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Voluntary - Public

Date: 11/12/2009

GAIN Report Number: MX9086

Mexico

Post: Mexico

NAFTA Apple Anti-Dumping Panel Decision

Report Categories:

Agriculture in the Economy

Fresh Deciduous Fruit

Trade Policy Monitoring

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Report Highlights:

The Secretariat of Economy (SE) published an announcement on November 4, 2009, in the Diario Oficial (Federal Register) with the final decision of the NAFTA Panel regarding the antidumping investigation on imports of apples from the United States. The Panel's decision is to resend this matter to the SE with instruction to reissue a new final determination focusing only on data from 2004-05. The Panel found that the SE's use of information and data from a period of time, which was more than eight years old, was contrary to the applicable legal provisions. The SE is required to issue their new decision by December 15, 2009.

General Information:

Introduction: This report summarizes an announcement concerning the final decision of the NAFTA Panel regarding the antidumping investigation on imports of apples from the United States. The announcement was published in Mexico's *Diario Oficial* (Federal Register) on November 4, 2009.

Disclaimer: This summary is based on a *cursory* review of the subject announcement and therefore should not, under any circumstances, be viewed as a definitive reading of the regulation in question, or of its implications for U.S. agricultural export trade interests. In the event of a discrepancy or discrepancies between this summary and the complete regulation or announcement as published in Spanish, the latter shall prevail.

Title: Final Decision of the Review Panel on the Final Resolution of the Antidumping Investigation for Importation of Red Delicious Apple Varieties, their Mutations, and Golden Delicious Apples, and Merchandise Classified under the Tariff Number 0808.10.01 of the General Duties of the Import and Export Tariff Law, Originating in the United States, Independent from the Country of Origin

Executive Summary: According to the final decision published in the *Diario Oficial* (Federal Register), the NAFTA Panel is resending this issue to the Secretariat of Economy (SE) for further actions consistent with their investigation, in accordance with paragraph 8, Article 1904 of NAFTA. Specifically, the panel is sending this matter with instructions for the SE to re-issue a new final determination considering data that focuses only on information from 2004-2005 as indicated by the Secretariat in the Preliminary Investigation of September 29, 2005. (Note: This decision was issued by the NAFTA Panel on October 15, 2009, and published November 4, 2009.)

According to the panel's decision, the official authorities should issue the new determination based on the following:

- SE should base its determination on information and data contained in the files only;
- Provide a justification in case it chooses to exclude data of certain months as established in the Preliminary Resolution;
- Provide a justification in case it chooses to include producers that are also importers of this product;
- Provide the percentage of the domestic production of the product in question that was considered for its analysis in case the SE determines positive injury findings.

The Panel found that the SE's use of information and data from a period of time that ended more than eight years prior was contrary to the applicable legal provisions. Therefore, the panel ordered the SE to reissue a new final determination considering information and data only from the additional period indicated by the Secretariat (2004-2005) during the investigation. Once the Ministry reissues its determination, the panel will further analyze and consider other arguments that were filed by the NFE in its NAFTA complaint, which were not analyzed by the panel in its decision.

The SE was granted 60 days from the date of this decision (October 15, 2009) to reissue its final determination complying with the panel's finding. Such determination should be issued at the latest on

December 15, 2009. The Panel Resolution does not change anything concerning this issue until at least December; therefore, the antidumping duty continues to apply.

Important Dates:

1. Publication Date: November 4, 2009

2. Date to return the information: December 15, 2009 (60 days following the decision date-October 15, 2009)

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FAS Web Site: <http://www.fas.usda.gov>

Useful Mexican Web Sites:

Mexico's equivalent of the Secretariat of Agriculture, SAGARPA, can be found at www.sagarpa.gob.mx and Mexico's equivalent of the Secretariat of the Economy can be found at www.se.gob.mx