

USDA AMS Fruit and Vegetable Program and USDOC ITA Import Administration



Presents...

Tomato Suspension Agreement Explained

As Amended March 4, 2013

Helping buyers and sellers market their fresh and processed fruits, vegetables, and other specialty crops by:

- **Developing U. S. grade standards**
- **Grading and inspecting products**
- **Producing Market News reports and related information**
- **Facilitating fair trade and dispute resolution through enforcement of the Perishable Agricultural Commodities Act (PACA)**





USDOC ITA IMPORT ADMINISTRATION

Helping strengthen U.S. industry competitiveness, while promoting trade and investment; ensures fair trade through rigorous enforcement of trade laws and agreements.

- Improve global business environment
- Enforce fair trade laws and agreements
- Implement measures to address market distorting effects of foreign unfair trade practices to help U.S. workers and firms compete on a level playing field.



YOUR SPEAKERS



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WHY IS THERE A TOMATO SUSPENSION AGREEMENT ?



Judy Rudman

- On April 1, 1996, The U.S. tomato industry filed an antidumping petition alleging that Mexican tomato producers/exporters were selling tomatoes in the United States at less than fair value.
- Mexican tomato growers submitted a proposal for a suspension agreement. USDOC negotiated the details, taking into consideration input from the domestic industry, U.S. Customs and Border Protection, and the USDA.

BASIC INFORMATION ABOUT THE AGREEMENT

- **The Suspension Agreement (the Agreement) is an agreement between USDOC and Mexican tomato growers.**
- **All fresh tomatoes from Mexico, except tomatoes for processing, are covered by the Agreement.**
- **On June 22, 2012, the U.S. petitioning industry sought to withdraw their petition and requested termination of the underlying suspended investigation and the Agreement.**
- **Negotiations for a revised agreement began and resulted in the new agreement, effective March 4, 2013.**



BASIS OF THE AGREEMENT

- Each signatory agrees it will not sell product subject to the Agreement at prices below the established reference prices.
- The Agreement has two reference price periods.

Time Period

July 1 – October 22 (“summer”)

October 23 – June 30 (“winter”)



The 2013 Agreement distinguishes between growing environments

- Open Field/Adapted Environment (other than specialty tomatoes)
- Controlled Environment (other than specialty tomatoes)

The Agreement provides separate reference prices for “specialty tomatoes,” loose and packed.

SIGNATORY CONTAINER LABELING REQUIREMENTS

- Label boxes with:

- Name,
- Signatory identification number,
- "These tomatoes were grown/exported by a signatory of the 2013 Suspension Agreement."

- Label boxes with:

- Type of tomato
- Growing/Production method



- For sales in the Mexican domestic market, label:
- "Prohibida Su Exportacion a los EUA/Not for export to the United States."



AGREEMENT PARTIES

- **Signatories**
- **Selling Agents**
- **Processors**
- **Third Parties**



CONTRACT REQUIREMENTS BETWEEN THE PARTIES

- **Signatories must enter into a contract with the Selling Agent responsible for the first sale to an unaffiliated customer in the United States.**
- **Each signatory must confirm and ensure that its Selling Agent holds a valid and effective PACA license.**
- **The Selling Agent must establish a contract with third parties to ensure any adjustments are in accordance with the Agreement.**



WHAT IS CONSIDERED A VIOLATION OF THE AGREEMENT

- Sales made at net prices (after rebates, back billing, discounts for quality and other claims) below the reference price.
- Any act or practice which would have the effect of hiding the real price of the fresh tomatoes being sold (i.e., a bundling arrangement, commingling tomato products, discounts/free goods, special financing package, swap).
- Sales not in accordance with the terms and conditions specified in the Agreement involving adjustments due to changes in condition after shipment.



ADDITIONAL VIOLATIONS OF THE AGREEMENT

- **Selling signatory tomatoes to Canada in a manner that is not consistent with the requirements of Appendix E of the Agreement.**
- **Selling signatory tomatoes for processing in the United States in a manner that is not consistent with the requirements of Appendix F of the Agreement.**
- **Labeling boxes in a manner that is inconsistent with the labeling provisions of the Agreement for the apparent purpose of circumventing the Agreement.**



ADDITIONAL VIOLATIONS OF THE AGREEMENT

- **Repeated or routine over filling of boxes beyond reasonable variations in weights for the apparent purpose of circumventing the Agreement.**
- **Any other act or practice that USDOC finds in violation of the Agreement.**



- **Any person who intentionally violates the Agreement shall be subject to the same penalty imposed for a fraudulent violation of section 592(a) of the Tariff Act of 1930, as amended.**
- **Violations of the Agreement may also lead to denial by Mexican authorities to export to the United States.**



- The term “reference price” refers to the FOB price from the Selling Agent.
- The reference price includes all palletizing and cooling charges incurred prior to shipment from the Selling Agent.
- Actual movement and handling expenses beyond point of entry into the United States must be added to the reference price and must be arm’s-length expenses.



THE BOX WEIGHT CHARTS

- **USDOC determined an average weight for each box type and multiplied that weight by the per-pound reference price. The reference prices are listed in the Box Weight Charts.**
- **For example, USDOC determined the average weight for a 6x6 three-layer of vine-ripes was 29.39 pounds. The reference price for that particular box for the winter season is \$9.11 (29.39 x \$0.31/pound).**

BOX WEIGHT CHART

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	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

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	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

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

Box Type*	Layers	Size	Avg. Kg. Weight	Avg. Lb. Weight**	July 1 - October 22	October 23 - June 30
					\$0.3568/lb	\$0.45/lb
					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, adapted environment or controlled environment).**

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

BOX WEIGHT CHART

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

Box Type*	Layers	Size	Avg. Kg. Weight	Avg. Lb. Weight**	July 1 - October 22	October 23 - June 30
					\$0.4679/lb	\$0.59/lb
					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	9.60	4.49	5.66

***Applicable regardless of production method (e.g., open field, adapted environment or controlled environment).**

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



- Adjustments for quality defects are not permitted.
- The Agreement only permits adjustments to the sales price of signatory tomatoes for certain condition defects.
- The sales price for any tomatoes accepted in a lot cannot fall below the reference price.



ALLOWABLE DEFECTS

- Sunken Discolored Areas
- Sunburn
- Internal Discoloration
- Freezing and Freezing Injury
- Chilling Injury
- Abnormal Soft and Watery Fruit
- Cuts and Broken Skins (unhealed)
- Soft/Decay
- Bruises
- Nailhead Spot
- Skin Checks
- Decayed/Moldy Stems
- Waxy Blister
- White Core
- Shriveling
- Discolored Seed Areas
- Insect/Worm Injury (alive when present)

Not Allowed: Abnormal Coloring, Soil Spot, Blossom End Discoloration, and Surface Discoloration (Silvery-White and Gold Fleck)



CONDITION DEFECT ADJUSTMENTS

- To qualify for an adjustment, a USDA inspection must be called for no more than **eight** hours from the time of arrival of the tomatoes at the destination specified by the receiver and be performed in a timely manner at that destination.
- The inspection must be unrestricted. Any product that is not inspected cannot be considered for purposes of a condition defect adjustment.
- The lot must fail to meet “Suitable Shipping Conditions” (SSC).
- SSC means the product at time of shipment, if handled under normal transportation conditions, will arrive at destination without abnormal deterioration.



- The lot fails to meet **“Suitable Shipping Condition”** when the USDA inspection indicates the lot has:
 - More than 20% total condition defects.
 - More than 15% of any one condition defect.
 - More than 8% soft & decay.



REJECTED TOMATOES

- If USDA inspection establishes failure to meet “Suitable Shipping Condition,” the receiver may reject entire lot or portion of lot.
- If the full lot is rejected based on condition defects, the lot may be destroyed or donated to a non-profit food bank.
- If the receiver accepts part of the lot, price adjustment is limited to the actual percentage of condition defects as documented on the USDA inspection certificate.
- The price invoiced to and paid by receiver for accepted tomatoes must not fall below the reference price.

REIMBURSEMENT RIGHTS FOR REJECTED TOMATOES

- Selling Agent may reimburse receiver for actual destruction costs of defective tomatoes.
- Selling Agent may reimburse receiver for freight expenses allocated to defective tomatoes.
- Selling Agent may reimburse receiver for repacking charges associated with salvaging and reconditioning.
- Selling Agent may reimburse the receiver for inspection fees, if paid by receiver.
- Proper documentation required for all of the above.



INSPECTION ADJUSTMENT EXAMPLE

- Contract for 1,000 cartons of 2 layer 5x5 open field tomatoes @ \$8.00 per carton, for a total invoice price of \$8,000.
- Timely USDA inspection with 25% total condition defects, including decay, soft, and bruising.
- Freight charges for load \$1,500, and inspection fee of \$125.

Total Invoice Price	\$8,000
Total Defective Tomatoes 1,000 cartons X 25% = 250 @ \$8.00	\$2,000
Total Repacking Charges 1,000 cartons X \$2.50	\$2,500
Total Freight for Defective Tomatoes 250 cartons X \$1.50	\$375
USDA Inspection Fee	\$125
Total Return to Selling Agent from Buyer	\$3,000



- For sales of Mexican tomatoes to Canada, the Selling Agent must maintain in its files the documentation specified in Appendix E of the Agreement.
- The Selling Agent must notify its Canadian customers that any resale of signatory tomatoes into the United States must be in accordance with the terms of the Agreement.



INTERNATIONAL
T R A D E
ADMINISTRATION

TOMATOES FOR PROCESSING

- Are not subject to the Agreement.
- Must be sold directly to a processor (i.e., the first purchaser in the United States must be a processor).
- Must be accompanied by an “Importer’s Exempt Commodity Form”.
- Shipped in a packing form not typical for fresh market.
- Labeled “Tomatoes for Processing.”
- Tomatoes cannot be sold to a processor after their initial arrival in the United States.



- **USDOC may conduct verifications of parties handling signatory tomatoes to monitor compliance.**
- **Selling Agents should maintain paperwork related to sales transactions demonstrating;**
 - **All expenses beyond the point of entry into the United States have been added to the reference price**
 - **Proper procedures were followed for condition defect claims, for sales to Canada, and sales to processors**

PACA AND CONTRACTS BETWEEN THE PARTIES



Brian Wright

- **Signatories must enter into a contract with the Selling Agent responsible for the first sale to an unaffiliated customer in the United States.**
- **The Selling Agent must establish a contract with third parties to ensure any adjustments are in accordance with the Agreement.**
- **Send notifications via registered mail, return receipt, overnight mail, or email with a confirmation received, informing customers all sales are subject to the Agreement.**



INTERNATIONAL
TRADE
ADMINISTRATION

VIOLETIONS AND PACA

- Selling Agents must be PACA Licensees.
- A violation of the Agreement by a Selling Agent MAY also constitute an unfair trade practice which violates the PACA.
- USDOC, a signatory, or other interested entity may file with the Secretary of Agriculture a written notification of any alleged violations of the PACA.
- PACA may only take action after WRITTEN notice from outside the Division is received.
- PACA violations can lead to warning letters, substantial civil penalties, suspension of license, revocation and removal of principal from the industry.

EXAMPLES OF UNFAIR TRADE PRACTICES UNDER THE PACA

- ❖ **Examples of unfair PACA trade practices include:**
 - **Fraud**
 - **False or misleading statements**
 - **Misbranding/Mislabeled**
 - **Non payment**
 - **Employing restricted individuals**



PACA & MISBRANDING

- **Violation of section 2(5) of the PACA, for a commission merchant, dealer, or broker to misrepresent by word, act, mark, stencil, label, statement, or deed, the character, kind, grade, quality, quantity, size, pack, weight, condition, degree, or maturity, or State, country, region of origin of any perishable agricultural commodity received, shipped, sold, or offered to be sold in interstate or foreign commerce.**



- **Payment disputes can be handled by PACA dispute resolution procedures.**

1-800-495-7222, Extension 2

- **PACA will uphold actions, if, prior to making a sale, the Selling Agent informs its customers that the Agreement applies.**

www.ams.usda.gov/paca

- **Movement and Price Data**
- **Collected on a voluntary basis – 92% cooperation nationwide**
- **Three levels of the market reported:**
 - **Shipping point or point of entry daily sales**
 - **15 wholesale markets daily sales**
 - **Retail weekly advertised specials**

FRUIT AND VEGETABLE MARKET NEWS

- Price reports reflect the market at a “moment in time.”
- Prices represent generally good quality and condition, unless otherwise stated.
- Market News website
<http://www.marketnews.usda.gov/portal/fv>
- Reliable reports, widely used for value determination.
- Experienced full-time Market Reporters

TOMATO FAX REPORT



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Agriculture

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<http://www.marketnews.usda.gov/portal/fv>

Friday, March 01, 2013

DAILY SHIPMENTS AND CROSSINGS

Movement information is current as of the date of the report. Information is subject to revision.

40,000 LB UNITS TOMATOES	Fri	Sat	Sun	Mon	Tue	Wed	Thu	TOTAL TO DATE		FINAL
	Feb 22	Feb 23	Feb 24	Feb 25	Feb 26	Feb 27	Feb 28	This Year	Last Year	Last Year
FLORIDA										
Florida Districts	99	82	28	143	124	118	99	11,888	12,909	24,764
PUERTO RICO										
Jacksonville, FL (Boat)	20	-	-	-	39	-	-	398	328	651
MEXICO										
Imports through Detroit	-	9	-	-	-	-	-	194	165	276
Calexico	-	1	-	-	1	1	1	30	16	38
El Paso, TX	-	-	-	-	1	-	-	92	92	169
Laredo, TX	7	4	3	4	5	7	5	873	707	1,427
Otay Mesa				1		1	1	148	404	620



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Tips for First Time Users

March 04, 2013

Run a Custom Report

Category: Terminal Market (including Organics)

www.marketnews.usda.gov/portal/fv

202-720-2175

- Shipping Point High/Low Highlights
- Daily Movement Report
- Mexico Crossings Report
- National Shipping Point Trends
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- Commodity Procurement
- FV Industry Advisory Committee
- Grading and Standards
- Marketing Orders

**THANK YOU!
QUESTIONS?**



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