

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC

Investigation No. 731-TA-747 (Fifth Review)

Fresh Tomatoes from Mexico

Institution of a Five-Year Review.

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to the Tariff Act of 1930 (“the Act”), as amended, to determine whether termination of the suspended investigation on fresh tomatoes from Mexico would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

DATES: Instituted August 1, 2024. To be assured of consideration, the deadline for responses is September 3, 2024. Comments on the adequacy of responses may be filed with the Commission by October 10, 2024.

FOR FURTHER INFORMATION CONTACT: Alejandro Orozco (202-205-3177), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission’s TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<https://www.usitc.gov>). The public record for this proceeding may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background.--Effective November 1, 1996, the Department of Commerce (“Commerce”) suspended its antidumping duty investigation on imports of fresh tomatoes from Mexico (61 FR 56618). Effective the same day, the Commission suspended the final phase of its investigation

(61 FR 58217, November 13, 1996). On October 1, 2001, Commerce initiated and the Commission instituted their first five-year reviews of the suspended investigations (66 FR 49926, 49975). After the withdrawal from the suspension agreement by certain Mexican tomato growers, Commerce terminated the suspension agreement (67 FR 50858, August 6, 2002), and both Commerce and the Commission terminated their first five-year reviews and resumed their antidumping investigations, effective July 30, 2002 (67 FR 53361, August 15, 2002; 67 FR 56854, September 5, 2002). On December 16, 2002, Commerce and the Commission suspended their resumed investigations when Commerce signed a new suspension agreement with certain growers/exporters of fresh tomatoes from Mexico (67 FR 77044, December 16, 2002; 67 FR 78815, December 26, 2002). On November 1, 2007, Commerce initiated and the Commission instituted their second five-year reviews of the suspended investigations (72 FR 61861, 61903, November 1, 2007). Once again, based on the withdrawal from the suspension agreement by certain Mexican tomato growers, Commerce terminated the suspension agreement (73 FR 2887, January 16, 2008), and both Commerce and the Commission terminated their second five-year reviews and resumed their antidumping investigations, effective January 18, 2008 (73 FR 2888, January 18, 2008; 73 FR 5869, January 31, 2008). The resumed antidumping investigations were again suspended by Commerce and the Commission when Commerce signed a new suspension agreement with certain growers/exporters of fresh tomatoes from Mexico, effective January 22, 2008 (73 FR 4831, January 28, 2008; 73 FR 7762, February 11, 2008). On December 1, 2012, Commerce initiated its third five-year review of the suspended investigation (77 FR 71684, December 3, 2012), and on December 3, 2012, the Commission instituted its third five-year review of the suspended investigation (77 FR 71629, December 3, 2012). Based on the withdrawal from the suspension agreement by certain Mexican tomato growers/exporters, Commerce terminated the suspension agreement and its third five-year review of the suspended investigation, and resumed its investigation, effective March 1, 2013 (78 FR 14771, March 7, 2013). On March 4, 2013, the Commission terminated its review of the suspended investigation and resumed the final phase of its investigation (78 FR 16529, March 15, 2013). Also on March 4, 2013, Commerce signed a new agreement with certain growers/exporters of fresh tomatoes from Mexico, and again suspended its resumed investigation (78 FR 14967, March 8, 2013). On March 5, 2013, the Commission suspended its resumed final phase investigation (78 FR 16530, March 15, 2013). On February 1, 2018, Commerce initiated and the Commission instituted their fourth five-year reviews of the suspended investigations (83 FR 4641, 4676, February 1, 2018). After receipt of a request by the Florida Tomato Exchange, an association of domestic growers

and packers of fresh tomatoes and a petitioner in the original investigation, Commerce terminated the suspension agreement and resumed its investigation, effective May 13, 2019 (84 FR 20858, May 13, 2019). Also on May 7, 2019, the Commission terminated its review of the suspended investigation and resumed the final phase of its investigation (84 FR 21360, May 14, 2019; 84 FR 27805, June 14, 2019). On September 19, 2019, Commerce signed a new agreement with certain growers/exporters of fresh tomatoes from Mexico, and again suspended its resumed investigation (84 FR 49987, September 24, 2019). On September 24, 2019, the Commission suspended its resumed final phase investigation (84 FR 54639, October 10, 2019). Following requests submitted by the Florida Tomato Exchange and by Red Sun Farms Virginia LLC, Commerce resumed its final investigation and made an affirmative determination (84 FR 57401, October 25, 2019). On October 17, 2019, the Commission continued the final phase of its investigation (84 FR 56837, October 23, 2019) and, on December 9, 2019, made an affirmative determination (84 FR 67958, December 12, 2019). The Commission is now conducting a fifth review pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether termination of the suspended investigation would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR Part 201, Subparts A and B, and 19 CFR Part 207, Subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions.--The following definitions apply to this review:

- (1) **Subject Merchandise** is the class or kind of merchandise that is within the scope of the five-year review, as defined by Commerce.
- (2) The **Subject Country** in this review is Mexico.
- (3) The **Domestic Like Product** is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise*. In its original determination, the Commission defined a single *Domestic Like Product* consisting of all fresh tomatoes coextensive with Commerce's scope.

- (4) The **Domestic Industry** is the U.S. producers as a whole of the *Domestic Like Product*, or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined the *Domestic Industry* to include all domestic producers of fresh tomatoes, except for certain domestic producers that were excluded as related parties.
- (5) An **Importer** is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding and public service list.--Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the *Federal Register*. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post-employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202-205-3408.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.--Pursuant to § 207.7(a) of the Commission's rules,

the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the *Federal Register*. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.--Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Written submissions.--Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is 5:15 p.m. on September 3, 2024. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is 5:15 p.m. on October 10, 2024. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures*, available on the Commission's website at https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf, elaborates upon the Commission's procedures with respect to filings. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, <https://edis.usitc.gov>). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

No response to this request for information is required if a currently valid Office of Management and Budget ("OMB") number is not displayed; the OMB number is 3117 0016/USITC No. 24-5-610, expiration date June 30, 2026. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

Inability to provide requested information.--Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to § 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determination in the review.

INFORMATION TO BE PROVIDED IN RESPONSE TO THIS NOTICE OF INSTITUTION: As used below, the term "firm" includes any related firms.

Those responding to this notice of institution are encouraged, but not required, to visit the USITC's website at https://usitc.gov/reports/response_noi_worksheet, where one can download and complete the "NOI worksheet" Excel form for the subject proceeding, to be included as attachment/exhibit 1 of your overall response.

- (1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and E-mail address of the certifying official.
- (2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product*, a U.S. union or worker group, a U.S. importer of the *Subject*

Merchandise, a foreign producer or exporter of the *Subject Merchandise*, a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

- (3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.
- (4) A statement of the likely effects of the termination of the suspended investigation on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry*.
- (5) A list of all known and currently operating U.S. producers of the *Domestic Like Product*. Identify any known related parties and the nature of the relationship as defined in § 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).
- (6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2018.
- (7) A list of 3-5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and E-mail address of a responsible official at each firm).
- (8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.
- (9) If you are a U.S. producer of the *Domestic Like Product*, provide the following information on your firm's operations on that product during calendar year 2023, except as noted (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information,

on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

- (a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;
 - (b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);
 - (c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);
 - (d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and
 - (e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).
- (10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2023 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.
- (a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports

of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

- (b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country*; and
- (c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country*.

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2023 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

- (a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;
- (b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and
- (c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

- (12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 2018, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country*, and such merchandise from other countries.
- (13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry*; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

AUTHORITY: This proceeding is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

By order of the Commission.



Lisa R. Barton
Secretary to the Commission

Issued: July 24, 2024