

## CASE STUDY



### CSC Sugar LLC

#### NEW CANAAN, CT OVERVIEW

When the U.S. Commerce Department amended a prior suspension agreement regarding the importation of Mexican sugar in 2017, it changed the purity definition of refined sugar, effectively altering the product definition for trade purposes and significantly imperiling the business of CSC Sugar, whose cutting-edge refining processes were developed to use a higher purity input. CSC came to Husch Blackwell's international trade team to help craft a strategy to deal with this unexpected hazard.

### Challenges

Among the many challenges to our client's position, the fact that the U.S. Court of International Trade had never overturned a Commerce Department suspension agreement was perhaps the most daunting. This state of affairs argued for taking a unique approach to the matter, so the Husch Blackwell team dug into the fact set and looked for the circumstances around which a successful challenge could be mounted.

### Solution

After a careful review of the client's position, we determined to center our legal strategy around the government's recordkeeping procedures during its negotiations with Mexico. Our diligent review of the matter revealed that the Commerce Department had failed to place information

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regarding *ex parte* meetings of discussions with other members of the domestic industry and Commerce officials, including Secretary Wilbur Ross, on the record. If this could be demonstrated in court, it would provide CSC with the legal justification to strike down the amended agreement with Mexico, since it would have violated U.S. law.

### Result

On October 18, 2019, Judge Leo M. Gordon of the U.S. Court of International Trade filed an opinion granting CSC Sugar's motion for judgment on the agency record. In doing so, Judge Gordon reasoned that "[t]his matter involves Commerce's failure to maintain a complete record as required by the statute and its own regulations, and the court agrees with Plaintiff that such issues involved important procedural benefits that go beyond mere technical notice defects."

The effect of the opinion is far-reaching. As a result, the court stated that the Commerce Department's decision was vacated; thus, the amended agreement with Mexico—along with its damaging redefinition of refined sugar—is null and void, handing our client a complete victory in the litigation and becoming the first instance in which a suspension agreement has been overturned.