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August 5, 2019

The Honorable Wilbur Ross
Secretary of Commerce
Attention: Enforcement & Compliance, Room 18022
U.S. Department of Commerce
14th Street and Constitution Avenue, NW
Washington, DC 20230

Attention: Mr. Lee Smith, Ms. Sally Gannon

Case No. A-201-820
Total Pages: 18
Investigation
OP/BAU

Public Document

Resumed 1996 Investigation on Fresh Tomatoes from Mexico: Commerce July 17 Proposal

DEAR SECRETARY ROSS:

On behalf of 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 referred to hereafter as the **Mexican Industry**) we are submitting herein our response to the Department's July 17, 2019, proposal to suspend the antidumping investigation on imports of fresh tomatoes from Mexico, and a counterproposal for your consideration.

August 5, 2019
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Please do not hesitate to contact the undersigned with any questions.

Respectfully submitted,

/s/ Robert S. LaRussa

Robert S. LaRussa

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de Hortalizas del Yaqui y Mayo and Sistema
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U.S. Department of Commerce
Public Certificate of Service

I hereby certify that a copy of this submission is being served on August 5, 2019, by first class mail
upon the following parties:

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/s/ Robert S. LaRussa
Robert S. LaRussa

REPRESENTATIVE CERTIFICATION

I, Robert S. LaRussa, with the law firm of Shearman & Sterling LLP, counsel for CAADES, CABC, AMHPAC, APHYM and SPT, certify that I have read the enclosed submission dated August 5, 2019, in connection with the resumed 1996 investigation on fresh tomatoes from Mexico (A-201-820). In my capacity as an adviser, counsel, preparer or reviewer of this submission, I certify that the information contained in this submission is accurate and complete to the best of my knowledge. I am aware that U.S. law (including, but not limited to, 18 U.S.C. § 1001) imposes criminal sanctions on individuals who knowingly and willfully make material false statements to the U.S. Government. In addition, I am aware that, even if this submission may be withdrawn from the record of the AD/CVD proceeding, the Department may preserve this submission, including a business proprietary submission, for purposes of determining the accuracy of this certification. I certify that I am filing a copy of this signed certification with this submission to the U.S. Department of Commerce and that I will retain the original for a five-year period commencing with the filing of this document. The original will be available for inspection by U.S. Department of Commerce officials.

Signature: _____



Date: August 5, 2019

COMPANY CERTIFICATION

I, Lic. Mario Haroldo Robles Escalante, currently employed as Director of Confederación de Asociaciones Agrícolas del Estado de Sinaloa, A.C., certify that I prepared or otherwise supervised the preparation of the submission dated August 5, 2019, withdrawing any prior request for postponement of the proceeding, in connection with the resumed 1996 investigation on *Fresh Tomatoes from Mexico* (A-201-820). I certify that the information contained in this submission is accurate and complete to the best of my knowledge. I am aware that the information contained in this submission may be subject to verification or corroboration (as appropriate) by the U.S. Department of Commerce. I am also aware that U.S. law (including, but not limited to, 18 U.S.C. 1001) imposes criminal sanctions on individuals who knowingly and willfully make material false statements to the U.S. Government. In addition, I am aware that, even if this submission may be withdrawn from the record of the AD/CVD proceeding, the Department may preserve this submission, including a business proprietary submission, for purposes of determining the accuracy of this certification. I certify that I am filing a copy of this signed certification with this submission to the U.S. Department of Commerce and that I will retain the original for a five-year period commencing with the filing of this document. The original will be available for inspection by U.S. Department of Commerce officials.

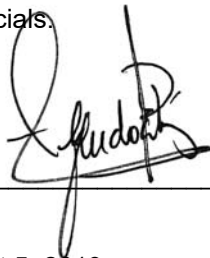
Signature: _____

Date: August 5, 2019

COMPANY CERTIFICATION

I, Ing. Alfredo Diaz Belemontes, currently employed as Director of Asociación Mexicana de Horticultura Protegida, A.C., certify that I prepared or otherwise supervised the preparation of the enclosed submission dated August 5, 2019, withdrawing any prior request for postponement of the proceeding, in connection with the resumed 1996 investigation on *Fresh Tomatoes from Mexico* (A-201-820). I certify that the information contained in this submission is accurate and complete to the best of my knowledge. I am aware that the information contained in this submission may be subject to verification or corroboration (as appropriate) by the U.S. Department of Commerce. I am also aware that U.S. law (including, but not limited to, 18 U.S.C. 1001) imposes criminal sanctions on individuals who knowingly and willfully make material false statements to the U.S. Government. In addition, I am aware that, even if this submission may be withdrawn from the record of the AD/CVD proceeding, the Department may preserve this submission, including a business proprietary submission, for purposes of determining the accuracy of this certification. I certify that I am filing a copy of this signed certification with this submission to the U.S. Department of Commerce and that I will retain the original for a five-year period commencing with the filing of this document. The original will be available for inspection by U.S. Department of Commerce officials.

Signature: _____

A handwritten signature in black ink, appearing to read 'Alfredo Diaz Belemontes', is written over a horizontal line. The signature is stylized with a large initial 'A' and a prominent 'B' at the end.

Date: August 5, 2019

COMPANY CERTIFICATION

I, Ing. Luis Renán Cruz Valenzuela, currently employed as Director of Asociación de Productores de Hortalizas del Yaqui y Mayo, certify that I prepared or otherwise supervised the preparation of the enclosed submission dated August 5, 2019, withdrawing any prior request for postponement of the proceeding, in connection with the resumed 1996 investigation on *Fresh Tomatoes from Mexico* (A-201-820). I certify that the information contained in this submission is accurate and complete to the best of my knowledge. I am aware that the information contained in this submission may be subject to verification or corroboration (as appropriate) by the U.S. Department of Commerce. I am also aware that U.S. law (including, but not limited to, 18 U.S.C. 1001) imposes criminal sanctions on individuals who knowingly and willfully make material false statements to the U.S. Government. In addition, I am aware that, even if this submission may be withdrawn from the record of the AD/CVD proceeding, the Department may preserve this submission, including a business proprietary submission, for purposes of determining the accuracy of this certification. I certify that I am filing a copy of this signed certification with this submission to the U.S. Department of Commerce and that I will retain the original for a five-year period commencing with the filing of this document. The original will be available for inspection by U.S. Department of Commerce officials.

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COMPANY CERTIFICATION

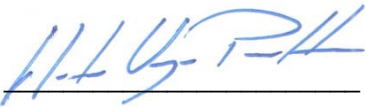
I, Lic. Keren Jael Rodriguez Espinoza, currently employed as Coordinator of the Director of Sistema Producto Tomate, certify that I prepared or otherwise supervised the preparation of the enclosed submission dated August 5, 2019, withdrawing any prior request for postponement of the proceeding, in connection with the resumed 1996 investigation on *Fresh Tomatoes from Mexico* (A-201-820). I certify that the information contained in this submission is accurate and complete to the best of my knowledge. I am aware that the information contained in this submission may be subject to verification or corroboration (as appropriate) by the U.S. Department of Commerce. I am also aware that U.S. law (including, but not limited to, 18 U.S.C. 1001) imposes criminal sanctions on individuals who knowingly and willfully make material false statements to the U.S. Government. In addition, I am aware that, even if this submission may be withdrawn from the record of the AD/CVD proceeding, the Department may preserve this submission, including a business proprietary submission, for purposes of determining the accuracy of this certification. I certify that I am filing a copy of this signed certification with this submission to the U.S. Department of Commerce and that I will retain the original for a five-year period commencing with the filing of this document. The original will be available for inspection by U.S. Department of Commerce officials.

Signature:  _____

Date: August 5, 2019

COMPANY CERTIFICATION

I, Héctor Uraga Peralta, currently of the General Director of the Consejo Agrícola de Baja California, A. C., certify that I prepared or otherwise supervised the preparation of the enclosed submission dated August 5, 2019, withdrawing any prior request for postponement of the proceeding, in connection with the resumed 1996 investigation on *Fresh Tomatoes from Mexico* (A-201-820). I certify that the information contained in this submission is accurate and complete to the best of my knowledge. I am aware that the information contained in this submission may be subject to verification or corroboration (as appropriate) by the U.S. Department of Commerce. I am also aware that U.S. law (including, but not limited to, 18 U.S.C. 1001) imposes criminal sanctions on individuals who knowingly and willfully make material false statements to the U.S. Government. In addition, I am aware that, even if this submission may be withdrawn from the record of the AD/CVD proceeding, the Department may preserve this submission, including a business proprietary submission, for purposes of determining the accuracy of this certification. I certify that I am filing a copy of this signed certification with this submission to the U.S. Department of Commerce and that I will retain the original for a five-year period commencing with the filing of this document. The original will be available for inspection by U.S. Department of Commerce officials.

Signature: 

Date: August 5, 2019

PROPOSAL OF THE MEXICAN INDUSTRY

Mexican Growers Proposal of August 2, 2019

Further to our recent telephone conversations, the Mexican growers offer the following proposal and comments on the Department's proposal of July 17. Each element is conditioned upon the acceptance of all terms.

First, the Mexican Industry proposes an increase in reference prices from our June 9 proposal, including increases in the reference prices for TOVs from 0.31 per pound to 0.41 per pound and an increase on all organic products so that there is a premium of 35 percent above the non-organic products. The new prices would be as follows:

Type	Non-Organic	New Proposal for Organics
Round and Roma	\$0.31/lb	\$0.4185/lb
TOV	\$0.41/lb	\$0.5535/lb
Stem On	\$0.42/lb	\$0.5670/lb
Specialty: Loose	\$0.47/lb	\$0.6345/lb
Specialty: Packed	\$0.59/lb	\$0.7965/lb

This proposed increase represents increases up to 33 percent increase over the Mexican Industry's prior proposal in June. Reference price increases for both organic and non-organic tomatoes beyond this point are simply not justified by the market data on the record.

Second, the Mexican Industry continues to propose that the sales price for accepted tomatoes must always be at or above the reference price. The Department has asked us to demonstrate how this would be applied. A proposed revised Appendix D is provided herein at **Attachment 1**, which implements the following:

- Outlines the procedures for rejections and/or returns to Mexico for all or part of a shipment, should condition defects exceed the stated thresholds.
- Limits the liquidated damages for breach of warranty in a way that protects the Buyer's right under PACA. This reflects a change from our June proposal. Specifically, in the event a Buyer rejects the product, as is its right under PACA, the Mexican Industry proposes that the remedy is to return the product to the Seller or destroy it under U.S.D.A. supervision. Accordingly, repacking and dump charges will not be eligible for liquidated damages or breach of warranty.
- Provides that loads with condition defects of more than 35 percent must be returned to Mexico at the expense of the Mexican Signatory.

We do not understand what more the Department could be seeking beyond this. As the Department is aware, the record of the 2013 Agreement reflects that liquidated damages for breach of warranty pursuant to valid U.S.D.A. inspections occur only in one percent of all sales. The Mexican Industry remains very concerned about the comments from other parties and its own analysis that what the Department proposes is a violation of U.S. antitrust laws and the Department has provided no assurances otherwise.

Third, the Mexican Industry continues to reject the Department's proposal to replace the existing border inspection procedures in place for decades with an entirely new mechanism based on procedures not yet defined and staffed by personnel U.S.D.A. does not yet have. As discussed above and in the filings of the Government of Mexico, rejections are one percent at destination and next to zero at the border. Accordingly, all shipments will pass an inspection at the border. Given this, no additional inspection is warranted and there is no justification for the tremendous expense and disruption at the border the Department's proposal would create.

The Department misunderstands the views of the commenters on its border inspection mechanism. No one thinks the Department seeks to inspect every tomato on a truck. The objections, however, are to inspecting *every truck*. As explained well by many parties, inspecting every truck will require extensive additional infrastructure to be built and will exacerbate transportation shortages by tying up trailers for staging. Moreover, contrary to the Department's memorandum, its proposal to inspect every truck would impose an extremely complex process that would be extraordinarily burdensome, far more than normal sampling procedures. Most importantly, neither the Department nor U.S. Customs or the U.S.D.A. have any authority to implement such a proposal.

The Department has pointed to no legal authority for what it proposes. Nor has the Department explained what market reality it seeks to remedy. The Department does not appear to have considered or addressed the comments of the Government of Mexico, the Fresh Produce Association of the Americas, the Texas International Produce Association, the Border Trade Alliance, the Texas Association of Business, the American Trucking Association, the Nogales U.S. Customs Brokers Association, the San Diego Customs Brokers Association, the Otay Mesa Chamber of Commerce, Walmart and others. Most importantly, the Department has not considered or explained why the Mexican Industry's proposal is not sufficient. We also note that the Mexican Government has recently noted that there have been calls for reciprocal inspections on U.S. agricultural products entering Mexico, which would have a very negative impact on U.S. exporters of beef, pork, wheat, corn, soybeans, apples and other sectors that rely on the Mexican market for a high percentage of their sales. From every conceivable perspective, this proposal must be rejected.

Instead, the Mexican Industry continues to maintain that the most effective way to maintain quality exports is not by unnecessary and burdensome inspections that all shipments will pass but instead by blocking unintended exports of signatory-grower tomatoes by non-grower signatories. To that end, the Mexican Industry has worked with the Mexican government to require growers to formally assign volumes sold in Mexico to another party in order for that party to get an export license. This gives each grower the ability to deny exports of its product and exercise control over what of its product is exported, by whom and when. The Mexican Industry has also proposed that quarterly certifications include volumes assigned and or received for export and that exporting fresh tomatoes to the United States under a signatory number different than one's own signatory number be designated a violation of the suspension agreement that may result in the revocation of a signatory's export license in Mexico.

Finally, the Department's draft text includes a number of restrictions on the due process rights of the Mexican Signatories and/or proposals that otherwise increase the administrative burden of the parties. Accordingly, the Mexican Industry rejects the following new proposals from the Department:

- The Department must restore the provision that the agreement cannot be terminated for a violation without a formal review under Section 751 of the Tariff Act of 1039 as amended. The Mexican Industry seeks to retain the right to have all evidence on the record, a preliminary determination from the Department with regard to the evidence and the ability for all parties to comment.
- The Department has no authority to follow the procedures in 1673c(i) without making one or the other of the two determinations required by that statute to trigger those procedures. Accordingly, the Department must drop its new proposed provision XI.C.
- The Mexican Industry objects to the Department's proposed content of the quarterly filings and agrees only to provide the information provided under the 2013 Agreement with the addition of those items specified in the Mexican Industry's proposal of May 22, 2019.
- The Mexican Industry objects to the Department's proposed requirement that each quarterly certification would be submitted individually in excel. This would require the submission of hundreds of spreadsheets quarterly that the Department does not have the time to review individually. Moreover, this would add a significant administrative burden and/or expense on the parties, the majority of whom are not well versed in how to protect the confidentiality of a submission's contents. The Mexican Industry rejects this proposal and agrees only to maintain

the same procedures as under the 2013 Agreement. The Mexican Industry agrees to provide in excel the additional information, to be agreed upon, for those entities that are sampled quarterly.

- The Department's proposed definition for "Selling Agent" is rejected. We refer the Department to the definition proposed by the Mexican Signatories on May 22, 2019.
- The Mexican Signatories agree to update the box weights only in accordance with the procedures agreed to by the parties in the 2013 Agreement as modified to provide for the exercise to be conducted at the Nogales, Arizona, port facility, Seller facility, in bonded compounds or in signatory packhouses, to accommodate the short notice provided for our observers. Until that time, the box weight charts as listed in the 2013 Agreement must remain in effect.

ATTACHMENT 1

APPENDIX D – SUSPENSION OF ANTIDUMPING INVESTIGATION – FRESH TOMATOES FROM MEXICO – PROCEDURES FOR REJECTIONS AND/OR RETURNS TO MEXICO BASED ON CERTAIN CHANGES IN CONDITION AFTER SHIPMENT

The purpose of this appendix is to explain the procedures for rejections and/or returns to Mexico of all or part of lot¹ based on certain changes in condition after shipment under PACA. With the exception of paragraph A.7.(a) below, which applies to all transactions, this appendix applies only to transactions at the minimum reference price that involve rejections.

As explained in Appendix A of the Agreement, the term “reference price” refers to the price FOB shipping point, *i.e.*, U.S. side of the US-Mexico border. The reference price includes all palletizing and cooling charges incurred prior to shipment from the shipping point, Mexican border. The actual movement or handling expenses beyond the point of entry into the United States (*e.g.*, McAllen, Nogales, Otay Mesa) must be added to the reference price and must reflect the cost for an arm’s-length transaction.

Appendix G of the Agreement outlines specific actions that signatories should take to ensure that their efforts to abide by the Agreement are upheld in any claims taken to the U.S. Department of Agriculture under PACA.

In reviewing any such claim, PACA will establish a “Seller” and a “Buyer.” For purposes of this Agreement, it is understood that the “Seller” is any entity that makes the first unaffiliated sale in the United States. This could be the signatory or a third party facilitating or performing the sale on behalf of the signatory. For purposes of this Agreement, it is understood that the “Buyer” is the first unaffiliated buyer taking title of the subject merchandise. To facilitate the verification of claims for changes in condition after shipment, the contract between the Seller and the Buyer must establish that all paper work be completed within 15 business days after the U.S.D.A. inspection, and that claims be resolved within 15 business days after the U.S.D.A. inspection, unless a PACA reparation or other claim is filed. Failure to complete this paperwork in a timely manner may constitute a violation of the Agreement. When filing quarterly certifications with the Department, signatories should report the number of lots (1) returned to Mexico and/or (2) involving rejections in transactions sold at the minimum reference price, the total quantity and value of tomatoes returned, donated or destroyed. Each quarter, the Department will sample transactions with rejections and the Mexican signatories agree to provide all required documents as listed below. Signatories can obtain from the Department’s website a copy of the suggested form for submitting the quarterly certification information. See “Quarterly Certification” at http://ia.ita.doc.gov/tomato/2013-agreement/documents/suggested_forms/.

A. Contractual Terms for Rejecting All or Part of a Lot

1. No part of a lot may be rejected for failure to meet suitable shipping conditions unless supported by an unrestricted U.S.D.A. inspection.
2. If the U.S.D.A. inspection indicates that the lot has: 1) over 8% soft/decay condition defects; 2) over 15% of any one condition defect; or 3) greater than 20% total condition defects, the receiver may reject the lot or may accept a portion of the lot and reject the defective tomatoes. For purposes of this Agreement, a condition defect is any defect listed in the chart in part A.5 below. When a lot of tomatoes has condition defects in excess of those outlined above as documented on a U.S.D.A. inspection certificate, the documented percentage of the tomatoes with condition defects are considered DEFECTIVE tomatoes.
3. No part of a lot may be rejected based on a failure to meet suitable shipping conditions if the U.S.D.A. inspection certificate does not indicate one of the condition thresholds outlined above.

¹ For these purposes, a lot is defined as a grouping of tomatoes in a particular shipment that is distinguishable by packing type.

4. The U.S.D.A. inspection must be called for no more than eight hours from the time of arrival at the destination specified by the receiver and be performed in a timely fashion thereafter. If there is more than one U.S.D.A. inspection on a given lot, the inspection certificate corresponding to the first inspection is the one that will be used for making any rejections. However, if an appeal inspection is conducted which reverses the original inspection, it will supersede the first inspection, as long as the appeal inspection is requested within a reasonable amount of time not to exceed 12 hours from the first inspection.

The first receiver of the product, regardless of whether that receiver is acting as a broker for an unrelated Buyer or whether the receiver is the unrelated Buyer acting on its own right, must specify the city/metropolitan area of the destination of the product. The inspection will take place at the destination of delivery as specified prior to shipment.

No part of a lot may be rejected based on a U.S.D.A. inspection at a destination which is different from the destination specified by the first receiver of the product. In the event that the first receiver does not specify the city/metropolitan area of the destination of the product, the eight-hour period within which an inspection may be requested will begin to run at such time as title to the product transfers to the unrelated purchaser, for example, upon loading of the product at the first handler's (importer's) warehouse in an FOB transaction and upon delivery of the product to the first buyer's warehouse in a delivered sale.

A person or company shall be considered a broker for an unrelated purchaser: 1) when that person or company falls within the description of types of broker operations set forth in 7 CFR 46.27; or 2) have provided a broker's memorandum of sale as set forth in 7 CFR 46.28(a). The following paragraphs apply if a broker or dealer is involved in the transaction.

A broker, unlike a dealer, does not take ownership or control of the tomatoes and title to the product does not pass to the broker but the broker arranges for delivery directly to the Seller or Buyer. Because a broker never takes ownership or control over or title to the tomatoes, the Buyer and not the broker may request an inspection, and only the Buyer is entitled to any resulting rejections. The inspection would take place at the Buyer's destination, as specified in the broker's contract with the Seller.

A Dealer is a Buyer which takes title to the tomatoes. When a dealer is involved in the sale, the destination of delivery stated in the contract is where the inspection is to take place. If the dealer does not specify the destination of delivery, the default destination of delivery is the warehouse of the Seller. With respect to a lot of tomatoes that is owned or controlled by a dealer, it is the responsibility of the dealer to request an inspection of the tomatoes in his possession in a timely manner, if he deems it necessary. If the dealer does not request an inspection in a timely manner (*i.e.*, within eight hours from the time of arrival at the destination specified by the dealer) and resells the tomatoes to a third party, which does request an inspection, the dealer is then responsible for all costs pertaining to the inspection and the condition or quality of the tomatoes.

5. Under this Agreement, rejections will be permitted only for condition defects. The term "condition defect" is intended to have the same definition recognized by the Specialty Crops Inspection Division of the United States Department of Agriculture, with the exception of abnormal coloring, soil spot, blossom end discoloration, and surface discoloration (silvery-white and gold fleck), and, therefore, covers the following items:

Condition Defects
1) Sunken Discolored Areas
2) Sunburn
3) Internal Discoloration
4) Freezing and Freezing Injury
5) Chilling Injury
6) Abnormally Soft and Watery Fruit
7) Cuts and Broken Skins (unhealed)
8) Soft/Decay
9) Bruises
10) Nailhead Spot
11) Skin Checks
12) Decayed/Moldy Stems
13) Waxy Blister
14) White Core
15) Shriveling
16) Discolored Seed Areas
17) Insect/Worm Injury (alive when present)

6. The Buyer has the right to decide whether to accept or reject all or a portion of a lot, but must pay the full reference price for any accepted tomatoes.
 - a. No adjustments will be permitted below the reference price.
 - b. Any repack, reconditioning, donation or destruction is done at Buyer's expense.
7. The rejected tomatoes will be divided into a separate lot and treated as not having been sold.
 - a. If the rejected lot has more than 35 percent eligible condition defects based on a U.S.D.A. inspection certificate meeting all of the above-listed terms, the Mexican signatory will pay all expenses related to the return of the defective tomatoes to Mexico as a sanction.
 - b. If the rejected lot is less than or equal to 35 percent eligible condition defects based on a U.S.D.A. inspection certificate meeting all of the above-listed terms, the Buyer may choose to have the rejected tomatoes destroyed, donated to non-profit food banks, or returned to the Seller. The rejected tomatoes may not be sold.²
 - c. In either case, the PACA-required settlement of Buyer expenses (freight and U.S.D.A. inspection fees) will be paid to the Buyer by the Mexican signatory or the Seller as a sanction.
8. For any transaction involving rejected tomatoes, the Seller must obtain/maintain the following documents/information:
 - Shipper name
 - Shipping manifest
 - Details of the shipper invoice, including invoice number, date, brand, tomato type, quantity (boxes), and value

² Tomatoes for processing must be handled in accordance with the guidelines set forth in Appendix F of the Agreement.

- Documentation supporting the freight expenses incurred for the original shipment
- U.S.D.A. inspection certificate
- Documentation of return, destruction or donation
- A statement that "No monies or other compensation was received for the destroyed or donated tomatoes"
- Signature of a responsible official at the Buyer

B. Contractual Terms for Rejection of Full Loads for Reasons Other than Condition Defects

In cases where the Buyer rejects for any reason other than condition defects based on a U.S.D.A. certificate, the Seller may sell the entire rejected lot to another Buyer (the "Final Buyer"). In that case, the price paid must be not less than the reference price plus all costs incurred (e.g., transportation, commissions, etc.) from the F.O.B. port of entry to the Final Buyer. If the Final Buyer finds that the lot contains condition defects greater than those outlined above, it shall follow the directions stated above with respect to rejection of partial loads.

C. Contractual Terms for Partial vs. Unrestricted Lot Inspections

As explained in part A.1 above, the Department will only allow rejections for condition defects if the U.S.D.A. inspection is unrestricted. During the time between the call for inspection and the arrival of the U.S.D.A. inspector, the Buyer might sell part of the lot and, therefore, by the time the U.S.D.A. inspector arrives, that part is not available for inspection. If the U.S.D.A. inspector is allowed full access to the partial lot, the Department will consider this an unrestricted partial-lot inspection. Alternatively, if the U.S.D.A. inspector is not allowed full access to the partial lot, the Department will deem it a restricted inspection. No part of a lot may be rejected for failure to meet suitable shipping conditions if the U.S.D.A. inspection is restricted. For purposes of this Agreement, when considering a rejection for failure to meet suitable shipping conditions where an unrestricted partial-lot inspection has taken place, only the portion of the lot inspected is eligible for rejection.

For example, before the U.S.D.A. inspector arrives, the Buyer sells 140 boxes of 5x5s from a lot identified as 160 5x5s on the invoice. When the U.S.D.A. inspector arrives, the Buyer requesting the inspection provides full access to the partial lot within its possession. The inspector finds that the partial lot of 20 5x5s has soft/decay condition defects of 25 percent and notes this on this inspection certificate. Under the Agreement, only the 20 5x5s are eligible for rejection for failure to meet suitable shipping conditions, and the 140 5x5s that the Buyer already sold will not be eligible for rejection based on the U.S.D.A. inspection.