

North American Tomato Trade Work Group

Canada – Mexico – United States

Rec'd 6/26/03
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June 19, 2003

Dr. Robert Lake
Director of Regulations and Policy
Center for Food Safety and Nutrition
Food and Drug Administration
Harvey W. Wiley Federal Building
5100 Paint Branch Parkway
College Park, MD. 20740-3835

Dear Dr. Lake:

On behalf of fresh tomato producers in North America we are writing to you to express our concerns with the proposed regulations published by the Food and Drug Administration (FDA) under the [U.S.] Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Bioterrorism Act), and the prior notification regulations being developed by the U.S. Bureau of Customs and Border Protection (BCBP). We realize that the initial comment period is over, but we still feel compelled to express our concerns directly, as we understand that reciprocal initiatives are now being considered and/or developed in both Canada and Mexico.

The North American Tomato Trade Working Group ("NATTWG") was formed last year to deal with issues impacting the trade of tomatoes within the North American fresh tomato industry. We are a unique organization within the produce industry that is working toward improving the fair trade of tomatoes between our three countries rather than engaging in litigation, as has transpired over the last decade.

The members of NATTWG represent the major producers of fresh tomatoes in the United States, Canada and Mexico. Our member sales in North America exceed two billion dollars annually. As fresh tomato production is seasonal, strategic alliances and fair market access throughout the year is critical to the commercial success of our respective producers.

It is appropriate to advise you that the industry supports the objectives of the U.S. Bioterrorism legislation. We understand that business has to be conducted differently since September 11th. While we support the concept of the legislation, we would like to stress the importance of implementing regulations in the least trade restrictive fashion so that commerce and business relationships continue unimpaired.

As the United States moves towards the implementation of these regulations, it must be taken into consideration that the development of similar legislation may already be underway in Canada and Mexico that will utilize the identical model adopted by the U.S. For this reason, it is even more important that the U.S. develop thoughtful and workable regulations, as reciprocal regulations will exacerbate any flaws inherent in those adopted by the U.S. This will result in even further disruptions and unwarranted impediments to the flow of fresh tomatoes between our three countries.

North American Tomato Trade Work Group
C/O California Tomato Commission
1625 East Shaw Avenue Ste 106
Fresno, California 93710
(559) 230-0116 Fax (559) 230-0635

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It is important to recognize the uniqueness of the trilateral trade between our three countries. It involves unprecedented volumes of shipments, and in the case of our particular industry, perishable products that are particularly sensitive to border procedures.

Retail and food service consolidation within the North American food industry has resulted in increased pressure on suppliers of perishable commodities. In an effort to improve quality, reduce claims, and overhead associated with warehousing inventory, the food industry has moved to "just in time delivery" models. The success of these new food distribution models is predicated on suppliers being able to react quickly to market requirements. Orders are regularly altered by the buyer right up until the time of shipment to ensure opportunities are maximized at the retail and food service level. As suppliers, it is our responsibility to meet these challenges in accordance with our customer's demands in North America.

While we welcome the May 27 FDA and BCBP plans to streamline prior notice requirements, the announcement does not address when the harmonization of the two systems will occur. We were previously advised by FDA officials that the joint system would not be operational until the year 2005. This is clearly unacceptable. In addition, the announcement does not indicate whether the differing timelines in the FDA and BCBP proposed regulations will be harmonized. As is, the FDA's proposed noon, the day prior to arrival, is unworkable. It is critical that the two sets of requirements be consistent, including the timeline for notification. Different and complex rules applied to the same commodities in pursuit of similar counter-terrorism objectives could introduce unnecessary costs for government agencies, exporters, importers and consumers, in all three countries.

If these regulations are implemented without significant amendments, and further reciprocated by Canada and Mexico, it will create unprecedented confusion, while producing unintended obstacles to compliance. Thus, we would encourage the U.S. government to also seek harmonization of prior notice requirements among the three North American trading partners.

We believe there are alternative approaches that would be beneficial. For example, the U.S. government could focus on harmonization of efforts and build on the Smart Border Plan agreed to and directed by Department of Homeland Security Secretary Ridge and Deputy Prime Minister Manley of Canada.

A key element of this plan is the Free and Secure Trade (FAST) bilateral arrangements. Under the U.S. Customs-Trade Partnership Against Terrorism (C-TPAT) and the Canadian Partners in Protection (PIP) programs, companies approved by both countries have invested in specific counter-terrorism and supply chain integrity measures and are therefore accorded more expedited treatment at the United States-Canada border in recognition of the lower risk they present.

In December 2002, Department of Homeland Security Secretary Ridge and Deputy Prime Minister Manley announced that Canada and the United States have also agreed to cooperate on biosecurity under the Smart Border Plan. Regulatory agencies in Canada and the United States already cooperate on a unique and unprecedented basis. Under the Smart Border Plan and the bilateral cooperative initiatives on biosecurity, this cooperation will be enhanced, including the area of food safety and countering bioterrorism.

The U.S. could build on and take advantage of these successful initiatives that share the FDA's counter-bioterrorism objectives and BCBP prior notification objectives. Any future regulations could be developed with a focus on how to provide special and less stringent treatment for low risk companies, such as those operating under FAST programs. This would allow FDA to focus its resources on sources of higher risk.

These are some of the initiatives and alternative approaches that should be fully explored. We urge all U.S. government departments that are working to improve the safety of trans-border shipments of produce to proceed cautiously, in a thoughtful and pragmatic fashion, and with meaningful consultation with the produce industry. Failure to do so will inevitably result in unintended obstacles to compliance, needless costs, and unwarranted disruption to commerce.

Yours Truly,



Ed Beckman, NAATWG Chair
President
California Tomato Commission



Murray Driediger, NATTWG Vice-Chair
General Manager
BC Vegetable Marketing Commission

Mario Robles, NATTWG Secretary
Confederacion de Asociaciones Agricolas del Estado

c.c. Ms. Lesley Fraiser, Associate Director of Regulations and Policy, FDA
Congressman Michael Billirakis
Congresswoman Mary Bono
Congressman Darrell Issa
Congressman George Radanovich
Congressman Cliff Stearns
Shari Kosco, USDA FAS
Produce Marketing Association
United Fresh Fruit and Vegetable Assn
Tina Milanetti, AAFC Deputy Director International Trade Policy
Canadian Produce Marketing Association
Canadian Horticultural Council

North American Tomato Trade Work Group

To: See Following List

From: Ed Beckman

Date: June 20, 2003

Subject: Bioterrorism Act

Bilirakis	Michael	202-225-4085
Bono	Mary	202-225-2961
CHC		613-226-2984
Fraser	Lesley	301-436-2637
Issa	Darrell	202-225-3303
Lake	Robert	301-436-2637
Randanovich	George	202-225-3403
Stearns	Cliff	202-225-3973
Milanetti	Tina	613-759-7503