

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC 20436

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

FRESH TOMATOES FROM MEXICO

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the suspended investigation on fresh tomatoes from Mexico.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)) (the Act) 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 section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission;¹ to be assured of consideration, the deadline for responses is December 21, 2007. Comments on the adequacy of responses may be filed with the Commission by January 14, 2008. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: November 1, 2007.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202-205-3193), 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 (<http://www.usitc.gov>). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background.--On November 1, 1996, the Department of Commerce ("Commerce") suspended an antidumping duty investigation on imports of fresh tomatoes from Mexico (61 FR 56618). On October 1, 2001, Commerce initiated a five-year review of the suspended investigation (66 FR 49926). On the basis of the withdrawal from the suspension agreement by Mexican tomato growers which accounted for a significant percentage of all fresh tomatoes imported into the United States from Mexico, Commerce terminated the suspension agreement, terminated the review, and resumed the antidumping investigation, effective July 30, 2002 (67 FR 50858, August 6, 2002). On December 16, 2002, Commerce once again suspended the antidumping duty investigation on imports of fresh tomatoes from Mexico (67 FR 77044).

¹ 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. 08-5-175, expiration date June 30, 2008. Public reporting burden for the request is estimated to average 10 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.

The Commission is now conducting a second review 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. It 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 the Department of 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**. For the purpose of the preliminary investigation, the Commission defined the **Domestic Like Product** as all fresh market tomatoes. Fresh market tomatoes do not include processing tomatoes.
- (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. For the purpose of the preliminary investigation, the Commission defined the **Domestic Industry** as growers and packers of fresh tomatoes.
- (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 review 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 review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 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 review.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 C.F.R. § 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission is seeking guidance as to whether a second transition five-year review is the "same particular matter" as the underlying original investigation for purposes of 19 C.F.R. § 201.15 and 18 U.S.C. § 207, the post employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was "personal and substantial." However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202-205-3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.--Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, 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 review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.--Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.--Pursuant to section 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 December 21, 2007. Pursuant to section 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 January 14, 2008. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (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 review you do not need to serve your response).

Inability to provide requested information.--Pursuant to section 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 section 776(b) of the Act 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.

- (1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.
- (2) A statement indicating 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, 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 review 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 section 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 2001.
- (7) 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 2006 (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) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* grown or packed in your U.S. facility(ies); and
 - (c) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* grown or packed in your U.S. facility(ies).

- (8) 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 2006 (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) 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) 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) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country*.
- (9) 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 2006 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port). 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; and
 - (b) 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.
- (10) 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 2001, 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.
- (11) (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 review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

/s/
Marilyn R. Abbott
Secretary to the Commission

Issued: October 25, 2007