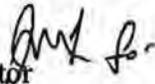




A-201-820
Sunset Review
Public Document
ITA/E&C/P&N/OP/BAU: JJM

December 18, 2018

MEMORANDUM TO: P. Lee Smith
Deputy Assistant Secretary
for Policy and Negotiations
Enforcement and Compliance

FROM: Carole Showers 
Executive Director
Office of Policy
Enforcement and Compliance

SUBJECT: Issues and Decision Memorandum for the Final Results of the Full
Sunset Review of the Suspended Investigation of Tomatoes from
Mexico

Summary

We have analyzed the comments of interested parties regarding the preliminary results in the sunset review of the suspended investigation on fresh tomatoes from Mexico.¹ Below is the complete list of the issues in this sunset review:

1. The adequacy of the Florida Tomato Exchange's (FTE) response
2. Likelihood of continuation or recurrence of dumping
3. Magnitude of the margin likely to prevail

We recommend that you approve the positions listed in the "Discussion of the Issues" section of this memorandum for the final results of the review.

Background

On August 27, 2018, Commerce published in the *Federal Register* the preliminary results of the five-year sunset review of the 2013 Suspension Agreement on Fresh Tomatoes from Mexico (the

¹ This is the fourth sunset review of the suspended investigation that has been initiated in this proceeding. See below section on "History of the Agreement."



Agreement).² We preliminarily found that dumping was likely to continue or recur at weighted-average margins up to 188.14 percent.³ We invited parties to comment on the preliminary results. On September 26, 2018, respondent 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 *et al.* or the Mexican growers) filed its case brief and requested a hearing.⁴ On September 26, 2018, Commerce also received a case brief from respondent NS Brands, Ltd. and its affiliates (collectively, NatureSweet).⁵ On September 27, 2018, petitioner, the Florida Tomato Exchange (FTE) requested a one-week extension of the October 1, 2018 deadline to file its rebuttal brief.⁶ Commerce granted a one-week extension to the FTE on September 28, 2018, setting the deadline for submission of rebuttal briefs as October 9, 2018, to account for the federal holiday on October 8, 2018. The FTE timely submitted its rebuttal brief on October 9, 2018.⁷

Commerce scheduled a public hearing for October 16, 2018. The public hearing was held as scheduled on October 16, 2018. On November 14, 2018, Commerce issued a request for further information to the FTE regarding information that was not provided in the FTE's Intent to Participate.⁸ The FTE provided its timely response to the request for further information on November 21, 2018.⁹ The Mexican growers timely provided rebuttal comments on November 26, 2018.¹⁰ The FTE submitted a timely sur-rebuttal on November 29, 2018.¹¹

Scope of the Review

The merchandise subject to the suspension agreement is all fresh or chilled tomatoes (fresh tomatoes) which have Mexico as their origin, except for those tomatoes which are for processing. For purposes of this suspension agreement, processing is defined to include preserving by any commercial process, such as canning, dehydrating, drying, or the addition of chemical substances, or converting the tomato product into juices, sauces, or purees. Fresh tomatoes that are imported for cutting up, not further processing (*e.g.*, tomatoes used in the preparation of fresh salsa or salad bars), are covered by this suspension agreement.

² See *Fresh Tomatoes from Mexico: Preliminary Results of the Five-Year Sunset Review of the 2013 Suspension Agreement on Fresh Tomatoes*, 83 FR 43642 (August 27, 2018) (*Preliminary Results*) and accompanying Issues and Decision Memorandum.

³ *Id.* at 43643.

⁴ See Mexican Growers' Case Brief, "Sunset Review of the 2013 Suspension Agreement on Fresh Tomatoes from Mexico," dated September 26, 2018 (Growers' Case Brief) at 1.

⁵ See NatureSweet's Case Brief, "Case Brief of NS Brands, LTD.," dated September 26, 2018 (NS Case Brief).

⁶ See Letter from the FTE, dated September 27, 2018.

⁷ See The Florida Tomato Exchange's Case Brief, "Rebuttal Brief of the Florida Tomato Exchange," dated October 9, 2018 (FTE's Rebuttal Brief).

⁸ See Letter to the Florida Tomato Exchange, from Sally C. Gannon, Director for Bilateral Agreements, "Request for Further Information" (November 14, 2018) (Request for Further Information).

⁹ See Letter to Wilbur Ross, Secretary of Commerce, from the Florida Tomato Exchange, "Fresh Tomatoes from Mexico: Response to Request for Additional Information" (November 21, 2018) (FTE Additional Information).

¹⁰ See Letter to Wilbur Ross, Secretary of Commerce, from the Confederación de Asociaciones Agrícolas del Estado de Sinaloa, A.C., *et al.*, "Sunset Review of the 2013 Suspension Agreement on Fresh Tomatoes from Mexico" (November 26, 2018) (Growers' Comments).

¹¹ See Letter to Wilbur Ross, Secretary of Commerce, from the Florida Tomato Exchange, "Fresh Tomatoes from Mexico: Reply to CAADES' November 26, 2018 Comments" (November 29, 2018) (FTE Sur-Rebuttal).

Commercially grown tomatoes, both for the fresh market and for processing, are classified as *Lycopersicon esculentum*. Important commercial varieties of fresh tomatoes include common round, cherry, grape, plum, greenhouse, and pear tomatoes, all of which are covered by this suspension agreement.

Tomatoes imported from Mexico covered by this sunset review are classified under the following subheading of the Harmonized Tariff Schedules of the United States (HTSUS), according to the season of importation: 0702. Although the HTSUS numbers are provided for convenience and customs purposes, the written description of the scope of this suspension agreement is dispositive.

Discussion of the Issues

Legal Framework

In accordance with section 751(c)(1) of the Act, Commerce is conducting this sunset review to determine whether termination of the suspended investigation would be likely to lead to continuation or recurrence of dumping. Sections 752(c)(1)(A) and (B) of the Act provide that, in making this determination, Commerce shall consider both the weighted-average dumping margins determined in the investigation and subsequent reviews, and the volume of imports of the subject merchandise for the period before, and the period after, the issuance of the antidumping duty order or the acceptance of the suspension agreement. When analyzing import volumes for subsequent sunset reviews, Commerce's practice is to compare import volumes during the year preceding initiation of the underlying investigation to import volumes since the issuance of the last continuation notice.¹² In accordance with the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act, specifically the Statement of Administrative Action,¹³ the House Report,¹⁴ and the Senate Report,¹⁵ Commerce's determination of likelihood will be made on an order-wide (or suspension agreement-wide) basis for each proceeding, rather than on a company-specific basis.¹⁶ In addition, Commerce normally determines that revocation of an antidumping duty order or termination of a suspended investigation, as appropriate, is likely to lead to continuation or recurrence of dumping when, among other scenarios: (a) dumping continued at any level above *de minimis* after the issuance of the order or suspension agreement; (b) imports of the subject merchandise ceased after issuance of the order or suspension agreement; or (c) dumping was eliminated after the issuance

¹² See *Ferrovaniadium from the People's Republic of China and the Republic of South Africa: Final Results of the Expedited Second Sunset Reviews of the Antidumping Duty Orders*, 79 FR 14216 (March 13, 2014) (*Ferrovaniadium from China and South Africa*) and accompanying Issues and Decision Memorandum at Legal Framework.

¹³ See Statement of Administrative Action, H.R. Doc. 103-316, vol. 1 (1994) (SAA) at 879, reprinted in 1994 U.S.C.C.A.N. 4040, 4205-06 (1994).

¹⁴ See House Report, H. Rep. No. 103-826, pt. 1 (1994) (House Report), reprinted in 1994 U.S.C.C.A.N. 3773 (1994).

¹⁵ See Senate Report, S. Rep. No. 103-412 (1994) (Senate Report).

¹⁶ See SAA at 879; House Report at 56.

of the order or suspension agreement and import volumes for the subject merchandise declined significantly.¹⁷

Alternatively, Commerce normally will determine that revocation of an antidumping duty order or termination of a suspended investigation, as appropriate, would not be likely to lead to continuation or recurrence of dumping where dumping margins declined or were eliminated and import volumes remained steady or increased after issuance of the order or suspension agreement.¹⁸ In addition, as a base period of import volume comparison, it is Commerce's practice to use the one-year period immediately preceding the initiation of the investigation, rather than the level of pre-order or pre-suspension agreement import volumes, as the initiation of an investigation may dampen import volumes and, thus, skew the comparison.¹⁹

Commerce also explained that the data pertaining to weighted-average dumping margins and import volumes may not be conclusive in determining the likelihood of future dumping.²⁰ Thus, in the context of the sunset review of a suspended investigation, Commerce may be more likely to take other factors into consideration, provided good cause is shown. Therefore, in accordance with 752(c)(2) of the Act, Commerce shall also consider such other price, cost, market, or economic factors as it deems relevant when good cause is shown.

Further, section 752(c)(3) of the Act states that Commerce shall provide to the ITC the magnitude of the margin of dumping likely to prevail if the order is revoked or the suspended investigation is terminated. Section 752(c)(3) also instructs that Commerce "shall normally choose a margin that was determined under section 735 or under subsection (a) or (b)(1) of section 751." Generally, Commerce selects the antidumping duty margins from the final determination in the original investigation, as these rates are the only calculated rates that reflect the behavior of exporters without the discipline of an order or a suspension agreement, as appropriate, in place.²¹ However, in some instances a more recently calculated rate may be more appropriate.²²

In February 2012, Commerce announced that it was modifying its practice in sunset reviews such that it would not rely on weighted-average dumping margins that were calculated using the methodology found to be World Trade Organization (WTO)-inconsistent, *i.e.*, zeroing/the denial of offsets.²³ In the *Final Modification for Reviews*, Commerce stated that "only in the most extraordinary circumstances" would it rely on margins other than those calculated and published

¹⁷ See SAA at 889-90; House Report at 63-64; Senate Report at 52; see also *Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871, 18872 (April 16, 1998) (*Sunset Policy Bulletin*).

¹⁸ See SAA at 889-90; House Report at 63; and Senate Report at 52.

¹⁹ See, e.g., *Stainless Steel Bar from Germany; Final Results of the Sunset Review of the Antidumping Duty Order*, 72 FR 56985 (October 5, 2007), and accompanying Issues and Decision Memorandum at Comment 1.

²⁰ See SAA at 890.

²¹ See SAA at 890; see also *Persulfates from the People's Republic of China: Notice of Final Results of Expedited Second Sunset Review of Antidumping Duty Order*, 73 FR 11868 (March 5, 2008), and accompanying Issues and Decision Memorandum at Comment 2.

²² See SAA at 890-891.

²³ See *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101, 8103 (February 14, 2012) (*Final Modification for Reviews*).

in prior determinations, pursuant to 19 CFR 351.218(e)(2).²⁴ To that end, Commerce further stated that, apart from the “most extraordinary circumstances,” it would “limit its reliance to margins determined or applied during the five-year sunset period that were not determined in a manner found to be WTO-inconsistent” and that it “may also rely on past dumping margins that were not affected by the WTO-inconsistent methodology, such as dumping margins recalculated pursuant to Section 129 proceedings, dumping margins determined based on the use of total adverse facts available, and dumping margins where no offsets were denied because all comparison results were positive.”²⁵

Finally, pursuant to section 752(c)(4)(A) of the Act, a dumping margin of zero or *de minimis* shall not by itself require Commerce to determine that revocation of an antidumping duty order or termination of a suspended investigation would not be likely to lead to a continuation or recurrence of sales at less than fair value.

We address the comments received from interested parties below.

1. The Adequacy of the FTE’s Response

The Mexican Growers’ Comments

- Respondent Mexican growers assert that Commerce did not fully investigate the adequacy of the FTE’s response in the adequacy determination.²⁶
- The Mexican growers argue that Commerce erroneously stated²⁷ that the record did not contain information on whether the FTE’s members are related to foreign producers or exporters or are importers of the subject merchandise or are related to importers of subject merchandise.²⁸
- The Mexican growers argue record evidence reflects that FTE members have such relationships.²⁹
- The Mexican growers argue that Commerce should ask the FTE to certify which of its members are not related to Mexican producers and/or exporters or importers of subject merchandise and what percentage of US production those members represent. In lieu of that, the Mexican growers argue that Commerce should disregard the FTE’s response and terminate the 2013 Agreement and underlying investigation.³⁰
- At the public hearing, the Mexican growers discussed record evidence cited and addressed in its case brief, providing a summary of what the Mexican growers view as record evidence that the FTE’s members had foreign affiliations or were importers of subject merchandise, information that is required by 19 CFR 351.218(d)(1)(ii)(B) in a

²⁴ *Id.*

²⁵ *Id.*

²⁶ See Growers’ Case Brief at 2.

²⁷ *Id.* (mentioning *Preliminary Results* at fn. 32).

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.* at 2-3.

domestic interested party's notice of intent to participate.³¹ The Mexican growers made the following claims:

- Lipman Family Farms grows tomatoes in Mexico and is a member of the FTE.³²
- Procacci Bros, Inc., is reflected in the FTE member list as AG-Mart Produce, Inc., doing business as Santa Sweets, Inc., and Gargiulo, Inc. Procacci has significant growing and packing operations in Mexico and imports tomatoes.³³
- DiMare (Dimare Fresh, Dimare Wholesale, Inc., and DiMare Ruskin, Inc.) have “global procurement” operations.³⁴
- Esformes is an FTE member listed as Pacific Tomato Growers, Ltd. It names its Mexico growing operation, which is Vitanova Fresh Produce.³⁵

FTE's Comments

- The FTE argues that Commerce should not revisit its adequacy determination.³⁶
- The FTE, in response to the argument of the Mexican growers, argues that the point of 19 CFR 351.218(e)(1)(i)(B) is to ensure that the domestic parties are acting in the interest of domestic industry.³⁷
- The FTE contends that Commerce has broad discretion to disregard responses from domestic interested parties if that party is related to a foreign producer/exporter or is an importer of the subject merchandise.³⁸
- The FTE argues that Commerce will not disregard a substantive response when there is foreign ownership if the interested party is participating as a domestic interested party. In this case, there is no indication that any FTE member is not acting in the interest of the domestic industry.³⁹
- The FTE argues that the Mexican growers do not allege all FTE members are acting as foreign agents. As such, the FTE argues, there is no basis for disregarding its entire substantive response.⁴⁰

FTE's Response to Commerce's Request for Information⁴¹

- The FTE states that all of the FTE members listed in Appendix 1 of its “Notice of Intent to Participate” are domestic producers.⁴²

³¹ See Memorandum, “2018 Five-Year (Sunset) Review of the 2013 Suspension Agreement on Fresh Tomatoes from Mexico: Record Sources of Exhibits Referenced in the Hearing on October 16, 2018” (October 24, 2018) (Mexican Growers' Exhibits).

³² See Public Hr'g Tr. October 16, 2018, 14:18 – 15:20.

³³ See Public Hr'g Tr. at 15:21 – 16:13; 16:22 – 18:10.

³⁴ See Public Hr'g Tr. at 18:11 – 19:2.

³⁵ See Public Hr'g Tr. at 20:12 – 22:17.

³⁶ See FTE's Rebuttal Brief at 7.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.* at 7-8 (citing *Lemon Juice from Mexico: Final Results of the Full Sunset Review of the Suspended Antidumping Duty Investigation*, 78 Fed. Reg. 38944 (Jun. 28, 2013) and accompanying Issues and Decision Memorandum at Issue 3).

⁴⁰ *Id.* at 8.

⁴¹ See FTE Additional Information.

⁴² *Id.* at Attachment 1.

- With regard to foreign affiliations under 19 CFR 351.218(d)(1)(ii)(B)(1), the FTE states the following⁴³:
 - “FTE member Pacific Tomato Growers, Ltd., is related to Vitanova Fresh Produce S de RL de CV and Calle Cero y Canal Alto Valle de Fuerte S/N.”⁴⁴
 - “FTE member Ag-Mart Produce, Inc. is affiliated with AGMart de Mexico.”⁴⁵
- With regard to 19 CFR 351.218(d)(1)(ii)(B)(2), the FTE states the following:
 - “FTE member Pacific Tomato Growers, Ltd., is affiliated with Pacific Heartland, LLC, an importer of tomatoes from Mexico.”⁴⁶
 - “FTE member Ag-Mart Produce, Inc. is affiliated with AGMart de Mexico and Procacci Brothers, both of which are importers of fresh tomatoes from Mexico.”⁴⁷
 - Lipman Family Farms is affiliated with Custom Pak, The Produce Exchange, Lipman-Portman LLC, The Thomas Colace Company, Bonanze Produce, Combs Produce, and Western Repacking, all of which are importers of fresh tomatoes from Mexico.
- The FTE stated that all its members are participating as domestic interested parties in the proceeding.⁴⁸

The Mexican Growers’ Rebuttal⁴⁹

- The Mexican growers argue that the FTE’s submission of information renders the original substantive response inaccurate, incomplete, and unreliable.⁵⁰
- The Mexican growers emphasize that Commerce’s regulations require a “complete substantive response” from at least one domestic interested party.⁵¹
- The Mexican growers point out that Commerce’s regulations regarding disregarding responses do not “differentiate between whether any such domestic interested party is participating as a domestic interested party or otherwise.”⁵²
- The Mexican growers assert that the inclusion of such domestic interested parties that are related to foreign producers or exporters or are importers of subject merchandise (or are related to such importers) cause the substantive information in the submissions to be inaccurate.⁵³
- In this case, the Mexican growers argue that the FTE’s new submission of information renders inaccurate certain claims of the FTE, including:
 - That dumping has continued at levels above *de minimis* since the suspension of the investigation.⁵⁴

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ See FTE Additional Information at Attachment 1.

⁴⁹ See Growers’ Comments.

⁵⁰ *Id.* at 3-4.

⁵¹ *Id.* at 2; see also 19 CFR 351.218(e)(1)(i)(A).

⁵² *Id.* at 2.

⁵³ *Id.*

⁵⁴ *Id.* at 3.

- Volumes of imports have significantly increased.⁵⁵
- Termination of the suspended investigation will lead to the continuation of dumping.⁵⁶
- The Mexican growers argue that the original, inaccurate substantive response of the FTE means that Commerce has no accurate information on which to base its final determination.⁵⁷
- The Mexican growers assert the FTE’s original substantive response can now be read to argue that the FTE’s own members are dumping. The Mexican growers argue that Commerce needs to inquire how the FTE established it was dumping, the volume of FTE production in Mexico, the volume of FTE imports of Mexican tomatoes, and whether the FTE’s preferred margin-to-be-reported applies to FTE’s imports of subject merchandise.⁵⁸

FTE’s Sur-Rebuttal

- The FTE argues that the Mexican growers did not “rebut, clarify, or correct” the factual information submitted by the FTE; instead, the FTE argues that the Mexican growers reiterated their case brief.⁵⁹
- The FTE contends that the Mexican growers have not rebutted the factual information that all FTE members are domestic interested parties and almost all FTE members have no affiliation with Mexican entities and do not import Mexican tomatoes; therefore, the FTE argues, the Mexican growers provide no justification for rejecting the FTE’s participation in the sunset review.⁶⁰
- The FTE argues that it has met the statutory and regulatory requirements for participation.⁶¹
- The FTE emphasizes that only three of its fourteen members are affiliated with or import from Mexican producers/exporters; therefore, the FTE argues, at least eleven of its members satisfy the requirements for domestic interested party participation in the sunset review.⁶²
- The FTE continues to argue that information regarding affiliations is not required to be filed because the FTE is participating in the sunset review as an association and 19 CFR 351.218(d)(ii)(B) requires the information of domestic producers.⁶³
- The FTE argues that the purpose of a notice of intent to participate is for Commerce to determine whether a domestic interested party is willing to participate in the review; the FTE further contends the record indicates that the FTE has participated fully.⁶⁴

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.* at 4.

⁵⁸ *Id.*

⁵⁹ *See* FTE Sur-Rebuttal at 1-2.

⁶⁰ *Id.* at 2.

⁶¹ *Id.*

⁶² *Id.* at 3.

⁶³ *Id.* at 4

⁶⁴ *Id.* at 4-5.

- The FTE asserts that it has provided all the information required under 19 CFR 351.218(d)(ii)(B); thus, the FTE argues, Commerce cannot terminate the suspended investigation based on missing information from 19 CFR 351.218(d)(ii)(B).⁶⁵
- The FTE argues that the purpose of the regulations is to ensure that domestic parties are acting in the interest of the domestic industry. The FTE cites *Lemon Juice from Mexico*, and states that Commerce will not disregard a substantive response when there is foreign ownership so long as the interested party is participating as a domestic interested party.⁶⁶
- The FTE contends that there is no allegation or indication that any FTE member is not acting in the interests of the domestic industry.⁶⁷
The FTE criticizes the Mexican growers' request that Commerce inquire into the Mexican tomatoes produced by affiliates of the FTE and separate them for purposes of the sunset analysis; the FTE argues that there is no law or precedent for such an analysis.⁶⁸
- The FTE argues that the information requested by the Mexican growers is irrelevant for the purposes of Commerce's determination on likelihood of continuation or recurrence of dumping.⁶⁹

Commerce's Position

We disagree with the Mexican growers' claim that Commerce did not fully investigate the adequacy of FTE's substantive response, although we agree, with the Mexican growers that footnote thirty-two of the *Preliminary Results*, where Commerce stated that the record does not contain information on whether the FTE's members are related to foreign producers or exporters or are importers of the subject merchandise or are related to importers of subject merchandise, was not accurate. We evaluated the Mexican growers' claim regarding the footnote, and determined to request further information from the FTE, in accordance with 19 CFR 351.218(d)(1)(ii)(B), regarding the relationships, if any, of the domestic producer members of the FTE.⁷⁰ The FTE's response explains that some of its domestic producer members are related to a foreign producer/exporter, or importer, of Mexican tomatoes, and that some of its domestic producer members import Mexican tomatoes. However, the record evidence indicates that not all of the FTE's members are related to foreign producers and/or foreign exporters or are importers of subject merchandise (or are related to such importers).⁷¹

⁶⁵ *Id.* at 5.

⁶⁶ *Id.*

⁶⁷ *Id.* at 5-6.

⁶⁸ *Id.* at 6.

⁶⁹ *Id.* at 6-7.

⁷⁰ See Request for Further Information at 1-2 (explaining Commerce's request for information).

⁷¹ According to the FTE's answers, the following FTE members are not related to foreign producers and/or exporters and are not importers of subject merchandise: Classie Produce; DiMare Homestead, Inc.; DiMare Ruskin, Inc.; Gargiulo, Inc.; Kern Carpenter Farms; Mecca Family Farms, Inc.; Michael Borek Farms; Taylor & Fulton Packing, LLC; Tomatoes of Ruskin, Inc.; TomPak, LLC; West Coast Tomato, LLC. See FTE Additional Information at Attachment 1 and Appendix A; see also FTE Sur-Rebuttal at 2-3. The Mexican growers' submission of information at the hearing indicated that Gargiulo, Inc. may have repackaging operations in Mexico, and DiMare Homestead, Inc. and DiMare Ruskin, Inc. may repack Mexican tomatoes. See Mexican Growers' Exhibits. Even taking into account this information, there are still eight FTE members that do not import Mexican tomatoes (and are not related to such importers) and are not related to foreign producers and/or exporters of Mexican tomatoes.

Citing these relationships and activities, the Mexican growers assert that Commerce should disregard the FTE's substantive response. We disagree and decline to disregard the FTE's response. First, the Mexican growers argue that Commerce should exercise its discretion under 19 CFR 351.218(e)(1)(B) to disregard FTE's substantive response because certain FTE members are related to foreign producers/exporters or importers of Mexican tomatoes within the meaning of section 771(4)(B) of the Act, or themselves are importers of such merchandise. Commerce agrees with the FTE that Commerce has broad discretion, under 19 CFR 351.218(e)(1)(i)(B), to disregard a response from a domestic producer that is related to a foreign producer or to a foreign exporter or a domestic producer that is an importer of subject merchandise (or is related to such an importer).

Normally, Commerce will conclude that domestic interested parties have provided an adequate response where Commerce receives a complete response from at least one domestic interested party.⁷² Further, even if a party is related to a foreign producer and/or a foreign exporter or is an importer of subject merchandise (or related to such an importer), Commerce generally considers whether the party in question is participating as a domestic interested party, *i.e.*, whether the party is acting in a manner consistent with the interests of the domestic industry, in deciding whether to disregard an otherwise adequate response.⁷³ If a party is acting in a manner consistent with the interests of the domestic industry, or if there is insufficient evidence to determine that a party is not acting in the interests of the domestic industry, then Commerce will generally decline to disregard the response.⁷⁴

In this case, the FTE has clarified that it and all the domestic producers that are members of the FTE and identified in Appendix 1 of its notice of intent to participate are participating with the FTE as domestic interested parties in this proceeding.⁷⁵ As noted above, not all of the FTE's members are related to foreign producers and/or foreign exporters or are importers of subject merchandise (or are related to such importers). The substantive response filed by the FTE, which represents the views of its members, thus represents the views of some domestic producers that have no such relationships. Moreover, we have examined the record and do not find sufficient evidence that the FTE, or its members with such relationships, are not acting in a manner consistent with the interest of the domestic industry. The Mexican growers have not presented sufficient evidence that the FTE or its constituent members are not acting in a manner consistent with the interests of the domestic industry; in fact, the Mexican growers' record evidence focuses on the fact that the FTE's members merely have foreign affiliations and/or import subject merchandise.⁷⁶ Thus, consistent with Commerce's practice,⁷⁷ which reasonably

⁷² See 19 CFR 351.218(e)(1)(i).

⁷³ See *Lemon Juice from Mexico: Preliminary Results of Full Sunset Review of the Suspended Antidumping Duty Investigation*, 77 FR 75998 (December 26, 2012) (*Mexico Lemon Juice Prelim*) and accompanying Issues and Decision Memorandum at Issue 3, unchanged in *Lemon Juice from Mexico: Final Results of Full Sunset Review of the Suspended Antidumping Duty Investigation*, 78 FR 38944 (June 28, 2013) (*Mexico Lemon Juice Final*) and accompanying Issues and Decision Memorandum at Issue 3; *Brake Rotors from the People's Republic of China: Notice of Final Results of Expedited Second Sunset Review of Antidumping Duty Order*, 73 FR 1319, (January 8, 2008) and accompanying Issues and Decision Memorandum at Issue 2.

⁷⁴ *Id.*

⁷⁵ See FTE Additional Information, Attachment 1 at 3.

⁷⁶ See Mexican Growers' Exhibits; Public Hr'g Tr. at 14:18 – 22:17.

⁷⁷ See *Mexico Lemon Juice Prelim* IDM at Issue 3; *Mexico Lemon Juice Final* IDM at Issue 3.

construes the controlling regulation, we determine that the information on record does not constitute a basis for Commerce to disregard the FTE's response in this sunset review. For these reasons, Commerce declines to disregard the substantive response of the FTE.

Second, the Mexican growers claim that the FTE's response to our request for information renders the information originally presented in the FTE's substantive response inaccurate. In particular, the Mexican growers argue that because the FTE has stated that certain of its members are related to growing operations in Mexico and importers of Mexican tomatoes, then the FTE's substantive response – which asserts that dumping has continued since the suspension of the investigation, import volumes of Mexican tomatoes have increased significantly, and termination of the suspended investigation will lead to the continuation of dumping – is an admission that FTE members are dumping and importing Mexican tomatoes at high volumes. The Mexican growers argue that additional information is required because if the FTE's substantive response is left as is, then it may reflect self-reported dumping of the FTE's members with foreign affiliations instead of the actual behavior of the Mexican growers. We disagree with the Mexican growers' reading of the FTE's substantive response. We find no indication in the response that FTE has made any statements (or "admissions") as to party-specific or market-segment specific behavior. Moreover, as explained above, we have found based on the record evidence that the FTE is acting on behalf of its members and in a manner consistent with a domestic interested party. As such, we read the FTE's substantive response to address subject merchandise imports as a whole and to be domestic parties' views as the overall impact on the U.S. market if we were to terminate the suspended investigation. Without further evidence or explanation from the Mexican growers, it would be unreasonable for Commerce to deem the substantive response of the FTE inaccurate and unusable.

Additionally, although the Mexican growers' call for the collection of additional information, such as information regarding the dumping of the FTE's members and the volume of Mexican tomato imports of the FTE's members, we find that such information is not relevant for the purposes of this sunset review. In a sunset review, Commerce must determine whether dumping is likely to continue or recur if the suspended investigation is terminated, and Commerce must determine the magnitude of the margin likely to prevail.⁷⁸ Our sunset regulations only contemplate evaluating the relationships and import activities of a domestic interested party when determining, in the context of a sunset review, whether to disregard the response from a domestic producer.⁷⁹ The Mexican growers have identified no statutory or regulatory requirement for Commerce to collect the additional information they request, nor have they explained how such information is necessary to determine the likelihood of dumping and the magnitude of the margin likely to prevail. Contrary to what the Mexican growers seems to suggest, Commerce does not generally calculate margins anew in sunset reviews, nor does it conduct its sunset analysis on a party-specific or market-segment-specific basis.

2. Likelihood of Continuation or Recurrence of Dumping

Respondent Interested Party Comments

⁷⁸ See *Sunset Policy Bulletin* at 18872.

⁷⁹ See 19 CFR 351.218(e)(1)(B).

A. No record evidence of dumping

- The Mexican growers contend that Commerce’s preliminary determination in this sunset review is not supported by record evidence.⁸⁰
- The Mexican growers point out that the original 1996 investigation was not completed, that the first sunset review in 2002 was not completed, and no administrative reviews have been completed.⁸¹
- The Mexican growers argue that the preliminary determination is not probative of future dumping.⁸²
- The Mexican growers support their argument by contending the following:
 - The margin is over twenty-years old;
 - The margin concerned a company that has since gone out of business;
 - The margin was calculated to correct for economic distortions in Mexico that no longer exist.⁸³
- The Mexican growers also assert that Commerce erroneously relied upon a provision in the 2013 Agreement⁸⁴ as evidence of dumping; namely, that each signatory agrees to eliminate 85 percent of dumping. The Mexican growers assert that the provision in question did not establish dumping and that determination by Commerce is not intended by the statute.⁸⁵
- In contrast to the lack of record evidence of dumping, the Mexican growers point to USDA data on record that indicate prices for Mexican imports in U.S. markets are above the reference prices, above the estimated Mexican cost of production, and above the prices in the Mexican home market. The Mexican growers also reference USDA price data and claim that the data demonstrate that Mexican tomatoes are sold well above reference prices at shipping points and in the U.S. terminal markets.⁸⁶

B. Good cause arguments

- The Mexican growers assert that there is good cause under 752(c)(2) of the Act to consider other record information and that such information demonstrates there is no likelihood of the recurrence of dumping.⁸⁷ The Mexican growers assert:
 - The FTE’s U.S. production of gassed-green tomatoes serves a limited market.⁸⁸
 - The FTE faces doubled production costs and increasingly hostile growing conditions.⁸⁹
 - The FTE acknowledges that the market has shifted to greenhouse production, a type of production that is not viable in Florida.⁹⁰

⁸⁰ See Growers’ Case Brief at 3-4.

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.* at 4-5.

⁸⁴ *Id.* at 5 (citing *Preliminary Results* at fn. 32).

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ See Growers’ Case Brief at 7.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

- The FTE prevents its members from developing varieties of tomatoes that may be more attractive to the market.⁹¹
- Mexican tomatoes do not compete in the FTE's market, and no amount of protection will give the FTE an entry into the markets of Mexican tomatoes. The Mexican growers contend that, as a result, the FTE imports Mexican tomatoes to complement its limited market.⁹²
- Accordingly, the Mexican growers argue that termination of the 2013 Agreement will not impact the FTE.⁹³

C. Increased imports indicate dumping is less likely to recur

- The Mexican growers cite Commerce's preliminary finding that imports have increased. The Mexican growers assert that, as Commerce notes and as the legislative history indicates, higher imports are normally indicative that dumping is less likely to recur. The Mexican growers also noted that Commerce's 2002 sunset review of the suspension agreement found declining import levels as indicative that dumping would continue or recur.⁹⁴

D. Commerce did not establish a relationship between dumping margins and import volumes

- The Mexican growers contend that Commerce did not establish a relationship between dumping margins and import volumes, contrary to what the SAA and the legislative history require.⁹⁵

FTE's Rebuttal and Comments

A. Record evidence of dumping

- The FTE points to the dumping margins Commerce calculated as record evidence of dumping.⁹⁶
- The FTE contends that the Mexican growers' argument, that no record evidence of dumping in addition to increased imports demonstrates that the respondents do not have to dump to compete, is based on the erroneous assumption that there is no record evidence of dumping.⁹⁷
- The FTE also points out that Commerce does not consider sales at or above reference prices to indicate absence of dumping because such sales may be at less than fair value.⁹⁸

⁹¹ *Id.*

⁹² *Id.* at 7-8.

⁹³ *Id.* at 8.

⁹⁴ *Id.* at 6.

⁹⁵ *Id.* at 6-7.

⁹⁶ See FTE's Rebuttal Brief at 2.

⁹⁷ *Id.* at 3-4.

⁹⁸ *Id.* at 3.

- The FTE argues that the original dumping margins are probative of behavior in the absence of the discipline of a suspension agreement.⁹⁹

B. Good cause arguments

- The FTE contends that Commerce reasonably decided not to consider good cause factors because the traditional factors support a positive likelihood finding.¹⁰⁰
- Responding to the Mexican growers, the FTE acknowledges the difficult growing conditions for tomatoes in Florida and argues that gives Mexican farmers an incentive to dump and increase their market share in the United States. Additionally, in support of their point, the FTE points out that the Mexican tomato market encourages exports to the United States.¹⁰¹
- NatureSweet points out that there is information on the record of this review that provides good cause for it to consider recent price, cost, market or economic factors more relevant to determining the magnitude of dumping margins likely to prevail than any data from the original investigation.¹⁰²

C. Increased imports do not indicate dumping is less likely to recur

- The FTE argues that, when there is evidence of dumping margins and evidence of increased imports, Commerce finds a likelihood of recurrence of dumping.¹⁰³

D. Relationship between dumping margins and import volumes.

- The FTE contends that the Mexican growers' argument, that no record evidence of dumping in addition to increased imports demonstrates that the respondents do not have to dump to compete, is based on the erroneous assumption that there is no record evidence of dumping.¹⁰⁴

Commerce's Position

We agree with the FTE that the preliminary margins calculated in the suspended investigation constitute record evidence of dumping. Commerce, in accordance with the Sunset Policy Bulletin, will use a preliminary margin in certain cases in which Commerce "did not issue a final determination because the investigation was suspended and continuation was not requested."¹⁰⁵ Consistent with this practice, in previous cases, Commerce has used the preliminary margins of a suspended investigation as evidence of the behavior of exporters in the absence of the discipline

⁹⁹ *Id.*

¹⁰⁰ *Id.* at 4.

¹⁰¹ *Id.* at 4-5.

¹⁰² *Id.* at 4.

¹⁰³ *Id.* at 4 (citing *Ammonium Nitrate Preliminary Results of Five-year Sunset Review of Suspended Antidumping Duty Investigation*, 70 FR 61431 (October 24, 2005) (*Ammonium Nitrate*) and accompanying Issues and Decision Memorandum at Issue 1).

¹⁰⁴ *Id.* at 3-4.

¹⁰⁵ See *Sunset Policy Bulletin*, 63 FR at 18873.

of a suspension agreement.¹⁰⁶ Commerce agrees, in part, with the Mexican growers that the existence of the 2013 Agreement does not by itself establish dumping or the absence of dumping. Commerce's point in the *Preliminary Results*, however, is that there has been no determination that dumping has been eliminated; in fact, a certain amount of dumping is permissible under the 2013 Agreement because it is an agreement governed by section 734(c) of the Act.¹⁰⁷ As such, even if Mexican tomatoes are sold above the reference prices in the Agreement, this fact does not in itself indicate that the merchandise is not sold at a dumped price.

We disagree with the Mexican growers that there is "good cause" for Commerce to consider other record information, pursuant to section 752(c)(2) of the Act, in determining whether termination of the suspended investigation would be likely to lead to the continuation or recurrence of dumping. Commerce's normal practice in sunset reviews is to consider the preliminary margins of the original investigation because they are probative of the overall "behavior of exporters and foreign governments without the discipline of the suspension agreement in place," especially when the preliminary margins are the only calculated rates on record.¹⁰⁸ Additionally, Commerce normally evaluates import volumes by comparing import volumes during the year preceding initiation of the underlying investigation to import volumes since the issuance of the last continuation notice.¹⁰⁹ When Commerce finds the relationship between dumping margins and import volumes dispositive, it generally does not consider other factors.¹¹⁰ In the *Preliminary Results*, we found that the relationship between dumping margins and import volumes was dispositive.¹¹¹

In this case, based on the arguments of the Mexican growers, we do not see sufficient reason to determine that there is good cause to depart from our usual sunset practice. Although economic conditions at the time of the investigation may be different from the economic conditions of the present day, these circumstances do not in themselves justify departing from our usual sunset analysis. For example, the argument that there may be changes in the current tomato market does not invalidate the preliminary margins of the investigation, nor does it mean that the

¹⁰⁶ See *Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products Final Results of Expedited Sunset Review of Antidumping Duty Suspended Investigation*, 75 FR 47263 (August 5, 2010) and accompanying Issues and Decision Memorandum at Issue 1 (relying on the margins determined in a 1999 suspended investigation); see also *Ammonium Nitrate* at Issue 1, unchanged in *Ammonium Nitrate Final Results of Five-year Sunset Review of Suspended Antidumping Duty Investigation*, 71 FR 11177 (March 6, 2006) and accompanying Issues and Decision Memorandum at Issue 1.

¹⁰⁷ The Agreement provides, consistent with section 734(c)(1)(A) that signatories to the agreement individually agreed not to sell the subject merchandise at less than the reference price "in order to prevent price suppression or undercutting" and that, consistent with section 734(c)(1)(B), that for each entry dumping would not exceed 15 percent of applicable margin determined in the investigation. See 2013 Agreement at III.

¹⁰⁸ See *Uranium Final Results of Full Sunset Review of Suspended Antidumping Investigation*, 65 FR 41439 (July 5, 2000) (*Uzbekistan I*) and accompanying Issues and Decision Memorandum at Issue 4; see also *Preliminary Results of Five-year Sunset Review of Suspended Antidumping Duty Investigation on Ammonium Nitrate from the Russian Federation*, 70 FR 61431 (October 24, 2005) and accompanying Issues and Decision Memorandum at Issues 1; *Final Results of Five-year Sunset Review of Suspended Antidumping Duty Investigation on Ammonium Nitrate from the Russian Federation*, 71 FR 11177 (March 6, 2006) and accompanying Issues and Decision Memorandum at Issue 1 and Issue 2.

¹⁰⁹ See *Ferrovandium from China and South Africa* and accompanying Issues and Decision Memorandum at Legal Framework.

¹¹⁰ See *Cut-to-Length Carbon Steel Plate from Canada; Final Results of Full Sunset Review of Antidumping Duty Order*, 65 FR 47383 (August 02, 2000) and accompanying Issues and Decision Memorandum at Comment 2.

¹¹¹ See *Preliminary Results IDM* at Issue 1.

margins have no probative value, *i.e.*, the extent that the margins demonstrate the “behavior of exporters and foreign governments without the discipline of a suspension agreement in place.”¹¹² As we have previously explained, and the FTE correctly notes, the statute does not establish a lifespan after which margins cannot be evaluated in determining the likelihood of the continuation or recurrence of dumping.¹¹³ Nor are the margins removed from the record because of their age. Commerce has previously relied on preliminary margins when other data are unavailable, even when circumstances have changed since the preliminary margins were established.¹¹⁴ Commerce has also previously relied upon the margins determined in a suspended investigation to demonstrate the behavior of companies without the discipline of a suspension agreement in place.¹¹⁵

Commerce disagrees that sales of Mexican tomatoes at or above reference prices are evidence that dumping is less likely to recur. Sales at or above reference prices, under the discipline of an agreement, are not probative of behavior in the absence of an agreement.¹¹⁶ However, preliminary margins from a suspended investigation are probative of behavior in the absence of a suspension agreement.¹¹⁷

Commerce also disagrees with the Mexican growers’ argument about import volumes. Normally, two conditions must be met for increased import volumes to indicate that dumping is less likely to continue or recur. As stated in the SAA, the first condition is “declining (or no) dumping margins.”¹¹⁸ The second condition involves accompaniment of the first condition by “steady or increasing imports.”¹¹⁹ Together, those conditions “may indicate . . . that dumping is less likely to continue or recur if the order were revoked.”¹²⁰ In this case, there are dumping margins on the record from the preliminary investigation, and no subsequent determinations on the record showing that the margin has declined or disappeared. Therefore, the first condition is not met, and thus the increased import volumes do not indicate that dumping is less likely to continue or recur.¹²¹ In contrast, Commerce has previously found likelihood of recurrence or

¹¹² See, e.g., *Uzbekistan I* IDM at Issue 4.

¹¹³ See *Fresh and Chilled Atlantic Salmon from Norway: Final Results of Full Third Sunset Review of Antidumping Duty Order*, 76 FR 70409 (November 14, 2011) and accompanying Issues and Decision Memorandum at Comment 1 (“Importantly, the Act does not direct the Department to apply a statute of limitations after which facts concerning previously-calculated dumping margins no longer apply.”).

¹¹⁴ See *Uzbekistan I* IDM at Issue 4 (using a preliminary margin even though it was based on Soviet-era data from a country that no longer existed).

¹¹⁵ See, e.g., *Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products Final Results of Expedited Sunset Review of Antidumping Duty Suspended Investigation*, 75 FR 47263 (August 5, 2010) and accompanying Issues and Decision Memorandum at Issue 1 (relying on the margins determined in a 1999 suspended investigation).

¹¹⁶ See *Ammonium Nitrate* IDM at Issue 1.

¹¹⁷ *Id.*

¹¹⁸ See SAA at 889–90.

¹¹⁹ *Id.*

¹²⁰ *Id.* at 890.

¹²¹ Commerce notes that this is the analysis detailed by the SAA when it instructs Commerce to examine the “relationship between dumping margins . . . and the volume of imports of the subject merchandise.” See SAA at 890. Additionally, Commerce notes that it examined the volume of imports “before and after . . . the acceptance of a suspension agreement” in the *Preliminary Results*. See *Preliminary Results* IDM at Issue 1.

continuation of dumping in several cases where imports have risen under the discipline of an order or suspension agreement.¹²²

In light of the above, we continue to find that the record evidence supports a finding of the likelihood of continuation or recurrence of dumping.

3. Magnitude of the margin likely to prevail

Respondent Comments

- NatureSweet asserts the estimated likely prevailing margins calculated by Commerce do not comport with its statutory obligations.¹²³ Likewise, respondent Mexican growers argue that Commerce’s analysis of the magnitude of the margin likely to prevail is flawed.¹²⁴
- NatureSweet disagrees with Commerce’s “determination to rely on the highest rate”¹²⁵ when considering the likelihood of recurrence of dumping. NatureSweet argues that this decision results in a “highly skewed assessment” of what would occur after termination of the 2013 Agreement.¹²⁶
- NatureSweet points out that there is information on the record of this review that provides good cause for it to consider recent price, cost, market or economic factors more relevant to determining the magnitude of dumping margins likely to prevail than any data from the original investigation. NatureSweet also states that there are relevant new data from quarterly reports of the Mexican signatories that could be used to more accurately determine the margins; NatureSweet argues that Commerce ignores these data.¹²⁷
- NatureSweet notes that Commerce justifies using the preliminary margins from 1996 because the investigation was not completed, and those margins are the only data available. NatureSweet disagrees with this justification as insufficient because it does not address how the old margins have any relevance to the likelihood of future dumping over twenty years later.¹²⁸
- NatureSweet asserts that the preliminary margins are inadequate as predictors of future behavior because they came from a partial record that was compiled over two decades ago.¹²⁹ NatureSweet also argues that the tomato industry and the U.S. market have undergone substantial changes since 1996. As a result, the factors that were relevant to the 1996 dumping margins no longer exist.¹³⁰

¹²² See *Certain Steel Concrete Reinforcing Bars from Turkey; Final Results of the Expedited Sunset Review of the Antidumping Duty Order*, 73 FR 24534 (May 5, 2008) and accompanying Issues and Decision Memorandum at Issue 1; *Final Results of the Expedited Sunset Review of the Antidumping Duty Order on Fresh Garlic from the People’s Republic of China*, 71 FR 33279 (June 8, 2006) and accompanying Issues and Decision Memorandum at Issue 1; *Uzbekistan I* IDM at Issue 2.

¹²³ See NS Case Brief at 2.

¹²⁴ See Growers’ Case Brief at 8.

¹²⁵ See NS Case Brief at 2.

¹²⁶ *Id.*

¹²⁷ *Id.* at 4.

¹²⁸ See NS Case Brief at 2–3.

¹²⁹ *Id.* at 3–4.

¹³⁰ *Id.* at 4.

- NatureSweet notes that Commerce’s determination relies upon a twenty-two-year-old preliminary margin for a company that no longer exists.¹³¹
- The Mexican growers point out that none of the statutorily-directed margins were present, so Commerce can use the preliminary margin from the original investigation. Normally, the Mexican growers argue, Commerce would use a company-specific margin from the investigation for each company, but Commerce did not do so in this case.¹³² The Mexican growers also criticize Commerce’s use of a single preliminary margin that was based on different economic conditions and now-unreliable data.¹³³

FTE’s Rebuttal and Comments

- The FTE asserts that Commerce followed its long-standing practice of relying upon dumping margins calculated in the original investigation and relying upon evidence that import volumes of tomatoes from Mexico are increasing.¹³⁴
- The FTE emphasizes that Commerce followed its practice when it reviewed all margins calculated in the proceeding and determined the margins likely to prevail.¹³⁵
- The FTE argues that the statute only requires that Commerce report a margin by choosing one that was previously reported. The FTE also points out that Commerce reported a margin “up to 181.14 percent,” thus encompassing all previously calculated margins up the highest one.¹³⁶
- Responding to arguments of the Mexican growers, the FTE contends that the statute does not set a lifespan for reportable margins, and it does not require that the company upon which they are based to remain in existence; the FTE states the SAA does not require Commerce to determine future rates and that Commerce should report a margin calculated during the investigation.¹³⁷
- The FTE emphasizes Commerce uses the margins from the original investigation because it is the most probative evidence of behavior without the discipline of a suspension agreement.¹³⁸

Commerce’s Position

Commerce agrees with the FTE. Commerce reports the margins “up to” the highest rate — this statement encompasses the previously reported margins up to the highest rate. It also complies with Commerce’s section 752(c)(3) obligations to select “a margin,” and Commerce’s practice to select a preliminary margin from a suspended investigation if other margins are unavailable.¹³⁹ NatureSweet argues that reporting the margin “up to” the highest rate is misleading because it would not reflect what would occur after termination of the 2013 Agreement. However, Commerce’s practice to report margins “up to” the highest rate is not misleading because those

¹³¹ See NS Case Brief at 4-5.

¹³² See Growers’ Case Brief at 8.

¹³³ See Growers’ Case Brief at 4-5.

¹³⁴ See FTE’s Rebuttal Brief at 1-2.

¹³⁵ *Id.* at 5.

¹³⁶ *Id.* at 6.

¹³⁷ *Id.*

¹³⁸ *Id.* at 6-7.

¹³⁹ See *Sunset Policy Bulletin* at 18873.

margins are the best available indication of the behavior of exporters without the discipline of a suspension agreement.¹⁴⁰ Additionally, Commerce has relied on this practice in many other cases.¹⁴¹

In determining the magnitude of the margin likely to prevail, the Act does not direct Commerce to apply a statute of limitations after which facts concerning previously-calculated dumping margins no longer apply. As such, the existence of a long time span between the investigation and a sunset review does not inherently invalidate the margins calculated in the investigation for use in Commerce's sunset analysis. Indeed, Commerce has previously relied on rates and margins calculated in investigations even in proceedings in which there are long time spans between the investigation and the sunset.¹⁴² NatureSweet's claim that Commerce has not complied with its statutory obligations to determine margins as accurately as possible and to use the best information available in doing so, ignores the applicable standard. Section 351.218(e)(2) of Commerce's regulations states that "only under the most extraordinary circumstances will {Commerce} rely on a countervailing duty rate or a dumping margin other than those it calculated and published in its prior determinations" This language closely mirrors the guidance in the SAA.¹⁴³

Here, consistent with the *Final Modification for Reviews*, we corrected for the WTO-inconsistent methodology used in calculating the highest margin in the preliminary determination,¹⁴⁴ and relied on that adjusted margin in determining whether dumping was likely to continue or recur. Although NatureSweet requests a new or updated calculation of margins likely to prevail, there is insufficient data on the sunset review record to determine new dumping margins. First, there is insufficient information on the sunset review record to calculate U.S. price because, for example, the quarterly volume and value data on the record are aggregated data of U.S. imports of fresh tomatoes from Mexico and, therefore, are not reflective of individual EP or CEP sales and do not include necessary information like U.S. packing expenses, inventory carrying costs,

¹⁴⁰ See, e.g., *Large Power Transformers from the Republic of Korea: Final Results of the Expedited First Sunset Review of the Antidumping Duty Order*, 82 FR 51604 (November 7, 2017) and accompanying Issues and Decision Memorandum at Issue 2.

¹⁴¹ See, e.g., *Gray Portland Cement and Cement Clinker from Japan: Final Results of the Expedited Fourth Sunset Review of the Antidumping Duty Order*, 82 FR 12561 (March 6, 2017) and accompanying Issues and Decision Memorandum at Issue 2; *Certain Tin Mill Products From Japan: Final Results of the Expedited Third Sunset Review of the Antidumping Duty Order*, 82 FR 41933 (September 5, 2017) and accompanying Issues and Decision Memorandum at Issue 2.

¹⁴² See e.g., *Corrosion-Resistant Carbon Steel Flat Products From Germany and the Republic of Korea: Final Results of Full Sunset Reviews*, 77 FR 72827 (December 6, 2012) and Issues and Decision Memorandum (Third sunset review, noting that in the case of Germany there had been no administrative reviews, and relying on investigation margins (adjusted to eliminate WTO-inconsistent calculation methodology)); *Fresh and Chilled Atlantic Salmon From Norway: Final Results of Full Third Sunset Review of Antidumping Duty Order*, 76 FR 70409 (November 14, 2011) and accompanying Issues and Decision Memorandum at Comment 1 (relying on margins calculated in the investigation determining if the likelihood of the continuation); see also e.g., *Clad Steel Plate From Japan: Final Results of the Expedited Fourth Sunset Review of the Antidumping Duty Order*, 83 FR 22008 (May 11, 2018) and accompanying Issued and Decision Memorandum (noting that Commerce has not conducted any administrative reviews of the order and finding that revocation of the order would be likely lead to continuation or recurrence of dumping at the magnitude of weighted-average margins up to a margin determined in the 1996 final determination).

¹⁴³ See SAA at 891.

¹⁴⁴ See *Preliminary Results IDM* at Issue 2.

or indirect selling expenses. Second, there is insufficient information on the sunset review record to calculate normal value (NV) to compare to U.S. price because, for example, the record lacks data on Mexico's home market sales of tomatoes or any of the third country market sales of tomatoes, as well as data needed to make any necessary adjustments to NV. Moreover, even if there were sufficient information on the sunset review record, such a new calculation of margins would be inappropriately speculative. The SAA cautions against calculating future dumping margins, *i.e.*, margins that would prevail if the suspended investigation were terminated, because such a practice "would involve undue speculation."¹⁴⁵

For these reasons, we determine that termination of the suspended investigation on fresh tomatoes from Mexico would be likely lead to continuation or recurrence of dumping at the magnitude of weighted-average margins up to 188.14 percent.

Recommendation

Based on our analysis of the substantive responses received and the record evidence, we recommend adopting the above positions. If these recommendations are accepted, we will publish the final results of review in the *Federal Register* and notify the ITC of our findings.



Agree

Disagree



P. Lee Smith
Deputy Assistant Secretary
for Policy and Negotiations
Enforcement and Compliance

¹⁴⁵ See SAA at 891.