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Commerce, Mexican Growers Reach Tomato Deal; U.S. Growers Tentatively Endorse

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The Commerce Department over the weekend announced that it has reached a preliminary deal with Mexican tomato growers on a revised agreement to suspend an antidumping investigation on fresh and chilled tomatoes imported from Mexico, and U.S. growers have tentatively endorsed the deal.

The new suspension agreement, which was released by Commerce on Saturday (Feb. 2), makes three crucial changes to an existing 2008 agreement that U.S. growers had sought to scrap.

Specifically, it stipulates four categories of tomatoes that are subject to the agreement and sets a reference price for each category that is higher than the winter and summer reference prices set in the 2008 agreement. The price increases range from 47 to 180 percent depending on the categories in the winter and from 47 to 176 percent in the summer, according to a Commerce Department fact sheet.

It also ensures that all Mexican growers shipping to the United States are covered by the agreement through enforcement measures to be undertaken by the Mexican government. In addition, there will be enforcement measures on the U.S. side of the border.

The agreement will be open for public comment until Feb. 11. If finally adopted, it would replace the 2008 agreement – which U.S. tomato growers charged failed to protect them effectively against dumping due to an insufficient reference price that applied to all fresh and chilled tomatoes. They also said it did not reflect the shift from field to greenhouse tomatoes that cost more to produce and lacked an effective enforcement mechanism.

In a Feb. 3 statement two groups representing U.S. domestic tomato growers, the Florida Tomato Exchange and Certified Greenhouse Farmers, indicated their “tentative support” but emphasized that they would work to ensure the terms of the agreement would be met in the implementation.

They signaled that the new agreement would meet the requirements under U.S. antidumping law that it eliminate substantially all dumping.

“Undersecretary [of Commerce for International Trade Administration Francisco] Sanchez and his entire team have worked hard to update the suspension agreement to deal with the concerns of domestic producers and to achieve an agreement that more closely follows the statutory mandates,” Reggie Brown, executive vice president of the Florida Tomato Exchange, said in the statement. The deal was announced in a release by Sanchez.

Edward Beckman, president of Certified Greenhouse Farmers, said the new agreement appeared to meet the domestic industry’s demands in terms of pricing, coverage and enforcement. “We believe that the Department of Commerce and Mexico have struck a deal that meets those three tests, and we’re hopeful and optimistic that we’ll be able to compete under fair trade conditions,” he said.

He stressed that domestic industry would work in the implementation phase to ensure that these legal requirements are met. "The domestic industry will be evaluating administrative opportunities to ensure that, in fact, the statutory requirements are met and continue to be met over time," he said. Beckman added that the agreement needs to be "fully and faithfully implemented," and that continuous monitoring and enforcement will be critical.

Sanchez emphasized in his statement that the new agreement meets the requirements of U.S. antidumping law, which are that a suspension agreement must prevent price undercutting and price suppression in the U.S. market and eliminate at least 85 percent of the dumping.

"I am pleased that we were able to come to an agreement on fresh tomato imports from Mexico that restores stability and confidence to the U.S. tomato market and meets the requirements of U.S. law," Sanchez said. "The draft agreement raises reference prices substantially, in some cases more than double the current reference price for certain products, and accounts for changes that have occurred in the tomato market since the signing of the original agreement."

Sanchez had earlier emphasized that any solution to the tomato dispute would have to meet the requirements of U.S. antidumping law (*Inside U.S. Trade*, Nov. 23).

According to a Commerce Department fact sheet, the new agreement raises the reference price for the winter season to between \$0.31 and \$0.59 cents, up from the current level of \$0.21. It increases the summer reference price to between \$0.25 and \$0.47, up from the current level of \$0.17.

The four categories of tomatoes it covers are classified as "Open Field and Adapted Environment," "Controlled Environment," "Specialty, Loose," and "Specialty, Packed." There were no such categories in the previous agreement.

On enforcement, the new agreement for the first time would involve the Mexican government, which would put in place mechanisms "designed to ensure that signatories to the agreement constitute essentially all Mexican growers/exporters," according to the fact sheet.

The deal would also strengthen enforcement on the U.S. side of the border by incorporating a "reporting mechanism" administered pursuant to the U.S. Department of Agriculture's Perishable Agricultural Commodities Act (PACA) fair trade regulations, the fact sheet said.

The latest round of the tomato dispute started in June 2012 with the demands of Florida growers to the Commerce Department that an agreement suspending a 1996 antidumping investigation on fresh tomatoes from Mexico be terminated, after announcing their intent to withdraw their petition that launched the investigation.

The petitioners in the original case argued they were no longer interested in maintaining the agreement because its terms did not ensure fair trade. Some of the Florida growers said they wanted to pursue a new trade case.

In response to the U.S. growers' request to terminate the suspension agreement, Commerce announced on Sept. 27 a preliminary decision to terminate the underlying antidumping investigation, which could have ended the suspension agreement if upheld in a final decision. It did so as a result of a changed circumstances review, which found that substantially all U.S. tomato growers had no interest in continuing the suspension agreement.

The renegotiation of the suspension agreement between the Commerce Department and Mexican growers, which led to the preliminary agreement over the weekend, had been progressing in parallel to the changed circumstances review.