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DEPARTMENT OF COMMERCE

International Trade Administration

[A-201-820]

Fresh Tomatoes From Mexico: Termination of Suspension Agreement, Termination of Five-year Sunset Review, and Resumption of Antidumping Investigation

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

EFFECTIVE DATE: March 1, 2013

SUMMARY: On February 28, 2013, 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 Commerce of their withdrawal from the agreement suspending the antidumping investigation on fresh tomatoes from Mexico. Because the suspension agreement no longer covers substantially all imports of fresh tomatoes from Mexico, the Department of Commerce is terminating the suspension agreement, terminating the sunset review of the suspended investigation, and resuming the antidumping investigation.

FOR FURTHER INFORMATION CONTACT: Judith Wey Rudman or Julie Santoboni at (202) 482-0192 or (202) 482-3063, respectively; Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On February 2, 2013, the Department of Commerce (the Department) and Mexican tomato growers/exporters accounting for a significant percentage of all fresh tomatoes imported

into the United States from Mexico initialed a proposed agreement that would suspend a resumed antidumping investigation on fresh tomatoes from Mexico. Based on this proposed agreement, and the anticipation that the Mexican tomato growers/exporters would withdraw from the 2008 Agreement in order to enter into a new agreement if an acceptable agreement was reached, the Department published a notice of intent to terminate the suspension agreement and resume the antidumping investigation, and intent to terminate the sunset review on February 8, 2013. (See, Fresh Tomatoes from Mexico: Intent to Terminate Suspension Agreement and Resume Antidumping Investigation and Intent to Terminate Sunset Review, 78 FR 9366 (February 8, 2013).

On February 28, 2013, 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 2008 Suspension Agreement, effective 90 days from the date of their withdrawal letter (i.e., May 29, 2013), or earlier, at the Department's discretion. The Department is accepting the Mexican tomato growers/exporters withdrawal from the 2008 Suspension Agreement, effective March 1, 2013. Because the suspension agreement no longer covers substantially all imports of fresh tomatoes from Mexico, the Department of Commerce is terminating the suspension agreement, terminating the sunset review of the suspended investigation, and resuming the antidumping investigation.

Scope of the Investigation

The merchandise subject to this investigation is all fresh or chilled tomatoes (fresh tomatoes) which have Mexico as their origin, except for those tomatoes which are for processing. For purposes of this investigation, processing is defined to include preserving by any commercial process, such as canning, dehydrating, drying, or the addition of chemical substances, or

converting the tomato product into juices, sauces, or purees. Fresh tomatoes that are imported for cutting up, not further processing (e.g., tomatoes used in the preparation of fresh salsa or salad bars), are covered by 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 investigation.

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

Period of Investigation

The period of investigation (POI) is March 1, 1995, through February 29, 1996.

Termination of Suspension Agreement

The 2008 Suspension Agreement is an agreement to eliminate injury under section 734(c) of the Act. Under this type of suspension agreement, the Department may suspend an investigation based upon an agreement with exporters accounting for substantially all of the imports of the subject merchandise. The regulations in turn define “substantially all” as exporters (growers and resellers) which have accounted for not less than 85 percent by value or volume of the merchandise during the period for which the Department is measuring dumping in the investigation or such other period that the Secretary considers representative. See 19 CFR 353.18(c)(1996).

On February 28, 2013, signatory growers/exporters accounting for a large percentage of all fresh tomatoes imported into the United States from Mexico provided written notice to the Department of their withdrawal from the 2008 Suspension Agreement. Pursuant to the terms of the 2008 Suspension Agreement, signatory growers/exporters may withdraw from the agreement upon 90 days written notice to the Department. Therefore, in accordance with the terms of the 2008 Suspension Agreement and the notice of withdrawal from the signatory growers/exporters, these withdrawals from the 2008 Suspension Agreement become effective on May 29, 2013, or earlier at the Department's discretion. Virtually all imports of fresh tomatoes from Mexico into the United States are accounted for by those growers/exporters which have withdrawn from the 2008 Suspension Agreement; the few signatories remaining in the 2008 Suspension Agreement will not account for substantially all of the imports of subject merchandise once the withdrawal becomes effective.

Accordingly, because the 2008 Suspension Agreement will not cover substantially all imports of fresh tomatoes from Mexico without the participation of the growers/exporters which provided their notice of withdrawal on February 28, 2013, the Department is terminating the 2008 Suspension Agreement, effective March 1, 2013.

Termination of Five-Year Sunset Review

On December 3, 2012, the Department initiated a five-year sunset review of the suspended antidumping investigation on fresh tomatoes from Mexico pursuant to section 751(c) of the Act. See Initiation of Five-Year ("Sunset") Review, 77 FR 71684 (December 3, 2012).

Because the Department is terminating the 2008 Suspension Agreement, there is no longer a suspended investigation for which to conduct a sunset review. Therefore, the Department is terminating the sunset review of the suspended antidumping investigation on fresh

tomatoes from Mexico, effective March 1, 2013.

Resumption of Antidumping Investigation

With the termination of the 2008 Suspension Agreement, effective March 1, 2013, the Department is resuming the underlying antidumping investigation, in accordance with section 734(i)(1)(B) of the Act. Pursuant to section 734(i)(1)(B) of the Act, the Department resumes the investigation as if it had published the affirmative preliminary determination under section 733(b) of the Act on March 1, 2013.

As explained in the Preliminary Determination, 61 FR at 56609, the Department postponed the final determination in this investigation until the 135th day after the date of the preliminary determination. Accordingly, the Department intends to issue its final determination in the resumed investigation by July 15, 2013, unless the Department and the Mexican tomato growers/exporters accounting for substantially all fresh tomatoes imported into the United States from Mexico sign an agreement that would suspend the resumed antidumping investigation on fresh tomatoes from Mexico.

Verification

As provided in section 782(i) of the Act, the Department will verify all information determined to be acceptable for use in making the final determination.

Suspension of Liquidation

The Department 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 March 1, 2013, the effective date of the termination of the 2008 Suspension Agreement. CBP shall require antidumping duty cash deposits or bonds for entries of the subject merchandise based on the preliminary dumping margins, which are as

follows:

Grower/Exporter	Weighted-average percentage margin
San Vincente Camalu	4.16
Ernesto Fernando Echavarria Salazar Grupo Solidario	11.89
Arturo Lomeli Villalobas S.A. de C.V.	26.97
Eco-Cultivos S.A. de C.V.	188.45
Ranchos Los Pinos S. de R.L. de C.V.	10.26
Administradora Horticola del Tamazula	28.30
Agricola Yory, S. de P.R. de R.I.	11.95
All Others	17.56

International Trade Commission

The Department will notify the International Trade Commission (ITC) of its termination of the 2008 Suspension Agreement, termination of the sunset review of the suspended investigation, and resumption of the antidumping investigation. If the Department makes a final affirmative determination, the ITC is scheduled to make its final determination concerning injury within 45 days after publication of the Department's final determination. If both the Department's and the ITC's final determinations are affirmative, the Department will issue an antidumping duty order.

Administrative Protective Order Access

Because of the significant changes made to the administrative protective order (APO) process since the initial suspension of the investigation, the Department will issue a new APO for this resumed investigation that will supersede the previously issued firm-specific APOs. Those

authorized applicants that were granted APOs during the original investigation phase, as indicated in the most recent APO service list on the Department's website, will continue to have access to business proprietary information under APO. Any new APO applications or necessary amendments for changes in staff under the pre-existing APOs should be submitted promptly, and in accordance with the Department's regulations currently in effect. See section 777(c)(1) of the Act; 19 CFR 351.103, 351.304, 351.305 and 351.306.

In addition, because of the significant changes made to the Department's filing and certification requirements since the initial suspension of the investigation, including the introduction of electronic filing, the Department will apply its current regulations and practices with regard to filing and certification for purposes of this resumed antidumping investigation. See 19 CFR 351.303(b) and (g). However, with respect to the procedures for the conduct of this resumed investigation generally, including any possible suspension thereof, the Department's regulations in effect in 1996 shall govern. See 19 CFR 351.701; San Vicente Camalu SPR de RI v. United States, 491 F.Supp.2d 1186 (CIT 2007).

We are issuing and publishing this determination under section 733(f) and 734(i) of the Act.

Paul Piquado
Assistant Secretary for
Import Administration

March 1, 2013_
Date

