UNITED STATES COURT OF INTERNATIONAL TRADE

Confederación de Asociaciones Agrícolas del Estado de Sinaloa, A.C., Consejo Agrícola de Baja California, A.C., Asociación Mexicana de Horticultura Protegida, A.C., Asociación de Productores de Hortalizas del Yaqui y Mayo and Sistema Producto Tomate, Plaintiffs, v. UNITED STATES, Defendant.	**Court No.: 19-00059**

COMPLAINT

Plaintiffs Confederación de Asociaciones Agrícolas del Estado de Sinaloa, A.C., Consejo Agrícola de Baja California, A.C., Asociación Mexicana de Horticultura Protegida, A.C., Asociación de Productores de Hortalizas del Yaqui y Mayo and Sistema Producto Tomate (collectively, "CAADES") allege as follows:

Jurisdiction

1. CAADES seeks judicial review of three actions the Department of Commerce has announced it will take, effective May 7, 2019, in light of its withdrawal from the 2013 Suspension Agreement on Fresh Tomatoes from Mexico (the "Agreement"): (i) ordering a suspension of the liquidation of entries of fresh tomatoes from Mexico, (ii) resuming the antidumping duty investigation into fresh tomatoes from Mexico that it initiated in 1996; and (iii) instructing the U.S. Customs and Border Protection ("CBP") to require a cash deposit or bond for each entry of fresh tomatoes from Mexico., pending disposition of this civil action., rescind the five-year sunset review of the suspended. *Fresh Tomatoes from Mexico:*

Termination of Suspension Agreement, Rescission of Administrative Review, and Continuation of Antidumping Duty Investigation, __ Fed. Reg. ___ (Dep't of Commerce May __, 2019).

2. The Court has jurisdiction over this action under 28 U.S.C. § 1581(i)(2), (4).

Standing

3. CAADES has standing to bring this civil action because it is a party to the Agreement and subject to the actions taken by Commerce.

Timeliness of this Action

4. The challenged actions were announced by Commerce and will be published in the Federal Register tomorrow or in the next few days.

5. This complaint is timely under 28 U.S.C. § 2636(i) because it is brought within two years after CAADES' cause of action accrued.

FACTS AND BACKGROUND

6. On April 18, 1996, Commerce initiated an antidumping investigation to determine whether imports of fresh tomatoes from Mexico were being, or were likely to be, sold in the United States at less than fair value. *See Initiation of Antidumping Duty Investigation: Fresh Tomatoes From Mexico*, 61 Fed. Reg. 18,377 (Dep't of Commerce Apr. 25, 1996).

7. Since then, Commerce and Mexican tomato growers/exporters accounting for substantially all fresh tomatoes imported into the United States from Mexico have entered into agreements, as authorized by section 734 of the Tariff Act of 1930, as amended (the "Act"), 19 U.S.C. § 1673c(c), to revise prices and eliminate the injurious effect of exports to the United States of those tomatoes.

8. With the execution of each of these agreements, Commerce has suspended its antidumping investigation.

9. Most recently, on March 4, 2013, Commerce signed the Agreement with the Mexican Growers and suspended its antidumping investigation. *See 2013 Suspension Agreement*, 78 Fed. Reg. 14,967 (Dep't of Commerce March 8, 2013).

10. Among other things, the Agreement established summer and winter season reference prices for each of four general types of tomatoes currently exported from Mexico. *Id*. Appendix A, 14,972.

11. As a result of the Agreement, Commerce again suspended its antidumping investigation. *Id.*, 14,967-14,968.

12. The Agreement includes provisions for monitoring compliance, consultations, and violations of its terms. Thus, section IV.E of the Agreement, entitled "Compliance Consultations," provides that, "[w]hen the Department identifies … that sales may have been made at prices inconsistent with section III of the Agreement, the Department will notify each signatory which it believes is responsible [and] … will consult with each such party for a period of up to sixty days to establish a factual basis regarding sales that may be inconsistent with section III of this Agreement."

13. Section IV.G of the Agreement, entitled "Violations of the Agreement," provides that, a "[v]iolation means noncompliance with the terms of this Agreement," and "[i]f the Department determines that there has been a violation of the Agreement or that the Agreement no longer meets the requirements of sections 734(c) or (d) of the Act, the Department shall take action it determines appropriate … ."

14. Section VI.B of the Agreement allows any party to "withdraw" from it on 90 days' written notice. However, the Agreement does not provide for any consequences of a withdrawal.

15. The administrative record establishes that, since the Agreement was signed in 2013, the Mexican Growers have been in full compliance with its terms. The record includes more than a dozen reports of monitoring and enforcement efforts by Commerce over a six year period, including on-site inspections in Mexico by Commerce and representatives of the Department of Agriculture's Perishable and Agricultural Commodities Act Division. Out of over 50 billion transactions since the Agreement was signed in 2013, Commerce has documented 62 instances of alleged violations, or 0.0001 percent. Most of those alleged violations involved the mislabeling of boxes. Commerce thoroughly investigated all those alleged violations and satisfactory outcomes were reached in all of them: labels were corrected, contractual paperwork was verified, and subject sales were confirmed to be above the reference price. The record reflects zero actual violations of the Agreement by the Mexican Growers.

16. In an announcement that will be published tomorrow or in the next few days in the Federal Register, Commerce gave notice that, effective May 7, 2019, it has withdrawn from the Agreement. *Fresh Tomatoes from Mexico: Termination of Suspension Agreement, Rescission of Administrative Review, and Continuation of Antidumping Duty Investigation*, __ Fed. Reg. ___ (Dep't of Commerce May __, 2019). Commerce said that, in light of that withdrawal, it immediately will (i) "will instruct U.S. Customs and Border Protection ("CBP) to suspend liquidation of entries of fresh tomatoes from Mexico that are entered, or withdrawn from warehouse, for consumption," (ii) "continu[e] the underlying [Antidumping Duty] investigation," and (iii) direct CBP to "require antidumping duty cash deposits or bonds for entries of the subject merchandise based on the preliminary dumping margins," from 4.16 to 188.45 percent. *Id*.

17. Commerce gave no reasons and made no determinations to justify any of these three actions. It merely cited "[s]ection VI.B of the 2013 Agreement," permitting it to withdraw from the Agreement on 90 days' written notice. ___ Fed. Reg. at ___.

STATEMENT OF CLAIMS

18. CAADES realleges and incorporates paragraphs 1-17.

19. The three actions that Commerce has said it will take as a result of its withdrawal from and termination of the Agreement are invalid and unlawful because Commerce has not complied with the applicable and mandatory requirements of section 752(d)(2) of the Act, 19 U.S.C. § 1675(d)(2), and its implementing regulation, 19 C.F.R. § 351.218.

RELIEF REQUESTED

CAADES respectfully prays for the grant of a preliminary and permanent injunction, enjoining Commerce from taking the challenged three actions; for the reimbursement of its attorneys' fees and costs, and for such other and further relief as the Court deems appropriate.

Dated: May 9, 2019

Respectfully submitted,

/s/ Robert S. LaRussa

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