



June 2, 2021

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

Dear Secretary Raimondo:

The Border Trade Alliance writes to you today regarding our growing concern over the execution of the Tomato Suspension Agreement (TSA) that guides tomato trade between the United States and Mexico.

Throughout our 35-year-history, the BTA has been a stalwart champion of the promise of free trade in North America. Our advocacy includes strong support for the original North American Free Trade Agreement and the successor United States-Mexico-Canada Agreement. Consistent with that view is our belief that cross-border trade in fresh produce should be conducted free of tariffs and duties.

As we shared with your predecessor on multiple occasions, we are concerned about U.S. trade policy calibrating around the protests of a small but vocal cohort of regional special interests. We are concerned that the Department of Commerce is implementing the TSA in a way that neither the writers nor signatories intended that advantages one party over another.

BTA's agricultural sector members have informed us that Commerce will treat "FOB U.S. Shipping Point" as meaning the U.S. port-of-entry, not the first U.S. selling agent's facility. Existing law, however, defines FOB as the first point of sale, not the first point of entry.

The result of this change is an increase in the minimum reference price for all tomatoes set forth in the TSA by requiring the U.S. first point of sale agents to include above the minimum reference price costs such as U.S. customs fees, USDA inspection fees, transportation from the border to the facility, and other handling fees incurred from the moment the truck crosses the U.S.-Mexico border through shipping at the U.S. border facility (i.e. the importing or sale agent's warehouse in the U.S.).

This is a dramatic departure from the way the fresh produce import industry has conducted business. We are equally concerned that your Department has indicated to stakeholders that it intends to audit companies subject to the TSA on the above items. Since Commerce contemplates such dramatic change in the conduct of cross-border tomato trade, we anticipate most companies failing any such audit.

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Interpreting the TSA in such a way undermines the USMCA in letter and spirit, risks the failure of border-based businesses and job loss, and invites retaliatory trade actions by Mexico that could harm the broader U.S. exporting community.

We respectfully request revisiting the planned definitional changed of “FOB U.S. shipping point,” and avoid a resulting increase in the minimum reference prices set forth more than a year ago by the TSA, and an erosion in the TSA itself.

The BTA and its agriculture industry stakeholders would welcome the opportunity to discuss this matter with you or the appropriate staff member at your convenience.

Sincerely,



Sergio Contreras
Chair



Britton Mullen
President