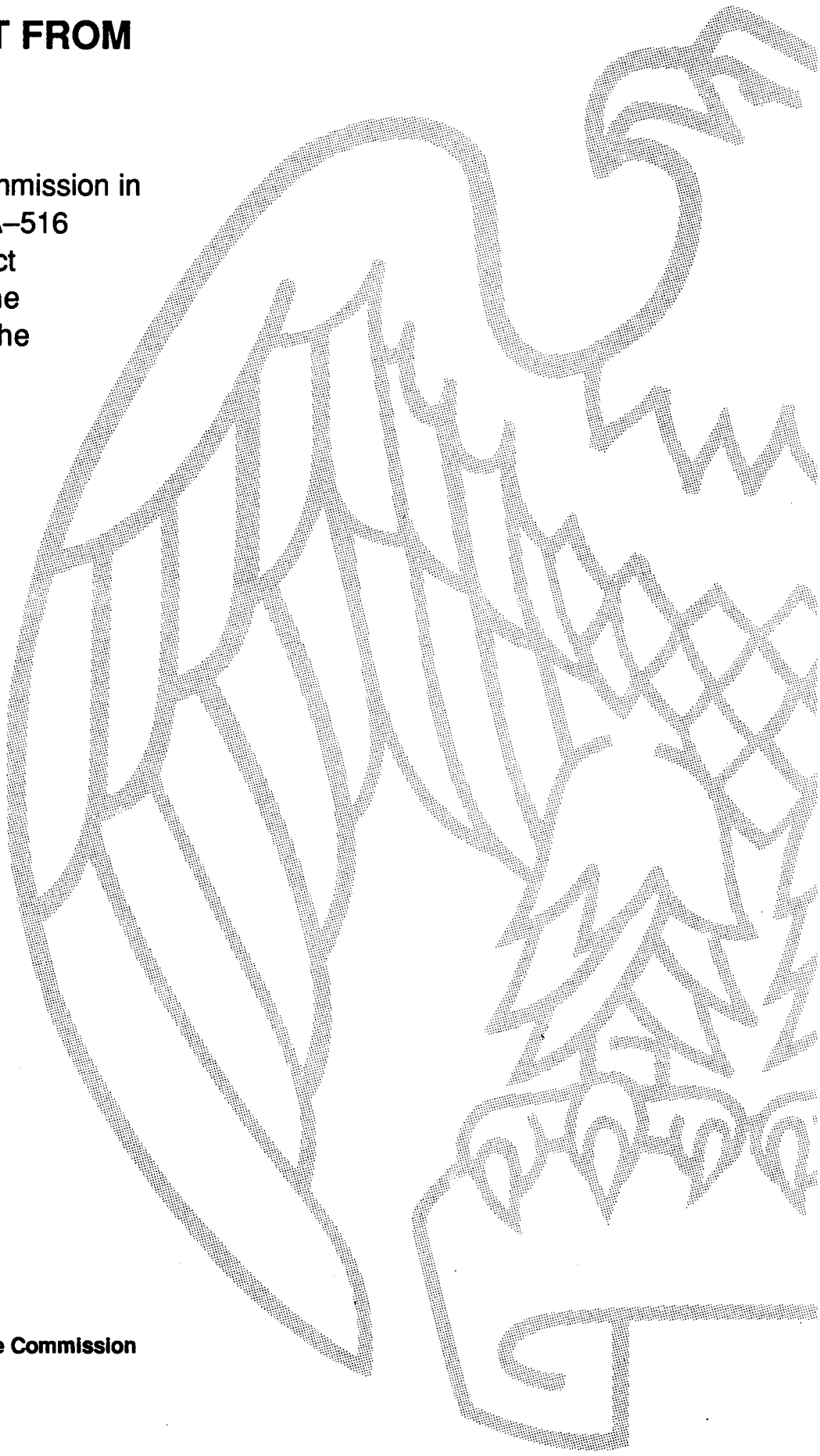
FRESH KIWIFRUIT FROM NEW ZEALAND

Determination of the Commission in Investigation No. 731–TA–516 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation



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UNITED STATES INTERNATIONAL TRADE COMMISSION

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UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation No. 731-TA-516 (Final)

FRESH KIWIFRUIT FROM NEW ZEALAND

Determination

On the basis of the record[1] developed in the subject investigation, the Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the act), that an industry in the United States is materially injured by reason of imports from New Zealand of fresh kiwifruit, provided for in subheading 0810.90.20 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective November 26, 1992, following a preliminary determination by the Department of Commerce that imports of fresh kiwifruit from New Zealand were being sold at LTFV within the meaning of section 733(b) of the act (19 U.S.C. § 1673b(b)). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of December 27, 1991 (56 F.R. 67098). The hearing was held in Washington, DC, on April 14, 1992, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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[1]The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2]Commissioner Watson not participating.

[redacted]

[redacted]

VIEWS OF THE COMMISSION[1]

Based on the record in this final investigation, we unanimously determine that an industry in the United States is materially injured by reason of imports of fresh kiwifruit from New Zealand that have been found by the Department of Commerce to be sold at less than fair value (LTFV).[2]

I. Like Product

In determining whether an industry in the United States is materially injured or is threatened with material injury by reason of the subject imports, the Commission must first define the "like product" and the "industry." Section 771(4)(A) of the Tariff Act of 1930 defines the relevant industry as the "domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product . . . ."[3] In turn, the statute defines "like product" as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation . . . ."[4]

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[1] Commissioner Watson did not participate in this investigation.

[2] Material retardation of the establishment of an industry is not an issue in this investigation and will not be discussed further.

[3] 19 U.S.C. § 1677(4)(A).

[4] 19 U.S.C. § 1677(10). The Commission's determination of what is the appropriate like product or products in an investigation is a factual determination, to which we apply the statutory standard of "like" or "most similar in characteristics and uses" on a case-by-case basis. In analyzing like product issues, the Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability of the products; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) the use of common manufacturing facilities and production employees; and where appropriate, (6) price.

The Department of Commerce has defined the imported product found to be sold at LTFV as:

> . . . fresh kiwifruit from New Zealand. Processed kiwifruit, including fruit jams, jellies, pastes, purees, mineral waters, or juices made from or containing kiwifruit, are not within the scope of this investigation.[5]

In the preliminary investigation, the Commission determined the like product to be fresh Hayward-variety kiwifruit.[6] There is no new information or argument in the record of the final investigation to warrant changing that definition. Although several varieties of kiwifruit exist, all commercial kiwifruit currently produced in the United States is of the Hayward variety.[7] As such, there is only one U.S. product "like" the imports under investigation. Accordingly, we define the like product as fresh Hayward-variety kiwifruit.

II. Domestic Industry

In determining the composition of the domestic industry, we have considered whether the industry consists of only kiwifruit growers, or includes packers and handlers as well. Petitioners asked that the Commission limit the domestic industry to growers, although they noted that packers and handlers support the petition as well.[8] The respondent asked the Commission,

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[5] 57 Fed. Reg. 13695 (April 17, 1992).

[6] Fresh Kiwifruit from New Zealand, Inv. No. 731-TA-516 (Preliminary), USITC Pub. 2394 (June 1991) at 4-5. Commissioner Crawford and Commissioner Nuzum did not participate in the preliminary investigation because they were not on the Commission at that time.

[7] Report at I-4.

[8] Transcript of conference (May 15, 1991) at 78; Petitioner's Prehearing Brief at 24-27.

in the preliminary investigation, to examine this question, but it did not address the issue in the final investigation.[9]

The types of activities performed by packers and handlers--harvesting, packing, cold storage, repacking, and distribution of fresh kiwifruit[10]--do not contribute to the actual growing of the domestic product, fresh kiwifruit. Nor do other relevant factors, such as coincidence of economic interests, suggest that the kiwifruit growers, packers, and handlers are all part of this domestic industry.[11] Although there is some degree of vertical integration among all three groups, there is not a large degree of integration between the growers on the one hand and the packers or handlers on the other.[12]

Of the three groups, only the growers ever have title to the kiwifruit.[13] Charges for services provided by packers and handlers to growers are negotiated at arm's length and independent of the ultimate selling price of the fruit.[14] In some instances, the packers or handlers may even profit from additional costs to growers due to longer cold storage and periodic repacking.

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[9] See Conference Transcript at 175. In its briefs in this final investigation, respondent addresses material injury and threat of material injury only with respect to the growers. See, e.g., Respondent's Prehearing Brief at 35-39.

[10] Report at I-10-12.

[11] Because no party has urged in this final investigation that the packers and handlers be included in the domestic industry, and because he finds that their kiwifruit operations are not sufficiently production-related, Chairman Newquist believes it is unnecessary to assess the extent to which the economic interests of the packers and handlers may coincide with the economic interests of kiwifruit growers.

[12] Report at I-11 and n. 39.

[13] Report at I-5, 11-12; Conference Transcript at 90.

[14] Id.

The economic interests of the handlers, who sell on commission, are tied to the current selling price of fresh kiwifruit.[15] However, the activities performed by the handlers are not production-related. Rather, handlers perform the same marketing and sales functions as do distributors of any other products, who generally are not considered by the Commission to be part of the domestic industry. Furthermore, even the integrated handlers depend on kiwifruit for only a small percentage of their business.[16]

Accordingly, we find that the domestic industry consists only of kiwifruit growers.

III. Condition of the Domestic Industry

In assessing whether there is material injury to a domestic industry by reason of dumped imports, the Commission is instructed to consider "all relevant economic factors which have a bearing on the state of the industry in the United States . . . ."[17] In that assessment we consider, among other relevant factors, U.S. consumption, production, shipments, capacity utilization, employment, wages, financial performance, capital investment, and research and development expenses.[18] In each investigation, the Commission considers the particular nature of the industry under investigation[19] in the context of the "conditions of competition that are distinctive to the affected industry."[20]

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[15] Report at I-11.

[16] See Report at Tables 15 and 16, I-36-37.

[17] 19 U.S.C. § 1677(7)(C)(iii).

[18] See 19 U.S.C. § 1677(7)(C)(iii).

[19] See 19 U.S.C. § 1677(7)(C)(iii). See also H.R. Rep. No. 317, 96th Cong., 1st Sess. 36; S. Rep. No. 249, 96th Cong., 1st Sess. 88.

[20] 19 U.S.C. § 1677(7)(C)(iii). The statute also provides for consideration of any business cycle distinctive to the affected industry. This factor, however, does not arise in this investigation.

There are several distinctive features of competition in the U.S. kiwifruit market. First, the growing season in the northern hemisphere differs from that in the southern hemisphere, which in turn leads to different marketing (selling) seasons. U.S. growers harvest their kiwifruit during October and November, while New Zealand growers harvest their fruit from mid-April to June.[21] Because of the differing harvest seasons, the peak selling season in the United States for domestic kiwifruit is during the winter and spring months, with southern hemisphere fruit dominating the U.S. market during the summer and fall months.[22]

Second, the establishment of a kiwifruit vineyard requires a substantial advance commitment of capital. Kiwifruit vines generally take four years after planting to produce marketable quantities of fruit and eight years to realize full yield.[23] The waiting period between planting and yield dictates that the supply of kiwifruit is largely fixed by planting decisions made in previous years.[24]

The grower data on which we have relied were based upon responses received to questionnaires sent to 204 of the 572 domestic kiwifruit growers.[25] These 204 growers were selected as a stratified random sample representative of the industry as a whole, and include small, intermediate, and large-sized growers. Their responses were then used to project the

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[21] Report at I-5, I-8 (Table 1).

[22] Report at I-8-9 (Table 1).

[23] Report at I-4.

[24] See Fresh and Chilled Atlantic Salmon, Inv. No. 701-TA-302 (Final), USITC Pub. 2371 (1991) at 11-12 & 21, (Commission gave weight to the fact that the Atlantic salmon industry is governed by a three-year production cycle and that the supply of the product was largely fixed by production decisions made in previous years.)

[25] Report at I-16 and Appendix C.

following information for the industry as a whole: aggregate acreage, production, employment, and financial data.[26] Data on domestic shipments, apparent consumption, and inventories represent the industry-wide figures reported by the California Kiwifruit Commission (CKC). Our discussion of the data covers the period of investigation, from the fall of 1988 to early 1992, which includes three full crop years and one partial crop year.[27]

Apparent U.S. consumption of kiwifruit rose markedly from 1989 to 1991. The most significant increase occurred from 1989 to 1990, when there was a substantial increase in both the quantity and value of kiwifruit consumed in the U.S. market.[28]

Total shipments (domestic and export) of U.S.-grown kiwifruit increased by 18 percent from 8.4 million tray equivalents in the 1988/89 crop year to 9.9 million tray equivalents in the 1989/90 crop year.[29] Total shipments then

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[26] While neither petitioner nor respondent objects in principle to the use of a statistical sample or the basic statistical method used in this investigation, both parties have raised some objections to various aspects of the methodology. See, e.g., Petitioner's Prehearing Brief at 10 and Appendix A, Transcript of Hearing at 15, 203-204, Respondent's Posthearing Brief at Attachment B. Having considered these arguments, we conclude that the sampling method is consistent with sound statistical practice and provides accurate data for this investigation, particularly considering the problems inherent in collecting data for an agricultural industry with a very large number of small growers. In particular, we have examined respondent's argument that we should rely on the raw or unextrapolated data received from growers rather than extrapolating these responses to account for different sampling and response rates from different sizes of growers. (Hearing Transcript at 204-205.) Use of the unextrapolated data would place more reliance on the performance of large growers than is warranted given their relative importance in this industry. Extrapolation provides data that are appropriately representative of the kiwifruit industry as a whole.

[27] The domestic industry's crop year covers kiwifruit harvested in the fall and sold through the first half of the following year. Report at I-16, n. 60.

[28] The exact apparent consumption data, as well as the market share percentages derived from these data, are business proprietary.

[29] Report at I-19 (Table 4).

decreased by 12 percent to 8.7 million tray equivalents in the 1990/91 crop year.[30]

U.S. growers' domestic shipments of kiwifruit increased from 5.3 million tray equivalents in 1988/89 to 6.7 million tray equivalents in 1990/91.[31] During that same time, exports of U.S. kiwifruit decreased steadily from 3.1 million to 2.1 million tray equivalents.[32] The increase in domestic shipments was not proportionate to the marked increase in apparent consumption. Despite the rise in U.S. growers' domestic shipments, the U.S. growers' share of total apparent U.S. consumption steadily decreased.[33]

Domestic kiwifruit production rose 30 percent between 1988/89 and 1989/90, remained essentially the same in 1990/91, and dropped 21 percent in 1991/92.[34] Many growers attributed the 1991 decline in production to bad weather conditions and to reductions in cultural practices by some growers.[35]

Production capacity is reflected in the number of acres bearing kiwifruit and the yield per acre. Acreage dedicated to producing kiwifruit declined from 6,707 acres in the 1988/89 crop year to 6,464 acres in crop year 1991/92.[36] The U.S. growers' yields per acre tracked production, increasing from 1,167 tray equivalents per acre in 1988/89 to 1,471 and 1,490 tray

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[30] Id.

[31] Report at I-19 (Table 4).

[32] Id.

[33] Report at I-45 (Table 22).

[34] Report at I-17 (Table 2).

[35] Report at I-17-18. Cultural practices include vineyard maintenance such as pruning, trellising, and irrigating. See Report at I-4, Appendix D.

[36] Report at I-17 (Table 2).

equivalents per acre in 1989/90 and 1990/91, respectively, before falling to 1,245 tray equivalents per acre in 1991/92.[37]

After each season's harvest in October and November, domestic inventories are at their highest level and then gradually decline as the marketing season for kiwifruit proceeds.[38] Reported inventories for the beginning of the domestic growers' marketing season steadily declined from 10 million tray equivalents in October 1989--the beginning of the 1989/90 season--to 7.8 million tray equivalents in October 1991.[39]

Employment declined 2 percent from 1988/89 to 1989/90 and another 6 percent in 1990/91.[40] Hours worked rose by 10 percent in 1989/90 and declined by 6 percent in 1990/91, paralleled by a 14 percent rise in compensation paid to directly-hired workers and a 3 percent decline in 1990/91. Average hourly compensation increased slightly each year, from $5.04 in 1988/89 to $5.33 in 1990/91. These data are somewhat understated, however, because they do not include picking and pruning performed by contract crews.[41] Compensation paid to contract crews followed a similar pattern to that paid to directly-hired workers, rising by 10 percent in 1989/90 and declining by 6 percent in 1990/91.

The industry incurred significant financial losses throughout the investigatory period, although the magnitude of the losses declined. Of the

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[37] Id.

[38] Report at I-21.

[39] Report at I-20 (Table 5).

[40] Report at I-22 (Table 6). The employment data reflect the number of full-time and part-time workers hired directly by the growers to perform any work on the kiwifruit acreage. Report at I-21.

[41] Report at I-21. Many growers rely on contract crews for picking and pruning, and usually do not know the number of workers or the hours worked under contract.

572 firms producing kiwifruit, 391 firms suffered net losses before income taxes in 1988/89 and 405 firms suffered such losses in 1989/90 and 1990/91.[42]

Gross domestic sales of kiwifruit rose during the investigation, from $38.5 million in 1988/89 to $44.7 million in 1990/91.[43] However, after deducting sales commissions and packing, repacking, cold storage, and assessment expenses, net grower returns as a percentage of gross sales dropped slightly from 36.6 percent in 1988/89 to 35.9 percent in 1990/91. Gross sales peaked at $45.8 million in 1989/90, but at the same time net grower returns as a percentage of gross sales was at a period low of 32 percent. On a per-tray-equivalent basis, net grower returns declined from $1.95 in 1988/89 to $1.69 in 1990/91.[44] At the same time, trays lost in repacking (due to spoilage) as a share of gross trays packed increased from 3.3 percent to 7.2 percent.

Growing and operating expenses were fairly steady throughout the investigatory period, although they rose somewhat in 1989/90.[45] Net losses increased from $7.7 million in 1988/89 to $8.4 million in 1989/90, but then dropped to $6.1 million in 1990/91.[46] The peak loss in 1989/90 reflects the slight increase in growing and operating expenses and an increase in packing, repacking, cold storage, and assessment expenses from $24.4 million in 1988/89 to $31.1 million in 1989/90. The income loss margin declined throughout the period of investigation, from 19.1 percent in 1988/89 to 12.7 percent in

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[42] Report at I-26 (Table 8).

[43] Report at I-25-26 (Table 8).

[44] Report at I-30 (Table 12).

[45] Report at I-26 (Table 8).

[46] Id.

1990/91.[47] The U.S. growers realized negative returns on total assets each year under investigation.[48] [49]

IV. Material Injury by Reason of LTFV Imports

In determining whether the domestic industry is materially injured by reason of the imports under investigation, the statute directs the Commission to consider:

> (I) the volume of imports of the merchandise which is the subject of the investigation,
>
> (II) the effect of imports of that merchandise on prices in the United States for like products, and
>
> (III) the impact of imports of such merchandise on domestic producers of like products, but only in the context of production operations within the United States . . . .[50]

In making this determination, the Commission may consider "such other economic factors as are relevant to the determination . . . ."[51] Although we may consider information that indicates that injury to the industry is caused by factors other than the LTFV imports, we do not weigh causes.[52] The Commission need not determine that imports are the principal or a substantial cause of

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[47] Id.

[48] Report at I-34 (Table 14).

[49] Based on the foregoing performance indicators, Chairman Newquist and Commissioner Rohr find that the domestic industry producing fresh kiwifruit is experiencing material injury. They rely especially on the decline in production and acreage and on the poor financial performance of the industry.

[50] 19 U.S.C. § 1677(7)(B)(i).

[51] 19 U.S.C. § 1677(7)(B)(ii).

[52] E.g., Citrosuco Paulista S.A. v. United States, 704 F. Supp. 1075, 1101 (Ct. Int'l Trade 1988). See also S. Rep. No. 249, 96th Cong., 1st Sess. 57 (1979); H.R. Rep. No. 317, 96th Cong., 1st Sess. 46-47 (1979).

material injury. Rather, the Commission need only determine whether imports are a cause of material injury.[53] [54]

For the reasons discussed below, we find that there is material injury to the domestic industry by reason of LTFV imports of fresh kiwifruit from New Zealand. We note that much of the information on which we base our decision is business proprietary because there is only one importer of the subject imports. Therefore, our discussion of their effects necessarily must be in general terms.

Competition between domestic and New Zealand kiwifruit occurs during certain months at the beginning and the end of each country's marketing seasons, when supplies from both countries are available in the U.S. market.[55] The months of greatest overlap during the period of investigation have been May to June, when domestic suppliers are near the end of their marketing season and New Zealand suppliers are beginning theirs, and October to January or February, when the New Zealand suppliers are ending their marketing seasons and the domestic suppliers are beginning theirs.[56]

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[53] See S. Rep. No. 249, 96th Cong., 1st Sess. 74-75 (1979). See also Iwatsu Electric Co. v. United States, 758 F. Supp. 1506 (Ct. Int'l Trade 1991); United Engineering & Forging v. United States, 779 F. Supp. 1375 (Ct. Int'l Trade 1991); LMI-La Metalli Industriale, S.p.A. v. United States, 712 F. Supp. 959 (Ct. Int'l Trade 1989).

[54] Vice Chairman Brunsdale and Commissioner Crawford agree that the Commission is not to weigh causes. It must nonetheless determine that the injury "by reason of" the subject imports is material in order to reach an affirmative determination. While the a-cause-of-material-injury formulation used in the text has received some favorable commentary in judicial dicta, it finds no support in the language of the statute or in the legislative history. For a full treatment of this issue, see Certain Telephone Systems and Subassemblies Thereof from Japan and Taiwan, Invs. Nos. 731-TA-426 and 428 (Final), USITC Pub. 2237 (November 1989) at 147-248 and particularly 228-248 (Dissenting Views of Vice Chairman Ronald A. Cass).

[55] Report at I-46.

[56] Id.

In considering whether the dumped imports have had an injurious effect on domestic prices and domestic producers during these overlap periods, we note that the imports and the domestic product are highly substitutable. There is evidence that the age of the fruit may have some effect on its desirability either positively (because the fruit ripens as it matures) or negatively (because it becomes overripe at some point). Further, some purchasers stated that differences in marketing strategies also influenced their purchasing decisions.[57] However, we note that the majority of purchasers surveyed by the Commission agreed that there are no significant quality differences between domestic and New Zealand kiwifruit.[58] Also, most of the purchasers contacted by the Commission in investigating allegations of lost sales or lost revenues stated that they purchased the least expensive kiwifruit.[59] Given the considerable substitutability between domestic and New Zealand kiwifruit, any increase in the volume of the subject imports during the months when domestic and New Zealand are in direct competition, and any resulting price effects, may be particularly significant.[60]

New Zealand kiwifruit was marketed from May through January or February of each year investigated. From the 1989-90 marketing season to the 1990-91 season, subject imports increased dramatically. In the 1991-92 season, the subject imports declined somewhat, but this may have been induced by the suspension of liquidation and requirement to post a bond on the subject

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[57] Economic Memorandum at 13.

[58] Id.

[59] Report at I-59-61.

[60] In the view of Vice Chairman Brunsdale, domestic and imported kiwifruit are more substitutable than suggested by the Economic Memorandum (at 12-15). In her view, the elasticity of substitution, which is a quantitative measure of the substitutability between the two products, should be in the range of 6 to 8, rather than the 3 to 5 range suggested in the memorandum.

imports following the Commerce Department's preliminary affirmative determination in November 1991.[61]

In addition to absolute import volumes, the market share of subject imports is another important factor indicating how these imports affect the domestic industry. Examination of the market share of the imports from New Zealand is complicated in this case by the differences in growing and selling seasons for the U.S. and New Zealand products. We therefore have examined the market share on a number of different bases.

Because both products are in the U.S. market only during the overlap months of May to June and October to January or February, we considered the market share during each of these periods as well as the two periods together. We also considered the market share during the entire season that the U.S. product was sold. Finally, we examined the market share during each entire year. Regardless of the approach employed, New Zealand market share increased significantly over the period of investigation and was particularly substantial during the last two years of the investigation.[62]

We have considered respondent's argument that a transhipment of 700,000 trays of New Zealand kiwifruit from Japan to the United States in December

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[61] See generally USX Corp. v. United States, 655 F. Supp. 487, 492 (Ct. Int'l Trade 1987); Rhone Poulenc, S.A. v. United States, 592 F. Supp. 1318, 1324 (Ct. Int'l Trade 1984).

[62] On an annual basis, New Zealand market share increased from *** percent in 1989 to *** percent in 1991, while U.S. market share dropped from *** percent to *** percent. Report at I-45 (Table 22). During the overlapping selling months, New Zealand market share increased from *** percent in 1989 to *** percent in 1991, while U.S. market share dropped from *** percent to *** percent. See Report at I-8 (Table 1), I-44 (Table 21), I-45 (Table 22) and official Department of Commerce import statistics. For the October-May period, New Zealand market share increased from *** percent in 1989 to *** percent in 1991, while U.S. market share dropped from *** percent to *** percent. Id.

1990 was an "aberration."[63] Nonetheless, even if that shipment is disregarded, the data demonstrate a dramatic increase in volume and market share of New Zealand imports during the 1990/91 marketing season.[64]

Given the large and increasing market share of the LTFV imports and the high degree of substitutability between the domestic and the LTFV products, we believe that prices of domestic kiwifruit were depressed or suppressed during the periods when both products were in the market.[65] The record evidence presents a mixed picture of overselling and underselling by the New Zealand imports.[66] However, New Zealand kiwifruit undersold the domestic product in eight of thirteen monthly comparisons of sales of kiwifruit in trays (which constitute the majority of domestic sales) prior to the filing of the petition

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[63] In December of 1990, approximately 700,000 trays of New Zealand kiwifruit were destined for delivery to Japan aboard the refrigerated ship, the *Pioneer Reefer*. At the last minute, the Japanese refused delivery, and the shipment was diverted to the United States. See Report at I-53.

[64] Disregarding the *Pioneer Reefer* shipment, New Zealand market share during the October-May domestic selling season increased from *** percent in 1989/90 to *** percent in 1990/1991, while U.S. market share dropped from *** percent to *** percent. See Report at I-8 (Table 1), I-44 (Table 21), I-45 (Table 22) and official Department of Commerce import statistics.

[65] Another factor considered by Vice Chairman Brunsdale is the magnitude of the dumping margin computed by the Department of Commerce. The margin provides information on how much below a fair level the import price is. The greater the difference between the actual price of the imports and the fair price level, the more likely it is that the domestic industry is being materially injured by the unfair imports. In this case, the Department of Commerce determined the dumping margin was equal to 98.6 percent. (57 Fed. Reg. 13695, 13706, April 17, 1992).

[66] Vice Chairman Brunsdale and Commissioner Crawford note that interpretation of the underselling data may be complicated by the differences in the growing seasons which may cause the New Zealand prices to be highest when domestic prices are lowest and vice versa. In addition, differences in the size of the kiwifruit from the two countries may further complicate price comparisons. As a result, they find the underselling evidence to be of limited value.

in April 1991, with most of the underselling occurring at the beginning of the U.S. selling season.[67]

The evidence of lost sales and lost revenues confirms the adverse effects of LTFV imports on sales and on the price of U.S. kiwifruit.[68] Purchasers specifically confirmed several lost sale and lost revenue allegations, and agreed that most other allegations sounded quite possible.[69] Furthermore, as noted, most of these purchasers indicated that price was their primary consideration in purchasing kiwifruit.[70]

The adverse price effects caused by increased LTFV imports are further illustrated by the low U.S. prices that followed a large influx of New Zealand kiwifruit. The volume of kiwifruit imported from New Zealand was markedly higher during October to December 1990 than the volume imported during the corresponding period in 1989 and 1991.[71] During these first three months of the 1990/91 U.S. marketing season, prices for U.S. kiwifruit were significantly lower than the prices in the same months of the 1989/90 or

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[67] Report at I-49 (Table 23). We do not accord much weight, however, to the post-petition pricing information, because it suggests a dramatic change in pricing practices for New Zealand kiwifruit at the beginning of the U.S. selling season, which change may have been made in reaction to the intervention of this investigation. See USX Corp. v. United States, 655 F. Supp. at 492; Rhone Poulenc, S.A. v. United States, 592 F. Supp. at 1324; Report at D-5. For example, in December and January of the 1989/90 and 1990/91 seasons, New Zealand kiwifruit undersold U.S. kiwifruit at margins of greater than 20 percent. Report at I-49 (Table 23). In contrast, New Zealand kiwifruit oversold U.S. kiwifruit in December 1991 and then undersold U.S. kiwifruit only by a comparatively small margin (5.6 percent) in January 1992. Id.

[68] Vice Chairman Brunsdale and Commissioner Crawford do not rely on anecdotal evidence showing that competition from the imports caused domestic producers to lose particular sales or forced them to reduce their prices on other sales in reaching their determinations.

[69] Report at I-59-61.

[70] Id.

[71] Report at I-8 (Table 1).

1991/92 domestic marketing seasons.[72] The reduction in prices for the domestic kiwifruit during a period of markedly increased imports is particularly indicative of the negative effects of the LTFV imports on U.S. kiwifruit prices.

In addition to the price effects noted above, the evidence tends to support petitioner's allegation that the imports from New Zealand also have adversely affected U.S. kiwifruit sales during the remaining months of the domestic season. According to domestic growers, the increase in imports from New Zealand at the beginning of the U.S. season delays shipment of the domestic product during November to February, thus increasing the supply and reducing the price of U.S. kiwifruit that must be sold during the remaining, "compressed" period from February to May.[73] This delay in selling the kiwifruit results in increased interest expenses and in additional expenses for cold storage and repacking kiwifruit that is not sold early in the season, as well as in losses of kiwifruit due to spoilage.[74]

These additional expenses, combined with already artificially low selling prices, are likely to result in reduced revenues for the growers, who hold title to the kiwifruit until it is sold and are reimbursed only after all expenses are deducted. The delay in selling their crops also leaves many U.S. growers without adequate funds for the steady reinvestment needed to operate their kiwifruit farms. These strains caused by the LTFV imports are reflected in the poor financial performance of the U.S. industry. The distressed financial condition of the industry has made kiwifruit growers a poor credit

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[72] Report at I-49-52 (Tables 23-25 and Figures 1-3).

[73] Report at D-3.

[74] Report at I-11-12, I-31 (Table 13), D-3-4.

risk and has left many growers without the financing necessary to maintain their kiwifruit farms.[75]

CONCLUSION

Based on our analysis of the statutory factors, we conclude that the domestic industry is materially injured by reason of LTFV imports of fresh kiwifruit from New Zealand.

[redacted]

[redacted]

[75] See Report at Appendix D.

[redacted]

[redacted]

[redacted]

[redacted]

INFORMATION OBTAINED IN THE INVESTIGATION

INTRODUCTION

Following a preliminary determination by the U.S. Department of Commerce (Commerce) that imports of fresh kiwifruit[1] from New Zealand are being, or are likely to be, sold in the United States at less than fair value (LTFV), the U.S. International Trade Commission (Commission), effective November 26, 1991, instituted investigation No. 731-TA-516 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) to determine whether an industry in the United States is materially injured or threatened with material injury or whether the establishment of an industry in the United States is materially retarded by reason of imports of such merchandise. The Commission gave notice of the institution of the final investigation and of the public hearing to be held in connection therewith by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register on December 27, 1991 (56 F.R. 67098).[2] The hearing was held in Washington, DC, on April 14, 1992.[3]

Commerce notified the Commission of its final LTFV determination on April 16, 1992. The Commission voted on this investigation on May 15, 1992, and notified Commerce of its final injury determination on May 26, 1992.

Background

On April 25, 1991, the Ad Hoc Committee for Fair Trade of the California Kiwifruit Commission (CKC) and individual California kiwifruit grower members of the Committee filed a petition with the Commission and Commerce alleging that an industry in the United States is being materially injured and is threatened with material injury by reason of imports from New Zealand of fresh kiwifruit that are allegedly sold in the United States at LTFV. In response to that petition, the Commission instituted investigation No. 731-TA-516 (Preliminary) under section 733(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) and, on June 10, 1991, determined that there was a reasonable indication that an industry in the United States is materially injured by reason of imports of the subject merchandise from New Zealand into the United States (56 F.R. 28171).

Nature and Extent of the Sales at LTFV

On April 16, 1992, Commerce informed the Commission of its final determination of sales at LTFV. Based on a price comparison with the respondent's sales in Japan, Commerce found the margin to be 98.60 percent (57 F.R. 13695).

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[1] Fresh kiwifruit is provided for in subheading 0810.90.20 of the Harmonized Tariff Schedule of the United States.

[2] Appendix A presents copies of cited Federal Register notices.

[3] Appendix B presents a list of witnesses who appeared at the hearing.

THE PRODUCT

Description

Kiwifruit, or Actinidia chinensis, is an egg-sized, fuzzy, brown fruit with a bright green pulp and small black seeds. Like most other fruits, kiwifruit is an excellent source of vitamins and minerals, especially vitamin C and potassium. One of the more distinctive characteristics of kiwifruit is its extremely long shelf life. In proper storage, kiwifruit remains fresh for six months or even longer.[4]

The Hayward variety is the only variety of kiwifruit grown on a commercial basis throughout the world, and it serves as the basis for grading and sizing standards worldwide. The Hayward accounts for all U.S. imports and all U.S. commercial production of kiwifruit.[5]

At the consumer level, there is little discernible difference between New Zealand and U.S. kiwifruit. All of the 28 purchasers returning Commission questionnaires reported that kiwifruit grown in New Zealand is consumed in the same manner as U.S.-grown kiwifruit. Eleven purchasers indicated that New Zealand kiwifruit is often superior to the domestic product in terms of size, shape, and color consistency and shelf life.[6] The remaining purchasers indicated that domestic and New Zealand kiwifruit are comparable in quality.

Production Process

Kiwifruit is a vine-grown fruit which requires a temperate, frost-free climate with sufficient water supply. The establishment of a kiwifruit vineyard requires a substantial capital investment over a period of years, since kiwifruit vines generally require four years to produce marketable quantities of fruit. In addition to the cost of acquiring land, "the clearing of the land, land preparation, nursery stock, irrigation systems and trellising come to at least...$10,000 per acre."[7] In total, California growers invest roughly $25,000 per acre to reach the full production stage.[8]

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[4] Research conducted in 1991 by Gordon Mitchell, Gene Mayer, and Bill Biasi of the University of California-Davis, indicated that harvesting relatively late and maintaining a low storage temperature and a very low ethylene level in the storage atmosphere may extend "the storage life of this fruit considerably beyond the six months previously considered to be the maximum." Jeanne Bailey, "Longer Term Kiwifruit Storage Possible," California Grower, March 1992.

[5] Petition, p. 12. The growing of other varieties is limited to experimental production in research activities in New Zealand, the United States, and Italy.

[6] One domestic handler noted that New Zealand ships only high-quality fruit to the U.S. market while several different grades of domestic kiwifruit are available in the U.S. market.

[7] Tom Schultz of Chase National Kiwi Farms, an integrated producing firm. Conference transcript, p. 24.

[8] Ibid.

Yields of fruit per acre tend to increase each year to a certain level and decline thereafter. Most kiwifruit vines produce favorable yields until the age of 20 years.[9] Yields per acre in California averaged approximately 1,200-1,500 tray equivalents[10] annually (or 8,400-10,500 pounds) from 1988 to 1991.

Growers harvest kiwifruit when the sugar content in the fruit reaches about 7 degrees brix.[11] In California, the harvest begins in early October and lasts through mid-November. Growers use labor-intensive handpicking to harvest their fruit.[12] Growers deliver their crop in large bins to packers who inspect, clean, sort and grade by size, shape, and quality,[13] and pack the fruit in a variety of containers. Packers, then, immediately place the containers in cold storage facilities. Handlers, or sellers, arrange for sale and delivery of the stored fruit throughout California's traditional October through May marketing season. Prior to shipment, the U.S. Department of Agriculture (USDA) inspects and grades all kiwifruit.[14] Throughout the harvesting, packing, and marketing process, growers retain title to their fruit, receiving complete payment only after handlers have sold all of their kiwifruit.

In December and January, growers prune and tie their vines to ensure a good harvest the ensuing fall. After budbreak in April and May, most growers remove disfigured and excess blossoms from the vine. This thinning reduces the number of low quality fruit and promotes the growth of larger fruit. Growers try to reduce the amount of substandard fruit delivered to packers in

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[9] James Beutel, "Kiwifruit Production in California," University of California at Davis, Jan. 1989, p. 3.

[10] The industry's standard unit of measure of quantity is based on the most common pack type, the tray. All other pack types can be converted into the standard tray measure. While tray weights depend on the size of the individual kiwifruit, the standard tray conversion factor in the United States is 7 pounds. Kiwifruit imported from New Zealand tends to be larger (3.5 kgs or roughly 7.7 pounds per tray) than domestically produced kiwifruit. This report converts all nontray packaging for U.S. and New Zealand kiwifruit into tray equivalents using 7 pounds and 7.7 pounds, respectively.

[11] The brix scale measures the density or concentration of sugar in solution on a percentage basis--the higher the brix value, the higher the concentration of sugar solids. At harvest, the kiwifruit is unripe and hard (at 14 to 20 pounds pressure). Not until the kiwifruit has been held in storage for a period of time or been preripened by the introduction of ethylene gas do consumers eat kiwifruit. Beutel, "Kiwifruit Production in California," p. 6.

[12] Some growers hire their own seasonal labor during harvest time, although many contract for picking crews with packing firms. Conference transcript, pp. 88-89.

[13] Although workers remove the culls by hand, most packing operations use sophisticated machinery to sort and grade the fruit automatically. Workers then manually pack the sorted kiwifruit into various containers.

[14] Although slight differences in grading standards exist, both New Zealand and U.S. kiwifruit must meet rigid size and shape requirements to pass inspection. All imports from New Zealand are of the New Zealand "export" grade, and U.S. kiwifruit is most often either "U.S. No. 1" or "U.S. Fancy." The three grades are largely similar. Petition, p. 6.

Table 1
Fresh kiwifruit: Apparent U.S. consumption of domestic and New Zealand product,[1] by months, January 1989-March 1992

Month	Shipments of domestic product	Shipments of imports from New Zealand	Apparent consumption	Ratio of shipments of imports to apparent consumption
	Tray equivalents			Percent
1989:				
January.....	800,754	***	***	***
February....	682,778	***	***	***
March.....	960,261	***	***	***
April.....	910,760	***	***	***
May.....	537,274	***	***	***
June.....	138,947	***	***	***
July.....	0	***	***	***
August.....	0	***	***	***
September...	0	***	***	***
October.....	221,398	***	***	***
November....	486,309	***	***	***
December....	571,727	***	***	***
Total.....	5,310,208	***	***	***
1990:				
January.....	1,129,716	***	***	***
February....	1,299,033	***	***	***
March.....	1,177,004	***	***	***
April.....	1,115,224	***	***	***
May.....	662,092	***	***	***
June.....	148,614	***	***	***
July.....	55,947	***	***	***
August.....	0	***	***	***
September...	0	***	***	***
October.....	385,850	***	***	***
November....	547,648	***	***	***
December....	464,527	***	***	***
Total.....	6,985,655	***	***	***
1991:				
January.....	978,233	***	***	***
February....	1,140,257	***	***	***
March.....	1,305,823	***	***	***
April.....	1,243,550	***	***	***
May.....	619,647	***	***	***
June.....	6,473	***	***	***
July.....	0	***	***	***
August.....	0	***	***	***
September...	0	***	***	***
October.....	34,420	***	***	***
November....	631,076	***	***	***
December....	682,268	***	***	***
Total.....	6,641,747	***	***	***
1992:				
January.....	886,257	***	***	***
February....	879,031	***	***	***
March.....	1,196,614	***	***	***

[1] Excludes Hawaiian shipments.
[2] Less than 0.5 percent.

Source: Compiled from data provided by CKC and Oppenheimer.

According to Commerce's import statistics, New Zealand has accounted for around 90 percent or more of U.S. imports of fresh kiwifruit in each of the past 3 years. Thus, the consumption figures shown in table 1 give an accurate estimate of overall domestic consumption on a monthly basis during the period of investigation; they will differ, however, from the annual figures presented in table 22, which includes imports from other countries and imports from New Zealand into Hawaii.

The data point out clearly the two marketing seasons: domestic shipments dominate the market in the winter months and shipments of imports from New Zealand dominate during the summer. Also apparent is the large increase in consumption. In 1990 and 1991, apparent consumption consistently approached or exceeded *** tray equivalents per month, a level significantly higher than in 1989. Annual apparent consumption grew *** percent in 1990 and declined slightly in 1991. In per-capita terms, consumption jumped from roughly *** pound in 1989 to *** pound in 1990 and 1991.[24]

In their questionnaire responses, 13 domestic handlers reported that the increase in demand over the past 3 years has resulted from better promotion and marketing on the part of the CKC, efforts which have led to greater consumer awareness of the product at the retail level. Oppenheimer reported that year-round supply and better merchandising efforts by the New Zealand Kiwifruit Marketing Board (NZKMB) have heightened consumer awareness of kiwifruit and increased consumer perception of the product as an everyday--and not an exotic--item.

Figures provided in table 1 show that imports from New Zealand have accounted for an increasing share of apparent consumption early in the New Zealand marketing season. In May and June 1989, New Zealand supplied *** and *** percent of total shipments, respectively. By 1991, New Zealand provided *** percent in May and *** percent in June of U.S. consumption.

Additionally, table 1 demonstrates the strong presence of New Zealand import shipments late in 1990 and into early 1991. In December 1989 and January 1990, New Zealand accounted for *** percent and *** percent, respectively, of apparent consumption. For the same months in 1990-91, imports from New Zealand captured *** percent and *** percent of the market. The higher level of market penetration results, in part, from the late-season arrival of the ship, the *Pioneer Reefer*.[25] In a more general trend, imports from New Zealand appear to be capturing more of the market in the latter months of the year. Market penetration in the fourth quarters of 1990 and 1991 stood significantly higher than in the same period of 1989.

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[24] Respondents note that, while U.S. consumption has grown sharply, it lags well behind consumption in western Europe, Japan, and Canada. Conference, exhibit 2, figure 2.

[25] The nearly 700,000 trays of kiwifruit aboard the *Pioneer Reefer* were originally intended for the Japanese market. However, when Japanese importers refused the shipment, the New Zealanders redirected the ship, underway from New Zealand, to the United States; it arrived in early December. See conference transcript, pp. 161-165 and respondents' brief, pp. 29-34 and 48-50, for more information on the *Pioneer Reefer*.

U.S. Producers

The CKC, located in Sacramento, CA, is a nonprofit state entity administered by kiwifruit growers and shippers.[26] Established in 1980, the CKC operates under the authority of the California State Director of Food and Agriculture. Its mission is to promote the sale of fresh kiwifruit and kiwifruit products domestically and abroad. Under California law, the CKC, funded by an assessment on each tray of kiwifruit sold, represents all California kiwifruit growers.[27]

Three other organizations active in the domestic kiwifruit industry include the Kiwifruit Administrative Committee (KAC), the Kiwifruit Marketing Association of California (KMAC), and the California Kiwifruit Exporters Association (CKEA). The KAC sets the standards and grades for kiwifruit produced in California under the Federal Marketing Order.[28] It funds itself through a 1.5-cent assessment on each tray sold and an inspection fee determined by the work and travel time required of inspectors.[29] KMAC is a marketing cooperative whose membership, composed of U.S. handlers, accounts for approximately 50 percent of U.S. domestic and export shipments. Its members conduct a weekly conference call during which they discuss inventory, prices, and market conditions; they also meet monthly in Sacramento to review the overall domestic market situation.[30] The CKEA functions much like KMAC, although members exchange information on export markets only. CKEA's members account for roughly 90 percent of U.S. export shipments.[31]

Growers

Approximately 600 farmers currently grow kiwifruit in California; these growers account for 99 percent of domestic output.[32] Kiwifruit production is concentrated in two regions of California--in Butte, Sutter, and Yuba counties, north of Sacramento, and in Tulare county, south of Fresno. Eighty percent of the California growers are diversified,[33] raising such additional crops as peaches, plums, nectarines, grapes, almonds, and walnuts.[34]

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[26] Petition, pp. 3-4.

[27] The current assessment is $0.215 per tray. Assessment rates vary by container type. State law charges the handlers with the collection of this assessment. Petition, pp. 4-5.

[28] Petition, p. 5.

[29] Prior to this marketing season, the fee totaled $0.0375 per tray.

[30] Tom Schultz, Conference transcript, p. 83; Petition, p. 5.

[31] Schultz, Conference transcript, pp. 83-84.

[32] A handful of farmers have begun to raise kiwifruit in South Carolina, Washington, and Oregon. Mark Houston, CKC, Conference transcript, pp. 91-92.

[33] Ibid., p. 12.

[34] According to growers' questionnaire responses in the preliminary investigation, sales of kiwifruit accounted for slightly more than one-half of growers' total farm income between 1988 and 1990.

Packers, Cold Storers, and Handlers

Approximately 79 firms pack kiwifruit in California.[35] Packers pack freshly harvested kiwifruit into a variety of containers and store the fruit in their own cold storage facilities, or deliver it to handlers for storage, or place it in independently operated cold store warehouses.[36] Packers charge growers a fee per tray of roughly $2.20 to $2.40 for labor and materials.[37] In addition, growers bear the cost of cold storage, which starts at approximately $0.20 per tray for the first month (known as precooling) and ranges from $0.14 to 0.18 per tray for each subsequent month.[38] Some packing firms additionally provide harvesting and handling services. In fact, several larger volume producers operate as vertically integrated growers, packers, cold storers, and handlers.[39]

Prior to shipment, packers inspect each container and, if necessary, "recondition" or repack the kiwifruit. They check each container for damaged or spoiled pieces of fruit, discard them, and replace them with good fruit. The longer kiwifruit remains in storage, the higher is the spoilage loss.[40] Packers charge growers for the cost of labor and supplies used in repacking.

Roughly 50 handlers are active in the kiwifruit trade in California. Of these 50, the largest 11 account for 75 percent of domestic kiwifruit shipments. In the kiwifruit business, "handler" is synonymous with "seller" or "marketer." Handlers sell the kiwifruit to retailers and wholesalers and then remit the proceeds to the growers after deducting a sales commission[41] and other charges.

Testimony from Tom Schultz, an integrated grower, packer, cold storer, and handler, summarizes the relationship among growers, packers, and handlers:

> Prior to harvest, a grower typically executes a written contract with both his packer and his marketer. After harvest, it becomes the packer's responsibility to make sure this fruit is packed in a timely

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[35] Petition, p. 5.

[36] Certain firms exist whose sole involvement in the kiwifruit industry is the provision of cold storage services. However, the Commission received no questionnaire responses from such firms, and they apparently play an insignificant role in the industry.

[37] Fees on other pack types are lower because of the reduction in required labor. ***.

[38] Handlers deduct cold storage costs from growers' gross returns. ***. Table 13 lists these expenses calculated on a tray equivalent basis from grower questionnaire responses.

[39] Of the 32 responding firms, 11 firms, which accounted for 38 percent of 1990/91 domestic shipments (and 57 percent of the shipments of reporting firms), are integrated packer/cold storer/handlers.

[40] Also, the type of packaging influences the amount of fruit lost to spoilage. In large volume containers, the individual kiwifruit touches each other which may cause injury and spread decay more rapidly. Pat Sanguinetti, Blue Anchor, Inc., Conference transcript, p. 101.

[41] Handlers charge growers a sales commission of roughly 7 to 9 percent of the sales price. Conversation with Mark Houston, CKC, Nov. 26, 1991.

> manner and under the mandatory U.S. grades of the USDA. All fruit is inspected and graded prior to shipment by the United States Department of Agriculture...
>
> After harvest, the first cash advance made to the grower historically is in December and January, after deductions have been made by the packer for labor and packing material supplied by the packer. This has customarily been followed by periodic advances during the growing season with the final settlement in June-July when all the fruit is sold and deductions have been made for packing, cold storage, sales commission, promotion assessments and marketing order inspection fees. Also, any repack losses suffered during the packing season would be made at this time...[42]

As a result of this arrangement, growers do not know their effective returns until their handlers sell all of their kiwifruit and make final payment at the end of the season. Growers do not know their actual returns from their harvest in one calendar year until June or July of the following year.

U.S. Importers

The NZKMB, respondent in this investigation, coordinates the export of New Zealand kiwifruit to all markets except Australia. The NZKMB designated Oppenheimer the sole importer and master agent of imports from New Zealand into the North American market beginning with the 1989 marketing season.[43] Oppenheimer has imported New Zealand kiwifruit into the United States since the early 1960s. Oppenheimer primarily imports kiwifruit from New Zealand into Seattle, WA, and New Castle, DE, for distribution throughout the continental United States and Canada. The firm's goal is to be "a year-round source of supply for kiwifruit to customers throughout the United States."[44] As a result, Oppenheimer markets California kiwifruit as well as limited quantities of imports from Chile to maintain its presence in the kiwifruit market throughout the year. In addition to Oppenheimer, a handful of firms import small quantities of kiwifruit from Chile, Italy, the Bahamas, and St. Lucia. In 1991, Chile's share of imports reached 11 percent; none of the other countries, however, is a major source of supply for the U.S. market.

Marketing Considerations

At the time of harvest, packers must decide the quantity of fruit to put in each style of packaging for the upcoming marketing season. Factors that influence a packer's decision include the projected overall crop size, the

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[42] Conference transcript, pp. 26 and 28.

[43] James D. Swoish, Inc. (Swoish) has been the exclusive importer of New Zealand kiwifruit into Hawaii since 1989. The firm cannot ship imports from New Zealand to the U.S. mainland because of concerns about the Mediterranean fruit fly. ***.

[44] Gary Hammonds, Chief Executive Officer, Oppenheimer, Conference transcript, p. 130.

average size of the fruit harvested,[45] the previous season's packaging mix, specific requests from customers for certain types of packaging, and perceived trends in package types.

Single-layer trays are the most common form of packaging used by domestic handlers and Oppenheimer; most handlers reported that between 50 and 100 percent of their total sales in each year are in this form, while Oppenheimer reported that *** percent of its total sales in each year are in single-layer trays. Loose-packed volume-fill containers are also a common form of packaging. The majority of handlers reported that these containers account for between 15 and 60 percent of their total sales, and Oppenheimer reported *** percent of its total sales in loose-packed volume-fill containers. Domestic handlers and Oppenheimer both reported that the remainder of their kiwifruit is sold in tri-layer/tri-pack containers (volume-fill containers in which the fruit is separated into 3 tray-equivalent units by molded sheets of plastic or panta-paks),[46] in 120-350 pound bulk bins, and in bags.[47]

Kiwifruit is sized by the number of pieces that fit into a standard-sized tray (the lower the number, the larger the fruit), and the size of the fruit is consistent within any given container. For example, a tray of "33's" contains 33 pieces of fruit of the same size (i.e. size 33). The majority of kiwifruit falls into a size range between 25 and 46, and demand for kiwifruit in the United States is centered around small to intermediate size fruit, primarily between sizes 33 and 42.[48]

Oppenheimer and nearly all of the responding domestic handlers reported that they have sold more kiwifruit in volume-fill and other bulk containers in recent years because of increased overall demand at the retail level and of the need to price the product competitively in the U.S. market.[49] Unlike packing in single-layer trays, packing in bulk containers provides marketers with reduced labor and packaging costs on a tray-equivalent basis, although

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[45] Smaller kiwifruit is usually packed in bulk containers and larger kiwifruit is usually packed in trays. Weather and other factors, such as cultural practices and soil conditions, affect the size of the fruit that is harvested, so the average size of the kiwifruit changes from year to year.

[46] "Tri-layer" is the terminology used by the U.S. industry, while tri-pack is the terminology used by the New Zealand industry.

[47] Six purchasers reported that domestic kiwifruit is available in loose-filled bags and larger bins of 250, 350, and 500 pounds net weight, while kiwifruit from New Zealand is not available, or not as readily available, in these forms of packaging. An additional four purchasers indicated that packaging styles available only from New Zealand include an 18-piece half-tray, 5-pound bags, and size 36 fruit, packed 50 per tray.

[48] Trays usually contain fruit ranging in size from 27 to 42; volume-fill cases normally hold fruit of sizes 33 to 46.

[49] As an indication of this trend, the CKC reported that tray, volume fill, and tri-layer/tri-pack shipments accounted for 65.8 percent, 20.4 percent, and 0.0 percent, respectively, of total U.S. producers' shipments during the 1989-90 marketing season, while tray, volume-fill, and tri-layer/tri-pack shipments accounted for 58.5 percent, 26.5 percent, and 6.9 percent, respectively, of the 1991-92 pack out.

storage losses may be higher.[50] The price per piece of the smaller size fruit, which is usually packed in bulk containers, is also lower. Citing the increased demand for kiwifruit in general and the cost savings on a per-piece basis, 23 of 27 purchasers reported purchasing more kiwifruit in bulk packaging in recent years. In addition, Oppenheimer stated that bulk bins can be placed directly on retail floors, so that supermarkets and smaller grocery stores require no additional shelf space to display their kiwifruit.

Domestic handlers and Oppenheimer usually sell most of their bulk-packed kiwifruit relatively early in their marketing seasons, because the fruit in these styles of packaging does not store well for extended periods of time. The reduced cost per piece of fruit in bulk containers allows both domestic and New Zealand suppliers to compete with each other because, when the domestic suppliers are at the beginning of their marketing season, the New Zealand suppliers are nearing the end of their own. Suppliers with late season fruit are inclined to reduce prices in order to sell the fruit before it becomes impractical to continue storing the fruit, because of storage costs and loss to spoilage.[51] Oppenheimer also added that bulk displays are important early in the marketing season to increase consumer awareness of New Zealand kiwifruit as it enters the U.S. market.

Kiwifruit stored in single-layer trays can reportedly remain in cold storage longer than bulk-packed fruit and is usually marketed later in the marketing season.[52] Sellers have, at times, kept the fruit in inventory while waiting for the depletion of supplies from other countries and for a corresponding increase in market price.[53]

Channels of Distribution

Domestic handlers reported sales in varying proportions to brokers, retailers, and wholesalers with no channel receiving a substantially greater share of total sales than any other. For the year 1991, Oppenheimer reported that *** percent of its total sales were to retailers, and *** percent were to wholesalers. Other smaller types of customers accounting for the remainder of Oppenheimer's total sales volume include brokers, institutional wholesaler/

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[50] Spoilage rates for kiwifruit packed in volume-fill containers are higher than for fruit packed in trays. The repack loss can be substantial if volume fill containers remain in cold storage for an extended period of time.

[51] Petitioners and respondents both generally agree that it is possible to keep some kiwifruit in cold storage for up to 12 months. However, beyond a certain point, between six and eight months into the marketing season, the costs of cold storage and repack begin to exceed the expected net return, and continuing to store sizeable volumes of kiwifruit becomes financially infeasible. Hearing transcript, pp. 57, 68-70, and 126-28.

[52] According to ***, the length of time that kiwifruit can remain in cold storage depends on a number of factors including the sugar and water content of the fruit at the time that it is put into storage; a lower sugar and water content usually leads to a longer storage life. ***.

[53] Domestic handlers explained that relatively low shipments during the first quarter of 1991, normally the prime marketing season for the domestic product, occurred because they held inventories while waiting for Oppenheimer to sell out its late 1990 shipment. Conference transcript, p. 31.

retailers, and food service distributors. Larger retailers generally purchase for their own accounts, while wholesalers purchase for resale to smaller retail grocers and commercial end users in the food service industry. In addition, certain buying cooperatives purchase on behalf of small and medium size retailers.

Sales and marketing efforts differ somewhat for domestic and New Zealand kiwifruit. Approximately 50 handlers sell domestic kiwifruit in the U.S. market and compete with one another as well as with Oppenheimer for sales to customers in the United States. Various levels of organization exist with respect to packing, storing, and selling domestic kiwifruit. Some handlers contract with individual growers to harvest, pack, and sell the grower's fruit; others only sell kiwifruit on behalf of a particular grower.[54] By contrast, Oppenheimer, acting as the sole importer of New Zealand kiwifruit into the United States, handles all aspects of storing, pricing, marketing, and selling New Zealand kiwifruit in the United States.

Fresh kiwifruit is marketed nationally by domestic handlers and by Oppenheimer. While domestic storage facilities are situated primarily in the agricultural regions of California, most domestic handlers reported the majority of their sales to customers located farther than 500 miles from their storage facilities. Oppenheimer reported that shipments of kiwifruit are made from its U.S. ports of entry directly to U.S. customers, as well as to *** different primary cold storage facilities, and *** additional satellite cold storage facilities located throughout the continental United States. Primary cold storage facilities are larger and are generally located near the major ports of entry on both the East and West Coasts, while satellite facilities are smaller and are located more in inland areas. Most of Oppenheimer's shipments are made from these facilities to the customer.[55]

Purchasers generally reported slightly shorter average lead times between order and delivery from Oppenheimer than from domestic suppliers. Virtually all of the responding purchasers reported lead times of between one and three days for orders from Oppenheimer, whereas approximately one-half of the responding purchasers reported lead times of between one and three days for purchases of kiwifruit from domestic suppliers. The others reported lead times of between four and seven days.

Approximately one-half of all purchasers indicated that Oppenheimer is superior to domestic suppliers in terms of its sales techniques and the promotional programs that it offers. Some of the differences noted include better promotion and sales efforts at the point of purchase, including in-store displays, in-store sampling, and retail sales contests. Other purchasers reported that Oppenheimer offers larger and more frequent advertising allowances, is more aware of consumer needs, and is more innovative and aggressive in its marketing efforts. The remaining purchasers reported that domestic and New Zealand suppliers do not differ in terms of their sales and promotional efforts.

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[54] In addition, one large domestic marketing cooperative, ***, also exists. This grower-owned cooperative packs, stores, and markets each member's kiwifruit during each season and pays ***.

[55] According to Oppenheimer, ***.

A few purchasers provided specific examples of the allowances and purchase incentives that they received from domestic suppliers and Oppenheimer. *** reported that domestic suppliers offered $*** for *** advertisements between *** and *** and $*** for *** ads between *** and ***. Oppenheimer offered $*** for *** ads between *** and ***; $*** for *** ads between *** and ***; and $*** for *** ads between *** and ***. Two purchasers, ***, reported that during ***, Oppenheimer offered ***.[56]

CONSIDERATION OF MATERIAL INJURY TO AN INDUSTRY IN THE UNITED STATES

The Commission mailed 204 questionnaires to growers of fresh kiwifruit and 116 to packers, cold storers, and handlers of kiwifruit. The 204 growers were selected from the universe of 572 growers[57] as a stratified random sample representative of the industry as a whole. The sample was divided into three strata--large growers, intermediate growers, and small growers--based on a record maintained by the CKC of each grower's 1990 production data.[58] Aggregate acreage, production, employment, and financial data for the industry, projected from the questionnaire responses of these selected growers,[59] are presented in the following sections. Since the CKC maintains monthly shipment and inventory data for the entire California industry, the following sections contain these actual data as well, where appropriate.

The Commission also received usable questionnaire responses from 32 firms that accounted for approximately 63 percent, 54 percent, and 72 percent of the U.S. kiwifruit packed, stored, and sold, respectively, in 1990/91. The following sections of this report provide actual production, shipment, employment, and financial data gathered from them.

U.S. Kiwifruit Acreage and Production

Table 2 contains information on kiwifruit acreage, production, and yields, by grower types and for the industry as a whole, for the crop years 1988/89-1991/92.[60]

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[56] Questionnaire responses and conversations with ***.

[57] The CKC provided the Commission with a list of 633 growers for 1990. Handlers maintain a register of all growers whose kiwifruit they sell in any given year. The CKC compiles these registers into an industry listing of all kiwifruit growers. The Commission arrived at 572 growers by combining grower entries of like name and/or like address.

[58] Large growers include those who produced from 49,001 to 490,000 tray equivalents in 1990/91; intermediates produced from 14,701 to 49,000 tray equivalents, and smaller-sized growers produced from 40 to 14,700 tray equivalents.

[59] This report employs the term "projected" for those data calculated from the random sample. All other data are actual data received by the Commission. For a discussion of the statistical sampling technique and the 95-percent confidence intervals for each variable measure, refer to appendix C.

[60] For the purposes of this investigation, a crop year covers fruit harvested in the fall and sold in that year and in the first part of the

(continued...)

Table 2
Fresh kiwifruit: Projected U.S. acreage and production, by grower types, crop years 1988/89-1991/92

Item	1988/89	1989/90	1990/91	1991/92
	Acreage producing kiwifruit (number of acres)			
Large growers	2,203	2,418	2,519	2,519
Intermediate growers	1,840	1,873	1,813	1,772
Small growers	2,664	2,635	2,510	2,173
Total	6,707	6,926	6,842	6,464
	Production (tray equivalents)			
Large growers	3,452,669	4,322,730	4,627,047	3,626,508
Intermediate growers	2,139,669	3,124,495	2,822,643	2,342,450
Small growers	2,232,962	2,743,573	2,745,185	2,079,039
Total	7,825,300	10,190,798	10,194,875	8,047,997
	Yield (tray equivalents per acre)			
Large growers	1,567	1,788	1,837	1,440
Intermediate growers	1,163	1,668	1,557	1,322
Small growers	838	1,041	1,094	957
Average	1,167	1,471	1,490	1,245

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

The number of bearing acres grew significantly through the 1980s, reaching 6,926 in 1989/90. This upward trend reversed itself in 1990/91, as acreage fell 1 percent in 1990/91 and 6 percent in 1991/92. The industry has undergone a consolidation as some growers, particularly the smaller ones, have removed their kiwifruit acres or sold them to other growers in the past 2 or 3 years.[61] The data show that large growers' bearing acres have increased throughout the period of investigation, while the acreage of intermediate and small growers has diminished.

Production expanded 30 percent between 1988/89 and 1989/90, remained essentially the same in 1990/91, and dropped 21 percent in 1991/92. Many growers attribute the decline in yield in 1991/92 to a late, cool spring and to periods of excessive summer heat. In addition, many growers reported that

[61] The CKC estimates that the number of growers declined from 815 in 1988 to 643 in 1990. In a recent survey of growers, the CKC projected that the California industry consisted of 6,783 bearing acres and 87 nonbearing acres, as of the end of 1991. The study also estimated that 104 growers had left the kiwifruit business since 1990. Petitioners' prehearing brief, exhibit 8.

they have scaled back their cultural practices, thereby contributing to reduced production and yields.

U.S. Production Capacity

Table 3 provides reported trade and capacity data for U.S. packers and cold storers.[62]

Table 3
Fresh kiwifruit: Capacity and capacity utilization for U.S. packers and cold storers, crop years 1988/89-1990/91

Item	1988/89	1989/90	1990/91
	Quantity packed/stored (tray equivalents)		
Packers	4,686,713	6,764,187	6,431,336
Cold storers	3,901,643	4,333,444	5,513,985
	Average packing/storing capacity (tray equivalents)		
Packers	9,392,379	11,209,467	11,689,533
Cold storers	5,654,400	7,305,000	7,580,900
	Capacity utilization (percent)		
Packers	50	60	55
Cold storers	69	59	73

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Packers operated at between 50 and 60 percent of capacity during the investigation period. These capacity data, however, distort the amount of packing capacity available, because packers adapt their operations to the size of the harvest. In high crop years, packers either hire more temporary employees or increase the number of work shifts; in low crop years, the opposite occurs. Since many packers also pack stone and other fruits, kiwifruit extends their packing season into late fall. Packers have available laborers who have packed other fruits earlier in the year. As an "off season" fruit, kiwifruit also finds ample cold storage space available. The data show that kiwifruit production has not approached maximum storage capacity in the years from 1988 to 1991. Neither labor shortages nor inadequate storage capacity has constrained kiwifruit output in California during the period covered by this investigation.

[62] Physical or resource constraints presumably do not limit the handlers' ability to sell product.

U.S. Producers' Domestic and Export Shipments

Table 4 provides information on domestic and export shipments by California producers.

Table 4
Fresh kiwifruit: U.S. producers' domestic and export shipments, crop years 1988/89-1990/91

Item	Shipments by U.S. producers	Share of total shipments
	Tray equivalents	Percent
1988/89:		
Domestic.....	5,273,640	63
Export.....	3,099,981	37
Total.....	8,373,621	100
1989/90:		
Domestic.....	6,867,064	69
Export.....	3,040,315	31
Total.....	9,907,379	100
1990/91:		
Domestic.....	6,692,008	76
Export.....	2,077,336	24
Total.....	8,769,344	100

Source: CKC.

Total shipments grew in 1989/90 by 18 percent and fell by 12 percent in 1990/91. The U.S. industry has shipped a decreasing share of its output to export markets. During the 1988/89 marketing season, export shipments accounted for 37 percent of total U.S. producers' shipments. By 1990/91, that figure had declined to 24 percent. The strongest markets for U.S. exports of kiwifruit have been Canada and the Far East; in particular, Taiwan, Hong Kong, and Korea. U.S. producers have lost market share in Europe and Japan. During the 1986/87 marketing season, the United States exported over 2 million trays to Europe and Japan. By 1990/91, shipments to Europe fell to zero, while sales to Japan dwindled to roughly 22,000 trays. Increased U.S. demand for kiwifruit and expanded kiwifruit production in Europe and Japan have contributed to the overall long-term decline in U.S. export sales.

U.S. Producers' and U.S. Importer's Inventories

Table 5 provides monthly inventory data for domestic producers and for Oppenheimer.

Table 5
Fresh kiwifruit: U.S. inventories of domestic production and of imports from New Zealand, by months, May 1989-March 1992

(In tray equivalents)

Period	Domestic inventories	New Zealand inventories
1989:		
May	(1)	***
June	(1)	***
July	(1)	***
August	(1)	***
September	(1)	***
October	10,111,397	***
November	8,867,455	***
December	8,171,683	***
1990:		
January	6,654,819	***
February	4,534,738	***
March	2,802,722	***
April	1,136,203	***
May	183,484	***
June	0	***
July	0	***
August	0	***
September	0	***
October	9,811,890	***
November	8,501,925	***
December	7,902,611	***
1991:		
January	6,737,092	***
February	4,871,240	***
March	2,869,826	***
April	1,170,401	***
May	233,371	***
June	0	***
July	0	***
August	0	***
September	0	***
October	7,769,983	***
November	6,623,639	***
December	5,757,465	***
1992:		
January	4,866,395	***
February	3,491,140	***
March	1,630,876	***

[1] Not available; the CKC first collected inventory data in October 1989.

Source: CKC and Oppenheimer.

Domestic producers' inventories begin at a high level after the harvest in October and November and gradually decline as the marketing season for kiwifruit proceeds.[63] By June of the following year, stocks of domestically produced kiwifruit are exhausted. Inventories of imports from New Zealand are high through the summer and diminish to zero by ***. Inventories of New Zealand kiwifruit were *** in 1990 than in 1989 and 1991 and *** into that year.

U.S. Employment and Wages

Typically, a grower with a small or medium size operation works his kiwifruit acreage alone or with the aid of family members and frequently employs contract labor for picking and pruning. Large growers also employ only a handful of full-time workers and either hire their own picking and pruning crews on a temporary basis or rely on contract crews. If a grower employs contract labor, he usually does not know the number of workers under contract or their hours worked. As a consequence, the Commission solicited employment data from growers by requesting the number of full- and part-time workers (FPTWs) (usually the grower, his family members, and others hired directly by the grower), their hours worked, and their total compensation. In addition, questionnaires asked for the amount paid for contract services and the total compensation for FPTWs and for contract labor. Table 6 shows these data for the 3 most recent crop years.

Employment fell by 6 percent in 1990/91 after declining by 2 percent between 1988/89 and 1989/90. Hours worked rose by 10 percent in 1989/90 and declined by 6 percent in 1990/91. Compensation paid to FPTWs moved in line with hours, increasing 14 percent in 1989/90 and falling 3 percent in 1990/91. Hourly total compensation rose 6 percent over the period of investigation. Compensation paid for contract labor and total compensation followed a similar path, rising by 10 and 12 percent, respectively, in 1989/90 and declining by 10 and 6 percent, respectively, in 1990/91.

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[63] The CKC collects inventory data from all California handlers. The domestic inventory figures for October represent--ex post--the maximum reported inventory through each respective marketing season. Reported inventories tend to increase during the marketing season, as handlers supply the CKC with more accurate inventory estimates based on actual sales. Handlers' reported shipment data tend to be more reliable than their reported inventory figures. ***.

Table 6
Fresh kiwifruit: Projected employment data for U.S. growers, by grower types, crop years 1988/89-1990/91

Item	1988/89	1989/90	1990/91
	Number of full and part-time workers (FPTWs)		
Large growers	1,626	1,787	1,812
Intermediate growers	897	886	743
Small growers	3,732	3,484	3,222
Total	6,255	6,157	5,777
	Hours worked by FPTWs		
Large growers	303,857	388,732	379,927
Intermediate growers	183,161	175,877	149,945
Small growers	470,474	493,379	465,485
Total	957,492	1,057,988	995,357
	Total compensation paid to FPTWs (dollars)		
Large growers	2,202,587	2,588,388	2,612,898
Intermediate growers	1,004,636	1,007,170	890,966
Small growers	1,619,076	1,903,343	1,802,730
Total	4,826,299	5,498,901	5,306,594
	Hourly total compensation paid to full and part-time employees		
Large growers	$7.25	$6.66	$6.88
Intermediate growers	5.48	5.73	5.94
Small growers	3.44	3.86	3.87
Average	5.04	5.20	5.33
	Total compensation paid for contract labor (dollars)		
Large growers	989,369	1,258,379	963,210
Intermediate growers	1,431,951	1,483,653	1,403,403
Small growers	1,036,410	1,059,673	1,066,120
Total	3,457,730	3,801,705	3,432,733
	Total compensation paid to FPTWs and for contract laborers (dollars)		
Large growers	3,191,956	3,846,767	3,576,108
Intermediate growers	2,436,587	2,490,823	2,294,369
Small growers	2,655,486	2,963,016	2,868,850
Total	8,284,029	9,300,606	8,739,327

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Table 7 presents employment information for U.S. packers, cold storers, and handlers of kiwifruit.

Table 7
Fresh kiwifruit: Employment data for U.S. packers, cold storers, and handlers, crop years 1988/89-1990/91

Item	1988/89	1989/90	1990/91
	Number of production and related workers (PRWs)		
Packers	2,157	2,249	2,352
Cold storers	57	83	89
Handlers	63	59	60
Total	2,277	2,391	2,501
	Hours worked by PRWs		
Packers	513,892	653,444	644,922
Cold storers	46,410	72,010	70,395
Handlers	52,308	50,980	44,842
Total	612,610	776,434	760,159
	Total compensation paid to PRWs (dollars)		
Packers	2,675,879	3,719,144	3,556,253
Cold storers	352,080	528,503	564,231
Handlers	890,914	894,931	796,599
Total	3,918,873	5,142,578	4,917,083
	Hourly total compensation paid to PRWs		
Packers	$5.21	$5.69	$5.51
Cold storers	7.59	7.34	8.02
Handlers	17.03	17.55	17.76
Average	6.40	6.62	6.47

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Data supplied by packers, cold storers, and handlers show an increase of 10 percent in the number of workers employed over the period of investigation. Hours worked by these employees rose substantially in 1989/90, as kiwifruit production expanded considerably in that year. Hours increased by 27 percent in 1989/90 before declining 2 percent in 1990/91. Total compensation followed the same pattern--up by almost one-third in 1989/90 and down by 4 percent the subsequent crop year. Hourly compensation rose 3 percent between 1988/89 and 1989/90 and then receded by 2 percent in 1990/91.

Financial Experience on Kiwifruit Operations

Growers

Income-and-loss experience

As explained earlier and in appendix C, the Commission sent questionnaires to 204 growers selected on the basis of a stratified random sample. Usable income-and-loss data were received from 21 large growers, 29 intermediate growers, and 35 small growers, totaling 85 growers in crop year 1990/91.[64] The responding large growers accounted for about 34 percent of total U.S. production of kiwifruit in crop year 1990/91, intermediate growers accounted for 8 percent, small growers accounted for 2 percent, and in aggregate these firms accounted for 44 percent. Data from these growers were used to estimate data for the 572 firms in the kiwifruit industry. Of the 85 growers, 49 operated their business as a proprietorship, 18 as a partnership, and another 18 as a corporation.

The Commission generally collects financial data from each firm on a fiscal-year basis. The fiscal year for most of the growers ends on December 31. The majority of the growers employed a "cash basis" accounting method, used mainly for tax purposes. Under this accounting method, the grower records revenue when cash is received for his crop of kiwifruit and records the crop expenses when paid. As mentioned previously, kiwifruit is generally harvested and packed in the months of October and November of each year and sold during the first half of the ensuing year. Hence, the majority of growing and operating expenses for a crop are paid in the current year while almost all of the cash for a crop from the current year is received in the next year. Therefore, data reported on a "cash basis" do not reflect the financial performance for each annual crop, because there is not a proper matching of revenues and expenses for the same crop. Thus, in this final investigation, the Commission requested data from each grower on a crop year basis. Almost all of the growers sell their fruit through handlers. Handlers generally provide a statement reflecting the quantity of fruit sold, gross sales value, deductions made for their services, and net return paid to each grower for each crop year.

Table 8 presents projected data for the total population of 572 growers derived from the reported data of the 85 sample growers. Tables 9-11 contain information by strata, projecting data for the total population of 32 large growers from the data of the 21 sample firms (table 9), for the total population of 107 intermediate growers from the data of the 29 sample firms (table 10), and for the total population of 433 small growers from the data of the 35 sample firms (table 11).

In view of the statistical methodology used to calculate the overall financial data for growers, the ratio percentages are a fair presentation of the grower industry as reported by the questionnaire data. For each stratum of the questionnaire responses, the average (by grower) of each specific line item was calculated, and this average was multiplied by the estimated overall number of growers in the stratum. The financial ratios presented for each

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[64] Data of *** were verified by the Commission. There were no major changes in the data of these growers.

stratum (except net returns on total assets) are identical to those of the actual questionnaire data, because the increase is proportional for each item in the stratum. However, the small grower stratum is weighted more heavily than the intermediate and large grower strata because the sample size for the small grower stratum is proportionally much smaller. As a consequence, the ratios for the aggregate data for all growers (table 8) differ slightly from the ratios derived from actual sample data. For the ratio data presented in the financial section, almost all ratios are within 2 percent (absolute value) of the sample data and no ratios differ by more than 3.5 percentage points. All trends in table 8 remain the same as the aggregate sample data. The actual data reported in questionnaire responses can be calculated for each stratum by reducing the stratum data by 34.37 percent for large growers, 72.90 percent for intermediate growers, and 91.92 percent for small growers.

As shown in table 8, aggregate estimated gross sales of total kiwifruit rose by 19 percent from $38.5 million in crop year 1988/89 to $45.8 million in crop year 1989/90, and then declined by 2 percent to $44.7 million in crop year 1990/91. As a percentage of gross sales, the net grower return, after deducting sales commission and packing, repacking, cold storage, and assessment expenses from gross sales, dropped from 36.6 percent in crop year 1988/89 to 32.0 percent in crop year 1989/90 and then increased to 35.9 percent in crop year 1990/91. Total estimated net losses before income taxes and officer/partner salaries increased from $7.3 million in crop year 1988/89 to $7.9 million in crop year 1989/90 and then dropped to $5.7 million in crop year 1990/91. However, during these periods, the net losses before income taxes and officer/partner salaries showed a declining trend each year from 19.1 percent to 17.2 percent and to 12.7 percent; net losses before income taxes followed a similar trend.

The net loss before income taxes and officer/partner salaries margins for large growers (table 9) followed a trend similar to that of the aggregate population. The trends of such loss margins for intermediate growers (table 10) and for small growers (table 11) were slightly different, with increasing loss margins for intermediate growers in crop year 1989/90 and for small growers in crop year 1990/91.

Table 8
Projected income-and-loss experience of U.S. growers on their operations producing kiwifruit, crop years 1988/89-1990/91

Item	1988/89	1989/90	1990/91
	Value (1,000 dollars)		
Gross sales	38,458	45,753	44,652
Deductions by handlers[1]	24,402	31,109	28,639
Net grower returns	14,057	14,644	16,013
Interest expense	2,664	2,764	2,930
Growing and operating expenses excluding officer/partner salaries	18,741	19,766	18,763
Net (loss) before income taxes and officer/partner salaries	(7,349)	(7,886)	(5,680)
Officer/partner salaries	347	561	380
Net (loss) before income taxes	(7,696)	(8,447)	(6,060)
Depreciation expense	3,896	3,881	4,002
Cash flow[2]	(3,799)	(4,566)	(2,058)
	Ratio to gross sales (percent)		
Deductions by handlers	63.4	68.0	64.1
Net grower returns	36.6	32.0	35.9
Interest expense	6.9	6.0	6.6
Growing and operating expenses excluding officer/partner salaries	48.7	43.2	42.0
Net (loss) before income taxes and officer/partner salaries	(19.1)	(17.2)	(12.7)
Net (loss) before income taxes	(20.0)	(18.5)	(13.6)
	Projected number of firms		
Net losses before income taxes	391	405	405
Data	572	572	572

[1] Deductions include sales commissions and expenses for packing, repacking, storage, and assessments (paid to the CKC and/or the KAC). Any other expenses deducted by handlers are included in growing and operating expenses.

[2] Cash flow is defined as net income or loss before income taxes plus depreciation.

Note.--Because of rounding, value figures may not add to the totals shown. Ratios were calculated from the unrounded figures.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Table 9
Projected income-and-loss experience of large growers on their operations producing kiwifruit, crop years 1988/89-1990/91

Item	1988/89	1989/90	1990/91
	Value (1,000 dollars)		
Gross sales	17,410	20,794	22,030
Deductions by handlers[1]	10,191	13,360	13,377
Net grower returns	7,219	7,433	8,653
Interest expense	1,266	1,274	1,535
Growing and operating expenses excluding officer/partner salaries	9,121	9,633	9,255
Net (loss) before income taxes and officer/partner salaries	(3,167)	(3,475)	(2,137)
Officer/partner salaries	95	101	94
Net (loss) before income taxes	(3,263)	(3,575)	(2,230)
Depreciation expense	2,172	2,191	2,278
Cash flow[2]	(1,090)	(1,384)	47
	Ratio to gross sales (percent)		
Deductions by handlers	58.5	64.3	60.7
Net grower returns	41.5	35.7	39.3
Interest expense	7.3	6.1	7.0
Growing and operating expenses excluding officer/partner salaries	52.4	46.3	42.0
Net (loss) before income taxes and officer/partner salaries	(18.2)	(16.7)	(9.7)
Net (loss) before income taxes	(18.7)	(17.2)	(10.1)
	Projected number of firms		
Net losses before income taxes	24	23	24
Data	32	32	32

[1] Deductions include sales commissions and expenses for packing, repacking, storage, and assessments (paid to the CKC and/or the KAC). Any other expenses deducted by handlers are included in growing and operating expenses.

[2] Cash flow is defined as net income or loss before income taxes plus depreciation.

Note.--Because of rounding, value figures may not add to the totals shown. Ratios were calculated from the unrounded figures.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Table 10
Projected income-and-loss experience of intermediate growers on their operations producing kiwifruit, crop years 1988/89-1990/91

Item	1988/89	1989/90	1990/91
	Value (1,000 dollars)		
Gross sales	10,378	12,966	12,007
Deductions by handlers[1]	7,118	9,727	8,108
Net grower returns	3,260	3,239	3,899
Interest expense	364	452	353
Growing and operating expenses excluding officer/ partner salaries	4,073	4,371	4,042
Net (loss) before income taxes and officer/partner salaries	(1,178)	(1,584)	(496)
Officer/partner salaries	115	207	65
Net (loss) before income taxes	(1,293)	(1,791)	(561)
Depreciation expense	493	447	424
Cash flow[2]	(800)	(1,344)	(137)
	Ratio to gross sales (percent)		
Deductions by handlers	68.6	75.0	67.5
Net grower returns	31.4	25.0	32.5
Interest expense	3.5	3.5	2.9
Growing and operating expenses excluding officer/ partner salaries	39.3	33.7	33.7
Net (loss) before income taxes and officer/partner salaries	(11.4)	(12.2)	(4.1)
Net (loss) before income taxes	(12.5)	(13.8)	(4.7)
	Projected number of firms		
Net losses before income taxes	70	85	59
Data	107	107	107

[1] Deductions include sales commissions and expenses for packing, repacking, storage, and assessments (paid to the CKC and/or the KAC). Any other expenses deducted by handlers are included in growing and operating expenses.

[2] Cash flow is defined as net income or loss before income taxes plus depreciation.

Note.--Because of rounding, value figures may not add to the totals shown. Ratios were calculated from the unrounded figures.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Table 11
Projected income-and-loss experience of small growers on their operations producing kiwifruit, crop years 1988/89-1990/91

Item	1988/89	1989/90	1990/91
	Value (1,000 dollars)		
Gross sales	10,670	11,993	10,615
Deductions by handlers[1]	7,093	8,021	7,154
Net grower returns	3,578	3,972	3,461
Interest expense	1,034	1,038	1,041
Growing and operating expenses excluding officer/partner salaries	5,547	5,762	5,467
Net (loss) before income taxes and officer/partner salaries	(3,003)	(2,827)	(3,047)
Officer/partner salaries	136	253	222
Net (loss) before income taxes	(3,139)	(3,081)	(3,269)
Depreciation expense	1,231	1,242	1,300
Cash flow[2]	(1,909)	(1,838)	(1,969)
	Ratio to gross sales (percent)		
Deductions by handlers	66.5	66.9	67.4
Net grower returns	33.5	33.1	32.6
Interest expense	9.7	8.7	9.8
Growing and operating expenses excluding officer/partner salaries	52.0	48.0	51.5
Net (loss) before income taxes and officer/partner salaries	(28.1)	(23.6)	(28.7)
Net (loss) before income taxes	(29.4)	(25.7)	(30.8)
	Projected number of firms		
Net losses before income taxes	297	297	322
Data	433	433	433

[1] Deductions include sales commissions and expenses for packing, repacking, storage, and assessments (paid to the CKC and/or the KAC). Any other expenses deducted by handlers are included in growing and operating expenses.

[2] Cash flow is defined as net income or loss before income taxes plus depreciation.

Note.--Because of rounding, value figures may not add to the totals shown. Ratios were calculated from the unrounded figures.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Table 12 shows the estimated income-and-loss experience of all U.S. growers on a per-tray-equivalent basis. The average selling price per tray equivalent declined each year from $5.34 in crop year 1988/89 to $4.75 in crop year 1989/90 and to $4.72 in crop year 1990/91. During the same period, trays lost in repacking as a share of gross trays packed increased each year from 3.3 percent to 3.8 percent and to 7.2 percent. Average losses before income taxes and officer/partner salaries per tray equivalent dropped from $1.02 in crop year 1988/89 to $0.82 in crop year 1989/90 and to $0.60 in crop year 1990/91.

Table 12
Projected income-and-loss experience (on a per-tray-equivalent basis) of U.S. growers on their operations producing kiwifruit, crop years 1988/89-1990/91[1]

Item	1988/89	1989/90	1990/91
	Quantity (1,000 tray equivalents)		
Gross trays packed	7,452	10,005	10,208
Trays lost in repacking	245	379	739
Net trays sold	7,207	9,626	9,469
	Value (per tray equivalent)[2]		
Gross sales	$5.34	$4.75	$4.72
Deductions by handlers[3]	3.39	3.23	3.03
Net grower returns	1.95	1.52	1.69
Interest expense	0.37	0.29	0.31
Growing and operating expenses excluding officer/partner salaries	2.60	2.05	1.98
Net (loss) before income taxes and officer/partner salaries	(1.02)	(0.82)	(0.60)
Officer/partner salaries	0.05	0.06	0.04
Net (loss) before income taxes	(1.07)	(0.88)	(0.64)
	Ratio to gross trays packed (percent)		
Trays lost in repacking	3.3	3.8	7.2

[1] The data presented in this table are based on the usable sample questionnaires for financial data only and hence may not match similar data shown in other sections of this report.

[2] Based on net trays sold.

[3] Deductions include sales commissions and expenses for packing, repacking, storage, and assessments (paid to the CKC and/or the KAC). Any other expenses deducted by handlers are included in growing and operating expenses.

Note.--Because of rounding, figures may not add to the totals shown. Unit values and other ratios are calculated from the unrounded data.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Table 13 provides the percentage distribution of packing, repacking, cold storage, assessment expenses, and sales commissions as a share of total deductions by handlers; it also shows these expenses on a per-tray-equivalent basis.

Table 13
Projected handler deductions[1] from U.S. growers on their operations producing kiwifruit, crop years 1988/89-1990/91

Item	1988/89	1989/90	1990/91
	Share of handler deductions (percent)		
Packing expenses	60.0	60.0	58.2
Repacking expenses	2.6	3.1	3.9
Cold-storage expenses	17.7	17.7	18.4
Assessments[2]	7.7	7.6	7.6
Sales commissions	12.0	11.6	11.9
Total	100.0	100.0	100.0
	Value (per tray equivalent)[3]		
Packing expenses	$1.99	$1.86	$1.64
Repacking expenses	.08	.10	.11
Cold-storage expenses	.59	.55	.52
Assessments[2]	.25	.23	.22
Sales commissions	.40	.36	.34
Total	3.31	3.10	2.82

[1] The total projected deductions by handlers contained in this table do not correspond directly to the total projected handler deductions presented earlier, because these data are projected from only those grower questionnaire responses which provided the complete, detailed expense breakdown shown here.
[2] Includes assessments paid to the CKC and/or the KAC.
[3] Based on gross trays packed.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

The Commission requested supplemental information from 9 integrated packer/cold storer/handlers. Five of these 9 firms provided the Commission with data on the quantity and value of all kiwifruit sold and the related deductions made for those sales on a consolidated basis for all of their growers for crop year 1991/92 through March 31, 1992. These handlers accounted for about 26 percent of total shipments of kiwifruit by U.S. handlers through the first quarter of 1992. The Commission collected data on the growing and operating expenses and the production of kiwifruit for crop year 1991/92 from the growers in their questionnaire responses. Fifty-seven growers, accounting for approximately 35 percent of the total U.S. production of kiwifruit in crop year 1991/92, provided usable data.

The following tabulation presents interim income-and-loss experience of U.S. growers on a per-tray-equivalent basis for crop year 1991/92 through

March 31, 1992. The average selling price, deductions by handlers, and net grower returns per tray equivalent are computed on the basis of the supplemental data provided by handlers, because it was not feasible to collect such timely data from a large number of growers. The average interest expense, growing and operating expenses excluding officer/partner salaries, and officer/partner salaries per tray equivalent are computed on the basis of data supplied by U.S. growers in their questionnaire responses. The data in this tabulation are not strictly comparable to data provided in table 12.

Item	Crop year 1991/92 through March 31,1992
	Value (per tray equivalent)[1]
Gross sales[2]	$6.17
Deductions by handlers[2] [3]	3.67
Net grower returns[2]	2.50
Interest expense[4]	0.23
Growing and operating expenses excluding officer/partner salaries[4]	1.73
Net income before income taxes and officer/partner salaries	0.54
Officer/partner salaries[4]	0.04
Net income before income taxes	0.50

[1] Based on trays or other containers sold.

[2] The average per-tray equivalents for gross sales, deductions by handlers, and net grower returns are computed on the basis of supplemental information collected from handlers.

[3] Deductions include sales commissions and expenses for packing, repacking, storage, and assessments (paid to the CKC and/or the KAC). Any other expenses deducted by handlers are included in growing and operating expenses.

[4] The average per-tray equivalents for interest expense, growing and operating expenses excluding officer/partner salaries, and officer/partner salaries are computed on the basis of actual data collected from grower questionnaires, not projections.

Through March 31, 1992, the average selling price rose to $6.17 per tray equivalent, and deductions by handlers increased to $3.67 per tray equivalent, which provided a net grower return of $2.50 per tray equivalent. During the same period, the average interest expense and the average growing and operating expenses excluding officer/partner salaries declined. Growers earned an average net income before income taxes and officer/partner salaries of $0.54 per tray equivalent during crop year 1991/92 through March 31, 1992. Growers earned a pretax net income due mainly to a rise in the average selling price and due partially to some decline in interest and growing/operating expenses. The higher selling prices may have resulted from lower domestic production and reduced shipments of imports during this period.

Investment in kiwifruit facilities

Sixteen large growers, 20 intermediate growers, and 16 small growers provided assets, liabilities, and equity for their kiwifruit farm operations; these data are projected for each stratum and for the total population and are shown in table 14. The U.S. growers realized negative returns on total assets each year under investigation. The net returns on total assets for intermediate growers generally followed the same trend as the ratios of net losses to gross sales during the reporting periods. For large growers, small growers, and all growers in the aggregate, negative net returns on total assets increased slightly in crop year 1989/90, whereas the ratios of net losses to gross sales declined during that crop year. The projected net returns on total assets for each stratum and for the aggregate data are different from those of the actual questionnaire data, because income-to-asset ratios are not the same as projected income-to-asset ratios. The projected net returns on total assets were lower than those computed based on actual data, but the trends for large growers, small growers, and all growers in the aggregate remained the same.

Capital expenditures

Fourteen large growers, 23 intermediate growers, and 23 small growers supplied data on capital expenditures in at least one of the years under investigation. These sample data were used to derive estimated capital expenditures for the total population of kiwifruit growers. Capital expenditures for kiwifruit increased from $2.0 million in crop year 1988/89 to $5.1 million in crop year 1989/90 and declined to $5.0 million in crop year 1990/91.

Impact of imports on capital and investment

The Commission asked growers to comment on any unusual or nonrecurring events that affected their kiwifruit operations and to discuss the impact of imports on capital and investment. Appendix D summarizes their responses.

Table 14
Projected value of assets and return on assets of U.S. kiwifruit growers, crop years 1988/89-1990/91

Item	1988/89	1989/90	1990/91
	Value (1,000 dollars)		
Large growers:			
Total assets	35,281	35,458	34,329
Total liabilities	28,948	33,997	30,418
Equity	6,333	1,461	3,911
Intermediate growers:			
Total assets	26,118	30,303	27,330
Total liabilities	9,321	11,486	9,902
Equity	16,797	18,817	17,427
Small growers:			
Total assets	41,608	44,965	39,230
Total liabilities	15,894	17,450	17,471
Equity	25,714	27,516	21,759
All growers:			
Total assets	103,007	110,726	100,889
Total liabilities	54,163	62,932	57,791
Equity	48,844	47,794	43,097
	Net return on total assets (percent)		
Large growers:			
Before income taxes and officer/partner salaries	(9.0)	(9.8)	(6.2)
Before income taxes	(9.2)	(10.1)	(6.5)
Intermediate growers:			
Before income taxes and officer/partner salaries	(4.5)	(5.2)	(1.8)
Before income taxes	(5.0)	(5.9)	(2.1)
Small growers:			
Before income taxes and officer/partner salaries	(7.2)	(6.3)	(7.8)
Before income taxes	(7.5)	(6.9)	(8.3)
All growers:			
Before income taxes and officer/partner salaries	(7.1)	(7.1)	(5.6)
Before income taxes	(7.5)	(7.6)	(6.0)
	Projected number of firms		
Large growers	32	32	32
Intermediate growers	107	107	107
Small growers	433	433	433
All growers	572	572	572

Note.--Because of rounding, figures may not add to the totals shown. Returns are calculated from the unrounded figures.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

U.S. Packers, Cold Storers, and Handlers

Twenty-six firms supplied usable income-and-loss data on their kiwifruit operations by fiscal year.[65] These data are not adjusted by any statistical methods but are presented as reported in the questionnaires.[66] These firms accounted for about 58 percent of total kiwifruit packed, about 51 percent of total kiwifruit cold storage operations, and approximately 58 percent of total U.S. shipments in crop year 1990/91. Twenty-three of the 26 firms provided data on their overall operations. Two firms started kiwifruit operations in 1990 and two began in 1991. Aggregate data on kiwifruit and overall operations are presented in tables 15 and 16, respectively.

Income-and-loss experience

As shown in table 15, packing revenue from kiwifruit operations increased from $7.0 million in 1989 to $10.4 million in 1990 and declined to $9.3 million in 1991. As a share of total revenues, packing revenues accounted for 63 percent in 1989, 64 percent in 1990, and 61 percent in 1991. Cold-storage revenues rose from $1.5 million in 1989 to $3.1 million in 1991 and accounted for 13 percent of total revenues in 1989, 18 percent in 1990, and 20 percent in 1991. Commission income increased from $1.8 million in 1989 to $2.2 million in 1990 and declined to $2.1 million in 1991. Such income represented 16 percent of total revenues in 1989, 13 percent in 1990, and 14 percent in 1991.

Aggregate operating income on kiwifruit operations rose from $1.3 million in 1989 to $1.5 million in 1990 and then declined to $1.2 million in 1991. However, operating income margins dropped from 11.8 percent in 1989 to 9.2 percent in 1990 and to 8.2 percent in 1991. The margins for net income before income taxes followed a similar trend as did the operating income margins during the period of investigation. U.S. packers, cold storers, and handlers showed higher operating income margins on their kiwifruit operations than on their overall establishment operations. Kiwifruit is handled in the winter months, a period of relatively little activity for most firms; thus, revenue from kiwifruit sales helps cover handlers' fixed overhead costs. Sales of most other products occur during the summer months in larger volumes and at smaller margins.

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[65] These fiscal year data do not correspond directly to grower data supplied on a crop year basis.

[66] The Commission verified the data of ***. Assets and capital expenditures data of *** were revised for kiwifruit operations as they were not properly allocated. The income-and-loss, assets, and capital expenditure data of *** were completely revised for kiwifruit operations, because the data originally submitted included operations on other fruit. The income-and-loss data of *** were revised because of allocation problems.

Table 15
Income-and-loss experience of U.S. packers, cold storers, and handlers on their kiwifruit operations, fiscal years 1989-91[1]

Item	1989	1990	1991
	Value (1,000 dollars)		
Packing revenues	7,019	10,398	9,253
Cold-storage revenues	1,450	2,937	3,120
Commission income	1,817	2,176	2,067
Other business income[2]	769	752	797
Total revenues	11,055	16,263	15,237
Packing/repacking costs	4,482	6,823	6,311
Cold-storage costs	1,120	2,108	2,464
Other costs and expenses	1,404	2,061	1,746
Selling, general, and administrative expenses	2,748	3,782	3,469
Total costs and expenses	9,754	14,774	13,990
Operating income	1,301	1,489	1,247
Interest expense	277	344	324
Other income, net	177	240	188
Net income before income taxes	1,201	1,385	1,111
Depreciation and amortization	619	1,073	924
Cash flow[3]	1,820	2,458	2,035
	Ratio to total revenues (percent)		
Packing revenues	63.5	63.9	60.7
Cold-storage revenues	13.1	18.1	20.5
Commission income	16.4	13.4	13.6
Other business income	7.0	4.6	5.2
Costs and expenses	88.2	90.8	91.8
Operating income	11.8	9.2	8.2
Net income before income taxes	10.9	8.5	7.3
	Number of firms reporting		
Operating losses	7	5	6
Net losses	7	5	6
Data	22	24	26

[1] The fiscal year of 14 firms ended on December 31; 3 firms each on March 31 and June 30; 2 firms each on May 31 and October 31; and 1 firm each on February 28 and April 30.

[2] Income from fruit sales, consultant fees, kiwifruit plant sales, harvesting, rental income, etc.

[3] Cash flow is defined as net income or loss plus depreciation and amortization.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Table 16
Income-and-loss experience of U.S. packers, cold storers, and handlers on the overall operations of their establishments wherein kiwifruit is packed, cold stored, and/or handled, fiscal years 1989-91[1]

Item	1989	1990	1991
	Value (1,000 dollars)		
Packing revenues	21,196	24,741	23,287
Cold-storage revenues	7,043	9,250	10,159
Commission income	30,902	32,375	35,882
Other business income[2]	147,449	153,073	138,984
Total revenues	206,590	219,439	208,312
Packing/repacking costs	54,292	65,876	61,544
Cold-storage costs	6,297	7,249	7,492
Other costs and expenses	108,310	108,167	96,488
Selling, general, and administrative expenses	32,656	33,161	34,988
Total costs and expenses	201,555	214,453	200,512
Operating income	5,035	4,986	7,800
Interest expense	3,701	4,219	4,183
Other income, net	2,075	3,138	3,052
Net income before income taxes	3,409	3,905	6,669
Depreciation and amortization	4,608	4,973	5,062
Cash flow[3]	8,017	8,878	11,731
	Ratio to total revenues (percent)		
Packing revenues	10.3	11.3	11.2
Cold-storage revenues	3.4	4.2	4.9
Commission income	15.0	14.8	17.2
Other business income	71.4	69.8	66.7
Costs and expenses	97.6	97.7	96.3
Operating income	2.4	2.3	3.7
Net income before income taxes	1.7	1.8	3.2
	Number of firms reporting		
Operating losses	5	5	3
Net losses	7	7	3
Data	21	21	23

[1] The fiscal year of 12 firms ended on December 31; 3 firms each on March 31 and June 30; 2 firms each on May 31 and October 31; and 1 firm on February 28.
[2] Income from sale of farm and dairy products, harvesting and other field services, consultant fees, kiwifruit plant sales, bin storage and repairs, etc.
[3] Cash flow is defined as net income or loss plus depreciation and amortization.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Investment in property, plant, and equipment

Reported data on fixed and total assets and return on assets for packers, cold storers, and handlers are presented in table 17. The operating and net returns on the book value of fixed assets and on total assets for kiwifruit operations showed an increasing trend in 1990 from 1989 and then declined in 1991.

Table 17
Value of assets and return on assets of U.S. packers, cold storers, and handlers on the overall operations of their establishments wherein kiwifruit is packed, cold stored, and/or handled, fiscal years 1989-91

Item	1989	1990	1991
	Value (1,000 dollars)		
All products:			
Fixed assets:			
Original cost	84,414	91,576	94,794
Book value	47,533	48,531	46,777
Total assets[1]	107,818	121,447	119,563
Kiwifruit:			
Fixed assets:			
Original cost	23,381	23,966	24,561
Book value	14,159	12,793	11,750
Total assets[2]	26,999	22,403	23,233
	Return on book value of fixed assets (percent)[3]		
All products:			
Operating return[4]	10.8	11.2	16.9
Net return[5]	7.4	9.0	14.5
Kiwifruit:			
Operating return[4]	10.1	12.0	6.3
Net return[5]	9.4	11.3	5.6
	Return on total assets (percent)[3]		
All products:			
Operating return[4]	4.8	4.5	6.7
Net return[5]	3.3	3.6	5.8
Kiwifruit:			
Operating return[4]	5.2	5.9	2.7
Net return[5]	4.8	5.6	2.4

[1] Defined as the book value of fixed assets plus current & noncurrent assets.
[2] Total establishment assets are apportioned, by firm, to product groups on the basis of the ratios of the respective book values of fixed assets.
[3] Computed using data from only those firms supplying both asset and income-and-loss information and, as such, may not be derivable from data shown.
[4] Defined as operating income or loss divided by asset value.
[5] Defined as net income or loss divided by asset value.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Capital expenditures

Data reported on capital expenditures by packers, cold storers, and handlers are shown in table 18.

Table 18
Capital expenditures by U.S. packers, cold storers, and handlers of kiwifruit, by products, fiscal years 1989-91

(In thousands of dollars)

Item	1989	1990	1991
All products:			
Land and land improvements	1,576	2,095	771
Building and leasehold improvements	949	597	502
Machinery, equipment, and fixtures	5,312	5,323	2,996
Total	7,837	8,015	4,269
Kiwifruit:			
Land and land improvements	593	463	475
Building and leasehold improvements	450	122	309
Machinery, equipment, and fixtures	2,104	978	1,138
Total	3,147	1,563	1,922

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Impact of imports on capital and investment

The Commission requested the packers, cold storers, and handlers to describe and explain the actual and anticipated negative effects, if any, of imports of kiwifruit from New Zealand on their growth, investment, ability to raise capital, or existing development and production efforts. Appendix D contains their comments.

CONSIDERATION OF THE QUESTION OF THREAT OF MATERIAL INJURY

Section 771(7)(F)(i) of the Tariff Act of 1930 (19 U.S.C. § 1677(7)(F)(i)) provides that--

In determining whether an industry in the United States is threatened with material injury by reason of imports (or sales for importation) of the merchandise, the Commission shall consider, among other relevant economic factors[67]--

> (I) If a subsidy is involved, such information as may be presented to it by the administering authority as to the nature of the subsidy (particularly as to whether the subsidy is an export subsidy inconsistent with the Agreement),
>
> (II) any increase in production capacity or existing unused capacity in the exporting country likely to result in a significant increase in imports of the merchandise to the United States,
>
> (III) any rapid increase in United States market penetration and the likelihood that the penetration will increase to an injurious level,
>
> (IV) the probability that imports of the merchandise will enter the United States at prices that will have a depressing or suppressing effect on domestic prices of the merchandise,
>
> (V) any substantial increase in inventories of the merchandise in the United States,
>
> (VI) the presence of underutilized capacity for producing the merchandise in the exporting country,
>
> (VII) any other demonstrable adverse trends that indicate the probability that the importation (or sale for importation) of the merchandise (whether or not it is actually being imported at the time) will be the cause of actual injury,
>
> (VIII) the potential for product-shifting if production facilities owned or controlled by the foreign manufacturers, which can be used to produce products subject to investigation(s) under section 701 or 731 or to final orders under section 706 or 736, are also used to produce the merchandise under investigation,

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[67] Section 771(7)(F)(ii) of the act (19 U.S.C. § 1677(7)(F)(ii)) provides that "Any determination by the Commission under this title that an industry in the United States is threatened with material injury shall be made on the basis of evidence that the threat of material injury is real and that actual injury is imminent. Such a determination may not be made on the basis of mere conjecture or supposition."

> (IX) in any investigation under this title which involves imports of both a raw agricultural product (within the meaning of paragraph (4)(E)(iv)) and any product processed from such raw agricultural product, the likelihood that there will be increased imports, by reason of product shifting, if there is an affirmative determination by the Commission under section 705(b)(1) or 735(b)(1) with respect to either the raw agricultural product or the processed agricultural product (but not both), and
>
> (X) the actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the like product.[68]

No subsidies (item (I)) are alleged in this investigation. Information on the volume, U.S. market penetration, and pricing of imports of the subject merchandise (items (III) and (IV) above) is presented in the section entitled "Consideration of the Causal Relationship Between Imports of the Subject Merchandise and the Alleged Material Injury," and information on U.S. inventories of kiwifruit imported from New Zealand (item (V)) and the effects of imports of the subject merchandise on U.S. producers' existing development and production efforts (item (X)) is presented in the section entitled "Consideration of Material Injury to an Industry in the United States." Available information follows on foreign producers' operations, including the potential for "product-shifting" (items (II), (VI), (VIII) and (IX) above); any other threat indicators, if applicable (item (VII) above); and any dumping in third-country markets.

Ability of Foreign Producers to Generate Exports and the Availability of Export Markets Other than the United States

In 1988, New Zealand legislation created the NZKMB, whose primary objective is "to obtain, in the interest of New Zealand producers, the best possible returns for kiwifruit intended for export."[69] As directed by statute, the NZKMB purchases all export-quality kiwifruit from New Zealand growers and directly controls exports of fresh kiwifruit to all foreign markets, except Australia. It develops business plans for its various markets based on crop forecasts and strategic planning goals. These plans establish volume targets, distribution systems, promotional programs, and shipping itineraries. Also, the NZKMB charters vessels on its own account to deliver the kiwifruit to its export markets. The NZKMB submitted the data presented

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[68] Section 771(7)(F)(iii) of the act (19 U.S.C. § 1677(7)(F)(iii)) further provides that, in antidumping investigations, "...the Commission shall consider whether dumping in the markets of foreign countries (as evidenced by dumping findings or antidumping remedies in other GATT member markets against the same class or kind of merchandise manufactured or exported by the same party as under investigation) suggests a threat of material injury to the domestic industry."

[69] Bruce Honeybone, Chairman, KMB, conference transcript, p. 110. His testimony (Conference transcript, pp. 110-18) explains in more detail the KMB's role and activities in marketing New Zealand kiwifruit.

in table 19 in response to the Commission's request for foreign producer information.

Table 19
Fresh kiwifruit: New Zealand's bearing acres, production, and shipments, 1989-91 and projected 1992-93

(In 1,000 tray equivalents, except as noted)

Item	1989	1990	1991	Projected 1992	Projected 1993
Bearing acres	39,261	38,888	37,845	***	***
Net crop purchased	47,823	71,719	57,938	***	***
Onshore fruit loss	1,655	6,366	1,283	***	***
Net trays available for sale	46,168	65,353	56,654	***	***
Shipments:					
Home market	15	280	415	***	***
Exports to--					
North America	3,995	8,760	6,837	***	***
Less fruit loss	71	137	47	***	***
Sales to United States	2,994	6,898	5,423	***	***
Sales to Canada	930	1,725	1,367	***	***
Other markets[1]	42,158	56,313	49,403	***	***
Total exports[1]	46,153	65,073	56,240	***	***

[1] Includes fruit loss.

Note.--Due to rounding, figures may not add to totals shown.

Source: Compiled from data submitted by counsel for the respondent.

Bearing acreage has declined slightly since 1989, and the NZKMB expects it to *** in 1992 and 1993. Production[70] rose significantly--by 50 percent--in 1990 and fell 19 percent the following year. The NZKMB estimates that 1992 and 1993 production will *** in 1991.

New Zealand consumed an increasing, although extremely small, share of its total output of export-quality kiwifruit over the period of investigation.[71] Throughout the period, New Zealand's approximately 3.2 million consumers bought less than 1 percent of export-quality kiwifruit output. Given the low level of domestic consumption, the NZKMB looks to foreign markets for the bulk of its sales. New Zealand's largest markets are

[70] The KMB may reject substandard fruit at the packing shed. Net crop purchased equals total production less recoveries from growers (fruit deemed unsuitable by the KMB). This figure represents, therefore, the total quantity of kiwifruit vendible internationally.

[71] Per-capita consumption of fresh kiwifruit in New Zealand equals 4.4 pounds per year. Conference exhibit 2. Most of the kiwifruit consumed in New Zealand does not meet KMB export standards.

Europe and Japan.[72] During the period of this investigation, "other markets" accounted for 86 to 91 percent of New Zealand's total exports, while sales in the United States fluctuated between 7 and 11 percent of these exports. U.S. sales of kiwifruit produced in New Zealand jumped 130 percent in 1990 and declined 21 percent in 1991. The NZKMB expects U.S. sales in 1992 and 1993 to *** 1991 sales.

The world market for kiwifruit has expanded greatly in recent years. Between 1987 and 1990, world production of kiwifruit nearly doubled.[73] Italy and New Zealand are by far the leading producers, with significant production in France, Japan, Chile and the United States as well.[74] Each of these producing countries substantially increased production during the latter part of the 1980s. While the growth in output will moderate somewhat in the next few years, production will continue to rise as newly-planted vineyards reach maturity.[75]

CONSIDERATION OF THE CAUSAL RELATIONSHIP BETWEEN IMPORTS OF THE SUBJECT MERCHANDISE AND THE ALLEGED MATERIAL INJURY

U.S. Imports

Table 20 presents import data for U.S. imports of kiwifruit, as reported by Oppenheimer and Swoish for New Zealand and by Commerce in official statistics for all countries other than New Zealand.[76]

Between 1989 and 1990, total imports *** in volume terms; in 1991, they decreased *** percent. The unit value of imports fluctuated, falling *** percent in 1990 and rising *** percent in 1991. Throughout the period, New Zealand clearly remained the dominant source of kiwifruit imports, supplying between *** and *** percent of imports during the investigation period.

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[72] Currently, no antidumping orders exist on fresh kiwifruit in Europe, Japan, or elsewhere.

[73] Respondents' postconference brief, exhibit 35.

[74] According to 1990 production figures, Italy, New Zealand, France, Japan, and Chile produced 70, 72, 15, 15, and 7 million tray equivalents, respectively, compared with U.S. production of roughly 10 million trays. Ibid.

[75] "The World Market for Kiwifruit," Organization for Economic Cooperation and Development, July 1990, p. 5. See Petition, exhibit 9.

[76] Oppenheimer markets roughly 20 percent of its U.S. imports from New Zealand in Canada each year, since kiwifruit enters either country duty-free. These import statistics, therefore, overstate the amount of kiwifruit actually purchased in the United States. Conference transcript, pp. 140-141; respondents' postconference brief, exhibit 15.

Table 20
Fresh kiwifruit: U.S. imports from New Zealand[1] and all other sources, 1989-91

Source	1989	1990	1991
	Quantity (tray equivalents)		
New Zealand.....	***	***	***
All other sources.....	297,420	198,425	959,556
Total.....	***	***	***
	Value (dollars)		
New Zealand.....	***	***	***
All other sources.....	1,811,064	1,056,334	4,164,307
Total.....	***	***	***
	Unit value (per tray equivalent)		
New Zealand.....	$***	$***	$***
All other sources.....	6.09	5.32	4.34
Average.....	$***	$***	$***

[1] Includes product subsequently re-exported to Canada--***, ***, and *** percent of Oppenheimer's total imports in 1989/90, 1990/91 and 1991/92, respectively.

Source: Compiled from official statistics of the U.S. Department of Commerce and from data supplied by Oppenheimer.

To give a clearer view of the seasonal nature of imports, table 21 provides Oppenheimer's import data by months for 1989-91.

Table 21
Fresh kiwifruit: U.S. imports[1] reported by David Oppenheimer & Company, by months, May 1989-January 1992

* * * * * * *

Source: Oppenheimer.

These figures reveal a *** percent increase in imports between the 1989/90 and the 1990/91 New Zealand marketing year. Oppenheimer's imports subsequently declined *** percent in 1991/92. Imports normally begin at a high level in May and remain high through the summer into September. The unusually large quantity of imports recorded in December 1990 resulted from the *Pioneer Reefer* shipment.

U.S. Market Shares

Table 22 shows the market shares of U.S. producers and U.S. importers during the investigation period.

Table 22
Fresh kiwifruit: U.S. producers' shipments, U.S. importers' shipments of New Zealand product, U.S. imports from all other sources, and apparent consumption, 1989-91

Item	1989	1990	1991
	Quantity (tray equivalents)		
U.S. producers' shipments.....	5,310,208	6,985,655	6,641,747
U.S. importers' shipments of New Zealand product.....	***	***	***
U.S. imports from all other sources.....	297,420	198,424	959,555
Apparent consumption.....	***	***	***
	Value (dollars)[1]		
U.S. producers' shipments.....	27,878,592	32,273,724	30,219,949
U.S. importers' shipments of New Zealand product.....	***	***	***
U.S. imports from all other sources.....	1,811,064	1,056,334	4,164,307
Apparent consumption.....	***	***	***
	As a share of the quantity of apparent consumption		
U.S. producers' shipments.....	***	***	***
U.S. importers' shipments of New Zealand product.....	***	***	***
U.S. imports from all other sources.....	***	***	***
Apparent consumption.....	100.0	100.0	100.0
	As a share of the value of apparent consumption		
U.S. producers' shipments.....	***	***	***
U.S. importers' shipments of New Zealand product.....	***	***	***
U.S. imports from all other sources.....	***	***	***
Apparent consumption.....	100.0	100.0	100.0

[1] This table estimates value figures for U.S. producers' shipments by multiplying CKC season average price estimates for 1988/89, 1989/90, and 1990/91 by CKC calendar year domestic shipment data for 1989, 1990, and 1991, respectively.

Source: Compiled from official statistics of the U.S. Department of Commerce and data provided by the CKC, Swoish, and Oppenheimer.

These data indicate that New Zealand's market share, based on quantity, rose in 1990 and remained fairly level in 1991. U.S. producers captured a declining share of a growing market; their share of apparent consumption declined from *** percent in 1989 to *** percent in 1991. Market penetration of imports from other sources increased significantly in 1991, reflecting the approximately 900,000 tray equivalents of imports from Chile.

Prices

Market Characteristics

Twenty-two domestic handlers and the sole continental U.S. importer, Oppenheimer, provided information pertaining to their sales and marketing practices for fresh kiwifruit in the United States. Twenty-eight purchasers also provided information on their purchases of domestic and New Zealand kiwifruit in the U.S. market.[77]

Prices for sales of domestic and New Zealand kiwifruit are most often quoted on an f.o.b. cold storage facility basis with inland shipping charges paid by the purchaser. In some instances suppliers arrange shipping and prepay the freight to a customer's location, but the freight is usually separated from the f.o.b. price and charged to the customer.[78] Sales of both domestic and New Zealand kiwifruit are made almost exclusively through telephone contact by sales representatives or by customers placing orders with handlers and are rarely based on a formal written contract between the buyer and seller.

Price lists are used by approximately half of the 22 responding domestic handlers, most of whom reported using these lists to maintain contact with customers and inform them that supply is available or to establish an initial price from which to negotiate a final selling price. List prices change frequently; depending upon market conditions and the size of a particular order, prices can be discounted by between $0.25 and $0.50 per tray or tray-equivalent unit. Oppenheimer publishes weekly price lists which are distributed to its brokers. These price lists are used by Oppenheimer's brokers to quote prices to their customers, but are not distributed directly to wholesale or retail customers themselves.

During certain months at the beginning and at the end of the U.S. and the New Zealand marketing seasons, supplies of kiwifruit from both countries are available in the U.S. market. The months of the greatest supply overlap during the past several years have been May-June, when domestic suppliers are nearing the end of their marketing season and New Zealand suppliers are beginning theirs, and October-December, when the New Zealand suppliers are ending their marketing season and domestic suppliers are beginning theirs. It is during these months that most of the price competition between U.S.-produced and New Zealand kiwifruit occurs. Approximately half of the responding purchasers indicated that prices for domestic kiwifruit fall each

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[77] Among the responding purchasers, 4 identified themselves as brokers, 11 identified themselves as wholesalers, 11 identified themselves as retailers, and 2 purchase and resell in the specialty market.

[78] ***.

year when New Zealand suppliers enter the U.S. market and prices for New Zealand kiwifruit fall when domestic suppliers enter the market. Prices for each country's fruit reportedly decline between 6 and 25 percent when supplies from the other country enter the market. Prices for late-season kiwifruit may also be discounted by suppliers from either country in order to sell the fruit before it becomes overripe and unsalable or to minimize additional costs of keeping the fruit in cold storage.

During the months of supply overlap, the fruit from one country can be substantially different in its physical characteristics from the competing fruit from the other. Twenty-one of 27 purchasers indicated that recently harvested kiwifruit from either country differs in its physical characteristics from fruit that has been in cold storage for a number of months.[79] Purchasers identifying differences reported that newly harvested kiwifruit generally has a lower sugar content, is more acidic, and is greener, harder, and less readily edible than fruit that has been in cold storage for several months. Primarily for these reasons, 13 purchasers indicated that they and/or their customers prefer kiwifruit that has remained in cold storage for some period of time over newly harvested kiwifruit. Some purchasers also reported that they are more inclined to continue purchasing from an existing supplier until that supplier sells out of its fruit rather than switch to a supplier just entering the market with newly harvested fruit.[80] Two purchasers indicated a preference for newly harvested kiwifruit because it is firmer, more consistent in quality, and has a longer shelf life. Most of the remaining purchasers reported that they do not have a preference for one over the other. Domestic and New Zealand kiwifruit in the same styles of containers can also be of significantly different size and can, therefore, be priced differently by the container and by the piece in the U.S. market.

Purchasers cited a number of factors that they consider to be most important when purchasing kiwifruit; 17 of 28 purchasers identified the quality of the fruit, 4 identified relationships with traditional suppliers, and 4 others identified price as the most important factors considered when purchasing kiwifruit. Other factors reported by purchasers to be important include product availability, supplier service, and the expected shelf life of the fruit.

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[79] These responses do not take into account preripening in which unripe, early-season fruit is exposed to ethylene gas, which greatly speeds up the natural ripening process. Respondents estimated that in June 1991 (the only month of the marketing season during which New Zealand kiwifruit would require preripening), approximately 50 percent of the fruit shipped was preripened. Hearing transcript, pp. 182-83. Petitioners also stated that they are able to ship preripened fruit whenever it is requested by a customer. Hearing transcript, p. 21.

[80] Separate conversations with ***.

Domestic Handler and Importer Price Trends[81]

Seventeen domestic handlers and Oppenheimer provided the Commission with usable pricing data for kiwifruit sales in the U.S. market packed in at least one of the following types of packaging: single-layer trays, loose-packed volume-fill containers, and tri-layer/tri-pack containers.[82] Monthly pricing data were requested for sales of kiwifruit during the period from October 1989 through March 1992. Pricing data requested for each style of packaging include the net f.o.b. price and quantity for the largest single sale in each month, as well as the total quantity and total net f.o.b. value shipped to all customers in each month. Also requested was an estimate of the average number of pieces of fruit in each type of packaging for the largest single monthly sale to allow calculation of the average price per piece of fruit in each type of packaging.[83]

Domestic handlers

Pricing information for sales during calendar year 1991 was reported by domestic handlers on a total sales volume of 3,705,392 tray-equivalent units for all three types of packaging combined (trays, volume-fill containers, and tri-layer containers; tables 23-25 and figures 1-3, respectively). This accounts for 55.8 percent of total reported domestic shipments in all types of packaging for calendar year 1991. Pricing information for the first quarter of 1992 was reported by domestic handlers on sales volumes of 692,892 tray-equivalent units, which represents 23.5 percent of reported total domestic shipments in this period.

Weighted-average f.o.b. prices for sales of U.S.-grown kiwifruit packed in trays followed similar patterns in the 1989-90 and 1990-91 marketing seasons, the two seasons for which full pricing cycles were available. Prices for trays of U.S.-grown kiwifruit were at a high near the beginning of the marketing season in September-November of each year ($*** per tray in November 1989 and $*** per tray in September 1990) and generally declined to a season low over the following 4 to 5 months. Prices then increased somewhat before declining during June-July, the final months of the marketing season.

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[81] Sales price data presented in this section of the report are combined for sales to brokers, wholesalers, and retailers. An examination of the price data separated by types of customer revealed no substantial difference in price for sales to the different types of customers. Separate discussions with representatives of the importer and handlers support this observation. *** stated that ***. *** also stated that prices to retailers are not substantially different from prices to wholesalers. ***.

[82] Other types of packaging for which pricing data were not collected include bags and bulk bins. Each volume-fill and tri-layer/tri-pack container contains 3 tray-equivalent units of kiwifruit. "Tri-layer" is the terminology used by the U.S. industry, while "tri-pack" is the terminology used by the New Zealand industry. In both packs, the fruit is separated into three tray equivalents by molded sheets of plastic, or "panta-paks."

[83] Price trends on a per-piece basis are not discussed in this section because they closely follow the price trends for the fruit in the corresponding containers.

Table 23
Weighted-average net f.o.b. prices for sales of kiwifruit trays reported by U.S. handlers and Oppenheimer and margins of underselling (overselling) on a per-tray basis and a per-piece basis, by months, October 1989-March 1992

Month	United States Price Tray	United States Price Piece	United States Total quantity Trays	New Zealand Price Tray	New Zealand Price Piece	New Zealand Total quantity Trays	Margins Tray	Margins Piece
							-----Percent---	
1989:								
Oct....	$***	$***	68,724	$***	$***	***	(27.5)	(35.3)
Nov....	***	***	76,082	***	***	***	(3.2)	0.0
Dec....	***	***	151,265	***	***	***	22.9	0.0
1990:								
Jan....	***	***	302,525	***	***	***	21.1	0.0
Feb....	***	***	366,214	***	***	***	(2)	(2)
Mar....	***	***	651,078	***	***	***	(2)	(2)
Apr....	***	***	793,343	***	***	***	(2)	(2)
May....	***	***	447,290	***	***	***	(10.5)	(6.7)
June...	***	***	120,067	***	***	***	(15.8)	(28.6)
July...	***	***	1,238	***	***	***	(25.5)	(38.5)
Aug....	***	***	(1)	***	***	***	(2)	(2)
Sept...	***	***	144	***	***	***	17.6	23.8
Oct....	***	***	58,747	***	***	***	2.9	0.0
Nov....	***	***	63,124	***	***	***	15.7	26.7
Dec....	***	***	58,048	***	***	***	20.0	21.4
1991:								
Jan....	***	***	104,355	***	***	***	29.0	15.4
Feb....	***	***	274,569	***	***	***	24.0	7.1
Mar....	***	***	455,238	***	***	***	(2)	(2)
Apr....	***	***	450,176	***	***	***	(2)	(2)
May....	***	***	369,503	***	***	***	(13.6)	(13.3)
June...	***	***	16,621	***	***	***	(14.4)	(20.0)
July...	***	***	(1)	***	***	***	(2)	(2)
Aug....	***	***	(1)	***	***	***	(2)	(2)
Sept...	***	***	(1)	***	***	***	(2)	(2)
Oct....	***	***	29,028	***	***	***	(10.1)	(5.3)
Nov....	***	***	81,206	***	***	***	(11.2)	(18.8)
Dec....	***	***	121,029	***	***	***	(7.7)	(52.9)
1992:								
Jan....	***	***	114,313	***	***	***	5.6	(27.8)
Feb....	***	***	75,599	***	***	***	(2)	(2)
Mar....	***	***	251,907	***	***	***	(2)	(2)

[redacted]

[redacted]

[1] Pricing data not reported.
[2] Margins not calculated.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Table 24
Weighted-average net f.o.b. prices for sales of kiwifruit volume-fill containers reported by U.S. handlers and Oppenheimer and margins of underselling (overselling) on a per-volume-fill basis and a per-piece basis, by months, October 1989-March 1992

Month	United States Price Case	United States Price Piece	United States Total quantity Cases	New Zealand Price Case	New Zealand Price Piece	New Zealand Total quantity Case	Margins Case	Margins Piece
							-----Percent---	
1989:								
Oct....	$***	$***	3,901	$***	$***	***	(18.3)	(7.7)
Nov....	***	***	18,476	***	***	***	(29.4)	(36.4)
Dec....	***	***	21,867	***	***	***	(32.3)	(25.0)
1990:								
Jan....	***	***	49,098	***	***	***	(82.5)	(112.5)
Feb....	***	***	102,919	***	***	***	(2)	(2)
Mar....	***	***	72,670	***	***	***	(2)	(2)
Apr....	***	***	14,974	***	***	***	(2)	(2)
May....	***	***	1,594	***	***	***	(6.1)	17.6
June...	***	***	11	***	***	***	(47.8)	(37.5)
July...	***	***	102	***	***	***	(65.8)	(55.6)
Aug....	***	***	(1)	***	***	***	(2)	(2)
Sept...	***	***	(1)	***	***	***	(2)	(2)
Oct....	***	***	13,082	***	***	***	(33.3)	(62.5)
Nov....	***	***	20,587	***	***	***	(24.1)	(62.5)
Dec....	***	***	12,351	***	***	***	(36.3)	(62.5)
1991:								
Jan....	***	***	65,764	***	***	***	(72.6)	(100.0)
Feb....	***	***	106,765	***	***	***	(6.8)	(25.0)
Mar....	***	***	121,500	***	***	***	(2)	(2)
Apr....	***	***	31,209	***	***	***	(2)	(2)
May....	***	***	5,372	***	***	***	(35.2)	(41.7)
June...	***	***	(1)	***	***	***	(2)	(2)
July...	***	***	(1)	***	***	***	(2)	(2)
Aug....	***	***	(1)	***	***	***	(2)	(2)
Sept...	***	***	(1)	***	***	***	(2)	(2)
Oct....	***	***	9,599	***	***	***	7.5	0.0
Nov....	***	***	45,097	***	***	***	(4.9)	(38.5)
Dec....	***	***	42,951	***	***	***	(2.5)	0.0
1992:								
Jan....	***	***	31,299	***	***	***	(3.5)	(6.7)
Feb....	***	***	33,686	***	***	***	(2)	(2)
Mar....	***	***	6,878	***	***	***	(2)	(2)

[1] Pricing data not reported.
[2] Margins not calculated.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Table 25
Weighted-average net f.o.b. prices for sales of kiwifruit tri-layer/tri-pack containers reported by U.S. handlers and Oppenheimer and margins of underselling (overselling) on a per-tri-layer/tri-pack basis and a per-piece basis, by months, February 1990-March 1992

Month	United States Price			New Zealand Price			Margins	
	Tri-layer/ tri-pack	Piece	Total quantity Tri-packs	Tri-layer/ tri-pack	Piece	Total quantity Tri-packs	Tri-layer/ tri-Pack	Piece
							-----Percent---	
1990:								
Feb....	$***	$***	9,768	$***	$***	***	(2)	(2)
Mar....	***	***	18,522	***	***	***	(2)	(2)
Apr....	***	***	2,479	***	***	***	(2)	(2)
May....	***	***	(1)	***	***	***	(2)	(2)
June...	***	***	(1)	***	***	***	(2)	(2)
July...	***	***	(1)	***	***	***	(2)	(2)
Aug....	***	***	(1)	***	***	***	(2)	(2)
Sept...	***	***	(1)	***	***	***	(2)	(2)
Oct....	***	***	1,758	***	***	***	(3.8)	(16.7)
Nov....	***	***	11,938	***	***	***	(13.0)	(16.7)
Dec....	***	***	4,049	***	***	***	(21.1)	(55.6)
1991:								
Jan....	***	***	10,169	***	***	***	(47.8)	(66.7)
Feb....	***	***	11,973	***	***	***	(2)	(2)
Mar....	***	***	39,130	***	***	***	(2)	(2)
Apr....	***	***	64,658	***	***	***	(2)	(2)
May....	***	***	25,690	***	***	***	(21.5)	(23.1)
June...	***	***	485	***	***	***	(64.4)	(60.0)
July...	***	***	18.92	***	***	***	(2)	
Aug....	***	***	18.59	***	***	***	(2)	
Sept...	***	***	13.78	***	***	***	(2)	
Oct....	***	***	1,200	***	***	***	12.0	0.0
Nov....	***	***	9,023	***	***	***	13.8	6.7
Dec....	***	***	10,638	***	***	***	14.0	13.3
1992:								
Jan....	***	***	5,416	***	***	***	(2)	(2)
Feb....	***	***	3,288	***	***	***	(2)	(2)
Mar....	***	***	3,124	***	***	***	(2)	(2)

[1] Pricing data not reported.
[2] Margins not calculated.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Figure 1
Net f.o.b. sale prices and quantities for trays, October 1989-March 1992

* * * * * * *

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Figure 2
Net f.o.b. sale prices and quantities for volume-fill containers, October 1989-March 1992

* * * * * * *

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Figure 3
Net f.o.b. sale prices and quantities for tri-pack containers, February 1990-March 1992

* * * * * * *

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Prices from October through March of the 1991/92 marketing season were generally higher and more stable than in the previous two seasons, increasing slightly from $*** per tray to $*** per tray over this period.[84]

Domestic kiwifruit packed in volume-fill containers entered the market in October 1989 at a price of $*** per container and declined through February of 1990 to a low of $*** per container. Prices then increased to a season peak of $*** per container in May 1990 and declined substantially during the final two months of the marketing season on relatively small sales volumes. Domestic kiwifruit entered the market in October 1990 at $*** per volume-fill container and declined steadily to a season low of $*** per container in January of 1991. Prices then increased to a season high of $*** in May 1991. Domestic volume-fills entered the market in October 1991 at $*** per container, considerably higher than the $*** per container price in October of the previous year, and increased irregularly to a high of $*** per container through March 1992, the last month for which pricing data were reported.

Prices for domestic tri-layer containers increased slightly from $*** in February 1990 to $*** in April 1990, the first months for which pricing data

[84] The domestic harvest in the fall of 1991 was approximately 20 percent smaller in total volume than the 1990 harvest and the average size of the fruit in 1991 was also somewhat larger than in the previous year.

were reported in the 1989/90 marketing season. Prices were more variable during the 1990-91 marketing season, declining by 26 percent from a peak of $*** per case in October 1990 to $*** per case in June 1991. Between October 1991 and March 1992, prices were considerably more stable, increasing only slightly from $*** to $*** per case over this period.

Importers[85]

Pricing information for sales during 1991 was reported by Oppenheimer on a total sales volume of *** tray-equivalent units for all three types of packaging combined (trays, volume-fill containers, and tri-layer/tri-pack containers). This accounts for *** percent of reported total U.S. shipments of New Zealand kiwifruit in all types of packaging for calendar year 1991. Pricing information for sales during the first quarter of 1992 was reported by Oppenheimer on a total sales volume of *** tray-equivalent units, accounting for *** percent of reported total shipments in the U.S. market over this period.

Prices were reported by Oppenheimer for tray sales during the final 4 months of New Zealand's 1989/90 marketing season and, over this period, prices declined considerably from $*** per tray in *** 1989 to $*** per tray in *** 1990. Sales volumes also declined considerably from *** trays in *** 1989 to *** trays in *** 1990.

During the 1990/91 marketing season, tray prices for New Zealand kiwifruit declined by *** percent, from $*** per tray in *** 1990 to $*** per tray in *** 1991. Prices reached a peak of $*** in *** 1990 and a low of $*** per tray in *** 1991.[86] During the period from *** 1991 through *** 1992, prices were generally higher and more stable. With the exception of *** 1991 when Oppenheimer's price dropped to $*** per tray, prices ranged from a low of $*** per tray in *** 1992 to a high of $*** per tray in *** 1991.

Prices for New Zealand volume-fill containers were fairly stable during the final 4 months of the 1989/90 marketing season, increasing from $*** per container in *** 1989 to $*** per container in *** 1990. During the 1990/91 marketing season, volume-fill prices declined irregularly by *** percent, from $*** per container in *** 1990 to $*** per container in *** 1991. Prices during the 1991/92 season declined steadily from $*** per container in ***

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[85] Oppenheimer reported an average price for all sales of each style of packaging (trays, volume-fill containers, and tri-pack containers) to its largest single customer in each month. According to ***, prices were reported in this manner because the company ships truckload quantities of each pack type to a number of different customers in a month, and any of these shipments could constitute its largest single sale. The average price was reported to provide a more accurate representation of price levels in each month for New Zealand kiwifruit.

[86] Unusually large sales volumes of New Zealand kiwifruit during December 1990 through February 1991, accompanied by relatively low f.o.b. prices, were a result of the December 1990 *Pioneer Reefer* shipment of 700,000 trays from New Zealand that was originally destined for Japan but was diverted to the U.S. market when Japanese purchasers refused it.

1991 to $*** in *** 1991, and then fluctuated between $*** and $*** per container from *** 1991 to *** 1992.

New Zealand tri-pack container prices were variable during the 1990/91 marketing season, selling at a peak of $*** per container at the beginning of the season in *** 1990 and at the end of the season in *** 1991, and selling at a low of $*** per container in *** 1990. Prices during the following season declined irregularly from $*** per tri-pack container in *** 1991 to $*** per container in *** 1991, the final month for which prices were reported.

U.S. Handler and Importer Price Comparisons[87]

Price comparisons between domestic and New Zealand kiwifruit were made on a per-package basis (trays, volume-fill containers, and tri-layer/tri-pack containers) as well as on a per-piece basis for the fruit sold in the different styles of packaging.

Several points should be noted regarding price comparisons in this section. First, because of the offsetting marketing seasons, sellers of kiwifruit from New Zealand and the United States will be at different points in their respective marketing seasons during any month for which price comparisons are made and the fruit from each country may be at different stages of maturity or ripeness. Consequently, during these months, the domestic and New Zealand fruit may be priced somewhat differently in the U.S. market. For example, in November of any year the newly harvested U.S.-grown fruit is different in its physical characteristics from the New Zealand fruit that has been in cold storage since the time of the New Zealand harvest in April or May of that year. Purchasers expressed some preference for more mature kiwifruit from either country that has been in cold storage for some period of time, although this fruit is usually closer to spoiling and may, at times, be sold at a discount.[88]

Second, in several monthly price comparisons for each type of packaging, the total volumes of shipments reported by U.S. and New Zealand suppliers are

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[87] Pricing data were reported by domestic handlers for two different grades of kiwifruit: U.S. Fancy, which is the highest domestic grade available, and U.S. No. 1, which is slightly lower in quality. Kiwifruit from New Zealand is labeled as export grade, which is most directly comparable in quality to U.S. Fancy. In this section, prices for sales of both grades of domestic kiwifruit are aggregated and compared to the New Zealand fruit because, according to most domestic handlers, the price difference between the two grades of fruit is small or nonexistent and they usually do not differentiate among these two grades of domestic kiwifruit. Several domestic suppliers also stated that unless the grade of the fruit is specified in a sale's order, they will ship whatever grade is available at the prevailing market price.

[88] Price trends for domestic and New Zealand kiwifruit in all three styles of packaging indicate that, in some instances, relatively small volumes of fruit may have been sold at a discount at the end of the marketing season (tables 23-25). The discounting of late season fruit is also acknowledged by several purchasers in their questionnaire responses. *** reported that "***." *** reported that "***."

substantially different from one another. Therefore, during these months, small-volume sales from one country may have only a limited effect on the prices reported for sales of kiwifruit from the other country with substantially larger sales volumes.

Finally, it is possible that margins reported on a tray, volume-fill, or tri-layer/tri-pack basis may differ in magnitude or direction from the margins reported on a per-piece basis for the fruit packed in these containers. For example, it is possible to have underselling on a per-tray basis and overselling on a per-piece basis for the same trays of kiwifruit if the size of the fruit in the lower priced tray is larger than the size of the fruit in the higher priced tray. If a tray of size 45 fruit sells for $6.00, the price of the fruit would be $0.13 per piece, and if a tray of size 33 fruit sells for $5.00, the price of the fruit in this tray would be $0.15 per piece. A price comparison between these two trays of kiwifruit would show underselling on a per-tray basis but overselling on a per-piece basis.[89]

Nineteen monthly price comparisons were possible for tray sales of domestic and New Zealand kiwifruit between October 1989 and January 1992 (table 23). In 10 of these comparisons--October and November 1989, May-July 1990, May and June 1991, and October-December 1991--New Zealand kiwifruit in trays was priced higher than the domestic product. Margins of overselling for New Zealand fruit ranged from 3.2 percent in November 1989 to 27.5 percent in October 1989. During the remaining 9 months--December 1989, January 1990, September 1990-February 1991, and January 1992--kiwifruit from New Zealand was priced below kiwifruit from the United States by margins ranging from 2.9 percent in October 1990 to 29.0 percent in January 1991.[90]

On a price per-piece basis for kiwifruit packed in trays, 19 monthly price comparisons were also possible.[91] In 10 of these comparisons--October 1989, May-July 1990, May and June 1991, October-December 1991, and January 1992--New Zealand kiwifruit was priced between 5.3 and 52.9 percent higher than domestic kiwifruit. In five comparisons--September 1990 and November 1990 through February 1991--per-piece prices for New Zealand kiwifruit in trays were below per-piece prices for the domestic product by margins ranging

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[89] An examination of the price comparisons for both sales and purchases of kiwifruit reveals that, in the majority of cases, margins on a per-tray, volume fill, and tri-layer/tri-pack basis differed only in magnitude and not in direction from the margins reported on a per-piece basis.

[90] Margins of underselling were relatively high on a tray basis for kiwifruit from New Zealand between December 1990 and February 1991. However, during the same months, New Zealand kiwifruit in volume-fill containers was priced substantially higher than domestic volume-fill containers, and during December 1990 and January 1991, New Zealand tri-layer/tri-pack containers were priced substantially higher than domestic tri-layer/tri-pack containers. The relatively large margins of underselling for trays are due, in part, to the fact that the large volume of New Zealand kiwifruit shipped to the U.S. market in December 1990 was packed primarily in trays and was, therefore, more directly competitive with domestic trays than with the other two types of containers.

[91] Reported average prices per piece were rounded to the nearest cent for comparison purposes.

from 7.1 to 26.7 percent. Finally, in 4 quarters, the price per piece of New Zealand kiwifruit was equal to the price per piece of domestic kiwifruit.

Seventeen monthly price comparisons were possible between October 1989 and January 1992 for sales of U.S. and New Zealand kiwifruit in loose-packed volume-fill containers. In 16 of these 17 months, kiwifruit from New Zealand was priced higher than domestic kiwifruit by margins ranging from 2.5 percent in December 1991 to 82.5 percent in January 1990.[92] In October 1991, the only instance of underselling, New Zealand kiwifruit in volume-fill containers was priced 7.5 percent below domestic kiwifruit in the same pack style.

Price comparisons on a per-piece basis for domestic and New Zealand kiwifruit in volume-fill containers were possible during the same 17 months. During 14 of these months, New Zealand kiwifruit was priced higher per piece than domestic kiwifruit; margins of overselling ranged from 6.7 percent in January 1992 to 112.5 percent in January 1990. In May 1990, the only instance of underselling on a per-piece basis, New Zealand kiwifruit was priced below U.S.-produced kiwifruit by a margin of 17.6 percent. Domestic and New Zealand kiwifruit were priced the same per piece during the months of October and December 1991.

Nine monthly price comparisons were possible for sales of domestic and New Zealand kiwifruit in tri-layer/tri-pack containers during the period from October 1990 through December 1991. New Zealand kiwifruit was priced higher than domestic kiwifruit in 6 months between October 1990 and June 1991, with margins ranging from 3.8 percent to 64.4 percent. During the final 3 months of 1991, New Zealand kiwifruit in tri-layer/tri-pack containers was priced between 12.0 and 14.0 percent below U.S.-grown kiwifruit.

Price comparisons were possible on a per-piece basis in the same 9 months for kiwifruit packed in tri-layer/tri-pack containers and margins were similar in direction to those for the containers. During 6 months between October 1990 and June 1991, New Zealand kiwifruit was priced higher than domestic fruit with margins ranging from 16.7 percent in October 1990 to 66.7 percent in January 1991. The price per piece of New Zealand kiwifruit was 6.7 percent and 13.3 percent below the price per piece of domestic kiwifruit during November and December 1991, respectively. In October 1991 domestic and New Zealand kiwifruit were priced the same on a per-piece basis.

Purchaser Price Trends and Comparisons

A total of 25 purchasers reported some pricing data for purchases of domestic and/or New Zealand kiwifruit between October 1989 and December 1991 in one or all of the specified forms of packaging: single-layer trays,

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[92] Because of low priced trays of New Zealand kiwifruit that were available in the U.S. market from December 1990 through February 1991, a number of domestic handlers reported that a large portion of their sales during these months was of smaller sized fruit in bins, volume-fill, and tri-layer containers.

loose-packed volume-fill containers, and tri-layer/tri-pack containers.[93] Calendar year 1991 pricing information was reported by purchasers on a total volume of 2,145,639 tray-equivalent units for the three types of packaging indicated, which accounts for 16.7 percent of reported total domestic and New Zealand shipments in all types of packaging for 1991.

Price trends for purchases of domestic and New Zealand kiwifruit packed in the three types of containers were similar to the trends reported by domestic handlers and Oppenheimer for their sales of each of these types of packaging to U.S. customers. Consequently, only purchase price comparisons for the three pack styles are presented in this section. Aggregated purchase price and quantity data, and price comparisons on a per-piece basis are found in appendix E.

Price comparisons for tray purchases of domestic and New Zealand kiwifruit showed mixed instances of overselling and underselling in 23 monthly comparisons over the period from October 1989 through December 1991. In 10 of 11 possible price comparisons between October 1989 and October 1990, New Zealand kiwifruit was priced higher than domestic kiwifruit by margins ranging from 7.1 to 27.9 percent. The one exception was in November 1989, when New Zealand trays were priced 1.0 percent below domestic trays. However, during the 6 months from November 1990 through April 1991, New Zealand kiwifruit was priced consistently below the domestic product by margins between 1.7 and 24.1 percent. Among the six remaining tray price comparisons between May and December 1991, New Zealand kiwifruit was priced higher than domestic kiwifruit in 3 months by margins ranging from 5.6 to 24.7 percent, and lower than the domestic product in 3 months by margins ranging from 2.1 to 6.9 percent.

Purchase price comparisons for domestic and New Zealand volume-fill containers were possible in a total of 10 months during the period from November 1989 through December 1991. In 8 of these 10 months, New Zealand kiwifruit was priced higher than the domestic product with margins ranging from 2.1 percent in November 1989 to 31.1 percent in November 1991. During the remaining 2 months--January and June 1991--New Zealand volume-fills were priced below domestic volume-fills by margins of 33.0 percent and 1.0 percent, respectively.

Purchase price comparisons between domestic and New Zealand tri-layer/tri-pack containers were possible in 8 different months between October 1989 and November 1991. In 5 months--November and December 1990, and February, May, and November 1991--tri-layer/tri-packs from New Zealand were priced higher than domestic tri-layer/tri-packs. Margins of overselling ranged from a low of 1.1 percent in November 1991 to a high of 22.6 percent in December 1990. New Zealand tri-layer/tri-pack containers undersold the domestic product in the 3 months of October 1989-91, by margins of 9.4, 11.0, and 6.9 percent, respectively.

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[93] Three of the largest responding purchasers with multiple divisions located around the United States, ***, provided purchase price data from single purchasing divisions that management determined to be representative of the entire company's purchasing operations.

Exchange Rates

Quarterly data reported by the International Monetary Fund indicate that during January-March 1989 through October-December 1991 the nominal value of the New Zealand dollar fluctuated, depreciating 9.5 percent overall relative to the U.S. dollar (table 26).[94] Adjusted for movements in producer price indexes in the United States and New Zealand, the real value of the New Zealand currency showed an overall depreciation of 3.9 percent for the period January-March 1989 through the third quarter of 1991, the most recent period for which official price data are available.

Table 26
Exchange rates:[1] Indexes of nominal and real exchange rates of the New Zealand dollar and indexes of producer prices in the United States and New Zealand,[2] by quarters, January 1989-December 1991

Period	U.S. producer price index	New Zealand producer price index	Nominal exchange rate index	Real exchange rate index[3]
1989:				
January-March.....	100.0	100.0	100.0	100.0
April-June.....	101.8	101.7	96.6	96.5
July-September.....	101.4	104.4	94.7	97.5
October-December....	101.8	105.8	95.3	99.0
1990:				
January-March.....	103.3	106.6	95.8	98.9
April-June.....	103.1	107.6	93.4	97.5
July-September.....	104.9	107.5	98.3	100.7
October-December....	108.1	109.2	98.0	99.0
1991:				
January-March.....	105.9	108.5	96.5	98.9
April-June.....	104.8	108.4	94.4	97.6
July-September.....	104.7	108.6	92.7	96.1
October-December....	104.8	(4)	90.5	(4)

[1] Exchange rates expressed in U.S. dollars per New Zealand dollar.
[2] Producer price indexes--intended to measure final product prices--are based on period-average quarterly indexes presented in line 63 of the International Financial Statistics.
[3] The real exchange rate is derived from the nominal rate adjusted for relative movements in producer prices in the United States and New Zealand.
[4] Not available.

Note.--January-March 1989 = 100.

Source: International Monetary Fund, International Financial Statistics, March 1992.

[94] International Financial Statistics, March 1992.

Lost Sales and Lost Revenues

Four domestic handlers alleged eight instances of lost sales for trays and volume-fill containers between October 1990 and February 1992 for a total of 3,060 trays valued at $22,671 and 3,060 volume-fill containers valued at $40,703. Four domestic handlers also alleged 14 instances of lost revenues totaling $14,660 over the same period on sales of 2,980 trays, 700 volume-fill containers, and 360 tri-layer containers.[95] The Commission was able to discuss with purchasers five lost sales allegations totaling $34,041 and five lost revenue allegations totaling $1,515. Other purchasers either could not be reached or refused to discuss their purchasing practices.

Lost Sales

*** reported a lost sale on ***. According to the allegation, *** rejected an offer from *** for *** single-layer trays of size *** kiwifruit at a total price of $*** (the equivalent of $*** per tray or $*** per piece) because of a competing offer for kiwifruit from New Zealand. *** stated that it is possible that his company purchased New Zealand kiwifruit instead of the domestic fruit in this instance. *** reportedly considers the price, the size, and the quality of the kiwifruit available when deciding from whom to purchase for any single order, and these factors can vary from day to day for kiwifruit from domestic and New Zealand suppliers. He stated that he does not consistently prefer kiwifruit from one country or another and, instead, purchases the fruit from either country that he believes will sell best in his company's retail stores.

*** alleged a lost sale of *** trays of size *** kiwifruit to *** and identified New Zealand as the country of origin of the competing product. The imported fruit was reportedly comparable to the domestic fruit but was sold for a total of $***, or $*** per tray, while the domestic fruit was offered for sale at $***, or $*** per tray. *** agreed that the price of $*** per tray from New Zealand and the quantity, equal to one pallet of fruit, sounded accurate for that time. ***. He stated that ordinarily during *** purchases domestic kiwifruit, but he chose to purchase New Zealand fruit due to the difference in price. According to ***, quality and size, as well as terms of sale, are similar for both domestic and imported kiwifruit and price is the primary factor he uses when deciding which fruit to purchase.

*** identified *** in one lost sale allegation of *** size *** trays on ***. The domestic kiwifruit was allegedly offered for a price of $*** per tray while the sale was made on a competing offer of $*** per tray for New Zealand kiwifruit. *** was not able to recall the specific incident, but stated that it is possible that his company purchased the New Zealand kiwifruit instead of the domestic product in this instance. *** said that kiwifruit from New Zealand and the United States are usually comparably priced in the U.S. market, and he tends to purchase kiwifruit from whichever domestic or foreign supplier offers him the lowest price. He did note, however, that

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[95] In addition to the two handlers providing specific lost sales and lost revenue allegations, the majority of all other handlers indicated that they have lost sales and revenues during the past three years, but were unable to provide dates, prices, or quantities pertaining to these allegations.

he has, at times, purchased the New Zealand product because it has a more consistent size, shape, and color when compared to the domestic product.

*** also named *** in a lost sale of *** volume-fill containers of size *** fruit on ***, priced at $***, or $*** per case. On a tray-equivalent basis, this is equal to approximately *** trays at a price of $*** per tray. This customer allegedly purchased *** trays of size *** fruit for a price of $*** per tray from New Zealand.[96] *** stated that his company did, indeed, purchase size *** kiwifruit from New Zealand in *** for $*** per tray, although he did not have an exact count of the total volume. He also ***. *** stated that the quality of the domestic and New Zealand products is very similar, and his customers have never expressed a preference for one over the other. Consequently, he buys the least expensive product on the market regardless of the country of origin.

*** named *** in a lost sales allegation dated ***, involving *** volume-fill containers of size *** fruit offered for sale at a total price of $***, or $*** per case. The accepted price and quantity for the sale of the competing kiwifruit from New Zealand were not identified by ***. *** did not have access to the specific information relevant to this allegation and could neither confirm nor deny its accuracy. He did note, however, that the quality of kiwifruit from New Zealand and the United States is comparable and that his primary consideration when purchasing is the price of the product. *** has never expressed a preference for kiwifruit based on the country of origin.

Lost Revenues

*** identified *** in a lost revenue allegation of $*** on sales of ***, size *** volume-fill containers. The date of the allegation is ***, and the original offered price of $*** per case was lowered to $*** per case because of a competing offer for kiwifruit from New Zealand. *** could not recall the specific allegation, but stated that it does not sound unusual and might, indeed, be correct. He said that prices for domestic and New Zealand fruit often fluctuate, and during any week kiwifruit from either country can be priced below kiwifruit from the other. *** also said that the quality of domestic and New Zealand kiwifruit is similar and none of his customers has ever specifically requested kiwifruit from one country or the other. He stated that price is generally the most important factor he considers when purchasing kiwifruit from any supplier.

*** also alleged that it lost revenues totaling $*** on a ***, sale of *** trays of size *** kiwifruit to buyer ***. The original price quote reported was $*** per tray, but due to competition from New Zealand kiwifruit, the sale was made at a reduced price of $*** per tray. *** did not have specific purchase records, but believed that the reported prices sounded accurate. He purchases kiwifruit primarily based on price, and he stated that domestic and New Zealand kiwifruit sold in the U.S. market are very similar products in terms of size, flavor, and appearance. *** stated that by

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[96] In this case, the price of the domestic fruit on a tray-equivalent basis was less than the price of the New Zealand fruit because it was smaller in size and was packed in volume fill containers rather than in single-layer trays.

December the New Zealand kiwifruit had likely been in storage for a relatively long period of time and the seller may have attempted to reduce prices in order to clear out remaining inventories.

*** named *** in three separate lost revenue allegations totaling $***. On *** alleged that it was forced to reduce its price quote on *** trays of size *** fruit from $***, or $*** per tray, to $***, or $*** per tray. Two additional allegations of lost revenues both occurred on ***. For *** trays of size *** kiwifruit, *** was allegedly forced to lower its price from $***, or $*** per tray, to $***, or $*** per tray, and for *** trays of size *** kiwifruit, it was forced to lower its offered price from $***, or $*** per tray, to $***, or $*** per tray. In each instance, New Zealand was named as the source of the competing product. *** was able to confirm the accuracy of prices and quantities reported in each of these three allegations, but she stated that, in the case of the *** allegation, the source of the competing price quote came from another domestic handler and not from a New Zealand supplier. However, *** referred to the large shipment from New Zealand in December 1990 and stated that this depressed prices of kiwifruit in the U.S. market through January 1991.

APPENDIX A

FEDERAL REGISTER NOTICES

[Investigation No. 731-TA-516 (Final)]

Fresh Kiwifruit From New Zealand

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a final antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731-TA-516 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from New Zealand of fresh kiwifruit, provided for in subheading 0810.90.20 of the Harmonized Tariff Schedule of the United States.

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: November 26, 1991.

FOR FURTHER INFORMATION CONTACT: Jeff Doidge (202-205-3183), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of fresh kiwifruit from New Zealand are being sold in the United States at less than fair value within the meaning of section 733 of the act (19 U.S.C. 1673b). The investigation was requested in a petition filed on April 25, 1991, by the Ad Hoc Committee for Fair Trade of the California Kiwifruit Commission and Individual California Kiwifruit Growers, Sacramento, CA.

Participation in the Investigation and Public Service List

Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, not later twenty-one (21) days after publication of this notice in the Federal Register. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this final investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the Federal Register. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in this investigation will be placed in the nonpublic record on March 30, 1992, and a public version will be issued thereafter, pursuant to section 207.21 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on April 14, 1992.

at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before April 7, 1992. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on April 9, 1992, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules.

Written Submissions

Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.22 of the Commission's rules; the deadline for filing is April 9, 1992. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.24 of the Commission's rules. The deadline for filing posthearing briefs is April 22, 1992; witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before April 22, 1992. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules.

Issued: December 20, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-30878 Filed 12-26-91; 8:45 am]

BILLING CODE 7020-02-M

International Trade Administration

[A-614-801]

Final Determination of Sales at Less Than Fair Value: Fresh Kiwifruit from New Zealand

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

EFFECTIVE DATE: April 17, 1992.

FOR FURTHER INFORMATION CONTACT: Erik Warga, Office of Antidumping Investigations, Import Administration, International Trade Administration U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-6922.

Final Determination

We determine that fresh kiwifruit from New Zealand is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amende (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the publication of our notice of preliminary determination on Novembe 27, 1991 (56 FR 60092) the following events have occurred.

On November 27, 1991, the New Zealand Kiwifruit Marketing Board (NZKMB), the sole respondent in this investigation, requested that the final determination be postponed for the maximum time permitted under the Act We published a notice postponing our final determination on December 18, 1991 (56 FR 65724). Sales verification took place December 3-7, 1991, at respondent's Auckland office and February 12-13, 1992, at the office of David Oppenheimer & Company (Oppenheimer), respondent's North American selling agent. The cost of production (COP) verification took plac December 4-21, 1991. We received a request for a public hearing from petitioners on December 9, 1991. Both petitioners and respondents filed case briefs on March 5, 1992, and rebuttal briefs on March 9, 1992. A public hearir was held on March 10, 1992.

Scope of the Investigation

The product covered by this investigation is fresh kiwifruit from Ne Zealand. Processed kiwifruit, including fruit jams, jellies, pastes, purees, miner waters, or juices made from or containing kiwifruit, are not within the scope of this investigation.

Fresh kiwifruit is currently classifiable under subheading 0810.90.20.60 of the Harmonized Tariff Schedule (HTS). Although the HTS subheading is provided for convenienc and customs purposes, our written description of the scope of this proceeding is dispositive.

Period of Investigation

The period of investigation (POI) i April 1, 1990, through March 31, 1991.

Such or Similar Comparisons

We made such or similar comparisc based on the methodology described i the preliminary determination.

Fair Value Comparisons

To determine whether sales of fresh kiwifruit from New Zealand to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

We calculated USP using the methodology described in the preliminary determination. Based on our findings at verification, we modified respondent's USP database as follows: The date of payment was changed for two invoices; for seven sales, the date of shipment was corrected; U.S. duty, brokerage and handling amounts were reallocated to all fruit on board the vessels and not just to U.S. fruit; inventory carrying expenses were recalculated for some sales for which shipment dates were corrected; adjustments for repacking costs, U.S. direct and indirect advertising expenses, U.S. satellite coolstore expenses, U.S. satellite coolstore-to-customer foreign charges, and other U.S. expenses incurred by the New Zealand Fruit Company (the marketing company in which the NZKMB holds an interest) were recalculated for all U.S. sales. General and administrative expenses incurred in New Zealand and incorrectly reported as indirect selling expenses were dropped from the database. Missing payment dates were set to the date of this determination, and credit expenses were recalculated for certain sales. When respondent was unable to determine the vessel in which pallets arrived, we used the highest correctly reported amounts for duty, brokerage, ocean freight and inventory carrying expenses as the best information available (BIA). We also corrected the tray conversion factor for kiwifruit packed in one pound bags. Finally, Canadian sales were removed from the U.S. sales listing.

Foreign Market Value

In accordance with section 773(a)(1) of the Act, we found that the home market was not viable for sales of fresh kiwifruit. In selecting which third country market of those having an adequate sales volume was the most appropriate for comparison purposes, we selected Japan, in accordance with 19 CFR 353.49(b). (See Preliminary Determination and Fair Value Comparison Comment 2, below for further discussion.)

We calculated FMV using the methodology described in the preliminary determination. Based on our findings at verification, we made changes to the third country database as follows: expenses associated with a consumer survey, previously included in direct advertising expenses, were reclassified as an indirect selling expense; a portion of indirect selling expenses was disallowed because it represented U.S. ocean freight; another portion of indirect selling expenses was disallowed because it represented general and administrative expenses of the Auckland office; credit days were reduced by the average overstatement of credit days on verified sales (see Fair Value Comparison Comment 13, below); and all rebates were disregarded because they could not be documented at verification (see Fair Value Comparison Comment 11, below). In addition, New Zealand coolstore charges and the ocean freight expense for one vessel were recalculated. For those sales for which there was no reported date of payment, we set the credit expense to zero as BIA. We also corrected the tray conversion factor for kiwifruit packed in one pound bags.

At verification it was also determined that approximately 12 percent by volume of respondent's third country sales had not been included in the third country database. As BIA, we distributed the volume of the missing sales equally across all pricing periods. Within each pricing period, we looked at the percentage of above-cost sales represented by each combination of countsize and pack type. We then distributed each period's volume of missing sales according to each combination's percentage of sales volume within the period. We assigned to each portion of the added volume the highest net price in the pricing period that was found in its pack type/countsize category.

Cost of Production

Petitioners alleged that respondent's third country sales of fresh kiwifruit were made at prices below COP. As stated in our preliminary determination, we received an adequate allegation from petitioners that the respondent had sales below COP. We initiated a sales below cost investigation of respondent. In our preliminary determination, we described a sampling method by which we selected 20 growers to be examined for COP purposes.

While the respondent did not obstruct our COP investigation, one of the growers was unwilling to provide the required information, one of the grower's information was unverifiable, and three growers did not participate in the verification process. As detailed in our response to Grower-Wide Comment 1, Cost of Production Comments, the Department had to use BIA to value these growers' costs.

To arrive at a weighted-average cost of producing kiwifruit in New Zealand, we relied upon the submissions of the 15 growers whose information we were able to verify. For the one grower who did not respond to our questionnaire, the one grower who failed verification, and the three growers who did not participate in the Department's verification process, we used the higher of (1) the grower's own cost data, as adjusted in the preliminary determination; (2) the highest verified cost for a farm of the same size in the same region; or (3) the average cost for farms or different sizes, but in the same region, adjusted for farm size.

For this Final Determination, we based capitalized cultivation costs upon verified data. We obtained complete cost information from eight growers and have used this information in the COP calculation for the 15 growers. We also calculated the average per-hectare cost of establishing a kiwifruit orchard based on the verified information obtained from these eight growers. For the seven growers who were unable to provide complete costs for establishing their orchards, we based their capitalized cultivation costs on BIA. As BIA, we used the calculated verified average per-hectare cost of establishing a kiwifruit orchard multiplied by the kiwifruit orchard area.

We based the cost of related-party management services upon verified data. We obtained information regarding the salary paid to unrelated managers from five growers and have used this information in the COP calculation for each. For those growers who retained related-party managers, we based their management costs on BIA. As BIA for farm management costs, we used the verified wages paid to unrelated farm managers and calculated an average cost per hectare. As BIA to value orchard work (other than management) performed by family or other related parties, we relied upon the minimum wage rates for orchard workers established under the New Zealand Labour Relations Act.

We adjusted the reported number of trays sold by a fruit loss rate of 13 percent, which was taken from the NZKMB's financial statement. Each farm's total costs were then allocated over the adjusted quantity sold to determine the cost per tray.

We calculated a simple average of the individual grower costs within each subcategory (designated by region and

farm size). For one of these subcategories, there were no remaining farms in the subcategory due to misclassifications reported to the Department. For this subcategory, as BIA, we calculated a cost based on verified costs in the next size range within the same region, adjusted by the cost ratio between the same farm sizes in the other region.

We included in COP the cost of materials, farm labor, farm overhead, the general expenses of each grower and packing. The growers' costs per single layer tray equivalent (STE) within each subcategory were simple-averaged to arrive at a cost per-STE for each subcategory. We calculated a weighting factor for each subcategory based on figures on New Zealand farm production by size and location. Each subcategory's cost was then multiplied by that subcategory's weighting factor. The eight resulting amounts were then summed to arrive at the overall weighted-average farm cost per STE. We added respondent's coolstorage and selling, general and administrative expenses (SG&A) to the weighted average farm cost per STE. We included in the G&A calculation insurance reimbursements and amortized expenses. In addition, respondent's G&A expenses that were incorrectly categorized as third country indirect selling expenses were reclassified as G&A. Based on findings at verification, we made grower-specific revisions to the COP data (see Grower-Specific Comments, Cost of Product Comments, below). The total COP was calculated on a New Zealand dollar per STE basis (NZ$/STE).

Based on our COP analysis, we found that between ten and 90 percent of respondent's sales were at prices above the total COP of fresh kiwifruit. Respondent provided no information demonstrating that costs would be recovered over a reasonable period of time. Therefore, we disregarded only below-cost sales because they were made in substantial quantities, and limited FMV to respondent's above-cost Japanese sales.

Critical Circumstances

Petitioners alleged in the petition that "critical circumstances" exist with respect to imports of fresh kiwifruit from New Zealand. In our preliminary determination, we concluded that massive imports do not exist because the quantity of imports in the periods examined were determined to be related to seasonal variations and thus not massive within the meaning of the law. Petitioners have not raised the issue subsequently. At verification, we found no new evidence supporting a reversal of our finding in the preliminary determination. An examination of official monthly import statistics (IM 146) has also revealed no evidence indicating the existence of critical circumstances. Therefore, we find that there is no basis for finding that critical circumstances exist under 19 CFR 353.16 with respect to imports of fresh kiwifruit from New Zealand.

Currency Conversion

We made all currency conversions in accordance with 19 CFR 353.60 by using the exchange rates certified by the Federal Reserve Bank of New York.

Verification

As provided in section 776(b) of the Act, we verified information provided by the respondent by using standard verification procedures, including the examination of relevant sales and financial records, and selection of original source documentation containing relevant information.

Interested Party Comments

Fair Value Comparison Comments

Comment 1: Petitioners contend that only "extraordinary seasonality factors—which are not present in the case of kiwifruit" would allow the Department to expand the POI to a full year as it did for the preliminary determination. According to petitioners, kiwifruit prices do not fluctuate for seasonal reasons, as evidenced by past practice. Furthermore, they contend that kiwifruit can be stored and marketed for up to 12 months after harvest, demonstrating its non-perishable nature.

Petitioners note that the Department's regulations state that the Department "normally" will examine at least 60 percent of sales within a six-month POI, and that using a six-month POI has been the Department's consistent practice. In addition, petitioners argue that the standard six-month POI would itself capture 60 percent of annual sales.

Respondent contends that a 12-month POI is required to obtain a representative picture of its pricing practices. It claims that higher coolstorage losses and costs for repacking reduce the feasibility of bringing the kiwifruit to market, and decreased shelf life causes prices to drop over time.

DOC Position: We agree with respondent. As noted in our preliminary determination, the normal six-month POI would not have fallen entirely within the normal selling season; a six-month POI would have captured Japanese sales in only one month. Furthermore, a six-month POI would have disproportionately captured sales of nearing and end of the fruit's useful commercial life. Finally, with regard to perishability, the Department has received a great deal of conflicting information. Since perishability may be a factor in price trends, a 12-month POI ensures an accurate measure of less than fair value (LTFV) sales. Even if, as petitioners contend, perishability is not a factor, extending the POI to cover a full season cannot create any distortions.

Comment 2: Respondent contends that Germany, not Japan, is the most appropriate third country market. The Department's past interpretation of the Act mandates selection of the market "where sales are more similar" when sales volumes are large in more than one third country market. According to respondent, the record demonstrates that significant differences exist between kiwifruit sold in Japan and that sold in the United States. The record also shows that, using respondent's proposed revised matching criteria, German sales are more similar to U.S. sales than Japanese sales because they would provide more matches by time period, count size, and packing type. Furthermore, the Department has, in the past, selected a third country other than that with the largest sales volume when the Department deemed product comparability to be a factor (*e.g., Frozen Concentrated Orange Juice from Brazil: Final Results of Administrative Review* (55 FR 47502 (1990)) (*Brazilian Orange Juice*); *Final Determination of Sales at Less Than Fair Value: Fresh and Chilled Atlantic Salmon from Norway* (56 FR 7661 (1991)) (*Norwegian Salmon*)).

Respondent further argues that, with respect to market structure, the Department found in *Final Results of the Second Administrative Review of Certain Fresh Cut Flowers from Colombia* (55 FR 20491 (1990)) (*Colombian Flowers*) that differences between the U.S. and European flower markets militated against a European third country selection. That decision was based on the tendencies of the U.S. market to exhibit surges in sales volume around certain holidays against more steady, consistent European sales. Similarly, respondent contends that differences between the U.S. and Japanese kiwifruit markets weigh against selecting Japan as the third country market in this investigation. The Japanese and U.S. markets have different pricing mechanisms, organization, and levels of development, and respondent does not control sales from coolstores in Japan as it does in the

United States. According to respondent, market organization in Japan has a significant effect on Japanese kiwifruit prices. In Japan, respondent has an early, upstream exit from the sales process; whereas in the United States and Germany, the first unrelated sale takes place farther downstream (after importation). Respondent also cites as a market difference higher retail prices in Japan which permit it to charge importers higher prices.

Respondent avers that the Department could have verified the German sales information. According to respondent, use of the unverified German sales would be permissible since other information stood up under verification.

Petitioners contend that, under the criteria for third country selection set forth in 19 CFR 353.49(b), Japan, not Germany, is the appropriate third country for comparison purposes because it was respondent's largest export market during the POI. Similarity in markets and product characteristics, the two regulatory criteria in addition to volume, favor neither Japan nor Germany. With respect to market structure, differences claimed by respondent between Japan and the United States lie in respondent's own selling practices, not in the structure of the markets themselves. Regarding product characteristics, petitioners state that the high percentage of matches achieved in the Department's preliminary determination demonstrates the comparability of merchandise sold in the two markets. In contrast with *Brazilian Orange Juice* and *Norwegian Salmon* where merchandise in a different form or of dissimilar quality or size was sold in the largest third country market, significant product differences do not exist between Japanese and U.S. sales. Minor differences, such as in count size and packing, do not constitute the type of significant product differences which have in the past been a factor in the Department's third country selection process. Furthermore, petitioners argue that respondent's German sales information was never verified and, therefore, cannot be used by the Department. Petitioners further assert that the difference in fruit age between the two markets is irrelevant because kiwifruit is not perishable and the kiwifruit sold in Japan, if anything, can be expected to reach the market later than that which is sold in the United States at the same time. Finally, petitioners state that respondent's argument that larger fruit is sold in Japan at a premium is irrelevant since large fruit is also sold in the United States.

DOC Position: We agree with petitioners. The Department normally determines the appropriate third country market upon receiving a response to Section A of its questionnaire. At that point, the record indicated that Japan was respondent's largest third country market. When the third country selection was made, the record revealed no significant factors decisively favoring Germany with respect to either market organization and development, or similarity of merchandise. (See memorandum to Francis J. Sailer, August 9, 1991.) Further, we are not convinced that information submitted following the original decision requires that another third country selection be made.

Respondent is correct that the Department, in the past, has relied on such factors as market organization and product comparability to choose one third country over others. The decisions made in *Norweigian Salmon* and *Brazilian Orange Juice* were extraordinary and involved situations where, unlike in this case, sales in the largest third country market consisted completely or largely of different sizes, grades or types of merchandise that was unsuitable for comparisons to merchandise sold in the United States.

In this case, all products sold to Japan were sold to the United States. The exact percentage of identical matches, given highly comparable merchandise, is not a factor that the Department can consider at the time the third country selection must be made. To do so would set an unacceptable and unadministrable standard. The Department would have to establish matching criteria and then make price-to-price comparisons for each third country to determine which yields the greatest percentage of identical matches. Moreover, even if the Department had considered the percentage of identical matches in determining the appropriate third country in this case, respondent's failure to report 12 percent of its sales to Japan would have made it impossible for the Department to determine the percentage of identical matches in the Japanese market.

With respect to market organization and development, the Department routinely adjusts for the transactional differences cited by respondent when making price comparisons. The fact that market demand permits respondent to charge higher prices in Japan than in Germany does not constitute or demonstrate a difference in organization or development that would, as in *Colombian Flowers*, where the merchandise was highly perishable and prices extremely volatile, lead the Department to change third countries for reasons relating to market structure.

Comment 3: Petitioners contend that the Department should compare U.S. sales without identical third country matches to sales in the third country of similar merchandise. Petitioners contend that the misreported countsize on one selected Japanese sale makes disregarding all countsizes reasonable. Price differences are minimal, so the closest third country countsize could be used where no identical merchandise was available for comparison and, if necessary, the Department could make weight-based cost adjustments for differences in merchandise. Alternatively, the Department could use constructed value (CV) for comparison to unmatched U.S. sales.

Respondent contends that the Department cannot match non-identical kiwifruit, nor can it make non-contemporaneous comparisons. Therefore, unmatched sales should not be compared at all.

DOC Position: We continued to exclude from our comparisons those U.S. sales that do not have identical matches within each pricing period. We find that the percentage of U.S. sales matched to sales of identical merchandise in Japan was sufficiently high (over 60 percent) so that comparisons with non-identical merchandise or with CV were unnecessary. Section 771(16)(A) of the Act expresses a preference for comparisons of identical merchandise.

Comment 4: Petitioners contend that, with respect to the 12 percent of Japanese sales that respondent did not report, the Department should assign the highest single Japanese sales price as BIA and assume that these sales match all unmatched sales in the last pricing period.

Respondent contends that the weighted-average FMVs were unaffected by the omission of these sales because they were in pricing periods where other sales were reported and prices do not change within a period. It further asserts that because very few of the omitted sales were below COP, the COP analysis also was unaffected by the omission.

DOC Position: We agree with petitioners that the omitted sales should not be disregarded. As detailed above in the Foreign Mark Value section of this notice, as BIA, we divided the quantity of unreported volume evenly over the six pricing periods. Each pricing period's allocated share of the under-reported amount was then allocated

(proportionally by share of volume within the period) to each unique combination of countsize and packing type that was sold within the period. We then assigned the highest Japanese price for the pricing period, net of certain adjustments, for that countsize/packing type designation to the quantity allocated to that designation.

Comment 5: Respondent contends that the fact that kiwifruit prices declined during the POI demonstrates that kiwifruit is perishable because, with time, post-sale shelf life decreases and fruit loss increases. Because kiwifruit is perishable, the Department should only compare U.S. sales to contemporaneous Japanese sales within six days of the U.S. sale, or at least within the same month or pricing period as was done in *Final Determination of Sales at Less Than Fair Value: Certain Winter Vegetables from Mexico* (45 FR 20512 (1980)) (*Mexican Vegetables*), *Fall Harvested Round White Potatoes from Canada* (48 FR 51669 (1983)) (*Canadian Potatoes*), and *Norwegian Salmon*. Respondent states that the Department's preliminary determination methodology did not properly account for perishability because U.S. sales made after the last Japanese sale had no contemporaneous sale in Japan and, therefore, should have been dropped from the analysis. Respondent notes that the statute permits analysis of less than 100 percent of sales for purposes of estimating dumping margins. Alternatively, respondent argues that the Department could compare U.S. sales without matches in Japan to sales in Germany. Use of CV for these sales would be inappropriate, according to respondent, because CV does not take into account differences in fruit age.

Petitioners contend that: (1) Kiwifruit is not highly perishable, and that historically prices are fairly stable and tend to rise over time as supply diminishes; (2) Japanese prices reflect the lag between importation of the merchandise and its arrival in the marketplace and (3) prices in 1991 showing a downward trend were atypical. The Department should not depart from the pricing periods used in the preliminary determination as the results would be a measure of pricing discrimination unrelated to he pricing decisions.

DOC Position: We recognized in our preliminary determination that the trend toward lower net prices as the selling season progressed may, to some degree, reflect kiwifruit's perishability. Accordingly, we divided the POI into six periods, using respondent's description of the sales process in Japan (wherein separate pricing periods were negotiated) as the only reasonable means of determining the timing of pricing decisions based on perishability concerns. Petitioners' argument that kiwifruit can reach the marketplace as late as one year after harvest does not demonstrate that kiwifruit is not perishable to some degree since increased losses from lengthened cool-store periods, and increased storage and repacking costs, are possible.

Respondent's submission of October 4, 1991, states that sales to Japan are of "younger" fruit, implying that the Japanese importers are well aware of the lag in time between purchase and eventual resale when negotiating an acceptable price for kiwifruit purchased from respondent; the prices should reflect this knowledge. Thus, the comparison of U.S. and Japanese prices in the last pricing period represents end-of-season prices for kiwifruit in both markets. Furthermore, respondent's failure to report 12 percent of its Japanese sales (alleged by respondent to have occurred in the last two pricing periods) renders respondent substantially responsible for any difficulty in matching sales contemporaneously using respondent's proposed definitions of contemporaneity. We are, therefore, maintaining the pricing periods used in the preliminary determination and have not truncated the last pricing period as proposed by respondent.

Comment 6: Respondent contends that U.S., sales shipped aboard the Pioneer Reefer, the last vessel to arrive in the United States during the 1990–1991 season, should be categorized as distress sales because the fruit was in danger of rotting and had to be sold at deep discounts. Respondent further asserts that, as distress sales, fruit shipped aboard the Pioneer Reefer is outside the ordinary course of trade and should be excluded from the LTFV comparisons as was done in *Final Determination of Sales at Less Than Fair Value: Fabric and Expanded Neoprene Laminate from Taiwan* (52 FR 37193 (1987)) and *Final Determination of Sales at Less Than Fair Value: Certain Dried Salted Codfish from Canada* (50 FR 20819 (1985)). See also, *Ipsco, Inc. v. United States* 687 F. Supp. 633, 642 (1988), and 714 F. Supp. 1211, 1217 (1989), where the Court ruled that the Department had the discretion to exclude U.S. sales that were outside the ordinary course of trade.

Respondent also argues that the kiwifruit on the Pioneer Reefer was not the same as that normally sold in the United States since it consisted of countsizes and packing forms usually sold in Japan.

Petitioners contend that the same merchandise (by size and packtype) was sold in the U.S. market. Petitioners further assert that the kiwifruit aboard the vessel was not rotting because sales in the United States took place several months after the arrival of the vessel.

DOC Position: We agree with petitioners. The ordinary course of trade exclusion (19 CFR 353.46(a)) is for foreign market value only. In an investigation, however, the Department may exclude aberrational sales from comparison, but there is no obligation to do so. No evidence suggests that sales of kiwifruit from the Pioneer Reefer shipment were outside the ordinary course of trade, even if the vessel was originally destined for Japan. The countsizes and packing types of the kiwifruit were routinely sold in the United States. The fact that respondent expected to sell the fruit in Japan also suggests that the kiwifruit had a reasonable shelf life remaining. Accordingly, sales of kiwifruit from the Pioneer Reefer shipment cannot properly be viewed as distress sales and were not excluded from the Department's analysis.

Comment 7: Respondent contends that because kiwifruit is a perishable product the Department should disregard sales below the cost of production only if such sales exceed 50 percent of total sales volume. The Department has used the 50 percent threshold in past agricultural cases such as *Canadian Potatoes* because end-of-season prices may fall below COP and fruit loss increases at the end of the season. Respondent argues that, since limited processing alternatives for kiwifruit leave below-cost sales the only option for sellers faced with fruit rot, the 50 percent test is even more appropriate for kiwifruit than it was for potatoes.

Petitioners contend that the rationale for the 50 percent threshold, set forth in *Mexican Vegetables*, and the recent application of that rationale in *Norwegian Salmon* show that the normal 10 percent threshold is appropriate for kiwifruit. In *Mexican Vegetables*, the Department allowed below-cost sales of up to 50 percent for products where "the sellers are unable to control output or storage and for which below cost selling is a 'normal part of operations.'" In *Norwegian Salmon*, the Department determined the 10 percent threshold was appropriate because salmon farmers could control the time of sale of their output. Because kiwifruit is storable and respondent exercises control over distribution and

price, the 50 percent threshold is not appropriate in this investigation.

DOC Position: We agree with petitioners. The purpose of the exception is to account for situations where sellers frequently have no alternative but to sell at prices below the cost of production (as with products that will rot within a few days after harvest). Notwithstanding kiwifruit's similarities to potatoes, the precedent for applying the 50 percent test as an exception to the 10 percent threshold has clearly evolved since the 1983 *Canadian Potatoes* determination. In *Canadian Potatoes*, no clear rationale was presented for departure from the normal 10 percent threshold and, as such, the decision to apply the 50 percent test in that case cannot serve as a basis for a decision in this case. Because kiwifruit has a much longer shelf life than highly perishable agricultural products, sellers are not faced with a window of only a few days within which to sell before significant deterioration occurs. While the commercial life of kiwifruit is subject to what amounts to gradually increasing perishability, it is not subject to day-to-day perishability constraints. This long-term perishability is not what the 50 percent exception is intended to address.

Petitioners have correctly cited *Norwegian Salmon* as reflecting the current practice. In Japan, the market where the cost test is being applied, respondents acknowledge regular, controlled prices which changed infrequently during the one-year POI. Similarly, the farmers in the *Norwegian Salmon* investigation controlled the timing of their sales. The storable nature of kiwifruit and infrequent change in prices in the Japanese market dictate against applying the exceptional 50 percent test.

Comment 8: Petitioners contend that the portion of respondent's reported Japanese direct advertising expenses relating to a survey should not be classified as a direct advertising expense. Therefore, the Department should reduce Japanese direct advertising expenses to exclude the survey amount as well as any amount not clearly identifiable as a direct expense.

Respondent notes that the survey was conducted by a Japanese advertising agency to gather information on Japanese consumer attitudes toward kiwifruit. As such, the expense was legitimately categorized as direct; therefore, there should be no change to reported Japanese direct advertising expenses.

DOC Position: We agree with petitioners that a survey on consumer attitudes does not constitute an advertising expense. Accordingly, we have recategorized the amount spent for the survey as an indirect selling expense.

Comment 9: Petitioners contend that indirect selling expenses in Japan should be reduced since the amount reported incorrectly includes corporate G&A expenses, and an amount miscategorized as unrecovered Japanese shipping expenses which actually related to a shipment that was eventually sold in the United States. G&A expenses that were incorrectly allocated to sales should be added to G&A expenses reported elsewhere for COP/CV calculation purposes.

Respondent contends that the Auckland office administrative expenses were allocated to the sales division which primarily serves the Japanese market; therefore, these expenses represent a direct cost of selling to the Japanese market. Similar costs were reported as an indirect selling expense for U.S. sales. According to respondent, unrecovered shipping expenses are directly related to Japanese sales since they consist of costs incurred for the Pioneer Reefer, the ship originally bound for Japan. Therefore, no revision to indirect selling expenses for the unrecovered shipping expenses is appropriate.

DOC Position: We agree with petitioners that the Auckland Office expenses constitute G&A expenses. The Department does not allow G&A expenses incurred in the home market to be allocated to export sales for purposes of calculating indirect selling expenses; G&A expenses are calculated on a company-wide basis and are not market specific. Furthermore, nothing on the record permits us to determine what, if any, fraction of the total figure reported is not G&A and, thus, could properly be allocated to Japanese sales. However, respondent is correct in noting that similar expenses were also reported for the U.S. market; therefore, we did not make a deduction to USP for these expenses.

Since the unrecovered shipping expenses were incurred on a shipment of merchandise eventually sold to the United States, we also agree with petitioners that respondent's categorization of this charge as a Japan-related selling expense was incorrect. We have revised indirect selling expenses accordingly and included these costs in the calculation of corporate G&A.

Comment 10: Petitioners contend that respondent's failure to document one of eight selected sales calls into question the integrity of one eighth of reported sales. Also, petitioners express doubt over respondent's explanation of its inability to document this sale.

Respondent contends that the sales listing shows this sale to be an anomaly, and that the Department should not resort to BIA because one anomalous entry in the sales listing could not be verified. *DOC Position:* We agree with respondent that, by itself, the inability to verify one of the preselected sales does not merit wholesale use of BIA. In the course of verification, we review a number of sales in addition to the preselected transactions. Of the many observations from the third county sales listing that were examined at verification, only this one sale could not be verified. Further, the unverifiable sale did not appear to confer an advantage on respondent.

Comment 11: Because respondent was unable to document a reported rebate for one preselected sale, petitioners assert that the Department should disallow all rebates reported for Japanese sales. *DOC Position:* We agree. Since this was the only sale selected for verification for which a rebate was reported, we must assume that rebates were incorrectly reported for all sales. Accordingly, we have not deducted reported rebates on Japanese sales for purposes of our final determination.

Comment 12: Petitioners argue that, in light of the Department's discovery at verification that the count size had been misreported on one preselected sale which had an unusually low price, the Department should disregard all sales which have lower-than-normal prices in the third country sales listing. Alternatively, the Department should completely disregard countsize when matching U.S. sales. *DOC Position:* We disagree. Of the many sales examined at verification, an incorrect countsize had been reported for only one sale. This was a relatively minor reporting error that does not constitute a reason to suspect any serious inaccuracies overall in countsize reporting by respondent. Disregarding countsize altogether in price comparisons would by unduly harsh.

Comment 13: Petitioners contend that credit expenses in Japan should be revised based on verification findings that actual payment dates were usually earlier than reported payment dates. As BIA, the minimum verified credit period should be assumed.

Respondent contends that reported credit expenses are accurate and, thus, should not be revised. The date that the bank deposits an amount in respondent's account should not be classified as the date of payment since respondent is still being charged interest on credit extended against outstanding accounts receivable. The correct date of payment, as reported, is the date upon which the bank ceases to charge respondent interest against the outstanding accounts receivable. Should the Department choose to calculate credit based on the date that the bank credits respondent's account, a circumstance of sale adjustment should be made for the interest charged by the bank. *DOC Position:* We agree with petitioners in part. Verification revealed that, in most instances, respondent had the use of funds owed by its customer earlier than the date reported as payment date. Respondent's claim that the bank imposes an additional charge after this date was not reported in the questionnaire response and was not explained at verification. We must, therefore, find that Japanese credit costs have been overstated. However, because the overstatement was caused by an apparently unintentional error in reporting payment date, we have merely revised the credit period for all sales downward by the average overstatement found at verification.

Since respondent could not document the one selected sale for which no payment date was reported, we have also set credit costs equal to zero for all Japanese sales with no payment date.

Comment 14: Petitioners argue that the Department should base the final determination on BIA because respondent incorrectly reported return sales and a sale used at a trade fair in the U.S. sales listing.

Respondent contends that the effect of return sales on adjustments was demonstrated to be negligible. *DOC Position:* We agree with respondent that total BIA is not appropriate because return sales did not significantly affect adjustments or margin calculations. The returns were predominantly small quantities and parts of sales that otherwise were reported elsewhere.

Comment 15: Petitioners assert that U.S. credit expenses should be calculated using a New Zealand-dollar borrowing rate since respondent did borrow in the home market at this rate, but did not have any U.S. dollar-denominated borrowings. Respondent asserts that the U.S. interest rate should be used because credit costs are imputed. *DOC Position:* We agree with respondent. It is our standard practice to calculate credit expenses based on the U.S.-dollar borrowing rate in ESP situations (*See, e.g., Final Determination of Sales at Less Than Fair Value: Coated Groundwood Paper from France*, 56 FR 56380 (1991)).

Comment 16: According to petitioners, two separate Oppenheimer commission rates should be used rather than a weighted-average annual rate because Oppenheimer is on a two-tiered commission rate system.

Respondent argues that verification showed the actual commission rate paid to be an average. *DOC Position:* We agree with respondent. Verification showed that, although Oppenheimer receives preliminary payments throughout the selling season, a final year-end reconciliation takes place and payment is ultimately based on a weighted average of the two commission rates.

Comment 17: Respondent contends that the Department must, as directed by the statute, adjust for differences in packing costs when comparing differently packed identical merchandise. Respondent suggests using information it gathered from unrelated packers on their costs for various packing types to calculate packing costs.

Petitioners contend that the growers' actual costs, not respondent's estimates of unrelated packers' costs, are the correct basis for a packing adjustment. *DOC Position:* We agree with petitioners. We recognize that packing differences exist and, where possible, we have compared U.S. sales to Japanese sales of the same countsize and packing type. Nevertheless, the actual cost of packing to growers is the only appropriate basis for any packing adjustment, and we have made such adjustments accordingly. Unrelated packers' costs are not relevant.

Comment 18: Respondent contends that sales with negative net U.S. prices should be excluded from the Department's calculations because they are not truly sales, as shown at verification. Alternatively, the Department should set sales with a negative net price to a default minimum of $0.01. According to respondent, these sales' overall impact on the weighted-average margin in the preliminary determination was disproportionate.

Petitioners contend that the U.S. sale with a negative net price examined at verification yields what amounts to an unreported promotion expense. If these sales are removed from the sales listing, the new expense should be deducted from remaining U.S. sales. *DOC Position:* We disagree with both parties. The U.S. sale examined at verification revealed nothing inappropriate about its inclusion in the sales listing. The transactions in question simply represent sales with adjusted prices below zero. Setting such sales' net prices to $0.01 would incorrectly overstate the net price and understate the transaction margin. As with a U.S. sale with an adjusted price above zero, both the magin (the amount by which the weighted-average FMV exceeds the adjusted U.S. price) and adjusted price are weighted by the quantity. Thus, no disproportionate impact results from the inclusion of such sales in our calculations.

Comment 19: Petitioners contend that respondent's allocation methodology for Japanese ocean freight was incorrect and resulted in this charge being overstated. The Department should, therefore, revise Japanese ocean freight downwards.

Respondent contends that ocean freight was allocated correctly, as confirmed at verification, and that petitioners have misinterpreted a salesman's estimate to be the actual number of pallets shipped. *DOC Position:* We agree with respondent. Verification revealed no discrepancies in respondent's ocean freight allocation methodology.

Comment 20: Respondent contends that incorrectly reported arrival dates for certain Japanese sales should be replaced with the average arrival date.

Petitioners assert that the Department should resort to the use of BIA for all U.S. sales data in view of the data's general unreliability.

DOC Position: We consider this error to be too minor to call into question the integrity of the entire U.S. sales listing. We have assigned as BIA the highest, product-specific brokerage, duty, inventory carrying expense and ocean freight for sales that respondent could not tie to a particular vessel.

Cost of Production Comments

General Comments

Comment 1: Respondent contends that COP should be based on its acquisition cost plus SG&A expenses because it is an independent reseller unrelated to the growers. This would be consistent with the Department's practice of using transfer prices between a manufacturer and its related suppliers.

Petitioners note that section 773(b) of the Act refers to the "cost of producing the merchandise concerned," not the acquisition price. Using respondent's acquisition cost would be inconsistent with the methodology used in *Norwegian Salmon* whereby the Department examined the cost of producing salmon by individual salmon

farmers. The Department only accepts transfer prices when they are above COP, and respondent's POI payments to growers were insufficient to cover costs.

DOC Position: We agree with petitioners and, consistent with our practice, have based COP on grower production costs plus certain of respondent's costs (*See, e.g., Norwegian Salmon*). Further, transactions between respondent and the growers are not at arm's length. Growers have almost no choice but to sell to respondent. The transaction is ongoing, with payments being made by respondent to the growers throughout the season based on sales results, and the total payment received by growers is not negotiated between growers and respondent, but is determined by the total sales revenues of respondent. Further, growers actually account for a significant number of the Board's members.

Comment 2: Respondent contends that the Department's stratified sample used in calculating COP is neither representative nor based on generally recognized sampling techniques as required under section 777A of the Act.

The Department did not take into consideration respondent's contention in solicited comments that 80 percent of exports to the Untied States were from the Bay of Plenty region of New Zealand and that only farms greater than two square hectares would represent businesses, not hobby farmers. For the growers who proved to be incorrectly categorized by size or region after the Department had made its selection, the Department should have selected correctly categorized replacement farms.

Petitioners contend that respondent cannot challenge the incorrectly categorized growers since these growers were improperly categorized by respondent in its database. According to petitioners, allowing reselection would defeat the purpose of randomness. In any case, simple miscategorization is not necessarily an indication that the sample is unrepresentative of the industry as a whole.

DOC Position: The selection was reasonable and in accordance with the Act. The percentage of exports to the United States is irrelevant for purposes of testing the COP of fruit sold in Japan. And the presence or absence of hobby farmers in the selection is also irrelevant since the COPs of farms under two square hectares are weighted according to share of production volume as reported by respondent. Reselection of growers determined to be miscategorized would have been inappropriate because it would have permitted removal of randomly selected growers and might have skewed the results, rendering them less reliable.

Proper categorization of growers was the responsibility of respondent. At the time the growers were selected, the Department had no alternative but to rely on the information that respondent had submitted and certified to be accurate. In any case, responded has not shown that the selection methodology was inappropriate or produced unrepresentative results.

Comment 3: Petitioners contend that respondent incorrectly reported insurance recovered and tax credit revenues as an offset to SG&A for purposes of calculating COP.

Respondent contends that the Department verified the accuracy of its costs.

DOC Position: We agree with the petitioners in part. Tax credit revenues were improperly applied as an offset to SG&A since tax recoveries cannot be used to offset costs. We allowed the insurance recoveries as an offset to G&A because G&A is calculated on a company-side basis and is not market-specific. Furthermore, we calculated the per-unit cost for a single layer tray equivalent based on the number of trays sold net of losses.

Comment 4: Petitioners contend that, based on verification findings, a higher coolstorage cost should be used in COP calculations.

Respondent contends that the Department verified the accuracy of its costs.

DOC Position: We agree with petitioners. A slight understatement of coolstorage costs was noted at verification. COP calculations have been adjusted accordingly.

Grower-Wide Comments

Comment 1: Respondent argues that growers who did not respond or whose responses could not be verified should not be factored into the Department's COP calculation. Since the NZKMB has been cooperative and has done its best, the Department should not use adverse or punitive BIA for noncooperative or unverifiable growers over which the NZKMB has no control. To do so would further distort the already flawed sample and would unfairly penalize the NZKMB. The small, family nature of some grower operations made normal verification difficult or impossible. As in *Norwegian Salmon*, an average COP should be calculated using information from growers who responded and were verified. Alternatively, the Department could use the costs of verified growers in the same sample cell (or at least the same size category) as BIA. The Department should have no reason to believe that the four responding growers whose responses were unverified under-reported their costs because the requirements of tax reporting of costs resulted in no incentive to understate.

Petitioners contend that the Department must use adverse BIA for failed growers' COPs. Use of verified growers' costs as BIA would reward uncooperative growers. The Department must assume failure to cooperate was deliberate, and must infer that the correct information would yield results unfavorable to respondents.

DOC Position: Section 353.37 of 19 CFR indicates that the Secretary will use the best information available whenever the Secretary: (1) Does not receive a complete, accurate, and timely response to the Secretary's request for factual information; or (2) is unable to verify, within the time specified, the accuracy and completeness of the factual information submitted. In this case, grower 6 failed verification, grower 15 did not respond to our questionnaire and growers 17, 18 and 20 did not participate in the Department's verification process. Accordingly, we are required to assign to these growers a cost based on BIA. (See the Cost of Production section of this notice for the methodology used to calculate BIA.)

Comment 2: Petitioners argue that, wherever the Department discovered unreported orchard establishment costs at verification, BIA should be based on the highest reported establishment costs.

Respondent argues that a grower's initial investment in the orchard is an asset which has an indefinite useful life when properly maintained, is equivalent to equity investments, and the Department's practice has been to exclude expenses that increase the value of land and not include the cost of equity in its cost analysis.

Petitioners argue that respondent's argument is too broad. Costs such as structures are fully depreciable items and not enhancements of land value. Petitioners argue that the costs incurred in purchasing kiwifruit vines and in raising them to a productive level also should be included.

Respondent avers that, should the Department decide to include prior year expenses in current production costs, the Department must exclude all consumable expenses, such as fertilizer and sprays, land clearance and other one-time land preparation costs, personal expenses, G&A expenses and interest expenses.

Respondent also asserts that it is not appropriate to capitalize costs of materials that are consumed in less than one year. These types of expenses

normally are not capitalized under generally accepted accounting principles and it is often impossible to separate the amounts spend on kiwifruit from those spent on other productive crops. The labor required in the early stages is minimal until the vines are nearly at the productive stage. Land-clearance costs should not be considered a capitalized cultivation expense, since these costs permanently enhance the value of the non-depreciable land. The personal expenses of the growers, such as auto and house depreciation and interest expenses related to the mortgage, do not represent a true cost of producing kiwifruit, but are merely a tax break given to New Zealand farmers. G&A expenses are normally expensed in the year incurred.

Finally, respondent argues that the California capitalized cultivation costs are vastly greater (on average, twice that reported by New Zealand) than those attributable to the New Zealand kiwifruit industry and should not be used as BIA by the Department in its final determination. The Department should take into account the nature of the industry and not penalize the Board because some growers lacked sophisticated accounting histories.

DOC Position: We do not agree with petitioner that the highest reported establishment cost is the appropriate BIA when the Department discovered unreported establishment costs. We also do not agree with respondent that the initial investment has an indefinite useful life and should be completely attributed to the value of the land. The specific costs of developing the orchard are not costs which necessarily increase the value of the land. They relate to establishing a kiwifruit orchard and should be recovered during the life of that kiwifruit orchard. Nor should all of the "consumable" expenses be excluded from the calculation since these are real costs to the enterprise which must be recovered within a reasonable period of time.

We calculated an average per-hectare capitalized cultivation cost based on the verified data of those growers who established their orchards and had complete financial information regarding capitalized cultivation costs (*i.e.*, growers, 3, 4, 7, 8, 9, 10, 16, and 19). For those growers who purchased established orchards and could not determine the value of the orchard or whose prior year financial records do not lend themselves to this calculation, the average cost per hectare was used as BIA. This average per-hectare cost was then applied to growers, 1, 2, 5, 12, 13, and 14 according to their size. The calculation includes all costs incurred by the farm during those years prior to the first harvest, offset by revenue received and including general expenses. These costs have been incurred in raising the kiwifruit vines to a productive level and cannot be recovered until a crop is harvested.

Comment 3: Petitioners dispute the use of a 40-year life over which to amortize capitalized cultivation costs. Petitioners contend that the cost of the support structures and the shelter belts should be amortized over the actual useful life of these assets, not the purported useful life of the kiwifruit vine. Petitioners insist that a 40-year useful life of kiwifruit vines is insupportable and should be disregarded, stating that there is little experience with an actual life that long and repsondents had no documented records of productive vines dating that far back. Furthermore, kiwifruit production in New Zealand has become so unprofitable for many farms that vineyards are being pulled out to enable the land to be used for other purposes.

Respondent argues that capitalized cultivation costs must be allocated over a minimum of 45 years. Respondent contends that the Department cannot rely upon New Zealand GAAP or tax law because all such costs are expensed in the year incurred. A properly maintained orchard may, in fact, have an indefinite useful life, and capitalized cultivation costs should not be expensed at all because the value of the land has been permanently enhanced. Respondent supports its claim for a 45-year life in two ways: (1) Representatives of the Department visited an orchard which had been established in 1946, and (2) the U.S. International Trade Commission (ITC) stated that the useful life of an orchard is at least 50 years.

DOC Position: We continue to base our calculations on a 20-year life, as we did in our preliminary determination. This estimate of a kiwifruit vine's productive life is based upon an article entered into the record July 12, 1991, regarding kiwifruit production in California. The article states that "[m]ost vines are expected to be productive [for] 20 years * * *." Beutel, J.A., *Kiwifruit Production in California*; Family Farm Series: 1–6, University of California, Davis, California. (January 1989).

Generally accepted accounting principles call for the amortization and recovery of costs over the "expected productive life" of the asset. Respondent's argument for a 40- or 45-year life is based upon an anecdotal account of the age of the vines in one orchard in new Zealand. Respondent was not able to provide documentation as to the age of the vines during our visit to this orchard. The International Trade Commission's mention of a lifespan of "up to" (not at least) 50 years references a NZKMB-affiliated publication, not an independent authority. Therefore, the most reliable information on the record suggests that the "expected productive life" of a kiwifruit orchard is 20 years.

Comment 4: Petitioners maintain that the purchase price must reflect the orchard's total value and a portion of the purchase price should be allocated to the capitalized cultivation costs. Petitioners consider respondent's assertion that they were unable to establish the portion of the purchase price attributable only to the orchard completely implausible.

Respondent argues that those growers who purchased existing orchards did not incur any such capitalized cultivation expenses. If the land was purchased with debt, capitalized cultivation costs are captured in the form of higher interest costs. If the land was purchased with cash, any capitalized cultivation costs are included in the value of the land, which is a non-depreciable asset. If the Department were to impute such costs on current owners, it would be double counting the value of assets which are already accounted for either in terms of equity or loans.

DOC Position: We disagree with respondent that these growers who purchased existing orchards did not incur any orchard cultivation costs. These costs are an integral part of the purchase price of the property. Orchard cultivation costs are not included in interest expense, nor are all cultivation costs considered to be all nondepreciable permanent enhancements of the land. (See DOC position to Grower-Wide Comment 2, Cost of Production Comments.) For those growers who purchased an established orchard and were unable to determine the portion of the purchase price attributable to the orchard value, we used as BIA the average capitalized cultivation cost per hectare calculated from growers with verifiable data.

Comment 5: Petitioners believe that the allocation of most general expenses on the basis of area is not appropriate. Because most of these expenses often bear no relationship to farm area, it is more appropriate to allocate costs based on the cost of sales. Additionally, where the property is used solely for the production of kiwifruit, allocating costs to unproductive areas improperly diminishes these costs. Petitioners

assert that, to the extent that cost of sales for some growers may be unknown, general expenses can be directly related to kiwifruit by basing the allocation on kiwifruit revenue.

Respondent contends that the allocation of costs on the basis of area is the best and most reasonable method for apportioning costs among different products. A number of costs do vary by area, such as tax rates, interest, fuel, some machinery costs, and common current cultivation expenses if the grower has multiple orchard products.

DOC Position: We agree with petitioners. However, with respect to respondent's argument, fuel, machinery, and common current cultivation expenses were not included in general expenses. As to general expenses, allocating these costs over area causes them to be disproportionately allocated to other products or to non-productive areas. G&A costs are general expenses of the company which must be reported in the year incurred. The Department has allocated these expenses to all products based on cost of sales. In this manner, the Department can best determine whether all costs have been recovered by the revenues generated.

Comment 6: Petitioners argue that the business use of personal residences or cars is usual for growers in New Zealand, and represents general and administrative expenses which should be included in the cost of production.

Respondent argues that the personal expenses reflected in the tax accounts resulted from New Zealand tax law considerations which allow farmers to deduct up to 25 percent of a number of personal expenses from farm income in calculating their income taxes. Respondent contends that in no instance did a grower have as much as 25 percent of the personal house used exclusively for business. Generally, the kitchen table served as the office. Therefore, it would be wholly unfair and distortive of the true costs for the Department to impute a "fair market value" for the use of personal possessions which cause the business no actual costs. For the final determination, the Department should include only actual costs which are incurred in kiwifruit activities.

DOC Position: We did not include these expenses in the COP. Based upon our observations at verification, the growers use their personal residence only for keeping the books and records of the farm. Usually the kitchen table is used and, in fact, that is where most of the verifications took place. With respect to their personal cars, most growers had trucks or other vehicles which were used exclusively by the farm, the costs of which were included in COP. The usage of the family vehicle for business purposes amounts to no more than running errands—going to the accountant, the post office, etc. In any event, the business use of the residence and the personal cars is much less than the 25 percent deduction allowed by New Zealand tax law. Because the actual business use of these assets appears to be minute, we will not include these expenses in the COP.

Comment 7: Petitioners contend that the productive area used by respondent as a basis for allocation was under-reported because the access areas that surround orchards (headlands and sidelands) were not included in the total productive area. Petitioners believe that the use of land area results in inaccurate allocations and that the cost of sales is the most appropriate allocation method. However, if the Department continues to use productive area, the headlands, sidelands and the shelter belt areas should be included.

Respondent maintains that, if the headlands and sidelands are included in productive area, the same consideration must be given for comparable areas needed for other crops, such as the wastelands needed for fence rows, streams and boundaries of a grazing operation. In summation, all agriculture-related costs must be allocated over productive hectares, or all costs must be allocated on productive and non-productive hectares.

DOC Position: Because G&A and interest expenses were calculated as a percentage of cost of sales, the effect of excluding the headlands and sidelands from productive area is immaterial for the remaining overhead costs which were allocated based on productive area. Therefore, we are not adjusting the reported productive area.

Comment 8: Respondent argues that, should the Department decide to use actual unrelated manager salaries as obtained at verification, it must make an adjustment for the size of the orchard. Respondent substituted a nationwide measurement of the market rate for kiwifruit labor for the grower labor costs in its financial statements, because these costs typically bear no relationship to the commercial value for such services and most of the managers are also the owners. If owner labor as reported in the financial statements is used, it must be used for all growers, even those whose actual wages were less than that reported in the Board's response.

Petitioners argue that the Department should use actual farm manager wages wherever possible in its COP calculation. Petitioners consider respondent's argument that wages paid are based on tax consideration as conjectural and unverifiable. *DOC Position:* We are using the actual unrelated farm manager salaries calculated on a per-hectare basis. This figure was then used as a surrogate management cost for those growers whose farm managers are also related parties. The cost per farm was then calculated based upon the size of each farm and one manager per farm. This calculated cost more closely represents the actual farm manager wagers paid in New Zealand, adjusted for the relative size of each farm. Also, we valued related-party non-management labor based upon the minimum wage rates for orchard workers in new Zealand established under the New Zealand Labour Relations Act.

Comment 9: Respondent argues that, according to the CIT's ruling in *Ipsco, supra*, the Department is required to allocate costs to different grades on the basis of sales value. Respondent contends that the Department cannot reject an allocation of average costs to reflect differences in commercial value on the grounds that cost differences among grades cannot be quantified. Respondent maintains that the kiwifruit case is precisely the same as *Ipsco*, and it is clear that larger-size fruit have higher commercial values than smaller-size fruit. The Department should either allocate average costs on the basis of value, or compare average prices to average costs.

Petitioners argue that the cost of producing kiwifruit is identical for all count sizes. Fruit spanning the entire range of count sizes can be produced on a single kiwifruit vine. Petitioners also refute the *Ipsco* ruling stating that the case involved sales of prime quality products and of limited service co-products of lesser quality. In this case, all of the merchandise is of the same export quality. Therefore, there is no justification for allocating costs across to fruit sizes. *DOC Position*: Since there was no firm correlation between fruit size and net price, we did not have to determine whether to allocate costs according to fruit sizes.

Grower-Specific Comments

Grower 1

Comment 1: Respondent argues that the interest expenses associated with loans from an owner should be excluded from COP in accordance with Department policy.

Petitioners argue that any interest expenses that were necessary to produce kiwifruit should properly be included in the cost of production. *DOC*

Position: We agree with petitioners. There was no evidence that the interest rate on the related-party loan did not reflect market interest rates; therefore, we included the interest expense in the COP.

Grower 2

Comment 1: Petitioners assert that, because the growers sold kiwifruit grown on the property during the period of investigation, some portion of the purchase price of the property should be allocated to the value of the kiwifruit orchard, despite the grower's original intention to use the land as a housing development. The fact that the grower purchased the property for its potential value for housing development is irrelevant to the question of what should be included in the COP.

Respondent contends that the grower purchased the land solely for its potential as a residential site, and paid nothing for the existing orchard. Because no capitalized cultivation costs were incurred by this grower, either directly or indirectly, the Department has no basis to assign capitalized cultivation costs to this grower. *DOC Position:* We used the BIA capitalized cultivation cost for this grower. The fact that the grower intended to use the land for residential development is not relevant. It was evident at verification that this grower did not know when he might be able to start subdividing the land into individual plots and that this grower may continue harvesting kiwifruit for several years.

Grower 3

Comment 1: Petitioners assert that the cost related to labor hours not reported in the submission should be added to the COP. They state that labor is required to operate any farm, and the COP should contain an adequate labor component regardless of how the grower handles this element.

Respondent contends that part-time labor costs should not be imputed for this grower because the owners held other full-time jobs. The Department should not impute "fair market values" for costs which were not incurred. *DOC Position:* We included an imputed amount for related-party non-management labor (see Grower-Wide Comment 8). In previous cases where labor has been performed by owners or other related parties and for which no costs were incurred, the Department has included a fair market value for related-party labor (see *Canadian Potatoes* and *Final Determination of Sales at Less Than Fair Value: Certain Red Raspberries from Canada* (50 FR 19768 (1985)).

Grower 4

Comment 1: Petitioners argue that the grower's statement regarding the amount of time which the owners worked on the farm was a crude estimate which could not be verified. Petitioners contend that the amount of family labor is likely to be understated, rather than overstated as purported by respondent.

Respondent argues that it supplied documents at verification which indicated that one of the two owners had a full-time job elsewhere during the POI. Therefore, only the cost of one full-time manager should be included in COP.

DOC Position: Based upon our findings at verification, we determined that the inclusion of two full-time managers was an overstatement by the grower. Therefore, we have included the cost of only one full-time manager and one non-management worker in accordance with our methodology adopted for related-party wages.

Grower 5

Comment 1: Petitioners contest respondent's claim that interest expense was unrelated to kiwifruit production because it resulted from the failure of original financing plans in the purchase of the orchard. Petitioners contend that the full amount of the interest expense should be included in COP.

Respondent argues that the interest expenses related directly to the unexpected delays associated with the sale of the old property and were unrelated to the financial costs associated with running the orchard.

DOC Position: We did not include this interest expense in the COP because it specifically related to the sale of this grower's personal residence. The grower incurred this interest directly as a result of the buyer's failure to complete the contract.

Comment 2: Petitioners argue that certain costs, including advisory fees, which the grower claimed should be capitalized, were necessary to make the vineyard operable and thus should be included in the COP. They state that restoration costs cannot be equated with capitalized cultivation costs because this orchard was productive immediately. Furthermore, comparison with the following year's expenses, as respondent has proposed, may not serve as an adequate basis for a normal year's costs.

Respondent argues that, if prior year capitalized cultivation costs are included in the current year costs for other growers, then the restoration costs incurred by this grower, which were far greater than normal cultivation and maintenance costs, should be amortized over the same period.

DOC Position: We agree with respondent. The restoration costs were incurred in order to return the orchard to an operable state and were considered to be capitalizable costs. Accordingly, we have allocated these costs over the same period, 20 years, as used in the amortization of capitalized costs.

Grower 7

Comment 1: Petitioners maintain that the grower should not be allowed to exclude any financial statement expenses as non-kiwifruit expenses, nor should any income from grazing operations be offset against the cost of production, because the grower's financial statement does not show that any non-kiwifruit costs were incurred.

DOC Position: We agree in part. Because the costs related to grazing operations could not be separately identified, these costs were included in the COP of kiwifruit. Accordingly, we allowed the grazing income as an offset to production costs.

Grower 10

Comment 1: Petitioners argue that the verified wages paid to the owners should be included in the COP. Petitioners state that the Department should not accept respondent's argument based on alleged tax motivations for determining the amount of wages to be paid to the owners.

DOC Position: We recalculated management wages based upon findings of actual cost obtained at verification. Additionally, we included the cost of one part-time non-management laborer because both the husband and wife work in the business.

Comment 2: Respondent argues that all interest expenses should not be included in the COP because the land has a value as an investment and the loans include amounts associated with construction of the residence.

Petitioners argue that land not used for producing kiwifruit was not used to produce any other crop; therefore, all of the business-related interest should be allocated to kiwifruit.

DOC Position: We agree with petitioner. This grower's only productive crop was kiwifruit and no information was provided regarding the amount of interest related to the personal residence. In accordance with the methodology adopted for all growers, we have calculated interest expense as a percentage of cost of sales.

Grower 11

Comment 1: Petitioners argue that interest expenses contained in the financial statements which were not included in COP should be included.

DOC Position: We disagree. The interest in question resulted from accruals on the grower's books which were ultimately reversed off the books and never paid. The original mortgage was for the purchase of the property, which included the personal residence, the kiwifruit orchard, and a deer farm. The mortgage company moved the majority of its investments off-shore, resulting in large foreign exchange losses which were passed through to the grower from the mortgage company by increasing the balance of the mortgages. Interest continued to accrue on this ever-increasing mortgage balance. The mortgage company agreed to a settlement with the grower for substantially less than the balance of the mortgage and accrued interest. In the year subsequent to the period of investigation, the grower's accountant recorded the settlement and write-off of the loan and the accrued interest. Those interest expense items which related to kiwifruit were included in the COP.

Grower 14

Comment 1: Petitioners contend that, because the grower's submitted costs were based on estimates that could not be verified, the Department should use as BIA the COP from the petition.

Respondent argues that this grower had to use estimates because it produced over eight different crops and maintained no separate costs accounting systems. The methodology used by the grower may indeed be the most accurate. Should the Department reject the response, it should allocate costs over area. Additionally, given the complete and thorough cooperation of this grower, there is no reason to use BIA.

DOC Position: We did not use the grower's submission because the estimates could not be reconciled to verifiable data. Therefore, in accordance with the methodology adopted for all growers, we allocated costs over area.

Grower 16

Comment 1: Petitioners state that certain costs excluded from the submission, such as the loss incurred on the sale of a car, insurance costs, and the part-time labor of a partner, should be added to the cost of production. They also argue that an offset to COP which was unrelated to current cost should not be allowed.

DOC Position: We included only those items which related to the current cost of producing kiwifruit, *e.g.*, the loss on the sale of the car, and the part-time labor of the partner.

Grower 19

Comment 1: Petitioners contend that interest income related to rental property does not appear to be related to kiwifruit production and should not be allowed as an offset.

Respondent contends that petitioners misunderstand the methodology used by this grower. Interest expense related to the mortgage on the residence, which is rented separately and is, thus, a separate business, was excluded from the COP of kiwifruit.

DOC Position: We do not agree with the petitioners. Because interest expense was calculated as a percentage of financial statement cost of sales, we allowed the interest income to be offset against interest expense.

Continuation of Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of fresh kiwifruit from New Zealand that are entered, or withdrawn from warehouse, for consumption on or after November 27, 1991, which is the date of publication of our preliminary determination in the **Federal Register**. The Customs Service shall require a cash deposit or bond equal to the estimated amount by which the FMV of the merchandise subject to this investigation exceeds the U.S. price, as shown below. This suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Producer/ manufacturer/ exporter	Weighted-average margin percentage	Critical circumstances
NZKMB	98.60	No.
All others	98.60	No.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. The ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry by May 26, 1992.

This determination is published pursuant to section 735(d) of the Act (U.S.C. 1673d(d)), and 19 CFR 353.20(a)(4).

Dated: April 10, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-8982 Filed 4-16-92; 8:45 am]

BILLING CODE 3510-DS-M

APPENDIX B

CALENDAR OF PUBLIC HEARING

CALENDAR OF PUBLIC HEARING

Those listed below appeared as witnesses at the United States International Trade Commission's hearing:

Subject	:	FRESH KIWIFRUIT FROM NEW ZEALAND
Inv. No.	:	731-TA-516 (Final)
Date and Time	:	April 14, 1992 - 9:30 a.m.

Sessions were held in connection with the investigation in the Main Hearing Room 101 of the United States International Trade Commission, 500 E Street, S.W., Washington, D.C.

In Support of Imposition of
Antidumping Duties:

McDermott, Will & Emery
Washington, D.C.
On behalf of

Bruce P. Malashevich, Economic Consulting Services, Inc.

Mark R. Houston, President,
Ad Hoc Committee for Fair Trade,
California Kiwifruit Commission

Gary Suthers, President, AG Associates, and Chairman, California Kiwifruit Commission

Thomas Schultz, President,
Chase National Kiwi Farms, Marysville, CA

Pat Sanguinetti, President, Blue Anchor, Inc.,
Sacramento, CA

Doug Wilson, President, Wil-Ker-Son Ranches

Bruce L. McAbee, Vice President,
Production Credit Association

Don Love, Executive Vice President, Finance, AG Associates

Ashley Grant Stirrup, Staff Economist, ECS

David Chapman, Trade Specialist, McDermott, Will & Emery

Carolyn B. Gleason)
)--OF COUNSEL
David J. Levine)

In Opposition to the Imposition of
Antidumping Duties:

Baker & Hostetler
Washington, D.C.
On behalf of

Bruce Honeybone, Chairman,
New Zealand Kiwifruit Marketing Board
Auckland, New Zealand

Hillary Brick, Vice President, Marketing,
New Zealand Fruit Company,
Vancouver, British Columbia

Gary Hammonds, Chief Executive Officer,
David Oppenheimer & Associates
Vancouver, British Columbia

Grant Hunt, Partner, Grant Hunt & Company,
Oakland, California

Harold Alston, Vice President, Sales and Procurement,
Stop & Shop, Boston, Massachusettes

Andrew Wechsler, Principal and Managing Director,
Law & Economics Consulting Group, Incorporated
Washington, D.C.

Bruce Northey, Secretary, New Zealand Kiwifruit Marketing Board

Pieter van Leeuwen, Senior Economist, Law & Economics Consulting
Group, Inc.

Maureen Rosch, Senior Economist, Law & Economics Consulting
Group, Inc.

Shirley A. Coffield)
)--OF COUNSEL
John C. Lindsey)

APPENDIX C

DISCUSSION OF STATISTICAL METHODOLOGY AND PRESENTATION OF 95 PERCENT CONFIDENCE INTERVALS

Description of Statistical Methodology

In an effort to compile representative data on the domestic kiwifruit industry without sending a questionnaire to each grower, the Commission used a stratified random sample. Based on a list of 633 kiwifruit growers supplied by the CKC, a list of 572 growers was obtained by eliminating duplicate names and addresses. These growers were ranked by reported kiwifruit production in 1990/91; they reported total production of 9,048,903 tray equivalents, with production for individual growers ranging from less than 100 to almost half a million. Using optimum allocation techniques, these growers were divided into three strata in order to minimize variability within each stratum and the number of growers to be selected from each of the strata was determined; individual firms to be included within the sample were then selected randomly. The number of growers included, total reported production for all growers, the production range, and the sample size for each of the three strata are presented below:

Strata	Number of growers	Total production	Strata production range	Sample size
1.....	32	4,317,752	49,001-490,000	32
2.....	107	2,798,690	14,701- 49,000	64
3.....	433	1,932,461	40- 14,700	108
Total..	572	9,048,903	40-490,000	204

Responses containing usable data for at least some portion of the questionnaire were received from 119 (58.3 percent) of these growers, with 26 responses from members of the first stratum, 39 from the second, and 54 from the third. Projection techniques were then used to derive estimates for the entire population based on these sample responses. The tabulation below shows the number of responses, reported total, projected figure for the total population, and the width of the associated confidence interval (at the 95 percent level of confidence) for selected key variables for which projected data are presented in the report:

Variable	Number of responses	Sample total	Projected total	Confidence limit (@95%)
Kiwifruit acreage:				
1988/89....	106	2,606	6,707	+/- 721
1989/90....	109	2,881	6,926	+/- 722
1990/91....	112	2,958	6,842	+/- 683
1991/92....	117	2,954	6,465	+/- 718
Kiwifruit production (tray equiv.):				
1988/89....	106	2,606	6,707	+/- 721
1989/90....	109	2,881	6,926	+/- 722
1990/91....	112	2,958	6,842	+/- 683
1991/92....	117	2,954	6,465	+/- 718

Kiwifruit production (tray equiv.):				
1988/89....	104	3,594,516	7,825,301	+/- 839,953
1989/90....	108	4,854,915	10,190,798	+/- 1,012,095
1990/91....	112	5,046,186	10,194,875	+/- 984,807
1991/92....	105	3,958,206	8,047,997	+/- 996,943
Number of FPTWs:				
1988/89....	99	1,816	6,255	+/- 1,378
1989/90....	103	1,984	6,157	+/- 1,317
1990/91....	104	1,936	5,778	+/- 1,375
Hours worked by FPTWs:				
1988/89....	99	320,982	957,491	+/- 168,000
1989/90....	103	398,710	1,057,988	+/- 186,453
1990/91....	103	380,967	995,356	+/- 168,730
Total compensation paid to FPTWs (dollars):				
1988/89....	102	2,135,695	4,826,298	+/- 921,168
1989/90....	107	2,639,733	5,498,901	+/- 1,011,140
1990/91....	109	2,622,585	5,306,594	+/- 951,715
Gross sales ($1,000):				
1988/89....	85	15,101	38,458	+/- 5,457
1989/90....	85	18,129	45,753	+/- 5,664
1990/91....	85	18,569	44,652	+/- 5,544
Net loss before income taxes and officer/partner salaries ($1,000):				
1988/89....	85	2,641	7,349	+/- 3,379
1989/90....	85	2,938	7,886	+/- 3,246
1990/91....	85	1,783	5,680	+/- 2,967
Gross trays packed (1,000 tray eq.):				
1988/89....	85	2,910	7,452	+/- 1,071
1989/90....	85	3,915	10,005	+/- 1,249
1990/91....	85	4,190	10,208	+/- 1,265
Capital expenditures ($1,000):				
1988/89....	58	413	2,013	+/- 1,197
1989/90....	58	1,689	5,120	+/- 5,780
1990/91....	58	1,995	4,976	+/- 3,722

APPENDIX D

IMPACT OF IMPORTS ON CAPITAL AND INVESTMENT

GROWERS

Comments on Unusual and Nonrecurring Events

Growers were requested to check a list of unusual or nonrecurring events and specify other non-listed events which resulted in additional expenses or loss of income during the period of investigation. Only 21 growers responded, indicating the following unusual or nonrecurring items:

Weather damage (frost, wind, heavy rain, drought, etc.)	12
Replanting and pruning of weather damaged vineyards	5
Plant diseases	3
Start-up or shut-down expenses	6
Material effects of a strike, lack of labor, or other operational difficulty	2
Planting new vines on new land	1
Filing for bankruptcy	1

Impact of Imports on Capital and Investment

The Commission requested growers to describe and explain the actual and anticipated negative effects, if any, of imports of kiwifruit from New Zealand on their growth, investment, ability to raise capital, or existing development and production efforts.

Actual Negative Effects

Of the 134 responding growers, 8 growers stated that they experienced no actual negative effects of imports of kiwifruit from New Zealand on their operations. The kiwifruit operations of most of these 8 growers accounted for a small percentage of their total operations. The growers were asked to indicate negative effects for specific items and to describe other negative effects not specifically listed. The number of growers indicating actual negative effects caused by imports, by item, is as follows:

Cancellation or rejection of expansion projects	34
Increase in debt obligations	28
Reduction in the size of capital investments	27
Rejection of bank loans for current operations	19
Lowering of credit rating	18
Obtaining other or additional employment	15
Selling of assets to pay debt obligations	12
Rejection of bank loans for long term financing	11
Capitalization of operating losses	10
Denial or rejection of investment proposal	8
Obtaining FmHA emergency disaster loans	2
Filing for bankruptcy	1

Other actual negative impacts described by growers are summarized below. Most of the growers stated that, in the past, they have sold kiwifruit in competition with New Zealand kiwifruit during the overlapping portion of their seasons. Each year that period of overlap has become longer as the total size of the New Zealand crop increased. New Zealand operates a single-desk selling

system which enables New Zealand to keep the market price at a relatively high level during its season. As California kiwifruit comes on the market around November, New Zealand lowers its price of kiwifruit. This price reduction slows down shipments of domestic product during November to February and increases the cost of repacking and cold storage for U.S. growers and increases repack losses, which results in lower net returns and net losses. Lower returns have caused renegotiation and extension of some operating loans, severe cash flow problems, and extreme difficulty in obtaining financing for crop year 1991/92. Short-term and long-term institutional financing is often unavailable.

Other items mentioned by the growers included the following: Negative cash flow and losses financed by family members, other crops' returns, and rental income; value of land dropped drastically; losses or lower net returns in last 3 years because of low prices; kiwifruit returns insufficient to warrant capital investment and time investment; did not replace missing vines; cut expenses to save money; cost more to borrow due to not paying loan in time; long range plans have been put on hold due to low prices; curtailing kiwifruit production; reduced farm equity due to losses; spent personal retirement savings including IRA funds, stock accounts, and a loan against personal residence due to rejection by bank for operational expenses; mental anguish after 23 years of developing kiwifruit industry; lower prices of New Zealand kiwifruit at the end of their season to drive California growers out of business; scaled back normal capital expenditures; capital investment only for survival of existing vineyards; unable to find replacement financing due to negative returns and increased debt; forced to enter into protection of chapter 11 bankruptcy; due to non-existent profits, pulled out some vines to cut losses; returns per tray decreasing year after year; our selling season changed from traditional November through May to now March through May; unable to harvest entire crop due to weak market conditions and lost 25,000 trays valued about $35,000; bank refused to renew loans because it lost confidence in kiwifruit growers due to some foreclosures; lost management of 50 acre vineyard and nobody is planting any new vineyards; no longer producing kiwifruit, smaller size kiwifruit given away to charity; can't pay for new well for irrigation; 2/3 of my crop was sold as of January 15, 1992, whereas there were not any buyers for domestic kiwifruit in 1990 at a reasonable price.

Anticipated Negative Effects

Only one grower anticipated no negative impact of imports of kiwifruit from New Zealand. Most of the growers stated that, as long as New Zealand growers have the capability to profitably sell fruit between May and November and then market remaining inventories at below cost, there is no future for California producers. Other comments are summarized as follows. New Zealand kiwifruit selling at low prices longer into the U.S. growers' season raises post-harvest costs of cold storage and repacking and increases repack losses. The percentage of crop moved from November through February has declined significantly because of New Zealand dumping activities. Kiwifruit is sold at lower prices to compete, causing substantial economic losses for 1989/90 and 1990/91 crop years. Due to the filing of the antidumping petition, there has been some improvement in price and movement. The financial sources have noted this and their confidence depends on the outcome of this petition. If the grower cannot receive a fair price for their kiwifruit due to unfair New

Zealand marketing polices, they will not be able to continue in the kiwifruit industry. If forced to cease operations, the economic impact would be devastating to growers and to their employees. If growers' returns do not improve, most of the growers will be out of business next year.

Other summarized comments provided by the growers included: Hold plans to expand farming operations; at this time, many growers have abandoned their vineyards; did not do trellis maintenance; cutting basic expenses will show up in future years crop; cost cutting measures were implemented to stem the losses; funded kiwifruit operations from salaries of regular job; diminish other resources to cover kiwifruit losses due only to imports; forced to give up and quit; prices do not allow recovery of even cultural cost of crops; in 1985, the return was about $3.00 per tray whereas in 1991, return was $1.50 per tray; can't afford to change to another crop; if current trend continues, will not be able to survive; unable to upgrade equipment and ranch property because of rejection of bank loan; land values in 1988 were at $13,000-$15,000 per acre, current prices have fallen to $3,500-5,000 per acre due to high losses in kiwifruit operations; New Zealand has not been able to sell all of its kiwifruit profitably around the world for years and has thus adopted a predatory pricing structure designed to buy market share and force other growers out of the industry, which they will then monopolize.

PACKERS, COLD STORERS, AND HANDLERS

Impact of Imports on Capital and Investment

The Commission requested the packers, cold storers, and handlers to describe and explain the actual and anticipated negative effects, if any, of imports of kiwifruit from New Zealand on their growth, investment, ability to raise capital, or existing development and production efforts.

*** reported "No" to both actual and anticipated negative effects of imports of kiwifruit from New Zealand. Other responses are presented below.

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APPENDIX E

AGGREGATE PURCHASE PRICE AND QUANTITY DATA OF U.S. PURCHASERS

Table E-1
Weighted-average net f.o.b. prices for purchases of kiwifruit in trays reported by purchasers and margins of underselling (overselling) on a per-tray and a per-piece basis, by months, October 1989-December 1991

Month	United States			New Zealand			Margins	
	Price		Total quantity	Price		Total quantity		
	Tray	Piece	Trays	Tray	Piece	Trays	Tray	Piece
							-----Percent---	
1989:								
Oct....	$6.98	$0.18	2,286	$8.53	$0.24	3,605	(22.3)	(33.3
Nov....	6.21	.17	18,528	6.15	.17	9,678	1.0	0.0
Dec....	6.03	.16	23,336	6.67	.20	13,599	(10.6)	(25.0
1990:								
Jan....	5.62	.16	50,232	6.02	.18	69,168	(7.1)	(12.5
Feb....	4.75	.13	97,012	5.99	.20	44,373	(26.1)	(53.8
March..	4.67	.12	96,375	5.98	.19	10,120	(27.9)	(58.1
April..	4.99	.13	151,048	6.14	.16	8,435	(22.9)	(23.1
May....	5.99	.16	96,170	6.80	.18	6,753	(13.4)	(12.5
June...	6.00	.17	20,412	6.75	.18	15,817	(12.5)	(5.9
July...	5.82	.18	2,395	6.69	.18	17,161	(15.0)	0.0
Aug....	(1)	(1)	(1)	6.39	.17	33,123	(2)	(2)
Sept...	(1)	(1)	(1)	6.40	.17	25,678	(2)	(2)
Oct....	5.53	.14	4,443	6.33	.17	13,759	(14.5)	(21.4
Nov....	5.30	.14	5,040	5.21	.14	44,432	1.7	0.
Dec....	5.56	.15	19,990	4.64	.13	38,430	16.6	13.3
1991:								
Jan....	5.47	.14	81,318	4.32	.13	125,113	21.1	7.1
Feb....	5.56	.15	119,833	4.22	.13	48,875	24.1	13.3
March..	5.70	.15	85,333	5.36	.18	180	6.0	(20.0
April..	6.27	.18	121,843	5.49	(1)	(1)	12.4	(2)
May....	5.95	.16	89,424	6.39	.18	21,425	(7.4)	(12.5
June...	5.66	.15	2,259	7.06	.20	51,145	(24.7)	(33.3
July...	7.75	.18	844	7.34	.19	21,354	5.3	(5.6
Aug....	(1)	(1)	(1)	7.14	.18	30,379	(2)	(2)
Sept...	(1)	(1)	(1)	6.71	.17	39,553	(2)	(2)
Oct....	7.40	.21	1,125	6.89	.18	33,550	6.9	14.3
Nov....	6.49	.18	14,799	6.86	.18	24,380	(5.6)	0.0
Dec....	6.77	.18	15,460	6.63	.18	35,846	2.1	0.0

[1] Pricing data not reported.
[2] Margins not calculated.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Table E-2
Weighted-average net f.o.b. prices for purchases of kiwifruit in volume-fill containers reported by all purchasers and margins of underselling (overselling) on a per-volume fill basis and a per-piece basis, by months, October 1989-December 1991

	United States Price			New Zealand Price			Margins	
Month	Case	Piece	Total quantity Cases	Case	Piece	Total quantity Cases	Case	Piece
							-----Percent---	
1989:								
Oct....	([1])	([1])	([1])	$17.75	$0.15	1,296	([2])	([2])
Nov....	$17.38	$0.15	3,739	17.75	.15	1,164	(2.1)	0.0
Dec....	13.09	.11	4,806	([1])	([1])	([1])	([2])	([2])
1990:								
Jan....	11.20	.10	8,008	([1])	([1])	([1])	([2])	([2])
Feb....	11.20	.10	8,819	([1])	([1])	([1])	([2])	([2])
March..	12.75	.12	1,995	([1])	([1])	([1])	([2])	([2])
April..	13.35	.10	528	([1])	([1])	([1])	([2])	([2])
May....	14.00	.10	25	16.00	.13	144	(14.3)	(30.0)
June...	([1])	([1])	([1])	16.37	.14	8,770	([2])	([2])
July...	([1])	([1])	([1])	16.09	.14	10,152	([2])	([2])
Aug....	([1])	([1])	([1])	15.86	.13	7,718	([2])	([2])
Sept...	([1])	([1])	([1])	15.94	.13	5,350	([2])	([2])
Oct....	13.42	.11	198	15.58	.14	8,403	(16.1)	(27.3)
Nov....	12.61	.10	1,122	15.40	.13	3,939	(22.1)	(30.0)
Dec....	13.44	.12	1,536	14.11	.13	3,730	(5.0)	(8.3)
1991:								
Jan....	11.93	.10	3,695	8.00	.06	132	33.0	40.0
Feb....	12.20	.11	13,812	([1])	([1])	([1])	([2])	([2])
March..	13.80	.12	16,067	([1])	([1])	([1])	([2])	([2])
April..	14.11	.12	1,122	([1])	([1])	([1])	([2])	([2])
May....	17.08	.14	1,377	18.50	.17	1,152	(8.3)	(21.4)
June...	18.50	.16	660	18.32	.17	18,899	1.0	(6.3)
July...	([1])	([1])	([1])	19.60	.17	11,958	([2])	([2])
Aug....	([1])	([1])	([1])	18.25	.16	8,534	([2])	([2])
Sept...	([1])	([1])	([1])	17.09	.16	8,364	([2])	([2])
Oct....	([1])	([1])	([1])	14.29	.13	7,642	([2])	([2])
Nov....	16.01	.14	3,102	21.00	.18	414	(31.1)	(28.6)
Dec....	16.89	.17	5,097	21.00	.18	354	(24.3)	(5.9)

[1] Pricing data not reported.
[2] Margins not calculated.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Table E-3
Weighted-average net f.o.b. prices for purchases of kiwifruit in tri-layer/tri-pack containers reported by all purchasers and margins of underselling (overselling) on a per-container and a per-piece basis, by months, October 1989-December 1991

Month	United States Price			New Zealand Price			Margins	
	Tri-layer/ tri-pack	Piece	Total quantity Tri-packs	Tri-layer/ tri-pack	Piece	Total quantity Tri-packs	Tri-layer/ tri-Pack	Piece
							-----Percent---	
1989:								
Oct....	$17.80	$0.14	120	$16.13	$0.14	12,717	9.4	0.0
Nov....	(1)	(1)	(1)	19.38	.17	2,910	(2)	(2)
Dec....	(1)	(1)	(1)	(1)	(1)	(1)	(2)	(2)
1990:								
Jan....	14.27	.14	4,421	(1)	(1)	(1)	(2)	(2)
Feb....	10.76	.09	5,810	(1)	(1)	(1)	(2)	(2)
March..	13.12	.12	3,614	(1)	(1)	(1)	(2)	(2)
April..	14.11	.12	694	(1)	(1)	(1)	(2)	(2)
May....	18.60	.16	918	(1)	(1)	(1)	(2)	(2)
June...	(1)	(1)	(1)	17.09	.15	34,341	(2)	(2)
July...	(1)	(1)	(1)	17.03	.15	44,412	(2)	(2)
Aug....	(1)	(1)	(1)	17.43	.15	34,523	(2)	(2)
Sept...	(1)	(1)	(1)	13.56	.11	106,537	(2)	(2)
Oct....	15.50	.14	1,386	13.79	.12	72,330	11.0	14.3
Nov....	16.21	.13	462	17.05	.15	38,029	(5.2)	(15.4)
Dec....	14.58	.13	1,854	17.87	.18	21,556	(22.6)	(38.5)
1991:								
Jan....	10.92	.09	10,861	(1)	(1)	(1)	(2)	(2)
Feb....	11.07	.09	7,650	11.50	.09	132	(3.8)	0.0
March..	13.09	.11	19,814	(1)	(1)	(1)	(2)	(2)
April..	15.41	.13	11,028	(1)	(1)	(1)	(2)	(2)
May....	16.50	.14	4,427	18.50	.17	1,452	(12.2)	(21.4)
June...	(1)	(1)	(1)	18.21	.16	21,588	(2)	(2)
July...	(1)	(1)	(1)	18.82	.16	47,367	(2)	(2)
Aug....	(1)	(1)	(1)	18.12	.16	33,349	(2)	(2)
Sept...	(1)	(1)	(1)	16.66	.14	52,272	(2)	(2)
Oct....	18.50	.15	96	17.22	.15	47,926	6.9	0.0
Nov....	16.91	.14	2,647	17.10	.15	27,185	(1.1)	(7.1)
Dec....	17.56	.16	4,059	(1)	(1)	(1)	(2)	(2)

[1] Pricing data not reported.
[2] Margins not calculated.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.