

<sup>2</sup>If one of the above named companies does not qualify for a separate rate, all other exporters of Certain Cased Pencils from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

<sup>3</sup>If one of the above named companies does not qualify for a separate rate, all other exporters of Hand Trucks and Parts Thereof from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

<sup>4</sup>If one of the above named companies does not qualify for a separate rate, all other exporters of Honey from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

<sup>5</sup>If one of the above named companies does not qualify for a separate rate, all other exporters of Malleable Cast Iron Pipe Fittings from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

<sup>6</sup>If one of the above named companies does not qualify for a separate rate, all other exporters of Porcelain-on-Steel Cooking Ware from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

<sup>7</sup>On June 29, 2007, (72 FR 35693), we deferred this review for one year. However, Petitioner timely filed an objection to the deferral. Consequently, we have determined not to defer this review. Please see: Memorandum to the File: Granting Petitioner an Extension of Time to File an Objection to Respondent's Deferral Request, dated September 26, 2007.

## Suspension Agreements

None.

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under section 351.211 or a determination under section 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine, consistent with *FAG Italia v. United States*, 291 F.3d 806 (Fed. Cir. 2002), as appropriate, whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)), and 19 CFR 351.221(c)(1)(i).

Dated: January 22, 2008.

**Stephen J. Claeys,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. E8-1440 Filed 1-25-08; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-201-820]

### Suspension of Antidumping Investigation: Fresh Tomatoes From Mexico

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of suspension of antidumping investigation on fresh tomatoes from Mexico.

**EFFECTIVE DATE:** January 22, 2008.

**SUMMARY:** The Department of Commerce has suspended the antidumping investigation involving fresh tomatoes from Mexico. The basis for the suspension of the antidumping investigation is an agreement between the Department of Commerce and producers/exporters accounting for substantially all imports of fresh tomatoes from Mexico wherein each signatory producer/exporter has agreed to revise its prices to eliminate completely the injurious effects of exports of this merchandise to the United States.

**FOR FURTHER INFORMATION CONTACT:** Judith Wey Rudman or Jay Carreiro at (202) 482-0192 or (202) 482-3674, respectively; Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230.

### SUPPLEMENTARY INFORMATION:

#### Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to Department of Commerce (Department) regulations refer to the

regulations codified at 19 CFR part 353 (1996).

### Background

On April 18, 1996, the Department initiated an antidumping 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) (61 FR 18377, April 25, 1996). On May 16, 1996, the United States International Trade Commission (ITC) notified the Department of its affirmative preliminary injury determination.

On October 10, 1996, the Department and Mexican tomato growers/exporters initialed a proposed agreement suspending the antidumping investigation. On October 28, 1996, the Department preliminarily determined that imports of fresh tomatoes from Mexico are being sold at LTFV in the United States. 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*). On the same day the *Preliminary Determination* was signed, the Department and certain growers/exporters of fresh tomatoes from Mexico signed an agreement to suspend the investigation (1996 Suspension Agreement). See *Suspension of Antidumping Investigation: Fresh Tomatoes from Mexico*, 61 FR 56618 (November 1, 1996).

On May 31, 2002, Mexican tomato growers/exporters accounting for a significant percentage of all fresh tomatoes imported into the United States from Mexico provided written notice to the Department of their withdrawal from the 1996 Suspension Agreement, effective July 30, 2002. Because the 1996 Suspension Agreement would no longer cover substantially all imports of fresh tomatoes from Mexico, effective July 30, 2002, the Department terminated the

1996 Suspension Agreement, terminated the sunset review of the suspended investigation, and resumed the antidumping investigation. 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).

On November 8, 2002, the Department and Mexican tomato growers/exporters initialed a proposed agreement suspending the resumed antidumping investigation on imports of fresh tomatoes from Mexico. On December 4, 2002, the Department and certain growers/exporters of fresh tomatoes from Mexico signed a new suspension agreement ("2002 Suspension Agreement"). See *Suspension of Antidumping Investigation: Fresh Tomatoes From Mexico*, 67 FR 77044 (December 16, 2002). On November 3, 2003, the Department published the *Final Results of Analysis of Reference Prices and Clarifications and Corrections; Agreement Suspending the Antidumping Duty Investigation on Fresh Tomatoes From Mexico*, 68 FR 62281 (November 3, 2003).

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

On November 28, 2007, the Department and Mexican tomato growers/exporters initialed a new proposed agreement to suspend the antidumping investigation on imports of fresh tomatoes from Mexico. On December 3, 2007, the Department released the initialed agreement to interested parties and afforded them an opportunity to comment on the initialed agreement. On December 17 and 18, 2007, several interested parties filed comments in support of the initialed agreement.

Because the 2002 Suspension Agreement would no longer cover substantially all imports of fresh tomatoes from Mexico, the Department published a notice of intent to terminate the 2002 Suspension Agreement, intent to terminate the five-year sunset review of the suspended investigation, and intent to resume the antidumping investigation. 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). On January 16, 2008, the Department published a notice of termination of the 2002 Suspension Agreement, termination of the five-year sunset review of the suspended investigation, and resumption of the antidumping investigation, effective January 18, 2008. 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).

On January 22, 2008, the Department signed a new suspension agreement (2008 Suspension Agreement) with certain growers/exporters of fresh tomatoes from Mexico. The 2008 Suspension Agreement is attached to this notice of Suspension of Antidumping Investigation.

#### *Scope of the Agreement*

The merchandise subject to this Agreement 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 Agreement, 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 this Agreement.

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 Agreement.

Tomatoes imported from Mexico covered by this Agreement are classified under the following subheadings of the Harmonized Tariff Schedules of the United States (HTSUS), according to the season of importation: 0702 and 9906.07.01 through 9906.07.09. Although the HTSUS numbers are provided for convenience and customs purposes, the written description of the scope of this Agreement is dispositive.

#### **Suspension of Investigation**

The Department consulted with the parties to the proceeding and has considered the comments submitted with respect to the proposal to suspend the antidumping investigation. In accordance with section 734(c) of the

Act, we have determined that extraordinary circumstances are present in this case, as defined by section 734(c)(2)(A) of the Act. See the memorandum titled "Existence of Extraordinary Circumstances" from Ronald K. Lorentzen, Acting Deputy Assistant Secretary for Policy and Negotiations, to David M. Spooner, Assistant Secretary for Import Administration.

The 2008 Suspension Agreement provides that the subject merchandise will be sold at or above the established reference price and, for each entry of each exporter, the amount by which the estimated normal value exceeds the export price (or constructed export price) will not exceed 15 percent of the weighted-average amount by which the estimated normal value exceeded the export price (or constructed export price) for all LTFV entries of the producer/exporter examined during the course of the investigation. We have determined that the 2008 Suspension Agreement will eliminate completely the injurious effect of exports to the United States of the subject merchandise and prevent the suppression or undercutting of price levels of domestic fresh tomatoes by imports of that merchandise from Mexico.

We have also determined that the 2008 Suspension Agreement is in the public interest and can be monitored effectively, as required under section 734(d) of the Act. See the memorandum titled "Public Interest Assessment of the Agreement Suspending the Antidumping Duty Investigation on Fresh Tomatoes from Mexico" from Ronald K. Lorentzen, Acting Deputy Assistant Secretary for Policy and Negotiations, to David M. Spooner, Assistant Secretary for Import Administration.

For the reasons outlined above, we find that the 2008 Suspension Agreement meets the criteria of section 734(c) of the Act.

#### **International Trade Commission**

In accordance with section 734(f) of the Act, the Department has notified the ITC of the 2008 Suspension Agreement.

#### **Suspension of Liquidation**

The suspension of liquidation ordered in the preliminary affirmative determination in this case published on November 1, 1996, and resumed on January 18, 2008 (see 73 FR 2887), shall continue to be in effect, subject to section 734(h)(3) of the Act. Section 734(f)(2)(B) of the Act provides that the Department may adjust the security required to reflect the effect of the 2008

Suspension Agreement. The Department has found that the 2008 Suspension Agreement eliminates completely the injurious effects of imports and, thus, the Department is adjusting the security required from signatories to zero. The security rates in effect for imports from non-signatory growers remain as published in the *Preliminary Determination*.

Notwithstanding the 2008 Suspension Agreement, the Department will continue the investigation if it receives such a request within 20 days after the date of publication of this notice in the **Federal Register**, in accordance with section 734(g) of the Act.

#### **Administrative Protective Order Access**

The Administrative Protective Orders (APOs) the Department granted in the original investigation segment of this proceeding remain in place. While the investigation is suspended, parties subject to those APOs may retain, but may not use, information received under those APOs. All parties wishing access to business proprietary information submitted during the administration of the 2008 Suspension Agreement must submit new APO applications. An APO for the administration of the 2008 Suspension Agreement will be placed on the record within five days of the date of publication of this notice in the **Federal Register**.

We are publishing this notice in accordance with section 734 of the Act and 19 CFR 353.18.

Dated: January 22, 2008.

**David M. Spooner,**  
*Assistant Secretary for Import Administration.*

Attachment.

#### **Suspension of Antidumping Investigation: Fresh Tomatoes From Mexico**

Pursuant to section 734(c) of the Tariff Act of 1930, as amended (19 U.S.C. 1673c(c)) ("the Act"), and section 353.18 of the U.S. Department of Commerce ("the Department") regulations (19 CFR 353.18 (1996)), the Department and the signatory producers/exporters of fresh tomatoes from Mexico enter into this Suspension Agreement (the "Agreement"). On the basis of this Agreement, the Department shall suspend its antidumping duty investigation, the initiation of which was published on April 25, 1996 (61 FR 18377), with respect to fresh tomatoes from Mexico, subject to the terms and provisions set out below.

#### **I. Product Coverage**

The merchandise subject to this Agreement 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 Agreement, 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. In Appendix F of this Agreement the Department has outlined the procedure that signatories must follow for selling subject merchandise for processing. 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 this Agreement.

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 Agreement.

Tomatoes imported from Mexico covered by this Agreement are classified under the following subheadings of the Harmonized Tariff Schedules of the United States (HTSUS), according to the season of importation: 0702 and 9906.07.01 through 9906.07.09. Although the HTSUS numbers are provided for convenience and customs purposes, the written description of the scope of this Agreement is dispositive.

#### **II. U.S. Import Coverage**

The signatories are the producers and exporters in Mexico which account for substantially all of the subject merchandise imported into the United States. The Department may at any time during the period of the Agreement require additional producers/exporters in Mexico to sign the Agreement in order to ensure that not less than substantially all imports into the United States are subject to the Agreement.

#### **III. Basis for the Agreement**

Each signatory individually agrees that, in order to prevent price suppression or undercutting, it will not sell, on and after the effective date of the Agreement, merchandise subject to the Agreement at prices that are less than the reference price, in accordance with Appendix A to this Agreement.

In order to satisfy the requirements of section 734(c)(1)(B) of the Act, each signatory agrees individually that for each entry the amount by which the estimated normal value exceeds the

export price (or the constructed export price) will not exceed 15 percent of the weighted-average amount by which the estimated normal value exceeded the export price (or the constructed export price) for all less-than-fair-value entries of the producer/exporter examined during the course of the investigation, in accordance with the calculation methodologies described in Appendix B of this Agreement.

#### **IV. Monitoring of the Agreement**

##### **A. Import Monitoring**

1. The Department will monitor entries of fresh tomatoes from Mexico to ensure compliance with section III of this Agreement.

2. The Department will review publicly available data and other official import data, including, as appropriate, records maintained by U.S. Customs and Border Protection, to determine whether there have been imports that are inconsistent with the provisions of this Agreement.

##### **B. Compliance Monitoring**

1. The Department may require, and each signatory agrees to provide, confirmation, through documentation provided to the Department, that the price received on any sale subject to this Agreement was not less than the established reference price. The Department may require that such documentation be provided, and be subject to verification, within thirty days of the sale.

2. The Department may require, and each signatory agrees to report in the prescribed format and using the prescribed method of data compilation, each sale of the merchandise subject to this Agreement, either directly or indirectly to unrelated purchasers in the United States, including each adjustment applicable to each sale, as specified by the Department.

Each signatory agrees to permit review and on-site inspection of all information deemed necessary by the Department to verify the reported information.

3. The Department may conduct administrative reviews under section 751 of the Act, upon request or upon its own initiative, to ensure that exports of fresh tomatoes from Mexico are at prices consistent with the terms of this Agreement. The Department may perform verifications pursuant to administrative reviews conducted under section 751 of the Act.

4. At any time, and without prior notice, the Department may conduct verifications of parties handling signatory merchandise to determine

whether they are selling signatory merchandise in accordance with the terms of this Agreement.

### *C. Shipping and Other Arrangements*

1. All reference prices will be expressed in U.S.\$/lb. in accordance with Appendix A of this Agreement. Subject to paragraph 24 of Annex 703.2 of the North American Free Trade Agreement, the quality of each entry of fresh tomatoes exported to the United States from Mexico will conform with any applicable U.S. Department of Agriculture minimum grade, size, and/or quality import requirements in effect.

2. Signatories agree not to circumvent the Agreement and to undertake measures that will help to prevent circumvention. For example, each signatory will take the following actions:

a. It is the responsibility of all signatories to ensure that sales of their merchandise are made consistent with the requirements of this Agreement. To that end, each signatory shall enter into a contract, with the party that is responsible for the first sale of its subject merchandise to an unaffiliated customer in the United States (the Selling Agent),<sup>1</sup> that incorporates the terms of this Agreement. Through a contractual arrangement signatories shall also require the Selling Agent establish a contract with third parties to ensure that adjustments for spoilage or other claims inconsistent with the Agreement will not be permitted. Further, this contractual arrangement must establish that the Selling Agent maintain documentation demonstrating that sales of their merchandise are made consistent with the requirements of this Agreement.

b. Each signatory will label its boxes of subject merchandise that are exported to the United States with its name, signatory identification number, and a statement that "These Tomatoes Were Grown/Exported By a Signatory of the 2008 Suspension Agreement."<sup>2</sup> Alternatively, if the signatory that exports the tomatoes is different from the entity that grew the tomatoes, it will label the boxes with its name and its signatory identification number.

c. Each signatory will label its boxes of fresh tomatoes sold in Mexico with its name and the title "Prohibida Su Exportacion".

3. Not later than thirty days after each quarter, each signatory will submit a written statement to the Department certifying that all sales during the most recently completed quarter were at net prices (after rebates, backbilling, discounts for quality and other claims) at or above the reference price and were not part of or related to any act or practice which would have the effect of hiding the real price of the fresh tomatoes being sold (e.g., a bundling arrangement, discounts/free goods/financing package, swap, or other exchange). Each signatory agrees to permit full verification of its certification as the Department deems necessary.

### *D. Rejection of Submissions*

The Department may reject: (1) Any information submitted after the deadlines set forth in this Agreement; (2) any submission that does not comply with the filing, format, translation, service, and certification of documents requirements under 19 CFR 353.31; (3) submissions that do not comply with the procedures for establishing business proprietary treatment under 19 CFR 353.32, or any information that it is unable to verify to its satisfaction. If information is not submitted in a complete and timely fashion or is not fully verifiable, the Department may use the facts otherwise available for the basis of its decision, as it determines appropriate, unless the Department determines that section V. applies.

### *E. Compliance Consultations*

1. When the Department identifies, through import or compliance monitoring or otherwise, that sales may have been made at prices inconsistent with section III of this Agreement, the Department will notify each signatory which it believes is responsible or, if applicable, notify the signatory's representative. The Department will consult with each such party for a period of up to sixty days to establish a factual basis regarding sales that may be inconsistent with section III of this Agreement.

2. During the consultation period, the Department will examine any information that it develops or which is submitted, including information requested by the Department under sections IV.A. and B. above.

### *F. Review*

If the Department is not satisfied at the conclusion of the consultation period that sales by such signatory are being made in compliance with this Agreement, the Department may conduct a review to determine whether

this Agreement is being violated by such signatory. This provision does not limit or restrict the Department's authority to conduct an administrative review under section 751 of the Act and paragraph IV.B.3. of this Agreement.

### *G. Operations Consultations*

The Department will consult with the signatory producers/exporters regarding the operations of this Agreement. A party to the Agreement 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 this Agreement. Consistent with the statutory requirement that the Agreement prevent the suppression or undercutting of price levels of domestic fresh tomatoes, the Department may revise the reference price following consultations under this provision.

In order to evaluate whether this Agreement fulfills the requirements of section 734(c)(1)(B) of the Act, the Department may conduct an administrative review under section 751 of the Act, upon request or upon its own initiative, to ensure that for each entry of each exporter the amount by which the estimated normal value exceeds the export price (or the constructed export price) did not exceed 15 percent of the weighted-average amount by which the estimated normal value exceeded the export price (or the constructed export price) for all less-than-fair-value entries of the producer/exporter examined during the course of the investigation, in accordance with the calculation methodologies described in Appendix B. An affirmative determination under section 751 of the Act may result in the termination of this Agreement.

### **V. Violations of the Agreement**

A. If the Department determines that the Agreement is being or has been violated or no longer meets the requirements of sections 734(c) or (d) of the Act, the Department shall take action it determines appropriate under section 734(i) of the Act and the Department's regulations.

B. Pursuant to section 734(i) of the Act the Department will refer any intentional violations of the Agreement to U.S. Customs and Border Protection. Any person who intentionally violates the Agreement shall be subject to a civil penalty assessed in the same amount, in the same manner, and under the same procedures as the penalty imposed for a fraudulent violation of section 592(a) of the Act. A fraudulent violation of section 592(a) of the Act is punishable by a civil penalty in an amount not to exceed the domestic value of the

<sup>1</sup> The Selling Agent can be an importer, agent, broker, distributor, or any other entity that facilitates the transaction between the signatory and the first unaffiliated U.S. customer.

<sup>2</sup> Signatories may continue to use boxes with markings from the 2002 Suspension Agreement through December 31, 2008.

merchandise. For purposes of the Agreement, the domestic value of the merchandise will be deemed to be the reference price, as the signatories agree not to sell the subject merchandise at prices that are less than the reference price or to ensure that sales of the subject merchandise are made consistent with the terms of the Agreement.

C. In addition, the Department will examine the activities of signatories, their Selling Agents, and any other party to a sale subject to the Agreement to determine whether any activities conducted by any party aided or abetted another party's violation of the Agreement. If any such parties are found to have aided or abetted another party's violation of the Agreement, they shall be subject to the same civil penalties described in section V.B. above.

Signatories of this Agreement consent to the release of all information presented to or obtained by the Department during the conduct of verifications with U.S. Customs and Border Protection and/or the U.S. Department of Agriculture. Further, through a contractual arrangement, signatories shall require that the Selling Agent consent to the release of all information presented to or obtained by the Department during the conduct of verifications with U.S. Customs and Border Protection and/or the U.S. Department of Agriculture.

D. The following activities shall be considered violations of the Agreement:

1. Sales that are at net prices (after rebates, backbilling, discounts for quality and other claims) that are below the reference price.

2. Any act or practice which would have the effect of hiding the real price of the fresh tomatoes being sold (e.g., a bundling arrangement, discounts/free goods financing package, swap, or other exchange).

3. Sales that are not in accordance with the terms and conditions applied by the Department when calculating prices for transactions involving adjustments due to changes in condition after shipment as detailed in Appendix D of this Agreement.

4. Selling signatory tomatoes to Canada in a manner that is not consistent with the requirements of Appendix E of this Agreement.

5. Selling signatory tomatoes for processing in the United States in a manner that is not consistent with the requirements of Appendix F of this Agreement.

6. Any other act or practice that the Department or U.S. Customs and Border Protection finds in violation of the Agreement.

## VI. Other Provisions

A. In entering into this Agreement the signatories do not admit that any exports of fresh tomatoes from Mexico are having or have had an injurious effect on fresh tomato producers in the United States or have been sold at less than fair value. The signatories also do not admit that greenhouse, cherry, or any other particular type of tomatoes are properly considered within the scope of the underlying investigation.

B. The signatories may withdraw from this Agreement upon ninety days written notice to the Department.

C. Upon request, the Department will advise any signatory of the Department's methodology for calculating its export price (or constructed export price) and normal value, which, for purposes of this Agreement, are described in Appendix B of this Agreement. Further, the Department reserves the right to modify its methodology in calculating export price (or constructed export price) and normal value.

## VII. Disclosure and Comment

A. If the Department proposes to revise the reference price as a result of consultations under this Agreement, not later than three months prior to the first day of each semi-annual period, the Department will disclose the results and the methodology of the Department's calculation of the preliminary reference price established for that upcoming semi-annual period.

B. Not later than seven days after the date of disclosure under paragraph VII.A., the parties to the proceeding may submit written comments to the Department, not to exceed fifteen pages. After reviewing these submissions, the Department will provide the final reference price for the upcoming semi-annual period, normally within thirty days after the date of disclosure under paragraph VII.A.

C. The Department may make available to representatives of each interested party to the proceeding, under appropriately drawn administrative protective orders, any business proprietary information submitted to the Department pursuant to section IV. of this Agreement, as well as the results of the Department's analysis of that information.

## VIII. Termination

Termination of the suspended investigation will be considered in accordance with the five-year review provisions of section 351.218 of the Department's regulations.

## IX. Effective Date

The effective date of the Agreement is January 22, 2008.

David M. Spooner,  
*Assistant Secretary for Import  
Administration.*

Dated: January 22, 2008.

The following parties hereby certify that the members of their organization agree to abide by all terms of the Agreement:

Ing. Manuel Esteban Tarriba Urtuzuastegui,  
President.

(Name and Title of Certifying Official)

(Signature of Certifying Official)

For CAADES, Sinaloa, A.C.

Dated: January 10th 2008.

Victor Rodríguez Hernández, President

(Name and Title of Certifying Official)

(Signature of Certifying Official)

For Consejo Agrícola de Baja California, A.C.

Dated: January 14th 2008.

Cesar Campana Acosta, President

(Name and Title of Certifying Official)

(Signature of Certifying Official)

For Asociacion Mexicana de Horticultura  
Protegida, A.C.

Dated: January 10th of 2008.

Gaspar Zaragoza Yberri, President

(Name and Title of Certifying Official)

(Signature of Certifying Official)

For Union Agrícola Regional de Sonora,  
Productores de Hortalizas Frutas y  
Legumbres

Dated: January 11 of 2008.

Basilio Gatzionis Torres, President

(Name and Title of Certifying Official)

(Signature of Certifying Official)

For Confederacion Nacional de Productores  
de Hortalizas

Dated: January 9, 2008.

## Appendix A—Suspension of Antidumping Investigation—Fresh Tomatoes From Mexico—Reference Price

Consistent with the requirements of section 734(c) of the Act, to eliminate completely the injurious effect of exports to the United States and to prevent the suppression or undercutting of price levels of domestic fresh tomatoes, the Department and signatory producer/exporters of subject merchandise hereby agree to adopt the reference prices calculated based on the methodology outlined in the November 1, 1996, agreement suspending the antidumping investigation involving fresh tomatoes from Mexico, as amended on August 14, 1998. See *Suspension of Antidumping Investigation; Fresh Tomatoes from Mexico*, 61 FR 56618,

56620 (November 1, 1996), October 28, 1996, Memorandum to Robert S. LaRossa titled "The Prevention of Price Suppression or Undercutting of Price Levels in the Suspension Agreement Covering Fresh Tomatoes from Mexico," *Amendment to the Suspension Agreement on Fresh Tomatoes from Mexico*, 63 FR 43674 (August 14, 1998), and *Final Results of Analysis of Reference Prices and Clarifications and Corrections; Agreement Suspending the Antidumping Duty Investigation on Fresh Tomatoes from*

*Mexico*, 68 FR 62281 (November 3, 2003). Accordingly, the reference price for the July 1 through October 22 period will be \$0.172 per pound and the reference price for the October 23 through June 30 period will be \$0.2169 per pound.

These reference prices will remain in effect unless modified in accordance with the provisions of paragraph IV.G. of the Agreement.

The term "reference price" refers to the price F.O.B. from the Selling Agent. The

reference price includes all palletizing and cooling charges incurred prior to shipment from the Selling Agent. The actual movement or handling expenses beyond the point of entry into the United States (e.g., McAllen, Nogales, Otay Mesa) must be added to the reference price and must reflect the cost for an arm's-length transaction. The chart below contains examples of certain minimum common trucking charges the USDA observed during the 2007 winter season.

F.O.B. Nogales to:	Los Angeles	New York	Chicago
Rate (\$US)/Per Truckload .....	\$900	\$5,000	\$3,200

Parties should refer to <http://www.ams.usda.gov/fv/mncs/fvwires.htm> to obtain examples of common trucking charges pertinent to the current season. Where the Selling Agent sells through an affiliated party, the transfer price from the Selling Agent to the affiliate must be at or above the reference price and any subsequent sale to an unaffiliated party must include the actual cost of markups (e.g., trucking charges) that reflect arm's-length costs. For guidance on the trucking-charge markup for such resales, parties should also refer to <http://www.ams.usda.gov/fv/mncs/fvwires.htm> to obtain common trucking charges pertinent to the current season.

During the Department's verifications of parties handling signatory merchandise it will ascertain whether (1) the handling expenses beyond the point of entry into the United States are added to the reference price and reflect the actual cost for an arm's-length transaction and (2) the transfer price from Selling Agents to their affiliates are at or above the reference price and any subsequent sale to an unaffiliated party includes markups (e.g., trucking charges) that reflect arm's-length costs.

The reference price for each type of box shall be determined based on the average weights stated in the chart contained in Appendix C of the Agreement.

## Appendix B—Suspension of Antidumping Investigation—Fresh Tomatoes From Mexico—Analysis of Prices at Less Than Fair Value

### A. Normal Value

The cost or price information reported to the Department that will form the basis of the normal value (NV) calculations for purposes of the Agreement must be comprehensive in nature and based on a reliable accounting system (e.g., a system based on well-established standards and can be tied either to the audited financial statements or to the tax return filed with the Mexican government).

#### 1. Based on Sales Prices in the Comparison Market

When the Department bases normal value on sales prices, such prices will be the prices at which the foreign like product is first sold for consumption in the comparison market in the usual commercial quantities and in the ordinary course of trade. Also, to the extent

practicable, the comparison shall be made at the same level of trade as the export price (EP) or constructed export price (CEP). The calculation of normal value based on a sales price in the comparison market will vary depending on whether the comparison is price-to-EP or price-to-CEP.

#### 2. Constructed Value

When normal value is based on constructed value, the Department will compute constructed values (CVs) for each growing season based on the sum of each respondent's growing and harvesting costs for each type of tomato, plus amounts for selling, general and administrative expenses (SG&A), U.S. packing costs, and profit. The Department will collect this cost data for an entire growing season in order to determine the accurate per-unit CV of that growing season.

#### Calculation of CV:

- + Direct Materials
- + Direct Labor
- + Factory overhead
- = Cost of Manufacturing
- + Home Market SG&A\*
- = Cost of Production
- + U.S. Packing
- + Profit\*
- = Constructed Value (CV)

\* SG&A and profit are based on home-market sales of the foreign like product made in the ordinary course of trade.

### B. Export Price and Constructed Export Price

EP and CEP refer to the two types of calculated prices for merchandise imported into the United States. Both EP and CEP are based on the price at which the subject merchandise is first sold to a person not affiliated with the foreign producer or exporter.

#### Calculation of EP:

- Gross Unit Price
- Movement Expenses
- Discounts and Rebates
- = Export Price (EP)

#### Calculation of CEP:

- Gross Unit Price
- Movement Expenses
- Discounts and Rebates
- Direct Selling Expenses
- Indirect Selling Expenses that relate to commercial activity in the United States
- The cost of any further manufacture or assembly incurred in the United States
- CEP Profit

= Constructed Export Price (CEP)

### C. Fair Comparisons

To ensure that a fair comparison with normal value is made, the Department will make adjustments to the price to the first unaffiliated customer in calculating the EP or CEP. For both EP and CEP the Department will add packing costs, if not already included in the price, rebated import duties, and, if applicable, certain countervailing duties. For both EP and CEP, the Department will deduct transportation costs and export taxes or duties. In calculating CEP, the Department will make additional deductions for commissions, direct selling expenses incurred in selling the merchandise under investigation in the United States, the cost of any further manufacture or assembly performed in the United States, and a portion of profit. In addition, the Department will deduct indirect selling expenses that relate to commercial activity in the United States.

## Appendix C—Suspension of Antidumping Investigation—Fresh Tomatoes From Mexico—Box Weights

The Department has the sole authority to make revisions to the Box Weight Chart used to apply the reference price to particular box configurations. The reference price for each type of box shall be determined based on the average weights stated in the chart below. The Department will coordinate with U.S. Customs and Border Protection in its collection and review of data for calculating and monitoring box-specific average weights. To derive representative average weights for each box type in the chart below, the Department will weigh twenty sample boxes, randomly chosen without notice, from three different shippers (i.e., an average weight of sixty boxes for each box type in the chart).

If the Department determines to revise an average weight figure based upon information that an average weight on the chart is no longer accurate, the Department will provide at least fifteen days notice to signatories (either directly or through their representative in this proceeding) prior to the effective date of such revised average weights for purposes of this Agreement. The Department will determine the revised average weight in accordance with the procedure described above. Once the Department determines the revised average weight, the weight will become effective at the beginning of the next growing season.

(which will be either July 1 or October 23 of a year).

In the event that a signatory intends to export subject merchandise to the United States in a box for which there is no average weight on the chart, the signatory shall notify the Department in writing no later than forty-five days prior to the date of the first exportation of such boxes to the United States. Signatories can obtain from the

Department's Web site a copy of the suggested form for submitting this information. See "Notification of Intent to Ship Tomatoes in a Specialty Pack" at [http://ia.ita.doc.gov/tomato/2008-agreement/documents/suggested\\_forms/](http://ia.ita.doc.gov/tomato/2008-agreement/documents/suggested_forms/). This information must be submitted to the Department in accordance with the filing instructions set forth under 19 CFR 353.31 and 353.32. The Department shall allow any

interested party to submit written comments, not to exceed ten pages, on the appropriate average weight for the box within seven days after the filing of the written notification by the signatory, and the Department shall inform the signatory or its representative of the average weight for the box no later than thirty days after filing of the written notification by the signatory.

#### BOX-WEIGHT CHART.—SUSPENSION OF ANTIDUMPING INVESTIGATION ON FRESH TOMATOES FROM MEXICO

Box type *	Layers	Size	Avg. Kg. weight	Avg. Lb. weight **	July 1–October 22 \$0.172/lb Reference price	October 23–June 30 \$0.2169/lb Reference price
Tomato (cherry) .....		12 Baskets .....	6.32	13.93	2.40	3.02
Tomato (cherry) .....	Bulk .....	Bulk .....	8.13	17.92	3.08	3.89
Tomato .....	2L .....	4 x 4 .....	10.78	23.77	4.09	5.16
Tomato .....	2L .....	4 x 5 .....	10.81	23.83	4.10	5.17
Tomato .....	2L .....	5 x 5 .....	10.43	22.99	3.96	4.99
Tomato .....	2L .....	5 x 6 .....	9.71	21.41	3.68	4.64
Tomato .....	3L .....	6 x 6 .....	13.33	29.39	5.05	6.37
Tomato .....	3L .....	6 x 7 .....	12.92	28.48	4.90	6.18
Tomato .....	Bulk .....	25 lbs.*** .....	12.15	26.79	4.61	5.81
Tomato .....	1L .....	Long Box .....	7.41	16.34	2.81	3.54
Tomato (Green) .....	Bulk .....	Small—20 lb. ....	8.16	17.99	3.09	3.90
Tomato Grape .....	Bulk .....	20 lb. ....	9.42	20.77	3.57	4.51
Tomato Grape .....	Clam Shell .....	12 Baskets—12 oz. ....	4.71	10.38	1.79	2.25
Tomato Cluster .....	1L .....	11 lb. Flat .....	5.58	12.31	2.12	2.67

\* Applicable regardless of production method (e.g., field grown or greenhouse grown).

\*\* Conversion factor from kg. to lb. based on 1 kg. = 2.20462 lbs.

\*\*\* Also applicable to 4/7 bushel cartons.

#### Appendix D—Suspension of Antidumping Investigation—Fresh Tomatoes From Mexico—Procedures for Making Adjustments to the Sales Price Due to Certain Changes in Condition After Shipment

The purpose of this appendix is to explain the procedures for making adjustments to the sales price of signatory tomatoes due to

certain changes in condition after shipment, such that the sales price for any tomatoes accepted in a lot<sup>1</sup> do not fall below the reference price. The procedures outlined in this appendix only apply if the adjustment reduces the net sales price below the reference price.

As explained in Appendix A of the Agreement, the term "reference price" refers to the price F.O.B. from the Selling Agent. The reference price includes all palletizing

and cooling charges incurred prior to shipment from the Selling Agent. The actual movement or handling expenses beyond the point of entry into the United States (e.g., McAllen, Nogales, Otay Mesa) must be added to the reference price and must reflect the cost for an arm's-length transaction. The chart below contains examples of certain minimum common trucking charges the USDA observed during the 2007 winter season.

F.O.B. Nogales to:	Los Angeles	New York	Chicago
Rate (\$US)/Per Truckload .....	\$900	\$5,000	\$3,200

Parties should refer to <http://www.ams.usda.gov/fv/mnsc/fvwires.htm> to obtain examples of common trucking charges pertinent to the current season. Where the Selling Agent sells through an affiliated party, the transfer price from the Selling Agent to the affiliate must be at or above the reference price and any subsequent sale to an unaffiliated party must include the actual cost of markups (e.g., trucking charges) that reflect arm's-length costs. For guidance on the trucking-charge markup for such resales, parties should also refer to <http://www.ams.usda.gov/fv/mnsc/fvwires.htm> to obtain common trucking charges pertinent to the current season.

Appendix G of the Agreement outlines specific actions that signatories should take to ensure that their efforts to abide by the Agreement are upheld in any claims taken to the U.S. Department of Agriculture under the Perishable Agricultural Commodities Act.

To facilitate the verification of claims for changes in condition after shipment, the contract between the signatory and the Selling Agent must establish that claims be resolved and all paper work be completed within fifteen business days after the USDA inspection unless the claim is referred to PACA for mediation. When filing quarterly certifications with the Department, signatories should report the number of lots

on which claims for condition defects were granted, the total volume of tomatoes destroyed or donated, and the total value of claims granted. Signatories can obtain from the Department's Web site a copy of the suggested form for submitting the quarterly certification information. See "Quarterly Certification" at [http://ia.ita.doc.gov/tomato/2008-agreement/documents/suggested\\_forms/](http://ia.ita.doc.gov/tomato/2008-agreement/documents/suggested_forms/).

#### A. Contractual Terms for Rejecting All or Part of a Lot

1. A USDA inspection certificate must be provided to support claims for rejection of all or part of a lot. Further, no adjustments will

<sup>1</sup> For these purposes, a lot is defined as a grouping of tomatoes in a particular shipment that is distinguishable by packing type.



be made for failure to meet suitable shipping conditions unless supported by an unrestricted USDA inspection.

2. If the USDA inspection indicates that the lot has: (1) Over 8% soft/decay condition defects; (2) over 15% of any one condition defect; or (3) greater than 20% total condition defects, the receiver may reject the lot or may accept a portion of the lot and reject the quantity of tomatoes lost during the salvaging process. In those instances, price adjustments will be calculated as described below. For purposes of this Agreement, a condition defect is any defect listed in the chart in part A.5. below. When a lot of tomatoes has condition defects in excess of those outlined above as documented on a USDA inspection certificate, the documented percentage of the tomatoes with condition defects are considered DEFECTIVE tomatoes.

3. No adjustments will be made for failure to meet suitable shipping conditions if the USDA inspection certificate does not indicate one of the condition thresholds outlined above.

4. The USDA inspection must be called for no more than six hours from the time of arrival at the destination specified by the receiver and be performed in a timely fashion thereafter. If there is more than one USDA inspection on a given lot, the inspection certificate corresponding to the first inspection is the one that will be used for making any adjustment to the sales price. However, if an appeal inspection is conducted, it will supercede the first inspection, as long as the appeal inspection is requested within a reasonable amount of time from the first inspection.

The first receiver of the product, regardless of whether that receiver is acting as an agent or a broker for an unrelated purchaser or whether the receiver is the unrelated purchaser acting on its own right, must specify the city/metropolitan area of the destination of the product. The inspection will take place at the destination of delivery as specified prior to shipment.

No adjustments will be granted for a USDA inspection at a destination which is different from the destination specified by the first receiver of the product. In the event that the first receiver does not specify the city/metropolitan area of the destination of the product, the six-hour period within which an inspection may be requested will begin to run at such time as title to the product transfers to the unrelated purchaser, for example, upon loading of the product at the first handler's (importer's) warehouse in an F.O.B. transaction and upon delivery of the product to the first buyer's warehouse in a delivered sale.

A person or company shall be considered an agent or broker for an unrelated purchaser: (1) When that person or company falls within the description of types of broker operations set forth in 7 CFR 46.27; or (2) have provided a broker's memorandum of sale as set forth in 7 CFR 46.28(a). The following paragraphs apply if a broker or dealer is involved in the transaction.

A broker, unlike a dealer, does not take ownership or control of the tomatoes but arranges for delivery directly to the vendor or purchaser. Because a broker never takes ownership or control over the tomatoes, the customer and not the broker may request an

inspection, and only the customer is entitled to any resulting adjustments. The inspection would take place at the customer's destination, as specified in the broker's contract with the Selling Agent.

When a dealer is involved in the sale, the destination of delivery stated in the contract is where the inspection is to take place. If the dealer does not specify the destination of delivery, the default destination of delivery is the warehouse of the Selling Agent. With respect to a lot of tomatoes that is owned or controlled by a dealer, it is the responsibility of the dealer to request an inspection of the tomatoes in his possession in a timely manner, if he deems it necessary. If the dealer does not request an inspection in a timely manner (*i.e.*, within six hours from the time of arrival at the destination specified by the dealer) and resells the tomatoes to a third party, which does request an inspection, the dealer is then responsible for all costs and adjustments pertaining to the inspection and the condition or quality of the tomatoes.

5. Under this Agreement, adjustments to the sales price of signatory tomatoes will be permitted only for condition defects. The term "condition defect" is intended to have the same definition recognized by the Fresh Produce Branch of the United States Department of Agriculture, with the exception of abnormal coloring, and, therefore, covers the following items:

#### CONDITION DEFECTS

- (1) Sunken & Discolored Areas
- (2) Sunburn
- (3) Internal Discoloration
- (4) Freezing Injury
- (5) Chilling Injury
- (6) Gray Mold Rot
- (7) Bacterial Soft Rot
- (8) Soft/Decay\*\*
- (9) Bruising
- (10) Nailhead Spot
- (11) Skin Checks
- (12) Decayed and Moldy Stems
- (13) Waxy Blister
- (14) White Core
- (15) Discolored or Dried-out Jelly Around Seeds

\*\*The most common decays listed by the USDA are pleospora rot, phoma rot, alternaria rot, and blossom end rot.

6. In calculating the transaction price for lots subject to an adjustment claim for condition defects, as defined above, the tomatoes classified as DEFECTIVE will be treated as rejected and as not having been sold.

#### *B. Contractual Terms for Rejection of Partial Loads*

If the lot contains condition defects greater than those outlined above and the receiver does not reject the entire lot of tomatoes, the Department will factor certain adjustments into the transaction price, provided that the following conditions apply:

1. The price invoiced to and paid by the receiver for the accepted tomatoes must not fall below the reference price.

2. The Selling Agent may reimburse the receiver for actual destruction costs associated with the DEFECTIVE tomatoes. If properly documented, these expenses will

not be considered in the calculation of the price of the accepted tomatoes.

3. The Selling Agent may reimburse the receiver for the portion of freight expenses allocated to the DEFECTIVE tomatoes. If properly documented, these expenses will not be considered in the calculation of the price of the accepted tomatoes.

4. If the Selling Agent follows the guidelines outlined below, it may reimburse the receiver for repacking charges directly associated with salvaging and reconditioning the lot. If properly documented, these expenses will not be considered in the calculation of the price of the accepted tomatoes.

a. If the salvaging and reconditioning activity is performed by a party unaffiliated with the Selling Agent's customer the fee charged for the service may be reimbursed if the Selling Agent's customer can provide evidence for such costs (*i.e.*, specifically, proof-of-payment documentation for the invoice from the repacker).

b. If the salvaging and reconditioning activity is performed by the Selling Agent's customer or a party affiliated with the Selling Agent, the direct labor costs or, in lieu thereof, one-half of the ordinary and customary repacking charges may be reimbursed. To substantiate such costs the Selling Agent's customer or party affiliated with the Selling Agent must provide detailed records of the labor cost incurred for repacking or, where applicable, evidence of the ordinary and customary repacking costs.

5. The Selling Agent may reimburse the receiver for the inspection fees listed on the USDA inspection certificate. If properly documented, these expenses will not be considered in the calculation of the price of the accepted tomatoes.

6. Any reimbursements from, by, or on behalf of the Selling Agent that are not specifically mentioned in items B.2., B.3., B.4., or B.5. above, or that are not properly documented, will be factored into the calculation of the price for the accepted tomatoes.

7. The receiver may not resell the DEFECTIVE tomatoes. The receiver may choose to have the DEFECTIVE tomatoes destroyed, donated to non-profit food banks, or returned to the Selling Agent. The DEFECTIVE tomatoes may not be sold.<sup>2</sup>

8. In addition, for each transaction involving adjustments due to changes in condition after shipment the Selling Agent must obtain/maintain the following documents/information:

- Shipper name.
- Shipping manifest.
- Details of the shipper invoice, including invoice number, date, brand, tomato type, quantity (boxes), and value.
- Documentation supporting the freight expenses incurred for the original shipment.
- USDA inspection certificate.
- Detailed listing of the expenses incurred in salvaging the non-DEFECTIVE tomatoes

<sup>2</sup> Tomatoes for processing must be handled in accordance with the guidelines set forth in Appendix F of the Agreement.



and documentation supporting the expenses.

- Description of the destruction or donation process and documentation from the landfill or food bank.
- Proof-of-payment documentation for any destruction costs.
- A statement that “No monies or other compensation was received for the destroyed or donated tomatoes.”
- Signature of a responsible official at the receiver.

#### *C. Contractual Terms for Rejection of Full Loads*

In cases where the receiver has rejected the full lot of tomatoes based on condition defects, the Selling Agent may choose to have the entire lot destroyed, donated to non-profit food banks, or returned. If the entire lot is destroyed or donated, the Selling Agent will require the receiver to provide the documentation noted above for partial-lot rejections. Further, the Selling Agent may reimburse the receiver for ordinary and customary expenses that the receiver incurred with respect to the lot, including those expenses associated with the destruction or donation process, as long as the Selling Agent obtains the support documentation specified above under B.8. The Department will treat such transactions as “non-sales” provided that adequate support documentation is available.

Alternatively, the Selling Agent may sell the entire rejected lot to another receiver. In that case, the price paid must be not less than the reference price plus all costs incurred (e.g., transportation, commissions, etc.) from the F.O.B. port of entry to the final receiver. If the final receiver finds that the lot contains condition defects greater than those outlined above, it shall follow the directions stated above with respect to rejection of partial loads.

#### *D. Contractual Terms for Partial vs. Unrestricted Lot Inspections*

As explained in part A.1. above, the Department will only allow adjustments to the transaction price for condition defects if the USDA inspection is unrestricted. During the time between the call for inspection and the arrival of the USDA inspector, the receiver might sell part of the lot and, therefore, by the time the USDA inspector arrives, that part is not available for inspection. If the USDA inspector is allowed full access to the partial lot, the Department will consider this an unrestricted partial-lot inspection. Alternatively, if the USDA inspector is not allowed full access to the partial lot, the Department will deem it a restricted inspection. No adjustments will be made for failure to meet suitable shipping conditions if the USDA inspection is restricted. For purposes of this Agreement, when calculating an adjustment for failure to meet suitable shipping conditions where an unrestricted partial-lot inspection has taken place, only the portion of the lot inspected is eligible for adjustment. The portion of the lot that the receiver sold prior to the inspection will not be eligible for an adjustment based on the USDA inspection.

For example, before the USDA inspector arrives, the receiver sells 140 boxes of 5x5s

from a lot identified as 160 5x5s on the invoice. When the USDA inspector arrives the receiver requesting the inspection provides full access to the partial lot within its possession. The inspector finds that the partial lot of 20 5x5s has soft/decay condition defects of 25 percent and notes this on this inspection certificate. Under the Agreement, only the 20 5x5s are eligible for an adjustment for failure to meet suitable shipping conditions, and the 140 5x5s that the receiver already sold will not be eligible for an adjustment based on the USDA inspection.

#### **Appendix E—Suspension of Antidumping Investigation—Fresh Tomatoes From Mexico—Contractual Arrangement for Documenting Sales of Signatory Merchandise to Canada**

Based on our experience in this proceeding, it is common practice for the signatory's Selling Agent to enter the merchandise into the United States for consumption and then re-export it to Canada. The purpose of this appendix is to: (1) Outline the process that each signatory of this Agreement must follow to ensure that the Selling Agent properly documents sales to Canada as such and (2) ensure that the signatory notifies the Canadian customer that any resales of its merchandise from Canada into the United States must be in accordance with the terms of this Agreement.

To document sales of Mexican tomatoes to Canada properly, this Agreement requires that such transactions be made pursuant to a contractual arrangement where each signatory requires that the Selling Agent that facilitates the sale to Canada maintain the following information in its files:

1. Signatory name and identification number;
2. Shipping manifest;
3. An invoice identifying sale date, brand, tomato type, quantity (boxes), and value; and
4. Entry documentation from Canadian Customs (*i.e.*, Landing Form (Form B3) or the Canada Customs Coding Form).

If a signatory to the Agreement or its Selling Agent does not document a sale to Canada in accordance with the procedures outlined above, the Department will consider the transaction a U.S. sale.

We also require signatories to ensure that the Canadian customer is notified that any resale of the signatory merchandise from Canada into the United States must be in accordance with the terms of the Agreement and that any movement or handling expenses beyond the point of export from Mexico must be added to the reference price and must reflect the actual cost for an arm's-length transaction. Signatories can obtain from the Department's Web site a copy of the suggested form for providing such notification. See “Form for Notifying Canadian Customer That Resales of Signatory Merchandise Into the United States Are Covered by the Terms of the 2008 Suspension Agreement” at [http://ia.ita.doc.gov/tomato/2008-agreement/documents/suggested\\_forms/](http://ia.ita.doc.gov/tomato/2008-agreement/documents/suggested_forms/). Further, through contractual arrangement each signatory must require that the Selling Agent maintain evidence in its files to document

that the Canadian customer was notified that any resales of the signatory merchandise from Canada into the United States must be in accordance with the terms of the Agreement.

#### **Appendix F—Suspension of Antidumping Investigation—Fresh Tomatoes From Mexico—Procedure Signatories Must Follow for Selling Subject Merchandise for Processing**

Sales to the United States of signatory tomatoes for processing must be:

1. Sold directly to a processor (in other words, the first purchaser in the United States of tomatoes for processing must be an actual processor);
2. Accompanied by an “Importer's Exempt Commodity Form”—Form FV-6, within the meaning of 7 CFR section 980.501(a)(2) and 980.212(l), should be used for all tomatoes for processing that are covered by the Florida Marketing Order; tomatoes for processing that are not covered by the Florida Marketing Order (*e.g.*, romas, grape tomatoes, greenhouse tomatoes and any tomatoes that are entered during the part of the year that the Florida Marketing Order is not in effect) must be accompanied by the “2008 Suspension Agreement—Tomatoes for Processing Exemption Form”. The exempt commodity form must be presented to U.S. Customs and Border Patrol at the time of crossing at the port of entry into the United States and both the Selling Agent and the processor must maintain a copy of the form.
3. Shipped in a packing form that is not typical of tomatoes for the fresh market (*e.g.*, bulk containers in excess of 50 lbs)—examples of typical fresh-market packing forms are identified in the Box-Weight Chart in Appendix C of the Agreement; and
4. Clearly labeled on the packaging as “Tomatoes for Processing”.

Signatories can obtain from the Department's Web site an example of the “2008 Suspension Agreement—Tomatoes for Processing Exemption Form”. See [http://ia.ita.doc.gov/tomato/2008-agreement/documents/suggested\\_forms/](http://ia.ita.doc.gov/tomato/2008-agreement/documents/suggested_forms/). If a party in the United States facilitates the transaction, through contractual arrangement each signatory must require that the party follow the procedures outlined above.

#### **Appendix G—Suspension of Antidumping Investigation—Fresh Tomatoes From Mexico—Specific Actions That Signatories Should Take To Ensure That Their Efforts To Abide by the Agreement Are Upheld in any Claims Taken to the U.S. Department of Agriculture Under the Perishable Agricultural Commodities Act**

This appendix provides guidance on the specific actions signatories can take to ensure that their efforts to abide by the Agreement are upheld in any claims taken to the Department of Agriculture under the Perishable Agricultural Commodities Act (PACA).

The former Chief of the Department of Agriculture's PACA branch, James R. Frazier, has confirmed that this Agreement is

enforceable under PACA regulations and PACA's claim settlement process. According to Mr. Frazier, in settling a claim, PACA will uphold actions taken by a signatory or a signatory's representative (collectively "signatory") to comply with the Agreement to the extent that the sales contract for the transaction at issue establishes that the sale is subject to the terms of the Agreement. In other words, if, prior to making the sale, the signatory, or the Selling Agent acting on behalf of the signatory through a contractual arrangement, informs the customer that the sale is subject to the terms of the Agreement and identifies those terms, PACA will recognize the identified terms of the Agreement as integral to the sales contract. In particular, signatories should inform their customers that their contractual agreement to allow defect claim adjustments is limited in accordance with the Agreement, including:

- Claims for adjustments must be supported by an unrestricted USDA inspection called for no more than six hours from the time of arrival at the receiver and performed in a timely fashion thereafter.

- The USDA inspection must find that the condition defects exceed the thresholds outlined in Appendix D above.

- Any price adjustments will be limited to the actual percentage of condition defects as documented by a USDA inspection certificate.

- The price adjustments will be limited to actual destruction costs, the allocated freight expense, and salvaging and reconditioning expenses calculated in accordance with Appendix D above.

- The customer may not resell any defective tomatoes. Instead, they must be destroyed, returned or donated to a non-profit food bank. Signatories should provide a copy of the Agreement to any customer which may be unfamiliar with its terms or which has questions about those terms.

The process by which a signatory could provide evidence to PACA that its sales contracts were made subject to the terms of the Agreement including, in particular, those terms listed above is outlined below.

- The signatory should maintain written documentation demonstrating that it had informed its customers and the customers accepted that the sales were subject to the terms of the Agreement prior to issuing the invoice. A signed contract to that effect would be the best evidence of that fact; however, a purchase by the customer after being informed of the relevance of the Agreement is evidence of acceptance.

- The signatory should send letters to its customers via registered mail, return receipt requested, informing the customers that, as a signatory to the Agreement, all of the signatory's sales are subject to the terms of the Agreement and that, by purchasing from them, the buyer agrees to those terms. The letter should also indicate that the signatory's sales personnel do not have authority to alter the terms of the Agreement.

- In addition, the signatory should include a statement on its order confirmation sheets that its contract with the buyer is subject to the terms of the Agreement as detailed in the signatory's "pre-season" letter and maintain a copy of the order confirmations and fax

receipts demonstrating that they were sent to the customer prior to making the sale. If the sale is to a first-time purchaser that did not receive a "pre-season" letter, a letter should be supplied to the buyer prior to making a sale.

- The signatory should instruct its sales personnel to inform customers making purchases by telephone or at the loading dock that the sale is subject to the terms of the Agreement and its restrictions on price adjustments and, by purchasing from them, the buyer agrees to those terms. In fact, the sales personnel should provide a copy of the letter to the customer and, ideally, have the customer acknowledge receipt of the letter, in writing, prior to making the sale. Such an established practice will help to ensure that even new customers are informed properly of the terms of sale prior to completing a contract.

PACA does not require any one particular form of written documentation but USDA officials have confirmed that, if signatories maintain written evidence demonstrating that their customers were informed that their sales were made subject to the terms of the Agreement prior to sale, PACA will recognize those terms as part of the sales contract.

[FR Doc. E8-1442 Filed 1-25-08; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### Proposed Information Collection; Comment Request; NOAA Satellite Groundstation Customer Questionnaire

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be submitted on or before March 28, 2008.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at [dHynek@doc.gov](mailto:dHynek@doc.gov)).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Paul Seymour, 301-763-

8051, extension 109 or [paul.seymour@noaa.gov](mailto:paul.seymour@noaa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Abstract

NOAA requests people who operate ground receiving stations that receive data from NOAA satellites to complete a questionnaire about the types of data received, its use, the equipment involved, and similar subjects. The data obtained are used by NOAA for short-term operations and long-term planning.

##### II. Method of Collection

The information is collected via an online questionnaire.

##### III. Data

*OMB Number:* 0648-0227.

*Form Number:* None.

*Type of Review:* Regular submission.

*Affected Public:* Not-for-profit institutions, business or other for-profit organizations, Individuals or households, Federal Government, and State, Local or Tribal Government.

*Estimated Number of Respondents:* 300.

*Estimated Time Per Response:* 5 minutes.

*Estimated Total Annual Burden Hours:* 25.

*Estimated Total Annual Cost to Public:* \$0 in capital and recordkeeping/reporting costs.

##### IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 22, 2008.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. E8-1408 Filed 1-25-08; 8:45 am]

**BILLING CODE 3510-HR-P**