[Order No. 855]

Designation of New Grantee for Foreign Trade Zone 126 and Reissuance of Grant of Authority for Subzone 89A (Porsche) Reno, Nevada; Resolution and Order

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the Foreign-Trade Zones Board Regulations (15 CFR Part 400), the Foreign-Trade Zones Board (the Board) adopts the following Order:

After consideration of requests (FTZ Docket 50–96, filed 6/5/96) from the Nevada Development Authority, which is grantee of both Foreign-Trade Zone 89, Las Vegas, Nevada and Foreign-Trade Zone 126, Reno, Nevada for (1) reissuance of the grant of authority for FTZ 126 to the Economic Development Authority of Western Nevada (EDAWN), a Nevada non-profit corporation (which has accepted such reissuance subject to approval of the FTZ Board) and for (2) reissuance of the subzone grant of authority for the Porsche Cars North America, Inc. facility in Reno to EDAWN as grantee of FTZ 126, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposed actions are in the public interest, approves both requests, recognizing the Economic Development Authority of Western Nevada as the new grantee of Foreign-Trade Zone 126, Reno, Nevada, and of Subzone 89A, Reno, Nevada, which is hereby redesignated as Subzone 126A.

The approval is subject to the FTZ Act and the FTZ Board's regulations, including Section 400.28.

Signed at Washington, DC, this 22nd day of November 1996.

Robert S. LaRussa,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 96–30624 Filed 11–29–96; 8:45 am]

BILLING CODE 3510–DS–P

[Order No. 852]

Grant of Authority for Subzone Status Robin Manufacturing U.S.A., Inc. (Small Internal-Combustion Engines); Hudson, Wisconsin

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act ''To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from Brown County, Wisconsin, grantee of Foreign-Trade Zone 167, for authority to establish special-purpose subzone status at the small internal-combustion engine manufacturing plant of Robin Manufacturing U.S.A., Inc., in Hudson, Wisconsin, was filed by the Board on September 5, 1995, and notice inviting public comment was given in the Federal Register (FTZ Docket 51–95, 60 FR 48101, 9–18–95); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, Therefore, the Board hereby authorizes the establishment of a subzone (Subzone 167A) at the Robin Manufacturing U.S.A., Inc., plant in Hudson, Wisconsin, at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 22nd day of November 1996.

Robert S. LaRussa,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 96–30626 Filed 11–29–96; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–201–601]

Fresh Cut Flowers From Mexico; Final Results of Antidumping Duty Administrative Review and Revocation in Part of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review and revocation in part of antidumping duty order.

SUMMARY: On June 4, 1996, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on certain fresh cut flowers from Mexico. The period of review is April 1, 1994 through March 31, 1995.

We gave interested parties an opportunity to comment on our preliminary results. We have not changed our preliminary results of review. We have determined that sales have not been made below normal value (NV). We have also determined to revoke the order in part, with respect to the respondent, Rancho El Aguaje (Aguaje).

EFFECTIVE DATE: December 2, 1996.

FOR FURTHER INFORMATION CONTACT: Rebecca Trainor or Maureen Flannery, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On June 4, 1996, we published in the Federal Register (61 FR 28166) the preliminary results of administrative review of the antidumping duty order on certain fresh cut flowers from Mexico (52 FR 13491 (April 23, 1987)), wherein we gave notice of our intent to revoke the order with respect to Aguaje's sales of the subject merchandise. We received a case brief from petitioners, The Floral Trade Council, on July 5, 1996, and a rebuttal brief from respondent on July 12, 1996.

Applicable Statutes and Regulations

Unless otherwise stated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the Federal Register on May 11, 1995 (60 FR 25130).

Scope of the Review

The products covered by this review are certain fresh cut flowers, defined as standard carnations, standard chrysanthemums, and pompon chrysanthemums. During the period of review (POR), such merchandise was classifiable under *Harmonized Tariff Schedule of the United States* (HTSUS) items 0603.10.7010 (pompon chrysanthemums), 0603.10.7020 (standard chrysanthemums), and 0603.10.7030 (standard carnations). The HTSUS item numbers are provided for convenience and Customs purposes

only. The written description remains dispositive as to the scope of the order.

This review covers the period April 1, 1994 through March 31, 1995.

Revocation of the Order in Part

On April 28, 1995, Aguaje submitted a request, in accordance with 19 C.F.R. 353.25(b), to revoke the order with respect to its sales of the subject merchandise. In accordance with 19 C.F.R. 353.25(b)(1), this request was accompanied by a certification from the firm that it had not sold the relevant class or kind of merchandise at less than NV for a three-year period, including this review period, and would not do so in the future. In our preliminary results we incorrectly stated that Aguaje had also submitted a written agreement to reinstatement in the order if we found that Aguaje had sold the subject merchandise at less than NV subsequent to revocation. Section 353.25(b)(2) requires that a firm that previously has been found to have sold the subject merchandise at less than NV also submit a written agreement to reinstatement in the order if we conclude that it sold the subject merchandise at less than NV subsequent to revocation. At the time of Aguaje's April 28, 1995 request for administrative review and revocation, this provision was not applicable to Aguaje, as we had not yet completed an administrative review in which we found dumping margins for Aguaje. The reinstatement agreement became applicable when we published the final results for the 1991–1992 administrative review on September 26, 1995 (60 FR 49569), in which we found dumping margins for Aguaje's sales in that period. Aguaje submitted a reinstatement agreement for the record of this review on November 15, 1996.

Analysis of the Comments Received

Comment 1: Petitioner argues that Aguaje has not established its entitlement to revocation of the antidumping duty order pursuant to 19 CFR 353.25(a)(2) because: (1) Aguaje failed to submit a reinstatement agreement when filing its request for revocation in accordance with 19 CFR 353.25(a)(2) & (b); and (2) Aguaje failed to maintain a three-year period of sales at not less than NV. Petitioner notes that Aguaje received a calculated dumping margin of 1.54% in the preliminary results of the 1993–94 administrative review, and was assigned a final 39.95 percent dumping margin for the 1991–92 administrative review on September 26, 1995.

Aguaje contends that, as of the date of its request for revocation, April 28, 1995, the Department had never issued a final affirmative antidumping determination for Aguaje. Thus, the reinstatement agreement was not required at the time the request for revocation was filed.

Aguaje argues that the preliminary finding of a 1.54 percent dumping margin for the 1993–94 review was based on a misallocation of indirect selling expenses which was at odds with standard Departmental methodology; after correction for this methodological error, Aguaje argues, its dumping margin becomes zero. Aguaje points out that the Department found zero dumping margins for the 1992–93 review, and preliminarily found zero dumping margins for this 1994–95 review. Thus, when the most recent two reviews are completed, Aguaje will have three consecutive reviews in which its dumping margin was zero, and will therefore have met the conditions for revocation under 353.25(a)(2)(i).

Department's Position: We disagree with petitioner. Since we published the preliminary results in this administrative review, we have completed the 1993–94 review, in which we found a final margin of zero for Aguaje. We also found a final margin of zero for Aguaje for the 1992–93 period. Although we found a margin of 39.95 percent in the 1991–92 review, Aguaje has subsequently demonstrated that it has sold the subject merchandise at not less than NV for three consecutive years. As we state in the above section, ''Revocation of the Order in Part,'' Aguaje has provided all the certifications required by 19 CFR 353.25(b). Therefore, we are revoking the order with respect to Aguaje.

Comment 2: Petitioner argues that the Department should not revoke the antidumping order with respect to Aguaje because Aguaje's questionnaire response data could not be reconciled with an audited financial statement and/or tax return. Petitioner cites the *Preliminary Results of Antidumping Duty Administrative Review; Certain Fresh Cut Flowers from Mexico*, 60 FR 19209 (April 17, 1995), in which the Department stated that an unaudited ''in-house'' system does not provide assurance that costs have been stated in accordance with generally accepted accounting principles, or that all sales and costs have been appropriately captured, and the *Final Results of Antidumping Duty Administrative Review; Certain Fresh Cut Flowers from Mexico*, 60 FR 49569 (September 26, 1995), in which the Department stated that, ''without such independent substantiation, the entire questionnaire responses are unusable.''

Petitioner also cites the Department's rejection of the questionnaire responses in *Chrome-Plated Lug Nuts from Taiwan*, 60 FR 44837 (August 29, 1995) (*Lug Nuts*), because the responses could not be reconciled to the respondents' audited financial statements. Petitioner asserts that Aguaje has provided the Department with questionable data for three consecutive years, and suggests that the Department postpone revocation until Aguaje's tax returns are available to confirm the reported data.

Aguaje argues that the fact that it does not maintain records with the same level of sophistication as larger, multi-million dollar companies should not preclude it from revocation. Aguaje asserts that it went far beyond the accounting requirements or practices of other small Mexican agricultural businesses in order to demonstrate to the Department that it is not dumping. Aguaje maintains that its financial statements and subsidiary ledgers provide detailed cost and revenue information for all of its flower operations, and that it has fully satisfied the verification provisions of 353.25(c)(2)(ii).

Department's Position: We disagree with petitioner. Although we routinely request that respondents provide audited financial statements and/or income tax returns as independent sources with which to substantiate questionnaire responses, we have concluded in this review that Aguaje cannot provide these documents because they do not exist. Petitioner cites language from the 1991–92 preliminary and final results of review of this order, in which we presented our rationale for requiring such sources of independent substantiation, as we also did in *Lug Nuts*. However, this review is distinct from those reviews. In the 1991–92 review of this order, the Department was unable to conclude from the record that the requested documents did not exist. In *Lug Nuts*, we found that the respondents' submissions were ''unreconcilable to their audited financial statements and thus unverifiable. * * *'' *Lug Nuts* at 44838. In this case, respondent has provided evidence that it is not required by law to keep audited financial statements, and that it has not yet filed its income tax returns for the review period. Therefore, we cannot deny revocation with respect to Aguaje because it failed to provide these documents. *Cf. Olympic Adhesives, Inc.* v. *United States*, 899 F.2d 1565 (Fed. Cir. 1990).

Comment 3: The petitioner claims that the zero margin found by the Department in its preliminary results

was based in large part on facts otherwise available (FA) instead of verifiable costs or actual profit figures, and is therefore an imprecise analysis of Aguaje's pricing practices in the U.S. market. Thus, petitioner argues, the Department should reconsider revoking the order with respect to Aguaje at this time.

Aguaje contends that petitioner's argument misinterprets the facts on the record. Aguaje asserts that *total* general and administrative (G&A) expenses were verified to original invoices, the expense ledger and the general ledger, and that the Department found Aguaje to be ''generally cooperative'' at verification. Aguaje cites the Department's Verification Report and the Preliminary Results at 28167. Aguaje states that the only aspect of G&A which could not be verified was the allocation methodology devised by Aguaje's former counsel, which relied on a recalculation of the cost of goods sold for roses. In this instance, Aguaje believes that the Department's application of FA was a just and reasonable exercise of the FA provision.

Aguaje argues that the verified data show that Aguaje's U.S. prices are almost 4 to 7 times its constructed value (CV) even though the Department applied a 52 percent profit rate to U.S. cost of production. Further, any G&A allocation method, however adverse to Aguaje, would still result in a finding of zero dumping margins, as G&A costs would have to increase by multiples of hundreds before any positive dumping margin would result.

Department's Position: Because Aguaje could not support its reported allocation of G&A to the subject merchandise at verification, we preliminarily used the higher of the amount Aguaje reported for this review, or the amount it reported for the 1992–93 review, which we verified. We have reconsidered our application of FA for G&A for the final results, and have recalculated Aguaje's G&A using the entire unallocated G&A figure, which we were able to verify.

We do not consider our use of FA in this case to be grounds for denying revocation. With respect to G&A, we used a verified figure that is adverse to Aguaje. With respect to profit, we calculated a substantial profit rate based on recent data that is representative of the Mexican flower industry. Even with these changes to Aguaje's reported data, Aguaje's margin remains zero.

Comment 4: Petitioner argues that Aguaje understated its G&A expenses to the extent that it did not include the cost of income taxes owed. Petitioner claims that income taxes should be included in G&A expenses as a cost of doing business in Mexico, and the Department should therefore impute the cost of Aguaje's income tax liability for the 1994–95 period.

Aguaje contends that the Department's long-held policy to exclude income taxes from the cost of production calculations does not lead to understated G&A rates, because the Department considers income tax to be a reduction in corporate profit rather than an increase in production cost. Aguaje cites the *Final Determination of Less Than Fair Value; High Information Content Flat Panel Display Glass from Japan*, 56 FR 32376 (July 16, 1991) (*Flat Panel Displays*) and *Final Results of Antidumping Administrative Review; Color Picture Tubes from Japan*, 55 FR 37915 (September 14, 1990).

Department's Position: We disagree that G&A should be recalculated to include imputed income tax. The amount of this tax is determined based on the level of corporate income. We do not consider taxes based on the aggregate profit/loss of the company to be a cost of producing the product. *See Flat Panel Displays* at 72792. We have therefore not made the requested adjustment.

Comment 5: Petitioner argues that, contrary to the statute, the general expense percentage the Department used for CV in the preliminary results does not reflect selling expenses. Petitioner asserts that, since Aguaje does not have a viable home or third country market, the Department should base CV selling expenses on Aguaje's U.S. selling expenses, reported for the 1994–95 period.

Petitioner states that the Department should also confirm that selling expenses have been allocated based on resale prices to unrelated parties, rather than transfer prices between Aguaje and its U.S. subsidiary, Lizbeth's Wholesale Flowers, Inc. (Lizbeth).

Aguaje argues that, if the Department were to include U.S. selling expenses in the calculation of total CV as advocated by the petitioner, it would have to deduct them as a circumstance-of-sale adjustment. Thus, the net effect of the inclusion of U.S. indirect selling expenses would be to slightly increase the amount of profit included in CV, which would not come close to the 400 percent increase in CV necessary to create positive dumping margins.

Aguaje states that the use of acquisition costs to allocate Lizbeth's selling expenses is tantamount to using resale prices to unrelated parties, because Lizbeth's acquisition costs are equal to resale prices, less its commission. As Lizbeth's commission rate to Aguaje was substantially less than that charged to unaffiliated customers, Aguaje claims, the use of acquisition costs would overstate the selling expenses allocable to Aguaje.

Department's Position: We have revisited this issue and have added to CV the amount of U.S. selling expenses incurred by Aguaje, pursuant to section 773(e)(2)(B)(iii) of the Act. Section 773(e)(2)(A) provides that CV include the actual amount of selling expenses incurred and realized by the specific exporter or producer being examined ''in connection with the production and sale of a foreign like product, in the ordinary course of trade, for consumption in the foreign country. . . .'' We determine that this provision does not apply here because Aguaje only sells culls in the home market. Because of (1) the significant physical differences between culls and export quality sales and (2) the major difference in commercial value for these two products, culls are not part of the foreign like product as defined by section 771(16)(A)–(C) of the Act. Therefore, we are unable to base the amount for selling expenses on home market sales of the like product.

For purposes of determining an amount of selling expenses, we have relied on the U.S. selling expenses reported by Aguaje as a reasonable method for determining selling expenses. *See* Section 773(e)(2)(B)(iii) (allowing the Department to base selling expenses on ''any other reasonable method''). As we have stated elsewhere, ''[b]ecause we rejected the prices of home market and third countries for purposes of FMV, we find it necessary to reject the general expenses and profits associated with these sales.'' *Certain Fresh Cut Flowers From Colombia; Final Results of Antidumping Duty Administrative Reviews*, 61 FR 42833, 42842 (Aug. 19, 1996). Here, we have determined that Aguaje's home market sales are not viable and, thus, not an appropriate basis for NV. Similarly, we determine that the selling expenses associated with those home market sales will not provide an accurate measurement of dumping in this case. We therefore resort to U.S. selling expenses incurred by Aguaje as the facts otherwise available. We note that these amounts are the only remaining alternative on the record for determining selling expenses.

Contrary to Aguaje's assertion, there is no need for an adjustment for differences in circumstances of sale, as the direct selling expenses included in CV are the same as those included in the U.S. selling price. Furthermore, there is no provision in the statute for deducting

indirect selling expenses from CV in this situation.

We agree that Aguaje's selling expenses should be allocated based on resale prices to unrelated parties, and not Lizbeth's acquisition cost (resale price plus Lizbeth's commission). We have made this recalculation for the final results.

Comment 6: The petitioner argues that the Department should recalculate constructed export price (CEP) profit to attribute all of Aguaje's expenses to export quality U.S. sales as offset by home market cull revenue.

Aguaje states that the Department's calculation of CEP profit was based entirely on U.S. sales, as Aguaje has neither home market sales nor costs associated with such sales.

Department's Position: We disagree that a recalculation of CEP profit is necessary. As demonstrated in Attachment 1 to our preliminary results calculation memo, the calculation of CEP profit was based solely on U.S. sales revenue and U.S. costs, offset by home market cull revenue. As Aguaje had neither a viable home market nor any third country markets during the POR, Aguaje's expenses have been allocated to U.S. sales in their entirety. *See* Memorandum to the File dated May 23, 1996, on file in room B–099 of the Commerce Department.

Comment 7: Petitioner states that the Department should reconsider whether revocation is appropriate if it cannot confirm that Aguaje is not likely to sell merchandise at less than NV in the future, as required by section 353.25(a)(2) of the Department's regulations. Petitioner notes that several factors weigh heavily against the finding that Aguaje is not likely to dump subject merchandise in the future. These factors include Aguaje's recent history of ''evasive and misleading'' responses in the 1991–92 review, the Department's inability to rely on independent sources for verification, the massive pricing pressure from Colombian exporters of the subject merchandise on the U.S. market, and the devaluation of the Mexican peso.

Aguaje contends that the history and facts found in the previous three annual reviews undercut petitioner's claim that Aguaje has failed to present any evidence that it will not dump in the future. Aguaje states that it is in the business for the sole purpose of exporting fresh cut flowers to the United States, and that carnation production in Mexico requires virtually no fixed costs. Aguaje adds that its sales to the United States relative to the total size of the market are so small that it cannot engage in predatory pricing. Finally, Aguaje asserts that the 1994 peso devaluation has greatly increased profitability of sales to the United States relative to sales in Mexico, rather than placing further pressure on firms to engage in less than fair value pricing as petitioner contends.

Department's Position: We disagree that we should not revoke the order with respect to Aguaje at this time. As stated in our responses to the comments received from petitioner and respondent, Aguaje has proven that it is entitled to revocation in accordance with section 353.25(a)(2) of the regulations. Our decision to revoke is based on the period April 1, 1992 through March 31, 1995. Our characterization of Aguaje's questionnaire response for the 1991–92 period is not relevant.

Petitioner has presented no evidence that Colombian pricing will cause Aguaje to begin dumping the subject merchandise in the future. Furthermore, as the 1994 devaluation of the peso did not cause Aguaje to dump flowers, we have no basis to conclude that the most recent devaluation will cause Aguaje to change its pricing practices to the degree needed to create dumping margins, given the negative margins found in this review, despite the use of FA for certain elements of CV.

Final Results of Review

We determine that no dumping margin exists for Aguaje for the period April 1, 1994 through March 31, 1995. We further determine that Aguaje has sold fresh cut flowers at not less than NV for three consecutive review periods, including this review period. For the reasons stated in our response to petitioner's comments, and because Aguaje has submitted the required certifications, we are revoking the order on certain fresh cut flowers from Mexico with respect to Aguaje in accordance with section 751(d) of the Act and 19 CFR 353.25(a)(2).

This revocation applies to all entries of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after April 1, 1995. The Department will order the suspension of liquidation ended for all such entries and will instruct the Customs Service to release any cash deposit or bonds. The Department will further instruct Customs to refund with interest any cash deposits on entries made on or after April 1, 1995.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Furthermore, the following deposit rates will be effective upon publication of these final results of administrative review for all shipments of certain fresh cut flowers from Mexico entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (2) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate shall be the rate established for the most recent period for the manufacturer of the merchandise; and (3) if neither the exporter nor the manufacturer is a firm covered in this or any previous review, the cash deposit rate will be 18.20 percent, the all others rate established in the LTFV investigation. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a 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 C.F.R. 353.34(d)(1). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an 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 section 353.22 of the Department's regulations.

Dated: November 25, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–30627 Filed 11–29–96; 8:45 am]

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