



## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-201-820]

#### **Agreement Suspending the Antidumping Duty Investigation on Fresh Tomatoes from Mexico; Preliminary Results of 2020-2021 Administrative Review**

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

**SUMMARY:** The U.S. Department of Commerce (Commerce) preliminarily determines that the respondents selected for individual examination, International Greenhouse Produce, S.A. de C.V. (IGP) and Negocio Agricola San Enrique, S.A. de C.V. and its affiliates (NASE), as a whole complied with the Agreement Suspending the Antidumping Duty Investigation on Fresh Tomatoes from Mexico (2019 Agreement), for the period of review (POR) September 1, 2020, through August 31, 2021, except for certain instances of inconsequential or inadvertent noncompliance. We preliminarily determine that such noncompliance does not materially frustrate the purposes of the 2019 Agreement; however, we intend to address such noncompliance of the respondent IGP by engaging in Operations Consultations pursuant to Section VII.G the 2019 Agreement. Commerce also preliminarily determines that the 2019 Agreement continued to meet the statutory requirements under sections 734(c) and (d) of the Tariff Act of 1930, as amended (the Act) during the POR.

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

**FOR FURTHER INFORMATION CONTACT:** Sally C. Gannon or David Cordell, Enforcement & Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482-0162 or (202) 482-0408, respectively.

## **SUPPLEMENTARY INFORMATION:**

### Background

On September 19, 2019, Commerce signed a suspension agreement<sup>1</sup> under section 734(c) of the Act, with representatives of Mexican fresh tomato producers/exporters accounting for substantially all imports of fresh tomatoes from Mexico, suspending the antidumping duty (AD) investigation on fresh tomatoes from Mexico.<sup>2</sup>

On September 17, 2021, the Florida Tomato Exchange (FTE),<sup>3</sup> a member of the U.S. petitioning industry, filed a request for an administrative review of the 2019 Agreement.<sup>4</sup> Commerce initiated the review of the 2019 Agreement on November 5, 2021.<sup>5</sup> On February 3, 2022, Commerce selected mandatory respondents and issued its questionnaire to two respondents, listed here in alphabetical order: International Greenhouse Produce and Negocio Agricola San Enrique, S.A.<sup>6</sup>

### Scope of the 2019 Agreement

Merchandise covered by the 2019 Agreement is typically classified under the following subheading of the Harmonized Tariff Schedules of the United States (HTSUS), according to the season of importation: 0702. The tariff classification is provided for convenience and customs purposes; however, the written description of the scope of this 2019 Agreement is dispositive.<sup>7</sup>

### Methodology and Preliminary Results

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<sup>1</sup> See *Fresh Tomatoes from Mexico: Suspension of Antidumping Duty Investigation*, 84 FR 49987 (September 24, 2019) (*2019 Agreement*).

<sup>2</sup> The Mexican signatories are predominately represented by the following associations: Asociacion Mexicana de Horticultura Protegida, A.C., Asociacion de Productores de Hortalizas del Yaqui y Mayo, Confederacion de Asociaciones Agricolas del Estado de Sinaloa, A.C., Consejo Agricola de Baja California, A.C., and Sistema Producto Tomate.

<sup>3</sup> The members of the FTE are as follows: Ag-Mart Produce, Inc. dba Santa Sweets, Inc., Classie Produce, DiMare Homestead, Inc., DiMare Ruskin, Inc., Gargiulo, Inc., Kern Carpenter Farms, Lipman Family Farms, Mecca Family Farms, Inc., Michael Borek Farms, Pacific Tomato Growers, Ltd., Taylor & Fulton Packing, LLC, Tomatoes of Ruskin, Inc., TomPak, LLC, and West Coast Tomato, LLC.

<sup>4</sup> See FTE's Letter, "Request for Administrative Review," dated September 17, 2021.

<sup>5</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 86 FR 61121 (November 5, 2021).

<sup>6</sup> See Memorandum, "Respondent Selection and Corrected Period of Review," dated February 3, 2022.

<sup>7</sup> For a complete description of the Scope of the 2019 Agreement, see Memorandum, "Decision Memorandum for the Preliminary Results of the 2020-2021 Administrative Review: Fresh Tomatoes from Mexico," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

Commerce has conducted this review in accordance with section 751(a)(1)(C) of the Act, which specifies that Commerce shall “review the current status of, and compliance with, any agreement by reason of which an investigation was suspended.” In this case, Commerce and representatives of the Mexican tomato producers/exporters accounting for substantially all imports of fresh tomatoes from Mexico signed the 2019 Agreement, which suspended the underlying antidumping duty investigation, on September 19, 2019. Pursuant to the 2019 Agreement, the Mexican signatories agreed to sell subject merchandise at or above certain minimum reference prices, and that their pricing would eliminate at least 85 percent of the dumping determined in the antidumping duty investigation.<sup>8</sup> The Mexican signatories also agreed to other conditions, including quarterly audits,<sup>9</sup> near-the-border inspections by the U.S. Department of Agriculture on all Round and Roma tomatoes and certain other types of tomatoes beginning on April 4, 2020,<sup>10</sup> and limits to adjustments to the sales price due to certain changes in condition and quality after shipment.<sup>11</sup>

After reviewing the information received to date from the respondent companies in their questionnaire and supplemental questionnaire responses, we preliminarily determine that the respondents have adhered to the terms of the 2019 Agreement, except for certain instances of inconsequential or inadvertent noncompliance that does not materially frustrate the purposes of the 2019 Agreement. We intend to address such noncompliance of the respondent IGP by engaging in Operations Consultations pursuant to Section VII.G of the 2019 Agreement. We also preliminarily determine that the 2019 Agreement is functioning as intended and that the 2019 Agreement continues to meet the statutory requirements under sections 734(c) and (d) of the Act.

For a full description of the analysis underlying our conclusions, *see* the Preliminary

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<sup>8</sup> *See 2019 Agreement*, 84 FR at 49990, at Price Undertaking.

<sup>9</sup> *Id.*, 84 FR at 49991, at Compliance Monitoring.

<sup>10</sup> *Id.* at Inspection of Subject Merchandise; *see also* Memorandum, “Frequently Asked Questions Regarding Inspections,” dated March 17, 2020.

<sup>11</sup> *See 2019 Agreement*, 84 FR 49996, at Appendix D.

Decision Memorandum. Commerce examines issues involving the discussion of proprietary information concerning each of the respondents in separate memoranda which we incorporate into the Preliminary Decision Memorandum.<sup>12</sup> A list of topics discussed in the Preliminary Decision Memorandum is included as an appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

### Verification

As provided in section 782(i) of the Act, Commerce may verify the information relied upon in making its final results. Normally, Commerce verifies information using standard procedures, including an on-site examination of original accounting, financial, and sales documentation. While we consider the possibility of conducting an on-site verification for some of the information submitted by the respondents, we may also need to verify the information relied upon in making the final results through alternative means in lieu of an on-site verification. Commerce intends to notify parties of its verification procedures, as applicable.

### Public Comment

Case briefs are due 30 days from the publication of these preliminary results in the *Federal Register*. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline date for case briefs.<sup>13</sup> Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument;

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<sup>12</sup> See Memoranda, "Preliminary Analysis of Proprietary Information and Argument Regarding International Greenhouse Produce," dated concurrently with this notice; and "Preliminary Analysis of Proprietary Information and Argument Regarding Negocio Agricola San Enrique S.A. and its Affiliates," dated concurrently with this notice.

<sup>13</sup> See 19 CFR 351.309(d)(1).

and (3) a table of authorities.<sup>14</sup> All briefs must be filed electronically using ACCESS. An electronically filed document must be received successfully in its entirety by the established deadline. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.<sup>15</sup>

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce within 30 days after the date of publication of this notice.<sup>16</sup> Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Commerce intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act, unless extended.

#### Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

**Dated:** September 30, 2022.

**Lisa W. Wang,**  
*Assistant Secretary for Enforcement and Compliance.*

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<sup>14</sup> See 19 CFR 351.309(c)(2) and (d)(2).

<sup>15</sup> See *Temporary Rule*.

<sup>16</sup> See 19 CFR 351.310(c).

## Appendix

### List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Scope of the 2019 Agreement
- III. Background
- IV. Preliminary Results of Review
- V. Discussion of the Issues
- VI. Recommendation

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