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DEPARTMENT OF COMMERCE

International Trade Administration

[A-201-820]

Fresh Tomatoes from Mexico: Termination of Suspension Agreement, Rescission of Administrative Review, and Continuation of the Antidumping Duty Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

SUMMARY: On February 6, 2019, the Department of Commerce (Commerce) gave 90 days' notice of intent to withdraw from the 2013 Suspension Agreement on Fresh Tomatoes from Mexico (2013 Agreement), terminate the 2013 Agreement, and continue the antidumping duty (AD) investigation initiated in 1996. Because a new suspension agreement has not been signed, Commerce is withdrawing from and terminating the suspension agreement, rescinding the administrative review of the 2013 Agreement, and continuing the antidumping duty (AD) investigation.

FOR FURTHER INFORMATION CONTACT: Sally C. Gannon or Rebecca Lee, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482-0162 or (202) 482-6188, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 18, 1996, Commerce initiated an AD investigation to determine whether imports of fresh tomatoes from Mexico are being, or are likely to be, sold in the United States at

less than fair value (LTFV).¹ On May 16, 1996, the United States International Trade Commission (ITC) notified Commerce of its affirmative preliminary injury determination.

On October 10, 1996, Commerce and certain tomato growers/exporters from Mexico initialed a proposed agreement to suspend the AD investigation. On October 28, 1996, Commerce issued its *1996 Preliminary Determination* and found imports of fresh tomatoes from Mexico were being sold at LTFV in the United States.² On the same day, Commerce and producers/exporters accounting for substantially all imports of fresh tomatoes from Mexico signed an agreement to suspend the investigation (1996 Agreement).³

On May 31, 2002, certain tomato growers/exporters from Mexico accounting for a significant percentage of all fresh tomatoes imported into the United States from Mexico provided written notice to Commerce of their withdrawal from the 1996 Agreement, effective July 30, 2002. Because the 1996 Agreement would no longer cover substantially all imports of fresh tomatoes from Mexico, effective July 30, 2002, Commerce terminated the 1996 Agreement, terminated the sunset review of the suspended investigation, and resumed the AD investigation.⁴

On November 8, 2002, Commerce and certain tomato growers/exporters from Mexico initialed a proposed agreement suspending the resumed AD investigation on imports of fresh tomatoes from Mexico. On December 4, 2002, Commerce and producers/exporters accounting

¹ See *Initiation of Antidumping Duty Investigation: Fresh Tomatoes from Mexico*, 61 FR 18377 (April 25, 1996).

² See *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Fresh Tomatoes from Mexico*, 61 FR 56608 (November 1, 1996) (*1996 Preliminary Determination*).

³ See *Suspension of Antidumping Investigation: Fresh Tomatoes from Mexico*, 61 FR 56618 (November 1, 1996).

⁴ See *Notice of Termination of Suspension Agreement, Termination of Sunset Review, and Resumption of Antidumping Investigation: Fresh Tomatoes from Mexico*, 67 FR 50858 (August 6, 2002).

for substantially all imports of fresh tomatoes from Mexico signed a new suspension agreement (2002 Agreement).⁵

On November 26, 2007, certain tomato growers/exporters from Mexico accounting for a significant percentage of all fresh tomatoes imported into the United States provided written notice to Commerce of their withdrawal from the 2002 Agreement, effective 90 days from the date of their withdrawal letter (*i.e.*, February 24, 2008), or earlier, at Commerce's discretion.

On November 28, 2007, Commerce and certain tomato growers/exporters from Mexico initialed a new proposed agreement to suspend the AD investigation on imports of fresh tomatoes from Mexico. On December 3, 2007, Commerce released the initialed agreement to interested parties for comment. On December 17 and 18, 2007, several interested parties filed comments in support of the initialed agreement.

Because the 2002 Agreement would no longer cover substantially all imports of fresh tomatoes from Mexico, Commerce published a notice of intent to terminate the 2002 Agreement, intent to terminate the five-year sunset review of the suspended investigation, and intent to resume the AD investigation.⁶ On January 16, 2008, Commerce published a notice of termination of the 2002 Agreement, termination of the five-year sunset review of the suspended investigation, and resumption of the AD investigation, effective January 18, 2008.⁷ On January 22, 2008, Commerce signed a new suspension agreement (2008 Agreement) with producers/exporters accounting for substantially all imports of fresh tomatoes from Mexico.⁸

⁵ See *Suspension of Antidumping Investigation: Fresh Tomatoes from Mexico*, 67 FR 77044 (December 16, 2002).

⁶ See *Fresh Tomatoes from Mexico: Notice of Intent to Terminate Suspension Agreement, Intent to Terminate the Five-Year Sunset Review, and Intent to Resume Antidumping Investigation*, 72 FR 70820 (December 13, 2007).

⁷ See *Fresh Tomatoes from Mexico: Notice of Termination of Suspension Agreement, Termination of Five-Year Sunset Review, and Resumption of Antidumping Investigation*, 73 FR 2887 (January 16, 2008).

⁸ See *Suspension of Antidumping Investigation: Fresh Tomatoes from Mexico*, 73 FR 4831 (January 28, 2008).

On August 15, 2012, certain growers/exporters of fresh tomatoes from Mexico filed a letter with Commerce requesting consultations under Section IV.G.⁹ of the 2008 Agreement, and Commerce agreed to consult. As a result of these consultations, on February 2, 2013, Commerce and tomato growers/exporters from Mexico accounting for a significant percentage of all fresh tomatoes imported into the United States from Mexico initialed a draft agreement that would suspend a resumed AD investigation on fresh tomatoes from Mexico. On February 8, 2013, Commerce published a notice of intent to terminate the 2008 Agreement, intent to terminate the five-year sunset review of the suspended investigation, and intent to resume the AD investigation.¹⁰ On March 1, 2013, Commerce issued a notice of termination of the 2008 Agreement, termination of the five-year sunset review of the suspended investigation, and resumption of the AD investigation.¹¹ On March 4, 2013, Commerce and producers/exporters accounting for substantially all imports of fresh tomatoes from Mexico signed a new suspension agreement (2013 Agreement).¹²

On January 9, 2018, Commerce issued a letter that formally opened consultations with the Mexican tomato growers/exporters to negotiate possible revisions to the 2013 Agreement.¹³ Since that time, Commerce has continued to negotiate with representatives of the Mexican growers/exporters and, in parallel, has continually consulted with representatives of the domestic industry.

⁹ Section IV.G. of the 2008 Agreement states that Commerce will consult with signatory producers/exporters regarding the operations of the 2008 Agreement. A party may request such consultations in any April or September (*i.e.* prior to the beginning of each season) following the first year of the signing of the 2008 Agreement.

¹⁰ See *Fresh Tomatoes from Mexico: Intent To Terminate Suspension Agreement and Resume Antidumping Investigation and Intent To Terminate Sunset Review*, 78 FR 9366 (February 8, 2013).

¹¹ See *Fresh Tomatoes from Mexico: Termination of Suspension Agreement, Termination of Five-Year Sunset Review, and Resumption of Antidumping Investigation*, 78 FR 14771 (March 7, 2013).

¹² See *Fresh Tomatoes from Mexico: Suspension of Antidumping Investigation*, 78 FR 14967 (March 8, 2013).

¹³ See Letter from Commerce to CAADES *et al.*, “Consultations on the 2013 Agreement Suspending the Antidumping Investigation on Fresh Tomatoes from Mexico,” dated January 9, 2018.

On February 1, 2018, Commerce initiated a five-year sunset review of the suspended investigation.¹⁴ On March 29, 2018, the Florida Tomato Exchange (FTE), a member of the U.S. petitioning industry, filed a request that Commerce conduct an administrative review on growers/exporters of fresh tomatoes from Mexico covered by the 2013 Agreement. On May 2, 2018, Commerce initiated the administrative review of the 2013 Agreement.¹⁵ On August 27, 2018, Commerce published in the *Federal Register* the preliminary results of the five-year sunset review of the suspended investigation.¹⁶

On November 14, 2018, the FTE filed a request that Commerce terminate the 2013 Agreement and resume the AD investigation under Section VI.B of the 2013 Agreement.¹⁷ Section VI.B of the 2013 Agreement states that “the signatories or the Department may withdraw from this Agreement upon ninety days written notice to the other party.” On November 27, 2018, the Fresh Produce Association of the Americas filed a rebuttal to FTE’s request to terminate.¹⁸ On November 26, 2018 and November 28, 2018, respectively, Confederación de Asociaciones Agrícolas del Estado de Sinaloa, A.C., Consejo Agrícola de Baja California, A.C., Asociación Mexicana de Horticultura Protegida, A.C., Asociación de Productores de Hortalizas del Yaqui y Mayo, and Sistema Producto Tomate (collectively, CAADES *et al.* or the Mexican growers) submitted responses to FTE’s previous request for Commerce to terminate the 2013 Agreement.^{19,20} On December 18, 2018, NS Brands, Ltd (NatureSweet), a signatory to the 2013

¹⁴ See *Initiation of Five-Year (Sunset) Reviews*, 83 FR 4641 (February 1, 2018).

¹⁵ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews (Initiation of Administrative Review)*, 83 FR 19215 (May 2, 2018).

¹⁶ See *Fresh Tomatoes from Mexico: Preliminary Results of the Five-Year Sunset Review of the 2013 Suspension Agreement on Fresh Tomatoes from Mexico* 83 FR 43642 (August 27, 2018).

¹⁷ See Letter to Wilbur Ross, Secretary of Commerce, from the FTE, “Fresh Tomatoes from Mexico: Request to Terminate Antidumping Suspension Agreement,” dated November 14, 2018.

¹⁸ See Letter to Wilbur Ross, Secretary of Commerce, from the Fresh Produce Association of the Americas, “Re: Fresh Tomatoes from Mexico: FTE’s Misleading Request to Terminate Agreement,” dated November 27, 2018.

¹⁹ See Letter to Wilbur Ross, Secretary of Commerce, from CAADES *et al.*, “2013 Suspension Agreement on Fresh

Agreement, filed a letter in support of the November 28, 2018 response by the Mexican growers.²¹ On December 27, 2018, Commerce published in the *Federal Register* the final results of the five-year sunset review of the suspended investigation on fresh tomatoes from Mexico, finding that termination of the suspended investigation would be likely to lead to continuation or recurrence of dumping.²²

On February 6, 2019, in accordance with Section VI.B of the 2013 Agreement, Commerce notified Mexican signatories that Commerce intends to withdraw from the 2013 Agreement.²³ Since the notification, as noted above, Commerce has held consultations with representatives of the Mexican growers/exporters and the domestic industry to discuss a possible new suspension agreement.

Scope of the Investigation

The merchandise subject to the investigation is all fresh or chilled tomatoes (fresh tomatoes) which have Mexico as their origin, except for those tomatoes which are for processing. For purposes of this suspended investigation, processing is defined to include preserving by any commercial process, such as canning, dehydrating, drying, or the addition of chemical substances, or converting the tomato product into juices, sauces, or purees. Fresh tomatoes that are imported for cutting up, not further processing (*e.g.*, tomatoes used in the preparation of fresh salsa or salad bars), are covered by the investigation.

Tomatoes from Mexico,” dated November 26, 2018.

²⁰ See Letter to Wilbur Ross, Secretary of Commerce, from CAADES *et al.*, “2013 Suspension Agreement on Fresh Tomatoes from Mexico,” dated November 28, 2018.

²¹ See Letter to Wilbur Ross, Secretary of Commerce, from NS Brands, Ltd., “2013 Suspension Agreement on Fresh Tomatoes from Mexico: NS Brands’ Response to Petitions Request to Terminate 2013 Suspension Agreement,” dated December 18, 2018.

²² See *Fresh Tomatoes from Mexico: Final Results of the Full Sunset Review of the Suspended Antidumping Duty Investigation*, 83 FR 66680 (December 27, 2018).

²³ See *Fresh Tomatoes from Mexico: Intent To Terminate Suspension Agreement, Rescind the Sunset and Administrative Reviews, and Resume the Antidumping Duty Investigation*, 84 FR 7872 (March 5, 2019).

Commercially grown tomatoes, both for the fresh market and for processing, are classified as *Lycopersicon esculentum*. Important commercial varieties of fresh tomatoes include common round, cherry, grape, plum, greenhouse, and pear tomatoes, all of which are covered by this investigation.

Tomatoes imported from Mexico covered by this investigation are classified under the following subheading of the Harmonized Tariff Schedule of the United States (HTSUS), according to the season of importation: 0702. Although the HTSUS numbers are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Termination of Suspension Agreement and Continuation of the AD Investigation

In accordance with Section VI.B of the 2013 Agreement, Commerce is withdrawing from the 2013 Agreement, effective May 7, 2019, which is 90 days after our February 6, 2019 notice to the signatories. Accordingly, Commerce is terminating the 2013 Agreement, effective May 7, 2019, and continuing the underlying AD investigation. The statute does not identify the timing for completion of the investigation in this particular scenario. Therefore, we are looking to section 734(i)(1)(B) of the Tariff Act of 1930, as amended (the Act), for guidance. Consistent with section 734(i)(1)(B) of the Act, Commerce will continue the investigation as if it had published the affirmative preliminary determination under section 733(b) of the Act on the effective date of the termination, May 7, 2019. As explained in its *1996 Preliminary Determination*, Commerce previously postponed the final determination until the 135th day after the date of the preliminary determination.²⁴ Commerce, therefore, intends to issue its final determination in the investigation 135 days after the effective date of withdrawal from and

²⁴ See *1996 Preliminary Determination* at 56609.

termination of the 2013 Agreement, *i.e.*, by September 19, 2019, unless a new suspension agreement becomes effective prior to or on this date. If Commerce and producers/exporters accounting for substantially all imports of fresh tomatoes from Mexico sign a new suspension agreement, following the notice and comment period provided in accordance with section 734(c) of the Act, the continued investigation will be suspended.

Rescission of the Administrative Review

On May 2, 2018, Commerce initiated an administrative review of the 2013 Agreement for the period March 1, 2017 through February 28, 2018.²⁵ Because Commerce has terminated the 2013 Agreement, there is no longer an agreement of which to conduct an administrative review. Therefore, Commerce is rescinding the administrative review of the 2013 Agreement, effective on the date of termination of the 2013 Agreement, *i.e.*, May 7, 2019.

Period of Investigation

The original period of investigation was March 1, 1995, through February 29, 1996. Due to the unusual procedural posture of this proceeding, in which we are terminating a suspension agreement and continuing an investigation that covers a period of investigation that dates back more than 23 years, Commerce will be requesting information corresponding to the most recent four full quarters, *i.e.*, April 1, 2018 through March 31, 2019.

Respondent Selection

In light of the unusual procedural posture of this proceeding, Commerce finds it appropriate to reconsider respondent selection. Commerce intends to evaluate U.S. Customs and Border Protection (CBP) data for U.S. imports of fresh tomatoes from Mexico for the most recent four quarters under the appropriate Harmonized Tariff Schedule of the United States

²⁵ See *Initiation of Administrative Review*, 83 FR at 19217.

(HTSUS) numbers listed in the “Scope of the Investigation” section above and select mandatory respondents in accordance with section 777A(c) of the Act.

We are releasing CBP data under Administrative Protective Order (APO) to all parties with access to information protected by APO concurrently with the issuance of this notice.

Interested parties wishing to comment on the CBP data must do so within two business days of the publication date of this notice. Comments must be filed electronically using Commerce’s electronic records system, ACCESS at <http://access.trade.gov> in accordance with 19 CFR 351.303.²⁶ An electronically filed document must be received successfully in its entirety by ACCESS no later than 5:00 p.m. Eastern Time, two business days after the publication date of this notice.

Suspension of Liquidation

Commerce will instruct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of fresh tomatoes from Mexico that are entered, or withdrawn from warehouse, for consumption on or after May 7, 2019, the effective date of the termination of the 2013 Suspension Agreement. CBP shall require antidumping duty cash deposits or bonds for entries of the subject merchandise based on the preliminary dumping margins, which are as follows:

Grower/exporter	Weighted- average percentage margin
San Vincente Camalu	4.16
Exportadora Agricola Sacramento S.A. de C.V. ²⁷	11.89

²⁶ See *Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures*, 76 FR 39263 (July 6, 2011).

²⁷ Exportadora Agricola Sacramento S.A. de C.V. (Sacramento) is formerly known as Ernesto Fernando Echavarria Salazar Grupo Solidario. See Commerce’s verification agenda to Sacramento dated October 11, 2002, and the Sacramento verification report dated November 12, 2002, at Home Market Exhibit 1.

Grower/exporter	Weighted- average percentage margin
Arturo Lomeli Villalobas S.A. de C.V.	26.97
Eco-Cultivos S.A. de C.V.	188.45
Productora Agricola Industrial del Noroeste, S.A. de C.V. ²⁸	10.26
Administradora Horticola del Tamazula	28.30
Agricola Yory, S. de P.R. de R.I.	11.95
All Others	17.56

International Trade Commission

Commerce will notify the International Trade Commission (ITC) of its withdrawal from and termination of the 2013 Suspension Agreement and continuation of the AD investigation. If Commerce makes a final affirmative determination, the ITC is scheduled to make its final determination concerning injury within 45 days after publication of Commerce's final determination. If both Commerce's and the ITC's final determinations are affirmative, Commerce will issue an AD order.

Filing Requirements

All submissions to Commerce must be filed electronically using Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS).²⁹ An electronically filed document must be received successfully in its

²⁸ Productora Agricola Industrial del Noroeste, S.A. de C.V. (Noroeste) was formerly known as Ranchos Los Pinos S. de R.L. de C.V. See Noroeste's entry of appearance dated October 18, 2002, the Noroeste cost verification report dated November 12, 2002, at 3, and the Noroeste sales verification report dated November 13, 2002, at 1, 4.

²⁹ See *Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures*, 76 FR 39263 (July 6, 2011); see also *Enforcement and Compliance; Change of Electronic Filing System Name*, 79 FR 69046 (November 20, 2014) for details of Commerce's electronic filing requirements, effective August 5, 2011. Information on help using ACCESS can be found at <https://access.trade.gov/help.aspx> and a handbook can be found at <https://access.trade.gov/help/>

entirety by the time and date it is due. Documents exempted from the electronic submission requirements must be filed manually (*i.e.*, in paper form) with Enforcement and Compliance's APO/Dockets Unit, Room 18022, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, and stamped with the date and time of receipt by the applicable deadlines.

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.³⁰ Parties must use the certification formats provided in 19 CFR 351.303(g).³¹ Commerce intends to reject factual submissions if the submitting party does not comply with the applicable revised certification requirements.

Administrative Protective Order Access and Letters of Appearance

Commerce will issue new administrative protective orders (APO) for the continued investigation that will supersede the previously issued firm-specific APOs. Those authorized applicants that were granted APOs during the original investigation, as indicated in the most recent APO service list on Commerce's website, will continue to have access to business proprietary information under APO. Any new APO applications or necessary amendments for changes in staff under the pre-existing APOs should be submitted promptly, and in accordance with the procedures outlined in Commerce's regulations at 19 CFR 351.305. These applications must be filed electronically using ACCESS at <http://access.trade.gov>. Those procedures apply to this continued investigation. Parties wishing to participate in this continued investigation should

Handbook%20on%20Electronic%20Filing%20Procedures.pdf.

³⁰ See section 782(b) of the Act.

³¹ See also *Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings*, 78 FR 42678 (July 17, 2013) (Final Rule). Answers to frequently asked questions regarding the Final Rule are available at http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.

ensure that they meet the requirements of these procedures, *e.g.*, the filing of separate letters of appearance as discussed at 19 CFR 351.103(d).

This determination is issued and published in accordance with section 733(f) and 777(i)(1) of the Act.

Dated: May 7, 2019.

Jeffrey I. Kessler,
Assistant Secretary
for Enforcement and Compliance.

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