

# The U.S.-Mexico Fresh Winter Tomato Trade Dispute The Broader Implications

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Policy Papers on the Americas  
Volume VII Study 4

September 3, 1996

CSIS Americas Program

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This study was prepared under the aegis of the CSIS Policy Papers on the Americas series. Comments are welcome and should be directed to:

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The author would like to thank Sidney Weintraub, Joyce Hoebing, Mary M. Lynch, and Robin King for their valuable criticisms, comments, and suggestions. Any errors or misinterpretations are those solely of the author.



## Executive Summary

The United States and Mexico have a long history of disputes over tomatoes, dating back to the 1960s, when competition between the two countries became more direct due to the Cuban embargo, which suspended the import of Cuban tomatoes, and the end of the Bracero Program, which had allowed the use of cheaper migrant labor. Since then, tomato growers in the two countries have been at loggerheads.

The competition intensifies each year during the winter months (November through February), when both areas are in full production. Mexico undoubtedly enjoys an absolute advantage during the winter because of its superior climate, and recent improvements in production techniques and the quality of inputs have further augmented that advantage. These improvements have prolonged the shelf life of the vine-ripened Mexican tomato, enabling brokers to diversify beyond the traditional market destinations to include more distant markets. This has taken away critical advantages once enjoyed by the U.S. tomato growers, who pick their tomatoes green and apply ethylene gas to either speed up or slow down the natural degreening process.

Under the North American Free Trade Agreement (NAFTA), the tariffs on Mexican fresh winter tomato imports decrease to zero over a ten-year period. A safeguard base, or tariff rate quota (TRQ), will also be phased out over the same time period. Mexican fresh tomato imports that exceed the TRQ are automatically subject to a tariff at the higher most-favored-nation (MFN) rate. The elimination of tariffs on Mexican fresh tomato imports will increase their competitiveness vis-à-vis U.S.-grown tomatoes, and the ten-year phase out period was designed to provide the U.S. industry time to adjust.

U.S. tomato growers have remained adamant about protecting their industry and have been actively exerting pressure in Washington. In the latest dispute, U.S. tomato growers filed two separate petitions with the U.S. International Trade Commission (ITC). One petition requested temporary relief from serious injury to the industry and the other requested the imposition of antidumping duties. The first petition was dismissed by the ITC, and the second is currently under review by the Secretary of Commerce, with a decision expected by October 7, one month prior to the presidential elections.

The ramifications of the final determination in the current dispute, unlike those of previous cases, will be far reaching, and may affect many other industries. The outcome will be a bellwether for:

- The extent to which politics determines trade policy;
- The ability of special interest groups to exert pressure on trade policy; and
- The commitment of the United States towards trade liberalization.

The determination will resonate in all three NAFTA countries and in the rest of the Western Hemisphere. Domestically, it will

indicate whether the United States will respect the principles of free trade once there is a hint of an economic and political cost. In Mexico and Canada, it will convey U.S. resolve to adhere to the spirit of NAFTA. In the rest of hemisphere, it could resonate more profoundly than a normal antidumping case, conveying a message that the U.S. commitment to free trade is conditional. This impression could be compounded by the apparent retreat from the spirit of hemispheric free trade, hailed at Miami's Summit of the Americas in December 1994, including the failure to renew fast track for Chile's accession to NAFTA, and the U.S. backtracking on NAFTA's trucking provision.

NAFTA and the 1994 Mexican peso devaluation have become part of the rhetoric surrounding the dispute. Skeptics of trade liberalization have used the tomato dispute as an example of NAFTA's detrimental impact on U.S. economic interests. The peso devaluation has served to energize the argument that Mexico's perceived lower production costs will eventually give it greater access to the market by eliminating those U.S. growers who are unable to compete.

The heightened political sensitivity surrounding the latest dispute has prompted growers from both countries to hold their cards close to their chest, making it difficult to obtain precise information and assess the true impact of increased Mexican fresh tomato imports on the respective industries. This report nonetheless attempts to explain the background of the current dispute and point to its broader implications.

## Background

Growers of tomatoes and other vegetables in Florida and the Mexican state of Sinaloa have been in direct competition with each other since the 1960s: the Cuban embargo halted the import of fresh vegetables from Cuba, which allowed Mexico to claim an increased share of the U.S. market, and the discontinuation of the Bracero Program in 1964 increased labor costs in the United States by ending the practice of using the cheaper *braceros*, or migrant labor. The Florida vegetable industry has changed in other ways, as well. In 1964, roughly 900 commercial vegetable farms were in operation in Florida. Today, approximately 200 farmers are in business.<sup>1</sup> In the case of tomatoes, five growers now make up about 40 percent of the acreage; the remainder are small- and medium-sized farms.

The direct competition between the two states spans from October to June. Between December and April, when both areas are in full production, Florida and Sinaloa account for over 90 percent of the supply to the U.S. market for several fresh vegetables.<sup>2</sup> This

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<sup>1</sup> Florida Farmers & Suppliers Coalition, *A Struggle for Survival: The Plight of the Florida Winter Vegetable Farmers* (Lantana, Florida: 1996), 7.

<sup>2</sup> John VanSickle et al., *Competition in the U.S. Winter Fresh Vegetable*

paper examines the period between November and February, or the "winter growing season."

The U.S. market is profoundly important for both Florida and Sinaloa producers. Mexican fresh vegetable exports to the United States in the 1990/1991 production season totaled \$272 million, while the portion of Florida's winter vegetable production that competed with Mexico was valued at \$942 million.<sup>3</sup>

Tomatoes constitute the most intense competition among the various Mexican fresh vegetables that compete with the U.S. winter fresh vegetable industry. The state of Florida produces 95 percent of the U.S. winter tomato crop.<sup>4</sup> Sinaloa produces 75 percent of its total annual production during the four-month winter period, the majority of which is exported to the United States.<sup>5</sup> Consequently, competition between these two producing regions is direct.

This competition has led to many disputes over the years. In September 1978, Florida vegetable growers joined forces and filed a petition with the United States Customs Service under the Antidumping Act of 1921. The Treasury Department determined that dumping had not occurred. Florida tomato producers, again unsuccessfully, filed a dumping case against Sinaloa tomato producers in 1987. And in March 1995, Florida producers filed a petition with the ITC seeking provisional relief, claiming that the increase in fresh tomato imports from Mexico was causing "serious injury" to the domestic industry.<sup>6</sup> The ITC ruled that the Mexican tomato imports during this four-month period did not significantly affect the Florida grower's overall industry.

The current tomato dispute between Mexico and the United States once again revolves around the increased import of fresh tomatoes from Mexico, and more specifically their capture of an increased share of the U.S. market. The dispute was sparked by the Florida growers in November 1995, when they pointed out that Mexican tomato imports in that month had increased by a staggering 166 percent compared to November 1994. The Florida growers claim that government intervention is necessary to protect their interests.

U.S. tomato growers have filed two separate petitions with the ITC. On March 11, 1996, they filed a petition requesting temporary relief under Section 201 of the Trade Act of 1974, claiming substantial damage. On March 29, 1996, they filed a petition requesting the imposition of antidumping duties on fresh tomato imports from Mexico. The ITC ruled on July 3 that the U.S. tomato industry had not been damaged by Mexican fresh tomato imports, thereby dismissing the charges under Section 201. In the antidumping case, the ITC notified the Secretary of Commerce on May 23 that it had made an "affirmative determination" in its preliminary antidumping investigation. The Secretary of Commerce must now undertake its own investigation and was to issue a preliminary determination by September 5. The Mexican growers, however, lagging in collecting the information requested by the Secretary of Commerce, were granted an extension, with the preliminary determination now being issued by October 7.<sup>7</sup>

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<sup>3</sup> Ibid., 1.

<sup>4</sup> James Gerstenzang, "Attack of the Killer Tomatoes," *Los Angeles Times*, March 14, 1996.

<sup>5</sup> VanSickle, *Competition in the U.S. Winter Fresh Vegetable Industry*, 17.

<sup>6</sup> International Trade Commission (ITC) Report, April 1995, 1-4.

<sup>7</sup> On July 26, 1996, the petitioners (the Florida Tomato Growers Exchange, et. al.) requested an extension of no more than 30 days. The Department of



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Commerce granted the request and has postponed its preliminary determination until no later than October 7, 1996. (Federal Register, Vol. 61, No. 151, August 5, 1996).

To fully understand the issues involved, it is necessary to review some key elements surrounding the dispute and ultimately how it affects the American consumer and the spirit of NAFTA.

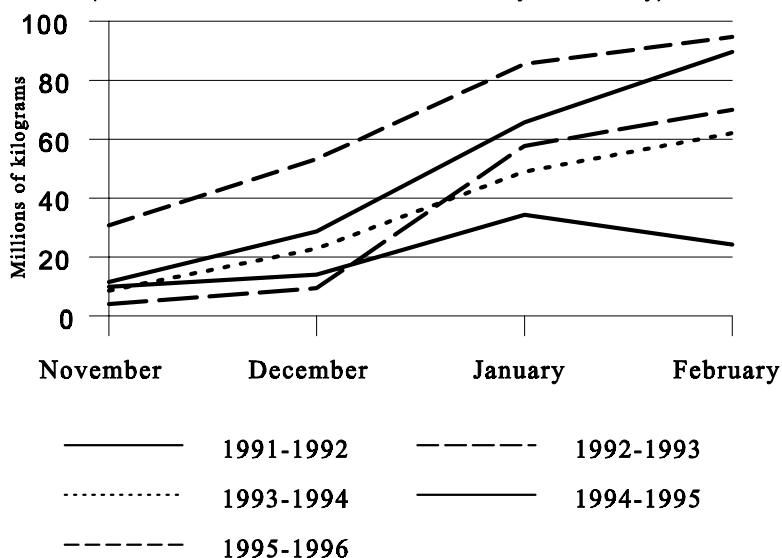
## Fresh Tomato Imports from Mexico

A close analytical look at import trends of winter fresh tomatoes from Mexico is necessary to examine the longstanding dispute between Florida and Sinaloa tomato growers. Aside from sluggish Mexican production in February 1992, a result of heavy rains and flooding, U.S. imports of Mexican fresh tomatoes have been steadily increasing, as illustrated in Chart 1 and Table 1. Following the depressed production of the 1991/1992 production season, winter tomato imports rebounded by 71 percent in 1992/1993, to a total of 141 million kgs. In the following production season, imports increased only one percent, to 142 million kgs. The current dispute in part stems from the fact that tomato imports from Mexico increased dramatically in each of the next two winter producing seasons—37 percent in 1994/1995 (to 195.6 million kgs.), and an additional 35 percent in 1995/1996 (to 264 million kgs). The quantity of tomato imports from Mexico, therefore, has increased a total of 220 percent since the 1991/1992 production season.

Chart 1

### Monthly Quantity of Fresh Tomato Imports From Mexico

(Entered between Nov. 15 and the last day in February)



Source: Bureau of Census

**Table 1**  
**Millions of Kilograms**

	November	December	January	February	TOTAL
1991-1992	9.955	13.978	34.391	24.199	82.523
1992-1993	4.035	9.404	57.744	69.979	141.162
1993-1994	8.661	22.897	49.018	62.055	142.631
1994-1995	11.561	28.712	65.732	89.563	195.568
1995-1996	30.735	53.291	85.494	94.704	264.224

Source: Bureau of Census

Mexico's share of the U.S. market has also increased. According to data collected from October 1, 1995 to January 29, 1996, Mexico's total U.S. market share for tomatoes increased from 42.3 percent in the 1994/1995 season to 62.9 percent in 1995/1996.<sup>8</sup>

Intensifying the direct competition even further is the fact that U.S. prices for fresh tomatoes are higher during the winter season than during the rest of the year.<sup>9</sup> In the 1995/1996 growing season, tomato prices in the United States fluctuated between \$2.00/10 kg box and \$25.00/10 kg box, depending on the status of Florida's supply. Traditionally, January prices for one box of tomatoes range from \$5.00 to \$6.00. Thereafter, prices begin to decrease to between \$2.00 to \$3.00/ box. Mexico, therefore, has been able to offset part of the advantage that Florida enjoys during the rest of the year by increasing its exports to the United States during that more lucrative time period.<sup>10</sup> Fresh tomato prices in the U.S. market are extremely volatile and may fluctuate several times in a single day. It is therefore difficult to ascertain whether Mexico has been dumping fresh tomatoes in the United States at less than fair value, as charged by the U.S. growers.

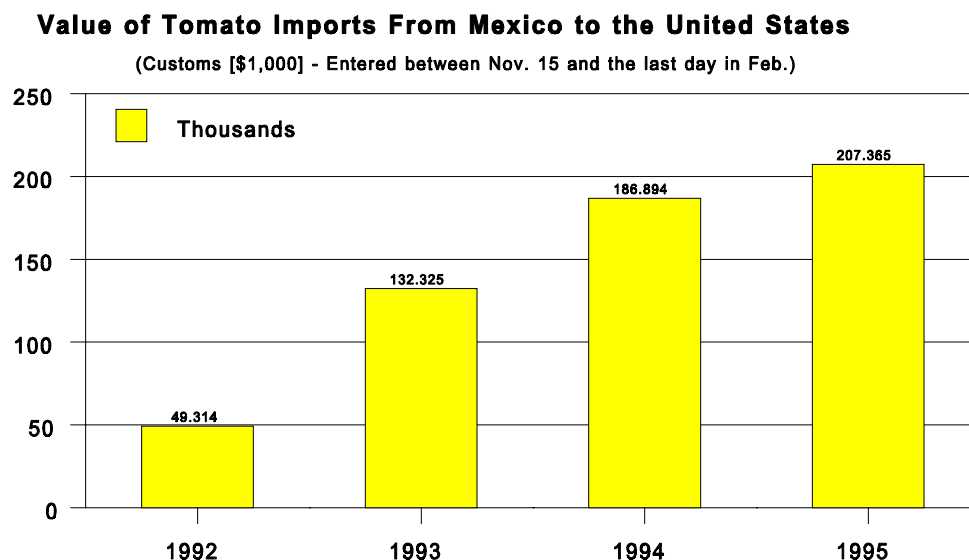
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<sup>8</sup> Florida Farmers & Suppliers Coalition, 7.

<sup>9</sup> Foreign Agricultural Service, USDA, *Mexico: Tomatoes and Products Report 1995*, Annual Report, MX9522A (Mexico City: December 12, 1995), 9.

<sup>10</sup> Van Sickle, 60.

There is also the possibility that U.S. brokers who import Mexican tomatoes have contributed to depressed tomato prices.<sup>11</sup> Because U.S. brokers are compensated on a commission basis, there may be an incentive either to get the highest price or sell as much excess supply as possible. Given the increases in the supply of Mexican tomatoes, brokers may be concerned more with volume and less with price. This could serve to depress tomato prices. Further analysis on the role of the U.S. brokers would be useful to better



understand the dispute.

The trends from 1992 through 1995 indicate that the value of Mexican fresh tomato imports to the United States has also increased steadily (see Chart 2).<sup>12</sup> The customs value of fresh tomato imports from Mexico has increased 320 percent over the last four years, from \$49 million in 1992 to \$207 million in 1995.

**Chart 2**

Source: Bureau of Census

## Causes of Increased Tomato Imports

There is no doubt that there has been an increase in imports of fresh tomatoes from Mexico. The reasons for this increase, however, are varied. Both broad and subsector specific factors affected the quantity of tomato imports from Mexico. These factors are examined below.

### **General Factors**

<sup>11</sup> The "U.S. brokers" referred to are actually importers and distributors who import tomatoes on consignment and search for buyers (produce chains, produce brokers, etc.); they typically make the sales in advance based on anticipated tomato imports.

<sup>12</sup> Calculated using harmonized tariff schedule commodity code 0702006000 up to 1994, and commodity codes 0702006030, 0702006060, and 0702006090 from 1995 on.

Winter freezes in Florida and the devaluation of the Mexican peso both contributed to the increase in tomato imports from Mexico.

1. Florida's winter tomato production has been volatile in the last few years due to severe winter temperatures, which have damaged acres of tomato plants. According to an Arizona broker, Florida has lost market share primarily due to its inability to meet demand: if Florida can increase its production, it can recapture its market share. The broker based this assertion on his belief that the typical consumer is indifferent to the source of tomatoes. What the broker did not mention, however, is that there is consumer preference for high quality tomato. Mexican growers argue that their vine-ripened tomato, compared to the green-picked Florida tomato, is superior in texture and taste and is therefore a differentiated product. It is theoretically possible, then, that Florida may be unable to recapture the market share even if winter conditions improve next winter. Also, it is important to note that Mexico's climate during the winter growing season is superior to Florida's, and that Mexico therefore does have an absolute advantage during those months.

2. The December 1994 Mexican peso devaluation, which provided Mexican growers with a cost-ratio advantage, also may have contributed to the increase in exports. Mexican growers point out, however, that any advantage was short term because production and imported input costs have increased more than the 1995 inflation rate.<sup>13</sup>

According to the Mexican Growers Association, CAADES, only 33 percent of production costs are in pesos, while the remaining 67 percent are inputs imported from the United States at dollar-denominated prices. Mexican growers must pay dollars for packing materials, pallets, seeds, fertilizer, irrigation equipment, and research and development.<sup>14</sup> The cost of purchasing domestic inputs has also risen, because Mexico's annual inflation rate has increased from seven percent in 1994 to close to 52 percent in 1995.<sup>15</sup> While production costs have increased, Mexican growers have been able to offset these increases by exporting their produce to the United States, where they receive a better price and are paid in dollars.

The peso devaluation's impact on interest rates may have diminished any cost-ratio advantages rendered by the devaluation. Since the devaluation, interest rates in Mexico have risen to between 35 and 80 percent. Virtually all loans in Mexico carry variable rates, so that growers with outstanding loans have seen their debt service increase dramatically. Moreover, Mexican banks have ceased issuing loans to tomato growers who produce for the domestic market, and, in the case of growers who produce for export markets, only those producers with diversified operations and

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<sup>13</sup> Foreign Agricultural Service, USDA, *Mexico: Tomatoes and Products Report 1995*, Annual Report, MX9522A (Mexico City: December 12, 1995), 2.

<sup>14</sup> Comision para la Investigacion y Defensa de las Hortalizas (CAADES), "El Conflicto Florida-Mexico Sobre Las Exportaciones de Tomate" (Mexico: March 1996), 10.

<sup>15</sup> Banco de Mexico Indicators ([www.quicklink.com/mexico/tablesec/tabpri.htm](http://www.quicklink.com/mexico/tablesec/tabpri.htm)).

sufficient capital investments received commercial credit for tomato production. Furthermore, only those producers fortunate enough to possess export contracts received some operating capital from the U.S. contracting companies.<sup>16</sup> The increased production cost and the limited access to credit have resulted in a decrease in the amount of land planted.

***Subsector Factors***

In addition to general factors such as weather conditions and exchange rates, specific subsector factors, such as the regulatory environment, production techniques, and labor costs, have adversely affected the competitiveness of Florida's fresh tomato industry.

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<sup>16</sup> Agricultural Attache Report, 4.

1. Florida growers and shippers have incurred higher production costs partly as a result of an increased regulatory environment.<sup>17</sup>

Federal regulations implementing the Immigration Reform and Control Act (IRCA) of 1986, which prohibits the employment of illegal workers, have been more strictly enforced in recent years. Complying with IRCA may result in labor shortages, and hence lower production. Violating the regulation, however, carries the risk of fines, which would increase production costs. In addition, Florida growers compete with urban centers for access to water, which has resulted in irrigation problems. Legislation concerning the preservation of wetlands and endangered species has also presented some restrictions to growers' use of land. Mexican growers do not encounter the same degree of regulatory, labor, irrigation, or land constraints.<sup>18</sup>

2. Mexican fresh tomato growers have made specific subsector improvements. They have employed new production techniques, particularly the use of plastic-covered greenhouses, and have improved input quality, most significantly the use of imported seeds from Israel which yield a better quality tomato. While surface area planted has decreased in the last five years, these improvements have resulted in higher overall yields.<sup>19</sup> These improvements have also prolonged the shelf life of the Mexican tomato, which in the case of a perishable product can have a tremendous impact on its distribution potential. The extended shelf life has enabled Arizona brokers to diversify beyond the traditional market destinations to include markets located considerably farther away. The tomatoes arrive at these more distant destinations ripe enough to be placed on the supermarket shelves and last long enough to be purchased.

The improved inputs and production techniques have also enabled Mexican growers to produce a higher quality tomato, making it easier to meet stricter USDA Grading System requirements. The USDA requires that Mexican tomato imports meet a grade 80 percent U.S. No. 1 or better. Florida on the other hand, is not subject to the same quality control standards, and can ship tomatoes out of state that fall under U.S. No. 2. Subjecting Florida growers to these less stringent standards could prove counter-productive in the long term, however, because the Mexican tomato could come to be perceived by the consumer as superior to the Florida tomato.

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<sup>17</sup> VanSickle, 26.

<sup>18</sup> VanSickle, 46.

<sup>19</sup> CAADES, 7.

3. Labor cost differentials may also affect the competitiveness of the Florida tomato. Precise information about labor costs is difficult to obtain from either Florida or Mexican growers. Florida growers are sensitive to allegations of using illegal field workers, while Sinaloa growers are sensitive to cheap labor arguments. It does appear, however, that Mexican growers have a comparative advantage with regard to labor costs. Mexican growers pay US\$4.70 per day, although the amount could increase if they are compensated on a per task basis (for example, per packed box).<sup>20</sup> Mexican growers contend that although labor costs constitute between 20 and 25 percent of production costs in Mexico, Florida's more automated harvesting process is not as labor intensive. They fail to recognize, however, that Florida's efficiency gains have come at a substantial cost. Mexican growers downplay the importance of labor costs and instead emphasize the rate of productivity as the defining issue, claiming that Mexican labor is less efficient.

## The Impact of NAFTA

Critics of trade liberalization have suggested that NAFTA is to blame for the increased imports of fresh tomatoes from Mexico. Their argument is based on the premise that U.S. import duties have traditionally increased Mexico's marketing costs and offset its lower production costs.

The tariff under NAFTA for the 1995/1996 season was \$0.028/kg, compared to the MFN rate of \$0.044/kg.<sup>21</sup> Any imports in excess of the safeguard base were subject to the MFN rate. At present, therefore, it is unlikely that the lower tariff costs for Mexican growers have been the sole cause of the surge in imports. Table 2 illustrates that tomato imports from Mexico exceeded the safeguard base by 13.5 percent and 49 percent in the 1994/1995 and 1995/1996 seasons, respectively.

**Table 2**  
NAFTA's Fresh Tomato Tariff Schedule

Tariff Season	Tariff (Cents/Kg)	Tariff Phase-Out	TRQs (mn. kg.)	Actual (mn. kg)
Nov. 15, 1994 - last day in Feb. 1995	3.2	10 years	172	195.6
Nov. 15, 1995 - last day in Feb. 1996	2.8	10 years	177	264.2

<sup>20</sup>The daily cost of \$4.70 was calculated based on the new peso cost of 35 per day, using an exchange rate of NP7.5:US\$1 (NP=New Pesos).

<sup>21</sup>Based on Most Favored Nation (MFN) status, March 1 - July 14, 1996.



Nov. 15, 1996 - last day in Feb. 1997	2.3	10 years	182	N.A.
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Source: USDA and U.S. Bureau of the Census

U.S. negotiators had identified Florida's winter tomato industry as one that would likely face intense pressure after NAFTA's full implementation. Nontariff barriers such as quotas and import licensing requirements were therefore converted into TRQs and scheduled to be phased out over ten years. The phase-out schedule will eventually improve Mexican growers' net competitive position for tomatoes, but it also gives Florida tomato growers time to adjust to the new situation. Since the passing of NAFTA, Mexican growers have been investing in improving their industry. Florida growers, on the other hand, have not adjusted quietly to the new reality, instead continuing aggressive political lobbying tactics in an attempt to thwart the competitiveness of Mexican tomato growers.

## The Politics of the Tomato Dispute

It is difficult to predict how the tomato dispute will be resolved, particularly because the import of Mexican tomatoes has been in full compliance with NAFTA provisions.

Since the current dispute began, both the U.S. legislative and executive branches have been trying to address the concerns of the Florida growers. The response of the Clinton administration and the U.S. Congress to the Florida growers, however, has been influenced by electoral politics.

Election year dynamics have propelled both the Democratic administration and the Republican Congress to imply that while they may advocate free trade, they are willing to simultaneously consider protectionist measures when a core group of constituents are adversely affected. The successful re-entry of protectionist Patrick Buchanan into the national political arena during the Republican primaries also helped influence the rhetoric surrounding the dispute.

Florida has the fourth highest vote in the electoral college, and responding, or appearing to respond, to constituent concerns in that state acquires an added importance in an election year. Sensitivity to Florida's concerns have been heightened by the fact that while Florida's total exports to Mexico increased 11.8 percent from 1993 to 1994, they then dropped 32.5 percent from 1994 to 1995.<sup>22</sup> Many of those affected by the drop in exports attribute it to NAFTA, rather than to the peso devaluation or other potential causes. Florida voters may again blame NAFTA if the decision on the fresh tomato dispute favors Mexico. The timing of the decision therefore has implications for President Clinton's re-election campaign because of his close association with NAFTA's passage.

Florida tomato growers can also count on many sympathetic ears

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<sup>22</sup> Adjustments to data from the U.S. Census Bureau, Foreign Trade Division, by Massachusetts Institute for Social and Economic Research (MISER).

in Washington. Twenty of Florida's 23 congressional delegates were in office at the time of the NAFTA vote: of those 20, fully half voted against NAFTA. Among them is Representative Peter Deutsch (D-FL), who represents the 20th Congressional District of Florida, which encompasses Dade County.<sup>23</sup>

This is the political climate in which the tomato dispute finds itself and which has influenced some of the following measures that have been considered by Congress and the Clinton administration.

- Responding to industry pressure, the Office of the U.S. Trade Representative (USTR) announced in a December 14, 1995 *Federal Register* notice that it would consider a proposal to recalculate the way it assesses TRQs for fresh tomato imports from Mexico. Specifically, USTR is considering a proposal to allocate TRQs on a weekly rather than a seasonal basis as a way to moderate surges. Mexican officials argue that this proposal is a violation of NAFTA provisions, particularly if U.S. importers of Mexican tomatoes are not allowed to carry over unused quantities of the quota to subsequent weeks within a given season. As illustrated in Chart 1, the quantity of imports fluctuates from month to month, thus making this proposal unacceptable to Mexican growers.
- An additional proposal under consideration in Washington is the elimination of consignment sales, which is basically the selling of tomatoes in an auction-like manner. U.S. officials feel that eliminating consignment sales will not only end a sales method that has a price-depressing effect, but will also force Mexican growers to have identified buyers before shipping to the United States.
- Senator Bob Graham (D-FL) introduced legislation (S.1462) on December 11, 1995, which asks that imported tomatoes be subject to packing standards contained in marketing orders issued by the Secretary of Agriculture. The bill would require imported tomatoes to be subject to the same packing standards as those of Florida. A comparable bill was subsequently introduced by Rep. Karen Thurman (D-FL) in the House of Representatives (H.R. 2921) on January 31, 1996. Under the proposed legislation the softer, vine-ripened Mexican tomatoes would have to be packed in ordinary boxes just like the harder, unripe Florida tomatoes. This type of packing would most likely bruise the vine-ripened Mexican tomatoes, which are currently packed in cushioned carton trays when they are imported. These proposed

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<sup>23</sup> Florida tomato growers are also located in Collier, Lee, and Charlotte Counties, which are represented by 14th District Representative Porter Johnston Goss (R-FL), and Hendry County, represented by 16th District Representative Mark Foley (R-FL).

packing requirements could be interpreted as a nontariff barrier which would reduce imports from Mexico.

- On January 12, 1996, Florida's Agriculture Commissioner, Bob Crawford, ordered that trucks carrying imported agricultural products across the state line be inspected for sanitary and security reasons. Each truck was also required to pay a US\$70.00 inspection fee.<sup>24</sup> Three months later, on April 11, Commissioner Crawford suspended the road-side inspection program. The commissioner's inspection program illustrates the extent to which the tomato dispute has been politicized. It served more as political posturing by Commissioner Crawford, an elected official, than as an effective vehicle for addressing the concerns of the Florida growers: the percentage of trucks that enter Florida is marginal. Most Mexican tomato imports enter the United States through Nogales, Arizona, San Diego, California, or Laredo, Texas, and are then distributed throughout the United States.
- Legislation, passed in the Senate but rejected in the House of Representatives, would have redefined the tomato industry. The Senate passed legislation (S. 1463) on January 26, 1996, which would have separated the seasonal fresh winter tomato industry from the broader year-round definition of the term. The narrower definition would have enabled Florida's fresh winter tomato production to be recognized as an independent industry, making it easier to establish safeguard or dumping violations and in turn impose import restrictions and/or qualify for provisional relief.  
 Senator Bob Dole (R-KS) sent a letter on April 24 to Representative Philip Crane (R-IL), chairman of the House of Representatives' Ways & Means Trade Subcommittee, expressing his support for a comparable bill that had been introduced in the House of Representatives (H.R. 2795). The subcommittee conducted a hearing on the merit of the bill, in which USTR testified that the bill was consistent with NAFTA and WTO obligations. Opponents of the bill, however, testified that the enactment of such legislation would be in violation of WTO and NAFTA safeguard provisions, and would likely result in retaliation against other U.S. exporters.<sup>25</sup> On May 9, 1996, the House of Representatives voted against the legislation.
- The Department of Commerce is required to give a preliminary determination on the current dumping petition by October 7, or one month prior to the presidential elections. It has decided to examine the period from March 1, 1995 to February 29, 1996, rather than the four winter months only. This extended period covers various growing seasons and therefore incorporates different growing regions throughout the United States. The

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<sup>24</sup> "Florida's Fight to Squash Mexican Tomato Trade," *Latin American Economy and Business*, No. 0960-8702 (London: March 1996).

<sup>25</sup> Charles E. Roh, Jr. statement before the House Committee on Ways and Means Trade Subcommittee, April 25, 1996.

parameters prejudice the case against the Mexican growers and make it more likely that the Department of Commerce will issue an affirmative determination. Although the Department of Commerce then has 120 days after the initial determination to issue a final ruling, which would fall well after November's election, it is unlikely that it would reverse its preliminary determination.

The decision to investigate the longer time period, combined with the joint statement issued by Commerce Secretary Mickey Kantor and Acting United States Trade Representative Charlene Barshefsky on July 2, 1996, expressing their disappointment with the ITC's decision not to grant provisional relief to Florida tomato growers, brings into question the impartiality of the dumping investigation undertaken by the Department of Commerce.

## Potential Resolutions to the Dispute

There are several possible resolutions to the tomato dispute. Florida growers have advocated the imposition of what many consider to be nontariff barriers to stem the flow of Mexican winter tomatoes. The other options would be implementing government-to-government or industry-to-industry agreements.

The *non-tariff barriers* that have been proposed, mainly by Congress, have ranged from tightening packing requirements, to relaxing the definition for safeguarding or dumping violations, to eliminating consignment sales methods. These measures may be in violation of WTO and NAFTA provisions, and are unlikely to be implemented.

A *government-to-government* voluntary restraint agreement (VRA) may or may not be a viable option. The Mexican government has been opposed to this route, contending that the actions of Mexican tomato growers have been in full compliance with the terms negotiated under NAFTA. If there is a high probability that the entire import market would be in danger, however, the Mexican position could change.<sup>26</sup>

An *industry-to-industry* agreement may be a feasible option because tomato growers from both countries have been familiar to each other for many years. Winter tomato growers, after all, are not scattered throughout the two countries, but are mostly centered in Florida's Dade County and Sinaloa's Culiacan Valley, and are not strangers to each other. They are somewhat interrelated because they sell their produce to the same customers (U.S. supermarket chains) and in some cases receive financing from the same sources (banks with whom the supermarket chains do business). One obstacle to such an agreement is the fact that relations between the Florida and Sinaloa growers have deteriorated even further since NAFTA.

An industry-to-industry agreement would be mutually beneficial to Florida and Mexican growers because it would help ensure that tomato prices do not become depressed. It is therefore possible that

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<sup>26</sup> On August 1, 1996, Senator Bob Graham sent a letter to President Clinton in which he outlines as a priority the need to "initiate consultations between the governments of the United States and Mexico."

growers from both countries will consider recalculating the way TRQs for fresh tomato imports from Mexico are assessed. Instead of calculating TRQs on a seasonal basis, for example, they might be assessed every four weeks—thus serving to moderate import surges.

One large potential impediment to an industry-to-industry agreement is that it might be interpreted as collusion and in turn be classified a violation of U.S. antitrust law. An available legal option may lie in the Capper Volstead Act, which would allow growers to join forces as cooperatives to set prices and/or market jointly. Although the statute traditionally has been used by U.S. growers, it contains no reference that prevents it from being applied jointly by U.S. and foreign growers. In the end, however, if the two industries are prepared to reach an agreement, the anti-trust problems could lead the two governments to act in their stead.

## Conclusion

It is difficult to say how the U.S.-Mexico fresh winter tomato dispute will be resolved. Although the costly see-saw legal battle may help draw attention to key elements of the dispute, it has yet to render an effective long-term solution to the problem.

Until now, the Clinton administration and Congress have been concentrating on ways to level the so-called playing field. They have proposed recalculating the way TRQs are assessed, eliminating consignment sales, downgrading Mexico's packing standards, imposing a road-side inspection toll, and even narrowing the definition of the industry to include seasonal industries. All of these measures are barriers to trade which may compromise NAFTA and WTO provisions.

More important, however, is the fact that none of the proposed measures actually addresses the fundamental question of how Florida growers can adjust to the evolving reality of globalization by increasing their competitiveness and/or diversifying.

In spite of the heated nature of the dispute, it is important not to lose sight of the broader, and much more important, economy-wide implications. Under the evolving globalization of markets, governments will be confronted with the dilemma of either promoting the values and principles of market-based competition, or reverting to protectionist measures that impede and distort the openness of markets.<sup>27</sup> The U.S.-Mexico fresh winter tomato dispute is symbolic of such a dilemma. How will a re-elected Clinton administration, or a new Republican team in the White House, respond to such challenges? Will resolution to this dispute convey the message that the U. S. commitment to free trade is highly conditional? Or will the message be one of a willingness to foster competition, which is ultimately in the best interest of the American consumer?

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<sup>27</sup> Crawford Falconer and Pierre Sauve, "Globalization, Trade and Competition," *OECD Observer*, No. 201, August/September 1996, p. 6.

## The Dispute's Resolution

The lengthy and highly heated U.S.-Mexico fresh winter tomato trade dispute, was finally resolved on October 28, 1996, when a suspension agreement was agreed to by the U.S. Department of Commerce and the Mexican tomato growers.<sup>28</sup>

Facing the possible imposition of dumping margins on their exports, Mexican tomato growers agreed to the AD Suspension Agreement. Under the agreement, Mexican tomato growers would not sell their tomatoes at a reference price lower than \$5.17/25 lb. box. Although the setting of a floor price was to prevent undercutting or price suppression in the U.S. market, it also served to reduce the price advantage the Mexican tomato growers enjoyed. The U.S. consumer was therefore left holding the bag, having to pay the higher prices, while the windfall goes to tomato growers in the United States and Mexico.<sup>29</sup>

### ENTRECAMINOS

Table 3

**Monthly Quantity of Fresh Tomato Imports From Mexico**  
**(entered between Nov. 15 and the last day in Feb.)**  
**Millions of Kilograms**

	November	December	January	February	TOTAL
1991-1992	9.955	13.978	34.391	24.199	82.523
1992-1993	4.035	9.404	57.744	69.979	141.162
1993-1994	8.661	22.897	49.018	62.055	142.631
1994-1995	11.561	28.712	65.732	89.563	195.568
1995-1996	30.735	53.291	85.494	94.704	264.224

<sup>28</sup> The agreement became effective upon notice of the suspension of the anti-dumping investigation in the November 1, 1996 issue of the Federal Register.

<sup>29</sup> Sidney Weintraub, *NAFTA at Three: A Progress Report*, The Center for Strategic and International Studies (CSIS), Washington, D.C. March 1997, 50.

**Table 3**

1996-1997	28.104	52.969	91.212	96.861 <sup>30</sup>	269.146
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Source: Bureau of Census

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<sup>30</sup> Because the Tariff-Rate-Quota (TRQ) for fresh tomato imports from Mexico was met by February 14, and any additional imports during that month would have been subject to a higher tariff rate, U.S. importers/brokers delayed filing the remainder of the February imports with U.S. Customs until March. In doing so, the U.S. importers/brokers were subject to a lower tariff rate. In order to factor this common tactic, and present February data which is less skewed, I have included commodity code 0702002090 in the February calculations (these include the following commodity codes: 0702006030, 0702006060 and 0702006090).

In examining the monthly quantity of fresh tomato imports from Mexico during the 1996-97 production season, it is clear that not much has changed other than the price U.S. consumers have had to pay for fresh tomatoes. Despite the agreement, there was an overall increase in the quantity of fresh tomato imports from Mexico during the 1996-97 production season.<sup>31</sup> Florida was again hampered by severe winter temperatures, which damaged their crops and thwarted their ability to meet this year's U.S. market.

## About the Author

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<sup>31</sup> Although the trade data for February 1997 has yet to be released by the U.S. Bureau of the Census, preliminary data sustains this conclusion.



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