

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

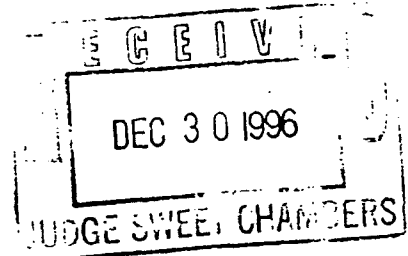
Plaintiff,

v.

NEW YORK COFFEE AND SUGAR EXCHANGE, INC.,  
n/k/a COFFEE, SUGAR & COCOA EXCHANGE, INC.

Defendant.

77 CIV 5038 (RWS)





**STIPULATION AND ORDER**

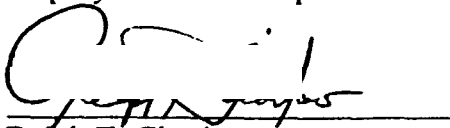
IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned parties, by their respective attorneys, that, in accordance with Section VIII of the Final Judgment dated December 15, 1978, and entered on May 11, 1979 (as heretofore amended), and notwithstanding any provision of such Final Judgment to the contrary, the Defendant may publish spot quotations or prices for world raw cane sugar in accordance with the procedures set forth in the Defendant's Standing Resolutions R-30 and R-31, copies of which are attached hereto as Exhibit A.

Dated: December 30, 1996

FOR THE PLAINTIFF,

  
Joel I. Klein  
Acting Assistant Attorney General

  
Rebecca P. Dick  
Deputy Director of Operations

  
Ralph T. Giordano  
Chief, New York Field Office

  
Philip F. Cody  
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FOR THE DEFENDANT:

CADWALADER, WICKERSHAM & TAFT

By:   
Edmund R. Schroeder

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100 Maiden Lane  
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Tel: (212) 504-6000

SO ORDERED:

  
U.S.D.J. *ms*

Date: *1/2/97* *PORT I*

## STANDING RESOLUTIONS

## R-30. Sugar Spot Price Procedures

WHEREAS the Exchange entered into a stipulation with the United States of America, consenting to the entry of a Final Judgment in the case of United States of America v. New York Coffee and Sugar Exchange, Inc., 77 Civ. 5038, pending in the United States District Court for the Southern District of New York;

WHEREAS the Exchange has entered into a stipulation to amend said Final Judgment;

WHEREAS the Final Judgment, as amended, enjoins the Exchange from determining and publishing spot quotations or prices for raw sugar except in accordance with the terms and conditions hereinafter set forth;

WHEREAS the Board has approved Section 302(b) of the By-Laws which will authorize the adoption of rules and/or procedures to determine and publish spot quotations or prices for raw sugar;

WHEREAS the Board previously adopted such procedures and implemented them; and

WHEREAS, the Board has determined that such procedures should be modified in the form hereinafter set forth, and has directed the staff to take whatever steps are necessary to modify the terms of the Final Judgment to conform to the terms of this Resolution;

NOW, THEREFORE, BE IT RESOLVED that, effective on the second Monday following the later of entry of an order by the court modifying said Final Judgment in the form hereinafter set forth and receipt of approval of the terms and conditions hereinafter set forth by the Commodity Futures Trading Commission, the Exchange shall determine and publish spot quotations or prices for raw sugar in accordance with the following terms and conditions:

**1. Definitions.**

As used in this Resolution:

- (a) The term "applicable trading period" shall mean the period during the Exchange's trading day commencing upon the later of (i) the opening of free trading (after the opening call, if any) and (ii) the commencement of the first bracket period following two hours prior to the end of free trading (or prior to the commencement of the closing call, if any) and in either case continuing through the close of trading for that day.

(b) The term "commission house" shall mean a firm engaged in raw sugar futures trading, on a monetary commission basis, predominantly on behalf of its customers.

(c) The term "bracket period" shall mean any consecutive, separately identified time period during the trading day which is no longer than thirty minutes or such other length of time as the Commodity Futures Trading Commission or the Exchange may prescribe from time to time.

(d) The term "Spot Quotation Day" shall mean the Exchange business day for which the estimated quotations or prices provided by the selected individuals are collected and applied to the Sugar No. 11 futures price to determine the spot quotation.

(e) The term "Spot Quotation Worksheet" shall mean the document to be completed by a selected individual to provide the estimated quotation or price for the Spot Quotation Day.

## 2. Definition of Spot Quotations or Prices

(a) The Exchange shall determine and publish, each trading day, spot quotations or prices for world raw cane sugar.

(b) The world spot quotation or price shall reflect the estimated price per unit, F.O.B. country of origin, of freely traded raw cane sugar in quantities exceeding 4,500 tons for shipment from Australia, Fiji, Philippines and Thailand ("F.O.B. sugar"); provided however, in the event it is determined (by the procedure set forth in Section 3(j) of this Resolution) that freely traded F.O.B. sugar is not available to be quoted from such countries of origin, the spot quotation or price shall reflect the estimated price per unit, C&F (Cost and Freight) Japan, Korea and China of raw cane sugar in quantities exceeding 4,500 tons ("C&F sugar").

## 3. Establishment and Use of Industry Rosters

(a) In determining the world spot quotations or prices, the Exchange shall establish a roster of individuals knowledgeable in raw sugar trading. The individuals on the roster shall be divided into categories representing different segments of the sugar industry and shall include nonmembers as well as members of the Exchange.

(b) With respect to the world roster, there shall be five categories, as follows:

(i) individuals associated with raw sugar merchants or operators;

(ii) individuals associated with sugar refiners;

(iii) individuals associated with raw sugar physical brokers;

(iv) individuals associated with commission houses; and

(v) individuals associated with or representing producers of cane sugar located in nations that are net exporters of freely traded sugar.

(c) The Exchange shall approach the principal firms in each of the specified categories and invite them to submit the names of candidates to be included on the rosters. The appointments to each roster shall be made by the Chairman of the Board of the Exchange with the approval of the Board. No more than one individual from any firm shall be appointed to the roster, provided that an alternate may be appointed to serve in the absence of another individual from the same firm.

(d) The Exchange shall endeavor to place at least eight individuals (not including alternates) in each category, and in no event may any category of either roster consist of less than five individuals (not including alternates). The names of the individuals, including alternates, selected by the Exchange and the firms with which they are associated will be retained in the Exchange's records subject to the inspection, upon request, of the Antitrust Division of the United States Department of Justice and/or of the Commodity Futures Trading Commission.

(e) On each trading day, an employee of the Exchange (the "Exchange Employee"), who is appointed for this purpose by the President, and who shall not be associated with any firm active at any level of the sugar industry, shall select by lot the names of five individuals from the world roster. Such employee shall select the name of one individual from each of the five categories.

(f) After the close of trading on the day preceding Spot Quotation Day, the Exchange Employee shall contact by telephone or facsimile transmission each of the selected individuals (or their alternates) and advise them that they have been selected to provide spot quotation information for the next Spot Quotation Day. The Exchange Employee shall send via facsimile transmission a Spot Quotation Worksheet to each of the individuals. The selected individual shall complete and return the Spot Quotation Worksheet during a period not exceeding one hour beginning two hours before the close of free trading in the Sugar No. 11 futures contract on the Spot Quotation Day.

(g) If an individual from a given roster category does not return the Spot Quotation Worksheet by the designated time, the Exchange Employee shall endeavor to telephone the individual for a response. If that individual is unavailable, the Exchange Employee shall record the reason for the individual's unavailability, select another name from the same roster category and contact that individual by telephone. The Exchange Employee shall then send a Spot Quotation Worksheet to this individual, who shall complete and return it via facsimile transmission before the close of trading in the Sugar No. 11 futures contract.

Alternatively, the selected individual may respond directly to the Exchange Employee by telephone (with the Exchange Employee recording the quotation).

(h) If there are no individuals from a given roster category available to complete a Spot Quotation Worksheet by the designated time, the Exchange Employee may select a name from the entire roster at large, provided that under no circumstances may more than two of the five quotes be from individuals representing any one category. The Exchange Employee shall record the reason for the individual's unavailability. The replacement individual may report the quotation by facsimile transmission of a completed Spot Quotation Worksheet or by telephone (with the Exchange Employee recording the quotations).

(i) To complete the Spot Quotation Worksheet each individual selected from the world roster shall provide a figure representing his expert opinion of the Spot Quotation Day's prevailing price differential between the price per unit of raw cane F.O.B. sugar during a period within sixty days of the Spot Quotation Day in question and the price, per unit, of raw cane sugar under the Sugar No. 11 futures contract for the nearest delivery month then trading on the Exchange for that contract, subject to Section 3(j) of this Resolution.

(j) In the event that any individual on the world roster indicates that no freely traded F.O.B. sugar is available to be quoted, he will inform the Exchange Employee immediately. The Exchange Employee shall immediately poll the entire roster, and if a majority of those individuals agree that no freely traded F.O.B. sugar is available, the world spot quotation shall reflect the estimated price of C&F sugar. The Exchange Employee will then send via facsimile transmission a new Spot Quotation Worksheet which requests C&F sugar price information as indicated in Section 3(k) of this Resolution. The Exchange Employee shall collect quotations for the freight rate between Thailand and Japan as provided for in Section 3(l) of this Resolution. The world spot quotation shall continue to be based each following each day on C&F sugar prices until any individual on the roster indicates to the Exchange that F.O.B. sugar is available to be quoted, at which time the Exchange Employee will poll the entire roster. If a majority believes that a price differential for F.O.B. sugar is available, the Exchange employee will send via facsimile transmission a Spot Quotation Worksheet requesting price differentials for F.O.B. sugar.

(k) In the event that the quotations reported are to be provided for C&F sugar, the individual shall provide a figure representing his expert opinion of the Spot Quotation Day's prevailing price differential between the price per unit of raw cane C&F sugar during a period within sixty days of the day in question and the price per unit of raw cane sugar under the Sugar 11 futures contract for the nearest delivery month then trading on the Exchange for that contract.

(l) In the event that is determined (as per Section 3(j) of this Resolution) that quotations are to be provided for C&F sugar, the Exchange Employee will immediately poll the entire roster to solicit a figure representing the roster member's expert opinion of the freight rate between Thailand and Japan. The Exchange Employee will repeat this poll on the first Exchange Business day of each week that the quotations provided are for C&F sugar.

(m) No individual selected from the roster shall be informed of the identities or figures of the other individuals selected on that day; nor shall such individual be informed of the average, range or nature of the figures provided by the other individuals selected on that day. The Exchange shall not publicly disclose this information except that the figures provided by such individuals shall be maintained by the Exchange for inspection, upon request, by the Antitrust Division of the United States Department of Justice and/or by the Commodity Futures Trading Commission.

(n) The nearest delivery month for the Sugar 11 futures contracts trading on the Exchange shall be the first one of the following delivery months that follows the day for which the spot quotation or price is being determined: March, May, July and October, except that, beginning on the fifth from the last trading day for any of these delivery months, the next one of such months shall be regarded as the nearest delivery month trading month trading on the Exchange. These delivery month designations may be changed, from time to time, by the Board in order to reflect prevailing market conditions.

#### **4. Computation of Estimated Spot Quotation or Price**

As soon as practical after the close of the futures market on the day for which the spot quotations or price is being determined, the Exchange Employee shall compute the world spot quotations or price as follows:

(a) With respect to the world spot quotation or price, the Exchange Employee shall take the F.O.B. figures received from the individuals selected from the world roster as the prevailing differential, on Spot Quotation Day, above or below the price of the Sugar No. 11 futures contract, eliminate the highest and lowest figures, compute the average of the remaining figures, and add that average to or subtract it from the weighted average price of all of such day's transactions on the Exchange, during the applicable trading period, in the nearest delivery month of the Sugar No. 11 futures contract then open for trading. The resulting amount shall constitute the world spot quotation or price for Spot Quotation Day.

(b) In the event that the quotations reported are to be provided for C&F sugar, the Exchange Employee shall take the C&F figures received from the individuals selected from the world roster as the prevailing differential, on Spot Quotation Day, above or below the price of the Sugar No. 11 Futures contract, eliminate the highest and lowest figures, compute the average of the remaining figures, and add that average to or subtract it from the weighted average price of all such day's transactions on the Exchange, during the applicable trading period, in the nearest delivery month of the Sugar No. 11 contract then open for trading. From this amount, the Exchange Employee shall subtract the most recent average Thailand/Japan freight rate as calculated in section 4(c) of this Resolution. This resulting amount shall constitute the world spot quotation or price for Spot Quotation Day.

(c) To calculate the average Thailand/Japan freight rate the Exchange employee shall take the freight rates collected as specified in section 3(l) of this Resolution, discard the highest 10% and the lowest 10% of the rates, and average the remaining freight rates to determine the average Thailand/Japan freight rate. This rate is to be used to determine the world spot quotation as specified in Section 4(b) of this Resolution.

## **5. Publication of Spot Quotations and Prices and Other Considerations**

(a) As soon as practical after their computation, but not later than the day on which they are computed, the Exchange shall make public the world raw sugar spot quotations or price. In doing so, the Exchange shall preface any such quotation or price with the word "Estimated" and shall identify the day to which each quotation or price applies. At the same time, the Exchange shall also make public the weighted average prices of all of the transactions on Spot Quotation Day, during the applicable trading period, in the nearest delivery month of the Sugar No. 11 futures contracts then open for trading, together with the total number of lots transacted on such day, during the applicable trading period, in each such contract.

(b) The Exchange shall instruct, in writing, each member of its roster not to, directly or indirectly, disclose and discuss his appointment or the figures which he submits to the Exchange Employee with anyone associated with any other firm.

(c) The Exchange shall endeavor to replace a substantial number of the individuals on the roster every twenty-four months, and no individual may serve continuously on the roster for more than thirty-six months; and

BE IT FURTHER RESOLVED, that the officers of the Exchange be and they hereby are authorized to take such steps as they deem to be necessary or appropriate to implement the foregoing Resolution.

### **R-31. Exchange Records Required Pursuant to Sugar Spot Price Procedures**

WHEREAS, the Exchange has adopted By-Laws, rules and resolutions for the publication of world spot prices for sugar; and

WHEREAS, said By-Laws, rules and resolutions are subject to court approval under a proposed consent judgment and to approval by the Commodity Futures Trading Commission; and

WHEREAS, the Board wishes to assure that adequate records are maintained with respect to the publication of such prices, and wishes to make explicit the specifications for the sugars that are the basis for the spot price quotations;

RESOLVED, that, with respect to publication of spot prices for sugar, the President is directed to maintain records that indicate:

1. The random selection procedures used in determining the panel members for spot prices;
2. The name of panel members (including alternates) selected each day, and



3. The differentials quoted each day by each of the panel members actually polled;

AND FURTHER RESOLVED, that the quality specifications for the sugars that are the basis for the world spot prices will be the same as the quality specifications from time to time in effect for sugars deliverable under the Sugar No. 11 contracts.