

analysis of issues raised in any such written comments or at a hearing.

Upon completion of this new shipper review, the Department will issue appraisal instructions directly to the U.S. Customs Service. The results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the determination and for future deposits of estimated duties.

The cash deposit rate for Nordic will be the rate determined in the final results of this new shipper review, effective upon publication of those final results for all of Nordic's shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this new shipper administrative review, as provided by section 751(a)(2) of the Act.

This notice serves as a preliminary reminder to importers of their responsibility to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This new shipper administrative review and notice are in accordance with section 751(a)(2) of the Tariff Act (19 U.S.C. 1675(a)(2)) and 19 CFR 353.22.

Dated: September 27, 1996.

Barbara Stafford,  
*Acting Assistant Secretary for Import Administration.*

[FR Doc. 96-25532 Filed 10-3-96; 8:45 am]

BILLING CODE 3510-DS-P

[A-614-801]

### **Fresh Kiwifruit From New Zealand; Final Results of Antidumping Administrative Review**

**AGENCY:** Import Administration,  
International Trade Administration,  
Commerce.

**ACTION:** Notice of final results of  
antidumping duty administrative  
review.

**SUMMARY:** On October 23, 1995, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on fresh kiwifruit from New Zealand. The review covers one exporter, the New Zealand Kiwifruit Marketing Board (NZKMB), and the period from June 1, 1993,

through May 31, 1994. Based on our analysis of the comments received, we have revised the dumping margin for NZKMB.

**EFFECTIVE DATE:** October 4, 1996.

**FOR FURTHER INFORMATION CONTACT:** Paul M. Stolz or Thomas F. Futtner, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone (202) 482-4474 or 482-3814, respectively.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

On October 23, 1995, the Department published the preliminary results (60 FR 54333) of its administrative review of the antidumping duty order on fresh kiwifruit from New Zealand (57 FR 23203 (June 2, 1992)). The Department has now completed this administration review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act). Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

##### **Scope of the Review**

The product covered by the order under review is fresh kiwifruit. Processed kiwifruit, including fruit jams, jellies, pastes, purees, mineral waters, or juices made from or containing kiwifruit, are not covered under the scope of the order. The subject merchandise is currently classified under subheading 0810.90.20.60 of the Harmonized Tariff Schedule (HTS). Although the HTS number is provided for convenience and customs purposes, our written description of the scope of this review is dispositive.

##### **Analysis of Comments Received**

We invited interested parties to comment on the preliminary results. We received timely comments from respondents, the NZKMB, and petitioner, the California Kiwifruit Commission.

##### **Comment 1**

The petitioner alleged a number of ministerial errors pertaining to the application of the computer program used by the Department in its analysis. The first error alleged pertained to adjustments to U.S. prices and expenses, specifically: (a) certain currency conversions were made in error, (b) certain movement expenses were not included in calculations, and

(c) other direct and indirect expenses were not included in calculations. The second error alleged pertained to the cost of production (COP) test: (a) certain elements of NZKMB's costs were not included in COP, (b) certain currency conversions were made in error, (c) certain direct and indirect expenses were not included in calculations and adjustments, and (d) certain adjustments were treated as expenses. The third error alleged pertained to foreign market value (FMV) selection, specifically: certain products were not properly matched in the concordance schedule.

Respondent alleged ministerial errors pertaining to two general areas. The first pertained to calculation of third country net prices: (a) two direct selling expense variables were not deducted from the third country net price, (b) the packing figure was incorrect, and (c) credit expenses were not properly deducted from net price. The second pertained to certain elements of the COP test: certain elements of COP were not properly included in the COP figure.

##### **DOC Position**

We agree with both petitioner and respondent. The Department has made corrections to the computer program in order to properly calculate COP and FMV. (See memo to the file dated August 27, 1996 for a detailed description of all adjustments made.)

##### **Comment 2**

Respondent asserts that although grower 21 refused to respond to the Department's COP questionnaire, "punitive" best information available (BIA) should not be applied for the per unit COP of grower 21. Respondent argues that it has cooperated in good faith and that it is not related to the growers from whom it purchases kiwifruit. Further, respondent asserts that it is without means to compel growers' cooperation.

Petitioner argues that not only is the application of "punitive" BIA appropriate, but that in recognition of the fact that the grower-respondent flatly refused to cooperate, a more adverse BIA should be used. Petitioner suggests that the highest cost components be drawn from all sampled growers and totaled to produce the BIA per unit cost for grower 21.

##### **DOC Position**

We disagree with respondent, but have modified the method of determining the BIA rate employed in

the preliminary determination to be consistent with the approach used in the less than fair value investigation. As provided in section 776(c) of the Act, the Secretary shall use BIA whenever: a party or any other person (1) refuses or is unable to produce information in a timely manner and in the form required, or (2) otherwise significantly impedes an investigation.

The purpose of BIA is not to punish. It is an investigative tool entrusted to the Department by Congress which encourages "respondents to provide the Department with requested information in a timely, complete, and accurate manner, so that the investigating authority may determine antidumping margins within statutory deadlines." *Rhone Poulenc v. United States*, 899 F.2d 1185 (Fed. Cir. 1990).

In this review, sampled kiwifruit grower number 21 refused to respond to our COP questionnaire. We note that while the respondent claims it has no control over the many growers in New Zealand, it did state that all growers were required by New Zealand law to export through the NZKMB during this POR. The NZKMB is, therefore a related party to the growers, and each of the growers may be held accountable for adequate cooperation in these proceedings. See *Koyo Seiko v. United States*, 96-1116, Court of Appeals for the Federal Circuit. (August 12, 1996). Accordingly, we are required to assign to this grower a cost based on BIA.

In determining what to use as BIA, we generally followed the precedent established in the less-than-fair-value (LTFV) investigation. See *Final Results of Sales at Less Than Fair Value: Fresh Kiwifruit from New Zealand*, 57 Fed Reg. 13695, 133696 (April 17, 1992). In this case, we used as BIA, the highest calculated per unit COP for a responding grower in the same region as grower number 21. Since costs in the different growing regions tend to differ, we determined that using the highest COP from the same region as the non-responding grower would yield a reasonably adverse BIA.

#### Final Results of Review

As a result of comments received and programming errors corrected, we have revised our preliminary results.

Manufacturer/exporter	Margin
New Zealand Kiwifruit Marketing Board .....	0.00%

The Customs Service shall assess antidumping duties on all appropriate

entries. Individual differences between U.S. price and FMV may vary from the percentage stated above. The Department will issue appraisement instructions concerning the respondent directly to the U.S. Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided for by section 751(a)(1) of the Act: (1) the cash deposit rate for the reviewed firm will be 0.00 percent; and (2) the cash deposit rate for merchandise exported by all other manufacturers and exporters who are not covered by this review will be the "all others" rate of 98.60 percent established in the less-than-fair-value investigation in accordance with Department practice. See *Floral Trade Council v. United States*, 822 F. Supp. 766 (CIT) 1993, and *Federal Mogul Corporation v. United States*, 822 F. Supp. 782 (CIT 1993).

These deposit requirements shall remain in effect until publication of the final results of the next administrative review. This notice serves as the final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of the APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: September 27, 1996.  
Barbara R. Stafford,  
*Acting Assistant Secretary for Import Administration.*

[FR Doc. 96-25540 filed 10-3-96; 8:45 am]

BILLING CODE 3510-DS-M

## National Institute of Standards and Technology

### Establishment of the Manufacturing Extension Partnership National Advisory Board

**AGENCY:** National Institute of Standards and Technology (NIST), Commerce.

**ACTION:** Notice of establishment of the Manufacturing Extension Partnership National Advisory Board.

**SUMMARY:** In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2, and the General Services Administration (GSA) rule on Federal Advisory Committee Management, 41 CFR Part 101-6, the Secretary of Commerce has determined that the establishment of the Manufacturing Extension Partnership (MEP) National Advisory Board (the "Board") is in the public interest in connection with the performance of duties imposed on the Department by law.

The Board will advise the Director of the National Institute of Standards and Technology (NIST) on MEP plans, programs, and policies.

The Board will consist of nine members appointed by the Director of NIST and its membership will be balanced to represent the views and needs of customers, providers, and others interested in industrial extension throughout the United States.

The Board will function solely as an advisory body, in compliance with the provisions of the Federal Advisory Committee Act.

**DATES:** The charter will be filed under the Act, fifteen days from the date of publication of this notice.

**ADDRESSES:** Manufacturing Extension Partnership Program, National Institute of Standards and Technology, Gaithersburg, MD 20899.

**FOR FURTHER INFORMATION CONTACT:** Linda Acierto, Manufacturing Extension Partnership, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone: 301-975-5020.

Authority: Federal Advisory Committee Act; 5 U.S.C. App. 2 and General Services Administration Rule: 41 CFR Part 101-6.

Dated: September 30, 1996.

Samuel Kramer,  
*Associate Director.*

[FR Doc. 96-25531 Filed 10-3-96; 8:45 am]

BILLING CODE 3510-13-M