

Department believes that the addition of Hawaii to the trade demand area should be evaluated on the same bases as other markets which might be added to the trade demand area. Should the second part of this material issue, as described below, be approved in this formal rulemaking procedure, the Board would be able to recommend adding Hawaii to the trade demand area through informal rulemaking procedures. Thus, this recommended decision denies that portion of the second material issue which recommends adding Hawaii to the trade demand area.

The second change would provide authority to the Board to make changes to the trade demand area, through informal rulemaking procedures. The Board now believes that it is in the best interest of the industry that the Board have the flexibility to respond to changing market conditions by adding a country or marketing region, when appropriate, to the trade demand area.

As currently provided, changes to the trade demand area require formal rulemaking procedures which include a public hearing, a recommended decision, an industry referendum and a final rulemaking decision. However, marketing policy decisions need to be made on a yearly basis, particularly those decisions that require computation to determine the amount of inshell hazelnuts available to be sold without restriction. The formal rulemaking procedure does not provide the Board with the flexibility or the timeliness it needs to respond to changing markets in other countries. Informal rulemaking authority, which requires a Board recommendation and Secretarial approval, would enable the Board to make more timely responses to changing market conditions in countries or regions outside the U.S.

The record indicates that a recommendation to add a country or region to the trade demand area would first be considered by the Board's Export Committee when it develops and recommends to the Board an annual export marketing policy. Changes in the trade demand area would then be considered by the Board and recommended to the Secretary. Notice of these meetings would be made to hazelnut growers and handlers in Oregon and Washington and the meetings would be open to all members of the industry.

According to the hearing record, a Board recommendation to add a country or region to the trade demand area would be based primarily on the potential market conditions and opportunities in the country or region. Market considerations could include:

Transportation modes and costs for getting product to the country or region; non-restrictive or at least neutral import and customs requirements; marketing infrastructure; consumption habits, holidays or cultural factors to which marketing efforts could be tied; economic outlook in the country; and other financial and economic factors.

The record evidence indicates that the characteristics of markets in some countries are very close to market characteristics in the United States. For instance, Canada, an export market country, is an example of a market that could be reviewed in a Board recommendation to expand the trade demand area. There is a considerable difference in price between hazelnuts sold in the U.S. and the same product sold in Canada. Inshell hazelnuts are marketed primarily during the end-of-the-year holiday season—which is also widely celebrated in Canada. The standard of living and disposable income levels in Canada are similar to those in the U.S. Thus, the record indicates that, for instance, the Board could recommend including Western Canada, or possibly all of Canada, in the trade demand area. Other examples of countries or areas which could be considered for inclusion in the trade demand area include Puerto Rico, and all or part of Mexico.

The Board would necessarily need to consider the effect adding a new country or region to the trade demand area would have on the U.S. inshell market. If the inshell supply designated for the trade demand area is not increased to meet the expected demand increase in new countries or regions, the inshell supply available to the U.S. market would be reduced. Thus, the addition of one or more new inshell markets, without an increase in inshell supply, could affect the amount of inshell hazelnuts available for shipment to domestic U.S. markets.

Any Board recommendation to shift a country or region from the export market to the trade demand area would likely result in a corresponding recommendation regarding the free and restricted volumes shipped. The Board should include the projected volume for the new country or region in inshell trade acquisitions when determining free and restricted percentages in its marketing policy recommendation to the Secretary. For instance, if Canada is added to the trade demand area, inshell shipments to Canada would be included in inshell trade acquisitions.

"Export" sales would be only hazelnut sales to those countries or regions that are not designated as being in the trade demand area.

Record evidence also indicates that the Board could recommend to the Secretary that a country or region be removed from the trade demand area if desired marketing results are not achieved. Indicators of failure could include: The volume of sales of hazelnuts in the new market were below expectations; the expected prices in the new market were not sustained; or the new market resulted in a negative or depressing affect on the marketing of hazelnuts in the remainder of the trade demand area.

The record does not suggest a minimum amount of time that a new country would be in the trade demand area before the Board could recommend its removal to the Secretary. The Board analyzes and recommends its marketing policy to the Secretary on an annual basis. Such analysis should include a complete and thorough review of any changes to the trade demand area that were made during the previous marketing season. Any recommendation to remove a country or region from the trade demand area would be reviewed by the Export Committee and recommended to the Board. Discussions for such a recommendation would be held at meetings open to industry members and the public prior to any recommendation to the Secretary. Thus, it is apparent that implementation of such a recommendation would preclude action to remove a country during the same marketing year it was added to the trade demand area.

A conforming change should be made in paragraph (b) of § 982.52 Disposition of restricted filberts. This amendment was listed as proposed material issue 9 in the Notice of Hearing but is discussed in this material issue as a conforming change.

Testimony submitted at the hearing indicates that free hazelnuts shipped to the trade demand area are marketed at prices higher than export prices. There is concern that exported inshell hazelnuts not be re-exported back to the U.S. at prices less than domestic market prices. The fourth sentence of § 982.52(b) currently provides that exporting handlers obtain certification from buyers that they will not re-export inshell hazelnuts back into the U.S. Record evidence indicates that, because foreign countries may be added to the trade demand area, inshell export sales to countries not in the trade demand area should not be exported or shipped onward to any country designated in the trade demand area. Thus, certifications signed by importers in export countries should include provisions that exported inshell hazelnuts not be exported again to any country or region that is part of