



July 7, 2005

Deborah A. Garza, Chair
Jonathan R. Yarowsky, Vice Chair
Antitrust Modernization Commission
1120 G Street, NW
Suite 810
Washington, DC 20005

Dear Ms. Garza and Mr. Yarowsky:

On behalf of the California kiwifruit industry, I am writing in response to the Federal Register notice of May 19, 2005 requesting comments on issues being studied by the Commission. In particular, the California Kiwifruit Commission (CKC) and the California Kiwifruit Exporters Association (CKEA) would like to voice its support for the Export Trading Company Act and Webb-Pomerene Acts and strongly urge that the Commission not recommend the elimination or limitation of these laws to the President and Congress.

Currently, there are approximately 300 growers in California producing around 50 million pounds of kiwifruit annually. Around 25% of the crop is exported each year generating 29% of the annual total crop value. In 1992, worldwide kiwifruit production reached record levels, over 2 billion pounds while California represented only 4%. The oversupply of kiwifruit throughout the world plagued California producers as increasingly other kiwifruit producing nations were taking over California's important export markets. California producers could no longer compete against cheap world kiwifruit prices and remain profitable. The formation of the California Kiwifruit Exporters Association, under the auspices of the ETC Act, has helped to allow our industry to remain competitive in the highly complex foreign market environment. The members of the California Kiwifruit Exporters Association, accounting for about 90% of the California kiwifruit exports, continue to benefit from the open communication and joint efforts that are allowed under the ETC Act.

The California kiwifruit industry needs joint export trade in order to succeed and compete effectively in foreign markets. The clarity of the ETC Act allows our industry to engage in joint export trade. This law helps reduce variable costs of transportation, warehousing and handling by enabling U.S. exporters to negotiate better rates for larger volumes of trade. It allows exporters to consolidate market research and administrative costs and to mitigate risks associated with non-payment by buyers, demand slumps, or disruption in deliveries caused by political or natural events in particular markets. At a time when U.S. trade deficits are routinely setting record highs, it would be unthinkable for the Antitrust Modernization Commission to come to the conclusion that these laws merit repeal.

Although the joint export trade provisions (with huge benefits and zero costs) can easily satisfy whatever standards the AMC may choose to apply in its review, we strongly reject the notion

that supporters should have to bear the burden of proving that the benefits of an existing law exceed its costs. It should go without saying that the burden rests with anyone attempting to alter an established law of Congress. In this same vein, the joint export trade provisions should not be subject to a “sunset” provision. If these laws continually were up for renewal at regular intervals, the legal certainty and protections they afford would be cast into doubt, and it would impinge on the long-term planning and contracting in which joint exporters engage.

Any attempts to change U.S. antitrust law should, at a minimum, do no harm to the U.S. economy. There can be no doubt that the repeal of the ETC and Webb-Pomerene Acts would harm the U.S. economy, including exporters of California grown kiwifruit.

Thank you for your consideration of these comments.

Sincerely,

Linda LaFrancis

Linda LaFrancis
President – California Kiwifruit Commission
Manager – California Kiwifruit Exporters Association

cc. The Honorable Dianne Feinstein
The Honorable Barbara Boxer
The Honorable John Doolittle
The Honorable Wally Herger
The Honorable Devin Nunes
The Honorable George Radanovich
The Honorable William Thomas