Testimony
Reginald Brown
Florida Tomato Exchange
July 26, 2017

House Committee on Agriculture
Hearing on Renegotiating NAFTA: Opportunities for Agriculture

Thank you for the opportunity to testify before the House Committee on Agriculture concerning *Renegotiating NAFTA: Opportunities for Agriculture*. I am Reggie Brown, Executive Vice President of the Florida Tomato Exchange, representing tomato growers in Florida, one of the major fresh tomato producing regions in the United States, as well as other tomato-growing areas of the country. The Florida Fruit and Vegetable Association has also asked that I speak to the concerns of Florida's other fruit and vegetable sectors, which are encountering issues similar to those confronting Florida's tomato sector. As a member of the US Government's Agricultural Technical Advisory Committee for Fruits and Vegetables, I have been conveying many of these concerns to the US Government since the North American Free Trade Agreement (NAFTA) first took effect.

Mr. Chairman, while a number of our nation's farmers and ranchers have benefitted from NAFTA, the same has not been true for Florida's fruit and vegetable sector. US Secretary of Agriculture Sonny Perdue summed it up well in stating to this Committee in May that --

> *"Certainly I think our vegetables and our produce sectors of agriculture have maybe been the ones that have not benefited as much under NAFTA. Regarding NAFTA negotiations, it is my hope . . . [that] one area we can improve our position vis a vis Mexico is in regards to vegetables."*[1]

Florida and US specialty crop producers grow the highest quality agricultural commodities in the world, and can successfully compete in a fair market environment. We are not opposed to free trade - however it must be fair trade. Unfortunately, the current trade environment under NAFTA has not fared as well for many US fruit and vegetable producers, as we have heard concerns from many regions around the country including growers of Georgia blueberries and broccoli, Texas watermelon, California grapes and asparagus and other specialty crop producers impacted under NAFTA throughout the nation.

Even before NAFTA entered into force, the original negotiators forecasted that NAFTA could negatively affect Florida and other specialty crop regions. Florida and Mexico produce a number of the same specialty crops and share a similar growing season. Mexico's known unfair advantages made NAFTA a concern. True to forecast, most of the growth in Mexico's agricultural shipments to the United States since the turn of the millennium has been in the fresh fruit and vegetable sector. Mexico's growth in these sectors has resulted in a loss of agricultural cash receipts of between $1-3 billion a year to Florida alone.

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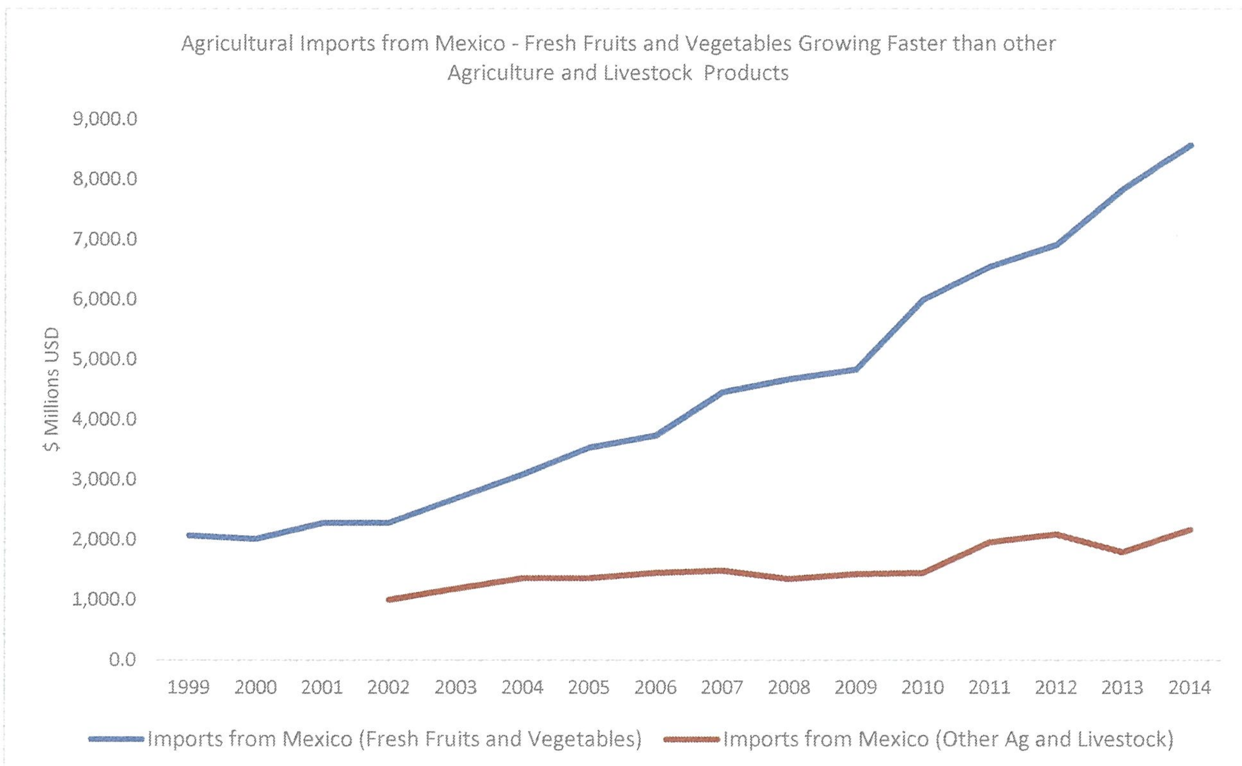
[1] May 17, 2017, testimony before the House Committee on Agriculture.

Tomatoes are a vivid example of Mexico's explosive growth in specialty crops. US imports of tomatoes from Mexico increased from 1.2 billion pounds in 2000 to 3.2 billion pounds in 2016, a 166% increase. By comparison, US tomato production shrank from 27 billion pounds in 2000 to 1.7 billion pounds in 2016, a nearly 40% decrease.[2] Despite US trade remedy measures and a long-standing Suspension Agreement, Mexican tomatoes continue to surge into the US market at unfairly low prices.

Other Florida specialty crops have encountered similar adverse trends under NAFTA. Since 2000, for example, US imports of Mexican strawberries have almost tripled. Imports of Mexican bell peppers have grown by 163%.

Although the United States is one of the world's major agricultural producers, Mexico's extraordinary expansion in fruit and vegetable shipments to the United States is creating a growing trade deficit in US-Mexico agricultural trade. As of 2016, that deficit exceeded $5.3 billion.



Source: Florida Department of Agriculture and Consumer Services

With Florida's fruit and vegetable industry a growing casualty to this rising deficit, our industry is in dire need of government help. Florida's specialty crop sectors were therefore encouraged by the Administration's July 17, 2017, *Summary of Objectives for the NAFTA Renegotiation*, which expressed the Administration's intention to

[2] Data from Florida Department of Agriculture and Consumer Services.

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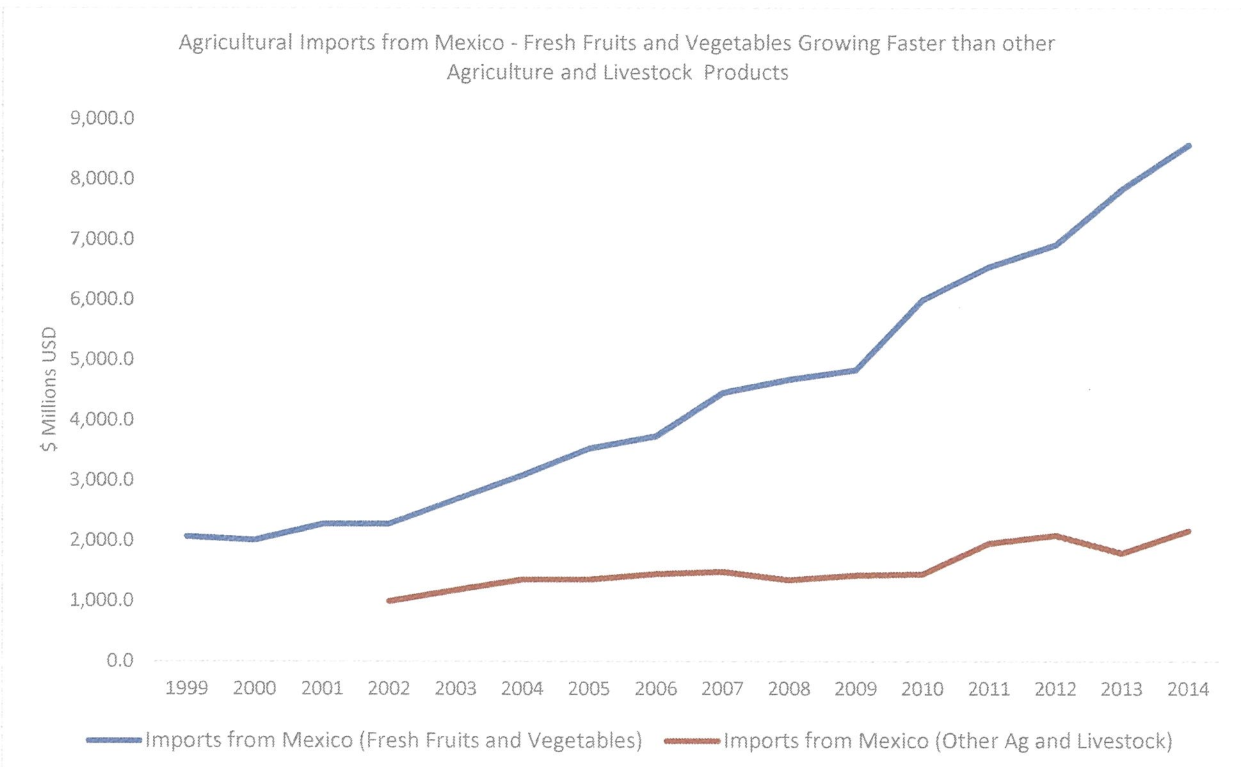

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[2] Data from Florida Department of Agriculture and Consumer Services.

- *"improve the U.S. trade balance and reduce the trade deficit with the NAFTA countries;"*

- *"seek a separate domestic industry provision for perishable and seasonal products in AD/CVD proceedings;"*

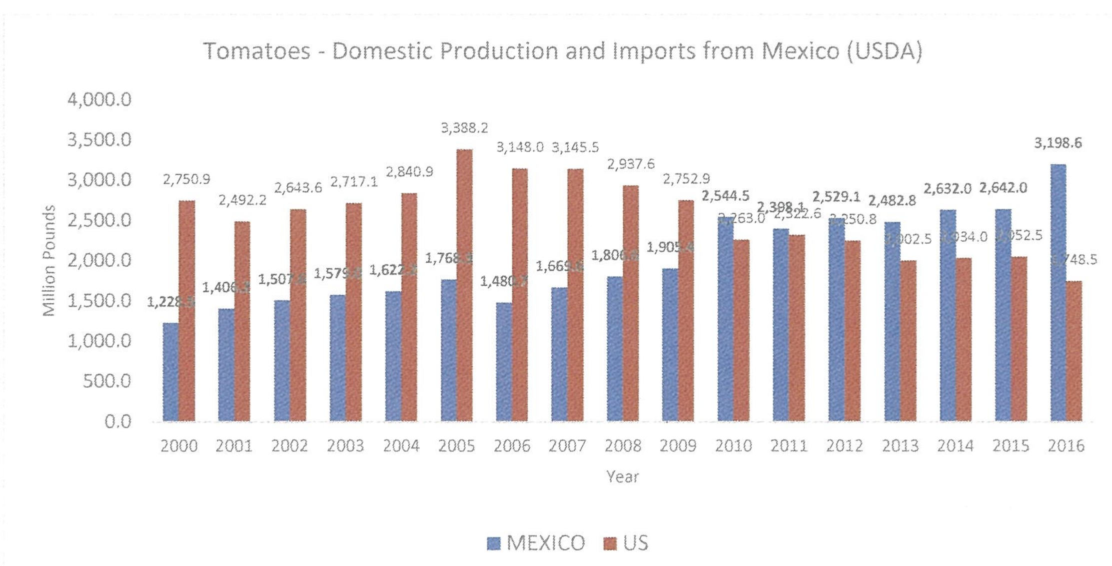
- *"preserve the ability of the United States to enforce vigorously its trade laws, including the antidumping, countervailing duty, and safeguard laws;" and*

- *"require NAFTA countries to have laws governing acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health."*

Our industry is also grateful to the Florida members of this Committee who joined with numerous other Colleagues in calling on the Secretary of Commerce to address Mexico's unfair trading practices, which are displacing Florida's production. Their letter to Commerce stated that

> "*Florida produces the highest-quality agricultural commodities in the world and can successfully compete in a global market, if it's operating on a level playing field, [but] the current trade environment created under NAFTA is anything but fair, particularly when it comes to policies impacting Florida's specialty crop growers and producers.*" (Letter attached for Record)

As the many Members signing that letter correctly stated, Mexico's specialty crops have only been able to achieve their extraordinary US growth with the help of sales prices significantly below costs of production, unfair subsidies, and dramatically lower labor costs. The US tomato sector again drives home the point. Despite years and years of US trade remedy proceedings and a long-standing Suspension Agreement, tomato imports from Mexico are still bypassing the Suspension Agreement at unreasonably low prices and at volume levels that are stronger than ever.



Source: *Florida Department of Agriculture and Consumer Services*

As Mexican volumes have soared, and prices fallen, US fresh tomato growers have been unable to keep up with rising farm costs. Florida farmers have been forced to leave tomato fields unharvested. Numerous producers, especially smaller farms, have filed for bankruptcy. As confirmed by USDA figures, US fresh tomato production is in serious decline, having lost almost 25% of total acreage since the inception of NAFTA.[3]

Compounding Mexico's unfair pricing practices is a web of unfair Mexican subsidy schemes for specialty crops. Those subsidies are aimed at increasing yields for "protected" specialty crops (greenhouses, shade-houses, and on tunnel farms), not only during the winter months (November-March), but throughout the year. In 2009 and 2010, Mexico spent $189.2 million on 2,500 ha of protected agriculture: 65% for greenhouses, 25% for shade-houses, 7% for macro-tunnels, and 3% for micro-tunnels. Those Mexican Govenment programs supported 859 ha of tomatoes (41%), 428 ha of cucumbers (20%), 347 ha of bell peppers (16%), 274 ha of berries (13%), and additional plantings of zucchini, grapes, brussels sprouts, habanero and green peppers, and ornamental plants, among other specialty products. Not surprisingly, Mexico's productivity improved markedly during this period, even as overall planted areas decreased.[4]

For FY2017, Mexico has established at least nine programs and 43 "components" to support agriculture.[5] Its regulations specifically authorize greenhouse "incentives" of up to $48,000 per hectare.[6] Other reports have found that subsidies for new greenhouse installations are as high as $162,000 per agricultural project.[7] Those greenhouse funds can be used in Mexico for the purchase of materials, equipment, and infrastructure, and for the management, conservation, and processing of greenhouse products.[8] They can cover up to 50% of the cost of investments.[9] As noted, these benefits, which are aimed at promoting year-round production for Mexican fresh fruits and vegetables, have already put Florida producers at serious risk and in time will compromise all US fruit and vegetable production if corrections are not made.

The Mexican industry's considerable labor wage disparities only add to its unfair advantages. The estimated annual Mexican wage advantage in the agricultural sector is $1 billion.[10] Mexico's farm laborers are paid about 10% of what US farm laborers are paid for similar work.[11]

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[3] *See* USDA National Statistics Service, Annual Survey Data, available at https://quickstats.nass.usda.gov/

[4] *See* Wageningen University and Research, "Mexican Protected Horticulture: Production and Market of Mexican Protected Horticulture Described and Analyzed," (Report GTB-1126, 2011); USDA Foreign Agricultural Service, 2012 Tomato Annual, GAIN Report No. MX2036 (June 4, 2012), at 6.

[5] Government of Mexico website, "SAGARPA has the Support You Need," January 14, 2016.

[6] Official Diary of the Government of Mexico, "Rules of Operation for the Program for the Promotion of Agriculture of the Secretariat of Agriculture, Livestock Rural Development, Fisheries and Food for the 2017 Fiscal Year," December 31, 2016, Article 12.

[7] *Id.*

[8] *Id.*

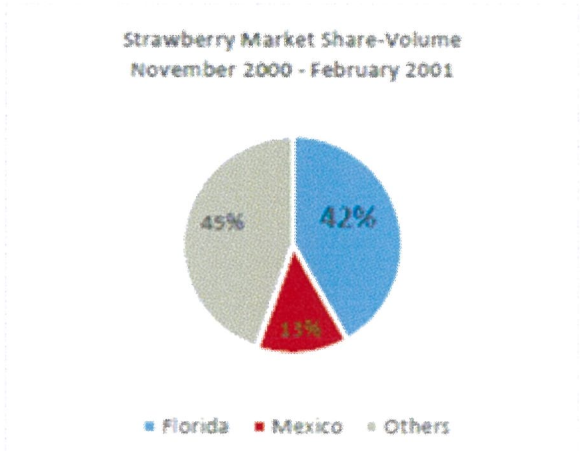
[9] *Id.*, at Article 10.

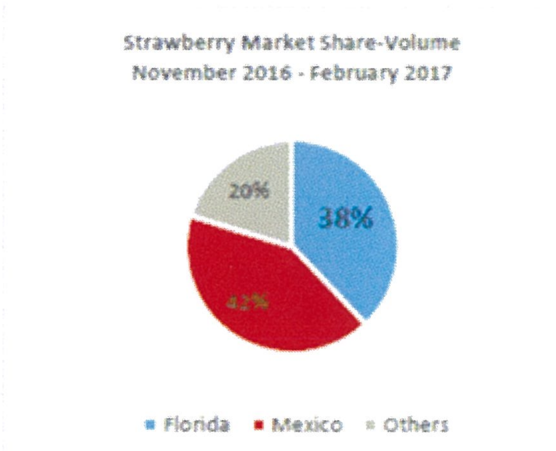
[10] Florida Department of Agriculture and Consumer Services, "An Examination of International Competitive Impacts on Florida Agriculture" (March 2017), at 11.

[11] Farmworkers in Mexico typically earn approximately the equivalent of $8 per day, while US farmworkers earn approximately $10-12 per hour. Thus, assuming an eight-hour day, a farmworker in the United States would earn at a minimum $80, while a Mexican farmworker would earn $8 , *i.e.,* 10%.

As each phase of production is completed, this labor differential provides Mexican specialty crop producers with a compounding advantage.

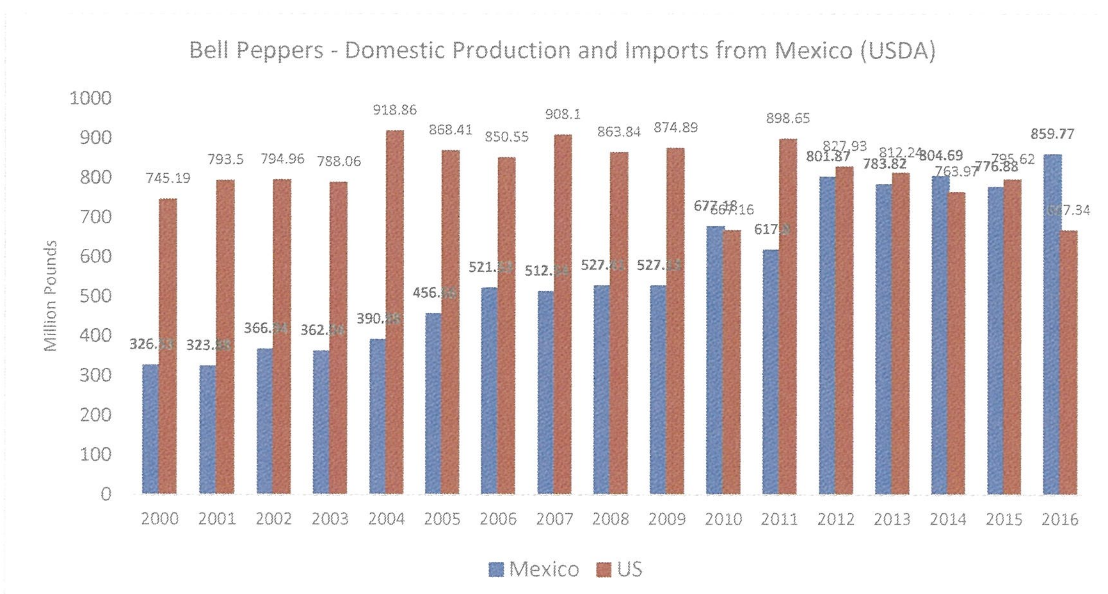
In line with the staggering losses faced by Florida tomato growers under these unfair Mexican practices, numerous other Florida specialty crops are sustaining growing losses as well. US imports of strawberries from Mexico have risen from 76.1 million pounds in 2000 to 216 million pounds in 2016 (a 184% increase).[12] That expansion has compromised absolute growth and market share for domestic producers.





Source: Florida Department of Agriculture and Consumer Services
Note: "Others" (gray) is primarily California production that appears to be shifting to Mexico.

Imports of bell peppers from Mexico have grown from 326.53 million pounds in 2000 to 859.77 million pounds in 2016, a 163% increase.



Source: Florida Department of Agriculture and Consumer Services

[12] Data from Florida Department of Agriculture and Consumer Services.

As the Committee knows, the Trade Priorities and Accountability Act of 2015 (TPAA) took careful note of the market pressures being faced by Florida's fruit and vegetable sectors and established several FTA objectives specific to specialty crops, the primary ones being the following:

> (J) eliminating practices that adversely affect trade in perishable or cyclical products, while improving import relief mechanisms to recognize the unique characteristics of perishable and cyclical agriculture;
>
> (K) ensuring that import relief mechanisms for perishable and cyclical agriculture are as accessible and timely to growers in the United States as those mechanisms that are used by other countries; . . . [and]
> (R) seeking to develop an international consensus on the treatment of seasonal or perishable agricultural products in investigations relating to dumping and safeguards and in any other relevant area.[13]

The Florida industry hopes these TPAA objectives, together with the objectives in the Administration's *Summary of Objectives for the NAFTA Renegotiation* referenced above, will help deliver a substantially revised NAFTA that finally enables Florida's fruit and vegetable sectors to endure and thrive. We will coordinate closely with the Committee, Congress, and the Administration to help achieve that result.

In the meantime, given the extraordinary market pressures Mexican suppliers are now creating for our specialty corps, the Florida fruit and vegetable industry is also asking the Administration to pursue various other near-term remedial and political steps to help reverse Mexico's unfair practices as quickly as possible. As these near-term solutions take shape, the Florida fruit and vegetable industry looks forward to working with this Committee, Congress, and the Administration on aligning its near-term solutions with longer-term NAFTA specialty crop and trade enforcement reforms. Our aim is to achieve all measures necessary -- both near- and long-term -- that can provide the Florida industry with the timely, effective protections it critically needs.

We greatly appreciate this Committee's continuing support for a strong Florida fruit and vegetable sector and stand ready to coordinate with the Committee on NAFTA and bilateral strategies to achieve that result.

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[13] Bipartisan Congressional Trade Priorities and Accountability Act of 2015, Pub. L. No. 114-26, § 102(b)(3), 129 Stat. 320, 322-23 (2015) ("2015 TPAA").

ATTACHMENT A

FLORIDA TOMATO EXCHANGE
DEFICIT COMMENTS

FLORIDA TOMATO EXCHANGE

"A Nonprofit Agricultural Cooperative Association"

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Phone (407) 660-1949 · Fax (407) 660-1656

May 9, 2017

VIA REGULATIONS.GOV

The Honorable Wilbur L. Ross, Jr.
Secretary of Commerce
U.S. Department of Commerce
14th St. & Constitution Ave., N.W.
Washington, D.C. 20230

The Honorable Stephen Vaughn
Acting U.S. Trade Representative
Office of the U.S. Trade Representative
600 17th Street, NW, Room F516
Washington, D.C., 20508

Re: *Docket No. DOC–2017–0003: Omnibus Report on Significant Trade Deficits*, **Comments Regarding Causes of Significant Trade Deficits for 2016**

Country of Interests: **Mexico**

Harmonized System (HS) Categories of Interest: **0702 – Tomatoes; fresh or chilled**

The Florida Tomato Exchange ("FTE") and the Florida Tomato Growers Exchange ("FTGE") appreciate this opportunity to submit comments to assist the Department of Commerce and the United States Trade Representative in preparing an Omnibus Report on Significant Trade Deficits for the President.[1] The FTE and FTGE represent tomato growers in Florida, one of the major tomato producing regions in the United States.

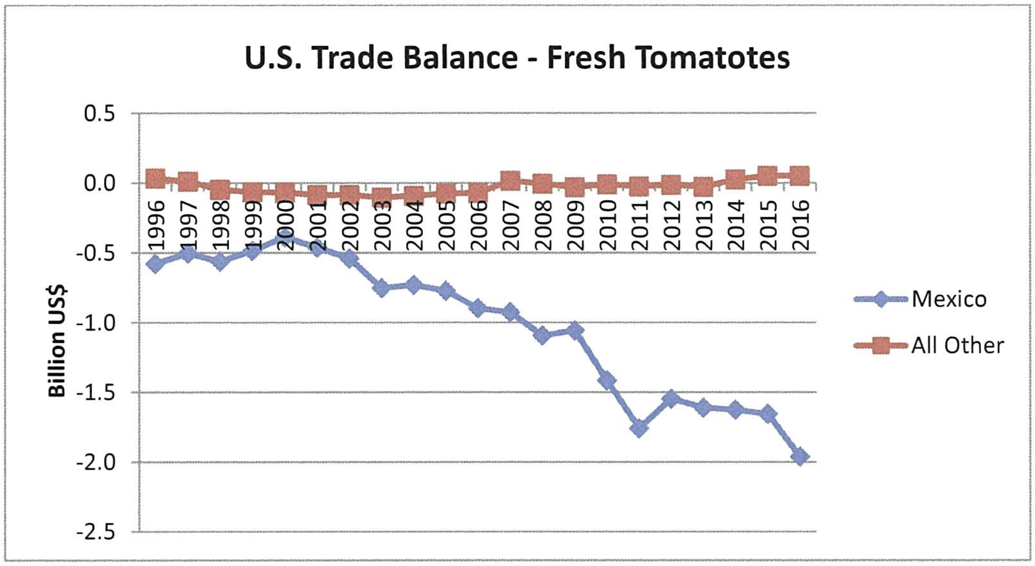
[1] These comments are submitted in response to the request in 82 Fed. Reg. 18,110-11 (April 17, 2017).

Florida tomato growers are particularly concerned with one area of trade that has contributed to the United States' trade deficit with Mexico: fresh tomatoes.[2] Florida tomato growers and other fresh tomato producers throughout the United States have been seriously challenged for decades with an ever-increasing trade deficit with Mexico. The Mexican government provides significant financial support for the production of tomatoes with the foremost purpose of pushing them into the U.S. market, to the detriment of the U.S. fresh tomato industry. U.S. tomato growers' struggle with unbalanced Mexican imports has been prolonged by weak enforcement of U.S. trade laws by prior administrations; even though the Department of Commerce has previously determined that Mexican tomato exports to the United States are dumped at unfair prices.

The Trade Deficit with Mexico in Fresh Tomatoes

The United States runs a large and growing trade deficit with Mexico on this major crop. As shown in the trade statistics in Attachment 1 to these comments, in 2016 the deficit on fresh tomatoes with Mexico surpassed 1.9 billion dollars. This is virtually all one-way trade: with Mexican tomato production mainly focused on exporting to the United States while U.S. exports of tomatoes to Mexico have remained comparatively non-existent. Further, as shown in the graph below, apart from the substantial and growing deficit with Mexico, other trade in fresh tomatoes is relatively balanced.

[2] If identifying a particular sector, commenters were requested to indicate the relevant HS category. 82 Fed. Reg. at 18111. Fresh tomatoes fall under category 0702, with various subcategories based on the season of importation and the growing environment and type of the tomato (greenhouse, cherry, roma, etc.).



Sources: trade data from the U.S. International Trade Commission.

<u>The Mexican Government's Support of Production for Export in Mexico</u>

In Mexico, fresh tomato growers benefit from numerous support programs made available by the Mexican government. Many of these programs are aimed at increasing the productivity of Mexican production, particularly through the establishment of protected agriculture (greenhouses and shade-houses), which dramatically increase per-acre production of tomatoes. A 2012 U.S. Department of Agriculture ("USDA") report stated that Mexican government support programs available to Mexican producers can provide as much as 45 to 60 percent of the cost of improvements.[3]

The push for tomato production in Mexico is aimed at exporting the product to the United States. The 2012 USDA report explains that in Mexico, "domestic consumption is a residual after exporting."[4] Mexican growers do not grow tomatoes for Mexican consumers; they grow them to send to the U.S. market. The Mexican government's support programs have the same goal. The USDA report states the "increase {in protected-agriculture production capacity} is largely attributable to recent success in exporting to the United States."[5]

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[3] *See* USDA Foreign Agricultural Service, *2012 Tomato Annual*, GAIN Report No. MX2036 (June 4, 2012) at 6, included in Attachment 4.

[4] *Id.*

[5] *Id.*

The Mexican government's programs have distorted trade. The government' push for increased production and capacity has led to a glut of capacity in Mexico, with many green- and shade-houses sitting empty in some areas. One report found that 30 percent of greenhouses in major producing areas in Mexico "were not operating."[6] With significant overcapacity and an industry aimed at exporting to a single foreign market, the increasing flood of Mexican tomatoes in the U.S. market is unsurprising.

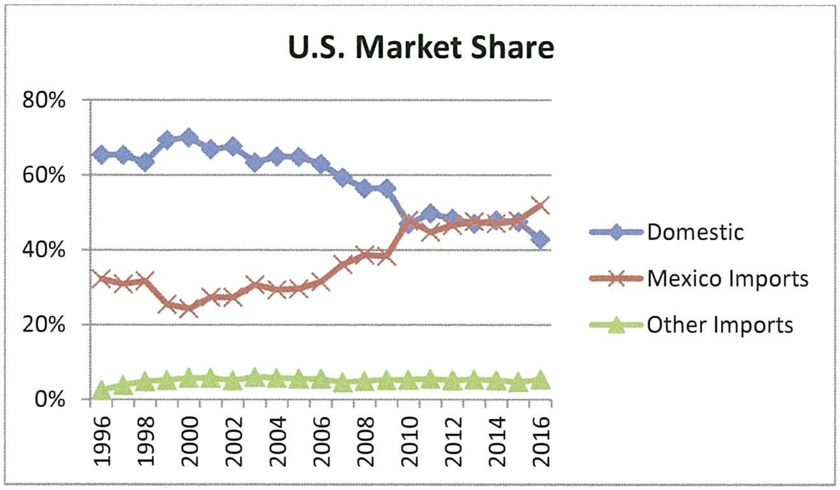
From a broader perspective, the devaluation of the Peso since the signing of the NAFTA agreement from 3.1 Pesos to the dollar to currently 18.5 to 22 has also significantly disadvantaged U.S. growers. In real terms (adjusted for inflation), the Peso has lost nearly a third of its value in that time.[7] This is a particular advantage to an export-oriented industry such as the Mexican tomato growers, who are able to receive dollars for their goods but in turn pay Peso-denominated costs. U.S. growers are competitive, but this absolute advantage by currency devaluation strongly advantages the Mexican industry in their effort to dominate the market.

The Impact of the Deficit on the U.S. Fresh Tomato Industry

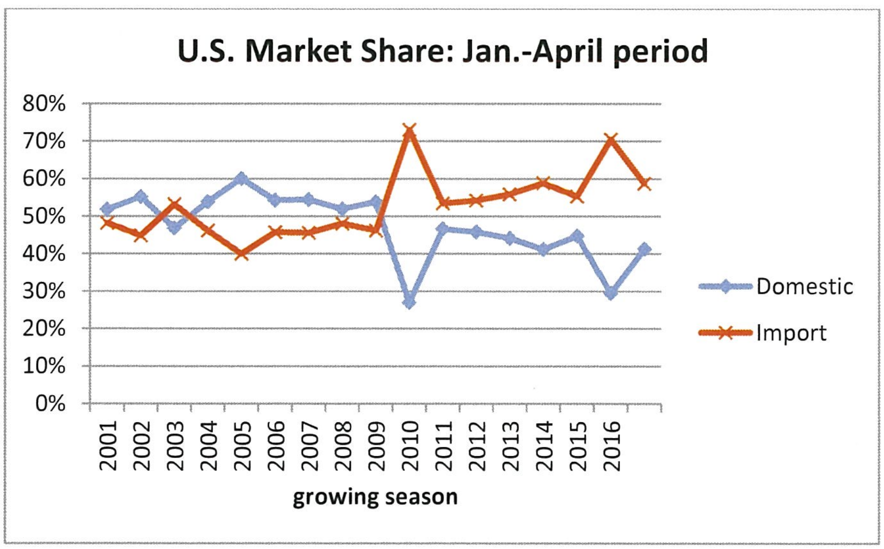
Tomato growers in Florida are particularly impacted by Mexican tomato exports because the Florida and Mexico growing seasons align: perishable tomatoes from both regions enter the market at the same times of the year and compete directly. As shown in Attachment 2, since 1996 the volume of Mexican fresh tomato imports has more than doubled. Over this period, the U.S. fresh tomato industry has continually lost market share to Mexican product. As shown in the chart below, based on USDA production data, Mexican imports have overtaken U.S. production in recent years, and in 2016 accounted for over half of U.S. consumption. As shown in the second chart, for the January-April period, the months when Florida and Mexican tomatoes are both most heavily competing in the market, the impact of imports has been even more pronounced.

[6] *Id.* at 4.

[7] Based on Real Effective Exchange Rate data from the IMF, http://data.imf.org.



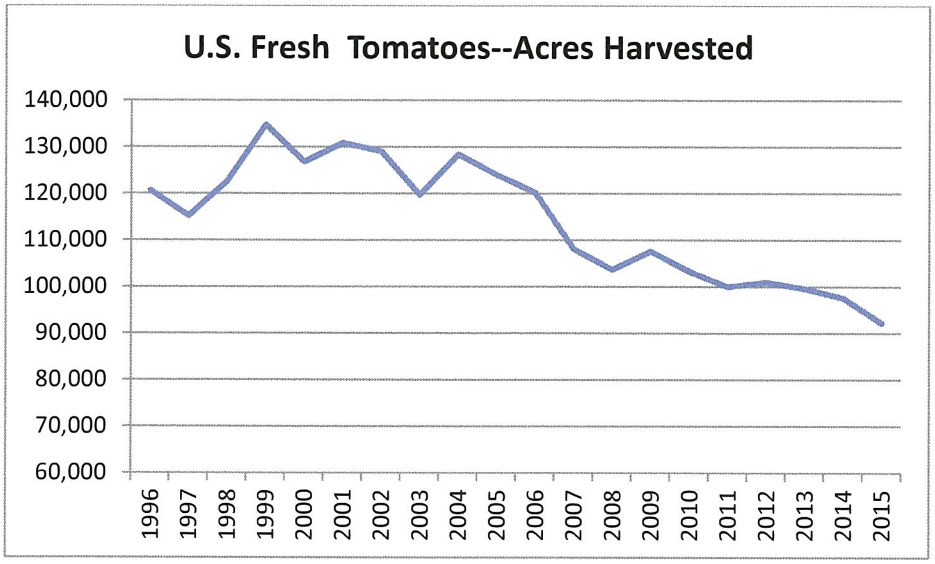
Source: USDA Economic Research Service, Vegetables and Pulses Yearbook Data 2017, excerpt included in Attachment 3.



Source: USDA Agricultural Marketing Service, Market News Report Data (Movement Report), https://www.marketnews.usda.gov/mnp/fv-home.

The ever-increasing wave of tomatoes crossing the border has devastated the U.S. industry. U.S. fresh tomatoes growers have struggled as prices, depressed by escalating import competition, have failed to keep up with raising farming costs. In the bad years, many fields planted in tomatoes have been left unharvested, as market prices were too low to sustain even that final step. Many producers, especially smaller and family farms, have been forced into bankruptcy.

Figures reported by the USDA show that U.S. production, shown in the number of acres in fresh tomatoes that are harvested, remains in serious decline, having lost almost a quarter of the total acreage since 1996.



Source: USDA National Statistics Service, Annual Survey Data (data available at https://quickstats.nass.usda.gov/).

<u>The United States' 20-Year Failure to Respond to Dumped Mexican Tomatoes</u>

Following the surge of low-priced Mexican tomatoes and the disastrous effect on U.S. producers in the years following the signature of NAFTA, FTE and FTGE were among the domestic parties that sought relief from the Department of Commerce and the International Trade Commission ("ITC") by submitting an antidumping petition on fresh tomatoes from Mexico in 1996. The ITC preliminary found that there was a reasonable indication that Mexican tomatoes were a material cause of injury to the U.S. industry.[8] The Department's investigation confirmed that

[8] *See Fresh Tomatoes from Mexico*, Inv. No. 731-TA-747, USITC Pub. 2967 (May 1996) (making a positive preliminary injury determination).

Mexican exporters were dumping their product on the U.S. market at unfair prices. The Department preliminarily found dumping margins ranging from 4.16 to 188.45 percent.[9]

However, rather than continuing the investigation and ordering final duties on Mexican tomatoes, the Department entered into a suspension agreement with Mexican tomato growers (concurrently with its preliminary determination).[10] Suspension agreements are allowed under U.S. trade law[11] but only if foreign exporters agree to terms that will prevent injury to the U.S. industry and if most of the unfair dumping is eliminated. The type of suspension agreement the Department used in this case required that Mexican tomatoes could not be sold to the U.S. market at less than an established reference price.[12]

While the statute permits suspension agreements, Congress made clear that it was highly distrustful of such agreements, which it saw could be used for political purposes to the detriment of the U.S. industry the trade law was intended to protect from unfair trade. The statute therefore only allows these agreements in "extraordinary circumstances", where the Department of Commerce can determine that both all injury caused by the imports along and all underselling or price suppression in the U.S. market will be eliminated. Additionally, in the type of agreement here, 85 percent of the dumping found in the investigation must be eliminated for every entry of the product. The continued ability of every suspension agreement to meet these stringent requirements was intended to be reviewed by the Department at least every 5 years in a sunset review.

In 1996, domestic growers did not oppose the suspension. The Department set the 1996 reference price based on market prices from earlier years where Mexican tomatoes were not having a detrimental effect on the market. The Department did not address how the reference price eliminated 85 percent of the dumping, however. But when the time came for the sunset review however, the Department did not complete its review of whether the agreement continued to meet statutory requirements. Instead, in order to avoid these questions, the Mexican growers

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[9] *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Fresh Tomatoes From Mexico*, 61 Fed. Reg. 56608, 56615 (Dep't Commerce Nov. 1, 1996).

[10] *Suspension of Antidumping Investigation: Fresh Tomatoes From Mexico*, 61 Fed. Reg. 56618 (Dep't Commerce Nov. 1, 1996)

[11] 19 U.S.C. § 1673c.

[12] In the 1996 agreement, only on reference price was established. In later agreements, the different reference prices were set for the winter and summer seasons and then for tomatoes grown in different production environments.

withdrew from the 1996 agreement, terminating it. Those growers and the Department then entered into a substantially identical "new" 2002 agreement. To accommodate this, the Department resumed the investigation temporarily, terminated the sunset review, and then resumed suspension upon concluding the new agreement.[13] The same process occurred again when the next sunset review was due, resulting in a 2008 agreement.[14]

In 2012, following a disastrous season in which a flood of Mexican tomatoes forced many U.S. producers, including the largest U.S. greenhouse producer, into bankruptcy, domestic producers sought to end this cycle.[15] The domestic petitioners filed notice with the Department that they were withdrawing their petition, seeking to terminate the investigation and hence the suspension of the investigation. However, the Department declined to recognize the withdrawal and instead initiated a "changed circumstances" review to consider the termination of the suspended investigation.[16] The Department can terminate an investigation or antidumping duty order through a changed circumstances review if substantially all of the domestic industry (defined as those producers accounting for over 85 percent of domestic production) declare they have no interests in its continuation.

In the changed circumstances review, U.S. growers who accounted for over 90 percent of U.S. fresh tomato production submitted letters to the Department seeking to have the investigation terminated.[17] Domestic producers also submitted information, including cost studies from the Mexican government, that showed costs to produce in Mexico had risen significantly from 1996 and were well above the suspension agreement reference prices, so that the suspension

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[13] *See Suspension of Antidumping Investigation: Fresh Tomatoes From Mexico*, 67 Fed. Reg. 77044 (Dep't Commerce Dec. 16, 2002).

[14] *See Suspension of Antidumping Investigation: Fresh Tomatoes From Mexico*, 73 Fed. Reg. 4831 (Dep't Commerce Jan. 28, 2008).

[15] Between the 1996 and 2008 suspension agreements, the reference prices had increased less than 5 percent. This failed to keep any kind of pace with raising costs of production, and allowed prices to fall to the unsustainable levels for the U.S. industry.

[16] *See Fresh Tomatoes From Mexico: Notice of Initiation of Changed Circumstances Review and Consideration of Termination of Suspended Investigation*, 77 Fed. Reg. 50553 (Dep't Commerce Aug. 21, 2012)

[17] *See Fresh Tomatoes From Mexico: Notice of Preliminary Results of Changed Circumstances Review and Intent To Terminate the Suspended Antidumping Investigation*, 77 Fed. Reg. 60103, 60104 (Dep't Commerce Oct. 2, 2012).

agreement would allow significant dumping by Mexican exporters even at those reference prices. During this period, the Department also initiated a sunset review of the 2008 agreement.

But once again, the Department allowed the foreign exporters to determine how they would be treated under U.S. antidumping law. The Mexican producers again withdrew from the suspension agreement, terminating that sunset review.[18] At the Mexican producers' request, in February of 2013, the Department entered into yet another suspension agreement with the Mexican growers.[19] The Department never completed the changed circumstance review or honored the domestic industry's repeated request to end the repetitive suspension. Also, despite two decades having passed since it collected dumping data in its preliminary investigation, the Department again did not collect any updated information that would allow it to determine what the fair market value of Mexican tomatoes would be in 2013, including even basic Mexican growing costs. Instead, the Department argued that the Mexican exporters would self-monitor their level of dumping. The Department then set the new reference prices at the price levels that were on the market in the 2012 winter season, a period where the price levels devastated to the U.S. industry and lead directly to the U.S. producers' attempts to have the suspended investigation terminated.

Because the Department made no effort with the 2013 agreement to determine if the reference prices would in fact eliminate dumping and set those prices at levels that would not prevent injury to the U.S. industry, FTE has appealed the suspension to the Court of International Trade ("CIT").[20] Four years later, there has still been no final court decision on FTE's claims. The CIT remanded the issue to the Department in 2015,[21] but the Department maintained the suspension agreement with no changes and returned the agreement to the CIT. Following an

[18] *See Fresh Tomatoes From Mexico: Intent To Terminate Suspension Agreement and Resume Antidumping Investigation and Intent To Terminate Sunset Review*, 78 Fed. Reg. 9366 (Dep't Commerce Feb. 8, 2013).

[19] *See Fresh Tomatoes From Mexico: Suspension of Antidumping Investigation*, 78 Fed. Reg. 14967-79 (Dep't Commerce March 8, 2013).

[20] CIT Case. No. 13-00148, *FTE v. United States*.

[21] The CIT remanded to the Department of Commerce because Commerce had failed to disclose certain information regarding its views of the suspension agreement to domestic producers before it entered the agreement, as required by law. The Court remanded with instructions for the Department to properly allow domestic producers to comment on the late-disclosed information, but did not address FTE's substantive challenges to the agreement at that time. Because the Department made no changes to the agreement during the remand, FTE maintained those substantive challenges.

additional hearing before the CIT in February of 2017, the domestic growers await the Court's further decision.[22]

Conclusion

The U.S. fresh tomato industry has repeatedly sought the protections intended for U.S. industries under U.S. trade laws against dumped products such as Mexican tomatoes. Due to a continued lack of strong enforcement of those laws and the Mexican growers' repeated gaming of the system to avoid a review of the suspension agreements that they have found favorable, nothing has stemmed the mounting flow of underpriced tomatoes coming from Mexico.

The Mexican government has continued to encourage over-production of fresh tomatoes through subsidization of Mexican growers and simply pushed the resulting over-production north to land on the U.S. market. The result has been a ballooning deficit in trade between the U.S. and Mexico and the continuing evaporation of the U.S. industry. On behalf of the U.S. tomato growers who have been forced to carry the costs of the Mexico's production choices, FTE and FTGE urge the Department and the USTR to strongly enforce the U.S. trade laws that were intended to prevent exactly this outcome.

Sincerely,

Reggie Brown

Reggie Brown
Executive Vice President for the
Florida Tomato Exchange and the
Florida Tomato Growers Exchange

[22] Additionally, despite continued efforts by the Department of Commerce to enforce those reference prices it did put in place in 2013, Florida tomato growers remain concerned that importers and sellers of Mexican tomatoes have implemented various schemes to circumvent even the limited terms of that agreement.