

March 13, 2024

Case No: A-201-820  
Total ~~of~~ Pages:34  
2019 Suspension Agreement

**PUBLIC VERSION**  
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Business Proprietary Information contained  
on page 7 and in Exhibit 7.

**FILED ELECTRONICALLY (VIA ACCESS)**

The Honorable Gina M. Raimondo  
Secretary of Commerce  
U.S. Department of Commerce  
Attn: Enforcement and Compliance  
APO/Dockets Unit, Room 18022  
14th Street and Constitution Avenue, NW  
Washington, DC 20230

Re: Fresh Tomatoes from Mexico: FPAA Rebuttal Comments to  
FTE's Feb. 29, 2024 Comments

Dear Secretary Raimondo:

On behalf of the Fresh Produce Association of the Americas (“FPAA”) – Tomato Division, we hereby submit rebuttal comments to the February 29, 2024 letter of the Florida Tomato Exchange (“FTE”) that purports to provide an “update” on allegedly “deteriorating market conditions.” FTE’s comments literally are incredible because their assertions are utterly void of any credibility. FTE’s claims that Mexican tomato imports are allegedly suppressing U.S. grower’s prices are so far removed from reality and blatantly ignore the relevant supply and demand conditions that are actually affecting prices in the U.S. tomato market. We support and incorporate by reference the comments of other interested parties rebutting FTE’s comments.<sup>1</sup> FPAA highlights the following clarifying points to provide additional context for why FTE’s

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<sup>1</sup> See, NatureSweet’s March 7, 2024 Comments; Mexican Signatories’ March 8, 2024 Comments; Mastronardi’s March 12, 2024 Comments.



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comments are inaccurate and misleading and why their accusation that Mexican tomatoes are suppressing US growers' prices is flat out wrong.

First, FPAA notes that FTE's submission cites USDA data only on roma tomatoes, but not any other types of tomatoes – round, specialty (cherry, grape), stem-on tomatoes, tomatoes on the vine – that are all specifically covered by the Suspension Agreement. The complete absence of any discussion of the price conditions for round tomatoes is particularly notable because FTE members have traditionally relied overwhelmingly on producing open-field round tomatoes that were sold predominantly to foodservice customers. Presumably FTE did not mention any round tomato (or any other tomato type) pricing data because there was nothing to suggest that Mexican imports were causing any adverse price effects. As noted in the Mexican Signatories' March 12, 2024 Comments, the USDA AMS shipping point pricing data shows prices for Florida-grown round tomatoes (and for grape tomatoes) have been near record highs throughout the winter season.<sup>2</sup>

FTE's comments focus entirely on recent pricing trends of roma tomatoes as if they were representative of the entire U.S. tomato market. They are not. Roma tomatoes, like other certain types of tomatoes such as stem-on and tomatoes on the vine, are not grown in significant quantities by U.S. growers and have long been supplied mainly from Mexico. U.S. growers only recently have entered the roma tomato market, but still are a very small minority presence. Currently about 85% of all roma tomatoes are shipped from Mexico.<sup>3</sup>

The historical context by which the U.S. market for roma tomatoes was started and developed by suppliers of Mexican tomatoes is relevant to how much significance (if any) should be placed on the USDA roma tomato pricing data presented by FTE. Roma tomatoes were long grown and sold in the Mexican market for decades. Only beginning in 1990 when the U.S. growers experienced wide-spread freezes causing supply short-falls, roma tomatoes from Mexico were first introduced into the U.S. market as an emergency supply gap filler. From that initial

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<sup>2</sup> Mexican Signatories' March 8, 2024 Comments at 4-5, Attachments 4-7.

<sup>3</sup> See Exhibit 1 – AMS data on roma tomato shipments.



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introduction into the U.S. market, roma tomatoes have made steady gains in the U.S. tomato market, but predominantly supplied from Mexico. The only reason the U.S. growers have just recently started to grow roma tomatoes is because the market demand for roma tomatoes has become so strong that U.S. growers could no longer ignore that market segment.

Within the past ten years, there has been a noticeable shift in U.S. consumer preference for roma tomatoes over open field gassed green round tomatoes. Foodservice customers in particular noted that they get higher usage yield with roma tomatoes because they can get 20-30 percent more slices out of a carton of roma tomatoes compared to mature green round tomatoes. Moreover, because roma tomatoes are generally grown using protected agriculture (shade houses, greenhouses) throughout Mexico, certain large foodservice customers have come to see roma tomatoes as having a clear advantage in terms of consistency and reliability of supply over open-field grown tomatoes that have to deal with a high degree of risk of severe weather variability. Within the past year, Subway switched to using exclusively roma tomatoes when they used to be a significant purchaser of mature green round tomatoes.

After long ignoring the shift that U.S. consumers in both retail and foodservice segments were increasingly preferring roma tomatoes over the gassed green round tomatoes, the U.S. growers only recently have tried to get into this expanded roma tomato market because of the exceptional demand and new and improved varieties that have been developed. But because U.S. tomato growers still primarily rely on open field production, the U.S. growers continue to remain susceptible to extreme weather events that create unpredictable and unreliable supply. U.S. production of open-field roma tomatoes has resulted in far less production yields than those of more established Mexican roma tomato growers who had a head start of decades in developing protected agriculture to efficiently grow high quality roma tomatoes with high yields. U.S. growers thus were not only slow and late to recognize the need to catch up to the increasing U.S. consumer demand for roma tomatoes, their efforts to gain traction in the roma tomato market created by Mexican tomato suppliers also are critically handicapped by their reliance on open field production methods.



Any analysis of the roma tomato prices cited by FTE thus should consider all of these factors of how the roma tomato market developed and now works instead of FTE's oversimplistic assertion that somehow a flood of Mexican roma tomatoes are to blame for the alleged price depression of U.S. roma prices. The historical context of how and why roma tomatoes became a significant market segment shows that any comparison of U.S. and Mexican roma tomato prices has little probative value. Once again FTE is trying to blame Mexican imports for certain natural changes in market supply and demand conditions that FTE was slow and unwilling or unable to react to.

Notably, many FTE members are trying to gain increased access to the roma market not by trying to adopt protected agriculture methods and grow them in Florida or elsewhere in the United States but rather by buying out other companies that produce, pack and distribute roma tomatoes. As noted in FPAA's September 22, 2023 comments on FTE's request to terminate the TSA, many of FTE's members have invested heavily to acquire Mexican tomato growing operations and U.S. companies that purchase and repack and distribute Mexican tomatoes and developing relationships to expand their already significant import volumes of Mexican tomatoes. For example, Lipman recently acquired a Mexican greenhouse, and it is believed that production at this new acquisition will focus on roma tomatoes for foodservice market segment.<sup>4</sup> FTE members proudly promote their investments in and ability to produce and distribute Mexican tomatoes to show that they can meet customer demands year-round from a wide range of supply sources.<sup>5</sup>

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<sup>4</sup> Exhibit 2 – “Lipman Family Farms Buys 75-Acre Greenhouse in Mexico, Produce Blue Book, July 26, 2022. (<https://www.producebluebook.com/2022/07/26/lipman-family-farms-buys-75-acre-greenhouse-in-mexico/> ). “With the goal of being North America’s largest integrated network of growers, value-added partners, and solution providers in fresh produce, Lipman Family Farms continues to solidify scope through strategic growth.”; “Lipman Family Farms Buys Mexican Greenhouse Facility, The Packer, July 26, 2022. (“The greenhouse is the newest addition to company operations. Lipman now partners with more than 50 local field and greenhouse growers across North America, in addition to the company’s Lipman-owned land in the U.S., Canada, and Mexico.”) (<https://www.thepacker.com/news/industry/lipman-family-farms-buys-mexican-greenhouse-facility>).

<sup>5</sup> See, e.g., Exhibit 3 ( <https://www.lipmanfamilyfarms.com/news/hermosillo/>); Exhibit 4 (Pacific Tomato Growers dba Sunripe Certified Brands - <https://sunripecertified.com/about/>) (“We grow in Mexico too!”).



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The many corporate acquisitions of certain FTE members of other smaller tomato growers, packers and distributors both in the U.S. and Mexico also highlights the hypocrisy of FTE's complaints that Mexican tomatoes are to blame for all of their alleged woes. The ability of FTE companies to buy out and take over other companies is typically a sign of financial strength not weakness. Lipman and other FTE members over the past ten years have proudly proclaimed their acquisitions and expansion of their North American (Mexico, U.S. and Canada) tomato market footprint,<sup>6</sup> all while complaining to the Department that they are vulnerable to the alleged harms caused by Mexican tomato imports. Although they may have started primarily as growers and/or packers, some of the FTE members have significantly diversified and expanded their portfolio of operations throughout the entire tomato supply chain with their corporate acquisitions and partnerships. By buying out and taking over multiple packing and repacking facilities, marketers, resellers, distributors, and wholesalers, these FTE members have significantly increased their access and consolidated control over key points of the tomato supply chain. These FTE members wield significant market power throughout the U.S. tomato supply chain and yet continue to portray themselves to the Department as vulnerable growers to the alleged harm caused by Mexican tomato imports.

The FTE members increasing presence in Mexico through direct affiliates or partner companies is particularly ironic as some FTE companies now are marketing significantly more Mexican tomatoes than Florida-grown tomatoes. Although FTE members with a Mexican presence are clearly benefitting from their ability to sell Mexican tomatoes as a result of the market stability provided by the Suspension Agreement, FTE through their lawyers nonetheless continue to complain that the Suspension Agreement must be terminated because it somehow is not working even though they are profiting from their own significant tomato imports from Mexico.

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<sup>6</sup> See, e.g., Exhibit 5 – “Lipman Family Farms Acquires Northeast Produce,” Hayley Hyer, Supermarket Perimeter, March 7, 2024. “Lipman Family Farms has made its 12th acquisition in the last 20 years with its purchase of Northeast Produce.”



Another indication that FTE members are doing much better than how they portray themselves to the Department is the USDA's recent proposed rule that would raise the assessment rate for Florida-grown tomatoes from 2.5 cents to 3.5 cents per 25-pound container.<sup>7</sup> The Florida Tomato Committee, which consists primarily of FTE members, recommended the increased assessment rate in order to allow the Committee to replenish and maintain its financial reserves and to fund expenditures on tomato-related research, education and promotions. This recommendation for increased tomato assessment reflects a determination by FTE members that they can afford to pay more assessments that would help fund Committee expenditures for work that would generate more revenue for their members.

Having provided context for how the U.S. market for roma tomatoes developed historically and how U.S. growers have been unable or unwilling to invest in protected agriculture to grow romas domestically, and instead have chosen to expand their footprint by strategically buying out and taking over multiple companies throughout the tomato supply chain, we now explain why the USDA roma pricing data cited by FTE does not actually show that Mexican tomatoes are suppressing U.S. tomato prices. Fundamentally, FTE once again is cherry picking certain data points without discussing the context of any other relevant factors that explain those data points far more reasonably than FTE's flawed and incomplete interpretation.

FTE cites to increased shipment volumes from Mexico and decreasing U.S. prices for roma tomatoes at the end of January and early February 2024. FTE Comments at 2, Exhibit 1 – USDA AMS Crossings Data for 25-Pound Roma Cartons. However, FTE's comments fail to acknowledge that their own data shows U.S. prices for roma tomatoes immediately before this period were at all-time record high levels for most of December and into January.

FTE's comments ignore that these record high prices are reflected in market conditions cited in the "act of god" letters that several FTE members sent to their customers in which they invoked contract provisions that allowed them to be released from negotiated prices if

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<sup>7</sup> See Exhibit 6 – "USDA Publishes Proposal to Raise Assessments on Florida Tomatoes," *The Packer*, March 7, 2024. "Tomatoes Grown in Florida; Increased Assessment Rate", Agricultural Marketing Service, USDA, 89 Fed. Reg. 16471 (March 7, 2024).



unforeseen weather events impact market price conditions.<sup>8</sup> In its letter dated [

its letter [

] <sup>9</sup> In

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By invoking their “act of god” contract provisions, FTE members were acknowledging that unforeseen weather events had so significantly affected supply conditions that it was necessary increase their tomato prices far more than what would normally be permitted under their contract terms. These “act of god” letters are also significant because the FTE members acknowledge that they have their own Mexican tomato growing operations that are critical to supplying their U.S. customers. Although FTE complains bitterly to the Department about the alleged harm caused by Mexican tomatoes, FTE proudly tell their U.S. customers that they have significant Mexican tomato operations. These letters highlight how FTE members import significant volumes of Mexican tomatoes to meet their own customers’ supply demands rather than relying just on their Florida grown tomatoes.

Due to these supply shortage conditions, U.S. tomato market prices increased significantly. FTE completely ignores this critical and unusual market supply condition that provides directly relevant context for why tomato prices eventually declined as they did. All suppliers took advantage of these market conditions and tried to sell at high prices for as long as possible. This is evidenced by the extended period from early December 2023 into beginning of January 2024 where roma tomato prices were at or near all-time highs. But prices inevitably had to fall and return to more normal levels as those weather events passed, and production resumed to fill the supply gap caused by those weather disruptions.

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<sup>8</sup> See Exhibit 7 ([Lipman “Act of God” letter; Sunripe “Act of God” letter]).

<sup>9</sup> Id. ([ citing cold weather in Mexico and rainy weather in Florida]).



Prices fell as sharply as they did in the period cited by FTE because the perishable nature of tomatoes causes significant and rapid market prices changes that happen not just on a weekly or daily basis, but even hourly. The fundamental principles of supply and demand still apply to tomato pricing albeit on a faster scale because the perishability of tomatoes necessarily causes a short and finite market life. Once enough tomato supply eventually returned to the market, the market pricing changed direction very quickly and the sharp decline in the daily price reflects the market's reaction to the normalization of production and supply. However, even after this sudden and sharp price decline, the USDA data shows roma market prices and shipment volumes by the end of February already returning to historical normal levels.

It is ironic that FTE is requesting that the Suspension Agreement be terminated and that an antidumping order be imposed, as the sharp price declines cited by FTE would actually be far more extreme under an antidumping order. FTE still has not even tried to explain how an antidumping order would be any better than the Suspension Agreement in preventing the price suppression that is allegedly occurring. Given how antidumping duties and the U.S. tomato market works, FPAA is concerned that FTE is asking for the termination of the Suspension Agreement without acknowledging the likelihood that the U.S. tomato market may be far worse off under an antidumping order than under the current Suspension Agreement.

The Reference Price under the Suspension Agreement provides a floor price below which Mexican suppliers cannot sell. Under an antidumping order, although an extra 20.91% antidumping duty deposit may need to be paid, there is no hard floor price to limit how low the tomato market price can fall. The USDA roma tomato pricing data in the period cited by FTE highlights the volatility of how the tomato market prices react to extreme changes in supply and demand conditions. Given the perishable nature of tomatoes, when abnormal supply conditions occur (such as those that triggered the Act of God letters along with the recovery from that extreme supply shortage), sellers of Mexican tomatoes still will have to sell whatever supply they have available at whatever the market price is when the tomatoes become ready to be sold, regardless of any additional AD duties.





Although FTE complains that the Suspension Agreement did not prevent the cited price declines, antidumping duties similarly may not be able to prevent even sharper price decreases. Without a floor Reference Price that moderates downward price trends driven by rapidly fluctuating spot market transactions, there will be even greater volatility in the U.S. tomato market affecting all tomatoes, both domestic and imported. FTE members and all other U.S. tomato growers may well be far worse off than under the more stable market conditions regulated by the Reference Price. FTE fails to recognize that the small sliver of USDA roma tomato pricing data cited by FTE actually further demonstrates why the Suspension Agreement is a better mechanism than antidumping duties.

In sum, FTE's latest submission does not actually show that Mexican tomatoes are suppressing U.S. market prices. FTE has highlighted a very small sample of data on roma tomatoes without fully addressing other relevant market conditions that provide context for the data presented. FTE focuses only on the price declines resulting from increased shipment volumes of Mexican roma tomatoes but fails to acknowledge that this was a market correction following the basic laws of supply and demand with prices normalizing after supply eventually returned to the market after weather events triggered Act of God letters that had raised prices to record levels due to supply shortages.

FTE's allegations of price suppression in roma tomatoes also fails to acknowledge the context of how the roma tomato market was created and developed by Mexican suppliers and how U.S. growers are not just slow in coming into this market, but also handicapped by their open-field growing methods so that they simply will not be able to meet the volume requirements of certain food service customers. FTE once again hypocritically blames Mexican tomatoes for all their alleged woes and yet FTE members are profiting from their own imports of Mexican tomatoes. Certain FTE members are also hyperaggressively acquiring companies in the U.S. and Mexico to expand their ability to grow, pack and distribute Mexican tomatoes and have significant control over key segments of the tomato supply chain.

We urge the Department to recognize that FTE's comments once again tell an incomplete and inaccurate story of what is happening in the U.S. tomato market. An analysis of other



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relevant market supply and demand conditions will show that the Suspension Agreement is working and preventing price suppression or undercutting and substantially eliminating dumping.

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Pursuant to 19 C.F.R. § 351.105(c)(4), (6) and (11), FPAA requests proprietary treatment of the bracketed business proprietary information (“BPI”) contained in the Attachments. Releasing the information for which FPAA requests proprietary treatment would cause substantial harm to its competitive position. As a result, the information may not be disclosed to the public. FPAA consents, however, to the release of the BPI contained in this submission under an appropriately issued Administrative Protective Order.

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We thank you for your attention to this matter. Please contact the undersigned should the Department have any questions or requires additional information.

Respectfully submitted,

HARRIS SLIWOSKI, LLP

/s/Adams Lee  
Adams Lee

**COMPANY CERTIFICATION**

I, Lance Jungmeyer, President of the Fresh Produce Association of the Americas ("FPAA"), Tomato Division, certify that I prepared or otherwise supervised the preparation of the attached submission of the rebuttal comments on FTE's February 29, 2024 comments, filed on or by March 13, 2024, in the 2019 Suspension Agreement on Fresh Tomatoes from Mexico (A-201-820). I certify that the public information and any business proprietary information of Sunshine contained in this submission is accurate and complete to the best of my knowledge. I am aware that the information contained in this submission may be subject to verification or corroboration (as appropriate) by the U.S. Department of Commerce. I am also aware that U.S. law (including, but not limited to, 18 U.S.C. 1001) imposes criminal sanctions on individuals who knowingly and willfully make material false statements to the U.S. Government. In addition, I am aware that, even if this submission may be withdrawn from the record of the AD/CVD proceeding, the U.S. Department of Commerce may preserve this submission, including a business proprietary submission, for purposes of determining the accuracy of this certification. I certify that a copy of this signed certification will be filed with this submission to the U.S. Department of Commerce.

Signature: \_\_\_\_\_

Dated: 3/13/24

**REPRESENTATIVE CERTIFICATION**

I, Adams Lee, with Harris Sliwoski, LLP, counsel to the Fresh Produce Association of the Americas (“FPAA”), Tomato Division, certify that I have read the attached submission of the rebuttal comments on FTE’s Feb. 29, 2024 comments filed on March 13, 2024 pursuant to the 2019 Suspension Agreement on Fresh Tomatoes from Mexico (A-201-820). In my capacity as counsel of this submission, I certify that the information contained in this submission is accurate and complete to the best of my knowledge. I am aware that U.S. law (including, but not limited to, 18 U.S.C. 1001) imposes criminal sanctions on individuals who knowingly and willfully make material false statements to the U.S. Government. In addition, I am aware that, even if this submission may be withdrawn from the record of the AD/CVD proceeding, the U.S. Department of Commerce may preserve this submission, including a business proprietary submission, for purposes of determining the accuracy of this certification. I certify that a copy of this signed certification will be filed with this submission to the U.S. Department of Commerce.

Signature:           *Adams Lee*          

Date:           Mar. 13, 2024

**PUBLIC CERTIFICATE OF SERVICE**

Case No: A-201-820  
Fresh Tomatoes from Mexico  
2019 Suspension Agreement

I, Adams Lee, certify that this Public Version DOCUMENT has been filed through ACCESS to be served by the Department, on this 13th day of March, 2024, on the following:

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/s/Adams Lee  
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## **Exhibit List**

1. USDA- AMS data on Roma Tomato Shipments
2. “Lipman Family Farms Buys 75-Acre Greenhouse in Mexico,” Produce Blue Book, July 26, 2022; “Lipman Family Farms Buys Mexican Greenhouse Facility,” The Packer, July 26, 2022.
3. Lipman Family Farms website - <https://www.lipmanfamilyfarms.com/news/hermosillo/>
4. Pacific Tomato Growers dba Sunripe Certified Brands - <https://sunripecertified.com/about/>
5. Lipman Family Farms Acquires Northeast Produce,” Hayley Hyer, Supermarket Perimeter, March 7, 2024.
6. “USDA Publishes Proposal to Raise Assessments on Florida Tomatoes,” The Packer, March 7, 2024. “Tomatoes Grown in Florida; Increased Assessment Rate”, Agricultural Marketing Service, USDA, 89 Fed. Reg. 16471 (March 7, 2024).
7. “Act of God” Letters