million STRV (12.6 million MT).¹¹⁸ For comparative purpose, it can be seen in Table 2 that the total production capacity of U.S. producers is at least ten times larger than the total Canadian market which is approximately 1.3 million MT.

Unused Capacity of U.S. Sugar Refiners

[147] Over the last five marketing years (2015-2020), U.S. cane refiners had on average approximately 16.7% of unutilized capacity that ranged between 0.8-1.3 million MT, refined value.¹¹⁹ With the exception of the marketing year 2019/2020 when bad weather caused by significant reduction in sugar beet crop, the excess of U.S. cane refining capacity could have been enough to supply the entire Canadian market.¹²⁰ It is reasonable to conclude that the U.S. producers have the capacity and the incentive to increase their production, which will be available for increased exports to Canada, made possible by existing unused capacity. This is directly relevant to the likelihood of continued dumping of U.S. refined sugar into Canada.

[148] Through the RSRP, U.S. refiners can maximize the capacity utilization of their refineries by exporting refined cane or beet sugar to the world market, and then import an equivalent amount of world-priced raw cane sugar outside of the Tariff-Rate Quotas, for processing in a U.S. refinery and sale in the U.S. market. The program helps U.S. sugar refiners compete in world markets.¹²¹ As a result, the RSRP 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.

¹¹⁶ Exhibit 16 (NC) – Exporter Response – ASR-at Q52.

¹¹⁷ Exhibit 24 (NC) – Producer Response – CSI, para. 139.

¹¹⁸ Exhibit 24 (NC) – Producer Response – CSI, para. 145.

¹¹⁹ Exhibit 24 (NC) – Producer Response – CSI, para. 193 and attachment CSI-80.

¹²⁰ Exhibit 24 (NC) – Producer Response – CSI, para. 194.

¹²¹ Exhibit 33 (NC) – Articles, reports and CBSA research, USDA - Policy Sugar, pages 5-6.

[149] It is important to note that the program allows refined sugars derived from either sugar beet or sugarcane to be substitutable, which encourages exports to Canada, given the proximity of sugar beet processing facilities to the Canadian border.¹²² Accordingly, the benefits of the RSRP provide incentives to export refined sugar to Canada at prices that are significantly lower than U.S. domestic supported prices, should the CITT's orders be rescinded.

[150] Domestic marketing allotments that were in place during the 2015 expiry review have been continued with the 2018 Farm bill which extends the program through the 2023 crop year. While the marketing allotments are established each year by the USDA and limit the quantity of sugar that U.S processors can sell for domestic use, they do not limit the amount of sugar beet and cane U.S growers can produce, nor limit the amount that can be refined.¹²³ Further, sugar produced in excess of a producer's market allotment, referred to as "blocked stocks", cannot be used for credit under the RSRP. However, beet sugar producers can create a credit by exporting allotment sugar and subsequently selling the credit to a refiner, allowing the refiner to import world-priced raw cane sugar for refining, thus increasing capacity utilization, and then selling the sugar in the U.S. domestic market at the supported domestic price. The combination of the selling price of the sugar in the world market and the revenue from the sale of the credit make the exportation profitable.¹²⁴

[151] Given that all the major U.S. sugar refiners and marketers currently hold licenses¹²⁵ to participate in the RSRP, it is reasonable to conclude that all sugar exported from the U.S. during the POR has benefited from the RSRP. As such, the RSRP continues to provide an incentive to export dumped sugar into Canada.

Inventories of Refined Sugar

[152] The administrative record contains information on actual and forecasted production of U.S. refined sugar. The USDA monthly report indicates that domestic production of sugar (cane and beet) is projected to be 9.265 million STRV in 2020/2021, up 14% from 2019/2020. This projection also reflects the increase in beet sugar production forecasted at 23.8% with production reaching 5.199 million STRV. According to the USDA, the sugar ending stocks for 2020/2021 are estimated to be approximately 1.788 million STRV or 1.622 million MT, which correspond to a 14.6 % stocks-to-use ratio (the ending stock over the total consumed).¹²⁶ This is significant compared to the total Canadian market of approximately 1.3 million MT, as reported in **Table 2**.

¹²² Exhibit 24 (NC) – Producer Response – CSI, attachment CSI-84.

¹²³ Exhibit 24 (NC) – Producer Response – CSI, attachment CSI-50.

¹²⁴ Exhibit 24 (NC) – Producer Response – CSI, paras 161-165 and 183-184.

¹²⁵ Exhibit 24 (NC) – Producer Response – CSI, para. 181.

¹²⁶ Exhibit 24 (NC) – Producer Response – CSI, attachment CSI-5.

[153] The stocks-to-use ratio is also a key determiner of refined sugar prices; a lower stocks-to-use ratio generally means stronger prices. Since 2017, U.S. stocks-to-use ratios have returned to the USDA's targeted range of 13.5% to 15.5%. Even though the surplus ratio, on average, has declined from 16.2% in the marketing year 2005/2006, to 14.3% in 2019/2020, the volume of ending stocks has increased overall from 1.698 to 1.744 million STRV, respectively, as the production domestically consumed rose. Further, the ending-stock-to use is forecasted to increase and reach 14.6% in 2020/2021 with a volume of ending stocks of 1.788 million STRV.¹²⁷

[154] Given the existence of this considerable stock surplus situation in the U.S and the fact that U.S. supported domestic sugar prices are above world and Canadian price levels, the CBSA finds that it is likely that exporters of subject goods will continue to sell goods to Canada at dumped prices.

Future Performance of Exporters

[155] American Sugar Refining (ASR) is the only U.S. company that provided a response to the exporter ERQ. Based in West Palm Beach, Florida, ASR is a leading producer of refined sugar in the U.S. and operates four sugar refineries and one facility.¹²⁸ In addition, ASR has a large number of associated companies which are involved in the supply, production, and/or marketing of raw or refined sugar. ASR owns the leading sugar brands in the Eastern and Western U.S. regions, as well as Redpath which operates in Canada.¹²⁹

[156] Given the presence of an associated company already well established in Canada (Redpath), and the fact that ASR holds a license under the RSRP which can generate credits on their exports, it is reasonable for the CBSA to conclude that ASR has the incentive to increase its production and exports to Canada if the CITT's orders are rescinded.¹³⁰

[157] Evidence on the record also indicates that, on January 6, 2016, the Mexican Government modified the provisions of its special import zone (IMMEX) which was allowing U.S. to export sugar duty-free to Mexico to be incorporated into other products and then re-exported, using the U.S. RSRP. This recent change in policy prohibits the U.S.-origin sugar from benefiting from the U.S. RSRP when using the IMMEX program and has resulted in reduced demand for refined sugar and reduced capacity utilization of sugar refiners in the U.S.¹³¹

¹²⁷ Exhibit 33 (NC) – Articles, reports and CBSA research, Sugar market stable and upbeat, economist says, p.2 and Exhibit 24 (NC) – Producer Response – CSI, attachment CSI-37

¹²⁸ Exhibit 15 (NC) – Exporter Response – ASR, at Q9.

¹²⁹ Exhibit 15 (NC) – Exporter Response – ASR, at Q6.

¹³⁰ Exhibit 24 (NC) – Producer Response – CSI, at Table 14.

¹³¹ Exhibit 24 (NC) – Producer Response – CSI, par.190.

[158] Information on the record, consisting of monthly reports published by the USDA Foreign Agricultural Service (FAS), exposed a drastic reduction in the use of the RSRP following the recent change in IMMEX program regulation. According to these reports, the total RSRP was 138,616 MT in 2015, before the change in IMMEX, and dropped to 7,499 MT in the 2020 calendar year.¹³² This represents an approximate decrease of 95% from 2015 to 2020 in the use of U.S. refined sugar for export credit under the RSRP to Mexico. As such, the loss of this market reduced the capacity utilization of sugar refiners in the U.S. which has created additional pressure for U.S. sugar producers to seek new export markets such as Canada.

[159] The record also contains evidence showing the most recent import protection measures in place, including WTO bound and applied tariffs on refined sugar for selected WTO member countries.¹³³ With few exceptions, this information indicates that tariffs applied to imports of refined sugar by developed and developing countries remain at very high, often prohibitive, levels. Widespread government interventions combined with some level of domestic support further limit market access for refined sugar.¹³⁴ Canada is a well-developed industrial and consumer market in close proximity to the U.S. border, enabling convenient supply arrangements with U.S. refiners and beet processors. The CBSA is of the opinion that, in the absence of the CITT's orders, Canada would be an attractive market for U.S. exporters as Canada remains one of the few open markets in North and South America without government intervention and import restrictions on refined sugar.

Trade Measures in Other Jurisdictions

[160] In 2020, several jurisdictions imposed other trade measures with respect to refined sugar as well as other sweetener products. At least five countries have imposed safeguard measures and import duties on exports of refined sugar covered by the product definition. For example, Costa Rica currently has safeguard measures at a rate (digressive) of 27.68% in place until July 2023. In addition, Indonesia has banned certain sugar products and adopted safeguard measures against fructose syrup. In March 2020, Lebanon also implemented trade measure against refined white sugar in the form of an import tariff of 7%.¹³⁵

[161] The intensification of trade measures around the world limits the availability of markets outside the U.S. for exported refined sugar and the use of the RSRP to maximize the capacity utilization by U.S. domestic refineries. This leaves Canada as a desirable potential target for U.S. sugar exports, given Canada is one of the few open markets for the subject goods.

¹³² Exhibit 24 (NC) – Producer Response – CSI, at Figure 22 and USDA FAS, Sugar Monthly Import and Re-Export Data, Table 6 -- U.S. Refined Sugar Reported for Export Credit Under the U.S. Refined Sugar Re-Export Program, Fiscal Years 2013 to 2020. Available online at:

<https://usda.library.cornell.edu/concern/publications/tq57nr00k?locale=en>.

¹³³ Exhibit 24 (NC) – Producer Response – CSI, attachment CSI-83.

¹³⁴ Exhibit 24 (NC) – Producer Response – CSI, paras.112-113.

¹³⁵ Exhibit 13(NC) – Exporter Response – Cosun Beet Company, question 51 and Exhibit 28(NC) – Exporter Response –Sudzucker, at Q50.

Outlook for a Continued Global Sugar Surplus

[162] Evidence on the record indicates that during the last decade, the world sugar market has had more surplus years than deficit years. While deficits still occur, they are becoming less important, and the surpluses are getting larger. The 2018/2019 marketing year had a large surplus with high production from India and Thailand, which contributed to increased world stocks. Overall, the world sugar supply has been rising with global production in 2020/2021 forecasted at 183.4 million MT, up 4.9 million MT from 2019/2020.¹³⁶ Inventory stocks have also accumulated, reaching high levels with 71.6 million MT for 2020/2021, an increase of 12% compared to the stock levels of 64.0 million MT in 2011/2012.¹³⁷ During 2019/2020, the COVID-19 pandemic has also decreased apparent consumption which has resulted in the first contraction in global sugar demand since 1980/1981.¹³⁸

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

Proximity of the U.S. Industry to the Canadian Market

[164] As mentioned previously, an important factor to consider is that the U.S. sugar industry is situated close to Canada. The record contains a map showing the locations of the sugar beet factories, cane refineries and sugar distributions centres. A large portion of these factories and centers are concentrated in the northern part of the U.S, including Idaho, Montana, North Dakota, Minnesota, Michigan, Ohio, Pennsylvania, and New York.¹³⁹

[165] In the 2015 review, the CBSA recognized that the geographic proximity with the U.S. border and U.S. sugar processing plants and refineries represents a greater risk, as production levels rise, of dumped sugar entering Canada in the absence of the CITT orders.¹⁴⁰

[166] With widespread government intervention in the sugar sector in other countries continuing to limit market access for refined sugar, Canada remains one of the few nations not protected by a government-regulated sugar program. As such, given its close proximity to the U.S. border, Canada will continue to be an attractive market for U.S. refined sugar in the absence of the CITT's orders.

¹³⁶ Exhibit 24 (NC) – Producer Response – CSI, paras 97-98.

¹³⁷ Exhibit 24 (NC) – Producer Response – CSI, Appendix CSI-26

¹³⁸ Exhibit 39 (NC) – Producer Response – CSI, para. 101.

¹³⁹ Exhibit 24 (NC) – Producer Response – CSI, attachment CSI-84.

¹⁴⁰ Exhibit 24 (NC) – Producer Response – CSI, para. 26 & Exhibit 37 (NC) – Case Brief – CSI, para. 35.

Determination Regarding Likelihood of Continued or Resumed Dumping – the U.S.

[167] Based on the information on the record in respect of: continued dumping into Canada of the subject goods while the orders were in effect; the small volume of imports; production, capacity and demand in the U.S.; trade measures in other jurisdictions; and the proximity of the U.S. industry to the Canadian market, the CBSA determined that the expiry of the orders is likely to result in the continuation or resumption of dumping of refined sugar originating in or exported from the U.S.

Likelihood of Continued or Resumed Dumping – Denmark, Germany, the Netherlands and the United Kingdom

[168] The following analysis pertains to the above four named countries located in the E.U. As mentioned previously, during all but the final three months of the POR, the U.K. was a member of the E.U. and was still within the E.U. customs union and single market during the transition period which ended January 1, 2021. Therefore, for the purposes of this assessment, the CBSA considered the U.K. to be a member of the E.U. A country-by-country analysis is not included, as exporters in the named countries did not previously provide any information to the CBSA allowing such a distinction, even at the time of the original investigation. Although the CBSA received responses from three exporters in the current investigation, one headquartered in the U.K., one in the Netherlands, and one in Germany, these companies provided information on operations conducted throughout the E.U., again not allowing a country-by-country analysis. In addition, comments made regarding the likelihood of continued/resumed dumping by the CSI, exporters, the CEFS and E.C. relate to all four countries, and arguments were not provided on a country-by-country basis.

[169] Since the last expiry review, there have been changes to the E.U. sugar regime. The E.U. reform in 2017 abolished production quotas and minimum beet prices, and at the same time, the WTO export limits were rescinded. These changes came into effect on October 1, 2017.¹⁴¹ However, some trade distorting programs remain in place, including private storage aid, and import tariff protection for all but preferential suppliers.¹⁴²

Continued Dumping while the Orders were in Effect

[170] The CITT's anti-dumping orders concern subject goods from Denmark, Germany, the Netherlands and the U.K.. Lack of response from the exporters at the time of the original investigation resulted in dumping margins ranging from 42% to 180%, in accordance with the ministerial specification. As stated previously, a re-investigation was conducted in 2014. None of the exporters in Germany, Denmark, the Netherlands, or the U.K. participated in the re-investigation. As such, following the conclusion of the re-investigation on September 4, 2014, all imports of subject goods from Germany, Denmark, the Netherlands and the U.K. are subject to 180% anti-dumping duty rate, in accordance with the revised ministerial specification.

¹⁴¹ Exhibit 24 (NC) – Producer Response – CSI, para 91, Attachment CSI–21C, FO Licht – ISSR (6 May 2020), page 3.

¹⁴² Exhibit 24 (NC) – Producer Response – CSI, para 205.

[171] During the POR, imports of subject goods from Denmark, Germany, the Netherlands and the U.K. were minimal, totalling approximately \$267,238, on which \$285,199 of SIMA duties (both anti-dumping and countervailing duty) were assessed, as shown in **Table 1** and **Table 3**. The fact that the duties were assessed indicates that subject goods from those countries were dumped while the orders were in effect.

Decline in the Volume of Imports

[172] In general, imports of the subject goods from the four countries have all but ceased since the injury findings. As shown in **Table 1**, imports from the four countries represent less than 1% of all imports during the POR. This can be attributed to the high anti-dumping duties and countervailing duties that are currently in place. This can also be an indication that the producers from Denmark, Germany, the Netherlands and the U.K. are unable to export to Canada at non-dumped prices. Without anti-dumping duty in place, these exporters would therefore have to resume dumping in order to generate sales in the Canadian market.

Removal of Production Quotas and Export Limits

[173] Information on the record provided by Cosun Beet Company indicates that the E.U. exported 0.74 million MT of white sugar and imported 1.745 million MT of sugar in 2019/2020. However, it is noted that 1.161 million MT of these imports were of raw sugar, which is not subject to the orders.¹⁴³ Therefore, evidence on the record demonstrates that the E.U. is a net exporter of refined sugar.

[174] Following the removal of the production quotas and export limits in October 2017, E.U. production increased significantly from 16,838,693 MT in 2016/2017 to 21,316,844 MT in 2017/2018.¹⁴⁴ The surplus production during this year was 3.3 million MT, more than twice the size of the Canadian market.¹⁴⁵ In that same year, refined sugar exports from the E.U. increased significantly, from 1.3 million MT in 2016/2017 to 3.4 million MT in 2017/2018.¹⁴⁶ In their 2018/2019 Annual Report, Südzucker noted that they took advantage of the removal of the quotas by increasing capacity utilization, leading to an “expansion of low-margin third-country sugar exports.”¹⁴⁷

[175] Exporters in the E.U. will likely continue to take advantage of the unlimited production and exports, and should the orders be rescinded, Canada’s open market would likely be a target for these exports.

¹⁴³ Exhibit 14 (NC) – Exporter Response – Cosun Beet Company, at Q35.

¹⁴⁴ Exhibit 39 (NC) – Case Brief – CSI, para. 134.

¹⁴⁵ Exhibit 39 (NC) – Case Brief – CSI, para. 135.

¹⁴⁶ Exhibit 12 (NC) – Government Response – E.C. – page 2, at Q2.

¹⁴⁷ Exhibit 64 (NC) – Exporter Response – Südzucker – Annex Q28ai – 2018/2019 Annual Report, page 155.

Production within the E.U.

[176] As mentioned above, production in the E.U. increased significantly following the abolition of the production quotas and export limits. Although production decreased in the 2018/2019 and 2019/2020 years, this could be due to unfavourable weather conditions and crop disease outbreaks.¹⁴⁸ Nonetheless, total E.U. annual production has increased by 16% over the past 5 years, from approximately 14.9 million MT in 2015/2016, to an estimated 17.4 million MT in 2019/2020.¹⁴⁹ More specifically, the production in the four named countries has increased by 38.5% since the 2015 expiry review.¹⁵⁰

[177] In addition, human consumption of sugar in the E.U. is expected to decrease by 0.8% annually, while production is expected to recover from the poor conditions of the past two years. The decreased demand and increased production is projected to increase exports, which are estimated to reach 2.2 million MT by 2030.¹⁵¹

[178] Evidence on the record also suggests that there is unutilized capacity in the E.U.¹⁵² This indicates an ability for producers to further increase production, creating a surplus of sugar. With export limits having been eliminated, this surplus sugar could then be exported to third countries. Should the CITT's orders be rescinded, Canada's open market would likely be a target for dumped exports of surplus sugar from the four named countries subject to the CITT's orders.

Price Levels in the E.U.

[179] The E.C. and Südzucker claim that the E.U. domestic prices have aligned closer to world price levels since the 2017 sugar reform. Although there is evidence to support the decrease in prices, evidence on the record also demonstrates that prices have begun to recover, and are projected to continue increasing.¹⁵³ The CBSA further notes that although refined sugar prices in the E.U. have narrowed substantially in comparison to the world price, E.U. sugar prices remain higher than world prices. As of June 2020, the E.U. refined price in the first half of 2020 averaged USD 411 per MT, compared to the average world price of USD 365 per MT.¹⁵⁴ Although E.U. and Canadian prices have been similar since 2015, the Canadian refined sugar import price was USD 404 per MT for the first half of 2020, above the world price and below the E.U. price.¹⁵⁵ With prices above world prices but below E.U. prices, Canada remains an attractive market for E.U. exports.

¹⁴⁸ Exhibit 33 (NC) – Articles, Reports and CBSA Research – USDA Sugar Semi-Annual for E.U., page 1.

¹⁴⁹ Exhibit 24 (NC) – Producer Response – CSI, paras. 208-209.

¹⁵⁰ Exhibit 39 (NC) – Case Brief – CSI, para. 137.

¹⁵¹ Exhibit 12 (NC) – Government Response – E.C., Annex 4, page 27.

¹⁵² Exhibit 39 (NC) – Case Brief – CSI, para. 153.

¹⁵³ Exhibit 24 (NC) – Producer Response – CSI, Exhibit CSI-55 – EC Report – E.U. Agricultural Outlook for Markets and Income 2019-2030.

¹⁵⁴ Exhibit 24 (NC) – Producer Response – CSI, Exhibit CSI-20 – CSI Wholesale (bulk) Refined Sugar Prices.

¹⁵⁵ Exhibit 24 (NC) – Producer Response – CSI, Exhibit CSI-20 – CSI Wholesale (bulk) Refined Sugar Prices.

[180] Information provided by producers in the E.U. demonstrates that the decrease in prices in the E.U. has caused operating losses for producers, indicating that these prices are unprofitable.¹⁵⁶ These unprofitable sales would likely not permit a proper comparison.

[181] As a result, exports of subject sugar from the E.U. to Canada would most likely be found to be dumped.

Loss of Traditional Export Markets for E.U. Exporters

[182] The MENA region, a traditional export market for the E.U., has experienced growth in sugar refining capacity. Evidence on the record indicates that daily refining capacity in the MENA region increased by 21,000 MT between 2010 and 2016. Although the capacity decreased slightly after 2017 and 2018 when refineries in Israel and Bahrain closed, it has increased again in 2020, and is projected to increase further in the next two years due to the openings of new refineries.¹⁵⁷

[183] The current refining capacity of standalone raw sugar processors in the MENA region is approximately 36,000 MT daily. When considering the production capacity of these producers as well as the growth in domestic production of three significant importers in the region, there is an estimated surplus of 2 million MT in the MENA region.¹⁵⁸ The increased capacity and surplus reduces the opportunities for sales to these traditional markets, thus increasing the likelihood of sales of dumped goods to Canada by the named countries, in the absence of the CITT's orders.

Outlook for a continued Global Sugar Surplus

[184] As noted in the discussion of U.S. sugar, forecasts of a global sugar surplus increase the concern that Canada would be an attractive market for dumped sugar from the E.U. if the CITT's orders are rescinded. As mentioned in the discussion of U.S. sugar, evidence has been provided summarizing the sugar policies and import restrictions of other countries.¹⁵⁹

[185] Given the E.U. sugar surplus and the government intervention and import restrictions on imports of sugar in other countries, there is a likelihood of diversion of E.U. refined sugar exports to Canada, in the absence of the CITT's orders, including diversion of sugar from Denmark, Germany, the Netherlands and the U.K. .

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

¹⁵⁶ Exhibit 64 (NC) – Exporter Response – Südzucker – Annex Q28ai.; Exhibit 14 (NC), Exporter Response – Cosun Beet Company, page 9. At Q25.

¹⁵⁷ Exhibit 24 (NC) – Producer Response – CSI, Exhibit CSI-36-A. HIS Markit – International Sugar & Sweetener Report (6 May 2020).

¹⁵⁸ Exhibit 24 (NC) – Producer Response – CSI, para. 122.

¹⁵⁹ Exhibit 24 (NC) – Producer Response – CSI, para. 103-111.; Exhibit 13 (NC) – Exporter Response – Cosun Beet Company, at Q51.

[186] Based on the information on the record in respect of: continued dumping into Canada of the subject goods from these countries while the orders were in effect; the decline in volume of imports; the removal of production quotas and export limits; the production and price levels in the E.U.; the loss of traditional export markets; and the outlook for a continued global sugar surplus, the CBSA determined that the expiry of the orders is likely to result in the continuation or resumption of dumping of refined sugar originating in or exported from Denmark, Germany, the Netherlands and the U.K..

POSITION OF THE PARTIES - SUBSIDIZING

Parties Contending that Continued or Resumed Subsidizing is Likely

Position of the Canadian Sugar Institute regarding the European Union

[187] The CSI presented evidence, additional information, a case brief and a reply submission in support of its position that the countervailing duty measures should remain in place. The main argument made by the CSI is that the E.U. has continued subsidization of E.U. refined sugar while the orders have been in effect.

EU Continues to Subsidizes Refined Sugar

[188] 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.

[189] In their case argument, the CSI noted that the current E.U. direct payments regime, which is comprised of the “voluntary coupled support” (VCS) and “decoupled support” subsidies, allocated approximately EUR 293 billion of direct payments to European farmers over the 2014-2020 period (i.e., an average of about EUR 41.8 billion per year).¹⁶⁰ Further, the CSI note that these subsidies are passed through to the production of refined sugar due to the interconnection between producers of sugar beets and the production of refined sugar. This, in turn, has distorting effects on trade in that exports of subsidized sugar production are at higher levels than would exist in the absence of the subsidies.¹⁶¹

[190] To further support their arguments, the CSI provide an estimate of sugar subsidies by referring to a recent report from ProSunergy (UK) for the American Sugar Alliance.¹⁶² Specifically, they noted that the annual E.U. sugar subsidies in 2019 amounted to EUR 685 million, of which EUR 203 million was VCS for sugar beet production and EUR 299 million was decoupled support.¹⁶³

¹⁶⁰ Exhibit 39 (NC) – Case Brief – CSI, para 82.

¹⁶¹ Exhibit 24 (NC) – Producer Response – CSI, paras. 234-235 and Exhibit 39 (NC) – Case Brief – CSI, para 108.

¹⁶² Exhibit 24 (NC) – Producer Response – CSI, Attachment CSI-76, *The European Union Sugar Industry at World Market Prices*, a report for the American Sugar Alliance by Patrick H. Chatenay, President, ProSunergy (UK) Ltd. (25 June 2019).

¹⁶³ Exhibit 24 (NC) – Producer Response – CSI – para. 237.

[191] As per the CSI, with the removal of the E.U. sugar production quotas and the WTO-mandated limitation on E.U. sugar exports on October 1, 2017, the direct payment subsidies now support substantial surplus production and exports of E.U. refined sugar that would not otherwise exist.¹⁶⁴

[192] The CSI also noted that an impact assessment done by the E.C. concluded that “[c]oupled support is questionable when it is used, as in the sugar sector, to compensate for the lack of competitiveness of a whole country (and not a specific territory)” and that it “introduces elements of unfair competition between Member States”.¹⁶⁵

[193] Based on the information discussed above, the CSI argue that such injurious subsidizing should not be immune from remedy, particularly where it clearly has distorting effects on the production and trade of the subject goods.¹⁶⁶

Parties Contending that Continued or Resumed Subsidizing is Not Likely

Position of the European Commission regarding the European Union

[194] The E.C. provided a response to the CBSA government ERQ and a submission to the CITT’s administrative record with respect to the pre-initiation stage of the expiry review, where it contends that the subsidizing of refined sugar from the E.U. is not likely to continue or resume should the CITT’s orders expire. Therefore, the E.C. argues that the countervailing measures should not remain in place.

[195] The main argument made by the E.C. concerns the elimination of public interventions in E.U. sugar since the reform of that sector in 2017.

Elimination of Subsidization in the E.U. Sugar Sector

[196] The E.C. explained that the E.U. agricultural policy has undergone reforms resulting in the withdrawal of the main schemes that motivated the imposition of countervailing duties and the continuation of measures since the last re-investigation in 2014.¹⁶⁷ Full implementation of these reforms led to the elimination of the E.U. sugar quota regime in 2017. The E.C. also noted that since September 2008, export refunds in the sugar sector have been eliminated.¹⁶⁸

[197] Further, the E.C argues that the reform process has made the price for E.U. refined sugar significantly aligned with world prices. As per the E.C, the E.U. sugar market relies on market forces and the E.U. legislation has not provided public intervention since 2009/2010.

[198] The E.C. also provided comments related to the last CBSA’s last subsidy re-investigation in 2014. The E.C. argues that its Basic Payment Scheme is a “green box” (i.e. it is not trade

¹⁶⁴ Exhibit 39 (NC) – Case Brief – CSI, para. 106.

¹⁶⁵ Exhibit 24 (NC) – Producer Response – CSI, para. 238.

¹⁶⁶ Exhibit 39 (NC) – Case Brief – CSI, para. 80.

¹⁶⁷ Exhibit 12 (NC) – Government Response- EU, at Q10.

¹⁶⁸ Exhibit 2 (NC) – CITT Administrative Record – LE-2020-003-04.01 – p.4.

distortive) as it is in line with the provisions of the WTO as defined in Annex 2 of the WTO Agreement on Agriculture, and is not countervailable.¹⁶⁹

[199] In addition, the E.C. provided information regarding the VCS which is granted to specific types of farming or agricultural sectors (including the sugar beet sector). In particular, the E.C. argued that the VCS is reported as a “blue box” support according to the requirement in Article 6.5 of the WTO Agreement on Agriculture and stress that VCS does not aim to increase production.¹⁷⁰

[200] The E.C. also provided additional information in regards to the Program of Options Specifically Relating to Remoteness and Insularity (Programme d'options spécifiques à l'éloignement et l'insularité - POSEI) which was targeted in the 2015 expiry review. The E.C. explains that POSEI supports the production volumes of refined sugar in the E.U. outermost regions which are facing specific socioeconomic problems due to their geographical situation (remoteness, insularity, smaller size, difficult topography and climate).¹⁷¹

Position of the CEFS Regarding the European Union

[201] The CEFS submitted a case brief and a reply submission in response to the case brief submitted by the CSI. The CEFS provided arguments in support of its position that continued or resumed subsidizing of refined sugar from the E.U. is not likely.

Elimination of Subsidization in the E.U. Sugar Sector

[202] The CEFS stated that the price support program found during the CBSA's last re-investigation in 2014 has been terminated. The CEFS further stated that remaining amount of support under the E.U. POSEI (Programme d'options spécifiques à l'éloignement et l'insularité), is payable to sugar beet growers in the outermost regions. The CEFS noted that this program has not been shown to confer a pass-through benefit to the producers of refined sugar.¹⁷²

[203] The CEFS noted that exporters in both Germany and the Netherlands have stated that they have not received subsidies from either the E.U. or its member states in relation to the production or export of refined sugars. The CEFS explained that support measures in the E.U. have either been terminated or now conform to WTO rules, and therefore are neither prohibited nor actionable.¹⁷³ The CEFS also referenced the submission by the E.C. in which it described specific programs, and indicated that the programs had either been terminated, or do not constitute countervailable support.¹⁷⁴

[204] The CEFS further argued that since the quotas, minimum beet prices and export prices have all been terminated, the E.U. sugar market is a fully liberalized market. The CEFS noted

¹⁶⁹ Exhibit 12 (NC) – Government Response- EU, at question 7 and Exhibit 2 (NC) – CITT Administrative Record – LE-2020-003-04.01 – p.3

¹⁷⁰ Exhibit 12 (NC) – Government Response- EU, at Q7.

¹⁷¹ Idem.

¹⁷² Exhibit 37 (NC) - Case brief filed on behalf of Comité Européen des Fabricants de Sucre, para. 41.

¹⁷³ Exhibit 37 (NC) - Case brief filed on behalf of Comité Européen des Fabricants de Sucre, para. 42.

¹⁷⁴ Exhibit 37 (NC) - Case brief filed on behalf of Comité Européen des Fabricants de Sucre, para. 42.

that seven sugar factories have closed in France, Germany and Poland between 2017 and 2020, and the number of beet growers decreased from 300,000 in 2000 to 140,000 in 2020. The CEFS argued that this demonstrates the restructuring and consolidation of the industry since the reform, as well as the free and competitive state of the market.¹⁷⁵

Position of Südzucker regarding the European Union

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

Elimination of Subsidization in the E.U. Sugar Sector

[206] Südzucker noted that since September 2008, export refunds in the sugar sector are no longer being granted.¹⁷⁶ In addition, due to the E.U. sugar sector reform in 2017, the E.U. quota regime and minimum beet prices were eliminated. It is Südzucker's position that since the 2017 reform, the E.U. is one of the most liberal sugar markets in the world.¹⁷⁷ In addition, as a result of the Comprehensive Trade and Economic Agreement that concluded between Canada and the E.U. in 2014, the E.U. has committed to not granting export refunds to sugar destined for Canada.¹⁷⁸

CONSIDERATION AND ANALYSIS - SUBSIDIZING

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

[208] Guided by the factors in the SIMR, the CBSA reviewed the documentation submitted by the various participants and considered the information on the administrative record. The continued subsidizing while the orders were in effect is considered to be the most relevant to the analysis with respect to the likelihood of continued or resumed subsidizing.

Likelihood of Continued or Resumed Subsidizing – European Union

¹⁷⁵ Exhibit 37 (NC) - Case brief filed on behalf of Comité Européen des Fabricants de Sucre, paras. 44-45.

¹⁷⁶ Exhibit 28 (NC) – Exporter Response – Südzucker – Page 15, at Q51.

¹⁷⁷ Exhibit 28 (NC) – Exporter Response – Südzucker – Pages 13-14, at Q34.

¹⁷⁸ Exhibit 28 (NC) – Exporter Response – Südzucker – Page 15, at Q51.

[209] As mentioned previously, sugar producers in the E.U. are supported by a sugar regime that is administered as part of the Common Agricultural Policy (CAP) by the Commission of the European Communities. The current version of the CAP was established in 2013 and has been applied over the 2014-2020 period.¹⁷⁹ The E.U. sugar policy currently in effect is outlined in Regulation (E.U.) No 1308/2013 of the European Parliament and of the Council of December 17, 2013 establishing a common organisation of the markets in agricultural products. On October 1, 2017, E.U. sugar production quotas were removed which represented 13.5 million tonnes per year, along with the minimum beet prices and WTO-mandated export limitation.¹⁸⁰

Continued Subsidizing while the Orders were in Effect

[210] The CBSA concluded its last subsidy re-investigation on September 4, 2014, which updated the amount of subsidy applicable to refined sugar from the E.U. The amount of countervailing duty is currently set at EUR 24.39 per 100kg, which remains unchanged since the last expiry review.

[211] The CSI argues that various measures from the CAP can be used to continue supporting the E.U. sugar sector to mitigate unexpected market disturbances. Evidence on the record shows the distortive effects, massive surplus production and increased exports in 2017/2018, caused by the decoupled support and VCS subsidies, which remain in effect.¹⁸¹

[212] Both the CEFS and Südzucker argued in their submissions that export refunds have been suspended since September 2008.¹⁸² The CBSA agrees with the position stated by the CEFS and Südzucker, and at the last re-investigation, an amount of subsidy for export refunds was not included in the calculation of the overall amount of subsidy for the E.U.

[213] The E.C. provided information with respect to the POSEI income support provided to the outermost regions of the E.U. The E.C. explained that POSEI supports the production volumes of refined sugar which are facing specific socioeconomic problems due to their geographical situation (remoteness, insularity, smaller size, difficult topography and climate).¹⁸³

[214] The CEFS noted that this program has not been shown to confer a pass-through benefit to the producers of refined sugar. They further stated that exporters in both Germany and the Netherlands have stated that they have not received subsidies from neither the E.U. nor its member states in relation to the production or export of refined sugars.¹⁸⁴

¹⁷⁹ Exhibit 24 (NC) – Producer Response – CSI, para. 233 and Attachment CSI-73.

¹⁸⁰ Exhibit 24 (NC) – Producer Response – CSI, para. 204 and Exhibit 39 (NC) – Case Brief – CSI, para. 119.

¹⁸¹ Exhibit 39 (NC) – Case Brief – CSI, para. 120 and Exhibit Attachments CSI-77-A and CSI-77-B.

¹⁸² Exhibit 28 (NC) – Exporter Response – Südzucker – question 51 and Exhibit 37 (NC) – Case brief filed on behalf of Comité Européen des Fabricants de Sucre, para. 43.

¹⁸³ Exhibit 17 (NC) – CITT Administrative Record – LE-2014-005-04.02 – paras. 3, 4.

¹⁸⁴ Exhibit 37 (NC) – Case brief filed on behalf of Comité Européen des Fabricants de Sucre, para. 42.

[215] During the last re-investigation, the CBSA investigated the POSEI program, and found it to be both a financial contribution under paragraph 2(1.6)(a) of SIMA, and specific under paragraph 2(7.2)(a) of SIMA. Therefore, it was included in the calculation of the overall amount of subsidy for the E.U. Evidence on the record demonstrates that the POSEI program is still in effect, and still provides a benefit to the E.U. market.¹⁸⁵

[216] The CBSA notes that as the 2014 subsidy re-investigation was conducted on an aggregate basis, an amount of subsidy of EUR 24.39 per 100kg currently applies to subject goods from the E.U. Generally, the amount of subsidy will vary according to the Member State, producer or exporter. However, due to the proximity of the E.U. countries, cross-border ownership of production facilities and the fungible nature of sugar, it is difficult to know if the sugar is beet or cane sugar, or even in which production facility the sugar was produced.

[217] The CBSA acknowledges that E.U. sugar prices have aligned closer to the world price levels due to the 2017 reform and elimination of the price support subsidy. However, it also notes that the POSEI program continues, as well as other trade-distorting CAP measures, such as the decoupled and VCS subsidies.

Determination Regarding Likelihood of Continued or Resumed Subsidizing

[218] Based on the information on the administrative record in respect of the subsidizing of the subject goods while the orders have been in effect and the fact that this subsidizing is continuing, the CBSA determined that the expiry of the orders is likely to result in the continuation or resumption of subsidizing of refined sugar originating in or exported from the E.U.

CONCLUSION

[219] For purposes of making determinations in this expiry review investigation, the CBSA conducted its analysis within the scope of the factors found under subsection 37.2(1) of the SIMR. Based on the foregoing consideration of pertinent factors and analysis of evidence on the record, on March 1, 2021, pursuant to paragraph 76.03(7)(a) of SIMA, the CBSA determined that the expiry of the orders made by the CITT on October 30, 2015 in Expiry Review No. RR-2014-006:

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

FUTURE ACTION

¹⁸⁵ Exhibit 12 (NC) – Government Response- EU, at Q7.

[220] On March 2, 2021, the CITT initiated its inquiry to determine whether the expiry of the orders in respect of 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 is likely to result in injury. The CITT's Expiry Review schedule indicates that it will make its decision by August 6, 2021.

[221] If the CITT determines that the expiry of the orders with respect to the goods is likely to result in injury, the orders will be continued in respect of those goods, with or without amendment. If this is the case, the CBSA will continue to levy anti-dumping and/or countervailing duties on dumped and/or subsidized importations of the subject goods. With respect to countervailing duties on subject goods from the U.K., following a request from an interested party, the CBSA will consider whether a review of subsidy amounts will be necessary in light of the U.K.'s departure from the E.U.

[222] If the CITT determines that the expiry of the orders with respect to the goods is not likely to result in injury, the orders will be rescinded in respect of those goods. Anti-dumping and/or countervailing duties would then no longer be levied on importations of the subject goods, and any anti-dumping and/or countervailing duties paid in respect of goods that were released after the date that the orders were scheduled to expire will be returned to the importer.

INFORMATION

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

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Doug Band
Director General
Trade and Anti-dumping Programs Directorate

APPENDIX – PRODUCT DEFINITION AND EXCLUSIONS

The subject goods are defined as:

“Refined sugar, refined from sugar cane or sugar beets, in granulated, liquid, and powdered form.”

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

A number of products have been excluded from the original product definition by the CITT. These exclusions are as follow:

Exclusions as of November 6, 1995

1. Co-crystallized products - For greater clarity, these products are comprised of sugar syrups or liquid sucrose blends and one or more non-sucrose ingredients combined through a co-crystallization process to form a dry solid structure in granulated or powder form.
2. Pearl sugar - For greater clarity, pearl sugar is hard granulated sugar, pellet-formed by subjecting sugar syrup to intense heat. The pellet, which is the size of a pea, is shaped like a football. It is coarser than coarse sugar, i.e. confectioners' sugar.
3. Bottler's floc-free beet sugar - Imported by McNeil Consumer Products Company for use in pharmaceutical preparations.
4. Lyle's Golden Syrup - Produced by Tate & Lyle PLC.
5. Lyle's Pouring Syrup - Produced by Tate & Lyle PLC.
6. Daddy brand wrapped sugar dominoes in 1-kg boxes - For greater clarity, these are sugar cubes which are wrapped in illustrated paper wrappings, each of which contains two sugar cubes.
7. Daddy brand wrapped sugar cubes in 5-kg boxes containing 960 portions - For greater clarity, each portion contains two sugar cubes which are wrapped in illustrated paper wrappings.
8. Saint Louis brand pre-cut brown cane sugar lumps in 1-kg boxes - For greater clarity, these are rough-shaped sugar lumps comprised of brown cane sugar.
9. Daddy brand shaped white sugar pieces in 500-g boxes - For greater clarity, these sugar pieces are pre-cut into diamond, heart, spade and club shapes.

10. Daddy brand brown or blond "Vergeoise" sugar in 500-g cases.
11. Comptoir du Sud brand brown and white sugar pieces in 1-kg and 500-g boxes.
12. Daddy brand brown coffee sugar 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.

Additional Exclusion as of October 30, 2015

26. Specialty-coloured decorative sugar crystals in granulated form combined with carnauba wax and food colouring matter, imported in small retail-ready containers not exceeding 16 oz. for use exclusively as a superficial decoration in baked goods (such as pies, cakes, pastries, muffins, cookies, etc.) and other prepared foods.