

# **FRESH KIWIFRUIT FROM NEW ZEALAND**

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

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Washington, DC 20436



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# C O N T E N T S

	<u>Page</u>
Determination.....	1
Views of the Commission.....	3
Additional views of Commissioner Seeley G. Lodwick.....	19
Information obtained in the investigation.....	A-1
Introduction.....	A-3
The product:	
Description.....	A-3
Production process.....	A-4
Uses.....	A-5
Substitute products.....	A-6
U.S. tariff treatment.....	A-6
The nature and extent of sales at LTFV.....	A-6
The U.S. market:	
Apparent U.S. consumption.....	A-6
U.S. producers.....	A-9
Growers.....	A-9
Packers and handlers.....	A-9
U.S. importers.....	A-11
Marketing considerations and channels of distribution.....	A-11
Consideration of material injury to an industry	
in the United States.....	A-12
U.S. kiwifruit acreage and production.....	A-13
U.S. producers' domestic and export shipments.....	A-13
U.S. producers' and U.S. importers' inventories.....	A-14
U.S. employment and wages.....	A-15
Financial experience of U.S. growers:	
Kiwifruit operations.....	A-16
Overall operations.....	A-18
Capital expenditures.....	A-18
Consideration of the question of threat of material injury.....	A-20
Ability of foreign producers to generate exports and the	
availability of export markets other than the United States.....	A-22
Consideration of the causal relationship between imports of the	
subject merchandise and the alleged material injury:	
U.S. imports.....	A-24
U.S. market shares.....	A-25
Prices:	
Market characteristics.....	A-26
Questionnaire price data.....	A-27
Price trends and price comparisons.....	A-28
Exchange rates.....	A-32
Lost sales and lost revenues.....	A-33
Appendix A - <u>Federal Register</u> notices.....	B-1
Appendix B - Witnesses appearing at the staff conference.....	B-5
Appendix C - Growers' questionnaire data.....	B-7
Appendix D - Packers'/handlers' questionnaire data.....	B-11

## CONTENTS

	<u>Page</u>
Tables	
1. Fresh kiwifruit: Apparent U.S. consumption, by months, January 1988-March 1991.....	A-7
2. Fresh kiwifruit: U.S. acreage and production, 1988-90.....	A-13
3. Fresh kiwifruit: U.S. producers' domestic and export ship- ments, 1988-90, January-March 1990, and January-March 1991....	A-14
4. Fresh kiwifruit: U.S. inventories of domestic production and of imports from New Zealand, by months, May 1989-March 1991...	A-15
5. Fresh kiwifruit: Employment data of U.S. growers, crop years 1987/88-1989/90.....	A-16
6. Income-and-loss experience of U.S. growers on their operations producing kiwifruit, fiscal years 1988-90.....	A-17
7. Income-and-loss experience of U.S. growers on the overall operations of their farms where kiwifruit is produced, fiscal years 1988-90.....	A-19
8. Value of assets and return on assets of U.S. growers' farms where kiwifruit is produced, fiscal years 1988-90.....	A-20
9. Fresh kiwifruit: New Zealand's bearing acres, production, and shipments, 1988-90 and projected 1991-92.....	A-22
10. Fresh kiwifruit: U.S. imports from New Zealand and all other sources, 1988-90, January-March 1990, and January-March 1991..	A-24
11. Fresh kiwifruit: U.S. imports reported by David Oppenheimer & Company, by months, May 1989-January 1991.....	A-25
12. Fresh kiwifruit: U.S. producers' shipments, U.S. imports, and apparent consumption, 1988-90, January-March 1990, and January-March 1991.....	A-25
13. Fresh kiwifruit packed in trays: Weighted-average net f.o.b. prices for sales to retailers and wholesalers reported by U.S. handlers and one importer and margins of underselling (overselling) for the New Zealand fruit, by specified months, April 1988-March 1991.....	A-29
14. Fresh kiwifruit packed in volume-fill containers: Weighted- average net f.o.b. prices for sales to retailers and wholesalers reported by U.S. handlers and one importer and margins of underselling (overselling) for the New Zealand fruit, by specified months, April 1988-March 1991.....	A-30
15. Exchange rates: Indexes of nominal and real exchange rates of the New Zealand dollar and indexes of producer prices in the United States and New Zealand, by quarters, January 1988-March 1991.....	A-33
C-1. Fresh kiwifruit: Certain salient data of U.S. growers, crop years 1987/88-1989/90.....	B-8
D-1. Kiwifruit: Certain salient data of packers/handlers, crop years 1987/88-1989/90 and October-March of 1989/90 and 1990/91.....	B-14
D-2. Income-and-loss experience of packers-only on their kiwifruit operations, fiscal years 1988-90, October-March 1989/90, and October-March 1990/91.....	B-15

## CONTENTS

## Tables--Continued

	<u>Page</u>
D-3. Income-and-loss experience of packers-only on the overall operations of their establishments wherein kiwifruit are packed, fiscal years 1988-90, October-March 1989/90, and October-March 1990/91.....	B-15
D-4. Income-and-loss experience of handlers-only on their kiwifruit operations, fiscal years 1988-90, October-March 1989/90, and October-March 1990/91.....	B-15
D-5. Income-and-loss experience of handlers-only on the overall operations of their establishments wherein kiwifruit are handled, fiscal years 1988-90, October-March 1989/90, and October-March 1990/91.....	B-15
D-6. Income-and-loss experience of packer/handlers on their kiwifruit operations, fiscal years 1988-90, October-March 1989/90, and October-March 1990/91.....	B-15
D-7. Income-and-loss experience of packer/handlers on the overall operations of their establishments wherein kiwifruit are packed/handled, fiscal years 1988-90, October-March 1989/90, and October-March 1990/91.....	B-15
D-8. Income-and-loss experience of packers, handlers, and packer/handlers on their kiwifruit operations, fiscal years 1988-90, October-March 1989/90, and October-March 1990/91....	B-15
D-9. Income-and-loss experience of packers, handlers, and packer/handlers on the overall operations of their establishments wherein kiwifruit are packed/handled, fiscal years 1988-90, October-March 1989/90, and October-March 1990/91.....	B-15
D-10. Value of assets and return on assets of kiwifruit packers/handlers, by types of firms, fiscal years 1988-90, October-March 1989/90, and October-March 1990/91.....	B-16
D-11. Capital expenditures of kiwifruit packers/handlers, by types of firms, fiscal years 1988-90, October-March 1989/90, and October-March 1990/91.....	B-16

Note.--Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report. Such deletions are indicated by asterisks.



UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation No. 731-TA-516 (Preliminary)

FRESH KIWIFRUIT FROM NEW ZEALAND

Determination

On the basis of the record<sup>1</sup> developed in the subject investigation, the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)), that there is a reasonable indication 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 are alleged to be sold in the United States at less than fair value (LTFV).

Background

On April 25, 1991, a petition was filed with the Commission and the Department of Commerce by the Ad Hoc Committee for Fair Trade of the California Kiwifruit Commission and individual California kiwifruit grower members of the Committee, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of fresh kiwifruit from New Zealand. Accordingly, effective April 25, 1991, the Commission instituted preliminary antidumping investigation No. 731-TA-516 (Preliminary).

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

Notice of the institution of the Commission's investigation and of a public conference 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 May 1, 1991 (56 F.R. 20023). The conference was held in Washington, DC, on May 15, 1991, and all persons who requested the opportunity were permitted to appear in person or by counsel.



## VIEWS OF THE COMMISSION

Based on the information obtained in this preliminary investigation,<sup>1</sup> we determine that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of fresh kiwifruit from New Zealand alleged to be sold at less than fair value.<sup>2</sup>

The Legal Standard in Preliminary Investigations

The legal standard in preliminary antidumping investigations is set forth in section 733(a) of the Tariff Act of 1930, as amended.<sup>3</sup> This section requires the Commission to determine whether, based on the best information available at the time of the preliminary determination, there is a reasonable indication of material injury to a domestic industry, or threat thereof, or material retardation of the establishment of an industry, by reason of the imports under investigation.<sup>4</sup>

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<sup>1</sup> We note that the postconference brief filed by respondent violated the double-spacing and page limit requirements of new Commission rule 207.15 (19 C.F.R. § 207.15, printed in 56 Fed. Reg. 11918, 11926, March 21, 1991), which went into effect on April 22, 1991. Respondent was permitted to file a revised brief, which also was not in complete compliance with the rule, in that no effort was made to withdraw or consolidate the extra pages of argument contained in exhibits. Because of the relatively recent change in the Commission rules to impose a page limitation, the Commission elected to accept respondent's refiled brief. In the future, however, Rule 201.15 will be strictly enforced.

We note further that, in its revised brief, respondent reduced the size of its footnotes to a very small pitch. The use of this pitch is not technically in noncompliance with the Commission Rule, but it does suggest creative efforts to skirt the page requirements. In promulgating the new rules, the Commission decided against specifying such minute details as type pitch. See 56 Fed. Reg. at 11921/2. If the parties to investigations continue to interpret the rules in the fashion displayed here, the Commission may reconsider whether it is necessary to police minor details of procedure.

<sup>2</sup> Material retardation of the establishment of an industry is not an issue in this investigation and will not be discussed further.

<sup>3</sup> 19 U.S.C. § 1673b(a).

<sup>4</sup> *Maverick Tube Corp. v. United States*, 687 F. Supp. 1569, 1573 (CIT 1988).

In American Lamb Co. v. United States,<sup>5</sup> the United States Court of Appeals for the Federal Circuit addressed the standard for preliminary determinations. The Court held that the reasonable indication standard requires more than a finding that there is a possibility of material injury or threat thereof, and that the Commission is to determine if the evidence obtained demonstrates that a reasonable indication exists. The Commission may render a negative preliminary determination only if "(1) the record as a whole contains clear and convincing evidence that there is no material injury or threat of such injury; and (2) no likelihood exists that contrary evidence will arise in a final investigation."<sup>6</sup>

#### Like Product

In determining whether there is a reasonable indication of material injury or threat thereof to a domestic industry, the Commission must make threshold factual determinations with respect to "like product" and "domestic industry." Section 771(4)(A) of the Tariff Act of 1930 defines the term "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. . . ."<sup>7</sup> "Like product" is defined 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 . . . ."<sup>8</sup>

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<sup>5</sup> 785 F.2d 994 (Fed. Cir. 1986).

<sup>6</sup> Id. at 1001.

<sup>7</sup> 19 U.S.C. § 1677(4)(A).

<sup>8</sup> 19 U.S.C. § 1677(10).

The imported product subject to these investigations is fresh kiwifruit from New Zealand. In the initiation notice, Commerce has defined this product as follows:

The product covered by this investigation is fresh kiwifruit. Processed kiwifruit, including fruit jams, jellies, pastes, purees, mineral waters, or juices made from or containing kiwifruit, are not covered under the scope of this investigation.<sup>9</sup>

Thus, the investigation covers only a raw agricultural product and not any product processed from the raw product.<sup>10</sup> Although several varieties of kiwifruit exist, all commercially-produced kiwifruit, including New Zealand and U.S. kiwifruit, is of the Hayward variety.<sup>11</sup> Thus, there is only one U.S.-produced product "like" the imports under investigation--Hayward variety fresh kiwifruit. Accordingly, we define the like product as fresh Hayward variety kiwifruit.

#### Domestic Industry

The statute defines the domestic industry as the "domestic producers as a whole of the like product, or those products whose output of the like product constitutes a major proportion of the total domestic production of the product."<sup>12</sup> Having defined the like product as fresh (Hayward variety) kiwifruit, we must determine whether the domestic industry should be defined to include only kiwifruit growers, or should be more expansive so as to include the packers and handlers as well. Petitioners support limiting the domestic industry to the growers, although petitioner notes that packers and

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<sup>9</sup> 56 Fed. Reg. 23273-74 (May 21, 1991).

<sup>10</sup> The statute defines "raw agricultural product" as "any farm or fishery product." 19 U.S.C. § 1677(4)(E)(iv).

<sup>11</sup> Commission Report at A-3.

<sup>12</sup> 19 U.S.C. § 1677(4).

handlers support the petition as well.<sup>13</sup> Respondent argues that packers and growers are each an integral part of the same domestic industry.<sup>14</sup>

The domestic industry definition turns essentially on the meaning of who contributes to the "collective output" of fresh kiwifruit production.<sup>15</sup> In previous investigations, the Commission has considered the scope of the domestic industry producing agricultural products, and has addressed the relationship between growers and packers of a product.<sup>16</sup> In most of the agricultural investigations raising domestic industry questions, however, we have explored whether the growers of a raw agricultural product should be included as part of the domestic industry that produces a processed or otherwise more advanced form of the fresh product.<sup>17</sup> The 1988 amendments to Section 771 institutionalized the Commission's practice with respect to those cases.<sup>18</sup>

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<sup>13</sup> Transcript of conference (May 15, 1991) (Tr.) 78.

<sup>14</sup> Respondent's postconference brief at 6.

<sup>15</sup> See 19 U.S.C. § 1677(4)(A).

<sup>16</sup> E.g., Live Swine and Pork from Canada, Inv. No. 701-TA-224 (Final) USITC Pub. 1733 (1985) at 6-7.

<sup>17</sup> E.g., Tart Cherry Juice and Tart Cherry Juice Concentrate from Germany and Yugoslavia, Invs. Nos. 731-TA-512-513 (Preliminary), USITC Pub. 2378 (May 1991); Fresh, Chilled, or Frozen Pork from Canada, Inv. No. 701-TA-298 (Final), USITC Pub. 2218 (1989); Frozen Concentrated Orange Juice from Brazil, Inv. No. 731-TA-326 (Final), USITC Pub. 1970 (1987); Certain Red Raspberries from Canada, Inv. No. 731-TA-196 (Final), USITC Pub. No. 1717 (1985).

<sup>18</sup> Section 771(4)(E) now provides guidance for considering, "in an investigation involving a processed agricultural product from any raw agricultural product," whether the growers of the raw product should be included in the domestic industry. 19 U.S.C. § 1677(4)(E). Under this guidelines, the Commission first determines whether there is a single continuous line of production and, second, whether there is a substantial coincidence of economic interest. In addressing coincidence of economic interest, the Commission may, in its discretion, consider price, added market value, or other economic interrelationships. 19 U.S.C. § 1677(4)(E)(i).

Unlike the situations contemplated by the amendments to Section 771, the question in this investigation is not whether the growers should be included as part of the industry producing a more advanced version of the agricultural product, but whether the packers and handlers of the agricultural product should be included in the domestic industry along with the growers.<sup>19</sup> The Commission generally has not considered firms which merely distribute the like product to be domestic producers. Nor have we included downstream processors who transform the like product into a different article.<sup>20</sup> However, the Commission has been receptive to broadening the domestic industry to include "horizontal" producers who perform sufficient activities to contribute to the output of the domestic like product.<sup>21</sup>

In this investigation, there is some degree of vertical integration, in that several large growers also conduct packing and handling operations.<sup>22</sup> However, according to an industry witness, "the vast majority of the industry is strictly growers."<sup>23</sup> Although some packing firms provide harvesting

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<sup>19</sup> The guidelines of section 771(4)(E) are not directly applicable in this investigation, but they are useful by analogy.

<sup>20</sup> E.g., Tungsten Ore Concentrates from the People's Republic of China, Inv. No. 731-TA-497 (Preliminary), USITC Pub. 2367 (March 1991).

<sup>21</sup> E.g., Generic Cephalexin Capsules from Canada, Inv. No. 731-TA-423 (Final), USITC Pub. 2211 (1989) at 11-12 (domestic industry included producers of bulk cephalexin as well as producers of oral dosage form cephalexin); Butt-Weld Pipe Fittings from Brazil and Taiwan, Invs. Nos. 731-TA-308 and 310 (Final) USITC Pub. 1918 (1986) at 8-9 (converters, who buy unfinished product and machine, clean, and paint to produce finished fittings included in domestic industry producing finished, semi-finished, and rough-form fittings); Certain Granite from Italy and Spain, Invs. Nos. 731-TA-381 & 382, 701-TA-284 (Final), USITC Pub. 2110 (1988) at 12, n. 37 (marble shops, which perform finishing operations on marble slabs, included in domestic industry producing finished granite products.)

<sup>22</sup> Commission Report at A-10.

<sup>23</sup> Tr. 87.

services, the grower is charged a fee for such services in an arms-length transaction.<sup>24</sup>

Packers play an integral part in the preparation of domestic kiwifruit for the market. In this regard, we note that the New Zealand product subject to investigation arrives in packed form (packed by New Zealand packers). Thus, it may be argued that domestic packers participate in "producing" kiwifruit in a form (packed) like the subject imports.

We note that all three groups (growers, packers, and handlers) would be affected by the decline of the U.S. industry and U.S. production, but the economic interests of the three are not necessarily coincident. Significantly, the three groups are not similarly affected by price fluctuations. Of the three groups, only the growers ever have title to the kiwifruit.<sup>25</sup> The packers charge standard packing and storage charges independent of the ultimate selling price of the fruit.<sup>26</sup> In some instances, the packers may even profit when the domestic growers are forced to keep their products in cold storage longer than usual (e.g., as a result of LTFV import competition). In such instances, the growers would incur additional costs--paid to the packers--for longer storage and periodic repacking.

The handlers, who sell the fruit on a consignment basis, are affected by the selling price to the extent they sell on a price-based commission basis. However, the handlers perform the same functions as do distributors of any other products, who typically are not considered by the Commission to be part of the domestic industry producing a product. Even if the exact amount of the

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<sup>24</sup> Commission Report at A-10; Tr. 90.

<sup>25</sup> Commission Report at A-5, 10-11; Tr. 90.

<sup>26</sup> Id.

handlers' revenue is dependent upon the selling price, as distributors, they do not "contribute to the collective output" of production. Furthermore, the information gathered in this preliminary investigation suggests that handlers depend on kiwifruit for only 10 percent of their business--another factor suggesting that they not be included within the domestic industry producing fresh kiwifruit.<sup>27</sup>

Accordingly, for the purposes of this preliminary investigation, we define the domestic industry to consist only of the kiwifruit growers. We may reexamine this question in any final investigation, particularly with respect to the inclusion of packers.

#### Condition of the Domestic Industry<sup>28</sup>

In assessing the condition of the domestic industry, we consider, among other factors, domestic consumption, production, capacity, capacity utilization, shipments, inventories, employment, financial performance, capital investment, and research and development efforts.<sup>29</sup> We must evaluate these factors within the context of the business cycle and conditions of competition that are distinctive to the affected industry.<sup>30</sup> The statute

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<sup>27</sup> See Tart Cherries at 15, 16.

<sup>28</sup> Acting Chairman Brunsdale joins in this discussion of the condition of the domestic industry. However, she does not reach a separate legal conclusion regarding the presence or absence of material injury based on this information. While she does not believe an independent determination is either required by the statute or useful, she finds the discussion of the condition of the domestic industry helpful in determining whether any injury resulting from dumped or subsidized imports is material. See Certain Light-Walled Rectangular Pipes and Tubes from Taiwan, Inv. No. 731-TA-410 (Final), USITC Pub. 2169 (1989) at 10-15 (Views of Chairman Brunsdale and Vice Chairman Cass).

<sup>29</sup> 19 U.S.C. § 1677(7)(C)(iii).

<sup>30</sup> Id.

defines material injury as "harm which is not inconsequential, immaterial, or unimportant."<sup>31</sup>

For the purpose of this preliminary investigation, the Commission collected data bearing on the condition of the domestic industry for the period 1988 through 1990, as well as interim data for the first three months of 1990 and 1991. The data collected and analyzed in this investigation points to a reasonable indication that the domestic industry is suffering material injury.

In this investigation, we are mindful of several distinctive features of the domestic kiwifruit industry. First, the peak selling season for domestic kiwifruit is during the winter months, with southern hemisphere fruit dominating the market during the summer months. Second, the establishment of a kiwifruit vineyard requires a substantial capital investment over a period of years, since kiwifruit vines generally take four years after planting to produce marketable quantities of fruit.<sup>32</sup>

The quantity of U.S. growers' domestic shipments of kiwifruit increased over the investigation period, from 4.1 million tray equivalents in 1988 to 7 million tray equivalents in 1990.<sup>33</sup> However, this increase in domestic shipments did not parallel the marked surge in apparent consumption. Total apparent domestic consumption of kiwifruit doubled during the period of investigation, rising from 8.3 million tray equivalents in 1988 to 16.5 tray

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<sup>31</sup> 19 U.S.C. § 1677(7)(A).

<sup>32</sup> Commission Report at A-4. Similarly, in Fresh and Chilled Atlantic Salmon from Norway, Invs. Nos. 701-TA-302 and 731-TA-454 (Final), USITC Pub. 2371 (April 1991) at 11-12 & 21, the 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.

<sup>33</sup> Commission Report at A-14 (Table 3).



equivalents in 1990.<sup>34</sup> Despite the steady rise in U.S. growers' shipments, the U.S. growers' share of total apparent consumption decreased over the investigation period. As a share of apparent consumption, domestic shipments rose from 50 percent in 1988 to 61 percent in 1989, and then dropped to 42 percent in 1990.<sup>35</sup> For the first three months of 1991, domestic shipments, both in absolute terms and as share of total consumption, were down as compared to the corresponding period for 1990.<sup>36</sup>

U.S. growers' exports of kiwifruit decreased from 1988 to 1989, and then remained relatively steady in 1990.<sup>37</sup> Export shipments of U.S. kiwifruit, like domestic shipments, were lower in January-March of 1991 than they were for the same period in 1990.

Acreage bearing domestic kiwifruit increased 12 percent between 1988 and 1990, while the number of nonbearing acres halved.<sup>38</sup> The decline in non-bearing acreage and the recent cessation of new plantings will limit production expansion in the years ahead. Production rose 23 percent between 1988 and 1989, but fell 4 percent between 1989 and 1990 despite the increase in bearing acreage.<sup>39</sup> The decline in production has been attributed to a number of factors, including unusually warm weather, drought, and reductions in pruning and weed control measures by some growers.<sup>40</sup>

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<sup>34</sup> Commission Report at A-25 (Table 12).

<sup>35</sup> Id.

<sup>36</sup> Id.; Commission Report at A-7 (Table 1).

<sup>37</sup> Commission Report at A-14 (Table 3).

<sup>38</sup> Commission Report at A-13 (Table 2).

<sup>39</sup> Id.

<sup>40</sup> Id. An industry witness indicated that financial problems have made it difficult for domestic growers to take appropriate measures to combat these problems. Tr. 84-85, 92-93.

Domestic inventories begin at a high level after the harvest in November and gradually decline as the marketing season for kiwifruit proceeds. Despite a 4 percent drop in production between 1989 and 1990, first quarter inventories in 1991 were higher, on average, than first quarter inventories in 1990.<sup>41</sup>

Many growers were unable to provide accurate employment data, because they rely on contract crews to harvest and prune their vineyards.<sup>42</sup> The limited data available shows steady increases in the number of workers, hours worked, wages, and total compensation.<sup>43</sup>

The financial indicators for kiwifruit operations show unfavorable performance by the industry. We note, however, that the available data account for only 30 percent of 1990 domestic kiwifruit production.<sup>44</sup> Further, revenues and expenses for a particular crop are not matched against one another.<sup>45</sup> Specifically, financial information was gathered on a fiscal-year basis, so that expenses incurred during planting and harvest from May to November typically will appear in the financial statement for the year prior to that in which the revenues for the crop are received, at the conclusion of the marketing season.

Nonetheless, the information gathered indicates poor financial trends. Total proceeds from net sales dropped by 14 percent, from \$8.8 million in 1988 to \$7.6 million in 1989, and then rose in 1990 to a level (\$8.4 million) still

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<sup>41</sup> Commission Report at A-15 (Table 4).

<sup>42</sup> Commission Report at A-16 & n. 45.

<sup>43</sup> Id. (Table 5).

<sup>44</sup> Commission Report at A-16.

<sup>45</sup> Id.

below the 1988 level.<sup>46</sup> Total growing expenses increased regularly during the investigation period, from \$9 million in 1988 to \$11.2 million in 1990. Net losses before income taxes rose markedly during the period of investigation from \$228,000 in 1988 to \$2.7 million in 1990, with a peak of \$3.2 million in 1989. In 1988, the industry showed an income loss margin of 2.6 percent, but in 1989 and 1990, the firms reported income losses of 42.8 percent and 32.3 percent, respectively. Of the 54 kiwifruit growers who supplied financial information (53 for 1988), the number of firms reporting losses increased from 28 in 1988 to 41 in 1989 and then to 43 in 1990.

Capital expenditures for kiwifruit production increased from \$784,000 in 1988 to \$2.1 million in 1989, and then dropped to \$1.6 million in 1990.<sup>47</sup> An industry witness testified that the declining financial health of the industry has made it difficult to secure financing for ongoing operations and expansion activities.<sup>48</sup>

Based on the foregoing performance indicators, we find a reasonable indication that the domestic industry producing fresh kiwifruit is experiencing material injury. We especially rely on the comprehensive data showing a leveling off of acreage and plantings, coupled with a decrease in production, an increase in interim inventories, and a significant loss in market share for domestic kiwifruit. In addition, the available financial information is indicative of a weakened industry.

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<sup>46</sup> Commission Report at A-17 (Table 6).

<sup>47</sup> Commission Report at A-18.

<sup>48</sup> Tr. 84-85, 90-93.

Reasonable Indication of Material Injury by Reason of Allegedly LTFV Imports of Fresh Kiwifruit from New Zealand

In this preliminary investigation, the Commission must determine whether there is a reasonable indication of material injury or the threat thereof to the domestic industry "by reason of" the imports under investigation.<sup>49</sup> The Commission considers the volume of imports, their effect on prices for the like product, and their impact on domestic producers.<sup>50</sup> In doing so, the Commission examines whether import volumes or increases in volume are significant, whether there has been significant underselling by imports, whether imports significantly depress or suppress prices for the like product, and such factors as domestic production, sales, capacity utilization, inventories, employment, and profits.<sup>51</sup> The Commission may in its discretion examine additional economic factors.<sup>52</sup>

The Commission may consider alternative causes of injury, but it is not to weigh causes.<sup>53</sup> The Commission need not determine that imports are the

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<sup>49</sup> 19 U.S.C. § 1673b(a).

<sup>50</sup> 19 U.S.C. § 1677(7)(B)(i).

<sup>51</sup> 19 U.S.C. § 1677(7)(C).

<sup>52</sup> 19 U.S.C. § 1677(7)(B)(ii).

<sup>53</sup> *Citrosuco Paulista S.A. v. United States*, 704 F. Supp. 1075, 1101 (CIT 1988). Alternative causes may include:

the volume and prices of imports sold at fair value, contraction in demand or changes in patterns of consumption, trade, restrictive practices of and competition between the foreign and domestic producers, developments in technology, and the export performance and productivity of the domestic industry.

S. Rep. No. 249, 96th Cong., 1st Sess. 74 (1979). Similar language is contained in the House Report. H.R. Rep. 317, 96th Cong., 1st Sess. 47 (1979).

principal or a substantial cause of material injury.<sup>54</sup> Rather, as the Court of International Trade has held, the Commission is to determine whether imports are a cause of material injury.<sup>55 56</sup>

Based on adjusted official Department of Commerce statistics,<sup>57</sup> kiwifruit imports from New Zealand increased significantly during the period of investigation, mirroring the substantial rise in consumption.<sup>58</sup> Like consumption, the volume of imports from New Zealand more than doubled during the period of investigation. Throughout the period, New Zealand remained by far the dominant source of kiwifruit imports, supplying more than 90 percent of imports each year. Against this background, we particularly note that a significant share of 1990 New Zealand imports were imported at the beginning

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<sup>54</sup> "Any such requirement has the undesirable result of making relief more difficult to obtain for industries facing difficulties from a variety of sources; industries that are often the most vulnerable to less-than-fair-value imports." S. Rep. No. 249, at 74-75.

<sup>55</sup> *LMI-La Metalli Industriale, S.p.A. v. United States*, 712 F. Supp. 959, 971 (CIT 1989), citing, *British Steel Corp. v. United States*, 8 CIT 86, 593 F. Supp. 405, 413 (1984); *Hercules, Inc. v. United States*, 673 F. Supp. 454, 481 (CIT 1987). See also, *Maine Potato Council v. United States*, 613 F. Supp. 1237, 1244 (CIT 1985) (The Commission must reach an affirmative determination if it finds that imports are more than a "de minimis" cause of injury.)

<sup>56</sup> Acting Chairman Brunsdale agrees 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 (1989) at 147-248 and particularly 228-248 (Dissenting Views of Vice Chairman Ronald A. Cass).

<sup>57</sup> The figures contained in the Commission's Report were adjusted based upon information presented by respondent. Commission Report at A-24 & n. 54.

<sup>58</sup> Commission Report at A-24 (Table 10).

of the U.S. growers' 1991 marketing season, for sale during the peak months of that season.<sup>59</sup>

New Zealand's already-high market share dropped from 50 percent in 1988 to 36 percent in 1989, but then climbed significantly in 1990 to a period high of 57 percent.<sup>60</sup> At the same time, U.S. growers' share of the domestic market moved in the opposite direction, starting the period with an share equal to that of New Zealand imports and dropping to 42 percent of the market in 1990.<sup>61</sup>

In considering price effects, we note that the purchasers contacted agreed that there are no significant quality differences between domestic and New Zealand kiwifruit.<sup>62</sup> Rather, price is the primary consideration in a purchasing decision.<sup>63</sup> Given the price sensitivity of this market, any increases in the volumes or prices of imported products pricing are particularly significant.<sup>64</sup>

In this light, there were several indications of adverse price effects caused by the imports. First, in sales of kiwifruit in trays (which constitute the majority of domestic sales),<sup>65</sup> New Zealand kiwifruit undersold

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<sup>59</sup> Commission Report at A-8.

<sup>60</sup> Commission Report at A-25 (Table 12). Even if the market share is recalculated to account for reported transshipments of imports to Canada, the pattern is similar. Commission Report at A-26.

<sup>61</sup> Commission Report at A-25 (Table 12). Here again, even based upon respondent's suggested recalculations, the trend is the same. See Commission Report at A-26.

<sup>62</sup> Commission Report at A-33-35.

<sup>63</sup> Id.

<sup>64</sup> See Sodium Thiosulfate from the Federal Republic of Germany, the People's Republic of China, and the United Kingdom, Invs. Nos. 731-TA-465, 466, and 468 (Final), USITC Pub. 2358 (Feb. 1991) at 16-17.

<sup>65</sup> Commission Report at A-27; Tr. 95.

the domestic product in eight of eleven monthly price comparisons.<sup>66</sup> It is particularly noteworthy that the margins of underselling were highest during the peak months of the U.S. growers' marketing season. This evidence of underselling during the season when domestic growers expect their greatest return of revenue deserves especial weight.<sup>67</sup> In addition, the Commission confirmed some instances of sales or revenues lost to lower-priced imports.<sup>68</sup>

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<sup>66</sup> Commission Report at A-29 (Table 13) & A-31.

<sup>67</sup> The statute directs the Commission, in examining the impact of LTFV imports, to evaluate the relevant economic factors "within the context of the business cycle and conditions of competition that are distinctive to the affected industry." 19 U.S.C. § 1677(7)(C)(iii). See Fresh and Chilled Atlantic Salmon at 21.

<sup>68</sup> Commission Report at A-33-35.

### Conclusion

For the foregoing reasons, we find that there is a reasonable indication that the domestic industry producing fresh kiwifruit is materially injured by reason of allegedly LTFV imports of fresh kiwifruit from New Zealand.<sup>69 70</sup>

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<sup>69</sup> Respondent argues that "the only concrete example of a potentially and unexpected late season impact by New Zealand product came with the *Pioneer Reefer* shipment in late 1990." Respondent's postconference brief at 29. The *Pioneer Reefer* incident involved the diverting of a shipment of 699,000 trays of New Zealand kiwifruit carried on a refrigerated ship--the *Pioneer Reefer*--from Japan to the United States in December 1990. In examining whether there is an indication of present material injury to a domestic industry by reason of LTFV imports, it matters not whether present material injury was caused by one or many shiploads of the imported product. While respondent's assertions that the *Pioneer Reefer* shipment was an aberrant incident that will not be repeated may be relevant to a threat determination, we need not discuss that question in this preliminary investigation in light of our finding of a reasonable indication of present material injury.

<sup>70</sup> In determining that there is a reasonable indication of material injury by reason of the allegedly dumped imports, Acting Chairman Brunsdale notes the large market share of the subject imports during the months when both products are sold in the U.S. (Commission Report at A-7, Table 1.) and the levels of the alleged dumping margins. (*Id.* A-6.) While the alleged margins are little more than petitioners' claims, they are the best information currently available concerning the level of the dumping and suggest that the price of imported kiwifruit may be significantly below "fair" levels. She also notes the evidence that kiwifruit from the U.S. and New Zealand are of comparable quality and that price is an important determinant in purchase decisions. (*Id.* at A-34-35.)

As regards the evidence of underselling, the Acting Chairman notes that the data on prices per container reported in Table 14, at A-30 of the Commission Report, do not paint the same picture of underselling as the data in Table 13, at A-29. In addition, the record contains some suggestion that the relationship between U.S. and New Zealand prices may depend on the month of the year and may be influenced by the relative freshness of the fruit from the two countries. (See Commission Report at A-31, n. 69.) In any final investigation in this case, the Acting Chairman would be interested in the views of the parties as to the proper data to use in measuring underselling, given these and possibly other complicating factors.



## Additional Views of Commissioner Lodwick

I fully join the majority's opinions in these investigations. I offer these comments to address several issues.

### Cyclical Agricultural Production

Some agricultural products are marked by cyclical levels of production over a period of years. Both the level of production and the prices for the finished products vary over a "production cycle" and are marked by lagged response relationships. These production cycles are marked by an "up phase" as growers are induced by high current commodity prices to expand their production operations.<sup>1</sup> As supplies expand over time to exceed demand at a given price level, biological<sup>2</sup> or inventory constraints induce growers to sell their products; prices then drop and growers may liquidate part or all their stock, often at a loss, and curtail their production operations.<sup>3</sup> This "down phase" continues until demand again exceeds supply at a given price level and prices begin

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<sup>1</sup> For example, in the case of beef cattle or swine, some marketable animals are held back for breeding purposes to enlarge the breeding stock and future herd size. This effectively reduces current supplies and pushes current prices upward thereby accentuating the cyclical effect. The production cycle for beef cattle is about 10 years and about 4 years for swine.

<sup>2</sup> Biological constraints such as animal or plant growth rates or in the case of fruits, the ripeness of the fruit.

<sup>3</sup> This situation is referred to in the legislative language:

"Because of the special nature of agricultural production including the cyclical nature of much of agricultural production, special problems exist in determining whether an agricultural industry is injured. For example, in the livestock sector, certain factors relating to state of a particular industry within that sector may appear to indicate a favorable situation for that industry when in fact the opposite is true. Thus gross sales and employment in the industry producing beef could be increasing at a time when economic loss is occurring, i.e. cattle herds are being liquidated because prices make the maintenance of the herds unprofitable." S. Rep. 96-249, 96th Cong., 1st Cong., 1st Sess. (1979) at 88.

to rise thereby repeating the cycle.

Given the fixity<sup>4</sup> of their land and many of their capital assets plus the biological time lag inherent in much of agricultural production, many agricultural producers have difficulty adjusting their marketable supplies to price changes in the short run or within less than a year. Some producers can make short run adjustments by selling commodities before or after their optimum slaughter weights or harvest conditions but often at a lower profit per unit.<sup>5</sup>

Cyclical production in agriculture occurs due to several factors<sup>6</sup>:

- 1) a biological time lag exists between the decision to produce a commodity and the period of time the finished commodity is available for sale - about 32 months for cattle and 10 months for swine;
- 2) many producers base their production decisions on current commodity prices [ $Q^{(s)}_{t+1} = f(P_t)$ ] rather than on the expected price levels when their finished products enter the market [ $Q^{(s)}_{t+1} = f(P^{e}_{t+1})$ ];
- 3) current prices are mainly a function of current supply and demand conditions [ $P^{(s)}_t = f(Q^{(s)}_t, Q^{(d)}_t)$ ]. Many finished agricultural products can be marketed at an optimum slaughter weight or at an optimum harvestable condition over a very short period of time<sup>7</sup>;

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<sup>4</sup> Fixed assets are non financial assets which are relatively long lived and are specific to a particular productive process. Their cost is normally recoverable only over an operating period of some duration.

<sup>5</sup> However, if there is a continuous stream of commodities reaching their optimum slaughter weight or harvest condition and entering the market, this option is limited to some extent.

<sup>6</sup> Kenneth L. Robinson and William G. Tomek, Agricultural Product Prices (Cornell University Press, 1981), p. 178-189.

<sup>7</sup> The growth of a steer reaching its optimum slaughter weight of 1100 lbs. can be slowed but is uneconomical to stop; the steer must be slaughtered and marketed quickly if it is sold as fresh beef to maximize net returns. The price received for the steer will reflect in large part, the number of steers being slaughtered at that point in time. Steer producers have a relatively narrow "window" of time to market their steer at an optimum weight that maximizes profit per steer. In contrast, corn is harvested at an optimum time during October but can be stored to be marketed around the year or over a period of years depending on corn prices and inventory costs.

- 4) many agricultural sectors are characterized by a large number of producers that are price takers;<sup>8</sup> and
- 5) many agricultural markets are characterized by price inelasticity; i.e., during a market downturn, some agricultural product prices fall at a faster rate than the rate at which quantities sold increases. This results in lower total producer revenues and lower contribution margins with which to cover the producers' fixed production costs.

### **Kiwifruit Production**

From the information gathered in this preliminary investigation, it appears that the kiwifruit industry has some characteristics of a cyclical agricultural industry.

- 1) There is an estimated 4 year lag between the planting of a kiwifruit cutting and the first harvest of marketable kiwifruit.<sup>9</sup>
- 2) There is evidence that the U.S. kiwifruit industry has been marked by expansion and new plantings since the mid-1970s in response to growing demand.<sup>10</sup> However, due to recent price declines, some growers have begun to cut back on their new plantings.<sup>11</sup> However, bearing acreage has continued to grow due to plantings in previous years.
- 3) Kiwifruit growers are constrained by spoilage and refrigeration costs to market

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<sup>8</sup> This type of market could be defined as a competitive market: "A market in which a very large number of small buyers and seller trade independently, and as such no one trader can significantly influence prices." Pearce, David W., The MIT Dictionary of Modern Economics, 3rd Ed.

<sup>9</sup> Report at A-4. Note, however, that additional time is required for nursery development of the cuttings or grafted rootstock which are used as planting materials.

<sup>10</sup> Transcript at 13 and 97.

<sup>11</sup> See Petition Exhibit 9 at page 3 and 18, Respondents Post Conference Brief at Exhibits 23 & 25, and Report at Table 2 & 13. Petitioners state, "there was absolutely no new acreage brought under cultivation for kiwifruit for the first time in many years. In short, the domestic kiwifruit growing industry has entered nothing less than a depression." Transcript at 55.

their available supply of kiwifruit within 6 to 9 months of harvest.<sup>12</sup>

- 4) It appears that most kiwifruit is marketed by individual growers or their handlers. Most growers are price takers and cannot individually manipulate market prices by selling or withholding kiwi supplies.<sup>13</sup> An exception, of course, are the New Zealand growers who are represented by a marketing organization who can and has affected U.S. prices by the timing and volume of imported kiwifruit sales in the U.S. market.<sup>14</sup>
- 5) With regards to the nature of demand for kiwifruit, kiwifruit may be unlike other agricultural commodities and face an elastic demand; that is, as kiwifruit prices fall, the quantity of kiwifruit demanded rises at a faster rate thereby increasing grower sales, if additional supplies are available.<sup>15</sup> This may be true if there is high cross price elasticity between kiwifruit and other substitute fruits such as apples, strawberries, mangos and papayas.<sup>16</sup>

Unlike some agricultural commodities such as cattle, it also does not appear that significant levels of kiwifruit are held back or grown for cuttings for planting materials.

### Conditions of Competition

If the kiwifruit industry is a cyclical agricultural industry hitting the end of the "up" phase after years of expansion and now has excess supplies at a given price, it would be expected that, barring new demand, prices would begin to decline from those levels that had originally induced additional

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<sup>12</sup> See Transcript at 46 and Respondents Post Conference Brief at Exhibit at page 2.

<sup>13</sup> There are an estimated 890 kiwifruit growers. Transcript at 12.

<sup>14</sup> The market power of the New Zealand importer declines as imports begin to compete with domestic kiwifruit during the overlap period.

<sup>15</sup> The elasticity of demand for kiwi fruit is estimated at -2, during the winter and -4 for the summer. Respondents Post Conference Brief at Exhibit 14 at page 5. However petitioners testify that the demand of kiwifruit is inelastic in the range of .2 to 1.4. Transcript at 61.

<sup>16</sup> Information gathered in any final investigation on the elasticity of demand for kiwi fruit and/or kiwi fruit's cross-price elasticities with other fruits would be useful in evaluating effects on grower revenues.

kiwifruit plantings. Excess kiwifruit supplies can be sold, but are purchased at lower prices.<sup>17</sup> If kiwifruit growers believe that these lower prices will continue for a period of time, growers may then respond by curtailing future supplies through decreased new plantings.<sup>18</sup> If lower prices result in lower returns in the current period, it may become more difficult for growers to pay off loans for costs incurred in previous years when the kiwifruit plants were planted. Lower returns may also affect cash flows for current operating expenses. Besides curtailing new plantings, growers may eliminate less profitable bearing vines or farm less intensively by reducing pruning or fertilizer costs in an effort to cut costs or improve profitability.<sup>19</sup> These behaviors are characteristic of the beginning of the "down" phase in which growers respond to falling prices by reducing supplies.

There is some evidence that, absent any influence from imported kiwifruit from New Zealand in 1990, the U.S. kiwifruit industry had already begun to respond to an oversupply condition and falling prices by curtailing new plantings.<sup>20</sup> The response in the U.S. appears to follow world wide trends of falling prices and slowing expansion in most kiwifruit producing countries.<sup>21</sup> Given the biological lag between the planting and harvesting of kiwifruit and the propensity of agricultural

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<sup>17</sup> Respondents note that price changes from \$.50 per kiwi fruit to 3 or 4 kiwi fruit per dollar resulted in enormous increases in apparent U.S. consumption. Respondents Post Conference Brief at Exhibit 14, footnote 5.

<sup>18</sup> For a discussion of the dynamic link between prices and quantities produced, see Fresh and Chilled Atlantic Salmon from Norway, No. 731-TA-454 (Final), USITC Pub. 2371, April 1991, pages 43-48, Additional Views of Commissioner Lodwick.

<sup>19</sup> It seems that "replacement" plantings are not a significant issue in this case if the kiwifruit plant can produce for 50 years and if significant kiwifruit plantings began in the 1970s. Report at A-4.

<sup>20</sup> See Petition Exhibit 9 at page 3 and 18, Respondents Post Conference Brief at Exhibits 23 & 25, and Report at Tables 2 & 13.

<sup>21</sup> See Petition at Exhibit 9 at Table 1 & 5 and page 5; Respondents Post Conference Brief at Exhibits 35 & 39.

producers to respond to price changes in a cyclical fashion<sup>22</sup>, this implies that the general downturn that U.S. kiwifruit producers are now experiencing could have occurred whether or not New Zealand had exported kiwifruit to the United States before the end of 1990. If New Zealand kiwifruit imports essentially complemented domestic kiwifruit marketing before the fall of 1990<sup>23</sup>, it could be argued that the effect of the Pioneer Reefer shipments in late 1990 and early 1991 merely served to exacerbate an existing situation.<sup>24 25</sup> This, however, does not preclude a finding that imports of kiwifruit from New Zealand injured or contributed to the injury suffered by the U.S. kiwifruit industry.

#### **Price Effects Across Time Periods**

Respondents argue that the complementary effect of New Zealand kiwifruit imports helped domestic sales by ensuring shelf space for the following domestic crop and by providing higher and more stable prices during the New Zealand marketing period.<sup>26</sup> A logical question to ask is whether the U.S. industry is affected by sales of imports in a time period different from that in

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<sup>22</sup> Note that U.S. bearing acreage has continued to grow though new plantings have declined.

<sup>23</sup> Mr. Malashevich notes: "Prior to the current marketing year, that is '90-91', the two sources of supply were very nearly complementary, overlapping minimally in time and outside the months of November and March when the vast majority of domestic shipments occur." Transcript at 47.

<sup>24</sup> This situation is similar and dissimilar to the recently completed Atlantic Salmon case. Unlike U.S. growers, U.S. salmon producers faced imports of Norwegian salmon on a year round basis. Like U.S. kiwifruit growers, U.S. salmon producers faced sharp increases in subject imports and sharply falling prices during a single marketing period.

<sup>25</sup> Transcript at 85.

<sup>26</sup> Respondents Post Conference Brief at 13 and 37.

which the domestic industry sells its goods?<sup>27</sup> U.S. and New Zealand kiwifruit appear to be relatively fungible,<sup>28</sup> are offered in similar geographic markets by similar channels of distribution but before late 1990 were generally offered in distinctly different time periods with some minor overlap. In evaluating any possible residual effects across time periods, it is important to remember that once kiwifruit is purchased by the final consumer, it is most likely to be consumed relatively quickly due to its perishable nature once out of cold storage.<sup>29</sup> Residual price effects across time periods would probably be manifested in terms of price expectations by consumers, that is, the price that consumers are now willing to pay for kiwifruit may be linked to what they remember paying for kiwifruit in previous time periods. There may be some resistance by consumers to pay different prices especially if the consumers have imperfect information about possible substitutes. The time path of adjustments by consumers to different price levels in later time periods can be estimated using differential or difference equations which can, in turn, be used to estimate the net effect that earlier prices had on price levels in later periods. This type of estimation may be difficult to quantify. Due to the perishability and supply fixity characteristics of the fresh fruit industry, it can also be argued that each marketing day or week has its own price dynamics with little relationship

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<sup>27</sup> In evaluating the question of cumulation of imports, the Commission has looked at such factors as fungibility of products, similar geographic markets, common channels of distribution and whether the imports are simultaneously present in the market. This evaluation of how imports compete with each other could also be used in evaluating how domestic products compete with imported products.

<sup>28</sup> However, respondents note that there are quality differences in ripe imported kiwifruit from New Zealand and hard California kiwifruit containing high starch levels at the beginning of the U.S. marketing season. Respondents Post Conference Brief at 14. This could limit the substitutability of U.S. and imported kiwifruit during that period of time.

<sup>29</sup> Transcript at 69. If the majority of kiwi fruit is eaten by consumers within a week of purchase, the intertemporal price effect of kiwifruit purchases a couple months apart would appear to be negligible. This price effect across periods would be different for a consumer who purchases lumber in December because of relatively low prices but then does not use the lumber until the Spring or Summer for a home project when lumber prices are higher.

to prices in other time periods; this would further limit any negative intertemporal price effects.

If kiwifruit is purchased and consumed in the same time period, if imported New Zealand kiwifruit prices are generally higher during the New Zealand marketing season than domestic kiwifruit prices are during the domestic marketing season<sup>30</sup> and if domestic kiwifruit sold in existing shelf space vacated by imported kiwifruit, it is difficult to see how New Zealand kiwifruit sold in September would have any negative effect on domestic kiwifruit sold in February. In fact, petitioners testified that the imported New Zealand kiwifruit provided "something of a boost to price at the onset of the U.S. season".<sup>31</sup>

However, a contrary view of consumer expectations can also be considered. If kiwifruit is being offered 12 months a year and is becoming an "everyday fruit", current prices for kiwifruit could be below that of price levels obtained if kiwifruit is viewed as an exotic fruit and available only seasonally. It could be argued that the availability of imported New Zealand in mid and latter part of the year satisfies consumer demand for kiwifruit in the offseason thereby reducing the prices that consumers would be willing to pay for kiwifruit if it was available only during the domestic marketing season.

#### **Nature of Kiwifruit Consumption**

Available information shows that per capita consumption of kiwifruit in the mid and late 1980s has risen in the United States and abroad.<sup>32</sup> This can be attributed to shifting consumer demand and promotional activities by New Zealand importers and California growers. Changes in

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<sup>30</sup> Transcript at 48 and 108.

<sup>31</sup> Transcript at 48.

<sup>32</sup> Petition at Exhibit 9 at table 3; Respondents Post Conference Brief at Exhibit 27.



kiwifruit consumption can be viewed in two different ways. First, increased kiwifruit consumption could be due to new demand, that is, more kiwifruit is being demanded by consumers at each price level due to promotional activities. Second, additional kiwifruit consumption may result from falling kiwifruit prices which stimulates consumers to substitute kiwifruit for other fruits such as apples or avocados. If kiwifruit purchases are rising, it may be difficult to separate out the nature of increased consumption. However, it is important to kiwifruit suppliers as to what type of consumption predominates in the marketplace. If new demand creates additional consumption, then suppliers can increase their total revenues absolutely through both price and/or volume increases thereby increasing their contribution margin or profits. However, if additional consumption comes at the expense of falling kiwifruit prices and not new demand, suppliers may suffer decreases in their total sales and/or contribution margins or profits depending on the demand elasticity of kiwifruit.

### **Nature of Kiwifruit Supply**

Unlike other agricultural commodities such as salmon or cattle, kiwifruit and other fruits are harvested during a specific period of the year instead of being harvested year round. California kiwifruit growers are limited to harvest from early October to mid-November but, unlike some other fruit growers, can spread out the marketing of the kiwifruit over a period of several months. In order to maximize the grower's profits, the grower and/or the handler will evaluate the following: the supply of kiwifruit the grower has for sale, the supply of kiwifruit other growers have available for sale, the marketing strategies of other growers, world supplies and prices, the expected demand

for kiwifruit, the expected prices over the marketing season and the cost of storage and spoilage.<sup>33</sup> Growers or the handlers acting as the growers' agents will then sell the growers' kiwifruit over the marketing period in such a manner as to maximize their profits adjusting their strategy with every market development.<sup>34</sup> Given the perishable nature of kiwifruit on the retail shelf, the whole marketing season can be divided into smaller time periods (approximately as long as a kiwifruit will stay fresh on the retail shelf), each with its own supply and demand dynamics. Alternatively, the market can also be viewed as having continually changing supply and demand dynamics that

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<sup>33</sup> The quantities sold by U.S. suppliers represent domestic and export shipments. By shifting volumes of its kiwifruit exports among its export markets including the U.S., New Zealand's kiwi fruit exports can impact U.S. suppliers in both the U.S. market and the export markets to which U.S. kiwifruit is shipped to the extent that their markets overlap.

<sup>34</sup> The type of decision making that growers or their handlers make can be approximated mathematically. The expected effective returns,  $P^{\wedge}_1$  and quantities sold  $x^{\wedge}_1$ , becomes the actual return,  $P_1$ , and quantity,  $x_1$ , sold per period as each separable period of time during the marketing season is reached. Sellers then readjust their price and quantity expectations for the remaining periods.

$$\begin{array}{ll} \text{Maximize} & Z = P^{\wedge}_1 x^{\wedge}_1 + P^{\wedge}_2 x^{\wedge}_2 + \dots + P^{\wedge}_n x^{\wedge}_n \\ \text{subject to} & Q^{(d)} \geq x_1 + x_2 + \dots + x_n \\ \text{where} & P_n = f(x_n, C_n, Q^{(d)}_n) \end{array}$$

$Z$  = Maximum profit

$P^{\wedge}_1, P^{\wedge}_2, P^{\wedge}_n$  = Expected effective return to grower in time period 1, 2 or n. This is a function of quantity supplied and demanded and costs incurred.

$n$  = 1, 2, ... nth time period, can be a day, week or month. This can be approximated by the time a single kiwifruit stays fresh on the retail shelf.

$x^{\wedge}_1, x^{\wedge}_2, x^{\wedge}_n$  = Expected quantities of kiwifruit supplied in first, second or nth time period.

$Q^{(d)}$  = Quantity of kiwi fruit supplied for the entire season

$C_n$  = Costs (growing, storage, spoilage) incurred to supply kiwi fruit in the nth period

$Q^{(d)}_n$  = Demand of kiwifruit in time period n.

suppliers must adjust to.<sup>35</sup> If many suppliers sell early in the season, prices may fall early in the season but may then rise sharply in the latter part of the season when fewer supplies are available; the suppliers who did not sell their kiwifruit early would enjoy the higher prices for their available supplies late in the season.

Absent imports, each individual grower and the whole domestic kiwifruit industry have a fixed supply of kiwifruit to ration over the marketing period. If the total supply of kiwifruit is less than that demanded over the marketing period at a given price, then average season prices will most likely rise<sup>36</sup>. Conversely, if the total supply of kiwifruit is more than that demanded over the marketing period at a given price, then average season prices will most likely fall. The prices and profits received during the marketing year will then signal growers whether to increase or decrease their future supplies. Absent collective action by the large number of U.S. growers, the long run prices and returns to U.S. growers would approximate that of a competitive market structure returning normal profits to growers.<sup>37</sup> Respondents cite the structure of the California industry as a cause of problems the domestic industry is experiencing by "encouraging competition harmful to domestic producers".<sup>38</sup> In contrast, New Zealand kiwifruit imports are controlled by a single importer.<sup>39</sup> This allows the importer to manipulate U.S. consumer prices to earn super normal

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<sup>35</sup> Season profits could be estimated by integrating an equation approximating the net returns over the marketing season.

<sup>36</sup> If the price of kiwifruit substitutes stays constant.

<sup>37</sup> Considering the cyclical dynamics, it could be argued that U.S. producers earned supernormal profits during the "up" phase of the cycle but is now going through a "down" phase with less than "normal" profits.

<sup>38</sup> Respondents Post Conference Brief at 37.

<sup>39</sup> Report at A-8.

profits for the importer and extract rents from the consumer<sup>40</sup> without considering the supplies and pricing strategy of another importer or a domestic supplier<sup>41 42</sup> and be checked only by the prices and supplies of kiwifruit substitutes.<sup>43</sup>

New Zealand growers have harvesting and storage constraints similar to that of U.S. growers. However, in the marketing of kiwifruit, New Zealand growers are under the authority of the Kiwifruit Marketing Board (KMB) which rations out the fixed supply of New Zealand kiwifruit harvest to different world markets.<sup>44</sup> Through promotional efforts, marketing in the Northern Hemisphere's offseason and selling in many world markets, the KMB is able to distribute its supply of kiwifruit during the marketing year, at different price levels, in various markets and at different times to obtain "the best possible returns for kiwifruit intended for export".<sup>45</sup> By creating new

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<sup>40</sup> Respondents observe, "Undisciplined selling leads to lower prices." Transcript at 115.

<sup>41</sup> It could be argued that if there are price effects between marketing periods, it is probably the domestic prices at a competitive level holding down the New Zealand's "controlled prices" during the summer marketing season. Respondents assert that U.S. prices have lowered imported prices. Transcript at 116.

<sup>42</sup> Indeed, if U.S. and New Zealand imports are considered close substitutes, the higher annual weighted prices of New Zealand kiwifruit imports in the U.S. market offer direct evidence of a single importer being able to control supplies to obtain prices above those if the market were more competitive.

<sup>43</sup> Transcript at 112.

<sup>44</sup> Transcript at 111.

<sup>45</sup> The type of decision making that the KMB engages in is similar to that U.S. growers or their handlers but is also made for each of their export markets. It can be modelled in the following equations (Variable definitions are in earlier footnote):

$$\begin{array}{lll}
 \text{Maximize} & Z & = P_{1i}^{\wedge} * x_{1i}^{\wedge} + P_{2i}^{\wedge} * x_{2i}^{\wedge} + \dots + P_{ni}^{\wedge} * x_{ni}^{\wedge} \\
 \text{subject to} & Q^{(d)} & \geq x_{1i} + x_{2i} + \dots + x_{ni} \\
 \text{where} & P_{ni} & = f(x_{ni}, C_{ni}, Q_{ni}^{(d)}) \\
 & i & = \text{the } i\text{th export market}
 \end{array}$$

demand through promotion and shipping in the offseason, KMB is able to dispose of its supplies and maintain its export kiwifruit prices at profitable levels.<sup>46</sup> However, if KMB is faced with excess supply at a given price in its offseason marketings, it also has the option to market New Zealand kiwifruit into the marketing seasons of the Northern Hemisphere countries. This degree of market power in world markets by KMB gives it the ability to influence prices in each market by shifting available supplies between markets. Super normal profits in one market could be used to subsidize the sales of kiwifruit below competitive prices in another market if KMB wanted to drive out competitors in that market. Or KMB could use supernormal profits from one marketing period in a market when no domestic competition is present to cover losses incurred by dumping surplus imports into the same market in a later marketing period when its domestic rival was supplying the market. This would allow KMB to maintain normal profits while causing its domestic rival operating in a more competitive market to suffer less than normal profits.

Strategic business moves aside, U.S. and GATT rules governing trade are drafted to discourage the selling of surplus commodities on the world market below their cost of production. This is designed to prevent countries from engaging in "beggar-my-neighbor" policies.<sup>47</sup> U.S. trade law allows the Department of Commerce to disregard sales made at less than the cost of production in the exporting country when determining the foreign market value in the exporting country; this "adjusted" foreign market value is then used to determine dumping margins.<sup>48</sup> The Department of Commerce, in its critical circumstance determination, is also allowed to consider, among other

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<sup>46</sup> Transcript at 122 to 124 and 171.

<sup>47</sup> Beggar-My-Neighbor Policies: "Economic measures taken by one country to improve its economic conditions which have adverse effects on other economies. . . ., The benefit which it attains is at the expense of some other country which experiences lower exports or increased imports." Pearce, David W., The MIT Dictionary of Modern Economics, 3rd Ed.

<sup>48</sup> 19 U.S.C. 1677 Sec. 773 (b)

factors, whether the exporter knew or should have known that the merchandise was being sold at less than its fair value.<sup>49</sup> Perishable agricultural commodities would appear to be particularly susceptible to below cost of production dumping, even for just a season or two while an oversupply situation exists. The cyclical nature of agricultural production and the biological lags inherent in agricultural production lends itself to periods of over and undersupply for demand at a certain price and results in high price variability. It is interesting to note the pricing strategy of New Zealand kiwifruit imports from May 1990 to Feb. 1991 as the importer tries to dispose of large supplies of kiwifruit.<sup>50</sup> Note the steady decline of import prices.<sup>51</sup> This ten month marketing period appears to stretch the limits of perishability of kiwifruit even when kept in cold storage and illustrates the difficulty the New Zealand importer had in selling its large supply of kiwifruit at higher volumes per month and for more months than in previous years.<sup>52</sup> Their end-of-period prices were nearly 40% below their beginning-of-period prices and over 30% below comparable U.S. prices in an effort to move their inventories.<sup>53</sup> These imports effectively displaced some U.S. sales and affected U.S. price levels. Petitioners estimated the loss to be 400,000 trays and a 10% decline in prices

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<sup>49</sup> 19 U.S.C. 1673 Sec. 733 (e)

<sup>50</sup> Report at page A-31.

<sup>51</sup> New Zealand kiwifruit was being sold well into February despite the testimony by respondents that product quality does not permit commercially viable sales beyond January and that they want to get out of the market by December to minimize fruit losses. Transcript at 133.

<sup>52</sup> Report at A-7. Transcript at 52.

<sup>53</sup> Note testimony that kiwifruit prices are normally relatively stable over the marketing year due to kiwifruit's storability. Transcript at 36. Respondents also note that they promote the product throughout the season at multiple pricing levels to increase sales velocities so they don't arrive at the end of the season with an overabundant supply on hand. Transcript at 135. The falling price trends and the volumes of imported kiwifruit suggest that the importer had difficulty in disposing of the volumes involved and was unable to maintain stable prices throughout the period.

for an estimated lost income of \$4 million.<sup>54</sup> Unlike U.S. growers selling in a competitive market, the KMB has the ability to offset its losses in the later marketing period with super normal profits from earlier marketing periods and from other export markets.

#### **Impact of New Zealand kiwifruit imports**

Due to a large New Zealand kiwifruit harvest in 1990, KMB appears to have had excess kiwifruit supplies left after its offseason marketings in 1990.<sup>55</sup> Despite the quadrupling its home market consumption and shipping over 30% more to its non-U.S. export markets, New Zealand responded by more than doubling its shipments to the U.S. market. Part of this excess supply to the U.S. market appears to have been absorbed during the summer months and resulted in lower prices than usual during those months.<sup>56</sup> However, part of the excessive New Zealand supply spilled over into the domestic marketing season and adversely affected the marketing of U.S. growers.

It is important to understand that, during October to February, the end of the New Zealand marketing season overlaps with the beginning of the U.S. marketing season. This implies that New Zealand exporters are under pressure to dispose of their ripe inventories to avoid additional spoilage and inventory costs while U.S. producers have a choice to hold their new harvest for several months. Any price over shipping costs to the U.S. will help New Zealand exporters recover their harvest and storage costs. Petitioners also testified that the New Zealanders brought in top quality and large sized tray kiwifruit which normally command a premium price in the U.S. market

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<sup>54</sup> Transcript at 52.

<sup>55</sup> New Zealand's production rose by over 50% from the 1989 to the 1990 crop year. Report at A-22.

<sup>56</sup> Report at Table 1 & at A-31.

and sold them at very low prices completely forestalling any U.S. moves to sell smaller fruit at lower prices early in the season.<sup>57 58</sup> U.S. producers had no choice but to hold back much of their fruit.<sup>59</sup> Inability by U.S. producers to enter the market at their normal time has two disastrous effects on their net returns.<sup>60</sup> First, U.S. growers will have less time or fewer time periods in which to market their fixed supply of kiwifruit. Unless new demand can be quickly created through massive promotional efforts, additional consumption in each of the remaining time periods can only be achieved by lowering kiwifruit prices.<sup>61</sup> This will lower grower total revenues even if the demand for kiwifruit is elastic since their supplies of kiwifruit during the remaining marketing season are fixed or may even decrease through additional spoilage. Second, the delay in marketing raises the storage costs and spoilage rates which effectively raises the growers' costs.<sup>62</sup> This additional cost-price squeeze on growers already on financially shaky ground due to the beginning of "down" phase in the kiwifruit's business cycle can have a devastating effects on the growers. This also implies that there is great uncertainty about future prices by kiwifruit growers and their

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<sup>57</sup> Transcript at 39.

<sup>58</sup> Petitioners testified retailers keep retail prices more or less the same for consumers and kept the difference (retail price minus the low import price). This implies that retailers would prefer to sell imported New Zealand kiwifruit or force the US. handlers to cut their asking prices. In addition, if consumer prices did not fall due to retailers keeping the difference, additional demand would not occur to absorb the additional supplies on the market. Transcript at 37.

<sup>59</sup> In 1988, imports were 11% of consumption of the overlap period but by 1990 imports constituted 55% of the consumption during the critical overlap period. Transcript at 40, 44.

<sup>60</sup> Respondents assert, "domestic producers were able to completely compensate down to the day by delaying their entry". Respondents appear to suggest that any additional storage costs incurred by the delay were regained through strong demand. Transcript at 160. However, the set of assumptions behind this conclusion would differ sharply from a static analysis which asks what would have the U.S. revenue and profits been if the imports had not delayed entry of U.S. sales in the U.S. market.

<sup>61</sup> Report at B-9.

<sup>62</sup> Report at B-9 to 11. Petitioner's Post Conference Brief at 14.



lenders as this is the first major downturn in the industry after years of growth.<sup>63</sup> As there are no distinct price and production cycles from the past to rely on, growers would have difficulty in estimating where and when prices will bottom out.<sup>64</sup> There are also no assurance that New Zealand kiwifruit imports or imports from another country will not reenter the U.S. market during the domestic marketing season.<sup>65 66</sup>

In addition, New Zealand's major position in the export markets can affect the ability of U.S. growers to sell part of their supply abroad if U.S. and New Zealand kiwifruit exports overlap in marketing regions and seasons.<sup>67</sup> A loss of U.S. producers' export markets forces a larger share of the U.S. supply into the domestic market. A larger supply in the domestic market without corresponding increases in domestic demand can only mean that U.S. prices will fall as a result. However, New Zealand's pricing practices abroad are not at issue here and part of the U.S. kiwifruit industry's difficulties may be attributed to the steady loss of the U.S. industry's export markets which have forced additional supplies on the U.S. domestic market.<sup>68</sup> In evaluating the

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<sup>63</sup> Transcript at 33.

<sup>64</sup> There are continued increases in U.S. kiwi fruit acreage coming into production. Report at A-13 and B-8.

<sup>65</sup> There appear to be few or no barriers to imports from a world market characterized by oversupply. Report at A-6 and 23. Respondents state that they have no desire or intent to be in the market past December. Transcript at 117.

<sup>66</sup> Petitioners testified that New Zealand's production has been skyrocketing and that New Zealand's Marketing Board has expressly resolved to expand to year round marketing. However, this year round strategy is contested by Respondents though respondents state that "in order to successfully position kiwifruit as a premium everyday fruit, we must have a 12 month supply." In addition, New Zealand's export marketing practices in Europe and Japan have led to responses that may lead to market access restricting measures in those countries, thereby increasing pressure for New Zealand to export to the United States. Transcript at 17, 18, 66, 114 and 128.

<sup>67</sup> Respondents state that U.S. producers lost export markets abroad but only to Northern hemisphere producers. Transcript at 155.

<sup>68</sup> Report at A-14.

U.S. kiwi industry, it will be difficult to separate out the influence of an oversupplied U.S. market, the intrusion of imported kiwifruit from New Zealand into the U.S. marketing season and the loss of U.S. export markets on the domestic industry. This warrants being addressed in any final investigation.

The negative effect of New Zealand's imports of kiwifruit can have both short term and long term effects. In the short run, growers suffered from increased cash flow difficulties in December 1990, and were unable to adequately prune and maintain their vineyards during December and January thereby affecting next year's yield and possibly causing some growers to exit from the industry.<sup>69 70</sup> Growers receiving lower total returns would also have to reschedule their debt or raise additional capital for operating expenses if lenders are even willing to extend their credit.<sup>71</sup> This increase in growers' debt load makes positive returns more difficult to obtain during the current operating year and in future years. Other growers stated they were cutting back on expansion plans or even pulling up producing kiwifruit vines. These represent a loss of future net returns and an inability to recover investment costs on which loans may still being paid. Some growers are electing to exit kiwifruit farming representing a loss of U.S. productive capacity.<sup>72</sup> Petitioners also testify that the California Kiwifruit Commission's research budget has also suffered

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<sup>69</sup> Transcript at 25, 54 and 55.

<sup>70</sup> A question which arises in the context of cash flow constraints and injury to the U.S. industry is whether U.S. kiwifruit growers can farm their acreage less intensively by reducing their fertilizer, pesticide or pruning costs? This could result in less kiwifruit produced per acre but not result in a severe reduction in profits per acre. If this is the case, the impact of imports could be reduced.

<sup>71</sup> Transcript at 84.

<sup>72</sup> Transcript at 63.

cutbacks due to the recent reduction in grower returns.<sup>73</sup>

Based on the reduced kiwifruit marketings by U.S. handlers in October 1990 to March 1991, deteriorating financial condition of U.S. growers and testimony of growers of reduced cash flows for pruning activities and increased difficulty in obtaining financing, I find that there is a reasonable indication that the U.S. kiwifruit industry is materially injured. I also find that increased kiwifruit imports from New Zealand, underselling by imports from New Zealand and instances of lost sales and revenues by domestic producers indicates that there is a reasonable indication of material injury by reason of imports of kiwifruit from New Zealand.

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<sup>73</sup> Transcript at 91.



**INFORMATION OBTAINED IN THE INVESTIGATION**



## INTRODUCTION

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 U.S. International Trade Commission (Commission) and the U.S. Department of Commerce (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<sup>1</sup> that are allegedly sold in the United States at less than fair value (LTFV). Accordingly, effective April 25, 1991, 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)) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of such merchandise into the United States.

The statute directs the Commission to make its preliminary determination within 45 days after receipt of the petition or, in this investigation, by June 10, 1991. Notice of the institution of the Commission's investigation was posted in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and published in the Federal Register on May 1, 1991 (56 F.R. 20023).<sup>2</sup> Commerce published its notice of initiation in the Federal Register of May 21, 1991 (56 F.R. 23273). The Commission held a public conference in Washington, DC, on May 15, 1991, at which time all interested parties were allowed to present information and data for consideration by the Commission.<sup>3</sup>

## 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 kiwifruit's more distinctive characteristics is its extremely long shelf life. In proper storage, kiwifruit remains fresh up to 6 months and longer.<sup>4</sup>

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

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<sup>1</sup> Fresh kiwifruit is provided for in subheading 0810.90.20 of the Harmonized Tariff Schedule of the United States.

<sup>2</sup> App. A presents copies of cited Federal Register notices.

<sup>3</sup> App. B presents a list of conference participants.

<sup>4</sup> A research report on kiwifruit indicated that when cooled to a core temperature of 32° within 12 hours after harvest, kiwifruit can be stored up to 6 months under commercial refrigeration with little shrinkage. "Kiwifruit Industry Young, but Lusty," Harold A. LeSieur, The Packer, Jan. 15, 1977, quoted in United Fresh Fruit and Vegetable Association, Fruit & Vegetable Facts & Pointers, March 1979, p. 5. B. McDonald and J.E. Hanman, "Controlled Atmosphere Storage of Kiwifruit," Scientia Horticulturae, 1982, p. 113.

U.S. commercial production of kiwifruit.<sup>5</sup> At the consumer level, there are no discernible differences between New Zealand and U.S. fresh kiwifruit.

#### 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 take 4 years after planting 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."<sup>6</sup> In total, California growers invest roughly \$25,000 per acre to reach the full production stage.<sup>7</sup>

Yields of fruit per acre tend to increase each year up to a certain level and decline thereafter. Yields per acre in California have averaged about 1,300-1,400 tray equivalents<sup>8</sup> over the past few years.<sup>9</sup> Kiwifruit tends to produce heavily every other year, and kiwifruit vines yield fruit for up to 50 years.<sup>10</sup>

Growers harvest kiwifruit when the sugar content in the fruit reaches a certain level, about 7 degrees brix.<sup>11</sup> In California, the harvest begins in early October and lasts through mid-November. Growers use labor-intensive handpicking to harvest their fruit.<sup>12</sup> The growers deliver their crop in large bins to packers who clean; sort and grade by size, shape, and quality; and pack the fruit in a variety of containers. Packers then place the containers in cold storage facilities. "Handlers," or sellers, arrange for sale and

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

<sup>6</sup> Tom Schultz, California kiwifruit grower, Conference transcript (transcript), p. 24.

<sup>7</sup> Ibid.

<sup>8</sup> The industry's standard 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 vary depending on the size of the individual kiwifruit, the standard tray conversion factor in the United States is 7 pounds. Telephone conversation with \*\*\* May 24, 1991. 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.

<sup>9</sup> California Fruit & Nut Statistics, 1981-90, California Agricultural Statistics Service (CASS), May 1991, p. 6.

<sup>10</sup> New Zealand Kiwifruit, a supplement to The Packer, May 24, 1986, p. 8D.

<sup>11</sup> At this point, the fruit is unripe and hard (at 14-20 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. "Kiwifruit Production in California," James A. Beutel, Cooperative Extension, University of California, Davis, January 1989, p. 6.

<sup>12</sup> Some growers hire their own seasonal labor during harvest time, although many contract for picking crews with packing firms. Transcript, pp. 88-89.



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.<sup>13</sup> Throughout the harvesting, packing, and marketing process, growers retain title to their fruit and receive complete payment only after handlers have sold all of their fruit.

In December and January, growers prune 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 order to avoid incurring packing and inspection expenses on unmarketable fruit.<sup>14</sup>

The kiwifruit production process in New Zealand is much the same as in the United States, with two notable exceptions. The New Zealand kiwifruit harvest starts in mid-April and extends through early June and, as a consequence, the New Zealand marketing season in the United States normally runs from May to December. Also, kiwifruit vineyards are almost exclusively rain-fed in New Zealand, not irrigated as in California.

#### Uses

Consumers eat fresh kiwifruit in a variety of ways. They often peel or slice kiwifruit for direct consumption or as an ingredient in fruit salads, as a garnish on pies and other desserts, or as a topping for ice cream or breakfast cereal. The average size kiwifruit yields about 1/2 cup (4 ounces) of diced or sliced fruit.<sup>15</sup> Nearly all kiwifruit is consumed fresh rather than processed.<sup>16</sup> Efforts are underway in the United States and New Zealand to expand the use of kiwifruit in processed products, such as ice cream, yogurt, jams, and fruit juices.<sup>17</sup>

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<sup>13</sup> Although there are slight differences in grading standards, 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, while U.S. kiwifruit is most often either "U.S. No. 1" or "U.S. Fancy." The three grades are largely similar. Petition, p. 6.

<sup>14</sup> Growers and packers normally reject around 5 to 20 percent of each crop before it enters cold storage for failure to meet prescribed quality standards. The percentage discarded usually depends on the cultural practices of the individual grower. Telephone conversation with \*\*\* May 28, 1991.

<sup>15</sup> United Fresh Fruit and Vegetable Association, Fresh Facts for Foodservice: Kiwifruit, June 24, 1985, p. 1.

<sup>16</sup> "Of the fruit shipped to pack, roughly 95% is sold as fresh product." Petition, p. 6.

<sup>17</sup> Imports of processed kiwifruit fall under a different tariff classification from fresh kiwifruit and are not within the scope of this investigation. Petition, p. 12.

### Substitute Products

Kiwifruit competes for shelf space and sales at the retail level with commonly available fruits, namely apples, oranges, bananas, grapes, melons, and strawberries, as well as with such "exotic" fruits as mangoes, guavas, and papayas. However, because of its unique physical characteristics, fresh kiwifruit has no direct substitute.

### U.S. Tariff Treatment

Fresh kiwifruit is classified for tariff purposes in subheading 0810.90.20 of the Harmonized Tariff Schedule of the United States and is free of duty under the general (column 1) rate of duty, which applies to imports from New Zealand.

There is an agricultural marketing order in effect on all domestic kiwifruit regarding grade, size, and pack and container requirements.<sup>18</sup> The 1937 Agricultural Marketing Agreements Act provides that, whenever grade, size, quality or maturity regulations are in place on a commodity under a marketing order, the same or comparable regulations must be imposed on imports of that commodity.<sup>19</sup> Since New Zealand fruit meets U.S. standards, this marketing order has not affected imports from New Zealand. In addition, there are phytosanitary requirements for imports of fresh kiwifruit administered by the Animal, Plant and Health Inspection Service (APHIS) of the USDA. U.S. imports of kiwifruit from Chile and Italy must receive the so-called "cold treatment" to eliminate the threat of Mediterranean fruit flies. Imports from New Zealand are not affected since the fruit fly is not found there.

### THE NATURE AND EXTENT OF SALES AT LTFV

In calculating the margin of alleged underselling, petitioners argue that the New Zealand domestic market is not suitable for comparison with the U.S. market because of the inferior quality of the kiwifruit consumed in New Zealand and the presence of home market sales at less than the cost of production. Further, petitioners estimate that New Zealand also sells kiwifruit in third countries, i.e. Japan and Germany, at prices below production cost. As a result, based on information obtained on New Zealand production costs, petitioners construct a foreign market value of approximately \$6.00 per tray. Petitioners' comparison of this estimate with U.S. market prices yields an average alleged dumping margin of 255 percent.

### THE U.S. MARKET

#### Apparent U.S. Consumption

Table 1 presents data collected on monthly shipments of domestic and imported kiwifruit.

<sup>18</sup> 7 CFR Ch. IX, Part 920, Agricultural Marketing Service, USDA, Jan. 1, 1989.

<sup>19</sup> Agricultural Marketing Service, USDA, Marketing Agreements and Orders, p. 9.

Table 1

Fresh kiwifruit: Apparent U.S. consumption, by months, January 1988-March 1991

Month	Shipments of domestic product	Shipments of imports from New Zealand <sup>1</sup>	Apparent consumption	Ratio of ship- ments of imports to apparent consumption
	-----Tray equivalents-----			Percent
1988:				
January....	502,275	***	***	***
February...	686,797	***	***	***
March.....	667,674	***	***	***
April.....	622,533	***	***	***
May.....	395,480	***	***	***
June.....	0	***	***	***
July.....	0	***	***	***
August.....	0	***	***	***
September..	0	***	***	***
October....	111,466	***	***	***
November...	379,766	***	***	***
December...	751,634	***	***	***
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	***	***	***
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..	377	***	***	***
October....	314,709	***	***	***
November...	500,966	***	***	***
December...	527,830	***	***	***
1991:				
January....	748,218	***	***	***
February...	1,179,782	***	***	***
March.....	1,405,433	***	***	***

<sup>1</sup> Does not include \*\*\*.

Source: Compiled from data provided by NZKEA, CKC, and Oppenheimer.

Data for New Zealand shipments in 1988 are not directly comparable with similar data for 1989 and 1990. The New Zealand Kiwifruit Export Authority (NZKEA) provided figures for shipments between January 1988 and April 1989. These data include shipments from New Zealand to the continental United States as well as to Hawaii.<sup>20</sup> David Oppenheimer and Company, Seattle (Oppenheimer), a member of the David Oppenheimer Group, Vancouver, British Columbia, became the sole importer of New Zealand kiwifruit into the continental United States beginning with New Zealand's 1989 crop. Shipment figures for May 1989 onward represent Oppenheimer's U.S. shipments only and exclude imports into Hawaii and transshipments to Canada.<sup>21</sup>

According to Commerce import statistics, New Zealand has accounted for more than 90 percent of U.S. imports of fresh kiwifruit in each of the past three years. Thus, the consumption figures shown in table 1 give an accurate estimate of overall domestic consumption during the period of investigation.

The figures clearly point out the two marketing seasons: domestic shipments dominate the market in the winter months, and shipments of imports from New Zealand dominate during the summer. With each succeeding year, however, U.S. shipments have extended further into the summer months. In 1988, 1989, and 1990, domestic shipments of kiwifruit ceased in May, June, and July, respectively. Also apparent is the large increase in consumption. Toward the end of the period of investigation, apparent consumption consistently topped 1 million tray equivalents per month, a level significantly higher than in previous years. U.S. per-capita consumption of kiwifruit has risen dramatically in recent years. Between 1988 and 1989, per-capita consumption in the United States rose 46 percent and, between 1984 and 1989, it registered more than a 150-percent increase.<sup>22</sup> Finally, table 1 shows the strong presence of New Zealand fruit 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 and 1991, imports captured \*\*\* percent and \*\*\* percent of the market. The higher level of market penetration results, in part, from the late-season arrival of the ship *Pioneer Reefer*.

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, a date unusually late for New Zealand shipments to reach the North American market.<sup>23</sup>

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<sup>20</sup> Hawaii accounted for roughly \*\*\* percent of all imports of kiwifruit from New Zealand into the United States in 1990.

<sup>21</sup> In 1990, Oppenheimer re-exported slightly more than \*\*\* percent of its U.S. imports to Canada.

<sup>22</sup> Conference exhibit 2, Figure 5. Respondents also note that, while U.S. consumption has grown sharply, it lags well behind consumption in western Europe, Japan, and Canada. Ibid, Figure 2.

<sup>23</sup> Petitioners claim that this shipment demonstrates New Zealand's efforts to extend its marketing season in the United States, while respondents assert that the *Pioneer Reefer* was an "aberration" not to be repeated. See 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.<sup>24</sup> 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 represents all California kiwifruit growers, each of whom must pay an assessment on every tray of kiwifruit sold in order to fund the CKC.<sup>25</sup>

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.<sup>26</sup> It funds itself through a 1-cent assessment on each tray sold and a \$0.0375 per tray inspection fee. KMAC is a marketing cooperative whose membership, composed of U.S. handlers, accounts for approximately 50 percent of U.S. shipments. Its members conduct a weekly conference call to discuss inventory, prices, and market conditions; they also meet monthly in Sacramento to review the overall domestic market.<sup>27</sup> The CKEA functions much like KMAC, although the exchange of market information among members is limited to that of export markets. CKEA's members account for roughly 90 percent of U.S. export shipments.<sup>28</sup>

## GROWERS

Approximately 890 farmers grow kiwifruit in California; these growers account for 99 percent of domestic output.<sup>29</sup> 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,<sup>30</sup> raising such crops as peaches, plums, nectarines, grapes, almonds, and walnuts.<sup>31</sup>

## PACKERS AND HANDLERS

Approximately 79 firms pack kiwifruit in California.<sup>32</sup> Packers pack freshly harvested kiwifruit into a variety of containers and store the fruit

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<sup>24</sup> Petition, pp. 3-4.

<sup>25</sup> The current assessment is \$0.20 per tray. State law charges the handlers with the collection of this assessment. Petition, pp. 4-5.

<sup>26</sup> Petition, p. 5.

<sup>27</sup> Tom Schultz, transcript, p. 83; Petition, p. 5.

<sup>28</sup> Ibid., pp. 83-84.

<sup>29</sup> A handful of farmers have begun to raise kiwifruit in South Carolina, Washington, and Oregon; none of these farmers is thought to produce commercial quantities of fruit. Mark Houston, CKC, transcript, pp. 91-92.

<sup>30</sup> Mark Houston, CKC, transcript, p. 12.

<sup>31</sup> According to growers' questionnaire responses, sales of kiwifruit accounted for slightly more than one-half of growers' total farm income between 1988 and 1990. See table 7.

<sup>32</sup> Petition, p. 5.

in their own cold storage facilities, or deliver it to handlers for storage, or place it in independently operated cold stores. Packers charge a fee per tray of roughly \$2.20-\$2.40.<sup>33</sup> In addition, cold storage costs start at approximately \$0.20 per tray for the first month (known as precooling) and average \$0.14-0.18 per tray for each subsequent month.<sup>34</sup> Some packing firms additionally provide harvesting and handling services. In fact, several larger producers operate as vertically integrated growers, packers, and handlers.

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 sits in storage, the higher is the spoilage loss.<sup>35</sup> Packers charge growers for the cost of labor and supplies used in repacking.<sup>36</sup>

Roughly 50 handlers are active in the kiwifruit trade in California.<sup>37</sup> 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 and other charges.

Testimony from Tom Schultz, an integrated grower, packer, and handler, summarizes the relationship between growers and 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 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....<sup>38</sup>

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<sup>33</sup> Telephone conversation with \*\*\* May 11, 1991. Fees on other pack types are lower because of the reduction in required labor.

<sup>34</sup> Telephone conversation with \*\*\* May 28, 1991.

<sup>35</sup> Also, the type of packaging influences the amount of fruit lost to spoilage. In large volume containers, where the individual kiwifruit touch each other, decay spreads more rapidly. Pat Sanguinetti, Blue Anchor, Inc., transcript, p. 101.

<sup>36</sup> Petitioners contend that the alleged dumping of New Zealand kiwifruit not only depressed prices but forced growers to hold their output longer than usual, thereby compounding cold storage and repack expenses and increasing the amount of fruit lost to spoilage. See petitioners' brief, p. 14.

<sup>37</sup> Petition, p. 5.

<sup>38</sup> Transcript, pp. 26 and 28.

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 will not know their actual returns from their 1990 harvest until June or July of 1991.

#### U.S. Importers

Oppenheimer has imported New Zealand kiwifruit into the United States since the early 1960s. Since the 1989 New Zealand marketing season, it has been the sole importer and master agent of imports from New Zealand into the continental United States.<sup>39</sup> Oppenheimer imports kiwifruit from New Zealand for distribution throughout the continental United States, Canada, and Mexico. The firm's goal is to be "a year-round source of supply for kiwifruit to [its] customers throughout the United States."<sup>40</sup> 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 amounts of kiwifruit from Chile and, more recently, from Italy. Neither country, however, is a major source of supply for the U.S. market.

#### Marketing Considerations and Channels of Distribution

As mentioned, California kiwifruit is harvested each fall and marketed primarily during the period from October through May of the following year; peak selling months are usually January, February, and March. New Zealand kiwifruit, grown in the Southern Hemisphere, is harvested beginning in April and marketed in the United States from May through December of that year with peak selling months of June through October.

Domestic kiwifruit is sold by handlers who act as marketing agents for the growers. Most domestic handlers are privately organized and contract with growers to market their production of kiwifruit for a given year. Two grower-owned handling or marketing cooperatives, accounting for about \*\*\* of total U.S. producers' shipments, are also known to exist.

Domestic handlers and the one importer, Oppenheimer, primarily sell kiwifruit to wholesalers and retailers. The larger retailers generally purchase for their own accounts, while wholesalers purchase for resale to smaller retail grocers. Sales are also made to buying cooperatives. Forming a cooperative allows small to medium-sized retailers to achieve greater purchasing power. In many cases, sales to wholesalers and buying cooperatives are made at the various terminal markets around the United States.

Marketing efforts differ somewhat for the domestic and imported products. In contrast to the 50 handlers of domestic kiwifruit, Oppenheimer is the only U.S. importer of New Zealand kiwifruit. Oppenheimer handles all aspects of storing, shipping, pricing, marketing, and promoting New Zealand kiwifruit in the United States. As part of its promotion, Oppenheimer employs

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<sup>39</sup> \*\*\*.

<sup>40</sup> Gary Hammonds, Chief Executive Officer, Oppenheimer, transcript, p. 130.

merchandising agents who attempt to influence the placement of kiwifruit at the retail level and enhance consumer awareness of kiwifruit.

Kiwifruit is marketed in the United States in a variety of different sizes. The size of the fruit is measured by the number of pieces that will fit into a standard-sized tray--the lower the number, the larger the fruit. The majority of kiwifruit falls into a size range between 25 and 46. Demand for kiwifruit in the United States appears to be centered around small to intermediate-sized fruit, primarily between sizes 33 and 42.<sup>41</sup>

Domestic handlers and the U.S. importer have developed a number of different styles of packaging for kiwifruit to suit the different needs of their customers. The most common forms of packaging for both the domestic and the imported fruit are the single-layer tray, which is usually packed in sizes ranging from 27 to 42, and the volume-fill and the tri-pack containers, both of which contain fruit sized anywhere from 33 to 46.<sup>42</sup> For the period from May 1989 through January 1990, Oppenheimer reported approximately \*\*\* percent of its total U.S. shipments (by value) in trays, and \*\*\* percent in tri-packs. Petitioners indicated that, in the 1989-90 marketing season, 65 percent of their total production was in trays, 20 percent was in volume-fill containers, 12 percent was in bags, and 3 percent was shipped in bulk.<sup>43</sup> Other less common forms of packaging include one-pound bags, half trays, and bins ranging from 157 to 350 pounds in gross weight. The size of fruit is consistent within any given container; for example, a tray of "33s" contains fruit of size 33 only.

#### **CONSIDERATION OF MATERIAL INJURY TO AN INDUSTRY IN THE UNITED STATES**

The Commission mailed 230 questionnaires to growers, packers, and handlers. Sixty-six growers, accounting for nearly 35 percent of 1990 U.S. production, provided usable information. Their employment and financial data are presented in the following sections. Since the CKC maintains acreage and production data for the entire California industry, the following sections contain CKC data, while appendix C presents acreage and production data collected from responses to the Commission's questionnaires. Since packers and handlers are not directly involved in the actual production of kiwifruit, this report provides production, shipment, employment, and financial data gathered from them in appendix D.

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<sup>41</sup> Demand in Japan is primarily for larger sized fruit (sizes 25-33), while demand in Canada is for smaller sized fruit (sizes 39-46). \*\*\*.

<sup>42</sup> According to both petitioners and respondents, a volume-filled box contains three tray equivalent units of fruit loosely packed, while a tri-pack contains approximately the same quantity of fruit with three single-layer trays packed into a volume-fill box. Due to the additional materials and labor, the tri-pack costs slightly more than the standard volume-fill pack. Transcript, pp. 98, 182.

<sup>43</sup> Petition, exhibit 39-A.



## U.S. Kiwifruit Acreage and Production

Table 2 contains information on farm acreage devoted to kiwifruit production in California and annual output.

Table 2

Fresh kiwifruit: U.S. acreage and production, 1988-90

Year	Acreage				Production Millions of trays
	Bearing	Non-	Removed	New	
		bearing			
-----Acres-----					
1988.....	7,708	1,500	0	500	8.3
1989.....	8,208	1,250	0	250	10.2
1990.....	8,608	750	100	0	9.8

Source: CKC.

The number of bearing acres grew 12 percent between 1988 and 1990. However, the decline in non-bearing acreage and the recent cessation of new plantings will limit production expansion in the years ahead. Production rose 23 percent between 1988 and 1989 but fell 4 percent between 1989 and 1990 despite the increase in bearing acreage. A combination of factors contributed to this decline, including relatively warm weather, the continued drought in California, and a reduction in pruning and in weed control measures by some growers.<sup>44</sup>

## U.S. Producers' Domestic and Export Shipments

Table 3 provides information on domestic and export shipments by California producers.

<sup>44</sup> Telephone conversation with \*\*\* May 22, 1991.

Table 3

Fresh kiwifruit: U.S. producers' domestic and export shipments, 1988-90, January-March 1990, and January-March 1991

Item	Shipments by U.S. producers	Share of total shipments
	Tray equivalents	Percent
1988:		
Domestic.....	4,117,625	54
Export.....	3,455,211	46
Total.....	7,572,836	100
1989:		
Domestic.....	5,310,208	65
Export.....	2,859,396	35
Total.....	8,169,604	100
1990:		
Domestic.....	6,931,512	71
Export.....	2,852,455	29
Total.....	9,783,967	100
January-March--		
1990:		
Domestic.....	3,605,753	70
Export.....	1,553,418	30
Total.....	5,159,171	100
1991:		
Domestic.....	3,333,433	76
Export.....	1,072,609	24
Total.....	4,406,042	100

Source: CKC.

Total shipments grew in each successive year between 1988 and 1990. Shipments in 1989 were 8 percent above 1988 shipments, and shipments climbed another 20 percent in 1990. The interim periods show a decline in shipments. Between January-March 1990 and January-March 1991, total shipments fell 15 percent.

The U.S. industry has shipped a decreasing share of its output to export markets. In 1988, export shipments accounted for 46 percent of total U.S. producers' shipments. By 1990, that figure had fallen 29 percent. In interim 1991, the domestic market absorbed 76 percent of U.S. shipments and export markets the remainder. The strongest markets for U.S. exports of kiwifruit have been Canada and the Far East, in particular Taiwan, Hong Kong, Japan, and Korea.

#### U.S. Producers' and U.S. Importers' Inventories

Table 4 provides inventory data for domestic producers and the New Zealand importer.

Table 4

Fresh kiwifruit: U.S. inventories of domestic production and of imports from New Zealand, by months, May 1989-March 1991

Period	Domestic	New Zealand	Inventories as a ratio	
	inventories	inventories	to apparent consumption	
	-----Tray equivalents-----		Domestic	New Zealand
			-----Percent-----	
1989:				
May.....	( <sup>1</sup> )	***	***	***
June.....	( <sup>1</sup> )	***	***	***
July.....	( <sup>1</sup> )	***	***	***
August.....	( <sup>1</sup> )	***	***	***
September....	( <sup>1</sup> )	***	***	***
October.....	5,024,994	***	***	***
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.....	( <sup>1</sup> )	***	***	***
November.....	8,501,925	***	***	***
December.....	7,902,611	***	***	***
1991:				
January.....	6,737,092	***	***	***
February.....	4,871,240	***	***	***
March.....	2,869,826	***	***	***

<sup>1</sup> Not available; the CKC first collected inventory data in October 1989. In 1990, it did not collect data for October, since the harvest is not complete until November.

Source: CKC and Oppenheimer.

Domestic inventories begin at a high level after harvest in November and gradually decline as the marketing season for kiwifruit proceeds. Inventories of imports from New Zealand are high through the summer, but dwindle \*\*\*. Inventories of New Zealand kiwifruit were \*\*\* in 1990 than in previous years and remained at \*\*\* late into that year and into January of 1991.

#### U.S. Employment and Wages

Table 5 shows employment data for growers' 3 most recent crop years (October 1 through September 30).

Table 5

Fresh kiwifruit: Employment data of U.S. growers, crop years 1987/88-1989/90

Item	1987/88	1988/89	1989/90
Number of production and related workers (PRWs) . . . .	1,859	1,993	2,336
Hours worked by PRWs . . . . .	245,709	247,420	312,656
Total compensation paid to PRWs (1,000 dollars) . . . .	1,363	1,396	1,872
Hourly total compensation paid to PRWs . . . . .	\$5.45	\$5.55	\$5.92

Note.--Ratios are calculated using data provided by firms supplying both numerator and denominator information.

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

Fifty growers, accounting for 27 percent of production in 1990, provided usable employment data. All employment indicators in table 5 increased with each succeeding crop year. The number of hours worked by production workers rose 27 percent between the 1987/88 crop year and the 1989/90 crop year, and total compensation paid increased 37 percent over that period.<sup>45</sup>

#### Financial Experience of U.S. Growers

##### KIWIFRUIT OPERATIONS

Usable income-and-loss data were received from 54 growers on their kiwifruit operations in 1990. These firms accounted for about 30 percent of total U.S. production of kiwifruit in 1990. Of the 54 growers, 26 operated their business as a proprietorship, 14 as a partnership, and another 14 as a corporation. Aggregate data are presented in table 6.

The Commission requested data from each grower on a fiscal-year basis, which ended on December 31 for the majority of growers. Most of the growers employed a "cash basis" accounting method, which is mainly used for tax purposes. Under this accounting method, the grower records revenue when cash is received for its crop of kiwifruit and records the crop expenses when paid. In the kiwifruit industry, fruit is harvested and packed generally in the months of October and November of each year. Most of the fruit is normally sold during the first half of the next 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, because there is not a proper matching of revenues and expenses for the same crop, data reported on a "cash basis" do not reflect the financial

<sup>45</sup> In their questionnaire responses, many growers indicated that they relied on contract crews to harvest and prune their vineyards. Consequently, they were unable to provide accurate employment data.

performance for each annual crop.

Total proceeds from sales of kiwifruit dropped by 14 percent from \$8.8 million in 1988 to \$7.6 million in 1989. Such proceeds rose by about 12 percent to \$8.4 million in 1990 from the 1989 level. Total growing and operating expenses increased by 24 percent from \$9.0 million in 1988 to \$11.2 million in 1990. Net losses before income taxes rose from \$228,000 in 1988 to \$3.2 million in 1989, before declining to \$2.7 million in 1990.

Growers' aggregate pretax net loss margins increased from 2.6 percent in 1988 to 42.8 percent in 1989 and then declined to 32.3 percent in 1990. Their

Table 6

Income-and-loss experience of U.S. growers on their operations producing kiwifruit, fiscal years 1988-90<sup>1</sup>

Item	1988	1989	1990
	Value (1,000 dollars)		
Proceeds from deliveries/ sales . . . . .	8,786	7,551	8,431
Growing and operating expenses:			
Officers'/partners' salaries . . . . .	337	405	421
Interest expense . . . . .	702	931	1,028
Other . . . . .	7,975	9,450	9,708
Total . . . . .	9,014	10,786	11,157
Net (loss) before income taxes . . . . .	(228)	(3,235)	(2,726)
Net income or (loss) before income taxes and officers' or partners' salaries . . . .	109	(2,830)	(2,305)
	Ratio to net sales (percent)		
Growing and operating expenses . . . . .	102.6	142.8	132.3
Net (loss) before income taxes . . . . .	(2.6)	(42.8)	(32.3)
Net income or (loss) before income taxes and officers' or partners' salaries . . . .	1.2	(37.5)	(27.3)
	Number of firms reporting		
Net losses before income taxes	28	41	43
Data . . . . .	53	54	54

<sup>1</sup> Forty-four growers reported fiscal years that end on December 31; 4 growers on October 31; 2 growers on May 31; and one grower each on March 31, April 30, June 30, and September 30.

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

aggregate net income margin before deductions of income taxes and officers' or partners' salaries was 1.2 percent in 1988, but dropped to loss margins of 37.5 percent in 1989 and 27.3 percent in 1990. The number of firms reporting losses increased from 28 in 1988 to 41 in 1989 and 43 in 1990.

#### OVERALL OPERATIONS

Fifty of the 54 growers who supplied usable data on kiwifruit operations provided data on the overall operations of farms where kiwifruit is produced. The data are presented in table 7. The profitability trend for overall operations is generally the same as that for kiwifruit operations presented in table 6, except that the loss margin for overall operations is much higher in 1988.

Thirty-one growers provided assets, liabilities, and equity for overall farm operations; these data are shown in table 8. The reporting growers realized a negative return on total assets each year under investigation. The numbers of growers reporting negative equity were 9, 10, and 11 in 1988, 1989, and 1990, respectively.

#### CAPITAL EXPENDITURES

Twenty-eight growers reported capital expenditures in at least one of the years under investigation. Capital expenditures for kiwifruit operations increased from \$784,000 in 1988 to \$2.1 million in 1989, and then declined to \$1.6 million in 1990. The data are presented in the following tabulation (in thousands of dollars):

<u>Item</u>	<u>1988</u>	<u>1989</u>	<u>1990</u>
All products.....	1,616	2,864	2,122
Kiwifruit.....	784	2,085	1,574

Table 7

Income-and-loss experience of U.S. growers on the overall operations of their farms where kiwifruit is produced, fiscal years 1988-90

Item	1988	1989	1990
Value (1,000 dollars)			
Proceeds from deliveries/ sales of--			
Kiwifruit . . . . .	6,874	6,051	6,979
Other farm products . . . . .	3,179	3,345	3,224
Other farm income . . . . .	1,548	2,164	2,181
Total farm income . . . . .	11,601	11,560	12,384
Growing and operating expenses:			
Officers'/partners' salaries . . . . .	352	436	443
Interest expense . . . . .	1,541	1,656	2,037
Other . . . . .	11,149	13,213	13,535
Total . . . . .	13,042	15,305	16,015
Net (loss) before income taxes . . . . .	(1,441)	(3,745)	(3,631)
Net (loss) before income taxes and officers' or partners' salaries . . . . .	(1,089)	(3,309)	(3,188)
Ratio to total farm income (percent)			
Kiwifruit sales . . . . .	59.3	52.3	56.4
Growing and operating expenses . . . . .	112.4	132.4	129.3
Net (loss) before income taxes . . . . .	(12.4)	(32.4)	(29.3)
Net (loss) before income taxes and officers' or partners' salaries . . . . .	(9.4)	(28.6)	(25.7)
Number of firms reporting			
Net losses . . . . .	32	36	38
Data . . . . .	49	50	50

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

Table 8

Value of assets and return on assets of U.S. growers' farms where kiwifruit is produced, fiscal years 1988-90

Item	1988	1989	1990
	Value (1,000 dollars)		
Total assets . . . . .	23,062	24,150	23,657
Total liabilities . . . . .	18,536	21,222	24,423
Equity . . . . .	4,526	2,928	(766)
	Return on total assets (percent) <sup>1</sup>		
Ratio of net farm (loss) to total assets . . . . .	(5.7)	(15.0)	(14.7)

<sup>1</sup> Defined as net farm income or loss divided by total asset value. Computed from data of firms providing both asset and net income data.

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

The Commission requested 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 C contains growers' responses to these requests.

#### 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 any merchandise, the Commission shall consider, among other relevant factors<sup>46</sup>--

(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),

<sup>46</sup> 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."



(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 736, are also used to produce the merchandise under investigation,

(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.<sup>47</sup>

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<sup>47</sup> 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 (continued...)

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**

Table 9 presents data provided by respondents' counsel in response to the Commission's request for foreign producer information.

Table 9

Fresh kiwifruit: New Zealand's bearing acres, production, and shipments, 1988-90 and projected 1991-92

(In 1,000 tray equivalents, except as noted)					
Item	1988	1989	1990	Projected 1991	1992
Bearing acres.....	39,064	39,204	39,278	38,596	37,806
Production.....	51,300	47,800	72,100	62,500	68,300
Shipments:					
Home market.....	2,539	2,243	9,076	6,250	6,830
Exports to--					
United States.....	4,058	2,969	6,852	5,855	6,400
All other export markets.....	44,703	42,588	56,172	50,395	55,070
Total exports.....	48,761	45,557	63,024	56,250	61,470
Total shipments....	51,300	47,800	72,100	62,500	68,300

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

Production figures attest to the biennial bearing cycle of kiwifruit in New Zealand. Production fell 7 percent in 1989, rose over 50 percent in 1990, and is projected to fall 13 percent in 1991 and rise again by 9 percent in 1992. New Zealand consumed an increasing share of its total output of

<sup>47</sup> (...continued)

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."

kiwifruit over the period of investigation. Nonetheless, New Zealand's domestic market accounted for only 13 percent of total production in 1990, the year of highest domestic consumption.

Given the low level of domestic consumption, export markets are of paramount importance to New Zealand kiwifruit producers. Exports to the United States declined by 27 percent in 1988 and then more than doubled in 1990. Although the United States is a significant market for New Zealand exports, other markets, primarily Europe<sup>48</sup> and Japan, account for most of New Zealand's shipments. These exports fell by 5 percent in 1989 and jumped by nearly one-third in 1990.

The world market for kiwifruit has expanded greatly in recent years. Between 1987 and 1990, world production of kiwifruit nearly doubled.<sup>49</sup> Italy and New Zealand are by far the leading producers, with significant production in France, Japan, and Chile as well.<sup>50</sup> 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.<sup>51</sup>

In 1988, New Zealand legislation created the Kiwifruit Marketing Board (KMB), whose primary objective is "to obtain, in the interest of New Zealand producers, the best possible returns for kiwifruit intended for export."<sup>52</sup> The KMB directly controls exports of fresh kiwifruit to all foreign markets, except to 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 plans. Also, the KMB charters vessels on its own account to deliver the kiwifruit to its export markets.<sup>53</sup>

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<sup>48</sup> Currently, there are no antidumping orders in place on fresh kiwifruit in Europe or elsewhere. Petitioners, nonetheless, provided correspondence between representatives of the French kiwifruit industry and the KMB in which the French express their displeasure with KMB's marketing efforts in Europe. Petitioners' brief, exhibit 6.

<sup>49</sup> Respondents' brief, exhibit 35.

<sup>50</sup> According to 1990 production figures, Italy, New Zealand, France, Japan, and Chile produced 70, 72, 15, 15, and 7 million trays, respectively, compared with U.S. production of roughly 10 million trays. Ibid.

<sup>51</sup> "The World Market for Kiwifruit," Organization for Economic Co-operation and Development, July 1990, p. 5. See Petition, exhibit 9.

<sup>52</sup> Bruce Honeybone, Chairman, KMB, transcript, p. 110.

<sup>53</sup> Respondents' brief, p. 8. Respondents note that, by establishing a KMB office in Japan and by changing its business practices \*\*\*, the KMB will avoid future incidents like the *Pioneer Reefer*.

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

U.S. Imports

Table 10 presents import data for U.S. imports of kiwifruit, as reported in official statistics by Commerce.<sup>54</sup>

Table 10

Fresh kiwifruit: U.S. imports from New Zealand and all other sources, 1988-90, January-March 1990, and January-March 1991

Source	1988	1989	1990	January-March	
				1990	1991
Quantity (tray equivalents)					
New Zealand.....	4,107,631	3,114,286	9,352,822	52,848	2,222
All other sources....	35,270	297,420	198,425	608	69,783
Total.....	4,142,901	3,411,706	9,551,247	53,456	72,005
Value (dollars)					
New Zealand.....	25,468,360	22,292,627	57,268,305	369,936	14,040
All other sources....	260,203	1,811,064	1,056,334	3,021	577,934
Total.....	25,728,563	24,103,691	58,324,639	372,957	591,974
Unit value (per tray)					
New Zealand.....	\$6.20	\$7.16	\$6.12	\$7.00	\$6.32
All other sources....	7.38	6.09	5.32	4.97	8.28
Total.....	6.21	7.06	6.11	6.98	8.22

Source: Compiled from official statistics of the U.S. Department of Commerce.

These data show the significant increase in imports during the period of investigation, mirroring the substantial rise in consumption. Between 1988 and 1990, total imports more than doubled in terms of volume. Throughout the period, New Zealand remained by far the dominant source of kiwifruit imports, supplying more than 90 percent of imports each year.

To give a clearer view of the seasonality of imports, table 11 provides Oppenheimer's import data<sup>55</sup> by month for 1989 and 1990.

<sup>54</sup> Respondents submitted information indicating that U.S. imports in 1989 overstated actual imports from New Zealand by roughly 8 million kilograms (slightly more than 1 million trays). See respondents' brief, exhibit 18. Table 10 adjusts 1989 imports from New Zealand to correct this error.

<sup>55</sup> Respondents note that Oppenheimer markets roughly 20 percent of its U.S. imports from New Zealand in Canada each year, since kiwifruit enters either country duty-free. Official import statistics, therefore, overstate the

(continued...)

Table 11

Fresh kiwifruit: U.S. imports<sup>1</sup> reported by David Oppenheimer & Company, by months, May 1989-January 1991

\*            \*            \*            \*            \*            \*            \*

These figures reveal \*\*\* percent increase in imports between the 1989 New Zealand marketing year and the 1990 marketing year.<sup>56</sup> Also noteworthy is the high level of imports in December 1990, as a result of the *Pioneer Reefer* shipment.

### U.S. Market Shares

Table 12 shows the market shares of U.S. producers and U.S. importers, using adjusted official statistics for imports (i.e., those presented in table 10), during the investigation period.

Table 12

Fresh kiwifruit: U.S. producers' shipments, U.S. imports, and apparent consumption, 1988-90, January-March 1990, and January-March 1991

Item	1988	1989	1990	January-March	
				1990	1991
	<hr/> <div>Quantity (tray equivalents)</div> <hr/>				
U.S. producers' shipments.....	4,117,625	5,310,208	6,931,512	3,605,753	3,333,433
U.S. imports:					
New Zealand.....	4,107,631	3,114,286	9,352,822	52,848	2,222
All other sources.....	35,270	297,420	198,425	608	69,783
Apparent consumption.....	8,260,526	8,721,914	16,482,759	3,605,753	3,405,438
	<hr/> <div>As a share of the quantity of apparent consumption</div> <hr/>				
U.S. producers' shipments.....	49.8	60.9	42.1	98.5	97.9
U.S. imports:					
New Zealand.....	49.7	35.7	56.7	1.4	0.1
All other sources.....	0.4	3.4	1.2	0.0	2.0
Apparent consumption.....	100.0	100.0	100.0	100.0	100.0

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

Source: Compiled from official statistics of the U.S. Department of Commerce and the CKC.

<sup>55</sup> (...continued)

amount of kiwifruit actually consumed in the United States. Transcript, pp. 140-141; respondents' brief, exhibit 15.

<sup>56</sup> \*\*\*.

These data indicate that New Zealand's market share fell in 1989 and increased significantly in 1990. U.S. producers' share of apparent consumption rose from just under 50 percent in 1988 to nearly 61 percent in 1989; it declined between 1989 and 1990 to 42 percent. However, the market shares for the interim periods demonstrate the seasonality of the kiwifruit trade: exports from Southern Hemisphere producers, such as New Zealand, virtually ceased, whereas U.S. producers' shipments were at their peak. Therefore, the monthly shipment data presented in table 1 give a better view of the kiwifruit market.

As mentioned above, Oppenheimer asserts that U.S. import statistics overestimate the level of its U.S. sales. Recalculating table 12, assuming the transshipment to Canada of 20 percent of imports, yields the following market shares as a percentage of apparent consumption:

<u>Item</u>	<u>1988</u>	<u>1989</u>	<u>1990</u>	<u>January-March</u>	
				<u>1990</u>	<u>1991</u>
U.S. producers' shipments....	54	66	47	99	98
Imports from New Zealand.....	44	31	51	1	0

#### Prices

#### MARKET CHARACTERISTICS

The vast majority of both domestic and imported kiwifruit is sold on an f.o.b. basis and purchasers usually pay shipping charges for delivery of the fruit to their retail locations or storage facilities. Sales of kiwifruit are made almost exclusively through telephone contact by sales representatives or by customers placing orders and are rarely based on a formal written contract between the buyer and seller.<sup>57</sup> Price lists are uncommon and, when used, are generally not distributed to customers, but rather serve as suggested selling prices for sales to retailers and wholesalers. Discounts are frequently made from these list prices.<sup>58</sup>

Prices of kiwifruit in the U.S. market are primarily influenced by the supply from New Zealand and the United States relative to growing demand at the consumer level. This supply is determined by the size of each country's harvest in a given year, and prices during months in which New Zealand and U.S. marketing seasons overlap are usually lower, due in part to the greater overall supply in the U.S. market.<sup>59</sup> Because of the long storage life of kiwifruit, sellers have the option of maintaining inventories in cold storage

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<sup>57</sup> The Perishable Agricultural Commodities Act (PACA) states that an order from a customer cannot be canceled after the fruit is loaded for shipment at the seller's facility. Petitioners indicated that these guidelines are generally adhered to in the kiwifruit industry. Conversation with \*\*\*.

<sup>58</sup> \*\*\*.

<sup>59</sup> Lower market prices during these periods of seasonal overlap may also be due to additional factors: brokers or handlers may be willing to sell at a reduced price the fruit that is nearing the end of its storage life or the fruit just entering the market may not be completely ripe and will thus also be priced lower than at a later point in the season.

for some months while waiting for the depletion of supplies from other countries and for a corresponding increase in market price.<sup>60</sup>

#### QUESTIONNAIRE PRICE DATA

Twelve handlers and one importer provided information pertaining to their sales and marketing practices for domestic kiwifruit. Most handlers reported approximately equal volumes of sales to wholesalers and retailers. For the year 1990, Oppenheimer reported \*\*\* percent of its total sales to retailers and \*\*\* percent to wholesalers. Other smaller types of customers accounting for the remainder of its total sales volume include brokers, institutional wholesaler/retailers, and food service distributors.

The majority of domestic handlers sell kiwifruit in single-layer trays, although petitioners note that in recent years, especially at the beginning of the U.S. marketing season, there has been a trend toward more sales of smaller sized domestic fruit in bins and 23-pound volume-fill containers.<sup>61</sup> This provides the handler with reduced labor and packaging costs on a tray-equivalent basis when compared with single-layer trays, and the price per piece of the smaller sized fruit, which is usually packed in these forms, is also lower.<sup>62</sup> Oppenheimer reported that approximately \*\*\* of its shipments are packed in trays and \*\*\* are packed in volume-fill containers.

Fresh kiwifruit is marketed on a national basis; handlers reported most of their sales to customers located more than 500 miles from their facilities. \*\*\*. Nine of 12 handlers reported that demand for kiwifruit in the United States has increased over the investigation period; one reason cited for this increase in demand is better promotion and marketing on the part of handlers and the CKC. One handler noted that greater efforts have been made to change the consumer perception of kiwifruit from an exotic fruit to one that has more of an everyday appeal.<sup>63</sup> \*\*\* indicated that demand in the United States has increased in recent years. Reasons cited for this increase are \*\*\*. The number of full-time retail store merchandisers employed by the importer grew from \*\*\* in 1986 to \*\*\* in 1990.

\*\*\* reported that U.S.-produced and New Zealand kiwifruit are used interchangeably, although \*\*\* also noted that quality differences do exist between fruit from the two countries. Among this latter group, \*\*\* noted that kiwifruit imported from New Zealand generally has a more uniform quality, size, and flavor, and is preferred by buyers when both domestic and New

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<sup>60</sup> As an example, U.S. handlers explained that the cause of the relatively low shipments during the first quarter of 1991, which is usually the prime marketing season for the domestic product, was that they were holding inventories while waiting for New Zealand to sell out of their late 1990 shipment. Transcript, p. 31.

<sup>61</sup> Transcript, p. 101.

<sup>62</sup> 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 too long. Transcript, p. 101.

<sup>63</sup> Questionnaire response of \*\*\*.

Zealand kiwifruit are available.<sup>64</sup> Two other handlers stated that domestic kiwifruit is higher in quality than imported fruit; one noted that this is particularly the case when the U.S. season is just beginning and the fruit is fresh, while the fruit from New Zealand has been stored for as long as 9 months.<sup>65</sup>

#### PRICE TRENDS AND PRICE COMPARISONS

Nine different domestic handlers and the one importer, Oppenheimer, provided the Commission with usable pricing data for sales in the U.S. market of kiwifruit packed in trays or in volume-fill containers (22-23 pounds of fruit net weight).<sup>66</sup> Monthly pricing data were requested for sales of kiwifruit during the months of April, August, and November of 1988 and 1989, as well as for each month in 1990 and the first three months of 1991. Data requested include quantities for the largest single sale of trays and volume-fill containers in each month, the net U.S. f.o.b. price per tray and volume-fill, the total quantity sold in each month, and the total net f.o.b. value shipped.<sup>67</sup> Also requested for each month was an estimate of the average number of pieces of fruit packed in trays and volume-fill containers in an attempt to arrive at an average price per piece of fruit in each type of packaging (tables 13-14).

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<sup>64</sup> A possible explanation offered by one handler was that New Zealand ships only high quality fruit to the export markets while several different grades of domestically produced kiwifruit are sold in the U.S. market.

<sup>65</sup> This information conflicts with a report from a buyer for \*\*\* who stated that \*\*\* prefers to continue purchasing the fruit that is nearing the end of its marketing season despite the length of time that it has remained in storage, because fresh fruit is usually harder and not as sweet as the more mature fruit. Telephone conversation, Apr. 25, 1991; \*\*\*.

<sup>66</sup> 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 type 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 the only way in which prices to the different types of customers vary is in \*\*\*, which were not included in the net f.o.b. prices reported in the Commission's questionnaire. Telephone conversation, May 21, 1991.

\*\*\* also stated that prices to retailers are not substantially different from prices to wholesalers. Telephone conversation, May 21, 1991.

<sup>67</sup> One handler, \*\*\*, was unable to determine its largest single sale of trays and volume-fill containers to one customer in each month. Instead \*\*\* reported weighted-average prices for sales of trays and volume-fill containers to its largest customer in each month.

\*\*\*.



Table 13

Fresh kiwifruit packed in trays: Weighted-average net f.o.b. prices for sales to retailers and wholesalers reported by U.S. handlers and one importer and margins of underselling (overselling) for the New Zealand fruit, by specified months, April 1988-March 1991

Month	United States			New Zealand			Margins	
	Price		Total quantity	Price		Total quantity	Trays	Piece
	Tray	Piece		Tray	Piece			
			Trays			Trays	-----Percent---	
1988:								
Apr....	\$***	\$***	117,079	\$***	\$***	***	( <sup>2</sup> )	( <sup>2</sup> )
Aug....	***	***	( <sup>1</sup> )	***	***	***	( <sup>2</sup> )	( <sup>2</sup> )
Nov....	***	***	92,214	***	***	***	18.2	9.1
1989:								
Apr....	***	***	149,720	***	***	***	( <sup>2</sup> )	( <sup>2</sup> )
Aug....	***	***	( <sup>1</sup> )	***	***	***	( <sup>2</sup> )	( <sup>2</sup> )
Nov....	***	***	78,199	***	***	***	7.6	9.3
1990:								
Jan....	***	***	255,082	***	***	***	25.1	(13.6)
Feb....	***	***	321,533	***	***	***	( <sup>2</sup> )	( <sup>2</sup> )
Mar....	***	***	616,854	***	***	***	( <sup>2</sup> )	( <sup>2</sup> )
Apr....	***	***	688,590	***	***	***	( <sup>2</sup> )	( <sup>2</sup> )
May....	***	***	571,017	***	***	***	(11.1)	(8.6)
Jun....	***	***	161,810	***	***	***	(16.7)	(29.4)
Jul....	***	***	1,238 <sup>3</sup>	***	***	***	(23.2)	(31.2)
Aug....	***	***	( <sup>1</sup> )	***	***	***	( <sup>2</sup> )	( <sup>2</sup> )
Sep....	***	***	( <sup>1</sup> )	***	***	***	( <sup>2</sup> )	( <sup>2</sup> )
Oct....	***	***	35,442	***	***	***	2.6	5.9
Nov....	***	***	62,983	***	***	***	15.2	21.1
Dec....	***	***	51,364	***	***	***	21.7	29.3
1991:								
Jan....	***	***	137,885	***	***	***	34.1	26.5
Feb....	***	***	269,677	***	***	***	30.6	6.2
Mar....	***	***	281,953	***	***	***	( <sup>2</sup> )	( <sup>2</sup> )

<sup>1</sup> Pricing data not reported.

<sup>2</sup> Margins not calculated.

<sup>3</sup> The weighted-average price for this month does not include sales by \*\*\*.

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

Table 14

Fresh kiwifruit packed in volume-fill containers: Weighted-average net f.o.b. prices for sales to retailers and wholesalers reported by U.S. handlers and one importer and margins of underselling (overselling) for the New Zealand fruit, by specified months, April 1988-March 1991

Month	United States			New Zealand			Margins	
	Price		Total quantity	Price		Total quantity	Cases	Piece
	Case	Piece		Case	Piece			
			Cases			Cases	-----Percent---	
1988:								
Apr....	\$***	\$***	6,173	\$***	\$***	***	( <sup>2</sup> )	( <sup>2</sup> )
Aug....	***	***	( <sup>1</sup> )	***	***	***	( <sup>2</sup> )	( <sup>2</sup> )
Nov....	***	***	2,365	***	***	***	( <sup>2</sup> )	( <sup>2</sup> )
1989:								
Apr....	***	***	144	***	***	***	( <sup>2</sup> )	( <sup>2</sup> )
Aug....	***	***	( <sup>1</sup> )	***	***	***	( <sup>2</sup> )	( <sup>2</sup> )
Nov....	***	***	20,212	***	***	***	(31.8)	3.4
1990:								
Jan....	***	***	59,517	***	***	***	( <sup>2</sup> )	( <sup>2</sup> )
Feb....	***	***	87,231	***	***	***	( <sup>2</sup> )	( <sup>2</sup> )
Mar....	***	***	88,899	***	***	***	( <sup>2</sup> )	( <sup>2</sup> )
Apr....	***	***	11,259	***	***	***	( <sup>2</sup> )	( <sup>2</sup> )
May....	***	***	3,567	***	***	***	(26.0)	(70.2)
Jun....	***	***	( <sup>1</sup> )( <sup>3</sup> )	***	***	***	( <sup>2</sup> )	( <sup>2</sup> )
Jul....	***	***	( <sup>1</sup> )( <sup>3</sup> )	***	***	***	( <sup>2</sup> )	( <sup>2</sup> )
Aug....	***	***	( <sup>1</sup> )	***	***	***	( <sup>2</sup> )	( <sup>2</sup> )
Sep....	***	***	( <sup>1</sup> )	***	***	***	( <sup>2</sup> )	( <sup>2</sup> )
Oct....	***	***	10,458	***	***	***	(9.2)	(31.3)
Nov....	***	***	31,288	***	***	***	(0.9)	(13.4)
Dec....	***	***	14,597	***	***	***	(9.3)	(38.1)
1991:								
Jan....	***	***	64,503	***	***	***	(40.4)	(63.2)
Feb....	***	***	89,044	***	***	***	( <sup>2</sup> )	( <sup>2</sup> )
Mar....	***	***	335,605	***	***	***	( <sup>2</sup> )	( <sup>2</sup> )

<sup>1</sup> Pricing data not reported.

<sup>2</sup> Margins not calculated.

<sup>3</sup> The only prices reported for these months were for sales \*\*\*.

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

Weighted-average prices for U.S.-produced kiwifruit packed in trays fluctuated, but declined overall by 14 percent from \$\*\*\* to \$\*\*\* per tray between April 1988 and March 1991. Prices per piece of fruit packed in trays also declined slightly from \$\*\*\* to \$\*\*\* over the same period. Prices per tray for New Zealand kiwifruit decreased substantially from \$\*\*\* to \$\*\*\* between August 1988 and February 1991. The price per piece of imported kiwifruit packed in trays also declined, from \$\*\*\* to \$\*\*\* over the same period.<sup>68</sup>

Eleven monthly price comparisons were possible for tray sales over the investigation period. In eight instances, New Zealand kiwifruit was priced below the domestic product with margins ranging from 2.6 percent in October 1990 to 34.1 percent in January 1991. In May, June, and July of 1990, trays from New Zealand were priced 11.1, 16.7, and 23.2 percent, respectively, higher than domestic trays.<sup>69</sup> Price comparisons were also possible on a per-piece basis in 11 different months, and margins generally corresponded with those for tray sales. In 7 months, New Zealand kiwifruit was priced below the domestic product with margins ranging from 5.9 percent in October 1990 to 29.3 percent in December 1990, and in 4 months, January and May-July of 1990, kiwifruit from New Zealand was priced higher than domestic kiwifruit with margins ranging from 8.6 to 31.2 percent.<sup>70</sup>

Monthly prices for domestic volume-fill containers fluctuated between April 1988 and March 1991 and decreased overall by 12 percent from \$\*\*\* to \$\*\*\* per container. Prices per piece of domestic fruit packed in volume-fill containers also fluctuated and decreased slightly, from \$\*\*\* to \$\*\*\* over this same period. Prices for volume-fill containers from New Zealand declined by 36 percent from \$\*\*\* to \$\*\*\* between August 1989 and January 1991. Prices per piece of New Zealand kiwifruit packed in volume-fill containers also declined considerably, from \$\*\*\* to \$\*\*\* per piece over this same period.

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<sup>68</sup> Reported sales volumes for domestic trays declined from 255,082 trays in January 1990 to 137,885 trays in January 1991, while reported sales volumes for New Zealand trays of kiwifruit increased substantially from \*\*\* in January 1990 to \*\*\* in January 1991. This dramatic increase in sales volume is due, in part, to the late-season Pioneer Reefer shipment. The larger than normal late-season sales may have exerted downward pressure on prices of trays and volume-fill containers in late 1990 and early 1991.

<sup>69</sup> Margins of overselling for these months correspond with increasing sales volumes of New Zealand fruit as the New Zealand marketing season is beginning, and decreasing sales volumes of domestic kiwifruit as the U.S. marketing season is ending. \*\*\* stated that kiwifruit from New Zealand usually enters the market at the beginning of the season with a higher price because it is fresher than the domestic fruit which has been stored for a number of months. Telephone conversation, May 24, 1991.

<sup>70</sup> In January 1990, a margin of underselling of 25.1 percent was reported for trays, and a margin of overselling of 13.6 percent was reported on a per-piece basis. This discrepancy is explained by the fact that the New Zealand fruit was reported to be of a much larger size than the domestic fruit: the size for New Zealand was 25, and the size of the domestic fruit averaged 39. Thus the price per piece of New Zealand fruit exceeded the price per piece of the domestic fruit despite a lower reported price per tray for the former.

Six monthly price comparisons between domestic and New Zealand volume-fill containers were possible. In all six comparisons, volume-fill containers from New Zealand were priced higher than domestic volume-fill containers, with margins ranging from 0.9 percent in November 1990 to 40.4 percent in January of 1991. In five of six comparisons on a per-piece basis for kiwifruit packed in volume-fill containers, the New Zealand product was priced higher than the domestic product, with margins ranging from 13.4 percent in November 1990 to 70.2 percent in May 1990. The one instance of underselling occurred in November 1989; the price per piece of New Zealand kiwifruit was 3.4 percent less than the price per piece of the domestic fruit.<sup>71</sup>

### Exchange Rates

Quarterly data reported by the International Monetary Fund indicate that during January 1988-March 1991 the nominal value of the New Zealand dollar fluctuated, appreciating 10.8 percent overall relative to the U.S. dollar (table 15).<sup>72</sup> 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 appreciation of 10.7 percent for the period January 1988 through the fourth quarter of 1990, the most recent period for which official price data are available.

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<sup>71</sup> Measured in volume-fill containers, New Zealand kiwifruit in this month was priced 31.8 percent higher than the domestic product. The discrepancy in margins between the price per container and the price per piece apparently occurred because the New Zealand fruit, at size 45, was much smaller than the domestic fruit with an average size of 30-33. Therefore, although the average price per volume-fill container from New Zealand exceeded the price of the domestic volume-fill, the fruit from the former was smaller and underselling occurred on a per-piece basis.

<sup>72</sup> International Financial Statistics, May 1991.

Table 15

Exchange rates:<sup>1</sup> Indexes of nominal and real exchange rates of the New Zealand dollar and indexes of producer prices in the United States and New Zealand,<sup>2</sup> by quarters, January 1988-March 1991

Period	U.S. producer price index	New Zealand producer price index	Nominal exchange rate index	Real exchange rate index <sup>3</sup>
1988:				
January-March.....	100.0	100.0	100.0	100.0
April-June.....	101.6	101.5	96.9	96.8
July-September.....	103.1	103.1	102.7	102.7
October-December....	103.5	104.3	104.5	105.3
1989:				
January-March.....	105.8	106.3	106.9	107.4
April-June.....	107.7	108.1	110.6	111.1
July-September.....	107.3	111.0	112.9	116.8
October-December....	107.7	112.4	112.2	117.2
1990:				
January-March.....	109.3	113.3	111.6	115.7
April-June.....	109.1	114.4	114.5	120.0
July-September.....	111.0	114.3	108.8	112.0
October-December....	114.4	116.1	109.1	110.7
1991:				
January-March.....	112.7 <sup>4</sup>	( <sup>5</sup> )	110.8	( <sup>5</sup> )

<sup>1</sup> Exchange rates expressed in U.S. dollars per New Zealand dollar.

<sup>2</sup> 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.

<sup>3</sup> The real exchange rate is derived from the nominal rate adjusted for relative movements in producer prices in the United States and New Zealand.

<sup>4</sup> Derived from U.S. price data reported for January-February only.

<sup>5</sup> Not available.

Note.--January-March 1988 = 100.

Source: International Monetary Fund, International Financial Statistics, May 1991.

### Lost Sales and Lost Revenues

\*\*\* handlers alleged six instances of lost sales for trays and volume-fill containers over the investigation period for a total of \*\*\* trays valued at \$\*\*\* and \*\*\* 23-pound volume-fill containers valued at \$\*\*\*. Six lost revenue allegations totaling \$\*\*\* over the investigation period were also received from the same \*\*\* handlers on sales of \*\*\* trays of size \*\*\* and \*\*\* kiwifruit and \*\*\* volume-fill containers.<sup>73</sup> The Commission contacted

<sup>73</sup> In addition to the \*\*\* handlers providing specific lost sales and lost revenue allegations, the majority of all other handlers also indicated that  
(continued...)

purchasers in three lost sales allegations and four lost revenue allegations. Other purchasers either could not be reached or refused to discuss their purchasing practices.

\*\*\* alleged that it lost a sale of \*\*\* trays of size \*\*\* kiwifruit to \*\*\* on \*\*\*, and identified New Zealand as the country of origin of the competing product. The imported fruit was reportedly the same size as the domestic fruit but sold for a total of \$\*\*\*, or \$\*\*\* per tray, while the domestic fruit was offered for sale at \$\*\*\*, or \$\*\*\* per tray. \*\*\* did not specifically confirm the substance of the allegation, but agreed that the price of \$\*\*\* per tray from New Zealand and the quantity, equal to \*\*\* of fruit, sounded accurate. \*\*\*. \*\*\* stated that \*\*\* ordinarily purchases domestic kiwifruit during December, but \*\*\* firm chose to purchase New Zealand fruit because of the difference in price. According to \*\*\*, quality and size, as well as terms of sale, are similar for both domestic and imported kiwifruit, but price is the primary factor \*\*\* uses when deciding which fruit to purchase.

\*\*\* also named \*\*\* as the source of a lost sale of \*\*\* volume-fill containers of size \*\*\* fruit on \*\*\*, priced at \$\*\*\*, or \$\*\*\* per container. 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.<sup>74</sup> \*\*\* stated that \*\*\* company purchased size \*\*\* kiwifruit from New Zealand in \*\*\* for \$\*\*\* per tray, although \*\*\* did not have an exact count of the total volume. \*\*\*. \*\*\* stated that the quality of the domestic and New Zealand products is very similar, and \*\*\* customers have never expressed a preference for one over the other. Consequently, \*\*\* buys the least expensive product on the market regardless of the country of origin.

\*\*\* cited \*\*\*, a wholesaler located in \*\*\*, 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. \*\*\* did note, however, that the quality of kiwifruit from New Zealand and the United States are comparable and that \*\*\* primary consideration when purchasing is the price of the product. \*\*\* has never given preferential treatment to kiwifruit by country of origin.

\*\*\* named \*\*\* as a customer 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 \*\*\*. On \*\*\* trays of size \*\*\* kiwifruit, \*\*\* was allegedly forced to lower

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<sup>73</sup> (...continued)

they have lost sales and revenues over the period of investigation, but were unable to provide dates, prices, and quantities pertaining to these allegations.

<sup>74</sup> In this case, the price of the domestic fruit on a tray-equivalent basis is lower than the price of New Zealand fruit, because it is smaller in size and packed in volume-fill containers rather than in single-layer trays.

the price from \$\*\*\*, or \$\*\*\* per tray, to \$\*\*\*, or \$\*\*\* per tray. On another sale of \*\*\* 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 stated that, in the case of the \*\*\* lost revenue allegation, the source of the competing price quote came from another domestic handler and not from a New Zealand supplier as was alleged. However, \*\*\* referred to the large shipment from New Zealand in December 1990 and stated that it depressed prices of kiwifruit in the U.S. market through January of 1991.

\*\*\* alleged that it lost revenues totaling \$\*\*\* on a \*\*\* sale of \*\*\* trays of size \*\*\* kiwifruit to \*\*\*. The original price quote reported was \$\*\*\* per tray and, 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 seemed accurate. \*\*\* purchases kiwifruit primarily based on price. \*\*\* also stated that domestic and New Zealand kiwifruit sold in the U.S. market are similar in terms of size, flavor, and appearance. \*\*\* speculated that, \*\*\* 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.





B-1

**APPENDIX A**  
**FEDERAL REGISTER NOTICES**

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201, as amended by 56 F.R. 11918, Mar. 21, 1991), and part 207, subparts A and B (19 CFR part 207, as amended by 56 FR 11918, Mar. 21, 1991).  
**EFFECTIVE DATE:** April 25, 1991.

**FOR FURTHER INFORMATION CONTACT:** Jeff Doidge (202-252-1183), 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 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

**SUPPLEMENTARY INFORMATION:**

**Background**

This investigation is being instituted in response to 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 (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary of the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven (7) 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 section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this preliminary investigation available to authorized applicants under the APO issued in the investigation, provided that the application be made not later than seven (7) 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.

**Conference**

The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on May 15, 1991, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Jeff Doidge (202-252-1183) not later than May 10, 1991, to arrange for their appearance. Parties in support of the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

**Written Submission**

As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before May 20, 1991, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must 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 section 207.12 of the Commission's rules.

By order of the Commission.

Issued: April 28, 1991.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-10280 Filed 4-30-91; 8:45 am]

BILLING CODE 7020-02-M

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

**Fresh Kiwifruit From New Zealand;  
Institution and Scheduling of a  
Preliminary Antidumping Investigation**

**AGENCY:** United States International Trade Commission.

**ACTION:** Institution and scheduling of a preliminary antidumping investigation.

**SUMMARY:** The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731-TA-516 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that 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, that are alleged to be sold in the United States at less than fair value. The Commission must complete preliminary antidumping investigations in 45 days, or in this case by June 10, 1991.

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[A-614-601]

**Initiation of Antidumping Duty Investigation: Fresh Kiwifruit From New Zealand**

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

**ACTION:** Notice.

**SUMMARY:** On the basis of a petition filed in proper form with the U.S. Department of Commerce (the Department), we are initiating an antidumping duty investigation to determine whether imports of fresh kiwifruit from New Zealand are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commissions (ITC) of this action so that it may determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports from New Zealand of fresh kiwifruit. The ITC will make its preliminary determination on or before June 10, 1991. If that determination is affirmative, we will make a preliminary determination on or before October 1, 1991.

**EFFECTIVE DATE:** May 21, 1991.

**FOR FURTHER INFORMATION CONTACT:** V. Irene Darzenta or Louis Apple, 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) 377-0186 or 377-1769, respectively.

**SUPPLEMENTARY INFORMATION:**

**The Petition**

On April 25, 1991, we received a petition filed in proper form by the Ad

Hoc Committee for Fair Trade of the California Kiwifruit Commission (the Committee) and its members in their individual capacity. In compliance with the filing requirements of the Department's regulations (19 CFR 353.12), petitioners allege that imports of fresh kiwifruit are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that there is a reasonable indication that 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. Petitioners also allege that critical circumstances, as defined under 19 CFR 353.16, exist with respect to imports of fresh kiwifruit from New Zealand.

Petitioners have stated that they have standing to file the petition because they are interested parties, as defined under section 771(9)(C) of the Act, and they have filed the petition on behalf of the U.S. industry producing the product that is subject to this investigation. If any interested party, as described under paragraph (C), (D), (E), or (F) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, please file a written notification with the Assistant Secretary for Import Administration.

Under the Department's regulations, any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements regarding the filing of such requests are contained in 19 CFR 353.14.

**United States Price and Foreign Market Value**

Petitioners base their estimates of United States price on actual invoices and customer order forms obtained from regional marketing companies in the United States. Petitioners adjusted United States price for foreign inland freight, foreign brokerage and handling, ocean freight, marine insurance, U.S. Customs user fees, U.S. brokerage and handling charges, U.S. inland freight, and U.S. selling expenses such as advertising, marketing, financing costs, and other selling expenses.

Petitioners have provided evidence that less-than-fair-value margins exist whether U.S. prices are compared to home market prices, third country prices, or constructed value. However, petitioners claim that home market

prices cannot be used as a basis for estimating foreign market value because (1) the home market is not viable, (2) the majority of the kiwifruit sold in the home market is not of a comparable quality, and, as such, is not similar to that exported to the United States, and (3) home market sales of kiwifruit of a comparable quality to that exported to the United States are made at prices below their cost of production. Petitioners have also presented evidence that third country prices are below cost of production and are thus an inappropriate basis for foreign market value. (See "Sales Below Cost of Production" section of this notice.) Therefore, petitioners base foreign market value on constructed value pursuant to section 773(e)(1) of the Act. Constructed value consists of the cost of production, general expenses, profit and packing. Petitioners based the cost of production on (1) a study published by the New Zealand Ministry of Agriculture and Fisheries detailing grower costs for the 1990/1991 growing season (the MAF study) and (2) various 1990 publications which set forth post-harvest storage and marketing expenses of the New Zealand Kiwifruit Marketing Board (NZKMB), the sole exporter of fresh kiwifruit to the United States.

The MAF study calculates grower costs inclusive of packing, principal repayments on outstanding loans as a debt servicing expense, and certain other expenses which are more appropriately classified as general expenses. To the grower costs, petitioners added the NZKMB's expenses to arrive at the cost of production (inclusive of both grower and NZKMB costs).

To calculate constructed value, petitioners added to the cost of production the statutory minima of ten percent for selling, general, and administrative expenses (SG&A) and eight percent for profit. In accordance with the Department's methodology, we have deducted from the grower costs packing, principal repayments, and general expenses. We have added to the cost of production the general expenses from the MAF study because they exceed the statutory minimum. To this sum, we have added the statutory minimum for profit and the packing expenses deducted from grower costs.

Based on a comparison of United States price and foreign market value, petitioners have calculated a weighted-average dumping margin of 255.02 percent. Based on our recalculation of the constructed value, we found a weighted-average dumping margin of approximately 220 percent.

#### Sales Below Cost of Production

Petitioners allege that home market and third country sales of the subject merchandise are made at prices below cost of production. Petitioners have calculated cost of production based on the grower costs presented in the MAF study (adjusted, in accordance with the Department's methodology, to exclude principal repayments and general expenses, but not packing) and the NZKMB's costs (see the "United States Price and Foreign Market Value" section of this notice). Petitioners have compared the cost of production with NZKMB's home market and third country prices obtained from various 1990 and 1991 publications. This analysis provides reasonable grounds to believe or suspect that the NZKMB has made sales in the home market and to third countries at prices below the cost of production. Therefore, pursuant to section 773(b) of the Act, we are initiating an investigation to determine whether home market sales (or third country sales in the event that we determine that the home market is not viable) are made at prices below cost of production.

#### Initiation of Investigation

Pursuant to section 732(c) of the Act, the Department must determine, within 20 days after a petition is filed, whether the petition sets forth allegations necessary for the initiation of an antidumping duty investigation, and whether the petition contains information reasonably available to petitioner supporting the allegations.

We have examined the petition and found that it complies with the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of fresh kiwifruit from New Zealand are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by October 1, 1991.

#### Scope of Investigation

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

Fresh kiwifruit is classified under subheading 0810.90.20.60 of the Harmonized Tariff Schedule (HTS). This HTS subheading is provided for

covenience and customs purposes. The written description remains dispositive.

#### ITC Notification

Section 732(d) of the Act requires us to notify the International Trade Commission (ITC) of this action and to make available to it the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in the Department's files, provided the ITC confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Deputy Assistant Secretary of Investigations, Import Administration.

#### Preliminary Determination by ITC

The ITC will determine by June 10, 1991, whether there is a reasonable indication that 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. If its determination is negative, the investigation will be terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act and 19 CFR 353.13(b).

Dated: May 15, 1991.

Eric L. Garfinkel,  
Assistant Secretary for Import  
Administration.

[FR Doc. 91-12027 Filed 5-20-91; 8:45 am]  
BILLING CODE 3510-06-0

**APPENDIX B**  
**WITNESSES APPEARING AT THE STAFF CONFERENCE**

LIST OF WITNESSES

Investigation No. 731-TA-516 (Preliminary)

FRESH KIWIFRUIT FROM NEW ZEALAND

Those listed below appeared at the United States International Trade Commission conference on May 15, 1991, in connection with the subject investigation.

In support of the imposition of antidumping duties:

McDermott, Will & Emery  
Washington, DC  
on behalf of

Mark R. Houston, President, California Kiwifruit Commission,  
Sacramento, CA

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

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

Bruce P. Malashevich, Economic Consulting Services, Inc.

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

In opposition to the imposition of antidumping duties:

Baker & Hostetler  
Washington, DC  
on behalf of

Hillary Brick, Vice President, Marketing, New Zealand Fruit Company,  
Seattle, Washington

Avon Carpenter, Board Member, New Zealand Kiwifruit Marketing Board,  
Auckland, New Zealand

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

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

Andrew Wechsler, Senior Vice President, Economists Incorporated,  
Washington, DC

Graham Painter, Principal Director, Trade Consultants, Ltd., Auckland,  
New Zealand

Shirley A. Coffield )--OF COUNSEL  
David I. Wilson )

**APPENDIX C**  
**GROWERS' QUESTIONNAIRE DATA**

## GROWERS' QUESTIONNAIRE DATA

The Commission received usable questionnaire data from 66 California growers who produced roughly 35 percent of U.S. kiwifruit in 1990. Table C-1 aggregates the acreage and production data from the growers' responses.

Table C-1

Fresh kiwifruit: Certain salient data of U.S. growers, crop years 1987/88-1989/90

Item	1987/88	1988/89	1989/90
Farm acreage:			
Total farm acreage . . . . .	8,740	8,802	9,470
Kiwifruit:			
Producing acreage . . . . .	1,859	1,947	2,100
Abandoned and/or not harvested acreage . . . . .	36	25	9
Net, harvested acreage . . . . .	1,823	1,922	2,091
Production (1,000 trays) . . . . .	2,244	2,563	3,439

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

## COMMENTS ON UNUSUAL AND NONRECURRING EVENTS

The growers were requested to check a list of unusual or nonrecurring events and specify other nonlisted events that resulted in additional expenses or loss of income during the period of investigation. Only 15 growers responded, indicating the following unusual or nonrecurring items:

Weather damage (frost, wind, heavy rain, drought, etc.)...	9
Replanting and pruning of weather damaged vineyards.....	3
Plant diseases.....	2
Planting new vines on new land.....	1
Material effects of a strike, lack of labor, or other operational difficulty.....	1
Material write-off of assets.....	1
Start-up or shutdown expenses.....	1

## IMPACT OF IMPORTS ON CAPITAL AND INVESTMENT

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



**Actual Negative Effects**

Of the 67 responding growers, 63 stated "Yes" that they experienced actual negative effects caused by imports of kiwifruit from New Zealand on their operations, while 4 growers said "No" to such impact of imports. The growers were asked to indicate the negative effects specifically listed in the questionnaire and to describe other negative effects not specifically listed. Following is the number of growers affected by the listed effects:

Increase in debt obligations.....	25
Cancellation or rejection of expansion projects.....	17
Rejection of bank loans for current operations.....	13
Reduction in the size of capital investments.....	13
Lowering of credit rating.....	12
Selling of assets to pay debt obligations..	11
Capitalization of operating losses.....	10
Rejection of bank loans for long term financing.....	9
Denial or rejection of investment proposal.....	9
Obtaining other or additional employment.....	9
Obtaining FmHA emergency disaster loans.....	1

In addition, most of the growers stated that the large shipment of kiwifruit in December 1990 from New Zealand caused a delay of their kiwifruit sales and lower prices for U.S. kiwifruit. Sales of crops were severely reduced during December 1990-February 1991, and New Zealand fruit sales in the U.S. market longer than their traditional season increased the costs of cold storage for U.S. growers and of repacking, and thus increased repack losses. This caused rearranging and extending some operating loans.

Other items mentioned by the growers were "\*\*\*."

**Anticipated Negative Effects:**

Sixty-four of the 67 responding growers reported that they anticipate negative impact from imports of kiwifruit from New Zealand. Only 3 growers stated "No" to anticipation of negative effects of such imports. Most of the growers stated that, due to high inventories of New Zealand fruit selling at low prices, they cannot sell fruit at a reasonable profit early in the season. The growers stated that this raises postharvest costs of cold storage and repacking, and increases repack losses. The amount of kiwifruit lost in repacking increased to over 10 percent during the 1990-1991 marketing season compared to 1 to 2 percent in the past, decreasing the amount of marketable fruit. In addition, fruit must be sold at lower prices to compete, resulting in higher losses.

Other summarized comments provided by the growers included: "\*\*\*."



**APPENDIX D**  
**PACKERS'/HANDLERS' QUESTIONNAIRE DATA**

## PACKERS'/HANDLERS' QUESTIONNAIRE DATA

Table D-1 provides data supplied by the 26 packers and handlers who responded to the Commission's questionnaire. The figures for "packing operations" represent 43 percent of total kiwifruit packed in 1990. The reporting handlers accounted for 68 percent of total U.S. shipments in 1990. Employment data are for the combined packing/handling operations of both packers and handlers.

## Financial Experience of U.S. Packers, Handlers and Packer/handlers

## KIWIFRUIT PACKER OPERATIONS

Five packers provided usable income-and-loss data on their kiwifruit operations and also on their overall operations. These firms accounted for about 11 percent of total kiwifruit packed in 1990. Aggregate data on kiwifruit and overall operations are presented in table D-2 and table D-3, respectively.

## KIWIFRUIT HANDLER OPERATIONS

Five handlers supplied usable income-and-loss data on their kiwifruit operations and also on their overall operations. These firms accounted for about 12 percent of total kiwifruit shipped in 1990. Aggregate data on kiwifruit and overall operations are presented in table D-4 and table D-5, respectively. One firm reported some revenue for cold storage and repacking functions, while all others reported commission income on sales of kiwifruit on behalf of growers.

## KIWIFRUIT PACKER/HANDLER OPERATIONS

Five packer/handlers provided usable income-and-loss data on their kiwifruit operations and also on their overall operations. These firms accounted for about 18 percent of total kiwifruit packed and 15 percent of total kiwifruit shipped in 1990. Aggregate data on kiwifruit and overall operations are presented in table D-6 and table D-7, respectively.

## KIWIFRUIT OPERATIONS OF PACKERS, HANDLERS, AND PACKER/HANDLERS COMBINED

Income-and-loss data of packers, handlers, and packer/handlers combined on their kiwifruit operations and also on their overall operations are presented in table D-8 and table D-9, respectively.

## INVESTMENT IN PROPERTY, PLANT, AND EQUIPMENT

Reported data on fixed and total assets, and return on assets for packers, handlers, packer/handlers, and all combined are presented in table D-10.

#### CAPITAL EXPENDITURES

Data reported on capital expenditures by packers, handlers, packer/handlers, and all combined are shown in table D-11.

#### IMPACT OF IMPORTS ON CAPITAL AND INVESTMENT

The Commission requested the packers, handlers and packer/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. Their responses are presented beginning on page B-16.

Table D-1

Kiwifruit: Certain salient data of packers/handlers, crop years  
1987/88-1989/90 and October-March of 1989/90 and 1990/91

Item	1987/88	1988/89	1989/90	Oct.-Mar.--	
				1989/90	1990/91
Packing operations:					
Average packing capacity					
(1,000 trays) . . . . .	4,821	4,974	5,539	5,399	5,537
Pack-out (1,000 trays) . . .	2,788	3,609	4,233	4,233	4,192
Capacity utilization					
percent . . . . .	55.4	68.3	72.4	74.1	71.7
Handling operations:					
Domestic shipments:					
Quantity (1,000 trays) . .	2,162	4,016	4,525	3,049	3,150
Value (1,000 dollars) . . .	6,643	11,244	14,232	9,839	9,755
Unit value (per tray) . . .	\$5.96	\$5.22	\$5.03	\$4.92	\$4.62
Exports:					
Quantity (1,000 trays) . .	1,094	1,530	2,189	1,695	1,010
Value (1,000 dollars) . . .	2,924	6,605	7,102	5,922	3,311
Unit value (per tray) . . .	\$6.47	\$5.57	\$4.81	\$4.86	\$4.31
Total shipments: <sup>1</sup>					
Quantity (1,000 trays) . .	3,257	5,546	6,714	4,744	4,160
Value (1,000 dollars) . . .	9,567	17,849	21,335	15,761	13,065
Unit value (per tray) . . .	\$6.11	\$5.34	\$4.96	\$4.90	\$4.54
End-of-period inventories					
(1,000 trays) . . . . .	0	0	0	1,837	1,933
Packing and/or handling operations:					
Production and related					
workers (PRWs) . . . . .	1,041	1,339	1,189	1,182	1,193
Hours worked by PRWs . . .	289,862	347,708	342,616	321,513	312,936
Total compensation paid					
to PRWs (1,000 dollars) . .	1,731	1,955	2,238	2,020	1,866
Hourly total compensation					
paid to PRWs . . . . .	\$5.97	\$5.62	\$6.53	\$6.28	\$5.96

<sup>1</sup> Because of rounding, figures may not add to the totals shown.

Note.--Ratios, which are derived from the unrounded data, are calculated using data provided by firms supplying both numerator and denominator information.

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

Table D-2

Income-and-loss experience of packers-only on their kiwifruit operations, fiscal years 1988-90, October-March 1989/90, and October-March 1990/91

\* \* \* \* \*

Table D-3

Income-and-loss experience of packers-only on the overall operations of their establishments wherein kiwifruit are packed, fiscal years 1988-90, October-March 1989/90, and October-March 1990/91

\* \* \* \* \*

Table D-4

Income-and-loss experience of handlers-only on their kiwifruit operations, fiscal years 1988-90, October-March 1989/90, and October-March 1990/91

\* \* \* \* \*

Table D-5

Income-and-loss experience of handlers-only on the overall operations of their establishments wherein kiwifruit are handled, fiscal years 1988-90, October-March 1989/90, and October-March 1990/91

\* \* \* \* \*

Table D-6

Income-and-loss experience of packer/handlers on their kiwifruit operations, fiscal years 1988-90, October-March 1989/90, and October-March 1990/91

\* \* \* \* \*

Table D-7

Income-and-loss experience of packer/handlers on the overall operations of their establishments wherein kiwifruit are packed/handled, fiscal years 1988-90, October-March 1989/90, and October-March 1990/91

\* \* \* \* \*

Table D-8

Income-and-loss experience of packers, handlers, and packer/handlers on their kiwifruit operations, fiscal years 1988-90, October-March 1989/90, and October-March 1990/91

\* \* \* \* \*

Table D-9

Income-and-loss experience of packers, handlers, and packer/handlers on the overall operations of their establishments wherein kiwifruit are packed/handled, fiscal years 1988-90, October-March 1989/90, and October-March 1990/91

\* \* \* \* \*

Table D-10

Value of assets and return on assets of kiwifruit packers/handlers, by types of firms, fiscal years 1988-90, October-March 1989/90, and October-March 1990/91

\* \* \* \* \*

Table D-11

Capital expenditures of kiwifruit packers/handlers, by types of firms, fiscal years 1988-90, October-March 1989/90, and October-March 1990/91

\* \* \* \* \*

### IMPACT OF IMPORTS ON CAPITAL AND INVESTMENT

#### Actual Negative Effects

##### Packers

\* \* \* \* \*

##### Handlers

\* \* \* \* \*

##### Packer/Handlers

\* \* \* \* \*

#### Anticipated Negative Effects

##### Packers

\* \* \* \* \*

##### Handlers

\* \* \* \* \*

##### Packer/Handlers

\* \* \* \* \*