103. Sinosteel Sichuan Co., Ltd.
104. SMMC Group Co., Ltd.
105. Sure Mega (Hong Kong) Ltd.
106. Tangshan Kimwan Special Carbon & Graphite Co., Ltd.
107. Tengchong Carbon Co., Ltd.
108. Tianjin (Teda) Iron & Steel Trade Co., Ltd.
109. Tianjin Kimwan Carbon Technology and Development Co., Ltd.
110. Tianjin Yue Yang Industrial & Trading Co., Ltd.
111. Tielong (Chengdu) Carbon Co., Ltd.
112. UK Carbon & Graphite
113. United Carbon Ltd.
114. United Trade Resources, Inc.
115. Weifang Lianxing Carbon Co., Ltd.
116. World Trade Metals & Minerals Co., Ltd.
117. XC Carbon Group
118. Xinyuan Carbon Co., Ltd.
119. Xuanhua Hongli Refractory and Mineral Company
120. Xuchang Minmetals & Industry Co., Ltd.
121. Xuzhou Carbon Co., Ltd.
122. Xuzhou Electrode Factory
123. Yangzhou Qionghua Carbon Trading Ltd.
124. Yixing Huaxin Imp & Exp Co. Ltd.
125. Youth Industry Co., Ltd.
126. Zhengzhou Jinyu Thermo-Electric Material Co., Ltd.
127. Zibo Continent Carbon Factory
128. Zibo DuoCheng Trading Co., Ltd.
129. Zibo Lianxing Carbon Co., Ltd.
130. Zibo Wuzhou Tanshun Carbon Co., Ltd.

Companies that are now part of the PRC entity because they did not demonstrate in this review that they are entitled to a separate rate.

1. Dechang Shida Carbon Co., Ltd.
2. Shida Carbon Group
3. Sichuan Shida Trading Co., Ltd.
4. Sichuan Guanghan Shida Carbon Co., Ltd.[13]

[FR Doc. 2013–05494 Filed 3–7–13; 8:45 am]

BILLING CODE 3510–DS–P

[13] In the *Initiation Notice,* we initiated a review of Guanghan Shida Carbon Co., Ltd. This company is the same entity as Sichuan Guanghan Shida Carbon Co., Ltd. *See Small Diameter Graphite Electrodes from the People's Republic of China: Final Results of the Antidumping Duty Administrative Review,* 77 FR 40854, 40856 (July 11, 2012).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–820]

Fresh Tomatoes From Mexico: Suspension of Antidumping Investigation

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

DATES: *Effective Date*: March 4, 2013.

SUMMARY: The Department of Commerce has suspended the antidumping investigation involving fresh tomatoes from Mexico. The basis for the suspension of the antidumping investigation is an agreement between the Department of Commerce and producers/exporters accounting for substantially all imports of fresh tomatoes from Mexico wherein each signatory producer/exporter has agreed to revise its prices to eliminate completely the injurious effects of exports of this merchandise to the United States.

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 to suspend the antidumping investigation on fresh tomatoes from Mexico. The Department released the proposed agreement to interested parties on February 2, 2013 and afforded them an opportunity to comment on the initialed agreement by February 11, 2013. Several interested parties filed comments.

Based on this proposed agreement, and the anticipation that the Mexican tomato growers/exporters would withdraw from the 2008 Suspension Agreement on Fresh Tomatoes from Mexico (*see Suspension of Antidumping Investigation: Fresh Tomatoes from Mexico,* 73 FR 4831 (January 28, 2008) (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 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 accepted the Mexican tomato growers/exporters' withdrawal from the 2008 Agreement, effective March 1, 2013. *See Termination of Suspension Agreement, Termination of Five-year Sunset Review and Resumption of Investigation,* publication pending.

On March 4, 2013, the Department signed a new suspension agreement (2013 Suspension Agreement) with certain growers/exporters of fresh tomatoes from Mexico. The 2013 Suspension Agreement is attached to this notice of Suspension of 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.

Suspension of Investigation

The Department consulted with the Mexican tomato growers/exporters and the petitioners and has considered the comments submitted by interested parties with respect to the proposal to suspend the antidumping investigation. In accordance with section 734(c) of the Tariff Act of 1930 (the Act), we have determined that extraordinary circumstances are present in this case, as defined by section 734(c)(2)(A) of the Act. *See* the memorandum titled ''Existence of Extraordinary Circumstances'' from Lynn Fischer Fox,

Deputy Assistant Secretary for Policy and Negotiations, to Paul Piquado, Assistant Secretary for Import Administration, dated March 4, 2013.

The 2013 Suspension Agreement provides that the subject merchandise will be sold at or above the established reference price and, for each entry of each exporter, the amount by which the estimated normal value exceeds the export price (or constructed export price) will not exceed 15 percent of the weighted-average amount by which the estimated normal value exceeded the export price (or constructed export price) for all less-than-fair-value entries of the producer/exporter examined during the course of the investigation. We have determined that the 2013 Suspension Agreement will eliminate completely the injurious effect of exports to the United States of the subject merchandise and prevent the suppression or undercutting of price levels of domestic fresh tomatoes by imports of that merchandise from Mexico. *See* the memorandum titled ''The Prevention of Price Suppression or Undercutting of Price Levels in the 2013 Suspension Agreement on Fresh Tomatoes from Mexico'' from Lynn Fischer Fox, Deputy Assistant Secretary for Policy and Negotiations, to Paul Piquado, Assistant Secretary for Import Administration.

We have also determined that the 2013 Suspension Agreement is in the public interest and can be monitored effectively, as required under section 734(d) of the Act. *See* the memorandum titled ''Public Interest Assessment of the Agreement Suspending the Antidumping Duty Investigation on Fresh Tomatoes from Mexico'' from Lynn Fischer Fox, Deputy Assistant Secretary for Policy and Negotiations, to Paul Piquado, Assistant Secretary for Import Administration, dated March 4, 2013.

For the reasons outlined above, we find that the 2013 Suspension Agreement meets the criteria of section 734(c) and (d) of the Act.

International Trade Commission

In accordance with section 734(f) of the Act, the Department has notified the International Trade Commission of the 2013 Suspension Agreement.

Suspension of Liquidation

The suspension of liquidation ordered in the preliminary affirmative determination in this case published on November 1, 1996 (*Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Fresh Tomatoes from Mexico,* 61 FR 56608 (November 1, 1996) (*Preliminary Determination*)) and resumed on March 1, 2013, shall continue to be in effect, subject to section 734(h)(3) of the Act. Section 734(f)(2)(B) of the Act provides that the Department may adjust the security required to reflect the effect of the 2013 Suspension Agreement. The Department has found that the 2013 Suspension Agreement eliminates completely the injurious effects of imports and, thus, the Department is adjusting the security required from signatories to zero. The security rates in effect for imports from non-signatory growers remain as published in the *Preliminary Determination.*

Notwithstanding the 2013 Suspension Agreement, the Department will continue the investigation if it receives such a request within 20 days after the date of publication of this notice in the **Federal Register**, in accordance with section 734(g) of the Act.

Administrative Protective Order Access

The Administrative Protective Orders (APOs) that the Department granted in the original investigation phase and the resumed investigation segment of this proceeding remain in place. While the investigation is suspended, parties subject to those APOs may retain, but may not use, information received under those APOs. All parties wishing access to business proprietary information submitted during the administration of the 2013 Suspension Agreement must submit APO applications 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. An APO for the administration of the 2013 Suspension Agreement will be placed on the record within five days of the date of publication of this notice in the **Federal Register**.

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

Dated: March 4, 2013.

Paul Piquado,

Assistant Secretary for Import Administration.

Suspension of Antidumping Investigation: Fresh Tomatoes From Mexico

Pursuant to section 734(c) of the Tariff Act of 1930, as amended (19 U.S.C. 1673c(c)) (the Act), and section 351.208 of the U.S. Department of Commerce (the Department) regulations (19 CFR 351.208 (2012)),[1] the signatory producers/exporters of fresh tomatoes from Mexico (signatories) and the Department enter into this Suspension Agreement (Agreement). On the basis of this Agreement, the Department shall suspend its antidumping duty investigation, the initiation of which was published on April 25, 1996 (61 FR 18377), with respect to fresh tomatoes from Mexico, subject to the terms and provisions set out below.

I. Product Coverage

The merchandise subject to this Agreement 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 Agreement, 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. In Appendix F of this Agreement the Department has outlined the procedure that signatories must follow for selling subject merchandise for processing. 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 Agreement.

Tomatoes imported from Mexico covered by this Agreement are classified under the following subheadings 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 Agreement is dispositive.

II. U.S. Import Coverage

In accordance with section 734(c)(1) of the Act, the signatories are the producers and exporters in Mexico which account for substantially all of the subject merchandise imported into the United States. The Department may at any time during the period of the Agreement require additional producers/exporters in Mexico to sign

[1] The resumption of the investigation and negotiation of a new suspension agreement were conducted in accordance with the Department's regulations in effect at the time of the original investigation, 19 CFR 353.18 (1996). Because this Agreement constitutes a new segment of the proceeding, the Agreement is governed by the regulations currently in effect. 19 CFR 351.701; *see also San Vicente Camalu SPR de Ri* v. *United States,* 491 F. Supp. 2d 1186 (CIT 2007).

the Agreement in order to ensure that not less than substantially all imports into the United States are subject to the Agreement.

III. Basis for the Agreement

In order to satisfy the requirements of section 734(c)(1)(A) of the Act, each signatory individually agrees that, in order to prevent price suppression or undercutting, it will not sell in the United States, on and after the effective date of the Agreement, merchandise subject to the Agreement at prices that are less than the reference price, in accordance with Appendix A to this Agreement.

In order to satisfy the requirements of section 734(c)(1)(B) of the Act, each signatory individually agrees that for each entry the amount by which the estimated normal value exceeds the export price (or the constructed export price) will not exceed 15 percent of the weighted average amount by which the estimated normal value exceeded the export price (or the constructed export price) for all less-than-fair-value entries of the producer/exporter examined during the course of the investigation, in accordance with the Act and the Department's regulations and procedures, including but not limited to the calculation methodologies described in Appendix B of this Agreement.

IV. Monitoring of the Agreement

A. Import Monitoring

1. The parties to this Agreement acknowledge that the signatories intend to establish a joint industry-Government-of-Mexico working group (''Working Group'') that will regularly monitor and reconcile Mexican export data and identify and address any inconsistencies or irregularities. The Working Group will refer any alleged violations (either those discovered during its monitoring exercises or those reported by the Department) to the Mexican Government for appropriate action. For further information, please see information provided at: *http://ia.ita.doc.gov/tomato*.

2. The Department will monitor entries of fresh tomatoes from Mexico to ensure compliance with section III of this Agreement.

3. The Department will review publicly available data and other official import data, including, as appropriate, records maintained by U.S. Customs and Border Protection, to determine whether there have been imports that are inconsistent with the provisions of this Agreement.

4. The Department will review, as appropriate, data it receives from the Working Group and through any data exchange program between U.S. and Mexican government agencies, to determine whether there have been imports that are inconsistent with the provisions of this Agreement.

B. Compliance Monitoring

1. The Department may require, and each signatory agrees to provide, confirmation, through documentation provided to the Department, that the price received on any sale subject to this Agreement was not less than the established reference price. The Department may require that such documentation be provided and be subject to verification.

2. The Department may require and each signatory agrees to report in the prescribed format and using the prescribed method of data compilation, each sale of the merchandise subject to this Agreement, either directly or indirectly to unrelated purchasers in the United States, including each adjustment applicable to each sale, as specified by the Department. Each signatory agrees to permit review and on-site inspection of all information deemed necessary by the Department to verify the reported information.

3. The Department may only initiate administrative reviews under section 751(a) of the Act in the month immediately following the anniversary month, upon request or upon its own initiative, to ensure that exports of fresh tomatoes from Mexico satisfy the requirements of section 734(c)(1)(A) and (B) of the Act. The Department may perform verifications pursuant to administrative reviews conducted under section 751 of the Act.

4. At any time it deems appropriate, and without prior notice, the Department will conduct verifications of parties handling signatory merchandise to determine whether they are selling signatory merchandise in accordance with the terms of this Agreement. The Department will also conduct verifications at the association level at locations and times it deems appropriate.

C. Shipping and Other Arrangements

1. All reference prices will be expressed in U.S. $/lb in accordance with Appendix A of this Agreement. Subject to paragraph 24 of Annex 703.2 of the North American Free Trade Agreement, the quality of each entry of fresh tomatoes exported to the United States from Mexico will conform with any applicable U.S. Department of Agriculture minimum grade, size, and/or quality import requirements in effect.

2. The parties to this Agreement acknowledge that in accordance with Mexican regulations, Mexican tomato growers and non-grower exporters exporting to the United States will become signatories to the Agreement. Signatories will fully comply with all requirements of Mexican regulations concerning identification, tracking, verification and inspection by the relevant Mexican authorities including the Ministry of Economy (SECON), the Ministry of Agriculture (SAGARPA), SAGARPA's National Food Health, Safety and Quality Service (SENASICA) and Customs. In accordance with Mexican regulations, non-compliance will result in the revocation of export privileges. For further information, please see information provided at: *http://ia.ita.doc.gov/tomato*.

3. Signatories agree not to circumvent the Agreement and to undertake measures that will help to prevent circumvention. For example, each signatory will take the following actions:

a. It is the responsibility of each signatory to ensure that sales of its merchandise are made consistent with the requirements of this Agreement. To that end, each signatory shall enter into a contract with the party that is responsible for the first sale of its subject merchandise to an unaffiliated customer in the United States (the Selling Agent) that incorporates the terms of this Agreement.[2] It is the responsibility of each signatory to confirm and ensure that the Selling Agent holds a valid and effective license issued pursuant to the Perishable Agricultural Commodities Act of 1930, as amended (7 U.S.C. 499a *et seq.*) (PACA).[3]

Through a contractual arrangement signatories shall also require the Selling Agent to establish a contract with third parties to ensure that adjustments for spoilage or other claims inconsistent with the Agreement will not be permitted. Further, this contractual arrangement must establish that the Selling Agent maintain documentation demonstrating that sales of their

[2] For purposes of this Agreement, a Selling Agent can be an importer, agent, distributor, or any entity that facilitates the transaction between the signatory and the first unaffiliated U.S. customer that meets the definition of ''commission merchant'', ''dealer'' or ''broker'', as those terms are defined in section 1(b) of the PACA (7 U.S.C. 499a(b)). A commission merchant, dealer or broker operating as a Selling Agent without a valid and effective PACA license is operating subject to license.

[3] This may be done by using ''PACA SEARCH'' on the PACA Web site at *www.usda.gov/paca,* or by calling the PACA National License Center Customer Service line at 1–800–495–7222, ext #1.

merchandise are made consistent with the requirements of this Agreement.

b. Each signatory will label its boxes of subject merchandise that are exported to the United States with its name, signatory identification number, and a statement that ''These Tomatoes Were Grown/Exported By a Signatory of the 2013 Suspension Agreement.''[4] Alternatively, if the signatory that exports the tomatoes is different from the entity that grew the tomatoes, it will label the boxes with its name and its signatory identification number. Each signatory also will label its boxes with the type of tomato and the growing/production method of the product being shipped in the box, *i.e.,* open field; adapted environment; or controlled environment.

For purposes of this Agreement, controlled environment tomatoes are limited to those tomatoes grown in a fully-enclosed permanent aluminum or fixed steel structure clad in glass, impermeable plastic, or polycarbonate using automated irrigation and climate control, including heating and ventilation capabilities, in an artificial medium using hydroponic methods.

c. Each signatory will label its boxes of fresh tomatoes sold in Mexico with its name and the statement ''Prohibida Su Exportacion a los EUA/Not for Export to the United States''.

4. Not later than thirty days after the end of each quarter, each signatory will submit a written statement to the Department certifying that all sales during the most recently completed quarter were at net prices (after rebates, backbilling, discounts for quality and other claims) at or above the reference prices in effect and were not part of or related to any act or practice which would have the effect of hiding the real price of the fresh tomatoes being sold (*e.g.,* a bundling arrangement, discounts/free goods/financing package, end-of-year rebates, swap, or other exchange). Each signatory that did not export tomatoes to the United States during any given quarter will submit a written statement to the Department certifying that it made no sales to the United States during the most recently completed quarter. Each signatory agrees to permit full verification of its certification as the Department deems necessary. Failure to provide a quarterly certification may be considered a violation of the Agreement.

[4] Signatories may continue to use boxes with markings from the 2008 Suspension Agreement through September 30, 2013, but they must add the growing method of the product being shipped to the existing labeling on the box.

D. Rejection of Submissions

The Department may reject: (1) Any information submitted after the deadlines set forth in this Agreement; (2) any submission that does not comply with the filing, format, translation, service, and certification of documents requirements under 19 CFR 351.303; (3) submissions that do not comply with the procedures for establishing business proprietary treatment under 19 CFR 351.304; (4) submissions that do not comply with any other applicable regulations, as appropriate, or any information that it is unable to verify to its satisfaction. If information is not submitted in a complete and timely fashion or is not fully verifiable, the Department may use facts otherwise available for the basis of its decision, as it determines appropriate, unless the Department determines that section V applies.

E. Compliance Consultations

1. When the Department identifies, through import or compliance monitoring or otherwise, that sales may have been made at prices inconsistent with section III of this Agreement, the Department will notify each signatory which it believes is responsible through their associations' counsel or directly, in the event that the signatory is not represented by counsel. The Department will consult with each such party for a period of up to sixty days to establish a factual basis regarding sales that may be inconsistent with section III of this Agreement.

2. During the consultation period, the Department will examine any information that it develops or which is submitted, including information requested by the Department under any provision of this Agreement.

3. If the Department is not satisfied at the conclusion of the consultation period that sales by such signatory are being made in compliance with this Agreement, the Department may evaluate under section 751 of the Act whether this Agreement is being violated, as defined in section V.F of this Agreement, by such signatory. Without prejudice to the provisions of section VI.B of this Agreement, in no event will the Department terminate the Agreement under this provision outside of the scope of a review under section 751.

F. Operations Consultations

The Department will consult with the signatories regarding the operations of this Agreement. A party to the Agreement may request such consultations in any April or September (*i.e.,* prior to the beginning of each season).

Notwithstanding the previous paragraph, the parties may agree to revise the reference prices at any time.

V. Violations of the Agreement

A. ''Violation'' means noncompliance with the terms of this Agreement, whether through an act or omission, except for noncompliance that may be considered inconsequential and inadvertent, or does not substantially frustrate the purposes of this Agreement.

B. If the Department determines that there has been a violation of the Agreement or that the Agreement no longer meets the requirements of sections 734(c) or (d) of the Act, the Department shall take action it determines appropriate under section 734(i) of the Act and the Department's regulations.

C. Pursuant to section 734(i) of the Act, the Department will refer any intentional violations of the Agreement to U.S. Customs and Border Protection. Any person who intentionally commits a violation of the Agreement shall be subject to a civil penalty assessed in the same amount, in the same manner, and under the same procedures as the penalty imposed for a fraudulent violation of section 592(a) of the Act. A fraudulent violation of section 592(a) of the Act is punishable by a civil penalty in an amount not to exceed the domestic value of the merchandise. For purposes of the Agreement, the domestic value of the merchandise will be deemed to be not less than the reference price, as the signatories agree not to sell the subject merchandise at prices that are less than the reference price or to ensure that sales of the subject merchandise are made consistent with the terms of the Agreement.

D. In addition, the Department will examine the activities of signatories, their Selling Agents, and any other party to a sale subject to the Agreement to determine whether any activities conducted by any party aided or abetted another party's violation of the Agreement. If any such parties are found to have aided or abetted another party's violation of the Agreement, they shall be subject to the same civil penalties described in section V.C. above.

Signatories to this Agreement consent to the release of all information presented to or obtained by the Department during the conduct of verifications with U.S. Customs and Border Protection and/or the U.S. Department of Agriculture. Further, through a contractual arrangement, signatories shall require that the Selling

Agent consent to the release of all information presented to or obtained by the Department during the conduct of verifications with U.S. Customs and Border Protection and/or the U.S. Department of Agriculture.

E. A violation of this Agreement by a Selling Agent may also constitute an unfair trade practice that violates the PACA.[5] The Department, a signatory, or any other interested person may file with the Secretary of Agriculture a written notification of any alleged violation of the PACA pursuant to section 6(b) of the PACA (7 U.S.C. 499f(b)). Upon receipt of a written notification, USDA will examine the allegation and determine whether further investigation, issuance of a letter of warning, or administrative complaint is warranted. Failure of a PACA licensee to cooperate with an ongoing investigation can lead to suspension of license and publication thereof. When an administrative complaint is filed, a finding by an administrative law judge that a PACA licensee or an entity operating subject to license has engaged in repeated and flagrant violations of the PACA can result in the assessment of a civil penalty, or suspension or revocation of the PACA license and/or publication thereof. Ensuing licensing and employment restrictions are mandated by the PACA. Notice of disciplinary actions taken against a licensee or an entity subject to license is released to the public.

F. The following activities shall be considered violations of the Agreement:

1. Sales that are at net prices (after rebates, backbilling, discounts for quality and other claims) that are below the reference price.

2. Any act or practice which would have the effect of hiding the real price of the fresh tomatoes being sold (*e.g.,* a bundling arrangement, commingling tomato products, discounts/free goods financing package, swap, or other exchange).

3. Sales that are not in accordance with the terms and conditions applied by the Department when calculating prices for transactions involving adjustments due to changes in condition after shipment as detailed in Appendix D of this Agreement.

4. Selling signatory tomatoes to Canada in a manner that is not consistent with the requirements of Appendix E of this Agreement.

5. Selling signatory tomatoes for processing in the United States in a manner that is not consistent with the requirements of Appendix F of this Agreement.

6. Labeling boxes in a manner that is inconsistent with the labeling provisions of section IV.C.3.b. and c. above for the apparent purpose of circumventing this Agreement.

7. Repeated or routine over filling of boxes beyond reasonable variations in weights for the apparent purpose of circumventing this Agreement.

8. Any other act or practice that the Department finds is in violation of this Agreement.

VI. Other Provisions

A. In entering into this Agreement the signatories do not admit that any exports of fresh tomatoes from Mexico are having or have had an injurious effect on fresh tomato producers in the United States, have caused the suppression or undercutting of prices, or have been sold at less than fair value.

B. The signatories or the Department may withdraw from this Agreement upon ninety days written notice to the other party.

C. Upon request, the Department will advise any signatory of the Department's methodology for calculating its export price (or constructed export price) and normal value in accordance with the Act and the Department's regulations and procedures, including but not limited to, the calculation methodologies described in Appendix B of this Agreement.

VII. Disclosure and Comment

This section provides for disclosure and comment on consultations not involving a review under section 751 of the Act.

A. If the Department proposes to revise the reference price(s) as a result of consultations under this Agreement, not later than two months prior to the first day of each semi-annual period, the Department will disclose the results and the methodology of the Department's calculation of the preliminary reference price(s) established for that upcoming semi-annual period.

B. Not later than seven days after the date of disclosure under paragraph VII.A, the parties to the proceeding may submit written comments concerning the proposed reference price(s) to the Department, not to exceed fifteen pages. After reviewing these submissions, the Department will provide the final reference price(s) for the upcoming semi-annual period, normally within thirty days after the date of disclosure under paragraph VII.A.

C. The Department may make available to representatives of each interested party to the proceeding, under appropriately drawn administrative protective orders, any business proprietary information submitted to and/or collected by the Department pursuant to section IV of this Agreement, as well as the results of the Department's analysis of that information.

VIII. Duration of the Agreement

This Agreement has no scheduled termination date. Termination of the suspended investigation will be considered in accordance with the five-year review provisions of section 351.218 of the Department's regulations.

IX. Effective Date

The effective date of the Agreement is March 4, 2013.

Paul Piquado
Assistant Secretary for Import Administration U.S. Department of Commerce

March 4, 2013
Date

The following parties hereby certify that the members of their organization agree to abide by all terms of the Agreement:

H. Armando Borboa Lopez, President
(Name and Title of Certifying Official)

(Signature of Certifying Official)
For CAADES, Sinaloa, A.C.

Date
William Manuel Hedrick Villalobos, President
(Name and Title of Certifying Official)

(Signature of Certifying Official)
For Consejo Agricola de Baja California, A.C.

Date
Carlos Enrique Cueto Rodriguez, President
(Name and Title of Certifying Official)

(Signature of Certifying Official)
For Asociacion Mexicana de Horticultura Protegida, A.C.

Date
Gaspar Zaragoza Iberri, President
(Name and Title of Certifying Official)

(Signature of Certifying Official)
For Union Agricola Regional de Sonora, Productores de Hortalizas Frutas y Legumbres

[5] Although not a party to this Agreement, the actions of an unaffiliated buyer who is a PACA licensee or is operating subject to license that aid or abet a violation of the Agreement may constitute an unfair trade practice that violates the PACA.

Date

Basilio Gatzionis Torres, President
(Name and Title of Certifying Official)

(Signature of Certifying Official)
For Confederacion Nacional de Productores de Hortalizas

Date

Appendix A—Suspension Of Antidumping Investigation—Fresh Tomatoes From Mexico—Reference Price

Consistent with the requirements of section 734(c) of the Act, to eliminate completely the injurious effect of exports to the United States and to prevent the suppression or undercutting of price levels of domestic fresh tomatoes, the Department and the signatory producer/exporters of the subject merchandise hereby agree to adopt the reference prices calculated based on a similar methodology to that outlined in the November 1, 1996, agreement suspending the antidumping investigation involving fresh tomatoes from Mexico, as amended on August 14, 1998. See *Suspension of Antidumping Investigation; Fresh Tomatoes from Mexico,* 61 FR 56618, 56620 (November 1, 1996), October 28, 1996, Memorandum to Robert S. LaRussa titled ''The Prevention of Price Suppression or Undercutting of Price Levels in the Suspension Agreement Covering Fresh Tomatoes from Mexico,'' *Amendment to the Suspension Agreement on Fresh Tomatoes from Mexico,* 63 FR 43674 (August 14, 1998), and *Final Results of Analysis of Reference Prices and Clarifications and Corrections; Agreement Suspending the Antidumping Duty Investigation on Fresh Tomatoes from Mexico,* 68 FR 62281 (November 3, 2003). For purposes of this Agreement, the reference prices have been updated to reflect recent pricing data, as well as to include additional reference prices for fresh tomatoes grown in a controlled environment and specialty tomatoes. For purposes of this Agreement, controlled environment tomatoes are limited to those tomatoes grown in a fully-enclosed permanent aluminum or fixed steel structure clad in glass, impermeable plastic, or polycarbonate using automated irrigation and climate control, including heating and ventilation capabilities, in an artificial medium using hydroponic methods. For purposes of this Agreement, specialty tomatoes include grape, cherry, heirloom and cocktail tomatoes.

Accordingly, the reference prices are as follows:

July 1 through October 22	Open Field and Adapted Environment, other than specialty	0.2458
	Controlled Environment, other than specialty	0.3251
	Specialty—loose	0.3568
	Specialty—packed	0.4679
October 23 through June 30	Open Field and Adapted Environment, other than specialty	0.31
	Controlled Environment, other than specialty	0.41
	Specialty—loose	0.45
	Specialty—packed	0.59

These reference prices will remain in effect unless modified in accordance with the provisions of paragraph IV.F of the Agreement or as described below. The Department reserves the right to modify its methodology in establishing a reference price, if appropriate, and will do so in accordance with the provisions of paragraph IV.F of the Agreement.

The term ''reference price'' refers to the price F.O.B. from the Selling Agent. The reference price includes all palletizing and cooling charges incurred prior to shipment from the Selling Agent. The actual movement or handling expenses beyond the point of entry into the United States (*e.g.,* McAllen, Nogales, Otay Mesa) must be added to the reference price and must reflect the cost for an arm's-length transaction. The chart below contains examples of certain minimum common trucking charges based on average U.S. long haul trucking rates calculated by the USDA observed during January through September 2012.

F.O.B. Nogales to:	Los Angeles	New York	Chicago
Rate ($US)/Per Truckload	$1337	$5988	$4396

Parties should refer to ''Agricultural Refrigerated Truck Quarterly'', which can be found at *http://www.ams.usda.gov/fv/mncs/fvwires.htm* to obtain examples of common trucking charges for prior seasons and to Market News Truck Rate Report, *http://www.ams.usda.gov/mnreports/fvwtrk.pdf* to obtain common trucking charges pertinent to the current season. Where the Selling Agent sells through an affiliated party, the transfer price from the Selling Agent to the affiliate must be at or above the reference price and any subsequent sale to an unaffiliated party must include the actual cost of markups (*e.g.,* trucking charges) that reflect arm's-length costs. For guidance on the trucking-charge markup for such resales, parties should also refer to Market News Truck Rate Report, *http://www.ams.usda.gov/mnreports/fvwtrk.pdf.*

During the Department's verifications of parties handling signatory merchandise it will ascertain whether: (1) The handling expenses beyond the point of entry into the United States are added to the reference price and reflect the actual cost for an arm's-length transaction; and (2) the transfer price from the Selling Agents to their affiliates are at or above the applicable reference price and that any subsequent sale to an unaffiliated party includes the appropriate markups (*e.g.,* trucking charges) that reflect arm's-length expenses.

The reference price for each type of box shall be determined based on the average weights stated in the chart contained in Appendix C of the Agreement.

Appendix B—Suspension of Antidumping Investigation—Fresh Tomatoes From Mexico—Analysis of Prices at Less Than Fair Value

A. Normal Value

The cost or price information reported to the Department that will form the basis of the normal value (NV) calculations for purposes of the Agreement must be comprehensive in nature and based on a reliable accounting system (*e.g.,* a system based on well-established standards and can be tied either to the audited financial statements or to the tax return filed with the Mexican government).

1. Based on Sales Prices in the Comparison Market

When the Department bases normal value on sales prices, such prices will be the prices at which the foreign like product is first sold for consumption in the comparison market in the usual commercial quantities and in the ordinary course of trade. Also, to the extent practicable, the comparison shall be made at the same level of trade as the export price (EP) or constructed export price (CEP).

Calculation of NV:

Gross Unit Price
± Billing Adjustments
− Movement Expenses
− Discounts and Rebates
− Direct Selling Expenses
− Commissions
− Home Market Packing Expenses
= Normal Value (NV)

2. Constructed Value

When normal value is based on constructed value, the Department will compute constructed values (CVs) for each growing season, as appropriate, based on the

sum of each respondent's growing and harvesting costs for each type of tomato, plus amounts for selling, general and administrative expenses (SG&A), U.S. packing costs, and profit. The Department will collect this cost data for an entire growing season in order to determine the accurate per-unit CV of that growing season.

Calculation of CV:

+ Direct Materials
+ Direct Labor
+ Factory overhead
= Cost of Manufacturing
  + Home Market SG&A*
= Cost of Production
  + U.S. Packing
  + Profit*
= Constructed Value (CV)

* SG&A and profit are based on home-market sales of the foreign like product made in the ordinary course of trade. SG&A includes financing but not movement expenses.

B. Export Price and Constructed Export Price

EP and CEP refer to the two types of calculated prices for merchandise imported into the United States. Both EP and CEP are based on the price at which the subject merchandise is first sold to a person not affiliated with the foreign producer or exporter.

Calculation of EP:

Gross Unit Price
− Movement Expenses
− Discounts and Rebates
± Billing Adjustments
+ Packing Expenses
+ Rebated Import Duties
= Export Price (EP)

Calculation of CEP:

Gross Unit Price
  − Movement Expenses
  − Discounts and Rebates
  ± Billing Adjustments
  − Direct Selling Expenses
  − Indirect Selling Expenses that relate to commercial activity in the United States
  − The cost of any further manufacture or assembly incurred in the United States
  − CEP Profit
  + Rebated Import Duties
  − Commissions
= Constructed Export Price (CEP)

C. Fair Comparisons

To ensure that a fair comparison with EP or CEP is made, the Department will make adjustments to normal value. The Department will adjust for physical differences between the merchandise sold in the United States and the merchandise sold in the home market. For EP sales, the Department will add in U.S. direct selling expenses, U.S. commissions [1] and packing expenses. For CEP sales, the Department will subtract the amount of the CEP offset, if warranted, and add in U.S. packing expenses.

Appendix C—Suspension of Antidumping Investigation—Fresh Tomatoes From Mexico—Box Weights

The Department has the sole authority to make revisions to the Box Weight Charts used to apply the applicable reference price to particular box configurations. The reference prices for each pack style or box configuration shall be determined based on the average net weights stated in the Box Weight Charts below.

The Department intends to commence and complete a box weighing exercise within 12 months following the signature of this Agreement, and thereafter, at such times as considered appropriate by the Department.

All weighing exercises may occur at a U.S. Customs and Border Protection (CBP) port facility, at U.S. Selling Agent facilities, in bonded compounds, or at signatory packhouses, at the sole discretion of the Department. For weighing exercises conducted at a CBP port facility, the Department will coordinate with CBP in its collection and review of data for calculating and monitoring box-specific average weights for any winter or summer season, as appropriate.

The Department will provide 14 hours advance notice to the signatories (through their associations' counsel or directly to the signatories, in the event that they are not represented by counsel) of the commencement of any box weighing exercise. Subject to approval by the Department and CBP, as appropriate, the Department will undertake best efforts to ensure that at least two, but no more than four representatives of the signatories are permitted access to a port or other facility to observe the box weighing exercise. Observers will be chosen by the signatory associations. Any requests for additional observers from signatories not represented by association counsel will be considered by the Department. In the event that no otherwise qualified observers are permitted by CBP to enter a port facility, the Department will either delay the exercise until at least one qualified observer is present or, at its discretion, will conduct the box weighing exercise at an alternate location.[1]

To derive representative average net weights [2] for each box type in the charts below, and any configurations that may be added, the Department will weigh twenty sample boxes from ten shippers for high-volume pack types,[3] a minimum of two shippers for low-volume pack types, and five shippers for all other pack types. All shippers will be randomly chosen, without notice to the specific shippers.

Observers may raise bona fide challenges to the recording of the weight of a particular box at the time it is weighed and must specify the nature of the challenge.[4] The parties will endeavor to resolve any such challenges immediately at the time of the weighing. A box weight will not be recorded if a bona fide challenge is not resolved. No challenges to the weight of a box will be considered once its weight has been recorded.

If the Department determines to revise an average weight figure based upon information that an average weight on the chart is no longer accurate or to provide an average weight for a box configuration not currently on the chart, the Department will provide at least fifteen days notice to signatories (through their associations' counsel or directly to the signatories, in the event that they are not represented by counsel) prior to the effective date of such revised average weights for purposes of this Agreement. The Department will determine the revised average weight in accordance with the procedure described above.

In the event that a signatory intends to export subject merchandise to the United States in a box for which there is no average weight on the chart, the signatory shall notify the Department in writing no later than five business days prior to the date of the first exportation of such boxes to the United States. Signatories can obtain from the Department's Web site a copy of the suggested form for submitting this information. See ''Notification of Intent to Ship Tomatoes in a New Pack Type'' at *http://ia.ita.doc.gov/tomato/2013-agreement/documents/suggested_forms/*. This information must be submitted to the Department in accordance with the filing instructions set forth in the Department's regulations. The Department shall allow any interested party to submit written comments, not to exceed ten pages, on the appropriate average weight for the box within seven days after the filing of the written notification by the signatory, and the Department shall inform the signatory or its representative of the average weight for the box no later than thirty days after filing of the written notification by the signatory. A signatory's failure to notify the Department of intended shipments of tomatoes in boxes for which there is no average weight on the box weight chart may constitute a violation of the Agreement.

[1] If there are not commissions in both markets, then the Department will apply a commission offset.

[1] Assuming proper notice is provided and necessary government approval is granted, it is the signatories' responsibility to ensure that their representatives observe the box weighing exercise, or the right to observe is waived.

[2] Average net weights are calculated by deducting the tare weight from the average gross box weight. For each twenty-box sample, the tare weight will be calculated by weighing a minimum of two empty boxes. If the differences in the weights of the boxes exceed two-hundredths of a pound, additional boxes will be weighed to establish the tare. Irrespective of any deviation, the average weight of five boxes will be sufficient to establish the tare.

[3] The 25 pound box configuration is an example of a high-volume pack type.

[4] Examples of bona fide challenges may include the non-random selection of trucks, loads or boxes, or selection of wet, damaged, or compromised boxes or pallets.

Box-Weight Chart – Open Field and Adapted Environment, other than specialty
Suspension of Antidumping Investigation on Fresh Tomatoes from Mexico

					July 1-October 22	October 23-June 30
					$0.2458/lb	$0.31/lb
Box Type	Layers	Size	Avg. Kg. Weight	Avg. Lb. Weight*	Reference Price	Reference Price
Tomato	2L	3 x 4	10.47	23.08	5.67	7.15
Tomato	2L	4 x 4	10.78	23.77	5.84	7.37
Tomato	2L	4 x 5	10.81	23.83	5.86	7.39
Tomato	2L	5 x 5	10.43	22.99	5.65	7.13
Tomato	2L	5 x 6	9.71	21.41	5.26	6.64
Tomato	3L	6 x 6	13.33	29.39	7.22	9.11
Tomato	3L	6 x 7	12.92	28.48	7.00	8.83
Tomato	Bulk	25 lbs.**	12.15	26.79	6.59	8.30
Tomato	1L	Long Box	7.41	16.34	4.02	5.07
Tomato (Green)	Bulk	Small-20 lb.	8.16	17.99	4.42	5.58
Tomato Cluster	1L	11 lb. Flat	5.58	12.31	3.03	3.82

*Conversion factor from kg. to lb. based on 1 kg. = 2.20462 lbs.

**Also applicable to 4/7 bushel cartons.

Box-Weight Chart – Controlled environment, other than specialty
Suspension of Antidumping Investigation on Fresh Tomatoes from Mexico

					July 1-October 22	October 23-June 30
					$0.3251/lb	$0.41/lb
Box Type	Layers	Size	Avg. Kg. Weight	Avg. Lb. Weight*	Reference Price	Reference Price
Tomato	2L	3 x 4	10.47	23.08	7.50	9.46
Tomato	2L	4 x 4	10.78	23.77	7.73	9.75
Tomato	2L	4 x 5	10.81	23.83	7.75	9.77
Tomato	2L	5 x 5	10.43	22.99	7.47	9.43
Tomato	2L	5 x 6	9.71	21.41	6.96	8.78
Tomato	3L	6 x 6	13.33	29.39	9.56	12.05
Tomato	3L	6 x 7	12.92	28.48	9.26	11.68
Tomato	Bulk	25 lbs.**	12.15	26.79	8.71	10.98
Tomato	1L	Long Box	7.41	16.34	5.31	6.70
Tomato (Green)	Bulk	Small-20 lb.	8.16	17.99	5.85	7.38
Tomato Cluster	1L	11 lb. Flat	5.58	12.31	4.00	5.05

*Conversion factor from kg. to lb. based on 1 kg. = 2.20462 lbs.
**Also applicable to 4/7 bushel cartons.

Box-Weight Chart – Specialty, loose
Suspension of Antidumping Investigation on Fresh Tomatoes from Mexico

					July 1-October 22	October 23-June 30
					$0.3568/lb	$0.45/lb
Box Type*	Layers	Size	Avg. Kg. Weight	Avg. Lb. Weight**	Reference Price	Reference Price
Tomato (cherry)	Bulk	Bulk	8.13	17.92	6.39	8.06
Tomato	1L	Long Box	7.41	16.34	5.83	7.35
Tomato Grape	Bulk	20 lb.	9.42	20.77	7.41	9.35
Tomato (Heirloom)	1L	10 lb.	5.08	11.20	4.00	5.04

*Applicable regardless of production method (e.g., open field and adapted environment or controlled environment).
**Conversion factor from kg. to lb. based on 1 kg. = 2.20462 lbs.

Box-Weight Chart – Specialty, packed
Suspension of Antidumping Investigation on Fresh Tomatoes from Mexico

					July 1-October 22	October 23-June 30
					$0.4679/lb	$0.59/lb
Box Type*	Layers	Size	Avg. Kg. Weight	Avg. Lb. Weight**	Reference Price	Reference Price
Tomato (cherry)		12 baskets	6.32	13.93	6.52	8.22
Tomato Grape	Clam Shell	12 Baskets - 12 oz.	4.71	10.38	4.86	6.12
Tomato Grape	Clam Shell	12 – one pint clamshells	4.35	9.6	4.49	5.66

*Applicable regardless of production method (e.g., open field and adapted environment or controlled environment).
**Conversion factor from kg. to lb. based on 1 kg. = 2.20462 lbs.

Appendix D—Suspension of Antidumping Investigation—Fresh Tomatoes From Mexico—Procedures for Making Adjustments to the Sales Price Due to Certain Changes In Condition After Shipment

The purpose of this appendix is to explain the procedures for making adjustments to the sales price of signatory tomatoes due to certain changes in condition after shipment, such that the sales price for any tomatoes accepted in a lot [11] does not fall below the reference price. The procedures outlined in this appendix only apply if the adjustment reduces the net sales price below the reference price.

As explained in Appendix A of the Agreement, the term ''reference price'' refers to the price F.O.B. from the Selling Agent. The reference price includes all palletizing and cooling charges incurred prior to shipment from the Selling Agent. The actual movement or handling expenses beyond the point of entry into the United States (*e.g.,* McAllen, Nogales, Otay Mesa) must be added to the reference price and must reflect the cost for an arm's-length transaction.

Appendix G of the Agreement outlines specific actions that signatories should take to ensure that their efforts to abide by the Agreement are upheld in any claims taken to the U.S. Department of Agriculture under PACA.

To facilitate the verification of claims for changes in condition after shipment, the contract between the signatory and the Selling Agent must establish that all paper work be completed within 15 business days after the USDA inspection, and that claims be resolved within 15 business days after the USDA inspection, unless the claim is referred to PACA for mediation. Failure to complete this paperwork in a timely manner may constitute a violation of the Agreement. When filing quarterly certifications with the Department, signatories should report the number of lots on which claims for condition defects were granted, the total volume of tomatoes destroyed or donated, and the total value of claims granted. Signatories can obtain from the Department's Web site a copy of the suggested form for submitting the quarterly certification information. See ''Quarterly Certification'' at *http://ia.ita.doc.gov/tomato/2013-agreement/documents/suggested_forms/.*

A. Contractual Terms for Rejecting All or Part of a Lot

1. A USDA inspection certificate must be provided to support claims for rejection of all or part of a lot. Further, no adjustments will be made for failure to meet suitable shipping conditions unless supported by an unrestricted USDA inspection.

2. If the USDA inspection indicates that the lot has: 1) Over 8% soft/decay condition defects; 2) over 15% of any one condition defect; or 3) greater than 20% total condition defects, the receiver may reject the lot or may accept a portion of the lot and reject the quantity of tomatoes lost during the salvaging process. In those instances, price adjustments will be calculated as described below. For purposes of this Agreement, a condition defect is any defect listed in the chart in part A.5 below. When a lot of tomatoes has condition defects in excess of those outlined above as documented on a USDA inspection certificate, the documented percentage of the tomatoes with condition defects are considered DEFECTIVE tomatoes.

3. No adjustments will be made for failure to meet suitable shipping conditions if the USDA inspection certificate does not indicate one of the condition thresholds outlined above.

4. The USDA inspection must be called for no more than eight hours from the time of arrival at the destination specified by the receiver and be performed in a timely fashion thereafter. If there is more than one USDA inspection on a given lot, the inspection certificate corresponding to the first inspection is the one that will be used for making any adjustment to the sales price. However, if an appeal inspection is conducted which reverses the original inspection, it will supersede the first inspection, as long as the appeal inspection is requested within a reasonable amount of time not to exceed 12 hours from the first inspection.

The first receiver of the product, regardless of whether that receiver is acting as an agent or a broker for an unrelated purchaser or whether the receiver is the unrelated purchaser acting on its own right, must specify the city/metropolitan area of the destination of the product. The inspection will take place at the destination of delivery as specified prior to shipment.

[11] For these purposes, a lot is defined as a grouping of tomatoes in a particular shipment that is distinguishable by packing type.

No adjustments will be granted for a USDA inspection at a destination which is different from the destination specified by the first receiver of the product. In the event that the first receiver does not specify the city/metropolitan area of the destination of the product, the six-hour period within which an inspection may be requested will begin to run at such time as title to the product transfers to the unrelated purchaser, for example, upon loading of the product at the first handler's (importer's) warehouse in an F.O.B. transaction and upon delivery of the product to the first buyer's warehouse in a delivered sale.

A person or company shall be considered an agent or broker for an unrelated purchaser: (1) When that person or company falls within the description of types of broker operations set forth in 7 CFR 46.27; or (2) have provided a broker's memorandum of sale as set forth in 7 CFR 46.28(a). The following paragraphs apply if a broker or dealer is involved in the transaction.

A broker, unlike a dealer, does not take ownership or control of the tomatoes but arranges for delivery directly to the vendor or purchaser. Because a broker never takes ownership or control over the tomatoes, the customer and not the broker may request an inspection, and only the customer is entitled to any resulting adjustments. The inspection would take place at the customer's destination, as specified in the broker's contract with the Selling Agent.

When a dealer is involved in the sale, the destination of delivery stated in the contract is where the inspection is to take place. If the dealer does not specify the destination of delivery, the default destination of delivery is the warehouse of the Selling Agent. With respect to a lot of tomatoes that is owned or controlled by a dealer, it is the responsibility of the dealer to request an inspection of the tomatoes in his possession in a timely manner, if he deems it necessary. If the dealer does not request an inspection in a timely manner (*i.e.,* within eight hours from the time of arrival at the destination specified by the dealer) and resells the tomatoes to a third party, which does request an inspection, the dealer is then responsible for all costs and adjustments pertaining to the inspection and the condition or quality of the tomatoes.

5. Under this Agreement, adjustments to the sales price of signatory tomatoes will be permitted only for condition defects. The term ''condition defect'' is intended to have the same definition recognized by the Specialty Crops Inspection Division of the United States Department of Agriculture, with the exception of abnormal coloring, soil spot, blossom end discoloration, and surface discoloration (silvery-white and gold fleck), and, therefore, covers the following items:

1) Sunken Discolored Areas
2) Sunburn
3) Internal Discoloration
4) Freezing and Freezing Injury
5) Chilling Injury
6) Abnormally Soft and Watery Fruit
7) Cuts and Broken Skins (unhealed)
8) Soft/Decay
9) Bruises
10) Nailhead Spot
11) Skin Checks
12) Decayed/Moldy Stems
13) Waxy Blister
14) White Core
15) Shriveling
16) Discolored Seed Areas
17) Insect/Worm Injury (alive when present)

6. In calculating the transaction price for lots subject to an adjustment claim for condition defects, as defined above, the tomatoes classified as DEFECTIVE will be treated as rejected and as not having been sold.

B. Contractual Terms for Rejection of Partial Loads

If the lot contains condition defects greater than those outlined above and the receiver does not reject the entire lot of tomatoes, the Department will factor certain adjustments into the transaction price, provided that the following conditions apply:

1. The price invoiced to and paid by the receiver for the accepted tomatoes must not fall below the reference price.

2. The Selling Agent may reimburse the receiver for actual destruction costs associated with the DEFECTIVE tomatoes. If properly documented, these expenses will not be considered in the calculation of the price of the accepted tomatoes.

3. The Selling Agent may reimburse the receiver for the portion of freight expenses allocated to the DEFECTIVE tomatoes. If properly documented, these expenses will not be considered in the calculation of the price of the accepted tomatoes.

4. If the Selling Agent follows the guidelines outlined below, it may reimburse the receiver for repacking charges directly associated with salvaging and reconditioning the lot. If properly documented, these expenses will not be considered in the calculation of the price of the accepted tomatoes.

a. If the salvaging and reconditioning activity is performed by a party unaffiliated with the Selling Agent's customer the fee charged for the service may be reimbursed if the Selling Agent's customer can provide evidence for such costs (*i.e.,* specifically, proof-of-payment documentation for the invoice from the repacker).

b. If the salvaging and reconditioning activity is performed by the Selling Agent's customer or a party affiliated with the Selling Agent, the direct labor costs or, in lieu thereof, one-half of the ordinary and customary repacking charges may be reimbursed. To substantiate such costs the Selling Agent's customer or party affiliated with the Selling Agent must provide detailed records of the labor cost incurred for repacking or, where applicable, evidence of the ordinary and customary repacking costs.

5. The Selling Agent may reimburse the receiver for the inspection fees listed on the USDA inspection certificate. If properly documented, these expenses will not be considered in the calculation of the price of the accepted tomatoes.

6. Any reimbursements from, by, or on behalf of the Selling Agent that are not specifically mentioned in items B.2, B.3, B.4, or B.5 above, or that are not properly documented, will be factored into the calculation of the price for the accepted tomatoes.

7. The receiver may not resell the DEFECTIVE tomatoes. The receiver may choose to have the DEFECTIVE tomatoes destroyed, donated to non-profit food banks, or returned to the Selling Agent. The DEFECTIVE tomatoes may not be sold.[2]

8. In addition, for each transaction involving adjustments due to changes in condition after shipment the Selling Agent must obtain/maintain the following documents/information:

—Shipper name.
—Shipping manifest.
—Details of the shipper invoice, including invoice number, date, brand, tomato type, quantity (boxes), and value.
—Documentation supporting the freight expenses incurred for the original shipment.
—USDA inspection certificate.
—Detailed listing of the expenses incurred in salvaging the non-DEFECTIVE tomatoes and documentation supporting the expenses.
—Description of the destruction or donation process and documentation from the landfill or food bank.
—Proof-of-payment documentation for any destruction costs.
—A statement that ''No monies or other compensation was received for the destroyed or donated tomatoes.''
—Signature of a responsible official at the receiver.

C. Contractual Terms for Rejection of Full Loads

In cases where the receiver has rejected the full lot of tomatoes based on condition defects, the Selling Agent may choose to have the entire lot destroyed, donated to non-profit food banks, or returned. If the entire lot is destroyed or donated, the Selling Agent will require the receiver to provide the documentation noted above for partial-lot rejections. Further, the Selling Agent may reimburse the receiver for ordinary and customary expenses that the receiver incurred with respect to the lot, including those expenses associated with the destruction or donation process, as long as the Selling Agent obtains the support documentation specified above under B.8. The Department will treat such transactions as ''non-sales'' provided that adequate support documentation is available.

Alternatively, the Selling Agent may sell the entire rejected lot to another receiver. In that case, the price paid must be not less than the reference price plus all costs incurred (*e.g.,* transportation, commissions, etc.) from the F.O.B. port of entry to the final receiver. If the final receiver finds that the lot contains condition defects greater than those outlined above, it shall follow the directions stated above with respect to rejection of partial loads.

[2] Tomatoes for processing must be handled in accordance with the guidelines set forth in Appendix F of the Agreement.

D. Contractual Terms for Partial vs. Unrestricted Lot Inspections

As explained in part A.1 above, the Department will only allow adjustments to the transaction price for condition defects if the USDA inspection is unrestricted. During the time between the call for inspection and the arrival of the USDA inspector, the receiver might sell part of the lot and, therefore, by the time the USDA inspector arrives, that part is not available for inspection. If the USDA inspector is allowed full access to the partial lot, the Department will consider this an unrestricted partial-lot inspection. Alternatively, if the USDA inspector is not allowed full access to the partial lot, the Department will deem it a restricted inspection. No adjustments will be made for failure to meet suitable shipping conditions if the USDA inspection is restricted. For purposes of this Agreement, when calculating an adjustment for failure to meet suitable shipping conditions where an unrestricted partial-lot inspection has taken place, only the portion of the lot inspected is eligible for adjustment. The portion of the lot that the receiver sold prior to the inspection will not be eligible for an adjustment based on the USDA inspection.

For example, before the USDA inspector arrives, the receiver sells 140 boxes of 5x5s from a lot identified as 160 5x5s on the invoice. When the USDA inspector arrives, the receiver requesting the inspection provides full access to the partial lot within its possession. The inspector finds that the partial lot of 20 5x5s has soft/decay condition defects of 25 percent and notes this on this inspection certificate. Under the Agreement, only the 20 5x5s are eligible for an adjustment for failure to meet suitable shipping conditions, and the 140 5x5s that the receiver already sold will not be eligible for an adjustment based on the USDA inspection.

Appendix E—Suspension of Antidumping Investigation—Fresh Tomatoes From Mexico—Contractual Arrangement for Documenting Sales of Signatory Merchandise to Canada

Based on our experience in this proceeding, it is common practice for the signatory's Selling Agent to enter the merchandise into the United States for consumption and then re-export it to Canada. The purpose of this appendix is to: (1) Outline the process that each signatory to this Agreement must follow to ensure that the Selling Agent properly documents sales to Canada as such and (2) ensure that the signatory notifies the Canadian customer that any resales of its merchandise from Canada into the United States must be in accordance with the terms of this Agreement.

To document sales of Mexican tomatoes to Canada properly, this Agreement requires that such transactions be made pursuant to a contractual arrangement where each signatory requires that the Selling Agent that facilitates the sale to Canada maintain the following information in its files:

1. Signatory name and identification number;

2. Shipping manifest;

3. An invoice identifying sale date, brand, tomato type, quantity (boxes), and value; and

4. Entry documentation from Canadian Customs (*i.e.,* Landing Form (Form B3) or the Canada Customs Coding Form).

If a signatory to the Agreement or its Selling Agent does not document a sale to Canada in accordance with the procedures outlined above, the Department will consider the transaction a U.S. sale. Failure to properly document a sale to Canada may constitute a violation of the Agreement.

We also require signatories to ensure that the Canadian customer is notified that any resale of the signatory merchandise from Canada into the United States must be in accordance with the terms of the Agreement and that any movement or handling expenses beyond the point of export from Mexico must be added to the reference price and must reflect the actual cost for an arm's-length transaction. Signatories can obtain from the Department's Web site a copy of the suggested form for providing such notification. See ''Form for Notifying Canadian Customer That Resales of Signatory Merchandise Into the United States Are Covered by the Terms of the 2013 Suspension Agreement'' at *http://ia.ita.doc.gov/tomato/2013-agreement/documents/suggested_forms/*. Further, through contractual arrangement each signatory must require that the Selling Agent maintain evidence in its files to document that the Canadian customer was notified that any resales of the signatory merchandise from Canada into the United States must be in accordance with the terms of the Agreement.

Appendix F—Suspension of Antidumping Investigation—Fresh Tomatoes From Mexico—Procedure Signatories Must Follow for Selling Subject Merchandise for Processing

Sales to the United States of signatory tomatoes for processing must be:

1. Sold directly to a processor (in other words, the first purchaser in the United States of tomatoes for processing must be an actual processor);

2. Accompanied by an ''Importer's Exempt Commodity Form''—Form FV–6, within the meaning of 7 CFR 980.501(a)(2) and 980.212(I), should be used for all tomatoes for processing that are covered by the Federal Marketing Order 966 (Marketing Order); tomatoes for processing that are not covered by the Marketing Order (*e.g.,* romas, grape tomatoes, greenhouse tomatoes and any tomatoes that are entered during the part of the year that the Marketing Order is not in effect) must be accompanied by the ''2013 Suspension Agreement—Tomatoes for Processing Exemption Form''. The exempt commodity form must be maintained by the importer and presented to U.S. Customs and Border Protection upon request and both the Selling Agent and the processor must maintain a copy of the form.

3. Shipped in a packing form that is not typical of tomatoes for the fresh market (*e.g.,* bulk containers in excess of 50 lbs)—examples of typical fresh-market packing forms are identified in the Box-Weight Chart in Appendix C of the Agreement; and

4. Clearly labeled on the packaging as ''Tomatoes for Processing''.

Signatories can obtain from the Department's Web site an example of the ''2013 Suspension Agreement—Tomatoes for Processing Exemption Form''. See *http://ia.ita.doc.gov/tomato/2013-agreement/documents/suggested_forms/*. If a party in the United States facilitates the transaction, through contractual arrangement each signatory must require that the party follow the procedures outlined above. Failure to properly document sales to processors may constitute a violation of the Agreement.

Sales of signatory merchandise to a processor after importation into the United States are a violation of the Agreement.

Appendix G—Suspension of Antidumping Investigation—Fresh Tomatoes From Mexico—Specific Actions That Signatories Should Take To Ensure That Their Efforts To Abide by the Agreement Are Upheld in Any Claims Taken to the U.S. Department of Agriculture Under the Perishable Agricultural Commodities Act

This appendix provides guidance on the specific actions signatories can take to ensure that their efforts to abide by the Agreement are upheld in any claims taken to the Department of Agriculture under PACA.

Payment disputes arising under the Agreement are actionable and/or able to be resolved under the PACA dispute resolution procedure. PACA will uphold actions taken by a signatory or a signatory's representative (collectively ''signatory'') to comply with the Agreement to the extent that the sales contract for the transaction at issue establishes that the sale is subject to the terms of the Agreement.

In other words, if, prior to making the sale, the signatory, or the Selling Agent acting on behalf of the signatory through a contractual arrangement, informs the customer that the sale is subject to the terms of the Agreement and identifies those terms, PACA will recognize the identified terms of the Agreement as integral to the sales contract. In particular, signatories should inform their customers that their contractual agreement to allow defect claim adjustments is limited in accordance with the Agreement, including:

* Claims for adjustments must be supported by an unrestricted USDA inspection called for no more than eight hours from the time of arrival at the receiver and performed in a timely fashion thereafter.

* The USDA inspection must find that the condition defects exceed the thresholds outlined in Appendix D above.

* Any price adjustments will be limited to the actual percentage of condition defects as documented by a USDA inspection certificate.

* The price adjustments will be limited to actual destruction costs, the allocated freight expense, and salvaging and reconditioning expenses calculated in accordance with Appendix D above.

* The customer may not resell any DEFECTIVE tomatoes. Instead, they must be destroyed, returned or donated to a non-profit food bank. Signatories should provide

a copy of the Agreement to any customer which may be unfamiliar with its terms or which has questions about those terms.

The process by which a signatory could provide evidence to PACA that its sales contracts were made subject to the terms of the Agreement including, in particular, those terms listed above is outlined below.

* The signatory should maintain written documentation demonstrating that it had informed its customers and the customers accepted that the sales were subject to the terms of the Agreement prior to issuing the invoice. A signed contract to that effect would be the best evidence of that fact; however, a purchase by the customer after being informed of the relevance of the Agreement is evidence of acceptance.

* The signatory should send letters to its customers via registered mail, return receipt requested, overnight mail, or email with a confirmation received from the recipient, informing the customers that, as a signatory to the Agreement, all of the signatory's sales are subject to the terms of the Agreement and that, by purchasing from them, the buyer agrees to those terms. The letter should also indicate that the signatory's sales personnel do not have authority to alter the terms of the Agreement.

* In addition, the signatory should include a statement on its order confirmation sheets that its contract with the buyer is subject to the terms of the Agreement as detailed in the signatory's ''pre-season'' letter and maintain a copy of the order confirmations and fax receipts demonstrating that they were sent to the customer prior to making the sale. If the sale is to a first-time purchaser that did not receive a ''pre-season'' letter, a letter should be supplied to the buyer prior to making a sale.

PACA does not require any one particular form of written documentation but USDA officials have confirmed that, if signatories maintain written evidence demonstrating that their customers were informed that their sales were made subject to the terms of the Agreement prior to sale, PACA will recognize those terms as part of the sales contract.

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DEPARTMENT OF COMMERCE

International Trade Administration

Trade Mission to Egypt and Kuwait

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Replacement Notice.

SUMMARY: The United States Department of Commerce, International Trade Administration, U.S. and Foreign Commercial Service is replacing the Notice regarding the Trade Mission to Egypt April 14–16, 2013, published at 78 FR 7752, February 4, 2013. The effect of this notice is to expand the mission eligibility to companies in all sectors and/or industries. All companies that have applied to this mission to date, and all companies that apply by March 14, 2013 will be considered.

SUPPLEMENTARY INFORMATION: In June 2012 the Department of Commerce initiated recruitment for participation in the U.S. Trade Mission to Egypt and Kuwait March 10–14, 2013, published at 77 FR 33439, June 6, 2012. In 77 FR 71777, December 4, 2012, the Department of Commerce announced that the application deadline for the mission was extended until January 18, 2013. Since then, due to unforeseen circumstances, the Kuwait portion of the mission has been cancelled, and Trade Mission to Egypt will be April 14 to 16 and the application deadline March 14. Interested firms that have not already submitted an application are encouraged to apply. Applications will be accepted after the deadline only to the extent that space remains and scheduling constraints permit.

Replacement

The Trade Mission to Egypt and Kuwait is replaced to read as follows:

Mission Description

The U.S. Department of Commerce, International Trade Administration, U.S. and Foreign Commercial Service is organizing a Trade Mission to Cairo, Egypt to explore opportunities in all industries.

Led by a senior executive of the Department of Commerce or other U.S. Government agency, the trade mission will include one-on-one business appointments with pre-screened potential buyers, agents, distributors and joint venture partners; meetings with national and regional government officials, chambers of commerce, and business groups; and networking receptions for companies and trade associations representing companies interested in expansion into the North African and Middle Eastern markets. Meetings will be offered with government authorities that can address questions about policies, tariff rates, incentives, grid interconnection, regulation, etc.

The mission will help participating firms and trade associations gain market insights, make industry contacts, solidify business strategies, and advance specific projects, with the goal of increasing U.S. exports to Egypt. Participating in an official U.S. industry delegation, rather than traveling to Egypt on their own, will enhance the companies' ability to secure meetings in Egypt.

Commercial Setting

Egypt is strategically located at the gateway of trade for Africa and the Middle East. It is a prime location for the transit of goods, as well as a key destination for American companies seeking to do business in the region.

Egypt has experienced profound political changes over the past year. On February 11, 2011, President Hosni Mubarak's 30-year rule came to an end. In January 2012, Egypt seated its first freely and fairly elected parliament, and has held a Presidential election. In the meantime, the United States remains committed to a strong partnership with Egypt.

As the largest Arab country with a population of 90 million, Egypt is the fourth largest export market for U.S. products and services in the Middle East. The United States is Egypt's largest bilateral trading partner, and the second largest investor. In 2011, bilateral trade reached $8.2 billion. The gross domestic product (GDP) grew over five percent from 2009 to 2010. According to Business Monitor International's forecasts, Egypt's real GDP is expanding 2.1% in FY2011/12 and projected to grow 4.9% in FY2012/13 (Egypt's fiscal year is July through June). Egyptian law requires that foreign companies retain Egyptian commercial agents for public tenders, but they may work directly with private companies. Most foreign companies have found it beneficial, however, to engage a local agent for private sector transactions as well because of their familiarity of the language, law and general business practices. Based on geographical location or product basis, a firm can appoint multiple agents in Egypt to further enhance its success.

Mission Goals

The goal of the trade mission is to provide U.S. participants with first-hand market information, access to government decision makers as appropriate and one-on-one meetings with business contacts, including potential agents, distributors and partners, so they can position themselves to enter or expand their presence in the Egypt.

Mission Scenario

Cairo is the capital of Egypt and the largest city in Africa. The business week runs from Sunday through Thursday.