

Florida Tomato Exchange Requests a Continuation of the Antidumping Investigation of Mexican Tomatoes

Washington, D.C., October 14, 2019 – The Florida Tomato Exchange (FTE) has filed a request for continuation of the antidumping investigation of fresh tomatoes from Mexico. The investigation was suspended on September 19, 2019, when a new suspension agreement between the Department of Commerce and Mexican growers and exporters went into effect. U.S. trade law, however, permits domestic producers to request continuation of the investigation.

The FTE is taking this action reluctantly. The Department of Commerce did an excellent job under difficult circumstances negotiating the new suspension agreement, which the FTE continues to support. Unfortunately, the Mexican tomato industry does not agree and has signaled its intention to challenge the agreement legally and politically, even though they signed the agreement just last month. The resumption of the investigation will not necessarily terminate the suspension agreement. In fact, the FTE's objective in taking this action is to protect the integrity of the new agreement.

Legal and Political Posturing by the Mexican Tomato Industry

In an October 3 letter to the Commerce Department, the Mexican growers associations, CAADES et al., signaled a strong likelihood that they will challenge the new suspension agreement in court. There have also been multiple public reports that the Mexican tomato industry will do everything possible to renegotiate the agreement and are counting on strong action by the Mexican government to insist on changes. Additionally, both CAADES and Red Sun Farms – a large Mexican producer – have pending litigation against the U.S. government at the Court of International Trade. The appeal by Red Sun Farms argues that Commerce did not lawfully terminate the 2013 Suspension Agreement, thereby asserting that the old suspension agreement should be reinstated.

These actions clearly indicate that the Mexican industry plans to force a renegotiation of the agreement by withdrawing at some point in the near future. This is a tactic the Mexican tomato industry used three times in the past to avoid sunset reviews and to negotiate new agreements that were more favorable to them. Those resulting agreements failed to protect the U.S. tomato industry from the injury caused by dumped Mexican tomatoes. Given this past precedent and the ongoing actions of the Mexican industry, the FTE has no choice but to request continuation of the investigation.

Possible Outcomes

The suspension agreement will remain in effect during the resumed investigation. Upon completion of the investigation, Commerce and the International Trade Commission (ITC) will determine whether or not Mexican tomatoes were dumped in the U.S. and whether the

dumping caused injury to the U.S. tomato industry. If both determinations are affirmative, the suspension agreement will remain in place, and duties will not be imposed so long as the agreement is in effect. Alternatively, if there is a negative finding, the proceeding will end, the suspension agreement will be terminated, and there will be free trade.

It is important to reiterate that the new suspension agreement will continue even if Commerce and the ITC make affirmative findings. An affirmative finding should, however, discourage the Mexican tomato industry from using legal and political maneuvers to try and weaken the agreement. Any future withdrawal from the agreement by either the Mexican growers or by Commerce would automatically trigger a 90-day window to renegotiate before antidumping duties are imposed. This potential for a more immediate imposition of antidumping duties – without having to resume the investigation – should create a strong incentive for the Mexican tomato industry to abide by the new agreement, which they signed, and to stop spending time and money attacking the agreement politically and in the courts.

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The member companies of the Florida Tomato Exchange produce over 90 percent of the tomatoes grown in Florida and are among the largest producers of tomatoes in California, Georgia, South Carolina, North Carolina, Virginia, New Jersey, and Puerto Rico. FTE member companies produce approximately 50 percent of the fresh-market tomatoes grown in the U.S. The FTE is the domestic petitioner in the antidumping case against fresh tomatoes from Mexico.

FTE Contact:

*Michael Schadler, Executive Vice President
407-660-1949 | michael@floridatomatoes.org*