

**TESTIMONY
OF
MR. MICHAEL W. JORGENSON
IMMEDIATE PAST CHAIRMAN
CORN REFINERS ASSOCIATION**

**BEFORE THE
SENATE FINANCE COMMITTEE**

**CONCERNING
UNFULFILLED PROMISES:
MEXICAN BARRIERS TO U.S. AGRICULTURAL EXPORTS**

September 23, 2003

Mr. Chairman, members of the Committee, I am Mike Jorgenson, President and Chief Executive Officer of Roquette America, Inc. and the Immediate Past Chairman of the Corn Refiners Association.

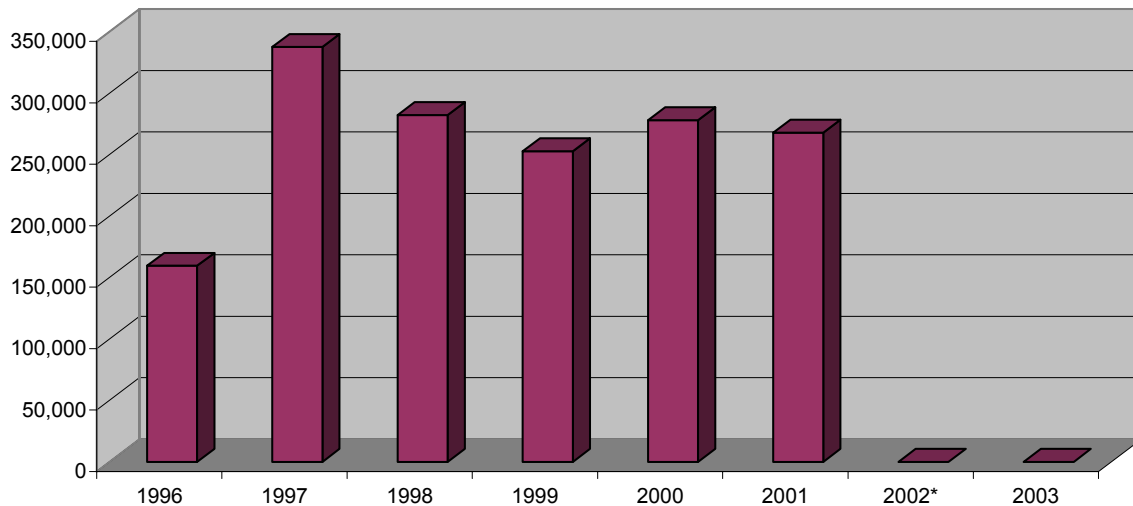
The Corn Refiners Association represents the corn wet milling industry and its member companies, which process corn into a number of products for use in food and industrial applications, including starches, corn oil, feed ingredients, food additives and ethanol. We are the makers of high fructose corn syrup—a nutritive sweetener that is found in many processed foods and beverages. In fact, half of the sweeteners used in the United States are derived from corn. The sweetener industry, which is comprised of HFCS and cane and beet sugar, provides 370,000 jobs for the American economy. **The majority of these jobs, 226,000, are generated from the corn sweetener industry.**

Our industry has been embroiled in a trade dispute with Mexico for more than seven years on high fructose corn syrup. This sweetener dispute and the resulting actions taken against our industry by Mexico has exacted a heavy toll on the corn refiners – jobs have been lost, plant capacity has been idled, and significant losses in investment have occurred. Most recently and most damaging, we have been completely denied access to our top export Mexico for more than 21 months now. This is an untenable situation that cannot be allowed to continue. Every effort must be made to bring an end to this industry crippling dispute.

Our industry strongly supports trade liberalization and fought hard to secure Trade Promotion Authority for the president. We support the North American Free Trade Agreement (NAFTA) and truly believed in the promise that it held for our industry. In fact, we put “our money where our mouth is” with respect to the NAFTA. Our industry invested in the U.S. and in Mexico to meet the “new demands” of the Mexican market – the highest per-capita consumer of soft drinks in the world and a large and growing market for sweeteners – only to see that market unfairly and illegally denied to us.

Mexico is a natural market for our corn sweetener HFCS. In fact, **Mexico is a market with an estimated long-term potential of two million metric tons of HFCS. Two million metric tons of HFCS equates to more than 133 million bushels of corn grown on over 945 thousand acres annually. And that production opportunity has been lost for America’s corn farmers and our refiners.**

Mexican Imports of HFCS



Our industry should be well on its way to reaching that two million metric ton potential in Mexico. Shortly after the NAFTA was implemented, we witnessed the beginnings of successful market access to Mexico when we shipped 150,000 metric tons in 1996 and 337,000 metric tons of HFCS in 1997. The process of market driven North American sweetener market integration – as the NAFTA had envisioned - had begun. And then our troubles began and have only intensified since.

In 1997, Mexico, unable to ship its cane sugar that was being displaced by competitive HFCS in the Mexican soft drink industry, took the U.S. corn refining industry “hostage.” It was at that moment in time that the origins of this dispute became very clear to us all. As you know, the United States signed the so-called NAFTA side letter on sugar and incorporated its elements within the overall implementing package for the NAFTA. The Mexican government, however, never formally signed nor did the Mexican Senate ratify the side letter. Consequently, Mexico continues to assert that the original NAFTA governs trade in sweeteners between our two countries. Mexico even started a NAFTA dispute settlement case on this matter. Therefore, there is no bilateral agreement that governs Mexican sugar access into the United States, which has ricocheted onto our exports of HFCS flowing south.

The original NAFTA and the side letter differ in several ways. Most importantly, the original NAFTA allows Mexico to ship all of its surplus sugar to the United States once

Mexico has been deemed to be a net surplus producer of sugar for two years. That condition was met in 1997, by the way, the year that our dispute with Mexico began. The side letter, conversely, capped Mexico's access into the United States at 250,000 metric tons and stipulated that Mexico could only ship the equivalent of its net surplus sugar production up to the maximum 250,000 metric tons. The concept of unfettered access for all of Mexico's surplus production was not incorporated in the side letter.

Just as our HFCS exports were on an upward trajectory into Mexico, the net surplus producer condition was triggered by Mexico and the "perfect storm" slammed the U.S. corn refining industry.

The first line of assault on our HFCS exports began with an illegal antidumping investigation launched by the Mexican government in 1997. Within a matter of months, Mexico imposed preliminary and ultimately final antidumping duties that significantly curtailed our industry's HFCS exports to Mexico and shut out entirely some of our member companies. We "played by the rules" and challenged Mexico's antidumping investigation in both the World Trade Organization and the NAFTA dispute settlement mechanisms. Our industry made history by employing these two dispute settlement systems concurrently – and winning our case against Mexico in both trade forums. In fact, we won five separate WTO and NAFTA panel rulings against Mexico over the course of four long and arduous years.

Mexico, unfortunately, has become a frequent user of antidumping investigations to thwart politically sensitive imports, and often without regard for its international obligations. Our industry was an initial "victim" and now – sad to say – ours is a common story as some of my fellow panelists will note today. The strongest NAFTA and trade agreement supporters in U.S. agriculture that became the "export engines" for our sector by shipping increasing quantities to Mexico have seen their trade with that country severely threatened or cut off altogether as in our case.

This has been acutely damaging for our industry and others precisely because the NAFTA helped create large markets. Mexico is now the second largest U.S. agricultural market overall, but it is certain to diminish in importance with the plethora of trade problems now underway. Increasingly larger portions of net farm income and agribusiness revenues have become dependent on foreign markets. So, when the rules are broken or ignored, the damage is that much more severe and the political backlash against new trade agreements mounts.

But, despite Mexico's illegal antidumping duties on our HFCS exports, our product was still competitive in the Mexican marketplace and strongly demanded by the Mexican soft drink bottlers. The dumping duties on our HFCS shipments caused our exports to plummet to a plateau of 250,000 metric tons from 1998 onward. In an attempt to further thwart the already diminished trade that we garnered during that period, the Mexican government in 1998 entered into a collusive agreement with the Mexican soft drink bottlers designed to cap the HFCS market. Subsequently, the Corn Refiners Association filed a 301 petition with the U.S. government to challenge the illegal actions of the

Mexican government and encourage the U.S. government to try to resolve the problem. That petition was accepted by the U.S. Trade Representative and discussions with Mexico were pursued in an effort to root out these discriminatory and unfair actions. Again, our industry utilized the trade laws to pursue its interests.

By the end of 2001 and four years after our efforts began, it became apparent that Mexico had reached the end of the rope on its illegal anti-dumping measures. As a result of our WTO and NAFTA challenges, Mexico had no choice but to lift its antidumping duties on our HFCS exports. That fact did not stop Mexico, however. And what happened next may be the start of a troubling pattern that does not bode well for industries that are under the gun of Mexican antidumping investigations that are not in compliance with international trade obligations.

Mexico has demonstrated an uncanny ability to substitute one illegal measure for another. In our case, just as the antidumping duties were to come off, the Mexican congress passed a law in the middle of the night on January 1, 2002 that instituted a 20 percent tax on all beverages sold in Mexico that are not sweetened with its own cane sugar. This highly discriminatory tax was aimed squarely at our HFCS exports and the production of HFCS by U.S. owned plants in Mexico.

The so-called soda tax shut down our top export market overnight. And that was nearly two years ago. **Never before in recent U.S. history has an industry been shut out of its top export market for this extensive period of time. It is a dangerous situation to let fester – and one that severely harms our industry. If left to stand, it invites similar activities against other competitive U.S. industries.**

The results of the soda tax are not all positive for Mexico either. Mexico is experiencing record high sugar prices and its sweetener consuming industries are paying dearly, with some threatening to leave Mexico to avoid the price squeeze. These industries are demanding access to more sweetener, which our industry is perfectly positioned to supply. But, to add additional insult to injury, Mexico is now importing in excess of 120,000 metric tons of sugar to make up for the sugar shortage in its domestic market. In addition, the entire investment climate in Mexico has now been called into question.

What can be done to resolve this interminable sweetener dispute with Mexico? There are two paths to a resolution, one is a pro-trade solution that involves a negotiated settlement with Mexico on sweeteners. This approach is a win-win for all parties and one that we wholeheartedly support. In that regard, we are working with the U.S. government and other segments of the U.S. sweetener industry to explore options for a proposed negotiated settlement.

The other path involves retaliation for Mexico's discriminatory and abusive actions that fly in the face of its international obligations - in essence a trade war. We believe that path will become necessary if Mexico does not return to the negotiating table in the very near term and work in earnest to find a quick and meaningful solution to this impasse.

We applaud the leadership efforts of Chairman Grassley in calling this hearing and working diligently to resolve the sweetener dispute with Mexico. Resolution of this interminable, and very devastating situation with our most important trade partner is our industry's top trade priority.

We look forward to working with you Mr. Chairman, and your colleagues in both the Senate and the House to resolve this dispute once and for all. Every effort must be taken – if necessary, the “gloves must come off” – to bring an end to one of the longest and most complex problems in our agricultural trade relationship with Mexico.

HFCS Case Chronology of Events

1997

1. Jan. 14, 1997: Mexican Sugar Chamber appears before SECOFI to request an antidumping investigation of high fructose corn syrup (HFCS) imports from the U.S.
2. Feb. 27, 1997: SECOFI agrees to accept Mexican Sugar Chamber request for an investigation and it appears in the Diario Oficial.
3. April 22, 1997: CRA files testimony for investigation
4. June 6, 1997: CRA Meeting with SECOFI
5. June 25, 1997: Interim dumping duties imposed on U.S. HFCS industry
6. July 4, 1997: CRA participates in disclosure conference in Mexico City
7. July 25, 1997: Senate approves resolution condemning Mexican HFCS duties
8. July 31, 1997: House approves resolution condemning Mexican HFCS duties
9. August 25, 1997: CRA testifies at public hearing in Mexico
10. September 4, 1997: USTR requests formal WTO consultations with Mexico
11. September 5, 1997: Congressional letter sent to SECOFI
12. September 8, 1997: Bill Barrett sends letter to Mexican ambassador in U.S.
13. September 11, 1997: Agreement made between Mexican sugar industry and soft drink bottlers to limit HFCS use to 350,000 tons/year for three years
14. October 9, 1997: USTR representative meets with Mexican representative for WTO consultations in Geneva, Switzerland
15. December 3, 1997: CRA testifies at public hearing in Mexico
16. (week of) December 8, 1997: CRA files final brief on antidumping investigation

HFCS Case Chronology of Events

1998

1. January 23, 1998: Mexican government imposes final antidumping duties on HFCS-42 \$63.75 to 100.60/ton & HFCS-55 \$55.37 to \$175.50/ton
2. February 1998: Government of Mexico threatens adverse labeling on HFCS and limiting import licenses for plants in Mexico using U.S. corn
3. February 20, 1998: CRA requests NAFTA panel
4. March 12, 1998: USTR announces sugar quota allocations
5. March 13, 1998: Mexican government requests NAFTA Chapter 20 consultations
6. March 20, 1998: CRA files legal brief on final resolution of antidumping investigation
7. April 2, 1998: CRA files Section 301 petition with USTR
8. May 8, 1998: USTR announces it will invoke WTO dispute settlement process
9. May 14, 1998: USTR announces sugar quota allocations
10. May 18, 1998: USTR announces acceptance of Section 301 case
11. June 12, 1998: USTR representative meets with Mexican representative for WTO consultations in Geneva, Switzerland
12. June 22, 1998: CRA files legal brief supporting NAFTA panel request
13. August 1998: Luis de la Calle, Minister of SECOFI-NAFTA at the Embassy of Mexico in Washington, D.C. promoted to position in Mexico City.
14. September 7, 1998 (week of): Duties ranging from \$55.37 to \$90.26 per ton were imposed on HFCS-90.
15. September 17, 1998: USTR announces FY 1999 sugar import quota, Mexico allocated 25,000 metric tons.
16. October 12, 1998 (week of): Mexico appoints NAFTA panelists and wins coin flip to choose fifth panelist.
17. October 22, 1998: USTR formally requests WTO panel, Mexico blocks
18. November 13, 1998: USTR makes second request for WTO panel.
19. November 25, 1998: WTO settlement body approves panel.
20. November 27, 1998: Mexico appoints Carbo Hall as 5th NAFTA panelist and chair.
21. December 3, 1998: President Clinton terminates duties on broom-corn brooms.
22. December 18, 1998: Mexico is expected to lift broom-corn broom retaliation duties.

HFCS Case Chronology of Events

1999

1. January 1, 1999: Mexico lifts broom-corn broom retaliation duties.
2. January 8, 1999: U.S. rejects fifth panelist in NAFTA case.
3. February 12, 1999: U.S. files legal brief to support WTO panel request.
4. March 19, 1999: Mexico files legal brief to support antidumping duties in WTO case.
5. April 22, 1999: Mexican fifth panelist for NAFTA panel selected and approved.
6. May 7, 1999: Deadline for U.S. and Mexico responses to questions in WTO case.
7. May 18, 1999: USTR announces it will further investigate Mexican actions to limit HFCS consumption.
8. June 28, 1999: NAFTA panelist, Bill Alford, submits resignation due to schedule conflicts.
9. September 24, 1999: WTO Secretariat to release preliminary decision. (delayed to week of October 4 to allow time for translation)
10. October 6, 1999: WTO Secretariat releases preliminary decision.
11. December 9, 1999: WTO panel final hearing
12. December: NAFTA panel finalized

HFCS Case Chronology of Events

2000

1. January 14, 2000: WTO panel report complete
2. January 21, 2000: WTO panel report released
3. February 9, 2000: Consorcio Azucarero Escorpion (CAZE) announces sale of sugar mills
4. February 24, 2000: WTO Dispute Settlement Body adopts report
5. March 20, 2000: At DSB meeting Mexico agrees to come into compliance with WTO AD agreement
6. May 15, 2000: Mexico publishes resolution to remand based on WTO ruling in the *Diario Oficial*
7. August 17, 2000: Mexico decides to request panel in NAFTA Chapter 20 case
8. August 22-23, 2000: CRA participates in NAFTA public hearing on Chapter 19 case
9. September 20, 2000: Mexico publishes revised final resolution to come into compliance with WTO ruling
10. October 11, 2000: U.S. petitions WTO to reconvene original panel to determine if Mexico's revised final resolution brings them into compliance.

HFCS Case Chronology of Events

2001

1. February 6, 2001: NAFTA panel rejects Mexico's motion to terminate the case
2. February 12, 2001: Mexico refuses to submit administrative record to NAFTA panel
3. April 17, 2001: Mexico submits administrative record to NAFTA panel
4. May 11, 2001: WTO interim report on Mexico's redetermination of threat of injury
5. June 22, 2001: WTO final report on Mexico's redetermination of threat of injury issued
6. June 19-20, 2001 : NAFTA Chapter 19 panel hearing
7. August 3, 2001: NAFTA panel final decision issued favoring U.S.
8. September 3, 2001: Mexican government expropriates 27 sugar mills
9. September 18, 2001: Mexico allocated 137,788 metric tons for FY2002 sugar TRQ
10. October 22, 2001: WTO Appellate Body affirms panel ruling on Mexico's redetermination of threat of injury
11. November 3, 2001: Original deadline for Mexico to comply with NAFTA panel ruling—extended 3 weeks to November 23, 2001.
12. November 21, 2001: WTO Dispute Settlement Body adopts Appellate Body ruling on Mexico's redetermination.
13. November 23, 2001: Mexico submits a new argument to justify HFCS antidumping duties to the NAFTA Secretariat.
14. December 11, 2001: U.S. and Mexico agree to settle sweetener dispute via bilateral negotiations. USTR agrees not to ask the DSB to consider a request for retaliation. Mexico agrees not to raise procedural objections if USTR decides to request authorization for retaliation in the future.

HFCS Case Chronology of Events

2002

1. January 1, 2002: President Fox signs budget legislation that includes a tax of up to 20 percent on soft drinks made with HFCS.
2. March 1, 2002: Mexico establishes import permit requirement for HFCS.
3. March 5, 2002: Presidential Decree suspending the soft drink tax until September 2002 published in the *Diario Oficial*.
4. April 2, 2002: Mexican Chamber of Deputies votes to legally challenge Presidential Decree suspending the soft drink tax.
5. April 15, 2002: NAFTA panel rules in favor of U.S. on Mexico's new argument. Final ruling: Mexico to lift antidumping duties and repay duties collected.
6. April 22, 2002: Mexico imposes 148,000 metric ton import quota for U.S. HFCS.
7. May 2, 2002: 43 House of Representatives send a letter to President Bush expressing outrage by the imposition of the Mexican soda tax and the complete disruption on U.S. exports of HFCS to Mexico.
8. May 20, 2002: Antidumping duties lifted. Published in *Diario Oficial*.
9. May 28, 2002: Mexican Economy Minister Derbez and USTR Zoellick publicly announce efforts to negotiate sweetener dispute.
10. July 12, 2002: Mexican Supreme Court rules soft drink tax suspension illegal.
11. July 16, 2002: Soft drink tax officially reinstated.
12. July 17, 2002: Supreme Court decision published in *Diario Oficial*.
13. August 12, 2002: 22 Senators send a letter to USTR Zoellick urging quick resolution to the sweetener dispute.
14. Deember 2002: Several Senators including Chairman Grassley, and separately, members of House including Speaker Hastert, send letters to President Bush and Ambassador Zoellick urging a quick resolution to the dispute.
15. December 16, 2002: Mexican Congress passes 2003 budget that includes language to extend the 20 percent tax on soft drinks sweetened with HFCS.
16. December 30, 2002: Departments of Commerce and Justice approve CRA petition to form an Export Trade Certificate of Review (ETCR) for allocating future HFCS exports to Mexico.

HFCS Case Chronology of Events

2003

1. January 10, 2003: Luis Derbez takes Mexican Foreign Relations Secretary position, Fernando Canales Clariond appointed Economy Secretary.
2. January 28, 2003: CEO letter urging quick resolution to sweetener dispute sent to USTR Zoellick, Agriculture Secretary Veneman and Secretary of State Powell.
3. January 28, 2003: Corn Products International files NAFTA Chapter 11 claim seeking compensation for \$250 million in investment losses due to the imposition of the soda tax.
4. February 21, 2003: CRA Chairman addresses sweetener dispute at USDA Ag Outlook Forum.
5. March 14, 2003: 31 House of Representatives send a letter to Mexican Ambassador Jose Bremer urging a quick and meaningful resolution to the sweetener dispute.
6. April 9, 2003: CEOs of the Corn Refining Industry meet with Ambassador Zoellick and separately Secretary Veneman to press for a timely conclusion of the sweetener negotiations with Mexico.
7. June 2, 2003: Mexican Supreme Court declares 20% tax on soft drinks that contain HFCS to be constitutional.
8. June 2003: Senator Grassley and Lugar send a letter to Secretary Evans and Undersecretary Larson urging the Administration to utilize the June "Partnership for Progress" conference to send a clear message of concern about Mexico's treatment of U.S. HFCS producers in Mexico and the negative effect of the sweetener dispute on the investment climate in Mexico.
9. Summer 2003: Mexico imports sugar (no official data on precise amounts) according to traders owing to domestic sweetener shortages driving Mexican sugar prices very high.
10. July 2003: Iowa Governor Tom Vilsack sends a letter to President Bush urging a meaningful resolution to the sweetener dispute.
11. July 2003: Mexican congressional elections result in a loss of congressional seats by the PAN (President Fox's party) and a gain in seats by the PRI and PRD. President Fox's ability to negotiate a solution on the sweetener dispute is perceived to be further weakened by this development.