

[164,540] United States v. New York Coffee and Sugar Exchange, Inc.

U. S. District Court, Southern District of New York. No. 77 Civ. 5038 (RWS).
Filed October 23, 1981.

Case No. 2612, Antitrust Division, Department of Justice.

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U. S. v. New York Coffee and Sugar Exchange, Inc.

Sherman Act

Price Fixing—Sugar Futures Market—Spot Price Quotations—Modification of Consent Decree.—A consent decree barring a sugar futures exchange from fixing and tampering with the prices of refined and raw cane sugar (1979-1 TRADE CASES ¶ 62,665) was modified to replace Exhibit A of the decree. Minor technical modifications were included in the new Exhibit A and changes concerning the exchange's trading period. See ¶ 4630.

For plaintiff: Philip F. Cody, Antitrust Div., Dept. of Justice, New York, N. Y.
For defendant: Edmund R. Schroeder, of Barrett Smith Schapiro Simon & Armstrong, New York, N. Y.

Stipulation and Order

SWEET, D. J.: It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The Final Judgment dated December 15, 1978 [1979-1 TRADE CASES ¶ 62,665] is hereby amended and modified, in accordance with Section VIII thereof, by deleting Exhibit A to such Judgment and incorporating, in lieu thereof, Exhibit A in the form hereto attached.

2. The Final Judgment may be modified as provided herein, without further notice to either party or other proceedings.

So Ordered.

Exhibit A

The following sets forth the terms and conditions under which the Exchange may determine and publish spot quotations or prices for raw sugar.

Definition of Applicable Trading Period

As used in this Exhibit A, the phrase "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 period¹ 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.

Definition of Spot Quotations or Prices

The Exchange may determine and publish either or both of two spot quotations or prices for each trading day: one for domestic raw cane sugar and for world raw cane sugar. The domestic spot quotation or price shall reflect the estimated price per unit, C. I. F. duty paid, of raw cane sugar in quantities exceeding 4,500 tons to arrive in the United States at a port of entry north of Cape Hatteras during a pe-

¹ "Bracket period" means any consecutive, separately identified time period during the trading day which is no longer than thirty

riod of not less than seven days nor more than sixty days after the day in question.

The world spot quotation or price shall reflect the estimated price per unit, F. O. B. country of origin, of raw cane sugar in quantities exceeding 4,500 tons for shipment from a list of countries of origin including North Brazil and various countries in the greater Caribbean area, during a period within sixty days of the day in question. The list of countries shall be designated by the Board of Managers of the Exchange and may be changed from time to time by the Board to reflect prevailing market conditions.

Establishment and Use of Industry Rosters

(a) In determining the domestic and world spot quotations or prices, the Exchange shall establish two rosters of individuals knowledgeable in raw sugar trading: one roster consisting of individuals knowledgeable in domestic raw sugar trading and the other consisting of individuals knowledgeable in world raw sugar trading. The individuals on each roster shall be divided into categories representing different segments of the sugar industry and shall include non-members as well as members of the Exchange.

With respect to the domestic roster, there shall be five categories as follows:

(i) Individuals associated with firms engaged in the growth of sugar cane and/or the production of raw sugar in the United States, including beet sugar growers and/or processors;

(ii) Individuals associated with raw sugar merchants or operators located in the United States, including foreign trade houses having offices, directly or through subsidiaries or affiliates, in the United States;

(iii) Individuals associated with sugar refiners located in the United States;

minutes or such other length of time as the Commodity Futures Trading Commission or the Exchange may prescribe from time to time.

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(iv) Individuals associated with industrial users of cane sugar located in the United States; and

(v) Individuals associated with commission² houses located in the United States.

With respect to the world roster, there shall be four categories, as follows:

(i) Individuals associated with raw sugar merchants or operators located in the United States, including foreign trade houses having offices, directly or through subsidiaries or affiliates, in the United States;

(ii) Individuals associated with sugar refiners located in the United States;

(iii) Individuals associated with industrial users of cane sugar located in the United States; and

(iv) Individuals associated with commission houses located in the United States.

(b) 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 Managers of the Exchange with the approval of the Board. An individual may be appointed to both the domestic and world rosters. However, no more than one individual from any firm shall be appointed to any roster, provided that an alternate may be appointed to serve in the absence of another individual from the same firm.

The Exchange shall endeavor to place at least eight individuals (not including alternates) in each category of each roster 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.

(c) On each trading day, an employee of the Exchange³ shall select by lot the names of five individuals from each roster.

For the domestic roster, such employee shall select the name of one individual from each of the five categories. For the

world roster, such employee shall select the name of one individual from each of the four categories and the name of one additional individual from the entire roster at large. The same individual may not be selected, on any trading day, from both the domestic and world rosters.

(d) At some time during a period not exceeding one hour beginning one hour before, and continuing until, the close of free trading (or before the commencement of the closing calls in sugar futures, if any), the Exchange employee shall telephone each of the individuals (or their alternates) selected by lot from the domestic and world rosters.

The Exchange employee shall ask each individual selected from the domestic roster for two figures representing his expert opinions of that day's prevailing price differential between the price per unit, C. I. F. duty paid, of raw cane sugar in quantities exceeding 4,500 tons to arrive in the United States at a port of entry north of Cape Hatteras during a period of not less than seven days nor more than sixty days after the day in question and

(i) The price, per unit, of raw cane sugar under the domestic sugar futures contract for the nearest delivery month then trading on the Exchange for that contract, and

(ii) The price, per unit, of raw cane sugar under the world sugar futures contract for the nearest delivery month then trading on the Exchange for that contract.

The Exchange employee shall ask each individual selected from the world roster for a figure representing his expert opinion of that day's prevailing price differential between the price per unit, F. O. B. country of origin, of raw cane sugar in quantities exceeding 4,500 tons for shipment from the aforesaid list of countries of origin including North Brazil and various countries in the greater Caribbean area, during a period within sixty days of the day in question and the price, per unit, of raw cane sugar under the world sugar futures contract for the nearest delivery month then trading on the Exchange for that contract.

(e) No individual selected from either roster shall be informed of the identities or figures of the other individuals selected on that day; nor shall such individual be

² As used herein, "Commission House" means any firm engaged in raw sugar futures trading, on a monetary commission basis, predominately on behalf of its customers.

³ Such employee shall not be associated with any firm active at any level of the sugar industry.

informed of the average, range or nature of the figures provided by the other individuals selected on the day. This information shall not be publicly disclosed by the Exchange 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.

(f) The nearest delivery month for the domestic and world 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, September and (in the case of the world futures contract) October, or (in the case of the domestic futures contract) November 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 on the Exchange. These delivery month designations may be changed, from time to time, by the Board of Managers of the Exchange in order to reflect prevailing market conditions.

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 prices are being determined, the Exchange employee shall compute the domestic and world spot quotations or prices as follows:

(a) With respect to the domestic spot quotation or price, if more than 175 lots have traded on that day,⁴ during the applicable trading period, in the nearest delivery month of the domestic sugar futures contract then open for trading (as that month is defined above), the Exchange employee shall take the figures received from the individuals selected from the domestic roster as to that day's prevailing differential above or below the price of such domestic futures contract, eliminate the highest and lowest figures, compute the average of the remaining figures, and add that average to or subtract that average from the weighted average price of all of that day's transactions on the Exchange, during the applicable trading period, in such contract. The

resulting amount shall constitute the domestic spot quotation or price for that day.

If that day's volume on the Exchange, during the applicable trading period, in the nearest delivery month of the domestic sugar futures contract then open for trading does not exceed 175 lots, then the Exchange employee shall take the figures received from the individuals selected from the domestic roster as to the differential prevailing above or below the price of the world futures sugar contract, eliminate the highest and lowest figures, compute the average of the remaining figures, and add that amount to or subtract it from the weighted average price of all of that day's transactions on the Exchange, during the applicable trading period, in the nearest delivery month of the world sugar futures contract then open for trading (as that month is defined above). The resulting amount shall constitute the domestic spot quotation or price for that day.

(b) With respect to the world spot quotation or price, the Exchange employee shall take the figures received from the individuals selected from the world roster as to that day's⁵ the prevailing differential, above or below the price of the world sugar 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 that day's transactions on the Exchange, during the applicable trading period, in the nearest delivery month of the world sugar futures contract then open for trading. The resulting amount shall constitute the world spot quotation or price for such day.

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 domestic and world raw sugar spot quotations or prices. 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 that day's⁶ transactions, during the

⁴ The day for which the domestic spot quotation or price is being determined. This 175-lot figure shall not include transactions against actuals or straddle transactions traded on point differentials.

⁵ The day for which the world spot quotation or price is being determined.

⁶ The day to which the spot quotations or prices in question apply.

applicable trading period, in the nearest delivery months of the domestic and world sugar futures contracts then open for trading, together with the total number of lots transacted that day, during the applicable trading period in each such contract.

(b) The Exchange shall instruct, in writing, each member of its domestic and world rosters not to, directly or indirectly, disclose

or 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 domestic and world rosters every twenty-four months, and no individual may serve continuously on either roster for more than thirty-six months.