

*What Every Member of the  
Trade Community Should Know About:*

# Cane and Beet Sugar (Quota, Classification & Entry)



AN INFORMED COMPLIANCE PUBLICATION

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**U.S. CUSTOMS and BORDER PROTECTION**

**NOTICE:**

This publication is intended to provide guidance and information to the trade community. It reflects the position on or interpretation of the applicable laws or regulations by U.S. Customs and Border Protection (CBP) as of the date of publication, which is shown on the front cover. It does not in any way replace or supersede those laws or regulations. Only the latest official version of the laws or regulations is authoritative.

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## PREFACE

On December 8, 1993, Title VI of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), also known as the Customs Modernization or “Mod” Act, became effective. These provisions amended many sections of the Tariff Act of 1930 and related laws.

Two new concepts that emerge from the Mod Act are “informed compliance” and “shared responsibility,” which are premised on the idea that in order to maximize voluntary compliance with laws and regulations of U.S. Customs and Border Protection, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the Mod Act imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s rights and responsibilities under customs regulations and related laws. In addition, both the trade and U.S. Customs and Border Protection share responsibility for carrying out these requirements. For example, under Section 484 of the Tariff Act, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and determine the value of imported merchandise and to provide any other information necessary to enable U.S. Customs and Border Protection to properly assess duties, collect accurate statistics, and determine whether other applicable legal requirements, if any, have been met. CBP is then responsible for fixing the final classification and value of the merchandise. An importer of record’s failure to exercise reasonable care could delay release of the merchandise and, in some cases, could result in the imposition of penalties.

Regulations and Rulings (RR) of the Office of International Trade has been given a major role in meeting the informed compliance responsibilities of U.S. Customs and Border Protection. In order to provide information to the public, CBP has issued a series of informed compliance publications on new or revised requirements, regulations or procedures, and a variety of classification and valuation issues.

This publication, prepared by the National Commodity Specialist Division of Regulations and Rulings is entitled “Cane and Beet Sugar (Quota, Classification & Entry).” It provides guidance regarding the quota, classification & entry of these items. We sincerely hope that this material, together with seminars and increased access to rulings of U.S. Customs and Border Protection, will help the trade community to improve voluntary compliance with customs laws and to understand the relevant administrative processes.

The material in this publication is provided for general information purposes only. Because many complicated factors can be involved in customs issues, an importer may wish to obtain a ruling under Regulations of U.S. Customs and Border Protection, 19 C.F.R. Part 177, or to obtain advice from an expert who specializes in customs matters, for example, a licensed customs broker, attorney or consultant.

Comments and suggestions are welcomed and should be addressed to U.S. Customs and Border Protection, Office of International Trade, Executive Director, Regulations and Rulings, 799 9<sup>th</sup> Street N.W. 7<sup>th</sup> floor, Washington, D.C. 20229-1177.

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## INTRODUCTION

This publication covers the quota, classification and entry requirements of sucrose derived from sugar cane and sugar beets.

Sugars are products that may be classified in **chapter 17, chapter 21** or **chapter 29** of the Harmonized Tariff Schedule of the United States (HTSUS). The sugars of chapter 17 include products such as sucrose, glucose, fructose, lactose and maltose. The sugars of chapter 21 include syrups that contain added coloring or flavoring matter. The sugars of chapter 29 include products such as chemically pure galactose, sorbose, xylose and raffinose.

Classification depends on the **type** of sugar, the **form** of the sugar and the **source** of the sugar.

While there are many types of sugar, **only sucrose is subject to a quota**. Sucrose can be obtained from a variety of sources, including sugar cane, sugar beets, maple sugar, sorghum, carob beans and palms.

## PRESIDENTIAL PROCLAMATION 6179

Importation of sugar is governed by Presidential Proclamation 6179. Presidential Proclamation 6179, dated September 13, 1990, established a tariff rate quota on sucrose derived from sugar cane or sugar beets effective October 1, 1990. The Proclamation set a lower tariff rate of duty for sucrose entered up to a specified quota level, and a significantly higher rate of duty for sucrose entered in excess of the quota allocation.

The quota applies to sucrose in both **dry** and **liquid** forms, which are classified in chapter 17 and chapter 21 of the HTSUS. The quota period begins on October 1 and extends to September 30 of the next year.

Entries of sucrose classified under both the low and high tariff rates must be reported to the Customs Quota Section in Customs Headquarters.

## Chapter 17 HTSUS, Additional U.S. Note 5 (Quota Allocations)

Additional U.S. Note 5 of chapter 17 describes the modifications of the duty rates and quantitative limitations that are contained in the Proclamation.

Additional U.S. Note 5(a)(i) provides for three different quota allocations. The Note states:

The aggregate quantity of raw cane sugar entered, or withdrawn from warehouse for consumption, under subheadings 1701.13.1000 or 1701.14.1000, during any fiscal year, shall not exceed in the aggregate an

amount (expressed in terms of raw value), as shall be established by the Secretary of Agriculture (hereinafter referred to as “the Secretary”), and the aggregate quantity of sugars, syrups and molasses entered, or withdrawn from warehouse for consumption, under subheadings 1701.12.10, 1701.91.10, 1701.99.10, 1702.90.10 and 2106.90.44, during any fiscal year, shall not exceed in the aggregate an amount (expressed in terms of raw value), as shall be established by the Secretary. With either the aggregate quantity of raw cane sugar or the aggregate quantity for sugars, syrups and molasses other than raw cane sugar, the Secretary may reserve a quota quantity for the importation of specialty sugars as defined by the United States Trade Representative.

The first quota allocation covers raw cane sugar provided for in subheadings 1701.13.10 or 1701.14.10. This quota is allocated on a country by country basis by the United States Trade Representative, as published in the Federal Register, pursuant to Additional U.S. Note 5(b)(i).

In alphabetical order, the countries currently with an allocation under this quota are: Argentina, Australia, Barbados, Belize, Bolivia, Brazil, Colombia, Congo, Côte d'Ivoire, Costa Rica, Dominican Republic, Ecuador, El Salvador, Fiji, Gabon, Guatemala, Guyana, Haiti, Honduras, India, Jamaica, Madagascar, Malawi, Mauritius, Mexico, Mozambique, Nicaragua, Panama, Papua New Guinea, Paraguay, Peru, Philippines, South Africa, St. Kitts & Nevis, Swaziland, Taiwan, Thailand, Trinidad-Tobago, Uruguay and Zimbabwe.

### **Certificate of Quota Eligibility**

Additional U.S. Note 5(b)(iv) states:

The United States Trade Representative may promulgate regulations appropriate to provide for the allocations authorized pursuant to this note. Such regulations may, among other things, provide for the issuance of certificates of eligibility to accompany any sugars, syrups or molasses (including any specialty sugars) imported from any country or area for which an allocation has been provided and for such minimum quota amounts as may be appropriate to provide reasonable access to the U.S. market for articles the product of those countries or areas having small allocations.

In addition to having a raw sugar produced in a country with a quota allocation, a **Certificate of Quota Eligibility (CQE)** is required in order to qualify for the low tariff rate under subheadings 1701.13.10 or 1701.14.10. The CQE is obtained by the importer from the country producing the raw sugar.

The Certificates are furnished to the various countries by the United States Department of Agriculture (USDA). Each CQE is numbered and identified by foreign country. It



contains information that includes the date of the current quota period, the shipper, the vessel, the port of loading, the name and address of the consignee, date of departure, etc.

A CQE is only valid for the quota period it covers. It must be presented at the time of entry. No bond may be taken for this document.

Note that a country without a quantity allocation under this quota may export raw cane sugar to the United States provided that the high tariff rate duties are paid. A CQE is not required in this case. This does not apply to any country subject to a United States embargo.

The second quota allocation provided by Additional U.S. Note 5(a)(i) pertains to subheadings 1701.12.10, 1701.91.10, 1701.99.10, 1702.90.10, and 2106.90.44. This quota allocation is sometimes referred to as the “**Refined Sugar Quota**”, but as we will see later, it covers more than simply refined sugar. With two exceptions, this quota is allocated on a global, first come, first served basis. As a result, the quota opens and fills on the same day.

The two exceptions to the global allocation are **Canada** and **Mexico**. Each of these countries has a specific allocation under this quota. However, sugar from Canada and Mexico may enter under the general global quota, if it is still open, before using their specific allocations.

**Mexico** and **Canada** are required to provide a CQE to obtain the low tariff rates when entering under its specific quota allocation.

The third and final quota allocation provided by Additional U.S. Note 5(a)(i) is for **Specialty Sugars**. This is actually a part of the second quota allocation, the so-called “Refined Sugar Quota.” It currently covers refined sugars classified chiefly in two subheadings: 1701.91.1000 and 1701.99.1010. It has a specific quantity allocation, and is based on a first come, first served basis.

Note that Specialty Sugars may enter under the general refined global quota, before using their specific quota allocation.

## **Specialty Sugar Certificate**

The Office of the United States Trade Representative determines which products can be designated as Specialty Sugars. As per the aforementioned Additional U.S. Note 5(b)(iv), a Specialty Sugar Certificate is required in order to enter sugar under the specific Specialty Sugar quota allocation.

An importer writes a letter to USDA, describing the product, providing technical information and furnishing a sample of the sugar. The Specialty Sugar Certificate is actually the response letter from USDA to the importer indicating that the product is a

Specialty Sugar. This letter must be presented at the time of entry for a sugar to obtain the low tariff rate under this quota. No bond may be taken for this document.

A sugar may be entered at the high tariff rates without a Specialty Sugar Certificate, provided the country is not subject to a United States embargo.

The following is a listing of the various subheadings of chapter 17 and chapter 21, HTSUS, in which different forms of sugar are classified. This listing discusses the varieties of sugar products and steps that must be taken by importers when importing sugar products.

### **Subheadings 1701.13.1000; 1701.14.1000**

**Subheadings 1701.13.1000, 1701.14.1000, HTSUS, provide for “Cane or beet sugar and chemically pure sucrose, in solid form: Raw sugar not containing added flavoring or coloring matter: Cane sugar...Described in additional U.S. note 5 to this chapter and entered pursuant to its provisions.”**

This is the tariff provision for raw cane sugar, which is identified in the first quota allocation in additional U.S. note 5(a)(i). It provides for the low tariff rate of duty. The subheading for the high tariff rate of duty is 1701.13.5000, 1701.14.5000, HTSUS.

Products classified in these provisions must be derived from sugar cane and must be in solid form. The term “solid” includes powders, crystals, etc. It excludes sugar in the form of a liquid or syrup. The products classified in these subheadings cannot contain any added flavoring or coloring matter.

The term **raw sugar** is defined in Subheading Note 1 to chapter 17: “For the purposes of subheadings 1701.12, 1701.13 and 1701.14, ‘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.” Polarimetric testing uses optical means to determine the percentage of sucrose in a product.

### **Sampling of Raw Sugar**

Customs Directive 3820-001B, dated May 1, 2007, requires that all importations of raw sugar must be sampled and tested by the United States CBP Laboratory. One sample of approximately one pound or 450 grams is required for each 2,100,000 pounds of bulk raw sugar. For raw sugar imported in bags, one bag out of each 100 bags must be sampled, or 10 bags must be sampled, whichever is greater.

The raw sugar must be sampled for various purposes. **First**, to determine the polarity of the sugar for classification. Noting the above referenced Subheading Note 1 to chapter 17, raw sugar must have a **polarity of less than 99.5 degrees**.

**Second**, sampling is required to determine the dutiable quantity of the raw sugar. Additional U.S. Note 1 to chapter 17 states: “The term ‘degree’ as used in the ‘Rates of Duty’ columns of this chapter means International Sugar Degree as determined by polarimetric test performed in accordance with procedures recognized by the International Commission for Uniform Methods of Sugar Analysis (ICUMSA).” The specific rates of duty for sugar are applied only on the actual sugar content of the products as determined by the CBP Laboratory.

**Finally**, the sampling and testing of raw sugar is required to determine the “**raw value**” of the sugar. This concept is addressed in Additional U.S. Note 5(c) to chapter 17, which provides:

For purposes of this note, the term raw value means the equivalent of such articles in terms of ordinary commercial raw sugar testing 96 degrees by the polariscope as determined in accordance with regulations or instructions issued by the Secretary of the Treasury. Such regulations or instructions may, among other things, provide: (i) for the entry of such articles pending a final determination of polarity; and (ii) that positive or negative adjustments for differences in preliminary and final raw value be made in the same or succeeding quota periods. The principal grades and types of sugar shall be translated into terms of raw value in the following manner--

- (A) For articles described in subheadings 1701.12.05, 1701.12.10, 1701.12.50, 1701.13.05, 1701.13.10, 1701.13.20, 1701.13.50, 1701.14.10, 1701.14.20, 1701.14.50, 1701.91.05, 1701.91.10, 1701.91.30, 1701.99.05, 1701.99.10, 1701.99.50, 2106.90.42, 2106.90.44 and 2106.90.46 by multiplying the number of kilograms thereof by the greater of 0.93, or 1.07 less 0.0175 for each degree of polarization under 100 degrees (and fractions of a degree in proportion).
- (B) For articles described in subheading 1702.90.05, 1702.90.10 and 1702.90.20, by multiplying the number of kilograms of the total sugars thereof (the sum of the sucrose and reducing or invert sugars) by 1.07.
- (C) The Secretary of the Treasury (now Secretary of Homeland Security) shall establish methods for translating sugar into terms of raw value for any special grade or type of sugar, syrup, or molasses for which he/she determines that the raw value cannot be measured adequately under the above provisions.

The various quota quantity allocations are expressed in terms of raw value. Since sugar is imported at different polarities or degrees of purity, the above concept of raw value is used to standardize sugar shipments at a polarity of 96 degrees.

The final raw value figures determined by the Customs Laboratory are sent to the Quota Section in Customs Headquarters in order to adjust the quota quantities.

### **Subheadings 1701.13.2000; 1701.14.2000 (Re-Export Sugar)**

**Subheadings 1701.13.2000, 1701.14.2000, HTSUS, provide for Cane or beet sugar and chemically pure sucrose, in solid form: Raw sugar not containing added flavoring or coloring matter: Cane sugar: Other sugar to be used for the production (other than by distillation) of polyhydric alcohols, except polyhydric alcohols for use as a substitute for sugar in human food consumption, or to be refined and re-exported in refined form or in sugar-containing products, or to be substituted for domestically produced raw cane sugar that has been or will be exported.**

This tariff provision allows the entry of raw sugar into the United States without the application of a tariff rate quota, provided that the sugar is used in one of three ways: to produce a polyhydric alcohol, to be refined and then re-exported, or to be refined and re-exported in a sugar containing product.

This provision refers to the “Sugar Re-Export Program”, which is regulated by the United States Department of Agriculture (USDA).

The requirements for classification under this subheading are stated in Additional U.S. Note 6 of chapter 17. The **first** part of this note simply restates the wording of the tariff provision.

The **second** part of the note states: “The Secretary of Agriculture may issue licenses for such entries and may promulgate such regulations (including any terms, conditions, certifications, bonds, civil penalties, or other limitations) as are appropriate to ensure that sugar entered under subheading 1701.13.20 is used only for such purposes.”

USDA issues a **license** for each of the uses of the raw sugar in subheadings 1701.13.2000 and 1701.14.2000, HTSUS.

A producer of polyhydric alcohol can obtain a license in the amount of up to 10,000 short tons, refined value. The polyhydric alcohol produced from the sugar does not have to be exported, but it cannot be used for human consumption.

A sugar refiner can obtain a license for raw sugar in an amount of up to 50,000 metric tons, raw value. The refined sugar must be exported, or transferred to a manufacturer of sugar containing products no later than 90 days after the date of entry.

A manufacturer of sugar-containing products can obtain a license for an amount of up to 10,000 short tons, refined value. The sugar-containing product must be exported no later than 18 months from the date of transfer of a quantity of refined sugar from a refiner.

The Re-Export Program also allows the use of **domestic** (US) raw cane sugar that has been or will be exported.

In addition to obtaining a license, entries of sugar under subheading 1701.13.20, HTSUS, must include a Summary of Transactions Sheet. This sheet contains information on the quantity of sugar, date of entry, port of entry, etc. It must be signed by a CBP official, and given to USDA by the importer.

It should be noted that USDA maintains these licenses within the same Agricultural Licensing System as is used for the Dairy Import Licensing program and regulates all related matters for this program including, bonds, record keeping, proof of export, penalties, etc.

It is also important to remember that the Re-Export Program provided for under subheading 1701.13.2000, HTSUS, applies only to raw cane sugar.

### **Subheading 1701.12.1000**

**Subheading 1701.12.1000, HTSUS, provides for Cane or beet sugar and chemically pure sucrose in solid form: Raw sugar not containing added flavoring or coloring matter: Beet sugar...Described in additional U.S. note 5 to this chapter and entered pursuant to its provisions.**

This is the tariff provision for **raw beet sugar**, which is identified in the second quota allocation in Additional U.S. Note 5 (a)(i). It provides for the low tariff rate of duty. The subheading for the high tariff rate of duty is 1701.12.5000, HTSUS.

Products classified in these subheadings are similar to raw cane sugar in that they must be in solid form, not contain any added flavoring or coloring matter, and are defined in Subheading Note 1 to chapter 17: "For the purposes of subheadings 1701.13 and 1701.12, "raw sugar" means sugar whose content of sucrose by weight, in the dry state, corresponds to a polarimetric reading of less than 99.5 degrees."

Subheading 1701.12, HTSUS, differs from subheadings 1701.13.10 and 1701.14.10, HTSUS, in that it provides for sucrose derived from sugar beets, instead of sugar cane. It is also noted that there is no Re-Export Program for raw sugar derived from beets. There is very little raw beet sugar produced anywhere in the world today.

## **Subheading 1701.91.1000**

**Subheading 1701.91.1000, HTSUS, provides for Cane or beet sugar and chemically pure sucrose, in solid form: Other: Containing added flavoring or coloring matter: Containing added coloring but not containing added flavoring matter...Described in additional U.S. note 5 to this chapter and entered pursuant to its provisions.**

This is the tariff provision for cane or beet sugar, as well as chemically pure sucrose, **containing added coloring matter**, which is identified in the second quota allocation in additional U.S. note 5(a)(i). It provides for the low tariff rate of duty. The subheading for the high tariff rate of duty is 1701.91.3000, HTSUS.

Products classified in these provisions are cane or beet sugar, and chemically pure sucrose in solid form, but now they may contain added coloring matter.

Regarding chemically pure sucrose, the Explanatory Notes to Chapter 17 state: "The heading also includes chemically pure sucrose in solid form, whatever its origin. Sucrose (other than chemically pure sucrose) obtained from sources other than sugar cane or sugar beet is excluded (heading 17.02)."

Generally, the items classified in these provisions consist of a refined cane or beet sugar with a small amount of added coloring, which are used as decorations on cakes, cookies, confectionery, etc.

These provisions do not, however, cover sucrose with added flavoring matter, which is provided for in subheadings 1701.91.42 through 1701.91.80, HTSUS, and is subject to the sugar containing products quotas, not to the Additional U.S. Note 5 quotas.

## **Subheadings 1701.99.1010; 1701.99.1025; 1701.99.1050**

**Subheadings 1701.99.1010, 1701.99.1025 and 1701.99.1050 HTSUS, provide for Cane or beet sugar and chemically pure sucrose, in solid form: other: other... Described in additional U.S. note 5 to this chapter and entered pursuant to its provisions.**

These tariff provisions are identified in the second quota allocation in additional U.S. note 5(a)(i). They provide for the low tariff rate of duty. The subheadings for the high tariff rate of duty are 1701.99.5010, 1701.99.5025 and 1701.99.5050, HTSUS.

Products classified in these provisions must be cane or beet sugar or chemically pure sucrose in solid form, which can not be raw sugar, or sucrose with added coloring or flavoring matter. Effective July 1, 2004, the Harmonized Tariff was modified to provide specific statistical breakouts for Specialty sugars under subheadings 1701.99.1010 and 1701.99.5010, HTSUS. Effective July 1, 2011, there is a new Statistical Note 1, which states "For the purposes of heading 1701, the term "further processing" means

performing those actions to further improve the quality of sugar by a refiner through affination or defecation, clarification and further purification by absorption or crystallization.” Subheadings 1701.99.10.25 and 1701.99.50.25 are sugar “not for further processing,” and subheadings listed under “other”, 1701.99.10.50 and 1701.99.50.50 are thus “for further processing.”

There are two main types of products classified in these provisions. The first is refined sugar. Subheading Note 1 to Chapter 17 defined raw sugar as having a content of sucrose by weight, in the dry state, corresponding to a polarimeter reading of less than 99.5 degrees. Therefore, refined sugar would have a content of sucrose by weight in the dry state, corresponding to a polarimeter reading of 99.5 degrees or higher.

The second type of product classified in these provisions is a mixture of refined sucrose with other substances, when it is determined that the sucrose imparts the essential character to the mixture under GRI 3(b). Examples of these would be mixtures of large quantities of sucrose with smaller amounts of the other sugars of chapter 17, such as dextrose, fructose, lactose or maltose.

Other types of products classified here are mixtures containing predominately sucrose with smaller amounts of starches or flours. It is noted that these mixtures are in solid form, usually consisting of powders, crystals, etc.

### **Subheading 1702.90.1000**

**Subheading 1702.90.1000, HTSUS, provides for other sugars...sugar syrups not containing added flavoring or coloring matter...other, including invert sugar: Derived from sugar cane or sugar beets: Containing soluble non-sugar solids (excluding any foreign substances, including but not limited to molasses, that may have been added or developed in the product) equal to 6 percent or less by weight of the total soluble solids...Described in additional U.S. note 5 to this chapter and entered pursuant to its provisions.**

This is the tariff provision for **sugar syrups**, etc., which is identified in the second quota allocation in additional U.S. Note 5(a)(i). It provides for the low rate of duty. The subheading for the high rate of duty is 1702.90.2000, HTSUS.

These are the last subheadings in Chapter 17, HTSUS, that are subject to the tariff rate quota of additional U.S. note 5. They are also the first subheadings subject to this quota that do not pertain to sugar in solid form.

Products classified in these subheadings include syrups obtained by dissolving sucrose from sugar cane or sugar beets in water, or juices and syrups that are obtained during the extraction of sugars derived from sugar cane or sugar beets. Unlike the sucrose in solid form, these products can not contain any coloring or flavoring matter.

They must also meet the requirement that they contain **6 percent or less soluble non-sugar solids**, when considering the **total soluble solids** in the product. In addition, this calculation **excludes** any foreign material added or developed in the product. Generally, this would refer to materials added in the extraction or refining process.

Since syrups, etc. containing over 6 percent soluble non-sugar solids are not subject to tariff rate quotas (subheading 1702.90.4000), samples of merchandise entered under these subheadings are sent to the U.S. CBP laboratory to check the soluble non-sugar solids. Therefore, it is advisable to include information on the soluble non-sugar solids content of the products when entry is made on this merchandise.

A sugar syrup containing over 6 percent soluble non-sugar solids was the subject of a New York ruling, a Headquarters ruling, and two court cases.

New York ruling 810328, dated May 15, 1995, concerned the classification of a sugar syrup, which was produced by adding molasses to raw sugar, and then adding water. The resulting syrup contained over 6 percent soluble non-sugar solids, and was classified under subheading 1702.90.4000, HTSUS. After importation, the molasses was removed and the syrup was used in the same manner as syrup subject to quota.

Headquarters issued ruling HQ 961273, dated November 8, 1999, revoking the NY ruling, and classifying the syrup in 1702.90.1000/1702.90.2000, subject to quota. The Headquarters ruling indicated that the product had no commercial identity. It was manufactured simply to avoid the quota. The addition of molasses was a foreign substance, which is excluded from the calculation of the soluble non-sugar solids.

In Heartland By Products v. United States & the Sugar Beet Association, Slip Op 99-110, dated October 19, 1999, the Court of International Trade determined that the syrup was plainly described in subheading 1702.90.4000, that the addition of molasses was not a foreign substance, since molasses is made from cane and beet sugar, and that sugar, molasses and syrup all have the same chemical ingredients, including impurities that naturally occur in sugar. The court further said that subheading 1702.90.4000 is not a use provision, and that because a product is classified in its imported condition an importer has a right to fashion his merchandise to obtain the lowest duty rate and classification.

The Heartland decision was appealed. In Heartland By-Products, Inc. v. United States, 264 F.3d 1126 (Fed. Cir. 2001), the Court of Appeals for the Federal Circuit upheld CBP' determination that adding molasses to raw sugar prior to importation in order to obtain a lower duty rate and to avoid quota restrictions was improper tariff engineering. The court also upheld Headquarters' interpretation that the addition of the molasses was adding a foreign substance and must be excluded when determining the soluble non-sugar solids. Finally, the court upheld the revocation ruling classifying the sugar syrup under 1702.90.10/20, HTSUS. The U.S. Supreme Court denied certiorari, 537 U.S. 812 (2002).



Subheadings 1702.90.1000 and 1702.90.2000, HTSUS, also cover **invert** sugar, which must be derived from sugar cane or sugar beets. The Explanatory Notes to Chapter 17, HTSUS, describe this product as: “Invert sugar...is usually prepared commercially by the hydrolysis of refined sucrose solutions and consists of equal proportions by weight of glucose and fructose.”

It should also be noted that sucrose solutions that are partially inverted are also covered by these provisions.

## **Subheading 2106.90.4400**

**Subheading 2106.90.4400, HTSUS, provides for syrups derived from cane or beet sugar, containing added coloring but not added flavoring matter... Described in additional U.S. note 5 to chapter 17 and entered pursuant to its provisions.**

This is the tariff provision for sucrose syrups with added coloring, which is identified in the second quota allocation in Additional U.S. Note 5(a)(i). It provides for the low tariff rate of duty. The subheading for the high tariff rate of duty is 2106.90.4600, HTSUS.

Products classified in these provisions must be **syrups** that are derived from sugar cane or sugar beets, and contain **added coloring matter**.

These syrups are classified in chapter 21, instead of in chapter 17, because Heading 1702 only provides for “sugar syrups not containing added flavoring or coloring matter...” For example, the Explanatory Notes to chapter 17, under section (B) Sugar Syrups, state: “This part covers syrups of all sugars...**provided** they do not contain added flavoring or coloring matter (see Explanatory Note to heading 21.06)”.

The syrups in these subheadings **cannot** contain any **added flavoring matter**. Flavored syrups are provided for in various 2106.90 subheadings, and are subject to the sugar containing products quotas, not to the U.S. Note 5 quotas.

## **High Tariff Rate Subheadings**

The high tariff rate subheadings previously mentioned included: 1701.13.5000, 1701.14.5000 (raw cane sugar), 1701.12.5000 (raw beet sugar), 1701.91.3000 (sucrose with added coloring), 1701.99.5010, 1701.99.5025, 1701.99.5050 (refined sucrose), 1702.90.2000 (sucrose syrups) and 2106.90.4600 (sucrose syrups with added coloring).

Classification under these subheadings is required for **three** main reasons:

- (1) A quota quantity has not been allocated for a product.
- (2) A quota allocation is filled for a product.
- (3) A product does not satisfy a quota requirement, usually involving specific documentation, which must be presented at the time of entry.

Products classified under the high tariff rate subheadings are also subject to the safeguard measures provided in Chapter 99, Subchapter IV of the Harmonized Tariff Schedule. The relevant safeguard measures, which are described in **U.S. Notes 1 and 2 to Subchapter IV**, provide for duties based either upon the value or the quantity of goods imported into the United States for certain agricultural products.

As stated in U.S. Note 1: “All of the duties provided for in this subchapter are cumulative duties which apply in addition to the duties, if any, otherwise imposed in the tariff schedule on the goods described therein”.

Currently, these additional duties are based on the value of the goods as provided for in the various Chapter 99, Subchapter IV subheadings. If it is determined that the additional duties are to be based on quantity, notice must be published in the Federal Register by the Secretary of Agriculture.

These safeguard measures, requiring additional duties, **do not apply** to goods of **Canada, Mexico, Jordan, Singapore, Chile, Australia, or Morocco**.

These preferential duty rates are provided for by the Andean Trade Preference Act (ATPA), the Caribbean Basin Initiative (CBI), the Generalized System of Preferences (GSP), the United States-Israel Free-Trade Agreement (IFTA), the North American Free Trade Agreement (NAFTA), and the United States-Jordan Free Trade Area Implementation Act (JFTA), the United States-Singapore Free Trade Agreement, the United States-Chile Free Trade Agreement, the United States-Australia Free Trade Agreement, and the United States-Morocco Free Trade Agreement Act (MA), the DR CAFTA and soon Colombia, Panama and South Korea. The only “Special” duty rates that are applicable pertain to products from Mexico, Jordan, Singapore, Chile, and Morocco.

## **GENERAL NOTE 15**

General Note 15 of the Harmonized Tariff Schedule provides for: “Exclusions. Whenever any agricultural product of chapters 2 through 52, inclusive, is of a type (i) subject to a tariff rate quota and (ii) subject to the provisions of subchapter IV of chapter 99, entries of such products described in this note shall not be counted against the quantity specified as the in-quota quantity for any such product in such chapters”.

All of the aforementioned sugar cane and sugar beet products include tariff provisions that reference General Note 15. These subheadings include: 1701.13.0500, 1701.14.0500 (raw cane sugar), 1701.12.0500 (raw beet sugar), 1701.91.0500 (sucrose with added coloring), 1701.99.0500 (refined sucrose), 1702.90.0500 (sucrose syrups), and 2106.90.4200 (sucrose syrups with added coloring).

General Note 15 allows classification under these subheadings, which will not count against the low tariff rate quota quantity allotment, for five circumstances. The three that relate to the listed subheadings include:

- (a) such products imported by or for the account of any agency of the U.S. Government;
- (b) such products imported for the personal use of the importer, provided that the net quantity of such product in any one shipment does not exceed 5 kilograms;
- (c) such products, which will not enter the commerce of the United States, imported as samples for taking orders, for exhibition, display or sampling at a trade fair, for research, for use by embassies of foreign governments or for testing of equipment, provided that written approval of the Secretary of Agriculture or his designated representative the United States Department of Agriculture (USDA) is presented at the time of entry.

General Note 15 provides additional instruction regarding item (c) above: "In applying to USDA for approval under subdivision (c) of this note, the importer must identify the product, quantity and intended use of the goods for which an exemption is sought. USDA may seek additional information and specify such conditions of entry as it deems necessary to ensure that the product will not enter the commerce of the United States."

The subheadings that refer to General Note 15 should not be used to classify quota products unless one of the circumstances listed in items (a), (b) or (c) is applicable.

## **COUNTRY OF ORIGIN MARKING**

The marking statute, section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that, unless excepted, every article of foreign origin (or its container) imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or its container) will permit, in such manner as to indicate to the ultimate purchaser the English name of the country of origin of the article. Part 134 of the Customs Regulations (19 CFR Part 134), implements the country of origin marking requirements and exceptions of 19 U.S.C. 1304.

The "country of origin" for marking purposes is defined by section 134.1(b), Customs Regulations (19 CFR 134.1(b)), to mean the country of manufacture, production, or growth of any article of foreign origin entering the United States. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the "country of origin."

Headquarters ruling HQ 082033, dated September 5, 1989 determined that the **refining** of a raw sugar is **not** a substantial transformation.

This ruling concerned raw sugar from Australia that was refined in Canada. The refining process included washing to remove the film of molasses, melting into a syrup, clarification, decolorization, evaporation and crystallization.

Headquarters stated: “The refining of cane sugar does not create an article with a new name, character or use. The product remains sucrose which, while upgraded by refining, retains the same use as with raw sugar: to provide a product with sweet taste and nutrient value.”

Therefore, the country of origin of a refined sucrose is the country producing the raw sugar, not the country where the sucrose is refined.

Headquarters ruling HQ 086097, dated May 15, 1990, determined that a sucrose syrup produced from raw or refined sugar **is not** a substantial transformation.

This ruling concerned raw or refined crystalline sucrose, which was produced in the United States or India and then sent to Canada for processing into a syrup. The processing in Canada included pouring the dry sucrose into a heated tank, where it was stirred and dissolved. The liquid sugar was pumped through strainers and then through carbonation vessels where absorption occurs.

Headquarters stated: “The character of the sugar remains the same: sucrose, whether in crystalline form or syrup, remains sucrose with the same sweetness and nutrient value...Also, the fact that the product is now called a syrup instead of sugar is not dispositive as to whether there has been a substantial transformation.”

Therefore, the country of origin of a sucrose syrup is the country producing the crystalline raw or refined sucrose.

The **marking rules** for sucrose products from **NAFTA** countries (the United States, Mexico and Canada) are found in the Annex 311 rules for determining the country of origin of NAFTA goods set forth in 19 CFR Part 102. Note T.D. 96-46, published in 61 Federal Register 28932.

Under the NAFTA marking rules, **raw sucrose** refined in a NAFTA country **does not undergo a tariff shift**, and remains a product of the country producing the raw sucrose.

Also, the production of a **sucrose syrup** in a NAFTA country from raw or refined sucrose **does not undergo a tariff shift**, and remains a product of the country producing the crystalline raw or refined sucrose.

## **ADDITIONAL INFORMATION**

### **The Internet**

The home page of U.S. Customs and Border Protection on the Internet's World Wide Web, provides the trade community with current, relevant information regarding CBP operations and items of special interest. The site posts information -- which includes proposed regulations, news releases, publications and notices, etc. -- that can be searched, read on-line, printed or downloaded to your personal computer. The web site was established as a trade-friendly mechanism to assist the importing and exporting community. The web site also links to the home pages of many other agencies whose importing or exporting regulations that U.S. Customs and Border Protection helps to enforce. The web site also contains a wealth of information of interest to a broader public than the trade community. For instance, the "Know Before You Go" publication and traveler awareness campaign is designed to help educate international travelers.

The web address of U.S. Customs and Border Protection is <http://www.cbp.gov>

### **Customs Regulations**

The current edition of Customs and Border Protection Regulations of the United States is a loose-leaf, subscription publication available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402; telephone (202) 512-1800. A bound edition of Title 19, Code of Federal Regulations is also available for sale from the same address. All proposed and final regulations are published in the Federal Register, which is published daily by the Office of the Federal Register, National Archives and Records Administration, and distributed by the Superintendent of Documents. Information about on-line access to the Federal Register may be obtained by calling (202) 512-1530 between 7 a.m. and 5 p.m. Eastern time. These notices are also published in the weekly Customs Bulletin described below.

### **Customs Bulletin**

The Customs Bulletin and Decisions ("Customs Bulletin") is a weekly publication that contains decisions, rulings, regulatory proposals, notices and other information of interest to the trade community. It also contains decisions issued by the U.S. Court of International Trade, as well as customs-related decisions of the U.S. Court of Appeals for the Federal Circuit. Each year, the Government Printing Office publishes bound volumes of the Customs Bulletin. Subscriptions may be purchased from the Superintendent of Documents at the address and phone number listed above.

## **Importing into the United States**

This publication provides an overview of the importing process and contains general information about import requirements. The current edition of *Importing Into the United States* contains much new and revised material brought about pursuant to the Customs Modernization Act ("Mod Act"). The Mod Act has fundamentally altered the relationship between importers and U.S. Customs and Border Protection by shifting to the importer the legal responsibility for declaring the value, classification, and rate of duty applicable to entered merchandise.

The current edition contains a section entitled "Informed Compliance." A key component of informed compliance is the shared responsibility between U.S. Customs and Border Protection and the import community, wherein CBP communicates its requirements to the importer, and the importer, in turn, uses reasonable care to assure that CBP is provided accurate and timely data pertaining to his or her importation.

Single copies may be obtained from local offices of U.S. Customs and Border Protection, or from the Office of Public Affairs, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Washington, DC 20229. An on-line version is available at the CBP web site. *Importing into the United States* is also available for sale, in single copies or bulk orders, from the Superintendent of Documents by calling (202) 512-1800, or by mail from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 979050, St. Louis, MO 63197-9000.

## **Informed Compliance Publications**

U.S. Customs and Border Protection has prepared a number of Informed Compliance publications in the "*What Every Member of the Trade Community Should Know About:...*" series. Check the Internet web site <http://www.cbp.gov> for current publications.

## Value Publications

*Customs Valuation under the Trade Agreements Act of 1979* is a 96-page book containing a detailed narrative description of the customs valuation system, the customs valuation title of the Trade Agreements Act (§402 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (19 U.S.C. §1401a)), the Statement of Administrative Action which was sent to the U.S. Congress in conjunction with the TAA, regulations (19 C.F.R. §§152.000-152.108) implementing the valuation system (a few sections of the regulations have been amended subsequent to the publication of the book) and questions and answers concerning the valuation system.

*Customs Valuation Encyclopedia* (with updates) is comprised of relevant statutory provisions, CBP Regulations implementing the statute, portions of the Customs Valuation Code, judicial precedent, and administrative rulings involving application of valuation law. A copy may be purchased for a nominal charge from the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250-7054. This publication is also available on the Internet web site of U.S. Customs and Border Protection.

The information provided in this publication is for general information purposes only. Recognizing that many complicated factors may be involved in customs issues, an importer may wish to obtain a ruling under CBP Regulations, 19 C.F.R. Part 177, or obtain advice from an expert (such as a licensed Customs Broker, attorney or consultant) who specializes in customs matters. Reliance solely on the general information in this pamphlet may not be considered reasonable care.

Additional information may also be obtained from U.S. Customs and Border Protection ports of entry. Please consult your telephone directory for an office near you. The listing will be found under U.S. Government, Department of Homeland Security.

## **“Your Comments are Important”**

The Small Business and Regulatory Enforcement Ombudsman and 10 regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement activities and rate each agency’s responsiveness to small business. If you wish to comment on the enforcement actions of U.S. Customs and Border Protection, call 1-888-REG-FAIR (1-888-734-3247).

**REPORT SMUGGLING 1-800-BE-ALERT OR 1-888-NO-DROGA**



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