13 August 2020

JA-EPA Coordinator
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Dear Sir / Madam

JA-EPA: 2020 review and renegotiation of certain market access outcomes for goods
CANEGROWERS and the Australian Sugar Milling Council welcomes the opportunity to provide input to the review and renegotiation of certain market access outcomes for Australian goods exports to Japan, including priority agriculture products such as sugar, as provided for in the Japan Australia Economic Partnership Agreement (JA-EPA).

Representing five sugar manufacturing companies which collectively produce 90 per cent of Australia's raw sugar at 17 sugar mills in Queensland, ASMC is the peak sugar industry organisation for raw sugar manufacturers. Representing around 72 per cent of Australia's sugarcane growers, CANEGROWERS is the peak body for Australia's sugarcane industry.

For sugar trade, JA-EPA has been superseded by the market access provisions of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CP-TPP) which entered into force on 30 December 2018. On occasions some cargoes are issued with both JA-EPA and CP-TPP certificates. However, the levy applied to all Australian raw sugar entering Japan is the lower CP-TPP levy – in effect making JA-EPA a redundant agreement for Australian sugar exports[1].

Article 2.20 of JA-EPA envisages improving market access by addressing issues by a variety of means. The examples provided, although illustrative are helpful. They include 'faster reduction and/or elimination of custom duties, streamlining tendering processes and increasing quota quantities, as well as addressing issues related to levies'. Consistent with both the terms and spirit of the article, two important steps could be taken to reinvigorate the now largely redundant JA-EPA and restore its relevance for Japan's purchases of hi-pol Australian raw sugar:

[1] Under JA-EPA, for Australian hi-pol (polarisation) sugar (i.e. 'Aus JB-1' which is >=98.5 and <99.3 polarisation and HS1701.14-200] the tariff removed and variable levy was set at the low-pol levy rate (¥71.80/kg) divided by 0.985 (approximately A$960/t at current exchange rates). Under JA-EPA, for Australian low-pol (i.e. 'J-spec' or 'BRAND 1' which is <98.5 polarisation and HS1701.14-110), the fixed tariff was removed but the variable levy was maintained. Under CP-TPP, for hi-pol sugar, the tariff was also removed and the variable levy set at the low-pol levy rate (¥71.80/kg) minus ¥1.5/kg (approximately A$925/t at current exchange rates).

- First, the levies that apply to hi-pol Australian sugar entering Japan under JA-EPA could be reduced to ensure the terms of JA-EPA are more favourable than the terms of CP-TPP and to achieve mutually beneficial outcomes; and
- Second, the technical issue associated with sugar pol test results could be addressed by various changes to the operating procedures associated with the collection, interpretation and certification of pol test results by Japanese stakeholders.

Levies

JA-EPA removed the tariff on hi-pol Australian sugar entering Japan. Although the levy and surcharge system remain, and the levy on hi-pol sugar is higher than that applied to low-pol sugar, the new structure provides significant commercial incentive to Japanese refiners to favour Australian hi-pol sugar trade.

JA-EPA and the further concessions under CP-TPP were instrumental in encouraging a significant increase in Japanese refiners' purchases of hi-pol Australian raw sugar and a reduction in Thailand's J-spec supply. For example, Japan's imports of Australian hi-pol increased from 281,948 tonnes in 2014/15 to 970,563 tonnes in 2018/19 (**Table 1**). Of note, the lowering of the levies on Australian hi-pol sugar did not reduce the competitiveness or supply of either Japan's domestically manufactured raw sugar or processed sugar made from beet. The production levels of each have changed little between 2014/15 and 2018/19.

Table 1: Japan's sugar supply and consumption

	2014/15	2015/16	2016/17	2017/18	2018/19	
Domestic raw sugar production	135,790	143,130	191,902	143,860	135,763	
Domestic white sugar production	1,675,421	1,677,336	1,689,217	1,640,808	1,620,781	
Raw sugar imports	*1,268,028*	*1,247,200*	*1,220,936*	*1,169,662*	*1,193,082*	
Domestic beet production	607,976	677,222	505,193	656,669	614,718	
TOTAL SUPPLY	2,419,187	2,497,688	2,386,312	2,441,337	2,371,262	
TOTAL CONSUMPTION	2,180,000	2,100,000	2,110,000	2,115,000	2,100,000	
Raw sugar imports (detailed)						% of 2018/19 total
Thailand (J-spec)	*706,633*	*582,385*	*301,819*	*312,557*	*205,202*	17%
Australia (J-spec)	*214,523*	*50,499*	*46,473*	*7,345*	-	0%
Phillipines (J-spec)	-	-	*40,737*	*7,345*	-	0%
S Africa (J-spec)	-	-	*26,000*	*988*	-	0%
Guatemala (J-spec)	*61,904*	-	-	-	-	0%
Australia (Hi-pol)	*281,948*	*600,801*	*801,876*	*808,152*	*970,563*	81%
Other	*3,020*	*13,515*	*4,031*	*33,275*	*17,317*	1%

Specifications:
Thai Hi-Pol >=98.5 degrees wet or 98.9 dry
Aus JB-1 >=98.5 degrees wet or 98.9 dry and <99.3 dry
Brazil VHP >=99 dry and <99.49 dry
J-spec <98.9 dry

Source: https://seitokogyokai.com/statistics/ and Japanese Government Import Data

Issues

When it entered into force on 30 December 2018, the market access provisions of the CP-TPP superseded those of JA-EPA. The levy Japan applies to hi-pol Australian raw sugar

under CP-TPP is lower than that applied under JA-EPA. Therefore, although as noted some cargoes are issued with both JA-EPA and CP-TPP certificates, all Australian raw sugar now enters Japan under the levy provisions of CP-TPP.

CP-TPP has made JA-EPA a redundant agreement for Japan's imports of high-quality Australian sugar.

Possible solution

Consistent with the spirit of the review and to ensure JA-EPA once again becomes the preferred agreement for hi-pol Australian sugar entering Japan, the Australian sugar industry seeks a further reduction in the levy that applies to hi-pol Australian sugar entering Japan under JA-EPA to a level below that which applies under CP-TPP.

This could be achieved by maintaining the tariff elimination provisions of JA-EPA and reducing the levies that apply to hi-pol JA-EPA sugar by perhaps ¥1.5/kg below the levels that apply under CP-TPP. At current foreign exchange levels this would reduce the levy paid on Australian hi-pol sugar by around A$20/t to around A$905/t, at current exchange rates, compared to that currently payable under CP-TPP (i.e. A$925/t).

There are several reasons why this would be of mutual benefit to Japan and Australia and should be pursued by Australian negotiators:

- The levy would continue to be very high, approximately A$905/t, meaning the proposed modest reduction is unlikely to threaten the competitiveness of Japan's domestic beet and raw sugar milling sector;
- CP-TPP provides Australia with preferential access to Japan compared with other suppliers. A revised JA-EPA would consolidate Australia's margin of preference ahead of Thailand's potential accession to CP-TPP, which would otherwise sharply reduce Australia's competitiveness in supplying sugar to Japan;
- Japan would receive supply security (and associated sugar supply consistency and production cost benefits) in a tightening Far East market (because Australia would give Japan priority);
- A further reduced levy would reduce Japanese refiners' costs, while not harming Japan's domestic sugarcane and sugar beet producers; and
- Japan's sugar consumption is declining. There is no immediate health problem in Japan requiring a strong price signal to curb consumption of sugar containing products.

Technical issue (Japan's collection and interpretation of Australian pol levels)

Japanese refiners benefit from their purchases of Australian hi-pol sugar by achieving significant cost savings in their refining process. Australian exporters also benefit because the intention of JA-EPA was to remove the need for Australian raw sugar producers to manufacture and segregate a low-pol raw sugar for Japan.

However, an important technical issue preventing trade in hi-pol Australian sugar from occurring in the manner envisaged in the agreement arose during JA-EPA's implementation has diluted the benefit to Australian producers. When assessing the sugar pol against the maximum pol limit of 99.3, Japan's Customs (and refiners) have variable proficiencies and

do not always comply with international best practice in applying the ICUSMA Pol Testing procedure and Codex standards because they do not:

- Mandate the collection of a representative composite sample of the consignment; and
- Require customs officials to take account of the analytical error inherent in the test procedure when interpreting the test results.

In relation to the latter, and consistent with the analytical error allowed by the international standards body, Codex[2], the analytical error range in the Codex approved ICUMSA[3] procedure used to calculate raw sugar pol is +/- 0.15. Japan is a member of Codex and, like Australia, Japanese customs officials use the ICUMSA procedure to calculate raw sugar pol. When dealing with measurement uncertainty, the standard Codex[4] approach is to make an allowance for the measurement uncertainty when deciding whether an analytical result falls within specification (refer to **Box 1** below).

The pol of Australia raw sugar bound for Japan is tested on at least three occasions:

1. As the sugar is received at an Australian bulk sugar storage terminal (STL engages Gateways Laboratories).
2. As the sugar is loaded on to a ship bound for Japan (undertaken by independent surveyors).
3. On discharge in Japan by Customs and refiners.

In Australia, and in line with international best practice, a representative composite sample of a whole shipment is undertaken at points (1) and (2) above.

In Japan, Japanese refineries and Customs undertake pol testing from either the ship, the conveyor belt that feeds the sugar into raw storage or at the refinery. There is a concern about how and where sampling occurs, including Australian industry's suspicion that sampling is apparently done incorrectly, with spot and not composite samples taken. Preparing composite samples of a shipment is accepted as best practice. In Japan, there can also be two or three discharge ports with separate samples taken at each.

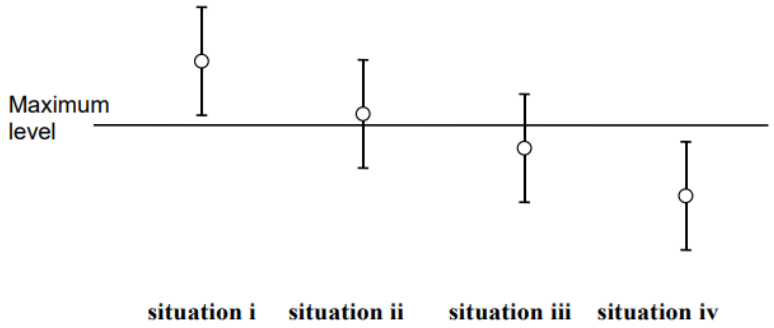
[2] The Codex Alimentarius Commission (Codex) is the international food standards setting body established by the United Nation's Food and Agriculture Organization and the World Health Organization.
[3] The International Commission for Uniform Methods of Sugar Analysis Ltd. (ICUMSA) is a world-wide body which brings together the activities of the National Committees for Sugar Analysis in more than twenty member countries.
[4] Codex Guidelines on Measurement Uncertainty, CAC/GL 54-2004, http://www.fao.org/fao-who-codexalimentarius/sh-proxy/en/?lnk=1&url=https%253A%252F%252Fworkspace.fao.org%252Fsites%252Fcodex%252FStandards%252FCXG%2B54-2004%252FCXG_054e.pdf, accessed 3 August 2020.

Box 1

Excerpt from Codex Guidelines on Measurement Uncertainty

8. Relationship between analytical results, measurement uncertainty and recovery factors
This section attempts to explain the significance of analytical results and their associated measurement uncertainties and recoveries.

8.1 Measurement Uncertainty
It is important that measurement uncertainty is considered when deciding whether or not a sample meets the specification. This consideration may not apply when a direct health hazard is concerned. The significance of this can be illustrated by an example shown in the diagram below, which shows the simplest case when decisions are made based on a single test sample. The example shown here is one where the test result is compared against the specification consisting of a maximum level. It illustrates how the concept of measurement uncertainty could be taken into account when interpreting analytical results on a tested sample.



This diagram demonstrates the importance of defining clear guidelines to allow unambiguous interpretation of analytical results with respect to their measurement uncertainties.

Situation i
The analytical result minus the expanded measurement uncertainty exceeds the maximum level. The result indicates that the measured analyte in the test sample is above the specification.

Situation ii
The analytical result exceeds the maximum level by less than the expanded measurement uncertainty.

Situation iii
The analytical result is less than the maximum level by less than the expanded measurement uncertainty.

Situation iv
The analytical result is less than the maximum level by more than the expanded measurement uncertainty.

Source: Codex Guidelines on Measurement Uncertainty, CAC/GL 54-2004, http://www.fao.org/fao-who-codexalimentarius/sh-proxy/en/?lnk=1&url=https%253A%252F%252Fworkspace.fao.org%252Fsites%252Fcodex%252FStandards%252FCXG%2B54-2004%252FCXG_054e.pdf, pages 5 and 6, accessed 3 August 2020.

Unless account is taken of the analytical error in the test procedure, a punitive tariff or surcharge may be added to Australian raw sugar arriving in Japan. Australian marketers can also incur significant other re-routing costs.

In December 2015 and January 2016, two separate shipments of Australian hi-pol raw sugar to Japan were rejected at Ichihara port on grounds that they were above the 99.3 pol limit. The sugar in each of the cargoes was within the JA-EPA pol limits when samples taken at the bulk loading facility were tested by Gateway Laboratories and upon further separate testing of samples taken upon loading in Australia. Prior to arrival at Ichihara, one of the shipments discharged part of its cargo in Osaka, where the sugar was accepted as being within the pol limit.

This situation demonstrates the importance of adopting international best practices and developing operational procedures and clear guidelines to allow the unambiguous interpretation of analytical results with respect to their measurement uncertainties and ensure the trade in hi-pol Australian sugar occurs as easily as envisaged in JA-EPA.

The supply chain costs incurred in Australia to mitigate risk arising from Japan's pol testing procedures are significant. These costs and the punitive penalties associated with any breaching of the 99.3 pol limit are summarised in **Table 2**.

Possible solutions

FIRST BEST: Japan recognises Australia's raw sugar testing and sampling regime (i.e. certifying the independent Australian Lab, Gateway Laboratories) and accepts the test results taken at Australia's bulk loading facilities.

This would be consistent with practice in all other countries that receive Australian raw sugar.

To this end, we understand Australian officials have passed to Japanese officials in Tokyo some examples of where Australian customs accepts overseas testing/standards, including for the purposes of HS classification.

Japan Customs and refiners could also be extended a renewed invitation to inspect and review Australia's raw sugar sampling and testing procedures.

SECOND BEST: Representatives of ICUMSA and Codex share and develop with Japanese Customs and refineries clear sets of operational procedures for interpreting pol test results in Japan that are in line with international best practice.

If there were differences in the pol test results obtained on loading a cargo in Australia or on discharge of that cargo in Japan, an independent third-party test could be obtained.

NB: such operational procedures, which could apply to both JA-EPA and CP-TPP, would not require an amendment to either agreement.

Table 2: Risk mitigation (and other costs) to Australian sugar producers from the threat of and an actual 99.3 pol exceedance

Response	Who implements	Costs
(A) Risk prevention costs (everyday costs)		
A.1 Addition costs of producing JB-1 (hi-pol)	Australian mills	A$1/t
A.2 Sell at 99.3 pol and not 99.5 pol	All Australian marketers	A$0.80/t pol-premium discount
A.3 Engage Sugar Terminals Limited (STL) to conduct NIR testing before loading	MSF and QSL, as a matter of course	A$0.50/t
A.4 Segregate JB-1 (hi-pol) from BRAND 1 at storage facilities	STL on behalf of all Aust marketers	A$1/t operational cost
	All marketers	AU$30/t opportunity loss. Segregation reduces effective storage capacity and the ability to benefit from a positive Oct-Mar futures spread, typically (A$30/t).
A.5 Engage independent surveyor at the Japanese port to take pol discharge samples	Wilmar, as a matter of course	A$0.35/t
TOTAL RISK PREVENTION COSTS		**At least, A$3m per annum (based on annual exports of 890kt)**
(B) Additional costs if 99.3 pol limit is exceeded		
B.1 Additional polarization testing if 99.3 exceedance occurs	MSF engaged Eynon & Lane (London) to undertake a laboratory assessment	AU$0.80/t
B.2 Additional tariff costs	Refiners and/or Aust marketers depending on contract arrangements	AU$250/t
B.3 Re-route vessel away from Japan to another country if a cargo is rejected on arrival in Japan	All Aust marketers	AU$2.50/t
TOTAL BREACH RELATED COSTS		**At least, A$253.30/t or A$9.07m (based on a single 35,800t cargo)**

Conclusion

The scheduled JA-EPA review of market access, with a view to improving market access conditions for priority agriculture products, including sugar is timely. Superseded by CP-TPP, JA-EPA has become a redundant agreement for sales of Australian raw sugar to Japan. The present review provides opportunity to reinvigorate the agreement by:

- Seeking a reduction in the levies that apply to hi-pol Australian raw sugar, setting the levy at say ¥1.5/kg (approximately A$20/t) below the level that apples under CP-TPP; and
- Either Japan adopting the first best solution of recognising Australia's raw sugar testing and sampling regime (i.e. certifying the independent Australian Lab, Gateway Laboratories) or second best solution of Japanese Customs and refineries developing, in consultation with representatives of ICUMSA and Codex, a clear set of operational procedures for interpreting pol test results in Japan that are in line with international best practice.

Please do not hesitate to contact Warren Males, CANEGROWERS Head-Economics or David Rynne, Director Policy, Economics and Trade at the ASMC if you require further information.

Yours sincerely

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