

final results of this administrative review for all shipments of aramid fiber from the Netherlands entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for Akzo will be the rate established in the final results of this review, except if the rate is less than 0.5 percent and, therefore, *de minimis*, the cash deposit will be zero; (2) 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 final results in which that manufacturer or exporter participated; (3) 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 will be the rate established for the most recent final results for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 66.26 percent, the "All Others" rate established in the LTFV investigation. See *Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Aramid Fiber Formed of Poly-Phenylene Terephthalamide From The Netherlands*, 59 FR 32678-01 (June 24, 1996).

These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402 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 determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

June 30, 1999.

**Richard W. Moreland,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 99-17395 Filed 7-7-99; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-614-801]

#### **Fresh Kiwifruit From New Zealand: Preliminary Results of Antidumping Duty Administrative Review**

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

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

**SUMMARY:** The Department of Commerce is conducting an administrative review of the antidumping duty order on fresh kiwifruit from New Zealand in response to a request by the respondent, the New Zealand Kiwifruit Marketing Board, the sole exporter of the subject merchandise to the United States. The review covers the period June 1, 1997, through May 31, 1998.

We preliminarily determine that sales have been made below normal value. Interested parties are invited to comment on these preliminary results. If these preliminary results are adopted in our final results of administrative review, we will instruct the Customs Service to assess antidumping duties on entries subject to this review.

**EFFECTIVE DATE:** July 8, 1999.

**FOR FURTHER INFORMATION CONTACT:** Sunkyu Kim or John P. Maloney, Jr., Office 2, AD/CVD Enforcement Group I, Import Administration—Room B099, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482-2613 or (202) 482-1503, respectively.

#### **SUPPLEMENTARY INFORMATION:**

##### **The Applicable Statute and Regulations**

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the current regulations at 19 CFR part 351 (April 1998).

##### **Background**

On June 10, 1998, the Department published in the **Federal Register** a notice of "Opportunity to Request an Administrative Review" of the antidumping duty order on fresh

kiwifruit from New Zealand (63 FR 31717).

In accordance with 19 CFR 351.213(b)(1), on June 29, 1998, the New Zealand Kiwifruit Marketing Board (NZKMB) requested an administrative review of the antidumping duty order covering the period June 1, 1997, through May 31, 1998. NZKMB also requested revocation of the antidumping order, in accordance with 19 CFR 351.222(b)(1). On July 28, 1998, the Department initiated an administrative review for NZKMB (63 FR 40258).

On July 21, 1998, the California Kiwifruit Commission (the petitioner) submitted a letter objecting to NZKMB's request for revocation. The petitioner argued that NZKMB failed to satisfy the regulatory requirements for seeking revocation and urged the Department to reject NZKMB's revocation request in this administrative review. Subsequently, on September 23, 1998, NZKMB withdrew its request for revocation of the antidumping duty order at the conclusion of this review.

On August 20, 1998, the Department issued the antidumping questionnaire to NZKMB. NZKMB submitted responses to sections A through D of the antidumping questionnaire on October 19, 1998 and February 22, 1999. The Department issued its supplemental questionnaires and received responses to the questionnaires in April 1999.

During May 1999, the Department conducted verifications of the sales and cost responses of NZKMB and individual kiwifruit growers. On June 24, 1999, NZKMB submitted revised sales and cost of production databases incorporating changes resulting from the verifications.

The Department is conducting this review in accordance with section 751(a) of the Act.

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

The product covered by this 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 this review. This merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 0810.90.20.60. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

##### **Verification**

As provided in section 782(i) of the Act, we verified the information provided by NZKMB. We used standard verification procedures, including on-

site inspection of the respondent's facilities and examination of relevant sales and financial records. Based on the Department's verification findings, we made certain changes to the sales and cost data submitted by the respondent used to calculate the preliminary margin. Our verification results are outlined in the verification reports placed in the case file.

#### Normal Value Comparisons

To determine whether sales of fresh kiwifruit to the United States were made at less than normal value (NV), we compared the constructed export price (CEP) to the NV for NZKMB, as specified in the "Constructed Export Price" and "Normal Value" sections of this notice.

When making comparisons in accordance with section 771(16) of the Act, we considered all products sold in the home market as described in the "Scope of the Review" section of this notice, above, that were sold in the ordinary course of trade for purposes of determining appropriate product comparisons to U.S. sales.

#### Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the export price (EP) or CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on constructed value (CV), that of the sales from which we derive selling, general and administrative (SG&A) expenses and profit. For EP, the LOT is also the level of the starting-price sale, which is usually from exporter to importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer in the comparison market. If the comparison-market sales are at a different LOT and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price

comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP-offset provision). See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

NZKMB claimed that it made home market sales at two levels of trade based on the channel of distribution (i.e., sales to a distributor on a consignment basis and direct sales to wholesale or retail customers). In the U.S. market, NZKMB reported only CEP sales made through one channel of distribution and claimed one level of trade (the CEP level of trade). NZKMB argued that a CEP offset is warranted in this case because neither of its two claimed home market levels of trade is similar to the U.S. CEP level of trade, and the home market levels are more remote from the factory than the CEP level. Accordingly, we have performed an analysis of the information on the record to determine whether a LOT adjustment, or in the alternative, a CEP offset, is warranted.

In order to determine whether NV was established at a different LOT than CEP sales, we examined stages in the marketing process and selling functions along the chains of distribution between NZKMB and its home market customers. We compared the selling functions performed for home market sales with those performed with respect to the CEP transactions, exclusive of economic activities occurring in the United States, pursuant to section 772(d) of the Act, to determine whether the home market levels of trade constituted more advanced stages of distribution than the CEP level of trade.

Based on an analysis of the information on the record, we found that NZKMB made sales in the home market at one LOT, with two types of sales within that level: sales through a distributor and direct sales to wholesale or retail customers. We examined the selling functions performed for both types of sales and found that NZKMB, and its marketing subsidiary Zespri, performed minimal selling functions for both types of sales in the home market. Through its packhouse and coolstore providers, NZKMB provides quality checking services supporting all home market sales. In addition, Zespri provides some advertising and customer support for home market sales to its distributor. However, for sales made to its distributor, which constitute the vast majority of home markets sales, the distributor handles the bulk of the services and selling functions after delivery from the coolstore, and Zespri "does not provide technical advice, warranty services, freight or delivery

arrangements, direct advertising support to the distributor (except for general brand-enhancement advertising), or any other sales support services." See NZKMB's October 19, 1998, submission at page A-17. Similarly, for the few direct sales to its customers, NZKMB maintains the fruit in coolstore until sale and provides quality control through its coolstore providers, but Zespri provides no subsequent sales support activities besides general advertising and customer support. Given the minimal level of reported selling functions for both types of sales in the home market, we preliminarily determine that the selling functions for both sales types are sufficiently similar to justify only one LOT in the home market.

Because all U.S. sales were CEP sales, the LOT for such sales is the level of the constructed sale from the exporter to the importer. We examined the selling functions performed by NZKMB and Zespri for U.S. CEP sales and preliminarily determine that they are made at the same LOT as home market sales. As with home market sales, NZKMB provides quality checking services in support of U.S. sales through their packhouse and coolstore providers. In addition, Zespri staff in New Zealand provide some support for U.S. sales including promotional information and strategic advice on sales and marketing tactics. See NZKMB verification report memorandum for Louis Apple from James Maeder and John Maloney, dated June 14, 1999. The majority of selling function support for U.S. sales occurs in the United States, performed by Zespri's affiliated North American selling agent, and are not considered for comparison purposes. Thus, similar to home market sales, Zespri performs a limited number of selling functions in New Zealand in support of the constructed U.S. CEP sales, including the quality and condition checking services performed for all kiwifruit sales. Furthermore, a comparison between the reported indirect selling expenses in New Zealand for U.S. sales and the reported indirect selling expenses for home market sales indicated no substantial quantitative difference in the level of selling functions. As a result, we find that the quantity and quality of selling functions performed by NZKMB and Zespri in support of the constructed U.S. sales are comparable to the selling functions performed in support of home market sales. Therefore, our analysis of the chains of distribution and selling functions performed for all sales in the home market and CEP sales in the U.S.

market indicates that both are made at the same stage in the marketing process.

Because of the analogous levels of selling functions and stages in the chains of distribution between home market sales and constructed U.S. sales, we find that sales in both markets were made at the same LOT. Therefore, no LOT adjustment or CEP offset is warranted in this case.

#### Constructed Export Price

For all U.S. sales made by NZKMB, we used CEP, in accordance with section 772(b) of the Act, because the sales were made to the first unaffiliated party in the United States after importation. We calculated CEP based on packed F.O.B. (ex-New Zealand coolstore) and delivered prices. We made deductions, where appropriate, for foreign inland freight (coolstore to port), pre-sale warehousing expenses, transportation insurance expenses (including inland and marine insurance), foreign brokerage and handling expenses, ocean freight, U.S. brokerage and handling, U.S. inland freight, U.S. coolstore expenses, and U.S. Customs fees, in accordance with section 772 (c)(2)(A) of the Act.

In accordance with sections 772(d)(1) and (2) of the Act, we made additional deductions, where appropriate, for commissions, credit expenses, direct advertising expenses, U.S. indirect selling expenses, U.S. inventory carrying costs, and U.S. repacking costs. We also made an adjustment for profit, in accordance with section 772(d)(3) of the Act. Finally, we increased the U.S. price to account for post-sale price adjustments not reflected in the gross price.

#### Normal Value

In order to determine whether there were sufficient sales of kiwifruit in the home market to serve as a viable basis for calculating NV, we compared the volume of NZKMB's home market sales of the foreign like product to the volume of U.S. sales of subject merchandise, in accordance with section 773(a)(1)(B) of the Act. Based on this comparison, we determined that NZKMB had a viable home market during the period of review (POR) (*i.e.*, June 1, 1997 through May 31, 1998). Consequently, we based NV on home market sales.

Pursuant to section 773(b)(2)(A)(ii) of the Act, there were reasonable grounds to believe or suspect that NZKMB had made home market sales at prices below the cost of production (COP) in this review because the Department had disregarded sales below the COP in the most recently completed administrative review. *See Fresh Kiwifruit from New*

*Zealand: Final Results of Antidumping Duty Administrative Review*, 61 FR 46438 (September 3, 1996) (Kiwifruit Third Review). Therefore, pursuant to section 773(b)(1) of the Act, we initiated an investigation to determine whether the respondent made home market sales during the POR at prices below the COP. We followed the Department's determinations in the original investigation and the prior administrative reviews that, in comparing NV to COP, the reseller's or exporter's acquisition prices are irrelevant because section 773(b) of the Act requires that the Department look at the actual COP of the subject merchandise. Accordingly, we used the costs incurred by kiwifruit growers, the actual producers of the subject merchandise, to calculate the COP.

Due to the large number of growers from which the NZKMB purchased kiwifruit during the POR, the Department determined that sampling was both administratively necessary and methodologically appropriate to calculate a representative cost of producing the subject merchandise for purposes of this administrative review. *See* section 777A of the Act. We selected the sample of kiwifruit growers by first geographically segregating farms into two regions: the Bay of Plenty region and the non-Bay of Plenty region. In selecting the sample of twenty growers, we selected sixteen growers representing the Bay of Plenty region and four from the non-Bay of Plenty region in order to accurately reflect the relative proportion of kiwifruit production from each of the two regions. Because the Department's purpose is to estimate the average unit cost per tray of exported kiwifruit, as a second step, we have assigned selection probabilities to the growers on the basis of the volume of kiwifruit each grower submitted to the NZKMB for export. We sent the COP/CV questionnaires through the NZKMB to the twenty selected kiwifruit growers and received responses to the Department's questionnaire from all twenty selected growers. We verified the COP/CV data provided by four of the twenty selected growers.

We calculated each grower's cultivation cost by summing all costs for the 1997-1998 kiwifruit season. These costs included cost of materials, farm labor, farm overhead, and packing. We allocated the cultivation cost on a per-tray equivalent basis over the total number of tray equivalents submitted by each grower to the NZKMB. A tray equivalent is a standard unit of measurement for kiwifruit which represents the amount of kiwifruit

which can fit into a standard packing tray. We adjusted these per-tray costs to reflect fruit loss and then added the NZKMB's G&A and interest expenses to the farm's average cost per tray.

The orchard set-up costs for all growers were amortized over twenty years as was done in prior reviews. Where growers purchased an established orchard, the acquisition price of the farm was treated as the set-up cost.

Except as follows, we relied on the COP data submitted on June 24, 1999, which incorporates the revised COP data of the three verified growers based on information obtained at verification. With respect to the COP and packing data provided by the remaining growers that were not verified, we adjusted their reported COP and packing data to reflect the adjusted COP and packing amounts of the three verified growers, based on our findings at the verifications. Specifically, for each of the three growers we verified, we calculated the difference between the reported COP and packing expense and the revised COP and packing expense based on the verification findings. We then increased the COP and packing expense amounts reported by the remaining, unverified growers by the average percentage difference between the revised and reported COPs and packing amounts of the three verified growers. *See Preliminary Results Calculation Memorandum* dated June 30, 1999. We then calculated a simple average COP and packing expense from the sampled growers' individual COPs and packing expenses, as revised. The total COP was calculated on a New Zealand dollar per single-layer tray (NZ\$/SLT) equivalent basis. We compared the COP figures to home market prices of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. On a product-specific basis, we compared the COP to home market prices, less any applicable movement charges, and direct and indirect selling expenses.

In determining whether to disregard home market sales made at prices below the COP, we examined whether such sales were made: (1) In substantial quantities within an extended period of time; and (2) at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade, pursuant to section 773(b)(1) of the Act.

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of NZKMB's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that

product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of NZKMB's sales of a given product were at prices less than the COP, we determined such sales to have been made in "substantial quantities" within an extended period of time in accordance with section 773(b)(2)(B) of the Act. In such cases, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded the below-cost sales.

We found that all of NZKMB's home market sales were at prices less than COP. We, therefore, disregarded all home market sales and based NV on CV in accordance with section 773(a)(4) of the Act.

In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of the respondent's cost of materials, fabrication, SG&A, profit and U.S. packing costs. Section 773(e)(2)(B) of the Act states that in the absence of above-cost sales of a foreign like product, SG&A and profit shall be based on (i) expenses and profit of the respondent's other products, or (ii) the expenses and profit of other producers subject to the antidumping investigation or review, or (iii) any other reasonable method. The first two alternatives are not available in this case, since NZKMB sells no other products and there are no other New Zealand exporters subject to this review. Therefore, we must rely on "other reasonable" methods. In this case, NZKMB earned no profits on home market sales and we have no other information on the record with respect to profit earned in the home market. Therefore, consistent with the methodology used in the most recent prior review of this proceeding, as facts available, we used the profits realized at the grower level. In this instance, we used the average profit of the twenty sampled growers as the profit figure in our margin calculations. With respect to selling expenses, we have used the selling expenses associated with the home market sales. *See Fresh Kiwifruit from New Zealand: Amended Final Results of Antidumping Duty Administrative Review*, 62 FR 47440 (September 9, 1997).

In comparing CEP to CV, we made circumstance-of-sale adjustments, where appropriate, for differences in credit expenses and advertising expenses, in accordance with sections 773(a)(6)(C)(iii) and 773(a)(8) of the Act. With respect to commissions, where applicable, we offset any commission

paid on a U.S. sale by reducing the NV by the amount of home market indirect selling expenses, including inventory carrying costs, up to the amount of the U.S. commission, in accordance with 19 CFR 351.410(e).

#### Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

#### Preliminary Results of Review

As a result of our review, we preliminarily determine that the following margin exists for the period June 1, 1997, through May 31, 1998:

Manufacturer/exporter	Percent margin
New Zealand Kiwifruit Marketing Board .....	4.66

Interested parties may request a hearing within 30 days of the publication of this notice. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 37 days after the date of the publication of this notice, or the first workday thereafter. Interested parties may submit case briefs within 30 days of publication. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument. Parties are also encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited.

The Department will subsequently issue a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any such written briefs not later than 120 days after the date of publication of this notice.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. We have calculated an importer-specific assessment rate based on the ratio of the total amount of antidumping duties calculated for the examined sales made during the POR to the total entered value of the examined sales. This rate will be assessed uniformly on all entries of that particular importer made during the POR. The Department will issue appraisal instructions directly to the Customs Service.

Further, the following deposit requirements will be effective for all

shipments of fresh kiwifruit from New Zealand entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rate for NZKMB will be the rate established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, de minimis within the meaning of 19 CFR 351.106, the cash deposit will be zero; (2) 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; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 98.60 percent, the all others rate established in the LTFV investigation.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) 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 administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 29, 1999.

**Richard W. Moreland,**

*Acting Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-122-833]

#### Notice of Preliminary Determination of Sales at Less Than Fair Value: Live Cattle From Canada

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