BEFORE THE INTERNATIONAL TRADE ADMINISTRATION
OF THE UNITED STATES DEPARTMENT OF COMMERCE AND THE
UNITED STATES INTERNATIONAL TRADE COMMISSION

PETITIONS FOR THE IMPOSITION OF ANTIDUMPING DUTIES AND
COUNTERVAILING DUTIES ON IMPORTS OF SUGAR FROM MEXICO

ON BEHALF OF THE AMERICAN SUGAR COALITION AND ITS MEMBERS:
AMERICAN SUGAR CANE LEAGUE, AMERICAN SUGARBEET GROWERS
ASSOCIATION, AMERICAN SUGAR REFINING, INC., FLORIDA SUGAR CANE
LEAGUE, HAWAIIAN COMMERCIAL AND SUGAR COMPANY, RIO GRANDE
VALLEY SUGAR GROWER'S, INC., SUGAR CANE GROWERS COOPERATIVE OF
FLORIDA AND THE UNITED STATES BEET SUGAR ASSOCIATION

NARRATIVE

Christopher J. Kent*
Christopher J. Cochlin*
Andrew Lanouette*
Marc McLaren-Caux*
Hugh Lee*
CASSIDY LEVY KENT (CANADA) LLP
1470-55, rue Metcalfe Street
Ottawa (Ontario) K1P 6L5
Canada
Tel: 613-482-9300
*Working under the supervision of Cassidy Levy Kent (USA) LLP

Robert C. Cassidy, Jr.
Charles S. Levy
John D. Greenwald
Jennifer A. Hillman
James R. Cannon, Jr.
Jonathan M. Zielinski
Friederike Görgens**
Deirdre Maloney
Senior International Trade Advisor
CASSIDY LEVY KENT (USA) LLP
2000 Pennsylvania Avenue, NW
Suite 3000
Washington, DC 20006
Tel.: 202-567-2300
**Admitted in Massachusetts; acting under the supervision of the principals of the firm admitted in the District of Columbia.
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AND THE UNITED STATES BEET SUGAR ASSOCIATION

NARRATIVE

I. INTRODUCTION AND SUMMARY

These antidumping and countervailing duty petitions against dumped and subsidized imports of sugar from Mexico in all its forms are being filed by the American Sugar Coalition and its members on behalf of the U.S. sugar industry. The American Sugar Coalition and its members ("Petitioners") represent domestic sugar cane growers, cane sugar mills, cane sugar refiners, sugarbeet farmers and sugarbeet processors that, taken together, account for the vast majority of sugar produced in the United States at each stage of the production process. The very sharp rise in dumped and subsidized sugar from Mexico has been the primary cause of the collapse of U.S. market prices over the past year to unsustainable levels, and, therefore, the primary cause of material injury to all segments of the U.S. industry.¹

¹ The U.S. antidumping and countervailing duty statutes instruct the Secretary of Commerce to impose antidumping and countervailing duties when the U.S. International Trade Commission finds material injury, or threat thereof, "by reason of" dumped or subsidized imports. In investigating material injury and causation, the Commission may not weigh different causes of injury; the causation test of the statute is satisfied if the imports under investigation are a cause of material injury even where there are other causes. Here, Petitioners characterize dumped and subsidized

(footnote continued on next page)
A. Evidence of Material Injury "by Reason of" Sugar Imports from Mexico

Sugar is a commodity product. Its market price is highly sensitive to changes in supply. Because of this, the supply of sugar to the U.S. market is regulated by the United States Government. Based on projected demand, the United States Department of Agriculture ("USDA") limits the volume of sugar that U.S. producers can sell on the U.S. market,\(^2\) and also limits the volume of sugar that can be imported under a tariff-rate quota ("TRQ") system from all foreign suppliers except Mexico.\(^3\) Mexico is the only source of sugar supply to the U.S. market that is entirely unregulated; under NAFTA, Mexico has unrestricted duty-free access to the U.S. market for as much sugar as it chooses to export. With record production in crop year 2012/2013 and record stocks, Mexico has more than doubled its sugar exports to the United States from their 2011/2012 levels.\(^4\)

The impact of the jump in Mexican production, stocks and exports to the United States on U.S. market prices was dramatic. In large part because of excess Mexican supply, U.S. market prices fell to the point that (1) other foreign producers were forced to withdraw from the U.S. market, (2) U.S. producers were forced to sell their allotted sugar at prices that have destroyed the economics of the industry, (3) U.S. producers had to forfeit their sugar under the USDA sugar loan program, and (4) the U.S. Government was forced to pay hundreds of millions of

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\(^2\) A detailed description of the U.S. sugar program, including the limitations on the volume of U.S. sugar that may be shipped in the U.S. market, is attached at Exhibit I-1.

\(^3\) Under the TRQ system, imports up to specified volumes of sugar may enter the United States each year at a low rate of duty (sugar from many countries may enter free of duty under the Generalized System of Preferences and various free trade agreements). If the specified volumes of imports are exceeded, then the sugar may still enter the United States but at a high rate of duty. The TRQ system for imports of sugar is described at Exhibit I-2.

\(^4\) The U.S. crop year runs from October 1 through September 30 of the succeeding year.
dollars to remove surplus sugar from the U.S. market. The downward trend in U.S. market prices was only halted when intervention by the USDA took over a million tons of sugar off the market at a cost of more than $250 million.

The cause and effect relationship between the collapse of U.S. market prices and the rise in imports from Mexico from 1.071 million short tons (or 9.6 percent of the U.S. market) in crop year 2011/2012 to 2.124 million short tons (or 18 percent of the U.S. market) in crop year 2012/2013 has been recognized by USDA: A February 14, 2014, USDA analysis of the U.S. sugar market states in no uncertain terms that the price depressing effect of Mexican supply on the U.S. market poses a continuing structural problem for the U.S. industry (and for USDA’s sugar programs):

On February 13, 2014, the U.S. Department of Agriculture (USDA) released its long run projections for the U.S. farm sector for the next 10 years. Included in these projections are those for the U.S. sugar sector through 2023/24. The two primary influences in the projections are large supplies of sugar in Mexico available for export to the United States and continued low world sugar prices through 2019/20. These two influences increase the likelihood of USDA purchases of sugar for resale to ethanol producers through 2019/20.

... The combination of Mexico’s improved sugar production prospects and declining sugar consumption makes more Mexican sugar available for export. Annual exports to the U.S. market are expected to average 1.949 million short tons, raw value (STRV). These projections contrast with the estimated average for the first 6 years of full implementation of the sweetener provisions of the North American Free Trade Agreement (NAFTA) period of 1.364 million STRV.5

Because sugar is a commodity product, U.S. market prices respond quickly to any substantial rise in low-priced supply. To be sure, the impact of excess Mexican supply on the

U.S. industry was mitigated to the extent domestic supply had been sold under long term contracts that predated the decline in prices attributable to the imports but, over time, the lower prices have worked their way through the entire market. Thus, the impact of excess Mexican supply on the U.S. market and the U.S. industry, which was already apparent in the data for the second half of crop year 2012/2013, becomes crystal clear in the year-to-date data for crop year 2013/2014 as shipments in the current crop year are largely under contracts entered into after the collapse of market prices. The impact will become even more pronounced as additional data for crop year 2013/2014 become available because the collapse in U.S. market prices has now been locked into contracts for sugar deliveries over the remainder of the current crop year and beyond. The industry data collected by Petitioners show that, in fiscal year 2013/2014, payments by cooperatives to farmers will be $[ ] million lower than in fiscal year 2012/2013 and the net income of sugar cane millers and refiners will be $[ ] million lower:

<table>
<thead>
<tr>
<th>Table 1</th>
<th>Period Drop in (1) Coop Payments to Growers and (2) Net Income to Corporate Cane Millers &amp; Refiners ($ Millions)</th>
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</thead>
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<tr>
<td></td>
<td>FY 2011/12</td>
</tr>
<tr>
<td>1. Coop Payments to Cane and Beet Growers</td>
<td>[ ]</td>
</tr>
<tr>
<td>2. Net Income of Corporate Millers and Refiners</td>
<td>[ ]</td>
</tr>
<tr>
<td>3. Industry Total</td>
<td>1,902</td>
</tr>
</tbody>
</table>

*Source: Petitioners' survey of industry financial performance.*

Unless and until the situation changes, that is, unless and until Mexican sugar becomes subject to antidumping and countervailing duty discipline, the viability of the domestic sugar industry will remain at risk.⁶

⁶ *Exhibit I-3, February 14 USDA analysis confirms this.*
In addition to the evidence of injury to the domestic industry summarized in Table 1 above, this petition provides other compelling evidence of injury to the industry, including evidence of the increased burden subject imports are putting on USDA’s sugar program. As market prices fell below price support levels, there were significant forfeitures under the U.S. sugar program. To arrest the decline in prices, the USDA took more than a million tons of sugar off the market, but did so only at significant cost.

B. Evidence of Dumping and Subsidization

There is no doubt that the rise in sugar imports from Mexico has been fueled by a combination of (1) imports that have been dumped at prices far below “fair value,” and (2) generous subsidies given by Mexico’s Federal and state governments to the Mexican industry. Using publicly available data, much of which has been collected and published by the Government of Mexico (“GOM”), this petition documents sales of Mexican sugar in the U.S. market at dumping margins of 45 percent ad valorem or more. Similarly, this petition relies on publicly available Mexican data to demonstrate the significance of the subsidies given to a number of Mexican sugar producers.

Mexican producers generally, and the sugar mills that the Mexican government has nationalized in particular, are, by U.S. standards, woefully inefficient. Many of them could not survive without government support. Petitioners understand that NAFTA gives Mexico the right to export sugar to the United States on a tariff-free and quota-free basis — but that does not give the Mexican industry the right to export its surplus to the U.S. market at dumped prices, nor does it permit the GOM to subsidize its sugar industry without regard to the impact of those subsidies on U.S. producers. To the contrary, NAFTA does not in any way abridge the U.S. industry’s
legal right to insist that the fair trade rules established by U.S. law be vigorously enforced.

Article 1902:1 of the NAFTA is explicit on this point:

> Each Party reserves the right to apply its antidumping and countervailing duty law to goods imported from the territory of any other Party.

1. **Dumping**

An important part of the support that the GOM gives its sugar industry is a protected home market. Prices in the Mexican market, which as a matter of government policy is reserved largely for Mexican producers, have been higher than U.S. market prices for most of the past year. The Mexican industry's preference, therefore, has been to sell its production in Mexico. However, with record crops from increasing acreage under cultivation and a strong incentive to maintain prices in its protected home market, the GOM has directed its industry to focus on exports as the outlet for the excess production. Not surprisingly, this has meant a Mexican industry focus on exports to the United States. In other words, Mexican producer dumping has been the consequence of (1) a very deliberate expansion of supply — since NAFTA went into effect the acreage devoted to sugar production in Mexico has *increased* by 66 percent while the acreage devoted to sugar production in the United States has *declined* by 11 percent — and (2), an equally deliberate determination to protect Mexican home market prices from the consequences of excess supply by exporting to the United States.

The extent of the dumping, however, goes beyond a simple comparison of the Mexican industry's average home market prices to the average price of its exports to the United States. While the data show that Mexican home market prices remained well above the price of

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8 *See Exhibit I-4.*
Mexico’s exports to the United States in calendar year 2013, they also show that as Mexican market prices fell over the course of 2013, they were often below the mills’ fully allocated costs of production. The dumping allegation in this petition includes an explicit allegation, supported by reasonably available evidence, of sales below cost; in fact, the petition alleges home market sales of sugar in estandar form that were systematically below cost and, therefore, the normal value of sugar in estandar form must be calculated by reference to its constructed value.

The Mexican sugar mills are not only inefficient but, during calendar year 2013, they were required by law to pay their growers a very high price for sugar cane even as sugar prices were falling. As a result, wholesale prices in Mexico for a 50 kg. bag were often below, and sometimes were significantly below, the average production costs of Mexican mills as calculated by reference to (1) the government-mandated price paid for sugar cane, and (2) an amount for other mill expenses as reported by the GOM’s Instituto Nacional de Estadística y Geografía ("INEGI").\(^9\) Under the antidumping law, below cost home market sales are not “in the ordinary course of trade” and, therefore, may not be used for dumping margin calculation purposes. Based on a comparison between Mexican export prices to the United States and Mexican home market prices that were above cost, Mexican producer dumping margins were generally in the 45-60 percent *ad valorem* range, and in some months exceeded 60 percent *ad valorem*.

The key elements of Petitioners’ dumping margin calculations are set out in Table 2, below:

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\(^9\) See, Exhibit II-2, VTZ study at 25.
Table 2
Basic Dumping Margin Calculation on Calendar Year 2013 Imports of Sugar from Mexico in Estandar (Approximately 70%) and Refined (Approximately 30%) Form (in US$/Pound)

<table>
<thead>
<tr>
<th></th>
<th>Estandar</th>
<th>Refined</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. Fully Allocated Cost of Production</td>
<td>US$0.295/lb.</td>
<td>US$0.309/lb.</td>
</tr>
<tr>
<td>B. Average “Ex-Mill” Price of Above Cost Home Market Sales</td>
<td>all sales below cost</td>
<td>US$0.3399/lb.</td>
</tr>
<tr>
<td>C. Constructed Value</td>
<td>US$0.325/lb.</td>
<td>N/A</td>
</tr>
<tr>
<td>E. Dumping Margin = B-C/C</td>
<td>62.34%</td>
<td>44.88%</td>
</tr>
</tbody>
</table>

2. **Subsidization**

Mexico’s sugar industry has been a ward of the Mexican state, in whole or in part, for decades. In the mid-1980s, 31 sugar mills accounting for roughly half of Mexico’s sugar production were state-owned. By the late 1980s and early 1990s, these mills had been privatized, but the privatizations were accomplished with only a modest down payment by the buyers that was supplemented by substantial public funding from Financiera Nacional Azucarera, S.N.C. (“FINA”), a GOM entity, with subsequent support from a host of other government entities.

In both 1995 and 1998, FINA agreed to significant restructurings of a rapidly increasing sugar industry debt, granting three year grace periods on payments and extending repayment terms up to 15 years at below market interest rates. Then, only three years later, with an industry that was by its own admission uncreditworthy and facing a real danger that the 2001-2002 sugar cane crop would not be processed, the GOM once again went from creditor to owner. Ten years
or so after Mexico’s government-owned mills had been “privatized” through public financing on non-market terms and conditions, 27 of the country’s 57 sugar mills were re-nationalized.\(^\text{10}\)

Following their 2001 re-nationalization, the GOM pumped billions of pesos into the expropriated sugar mills. To the best of Petitioners’ knowledge, little if any of these funds have ever been repaid or otherwise recovered by the GOM; the GOM has either forgiven the debt entirely or allowed close to 20 billion pesos of the FINA debt that existed as of 2005 to be repaid at significantly discounted rates. And although several of the expropriated mills were returned to their owners in 2004 and 2006, the GOM remains in the sugar milling business to this day. The GOM’s Fondo de Empresas Expropiadas del Sector Azucarero ("FEESA") still owns nine mills that, taken together, accounted for 21.6 percent of Mexican sugar production in crop year 2011/2012,\(^\text{11}\) far exceeding the production of the largest privately held sugar producer. From 2008 through 2013, the GOM has continued to subsidize the nine FEESA-owned mills to the tune of additional billions of pesos and has introduced additional subsidy programs to benefit other sugar mills and growers of sugar cane supplying these mills.\(^\text{12}\)

But for the government subsidies it has received, Mexico’s sugar industry could not, and would not, have been able to expand as it has. Because a large part of Mexican production is dependent on subsidies, because the increase in Mexican production has led to a gigantic increase in Mexico’s exports to the United States, and because the increase in Mexico’s exports to the United States has been the primary cause of the collapse of U.S. market prices, the cause and effect relationship between the subsides paid to Mexican sugar producers and material injury to the U.S. sugar industry is beyond serious dispute.

\(^{10}\) See, infra, pp. 82-85.


\(^{12}\) See, infra, pp. 112-147.
II. GENERAL INFORMATION

A. Petitioners' and Industry Support for the Petition

This petition is filed on behalf of the American Sugar Coalition and its members. The Coalition’s members are:

1. American Sugar Cane League,
2. American Sugarbeet Growers Association,
3. American Sugar Refining, Inc.,
4. Florida Sugar Cane League,
5. Hawaiian Commercial & Sugar Company,
6. Rio Grande Valley Sugar Growers, Inc.,
7. Sugar Cane Growers Cooperative of Florida and

The Coalition is “a coalition or trade association which is representative of ... (i) processors, (ii) processors and producers, or (iii) processors and growers” of sugar, a processed agricultural product. As such, the Coalition is itself an interested party as defined by section 771(9)(G) of the Tariff Act of 1930 (the “Act”), 19 U.S.C. § 1677(9)(G). Furthermore, some of the Coalition’s members are themselves sugar producers and others are associations, the majority of whose members are sugar producers. Each one is, therefore, also an interested party under section 771(9)(C), (E) or (F) of the Act, 19 U.S.C. §§ 1677(9)(C), (E) or (F). Exhibit I-5 describes each of the Coalition members.

Sugar is produced in the United States from sugarbeets and from sugar cane. Refined sugar produced from sugar case is identical to refined sugar produced from sugarbeets. Sugarbeet growers deliver their beets to sugar processors that produce refined sugar in a continuous process. All sugarbeet processors in the United States are owned by sugarbeet grower cooperatives.
Sugar cane growers deliver their cane to mills that produce raw cane sugar. Raw cane sugar is inedible. Sugar cane millers deliver raw cane sugar to sugar refiners that produce refined sugar.\(^{13}\)

Through its members, the Coalition accounts for the vast majority of sugar production in the United States at the sugar cane and sugarbeet grower, sugarbeet processor, raw cane sugar miller and cane sugar refiner stages of the production process and, therefore, represents the U.S. industry producing sugar within the meaning of sections 702(c)(4) and 732(c)(4) of the Act, 19 U.S.C. §§ 1671a(c)(4)(A) and 1673a(c)(4)(A). \textbf{Exhibit I-6} shows the proportion of total sugar production represented by Coalition members and their support for the petition.

\section*{B. Other Known U.S. Producers of Sugar\(^{14}\)}

In addition to the Coalition members, other known U.S. producers of sugar are:

1. AmCane Sugar, LLC
   
   David Rosenzweig, CEO
   21010 Trolley Industrial Drive
   Taylor, MI 48180
   PH: 313-299-1300

2. Imperial Sugar
   
   Mike Gorrell, CEO
   Sugar Creek Center Blvd
   Sugar Land, TX 77478
   PH: 912-721-3368
   Email: Mike.gorrell@Ld.com

\(^{13}\) The Mexican cane sugar industry has a different structure. All sugar mills in Mexico produce edible sugar from sugar cane; there are no separate cane sugar millers.

\(^{14}\) Petitioners have not included “melt houses” in this list of other known U.S. producers of sugar because such “melt houses” do not produce edible sugar from sugarbeets or from raw cane sugar; rather they liquefy the sugar that has been produced by Petitioners and the three other U.S. producers.
3. Louisiana Sugar Refining, LLC

Larry Faucheux
1189 Fifth Avenue
Gramercy, LA 70052
PH: 225-869-4550
Email: Larry.Faucheux@Isrsugar.com

C. Related Proceedings

Petitioners have not filed for import relief pursuant to sections 337 of the Act, 19 U.S.C. §§ 1337, or section 201 or 301 of the Trade Act of 1974, 19 U.S.C. § 2251 or 2411, or section 232 of the Trade Expansion Act of 1962, 19 U.S.C. § 1862, with respect to the merchandise that is subject of this petition, nor have Petitioners or any of its members taken any previous action under U.S. antidumping or countervailing duty law against imports of sugar from Mexico.

In 1978 and 1979, antidumping and countervailing duties were imposed on sugar from Belgium, France, Germany and the European Community. These orders were revoked after a sunset review in 2005. In 1980, an antidumping order was imposed on imports of sugar and syrups from Canada. This order was revoked after a sunset review in 1999.

D. Description of the Merchandise and Requested Scope of Investigation

1. The Product under Investigation

The merchandise covered by these petitions is:

raw and refined cane and beet sugar, in dry and liquid forms,
including colored sugar, flavored sugar and blends with other
sweeteners.

The products covered by these petitions are raw sugar, refined sugar, blends of sugar with other
sweeteners containing at least 65 percent sugar by weight, liquid sugar, and invert syrup
produced from sugar cane or sugarbeets. The sugar found in each of these products is
chemically classified as sucrose, a carbohydrate that occurs naturally in fruits and vegetables.
Sucrose is found in quantities large enough for commercial extraction in the stalk of sugar cane,
a perennial subtropical grass, and in the white root of a sugar beet, an annual vegetable which
grows in more temperate climates.

Sugar cane (approximately 11 percent sugar by weight) is initially cut and milled to
obtain sugar juice. Through a process of filtering, evaporating, and centrifuging, this juice, or
raw cane sugar, is produced, which consists of large sucrose crystals coated with molasses. This
intermediate product is normally 90-99 percent pure sucrose and is the principal “sugar” shipped
in world trade. Raw cane sugar is not sold to U.S. consumers because the Food and Drug
Administration (“FDA”) considers it unsuitable for use, either as food or as an intermediate food
ingredient, due to the high level of impurities it contains. Consequently, raw cane sugar is sold
only to refineries, which further process the sugar through additional melting, filtering,
evaporating, and centrifuging, to extract most of the remaining impurities and leave what is
called refined sugar (i.e., greater than 99.9 percent pure sucrose).
Sugarbeets (approximately 17 percent sugar by weight) grown in the United States are converted directly into refined sugar. Fully processed sugars from cane and beets are indistinguishable from each other; purchasers buy and use both for the same end uses.

The primary use of sugar in the United States is human consumption, as a caloric sweetening agent in food. Among its various applications are use in bakery products, cereals, confections, sauces, and meat curing; use in dairy and ice cream applications; and sales directly to consumers. Most sugar is sold as pure granulated or powdered sucrose. Some sugar is sold as liquid sugar (sugar dissolved in water), and in forms not chemically pure, such as brown sugar (refined sugar with molasses added fit for human consumption) and invert sugar syrups, or as sugar blends with glucose or fructose. 19

It is Petitioners’ understanding that all Mexican sugar is at present produced from sugar cane and is mostly shipped and sold in Mexico and to the United States in either semi-refined “estandar” form or in fully refined form. 20 Because “estandar” enters the United States under the Harmonized Tariff Schedule of the United States (“HTS”) subheading for refined cane sugar (1701.99), there are no U.S. import data that distinguish between estandar and refined sugar from Mexico. However, based on Mexican customs data, the National Chamber of the Sugar and Alcohol Industries in Mexico (“Mexican Sugar Chamber”) estimates that estandar “makes up the bulk of the Mexican increase in monthly exports.” 21 Petitioners believe that sugar from Mexico also enters the United States in liquid and syrup forms.

20 Refined sugar has a polarization of 99.9 degrees, while estandar has a polarization range of up to 99.8 degrees and is therefore less pure than refined sugar.
21 See Exhibit I-7, Mexican Sugar Chamber, Dynamics of an Oversupplied Market, 30th Int’l Sweetener Symposium, August 2013 at 28.
The competition between subject imports from Mexico and the domestic like product is
direct and price-based. Imports of estandar from Mexico are a direct substitute for U.S.-origin
raw cane sugar because both are sold to refiners for further processing. At the same time,
estandar also competes directly with U.S. refined sugar when it is sold to end-users that do not
need fully refined sugar. Similarly, imports of fully refined sugar from Mexico are a direct
substitute for, and compete head-to-head with, refined U.S. sugar (made from either cane or beet)
for sales to industrial accounts, food service accounts, retail accounts and distributors (among
others).

2. U.S. Tariff Classification

Sugar that is subject to this petition is presently classifiable under the following
subheadings of the Harmonized Tariff Schedule of the United States:

1701.12.10
1701.12.50

1701.13.05
1701.13.10
1701.13.20
1701.13.50

1701.14.05
1701.14.10
1701.14.20
1701.14.50

1701.91.05
1701.91.10
1701.91.30
1701.91.42
1701.91.44
1701.91.48

1701.99.05
1701.99.10
1701.99.50
Attached as Exhibit I-8 are the relevant subheadings of the HTS. The description of the product subject in these petitions, not these HTS subheadings, define the scope of these petitions.

3. The Production Process

a. Sugar cane processing

The production of sugar from sugar cane in the United States consists of three major steps: harvesting, raw cane sugar milling by cane millers, and refined sugar production by cane refiners. A detailed description of the harvesting and raw cane sugar milling process is in Exhibit I-9. After the sugar cane stalks are cut, they are transported to cane mills where they are prepared for juice extraction. The cane is cleaned and the hard structure of the cane is broken and ground. Next, through a process called imbibition, water or juice is added to the crushed cane to enhance the extraction of juice as the crushed cane travels by conveyer from mill to mill. The crushed cane exiting the mill is called “bagasse.”

The raw juice is then strained and clarified with heat and lime. The insoluble particulate mass, called “mud,” is separated from the limed juice and the clarified juice is sent to evaporators. The evaporator station produces a syrup, which has to then be clarified with lime and phosphoric acid. Afterwards the syrup is sent to the vacuum pans which produce a mixture of liquor and crystals, known as “massecuite.” The massecuite is then sent to the crystallizer which removes the crystals from the massecuite. The crystals are washed, and the centrifuge removes the wash water from the crystals. The by-products of the centrifugal are reprocessed
through the vacuum pans and crystallizers to yield additional crystals. The raw cane sugar is then combined, dried, and cooled.\(^{22}\)

The raw cane sugar is shipped to a cane sugar refinery. (In Mexico, sugar mills produce edible sugar (estandar and refined sugar) in a continuous process from sugar cane. There is little or no production of raw cane sugar for sale in the Mexican market.)

A detailed description of the production of refined sugar from raw cane sugar is in Exhibit I-10. Through a process called “affination,” the raw cane sugar is mixed with a warm syrup to remove the molasses film, washed, and then sent to a premelter and melter where it is mixed with sweetwaters and steam heated. The resulting syrup is clarified either through pressure filtration or chemical treatment with lime and phosphoric acid or carbon dioxide. During the decolorization stage, soluble impurities are removed by absorption until the final liquor color reaches a predetermined level. Using the same sequence used in raw sugar manufacture, the decolorized sugar liquor is then sent to heaters, followed by evaporators, and finally vacuum pans. The massecuite containing the crystallized sugar is discharged to a mixer and to the centrifuge which separates the white sugar from the sugar liquor that has to be reprocessed. The white sugar is washed again, dried, and finally screened and packaged.\(^{23}\)

\(^{22}\) The raw sugar consists of large sucrose crystals coated with molasses and has an amber color. This intermediate product (raw sugar) is normally 90-99 percent pure sucrose but is not sold to U.S. consumers because the Food and Drug Administration (“FDA”) considers it unsuitable for use, either as a food or as an intermediate food ingredient, due to the high level of impurities it contains. Rather, the raw sugar is sold to refiners.

\(^{23}\) A variety of products are produced from this refined sugar, including granulated sugar, specialty sugars (such as brown sugar and powdered sugar), liquid sugar, syrups and blends.
b. **Sugarbeet processing**

A detailed description of the processing of sugarbeets into refined sugar is in Exhibit I-11. The harvested sugarbeets are screened to remove dirt and the beet tops, cleaned, and sliced into thin strips called “cossettes.” These cossettes are sent to diffusers which extract sucrose using hot water. The resulting sugar-enriched water, called raw juice, is sent through purification. The juice mixture is heated, passed through screens to remove excess particles, and subjected to two carbonation tanks in which lime and carbon dioxide are added to remove further impurities. The juice is then filtered and sulfur dioxide is added to prevent darkening of the juice. During the evaporation process, the water is removed, resulting in a thick juice that is infused with crystalline sugars and filtered to produce a standard liquor. This liquor is then sent to vacuum pans for crystallization. The resulting product, massecuite, is poured into centrifuges that separate the crystals from the liquid. The liquid is reprocessed and the remaining crystals are washed, cooled, dried, and packaged.

E. **Country of Exportation**

The sugar that is the subject of this petition is produced in Mexico. Any Mexican sugar that is being trans-shipped through any third country to the United States is subject to this petition. At present, Petitioners have no specific knowledge of any such trans-shipments.

F. **Mexican Producers and Exporters of the Subject Merchandise**

Petitioners are aware of at least 54 Mexican sugar mills that operate in 15 of Mexico’s 32 states. These mills are concentrated in the major sugar cane growing areas of Veracruz, San Luis

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24 Unlike sugar cane which must be milled into raw sugar before refining, refined sugar from sugarbeets is produced by a continuous process within the same facility.
Potosi, Jalisco, Chihuahua and Oaxaca and most belong to a group of mills under common ownership (i.e., mills within a group are related parties). In terms of production and exports, the largest sugar producing group of sugar mills is the one owned by the GOM and controlled by FEESA. The nine mills in the FEESA group account for over 21 percent of Mexican sugar production. The largest privately held groups of mills are, in order of their production, the six Grupo Beta San Miguel mills, the five Grupo Zucarmex mills and the five Grupo Ingenios Santos mills. A list of known producers and exporters of sugar from Mexico by group, and the mills that belong to each group, is included in Exhibit I-12.

Because of (1) the different regions in which the Mexican mills operate, and (2) the distinction between government-owned and privately-held mills, Petitioners urge Commerce to select as mandatory respondents in its antidumping and countervailing duty investigations the FEESA nationalized group of sugar mills (i.e., the largest sugar producer in Mexico) as well as the largest one or two groups of privately held mills. This way, the antidumping and countervailing duty investigations will include the largest sugar producers/exporters that are (1) both government-owned and privately held, and (2) are located across all of Mexico’s major sugar producing regions.

G. Volume and Value of Imports

The volume and value of U.S. imports of sugar from Mexico and other countries are set out in Exhibit I-13 for calendar years 2011, 2012 and 2013. These data show a very sharp


26 The volume and value data presented in that exhibit are drawn from the USITC’s data web for all HTS numbers included within the scope of the petition and are presented on a calendar year basis. Elsewhere in the petition, import and production data are drawn from USDA data, which provide comprehensive data on both U.S. production and imports, but solely on a volume basis. Data drawn from USDA are presented on a crop year (October-September) basis.
increase in subject imports over the period of investigation, both absolutely and relative to
domestic production and consumption as well as a sharp drop in their average unit values.

H. Names and Addresses of U.S. Importers

Based on information reasonably available to Petitioners, a list of known importers of
sugar from Mexico during the 12-month period preceding the filing of this petition is included in
Exhibit I-14.

I. The U.S. Industry that Produces the “Domestic Like Product”

For purposes of assessing industry support for this petition and the impact of the subject
imports on domestic producers of the like product, Petitioners submit that the domestic like
product should be defined in a way that is co-extensive with the scope of the petition, that is,
sugar in all its forms, whether derived from sugar cane or sugarbeets.

1. The Domestic Like Product Is Sugar in All its Forms

   a. Raw and refined sugar constitute a single like product

   In both its first and second sunset reviews of sugar from the European Union, Belgium,
   France and Germany, the Commission concluded that a semifinished product analysis supports
   the inclusion of raw and refined sugar in a single like product.\(^{27}\) Nothing has changed with
   respect to the production or use or sale of sugar since 2005 that would suggest any change to the
   Commission’s analysis in this investigation.

   In performing its semi-finished product analysis, the Commission traditionally examines:
   (1) whether the upstream article is dedicated to the production of the downstream article or has

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\(^{27}\)Sugar from the European Union, Belgium, France and Germany, USITC Pub. No. 3793 (Aug. 2005) (hereinafter
“2005 Sunset Review”) at 7 and fn. 22.
independent uses; (2) whether there are perceived to be separate markets for the upstream and
downstream articles, (3) difference in the physical characteristics and functions of the upstream
and downstream articles, (4) differences in the costs or value of the vertically differentiated
articles; and (5) the significance and extent of the processes used to transform the upstream into
the downstream articles. Here, as the Commission found in the first and second sunset reviews,
each of the five factors points to a conclusion that raw and refined sugar are a single like product.
Raw sugar is dedicated to refined sugar production and is itself unfit for human consumption.
There is no separate market for raw sugar; it is sold only to refineries for use in producing
refined sugar. Both raw and refined sugar consist of sucrose; their physical characteristics differ
only in the degree of processing and therefore the degree of cleanliness and purity.

b. Cane and beet sugar constitute a single like product

Petitioners also submit that no distinction can or should be drawn between sugar
produced from sugar cane and sugar produced from sugarbeets. The Act, section 771(10),
defines “domestic like product” as a product which is like, or in the absence of like most similar
in characteristics and uses with, the article subject to an investigation. In making its
determination regarding like products, the Commission generally considers a number of factors,
including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of
distribution; (4) customer and producer perceptions of the products; (5) common manufacturing

\[\text{See, e.g., Low-Enriched Uranium from France, Germany, the Netherlands, and the United Kingdom, Inv. Nos.}
\text{701-TA-409-412 (Preliminary) and 731-TA-909-912 (Preliminary), USITC Pub. 3388 (Jan. 2001) at 5-6; Uranium}
\text{from Kazakhstan, Inv. No. 731-TA-539-A (Final), USITC Pub. 3213 (July 1999) at 6 n. 23; Saccharin from China}
\text{Inv. No. 731-TA-1013 (Preliminary), USITC Pub. 3535 (September 2002) at 6, n. 31.}
\[\text{19 U.S.C. § 1677(10).} \]
facilities, production processes, and production employees; and, where appropriate, (6) price. Based on these six factors, and consistent with all prior investigations, the Commission should find that cane and beet sugar constitute a single like product.

Sugar refined from sugar cane and from sugarbeets is identical in its physical characteristics and uses. Sugar refined from sugar cane and sugar refined from sugarbeets are entirely interchangeable and sold through the exact same channels of distribution. Customers perceive them to be the same product as they are generally sold without any distinction in packaging or price. While extracting sugar from sugar cane requires the additional processing step of milling, once the raw cane sugar is extracted, the process for producing refined sugar from either raw cane sugar or sugarbeets is virtually identical. Finally, sugar refined from sugar cane and sugar refined from sugarbeets are chemically indistinguishable and are typically sold for the same price to the same sets of customers.

c. HFCS is not “like” sugar

High fructose corn syrup (“HFCS”) is a sweetener that is primarily used to make soft drinks. Sugar is not “like” HFCS within the meaning of the statute. First, there are important differences between sugar and HFCS in physical characteristics and uses. Sugar consists of sucrose, which is an organic disaccharide consisting of equal parts glucose and fructose chemically joined by a type of covalent bond known as a glycosidic bond. HFCS, by contrast, is made up of the monosaccharides fructose and glucose. Moreover, HFCS has a different bonding structure with free monosaccharides. As a result, the two function differently and are therefore used differently; they cannot be substituted for one another in most applications. HFCS is used

31 See Exhibit I-10, refined cane sugar production; and Exhibit 11, refined beet sugar production.
primarily in soft drinks (because it results in greater stability and a longer shelf life than soft drinks made with sugar), as well as in certain soft baked products. Sugar, on the other hand, is used in a wide variety of applications, including confectionary (where, for example, sugar is preferred because of HFCS’ moisture content and inability to crystallize), bakery, dairy (ice cream makers prefer sugar because HFCS has a lower freezing point), canned food and dry cereal. In addition, more than one-third of sugar is sold to restaurants and other food service suppliers and to retailers for use by individual consumers for baking and as table sugar, while HFCS is not sold for retail consumption.

Second, HFCS and sugar do not share similar channels of distribution. HFCS is sold almost entirely to industrial users. Sugar, on the other hand, is sold to industrial end users, distributors, retailers, and institutional buyers.

Third, customers and producers do not perceive HFCS and sugar to be interchangeable or “like” one another. Customers for HFCS are primarily soft drink producers who purchase HFCS in bulk amounts and in liquid form. Given its stable shelf life and particular sweetening properties, such producers would not and could not easily switch to using sugar. Similarly, customers for sugar are generally purchasing a granulated product for use in particular applications and they do not perceive HFCS to be a substitute for sugar.

Fourth, there are no common manufacturing facilities or production processes used to produce both sugar and HFCS because they are produced by producers using very different processes and inputs. Sugar is extracted from beets or cane while HFCS is manufactured from corn by means of a series of chemical reactions induced by enzymes. As a result, HFCS is produced in chemical facilities where the reaction process can be controlled while sugar is
produced through a natural process of extraction, purification and evaporation involving no chemical reactions.

*Fifth*, the price of HFCS is historically significantly less than the price of sugar.

On the basis of all of the factors traditionally relied upon by the Commission, sugar and HFCS do not constitute "like" products and the producers of HFCS should not be considered part of the domestic sugar industry.

2. **The Domestic Industry Consists of Sugar Cane Growers, Sugar Cane Millers, Sugar Cane Refiners, Beet Growers and Beet Processers**

   a. **Cane growers and beet farmers are part of the domestic industry**

   Section 771(4)(A)\textsuperscript{32} of the Act defines the relevant domestic industry as the "producers as a whole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product." The statute also includes a specific provision for industries producing processed agricultural products which permits the Commission to include the producers or growers of the raw agricultural product as part of the industry producing the processed product, provided a two part test is met: (1) that the processed agricultural product is produced from the raw product in a continuous line of production, and (2) that there is a substantial coincidence of economic interest between the producers or growers of the raw agricultural product and the processors of the processed agricultural product.\textsuperscript{33}

   In both its first and second five-year reviews of sugar from the European Union, Belgium, France and Germany, the Commission found that the test set forth in the grower-

\textsuperscript{32} 19 U.S.C. § 1677(4)(a)

\textsuperscript{33} Tariff Act of 1930 § 771(4) (E), 19 U.S.C § 1677(4)(E).
processor provision of the statute noted above had been satisfied.\textsuperscript{34} In its second review in 2005, the Commission found that the grounds for including the growers had only strengthened in 2005 over its previous review, finding that “there remains a continuous line of production from sugar cane growers to millers and refiners, and from beet growers to processors” and that “the coincidence of economic interest between growers on the one hand, and sugar millers, processors, and refiners on the other hand, had increased since the first reviews, with an increasing proportion of sugar milled, processed, and refined through cooperative arrangements.”\textsuperscript{35}

The case for the inclusion of cane growers and beet farmers in these investigations is as strong, or even stronger, than it has ever been. There remains a continuous line of production because sugar cane and sugar beets are substantially devoted to raw and refined sugar production, with no other commercially significant uses for the raw agricultural product. Moreover, the coincidence of economic interest between the growers on the one hand and the millers, refiners and processors has only expanded since 2005. At that time, the Commission found that the proportion of beet sugar production by coops was 93.4 percent.\textsuperscript{36} Today, 100 percent of domestic beet sugar production is by coops.

\textbf{b. No domestic refiners should be excluded as related parties or importers}

\[ \text{NAME} \]

imprinted subject merchandise during the last three years. As such, the Commission has the discretion under Section 771(4)(B), 19 U.S.C. § 1677(4)(B), to determine whether or not to exclude [\text{NAME}] from

\textsuperscript{34} 2005 Sunset Review, supra, n. 26 at 8 and n. 29, 30.
\textsuperscript{35} Id.
\textsuperscript{36} Id. at 8, n. 30.
its definition of the domestic sugar industry. Traditionally, the Commission has weighed three factors in deciding whether appropriate circumstances exist to exclude a related party: (1) the percentage of domestic production attributable to the importing producer; (2) the reason the U.S. producer has decided to import the product subject to investigation, i.e., whether the firm benefits from the LTFV sales or subsidies or whether the firm must import in order to enable it to continue production and compete in the U.S. market; and (3) the position of the related producer vis-à-vis the rest of the industry, i.e., whether inclusion or exclusion of the related party will skew the data for the rest of the industry. See, e.g., Torrington Co. v. United States, 790 F. Supp. at 1168. The most significant of these factors is whether the domestic producer accrues a substantial benefit from its importation of the subject merchandise. Allied Minerals v. United States, 28 C.I.T. 1861, 1864 (2004) citing Empire Plow, 11 CIT at 853, 675 F. Supp. at 1353.37

In this instance, as noted in the table below, [NAME] imported limited quantities of subject sugar from Mexico:

<table>
<thead>
<tr>
<th>Imports from Mexico by [ ]</th>
<th>Crop Year 2011 (1,000 short tons, raw value)</th>
<th>Crop Year 2012 (1,000 short tons, raw value)</th>
<th>Crop Year 2013 (1,000 short tons, raw value)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Raw Sugar</td>
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<tr>
<td>Estandar</td>
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<tr>
<td>Refined Sugar</td>
<td>[ ]</td>
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</tr>
<tr>
<td>Refined Sugar</td>
<td>[ ]</td>
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<td>[ ]</td>
</tr>
</tbody>
</table>

37 Allied Minerals v. United States, 28 C.I.T. 1861, 1864 (2004) citing Empire Plow Co. v. United States, 675 F. Supp. 1348, 1353 (Ct. Int'l Trade 1987). Courts have emphasized that, “although little legislative history behind the related parties’ provision exists, the provision’s purpose is to exclude from industry headcount domestic producers substantially benefitting from their relationships with foreign exporters. Congress enacted the provision so that domestic producers whose interests in the imports were strong enough to cause them to act against the domestic industry would be excluded from the ITC’s consideration and investigation into material injury or threat thereof.” USEC, Inc. v. United States, 132 F. Supp. 2d 1, 12 (Ct. Int'l Trade 2001).
By way of comparison, [NAME] domestic production of refined sugar in 2013 [ ] short tons, raw value, indicating that imports of sugar from Mexico were a minimal factor in [NAME] operations. Moreover, the vast majority of the sugar that was imported from Mexico was brought in as [description] and was used by [NAME] as raw material for use [description] to produce refined sugar. [NAME] decision to import from Mexico was driven by [business strategy].

In terms of the percentage of domestic production, [NAME] accounted for approximately [ ] percent of total U.S. refined sugar production in 2013. Exclusion of [ ] from the domestic industry would, therefore, [EFFECT] the domestic industry data for purposes of injury analysis.

In sum, given the small volume of [ ] imports, the [business activity], the [description] portion of domestic sugar production attributable to [NAME], the significant amount of investment, capital, production facilities and employees [NAME] in the United States and [BUSINESS POSITION] as domestic producer of refined sugar, the Commission cannot legitimately exclude [NAME] from its definition of the domestic industry.
c. Melt houses should not be included in the domestic industry

There are a number of domestic processors that import Mexican "estandar" and refined sugar to produce liquid sugar. These "melt houses" should not be included within the domestic sugar industry for purposes of these investigations.38

While the statute defines the domestic industry as "producers as a whole of domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product,"39 the Commission has the discretion to exclude those companies that engage in only a minor level of production activity or that are themselves importers.40 Under either principle, the "melt houses" should be excluded from the domestic industry.

In determining whether a company is engaged in a sufficient level of domestic production-related activity to qualify as a domestic producer, the Commission generally considers six factors: (1) the source and extent of the firm's capital investment; (2) the technical expertise involved in U.S. production activities; (3) the value added to the product in the United States; (4) employment levels; (5) the quantity and type of parts sourced in the United States; and (6) any other costs and activities in the United States directly leading to production of the like product. No single factor is determinative and the Commission may consider any other factors it deems relevant in light of the specific facts of the investigation.41

38 Petitioners do not have a comprehensive list of "melt houses" but are aware of the following: CSC Sugar LLC; Indiana Sugars, Inc.; Able Sales Company; L&S Sweeteners; International Sugars Inc.; and Sweeteners Plus Inc.
40 See Tariff Act of 1930 § 771(4)(B)(ii), 19 U.S.C. § 1677(4)(B)(ii) ("if a producer of a domestic like product and an exporter or importer of the subject merchandise are related parties, or if a producer of the domestic like product is also an importer of the subject merchandise, the producer may, in appropriate circumstances, be excluded from the industry.").
41 Diamond Sawblades and Parts Thereof from China and Korea, Inv. Nos. 731-TA-1092-93 (Final), USITC Pub. 3862 at 8-11 (July 2006).
Melt houses essentially mix Mexican sugar with water and then filter it in order to produce liquid sugar. Unlike refiners, melt houses cannot make refined sugar from raw cane sugar. Melt houses must obtain edible sugar — refined or estandar — from producers in the United States, mills in Mexico, or producers in other countries. Melt houses do not increase the purity of the sugar. Cane refiners, on the other hand, take any form of raw cane sugar or estandar, and engage in a number of steps and processes, including affination, defecation, clarification, absorption, and crystallization to reduce impurities, before evaporating it to create granulated sugar. Melt houses are simply adding water to create liquid sugar.

Even if the Commission were to decide that the melt houses engage in a sufficient amount of production activity to qualify as part of the domestic industry, the Commission should exercise its discretion to exclude the melt houses as related parties. Traditionally, the Commission has weighed three factors in deciding whether appropriate circumstances exist to exclude a related party: (1) the percentage of domestic production attributable to the importing producer; (2) the reason the U.S. producer has decided to import the product subject to investigation, i.e., whether the firm benefits from the LTFV sales or subsidies or whether the firm must import in order to enable it to continue production and compete in the U.S. market; and (3) the position of the related producer vis-à-vis the rest of the industry, i.e., whether inclusion or exclusion of the related party will skew the data for the rest of the industry. The

42 Pursuant to section 771(4)(B) of the Act, 19 U.S.C. § 1677(4)(B), the Commission may exclude from the domestic industry any producers that are related to an exporter or importer of subject merchandise or which are themselves importers. See Torrington Co. v. United States, 790 F. Supp. 1161, 1186 (Ct. Int'l Trade 1992), aff'd without opinion, 991 F.2d 809 (Fed. Cir. 1993); Sandvik AB v. United States, 721 F. Supp. 1322, 1331-32 (Ct. Int'l Trade 1989), aff'd mem., 904 F.2d 46 (Fed. Cir. 1990); Empire Plow Co. v. United States, 675 F. Supp. 1348, 1352 (Ct. Int'l Trade 1987). The Court of International Trade has held that “the decision whether to exclude parties who import or are related to exporters of the subject merchandise from consideration of the domestic industry is within the discretion of the Commission.” Torrington at 1168.

43 See, e.g., Torrington Co. v. United States, 790 F. Supp. at 1168.
most significant of these factors is whether the domestic producer accrues a substantial benefit from its importation of the subject merchandise.\textsuperscript{44}

Here, the melt houses that import Mexican estandar or refined sugar do so because the price of the imported product is more favorable than the price of the domestic refined sugar that they would otherwise use to mix with water and make liquid sugar. In other words, not only do the melt houses accrue a substantial benefit by importing, but that benefit results entirely from the dumped and subsidized prices of their imports. Because these melt houses account for a small part of domestic production, their exclusion from the Commission’s analysis will not skew the data. Liquid sugar in total accounts for approximately 17 percent of all sugar production and Petitioners produce substantial quantities of liquid sugar.\textsuperscript{45} To the contrary, if anything their inclusion would skew the data because unlike bona fide domestic producers, they benefit substantially from unfairly traded sugar from Mexico.

\textsuperscript{44} Allied Minerals \textit{v.} United States, 28 C.I.T. 1861, 1864 (2004) citing Empire Plow at 1353. Courts have emphasized that,

\begin{quote}
“although little legislative history behind the related parties’ provision exists, the provision’s purpose is to exclude from industry headcount domestic producers substantially benefitting from their relationships with foreign exporters. Congress enacted the provision so that domestic producers whose interests in the imports were strong enough to cause them to act against the domestic industry would be excluded from the ITC’s consideration and investigation into material injury or threat thereof.” USEC, Inc. \textit{v.} United States, 132 F. Supp. 2d 1, 12 (Ct. Int’l Trade 2001). Thus, the legislative history of § 1677(4)(B) evinces Congress’ intent to exclude domestic producers who have accrued a substantial interest in the subject merchandise.”
\end{quote}

\textsuperscript{45} Estimated from archived Sweetener Market Data at www.usda.gov/FSA. Those data indicate that liquid sugar sales in 2012 were 1,868,009 short tons, raw value, while sales by members of the American Sugar Coalition accounted for, at the very least, $\text{\[40\]}$ percent or $\text{[\_\_\_\_\_\_\_\_\_\_] }$ of that liquid sugar total. Because Petitioners were not able to collect comprehensive data on liquid sugar production by all domestic cane refiners and beet processors, Petitioners believe that the $\text{\[40\]}$ percent figure significantly understates the role that domestic producers play in the production of liquid sugar and consequently overstates the role of melt houses.
III. THE U.S. SUGAR INDUSTRY HAS BEEN MATERIALLY INJURED BY REASON OF UNFAIRLY TRADED IMPORTS OF SUGAR FROM MEXICO

A. The Domestic Like Product is Coextensive With the Scope and Consists of All Sugar

Petitioners have defined the scope of this petition and the domestic like product to be coextensive, consisting of raw and refined cane and beet sugar, in dry and liquid forms, including colored sugar, flavored sugar and blends that are at least 65 percent sugar. The domestic industry consists of all cane growers, millers and refiners and all beet growers and processors, but does not include “melt houses” which simply process Mexican sugar into liquid sugar.

B. Subject Imports Surpass the Negligibility Threshold

Pursuant to section 771(24) of the Act, 19 U.S.C. § 1677(24)(A)(i), imports from any single country that account for less than 3 percent of the total import volume in the most recent 12-month period for which data are available that precedes the filing of the petition are considered negligible. Exhibit I-15 sets forth monthly import volumes of Mexican sugar for the period February 2013 to January 2014, which is the most recent 12-month period for which data are currently available. As the data indicate, Mexico was by far the largest source of imports, accounting for over 73 percent of total imports.

C. Conditions of Competition

Because sugar is a commodity product that is traded on a daily basis, and because sugar produced in Mexico (or elsewhere) is a perfect substitute for sugar produced in the United States in virtually all applications, competition between subject imports from Mexico and the domestic like product is based on price. Changes in price do not, however, have a major impact on demand. Apart from major periodic shifts in sugar use (such as the switch by soft drink
manufacturers in the 1980s from sugar to HFCS), U.S. demand for sugar has grown slowly and steadily over time as the country’s population has grown. Sugar supply, by contrast, varies as acreage devoted to sugar cane and sugar beets, the yields per acre planted, and the sugar content of the crop change. Market prices for sugar are highly sensitive to changes in supply.

1. Supply and the Elasticity of Supply
   a. Supply

   The U.S. sugar market is supplied by (1) domestic sugar produced from sugar cane and sugar beets which is subject to marketing allotments set by USDA, (2) imports from countries other than Mexico, which are subject to the TRQ regime, and (3) imports from Mexico, which are entirely unregulated. Potential supply from each source can and does change as the acreage devoted to sugar rises or falls and as yields and sugar content change with changes in the weather and technology. However, the restrictions on the tonnage of domestic and TRQ country supply that may be sold in the United States limit the impact of surplus domestic and TRQ country sugar supply on the domestic market. By contrast, the absence of any such limits on Mexican supply means that excess production in Mexico has a major impact on the U.S. market.

   In the fourteen years between January 1, 1994, when NAFTA went into effect, and January 1, 2008, when Mexican sugar gained unfettered access to the U.S. market, Mexican sugar cane acreage increased by about 500,000 acres. Since 2008, Mexican sugar cane acreage has increased by another 336,000 acres. The combination of increasing acreage, improvements in technology and favorable weather conditions led to a record Mexican sugar crop in crop year 2012/2013, and the expanded acreage will produce another large crop in the present crop year.

46 See Exhibit I-2 for a description of the TRQ system for imports of sugar.
with Mexican supply expected to far exceed Mexican demand. In fact, expectations are that Mexico’s sugar production will exceed Mexico’s demand for sugar for years to come.

In sharp contrast to the situation in Mexico, the acreage devoted to sugar cane and sugarbeet production in the United States has declined by about 11 percent since NAFTA went into effect and 38 American sugar producing plants have been shuttered. To be sure, the crop year 2012/2013 harvest and resulting sugar production rose over crop year 2011/2012 levels because of a weather-related yield gain, but unlike Mexico, the U.S. industry does not produce a sugar surplus (and even if it did, it could not sell sugar into the domestic market beyond the market share allotted to it by USDA).

Potential supply from the most TRQ countries is more than sufficient to fill their quota volumes. The issue for TRQ country supply is not whether it can fill the allotted quotas, but whether, given relative U.S. and world market pricing, there is any reason to do so. When U.S. prices drop to, or near, world price levels, the TRQ countries have no incentive to ship sugar to the U.S. market. This was the case for crop year 2012/2013. According to an August 2013 market analysis published by USDA, the supply of imported sugar from TRQ countries fell sharply in 2013 because the Mexican surplus drove U.S. market prices down to a level that discouraged TRQ country imports:

The mechanism behind generalized lower TRQ imports ... is a low margin between U.S. and world raw sugar prices. Depending on transport and other marketing costs, lower margins make exports from TRQ countries to other countries correspondingly more profitable than shipment to the U.S. market. Table 11 shows average July-September (third-quarter) U.S. and world raw sugar prices, the margin between them, and that margin as a proportion of the U.S. raw sugar price. The margin for 2013 is the lowest in the NAFTA period. It is here hypothesized that the narrow margin is largely attributable to the availability of a large Mexico-imported supply. Figure 4 shows that over the NAFTA period the price margin as a proportion of the U.S. raw sugar price is an
inverse function of the Mexico import share. (Emphasis supplied.)

In sum, while the supply of sugar to the U.S. market varies as weather conditions change, there is little question that in crop year 2012/2013 and into crop year 2013/2014, Mexico had a significant surplus available for export to the United States while domestic sugar supply was limited by USDA marketing allotments. In addition, TRQ supply fell because the gap between U.S. market prices and world market prices had narrowed to a point that substantially reduced the economic incentive to export TRQ sugar to the U.S. market.

b. Elasticity of supply

In any given year, the ability of sugar suppliers, whether domestic or foreign, to increase shipments to satisfy an increase in domestic demand depends on both the acreage devoted to sugar, weather and other production related variables and, for U.S. and TRQ-country producers, on the limitations that USDA places on their access to the U.S. market. Over the period of investigation, Mexico has produced sugar surpluses that have caused a surge in their exports and a sharp rise in inventories. Under these conditions, and as long as U.S. market prices are above world market prices, the elasticity of Mexican supply has been high. The elasticity of domestic supply and TRQ country supply, by contrast, has been (and will remain) much lower because USDA controls the volume of domestic and TRQ sugar that may be sold in the U.S. market.

2. Demand and the Elasticity of Demand

The cost of sugar is a small part of the cost of most sugar containing foods (and other products), whether at an industrial, food service or household level. To illustrate, Figure 1 below

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plots the price of a Hershey Bar over time as the price of sugar changes. Changes in the price of sugar have had no discernible impact on the Hershey Bar pricing:

**FIGURE 1**

Chocolate bar prices soar over past three decades, from 35 cents to $1.39, but the cost of the sugar in those bars remains just 1-3 cents; Price of sugar has no effect on retail product prices

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Sources: Sugar prices: USDA, wholesale refined sugar, Midwest market, calendar year averages. Hershey bars: Hershey Bar Index http://www.foodtimeline.org/foodfaq5.html (not available for all years) and survey of Safeway market prices; Arlington, VA. Based on 44-gram bar with 23 grams of sugar. 2010 price spike due to temporary global sugar shortage.
As these data demonstrate, the elasticity of demand for sugar is very low, -0.05.  

These examples explain why domestic demand for sugar changes little even as there have been significant changes in the per pound price of sugar. To be sure, there were significant change in sugar demand when the soft drink industry moved from sugar to HFCS, but that switch occurred over 30 years ago. In the decades since, U.S. demand for sugar has been growing slowly but steadily as the U.S. population has grown — and this trend is expected to continue for the foreseeable future.

3. **Competition and the Elasticity of Substitution**

Subject imports from Mexico are a perfect substitute for domestic sugar in most, if not all, applications. Because sugar supply from different sources are perfectly substitutable, they compete largely, if not exclusively, on price and, consequently, the elasticity of substitution between them is very high, *i.e.*, when additional low-priced supply from Mexico becomes available, domestic suppliers must meet the Mexican price or lose sales. A high elasticity of substitution for sugar coupled with inelastic demand and a high elasticity of Mexican supply means that excess Mexican supply has (and will always have) a strong downward pull on market pricing. The cause and effect relationship between the period of investigation rise in imports from Mexico and the fall in U.S. market prices is a textbook example of the economics of a commodity market as sugar prices reacted to excess supply.\(^{49}\)

**D. Condition of the U.S. Sugar Industry**

Over the past three years, the condition of the domestic sugar industry has gone from robust to unsustainable as imports from Mexico have soared. With prices falling below support levels, and support levels at or below full production costs, all segments of the domestic industry

\(^{49}\) *See, id.*
have seen their profitability evaporate. In crop year 2013, USDA had to intervene at a cost of $278 million to stabilize prices by removing over one million short tons of sugar from the market. In and of itself, Government intervention on this scale stands as compelling evidence of present material injury. However, the sugar program costs to the government are only a small fraction of the cost to the U.S. industry of the drop in sugar prices. Taken together, as shown in Table 1, the most recent projections for the 2013/2014 crop year indicate cooperative payments to sugar cane growers and sugarbeet farmers, and net income to sugar cane millers and sugar refiners will, in the aggregate, be nearly [ 910-11] dollars less than in crop year 2012/2013.

1. Forfeitures and USDA Purchases are an Indicator of Injury

Section 771(7)(D) of the Act, 19 U.S.C. § 1677(7)(D), contains two special rules with respect to injury determinations affecting agricultural products: First, the Commission may not determine that there is no material injury to U.S. producers “merely because the prevailing market price is at or above the minimum support price.” And second, in assessing injury by reason of subject imports, the Commission must consider any increased burden on government income or price support programs. The legislative history with respect to the latter special rule leaves no doubt that an increased burden on the government for payments to farmers can, in and of itself, demonstrate material injury. As the House Ways and Committee noted in its report,

Since the intervention of the support program in the market, if due to dumped or subsidized imports, is one of the factors the ITC shall consider, the necessity for such government intervention could be sufficient for a showing of injury.

House Report No. 96-317 at 48, Report of the Committee on Ways and Means to accompany H.R. 4537, Trade Agreements Act of 1979 (emphasis added). Similarly, the Senate Finance Committee, in its report accompanying the 1979 Act, noted:
The existence of agricultural price support programs creates special situations which are dealt with in Section 771(7)(D). Government price support operations are intended to assure producers a minimum return through government purchase, loans or direct payments. The nature of these support programs prevents imports from diminishing the amount received by a farmer below a minimum support level. To this extent, farmers may be shielded from the effects of subsidized or dumped imports because the government increases its outlays to absorb these effects. This increased burden on government support programs may be the major impact of subsidized or dumped imports. The Commission must take this into account in making an injury determination.

Senate Report No. 96-249 at 474 (emphasis added). 50

In this investigation, the prevailing market price for sugar was well above the forfeiture loan levels for raw cane sugar and refined beet sugar prices at the beginning of the period of investigation, but as Mexican imports poured into the market, prices were driven below the forfeiture loan levels. These low prices cost the United States Government $278.2 million dollars during Crop Year 2012/2013 as a result of forfeitures and the need to purchase sugar under loan for re-export swaps and for ethanol production under the Feedstock Flexibility Program. 51 As a primary cause of the 2013 decline in U.S. sugar prices, the million ton-plus increase in imports from Mexico was a major reason for USDA’s decision to remove a million short tons (raw value) from the market.

2. From Sugar Cane Growers and Sugarbeet Farmers to Sugar Cane Millers, Sugar Cane Refiners and Sugarbeet Processors, the Domestic Industry Has Lost Nearly One Billion Dollars in Revenues

a. Payments to sugar cane growers and sugarbeet farmers have declined to unsustainable levels

Injury to the domestic sugar industry flows from the millers, refiners and the processors that, respectively, buy sugar cane and sugarbeets for milling and refining to the sugar cane

50 For instance, the Commission took the burden on the government’s price support program for beekeepers into consideration in its finding of material injury by reason of less than fair value imports in Honey. See Honey from Argentina and China, Inv. Nos. 701-TA-402 and 731-TA-892-893 (Final), USITC Pub. 3470 (Nov. 2001) at 21.

51 See Exhibit I-17, USDA purchases.
growers and beet farmers that supply them. In the sugarbeet sector, all sugar production is by
coopertives. The beet farmers plant their crop in the early spring and harvest it in September or
October. They transport their crop directly to the processor owned by their cooperative and are
paid approximately 60-70 percent of the value of their crop in December. The remaining
payment is not made to farmers until the following year, when the sugar produced from their
crop has been sold and the final price for that sugar has been determined.

In the aggregate, payments to cane growers and beet farmers rose slightly in fiscal year
2012/2013 from fiscal year 2011/2012 levels. However, cooperative payments to cane growers
and beet farmers are expected to decline from [ ] in 2012/2013 to [ ] billion in
fiscal year 2013/2014 – a [ ] percent decline.52 An income drop of this magnitude
constitutes “material injury” by any objective measure.

b. Cane sugar refiners, sugar cane millers and sugarbeet processors have
seen their profits evaporate over the period of investigation

The financial condition of sugar cane mills, sugar cane refiners and sugarbeet processors
has also deteriorated substantially over the period of investigation as low prices have worked
their way through the market. In the following table, the operating income of millers, refiners
and processors, which stood at [620 million] in FY 2012, falls to [ ] in FY
2013, and [ ] in the first quarter of fiscal year 2014. Because a high percentage of
sugar is sold by long term (e.g., six months, a year or even longer), low contract prices have
already locked into place continuing losses.

52 See Table 1, supra p. 4.
### Table 4
Financial Data of Sugar Processors/Refiners

<table>
<thead>
<tr>
<th>Item</th>
<th>FY Ending in 2011</th>
<th>FY Ending in 2012</th>
<th>FY Ending in 2013</th>
<th>Q1 FY 2013</th>
<th>Q1 FY 2014</th>
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<tbody>
<tr>
<td>Sales Quantities</td>
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<tr>
<td>Sales Value</td>
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<td>5,500,181</td>
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<td>Sales Unit Value ($) / STRV</td>
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<td></td>
<td></td>
<td>800</td>
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<td>Cost of Goods Sold (COGS):</td>
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<td>Raw Materials</td>
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<td>Total COGS</td>
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<td>4,880,000</td>
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<td>Gross Profit or (Loss)</td>
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<tr>
<td>Total SG&amp;A Expenses</td>
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<td>754,018</td>
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<td>Operating Income or (Loss)</td>
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<td>Net Income or (Loss) before</td>
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<td>Income Taxes</td>
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</table>

Financial Data Of Cane Millers

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<th>Item</th>
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<th>FY Ending in 2012</th>
<th>FY Ending in 2013</th>
<th>Q1 FY 2013</th>
<th>Q1 FY 2014</th>
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<td>Sales Quantities</td>
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<td>Sales Unit Value ($) / STRV</td>
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<td>Raw Materials</td>
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<tr>
<td>Total COGS</td>
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<td>798,400</td>
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<td>Gross Profit or (Loss)</td>
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<tr>
<td>Total SG&amp;A Expenses</td>
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<td>35,407</td>
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<td>Operating Income or (Loss)</td>
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<td>Net Income or (Loss) before</td>
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<tr>
<td>Income Taxes</td>
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Source: Petitioners’ survey of industry financial performance.

See Exhibit I-18 for detailed sugar cane refiner and sugarbeet processor financials as well as cane miller financials.
E. The Volume and Pricing of Sugar Imports from Mexico Has Had a Significant Impact on the U.S. Industry

1. The Volume of Sugar Imports from Mexico is Significant and Increasing Significantly

The statute instructs the Commission to consider “whether the volume of imports of the merchandise {under investigation}, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.” Section 771(7)(C)(i), 19 U.S.C. § 1677(7)(B)(C)(i). Here, both the volume of imports of sugar from Mexico, and the increase in that volume, both absolutely and relative to U.S. production and consumption, have been unquestionably “significant.”

In 2011, imports from Mexico were already significant, standing at 1.575 million short tons. Imports fell somewhat in 2012 before more than doubling in 2013, increasing from 1.06 million short tons in 2012 to 2.314 million short tons in 2013.53 In market share terms, subject imports rose from approximately 9.0 percent in FY 2011/2012 to over 17.8 percent of the market in FY 2012/2013.54 Mexican imports also captured an increasing share of the total import volume, as Mexican sugar, which represented 3 percent of total imports in 2012, increased to 71 percent of total imports in FY 2013.55

2. Mexico Is the Only Unrestrained Source of Supply in the U.S. Market

This period of investigation rise in the volume of sugar imports from Mexico is a reflection of the fact that Mexico alone has unfettered access to the U.S. market. Mexico has

53 See Exhibit I-13, volume and value of sugar imports from Mexico 2011-2013.
54 See Exhibit I-19, apparent consumption, U.S. imports and market share data.
55 See Exhibit I-13, volume and value of sugar imports from Mexico 2011-2013.
spent the years since NAFTA went into effect increasing its sugar cane acreage by 66 percent while the United States has *reduced* its sugar area by 11 percent.\(^{56}\)

In contrast to Mexico’s free access to the U.S. sugar market, the amount of sugar that domestic producers and other foreign suppliers are permitted to put on the U.S. market is tightly controlled. As part of its sugar program, USDA sets marketing allotments for each domestic producer on an annual basis.\(^{57}\) Thus, even when U.S. producers have a particularly good yield due to favorable weather conditions, they are not permitted to sell any excess sugar over their marketing allotment in the U.S. food market; rather they must export their excess sugar, sell it for non-food use, or store it at their expense until their allotment opens up the following year.

USDA also sets the quantity of imports of raw cane and refined sugar, blended sugar syrups and certain sugar-containing products under a system of TRQs for merchandise from member countries of the World Trade Organization (WTO) and for certain countries under U.S. FTAs. The WTO TRQs contain minimum commitments which may be increased when the U.S. market is in need of sugar but which cannot be decreased below the minimum levels. In 2013, the WTO TRQs were set at the minimum levels. Even so, the low-priced Mexican imports drove a substantial part of the TRQ imports out of the U.S. market by lowering the margin between U.S. and world raw sugar prices.\(^{58}\)

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\(^{56}\) See Exhibit I-4, sugar cane and beet acreage increase/decrease.

\(^{57}\) The U.S. sugar program includes a price support program (loan rates), a domestic marketing allotment that is set at a minimum 85 percent of U.S. consumption, and a feedstock flexibility program to divert surplus sugar to ethanol production. See Exhibit I-1 for a description of the U.S. sugar program.

\(^{58}\) See November 2013 USDA analysis at pp. 26-27 and fn. 36
F. The Pricing of Sugar Imports from Mexico Has Been the Primary Cause of Material Injury to the U.S. Industry

1. Unfairly Traded Sugar Imports from Mexico Have Had Significant Negative Price Effects on the Domestic Industry

Sugar is a commodity product for which demand in the U.S. market has been growing steadily, but slowly, along with the growth of the country’s population. Changes in supply, not changes in demand, have therefore been the primary driver of changes in price. And because sugar is a traded commodity, suppliers have no choice but to meet changes in the prevailing market price.

a. Mexican sugar has depressed U.S. producer prices

The statute requires the Commission to consider the effect of imports on prices in the United States for the domestic like product, including “whether the effect of imports of such merchandise … depresses prices to a significant degree or prevents price increases which otherwise would have occurred, to a significant degree.” Section 771(7)(C)(II) of the Act, 19 U.S.C. § 1677(7)(C)(II). The evidence of price depression caused by imports of Mexican sugar is overwhelming. Imports of sugar from Mexico, which were both significant and increased significantly over the period of investigation, were sold during the period of investigation to the same types of purchasers for the same end uses as domestic sugar. Given the high-degree of substitutability and the commodity nature of sugar, the one million-plus short ton rise in imports of Mexican sugar to the market was bound to cause, and did cause, a significant fall in market prices.

Domestic raw sugar prices were at 40.15 cents per pound in crop year 2011, fell to 26.27 cents per pound at the end of crop year 2012, and then fell to 19.31 cents per pound at the end of crop year 2013, reaching their lowest levels in more than a decade. In 2013, for the first time
since 2002, U.S. market prices fell below the forfeiture level, inducing some producers that had taken loans from the USDA Commodity Credit Corporation ("CCC") to forfeit their sugar to CCC rather than selling their sugar on the open market.\footnote{The loan rate is 18.75 cents per pound for raw cane sugar and 24.09 cents per pound for refined beet sugar for crop years 2012 through 2018. Section 156 of the Federal Agricultural Improvement and Reform Act of 1996 as amended by the Agricultural Act of 2014, 7 U.S.C. § 7272.} As indicated in Exhibit I-17, in crop years 2012/2013 and 2013/2014, USDA was forced by the rise of low-priced Mexican imports to remove 1,047,491 short tons raw value of sugar from market. These actions cost the U.S. Government more than $287 million dollars in 2012/2013. \textit{See Exhibit I-16} for an explanation of the relationship between the rise in sugar imports from Mexico, the fall in the price of raw cane sugar for delivery in the future in the U.S. market, and the transaction prices realized by U.S. producers for their sugar.

\textbf{b. Underselling}

Section 771(7)(C)(ii)(I) of the Act, 19 U.S.C. 1677(7)(C)(ii)(I), instructs the Commission to consider whether there was "significant price underselling" by subject imports compared to the pricing of the domestic like product. To be meaningful in an investigation of sugar from Mexico, underselling analysis requires a departure from the Commission's standard data collection methodology. Given the commodity nature of sugar, the imports under investigation and the domestic product are, as the Commission has recognized in its past investigations and reviews, interchangeable.\footnote{See 2005 Sunset Review, supra, n. 27 at 25.} Quarterly data on the volume and value of sales are, therefore, unlikely to show any pattern of sustained underselling because prices of all suppliers adjust quickly to the prevailing market price.\footnote{There are two futures contracts for sugar traded on the Intercontinental Exchange ("ICE"). The Sugar No. 16 contract is for physical delivery of U.S. grown (or foreign origin with delivery and duty paid by the deliverer) raw (footnote continued on next page)
volume and value data collected in a way that accurately reflects the nature of competition in the market. Where there is direct competition between subject imports and the domestic like product in sales to sets of the same end-users, monthly data may well show the gravitational pull of import pricing on domestic producer prices. In order to limit the burden on both the Commission and the parties asked to supply pricing data, the monthly pricing data could be collected for calendar years 2012 and 2013 and the first two months of 2014 instead of the three year-plus partial year dataset that the Commission typically asks for.

c. Proposed pricing products

As set out below, Petitioners propose that monthly volume and value of deliveries for imported and domestic sugar be collected for seven specific products where there is head-to-head competition between subject imports and the domestic like product. The proposed pricing products are for sales to the same sets of purchasers because that is the only way to capture competitive pricing.

To illustrate, because Mexican estandar competes directly with domestic raw cane sugar for sales to refiners, Petitioners propose that the Commission collect and compare data on sales of Mexican estandar and domestic raw sugar to refiners. At the same time, because estandar and domestic refined sugar compete head-to-head for sales to certain industrial users, Petitioners propose the collection and analysis of sales of both estandar and domestic refined sugar to industrial users. Pricing data that compare imports of estandar only to the price of domestic raw sugar or domestic refined sugar would not reflect the reality of marketplace competition. In the

(footnote continued from previous page)
cane sugar at one of five U.S. ports. The Sugar No. 11 contract is the world benchmark for raw cane sugar trading and is for raw cane sugar F.O.B. vessel at a port within the country of origin of the sugar. Because it is focused on raw cane sugar delivered in the U.S., the No. 16 contract is the contract that is most closely followed and is sometimes linked to contract prices set by purchasers in the United States.
same vein, for some sales (e.g., to retailers) the form of packaging (e.g., 4 lb., 5 lb., 10 lb. bags) matters, but for others (e.g., sales to refiners) it does not. The collection of prices by channel of distribution as Petitioners propose is fully consistent with the Commission’s practice in Citric Acid, Tissue Paper, Wax Ribbons, and Hand Trucks.

Given these market realities, Petitioners suggest the products listed below for pricing analysis, with (1) refined sugar defined as sugar with a polarity greater than 99.8, (2) estandar defined as sugar with a polarity greater than 99.0 but no greater than 99.8, and (3) raw sugar defined as sugar with a polarity less than 99.0 that is not fit for human consumption. The data should be reported in hundred-weight and thousands of U.S. dollars.

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62 Citric Acid and Certain Citrate Salts from Canada and China, Inv. Nos. 701-TA-456 (Final), USITC Pub. 4076 (May 2009) at Section V.

63 Certain Tissue Paper Products from China, Inv. Nos. 731-TA-1070B (Final), USITC Pub. 3758 (Mar. 2005) at Section V.

64 Certain Wax and Wax/Resin Thermal Transfer Ribbons from France and Japan, Inv. Nos. 731-TA-1039 (Final), USITC 3683 (Apr. 2004) at Section V.

65 Hand Trucks and Certain Parts Thereof from China, Inv. Nos. 731-TA-1059 (Final), USITC Pub. 3737 (Nov. 2004) at Section V.

66 Petitioners understand that the “raw value” concept is not generally applied to sales of Mexican sugar in estandar form. Any attempt to impose a “raw value” metric on sales of estandar will likely create rather than resolve price comparison difficulties.
Product 1: Raw cane sugar or estandar sold to sugar refiners.

Product 2: Refined sugar or estandar sold to industrial producers of food, beverages or other sugar-containing-products (e.g., General Mills, Mars, Coca Cola, Kraft).

Product 3: Refined sugar sold in packages of 50 lbs. or less to grocery chains (e.g., Safeway, Harris Teeter, Walmart, Costco).

Product 4: Refined sugar sold in packages of 50 kgs. (110.23 lbs.) or less to institutional and/or food service providers (e.g., Sysco, restaurant chains, bakeries, schools, hospitals, prisons).

Product 5: Refined sugar sold in bulk to institutional and/or food service providers (e.g., restaurant chains, bakeries, schools, hospitals, prisons).

Product 6: Refined sugar or estandar sold in packages of 50 kgs. (110.23 lbs.) or less to distributors (i.e., companies such as Batory Foods that buy sugar to resell to the industrial trade for use as an ingredient).

Product 7: Refined sugar or estandar sold in bulk to distributors (i.e., companies such as Batory Foods that buy sugar to resell to the industrial trade for use as an ingredient).

To repeat a key point, if the Commission’s pricing data are to be meaningful, they must be collected for the pricing products set out above on a monthly basis. Because sugar is a commodity product, prices of all market participants gravitate quickly to any particular price point; comparisons of average prices by quarter could very well be misleading.

2. Lost Sales

As shown in Exhibit I-20, U.S. producers have lost a significant volume of sales to imports of Mexican sugar. In each of the channels of distribution, and most particularly with sales to large retailers such as [company], the evidence indicates that low-priced Mexican sugar displaced U.S. sugar producers at a number of key customers. Taken together, the lost sales noted in Exhibit I-20 total more than [1, $ million] short tons of sugar valued at US$[ ] million.
As the Commission investigates Petitioners’ lost sales allegations, it is important to recognize that the U.S. industry is not privy to the details of a particular purchaser’s switch to Mexican supply. Thus, in some cases, a lost sale allegation may reflect the loss of business to another domestic supplier that, in turn, lost part of its business to imports from Mexico. It is, for example, entirely possible that (1) a large grocery chain has decided to buy Mexican sugar instead of U.S. sugar for a distribution center in the southwest, (2) the U.S. supplier that was directly displaced by imports from Mexico was then given new business at a distribution center further north (and thus did not suffer a net loss of business), but (3) a net loss of business was suffered by the supplier that was displaced by the supplier that had been displaced by the Mexican imports. In other words it is entirely possible — indeed, likely — that the lost U.S. sales were a result of a cascade effect of the switch from U.S. supply to Mexican supply at a different distribution center. The relevant questions for the purchasers are not whether domestic supplier X lost a sale to imports from Mexico at Purchaser Y’s distribution center at Z price, but whether the purchaser increased its purchases of Mexican sugar when there were competitive offers to supply domestic sugar and, if so, whether the pricing of the Mexican sugar was a reason, even if not the only reason, for the switch.

3. Lost Revenues

As set forth in Exhibit I-18, U.S. producers have also lost significant revenues, as they have been forced to lower their prices in order to retain sales to a number of their key customers. As demonstrated, these price reductions resulted in an estimated loss of at least [3,4 million] associated with price reductions on [ ] short tons of sugar sold. As with the lost sales allegations, the lost revenue allegations in this petition are based on information available to U.S. suppliers in the course of their negotiations with purchasers. The question for the Commission to
put to the purchaser is not “Did the U.S. supplier lower its price from X to Y because of Mexican competition” but, rather, “Did the U.S. supplier lower its price during the course of negotiations with the purchaser and if so, did the purchaser have before it an offer of Mexican supply that was lower than the original offer price of the U.S. supplier?”

G. Unfairly Traded Sugar from Mexico Has Had a Significant Negative Impact on the Domestic Sugar Industry

In assessing whether the domestic industry is materially injured by reason of unfairly-traded imports, the Commission considers all the relevant statutory factors reflecting the state of the domestic industry. See section 771(7)(C)(iii) of the Act, 19 U.S.C. § 1677(7)(C) (iii).

1. Decreasing Sales Revenues and Decreasing Profits Demonstrate the Material Injury Caused by Subject Imports

The substantial increase in subject imports at low prices has resulted in the domestic industry’s loss of sales revenues and profits. As indicated, the U.S. sugar refiners and processors’ sales revenues between 2011 and 2012, only to fall by more than percent in 2013 and another percent in the first quarter of 2014. Similarly, the refining and processing industry watched its profits in the first quarter of 2014. These came at a time when the imports from Mexico had put substantial downward pressure on raw sugar prices as well, such that the cost to the refiners and processors to obtain raw sugar declined but they in the face of the dramatically reduced prices for refined sugar. This steep deterioration in the financial condition of the domestic sugar

67 See Exhibit I-18, financial data of domestic cane refiners, beet processors and cane millers.
industry is directly related to declining sales revenues which resulted from increased volumes of Mexican sugar sold at unfairly traded low prices.

2. Decreased Payments to Farmers Is Further Demonstration of Material Injury

In addition to the [ ] suffered by the refiners and processors, the Commission must examine the condition of the farmers and growers of sugarbeets and sugar cane, as they are an integral part of the domestic industry pursuant to section 771(4)(E) of the Act, 19 U.S.C. § 1677(4)(E). Here too, the data indicate a substantial loss in revenue as the payments farmers and growers receive for their crops have fallen the price for refined sugar fell. All beet sugar is produced through cooperative arrangements under which the beet farmers receive payment for their beets after the refined sugar made from those beets is sold. Cane growers’ payments are also a reflection of the price the cane millers are able to obtain for their raw sugar. The data, as reflected in Table 1, show that payments to beet farmers and cane growers for 2013/2014, which have largely been locked in by sales for future delivery under contract, are projected to fall by more than $[ ] million from the 2012/2013 levels, or by [ ] percent.

3. Impact of U.S. Sugar Program

As noted above, the statute contains specific requirements to address the "special situations" that are created by the existence of agricultural support programs. See section 771(7)(D) of the Act, 19 U.S.C. § 1677(7)(D). The first of these rules states that the Commission may not use the minimum support price as a fixed threshold for its material injury determinations and thereby limit its affirmative determinations to those in which the market price has fallen below the minimum support price. In the same vein, Petitioners contend that the Commission should not use the marketing allotments under the sugar program as a fixed
threshold for the volume of domestic sales and tie its injury determination to those cases in
which the domestic sales volume has fallen below the volume of the marketing allotments. To
do so would be to ignore the special situations created by the sugar program and the statute’s
requirement to take such special situations into account.68

Rather, the Commission should recognize that because the sugar program allocates a
certain portion of the U.S. sugar market to the domestic sugar industry on a volume basis, it
would not be appropriate to focus on the volume of U.S. production as a primary indicator of
injury, or to expect a significant decline in the volume levels of U.S. production. The
Commission should focus instead on the revenues from sales, which have plummeted as low-
priced imports from Mexico have surged. The value per short ton, raw value, of shipments of
domestic sugar fell from [§90 ] in Q1 FY 2013 to [ ] in Q1 FY 2014, a fall in just one
year of [ ], or [ ] percent.

In addition, the statute requires the Commission to consider any increased burden on the
government when it examines indicia of material injury. The U.S. sugar program had operated
for more than a decade at no net cost to the taxpayers, as USDA had been able to keep supply
(from U.S. production, Mexico and all other TRQ countries) and demand in close enough
balance to maintain prices that were at or above the loan forfeiture prices. The flood of low-
priced imports of sugar from Mexico has completely upset that balance and pushed prices below
the forfeiture rates set for the sugar program. As a result, the U.S. government has been forced
to expend over $278 million in the last year under the sugar program. That expenditure alone,
and the need to take over one million tons of sugar out of the U.S. food market, are both strong

existence of agricultural price support programs created special situations that are dealt with in section 771(7)(D).”
Senate Report No. 96-249 at 474.
indicators that the U.S. sugar industry has been materially injured by reason of sugar imports from Mexico.

H. Threat of Continuing Injury

In addition to analyzing present material injury, the statute requires the Commission to determine whether the domestic industry is threatened with material injury by reason of the unfairly-traded imports. Section 771(7)(F) of the Act, 19 U.S.C. § 1677(7)(F). When making its threat determination, the Commission is required to examine a number of factors set forth in the statute, including any increase in the foreign producers’ productive capacity or existing unused capacity, a significant rate of increase of the volume or market penetration of the subject imports, and the likelihood that imports of the subject merchandise are entering at prices that will have a significant depressing effect on domestic prices. Section 771(7)(F)(i) of the Act, 19 U.S.C. § 1677(7)(F)(i). Here, all three of these key threat of injury criteria are satisfied.

Mexico has increased the acreage devoted to sugar production by 336,000 acres, or 21 percent, since January 1, 2008. The result has been Mexican sugar production that, routinely, far exceeds Mexican demand. Whenever Mexico produces a significant sugar surplus, it significantly increases its stocks of sugar and thus has the capacity (and incentive) to export large volumes to the United States at destabilizing prices. Moreover, Mexico’s production of sugar now far exceeds its domestic demand, indicating that Mexico must continue to export substantial volumes of sugar with much of that volume destined for the U.S.
To be sure, the size of Mexico’s future sugar crops and, therefore, stocks will vary as weather shapes the yield per acre planted and the sucrose content of the harvest. However, projections by USDA are for substantial Mexican production surpluses over the next ten years. Mexican authorities echo the USDA projections. In a February 2014 presentation, “A New Fall for the Mexican Agriculture, the Sugar Cane Agroindustry,” Mr. Carlos Rello, Director General of FEESA, said that plans are for Mexico’s sugar cane production to rise to 61.6 million metric tons in crop year 2017/2018, far exceeding the 54.79 million metric tons harvested in record 2011/2013 crop year. Given Mr. Rello’s expectations, USDA’s projections and the Mexican Government’s production targets, there can be no doubt that without antidumping and
countervailing duty discipline on Mexican exports, the volume of sugar imports from Mexico that entered the United States in 2013 will soon be surpassed.

The Mexican industry's determination to increase its penetration of the U.S. sugar market is further evident from its established relationships with U.S. refiners, melt houses and retailers, all of whom buy on price. Indeed, increased exports from Mexico over their present level are all but certain because one of the largest Mexican exporters, Zucarmex, has just signed a five-year lease for a liquid sugar production facility in Tucson, Arizona.69 Zucarmex's plans are to produce liquid sugar using Mexican estandar and to begin sales of Zulka Pure Cane Sugar.

Finally, because (1) much of the sugar sold in the United States is sold on contracts which fix price and quantity for a period of one year or more, and (2) imports from Mexico during the past year depressed U.S. producer prices in contracts for future sugar deliveries, the price depressing effects of the imports on future sales have been locked into sales through 2014 and beyond. The threat presented by the pricing of subject imports is, at this point, certain to become present injury over the coming months.

IV. DUMPING

A. The Mexican Sugar Industry

Mexico is the world's seventh largest sugar producing country (counting the European Union as a single country).70 According to the GOM Department of Agriculture (Secretaría de Agricultura Ganadería Desarrollo Rural Pesca y Alimentación or "SAGAPA"), 780,000 hectares


70 See Exhibit II-1, Banco de Mexico Documentos de Investigacion, Working Paper No. 2013-16, Study on the Competitiveness of the Mexican Sugar Industry, November 2013 (hereinafter "Bank of Mexico Study") at Figure 1, p. 35.
of Mexican farmland were devoted to sugar cane production in crop year 2012/2013, up from 673,480 hectares in crop year 2010/2011. The combination of increased sugar cane acreage and favorable growing conditions resulted in a record sugar cane harvest which was then milled by over fifty operating mills spread across several major Mexican sugar producing regions to produce nearly seven million metric tons of sugar. Most of Mexico’s 2012/2013 sugar production, i.e., 64.27 percent, was semi-refined “estandar” with polarity up to 99.8 degrees. Another 29.89 percent was fully refined sugar, and the remaining 5.88 percent was split among various specialty sugars.

1. The Growers

Sugar cane is grown across Mexico by some 160,000 growers concentrated in the states of Veracruz, San Luis Potosí, Jalisco, Oaxaca and Chiapas. Most of them grow their cane on small plots — according to the Bank of Mexico, the size of a sugar cane growing plot of land in Mexico is, on average, 4.5 hectares (or just over 11 acres) and, according to the World Bank, “more than 57 percent of growers have plots smaller than 3 hectares and only 2 percent are larger than 15 hectares.” To put the size of these plots in perspective, the average size of a sugar cane farm in the United States is about 415 hectares. Because the average plot size is small, because only 22 percent of the cane is harvested mechanically, and because less than half

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71 Exhibit II-2B, Grupo Cultiba 2012 Financial Statements (hereinafter “Grupo Cultiba”).
72 Exhibit II-2, VTZ Study at 3; Exhibit II-2B, Grupo Cultiba.
73 Exhibit II-2B, Grupo Cultiba.
74 Exhibit II-1, Bank of Mexico Study at Table 1.
75 Id. at 5.
77 Id.
the sugar cane acreage is irrigated, Mexico's per hectare sugar cane yield is, by international standards, relatively low (i.e., 12.2 percent below the average U.S. yield).78

Sugar cane, which accounts for as much as 8.6 percent of the GDP of Mexico's agricultural sector,79 is by value Mexico's second most important agricultural crop (after corn). The government policy is, therefore, to ensure pricing for sugar cane that can sustain production. Because of their relative inefficiency, this means that Mexico's sugar cane growers need a relatively high price for their cane. To this end, the GOM sets the price that sugar mills must pay for their cane based on a fixed percentage of the wholesale price of sugar. The pricing formula which is described in detail at pages 17-19 of the Bank of Mexico Study is based largely on the wholesale price of sugar in the preceding crop year.80

The reference price for cane payments for each harvest year is published in Mexico's Official Journal (i.e., each year beginning October 1).81 Because the cane harvest begins in November and December each year, nearly all of the sugar from a given harvest will be produced and sold in the following calendar year. For the October 1, 2012 to September 30, 2013 harvest, i.e., the harvest from which virtually all of Mexico's calendar year 2013 sugar exports to the United States came, the reference price for cane payments based on Mexico's home market sales of sugar was Mx$10,618.72, or US$832.78, per metric ton.82 Because calendar year 2013 sugar prices in Mexico were significantly below their calendar year 2012

78 Exhibit II-1, Bank of Mexico Study at 5.
79 Id. at 2.
80 See also Exhibit II-2, VTZ Study at 24.
81 Copies of the reference prices published in the Diario Oficial for the past four years are found in Exhibit II-2G, The sugar cane reference prices for past year are also available online at http://www.dof.gob.mx/nota_detalle.php?codigo=5275529&fecha=26102012 (last accessed March 15, 2014).
levels, this government-mandated price formula for cane imposed costs on Mexico's sugar mills during the period of investigation that were entirely unrelated to the falling prices at which they are able to sell their sugar.

2. The Mills

At present, 55 sugar mills operate in Mexico. Thirty-four of them belong to one of seven sugar producing groups that, taken together, account for over 70 percent of Mexican sugar production.\(^\text{83}\) By far the largest of these sugar producing groups is the Fondo de Empresas Expropiadas del Sector Azucarero ("FEESA"), an agency of the GOM which operates nine expropriated sugar mills in five Mexican states.\(^\text{84}\) The second largest is Grupo Beta San Miquel which owns six mills located in six different Mexican states.\(^\text{85}\) Grupo Zucarmex, with five mills in four different states, and Grupo Ingenios Santos, which also operates five mills in four different states, are the third and fourth largest sugar producing groups.\(^\text{86}\)

In terms of efficiency, the factory yields of Mexico's sugar mills are, on average, well below the yields achieved by American mills.\(^\text{87}\) The economics of sugar production in Mexico are further compromised by the uniform application of the pricing formula for sugar cane without regard to the sugar content of the cane. Thus, during a period of falling sugar prices, Mexican sugar mills not only had to pay a 2013 price for cane that was high relative to the prevailing price of sugar, but mills that were supplied with lower quality cane had to pay a high price for a lower quality product.

\(^\text{83}\) Exhibit II-1, Bank of Mexico Study at Table 2. According to SAGARPA data, there were 55 mills operating during the 2012/13 harvest year. Exhibit II-2A.

\(^\text{84}\) Exhibit II-1, Bank of Mexico Study at Table 2; see also Exhibit II-2, VTZ Study at 7.

\(^\text{85}\) Exhibit II-1, Bank of Mexico Study at Table 2.

\(^\text{86}\) Id.

\(^\text{87}\) Id., Figure 14.
B. The Mexican Market

In crop year 2012/2013, Mexico consumed just under four million metric tons of sugar of the nearly seven million metric tons it produced.\(^8\) Essentially all Mexican demand, \textit{i.e.}, 99.8 percent, was supplied by Mexican mills,\(^9\) with between 55 percent and 60 percent sold for household consumption and 40 percent to 45 percent sold to industrial users (about half of which was sold to the bottling industry).\(^9\) About 75 percent of Mexican market sales are of standard sugar or estandar, a semi-refined form of sugar with a polarity that is greater than raw sugar but less than fully refined sugar. Most of the remaining 25 percent of Mexican market sales were of fully refined sugar, but Mexico also consumes small quantities of specialty sugars and sugar in liquid form. Sugar sales to industrial users tend to be in bulk, in 1,500 kilo “super sacks” or in 50 kilo bags; sales at wholesale are typically in 50, 40 and 25 kilo bags; and retail sales are typically in 5, 2 and 1 kilo bags.\(^9\)

1. Prices for Estandar

Wholesale “estandar” prices sold in 50 kilo bags across Mexico are published by the GOM Sistema Nacional de Información e Integración de Mercados (“SNIIM”). In calendar year 2013, the price reported by SNIIM for estandar ranged from a high of Mx$434.20 per 50 kg. bag in February to a low of Mx$353.51 in May and averaged Mx$382.22 per 50 kg. bag.\(^9\) Converted to a dollar per pound basis, these SNIIM prices for estandar were US$0.3095/lb. in

\(^{8}\) Exhibit II-2A, SAGARPA data.

\(^{9}\) \textit{Id.}

\(^{9}\) \textit{Id.}

\(^{9}\) Exhibit II-2, \textit{VTZ study} at 4.

\(^{9}\) Exhibit II-2E, SNIIM data for calendar year 2013.
February, US$0.2607/lb. in May and, on average, US$0.2767. Although far below the Mexican market prices of a year earlier, calendar 2013 wholesale prices in Mexico for estandar were still systematically higher than the No. 16 U.S. futures contract price, i.e., the traded market price for raw sugar for consumption in the United States, for the same period, as shown in Table 5, below:

<table>
<thead>
<tr>
<th>2013</th>
<th>A. SNIIM Price (Converted to US$/lb.)</th>
<th>B. No. 16 Contract Price (US$/lb.)</th>
<th>C. Difference as a % of No. 16 Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jan.</td>
<td>$0.2923</td>
<td>$0.2120</td>
<td>37.88%</td>
</tr>
<tr>
<td>Feb.</td>
<td>$0.3095</td>
<td>$0.2072</td>
<td>49.37%</td>
</tr>
<tr>
<td>March</td>
<td>$0.3094</td>
<td>$0.2082</td>
<td>48.61%</td>
</tr>
<tr>
<td>April</td>
<td>$0.2911</td>
<td>$0.2038</td>
<td>42.84%</td>
</tr>
<tr>
<td>May</td>
<td>$0.2607</td>
<td>$0.1951</td>
<td>33.62%</td>
</tr>
<tr>
<td>June</td>
<td>$0.2581</td>
<td>$0.1931</td>
<td>33.66%</td>
</tr>
<tr>
<td>July</td>
<td>$0.2581</td>
<td>$0.1922</td>
<td>35.54%</td>
</tr>
<tr>
<td>Aug.</td>
<td>$0.2741</td>
<td>$0.2097</td>
<td>30.71%</td>
</tr>
<tr>
<td>Sept.</td>
<td>$0.2629</td>
<td>$0.2105</td>
<td>24.89%</td>
</tr>
<tr>
<td>Oct.</td>
<td>$0.2569</td>
<td>$0.2182</td>
<td>17.74%</td>
</tr>
<tr>
<td>Nov.</td>
<td>$0.2600</td>
<td>$0.2061</td>
<td>26.15%</td>
</tr>
<tr>
<td>Dec.</td>
<td>$0.2858</td>
<td>$0.1995</td>
<td>43.26%</td>
</tr>
</tbody>
</table>

Source: Exhibit II-4 (SNIIM); Exhibit II-17 (No. 16 Contract Prices). SNIIM prices are reported in pesos per 50 kg. bags for each month of calendar year 2013. These prices were converted to U.S. dollars per lb. using the exchange rates found in Exhibit II-18 (Federal Reserve monthly exchange rates).

As (1) the bulk of Mexican sugar imported into the United States was in estandar form, and (2) imports of Mexican estandar compete directly with U.S. raw sugar for sales to refiners, these SNIIM prices imply significant “price-to-price” dumping for the 2013 imports of sugar from Mexico in estandar form.

However, as explained infra, SNIIM Mexican wholesale market prices for estandar include delivery costs for shipment from the mill to the wholesale market. These costs have

93 Id.
been calculated by the Mexican government at 6.4 percent of the wholesale price.\textsuperscript{94} When SNIIM prices are reduced by the 6.4 percent delivery cost to arrive at the “ex-mill” prices of sugar sold in the Mexican wholesale market, the ex-mill prices of the home market sales were systematically below the fully allocated “ex-mill” cost. Below cost sales must be excluded from the home market sales benchmark for dumping margin calculations.\textsuperscript{95} The actual margins of dumping of exports of estandar sugar to the United States in calendar year 2013, which must be calculated by reference to their “constructed value,” are, therefore, significantly higher than the differences between the SNIIM prices and the U.S. No. 16 Contract prices suggest.

2. Prices for Refined Sugar

Sales of refined sugar account for between 20 and 25 percent of Mexican home market consumption.\textsuperscript{96} Table 6 below (1) sets out the average SNIIM published price for refined sugar sold into Mexico’s wholesale markets and (2) compares those SNIIM prices to the average and published “Beet Sugar Midwest” price, \textit{i.e.}, the tracked U.S. market price, for refined sugar for the same month.\textsuperscript{97} The data show that despite falling home market prices for refined sugar over the course of calendar year 2013, Mexican home market prices were systematically higher than refined sugar prices in the United States:

\textsuperscript{94} See, \textit{e.g.}, Exhibi\textit{t II-2F}, Mexico Sugar Chamber weekly prices.

\textsuperscript{95} See Section 773(b)(1) of the Act, 19 U.S.C. § 1677b(b)(1).

\textsuperscript{96} Exhibit II-2A. Data from the GOM department of agriculture, Secretaría de Agricultura, Ganadería, Desarrollo Rural, Pesca y Alimentación (“SAGARPA”).

\textsuperscript{97} See Exhibit II-2E, SNIIM prices; Exhibit II-7, Midwest Refined Price. SNIIM prices are converted to U.S. dollars per lb. using the exchange rates found in Exhibit II-6.
Table 6
2013 SNIIM Average Monthly Refined Sugar Prices in Mexico Compared to Sugarbeet Midwest Prices for Refined Sugar

<table>
<thead>
<tr>
<th>2013</th>
<th>A. SNIIM Price (Converted to US$/lb.)</th>
<th>B. Midwest Refined Price (US$/lb.)</th>
<th>C. Difference as A% of Midwest Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jan.</td>
<td>$0.3707</td>
<td>$0.3050</td>
<td>21.54%</td>
</tr>
<tr>
<td>Feb.</td>
<td>$0.3725</td>
<td>$0.2850</td>
<td>30.70%</td>
</tr>
<tr>
<td>March</td>
<td>$0.3694</td>
<td>$0.2760</td>
<td>33.84%</td>
</tr>
<tr>
<td>April</td>
<td>$0.3654</td>
<td>$0.2663</td>
<td>37.21%</td>
</tr>
<tr>
<td>May</td>
<td>$0.3380</td>
<td>$0.2630</td>
<td>28.52%</td>
</tr>
<tr>
<td>June</td>
<td>$0.3167</td>
<td>$0.2650</td>
<td>19.51%</td>
</tr>
<tr>
<td>July</td>
<td>$0.3162</td>
<td>$0.2600</td>
<td>21.62%</td>
</tr>
<tr>
<td>Aug.</td>
<td>$0.3175</td>
<td>$0.2550</td>
<td>24.51%</td>
</tr>
<tr>
<td>Sept.</td>
<td>$0.3140</td>
<td>$0.2625</td>
<td>19.62%</td>
</tr>
<tr>
<td>Oct.</td>
<td>$0.3054</td>
<td>$0.2738</td>
<td>11.54%</td>
</tr>
<tr>
<td>Nov.</td>
<td>$0.3042</td>
<td>$0.2800</td>
<td>8.64%</td>
</tr>
<tr>
<td>Dec.</td>
<td>$0.3228</td>
<td>$0.2750</td>
<td>17.38%</td>
</tr>
</tbody>
</table>

Source: Exhibit II-2E, SNIIM; Exhibit II-7, Midwest Refined Price. SNIIM prices are reported in pesos per 50 kg. bags for each month of calendar year 2013. These prices were converted to U.S. dollars per lb. using the exchange rates found in Exhibit II-6, Federal Reserve monthly exchange rates.

As was shown in Table 5, comparing domestic estandar to No. 16 Contract prices, Table 6 also implies systematic and substantial “price-to-price” dumping margins comparing Mexican market domestic sales of refined sugar to U.S. market prices for refined sugar. Again, however, when taken back to an “ex-mill” level using the same 6.4 percent reduction to the wholesale price for delivery costs, the Mexican market sales of refined sugar were below the fully allocated “ex-mill” cost of the refined sugar cost for certain months of calendar year 2013. Because those below cost sales must be excluded from the Department’s dumping margin calculations, it follows that the margins of dumping are greater than a comparison of the SNIIM wholesale market prices to Midwest prices suggests.

C. U.S. Import and Mexican Export Statistics

Data on the values of sugar exports from Mexico to the United States, and U.S. imports from Mexico, are available in Mexican export and U.S. import statistics. In calendar year 2013,
imports of sugar from Mexico into the United States reached 2,064 thousand metric tons with a declared value of $1,068.8 billion. By volume, these imports were 119.8 percent higher than the calendar year 2012 level. The increase by value was, at 32.0 percent, significantly lower than volume increase but only because of the drop in their average unit value, i.e., from US$0.39 per pound in 2012 to US$0.23 per pound in 2013. However, U.S. import statistics do not distinguish between imports of semi-refined estandar and imports of fully refined Mexican sugar. As shown by Exhibit II-21, the tariff subheadings in the HTS define “raw cane sugar” to have a polarity of less than 99.5 degrees, but do not otherwise segregate refined sugar between semi-refined estandar and fully refined sugar. As such, the U.S. import statistics are of limited utility for purposes of antidumping analysis.

Mexican export statistics, by contrast, distinguish between exports of estandar and fully refined sugar. As indicated by Exhibit II-23, the Mexican tariff schedules specifically provide for estandar equal to or greater than 99.4 degrees (but less than 99.5 degrees) in subheading 1701.14.01, HTS (Mexico). In addition, estandar equal to or greater than 99.5 degrees, but less than 99.9 degrees, is classified under subheading 1701.99.01 or 1701.99.02, HTS (Mexico) and fully refined sugar, 99.9 degrees or more in polarity, is classified under heading 1701.99.03 HTS (Mexico). The Mexican export data are a very close match to the U.S. import data in both value ($1,099 million Mexican export value vs. $1,069 million U.S. import value) and volume

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98 Census statistics are included in Exhibit II-8.

99 As shown in Exhibit II-9, the HTSUS provides as follows: “‘raw sugar’ means sugar whose content of sucrose by weight, in the dry state, corresponds to a polarimeter reading of less than 99.5 degrees.” Estandar, however, commonly includes sugar with a polarity greater than 99.5, but less than 99.9 degrees. See Exhibit II-10, ships’ manifest data showing imports of estandar with polarity greater than 99.5 degrees. For example, Exhibit II-10 reports that CN Worldwide Inc. imported 99.52 degree estandar from Zucarmex on May 17, 2013 into the port of New Orleans. Given the relative sucrose content, the imported estandar is classified under HTSUS subheading 1701.99.50. Exhibit II-9.

100 Exhibit II-11, excerpts from the Mexican tariff schedules.
(2,183.7 thousand metric tons in Mexican export data vs. 2,064 thousand metric tons U.S. import data) and, therefore, provide a reliable basis for calculating the price of exports of both estandar and refined sugar from Mexico to the United States in 2013. Those data show that (1) most sugar exports from Mexico to the United States in calendar year 2013 were, in fact, in estandar form, and (2) the average unit value of such exports was significantly below the average unit value of refined sugar exports from Mexico to the United States.

To arrive at an “ex-mill” export price based on export values derived from Mexican data, we have reduced the export value by the same 6.4 percent for delivery costs in Mexico that the GOM applies to wholesale prices in Mexico to calculate the ex-mill price of Mexican market sales.

<table>
<thead>
<tr>
<th></th>
<th>2013 Mexican Export Data (GTA)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Export Value</td>
</tr>
<tr>
<td>Estandar</td>
<td>$621,178,911</td>
</tr>
<tr>
<td>Refined</td>
<td>$478,211,958</td>
</tr>
</tbody>
</table>

Source: Exhibit II-12, Global Trade Atlas.

D. Dumping Margin Calculations

The dumping margins alleged in these petitions are derived entirely from public data published by Mexican Government sources (although the cost of production calculations have been corroborated by data from other sources). Specifically, the home market prices are the 2013 monthly SNIIM prices for estandar and refined sugar in Mexico’s wholesale markets published by the Mexican Government, reduced by the 6.4 percent delivery costs associated with
such sales that the Mexican Government relies on to calculate the “ex-mill” reference price for sugar cane.101

To test whether these home market sales prices were above cost, Petitioners have calculated the cost of sugar production in Mexico on the basis of a three-step process. The details of the first two steps are set out in the VTZ study102 and related Annexes. First, the base cost of sugar cane used to produce estandar and refined sugar has been calculated using the cost of sugar cane for crop year 2012/2013 under the pricing formula mandated by the Mexican Government. Second, the cost of sugar cane has been increased by the 25.3 percent ratio of other sugar mill expenses to total mill costs, as reported by Mexico’s Instituto Nacional de Estadística y Geografía (“INEGI”). The third step, which is not in the VTZ study, was to allocate sugar mill costs other than cane costs between estandar and fully refined sugar based on their respective average SNIIM prices for calendar year 2013. Because fully refined sugar undergoes more processing than estandar, it carries a heavier cost. However, because there is no production of estandar in the United States and the added costs of transforming raw sugar into fully refined sugar will overstate the cost of processing estandar into fully refined sugar, allocation of non-cane mill costs on the basis of relative price is the only option reasonably available to Petitioners.

Because the calculation of non-cane mill costs incurred by Mexican mills is based on a ratio of cane to total mill costs calculated by INEGI using 2008 data, the applicability of that ratio to actual non-cane costs incurred by Mexican mills in 2013 needs to be corroborated by

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101 According to the World Bank Study, prices for export to the United States include “estimated freight to central Mexico,” reflecting the inland freight costs to ship to a CEDA. Exhibit II-3. The World Bank Study at 32. As indicated in Exhibit II-2 at 17 and shown in Exhibit II-2F, the National Chamber of the Sugar and Alcohol Industries (“Camara Nacional de las Industrias Azucarera y Alcoholera,” or CNIAA), which compiles the weekly wholesale prices at the various wholesale markets reported by SNIIM, uses national average rate of 6.4 percent to reflect the freight costs from the mills to the wholesale markets.

102 Exhibit II-2, VTZ study at 22-27.
other cost information. The petition relies on two sources of corroborating data. The first is a 2011 analysis of the economics of sugar production in Mexico that captures (1) other mill operating costs, and (2) post-harvest "reparation" expenses when the mills is not operating, in each case on a "Mx$-per-metric-ton-of-sugar-sold" basis. The second source of corroborating data is the direct labor, other factory and mill G&A costs reported by U.S. mills that produce raw sugar from sugar cane, adjusted for known differences in U.S. and Mexican costs.

Applying the cost calculation described above to the SNIIM "ex-mill" prices of Mexican home market sales of estandar, Petitioners found no estandar sales at above cost prices during calendar year 2013. Consequently, the normal value of Mexican exports of estandar has been calculated by reference to its constructed value, i.e., the fully allocated cost of production plus an amount for profit.

By contrast, the data show that SNIIM home market prices for refined sugar reduced by 6.4 percent to bring them back to an "ex-mill" price were above cost during certain months of 2013. The normal value of Mexican exports of refined sugar have, therefore, been calculated by reference to the average "ex-mill" price of those above cost sales. The details of the normal value and export price calculations are set out below.

1. Normal Value
   a. Home market prices

   To the extent the sugar sold by Mexican mills into the Mexican market was sold at above cost prices in calendar year 2013, those home market above cost sales provide the basis for calculating the "normal value" of imports of sugar from Mexico. See Section 773(b)(1) of the Act, 19 U.S.C. § 1677b(b)(1). However, as shown below, the evidence indicates that for both estandar and refined sugar, there were substantial below cost sales as Mexican market prices fell
over the course of 2013. Thus, to be clear, *Petitioners allege home market sales of sugar in Mexico in substantial quantities over an extended period at below cost prices.*

Under long-established Department practice, home market prices must be tested against the fully allocated cost of production and if, as Petitioners allege, there are sales below cost in the Mexican market, those below cost sales must be eliminated from the universe of home market sales used to calculate normal value.

i. **Estandar**

Average SNIIM wholesale prices for estandar for each month of 2013 are set out in Table 5, above. Mexico’s formula for calculating the price of that Mexican mills must pay for their sugar cane begins with the SNIIM wholesale price of sugar, and then deducts 6.4 percent of that price for delivery and other costs associated with those sales in order to adjust the SNIIM wholesale price to an “ex-mill” price. For purposes of this petition, the home market price for estandar in each month of calendar year 2013 is, therefore, 93.4 percent of the monthly price for estandar. The mathematical average of these monthly prices in U.S. dollars per pound is US$0.2591.

ii. **Refined sugar**

For purposes of this petition, the calculation of the average monthly home market price of refined sugar mirrors the methodology used to derive the average monthly home market price of estandar, *i.e.*, 93.4 percent of the SNIIM price for each month of calendar year 2013 set out in Table 6, *supra*. The average U.S. dollar per pound price for the full year is US$0.3130.

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b. Cost of production

i. Basic methodology

Because the formula used to set the price of sugar cane in 2013 is known, the cost of the principal material input used to produce sugar associated with Mexican market sales can be calculated with precision, i.e., 57 percent of the reference price multiplied by the yield of sugar per ton of cane, i.e., $0.57 \times \frac{119.27}{1000} \times \text{Mx} $10,618. To calculate the non-cane cost of producing sugar in Mexico, Petitioners have relied on a study by Mexico’s INEGI published in 2009 based on 2008 data. In that study, which is included in Exhibit II-2K, the INEGI analysts found that materials costs represented 74.7 percent of total mill costs of production. However, because the 0.747 ratio of sugar cane costs to total costs in the analysis of the cost of producing sugar in Mexico is based on 2008 data published in 2009, the US$0.0765/lb. estimate for 2013 non-cane mill costs must be tested against other data for accuracy.

ii. Non-cane cost reasonableness test

Petitioners have corroborated the US$0.0765/lb. non-cane cost in two different ways. The first is by reference to the 2013 experience of U.S. sugar cane mills. Petitioners have collected financial data from a number of U.S. cane sugar mills that purchase their sugar cane as evidence of material injury by reason of sugar imports from Mexico. Those data show that, on average, raw material costs (which are primarily but not exclusively cane costs) accounted for \[ b9.9 ] percent of the average sugar mill cost of production in fiscal year 2011, \[ ] percent is fiscal year 2012, and \[ ] percent in fiscal year 2013. In other words, these data show for purposes of calculating Mexican costs of sugar production, a 74.7 percent ratio of sugar

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104 See also Exhibit II-2, VTZ study at 26.
105 The aggregate financial data from the four non-coop sugar cane mills and their mill-specific data are provided in Exhibit II-14.
cane costs to total sugar production is conservative in that it overstates the cost of cane relative to other costs.\textsuperscript{106}

More to the point, the U.S. sugar mill data also show that, on average, the direct labor, other factory and G&A costs of converting sugar cane into a pound of raw sugar in fiscal years 2013 were, respectively, US\$[\text{ }], \text{US}\$[\text{ }\text{0}.\text{54}] \text{ and US}\$[\text{ }]. According to the Bureau of Labor Statistics August 9, 2013 International Comparisons of Hourly Compensation Costs in Manufacturing 2012, Mexican labor costs, at US\$6.36/hour, were 17.83 percent of U.S. costs (US\$35.67/hour).\textsuperscript{107} Petitioners have, therefore, adjusted the US\$[\text{ }\text{0}.\text{2}] \text{ per pound labor cost to } \text{US}\$[\text{ }\text{0}.\text{02} \text{ per pound to account for the known difference between U.S. and Mexican labor costs. With this change, the 2013 non-cane costs of sugar production in Mexico based on adjusted U.S. production costs were US}\$[\text{ }], \text{i.e., almost exactly the same as the non-cane cost figure derived from the INEGI study.}

The second test of the reasonableness of the non-cane mill cost estimate based on the 74.7 percent cost of cane to total mill costs in the INEGI study is an analysis of sugar mill costs in a January, 2011 article in Business Intelligence Journal, “Valuation of a Mexican Sugar Mill and Driving Value Factors,” by Carlos Acosta Calzado. Mr. Calzado’s analysis, which is based on a review of financial data for three Mexican mills, calculates non-cane costs of between 27 percent and 41 percent of total mill costs. In relevant part, the Calzado analysis reads as follows:

\begin{quote}
We analyzed three sugar mills from which we were able to obtain financial and operating data and we will assume that other Mexican sugar mills follow the same cost structure. Basically, there are four general costs and expenses in a sugar mill, the cost
\end{quote}

\textsuperscript{106} Indeed, it should be noted that the breakdown of sugar production costs identified by INEGI does not include selling, general and administrative expenses and, therefore, understates the full cost of production.

of raw materials or sugarcane, salaries, SG&A and reparation costs.

... The most important operating expense is the salary cost which could range from 5% to 10% of total sales. ...

Other SG&A expenses include petroleum used in caldrons, chemical products, utilities, maintenance, transportation, and containers, among others. Those range from 7% to 11% of total sales. ...

During the reparation period, not all workers are needed, but materials and salaries account for around 15% to 20% of total income.\textsuperscript{108}

That same article indicates both sugar production in metric tons used in its base year calculation and cost data (in millions of pesos) for “reparation expenses” and “operating expenses” in the same base year calculation. The combined costs for these items are Mx$108,900,000 which must be allocated over 29,810 metric tons of sugar sold.\textsuperscript{109} The result is a per metric ton non-cane cost of Mx$2,735, or US$0.0972 per pound of sugar produced, \textit{i.e.}, a figure that is well above the US$0.076/lb. figure Petitioners have attributed to non-cane mill costs in Mexico.

\textbf{iii. Allocation of non-cane costs between estandar and fully refined sugar}

The last part of the cost of production calculation is the allocation of mill costs other than cane costs between production of estandar sugar and fully refined sugar. Petitioners have allocated these costs based on the relative SNIIM wholesale prices for estandar and refined sugar reported in Mexico’s wholesale markets because (1) producing fully refined sugar entails more processing than production of estandar, but (2) because estandar is not produced in the United States.\textsuperscript{108} Exhibit II-16, Carlos Acosta Calzado (MBA), “Valuation of a Mexican Sugar Mill and Driving Value Factors,” \textit{Business Intelligence Journal}, January, 2011 (hereinafter “Business Intelligence Journal Article”) at 95-96.\textsuperscript{109} \textit{Id.} at 101.
States, allocation of common overhead and SG&A costs by relative value is the only option available using Mexican data. In 2013, the average price of a pound of estandar in Mexico was US$0.2589 and the average price of a pound of fully refined sugar was US$0.3126, with a combined value of US$0.5715. Estandar therefore account for 45.30 percent of the total and refined sugar accounted for 54.70 percent of the total. Non-cane mill costs have been allocated on that basis.  

Based on the foregoing, Petitioners calculate the representative Mexican industry cost of producing estandar in crop year 2012/2013 at US$0.2950 per pound and the cost of producing fully refined sugar was US$0.3090 per pound. The details of the calculation are set out in Table 8:

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110 As shown by Exhibit II-4, the average 2013 ex-mill price for estandar was $0.2766 per pound; the average ex-mill price for refined sugar was $0.3340 per pound. The labor cost difference is insignificant because the average labor cost per pound of sugar produced is insignificant.
A recent public statement regarding sugar production costs in Mexico by a Mexican sugar mill executive corroborates Petitioners' cost of production calculation. In an October 10, 2013 article attached at Exhibit II-17, Zafranet, a Mexican sugar industry publication, quotes Julio Agosto Ulloa, the chief operating officer of the Santa Clara sugar mill (which belongs to

**Table 8**

| 1. 2012/2013 reference price for cane cost calculation | = Mx$10,618 per metric ton |
| 2. Sugar yield per ton of cane | = 119.27 kgs. per metric ton |
| 3. Cost of sugar cane = 57% of reference price x yield | = 0.57 x 119.27/1000 x Mx$10,618 = Mx$722 per metric ton of sugar produced |
| 4. Total cane usage | = 61.439 million metric tons |
| 5. Cost of cane | = 61.439 million x Mx$722 = Mx$44,359 billion |
| 6. Total sugar production | = 6.975 million metric tons |
| 7. Cost of cane per metric ton of sugar produced | = Mx$44,359 billion/6.975 million metric tons = Mx$6,359 per ton |
| 8. Total per ton of sugar mill cost assuming cane cost = 747 percent of total | = Mx$6,359 ÷ 0.747 = Mx$8,512 per MT of sugar |
| 9. Average cost of sugar product US$/per pound | = Mx$8,512.72/2,204.6 = Mx$438.61/pound = Mx$0.3025/pound at a Mx$12.765/US$ exchange rate |
| 10. Average non-cane mill cost | Mx$8,512 – Mx$6,359 = Mx$2,153/MT = US$0.0765/lb. |
| 10. Cost of estandar based on allocation of non-cane costs on the basis of relative SNIIM price | = Cane cost + 90.6% of mill cost = US$0.2260 + 0.069 = US$0.295/lb. |
| 11. Cost of refined sugar based on allocation of non-cane cost on the basis of relative SNIIM prices | = Cane cost + 109.4% of mill cost = US$0.2260 + 0.083 = US$0.309 |
the Porres Group and produces only refined sugar)\textsuperscript{111} as saying that the Santa Clara mill’s cost of producing a 50 kg. bag of sugar was “between 380 and 390” pesos. At the mid-point of Mr. Ulloa’s stated cost range, \textit{i.e.}, Mx$385 pesos per 50 kg. bag, the Santa Clara mill’s production costs translate to a US$0.2736 per pound cost of production, \textit{i.e.}, a difference of $0.0214 per pound from Petitioners’ cost estimate:

\[
\text{Mx$385 for a 50 kg. bag = Mx$7.7 per kg. = Mx$3.49 per lb. = US$0.2736 at a Mx12.765/US$ exchange rate}
\]

c. Normal value calculations

As shown in Table 9 below, “ex-mill” home market prices of estandar sugar were systematically below the average US$0.295 Mexican mill cost of producing a pound of estandar during each month of calendar year 2013.

\begin{table}[h]
\centering
\begin{tabular}{|l|c|c|c|c|}
\hline
& SNIIM Average Monthly (Pesos/50kg) & SNIIM Average Monthly \ (US$/lb) & SNIIM FOB Mill Price \ ($/lb) & Prod’n Cost \ ($/lb) \\
\hline
Jan-13 & 409.15 & 0.2923 & 0.2736 & 0.295 \\
Feb-13 & 434.20 & 0.3095 & 0.2897 & 0.295 \\
Mar-13 & 426.28 & 0.3094 & 0.2896 & 0.295 \\
Apr-13 & 391.66 & 0.2911 & 0.2725 & 0.295 \\
May-13 & 353.51 & 0.2607 & 0.2441 & 0.295 \\
Jun-13 & 368.77 & 0.2581 & 0.2415 & 0.295 \\
Jul-13 & 366.51 & 0.2605 & 0.2439 & 0.295 \\
Aug-13 & 390.08 & 0.2741 & 0.2565 & 0.295 \\
Sep-13 & 378.33 & 0.2629 & 0.2461 & 0.295 \\
Oct-13 & 367.93 & 0.2569 & 0.2405 & 0.295 \\
Nov-13 & 372.84 & 0.2600 & 0.2433 & 0.295 \\
Dec-13 & 411.46 & 0.2858 & 0.2675 & 0.295 \\
2013 AVG & 389.22 & 0.2766 & 0.2589 & 0.295 \\
\hline
\end{tabular}
\caption{Monthly Estandar Sugar Prices: Pesos ($)/50 kg. Package Estimated Rates, Average All National Markets, Tuesday of Each Week}
\end{table}

\textsuperscript{111} See Exhibit II-17, Inside the Mills: Santa Clara Mill.
Because the home market prices of estandar were consistently below the cost of producing it, the normal value for estandar must be calculated by reference to its "constructed value," that is, the fully allocated cost of production plus an amount for profit. Petitioner has calculated the "normal" profit for estandar by reference to the 10 percent average profit margin realized by Mexican producers on their calendar year 2013 above cost sales of refined sugar. Applying that 10 percent profit margin to the cost of producing estandar as calculated above results in a constructed value for estandar of US$0.295/lb. x 1.10 = US$0.325/lb.

Table 10 sets out the SNIIM wholesale home market prices, ex-mill prices and cost data for refined sugar. The ex-mill prices of home market sales of refined sugar were above cost from January through May 2013.

<table>
<thead>
<tr>
<th></th>
<th>SNIIM Average Monthly Price (Pesos/50kg)</th>
<th>SNIIM Average Monthly Price (US$/lb.)</th>
<th>SNIIM FOB Mill Price (US$/lb)</th>
<th>Prod'n Cost (US$/lb)</th>
<th>Above Cost (US$/lb)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jan-13</td>
<td>518.87</td>
<td>0.3707</td>
<td>0.3470</td>
<td>0.309</td>
<td>0.3470</td>
</tr>
<tr>
<td>Feb-13</td>
<td>522.43</td>
<td>0.3725</td>
<td>0.3486</td>
<td>0.309</td>
<td>0.3486</td>
</tr>
<tr>
<td>Mar-13</td>
<td>508.95</td>
<td>0.3694</td>
<td>0.3457</td>
<td>0.309</td>
<td>0.3457</td>
</tr>
<tr>
<td>Apr-13</td>
<td>491.62</td>
<td>0.3654</td>
<td>0.3420</td>
<td>0.309</td>
<td>0.3420</td>
</tr>
<tr>
<td>May-13</td>
<td>458.26</td>
<td>0.3380</td>
<td>0.3164</td>
<td>0.309</td>
<td>0.3164</td>
</tr>
<tr>
<td>Jun-13</td>
<td>452.56</td>
<td>0.3167</td>
<td>0.2964</td>
<td>0.309</td>
<td></td>
</tr>
<tr>
<td>Jul-13</td>
<td>444.79</td>
<td>0.3162</td>
<td>0.2960</td>
<td>0.309</td>
<td></td>
</tr>
<tr>
<td>Aug-13</td>
<td>451.84</td>
<td>0.3175</td>
<td>0.2971</td>
<td>0.309</td>
<td></td>
</tr>
<tr>
<td>Sep-13</td>
<td>451.84</td>
<td>0.3140</td>
<td>0.2939</td>
<td>0.309</td>
<td></td>
</tr>
<tr>
<td>Oct-13</td>
<td>437.41</td>
<td>0.3054</td>
<td>0.2859</td>
<td>0.309</td>
<td></td>
</tr>
<tr>
<td>Nov-13</td>
<td>436.22</td>
<td>0.3042</td>
<td>0.2847</td>
<td>0.309</td>
<td></td>
</tr>
<tr>
<td>Dec-13</td>
<td>464.65</td>
<td>0.3228</td>
<td>0.3021</td>
<td>0.309</td>
<td></td>
</tr>
<tr>
<td>2013 AVG</td>
<td>469.95</td>
<td>0.3340</td>
<td>0.3126</td>
<td>0.309</td>
<td>0.3399</td>
</tr>
</tbody>
</table>
Excluding below cost sales of refined sugar from the computation, the average home market price of the above-cost sales of refined sugar derived from the SNIIM data is US$ 0.3399 per pound. For dumping margin calculation purposes, therefore:

1. The normal value of Mexican estandar is US$0.325 per pound;
2. The normal value of Mexican refined sugar is US$0.3399 per pound.

2. Export Price

For purposes of this petition, the export prices of sugar imports in estandar and fully refined form have been derived from Mexican export statistics as they are the only source of broad export pricing data that distinguish between estandar and fully refined Mexican sugar shipped to the United States. These statistics are included in Exhibit II-11. However, as with the SNIIM domestic prices, the Mexican export statistics must be adjusted to account for inland freight and handling between the mills and the trading companies that export to the United States.

Mexican sugar mills first sell to “traders,” “large domestic brokers” or directly to wholesale markets (centrales de abasto or “CEDAs”).112 These distributors resell to industrial users (producers of soft drinks, bakery, candy, milk products, etc.), retailers (public markets and convenience stores) and supermarkets.113 With respect to exports, sugar is shipped from the mills to one of the wholesale markets, where there are terminal facilities. Export contracts are used in the case of sales by the sugar mills to distributors, such as CSC or ED&F Man.114 Thus, at the time of sale by the Mexican mills to their distributors, the sales are “for exportation”

112 Exhibit II-2, VTZ study at 16.
113 Id.
114 Exhibit II-2, VTZ study at 32. Mexican mills enter different contracts for domestic and export sales in part to enable the calculation of sugar cane prices (one of the variables is the export price).
within the meaning of section 772(a) of the Act, 19 U.S.C. § 1677a(a). Inland freight from the mill to the wholesale market is included in the prices reported by the exporters.\(^{115}\) Hence, to account for such inland freight form the mills to the wholesale markets, the national average rate (6.4 percent) reported by CNIAA and SNIIM, as described above, was used to calculate inland freight costs.

More specifically, Petitioners have taken 93.6 percent of the declared value of Mexican exports in calendar year 2013 as the “ex-factory price” of such exports (i.e., it assumes the same intra-Mexico movement expenses on export sales as the sales in the Mexican market). By this measure, the 2013 average export price for estandar was US$0.2002 per pound and the average export price for refined sugar was US$0.2346.\(^{116}\)

3. Calculation

A comparison of the export price of estandar with its normal value, i.e., constructed value, produces a dumping margin for estandar of 62.44 percent, i.e.:

\[
\text{Normal value of US$0.325 per pound} - \text{export price of US$0.2002 per pound} \\
\quad = \text{an export price that is US$0.125 per pound below normal value, which results} \\
\quad \text{in a dumping margin of} 0.125 \div 0.2002 = 62.44 \text{ percent}
\]

A comparison of the export price of refined sugar with its normal value, i.e., above cost home market sales produces a dumping margin for refined sugar of 44.88 percent, i.e.:

\[
\text{Normal value of US$0.3399 per pound} - \text{export price of US$0.2346 per pound} \\
\quad = \text{an export price that is US$0.1053 per pound below normal value, which} \\
\quad \text{results in a dumping margin of} 0.1053 \div 0.2346 = 44.88 \text{ percent}
\]

\(^{115}\) According to the World Bank Study, prices for export to the United States include “estimated freight to central Mexico,” reflecting the inland freight costs to ship to a CEDA. Exhibit II-3 at 32.

\(^{116}\) As shown by Exhibit II-12, the average export value for estandar and fully refined sugar was $0.4716/kg and $0.5726/kg respectively. Adjusting for inland freight costs equal to 6.4 percent and converting to $/lb yields $0.2002/lb and $0.2346/lb.
V. COUNTERVAILABLE SUBSIDIES

E. Overview of Government of Mexico Subsidization of the Manufacture, Production and/or Export of Sugar

It is a well-known and well-documented fact that the sugar market in Mexico is a protected market, and that small communal agrarian land holdings as well as associations of sugar cane producers benefit from special status under the Mexican constitution. This special constitutional status has historical antecedents in the Mexican Revolution, as well as in the post-revolution public policy objectives to create work, income, and development for rural populations composed primarily of sugar cane growers. Such objectives led to the issuance of various Decretos cañeros ("Cane Decrees") from 1947 through to 2004, and eventually to the 2005 enactment of the current Ley de Desarrollo Sustentable de la Caña de Azúcar ("Cane Law"). The various Cane Decrees as well as the Cane Law have shared a common purpose: to enable the Government of Mexico ("GOM") to set the price of sugar cane based on the percentage of recoverable sugars in the sugar cane.

Sugar cane is currently produced in over 225 municipalities located in 15 of Mexico’s 23 states, and is the main economic activity in many of those areas. It is estimated that over 2 million people, mostly rural inhabitants, benefit directly from sugar cane production in Mexico.

117 Exhibit III-1, Constitution of Mexico, Title 1, Chapter I at Arts. 27-28.
119 Exhibit III-2, Rivera Report at 209; Exhibit II-3, World Bank at 27-29.
120 Exhibit II-3, World Bank at 27-29; Exhibit III-2, Rivera Report at 209-212.
121 Exhibit II-3, World Bank at 9; Exhibit III-2, Rivera Report at 209.
122 Exhibit II-3, World Bank at 3; Exhibit III-2, Rivera Report at 209.
A large majority of Mexican sugar cane production (61 percent in 2012) is undertaken by small-scale, high-cost farm operations, nearly 165,000 in number, with an average production area of 4 hectares (10 acres) or less.\(^{123}\) In addition, harvesting and transportation of cane to the mills is largely the responsibility of the cane growers and, in most cases, the cane is harvested by hand and loaded onto trucks for transport to mills.\(^{124}\) Economies of scale, innovation, and strategic investments under these conditions are virtually non-existent.

For all of these reasons, it is no surprise that sugar cane production is a national socio-economic priority for the GOM. Given the historical, constitutional, and regulatory context for sugar production in Mexico, it is also no surprise that the GOM will go to great lengths to sustain what would otherwise be unsustainable sugar cane production. In order to ensure a sufficiently high rate of return for the many thousands of Mexico’s most inefficient cane growers, the GOM must, as a constitutional and public policy imperative, ensure that its domestic market for sugar is protected, regulated, and above all heavily subsidized.

Simply put, the Mexican sugar industry as it exists today would not exist but for perennial and massive government subsidization. The Mexican sugar manufacturing industry is itself as structurally inefficient and highly politicized as is the upstream Mexican sugar cane growing industry, having undergone cycles of expropriation and privatization and having depended on unsustainably high amounts of public-sector financing at below-market interest rates followed by perennial and preferential debt restructurings. The GOM has also provided it with several massive operational bailouts and other domestic and export subsidies.

\(^{123}\) Exhibit III-2, Rivera Report at 215; Exhibit II-3, World Bank at 10.

\(^{124}\) Exhibit II-3, World Bank at 11.
At the heart of it all, the GOM effectively sets the price at which the domestic supply of sugar will meet domestic demand, and then requires the export of any production that is surplus to domestic demand. This is done to support upstream pricing for sugar cane to the benefit of the many thousands of inefficient upstream Mexican sugar cane producers. While the policy objectives of supporting rural agrarian lifestyles may be understandable, the GOM imposes no limits whatsoever on domestic sugar cane production volumes. This results in surplus production, the export of which the GOM facilitates any way that it can. In fact, as Mexican sugar was about to gain access to the U.S. market under NAFTA in 2008, GOM policy was to target the United States market as the first priority market for Mexico’s heavily subsidized exports: “strengthen{ing} mechanisms that provide incentives for exporting Mexican sugar to international markets,” and “plac{ing} growing volumes of sugar on the US market,” were all explicit GOM policy objectives in 2007.125

In essence, therefore, the GOM controls virtually every aspect of domestic sugar cane and refined sugar pricing and supply, including through the direct fixing of domestic sugar pricing in favor of sugar cane producers under the Cane Law,126 and associated efforts to eliminate surplus production through exports primarily to the United States. Indeed, through the operation of the Cane Law and the near-universal use of the Standardized Sales Contract, the GOM provides for steep financial penalties to be imposed on sugar mills that attempt to divert any surplus production originally earmarked for lower-return export markets back into the higher-return domestic market.127

127 Exhibit III-4, Financiera Rural, “Master Trust To Export Surplus Sugar from Sugar Factories,” December 15, 2008, at Art. 5; Exhibit III-5, CONADESUCA, Standard Agreement of Sale-Purchase and of Sowing, Cultivation, Harvest, Delivery and Reception of Sugar Cane at Art. 17.
To make matters worse, over the eighteen year average useful life (AUL) for sugar-producing assets applicable in this investigation, the GOM has itself, at times, owned and controlled more than 50 percent of sugar production in Mexico. The GOM currently continues to directly control over 20 percent of production. This has resulted in massive distortion to both the domestic market and the upstream market for sugar cane.

Using the best information reasonably available, Petitioners outlines the major countervailable subsidies which have directly benefitted the manufacture, production and/or export of subject merchandise by the Mexican sugar industry and which should therefore be the subject of a thorough investigation by the Department. These include:

1. GOM forgiveness of loans at sub-commercial rates to uncreditworthy sugar mills through FINA;
2. GOM granting of loans at sub-commercial rates to uncreditworthy sugar mills through FINA;
3. Restructuring of FINA debt to sugar mills in 1998;
4. GOM grants and/or loans at sub-commercial rates to uncreditworthy sugar mills through the 2001-2002 “Special Fund”;
5. GOM funding to expropriated mills in fiscal year 2008;
6. GOM funding to cover the 2009 operational deficit of expropriated mills;
7. New 2013 GOM funding to expropriated mills;
8. GOM funding for the purchase of a boiler for the Emiliano Zapata mill in 2011;
9. GOM forgiveness of tax liability to expropriated mills;
10. GOM support to assist mills with payments to cane growers under the 2008 PROINCANA program;

128 Pursuant to 19 C.F.R. § 315.524(b), non-recurring subsidies are allocated over a period corresponding to the AUL of the renewable physical assets used to produce the subject merchandise. The regulations at create a rebuttable presumption that the AUL will be taken from the IRS Tables. For the “manufacture of sugar products”, including “assets used in the production of raw sugar, syrup or finished sugar from sugar beets or sugar cane” the IRS Tables prescribe an AUL of 18 years.
11. Complimentary 2008 GOM and Mexican state government support for mill payments to cane growers;
12. GOM 1997 export subsidy for surplus sugar;
13. GOM 1998 inventory support subsidy;
14. GOM 1999 inventory support subsidy;
15. 2013 GOM Emerging Technology Program;
16. GOM Import VAT and duty exemptions for domestic sales of sugar under the Mexican re-export program;
17. GOM accelerated depreciation for renewable energy investments;
18. GOM exemption from general import and export tax for articles related to renewable energy investments; and
19. GOM renewable energy funds.

F. Countervailable Subsidy Allegations

4. GOM Forgiveness and Restructuring of Debt and Provision of Loans at Sub-Commercial Rates to Uncreditworthy Sugar Mills

The Mexican sugar industry would largely not exist but for cycle after cycle of GOM bailouts and nationalizations. Between the 1950s and the 1980s, a period of “creeping nationalization” of the sugar industry in Mexico took place, with an increasing number of sugar mills becoming owned and operated by the GOM through Azucar, S.A. At the height of this nationalization of the industry, some 31 mills representing roughly half of the mills in the country, operated as state-owned enterprises.¹²⁹

In the late 1980s and into the early 1990s, under the administrations of Presidents Madrid and Salinas, the GOM privatized the sugar mills in its possession. Generally, the mills were sold by tender on the basis of a modest down payment with the remainder payable on a term of up to

¹²⁹ Exhibit II-3, World Bank at 13.
Financing from Financiera Nacional Azucarera, S.N.C. ("FINA"), a public lending institution for the sugar industry created in 1953, was integral to the privatization process. Pursuant to a Government of Mexico decree, between 1985 and its liquidation in 2006, FINA operated as a National Credit Institution. As a National Credit Institution, the majority of FINA's share capital was at all times owned by the GOM and, by statute, FINA's operations were to be dedicated to fostering the development of the sugar industry and to operate and provide banking and credit services "as expressly authorized" by the GOM's Department of the Treasury and Public Credit (Secretaria de Hacienda y Crédito Público, or "SHCP").

Moreover, FINA's financing to the Mexican sugar industry was enabled by direct funding by the SHCP.

As of 1993, one third of Mexico's sugar mills were experiencing significant financial difficulties and three mills ceased production altogether. The mills had also fallen behind on their obligations to FINA and other creditors, namely sugar cane farmers.

In 1995, due to the dramatic effects of a peso devaluation that occurred in December 1994, some 46 of the country's sugar mills restructured their debt with FINA into new loans with

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131 Exhibit III-7, Superior Audit Office of the Federation (House of Representatives) ("ASF"), "Sugar Sector Audit Report, 2000 to 2005" at section 2.1 (hereinafter "ASF Sugar Sector Audit, 2000-2005").

132 Exhibit III-8, Official Gazette of the Federation, July 12, 1985 (Decree regarding the transformation of Financiera Nacional Azucarera ("FINA")).

133 Exhibit III-9, Official Gazette of the Federation, April 2, 1991 (Organic regulation of "FINA") at Art. 4.


135 Exhibit III-6, Girón & Jiménez at 27.

136 Exhibit III-6, Girón & Jiménez at 27.
terms of 7, 10, and 15 years, at interest rates of 7, 8, and 9 percent respectively, and in all cases with a grace period on payments of 3 years, i.e., until 1998.\textsuperscript{137}

By 1998, as the grace periods from the 1995 restructuring were coming to an end, the situation of the sugar industry had not improved. On the contrary, although production was at decade highs, “financial problems were raging at sugar factories throughout the country” such that “the Vice President of the National Chamber of Commerce of the Sugar and Alcohol Industry warned that eight sugar factories might stop functioning at the start of the 1998-1999 harvest.”\textsuperscript{138} As such, with the 1998/99 harvest and the livelihood of hundreds of thousands of cane farmers in the balance, FINA agreed to another restructuring of the sugar mills’ debt, which at that point had ballooned to roughly Mx$12.6 billion.\textsuperscript{139} Specifically, the mills’ debt was restructured into new loans with terms of up to 15 years, with an interest rate of 7.5 percent, and yet another three-year grace period on payments, i.e., until 2001.\textsuperscript{140}

By the end of 1999, the sugar mills’ FINA debt had grown to nearly Mx$15 billion (representing approximately 60 percent of total sugar industry obligations), with the second largest creditor being another public body – Comisión Nacional del Agua (“Conagua”), the national water utility – accounting for approximately 20 percent of the total industry’s obligations or nearly Mx$5 billion.\textsuperscript{141}

Predictably, in 2001, i.e. toward the end of the 1998 three year grace period, the mills were in need of yet another government bailout. The GOM’s response this time was to

\textsuperscript{137} Exhibit III-6, Girón & Jiménez at 27-28.
\textsuperscript{138} Exhibit III-6, Girón & Jiménez at 28-29.
\textsuperscript{139} Exhibit III-11, ASF, Report of Results of the Superior Auditors of the 1999 Public Account, FINA at 15.
\textsuperscript{140} Exhibit III-6, Girón & Jiménez at 29-30.
\textsuperscript{141} Exhibit III-10, Sugar & Fructose, Dec 2000. \textit{See also} Exhibit III-6, Girón & Jiménez at 29 (Table 3).
expropriate 27 of the most heavily-indebted mills in September 2001, instead of doubling-down on FINA’s loans. This was effectuated by Presidential Decree of then newly-elected Vicente Fox (the “Expropriation Decree”), a translation of which, including the list of the mills that were expropriated, can be found at Exhibit III-12. A number of the expropriated mills have either been returned to their original owners or sold to new owners since 2001. As of December 31, 2013, however, the GOM still owns 9 mills, which as discussed above accounts for approximately 20 percent of total sugar production in Mexico. Table 11 lists the 27 mills that were expropriated in 2001 as well as the current ownership status of these mills as of December 31, 2013, based on the best information reasonably available to Petitioners.

142 Exhibit III-12, Official Gazette of the Federation, September 3, 2001, “DECREE expropriating the shares, coupons and/or titles representing the capital or partnership interests of the companies listed herein by the nation on the grounds of public interest” (hereinafter the “Expropriation Decree”).

143 Exhibit III-13, Observatorio Veracruzano, “The sale of sugar factory could be finalized this year,” January 9, 2014.
<table>
<thead>
<tr>
<th>Expropriated Mills</th>
<th>Current Owner</th>
</tr>
</thead>
<tbody>
<tr>
<td>Azucarera de la Chontalpa</td>
<td>Beta San Miguel</td>
</tr>
<tr>
<td>Impulsora de la Cuenca del Papaloapan/San Cristobal</td>
<td>FEESA (Escorpion CAZE prior to 2001)</td>
</tr>
<tr>
<td>Ingenio de Atencingo</td>
<td>FEESA (Escorpion CAZE prior to 2001)</td>
</tr>
<tr>
<td>Ingenio de Casasano La Abeja</td>
<td>FEESA (Escorpion CAZE prior to 2001)</td>
</tr>
<tr>
<td>Ingenio El Modelo</td>
<td>FEESA (Escorpion CAZE prior to 2001)</td>
</tr>
<tr>
<td>Ingenio el Potrero</td>
<td>FEESA (Escorpion CAZE prior to 2001)</td>
</tr>
<tr>
<td>Ingenio Emiliano Zapata</td>
<td>FEESA (Escorpion CAZE prior to 2001)</td>
</tr>
<tr>
<td>Ingenio La Providencia</td>
<td>FEESA (Escorpion CAZE prior to 2001)</td>
</tr>
<tr>
<td>Ingenio Plan de San Luis</td>
<td>FEESA (Escorpion CAZE prior to 2001)</td>
</tr>
<tr>
<td>Ingenio San Miguelito</td>
<td>Grupo la Margerita (Machado prior to 2001)</td>
</tr>
<tr>
<td>Ingenio José María Morelos</td>
<td>Grupo Azucarero del Trópico</td>
</tr>
<tr>
<td>Ingenio La Joya</td>
<td>Grupo Azucarero Mexico (&quot;GAM&quot;)</td>
</tr>
<tr>
<td>Ingenio Presidente Benito Juarez</td>
<td>Grupo Azucarero Mexico (&quot;GAM&quot;)</td>
</tr>
<tr>
<td>Ingenio José Maria Martinez</td>
<td>Grupo Azucarero Mexico (&quot;GAM&quot;)</td>
</tr>
<tr>
<td>Ingenio Lázaro Cárdenas</td>
<td>Grupo Azucarero Mexico (&quot;GAM&quot;)</td>
</tr>
<tr>
<td>Ingenio Eldorado</td>
<td>Grupo Garcia Gonzalez (previously GAM)</td>
</tr>
<tr>
<td>Ingenio San Francisco El Naranjal</td>
<td>Grupo la Margerita (previously Machado)</td>
</tr>
<tr>
<td>Central Progreso</td>
<td>Grupo la Margerita (previously Machado)</td>
</tr>
<tr>
<td>Ingenio La Margarita</td>
<td>Grupo Porres (previously GAM)</td>
</tr>
<tr>
<td>Compania Industrial Azucarera San Pedro</td>
<td>Grupo Santos</td>
</tr>
<tr>
<td>Compania Industrial Azucarera/Cuatotolapan</td>
<td>Grupo Santos</td>
</tr>
<tr>
<td>Ingenio Alianza Popular</td>
<td>Grupo Santos</td>
</tr>
<tr>
<td>Ingenio Plan de Ayala</td>
<td>Grupo Santos</td>
</tr>
<tr>
<td>Compania Azucarera de Ingenio Bella Vista</td>
<td>Grupo Santos</td>
</tr>
<tr>
<td>Ingenio Pedernales</td>
<td>Grupo Santos</td>
</tr>
<tr>
<td>Ingenio San Gabriel</td>
<td>Grupo Santos</td>
</tr>
<tr>
<td>Fomento Azucarero del Golfo</td>
<td>Unknown/Independent (previously Grupo Machado)</td>
</tr>
</tbody>
</table>

During this same period, FINA was itself in dire financial straits. As a result, the GOM took the first steps in late 1999 towards FINA’s liquidation. In November 2000, a Presidential Decree authorizing the dissolution and liquidation of FINA was published in Mexico’s Official Gazette, with the optimistic requirement that this divestiture conclude within 12 months. For various reasons, subsequent accords extended FINA’s liquidation period until

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144 Exhibit III-7, ASF Sugar Sector Audit, 2000-2005 at ch. 3.
145 Exhibit III-7, ASF Sugar Sector Audit, 2000-2005 at ch. 3.
146 Exhibit III-7, ASF Sugar Sector Audit, 2000-2005 at ch. 3.
June 2006. A Presidential Decree in May 2006 finally established the terms for the completion of the divestiture process. Most notably, Article Two of this Decree provided that the GOM – owner of 11 FINA debtor mills – would assume FINA’s right as creditor. Until mid-2006, the mills’ outstanding loans remained on FINA’s books pending that institution’s liquidation. FINA’s demise is perhaps best summarized by Mexico’s Auditoria Superior de la Federación, who was tasked with reporting to the Mexican Government on FINA’s situation in 2006:

FINA operated from 1943 to 2006, and it always had the need to be granted fiscal support to finance the agroindustry. This was the only way it was able to operate. It did not have healthy promotion credit practices, and after 63 years of acting as a promotion bank, the agroindustry was not furthered and it lost its capital despite the fiscal support received, and its divestiture was the consequence of its ineffectiveness. It was actually a subsidy program to the sugar agroindustry that was never streamlined nor did it have the capacity to adapt to the market circumstances.

Petitioners are not aware of any further formal restructuring of the mills’ FINA debt balances pursuant or subsequent to the expropriation in 2001 or FINA’s eventual liquidation in 2006, nor is there any information reasonably available to it regarding the matter. However, there are strong indications that the already-low interest rates given to the then-uncreditworthy mills in 1998 (7.5 percent) dropped further at some point in or before 2005. For example, in the case of the Consorcio Azucarero Escorpión (“CAZE”) mills, the effective interest rate over all

147 Exhibit III-7, ASF Sugar Sector Audit, 2000-2005 at ch. 3.
148 Exhibit III-14, Official Gazette of the Federation, May 30, 2006, “DECREE establishing the mechanisms to conclude the process of divestiture, through dissolution and liquidation, of Financiera Nacional Azucarera, National Credit Company, a Development Banking Institution” (hereinafter “FINA Liquidation Decree”).
150 Exhibit III-7, ASF Sugar Sector Audit, 2000-2005 at ch 3.
nine mills had apparently dropped to 1.2 percent in or by 2005.\textsuperscript{151} Similarly, in or before 2005, Grupo Machado's interest rate had apparently dropped to 1.9 percent; Grupo Azucarero México SAB de CV's ("GAM") had dropped to 4.6 percent, and Grupo Santos was apparently paying a rate as low as 1.7 percent on its outstanding Mx$3.5 billion loan.\textsuperscript{152}

As of the end of 2005, the FINA debts of the CAZE, GAM, Grupo Santos, Grupo Machado, and two independent mills remained on the books and collectively had grown to a staggering Mx$19.2 billion (roughly USD 1.5 billion).\textsuperscript{153} A breakdown by mill of 2001 and 2005 FINA debt levels of both the 27 mills that were expropriated in 2001 and the 9 other non-expropriated mills is contained in an audit report of FINA commissioned by the Mexican Government in 2006 (See translation at Exhibit III-7) and set out below at Table 12:
## Table 12
FINA Debts by Sugar Mills in 2001 and 2005

<table>
<thead>
<tr>
<th>Sugar Groups by Sugar Mills</th>
<th>Debt Owed to FINA in 2001</th>
<th>Debt Owed to FINA in 2005</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>GAM</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cía. Industrial Azucarera San Pedro S.A. de C.V.</td>
<td>361,228,500</td>
<td>361,228,500</td>
</tr>
<tr>
<td>Ingenio el Dorado S.A. de C.V.</td>
<td>323,919,100</td>
<td>323,919,100</td>
</tr>
<tr>
<td>Ingenio Lázaro Cárdenas, S.A. de C.V.</td>
<td>1,408,500</td>
<td>1,408,500</td>
</tr>
<tr>
<td>Ingenio José María Martínez S.A. de C.V.</td>
<td>22,277,400</td>
<td>22,277,400</td>
</tr>
<tr>
<td>Ingenio San Francisco el Naranjal S.A. de C.V.</td>
<td>2,100,000</td>
<td>2,100,000</td>
</tr>
<tr>
<td>Ingenio Presidente Benito Juárez S.A. de C.V.</td>
<td>3,623,500</td>
<td>3,623,500</td>
</tr>
<tr>
<td><strong>MACHADO</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ingenio José María Morelos S.A. de C.V.</td>
<td>376,300,000</td>
<td>446,383,500</td>
</tr>
<tr>
<td>Fomento Azucarero del Golfo S.A. de C.V.</td>
<td>362,000,000</td>
<td>429,239,500</td>
</tr>
<tr>
<td>Central Progreso S.A. de C.V.</td>
<td>475,400,000</td>
<td>565,995,400</td>
</tr>
<tr>
<td>Ingenio la Margarita S.A. de C.V.</td>
<td>487,800,000</td>
<td>580,750,400</td>
</tr>
<tr>
<td><strong>SANTOS</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ingenio Alianza Popular S.A. de C.V.</td>
<td>831,600,000</td>
<td>1,030,788,200</td>
</tr>
<tr>
<td>Cía. Azucarera del Ingenio Bellavista S.A.</td>
<td>449,100,000</td>
<td>578,159,100</td>
</tr>
<tr>
<td>Ingenio Pedernales S.A. de C.V.</td>
<td>407,500,000</td>
<td>493,006,800</td>
</tr>
<tr>
<td>Cía. Industrial Azucarera S.A. de C.V.</td>
<td>311,300,000</td>
<td>370,613,200</td>
</tr>
<tr>
<td>Ingenio Plan de Ayala S.A. de C.V.</td>
<td>604,700,000</td>
<td>719,881,500</td>
</tr>
<tr>
<td>Ingenio San Gabriel Ver., S.A. de C.V.</td>
<td>282,500,000</td>
<td>336,295,100</td>
</tr>
<tr>
<td><strong>ESCORPION (CAZE)</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ingenio de Atencingo, S.A. de C.V.</td>
<td>918,100,000</td>
<td>1,398,243,700</td>
</tr>
<tr>
<td>Ingenio Emiliano Zapata S.A. de C.V.</td>
<td>1,306,800,000</td>
<td>1,658,826,700</td>
</tr>
<tr>
<td>Ingenio Plan de San Luis S.A. de C.V.</td>
<td>1,205,300,000</td>
<td>1,469,721,600</td>
</tr>
<tr>
<td>Impulsora de la Cuenca del Papaloapan S.A. de C.V.</td>
<td>1,912,400,000</td>
<td>2,624,266,300</td>
</tr>
<tr>
<td>Ingenio Casasano la Abeja S.A. de C.V.</td>
<td>248,000,000</td>
<td>295,313,100</td>
</tr>
<tr>
<td><strong>INDIVIDUAL</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cía. Azucarera la Concepción S.A. de C.V.</td>
<td>163,000,000</td>
<td>194,091,100</td>
</tr>
<tr>
<td>Ingenio la Joya S.A. de C.V.</td>
<td>344,300,000</td>
<td>409,967,600</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>15,536,728,500</td>
<td>19,297,678,800</td>
</tr>
</tbody>
</table>
On June 30, 2006, FINA was finally liquidated and its credit portfolio of Mx$18.6 billion was transferred to Banco de Desarrollo Rural, S.A. ("BANRURAL"). Because FINA was itself a significant debtor to development and private banks, the GOM’s treasury had to step in to pay off FINA’s creditors to effect the liquidation. Specifically, this massive debt rollover could only be achieved by the GOM satisfying FINA’s own creditors to the tune of Mx$11.8 billion, which it did through the SHCP.

Importantly, notwithstanding the transfer of FINA’s entire credit portfolio onto the books of BANRURAL as an accounting matter, the GOM made explicit its intention to only seek recuperation of the debts owed by mills that were no longer state-owned enterprises. Specifically, the GOM’s own public auditing authority, the Auditoria Superior de la Federacion, stated that:

The expropriated sugar factories that, by reason of the court rulings issued, became property of the Federal Government, maintain credits as of December 31, 2005, in favor of FINA, in the amount of 13,395,337,600 Mx$, as shown in the following table.

The debit balance of the 11 sugar factories for 13,395,337,600 pesos with the financial institution represents damages for the Federal Government, by reason that it will not recover these credits, upon assuming ownership of said sugar factories.

In the case of the 14 sugar factories that obtained the constitutional protection of the Justice of Union by court ruling, SAE will be responsible for administrating and managing the

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154 Exhibit III-15, ASF FINA 2006 at 600, where a mill-by-mill breakdown of the outstanding FINA loans transferred to BANRURAL is provided.

155 Exhibit III-15, ASF FINA 2006 at 596.

156 Exhibit III-7, ASF Sugar Sector Audit, 2000-2005 at ch. 6.1. See also Exhibit III-14, FINA Liquidation Decree at Art. 1.

157 Exhibit III-7, ASF Sugar Sector Audit, 2000-2005 at ch. 6.1.1.
recovery of the credit portfolio that these sugar factories have with FINA, which as of December 31, 2005, totaled 5,902,341,200 pesos, as shown below.158

While the financial statements of the expropriated mills are not available to Petitioners, the 2011 annual auditor report of the Fondo de Empresas Expropiadas del Sector Azucarero (“FEESA”), which administers and oversees the operation of the expropriated mills, notes that “the expropriated sugar factories did not report (sic) debt.”159 This statement, in combination with the above statements of Mexico’s Auditoria Superior, speak very clearly to the FINA debt of the expropriated mills having been forgiven.

As to the FINA debts of non-expropriated sugar mills, evidence submitted on behalf of the GOM in the NAFTA Chapter 11 proceeding involving the GAM sugar mills indicates that non-expropriated mills were allowed to negotiate cash payments to settle their FINA debt at a “big discount.”160

158 Exhibit III-7, ASF Sugar Sector Audit, 2000-2005 at ch. 6.1.1.

“There was another cause of the improved credit situation for some unexpropriated sugar mills – but not those of GAM or other expropriated mills. According to Mr. Garcia, after the expropriation the Government decided to allow the substantial majority (if not all) of the mill owners that carried public FINA debt to repay this debt at significantly discounted rates. Garcia, Tr. at 441:1-3 (“So, the sugar mills that still have debts to FINA have been negotiating cash payments with a big discount.”). This is true even for the mill owners that had previously simply defaulted on their FINA debt prior to the expropriation, rather than finding a legally recognized solution as GAM did. See id. at Tr. 439:18-441:3. Accordingly, the improved credit position of privately-held mills currently did not cause the post-expropriation rise in prices, but rather is both a function of the price rise and the Government’s own decision to forgive significant debts of the companies that it chose not to expropriate in September of 2001.

As stated in para. 44 of the Claimant’s Post-Hearing Brief, Mr. Garcia was a witness for the Government of Mexico. The transcripts of this proceeding were not available to Petitioner.
Curiously, it appears that BANRURAL has itself been in the process of liquidation and dissolution since December 2002.\textsuperscript{161} As with the FINA liquidation, under the BANRURAL liquidation the SAE is apparently still tasked with recovering FINA’s credit portfolio. However, there is no indication that the GOM has changed its position of seeking to recover the debts of only the non-state-owned mills.\textsuperscript{162}

To the extent that any FINA or FINA-successor debt remains outstanding to sugar mills, Petitioners are not aware of any evidence that the effective interest rates of these loans have changed since 2006, when apparently the last mill-specific GOM report on the FINA debts was published.

d. GOM forgiveness of FINA loans

iv. Financial contribution

As discussed above, the information reasonably available to Petitioners indicate that the GOM has forgiven the FINA debt of the expropriated mills. This information also indicates that the GOM has effectively forgiven at least part of the FINA debt of non-expropriated mills by allowing those mills to repay these debts at significant discounts.

The GOM’s debt forgiveness, including in the form of discounts offered to non-expropriated mills to settle the FINA accounts, constitutes a financial contribution within the meaning of section 771(5)(D)(i) of the Act in the form of a grant.

v. Specificity

The provision and forgiveness of loans to sugar mills through FINA was \textit{de jure} specific pursuant to section 771(5A)(D)(i) of the Act, as FINA expressly limited its financing to sugar

\textsuperscript{161} Exhibit III-18, ASF, Report of Results of the Superior Auditors of the 2010 Public Account, BANRURAL.

\textsuperscript{162} Exhibit III-18, ASF, Report of Results of the Superior Auditors of the 2010 Public Account, BANRURAL.
producers, and de facto specific pursuant to section 771(5A)(D)(iii) of the Act, as sugar mills were FINA’s only debtors according to FINA’s final balances.  

vi. Benefit

A benefit exists in respect of the GOM forgiveness of FINA debt in the amount of the grant, pursuant to 19 C.F.R. § 351.504(a).  

e. GOM granting of loans at sub-commercial rates to uncreditworthy sugar mills through FINA

vii. Financial Contribution

Alternatively, to the extent that any FINA or FINA-successor debt remains outstanding and was not forgiven as alleged above, the continued provision by the GOM of the FINA or FINA-successor debt financing constitutes a financial contribution within the meaning section 771(5)(D)(i) of the Act in the form of government loans.

viii. Specificity

The provision of loans to sugar mills through FINA was de jure specific pursuant to section 771(5A)(D)(i) of the Act, as FINA expressly limited its financing to sugar producers, and de facto specific pursuant to section 771(5A)(D)(iii) of the Act, as sugar mills were FINA’s only debtors according to FINA’s final balances.  

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163 Exhibit III-15, ASF FINA 2006 at 600.
165 Exhibit III-15, ASF FINA 2006 at 600.
ix. Benefit

To the extent that any FINA debt still remains outstanding, the information reasonably available to Petitioners shows that the sugar mills’ outstanding debt to FINA continued to increase right up until FINA’s dissolution in 2006. As discussed in detail in Section 2, below, the evidence also clearly indicates that the Mexican sugar industry was uncreditworthy during a significant portion of the AUL period and that certain Mexican sugar mills have been uncreditworthy throughout the entire AUL period. As such, Petitioners submit the Department has a basis to investigate and to attribute a benefit to both the GOM forgiveness of FINA debt and the GOM continued granting of financing to uncreditworthy recipients pursuant to 19 C.F.R. § 351.505(a)(1), (a)(3)(iii) and (a)(6)(i).

Even if one were to assume that the sugar producer recipients of FINA financing were creditworthy (which is not the case), the information reasonably available to Petitioners demonstrates that the debt financing provided by FINA and maintained by the GOM through the rollover to BANRURAL was at rates that were anything but the commercial interest rates that the sugar mills would have been able to obtain otherwise on the market, and that a corresponding benefit was thereby conferred. In particular, as shown above, this information shows that the FINA debts carried interest rates as low as around 1 percent as of 2005. In stark contrast, according to the World Bank statistics, Mexico’s country-wide short- and medium-term lending rate to the private sector was 9.695 percent in 2005, while during the period following the expropriation between 2001 and 2005, it was as high as 12.795 percent and was at no point lower

166 Exhibit III-15, ASF FINA 2006 at 599. Petitioner notes that the 18 year AUL period for this case begins on January 1, 1996.
than 7 percent. Clearly an interest rate of about 1 percent was well below the rate that even a creditworthy firm could have expected to receive at that time.

f. Restructuring of FINA debt to sugar mills in 1998

x. Financial contribution

As discussed above, in 1998, FINA agreed to the restructuring of sugar mill debt with the mills' balances restructured to terms of up to 15 years, with an interest rate of 7.5 percent, and a grace period on payments of three years.

The granting of a three year grace period on the FINA loans constitutes a financial contribution in the form of a direct transfer of funds (a grant) within the meaning of section 771(5)(D)(i) of the Act.

The new loans provided in 1998 constitute a financial contribution in the form of a direct transfer of funds (a loan) within the meaning of section 771(5)(D)(i) of the Act.

xi. Specificity

The 1998 restructuring of FINA debt was *de jure* specific pursuant to 771(5A)(D)(i) of the Act, as FINA expressly limited its financing to sugar producers, and *de facto* specific pursuant to section 771(5A)(D)(iii) of the Act, as sugar mills were FINA's only debtors according to FINA's final balances and only the debt of these mills was restructured.168

xii. Benefit

According to 19 C.F.R. § 351.505(c)(3), "{w}here the government-provided loan and the loan to which it is compared...are both long-term, fixed interest rate loans, but have different

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168 Exhibit III-15, ASF FINA 2006 at 600.
grace periods..., the Secretary will determine the total benefit by calculating the present value, in the year that repayment would begin on the comparable commercial loan, of the difference between the amount that the firm is to pay on the government-provided loan and the amount that the firm would have paid on the comparison loan." Such benefits are “assigned to a particular year” by allocating the total benefits over the number of years in the life of the loan under 19 C.F.R. § 351.505(c)(3)(ii).

The GOM-provided loans as restructured in 1998 constitute long-term loans with a fixed interest rate, specifically 15 year loans at 7.5 percent interest rate. In addition, the loan restructuring was announced in December 1998, and as a result, the POI would fall within the “number of years in the life of the loan.”

At the time when the loans were restructured, there was no comparable commercial loan that would have provided similarly generous grace periods. As explained in detail below in Section 2, the Mexican sugar mills were uncreditworthy in 1998, in that there was no commercial source of lending, let alone lending with grace periods. As such, the three-year grace period provided by the GOM conferred benefits to the mills in each of the three years by the difference between the amount of repayments the mills would have paid on “comparable commercial loans” – calculated in accordance with the Department’s uncreditworthy recipient methodology – and the repayment actually paid by the mills, which is zero. A benefit for the POI is the amount of total benefits apportioned under 19 C.F.R. § 351.505(c)(3)(ii).

The new GOM loans granted through the restructuring of the debt were provided to uncreditworthy sugar mills at rates of interest that were lower than the mills would pay on

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169 Exhibit III-6, Girón & Jiménez at 30.
170 See infra, Section 2 for a detailed discussion of uncreditworthiness.
“comparable commercial loans” they could actually obtain on the market – calculated in accordance with the Department’s uncreditworthy recipient methodology – pursuant to 19 C.F.R. § 351.505(a)(1), 19 C.F.R. § 351.505(a)(3)(iii) and 19 C.F.R. § 351.505(a)(6)(i).

5. Uncreditworthiness of the Mexican Sugar Producers

Pursuant to 19 C.F.R. § 351.505(a)(4), a firm or a project is considered to be uncreditworthy if “the firm could not have obtained long-term loans from conventional commercial sources” at the time of the government-provided loans.

It is notoriously well-known and well-documented, and has been openly attested by the GOM as well as key sugar mills, that Mexican sugar mills were not able to obtain any loan, let alone long-terms loans, during a significant part of their recent history. From 1998 to 2003 in particular (which as discussed above corresponds with the period of enormous growth of FINA debt and at least one restructuring of this debt), the evidence of wide-spread liquidity crisis among the Mexican sugar producers is indisputable and overwhelming.

For example, during the NAFTA Chapter 11 investor-state dispute settlement proceeding between GAM and the GOM, GAM’s witness, Alberto Santos (himself a Chairman of a major Mexican sugar mill, Ingenios Santos S.A. de C.V., and also a former President of the Cámara Nacional de las Industrias Azucarera y Alcoholera (“CNIAA”)),171 stated that since the “latter part of 1998, when conditions in the sugar industry worsened... the banks stopped lending money to the sugar industry.”172 Furthermore, citing the testimony of the GOM’s valuation expert witness, GAM stated that “the banks pulled out entirely and did not resume lending to the

171 Exhibit III-20, GAMI Investments, Inc. v. The Government of the United Mexican States, NAFTA Chapter 11 Arbitral Proceedings, Final Award, November 15, 2004 at para. 9 (hereinafter “GAMI Final Award”).
172 Exhibit III-17, GAMI Post-Hearing Brief at para 45.
sugar industry until 2003.\footnote{Exhibit III-17, GAMI Post-Hearing Brief at para 45.} Such statements unequivocally show that the Mexican sugar mills could not have obtained any loans from the banks for a substantial period of time, during which the government continued to provide financing.

The precarious financial state of the Mexican sugar mills, in particular during 1998-2003 period, cannot be overstated. By the end of 1999, total liabilities of the sugar industry amounted to over Mx$25 billion, the majority of which were owed to the government financial institution, FINA.\footnote{Exhibit III-6, Girón & Jiménez at 29.} The debts levels of each sugar mill groups were as follows:\footnote{Exhibit III-6, Girón & Jiménez at 29-30.}

<table>
<thead>
<tr>
<th>Sugar Mill Groups</th>
<th>Creditors</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>FINA</td>
<td>GOM (Fed)</td>
</tr>
<tr>
<td>AGA</td>
<td>$671.80</td>
<td>$0.00</td>
</tr>
<tr>
<td>BSM</td>
<td>$22.50</td>
<td>$0.00</td>
</tr>
<tr>
<td>CAZE</td>
<td>$8,382.80</td>
<td>$618.30</td>
</tr>
<tr>
<td>GAM</td>
<td>$375.80</td>
<td>$0.00</td>
</tr>
<tr>
<td>Zucarmex</td>
<td>$276.90</td>
<td>$0.00</td>
</tr>
<tr>
<td>Jimenez</td>
<td>$0.00</td>
<td>$0.00</td>
</tr>
<tr>
<td>Machado</td>
<td>$1,368.80</td>
<td>$0.00</td>
</tr>
<tr>
<td>PIASA</td>
<td>$0.00</td>
<td>$0.00</td>
</tr>
<tr>
<td>Porres</td>
<td>$440.80</td>
<td>$0.00</td>
</tr>
<tr>
<td>Saenz</td>
<td>$5.60</td>
<td>$0.00</td>
</tr>
<tr>
<td>Santos</td>
<td>$2,563.30</td>
<td>$85.90</td>
</tr>
<tr>
<td>Seoane</td>
<td>$8.50</td>
<td>$0.00</td>
</tr>
<tr>
<td>Other</td>
<td>$705.60</td>
<td>$0.00</td>
</tr>
<tr>
<td>TOTAL</td>
<td>$14,822.40</td>
<td>$704.20</td>
</tr>
</tbody>
</table>

Information reasonably available to the Petitioners show that GAM, BSM, and the mills owned by the GOM were uncreditworthy from 1998 to 2003 as further explained below. In
addition, there are evidences suggesting that Machado Group, Puga Group, Saenz Group and Seaoane Group, and El Refugio, Motzorongo, Santa Domingo, Calipam, El Carmen, Dos Patrias, Los Mochis, Bellavista, and Cuatotalapam sugar mills were all uncreditworthy at least at one point or another between 1998 and 2003.

In the case of GAM and the mills currently owned by the GOM, the evidence strongly suggests that they have been and continue to be uncreditworthy to this day. Information regarding the remaining sugar mills and sugar mill groups is more limited, primarily because these entities are privately held. However, given the overwhelming evidence of the wide-spread liquidity crisis in the Mexican sugar industry, especially between 1998 and 2003, Petitioners request that the Department investigate creditworthiness of each and every Mexican respondent in its investigation.

g. Uncreditworthiness of Grupo Azucarero México SAB de CV

Since 1996, GAM’s operations started showing signs of weakness that would put the liquidity and solvency of the company into question. GAM’s operating profit in 1996, which was Mx$366 million, decreased by almost 35 percent to Mx$238 million in 1997, before being eliminated entirely and turning into a loss of Mx$61 million by 1998. A small operating profit of Mx$8 million was made in 1999, but it was immediately followed by a substantial loss of Mx$160 million in 2000 and an even bigger loss of Mx$302 million in the first half of 2001 alone.177

Coinciding with the crash of its financial performance, GAM’s debts accumulated rapidly. By the end of 1999, economic studies show that GAM had total liabilities of Mx$749.8

176 Exhibit III-17, GAMI Post-Hearing Brief at footnote 142.
177 Exhibit III-17, GAMI Post-Hearing Brief at footnote 142.
million, more than half of which were owed to the government financial institution, FINA.\textsuperscript{178}

The overall illiquidity and insolvency of GAM are apparent in GAM's disclosure of its financial position at the end of the first quarters of 1999 and 2000.\textsuperscript{179}

<table>
<thead>
<tr>
<th>Table 14</th>
<th>GAM's Financial Position at the End of 1999 Q1 and 2000 Q1</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accounts</td>
<td>1999 Q1 (in thousand USDs)</td>
</tr>
<tr>
<td>Current Assets (A)</td>
<td>159,663</td>
</tr>
<tr>
<td>Current Liabilities (B)</td>
<td>168,537</td>
</tr>
<tr>
<td>Total Assets (C)</td>
<td>490,057</td>
</tr>
<tr>
<td>Total Liabilities (D)</td>
<td>337,463</td>
</tr>
<tr>
<td>Stockholders' Equity (E)</td>
<td>152,593</td>
</tr>
<tr>
<td>Working Capital (A-B)</td>
<td>-8,874</td>
</tr>
<tr>
<td>Current Ratio (A/B)</td>
<td>95%</td>
</tr>
<tr>
<td>Debt-to-equity Ratio (D/E)</td>
<td>221%</td>
</tr>
<tr>
<td>Debt-to-asset Ratio (D/C)</td>
<td>69%</td>
</tr>
</tbody>
</table>

At the end of the first quarter of 1999, GAM's current liabilities exceeded its current assets by almost USD$8.9 million. Within a year, the excess current liabilities almost tripled to USD$33.8 million. In other words, GAM could not have paid its current liabilities, \textit{i.e.}, liabilities that are due within a year, even if all of its current assets were to be liquidated in these time periods. GAM's debt-to-equity ratio, already at 221 percent by the end of the first quarter of 1999, deteriorated further to 432 percent within a year, signifying that GAM's overall business operations were almost entirely funded by liabilities. At the end of the first quarter of 2000, total liabilities of GAM accounted for 81 percent of all of its assets.

According to GAM, the "substantial decrease in revenues led to an acute cash flow crisis for GAM in 2000," and this "cash shortage" forced "GAM to default on some of its

\textsuperscript{178} Exhibit III-6, Girón & Jiménez at 25.

\textsuperscript{179} Exhibit III-21, Business Wire, "Grupo Azucarero Mexico S.A. de C.V. Announces US$0.16 Million in EBITDA During 1Q00 Compared to US$12.3 Million during 1Q99," May 1, 2000.
obligations. Under this pressure, GAM filed for suspensión de pagos, or "suspension of payments" (the Mexican equivalent of restructuring under the Chapter 11 bankruptcy law) on May 9, 2000 pursuant to the Ley de Quiebras y Suspensión de Pagos, or the "Law of Bankruptcy and Suspension of Payments." The suspensión de pagos is a legal procedure available to insolvent companies to settle their debts through restructuring agreements to be executed with the debtors. That said, even the suspensión de pagos, which relieved GAM of its responsibilities to pay interest or principal on its debt, did not appear to have been enough to rescue GAM from what GAM itself described to be its "liquidity crisis" – the debt restructuring agreement with GAM's senior creditor, Bancomext, failed and GAM remained in suspensión de pagos status through September 3, 2001, when the GOM ultimately expropriated GAM's five sugar mills.

The GOM itself noted the uncreditworthiness of GAM when it ultimately decided to expropriate the company in order to keep GAM's sugar mills running as a going concern. Specifically, the GOM outlined its reasons for expropriating GAM in its Administrative Records as including the following:

- GAM could not receive credit due to its entry into suspensión de pagos;
- GAM could not pay its debts to the cane producers, which totaled approximately Mx$463 million;
- GAM was involved in serious difficulties related to the issuance of bonds to foreign investors in Europe and had to repurchase those bonds with serious losses for the investors that acquired those instruments;

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182 Exhibit III-22. GAMI Statement of Claim at para 64.
• the Mexican Central Bank classified GAM’s mills with “Letter E,” signifying that they cannot be granted credit nor guarantee; and

• as of June 30, 2001, GAM’s 6 mills owed the Federal Government approximately Mx$450 million.\textsuperscript{184}

The Mexican Superior Audit Office conducted a fiscal oversight of FINA, which showed that most of GAM’s mills had not been servicing their debt at all between 2001 and 2005. Specifically, four of six GAM’s mills had exactly the same debt amount owed to FINA in 2005 as they did in 2001.\textsuperscript{185}

<table>
<thead>
<tr>
<th>Table 15</th>
<th>GAM Debts at Selected Mills in 2001 and 2005</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Group and Sugar Mills</strong></td>
<td><strong>Debt Owed to FINA in 2001 (in Mx$)</strong></td>
</tr>
<tr>
<td>GAM</td>
<td></td>
</tr>
<tr>
<td>Ingenio el Dorado S.A. de C.V.</td>
<td>323,919,100</td>
</tr>
<tr>
<td>Ingenio Lázaro Cárdenas, S.A. de C.V.</td>
<td>1,408,500</td>
</tr>
<tr>
<td>Ingenio José María Martínez S.A. de C.V.</td>
<td>22,277,400</td>
</tr>
<tr>
<td>Ingenio Presidente Benito Juárez S.A. de C.V.</td>
<td>3,623,500</td>
</tr>
</tbody>
</table>

Overall, GAM’s total debts against FINA decreased by a meager 2.8 percent from 2001 to 2005 (and Petitioners believe that even this small reduction was realized by the GOM’s forgiveness of the debts, as discussed above), and thus the “liquidity crisis” in 2001 clearly was not lessened by 2005.

In addition, GAM’s reported financial results from 2007 to 2010 shows its continued inability to cover its debts.\textsuperscript{186}


\textsuperscript{185} Exhibit III-7, ASF Sugar Sector Audit, 2000-2005 at ch. 3.

Table 16
GAM's Key Liquidity and Solvency Indicators from 2007-2010

<table>
<thead>
<tr>
<th>(in thousands of Mx$)</th>
<th>2010</th>
<th>2009</th>
<th>2008</th>
<th>2007</th>
</tr>
</thead>
<tbody>
<tr>
<td>Financial Position at the End of December 31 of Each Year</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Current assets (A)</td>
<td>585,210</td>
<td>778,078</td>
<td>868,492</td>
<td>695,510</td>
</tr>
<tr>
<td>Inventory (B)</td>
<td>239,828</td>
<td>184,629</td>
<td>192,045</td>
<td>135,588</td>
</tr>
<tr>
<td>Quick assets (A-B) (C)</td>
<td>345,382</td>
<td>593,449</td>
<td>676,447</td>
<td>559,922</td>
</tr>
<tr>
<td>Current liabilities (E)</td>
<td>572,698</td>
<td>755,203</td>
<td>796,271</td>
<td>888,053</td>
</tr>
<tr>
<td>Total liabilities (F)</td>
<td>1,423,490</td>
<td>1,574,371</td>
<td>1,749,522</td>
<td>1,891,572</td>
</tr>
<tr>
<td>Total equity (G)</td>
<td>2,055,219</td>
<td>1,722,955</td>
<td>1,749,121</td>
<td>2,263,020</td>
</tr>
<tr>
<td>Results of Operations During Each Year</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Operational Income (H)</td>
<td>392,652</td>
<td>33,387</td>
<td>-179,631</td>
<td>37,404</td>
</tr>
<tr>
<td>Interest expense (I)</td>
<td>-53,443</td>
<td>-74,884</td>
<td>-84,166</td>
<td>-43,925</td>
</tr>
<tr>
<td>Financial Ratios</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Working capital (A-E)</td>
<td>12,512</td>
<td>22,875</td>
<td>72,221</td>
<td>-192,543</td>
</tr>
<tr>
<td>Current ratio (A/E)</td>
<td>102%</td>
<td>103%</td>
<td>109%</td>
<td>78%</td>
</tr>
<tr>
<td>Quick ratio (C/E)</td>
<td>60%</td>
<td>79%</td>
<td>85%</td>
<td>63%</td>
</tr>
<tr>
<td>Debt-to-equity ratio (F/G)</td>
<td>69%</td>
<td>91%</td>
<td>100%</td>
<td>84%</td>
</tr>
<tr>
<td>Interest turnover ratio (I/H)</td>
<td>14%</td>
<td>224%</td>
<td>N/A</td>
<td>117%</td>
</tr>
</tbody>
</table>

In particular, GAM's current ratio in 2007 was below 100 percent, and between 2008 and 2010, the ratio remained essentially at 100 percent. In other words, GAM's short-term assets between 2007 and 2010 were insufficient to cover its short-term liabilities or barely enough to cover the short-term liabilities under the most generous (and unrealistic) scenario that GAM could turn all its current assets into cash or cash equivalents. Taking only the assets that can be easily converted into cash, i.e., the quick assets, GAM's inability to meet its current liabilities, i.e., debts due within a year, is clearly demonstrated by quick ratios substantially below the 100 percent mark.

More tellingly, GAM incurred interest expenses in 2007, 2008, and 2009 beyond what it earned through its business operations. In other words, at no time during the 2007-2009 period did GAM generate enough income to cover the interest expenses, let alone the loan principal, through its operations. In that regard, the fact that GAM has continued to be a highly debt-leveraged company during the same period is notable, as demonstrated by high debt-to-equity leverages.
ratios. These high ratios show that high and growing interest expenses were an inherent feature of GAM, owing to its unsustainable financial structure.

GAM’s financial position as of May 1, 2011, is the latest information reasonably available to Petitioners regarding its financial performance as a separate entity, as GAM and its subsidiaries amalgamated into Organización Cultiba, S.A.B. de C.V. (“Cultiba”). The GAM financial data as of May 1, 2011, show GAM’s current assets to be Mx$1,287,675,000, barely above its current liabilities of Mx$1,192,983,000. In total, GAM had Mx$2,331,714,000 in total debts at that time, Mx$2,314,248,000 of which were stated to be commercial loans.

Based on the foregoing payment default history and financial information, Petitioners believe that GAM has been and continue to be uncreditworthy throughout the AUL, i.e., 1996 to 2013.

h. Uncreditworthiness of Grupo Beta San Miguel S.A. de C.V. (“BSM”)

As discussed above, the evidence shows that private banks did not lend any funds to the Mexican sugar mills at least from latter part of 1998 to 2003. Dr. José Pinto Mazal, Director of BSM and an official of the CNIAA, estimated that “the government owned over 50 percent of {Mexico’s} production because the debts of the very big groups amounted to more than their assets.”

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190 Exhibit III-17, GAMI Post-Hearing Brief at para 45.
191 Exhibit III-20, GAMI Final Award at para 9.
BSM was not immune from this crisis. According to Mr. Pinto's testimony as cited in GAM's NAFTA Chapter 11 case, BSM “was losing money in 2000 and was highly indebted by 2001.”\footnote{193 Exhibit III-17, GAMI Post-Hearing Brief at para 65.} In addition, “Mr. Pinto testified that… BSM’s funded debt was roughly 1.4 billion pesos.”\footnote{194 Exhibit III-17, GAMI Post-Hearing Brief at para 65.} The consequence of the mounting liquidity pressure on BSM was a debt default, as was elaborated by the expert witness of the GOM in GAM’s NAFTA Chapter 11 case:

The Witness: Yes, that is right, Don Julio, but like San Miguel, Grupo Science \{sic – Saenz\}, and the vast majority, interestingly, have survived because they ceased paying their obligations. In other words, given the lack of liquidity, they opted to default vis-a-vis the banks and continuing working. So, I mean to say, well, that many of the companies were in the same situation or worse than GAM, but in those particular cases, they opted not to go into a formal suspension de pagos, even though de facto they stopped paying.\footnote{195 Exhibit III-17, GAMI Post-Hearing Brief at para 69.}

Like GAM, BSM could not pay the sugar cane producers and had to resort to a debt extension settlement. Specifically, BSM’s San Miguel del Naranjo mill, Quesería mill, Constancia mill, and San Rafael de Pucté mills all entered into a deferred payment scheme with the sugar cane growers.\footnote{196 Exhibit III-17, GAMI Post-Hearing Brief at para 120.}

Given the fact that BSM defaulted on its trade debts, \textit{i.e.}, payables that a company needs to settle in conducting day-to-day operations, Petitioners believe that BSM was unable to obtain any loans from commercial sources, long-term or short-term, and thus was uncreditworthy.

\textbf{i. Uncreditworthiness of the Government Owned Mills}

The most notorious debtors among the Mexican sugar mills during the period 1998 to 2003 were the mills that were previously owned by GAM, CAZE (Escorpion), Santos, and
Machado, among others that the GOM ultimately expropriated. According to the FEESA, the 27 sugar mills that it later expropriated alone had pre-expropriation debts that were ten times larger than the annual gross profit of the industry.\textsuperscript{197} An industry study concluded that these mills were simply “no longer creditworthy, and a renegotiation of their liabilities became improbable,”\textsuperscript{198} and according to The New York Times, they were “at the brink of bankruptcy or beyond.”\textsuperscript{199}

By the end of 1999, CAZE sugar mills alone owed almost Mx$10 billion to the GOM and banks.\textsuperscript{200} Together, the expropriated mills owed “1.5 times the annual income of the industry, including liabilities with Instituto Mexicano del Seguro Social (“IMSS”), Infonavit, CAN, the National Sugar Financial Institute and Unions, without considering debts with the Tax Administration System (SAT) and other creditors. This also meant 10 times the annual gross profit of the industry.”\textsuperscript{201}

By the time the consulting firm Deloitte examined the financial positions of these mills during 2001 and 2002, under the instructions of the Mexican Superior Audit Office, the problem had only worsened. According to Deloitte, the expropriated mills suffered a loss of Mx$3.28 billion and “the 27 sugar mills expropriated by the federal government {were} at current risk in their operations,” with short-term debts alone amounting to Mx$27.23 billion.\textsuperscript{202} Deloitte further opined that these mills might be “unable to continue their operation,” and that “the federal government, through the {Secretaría de Agricultura, Ganadería, Desarrollo Rural, Pesca y

\textsuperscript{197} \textit{Exhibit III-6}, Girón & Jiménez at 34.  
\textsuperscript{198} \textit{Exhibit III-6}, Girón & Jiménez at 34.  
\textsuperscript{200} \textit{Exhibit III-6}, Girón & Jiménez at 30.  
\textsuperscript{201} \textit{Exhibit III-6}, Girón & Jiménez at 34.  
\textsuperscript{202} \textit{Exhibit III-6}, Girón & Jiménez at 35.
Alimentación ("SAGARPA"), made available Mx$1 billion just to sustain the operation of these companies in 2002.\footnote{Exhibit III-6, Giron & Jimenez at 35.}

The liquidity and solvency crisis of the expropriated mills only worsened as time went on. In 2005, the debts of the expropriated mills to FINA alone increased to Mx$19.3 billion, an increase of 24 percent from its debt of Mx$15.5 billion in 2001.\footnote{Exhibit III-7, ASF Sugar Sector Audit, 2000-2005 at ch. 3.} While the increased debt level was only – and could only have been – made possible by deliberate government subsidization, it also shows that sugars mills, which according to an industry study were considered to be "no longer creditworthy" prior to expropriation, had become even less creditworthy four years later.

Specifically, as set out in the table below, every single mill except for six of GAM’s mills increased their debts during that period:\footnote{Exhibit III-7, ASF Sugar Sector Audit, 2000-2005 at ch 3.}
Table 17
FINA DEBTS BY SUGAR MILLS IN 2001 AND 2005 (Except Mills of GAM)
(in thousand Mx$)

<table>
<thead>
<tr>
<th>Groups and Sugar Mills</th>
<th>Debt Owed to FINA in 2001</th>
<th>Change %</th>
<th>Debt Owed to FINA in 2005</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>MACHADO</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ingenio José María Morelos S.A. de C.V.</td>
<td>1,701,500.00</td>
<td>19%</td>
<td>2,022,368.80</td>
</tr>
<tr>
<td>Fomento Azucarero del Golfo S.A. de C.V.</td>
<td>376,300.00</td>
<td>19%</td>
<td>446,835.50</td>
</tr>
<tr>
<td>Central Progreso S.A. de C.V.</td>
<td>362,000.00</td>
<td>19%</td>
<td>429,239.50</td>
</tr>
<tr>
<td>Ingenio la Margarita S.A. de C.V.</td>
<td>475,400.00</td>
<td>19%</td>
<td>565,995.40</td>
</tr>
<tr>
<td><strong>SANTOS</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ingenio Alianza Popular S.A. de C.V.</td>
<td>831,600.00</td>
<td>24%</td>
<td>1,030,788.20</td>
</tr>
<tr>
<td>Cía. Azucarera del Ingenio Bellavista S.A.</td>
<td>449,100.00</td>
<td>29%</td>
<td>578,159.10</td>
</tr>
<tr>
<td>Ingenio Pedernales S.A. de C.V.</td>
<td>407,500.00</td>
<td>21%</td>
<td>493,006.80</td>
</tr>
<tr>
<td>Cía. Industrial Azucarera S.A. de C.V.</td>
<td>311,300.00</td>
<td>19%</td>
<td>370,613.20</td>
</tr>
<tr>
<td>Ingenio Plan de Ayala S.A. de C.V.</td>
<td>604,700.00</td>
<td>19%</td>
<td>719,881.50</td>
</tr>
<tr>
<td>Ingenio San Gabriel Ver., S.A. de C.V.</td>
<td>282,500.00</td>
<td>19%</td>
<td>336,295.10</td>
</tr>
<tr>
<td><strong>ESCORPION</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ingenio de Atencingo, S.A. de C.V.</td>
<td>918,100.00</td>
<td>52%</td>
<td>1,398,243.70</td>
</tr>
<tr>
<td>Ingenio Emiliano Zapata S.A. de C.V.</td>
<td>1,306,800.00</td>
<td>27%</td>
<td>1,658,826.70</td>
</tr>
<tr>
<td>Ingenio Plan de San Luis S.A. de C.V.</td>
<td>1,205,300.00</td>
<td>22%</td>
<td>1,469,721.60</td>
</tr>
<tr>
<td>Impulsora de la Cuenca del Papaloapan S.A. de C.V.</td>
<td>1,912,400.00</td>
<td>37%</td>
<td>2,624,266.30</td>
</tr>
<tr>
<td>Ingenio Casasano la Abeja S.A. de C.V.</td>
<td>248,000.00</td>
<td>19%</td>
<td>295,313.10</td>
</tr>
<tr>
<td>Ingenio el Modelo S.A.</td>
<td>1,257,300.00</td>
<td>19%</td>
<td>1,496,888.60</td>
</tr>
<tr>
<td>Ingenio el Potrero S.A.</td>
<td>1,912,300.00</td>
<td>19%</td>
<td>2,276,737.60</td>
</tr>
<tr>
<td>Ingenio la Providencia S.A. de C.V.</td>
<td>752,900.00</td>
<td>19%</td>
<td>896,372.60</td>
</tr>
<tr>
<td>Ingenio San Miguelito S.A.</td>
<td>566,900.00</td>
<td>19%</td>
<td>674,908.70</td>
</tr>
<tr>
<td><strong>INDIVIDUAL</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cía. Azucarera la Concepción S.A. de C.V.</td>
<td>163,000.00</td>
<td>19%</td>
<td>194,091.10</td>
</tr>
<tr>
<td>Ingenio la Joya S.A. de C.V.</td>
<td>344,300.00</td>
<td>19%</td>
<td>409,967.60</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>15,175,500.00</td>
<td>25%</td>
<td>18,946,450.30</td>
</tr>
</tbody>
</table>

Simply put, the expropriated mills accumulated astronomical amount of debts by the time of the expropriation, which only grew larger. Indeed, the conclusion of the report commissioned by the GOM itself stated that these mills could not continue operating under the enormous debt. Based on the foregoing information, the Petitioners believe that the expropriated sugar mills were and continue to be uncreditworthy.
j. Uncreditworthiness of Certain Other Producers

Despite the fact that most, if not all, of the remaining sugar mill groups in Mexico are privately held, and hence their financial information is not reasonably available to the Petitioners, the uncreditworthiness of many Mexican sugar producers is still demonstrably evident from other publicly available sources. Chief among them are the sugar producers that received “Letter E” credit rating by the Mexican Central Bank, signifying that they cannot be granted credit or guarantees. Specifically, sugar mills belonging to Machado and Puga Groups, as well as El Refugio, Motzorongo, and Santa Domingo mills all received “Letter E” credit ratings by the Mexican Central Bank, signifying that they cannot be granted credit or guarantees. In addition, Calipam, El Carmen, Dos Patrias, Los Mochis, Bellavista, and Cuatotolapam mills similarly received a “zero” in the Mexican Central Bank’s assessment, which would have warranted an assignment of “Letter E” credit rating to these mills. The expert witness of the GOM in GAM’s NAFTA Chapter 11 case testified that some non-expropriated mills, including the Independencia which went bankrupt soon after, were performing even worse than the GAM mills that had been expropriated.

Puga, Saenz, and Seoane Groups apparently also could not meet their debt obligations to sugar cane growers, and had to negotiate an extension of the repayment terms, as did GAM and BSM. In the case of Saenz Group, the GOM’s expert witness to the GAM’s NAFTA Chapter

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206 Exhibit III-23, GAMI Reply at paras 82-83.
207 Exhibit III-23, GAMI Reply at para 82.
208 Exhibit III-17, GAMI Post-Hearing Brief at para 70.
209 Exhibit III-23, GAMI Reply at para 84.
210 Exhibit III-22, GAMI Statement of Claim at para 121; Exhibit III-17, GAMI Post-Hearing Brief at para 67.
11 case reported that it simply “ceased paying their obligations” and essentially “opted to default vis-à-vis the banks.”

The foregoing evidence shows that the following sugar groups and mills were not creditworthy in that they were considered to be uncreditworthy by the financial institutions and/or they in fact defaulted on debt repayments: Machado, Puga, Saenz, and Seoane Groups, and El Refugio, Motzorongo, Santa Domingo, Calipam, El Carmen, Dos Patrias, Los Mochis, Bellavista, and Cuatotolapam mills.

k. Conclusion

According to the Department’s regulations, a firm or a project is considered to be uncreditworthy if it “could not have obtained long-term loans from conventional commercial sources.” In this case, based on information reasonably available to Petitioners, the expropriated sugar mills, GAM, BSM, Machado, Puga, Saenz, Seoane Groups, and El Refugio, Motzorongo, Santa Domingo, Calipam, El Carmen, Dos Patrias, Los Mochis, Bellavista, and Cuatotolapam sugar mills were uncreditworthy under this standard during the period between 1998 and 2003.

Although the information reasonably available to the Petitioners show continuing uncreditworthiness of a part of the Mexican sugar industry throughout the AUL, namely GAM and the nine mills which continue to be owned by the GOM, similarly comprehensive analysis could not be done for the other producers due to the lack of availability of public financial information. Nonetheless, what is shown by the evidence is that all of the named producers have been uncreditworthy at least for part of recent history, in particular during when the GOM was funneling funds to the sugar industry, and that the liquidity crisis has been wide-spread throughout the Mexican sugar industry. For the foregoing reasons, Petitioners respectfully

211 Exhibit III-17, GAMI Post-Hearing Brief at para 69.
requests that the Department investigate each and every one of the Mexican respondents in respect of their creditworthiness throughout the AUL. Petitioners will further address uncreditworthiness to the extent required later in this proceeding.

6. **GOM Subsidies to Expropriated Mills**

On September 3, 2001, in view of the dismal financial condition and high levels of public indebtedness of a large segment of the industry, and the corresponding threat to cane harvest in the 2001/02 cycle, the GOM expropriated 27 of the country’s 57 sugar mills.\(^{212}\) By October 12, 2001, the GOM had constituted FEESA to administer and oversee the operation of the expropriated mills.\(^{213}\)

The New York Times summarized the state of industry at the time of expropriation:

**MEXICO CITY, Sept. 3** – Mexico’s government took over nearly half the nation’s sugar mills today in an attempt to save a dying industry subsidized for decades by the old government.

Officials said they would expropriate 27 of Mexico’s 60 privately operated and deeply indebted sugar mills, spending at least $110 million to acquire them. The government will then either shutter them or sell them. Almost all the seized mills are at the brink of bankruptcy or beyond. Some have not paid farmers for their crops in two years.

The Institutional Revolutionary Party, which ran Mexico from 1929 until President Vicente Fox defeated it last year, made the sugar industry part of its political apparatus. It subsidized growers, cutters, refiners, unions and bosses, spending billions.

Until last year, the subsidies won political loyalty from the sugar mills and cane fields, which employ roughly two million Mexicans, mostly peasant farmers. They also built a system whose

\(^{212}\) Exhibit III-7, ASF Sugar Sector Audit, 2000-2005 at ch. 4.1.

\(^{213}\) Exhibit III-7, ASF Sugar Sector Audit, 2000-2005 at ch. 4.1. See also Exhibit III-62, FEESA, Organization Manual, Section 2.
antiquated mills produce far more sugar than its most important customer -- the United States -- will buy.\textsuperscript{214}

Soon after the expropriation, the GOM infused massive amounts of cash into all 27 of the expropriated mills through a fund it established called the “Special Fund,” which FEESA administered, just to keep them afloat.\textsuperscript{215} In all, some Mx$3,360,289,000 was granted to the nationalized mills in 2001 and 2002 through this fund. To Petitioners’ knowledge, most of that money remains unrecovered.\textsuperscript{216}

Moreover, despite the Fox administration’s stated intentions, selling and/or shuttering the mills proved more difficult than expected. In particular, four groups who had collectively owned 25 of the 27 expropriated mills prior to the expropriation — CAZE (9 mills), GAM (6 mills), Grupo Santos (6 mills), and Grupo Machado (4 mills) — filed constitutional (amparo) suits to have the mills returned. All but CAZE were successful, first GAM in 2004; then the other two groups in 2006.\textsuperscript{217} CAZE did not have its mills returned, and indeed its nine mills remain in the GOM’s possession today; however, the GOM was required to pay Mx$1,187,852,000 as compensation to the mills’ previous owners.\textsuperscript{218}

As of 2008, the GOM was still in the sugar business — six years longer than it had intended to be. In that year, it provided massive grants to the eleven still state-owned mills


\textsuperscript{215} Exhibit III-29, Official Gazette of the Federation, September 19, 2001, “GUIDELINES of Operation of the Special Fund for the Payment of Several Commitments of Operation of the Sugar Sector, for the 27 sugar factories included in the Expropriation Decree published the 3rd of September, 2001” (hereinafter “Operating Guidelines of the Special Fund”).

\textsuperscript{216} Exhibit III-7, ASF Sugar Sector Audit, 2000-2005 at ch. 4.3. See also Exhibit III-16, FEESA 2011 Audit at 7. To Petitioners’ knowledge, the funds channeled to the remaining nine FEESA (previously CAZE) mills, which represented the majority of the Special Fund, have not been repaid.

\textsuperscript{217} Exhibit II-3, World Bank at 24.

\textsuperscript{218} Exhibit III-7, ASF Sugar Sector Audit, 2000-2005 at ch. 6.4.
through transfers to and out of FEESA, specifically in the amount of Mx$1,644,729,800. This funding was provided by the GOM treasury to cover the mills’ payments to cane growers and their other operational shortfalls. Similarly, amounts up to Mx$350,000,000 annually have been provided to the state-owned mills in 2009, 2011, and 2013. To this day, the GOM through FEESA remains in control of the nine mills previously owned by CAZE. All of the following grant programs provided “coverage for operating losses” and therefore conferred significant non-recurring benefits to the recipient mills that are allocable to the POI (see C.F.R. § 351.524(c)(1)).

I. GOM grants and/or loans at sub-commercial rates to uncreditworthy mills through the 2001-2002 “Special Fund”

In direct connection with the expropriation of the 27 sugar mills in September 2001, as set out in the overview immediately above, the GOM established a “Special Fund.” In general terms, the purpose of the Special Fund was to pay off the expropriated mills’ accrued short-term liabilities and to ensure that on an on-going basis, “when the funds available in the treasuries of the expropriated companies were insufficient, this fund would be used to complement or cover commitments generated by normal industry operations.” Essentially, this Special Fund was a

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221 Exhibit III-30, FEESA 2009 Audit at 2.

222 Exhibit III-13, Observatorio Veracruzano, “The sale of sugar factory could be finalized this year,” January 9, 2014.

223 Exhibit III-29, Operating Guidelines of the Special Fund.

224 Exhibit III-6, Girón & Jiménez at 34.
mechanism through which the GOM covered the operational losses of the expropriated sugar mills.

Grants through the Special Fund were a necessary component of the underlying GOM expropriation, as the expropriated mills had been the least creditworthy Mexican industry and had suffered most from severe liquidity problems.\textsuperscript{225} Indeed, it has been stated that without the Special Fund (more than half of which in 2001 went towards paying mill debts to sugar cane producers), there would have been no harvest at all in the 2001-02 season.\textsuperscript{226} In total, the GOM provided the expropriated mills with operational grants under the Special Fund totaling Mx$3.36 billion in 2001 and 2002 alone.

xiii. Financial contribution

The Special Fund provided financial contributions to the expropriated sugar mills in the form of direct transfers of funds (grants), within the meaning of section 771(5)(D)(i) of the Act. Specifically, the Special Fund involved the direct transfer of funds from SAGARPA, a department of the GOM Executive Branch responsible for agriculture,\textsuperscript{227} to FEESA. FEESA in turn transferred these funds to the 27 expropriated mills, in the following aggregate amounts.\textsuperscript{228}

<table>
<thead>
<tr>
<th>Year</th>
<th>Amount (Mx$)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2001</td>
<td>2,368,289,000</td>
</tr>
<tr>
<td>2002</td>
<td>992,000,000</td>
</tr>
</tbody>
</table>

\textsuperscript{225} Exhibit III-6, Girón & Jiménez at 34, referencing FEESA statements.

\textsuperscript{226} Exhibit III-6, Girón & Jiménez at 34.

\textsuperscript{227} Exhibit III-32, SAGARPA, "Introduction" (webpage: accessed February 21, 2014).

\textsuperscript{228} Exhibit III-7, ASF Sugar Sector Audit, 2000-2005 at 4.3.
A mill-by-mill breakdown of the amounts provided through the Special Fund in 2001 and 2002 can be found in Exhibit III-7.229

Information reasonably available to Petitioners shows that the amounts transferred to the mills were grants, as opposed to loans, including information showing that the GOM itself coded these funds as “subsidies and transfers” pursuant to its own public sector classification system230 (that classification system sets out an entirely different chapter or series for loans231).

xiv. Specificity

The government measure establishing the Special Fund was the Lineamientos de Operación del Fondo Especial para el Pago de Diversos Compromisos de Operación del Sector Azucarero, por los 27 ingenios incluidos en el Decreto de Expropiación publicado el 3 de septiembre de 2001.232 Specifically, the Special Fund was established for the payment of the following types of sugar mill-specific liabilities, both past and on-going: 1) pre-liquidation and settlement of debts to sugar cane producers; 2) labor-related financial obligations; 3) general mill operating expenses; and 4) payment for the release of the Sugar Report as well as for permits and other fees which may arise.233 On its face, the Special Fund is limited to the sugar industry, and more specifically the 27 expropriated sugar mills, and the funding provided under it is therefore de jure specific within the meaning section 771(5A)(D)(i) of the Act. The Special Fund is also

229 Exhibit III-7, ASF Sugar Sector Audit, 2000-2005 at 4.3.
231 Exhibit III-33, GOM Expenditure Classification, “7000” series.
232 Exhibit III-29, Operating Guidelines of the Special Fund.
233 Exhibit III-29, Operating Guidelines of the Special Fund. See also Exhibit III-6, Girón & Jiménez at 34.
clearly *de facto* specific pursuant to section 771(5A)(D)(iii) of the Act, as sugar mills are the only verifiable recipients of the funds.

**xv. Benefit**

As discussed above, these Special Fund grants provided non-recurring benefits to the 27 expropriated sugar mills as “coverage for operating losses,” or simply as “grants” (see 19 C.F.R. § 351.524(c)(1)). In either case, the amount of the benefit is the amount of the grants (19 C.F.R. § 351.504(a)), *i.e.*, a benefit exists in respect of the GOM Mex$3.36 billion in grants described above in the amount of those grants, pursuant to 19 C.F.R. § 351.504(a).

If the Department’s investigation reveals that the amounts were provided in the form of loans, the debt was provided to uncreditworthy sugar mills at rates of interest that were lower than the mills would pay on comparable commercial loans they could actually obtain on the market, pursuant to 19 C.F.R. § 351.505(a)(1), 19 C.F.R. § 351.505(a)(3)(iii) and 19 C.F.R. § 351.505(a)(6)(i). Petitioners are not aware of what, if any, interest rate would have attached to such loans since, tellingly, the legal instrument enabling and governing the Special Fund program did not prescribe any rate of interest or repayment terms for the funding provided.234

While the mills belonging to Grupo Santos and Grupo Machado were returned to their private owners by court orders in 2006, FEESA documentation confirms that as of June 30, 2012, these groups had not repaid the Mex$657,316,000 injected into their mills through the Special Fund.235 Information reasonably available to Petitioners provides no evidence of repayment of this amount as of the end of December, 2013.

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234 Exhibit III-29, Operating Guidelines of the Special Fund.
235 Exhibit III-16, FEESA 2011 Audit at 7.
m. GOM funding to expropriated mills in fiscal year 2008

According to FEESA’s 2009 Annual Public Audit Report, in fiscal year 2008, the GOM transferred funds through SAGARPA to FEESA in the amount of Mx$1,644,729,800 to partly cover the expropriated sugar mills’ payments to cane producers for the 2006-2007 harvest (Mx$294,729,800 of the total amount) and to similarly cover the expropriated mills’ operational deficit in 2008 (the remaining Mx$1,350,000,000).236

Very little other information is reasonably available to Petitioners as to which specific program or measure, if any, this support was granted under. This is partly because, curiously—and unlike for the years 2003 thru 2007 and 2009 thru 2012—the GOM did not produce an Annual Public Audit Report for FEESA for the year 2008. All that is available is an abbreviated accounting document identifying the existence of this extraordinary expenditure.237 A 2006-2012 GOM Accountability Report on FEESA similarly, and tellingly, contains no further or greater detail on this Mx$1,644,729,800 infusion.

xvi. Financial contribution

The GOM’s 2008 funding to the expropriated mills involved a direct transfer of funds (grants) made through FEESA within the meaning of section 771(5)(D)(i) of the Act. The entire amount transferred into FEESA was “exercised” in 2008,238 meaning that FEESA either transferred all of the money to the mills or paid the mills’ expenses on their behalf. Specifically, FEESA’s 2006 – 2012 audit document confirms that the 2008 amounts were transfers under the 4000 series (“Subsidies and Transfers”), and specifically 4309 “Transfers to Meet Operating

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238 Exhibit III-34, FEESA 2008 Budget.
Deficit and Administrative Expenditures.” The transfers were not made under the 7000 series, which pertains to “loans.”

That said, to the extent that the GOM provided this funding to the expropriated sugar mills in the form of loans, such GOM loans would likewise constitute a direct transfer of funds within the meaning of section 771(5)(D)(i) of the Act.

xvii. Specificity

As discussed above, Petitioners have been unable to locate any particular legal measure pursuant to which the GOM’s 2008 funding to the expropriated mills was granted. Based on the information reasonably available to Petitioners, the GOM’s 2008 funding to the expropriated mills was de jure specific pursuant to section 771(5A)(D)(i) of the Act, as the GOM and FEESA expressly limited its funding and/or financing to the expropriated mill recipients, and was in any event de facto specific pursuant to section 771(5A)(D)(iii) of the Act, as the expropriated sugar mills were the only recipients of this funding.

xviii. Benefit

A benefit to the expropriated mills exists in the amount of the grants under 19 C.F.R. § 351.504(a).

Alternatively, if the Department’s investigation reveals that funding in question was provided in the form of loans, the debt was provided to uncreditworthy sugar mills at rates of interest that were lower than the mills would pay on comparable commercial loans they could actually obtain on the market, pursuant to 19 C.F.R. § 351.505(a)(1), 19 C.F.R. § 351.505(a)(3)(iii) and 19 C.F.R. § 351.505(a)(6)(i).

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n. Funding to cover the 2009 operational deficit of expropriated mills

In fiscal year 2009, SAGARPA transferred Mx$100,000,000 to FEESA to cover the operating deficit of the expropriated mills. While these monies emanated originally from Mexico’s Programa de Atención a Problemas Estructurales (“PAPE”) (“Program to Address Structural Problems”), information reasonably available to Petitioners indicates that the Mx$100 million were earmarked and transferred from SAGARPA to FEESA for the explicit purpose of covering the operating deficit of expropriated sugar mills.240

xix. Financial contribution

The GOM 2009 funding to cover the 2009 operational deficit of expropriated mills provided these mills with a direct transfer of funds,241 in the form of a grant, which constitutes a financial contribution within the meaning of section 771(S)(D)(i) of the Act.

To the extent that the GOM provided this funding to the expropriated sugar mills in the form of loans, such GOM loans would likewise constitute a direct transfer of funds within the meaning of section 771(S)(D)(i) of the Act.

xx. Specificity

Based on the information reasonably available to Petitioners, the GOM’s 2009 funding to the expropriated mills was de jure specific pursuant to section 771(5A)(D)(i) of the Act, as the GOM and FEESA expressly limited its funding and/or financing to the expropriated mill

240 Exhibit III-30, FEESA 2009 Audit at 2: “Within the framework of the Attention to Structural Problems Program, SAGARPA transferred resources to FEESA in the amount of Mx$100,000.0 thousands during the 2009 fiscal year so that the expropriated sugar mills, which had been transferred to State ownership, could cover their operating deficit. (translation)

241 Exhibit III-30, FEESA 2009 Audit at 2.
recipients, and was in any event *de facto* specific pursuant to section 771(5A)(D)(iii) of the Act, as the expropriated sugar mills were the only recipients of this funding.

**xxi. Benefit**

A benefit to the expropriated mills exists in the amount of the grants under 19 C.F.R. § 351.504(a). Alternatively, if the Department’s investigation reveals that funding in question was provided in the form of loans, the debt was provided to uncreditworthy sugar mills at rates of interest that were lower than the mills would pay on comparable commercial loans they could actually obtain on the market, pursuant to 19 C.F.R. § 351.505(a)(1), 19 C.F.R. § 351.505(a)(3)(iii) and 19 C.F.R. § 351.505(a)(6)(i).

**o. New 2013 GOM funding to the expropriated mills**

An extraordinary *spike* in the magnitude of FEESA’s budget, not seen since 2008, has occurred during the 2013 POI. Specifically, according to official GOM public accounts for interim 2013 (January – November), FEESA received an additional Mx$351,400,000 in transfers from SAGARPA. This amount is confirmed in a SAGARPA report. Because of the GOM’s reporting cycle, no further information is reasonably available to Petitioners regarding this massive transfer.

That being said, the Director of FEESA has stated that Mx$150 million have been used to pay debts of the expropriated mills to IMSS (Mexico’s Social Security Administration), which were reportedly 12 years in arrears. Information reasonably available to Petitioners shows that the funds provided to the mills in 2013 were used at least in part to cover the mills’ operational costs.  

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losses due to a fall in the domestic price of sugar in Mexico in 2012, where most Mexican-produced sugar is purchased and consumed. Specifically, the USDA confirms that the Mexican domestic bulk price for estandar sugar decreased dramatically in the second half of 2012 and that those lower prices more or less persisted throughout 2013. More specifically, domestic prices were lower by 33 percent in the eighteen months following July 2012 as compared to the preceding period. The significant coverage for operating losses provided to the mills in 2008, described above, followed a similar pattern of falling and low prices in late 2007 and into 2008.

xxii. Financial contribution

The GOM funding in 2013, provided through SAGARPA and/or FEESA, to cover the 2012-2013 operational deficit of expropriated mills provided these mills, with a direct transfer of funds in the form of a grant, which constitutes a financial contribution within the meaning of section 771(5)(D)(i) of the Act.

To the extent that the GOM provided this funding to the expropriated sugar mills in the form of loans, such GOM loans would likewise constitute a direct transfer of funds within the meaning of section 771(5)(D)(i) of the Act.

xxiii. Specificity

Based on the information reasonably available to Petitioners, the GOM’s 2013 funding to the expropriated mills was de jure specific pursuant to section 771(5A)(D)(i) of the Act, as the GOM and FEESA expressly limited its funding and/or financing to the expropriated mill

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245 Exhibit III-38, USDA, “Table 56 -- Mexico: sugar production and supply, and sugar and HFCS utilization,” March 11, 2014 (hereinafter “USDA Table 56”).

246 Exhibit III-38, USDA, Table 56.
recipients, and was in any event de facto specific pursuant to section 771(5A)(D)(iii) of the Act, as the expropriated sugar mills were the only recipients of this funding.

xxiv. Benefit

A benefit to the expropriated mills exists in the amount of the grants under 19 C.F.R. § 351.504(a). As discussed above, given the history of bailouts provided by the GOM through SAGARPA, there is every reason to believe that the amount provided in 2013 was a grant to cover the operational deficits of the mills, and provided under classification 4309 of the GOM’s internal financial regulations.

Alternatively, if the Department’s investigation reveals that the funding in question was provided in the form of loans, the debt was provided to uncreditworthy sugar mills at rates of interest that were lower than the mills would pay on comparable commercial loans they could actually obtain on the market, pursuant to 19 C.F.R. § 351.505(a)(1), 19 C.F.R. § 351.505(a)(3)(iii) and 19 C.F.R. § 351.505(a)(6)(i).

p. GOM funding for the purchase of a boiler for the Emiliano Zapata Mill (2011)

In 2011, the GOM transferred Mx$60,000,000 to FEESA for the replacement of a boiler at the Emiliano Zapata mill.\(^{247}\) It appears that this transfer took the form of a grant, as it was a discretionary budgetary item approved the Cámara de Diputados, the lower house of Mexico’s Congress, on October 28, 2010.\(^{248}\) Notably, the description of the resolution of the Cámara de

\(^{247}\) Exhibit III-16, FEESA 2011 Audit at 4-5. See also Exhibit III-31, FEESA 2006-12 Report at 16-17.

Diputados in FEESA’s 2001 audit report indicates that the funding for the replacement boiler was earmarked as a separate item and approved on this separate basis. 249

xxv. Financial contribution

Based on information reasonably available to Petitioners, the GOM provided a direct transfer of funds, in the form of a grant, for the replacement of the boiler within the meaning of section 771(5)(D)(i) of the Act.

To the extent that the GOM provided this funding to the expropriated sugar mills in the form of loans, such GOM loans would likewise constitute a direct transfer of funds within the meaning of section 771(5)(D)(i) of the Act.

xxvi. Specificity

The information reasonably available to Petitioners shows that the funds provided to the Emiliano Zapata mill were provided on an entirely discretionary basis and were separately earmarked and approved as such. This funding therefore was de jure specific pursuant to section 771(5A)(D)(i) of the Act, as the GOM expressly limited its funding and/or financing to the Emiliano Zapata, and was in any event de facto specific pursuant to section 771(5A)(D)(iii) of the Act, as the Emiliano Zapata mill was the only recipient of this funding.

xxvii. Benefit

A benefit to the expropriated mills exists in the amount of the grants under 19 C.F.R. § 351.504(a). Alternatively, if the Department’s investigation reveals that funding in question

249 Exhibit III-16, FEESA 2011 Audit at 4: “The authorization document verified that the Chamber of Deputies approved, in the the FEESA budget for 2011 fiscal year, an assignment in the amount of Mx$69,101.2 thousands, which included the fiscal support for Mx$60,000.0 thousands in order to replace the boiler in the Emiliano Zapata sugar mill factory and consequently decrease emission of contaminating substances.”
was provided in the form of loans, the debt was provided to an uncreditworthy sugar mill at a rate of interest that was lower than the mill would pay on a comparable commercial loan it could actually obtain on the market, pursuant to 19 C.F.R. § 351.505(a)(1), 19 C.F.R. § 351.505(a)(3)(iii) and 19 C.F.R. § 351.505(a)(6)(i).

q. GOM forgiveness of tax liability to expropriated mills

In a February 10, 2014 article published in the Mexican newspaper Reforma, Carlos Rello Lara, the Director of FEESA, is reported as stating that in 2013, 898 million pesos of taxes were “cancelled” for the expropriated sugar mills by the Treasury (SHCP).250

xxviii. Financial contribution

This massive apparent forgiveness of tax liability by the GOM constitutes a financial contribution in the form of tax revenue foregone within the meaning of section 771(5)(D)(ii) of the Act.

xxix. Specificity

The information reasonably available to Petitioners shows that GOM’s forgiveness of tax liability to the expropriated mills was both de jure specific pursuant to section 771(5A)(D)(i) of the Act, as the GOM expressly limited its foregoing of tax revenue to the expropriated mills, and de facto specific pursuant to section 771(5A)(D)(iii) of the Act, as the expropriated sugar mills were the only apparent recipients of such foregone tax revenues.

250 Exhibit III-37, Reforma Article.
xxx. **Benefit**

A benefit exists in the amount of the direct tax that was foregone, within the meaning of 19 C.F.R. § 351.509(a)(1).

7. **2008 GOM Support Programs to Assist Mills with Payments to Cane Growers**

   r. **The Programa de Apoyo al Sector Agroindustrial de la Caña de Azúcar Program**

   In 2008, the GOM provided all of the sugar mills in the country with massive grants to cover the purchase price of cane for the 2007/08 harvest. This was done under the Programa de Apoyo al Sector Agroindustrial de la Caña de Azúcar ("PROINCAÑA") program. A breakdown of the amounts made available to each mill under this program is attached as **Exhibit III-41**. Roughly Mx$665,200,000 of the Mx$800,000,000 made available under this program was actually granted to mills. Notably, the amounts provided under this separate program are distinct from the amounts provided to the state-owned mills in 2008 through FEESA, as described above, and from the "Complimentary Aid Program, for Payments to Cane Growers" described below.

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251 **Exhibit III-40**, Official Gazette of the Federation, September 26, 2008, "AGREEMENT based on the Program to Promote Competitiveness of Industrial Sectors (PROIND in Spanish) whereby guidelines are presented for implementing the Support Program for the Sugarcane Agro-industrial Sector for fiscal year 2008" (hereinafter "PROINCAÑA Guidelines").


xxxii. **Financial contribution**

Funding under the PROINCAÑA Program was provided by the GOM's Economy Secretariat and constituted a direct transfer of funds within the meaning of section 771(5)(D)(i) of the Act.\(^{254}\)

xxxii. **Specificity**

The PROINCAÑA program is limited in law to the sugar industry\(^ {255}\) and therefore *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act. The program is also *de facto* specific pursuant to section 771(5A)(D)(iii) of the Act, as sugar mills were the only apparent recipients of PROINCAÑA payments.

xxxiii. **Benefit**

The preamble and Article I of the PROINCAÑA agreement clearly demonstrate that the amounts to be provided under that program are grants (*i.e.*, payments of liabilities of mills to cane growers), not loans.\(^ {256}\) The GOM has also confirmed on one of its websites that the amounts provided under the PROINCAÑA program were "one-time" grants.\(^ {257}\) As such the PROINCAÑA transfers are grants and conferred a countervailable benefit in the amount of the grants (see 19 C.F.R. § 351.504(a)) and are presumptively non-recurring (see 19 C.F.R. § 351.524(c)(1)).

\(^{254}\) Exhibit III-40, PROINCAÑA Guidelines at Preamble and Arts. 3, 17.

\(^{255}\) Exhibit III-40, PROINCAÑA Guidelines at Preamble and Art. 1.

\(^{256}\) Exhibit III-40, PROINCAÑA Guidelines.

\(^{257}\) Exhibit III-40, PROINCAÑA Guidelines at Preamble and Art. 1.
s. Complimentary GOM and Mexican State Government support for mill payments to cane growers

In parallel with the Economy Secretariat’s PROINCAÑA program, SAGARPA implemented its own complimentary program to assist mills with payments to cane growers for the 2007-2008 season.\(^{258}\) Under this program, aid in the form of one-time payments of up to Mx$145 per ton was provided.\(^{259}\) SAGARPA reported that the Mexican Federal Government provided a total of Mx$402.3 million under the program, while the states of Jalisco, Nayarit and San Luis Potosi y Veracruz provided Mx$44.8, Mx$6.1 and Mx$26.4 million in direct aid under the program, respectively.\(^{260}\)

xxxiv. Financial contribution

Funding under the Complimentary SAGARPA and State Government Aid Program for Mill Payments to Cane Growers emanated from SAGARPA (a Department of the GOM) and from the states of Jalisco, Nayarit and San Luis Potosi y Veracruz and constituted a direct transfer of funds within the meaning of section 771(5)(D)(i) of the Act\(^{261}\).

xxxv. Specificity

The Complimentary SAGARPA and State Government Aid Program is limited in law to the sugar industry\(^{262}\) and therefore de jure specific within the meaning of section 771(5A)(D)(i) of the Act.

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\(^{260}\) Exhibit III-43, 2008 Complimentary Program.

\(^{261}\) Exhibit III-40, PROINCAÑA Guidelines at Preamble and Arts. 3, 17.

\(^{262}\) Exhibit III-40, PROINCAÑA Guidelines at Preamble and Art. 1.
xxxvi. Benefit

Payments made under the Complimentary SAGARPA and State Government Aid Program for Mill Payments to Cane Growers were grants (i.e., payments of liabilities of mills to cane growers), conferred a countervailable benefit in the amount of the grants (see 19 C.F.R. § 351.504(a)) and are presumptively non-recurring (see 19 C.F.R. § 351.524(c)(1)).


t. Background

As Table 19 shows, Mexican production between 1995 and 1999 varied from a low of 4.3 million tons (1996) to a high of 5.2 million tons (1998). At the same time, however, domestic consumption of sugar fell or remained stagnant. The result was significant sugar surpluses ranging from 9 percent to 22 percent of domestic production.

<table>
<thead>
<tr>
<th>Year</th>
<th>Domestic Production</th>
<th>Domestic Consumption</th>
<th>Surplus</th>
</tr>
</thead>
<tbody>
<tr>
<td>1995</td>
<td>4,500,000</td>
<td>4,100,000</td>
<td>400,000</td>
</tr>
<tr>
<td>1996</td>
<td>4,377,453</td>
<td>3,983,800</td>
<td>393,653</td>
</tr>
<tr>
<td>1997</td>
<td>4,543,850</td>
<td>3,873,900</td>
<td>669,950</td>
</tr>
<tr>
<td>1998</td>
<td>5,174,027</td>
<td>4,025,600</td>
<td>1,148,427</td>
</tr>
<tr>
<td>1999</td>
<td>4,748,000</td>
<td>4,148,000</td>
<td>600,000</td>
</tr>
</tbody>
</table>

The primary reasons for the growth in sugar production was the corresponding increase in land dedicated to sugar cane production and government stimulus for increased sugar cane production. In order to enable and ensure the export of surplus sugar due to the increased sugar cane production, the GOM provided three one-time, non-recurring grants to sugar mills.

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263 Exhibit III-6, Giron & Jimenez at 29.
264 Exhibit III-6, Giron & Jimenez at 28.
265 See, e.g. Exhibit III-45, Official Gazette of the Federation, October 17, 1997, “AGREEMENT for the allocation of a subsidy intended to support the sugar mills by promoting the final exports of sugar surpluses from previous cycles to the 1996/1997 harvest” (hereinafter “1997 Surplus Export Program”).
These payments were made pursuant to three separate one-time programs, pursuant to measures enacted by the GOM in 1997, 1998, and 1999, respectively:

1. Agreement for the allocation of a subsidy intended to support the sugar mills by promoting the final exports of sugar surpluses from previous cycles to the 1996/1997 harvest, Federal Official Gazette (17 October 1997) ("1997 Export Subsidy");

2. Agreement for the allocation of a subsidy intended to support the management of national sugar inventories, Federal Official Gazette (16 April 1998) ("1998 Inventory Support Subsidy");

3. Agreement for the allocation of a subsidy to support inventory management of domestic sugar, Federal Official Gazette on (27 December 1999) ("1999 Inventory Support Subsidy").

u. GOM 1997 export subsidy

On 20 October, 1997, the GOM published the legislative instrument setting out the details of the 1997 Export Subsidy program. The GOM indicated that due to (i) the fact that the cane harvest in the 1996-1997 harvest year resulted in the record third straight year of sugar production; (ii) the close association between the price of sugar cane and the price of sugar; and, (iii) the requirement that the domestic sugar industry export a portion of its surpluses, it was necessary to grant a subsidy to sugar producers.266

The subsidy was granted by the GOM on a one-time basis, for the 1997 fiscal year.267 The amount of the subsidy provided was to be calculated by measuring the difference between the export price of the sugar exported in that year and the national average price of the sugar, up to a maximum of Mx$1,341.29 per ton.268 The total amount of funding available under the program was Mx$327,234,600.269 While the program was administered by the Secretariat of

266 Exhibit III-45, 1997 Surplus Export Program at Preamble.
267 Exhibit III-45, 1997 Surplus Export Program at Art. 4.
268 Exhibit III-45, 1997 Surplus Export Program at Art. 4.
269 Exhibit III-45, 1997 Surplus Export Program at Art. 3.
Commerce and Industrial Development, the funds were issued to the sugar producers through and by FINA.\(^{270}\)

In order to qualify for the export subsidy, the sugar producer had to be a domestic producer who exported its surplus.\(^{271}\) As eligibility and approval for the subsidy is contingent on export performance in law, the 1997 Export Subsidy is an export subsidy under 19 C.F.R. § 351.14.

xxxvii. Financial contribution

As a direct transfer of funds from the GOM in the form of a non-recurring, one-time grant, the 1997 Export Subsidy constitutes a financial contribution by the GOM within the meaning of section 771(5)(D)(i) of the Act.

xxxviii. Specificity

The 1997 Export Subsidy is *de jure* specific within the meaning of section 771(5A)(B) of the Act as the subsidy is contingent in law on the export of sugar. In order to qualify for the export subsidy, the sugar producer had to be a domestic producer who verifiably exported its surplus sugar.

xxxix. Benefit

A benefit exists within the meaning of 19 C.F.R. § 315.504(b) in the amount of the grant.

v. GOM 1998 inventory support subsidy

The GOM set out the requirements and benefits of the 1998 Inventory Support Subsidy on April 16, 1998. Similar to the 1997 Export Subsidy, the GOM indicated that the subsidy was

\(^{270}\) Exhibit III-45, 1997 Surplus Export Program at Arts. 2, 8.

\(^{271}\) Exhibit III-45, 1997 Surplus Export Program at Art. 1.
necessary because of the record sugar cane harvest and sugar production in Mexico. Unlike the 1997 Export Subsidy, however, the stated purpose of the subsidy was to help finance the yearly storage of the inventories of the domestic sugar production.

The GOM provided a one-time, non-recurring grant of Mx$117,132,000 to sugar mills, which was equivalent to Mx$195.22 per tonne of sugar inventories. Like the 1997 Export Subsidy, the main requirements to qualify and receive the subsidy were to comply with export allocations of the surplus sugar from the 1997/1998 harvest and to have stored sugar in bonded warehouses or exported its sugar temporarily during the period of April 30, 1998 to December 31, 1998. The GOM, through SAGARPA, provided the resources to FINA to administer the program. The funds were paid directly to the accounts of sugar producers on a monthly basis from May 1998 to December 1998.

As eligibility and approval for the subsidy was contingent on export performance in law, the 1998 Export Subsidy is an export subsidy under 19 C.F.R. § 351.14.

xl. Financial contribution

The 1998 Inventory Support Subsidy constitutes a direct transfer of funds in the form of a grant, and constitutes a financial contribution within the meaning of section 771(5)(D)(i) of the Act.

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272 Exhibit III-46, Official Gazette of the Federation, April 15, 1998, "AGREEMENT for the allocation of a subsidy intended to support the management of national sugar inventories" at Preamble (hereinafter "1998 Inventory Subsidy Program").

273 Exhibit III-46, 1998 Inventory Subsidy Program at Preamble.

274 Exhibit III-46, 1998 Inventory Subsidy Program at Art. 4.

275 Exhibit III-46, 1998 Inventory Subsidy Program at Art. 1.

276 Exhibit III-46, 1998 Inventory Subsidy Program at Art. 5.

277 Exhibit III-46, 1998 Inventory Subsidy Program at Art. 8.
xli. Specificity

The 1998 Inventory Support Subsidy expressly required the export of sugar in order to qualify for benefits, and is therefore deemed to be de jure specific within the meaning of section 771(5A)(B) of the Act.

xlii. Benefit

A benefit exists within the meaning of 19 C.F.R. § 315.504(b) in the amount of the grant.

w. GOM 1999 inventory support subsidy

The 1999 Inventory Support Subsidy was promulgated on December 27, 1999. As with both previous export subsidies, the GOM again acknowledged a fifth consecutive year of surplus sugar production, which required the export of such surpluses. As with the 1998 Inventory Support Subsidy, the GOM indicated that the program was necessary to finance the inventories of domestic sugar production.

In order to qualify for the subsidy, the sugar producers had to export their share of the 550,920.2 tons determined to be surplus by the Secretariat of Commerce and Industrial Development. If they so complied, sugar producers received a subsidy at the rate of Mx$192.16 per tonne of sugar in inventory. The one-time grant to the sugar mills was for a total of Mx$115,301,040. As with the 1998 Inventory Support program, the SAGARPA


279 Exhibit III-47, 1999 Inventory Support Program at Preamble.

280 Exhibit III-47, 1999 Inventory Support Program at Arts. 2, 8.

281 Exhibit III-47, 1999 Inventory Support Program at Art 1.

282 Exhibit III-47, 1999 Inventory Support Program at Art 1.
provided the resources to FINA to administer the program.\textsuperscript{283} The deadline for payments was February 15, 2000.\textsuperscript{284}

As eligibility and approval for the subsidy was contingent on export performance in law, the 1999 Inventory Support Subsidy is an export subsidy under 19 C.F.R. § 351.14.

\textbf{xliii. Financial contribution}

The 1999 Inventory Support Subsidy program constitutes a direct transfer of funds in the form of a grant, within the meaning of section 771(5)(D)(i) of the Act.

\textbf{xliv. Specificity}

The 1999 Inventory Support Subsidy required sugar mills to export sugar in order to be eligible for the grant. This requirement is explicitly set out in the legislative instrument. As such, the program is a \textit{de jure} specific export subsidy.

\textbf{xlv. Benefit}

A benefit exists in the amount of the grant, within the meaning of 19 C.F.R. § 315.504(b).

9. SAGARPA Emerging Technology Program

\textbf{x. Program description}

As described above, sugar cane is the only crop in Mexico that is dealt with by means of a specific piece of legislation, the Cane Law.\textsuperscript{285} Pursuant to this law, the National Committee for the Sustainable Development of Sugar cane sets the reference price for sugar cane based on a complex formula involving, \textit{inter alia}, the average price of semi-refined (estandar) sugar in

\textsuperscript{283} Exhibit III-47, 1999 Inventory Support Program at Art 10.

\textsuperscript{284} Exhibit III-47, 1999 Inventory Support Program at Art 11.

different regions of the country. Pursuant to Article 58 of the Cane Law, approximately 57 percent of this reference price must be paid to the sugar cane growers by the sugar producers.

Not surprisingly, the GOM at various times has developed subsidy programs to compensate sugar cane growers for downturns in the reference price. Most recently, in late 2013, the reference price established by the GOM fell 40 percent below the reference price for 2012, from Mx$10,617 per MT to Mx$6,697.06 per MT. This new lower reference price was the price used to calculate the final sugar cane payments for the 2012/2013 crop.

In anticipation of and as a response to this drop in the reference price, the GOM, after consultations with the sugar cane industry, approved the “SAGARPA Emerging Technology Program,” which is also referred to as the “Emergency Program.” The program was announced on October 25, 2013 and provides direct financial support to sugar cane growers in the amount of Mx$1,903 per hectare of farmland. In order to qualify, a sugar cane producer must have produced and harvested sugar cane in the 2013 harvest season. Payments under the program were made directly to the bank accounts of the sugar cane producers.

A number of sugar cane producers received support under this program in 2013. Media reports indicated that 40 percent of producers in the Veracruz region received support in 2013.

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with the remainder to receive support in early 2014. Likewise, media reports indicate that sugar cane producers in Morelos also received the 1,903/ha subsidy in late 2013. Payments were to be made to the Morelos sugar cane producers from November 15, 2013 to December 31, 2013.

Information reasonably available to Petitioners indicates that sugar mills who also own planted sugar cane farmland likely benefited from this program. For example, CULTIBA’s sugar producing subsidiary GAM holds sugar cane farmland. According to CULTIBA’s 2012 Annual Report, GAM currently leases approximately 14,485 hectares of sugar cane farmland, of which 8,073 hectares have been planted. This leased land and the resulting sugar cane production accounts for approximately 12 percent of GAM’s sugar cane needs. GAM secured the leases for this land beginning in 2008. GAM’s total holdings are set out in Table 20:

<table>
<thead>
<tr>
<th>Location</th>
<th>Number of Hectares Leased</th>
<th>Number of Hectares Planted</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tala (Jalisco)</td>
<td>3,673</td>
<td>2,080</td>
</tr>
<tr>
<td>Lázaro Cárdenas (Michoacán)</td>
<td>1,114</td>
<td>860</td>
</tr>
<tr>
<td>Eldorado (Sinaloa)</td>
<td>2,236</td>
<td>1,426</td>
</tr>
<tr>
<td>Benito Juárez (Veracruz)</td>
<td>7,462</td>
<td>3,707</td>
</tr>
<tr>
<td>Total</td>
<td>14,485</td>
<td>8,073</td>
</tr>
</tbody>
</table>

294 Exhibit III-55, ZAFRANET, “Sugar cane producers in El Morelo have received only part of the assistance from SAGARPA,” December 9, 2013 (hereinafter “ZAFRANET – El Morelo”)
It is reasonable to infer that GAM would have harvested the sugar cane in its planted hectares of farmland and would, therefore, have qualified for benefits under this program.

y. Financial contribution

The SAGARPA Emerging Technology Program constitutes a direct transfer of funds in the form of a grant within, the meaning of section 771(5)(D)(i) of the Act.

z. Specificity

To qualify for funds under the program, the applicant, by law, must have harvested sugar cane in the 2012/2013 harvest year. As such, the SAGARPA Emerging Technology Program is de jure specific to an industry within the meaning of section 771(5A)(D)(i) of the Act.

aa. Benefit

A benefit exists in the amount of the grant, within the meaning of 19 C.F.R. § 315.504(b).

10. Import VAT and Duty Exemptions for the Domestic Sales of Sugar Under the Mexican Re-Export Program

The Mexican re-export program, or “IMMEX,” was formerly known as the “PITEX” program and was established by the Decree for the Development of the Manufacturing, Maquila and Export Services Industry. According to the Department’s finding in Cut-to-Length Carbon Steel Plate from Mexico, the PITEX programs “is jointly administered by the Ministry of Commerce and Industrial Development and the Customs Administration. Manufacturers who

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meet certain export requirements are eligible for the PITEX program. Those who qualify are exempt from paying import duties and the value added tax (VAT) on temporarily imported goods that will be used in the production of exports. Categories of merchandise eligible for PITEX import duty and VAT exemptions are raw materials, packing materials, fuels and lubricants, perishable materials, machinery, and spare parts.”

The Department found the exemption of VAT and duties under the Mexican re-export program to confer countervailable subsidies to the extent that the program provided exemptions on imports not consumed in the production of the exported products.300

Under the IMMEX program, sugar sold by the Mexican sugar mills to the domestic food manufacturers are classified as exports, provided that the food manufacturer exported the final processed product.301 However, the transaction between a Mexican sugar mill and a Mexican food manufacturer is not an export transaction. Moreover, the categories of goods that qualify for VAT and duty refund under the IMMEX program (i.e., “raw materials, packing materials, fuels and lubricants, perishable materials, machinery, and spare parts”) are on their face goods which would be used for the production of sugar for both the Mexican domestic market and for exports.


The USDA reported the estimated deemed exports of sugar under the IMMEX program in each market year beginning October 2012 and October 2013 to be as much as 360,000 MT.\textsuperscript{302} As such, there is prima facie evidence that Mexican sugar mills have been using the IMMEX program and would have benefited to the extent that they imported eligible materials, machinery, and spare parts without paying duties and VAT during the POI.

\textbf{bb. Financial contribution}

Duty and VAT exemptions represent a foregoing or non-collection of revenue that is otherwise due and as such qualify as a financial contribution within the meaning of section 771(5)(D)(ii) of the Act.

\textbf{cc. Specificity}

To the best of Petitioners' knowledge, the deeming of domestically sold products as "exports" is unique to sugar. As such, the IMMEX program as it applies to sugar is specific in law and in fact to the sugar industry under section 771(5A)(D) of the Act.

\textbf{dd. Benefit}

A benefit within the meaning of 19 C.F.R. § 351.518(a)(1) and 519(a)(1)(i) or (ii) is conferred on the recipient of the VAT and duty exemptions in the amount of the tax revenue foregone by the GOM.

\textbf{11. Mexico's Renewable Energy Subsidies}

According to the Mexican Department of Energy ("DOE"), "\{i\}n December 2005, the {Mexican} House of Representatives approved the initiative of Law for the Use of Renewable

\textsuperscript{302} Exhibit III-57, USDA, "Mexico, Sugar Semi-Annual: Production & Exports for MY 2013/14 Estimated Slightly Lower than MY 2012/13," September 24, 2013 at 4-5.
Sources of Energy {"LAFRE"}, which establishes a Program for the Use of Renewable Energy Sources of Energy. A minimum percentage of 8 percent in renewable energy contribution to total energy generation is established as a goal for 2012.\textsuperscript{303} To achieve this goal, the GOM “deemed necessary to channel” about Mx$1 billion per year “in order to grant incentives to foster public and private investment for the development and operation of {renewable energy} electricity projects for public service, using competitive technologies,” among others.\textsuperscript{304} According to the Department of Energy, such technologies would include technologies relating to the following energy sources: solar, wind, geothermal, small hydropower, biomass, and biogas, among others.\textsuperscript{305}

During the first year of operation, the GOM set out to use the fund in the following ways:

- 55 percent of the fund to establish the “Green Fund,” to be used to foster the use of renewable energy mature technologies (electrical applications);
- 6 percent for the “Emergent Technologies Fund” (electrical applications);
- 10 percent for the “Rural Electrification Fund”;
- 7 percent for the “Biofuels Fund”;
- 7 percent for the “General Renewable Energy Fund” (for non-electrical applications); and
- 15 percent for the “Research and Technological Development Fund (“FIDTER”).\textsuperscript{306}

In addition to the aforementioned support, the GOM established a tax incentive program on December 1, 2004. Specifically, “{w}ith the purpose of promoting investments in machinery and equipment for energy {renewable energy} electricity generation, the Official of the

\textsuperscript{303} Exhibit III-58, Energy Secretary, “Renewable Energies for Sustainable Development in Mexico,” 2006 at 69 (hereinafter “Energy Secretary 2006”).
\textsuperscript{304} Exhibit III-58, Energy Secretary 2006 at 70.
\textsuperscript{305} Exhibit III-58, Energy Secretary 2006 at 55.
\textsuperscript{306} Exhibit III-58, Energy Secretary 2006 at 70.
Federation published the modification to Article 40, Fraction XII of the Income Tax Law. This law establishes that taxpayers can depreciate 100 percent of a qualifying investment in a single exercise."\textsuperscript{307} Cogeneration plants using sugar byproducts qualify as "renewable energy generation" for the purposes of this program.\textsuperscript{308}

Imports and exports related to renewable energy investments are also granted preferential treatment in terms of exemption from general import and export taxes.\textsuperscript{309} Specifically, the GOM provides for "grants exemption from payment of the general tax on the import and export of anti-contaminant equipment and its components, as well as... articles for research, or technological development related to renewable sources of energy and clean technologies."\textsuperscript{310}

Eligibility under these programs is very restricted. First and foremost, the investment must involve renewable energy generation, which appears to be limited by law to energy generation from solar, wind, geothermal, small hydropower, biomass, biogas, and certain other sources of energy.\textsuperscript{311} In addition, the GOM, under the administration of Comisión Reguladora de Energía ("CRE") further limits the use of the programs by way of controlling the granting of permits for renewable energy generation.\textsuperscript{312} Simply put, under the Public Electricity Service Act ("LSPEE"), cogeneration is not allowed unless a permit is issued by the CRE.\textsuperscript{313} As of the end

\textsuperscript{307} Exhibit III-58, Energy Secretary 2006 at 74.
\textsuperscript{309} Exhibit III-59, US Commercial Service at 2.
\textsuperscript{310} Exhibit III-60, ProMexico, "Renewable Energy, Global Industry."
\textsuperscript{311} Exhibit III-58, Energy Secretary 2006 at 55.
\textsuperscript{312} Exhibit III-58, Energy Secretary 2006 at 57, 59.
\textsuperscript{313} Exhibit III-58, Energy Secretary 2006 at 57, 59.
of 2005, there were only 54 permits granted for the electricity generated from five renewable energy sources, including sugar cane byproducts.\textsuperscript{314}

There is no question that the Mexican sugar mills have been benefiting under the GOM’s renewable energy subsidies. In this regard, GAM’s 2009 Annual Report states that it took an advantage of an immediate depreciation deduction program.\textsuperscript{315}

**ee. GOM accelerated depreciation for renewable energy investments**

The accelerated depreciation specifically allowed for investments into “renewable energy generation” is a countervailable subsidy within the meaning of section 771(5) of the Act. It is noted that the Department previously countervailed a similar Mexican tax deduction program, under which certain assets were depreciated at an accelerated pace or entirely in the first year of acquisition.\textsuperscript{316}

While information reasonably available to Petitioners do not allow Petitioners to confirm actual receipt and use of the accelerated tax deduction by the Mexican sugar mills during the POI, there is evidence of history of use of the program. Specifically, GAM’s 2009 Annual Report states that it took an advantage of an immediate depreciation deduction program.\textsuperscript{317} In addition, Cultiba (formerly GAM) was “in the process of concluding the construction of a co-generation power plant of 78 megawatts in {its} Ingenio Tala sugar mill in Talisco”\textsuperscript{318} and “initiated construction of a co-generation power plant in the Tala sugar mill located in

\textsuperscript{314} Exhibit III-58, Energy Secretary 2006 at 59.
\textsuperscript{315} Exhibit III-24, GAM 2009 Annual Report at 31.
\textsuperscript{316} Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Mexico, 58 FR 37352, (July 9, 1993). The Department in later sunset review found that the subsidy programs previously found countervailable in the Final Determination continue to exist as recently as in 2006. See Final Results of Expedited Five-Year Sunset Review: Certain Steel Products from Mexico, 71 FR 32521, (June 6, 2006).
\textsuperscript{317} Exhibit III-24, GAM 2009 Annual Report at 31.
\textsuperscript{318} Exhibit III-26, Cultiba 2012 Annual Report at 14.
Jalisco.

Since these cogeneration plants would qualify as “renewable energy generation” that could be immediately depreciated for the tax income deduction purpose, these are yet further evidence that the Mexican sugar mills could have benefitted under the program. In addition, there is evidence that another major Mexican sugar mill, BSM, has already made and has planned to make investments into cogeneration projects in the POI and beyond.

xlvi. Financial contribution

Accelerated deductions allowed for investments of “renewable energy generation” represent foregoing or non-collection of revenue that is otherwise due and as such qualify as a financial contribution within the meaning of section 771(5)(D)(ii) of the Act.

xlvii. Specificity

The accelerated deduction is limited to assets acquired for the “renewable energy generation,” which are limited to energy generated from certain energy sources such as solar, wind, geothermal, small hydropower, biomass, and biogas. Given the specified and highly limited list of qualified “renewable energy generation,” the accelerated deduction is de jure specific to a limited number of enterprises or industry pursuant to section 771(5A)(D)(i) of the Act. In addition, information available to Petitioners shows that a limited number of enterprises received permits to undertake renewable energy generation projects that are otherwise prohibited, as of the end of 2005. As such, Petitioners believe that the accelerated

319 Exhibit III-26, Cultiba 2012 Annual Report at 23.
320 Exhibit III-61, Beta San Miguel, “Our History” (webpage: accessed March 14, 2014). BSM states that “{t}uture projects for cogeneration are much more ambitious {than the ones that are completed} and are planned to start in 2013 and 2014, at Ingenio San Rael de Pucté and Ingenio San Miguel del Naranjo.”
321 See also Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea, 75 Fed. Reg. 55745 (Preliminary Results of Countervailing Duty Administrative Review, Sept. 14, 2010) where the Department found de jure specificity where access to the subsidy program was limited to companies or industries developing or promoting alternative energy.
depreciation tax deduction is also *de facto* specific to a limited number of enterprises pursuant to section 771(5A)(D)(iii) of the Act.

**xliv. Benefit**

A benefit within the meaning of 19 C.F.R. § 351.509(a) is conferred on the recipient of the accelerated deductions in the amount of the tax revenue foregone by the GOM.

**ff. GOM exemption from general import and export tax for articles related to renewable energy investments**

Exemption of general import and export tax specifically allowed for articles related to “renewable energy” is a countervailable subsidy within the meaning of section 771(5) of the Act. While information reasonably available to Petitioners do not allow Petitioners to confirm actual receipt and use of the accelerated tax deduction by the Mexican sugar mills during the POI, there is evidence of current and past investments into cogeneration projects by the Mexican sugar mills, which on their face would qualify as “renewable energy” projects under the program. For example, Cultiba’s 2012 Annual Report states that it has almost concluded construction of a cogeneration plant in 2012, and has initiated construction of another cogeneration plant. In addition, BSM states that it has made and is planning to make investments into cogeneration projects in the POI and beyond. As such, to the extent that these and other sugar mills investing in cogeneration plants import any articles related to the project, they could benefit from the exemptions.

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323 Exhibit III-26, Cultiba 2012 Annual Report at 23.
324 Exhibit III-61, Beta San Miguel, “Our History.” BSM states that “{f}uture projects for cogeneration are much more ambitious {than the ones that are completed} and are planned to start in 2013 and 2014, at Ingenio San Rael de Pucté and Ingenio San Miguel del Naranjo.”
Financial contribution

Exemption of general import and export tax specifically allowed for articles related to “renewable energy” represents a foregoing or non-collection of revenue that is otherwise due and as such qualify as a financial contribution within the meaning of section 771(5)(D)(ii) of the Act.

I. Specificity

Exemption of general import and export tax is allowed only for imports and exports related to “renewable energy,” which are limited to energy generated from certain energy sources such as solar, wind, geothermal, small hydropower, biomass, and biogas. Given the specified and highly limited list of qualified “renewable energy generation,” general import and export tax exemption is specific in law and in fact to an enterprise of industry under section 771(5A)(D) of the Act. 325

ii. Benefit conferred

A benefit within the meaning of 19 C.F.R. § 351.509(a) is conferred on the recipient of the general import and export tax exemptions in the amount of the tax revenue foregone by the GOM.

gg. Renewable energy funds

Based on information reasonably available to Petitioners, the Green Fund, Emergent Technologies Fund, Rural Electrification Fund, Biofuels Fund, General Renewable Energy Fund, and Research and Technological Development Fund established by the GOM’s Mx$1 billion support confer countervailable subsidies within the meaning of section 771(5) of the Act.

325 See also, Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea, 75 Fed. Reg. 55745 (Preliminary Results of Countervailing Duty Administrative Review, Sept. 14, 2010) where the Department found de jure specificity where access to the subsidy program was limited to companies or industries developing or promoting alternative energy.
iii. **Financial contribution**

As described above, the GOM specifically contemplates channeling of Mx$600 million per year and providing additional resources in the order of Mx$400 million per year under Renewable Energy funds. Based on the information available, Petitioners believe that the funds qualify as financial contributions and are provided in the form of preferential loan or grants, which would be direct transfer of funds under section 771(5)(D)(i) of the Act.

liii. **Specificity**

The various Funds appear to be provided for certain renewable energy related projects, as the funds are provided “in order to grant incentives to foster... investments... of {renewable energy}” using competitive and less mature technologies. Specifically, the Green Fund is provided to foster the use of electrical applications of mature renewable energy technologies. Emergent Technologies Fund is ostensibly provided for emergent renewable energy technologies for electrical applications. Likewise, other funds appear to be limited by specified technologies. To the extent that the Funds are provided to the specified and highly limited qualified “renewable energy” related technologies, the Funds are specific in law and fact to a limited number of an enterprise or industry pursuant to section 771(5A)(D) of the Act.

liv. **Benefit**

In the case of a grant, a benefit within the meaning of 19 C.F.R. § 351.504(b) in the amount of the grant from the GOM to the sugar mills is conferred. In the case of a preferential

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326 Exhibit III-58, Energy Secretary 2006 at 70.
327 Exhibit III-58, Energy Secretary 2006 at 70.
328 See also, Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea, 75 Fed. Reg. 55745 (Preliminary Results of Countervailing Duty Administrative Review, Sept. 14, 2010) where the Department found *de jure* specificity where access to the subsidy program was limited to companies or industries developing or promoting alternative energy.
loan, a benefit within the meaning of section 771(5)(E)(ii) of the Act is conferred on the recipient to the extent that the recipient pays a lower discounted rate of interest on the loans as compared to what they would pay on comparable commercial loan.
VI. CONCLUSION

For the reasons stated in this petition, the U.S. sugar industry has been materially injured and threatened with material injury by the significant and growing volume of imports of sugar from Mexico, which have been sold at less-than-fair value and have received significant countervailable subsidies from the Mexican Government. Petitioners request that the Department of Commerce and the U.S. International Trade Commission initiate antidumping and countervailing duty investigations of sugar from Mexico.

Respectfully submitted,

[Signature]

Christopher J. Kent*
Christopher J. Cochlin*
Andrew Lanouette*
Marc McLaren-Caux*
Hugh Lee*
CASSIDY LEVY KENT (CANADA) LLP
1470-55, rue Metcalfe Street
Ottawa (Ontario) K1P 6L5
Canada
Tel: 613-482-9300
*Working under the supervision of Cassidy Levy Kent (USA) LLP

Robert C. Cassidy, Jr.
Charles S. Levy
John D. Greenwald
Jennifer A. Hillman
James R. Cannon, Jr.
Jonathan M. Zielinski
Friederike Görgens**
Deirdre Maloney
Senior International Trade Advisor
CASSIDY LEVY KENT (USA) LLP
2000 Pennsylvania Avenue, NW
Suite 3000
Washington, DC 20006
Tel.: 202-567-2300
**Admitted in Massachusetts; acting under the supervision of the principals of the firm admitted in the District of Columbia.