



## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-201-820]

Fresh Tomatoes from Mexico: Notice of Court Decision Not in Harmony with the Final Determination of Antidumping Duty Investigation; Notice of Amended Final Determination

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

SUMMARY: On April 17, 2025, the U.S. Court of International Trade (CIT) issued its final judgment in *Bioparques de Occidente, S.A. de C.V., et al. v. United States*, Slip Op. 24-43, Consol. Court No. 19-00204, sustaining the U.S. Department of Commerce (Commerce)'s remand redetermination pertaining to the antidumping duty (AD) investigation of fresh tomatoes from Mexico covering the period of investigation (POI) March 1, 1995, through February 29, 1996. Commerce is notifying the public that the CIT's final judgment is not in harmony with Commerce's final determination in that investigation, and that Commerce is amending the final determination with respect to the dumping margin assigned to all Mexican tomatoes producers and exporters individually examined in this investigation.

DATES: Applicable April 28, 2025.

FOR FURTHER INFORMATION CONTACT: Thomas Schauer or Dmitry Vladimirov, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-0410 or (202) 482-0665, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Background

On April 25, 1996, Commerce initiated the AD investigation of fresh tomatoes from Mexico.<sup>1</sup> On November 1, 1996, Commerce published the preliminary determination of the AD

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

investigation of fresh tomatoes from Mexico.<sup>2</sup> In the *Preliminary Determination*, Commerce individually calculated dumping margins for San Vicente Camalu, Ernesto Fernando Echavarria Salazar Grupo Solidario, Administradora Hortícola Del Tamazula, Arturo Lomeli Villalobas S.A. de C.V., Ranchos Los Pinos S. de R.L. de C.V., Agrícola Yory, S. de P.R. de R.I., and Eco-Cultivos S.A. de C.V.<sup>3</sup> For the *Preliminary Determination*, the POI was March 1, 1995, through February 29, 1996.<sup>4</sup> Also, effective November 1, 1996, Commerce and certain producers and exporters of fresh tomatoes from Mexico signed an agreement to suspend the investigation.<sup>5</sup> A series of subsequent suspension agreements were negotiated and signed in 2002, 2008, and 2013.<sup>6</sup> Effective May 13, 2019, Commerce terminated the suspension agreement in effect and continued with this investigation in accordance with section VI.B of that suspension agreement.<sup>7</sup> For the continued investigation in 2019, Commerce selected new respondents for individual examination and relied on the data from these new respondents covering the period April 1, 2018 through March 31, 2019, in order to calculate the AD margins for the *Final Determination*.<sup>8</sup> The newly selected mandatory respondents that we individually examined in 2019 were Bioparques de Occidente, S.A. de C.V./Agrícola La Primavera, S.A. de C.V., Ceuta Produce, S.A. de C.V./Rancho La Memoria, S. de R.L. de C.V., and Negocio Agrícola San Enrique, S.A. de C.V.<sup>9</sup> Effective September 19, 2019, Commerce suspended the AD investigation of fresh tomatoes from Mexico.<sup>10</sup> On October 25, 2019, Commerce published its *Final Determination* in the AD

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<sup>2</sup> 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) (*Preliminary Determination*).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at 56610.

<sup>5</sup> See *Suspension of Antidumping Investigation: Fresh Tomatoes from Mexico*, 61 FR 56618 (November 1, 1996) (*Suspension Agreement 1996*).

<sup>6</sup> See, e.g., *Bioparques de Occidente, S.A. de C.V., et al. v. United States*, Consol. Court No. 19-00204, Slip Op. 25-43 (CIT 2025) (*Bioparques*), at 3.

<sup>7</sup> See *Fresh Tomatoes from Mexico: Termination of Suspension Agreement, Rescission of Administrative Review, and Continuation of the Antidumping Duty Investigation*, 84 FR 20858, 20860 (May 12, 2019)

<sup>8</sup> See, e.g., *Fresh Tomatoes from Mexico: Final Determination of Sales at Less Than Fair Value*, 84 FR 57401 (October 25, 2019) (*Final Determination*), and accompanying Issues and Decision Memorandum (IDM) at Comment 2.

<sup>9</sup> See *Final Determination*.

<sup>10</sup> See *Fresh Tomatoes from Mexico: Suspension of Antidumping Duty Investigation*, 84 FR 49987 (September 24, 2019) (*2019 Agreement*).

investigation of fresh tomatoes from Mexico.<sup>11</sup> No AD order was issued because the 2019 suspension agreement still “remain{ed} in effect.”<sup>12</sup>

Bioparques de Occidente, S.A. de C.V., Agricola La Primavera, S.A. de C.V., and Kaliroy Fresh LLC, Consolidated Plaintiffs appealed Commerce’s *Final Determination* as plaintiffs.<sup>13</sup> On April 17, 2024, the CIT issued the *Remand Order*, in which it concluded that “Commerce’s Final Determination must resume its investigation flowing from the affirmative preliminary determination issued on November 1, 1996, including focusing its analysis on the evidence submitted regarding the original period of investigation of March 1, 1995 through February 29, 1996, and reviewing the original six mandatory respondents” in order to comply with the language of section 734(i)(1)(B) of the Tariff Act of 1930, as amended (the Act).<sup>14</sup> On October 22, 2024, Commerce complied with the *Remand Order* under respectful protest and issued the Final Results of Redetermination accordingly.<sup>15</sup> In the Final Results of Redetermination, Commerce reconsidered the selection of respondents and consideration of recent data used in the continued investigation and evaluated the 1995-1996 data from the seven respondents individually examined in 1996 and in 2002 during the investigation and determined dumping margins using the 1995-1996 data.<sup>16</sup> In addition to complying with the *Remand Order*, to be consistent with our current practice, we used the differential pricing methodology and we

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<sup>11</sup> See *Final Determination*.

<sup>12</sup> See *2019 Agreement*; see also *Bioparques de Occidente, S.A. de C.V. v. United States*, 31 F.4th 1336, 1343-48 (Fed. Cir. 2022); see also *Fresh Tomatoes from Mexico: Intent to Terminate Suspension Agreement, Rescind an Administrative Review, and Issue an Antidumping Duty Order*, 90 FR 16499 (April 18, 2025) (*Intent to Terminate*) (“{Commerce} intends to terminate the 2019 Agreement Suspending the Antidumping Duty Investigation on Fresh Tomatoes from Mexico (2019 Agreement), rescind one of two ongoing administrative reviews of the 2019 Agreement, and to institute an antidumping duty (AD) order.”).

<sup>13</sup> In this litigation, the consolidated plaintiffs are plaintiffs are Confederacion de Asociaciones Agricolas del Estado de Sinaloa, A.C., Consejo Agrícola de Baja California, A.C., Asociacion Mexicana de Horticultura Protegida, A.C., Asociacion de Productores de Hortalizas del Yaqui y Mayo, and Sistema Producto Tomate. See *Boiparques* at 1. Subsequently, NS Brands, Ltd., Naturesweet Invernaderos S. de R.L. de C.V., and NatureSweet Comercializadora, S. de R.L. de C.V. joined the litigation as plaintiff-intervenors. See *Bioparques de Occidente S.A. de C.V. v. United States*, 745 F. Supp. 3d 1322 (CIT 2024).

<sup>14</sup> See *Bioparques de Occidente, S.A. de C.V., et al. v. United States*, 698 F. Supp. 3d 1265 (CIT 2024) (*Remand Order*).

<sup>15</sup> See Final Results of Redetermination Pursuant to the *Remand Order*, dated October 22, 2024 (Final Results of Redetermination), available at <https://access.trade.gov/public/FinalRemandRedetermination.aspx>.

<sup>16</sup> *Id.*

did not zero negative margins in the Final Results of Redetermination. On April 17, 2025, the CIT sustained Commerce’s Final Results of Redetermination.<sup>17</sup>

Timken Notice

In its decision in *Timken*,<sup>18</sup> as clarified by *Diamond Sawblades*,<sup>19</sup> the U.S. Court of Appeals for the Federal Circuit held that, pursuant to section 516A(c) and (e) of the Act, Commerce must publish a notice of court decision that is not “in harmony” with a Commerce determination and must suspend liquidation of entries pending a “conclusive” court decision. The CIT’s April 17, 2025, judgment constitutes a final decision of the CIT that is not in harmony with Commerce’s *Final Determination*. Thus, this notice is published in fulfillment of the publication requirements of *Timken*.

Amended Final Determination

Because there is now a final court judgment, Commerce is amending its *Final Determination* with respect to the respondents individually examined in the *Preliminary Determination* and the *Final Determination* as follows:

<b>Exporter/Manufacturer</b>	<b>Weighted-Average Dumping Margin (percent)</b>
San Vicente Camalu	2.81
Ernesto Fernando Echavarria Salazar Grupo Solidario	26.39
Administradora Horticola Del Tamazula	18.58
Arturo Lomeli Villalobas S.A. de C.V.	273.43*
Ranchos Los Pinos S. de R.L. de C.V.	273.43*
Agricola Yory, S. de P.R. de R.I.	273.43*
Eco-Cultivos S.A. de C.V.	273.43*
All Others <sup>20</sup>	17.09

\*Rate based on facts available with adverse inferences.

<sup>17</sup> See generally, *Bioparques*.

<sup>18</sup> See *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

<sup>19</sup> See *Diamond Sawblades Manufacturers Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

<sup>20</sup> In compliance with the *Remand Order*, we did not individually calculate dumping margins for the mandatory respondents newly selected for the *Final Determination* in 2019, *i.e.*, Bioparques de Occidente, S.A. de C.V./Agricola La Primavera, S.A. de C.V., Ceuta Produce, S.A. de C.V./Rancho La Memoria, S. de R.L. de C.V., and Negocio Agricola San Enrique, S.A. de C.V., for the original POI. The CIT sustained the Final Results of Redetermination. Therefore, these three respondents are all others in this amended final determination.

## Cash Deposit Requirements

The AD investigation of fresh tomatoes from Mexico is currently suspended under the *2019 Agreement*. However, on April 18, 2025, Commerce published its *Intent to Terminate* and will terminate the *2019 Agreement* and publish an AD order on fresh tomatoes from Mexico on July 14, 2025. In the *Intent to Terminate*, Commerce stated that, if it terminates the *2019 Agreement* and issues the AD order, it 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 July 14, 2025, the effective date of the termination of the *2019 Agreement*.<sup>21</sup> Thus, if the *2019 Agreement* is terminated and the AD order is issued, Commerce will instruct CBP to require AD cash deposits for entries of the subject merchandise based on the amended final weighted-average dumping margins listed above. At this time, we will not issue revised cash deposit instructions to CBP.

## Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(c) and (e) and 777(i)(1) of the Act.

Dated: April 25, 2025.

Abdelali Elouaradia,  
Deputy Assistant Secretary  
for Enforcement and Compliance.

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<sup>21</sup> See *Intent to Terminate*, 90 FR at 16501.