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September 28, 2012

INFORMATION MEMO FOR THE SECRETARY

FROM: EB – Jose W. Fernandez
WHA – Roberta S. Jacobson

SUBJECT: (SBU) Commerce Issues Preliminary Determination to Terminate Suspension Agreement in Antidumping Investigation on Mexican Tomatoes

(SBU) On September 27, the U.S. Department of Commerce issued a preliminary determination indicating its intent to terminate the suspension agreement in the antidumping (AD) investigation against imports of fresh tomatoes from Mexico. This preliminary determination is the first step toward canceling the suspension agreement, which would enable U.S. tomato growers to file a new AD petition that could lead to imposition of AD duties against U.S. imports of Mexican tomatoes. Mexico's new president is poised to take office on December 1, and this move potentially creates a significant controversy with the incoming administration.

(SBU) Under U.S. trade law, U.S. industry may petition Commerce to impose AD duties against imported goods sold at less than fair market value ("dumped"), which injure U.S. firms. As an alternative to imposing such duties, Commerce may negotiate an agreement with foreign governments or producers to prevent the dumping from occurring. Though such agreements are rare, Commerce negotiated one such agreement in 1996 with Mexican tomato growers to suspend imposition of AD duties against U.S. imports of tomatoes from Mexico. The U.S. domestic industry is not a party to this agreement.

(SBU) In June, U.S. tomato growers, based mostly in Florida, requested Commerce terminate the suspension agreement. Commerce responded by initiating a review of the agreement and soliciting comments on the request. Following issuance of its preliminary determination to terminate the agreement, Commerce will consider additional comments until November 6, and will issue a final determination following that comment period. Commerce is required to issue its final determination no later than May 2013, but will likely do so around November. Mexican growers and the Mexico government strongly oppose termination of the agreement, which they argue is a ploy by U.S. industry to create

market instability and increased costs for Mexican growers, and threaten nearly \$2 billion in annual Mexican exports. They have warned that termination will have significant and negative consequences for our bilateral trade relationship. For example, Mexican growers have warned that Mexico could retaliate by imposing AD duties on poultry and potatoes. In A/S Fernandez's call yesterday, Mexican embassy officials expressed doubt that the U.S. petitioners represented the 85 percent required by law, and commented that Commerce had rushed to make the preliminary determination much earlier than the 270 day period allowed.

(SBU) Mexican officials and industry representatives have lobbied hard for the State Department to intervene on their behalf, including through an August 24 letter from Mexican President Felipe Calderon to President Obama. The Mexican government and Mexican tomato growers propose that the current agreement be renegotiated to address U.S. industry concerns. We have raised concerns with Commerce, but are limited in what we can do because of the nature of the process. Commerce has the sole authority under U.S. law to conduct AD proceedings, in which the State Department does not play a role. The current reviews are legal proceedings insulated from political influence, and State cannot imply it is in a position to intervene in the process. Any such intervention could also be required by law to become part of the public record of these reviews.

Approved: EB – Jose W. Fernandez ok
WHA – Roberta Jacobson

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