

# Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. New York Coffee and Sugar Exchange, Inc., U.S. District Court, S.D. New York, 1979-1 Trade Cases ¶62,665, (May 11, 1979)

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United States v. New York Coffee and Sugar Exchange, Inc.

1979-1 Trade Cases ¶62,665. U.S. District Court, S.D. New York, No. 77 Civ. 5038 (RWS), Entered May 11, 1979, (Competitive impact statement and other matters filed with settlement: 43 *Federal Register* 60342, 44 *Federal Register* 25704).

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

## Sherman Act

### Price Fixing: Information in General: Sugar Futures Market: Spot Price Quotations: Consent Decree.—

A sugar futures exchange was barred by a consent decree from fixing and tampering with the prices of refined and raw cane sugar through the publication of world and domestic sugar spot price quotations. However, the exchange was not prohibited from continuing to determine and publish settlement prices in connection with the trading of sugar future contracts, including delivery notices pursuant to such future contracts; nor from determining or publishing a cash value for raw cane sugar in arbitrating futures contract default disputes or commercial contracts in the cash market. The decree ordered the exchange to amend its by-laws in accordance with the decree and to disband and eliminate its world and domestic spot quotation committees.

**For plaintiff:** John H. Shenefield, Asst. Atty. Gen., Ralph T. Giordano and Philip F. Cody, Attys., Dept. of Justice, Antitrust Div., New York, N. Y. **For defendant:** Edmund R. Schroeder, of Barrett Smith Schapiro Simon & Armstrong, New York, N. Y.

## Final Judgment

SWEET, D. J.: The Plaintiff, United States of America, having filed its Complaint on October 17, 1977; the defendant, New York Coffee and Sugar Exchange, Inc., having appeared and filed its answer to the Complaint; and the plaintiff and the defendant, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of law or fact and without this Final Judgment constituting any evidence or admission by either party with respect to any such issue;

Now Therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law and upon the consent of both parties, it is

Ordered, Adjudged and Decreed as follows:

### I

#### [ Jurisdiction]

This Court has jurisdiction over the subject matter of this action and both parties hereto. The Complaint states a claim upon which relief may be granted against the defendant under [Section 1 of the Sherman Act](#) (15 U. S. C. §1).

### II

#### [ Definitions]

As used in this Final Judgment:

A. "The Exchange" means the defendant, New York Coffee and Sugar Exchange, Inc., and each of its subsidiaries, affiliates and committees including the New York Coffee and Sugar Clearing Association, Inc.

B. "Spot quotation or price for raw sugar" means any figure or value which purports to reflect the actual or estimated current cash value of any amount of raw sugar anywhere in the world.

### III

#### **[ Applicability]**

The provisions of this Final Judgment shall apply to the Exchange, its subsidiaries, affiliates, successors and assigns; to each of their respective officers, directors, managers, agents and employees; and to all other persons, including members, in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

### IV

#### **[ Spot Quotations]**

The Exchange is enjoined and restrained from directly or indirectly determining and publishing a spot quotation or price for raw sugar except in accordance with the terms and conditions set forth in Exhibit A of this Final Judgment. Nothing contained herein, however, shall prohibit the Exchange from continuing to determine and publish settlement prices in connection with the trading of sugar futures contracts on the floor of the Exchange, including delivery notices pursuant to such futures contracts. Nor is the Exchange prohibited from determining or publishing a cash value for raw cane sugar in arbitrating or otherwise resolving any dispute resulting from a default in a futures contract of the Exchange or a commercial contract in the cash market.

### V

#### **[ Amendment of By-Laws]**

A. The Exchange is ordered and directed, within one hundred and eighty (180) days after the entry of this Final Judgment, to eliminate from its By-Laws, Rules and Regulations any provision which is inconsistent with Section IV of this Final Judgment, including such provisions contained in paragraphs (r) and (s) of Section 16 of its By-laws, Section 45 of its By-laws, and Rule 12.26 of its Sugar Trade Rules.

B. The Exchange is ordered and directed, within thirty (30) days after the entry of this Final Judgment, to disband and eliminate its Spot Domestic Quota Sugar Quotation Committee and its Spot World Sugar Quotation Committee.

### VI

#### **[ Notice]**

A. Within ninety (90) days after the entry of this Final Judgment, the Exchange shall mail to each of its members a complete copy of this Final Judgment.

B. Within one hundred and twenty (120) days after the entry of this Final Judgment, the Exchange shall file with this Court and serve upon the plaintiff an affidavit as to the fact and manner of its compliance with paragraph A of this Section VI.

### VII

#### **[ Inspections]**

A. For the purpose of determining or securing compliance with this Final Judgment, any duly authorized representative of the Department of Justice shall, on written request of the Attorney General or the Assistant

Attorney General in charge of the Antitrust Division, and on reasonable notice to the Exchange made to its principal office, be permitted, subject to any legally recognized privilege:

(1) Access during the regular business hours of the Exchange to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of the Exchange, which may have counsel present, relating to any matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of the Exchange and without restraint or interference from it, to interview managers, officers, agents or employees of the Exchange, any of whom may have counsel present, regarding any such matters.

B. The Exchange, upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, shall submit such reports in writing with respect to any of the matters contained in this Final Judgment, as may from time to time be requested.

No information obtained by the means provided in this Section VII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

If at the time information or documents are furnished by the Exchange to the plaintiff pursuant to this Section and the Exchange represents that the material, or any portion thereof, in any such information or documents is of a type described in Rule 26(c)(7) of the Federal Rules of Civil Procedure, and the Exchange identifies such material in writing and marks each pertinent page thereof "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then plaintiff shall give the Exchange ten (10) days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which the Exchange is not a party.

## VIII

### [ *Retention of Jurisdiction* ]

Jurisdiction is retained by this Court for the purpose of enabling either of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the amendment or modification of any of its provisions, for the enforcement of compliance therewith, and the punishment of violations thereof.

## IX

### [ *Public Interest* ]

Entry of this Final Judgment is in the public interest.

## 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 extending from 12:00 noon 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 one 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 period 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 in order 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 nonmembers 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;
- (iv) individuals associated with industrial users of cane sugar located in the United States; and
- (v) individuals associated with commission houses<sup>\*</sup> 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 Exchange<sup>\*\*</sup> 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 each trading day, after 1:00 p. m. but before the commencement of the closing calls in sugar futures, 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 informed of the average, range or nature of the figures provided by the other individuals selected on that 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, \* 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's <sup>\*\*</sup> 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 that 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's <sup>\*\*\*</sup> transactions, during the 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.

#### **Footnotes**

- \* As used herein, "Commission House" means any firm engaged in raw sugar futures trading, on a monetary commission basis, predominantly on behalf of its customers.
- \*\* Such employee shall not be associated with any firm active at any level of the sugar industry.
- \* 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.
- \*\* The day for which the world spot quotation or price is being determined.
- \*\*\* The day to which the spot quotations or prices in question apply.