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July 31, 2019

The Honorable Sonny Perdue

Secretary of Agriculture

and

USDA Fruit and Vegetable Industry Advisory Committee

**Re: Advisory Committee August 14-15, 2019 Public Meeting, Trade Policy Discussion**

As the U.S. Department of Agriculture pursues a path to improve the economic outlook for America's farmers, ranchers and the produce industry at large, it is crucial for the U.S. to be aware of policies that could invite reciprocal measures that may harm U.S. agricultural exports.

The Fresh Produce Association of the Americas (FPAA) represents U.S. importers and distributors of fresh fruits and vegetables from Mexico. We were founded in 1944 and we represent companies with headquarters all around the United States, many of whom are domestic growers who round out their domestic supplies with imports.

We see the impacts of trade policy firsthand, every day. Unfortunately, there are two examples of recent trade issues where U.S. agricultural trade policy is at risk of going entirely the wrong direction.

Southeast produce growers and their Congressmen are promoting the Defending Domestic Produce Production Act, which is almost exactly the same proposal for a "seasonal, regional perishable anti-dumping remedy" that came to be known as the "seasonality provision" during the negotiations of the USMCA. The concept of seasonality would have created a patchwork of regional market windows when produce imports would be subject to tariffs or quotas.

Seasonality was not included in the final USMCA and was opposed by a broad coalition of the U.S. agricultural industry, as well as Canada and Mexico during the negotiations. Seasonality is a concept that should stay out of U.S. law for obvious reasons. Every growing region in the world that could claim a marketing window would also stake out protections within their own nations. Trade barriers would proliferate, and all of the progress in growing world markets would begin to evaporate.

[www.freshfrommexico.com](http://www.freshfrommexico.com) [info@freshfrommexico.com](mailto:info@freshfrommexico.com)

PO Box 848 Nogales, AZ 85628 Phone (520) 287-2707 Fax (520) 287-2948



Simply put, designing trade remedies for specific regional or seasonal industries will invite more politics into U.S. trade policy, with predictable results, including raising prices for U.S. consumers.

Increased availability of commodities drives consumption, through both expanded domestic production and imports. For example, not until blueberries became available year-round could retailers receive consistent pricing and quality, and since then the consumption of blueberries has skyrocketed, leading to ever more opportunities for American farmers of blueberries. During this time berry acreage in the U.S. has grown dramatically, in many states.

But if the U.S. changed trade remedies to restrict supplies, consumer prices would rise, and retailers would reduce space on their shelves accordingly and overall sales of blueberries undoubtedly would decline.

We understand that the Fruit and Vegetable Industry Advisory Committee has been tasked with outlining a strategy for Sec. Perdue on trade, and we urge this committee to reject calls to create seasonal trade remedies.

Over the years, the United States has invested massive amounts of funds to develop ag export markets. If a seasonality provision were put in place, and other nations adopted similar measures, exports of many items would be jeopardized. In 2018 the USDA invested \$174 million into Market Access Promotion (MAP), resulting in \$130 billion in agricultural exports. The exports of MAP promoted agricultural products to Mexico alone in 2018 were \$18 billion; and to Canada \$20 billion dollars.

Changing trade law to benefit some regional producers at the expense of the larger agricultural industry would be counterproductive. Nonetheless, we do believe the agency can do more to create opportunities for regional perishable agriculture industries.

For instance, using the MAP model and working with states, USDA could create a special program for seasonal domestic producers to access new and emerging markets both within the United States, and outside of the U.S.

Also, as we have seen with avocados and watermelons, having consistent consumer promotions that are supported by all stakeholders has helped these industries grow. USDA/AMS has a strong role to play in creating national marketing boards that can promote massive consumption increases, with input and funding from both domestic and foreign producers.

In another area of trade, we are extremely concerned by some provisions in the proposed Tomato Suspension Agreement. The Tomato Division of FPAA is an interested party in the tomato proceedings.



While the Department of Commerce has oversight of the tomato agreement, two of these provisions have a direct interface with USDA, and we believe this committee should be aware of the harmful precedents that would be set if these move forward.

First, USDA would be charged with 100% inspection of Mexican tomato imports. Second, for some sellers and buyers of tomatoes, rights would be denied under the Perishable Agricultural Commodities Act. If either of these provisions are agreed upon, U.S. exports will suffer as reciprocal measures are put in place.

The so-called Border Inspection Mechanism is entirely unnecessary given that imports of Mexican tomatoes arrive with overwhelmingly high quality. This is borne out by data that FPAA presented to Commerce, showing that less than 0.02% of tomatoes inspected in Nogales resulted in a shipment being declared out of compliance.

The Border Inspection Mechanism would call for tomatoes to be inspected within 72 hours, which is unacceptable. This was proposed by the Florida Tomato Exchange simply to erect a trade barrier.

To conduct 100% inspections, more than \$220 million in new warehouse space would need to be built, and about \$30 million annually would be spent on the inspections themselves. Trailers would have to wait to be unloaded, reducing freight capacity and throughput along the border for many industries, not just for tomatoes.

Logistics stakeholders, including those who service U.S. ag export industries such as apples, grapes, grains and meats, have expressed their concern about the Border Inspection Mechanism. These groups include the American Trucking Association, the Texas Association of Business, the San Diego Custom House Brokers Association and others.

Mexico's Secretary of Agriculture Victor Villalobos also filed a letter to Sec. Perdue, stating his concern that such an inspection precedent ... "could detonate requests from our domestic industry to adopt similar measures that could clearly affect supply chains, not only of fruits and vegetables, but also of various agricultural products ... including meat products, grains and oilseeds and dairy products among others."

Another component of the new Tomato Suspension Agreement proposal would fundamentally change the rights of U.S. sellers and receivers under the PACA.

The proposal would limit buyers' ability to make claims for damages at arrival and instead would drive tomato sales toward and through repackers, who happen to be heavily integrated with the domestic tomato industry. Denying some U.S. sellers the longstanding guarantee under common law and PACA of rights to breach of damages puts them at a distinct disadvantage and erodes the very foundation that fruit and vegetable trade is built upon. This was not the intent of Congress when it wrote the PACA in 1937.



It is outside of the scope of dumping law to establish terms that help some U.S. sellers of Mexican tomatoes and harm other U.S. sellers of Mexican tomatoes. This precedent could impact all buyers and sellers of all types of fresh produce.

The Fruit and Vegetable Industry Advisory Committee should be aware of the potential negative consequences caused by the actions of other governmental agencies, including Commerce. How the U.S. treats its trading partners directly impacts how trading partners will treat U.S. exports.

As this committee recommends strategies and policies to Sec. Perdue, we urge you to consider the precedents that can be caused by implementing unfair or unsound policies.

Sincerely,

A handwritten signature in grey ink, appearing to read "LJ", with a long horizontal flourish extending to the right.

Lance Jungmeyer  
President  
The Fresh Produce Association of the Americas