



A-201-820  
2019 Suspension Agreement  
Public Document  
ITA/E&C/P&N/OP/BAU: Team

TO ALL INTERESTED PARTIES

February 13, 2020

Re: Appendix D Formula and Form

On September 19, 2019, the Department of Commerce (Commerce) signed the 2019 Agreement Suspending the Antidumping Duty Investigation on Fresh Tomatoes from Mexico (2019 Agreement) with Mexican tomato producers/exporters.<sup>1</sup> Since the 2019 Agreement was signed, various interested parties have commented on potential errors in the formula contained in Appendix D.<sup>2</sup> On December 20, 2019, Commerce issued a memorandum describing a revised formula that post-sale price adjustments pursuant to Appendix D must satisfy, as well as a Form for Accounting of Sales and Costs pursuant to Appendix D of the 2019 Agreement.<sup>3</sup> Subsequently, Commerce officials discussed the December 20, 2019 memorandum with counsel to FTE and counsel to CAADES.<sup>4</sup> Upon reexamination, Commerce proposes to rescind the December 20, 2019 memorandum and issue a revised formula that post-sale price adjustments pursuant to Appendix D must satisfy, as well as a revised Form for Accounting of Sales and Costs pursuant to Appendix D of the 2019 Agreement (Attachment 1).

Appendix D of the 2019 Agreement states:

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<sup>1</sup> See *Fresh Tomatoes from Mexico: Suspension of Antidumping Duty Investigation*, 84 FR 49987 (September 24, 2019) (2019 Agreement).

<sup>2</sup> See Letter to Wilbur Ross, Secretary of Commerce, from Asociación de Productores de Hortalizas del Yaqui y Mayo, Asociación Mexicana de Horticultura Protegida, A.C., Confederación de Asociaciones Agrícolas del Estado de Sinaloa, A.C., Consejo Agrícola de Baja California, A.C., and Sistema Producto Tomate (Mexican Signatories), “Suspension Agreement on Fresh Tomatoes from Mexico – Comments on Accounting for Sales and Costs Form” (November 14, 2019) (Mexican Signatory Comments); Letter to Wilbur Ross, Secretary of Commerce, from the Florida Tomato Exchange, “Fresh Tomatoes from Mexico: Comments on Draft Form for Accounting of Sales and Costs for the 2019 Agreement Suspending the Antidumping Duty Investigation on Fresh Tomatoes from Mexico” (November 14, 2019); Letter to Wilbur Ross, Secretary of Commerce, from Red Sun Farms, “Red Sun Farms’ Comments on Draft Form for Accounting of Sales and Costs: 2019 Suspension Agreement of Fresh Tomatoes from Mexico 04/01/18 to 03/31/19” (November 14, 2019).

<sup>3</sup> See Memorandum to All Interested Parties, “2019 Agreement Suspending the Antidumping Duty Investigation on Fresh Tomatoes from Mexico: Form for Accounting of Sales and Costs and Issues from Comments” (December 20, 2020) (December 20, 2019 Memorandum).

<sup>4</sup> See Memorandum to the File, “Meeting with Florida Tomato Exchange and Counsel” (January 22, 2020); Memorandum to the File, “Call with Representative of Florida Tomato Exchange” (January 28, 2020); Memorandum to the File, “Meeting with Counsel to the Mexican Growers” (February 10, 2020); Memorandum to the File, “Call with Counsel to Florida Tomato Exchange” (February 11, 2020); Memorandum to the File, “Call with Counsel to CAADES” (February 11, 2020).

Where a partial lot is being rejected, the net sales price of all accepted tomatoes in the lot shall result in a unit price that is not less than 100 percent of the applicable Reference Price established in Appendix A minus the per-unit USDA inspection fees and per-unit freight expense attributable to the defective tomatoes.<sup>5</sup>

In addition, Commerce’s September 23, 2019 memorandum regarding the prevention of price suppression or undercutting states:

Commerce limited the most significant post-sale price adjustments and allowed adjustments for freight attributable to the defective product and USDA inspection fees attributable to the defective product. Disallowing the most significant adjustments will reduce the likelihood of price suppression or undercutting resulting from substantial adjustments to the net sales price for the accepted products.<sup>6</sup>

The December 20, 2019 Memorandum contained a formula that was intended to implement the above-quoted language in Appendix D. However, the December 20, 2019 Memorandum contains two errors. Specifically, the left side of the formula does not express the “net sales price of all accepted tomatoes in the lot,”<sup>7</sup> *i.e.*, the sales price net of all post-sale price adjustments. The second error is in the right side of the formula. The term “Total Rejected Quantity” improperly distributes the adjustments over the rejected tomatoes, which are rejected and not sold, instead of distributing the adjustments over the accepted tomatoes.

Accordingly, Commerce now proposes the following formula, which reflects the text of the 2019 Agreement. The changes from the December 20, 2019 Memorandum formula appear in red:

$$\text{Net Per-Unit Sales Price of Accepted Tomatoes} \geq \left( \frac{\text{Reference Price}}{\text{per Unit}} \right) - \frac{\left( \frac{\text{USDA Inspection Fee} + \text{Freight Expense}}{\text{Total Invoice Quantity}} \right) \times \left( \frac{\text{Total Rejected Quantity}}{\text{Total Accepted Quantity}} \right)}{\text{Total Accepted Quantity}}$$

We note that the Net Per-Unit Sales Price of Accepted Tomatoes is simply the final sales price for the lot of accepted tomatoes, net of all adjustments, divided by the quantity of accepted tomatoes.

If the formula above is adopted, all transactions involving price adjustments pursuant to Appendix D of the 2019 Agreement would have to satisfy this formula.

Attachment 2 contains an example demonstrating how to apply the formula to a particular transaction. In the example, the total freight and inspection fees for the entire lot equal \$410, and the number of boxes rejected is 100 out of a total of 300 boxes. Therefore, the maximum amount of the reimbursement by the Signatory and/or Selling Agent to the Buyer is 1/3 of \$410, which is approximately \$136, or 68 cents per box of accepted tomatoes. In this example, which

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<sup>5</sup> See 2019 Agreement, 84 FR at 49996.

<sup>6</sup> See Memorandum to Jeffrey I. Kessler, “The Prevention of Suppression or Undercutting of Domestic Price Levels in the 2019 Agreement Suspending the Antidumping Duty Investigation on Fresh Tomatoes from Mexico” (September 23, 2019) at 19.

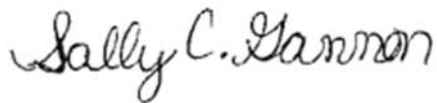
<sup>7</sup> See 2019 Agreement, 84 FR at 49996.

involves an original invoice price at the reference price, Commerce would consider a sales adjustment greater than 68 cents per box of accepted tomatoes to be inconsistent with the 2019 Agreement.

Commerce is inviting further comment on the issues discussed in this memorandum, including the proposed revisions to the formula above (again, as shown in red), as well as the revised form at Attachment 1. Comments are due **February 21, 2020**, by 5:00 p.m. ET.

If you have any questions regarding this matter, please contact me at (202) 482-0162 or David Cordell at (202) 482-0408.

Sincerely,

A handwritten signature in cursive script that reads "Sally C. Gannon".

Sally C. Gannon  
Director for Bilateral Agreements  
Office of Policy  
Enforcement and Compliance

Attachment

# **ATTACHMENT 1**

**2019 AGREEMENT SUSPENDING THE ANTIDUMPING DUTY INVESTIGATION ON FRESH  
TOMATOES FROM MEXICO (2019 AGREEMENT)**

**FORM FOR ACCOUNTING OF SALES AND COSTS**  
(Appendix D of the 2019 Agreement)

1. Buyer & PO Number: \_\_\_\_\_
2. Signatory/Selling Agent & PO Number: \_\_\_\_\_
3. Product (Tomato Type): \_\_\_\_\_
4. **Packaging/Box Type:** \_\_\_\_\_

**PRODUCT INFORMATION**

Total Number of Boxes in Lot:	_____ boxes	<b>B</b>	
<b>Original Invoice Unit Price per Box:</b>	\$ _____	<b>P</b>	
<b>Total Original Invoice Value:</b>	\$ _____	<b>TI</b>	$(B * P)$
Reference Price per Box: <sup>1</sup>	\$ _____	<b>RP</b>	
Checksum of Allowable Condition and/or Quality Defects from USDA:	_____ %	<b>CK</b>	
USDA Inspection Certificate No.	_____		

**TOTAL ACCEPTED & REJECTED**

Total Accepted:	_____ boxes	<b>A</b>	
<b>Total Original Value of Accepted Boxes:</b>	\$ _____	<b>TA</b>	$(A * P)$
Total Rejected:	_____ boxes	<b>R</b>	

**ALLOWABLE EXPENSES CREDITED**

Total Freight Charges for Lot:	\$ _____	<b>F</b>	
Total Inspection Fees for Lot:	\$ _____	<b>I</b>	
Total Credits:	\$ _____	<b>TC</b>	$(F + I)$
Total Credits Attributable to Defective Tomatoes:	\$ _____	<b>TD</b>	$TC * (\frac{R}{B})$
Total Credits Attributable to Defective Tomatoes Per-Unit:	\$ _____	<b>TU</b>	$\frac{TD}{A}$

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**FINAL ADJUSTED INVOICE VALUE**

<i>Input the final invoice value for the lot of accepted tomatoes, net of all adjustments.</i>	\$ _____	<b>FV</b>	
<b>NET PER-UNIT SALES PRICE<sup>2</sup></b>	\$ _____	<b>NU</b>	$\frac{FV}{A}$

**Print Name** \_\_\_\_\_ **Company** \_\_\_\_\_

**Signature** \_\_\_\_\_ **Date** \_\_\_\_\_

<sup>1</sup> See *Fresh Tomatoes From Mexico: Suspension of Antidumping Duty Investigation*, 84 FR 49987 (September 24, 2019) (2019 Agreement) at Appendix C for the Box Weight Charts.

<sup>2</sup> Your net per-unit sales prices (NU) must be greater than or equal to the reference price minus the credits attributable to defective tomatoes per-unit.

# **ATTACHMENT 2**

**2019 AGREEMENT SUSPENDING THE ANTIDUMPING DUTY INVESTIGATION ON FRESH  
TOMATOES FROM MEXICO (2019 AGREEMENT)**

**FORM FOR ACCOUNTING OF SALES AND COSTS**  
(Appendix D of the 2019 Agreement)

1. Buyer & PO Number: \_\_\_\_\_
2. Signatory/Selling Agent & PO Number: \_\_\_\_\_
3. Product (Tomato Type): \_\_\_\_\_
4. **Packaging/Box Type:** \_\_\_\_\_

**PRODUCT INFORMATION**

Total Number of Boxes in Lot:	<u>300</u> boxes	<b>B</b>	
<b>Original Invoice Unit Price per Box:</b>	<u>\$ 8.30</u>	<b>P</b>	
<b>Total Original Invoice Value:</b>	<u>\$ 2,490.00</u>	<b>TI</b>	$(B * P)$
Reference Price per Box: <sup>1</sup>	<u>\$ 8.30</u>	<b>RP</b>	
Checksum of Allowable Condition and/or Quality Defects from USDA:	<u>33</u> %	<b>CK</b>	
USDA Inspection Certificate No.	_____		

**TOTAL ACCEPTED & REJECTED**

Total Accepted:	<u>200</u> boxes	<b>A</b>	
<b>Total Original Value of Accepted Boxes:</b>	<u>\$ 1,660.00</u>	<b>TA</b>	$(A * P)$
Total Rejected:	<u>100</u> boxes	<b>R</b>	

**ALLOWABLE EXPENSES CREDITED**

Total Freight Charges for Lot:	<u>\$ 200</u>	<b>F</b>	
Total Inspection Fees for Lot:	<u>\$ 210</u>	<b>I</b>	
Total Credits:	<u>\$ 410</u>	<b>TC</b>	$(F + I)$
Total Credits Attributable to Defective Tomatoes:	<u>\$ 136.67</u>	<b>TD</b>	$TC * (\frac{R}{B})$
Total Credits Attributable to Defective Tomatoes Per-Unit:	<u>\$ 0.68</u>	<b>TU</b>	$\frac{TD}{A}$

**FINAL ADJUSTED INVOICE VALUE**

*Input the final invoice value for the lot of accepted tomatoes, net of all adjustments.*

**\$ 1,523.33 **FV****

**NET PER-UNIT SALES PRICE<sup>2</sup>**

**\$ 7.62 **NU**  $\frac{FV}{A}$**

**Print Name** \_\_\_\_\_

**Company** \_\_\_\_\_

**Signature** \_\_\_\_\_

**Date** \_\_\_\_\_

<sup>1</sup> See *Fresh Tomatoes From Mexico: Suspension of Antidumping Duty Investigation*, 84 FR 49987 (September 24, 2019) (2019 Agreement) at Appendix C for the Box Weight Charts.

<sup>2</sup> Your net per-unit sales prices (NU) must be greater than or equal to the reference price minus the credits attributable to defective tomatoes per-unit.