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The Supreme Court Decision Limiting Presidential Authority to Impose Tariffs Under the International Emergency Economic Powers Act (IEEPA): Implications for Western Agricultural Producers, Importers, Wholesalers, and Retailers



Introduction



- Today in the one hour I have I will discuss the recent supreme court decision on tariffs, what it covers, what it doesn't cover and what to expect next. I hope to cover enough of the legal foundation to please the lawyers that will be attending and a more general overview of the non-lawyers.
- A look to the future will include procedures to obtain refunds of the tariffs, who is eligible and how to apply and some different theories on best options for refunds, as well as new tariffs that are intended to replace it.
- To provide context other trade remedy statutes used in the past and which could be used in the future will be discussed.

Supreme Court Decision



The decision was a surprise to many since we have a conservative supreme court, many of the conservative justices were Trump appointees.

And the court has generally upheld the broad power of the President. The decision in this case, although much heralded was actually very narrow, held that one law that the president relied on for many tariffs, the International Emergency

Economic Powers Act known as the IEEPA, did not authorize the imposition of tariffs and the tariff imposed under it were unconstitutional. The IEEPA was enacted in 1977 to give the President emergency powers over international economic activities involving the United States.

Supreme Court Decision (cont'd)



More specifically the IEEPA authorizes the President to declare a national emergency to declare the existence of an unusual and extraordinary threat to national security foreign policy or the economy of the United states that originates in whole or substantial part outside the US. Amendments to the law restricted the President from blocking imports of print, audio and video material and other information protected by the first amendment. It did not prohibit the president from restricting imports of anything else . Nor did it specifically mention tariffs as a method of enforcement. Of the IEEPA powers. President Trump used the IEEPA extensively sanctioning 3700 entities and invoking 11 national emergencies. In May 2019 President Trump announced he would invoke the IEEPA to introduce tariffs on Mexico as a way to combat illegal immigration and against Canada and China for their role in the “sustained influx of illicit opioids and other drugs. This is the basis for the IEEPA sometimes being referred to as the “fentanyl tariff”.

Supreme Court Decision (cont'd)



These tariffs were 25% on Mexico and Canada and 20% on China. Most of the uses of the IEEPA involved sanctions and penalties related to such issues as the Iran hostage crisis and violations of US sanctions against North Korea and In response to 911. Also in 2025 a broader world wide tariff of 10% was imposed based on broader concerns for economic policies of trading partners which resulted in an imbalance of the tariff rates we imposed on them and what they imposed on us. In my opinion this widely publicized world wide tariff is what lead to the decision to challenge the law. Most of these countries were friendly long term trading partners and many believed that President Trump had gone too far IEEPA was used again this year against countries that import from countries that were providing oil to Cuba. It is my opinion that beyond the strict legal issues before the court concerning the Presidents authority, the way these tariffs were being used influenced some judges. Page 3 of the court's opinion written by chief justice Roberts lists these uses and it appears to subtly illustrate the growing expansion of use of the IEEPA.

Supreme Court Decision (cont'd)



In a very restrained use of words, Chief Justice Roberts found that “two words ‘regulate’ and ‘importation’” separated by 16 other words did not grant the power to the President” to impose tariffs on imports from any country, on any product at any rate for any amount of time. Those words cannot bear such weight,” These five sentences on page 5 of the majority opinion summarize the entire decision. Without more specific wording specifically authorizing the use of tariffs, the President could not take such broad actions under the limited emergency powers granted by the IEEPA.

What are the consequences of this ruling in the Present and Future in regard to trade issues



The decision clearly trimmed in the sails for President Trumps broad use of tariffs based on the declaration of successive national emergencies. However it has not put an end to them Only this one specific law was overturned out of many trade laws that exist and have been used effectively in the past. Almost immediately President Trump announced he was reimposing a 10% tariff to be raised to 15% under a different law, section 122 of the tariff act of 1974, a rarely used law but one that specifically authorized tariffs to deal with balance of payment issues. The US has had a trade deficit since 1980 so balance of payments is a legitimate issue that affect the economy and under Section 122 a national emergency does not have to be declared. Although the use of this statute is also likely to result in a court challenge, because of the high stakes involved, it is less likely to be overturned than the IEEPA.

Thus the Supreme Court decision may slow down President Trumps aggressive use of tariffs as a *modus vivendi* for dealing with trade issues, it is not going to stop him.

What Is The Impact Of The Supreme Court Decision On The Agricultural Industry



First-lets look at the impact of the IEEPA tariff

If proper procedures are followed tariffs paid can be refunded with interest. The Supreme court decision was not self executing and the Supreme Court did not specifically order refunds. However, under existing rules of customs laws any duty can be challenged by filing a protest or corrected in a Post Summary Correction (PSC)- both of these methods have time restrictions that need to be noted. This protest must be filed within certain time limits. These time limits are 180 days from the date of liquidation. Liquidation is a customs term of art for when customs had finalized the duties. Liquidation must occur within 314 days of entry but often occurs within several months . It is important for importers to learn this liquidation date and then calculate 180 days to know when their deadline is. This information is made available by customs to licensed customs brokers through customs computer system know as ACE(automated Commercial Environment). Your customs broker should provide you with this information and there are other ways to obtain it through attorneys.

What Is The Impact Of The Supreme Court Decision On The Agricultural Industry (cont'd)

I am already filing protests for several clients for imports that occurred . One client had an entry for March 18,2025 liquidate on February 13,2026. So you ,may want to start looking at entries in March of 2025. Customs generally acts on these protests in 30-90 days but with the large volumes expected due to the supreme court decision, it could take longer. If your protest is granted your duties paid are refunded with interest. The interest can be significant it is based on quarterly rates published by the IRS and has been averaging about 7% and 8% percent in recent quarters.

Thus the money paid for the IEEPA duties will wind up back in the pocket of the importer of record who may need to share with others who absorbed parts of the original tariffs representing

What Is The Impact Of The Supreme Court Decision On The Agricultural Industry (cont'd)

Thus the short term picture for the agriculture industry is an abundance of new cash infusions, on the negative side the supreme court decision did not abolish other tariffs that currently affect the the agriculture industry. President Trump had used other statutes to impose tarrifs on material imported by growers such as aluminum and, steel and more recently copper. Which could be used in greenhouses, piping etc., that support production these are all under a different statute, Section 232 of the Trade Expansion Act of 1962, which has been upheld by the courts if the duty can be related to national defense concerns. under this statute before duties can be imposed there must be a petition filed and an adjudication after hearings and written submissions by effected importers. I have participated in this process and it can take six months to a year for a final decision by the commerce department. It cannot be imposed by fiat as President Trump has done under the IEEPA tariff. Duties agricultural products from China have also been imposed under Section 301 of the Trade Act of the Trade Act of 1974. During President Trumps first term, Section 301 duties were imposed on many products from China of up to 25% and many are still in effect. again, Section 301 duties require a formal adjudicative procedure, administered by the office of united states trade representative with written submissions and hearings and the process can take at least six months.

What Is The Impact Of The Supreme Court Decision On The Agricultural Industry (cont'd)

Thus although the President has other tools at his disposal to use to impose tariffs on imported produce he has to follow more complex procedures that provide more rights to the importers and which will slow down the process.

Below are some observations of congressman Jim Costa, who represents several California agricultural districts:

U.S. West Coast. California's agricultural exports totaled \$23.6 billion in value in 2024, representing a 6.1% increase from the previous year, according to the state Department of Food and Agriculture. The state's ag economy has become increasingly dependent on exports, whose value has increased by 14.6% since 2015.

So when the U.S. Supreme Court on Feb. 20 overturned the sweeping global tariffs imposed unilaterally last year by President Donald Trump, on the grounds that he usurped powers reserved for Congress, the ruling inspired hope among West Coast producers and the lawmakers and organizations that represent them that the trade impediments would ease.

I hailed the decision for reaffirming the constitutional separation of powers.

What Is The Impact Of The Supreme Court Decision On The Agricultural Industry (cont'd)

“Here in the Central Valley, where agriculture is the backbone of our economy, the real-world harm has been deep and widespread,”. “California agriculture represents an estimated \$24 billion industry, and on-again, off-again tariffs have thrown supply chains into disarray, raised costs for producers, and heightened uncertainty for family farmers who already operate on thin margins.”

Similarly, the National Association of Wheat Growers noted that its producers in the Pacific Northwest and elsewhere just finished the third straight year of financial losses driven partly by stubbornly high supply costs.

However, any enthusiasm among free trade-minded ag advocates has been curbed by Trump's determination to replace the struck-down tariffs using alternative legal mechanisms. Since the ruling, the White House has already implemented a new 10% global tariff on imports and threatened to raise it to 15%.

What Is The Impact Of The Supreme Court Decision On The Agricultural Industry (cont'd)

California Board of Food and Agriculture President Don Cameron, who grows diverse crops in Fresno County, told me last summer he was concerned about the impact of tariffs on tree nut exports after the 2025 harvest. On Feb. 20, he was guardedly optimistic.

“I’m optimistic that the Supreme Court’s tariff ruling will help exports,” he said in an email. “However it sounds as if other tariffs may be forthcoming. We need to wait to see how this plays out before we can talk about improvement in overall export sales.”

Likewise, Natalie Henderson, the Almond Board of California's director of global communications, said in an email the organization is “awaiting more clarity on the impact on what next steps will entail.” Almonds are the state’s top-valued agricultural export commodity with \$4.95 billion in foreign sales in 2024.

Many in the West hope the administration will follow the advice of AFBF Zippy Duvall: “In light of (the) Supreme Court ruling, we urge the administration to work swiftly to find other ways to resolve trade disputes and finalize recently announced trade frameworks.”

California Agricultural Context



California's agricultural exports totaled approximately \$23.6 billion in 2024, representing a 6.1% increase over the prior year. Export value has grown significantly over the past decade, making trade policy critically important to the state's agricultural economy. When tariffs are placed on imports of foreign trading partners, often they retaliate with increased tariffs or other restrictions on imports. This was seen most dramatically in regard to soybeans. China which is one of the largest consumers of soybeans has retaliated against US tariff focusing on their imports of soybeans. Although soybeans are a midwestern crop rather than a western it is a good case study of the relationship between tariffs, imports and exports. In 2025-2026 China disrupted the soybean market in the US by halting its purchases and creating a massive unsold surplus of soybeans. China also imposed tariffs of 20-34% on US soy beans making them too expensive for the Chinese consumer. Previously exports to China were approximately half of US exports. China instead shifted its imports to Brazil that was more than happy to shift its sales to China that imported 79 million metric tons in the first nine months of 2025. The loss to US soybean producers during this same time period was \$5.7 billion

California Agricultural Context (cont'd) >>

On March 4, 2025, Canada implemented retaliatory tariffs of 25% on select U.S. imports in response to the IEEPA tariffs on Canadian imports that went into effect the same day. According to analysis of 2024 Canadian import statistics, these tariffs targeted approximately \$5.9 billion in U.S. agricultural goods by value. About 90% of the U.S. products facing retaliatory tariffs were consumer-oriented goods, including coffee, tea, orange juice, alcoholic beverages (i.e., beer, wine, distilled spirits), pasta, fruits (e.g., oranges, peaches), vegetables (e.g., tomatoes, preserved cucumbers), pecans, poultry, sausages, condiments (e.g., ketchup, mayonnaise, soy sauce), confections, dairy products (e.g., whey, cheese, milk), and tobacco products.

Canada announced its intention to implement a second round of tariffs on a proposed list of additional U.S. goods to be subject to a 25% tariff. Products proposed for additional retaliation include meat (e.g., beef, pork, poultry), additional dairy products (e.g., butter, cheese), baked goods (e.g., toasted bread, waffles), nonbeverage ethanol, additional fruits (e.g., apples, cherries, strawberries), additional vegetables (e.g., onions, asparagus, lettuce), and tree nuts (e.g., almonds, walnuts).



Recent Developments

Since the Supreme Court Decision was handed down on February 20, 2026 there has been considerable activity and speculation as to how the refunds will be handled. It was clear that the Supreme Court itself would not handle the mechanics of refunds. Traditionally this is remanded back to the lower courts. In this case a number of companies had already initiated individual cases at the Court of International Trade, a process to protect themselves from uncertainty. Such individual suits are not required but permitted up to two years after the decision. The Court of International Trade has exclusive jurisdiction over customs and trade issues. The Court of Appeals for the Federal Circuit has exclusive jurisdiction over appeals from the Court of International Trade. On March 3, 2026 the Court of Appeals for the Federal Circuit issued a “mandate” to return the cases to the Court of International Trade. The government had tried to delay this by requesting a stay. The Court of Appeals rejected this.

Recent Developments (cont'd)



The Government, given the huge amount of money involved in the refunds , wants to delay them. It is not clear where the money will come from. It might be the government is contemplating a Ponzi-like plan to pay off the refunds with revenues from new tariffs.

Companies have the option of filing individual cases with the Court of International Trade which could create a huge backlog and take some time. However, the recent Court of Appeals decision indicates that the Courts do not favor any delays that may be requested by the government.



Importers have several methods to proceed



1. Protests- the traditional method in cases involving customs duties to be refunded is through the use of a “Protest”. This is a formal request for refunds of certain duties paid. It must be filed within 180 days of the date “liquidation is suspended” This is a term of art for when customs has done its final calculation of duties. Liquidation must occur within 314 days from entry or the entries are “deemed liquidated” by operation of law. However, generally, liquidation occurs much sooner and it is important for the importer to know the “liquidation date” which is something Customs communicates to the customs broker, through its electronic system know as ACE. There has been some speculation as to whether the government might oppose granting refunds through protests in this case since it involves a constitutional issue not just an error by customs. If protests are denied you have another 180 days to appeal to the Court of International Trade.

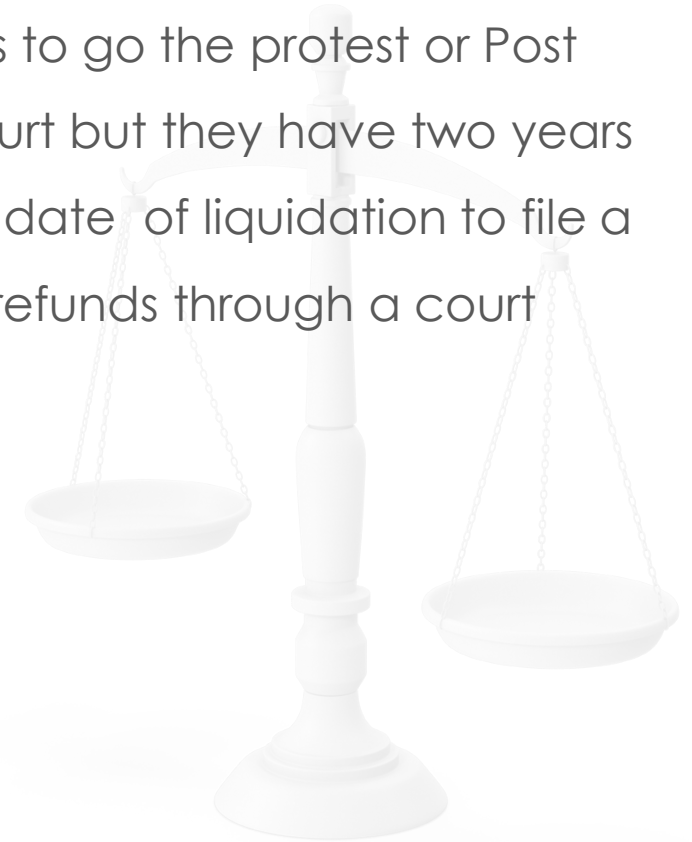
2. Post Summary Corrections (PRC)- if an entry has not been liquidated you can use the PRC process of modifying the original entry summaries to indicate that no duty is due. It can be filed up to 300 days after entry but prior to liquidation.

3. Lawsuits at the Court of International Trade-in December 2025 the Court of International Trade determined that it has the power to order reliquidation of entries and refunds and has jurisdiction to entertain direct law suits for refunds. There is a two year statute of limitations. My interpretation of this is the importers can file suites directly with the court, rather than file protests and first go through the administrative process at customs, but not that they must do this.

Importers have several methods to proceed (cont'd)



Court cases can be expensive and I am recommending to my clients to go the protest or Post Summary Correction route first, and follow the proceedings at the court but they have two years to decide whether to join in , they only have 180 days date from the date of liquidation to file a protest If the Court sets up a procedure for all companies to request refunds through a court process, companies can still do this.



New Tariffs



President Trump shortly after the Supreme Court decision striking down IEEPA indicated that he was immediately imposing a new 10% tariff under section 122 of the Trade Act of 1974. This tariff was immediately raised to 15% effective February 24th (unless the goods were already on the water and would arrive by February 28) and are temporary in nature and only can stay in effect for 150 days. This law does not have to be based on a national emergency as did the IEEPA tariff so it is not affected by the Supreme Court decision striking down that law. Section 122 does require a finding that there are fundamental international balance of payment problems exist. This has already been documented by the White House indicating that most countries have a much higher tariff than does the United States and a favorable balance of trade with the US. i.e. the US has a negative balance of trade. The U.S. had a negative trade balance with 95 countries in 2025, the largest trade deficit in the world so section 122 is likely to withstand a court challenge in my opinion.

Section 122 has certain exemptions one of which is for certain agricultural products, only beef, tomatoes and oranges are specifically set out,. Others are included in the annex.

Opportunities to expand the exceptions may be available. If you would like to find out if any of your products are exempted I can check this for you if you email me at lglick@fennemorelaw.com

Most Recent Developments in Refund Procedures

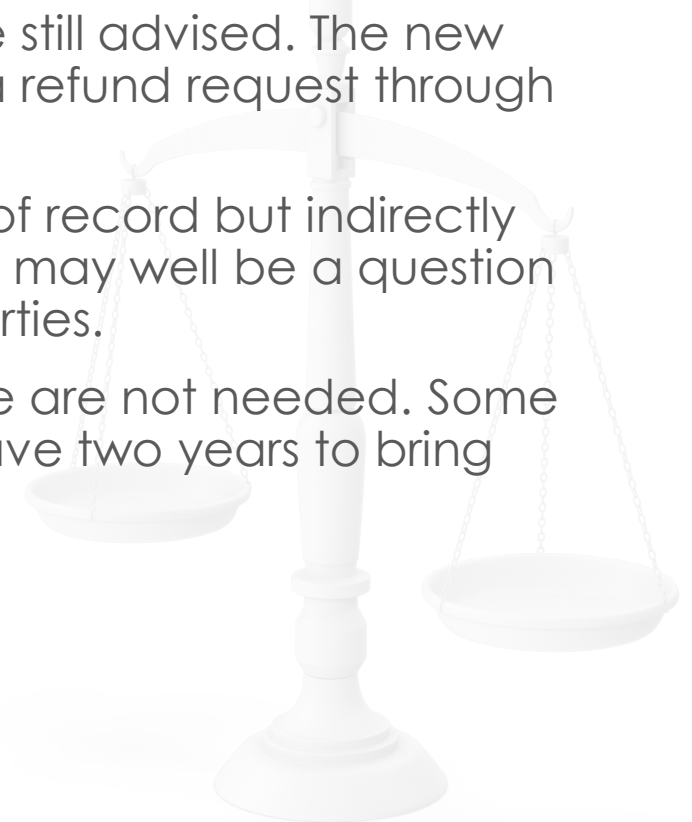


- The exact process for refunds has been undergoing considerable discussion.
- The Court of Appeals for the Federal Circuit indicated that all eligible companies should received a refund as quickly as possible and referred the case back to the initial court that decided the case, the U.S. Court of International Trade(CIT), a specialty court that has exclusive jurisdiction over customs and trade matters. The CIT assigned the case to Judge Easton who was designated as the exclusive judge to review these issues. Even though this is a large work load for one judge it was concluded that uniformity and consistency of having one judge review these issues was best in the long run, Judge Eaton wanted customs to establish a method of refunds . He first ordered that ‘all importers of record whose entries were subject to IEEPA duties are entitled the benefit of the U.S.Supreme Court February 20,2026 decision, invalidating the IEEPA as lawful authority to pay tariff
- Later Judge Eaton suspended the order to immediately begin paying refunds in deference to a declaration submitted by U.S.Customs and Border Protection (CBP) discussing the limitations they had in complying with the order. Brandon Lord, Executive Director of the Office of Trade Programs at CBP filed a declaration noting the over 330,000 importers had made over 53 million entries in which they had paid IEEPA duties that were potentially subject to refunds valued at \$166 billion dollars and the limitations and challenges CBP faces in making these refunds. Brandon stated that customs was working on a new “functionality “ within its existing ACE (Automated Commercial Environment) system to handle this. He indicated that customs would try to have this ready in 45 days from March 6, 2026. It is still recommended that importers file timely protests. The new system under construction is called CAPE(Consolidated Administration and Processing of Entries)

Most Recent Developments in Refund Procedures



- Judge Eaton held later conferences with Customs to try to resolve other issues one of which was to discuss whether entries that had past the 180 day from liquidation deadline could be reliquidated. No agreement with CBP was reached and protests are still advised. The new system is not automatic, claimants must come forward and submit a refund request through a “claim portal”
- Still open questions is the fate of companies that were not importer of record but indirectly paid the tariffs to another party who was the importer of record. This may well be a question of contract law based on the terms and conditions between the parties.
- As of now individual law suits before the Court of International Trade are not needed. Some law firms had been encouraging such laws suites. Companies still have two years to bring such suits.



Antidumping Duties on Tomatoes From Mexico: The End is in Sight?



- As many of you know there is a long history of antidumping investigations of fresh tomatoes from Mexico. I have been involved in representing some importers over the years. The investigations have been going on since 1996
- The investigations were initiated on the request of growers in Florida and an affirmative preliminary determination was reached in May 1996 but a suspension agreement came into effect in October 1996 whereby the antidumping orders were suspended in exchange for certain undertakings by Mexican growers to revise their prices to “eliminate completely the effect of exports”. Antidumping duties are imposed when prices in the US market are below those in the home market for like and competitive products. Adjustments are allowed for differences in terms of sale and differences in the products
- The results of this comparison is known as an antidumping margin. Where the home market is small the US Commerce Department can look at sales to comparable third markets to establish a price comparison. In addition there must be injury or threat of injury to US producers of a like and competitive produce. This is determined by the US International Trade Commission and independent bipartisan agency, while the dumping margins themselves are determined by the US Commerce Department a part of the executive branch of government

Antidumping Duties on Tomatoes From Mexico: The End is in Sight? (cont'd)



- By suspending the case the parties tacitly acknowledge that there was injury and by adjusting their prices they in theory at least eliminated injury.
- I won't go over the long and circuitous history of these antidumping investigations but in 2001 some Mexican growers withdrew from the suspension agreement and the investigations resumed only to result in another suspension agreement
- At the request of some Mexican growers the international trade commission in January 2026 initiated a changed circumstances review. To determine whether the dumping orders should stay in effect. A staff report is due on April 29, 2026 and a public hearing will be held on May 19, 2026. Requests to appear at the hearings can be filed by May 14, 2026. Written submissions other than written testimony can be filed until May 8, 2026 and post hearing briefs by May 28, 2026. The commission will release certain information on June 23, 2026 and give parties an opportunity for final comments no later than June 25th. The results of this review could possibly bring an end to this long saga of antidumping duties and suspension agreements.

Antidumping Duties on Tomatoes From Mexico: The End is in Sight? (cont'd)



- What has this accomplished raising the prices of fresh tomatoes to American consumers?. The suspension agreement, if the U.S. government were not involved, would be considered anti-competitive and constitute price fixing in violation of the U.S. antitrust laws.
- Groups like NALC that comprise many elements including representatives of the public interest could have standing comment and participate in this review as non parties if it chose to do so. The current rate of duty is approximately 17.56% for most Mexican producers which could be considered high enough to add to the inflation relating to food prices.
- I know that the NALC has members who are both importers and growers so both groups have an interest in the ITC final review.

Fresh Winter Strawberries from Mexico- Antidumping Investigation



- On March 3, 2026, in response to a petition filed by U.S. fresh winter strawberries in Florida the U.S. international trade commission (ITC) found that imports of fresh winter strawberries from Mexico resulted in a reasonable indication of injury to the U.S. domestic industry. The petition was noteworthy because it singled out only winter strawberries, a seasonal perishable agriculture product and involved a rarely used definition of the domestic industry as a regional industry in Florida and California. The case now has gone to the U.S. department of commerce that is expected to issue a preliminary determination of dumping (sales in the U.S. at less than fair or normal value. Alleged margins of dumping in the petition are 116.69%. This rate will automatically be applied to importers who fail to cooperate by answer the commerce department questionnaire.
- The preliminary determination at the commerce department now scheduled for June 9, 2026 if affirmative could result in withholding of appraisement and a provisional duty based on the findings of the commerce department. Often only the largest companies get individual rates and the others pay an average rate.
- A key issue will be whether the final determination accepts a segmented market for winter strawberries or insist on look at strawberries year round and if it considers separate regional markets. It appears that injury if any is mostly concentrated in the Florida market rather than nationally the could affect the outcome.



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Thank you.