Live Cattle From Canada

Investigation No. 731-TA-812 (Final)

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U.S. International Trade Commission

Washington, DC 20436

U.S. International Trade Commission

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UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation No. 731-TA-812 (Final)

LIVE CATTLE FROM CANADA

DETERMINATION

On the basis of the record[1] developed in the subject investigation, the United States International Trade Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Canada of live cattle, provided for in subheading 0102.90.40 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

BACKGROUND

The Commission instituted this investigation effective November 12, 1998, following receipt of a petition filed with the Commission and the Department of Commerce by the Ranchers-Cattlemen Action Legal Foundation ("R-Calf") (Columbus, MT). The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by the Department of Commerce that imports of live cattle from Canada were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Notice of the scheduling of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of August 16, 1999 (64 FR 44538). The hearing was held in Washington, DC, on October 6, 1999, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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

[2] Chairman Lynn M. Bragg dissenting.

VIEWS OF THE COMMISSION

Based on the record in this investigation, we find that an industry in the United States is not materially injured or threatened with material injury by reason of imports of live cattle from Canada that are sold in the United States at less than fair value ("LTFV").[1] [2] [3]

I. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. IN GENERAL

To determine whether an industry in the United States is materially injured or threatened with material injury by reason of imports of the subject merchandise, the Commission first defines the "domestic like product" and the "industry."[4] Section 771(4)(A) of the Tariff Act of 1930, as amended ("the Act"), defines the relevant industry as the "producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product."[5] In turn, the Act defines "domestic like product" as: "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation. . . ."[6]

The decision regarding the appropriate domestic like product(s) in an investigation is a factual determination, and the Commission has applied the statutory standard of "like" or "most similar in characteristics and uses" on a case-by-case basis.[7] No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.[8] The Commission looks for clear dividing lines among possible like products, and disregards minor

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[1] Chairman Bragg determines that an industry in the United States is materially injured by reason of imports of live cattle from Canada that are sold in the United States at LTFV. See Dissenting Views of Chairman Lynn M. Bragg, infra. She does not join this opinion.

[2] Commissioner Crawford joins sections I, II.A., and II.B. of these views. See Views of Commissioner Carol T. Crawford, infra.

[3] Commissioner Askey joins sections I, II.A., and III of these views. She writes separately to explain her determination that the domestic industry producing live cattle is not materially injured by reason of the subject imports. See Concurring Views of Commissioner Thelma J. Askey, infra.

[4] 19 U.S.C. § 1677(4)(A).

[5] 19 U.S.C. § 1677(4)(A).

[6] 19 U.S.C. § 1677(10).

[7] See, e.g., NEC Corp. v. Department of Commerce, Slip Op. 98-164 at 8 (Ct. Int'l Trade, Dec. 15, 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Torrington Co. v. United States, 747 F. Supp. 744, 749, n.3 (Ct. Int'l Trade 1990), aff'd, 938 F.2d 1278 (Fed. Cir. 1991) ("every like product determination 'must be made on the particular record at issue' and the 'unique facts of each case' "). The Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes and production employees; and, where appropriate, (6) price. See The Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int'l Trade 1996).

[8] See, e.g., S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979).

variations.[9] Although the Commission must accept the determination of the Department of Commerce ("Commerce") as to the scope of the imported merchandise sold at LTFV, the Commission determines what domestic product is like the imported articles Commerce has identified.[10]

B. PRODUCT DESCRIPTION AND DOMESTIC LIKE PRODUCT

In its final determination, Commerce defined the imported merchandise within the scope of this investigation as:

> all live cattle except imports of (1) bison, (2) dairy cows for the production of milk for human consumption, and (3) purebred cattle and other cattle specially imported for breeding purposes.[11]

In the preliminary phase of this investigation, the Commission determined that there was a single domestic like product encompassing all stages of development for "live cattle," and corresponding with the description of the subject merchandise.[12] Employing a semifinished product analysis, the Commission found that there are three primary developmental stages for cattle -- calf stage, stocker/yearling stage, and feeder stage -- prior to the immediate slaughter or fed cattle stage.[13] The

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[9] Nippon Steel, 19 CIT at 455; Torrington, 747 F. Supp. at 748-49. See also S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979) (Congress has indicated that the like product standard should not be interpreted in "such a narrow fashion as to permit minor differences in physical characteristics or uses to lead to the conclusion that the product and article are not 'like' each other, nor should the definition of 'like product' be interpreted in such a fashion as to prevent consideration of an industry adversely affected by the imports under consideration.")

[10] Hosiden Corp. v. Advanced Display Mfrs., 85 F.3d 1561, 1568 (Fed. Cir. 1996) (Commission may find single like product corresponding to several different classes or kinds defined by Commerce); Torrington, 747 F. Supp. at 748-752 (affirming Commission determination of six like products in investigations where Commerce found five classes or kinds).

[11] See Notice of Final Determination of Sales at Less Than Fair Value: Live Cattle from Canada, 64 Fed. Reg. 56739 (October 21, 1999). Confidential Report ("CR") at A-5; Public Report ("PR") at A-5. The subject merchandise is all cattle and calves, regardless of breed or size, for slaughter as well as stocker and feeder cattle imported for feeding on rangelands or feedlots prior to slaughter. Cull cattle, which are milk cows and breed stock that are at the end of their useful life, that are imported for slaughter also are included. CR/PR at II-4.

[12] Live Cattle from Canada and Mexico, Invs. Nos. 701-TA-386 and 731-TA-812-813 (Preliminary), USITC Pub. 3155 at 4-7 (Feb. 1999)("Live Cattle-Prelim."). A subset of the calf group are calves raised to be slaughtered for veal, which also are included in the scope of the investigation. We included veal calves in the single domestic like product in our preliminary determination. No party proposed that veal cattle be considered a separate domestic like product, and we see no reason to do so based on the record before us. Accordingly, we include veal calves in the single domestic like product.

[13] Live Cattle-Prelim., USITC Pub. 3155 at 5. The first stage consists of calves, which typically are raised with their mothers from birth to weaning at five to ten months and weigh between 400 to 650 pounds. The second stage consists of yearlings or stockers, which typically are calves weaned from their mothers and kept on stocker/yearling operations or ranches in pastures, pens, and fields and are fed on available forage and high-value roughage feeds (such as sugar beet tops and corn stalks) or grazed on wheat pasture. Cattle are considered stockers at weights between 400 pounds to 650 or 750 pounds, which generally is until they are 12 to 20 months of age. The third stage is the feeder stage, when cattle are placed in feedlots or confined areas for about three to five months and are fed on finishing, high-energy rations, typically corn and protein supplements and some roughage. Feeder cattle generally weigh between 650 or 750 pounds and 1,100 to 1,300 pounds. The final stage is fed cattle ready for immediate slaughter, when cattle are about 15 to 24 months old and weigh between 1,100 and 1,300 pounds. CR at I-4 - I-8.

record indicated that cattle at each stage of development are dedicated to progression to the next stage and ultimately to development as fed cattle for slaughter; thus, cattle have no independent use or function other than eventually to be slaughtered for beef. Moreover, cattle display their essential characteristics at birth, which vary depending primarily on breed and sex, and are enhanced through the development process. Customers and producers perceive one ultimate end-use market for cattle, the market for beef. However, typically cattle will be sold at different stages of development.[14] While the transformation from calf to fed cattle is significant, particularly given the fact that the animal doubles or triples in size from weaned calf to slaughter, the extent of additional "processing" is not particularly complex, and principally involves providing the appropriate feed for cattle at each stage of development. Finally, the primary expenses for an operator at any one stage of production appear to be the cost of acquiring the cattle and/or the cost of feed.[15]

The parties do not dispute our like product finding in the preliminary determination. They presented no new evidence or new arguments to warrant changing our finding in this final phase of the investigation.[16] Accordingly, for the same reasons articulated in the preliminary determination, we determine that there is a single domestic like product in this investigation, consisting of "live cattle," corresponding to Commerce's description of the subject merchandise.

C. DOMESTIC INDUSTRY AND RELATED PARTIES

The domestic industry is defined as "the producers as a [w]hole of a domestic like product . . ."[17] In defining the domestic industry, the Commission's general practice has been to include in the industry all of the domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market, provided that adequate production-related activity is conducted in the United States.[18]

In the preliminary phase of this investigation, the Commission defined the domestic industry to include all operators involved in the production of the domestic like product, including cow-calf operators, stocker/yearling operators, and feedlot operators.[19] [20] We have been presented with no new

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[14] However, the stage at which cattle are sold varies from operation to operation, and within each operation from year to year, depending on weather, economic factors, prices for grain and/or cattle, and operation-specific factors. Live Cattle-Prelim., USITC Pub. 3155 at 6; CR/PR at III-1 and III-2.

[15] CR at VI-5, PR at VI-4..

[16] CR at I-3 - I-11, PR at I-1-I-8. Tr. at 259 (Counsel for Canadian Cattlemen's Association ("Canadian Respondent") indicated that "we are not taking issue with that [preliminary determination] definition of a like product"). Petitioner indicated that it concurred with the Commission's preliminary determination definition of the domestic like product and domestic industry. Petitioner's Prehearing Brief at 7-16.

[17] 19 U.S.C. § 1677(4)(A).

[18] See United States Steel Group, et al. v. United States, 873 F. Supp. 673, 681-684 (Ct. Int'l Trade 1994), aff'd, 96 F. 3d 1352 (Fed. Cir. 1996).

[19] Live Cattle-Prelim, USITC Pub. 3155 at 8. We found that the operations involved in each of the stages of development play an integral, and roughly equivalent, role in the progression from calves to fed cattle and, thus, that such operations engage in sufficient production-related activity to be included in the domestic industry, regardless of origin of the cattle. Id.

[20] The statutory processed agricultural products provision is not applicable to these investigations since the domestic like product is the upstream raw agricultural product, "live cattle," and not a downstream processed agricultural product. See 19 U.S.C. § 1677(4)(E).

evidence or new arguments to warrant changing our finding in this final phase of the investigation.[21] Accordingly, we reaffirm our definition of the domestic industry to include all producers involved in the various stages of production of the domestic like product.

We must further determine whether any producer of the domestic like product should be excluded from the domestic industry pursuant to the related parties provision in 19 U.S.C. § 1677(4)(B). That provision allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry producers that are related to an exporter or importer of subject merchandise, or which are themselves importers.[22] Exclusion of such a producer is within the Commission's discretion based upon the facts presented in each case.[23]

In the preliminary determination, the Commission did not exclude any domestic producers as related parties.[24] In the final phase of this investigation, no party argued that any domestic producers should be excluded as a related party.[25]

While the record contains information concerning importers of cattle from Canada,[26] there is only limited information regarding the domestic producers with whom they have some type of a

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[21] Petitioner concurred in the Commission's definition of the domestic industry in the preliminary determination and urged the Commission to "decline any invitation to engage in a segmented analysis of the domestic industry and the impact of subject imports." Petitioner's Prehearing Brief at 17-21. Canadian Respondents, however, suggested that the Commission should consider the different segments of the market in its analysis. Tr. at 259; Canadian Respondents' Prehearing Brief at 24 and 25; Canadian Respondents' Posthearing Brief at 12-14.

[22] 19 U.S.C. § 1677(4)(B).

[23] Sandvik AB v. United States, 721 F. Supp. 1322, 1331-32 (Ct. Int'l Trade 1989), aff'd without opinion, 904 F.2d 46 (Fed. Cir. 1990); Empire Plow Co. v. United States, 675 F. Supp. 1348, 1352 (Ct. Int'l Trade 1987). The primary factors the Commission has examined in deciding whether appropriate circumstances exist to exclude the related parties include: (1) the percentage of domestic production attributable to the importing producer; (2) the reason the U.S. producer has decided to import the product subject to investigation, i.e., whether the firm benefits from the LTFV sales or subsidies or whether the firm must import in order to enable it to continue production and compete in the U.S. market; and (3) the position of the related producers vis-a-vis the rest of the industry, i.e., whether inclusion or exclusion of the related party will skew the data for the rest of the industry. See, e.g., Torrington Co. v. United States, 790 F. Supp. 1161, 1168 (Ct. Int'l Trade 1992), aff'd without opinion, 991 F.2d 809 (Fed. Cir. 1993). The Commission also has considered the ratio of import shipments to U.S. production for related producers and whether the primary interest of the related producers lie in domestic production or in importation. See, e.g., Melamine Institutional Dinnerware from China, Indonesia and Taiwan, Invs. Nos. 731-TA-741-743 (Final), USITC Pub. 3016 at 14, n.81 (Feb. 1997).

[24] Live Cattle-Prelim., USITC Pub. 3155 at 8-10.

[25] Petitioner acknowledged the practicality of the Commission's finding in its preliminary determination. Petitioner in the final phase maintained that it was not "necessary to exclude per se from the domestic industry feedlots that are owned by large integrated producers who also import Canadian cattle and/or operate feedlot and slaughter facilities in Canada. Petitioner instead proposed that the "Commission should not use the positions of such domestic producers who could be excluded from the domestic industry under the related parties provision in a manner that would be adverse to the petitioner." Petitioner's Prehearing Brief at 22-23; Petitioner's Posthearing Brief, Response to Questions by Chairman Bragg at 29. The Packer Respondents indicated that the "Commission properly recognized . . . [the] fact [that the feedlot operations of U.S. packers do not account for a 'significant share' of domestic production] in its preliminary analysis" and contended that the related party issue "should have little effect on the Commission's analysis." Joint Packers' Posthearing Brief, Attachment 1 at 28 and 29.

[26] Importers responding to the Commission's importers questionnaire accounted for at least 66 percent of subject imports from Canada in 1998. CR at IV-2 and 3, PR at IV-1-IV-2.

relationship.[27] The information on the record regarding importers generally involves imports of subject merchandise by packers, which are not members of the domestic industry, rather than by domestic producers such as feedlots. However, some domestic producers still may be deemed related parties despite not being importers of subject merchandise because they directly or indirectly control, or are controlled by, an importer, such as a packer, or an exporter of subject merchandise.

The record, however, does not contain individual domestic producer data to determine whether appropriate circumstances exist to exclude them from the domestic industry. Thus, there is no individual producer data to exclude even if appropriate circumstances were found to exist. The domestic cattle industry comprises over a million operations, and no domestic producer of live cattle accounts for more than a very small share of domestic production.[28] Thus, we do not exclude any domestic producers as related parties.

II. NO MATERIAL INJURY BY REASON OF SUBJECT IMPORTS

In the final phase of antidumping duty investigations, the Commission determines whether an industry in the United States is materially injured by reason of the imports under investigation.[29] [30] In making this determination, the Commission must consider the volume of imports, their effect on prices

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[27] For example, the largest beef packer, IBP, which accounted for *** of cattle imports from Canada in 1998, reportedly entered a risk-sharing arrangement for the production of cattle in 1997 with a cattle producer in the Northwest United States; no further information regarding identification or size of the cattle producer has been available. Commission's Prehearing Staff Report at IV-2 and CR at IV-2 - IV-3, PR at IV-1-IV-2.

[28] CR/PR at Tables III-1, III-2, and III-3.

[29] 19 U.S.C. § 1673d(b).

[30] Commissioner Crawford notes that the statute requires that the Commission determine whether a domestic industry is "materially injured by reason of" the LTFV imports. She finds that the clear meaning of the statute is to require a determination of whether the domestic industry is materially injured by reason of unfairly traded imports, not by reason of the unfairly traded imports among other things. Many, if not most, domestic industries are subject to injury from more than one economic factor. Of these factors, there may be more than one that independently are causing material injury to the domestic industry. It is assumed in the legislative history that the "ITC will consider information which indicates that harm is caused by factors other than less-than-fair-value imports." S. Rep. No. 249, 96th Cong., 1st Sess. 75 (1979). However, the legislative history makes it clear that the Commission is not to weigh or prioritize the factors that are independently causing material injury. Id. at 74; H.R. Rep. No. 317, 96th Cong., 1st Sess. 46-47 (1979). The Commission is not to determine if the unfairly traded imports are "the principal, a substantial or a significant cause of material injury." S. Rep. No. 96-249 at 74 (1979). Rather, it is to determine whether any injury "by reason of" the unfairly traded imports is material. That is, the Commission must determine if the subject imports are causing material injury to the domestic industry. "When determining the effect of imports on the domestic industry, the Commission must consider all relevant factors that can demonstrate if unfairly traded imports are materially injuring the domestic industry." S. Rep. No. 71, 100th Cong., 1st Sess. 116 (1987) (emphasis added); Gerald Metals v. United States, 132 F.3d 716 (Fed. Cir. 1997) (rehearing denied).

For a detailed description and application of Commissioner Crawford's analytical framework, *see* Certain Steel Wire Rod from Canada, Germany, Trinidad & Tobago, and Venezuela, Invs. Nos. 731-TA-763-766 (Final), USITC Pub. 3087 at 29 (March 1998) and Steel Concrete Reinforcing Bars from Turkey, Inv. No. 731-TA-745 (Final), USITC Pub. 3034 at 35 (April 1997). Both the Court of International Trade and the United States Court of Appeals for the Federal Circuit have held that the "statutory language fits very well" with Commissioner Crawford's mode of analysis, expressly holding that her mode of analysis comports with the statutory requirements for reaching a determination of material injury by reason of the subject imports. United States Steel Group v. United States, 96 F.3d 1352, 1361 (Fed. Cir. 1996), *aff'g* 873 F. Supp. 673, 694-95 (Ct. Int'l Trade 1994).

for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.[31] The statute defines "material injury" as "harm which is not inconsequential, immaterial or unimportant."[32] In assessing whether the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United States.[33] No single factor is dispositive, and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."[34]

For the reasons discussed below, we determine that the domestic industry producing live cattle is not materially injured or threatened with material injury by reason of subject imports from Canada.

A. INFORMATION AVAILABLE IN THIS FINAL INVESTIGATION

The domestic live cattle industry is extremely large and dispersed.[35] Thus, forwarding questionnaires to all domestic producers of the domestic like product -- live cattle at any stage of development -- or developing a sampling methodology was impractical.[36] The Commission has reliable, comprehensive and complete information for this investigation from secondary sources.[37] [38] The

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[31] 19 U.S.C. § 1677(7)(B)(i). The Commission "may consider such other economic factors as are relevant to the determination" but shall "identify each [such] factor . . . and explain in full its relevance to the determination." 19 U.S.C. § 1677(7)(B). See also Angus Chemical Co. v. United States, 140 F.3d 1478 (Fed. Cir. 1998).

[32] 19 U.S.C. § 1677(7)(A).

[33] 19 U.S.C. § 1677(7)(C)(iii).

[34] 19 U.S.C. § 1677(7)(C)(iii).

[35] In 1998, there were 1,115,650 operations (including cow-calf operators, stocker/yearling operators, feedlot operators) of live cattle in the United States. CR/PR at III-1. The feedlot sector had 104,071 operations in 1998. CR/PR at III-2. Because of significant overlap between operations that perform backgrounding and the cow-calf operators, there is no information regarding the precise number of operations in each of those segments.

[36] The Court of International Trade (CIT) in Chung Ling acknowledged that it would be "impractical given the time constraints for completing its investigation" for the Commission to attempt to obtain absolute coverage utilizing questionnaires for "an industry comprised of more than 1,000 producers," in a final investigation. Chung Ling Co. v. U.S., 805 F. Supp.45, 49 (Ct. Int'l Trade 1992).

[37] The statute directs the Commission to "use the facts otherwise available" if the necessary information is not available on the record. 19 U.S.C. § 1677e(a). The statute further cautions that when "the Commission relies on secondary information rather than on information obtained in the course of an investigation or review . . . the Commission . . . shall, to the extent practicable, corroborate that information from independent sources that are reasonably at their disposal." 19 U.S.C. § 1677e(c). In this case, the secondary information comes from the type of independent sources that would normally be used for corroboration.

[38] The CIT has supported use of secondary source data when the Commission determined that questionnaire responses did not provide an adequate basis for making its determination. Alberta Pork Producers' Mktg Bd. v. United States, 669 F. Supp. 445, 460 (Ct. Int'l Trade 1987)("statute permits the Commission to use the best information otherwise available, and nothing in the statute or regulations prevents the Commission from using information other than questionnaire responses when the Commission determines that the responses do not provide an adequate basis for making its determination."), aff'g, Live Swine and Pork from Canada, Inv. No. 701-TA-224 (Final). See also Ranchers-Cattlemen Action Legal Foundation v. United States, Slip Op. 99-122 at 57 (Ct. Int'l Trade Nov. 5, 1999) (Court affirmed Commission's use of secondary sources for information rather than questionnaire responses in preliminary phase of related investigation regarding Mexico), aff'g, Live Cattle from Mexico, Inv. No. 731-TA-813 (Preliminary).

necessary domestic producer data were obtained primarily from data compiled by USDA.[39] Official import statistics, which were divided by weight categories, were used for import data.[40] In fact, the comprehensiveness of the information available from secondary sources for this industry allowed us to obtain and analyze data not generally available in other investigations. In addition, the Commission has obtained some information on the domestic industry from questionnaires that asked narrative questions.[41] The Commission also has obtained some information from responses to the importers'/purchasers' questionnaires regarding pricing data on both domestically-produced and imported live cattle.[42] [43]

B. CONDITIONS OF COMPETITION[44]

In reaching our determination, we have considered the conditions of competition distinctive to the U.S. cattle industry that provide the context for our analysis.[45]

A very important condition of competition affecting this industry is the "cattle cycle," a "cyclical pattern of expansions and contractions" that historically lasts for approximately ten years from peak to peak and has four stages.[46] When slaughter cattle prices are relatively low and beginning to rise, cattle producers retain more cattle for breeding purposes, rather than marketing them for slaughter. This initially reduces the number of cattle slaughtered and tends to further increase cattle prices. This is the expansionary phase, which usually lasts about five years, but can last from three to eight years. In two to three years, the calves of the cows held for breeding will be available for slaughter. Thus, the supply of cattle begins to increase until a peak year, where supplies exceed demand and prices begin to decline. The industry then enters the liquidation phase, which usually lasts about two to three years, but may last up to four years, in which cattle producers reduce their herds by sending some of their breeding stock to slaughter, further increasing the supply of slaughter cattle on the market and further reducing the price. In the consolidation phase, which lasts about a year, cattle prices start to reflect the reduced supply of

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[39] CR/PR at I-1. The data generally involved periods through June 1999, with USDA price data as recent as September 1999, which were at least as recent if not more so than would have been obtained by questionnaire responses.

[40] CR/PR at I-1-I-2 and Appendix J.

[41] The Commission sent questionnaires to approximately 76 U.S. associations representing U.S. cattle operations and received 37 responses. CR/PR at III-1. While these responses provide qualitative information, they are not necessarily representative of the domestic industry.

[42] The Commission sent importer questionnaires to 58 U.S. firms that were believed to import cattle (i.e., packers and feedlots); 21 firms responded with import data, 15 firms responded that they did not import during the period of investigation, and 22 firms did not respond. CR/PR at IV-1 and n.1.

[43] We note that the parties have not taken issue with the Commission's reliance on secondary information in this investigation. Petitioner's Posthearing Brief, Response to Questions from Vice Chairman Miller at 36 (Petitioner believes reliance on secondary sources of information, including USDA and Customs data, "is entirely reasonable"); Tr. at 145 (Petitioner); Conf. Tr. at 140 (Respondent); Responses to Pub. Doc. No. 67A.

[44] Commissioner Askey does not join the remainder of Section II. See Concurring Views of Commissioner Thelma J. Askey, which describe her views on the lack of material injury by reason of subject imports. She joins Section III of this opinion, however.

[45] 19 U.S.C. § 1677(7)(C)(iii).

[46] See CR at II-1 - II-3; PR at II-1 - II-2. Petitioner contended that the last four cattle cycles have been from 10 to 13 years long. Petitioner's Posthearing Brief at Exhibit 10.

cattle for slaughter due to the earlier liquidation of the breeding stock, and thus, cattle prices begin to rise.[47]

The parties offered differing positions in this final investigation on whether the current cycle is in the liquidation phase or is between the liquidation and expansionary phases (i.e., the consolidation phase when cattle prices begin to rise). The parties also differed on the relative severity of the current cycle. Petitioner contended the cycle is still in the liquidation phase and is more severe than past cycles. Respondents maintained that the liquidation phase is finishing and that the current liquidation phase is no worse than in prior cycles.[48] The majority of importers/purchasers responding to the Commission questionnaires reported that the domestic industry is in the liquidation phase of the cattle cycle.[49] A recent USDA study on the cattle and beef industries reports that there is no evidence that the current cycle is significantly different or worse than other recent cattle cycles.[50]

The dispersed nature of the cattle industry is another central condition of competition. There were 1,115,650 total cattle operations in the United States in 1998.[51] As discussed in the domestic like product section, these operations include cow-calf operators, stocker/yearling operators, and feedlot operators. While the entire industry is subject to the foregoing conditions, each of these industry segments is affected by the various conditions to different degrees and each is affected by conditions of competition unique to each segment.

Cow-calf operations are the least concentrated, with many of the roughly 800,000 operations family-owned and operated.[52] They may do their own grazing (i.e., backgrounding), or sell or toll the weaned cattle to a stocker/yearling operator for grazing.[53] For cow-calf and stocker/yearling operators, weather and other environmental conditions that affect the cattle's growth are important factors in their operations.[54]

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[47] The evidence in the record indicates that the cattle cycles in the United States and Canada are similar and usually parallel each other. CR/PR at VII-1; Tr. at 229 and 230.

[48] Petitioner argued that the current cattle cycle is not operating in the expected fashion. Petitioner's Prehearing Brief at 57-58; Tr. at 175. Petitioner alleged that "we're proceeding into the 10th year of this cattle cycle" which was expected to turn around in 1997 and USDA reports "now are stretching that out to 2001. . . this one is different. It is longer. It is more severe." Tr. at 175 and 176. According to Petitioner, "we could easily be at the bottom of the liquidation phase and start going back up, but only if we can do something about the imports. . . .we're in a stagnant position in this cattle cycle." Tr. at 180 and 181; Petitioner's Posthearing Brief, Response to Questions from Commissioner Hillman at 47, and Commissioner Koplan at 73.

Conversely, the Canadian Respondent contended that "neutral observers, including the USDA, consider this cycle to have been well within the normal parameters governing recent cycles" and that this "cycle has been of average length." Canadian Respondent's Posthearing Brief at 3. According to this Respondent, "[t]here is general agreement that the liquidation phase of the cycle is either over or about to be over." Id. The Canadian Respondent maintained that two features unique to the current cycle were the heavier carcass weights and the increases in feed grain prices that occurred in 1996. Id. at 5-6.

The Packer Respondents contended that "[i]n 1999, the liquidation cycle is finishing and consolidation is beginning, with the expected improvement in price and profitability." Joint Packers' Prehearing Brief at 21.

[49] CR at II-2, PR at II-1.

[50] CR at II-3, PR at II-2 citing U.S. Beef Industry: Cattle Cycles, Price Spreads, and Packer Concentration, USDA, ERS, Report Technical Bulletin 1874 at 1 (April 1999).

[51] CR/PR at III-1. The evidence on the record also indicates that only a small percentage of operations had a large herd size, i.e., 500 or more head of cattle. Petition at 6.

[52] CR at II-3 and III-2, PR at II-2 and III-1.

[53] CR at III-2, PR at III-1.

[54] CR at II-3, PR at II-2.

Feedlot operations also are fragmented, with 104,071 operations in the United States in 1998.[55] For feedlots, the cost of feed (i.e., price of grain) is an important factor as the cattle almost double their weight from the feeder to the fed stages.[56] The cost of feed for feedlots was relatively high in 1996 and throughout 1997 (with the highest cost in August 1997); it declined in 1998 to relatively low levels in December 1998 and the January-June 1999 period.[57] The price of grain, as well as the price for fed cattle, plays a role in the decision as to when a feedlot operator markets cattle for slaughter.[58] For example, relatively low grain prices may encourage feedlot operators to retain cattle in the feedlots for slightly longer periods of time because additional weight gain to the cattle is relatively inexpensive. However, there is a limited window of opportunity for marketing fed cattle for slaughter. Most breeds of fed cattle receive their best quality grades if they are slaughtered when they reach the optimal weight of about 1,200 pounds.[59] Additional weight gain usually is less efficient in that it requires more feed for each pound gained and results in the cattle disproportionately gaining weight in fat rather than more valued muscle.

The packer industry, which purchases fed cattle for slaughter, is heavily concentrated among a few firms, with purchases by the four largest packers accounting for 81 percent of the fed cattle and 33 percent of the cull cattle slaughtered in the United States in 1998.[60]

Corresponding with the different conditions in each industry segment, purchasers of cattle have somewhat different concerns depending on the stage of development of the cattle being purchased. Packers are concerned with the quality of the meat that the fed cattle will produce.[61] Purchasers of calves, stockers, and feeder cattle, however, are principally interested in the health of the animal and its potential for weight gain.[62]

Within each stage of development, domestic and Canadian live cattle are a generally substitutable product.[63] [64] Prices fluctuate daily.[65] While prices are determined in a national spot market and are widely disseminated, the prices in the primary feeding and slaughter areas of Texas, Kansas, Nebraska, Iowa, and Colorado (i.e., the feeder belt states) drive the national market.[66] Conversely,

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[55] CR at III-2, PR at III-1.

[56] CR at VI-5, PR at VI-4.

[57] CR at VI-7, PR at VI-6, and Table VI-4.

[58] CR at I-8, PR at I-6.

[59] CR at V-9, PR at V-5. Packers also prefer cattle of consistent size.

[60] CR/PR at IV-1.

[61] CR at II-4, PR at II-2. Quality grades for beef from fed cattle include prime, choice, and select. Beef from cull cattle are graded on a different scale or not at all. CR/PR at V-3.

[62] CR at II-4, PR at II-2.

[63] CR at II-13, PR at II-8, and CR/PR at V-1.

[64] Commissioner Crawford concurs that live cattle from different sources generally are substitutable within each stage of development. However, cattle at *different* stages of development are not substitutable for each other. As discussed infra, in 1998 slaughter cattle accounted for 93 percent of the subject imports by weight. However, in 1998 slaughter cattle accounted for only about 35 percent of the domestic cattle. Calculated from CR/PR at Table III-3. Thus, the vast majority of the subject imports enter the U.S. market at a stage of development that differs from the large majority, 65 percent, of the domestic like product as a whole. Therefore, the vast majority of the subject imports is not substitutable for the large majority of the domestic like product. Consequently, Commissioner Crawford finds that the subject imports and the domestic like product, as a whole, are at best only moderate substitutes for each other.

[65] CR/PR at V-1.

[66] USDA/GIPSA, Concentration in the Red Meat Packing Industry at 14, 37 (Feb. 1996) ("Within the national fed-cattle market, price linkages are strongest within the Midwest and Plains regions, with the leading price discovery

"secondary markets in the Northwest and the Mid-Atlantic states draw off of the Midwestern fed cattle prices."[67] While cattle are raised throughout the United States, over 65 percent of U.S. cattle inventory (by head) is located in fourteen states, with almost 40 percent located in five states.[68] Because of the large number of cattle producers and the fact that each operation is small relative to the domestic market, domestic producers are price takers.[69] In addition, fed cattle generally are marketed when they reach their optimal weight.[70] Further, primarily as a result of close geographic proximity and relatively open border policies, cattle and beef markets in the United States and Canada are highly interrelated.[71]

The demand for live cattle is derived from the demand for beef and beef byproducts.[72] The demand for beef can shift within the beef market between different cuts and grades of beef, between these cuts and manufactured meat such as hamburger, and between beef and other meats or other foods.[73] Changes in demand for beef also can result from increased competition from competing protein sources including poultry and pork.[74] Any of these changes may affect the demand and price for cattle.[75] Changes in beef exports also may have a significant effect on the demand for cattle in the United States.[76] Economic difficulties in a number of the major importing countries of U.S. beef, including Japan and other Asian nations, have resulted in those countries purchasing lower-priced types of meat (chiefly frozen rather than fresh).[77] Therefore the value of beef exports has fallen while the weight of these exports has risen.[78] Beef demand increased by 1.2 percent from 1996 to 1998, and was 2.4 percent higher in interim period 1999 compared with interim period 1998.[79] More recent information indicates that beef demand has increased sharply in 1999.[80]

U.S. apparent consumption of slaughter cattle by weight changed relatively little (declining 0.6 percent) from 1996 to 1998. However, U.S. apparent consumption of slaughter cattle by weight was 2.1 percent higher in interim period 1999 compared with interim period 1998.[81] While U.S. apparent

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points in Nebraska and Kansas."); Tr. at 87-88, 95-96, 98; Petitioner's Posthearing Brief, Response to Questions at 34 and 35; Petitioner's Prehearing Brief at 43; Canadian Respondent's Final Comments at 3 and 4; Joint Packers' Final Comments at 4; Joint Packers' Posthearing Brief at 11.

[67] Tr. at 87-88.

[68] CR/PR at Table G-1. The 14 states in descending order by number of head of cattle in inventory as of January 1, 1999 are: Texas, Nebraska, Kansas, Oklahoma, California, Missouri, South Dakota, Iowa, Wisconsin, Colorado, Montana, Minnesota, Kentucky, and Tennessee. Id.

[69] CR/PR at V-1.

[70] CR at V-9, PR at V-6.

[71] 1997 Section 332 Study at 1-1; Canadian Respondent's Prehearing Brief at 16-19.

[72] CR at II-8, PR at II-4.

[73] CR at II-9, PR at II-6. Beef is produced in two main categories: "whole muscle" cuts, which primarily are produced from fed cattle bred for beef, and manufactured meats such as hamburger, which mainly are produced from cull cattle. Id. at CR at II-4 and II-9, PR at II-2 and II-6.

[74] CR at II-9, PR at II-6. Studies of demand for beef show that beef products may have been increasingly replaced by pork and chicken in the United States. CR at II-9 and II-10, PR at II-6 and II-7.

[75] CR at II-9 and II-10, PR at II-6 and II-7. Canadian Respondent's Posthearing Brief at Response F.

[76] CR at II-7, PR at II-4.

[77] CR at II-7, PR at II-4; USDA, FAS, "Japan Livestock 1999 Annual Report - Revised 1999," at 1-3, Aug. 10, 1999.

[78] CR at II-7, PR at II-4. Asian demand for high-quality leather also has declined. CR at II-8, PR at II-5.

[79] Calculated from CR/PR at Table L-1.

[80] Barrons, "Here's the Beef," Oct. 11, 1999, at MW 14.

[81] CR/PR at Table B-1. U.S. apparent consumption by head decreased by 3.7 percent from 1996 to 1998, and was 0.8 percent higher in interim period 1999 compared with interim period 1998. U.S. apparent consumption by value

consumption by head decreased by 3.7 percent from 1996 to 1998, the average slaughter weight for cattle increased during this period.[82] Thus, as a result of the increasingly heavier carcass weights, beef production remained relatively stable despite the reduction in number of head of cattle slaughtered during this period.[83] Beef production increased in 1999.[84]

Virtually all of the subject imports of live cattle from Canada (93 percent by weight) entered the United States in 1998 ready for immediate slaughter.[85] Included in the category of Canadian cattle ready for immediate slaughter are fed cattle, which accounted for 65.4 percent by weight of total subject imports in 1998, and cull cattle, which accounted for 27.4 percent by weight of subject imports.[86] The remaining seven percent of subject imports by weight entered the United States in 1998 primarily as feeder cattle with some yearling or stocker cattle.[87] Subject imports accounted for 83.7 percent by weight of imports of live cattle in 1998.[88]

C. VOLUME OF THE SUBJECT IMPORTS FROM CANADA[89]

Section 771(7)(C)(i) of the Act provides that the "Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant."[90]

The volume of subject imports from Canada is small and declined both by weight and by head during the period of investigation.[91] The quantity of subject imports from Canada of live cattle by weight and by head decreased from 1996 to 1998, declining significantly in interim period 1999 compared to interim period 1998.[92] While subject imports increased both by weight and head if we consider the

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increased by 0.7 percent from 1996 to 1998, and was 1.8 percent higher in interim period 1999 compared with interim period 1998. Id.

[82] Average U.S. slaughter weight increased by 3.7 percent from 1,140 pounds in 1996 to 1,182 pounds in 1998, and was 1.4 percent higher in interim period 1999 (1,197 pounds) compared to interim period 1998 (1,180 pounds). Calculated from CR/PR at Tables IV-3 and J-1.

[83] CR/PR at Table L-1.

[84] Beef production was 2.6 percent higher in interim period 1999 compared with interim period 1998. Calculated from CR/PR at Table L-1.

[85] Calculated from CR/PR at Table J-1. Cattle for immediate slaughter include: steers and heifers (fed cattle) and bulls and cows (cull cattle) under the category - weighing 320 kg or more; and the category - weighing less than 90 kg (veal calves).

[86] Calculated from CR/PR at Table J-1. Veal calves also are included in this category but accounted for less than 0.5 percent by weight of total subject imports in 1998.

[87] Calculated from CR/PR at Table J-1.

[88] CR/PR at Table IV-2. Imports from Mexico accounted for the balance. USITC Pub. 3155 at Table IV-2.

[89] Commissioner Crawford does not join the remainder of these views. See Views of Carol T. Crawford, infra.

[90] 19 U.S.C. § 1677(7)(C)(i).

[91] We consider data by weight when available as the best unit of measure for comparison of data which includes cattle at different stages of development. A comparison based on head of cattle would be less appropriate since cattle are not equivalent or substitutable at different stages of development. The use of weight provides a uniform measure of size and value at each stage of development. Indeed, cattle are sold on the basis of hundredweight, not by the head.

[92] CR/PR at Table B-1. U.S. imports of live cattle from Canada by weight were: 1.834 billion pounds in 1996, 1.659 billion pounds in 1997, 1.623 billion pounds in 1998, 815.1 million pounds in interim period (Jan.-June) 1998, and 613.1 million pounds in interim period (Jan.-June) 1999. Imports from Canada by weight decreased by 11.5 percent from 1996 to 1998. U.S. imports of live cattle from Canada by head were: 1,476,000 in 1996,

expanded period of 1995 to 1998,[93] we do not find this increase to be significant since the increase was small in absolute and relative terms and because subject imports declined each year after the initial increase from 1995 to 1996.[94] Slaughter capacity in Canada increased by 25 percent from 1996 to 1999.[95] Due to certain start-up difficulties at two expanded Canadian slaughter facilities, a higher level of fed cattle were exported to the United States in 1996.[96] Those facilities were completed by 1997 and 1998.[97] In particular, additional capacity was brought on line in October 1998 at the IBP Lakeside plant in Brooks, Alberta, which resulted in Alberta slaughter levels 13.3 percent higher in 1999 than those of a year earlier.[98] The decline in subject imports after 1996, including the 1999 interim period, is consistent with both the increase in slaughter capacity in Canada and the ending of the liquidation phase of the cattle cycle.[99] [100] [101]

Live cattle imports from Canada held a small and decreasing share of the U.S. market over the period of investigation, both by weight and by head.[102] The market share for subject imports by weight

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1,352,000 in 1997, 1,253,000 in 1998, 652,000 in interim period 1998 and 491,000 in interim period 1999. Imports from Canada by head decreased by 15.1 percent from 1996 to 1998. Imports from Canada by weight and by head were 24.8 percent lower in interim period 1999 compared to interim period 1998.

[93] Petitioner urged the Commission not to "limit its analysis only to the period 1996 to date" and in particular to consider a period including 1995. Petitioner's Prehearing Brief at 51; Petitioner's Posthearing Brief, Response to Questions from Vice Chairman Miller at 36-38.

[94] U.S. imports of live cattle from Canada by weight increased from 1.454 billion pounds in 1995 to 1.623 billion pounds in 1998, for an increase of 13.9 percent, and by head increased from 1.1 million head in 1995 to 1.3 million head in 1998, for an increase of 11.7 percent. Calculated from CR at Table B-1 and USITC Pub. 3155 at Table C-1. However, subject imports initially increased by 34.2 percent and 26.2 percent by head and weight, respectively, from 1995 to 1996. USITC Pub. 3155 at Table C-1. We note that from 1992 to 1998 the volume of subject imports fluctuated between years but overall remained at the same general level. CR/PR at Table H-1 (data on imports in this Table include imports of non-subject dairy and breeder cattle).

[95] CR/PR at VII-3.

[96] USDA, FAS Online, "A Look at Rising Cattle and Beef Trade in North America," at 2 (April 9, 1999).

[97] USDA, FAS Online, "A Look at Rising Cattle and Beef Trade in North America," at 2 (April 9, 1999).

[98] CR/PR at VII-3; Tr. at 212 ("This increased Canadian slaughter at one plant more than accounts for the reduction in live cattle slaughter exports since that date."); Canadian Respondent's Prehearing Brief at 28; Canadian Respondent's Posthearing Brief at 7.

[99] There is evidence that the Canadian cattle cycle has "bottomed out in terms of liquidation," with 1999 the bottom of the cycle and rebuilding starting in 2000. Tr. at 230.

[100] We are not persuaded by Petitioner's arguments that the "[d]ecline in 1999 cattle imports is due to the antidumping investigation." Petitioner's Posthearing Brief at 11-12; Petitioner's Prehearing Brief at 87. See also 19 U.S.C. § 1677(7)(I). In addition to the evidence discussed above, we note that the decline in subject imports in 1999 was for the period (Jan.-June) prior to the affirmative preliminary determination by Commerce on June 30, 1999, and the consequent requirement that importers post bond for the duty on subject imports. The decline in subject imports when comparing the interim periods does not reflect a change in import behavior due to the pendency of the investigation, but rather a continuation of a trend. Cf. SAA at 854.

[101] Commissioner Hillman does not join the preceding footnote. In her view, although other factors such as the increase in Canadian slaughter capacity played a part in the decline in subject imports from interim period 1998 to interim period 1999, the filing of the petition may also have played a role. Accordingly, she has given the decline in subject imports in interim 1999 less weight in her analysis. *See* 19 U.S.C. § 1677(7)(I).

[102] We note that calculating market share data when the subject merchandise and domestic like product include products at different stages of development presents methodological problems and may result in overstated or understated market shares. We have used a methodology that overstated the market share of imports to a small degree. We examined Canadian share of the U.S. market for cattle for immediate slaughter (fed and cull) but also

declined from 4.2 percent in 1996 to 3.7 percent in 1998 and between interim periods from 3.8 percent in interim period 1998 to 2.8 percent in interim period 1999.[103] At the same time, domestic producers held about 95 percent of the market by weight and by head in each year examined and in the interim periods.[104] Subject imports' share of U.S. production (calf crop) declined from 3.7 percent in 1996 to 3.2 percent in 1998, and was 1.7 percent in interim period 1999 compared to 2.3 percent in interim period 1998.[105]

The significance of the small volume of subject imports, nearly all of which are cattle ready for slaughter, is reduced when considered in the context of a U.S. cattle industry composed of producers of cattle at all stages of development. As indicated above, virtually all of subject imports of live cattle from Canada (93 percent by weight) entered the United States in 1998 ready for immediate slaughter, with fed cattle accounting for 65.4 percent by weight in 1998, and cull cattle accounting for 27.4 percent by

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included in the Canadian import figure imports at earlier stages of development such as feeder cattle to be placed on feedlots in the United States. (U.S. apparent consumption (whether by weight or head) includes cattle slaughtered of U.S. origin plus all imports whether for immediate slaughter or at an earlier stage of development.) This methodology, which is favorable to the domestic industry, assumes that all imported cattle are slaughtered in the same year as imported, which reflects most imports from Canada; however, to the extent imports are not slaughtered in the same year, the market share of imports could be overstated.

Respondents contended that because Canadian feeder cattle are included in its market share (numerator), then U.S. apparent consumption (denominator) should be increased to include, for example, all U.S. cattle placed in U.S. feedlots. Canadian Respondent's Prehearing Brief at 4 and n.1; Canadian Respondent's Posthearing Brief at 12-14 and Response I to Commission Questions; Canadian Respondent's Final Comments at 4, 5, and 13; Joint Packers' Posthearing Brief, Attachment 1 at 9-10; Joint Packers' Final Comments at 3. We recognize that there is an active market for feeder cattle that is separate from the market for fed cattle. A market share calculation that only takes into account the transactions at the slaughter stage does not take into account these sales of the domestic like product. Thus, we considered whether it would be appropriate to include U.S. cattle inventory together with annual slaughter of U.S. origin in the denominator when calculating import market share (e.g., January 1, 1999 inventory with 1998 annual slaughter for the 1998 annual consumption figure). However, the inventory figures would include cattle that were not transacted in that year. Accordingly, we have relied for U.S. producers' shipments data on the annual slaughter as the denominator, but recognize that this figure overstates the subject import presence in a market that includes significant transactions in the domestic like product at the feeder and yearling/stocker stages.

In addition, Petitioner argued that the U.S. producers' market share was overstated because the U.S. producers' shipments data include the additional weight gained in the United States by cattle imported at the stocker and feeder stages and fed to slaughter weight in the United States. Petitioner's Prehearing Brief at 51. However, such imported cattle become U.S. cattle and thus are correctly included in U.S. producers' data. CR at II-5, n.13 (USDA defines domestic cattle to include all cattle fed in the United States including cattle imported as stocker or feeder cattle and fed prior to slaughter.)

[103] CR/PR at Table IV-3. Canada's market share by weight was 4.2 percent in 1996, 3.8 percent in 1997, and 3.7 percent in 1998. Canada's market share by head of cattle was 3.8 percent in 1996, 3.5 percent in 1997, and 3.4 percent in 1998. Comparing interim period 1998 and 1999 figures, Canada's market share by head declined from 3.6 percent to 2.7 percent.

[104] CR/PR at Table IV-3. The U.S. market share by weight held by the domestic industry was: 95.3 percent in 1996; 95.5 percent in 1997, 1998, and interim period 1998; and 96.4 percent in interim period 1999. The U.S. market share by head held by the domestic industry was: 95.0 percent in 1996; 94.7 percent in 1997 and 1998; 94.5 percent in interim period 1998; and 94.9 percent in interim period 1999.

[105] Calculated from CR at IV-9, PR at IV-7.

weight.[106] The remaining seven percent of subject imports by weight entered the United States in 1998 primarily as feeder cattle with some yearling or stocker cattle.[107]

Petitioner has urged us to take into account the concentration of the imports in particular regional markets in evaluating the significance of the volume of subject imports.[108] We have done so, but we concluded that the geographic distribution of the subject imports serves to diminish, rather than enhance, the significance of the small volume of subject imports. Almost 80 percent of subject imports entered states other than the primary feeder belt states (Texas, Kansas, Nebraska, Colorado, and Iowa), and thus the great majority of subject imports entered states that are considered secondary markets, such as Washington, Utah, and Pennsylvania.[109] In the feeder belt states, subject imports accounted for an even smaller market share (1.1 percent by head) than their share of the market overall (3.4 percent by head) in 1998.[110]

We are mindful, as we found in our preliminary determination, that a relatively small volume of imports of an agricultural commodity product may be significant in light of the effect of that small volume on prices. However, based on the evidence in the final phase of this investigation, we find that the volume and market share of subject imports are not significant even in the context of the conditions of competition for this agricultural industry, in light of the small share held by subject imports, the geographic dispersion of the subject imports, the different segments of the U.S. cattle industry and, as discussed below, the lack of significant price effects caused by the subject imports.

D. PRICE EFFECTS OF THE SUBJECT IMPORTS FROM CANADA

Section 771(C)(ii) of the Act provides that, in evaluating the price effects of the subject imports, the Commission shall consider whether --

> (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and

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[106] Calculated from CR/PR at Table J-1. Cattle for immediate slaughter include: steers and heifers (fed cattle) and bulls and cows (cull cattle) under the category - weighing 320 kg or more; and the category - weighing less than 90 kg (veal calves). Veal calves also are included in this category but accounted for less than 0.5 percent by weight of total subject imports in 1998.

[107] Calculated from CR/PR at Table J-1.

[108] Petitioner's Posthearing Brief at 5; Petitioner's Final Comments at 13 and 14.

[109] In 1998, about 22 percent of subject imports entered the feeder belt states as a share of total subject imports (by head) as follows: Texas (less than 0.05 percent); Kansas (1.3 percent); Nebraska (13.2 percent); Colorado (6.1 percent); and Iowa (1.3 percent). CR/PR at Table K-1. In 1998, over 80 percent of subject imports entered the following eight states in descending order by percent of total subject imports (by head): Washington (25.2 percent); Utah (14.1 percent); Nebraska (13.2 percent); Pennsylvania (7.2 percent); Minnesota (6.9 percent); Colorado (6.1 percent); Idaho (6.0 percent); and North Dakota (4.6 percent). CR/PR at Table K-1.

[110] CR/PR at Table IV-3 and Calculated from CR/PR at Table K-1 and USDA, Livestock Slaughter 1998 Summary at 22 and 23. Subject imports held less than 0.05 percent share by head of the Texas market in 1998, a 0.2 percent share of the Kansas market, a 2.3 percent share of the Nebraska market, a 3.2 percent share of the Colorado market, and a 1.7 percent share of the Iowa market. Id. Individual state market shares are calculated using all subject imports entering a state (which includes fed, cull, feeder, and stocker cattle) as a share of the total commercial cattle slaughter in that state in 1998. Thus, for the same reasons discussed earlier, these market shares are somewhat overstated.

(II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.[111]

A number of factors affect the price of cattle at each stage of development, including the cattle cycle, the volume of cattle being marketed, the demand for and the price of beef and beef byproducts, weather conditions, input costs,[112] and transportation.[113] Moreover, the relative importance of each factor differs significantly according to stage of development. Most cattle associations and purchasers reported that domestic and Canadian live cattle at the same stage of development are interchangeable;[114] at the same time, however, most cattle associations and purchasers reported that differences other than price between Canadian and U.S. cattle at similar stages of development are significant.[115]

Cattle prices in the United States typically are set in the national spot market. Feedlots and cattle producers generally are price takers and have little alternative but to take the market price at the time their product is ready for sale.[116] While cattle can be sold on either the spot market or on a contract or formula basis, the majority of U.S. fed cattle are sold on the spot market directly from the feedlot, usually in the United States by a bid system.[117] The share of cattle sold on contract and formula

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[111] 19 U.S.C. § 1677(7)(C)(ii).

[112] The cost of grain has a significant impact on the cost of production and affects the price of fed cattle. CR at V-1.

[113] CR/PR at V-1.

[114] CR at II-12, PR at II-8. In responses to Commission questionnaires, 26 of the 29 responding cattle associations reported that U.S. and Canadian feeder cattle were interchangeable, 27 of the 30 responding cattle associations reported that U.S. and Canadian fed cattle were interchangeable, 20 of the 22 responding cattle associations reported that U.S. and Canadian cull cattle were interchangeable, and all 14 of the responding purchasers reported that domestic and Canadian cattle were interchangeable. Id.

[115] CR at II-12 and II-13, PR at II-8 and II-9. In responses to Commission questionnaires, 22 of the 29 responding cattle associations and eight of the 12 responding purchasers reported that differences other than price between Canadian and U.S. cattle were significant. Cited differences included health, drugs, vaccinations, product safety, regulations, contracts, proximity, availability, and quality. Id. Eight of the responding purchasers *** reported that quality was the most important factor in their purchasing decisions, while eight other purchasers *** reported availability was the most important factor. Only one purchaser reported price as the most important factor, although most identified price as one of the three most important factors. Id. at CR at II-11, PR at II-7. In evaluating the importance of 18 factors, 16 of the 16 responding purchasers rated availability as very important and 14 purchasers also rated quality as very important. Id. at CR at II-11 and II-12, PR at II-7 and II-8.

[116] CR/PR at V-1. It is important that cattle for slaughter be sold at their optimal weight in order to receive their best quality grades. CR at V-9, PR at V-5 and V-6.

[117] CR at V-8, PR at V-5. Under the bid system, feedlot operators offer fed or cull cattle that are or will be ready for slaughter to packers, and the packers bid a price for the cattle. There may be several rounds of requests and offers before a sale price is agreed. Cattle sold on the spot market are sold to be picked up during the following week. Although sales/purchase timing is sporadic, these cattle could be slaughtered evenly over the next week. CR at V-8 and V-9, PR at V-5 and V-6.

combined varies by region in the United States.[118] Spot market prices of cattle are widely disseminated and readily available.[119]

Domestic prices reported in questionnaires generally increased from the first quarter of 1996 to the second quarter of 1999, by a range of three percent to ***.[120] In general, reported U.S. prices followed the pricing trends of USDA data. Domestic prices fluctuated between years but generally increased during 1996, declined during 1997 and part of 1998, and increased during the remainder of 1998 and into 1999. Prices for imports from Canada followed similar trends. Overall prices have been low relative to costs since 1996.[121]

For purposes of the preliminary determination, we found that there was a reasonable indication that the small volume of imports from Canada were having a significant effect on domestic prices.[122] We continue to recognize that a small volume of imports of a price-sensitive agricultural product can have a significant effect on domestic prices. However, based on our full evaluation of the evidence in the final phase of this investigation, we find that the small and declining volume and market share of imports from Canada are not depressing domestic prices or suppressing price increases to a significant degree.

Petitioner argued that the small volume of imports is significantly affecting domestic prices in the cattle industry in light of the conditions of competition in this industry. Specifically, petitioner contended that: (1) live cattle are a perishable commodity; with a short window for sale, particularly for cattle ready for slaughter; (2) the live cattle market is a national market; (3) the cash or spot market price for fed cattle, which directly affects all sales including many forward contracts and formula contracts, is "thin" and is significantly affected by imports; (4) imports from Canada are concentrated in certain regional markets, and price effects in those markets have a "ripple effect" on national prices; and (5) prices for cattle at different stages of development are related.[123] We do not find Petitioner's arguments persuasive.

As discussed above, there is a national market for the price of cattle which is driven by the primary feeding and slaughter areas ("feeder belt states"), Texas, Kansas, Nebraska, Colorado, and Iowa.[124] "Secondary markets in the Northwest and the Mid-Atlantic states draw off of the Midwestern fed cattle prices."[125] Thus, while the spot market prices in the feeder belt states are quickly transmitted

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[118] The spot sales price typically is used as the basis for the formula price, with a formula to adjust for the quality and quantity of the meat. Under the formula agreement, a feedlot typically informally agrees to sell all its cattle to one packer and the packer informally agrees to purchase those cattle. However, neither party is bound and either can withdraw from the arrangement at any time. In contrast, contract sales tend to cover specific lots of cattle with set prices based on an agreed amount such as the forward cattle price on the Chicago Mercantile Exchange. Contract sales have some price adjustments for the quality of the meat, but neither party can withdraw from the agreement after it is made. Contract sales reportedly are becoming less common while formula sales account for an increasing portion of sales. CR at V-4-V-8, PR at V-3 and V-4.

[119] CR/PR at V-2 and V-3.

[120] CR/PR at Tables V-2 - V-7. We note that reporting coverage was comprehensive for Product 1 (fed cattle, live weight), Product 2 (fed cattle, carcass weight), and Product 5 (cull cattle); reporting coverage was limited for Product 3 (fed cattle, contract basis), Product 4 (feeder cattle), and Product 6 (veal cattle). Thus, we have focused our analysis on Products 1, 2, and 5. The reported prices for Product 3 declined by 0.4 percent from the beginning to the end of the period of investigation. We note that the prices for this product were on a contract or formula basis and the reporting coverage was limited. CR/PR at Table V-4.

[121] CR/PR at Table VI-3.

[122] Live Cattle-Prelim., USITC Pub. 3155 at 21.

[123] Petitioner's Posthearing Brief at 2-5; Tr. at 62 and 63; Petitioner's Prehearing Brief at 4 and 40-48.

[124] USDA/GIPSA, Concentration in the Red Meat Packing Industry at 14, 37 (Feb. 1996); Tr. at 87-88 and 98.

[125] Tr. at 87-88. "Lower prices in Nebraska means lower prices in other states." Id. at 98.

to, and affect, the secondary markets, the price discovery is asymmetrical (i.e., prices in the secondary markets affect prices in the feeder belt states to a much lesser extent).[126]

Subject imports are concentrated in secondary markets. For example, subject imports are concentrated in the Northwest, which includes Washington, Oregon, and Idaho; over 30 percent of subject imports enter these secondary markets.[127] A substantial portion (27.4 percent by weight, or 24.8 percent by head) of subject imports enter as cull cattle for slaughter.[128] These imports primarily enter in the states of Minnesota and Pennsylvania.[129] As stated above, subject imports held only a 1.1 percent share of the total cattle slaughtered in the five primary feeder belt states.[130] Thus, the concentration of subject imports in secondary markets substantially diminishes the price effects of subject imports in the market overall.

Moreover, while the market share held by subject imports in the Northwest is 23.4 percent,[131] almost all fed cattle in the state of Washington, which accounts for the majority of cattle slaughtered in this region, is sold on a contract or formula basis.[132] Contract and formula prices are not reported to the same degree as spot sales, and thus have less potential to affect spot prices in other regions. This factor makes it unlikely that any effect that the subject imports have in regional/secondary markets (particularly in the Northwest) will transfer directly to or have a significant effect on the much larger national market.[133]

We have considered, and rejected, Petitioner's argument that subject imports are significant because they serve to shrink an already thin U.S. spot market. In fact, the spot market accounts for about 80 percent of the domestic market and is hardly thin.[134] In addition, even if all Canadian fed cattle are considered as the equivalent of "captive supply," as Petitioner suggested, economic research indicates that the impacts of captive supply on fed cattle cash market prices "are negative, but very small."[135] Thus, even if Canadian cattle are considered as "captive supply," the small volume accounted for by subject imports would have a very small impact on the spot market for fed cattle.

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[126] USDA/GIPSA, Concentration in the Red Meat Packing Industry at 7 and 14 (Feb. 1996). See also Tr. at 98 and 339-340; Petitioner's Posthearing Brief at 4 ("If prices in Colorado, Nebraska and Kansas fall, prices will fall in Florida.")

[127] CR/PR at Table K-1.

[128] Calculated from CR/PR at Table J-1.

[129] In 1998, 7.2 percent of total subject imports by head entered Pennsylvania, and 6.9 percent entered Minnesota. CR/PR at Table K-1.

[130] Calculated from CR/PR at Table K-1 and USDA, Livestock Slaughter 1998 Summary at 22 and 23; see note 109 supra for calculation methodology. Total subject imports share of the (cattle slaughter) market by head in the primary feeder belt states in 1998 were: less than 0.05 percent in Texas; 0.2 percent in Kansas; 2.3 percent in Nebraska; 3.2 percent in Colorado; and 1.7 percent in Iowa. Id. Moreover, the market shares for subject imports that enter as cattle for immediate slaughter (fed and cull cattle) are even smaller. In 1998, the market shares of subject imports of slaughter cattle by head were: less than 0.01 percent for Texas; less than 0.01 percent for Kansas; 1.9 percent for Nebraska; 2.9 percent for Colorado; and 0.7 percent for Iowa. Calculated from CR/PR at Table K-1, Document No. 199911035020 (APHIS), and USDA, Livestock Slaughter 1998 Summary at 22 and 23.

[131] Calculated from CR/PR at Table K-1, Document No. 199911035020 (APHIS), and USDA, Livestock Slaughter 1998 Summary at 14, 22 and 23. The market share of subject imports that entered as slaughter cattle by head was 20.4 percent in 1998.

[132] CR at V-6, PR at V-4.

[133] USDA/GIPSA, Concentration in the Red Meat Packing Industry (Feb. 1996); Tr. at 339 ("[i]f the market were to drop $2 in Washington, I would not even notice that impact because it has really no effect on my market.").

[134] Petitioner's Posthearing Brief at 8.

[135] USDA, Beef Industry Price Discovery: A Look Ahead at 40.

The domestic product includes cattle at all stages of development. As indicated above, certain conditions of competition have differing relative affects on the prices for feeder cattle and for fed cattle. For example, the price that feedlots pay for feeder cattle is affected directly and significantly by grain prices, in contrast to fed cattle prices which are much less directly affected by grain prices.[136] Reflecting the different conditions of competition, there is not a direct correlation between prices of cattle at different stages of development.[137] Thus, the effect of subject imports on fed cattle prices is diluted further for the domestic like product as a whole, since subject imports enter primarily only at the slaughter stage, whereas the majority of the domestic industry is involved in segments of the industry prior to the feedlot segment.[138] While there is evidence of underselling by subject imported fed cattle,[139] we do not view this evidence to be significant for several reasons. First, as discussed above, the overall market share of subject imports is small and declining. Second, a substantial portion of the imports of fed cattle are destined for secondary markets and prices in secondary markets do not significantly affect overall U.S. price levels. Indeed, in the state of Washington, there is a very limited spot market from which prices could be disseminated to the national spot market. Third, imported Canadian fed cattle are sold on the Canadian spot market prior to importation and, therefore, do not compete directly in the U.S. spot market. Fourth, the effect of any underselling for fed cattle would be even less significant in the stocker/yearling and feeder cattle segments of the market. Finally, there is evidence on the record that the differences in reported prices, including overselling in cull cattle, reflect differences in factors such as availability, quality and yield grade of the products.[140]

Lastly, there does not appear to be any correlation between fluctuations in domestic prices and the volume of subject imports.[141] Based on the foregoing, we find that the subject imports of Canadian cattle have not had a significant depressing or suppressing effect on domestic prices.[142] Rather, we conclude that low domestic prices during 1996 through 1998 reflect the liquidation phase of the cattle cycle and other market factors.[143]

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[136] CR/PR at V-1; USITC Pub. 3048 at 2-16.

[137] Compare CR/PR at Table V-2 (USDA prices for fed cattle) to CR/PR at Table V-5 (USDA prices for feeder cattle); compare USITC Pub. 3155 at Table V-1 (USDA prices for fed cattle) to USITC Pub. 3155 at Table V-2 (USDA prices for stocker cattle). See Petitioner's Prehearing Brief at Tab 1. See, also, CR/PR at V-1. Indeed, there are separate futures markets for feeder cattle and for fed cattle. CR at VII-4, PR at VII-3.

[138] Calculated from CR/PR at Table III-3 (comparing number of slaughter cattle and cattle on feed to total inventory).

[139] CR/PR at Tables V-2 - V-7. We note that reporting coverage was comprehensive for Product 1 (fed cattle, live weight), Product 2 (fed cattle, carcass weight), and Product 5 (cull cattle); reporting coverage was limited for Product 3 (fed cattle, contract basis), Product 4 (feeder cattle), and Product 6 (veal cattle). Thus, we have focused our analysis on Products 1, 2, and 5. Pricing data reported for Products 1 and 2 (fed) show small margins. The pricing data for Product 5 (cull cattle) show overselling in every period.

[140] CR at II-11 and II-12, PR at II-7 and II-8. In this regard, we note that no purchaser reported that Canadian cattle were generally lower priced than U.S. cattle. Thirteen of fifteen responding purchasers reported that U.S. and Canadian cattle were comparable in terms of lowest price, while two purchasers reported U.S. cattle as being lower priced. CR at II-13 and II-14, PR at II-8 and II-9.

[141] For example, in 1996 when the volume of subject imports was at its peak, domestic prices were relatively high, and conversely, in 1998 when subject imports continued to decline, domestic prices were generally at their lowest levels. See CR/PR at Tables V-2 and V-3.

[142] CR/PR at Table V-1; Canadian Respondent's Posthearing Brief at 3.

[143] See, e.g., USDA, FAS Online, "A Look at Rising Cattle and Beef Trade in North America," at 2 (April 9, 1999) ("In 1998, U.S. cattle and beef prices moved downward, reflecting record cattle weights at slaughter and near record beef production. Moreover, record supplies of pork and poultry meat and the stagnating domestic beef consumption

E. IMPACT OF THE SUBJECT IMPORTS FROM CANADA ON THE DOMESTIC INDUSTRY

In examining the impact of the subject imports on the domestic industry, we consider all relevant economic factors that bear on the state of the industry in the United States.[144] These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is dispositive, and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."[145] [146]

We recognize that the domestic industry has experienced significant declines in most of the key domestic industry factors.[147] Indeed, the financial performance indicators for the industry were negative in each year of the period of investigation.[148] No party disputes that the U.S. cattle industry has been suffering.

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were also factors in lower prices.").

[144] 19 U.S.C. § 1677(7)(C)(iii). See also SAA at 851 and 885 ("In material injury determinations, the Commission considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they also may demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports." Id. at 885.)

[145] 19 U.S.C. § 1677(7)(C)(iii).

[146] The statute instructs the Commission to consider "the magnitude of the margin of dumping" in an antidumping proceeding, as part of its consideration of the impact of imports. 19 U.S.C. § 1677(7)(C)(iii)(V). In its notice of final determination, Commerce assigned final dumping margins on the subject merchandise from Canada ranging from 0.62 (de minimis) to 15.69 percent, with an all other rate of 5.63 percent. 64 Fed. Reg. at 56758 and 56759 (Oct. 21, 1999).

[147] CR/PR at Tables III-3 and IV-3. U.S. production (the calf crop) steadily declined from 39.8 million head in 1996 to 38.6 million head in 1998, and from 28.4 million head in interim period (Jan.-June) 1998 to 28.2 million head in interim period (Jan.-June) 1999. Production capacity for the domestic industry steadily declined from 55.0 million head in 1996 to 52.8 million head in 1998, and from 52.8 million head as of Jan. 1, 1998 to 52.2 million head as of Jan. 1, 1999. U.S. producers' shipments (slaughter of animals of U.S. origin) declined from 36.6 million head in 1996 to 35.2 million head in 1998. U.S. shipments increased slightly from 17.4 million head in interim period 1998 to 17.6 million head in interim period 1999. U.S. producers' shipments by weight followed a similar trend over the period of investigation. Mid-year and year-end inventories (total number of cattle and calves) declined from 1996 to 1998, and were lower in interim period 1999 compared with interim period 1998. The unit value of commercially slaughtered U.S. cattle by pounds fluctuated between years but increased from $0.59 in 1996 to $0.60 in 1998, and remained at $0.62 for both interim period 1998 and interim period 1999. Id.

[148] CR/PR at Tables VI-1, VI-2, VI-3, and VI-4. Since the USDA reporting format for cow-calf production cash costs and returns has changed during the period of investigation, we considered data for the 1996 to 1997 period from Table VI-1 and data for the 1997 to 1998 period from Table VI-2 separately. The gross value of U.S. cow-calf production (comparable to revenues on a per-unit basis) increased from $312.28 per bredcow in 1996 to $405.50 per bredcow in 1997; however, it declined from $414.27 per bredcow in 1997 to $402.98 per bredcow in 1998. CR/PR at Tables VI-1 and VI-2. Total cash expenses increased from $522.24 per bredcow in 1996 to $535.92 per bredcow in 1997; however, it declined from $542.25 per bredcow in 1997 to $502.01 per bredcow in 1998. Id. While, the gross value of production less cash expenses was negative in all three years, it improved each year from 1996 to 1998. Id. The record indicates that the sharp decline in feed costs in 1998 limited the negative return in that year. CR at VI-2, PR at VI-1. The USDA estimated net returns or margins (difference between the selling price and expenses) for commercial feedlot operations generally were positive in 1996 to the middle of 1997, were negative in the second half of 1997 until October 1998, and were positive from November 1998 to June 1999. CR/PR at Table VI-3.

Weak performance by the domestic industry is expected during the liquidation phase of the cattle cycle, and is not unique to this agricultural industry. The critical issue we must decide is whether the subject imports materially contributed to the industry's condition.

Petitioner argued that the subject imports from Canada have prolonged and exacerbated the current cattle cycle as compared to previous cattle cycles.[149] We do not find this argument persuasive. For the reasons discussed above, we find that the volume and price effects of subject imports are not significant. Therefore, we do not find that subject imports have materially contributed to the prevailing pricing levels and the financial condition of the industry during the liquidation phase of the current cycle.[150] Accordingly, we find that the subject imports from Canada have not adversely impacted the domestic industry producing live cattle.

F. CONCLUSION

For the reasons stated above, we find that the domestic industry is not materially injured by reason of subject imports from Canada.

III. NO THREAT OF MATERIAL INJURY BY REASON OF LTFV IMPORTS FROM CANADA[151]

Section 771(7)(F) of the Act directs the Commission to determine whether the U.S. industry is threatened with material injury by reason of the subject imports from Canada by analyzing whether "further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted."[152] The Commission may not make such a determination "on the basis of mere conjecture or supposition," and considers the threat factors "as a whole."[153] In making our determination, we have considered all factors, including all conditions of competition, that are relevant to this investigation,[154] and have determined that the domestic industry is not threatened with material injury by reason of the subject imports from Canada.

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[149] Petitioner's Posthearing Brief at 13 and Exhibit 10 at 5.

[150] We note that the current cycle would have to extend beyond 1999 in order to be longer than the 1949-58 and the 1958-67 cycles, beyond 2001 in order to be longer than the 1979-90 cycle, and beyond 2002 in order to be longer than the 1967-79 cycle. CR at II-3, PR at II-2, citing U.S. Beef Industry: Cattle Cycles, Price Spreads, and Packer Concentration, USDA, ERS, Technical Bulletin 1874 at 1 (April 1999); See Petitioner's Posthearing Brief, Exhibit 10 at Table 2. Thus, the current cycle is not longer than the previous cycles.

[151] Commissioner Askey joins this section of the Commission opinion.

[152] 19 U.S.C. §§ 1673d(b) and 1677(7)(F)(ii).

[153] 19 U.S.C. § 1677(7)(F)(ii). An affirmative threat determination must be based upon "positive evidence tending to show an intention to increase the levels of importation." Metallverken Nederland B.V. v. United States, 744 F. Supp. 281, 287 (Ct. Int'l Trade 1990), citing American Spring Wire Corp. v. United States, 590 F. Supp. 1273, 1280 (Ct. Int'l Trade 1984). See also Calabrian Corp. v. United States, 794 F. Supp. 377, 387-88 (Ct. Int'l Trade 1992), citing H.R. Rep. No. 1156, 98th Cong., 2d Sess. 174 (1984).

[154] 19 U.S.C. § 1677(7)(F)(i). Factor I regarding countervailable subsidies is inapplicable to this antidumping investigation. Factor VII regarding raw and processed agricultural products is inapplicable, because this investigation does not involve a processed agricultural product. Additionally, Factor VI regarding product shifting is not an issue in this investigation. Finally, there is no evidence in the record of dumping findings or antidumping remedies in markets of foreign countries relevant to this investigation. 19 U.S.C. § 1677 (7)(F)(iii).

Petitioner indicated that it is not arguing that the U.S. cattle industry is threatened with material injury by reason of imports of live cattle from Canada.[155] Nonetheless, as directed by statute, the Commission has considered this issue.

As an initial matter, we reiterate our observation that the domestic industry has experienced declines in most key domestic indicators throughout the period of investigation. However, such weak performance, which is normal during the liquidation phase of the cattle cycle, is expected to improve as the industry moves into the consolidation phase. Notwithstanding the industry's vulnerable condition, we find, for the reasons expressed below, that the domestic industry is not threatened with material injury by reason of the subject imports.

We find no likelihood of substantially increased subject imports. Subject import volumes declined over the period of investigation, both by weight and by head.[156] The decline in subject imports, particularly at the end of the period of investigation, is consistent with the increase in slaughter capacity in Canada.[157] The corresponding market share of subject imports also declined significantly over the period of investigation, both by weight and by head.[158] The market share of the imports, which is small, only 3.7 percent by weight in 1998, declined significantly between interim periods from 3.8 percent by weight in interim period 1998 to 2.8 percent by weight in interim period 1999.[159] In contrast, the domestic industry's market share has remained at about 95 percent by weight and by head throughout the period of investigation.[160] We find that the overall declining volume and the low and declining market share of subject imports from Canada during the period of investigation do not indicate the likelihood of substantially increased subject imports.

Furthermore, there is no indication of excess production capacity, or an imminent increase in capacity, in Canada that indicates the likelihood of substantially increased imports. Production and capacity to produce live cattle in Canada were lower in 1998 than in 1996.[161] The number of cattle in Canada has declined slightly over the period of investigation.[162] While the cattle inventory in Canada is

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[155] Tr. at 154 ("We don't have a threat case that's made.").

[156] CR/PR at Table IV-3. U.S. imports of live cattle from Canada by weight were: 1.834 billion pounds in 1996, 1.659 billion pounds in 1997, 1.623 billion pounds in 1998, 815.1 million pounds in interim period (Jan.-June) 1998, and 613.1 million pounds in interim period (Jan.-June) 1999. U.S. imports of live cattle from Canada by head were: 1,476,000 in 1996, 1,352,000 in 1997, 1,253,000 in 1998, 652,000 in interim period 1998 and 491,000 in interim period 1999.

[157] Slaughter capacity in Canada increased by 25 percent, or 720,000 head, from 1996 to 1999 and now totals 3.8 million head per annum. In Western Canada, plant capacity increased from 2.26 million head in 1996 to 2.95 million head in 1999, for an increase of 30 percent. Moreover, as additional capacity was brought on line in October 1998 at the IBP Lakeside plant in Brooks, Alberta, slaughter levels for Alberta were 13.3 percent higher in 1999 than those of a year earlier. CR/PR at VII-3; Tr. at 212; Canadian Respondent's Prehearing Brief at 28; Canadian Respondent's Posthearing Brief at 7.

[158] CR/PR at Table IV-3. Canada's market share by weight was 4.2 percent in 1996, 3.8 percent in 1997, and 3.7 percent in 1998. Comparing interim period 1998 and 1999 figures, Canada's market share declined from 3.8 percent to 2.8 percent. Canada's market share by head of cattle was 3.8 percent in 1996, 3.5 percent in 1997, and 3.4 percent in 1998. Comparing interim period 1998 and 1999 figures, Canada's market share declined from 3.6 percent to 2.7 percent. See note 102 supra indicating that these market share figures may be overstated.

[159] CR/PR at Table IV-3.

[160] CR/PR at Table IV-3.

[161] CR/PR at Table VII-1.

[162] CR/PR at VII-1 and Table VII-1. For purposes of applying the statutory threat factors to this investigation, we consider the overall number of cattle in Canada as the "inventory" of cattle in Canada, although different cattle would be marketable at different times.

expected to slowly begin to increase in 2000 and beyond, this increase will occur as the industry enters the consolidation phase of the cattle cycle when rebuilding of the herd begins and less cattle are marketed for slaughter.[163] Although the U.S. market is Canada's primary export market for cattle, the record indicates that the majority of Canadian shipments of cattle are to its home market, and those shipments increased over the period of investigation and are expected to further increase as a result of increases in Canadian slaughter capacity.[164] Thus, our evaluation of each of the statutory factors with respect to subject imports leads us to conclude that neither the volume nor the market penetration of subject imports is likely to increase substantially in the imminent future.

Moreover, we do not find that the imports of live cattle from Canada are likely to enter the market at prices that are likely to depress or suppress domestic prices to a significant degree and are likely to increase the demand for further imports. As discussed earlier, the imports from Canada are entering the United States in small volumes that are not currently having significant price suppressing or depressing effects on the domestic prices of live cattle.[165] Moreover, domestic prices have increased in the most recent period of the investigation. The record does not indicate any likelihood that the declining volume and market share of imports from Canada will depress or suppress domestic prices in the future to any significant degree.

Due to the small and declining market share of the imports from Canada and their lack of effects on domestic prices, we find that any actual or potential negative effect of the subject imports on existing development and production efforts of the domestic industry would not be material, and would not constitute a threat of material injury to the domestic cattle industry. We find no indication of "any other demonstrable adverse trends" that indicate that there is likely to be material injury by reason of the subject imports from Canada. Therefore, we do not find that material injury "would occur unless an order is issued or a suspension agreement is accepted."

Based on these factors, we determine that significantly increasing volume of subject imports are not imminent, and that material injury will not occur in the absence of an antidumping duty order. Therefore, we find that the domestic industry is not threatened with material injury by reason of subject imports from Canada.

CONCLUSION

For the foregoing reasons, we determine that the domestic industry producing live cattle is not materially injured or threatened with material injury by reason of LTFV imports from Canada.

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[163] CR/PR at VII-1 and VII-3; Tr. at 230.

[164] CR/PR at Table VII-1.

[165] For Commissioner Askey's views on the current price effects of the subject imports, see her Concurring Views.

VIEWS OF COMMISSIONER CAROL T. CRAWFORD

On the basis of information obtained in this investigation, I determine that the industry in the United States producing live cattle is not materially injured or threatened with material injury by reason of imports of live cattle from Canada that are sold in the United States at less than fair value ("LFV"). I join the majority of the Commission in the findings with respect to like product and domestic industry, and in the discussion of the conditions of competition that are distinctive to the domestic industry. Furthermore, I concur in the determination that an industry in the United States is not materially injured or threatened with material injury by reason of the subject imports from Canada. However, because my analysis differs from the majority, my separate views follow.

I. ANALYTICAL FRAMEWORK

In determining whether there is a reasonable indication that a domestic industry is materially injured by reason of the LTFV imports, the statute directs the Commission to consider:

> (I) the volume of imports of the merchandise which is the subject of the investigation,
> (II) the effect of imports of that merchandise on prices in the United States for like products, and
> (III) the impact of imports of such merchandise on domestic producers of like products, but only in the context of production operations within the United States . . .[1]

In making its determination, the Commission may consider "such other economic factors as are relevant to the determination."[2] In addition, the Commission "shall evaluate all relevant economic factors which have a bearing on the state of the industry . . . within the context of the business cycle and conditions of competition that are distinctive to the affected industry."[3]

The statute directs that we determine whether a domestic industry is materially injured "by reason of" the unfairly traded imports. Thus we are called upon to evaluate the effect of dumped imports on the domestic industry and determine if they are causing material injury. There may be, and often are, other "factors" that are causing injury. These factors may even be causing greater injury than the dumping. However, the statute does not require us to weigh or prioritize the factors that independently are causing material injury. Rather, the Commission is to determine whether any injury "by reason of" the unfairly traded imports is material. That is, the Commission must determine if the subject imports are causing material injury to the domestic industry. "When determining the effects of imports on the domestic industry, the Commission must consider all relevant factors that can demonstrate if unfairly traded imports are materially injuring the domestic industry."[4] It is important, therefore, to assess the effects of the unfairly traded imports in a way that distinguishes those effects from the effects of other factors unrelated to the dumping. To do this, I compare the current condition of the industry to the

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[1] 19 U.S.C. § 1677(7)(B)(i).
[2] 19 U.S.C.§ 1677(7)(B)(ii).
[3] 19 U.S.C. § 1677(7)(C)(iii).
[4] S. Rep. No. 100-71 at 116 (1987)(emphasis added); Gerald Metals, Inc. v. United States, 132 F.3d 716 (Fed. Cir. 1997) (rehearing denied).

industry conditions that would have existed without the dumping, that is, had subject imports all been fairly priced. I then determine whether the change in conditions constitutes material injury.[5]

In my analysis, I evaluate the effects of the dumping[6] on domestic prices, domestic sales, and domestic revenues. To evaluate the effects of the dumping on domestic prices, I compare domestic prices that existed when the imports were dumped with what domestic prices would have been if the imports had been priced fairly. Similarly, to evaluate the effects of the dumping on the quantity of domestic sales,[7] I compare the level of domestic sales that existed when imports were dumped with what domestic sales would have been if the imports had been priced fairly. The combined price and quantity effects translate into an overall domestic revenue impact. Understanding the impact on the domestic industry's prices, sales, and overall revenues is critical to determining the state of the industry, because the effects on the statutory impact factors[8] (e.g., employment, wages, etc.) are derived from the impact on the domestic industry's prices, sales, and revenues.

I then determine whether the price, sales, and revenue effects of the dumping, either separately or together, demonstrate that the domestic industry would have been materially better off if the imports had been priced fairly. If so, the domestic industry is materially injured by reason of the dumped imports.

For the reasons discussed below, I determine that the domestic industry producing live cattle is not materially injured or threatened with material injury by reason of dumped imports of live cattle from Canada.

II. CONDITIONS OF COMPETITION

To understand how an industry is affected by unfair imports, we must examine the conditions of competition in the domestic market. The conditions of competition constitute the commercial environment in which the domestic industry competes with unfair imports, and thus form the foundation for a realistic assessment of the effects of the dumping. This environment includes demand conditions, substitutability among and between products from different sources, and supply conditions in the market.

A. Demand Conditions

An analysis of demand conditions tells us what options are available to purchasers, and how they are likely to respond to changes in market conditions, for example an increase in the general level of prices in the market. Purchasers generally seek to avoid price increases, but their ability to do so varies with conditions in the market. The willingness of purchasers to pay a higher price will depend on the importance of the product to them (e.g., how large a cost factor), whether they have options that allow

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[5] Both the Court of International Trade and the United States Court of Appeals for the Federal Circuit have held that the "statutory language fits very well" with my mode of analysis, expressly holding that my mode of analysis comports with the statutory requirements for reaching a determination of material injury by reason of the subject imports. United States Steel Group v. United States, 96 F.3d 1352, at 1361 (Fed.Cir. 1996), *aff'g* 873 F.Supp. 673, 694-695 (Ct. Int'l Trade 1994).

[6] As part of its consideration of the impact of imports, the statute as amended by the URAA now specifies that the Commission is to consider in an antidumping proceeding, "the magnitude of the margin of dumping." 19 U.S.C. § 1677(7)(C)(iii)(V).

[7] In examining the quantity sold, I take into account sales from both existing inventory and new production.

[8] 19 U.S.C. § 1677(7)(C)(iii).

them to avoid the price increase, for example by switching to alternative products, or whether they can exercise buying power to negotiate a lower price. An analysis of these demand-side factors tells us whether demand for the product is elastic or inelastic, that is, whether purchasers will reduce the quantity of their purchases if the price of the product increases. For the reasons discussed below, I find that demand conditions are such that purchasers are likely to reduce significantly the amount of cattle they buy if prices increase.

Importance of the Product and Cost Factor. Key factors that measure the willingness of purchasers to pay higher prices are the importance of the product to purchasers and the significance of its cost. In the case of an intermediate product (e.g., an input), the importance will depend on its cost relative to the total cost of the downstream product in which it is used. When the price of the input is a small portion of the total cost of the downstream product in which it is used, changes in the price of the input are less likely to alter demand for the input or for the downstream product.

The cost share of cattle as a percentage of the final products, *i.e.*, beef cuts and beef byproducts, is quite high, ranging from 80 percent to 95 percent.[9] It is somewhat less for feedlot operators, but still ranges up to 75 percent of their costs.[10] For individual consumers, evidence indicates that meat accounts for 18.2 percent of food expenditures and that beef accounts for 43.7 percent of per-capita meat expenditures.[11] Therefore, the cost share of cattle accounts for significant shares of the costs of the intermediate and final products, while beef purchases account for a significant portion of the total per capita expenditures for beef and food. These significant shares indicate that demand is likely to be fairly elastic.

Alternative Products. Another important factor in determining whether purchasers would be willing to pay higher prices is the availability of viable alternative products. Often purchasers can avoid a price increase by switching to alternative products. If such an option exists, it can impose discipline on producer efforts to increase prices.

Products that can substitute for cattle include other meats, particularly pork and poultry, as well as nonsubject downstream products, such as carcasses imported from Canada. The record indicates that pork and poultry are regularly substituted for beef.[12] The availability of these alternative products indicates that demand is likely to be elastic.

Concentration of Buying Power. Although there is no concentration within the domestic cattle industry, there is considerable concentration in the packing industry, which is the purchaser of cattle. The four largest packers account for the great majority of the cattle purchased and processed into beef products.[13] Therefore, the purchasing power of the buyers is concentrated in the packing industry, which can and does exert significant influence over prices for cattle. In fact, petitioner acknowledges that the domestic producers are "price takers"[14] that thus have a limited ability to affect prices.

The existence of buying power among the relatively small number of purchasers, *i.e.*, the packers, implies that purchasers do not strictly react to changes in prices for these products, but can influence them as well. However, demand for cattle is a ultimately a derived demand, that is, consumers

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[9] CR at II-10; PR at II-7.
[10] CR at VI-5; PR at VI-4.
[11] CR at II-11; PR at II-7.
[12] CR at II-9 to II-10; PR at II-6.
[13] CR at IV-1; PR at IV-1.
[14] CR at V-1; PR at V-1; and Petitioner's Posthearing Brief at 41 and 78.

purchase beef through market outlets supplied by the packers. As discussed above, since beef represents a fairly high percentage of consumers' meat expenditures, and there are readily available substitute products for beef, an increase in the price of beef is likely to result in lower consumer purchases of beef. Because cattle represents a high percentage of the end cost of beef, any increase in the price of cattle will translate into significant increases in the cost of beef. Since beef consumers will reduce their consumption in response to higher beef prices, any increase in the price of cattle will ultimately result in lower purchases of cattle, despite the buying power of the packers. Therefore, I find that purchasers are likely to reduce significantly the amount of cattle they buy in response to a general increase in prices for these products.

B. Substitutability

Simply put, substitutability measures the similarity or dissimilarity of imported versus domestic products from the purchaser's perspective. Substitutability depends upon (1) the extent of product differentiation, measured by product attributes such as physical characteristics, suitability for intended use, design, convenience or difficulty of usage, quality, etc.; (2) differences in other non-price considerations such as reliability of delivery, technical support, and lead times; and (3) differences in terms and conditions of sale. Products are close substitutes and have high substitutability if product attributes, other non-price considerations, and terms and conditions of sale are similar.

While price is nearly always important in purchasing decisions, non-price factors that differentiate products determine the value that purchasers receive for the price they pay. If products are close substitutes, their value to purchasers is similar, and thus purchasers will respond more readily to relative price changes. On the other hand, if products are not close substitutes, relative price changes are less important and are therefore less likely to induce purchasers to switch from one source to another.

Given the existing demand conditions for cattle, overall purchases are likely to decrease somewhat when overall prices of cattle increase. In addition to any changes in overall demand for cattle, the demand for cattle from different sources will decrease or increase depending on their relative prices and their substitutability. If cattle from different sources are substitutable, purchasers are more likely to shift their demand when the price from one source (i.e., subject imports) increases. The magnitude of this shift in demand is determined by the degree of substitutability among the sources.

Nonsubject imports are only a minuscule presence in the market, and thus purchasers effectively have only two potential sources of cattle: the domestic product and the subject imports from Canada. Purchasers are more or less likely to switch from one source to another depending on the similarity, or substitutability, between and among them. I have evaluated the substitutability between domestic cattle and the subject imports as follows.

Overall, there is inherent substitutability in the U.S. market between domestic cattle and Canadian cattle, because all must meet USDA requirements. However, substitutability is reduced by differing product characteristics and non-product factors between the two sources.

1. Product Characteristics. There is a basic substitutability among cattle at the different production stages. However, cattle at different stages of production are not very good substitutes for each other. Cattle that have not been fed to an appropriate size are not substitutes for fed cattle because they will not produce the same type (quality grades and sized pieces) of beef.[15] Therefore, slaughter cattle (*i.e.*, fed cattle and cull cattle) are not good substitutes for cattle at the other stages of production

[15] CR at II-11; PR at II-7.

(*i.e.*, calves, stockers and feeder cattle). In 1998, about 88 percent of the number of cattle imported from Canada consisted of slaughter cattle.[16] In contrast, in 1998 only about 35 percent of domestic cattle were slaughter cattle.[17] Therefore, calves, stockers and feeder cattle account for a substantial portion of the like product that is not substitutable for the vast majority of the subject imports. Consequently, substitutability between the two sources is reduced considerably.

2. Non-Product Factors. The record indicates that domestic cattle have certain advantages over the subject imports. Purchasers have indicated that domestic cattle are superior to the subject imports in delivery times, availability and product quality.[18] Availability and product quality are particularly important to packers, the four largest of which account for the great majority of cattle purchased and processed into beef products.[19] Therefore, these factors further reduce the substitutability between the two sources of cattle.

For the reasons discussed above, I find that domestic cattle and the subject imports from Canada are, at best, only moderate substitutes for each other.

C. Supply Conditions

Supply conditions in the market are a third condition of competition. Supply conditions determine how producers would respond to an increase in demand for their product, and also affect whether producers are able to institute price increases and make them stick. Supply conditions include producers' capacity utilization, their ability to increase their capacity readily, the availability of inventories and products for export markets, production alternatives and the level of competition in the market. For the reasons discussed below, I find that the elasticity of supply of cattle is quite low.

Capacity Utilization and Capacity. Unused capacity can discipline prices. If there is a competitive market, no individual producer can make a price increase stick. Any attempt at a price increase by one producer would be beaten back by competitors who could produce more product to sell at the prevailing price.

A traditional concept of capacity utilization is not particularly applicable to the cattle industry as a measure of whether the domestic industry has the ability to increase its output in response to attempted price increases. Rather, I find that the most relevant consideration is the time it takes to "produce" fed cattle, that is, the length of time from when a calf is conceived until it has been raised to the point where it is ready for slaughter. The record indicates that the length of time from conception to slaughter is about two and one-half years.[20] Thus, in the short run, the domestic industry is not able to "produce" more cattle.

Inventories and Exports. As with capacity utilization, traditional concepts of inventories are not particularly applicable to the cattle industry. Specifically, live cattle are regularly traded at each stage of development, and thus the reported "inventories" do not represent product accumulating in storage. Rather, the reported inventories are, in fact, cattle already in the market when counted as inventory.

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[16] Calculated from Table J-1.

[17] Calculated from Table III-3. The whole herd of domestic cattle in 1998 is represented by the inventory of 99.744 million head on January 1, 1998. In 1998, 35.166 million head were slaughtered, an amount equal to 35.3 percent of the whole herd. Although precise data are not available for each stage of production, I find this estimate to be a reasonable approximation of the portion of the domestic like product accounted for by slaughter cattle.

[18] CR at II-13 to 14; PR at II-8.

[19] CR at IV-1; PR at IV-1.

[20] CR at II-5; PR at II-3.

Furthermore, once cattle reach the optimal weight for slaughter, it is important that they be sold quickly because they are at their best quality at that size, and continued feeding requires more food for each additional pound, which results in increased fat content.[21] Therefore, the reported inventories do not represent an additional source of supply for the domestic industry. Finally, the domestic industry's exports are extremely small, and thus do not represent a significant source of supply.[22] Therefore the domestic industry has no actual inventories and extremely small exports available that could have added supply to the U.S. market in response to changes in demand.

Level of Competition. The level of competition in the domestic market has a critical effect on producer responses to demand increases. A competitive market is one with a number of suppliers in which no one producer has the power to influence price significantly. In the U.S. market, there are more than 1.1 million domestic producers of cattle, which are widely dispersed. Thus, there is virtually no concentration within the domestic industry. Rather, there is significant competition within the domestic industry. Nonsubject imports are only a minuscule presence in the market, and thus they are not a source of competition. Even though there is virtually no competition from nonsubject imports, the competition among domestic producers indicates that there is a significant level of competition in the U.S. market for cattle.

Notwithstanding the level of competition in the U.S. market, the domestic industry's ability to supply the demand for subject imports is extremely limited, and consequently I find that the elasticity of supply is quite low.

III. NO MATERIAL INJURY BY REASON OF LTFV IMPORTS OF CATTLE FROM CANADA

The statute requires us to consider the volume of subject imports, their effect on domestic prices, and their impact on the domestic industry. I consider each requirement in turn.

A. Volume of Subject Imports

By weight, subject imports from Canada decreased from 1.834 billion pounds in 1996 to 1.659 billion pounds in 1997, and then further decreased to 1.623 billion pounds in 1998. In the first 6 months of 1999, the subject imports were 0.613 billion pounds. The value of the subject imports was $984.7 million in 1996, $933.1 million in 1997, $893.8 million in 1998, and $340.3 million in the first 6 months of 1999.[23] By weight, the subject imports held a market share of 4.2 percent in 1996, 3.8 percent in 1997, 3.7 percent in 1998, and 2.8 percent in the first 6 months of 1999. Their market share by value was 3.8 percent in 1996, 3.4 percent in 1997, 3.5 percent in 1998, and 2.5 percent in the first 6 months of 1999.[24] While it is clear that the larger the volume of subject imports, the larger the effect they will have on the domestic industry, whether the volume is significant cannot be determined in a vacuum, but must be evaluated in the context of its price effects and impact. Based on the market share of the subject imports from Canada and the conditions of competition in the domestic market, I find that the volume of subject imports from Canada is not significant in light of the lack of price effects and impact, as discussed below.

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[21] CR at V-9; PR at V-7.
[22] Table III-3.
[23] Table IV-3.
[24] Table IV-3.

B. Effect of Subject Imports on Domestic Prices

To determine the effect of the subject imports on domestic prices, I examine whether the domestic industry could have increased its prices if the subject imports had not been dumped. As discussed, both demand and supply conditions in the domestic market are relevant. Examining demand conditions helps us understand whether purchasers would have been willing to pay higher prices for the domestic product, or buy less of it, if subject imports had been sold at fairly traded prices. Examining supply conditions helps us understand whether available capacity and competition among suppliers to the market would have imposed discipline and prevented price increases for the domestic product, even if subject imports had not been unfairly priced.

If the subject imports from Canada had not been dumped, their prices in the U.S. market would have increased. Thus, if subject imports had been fairly priced, they would have become more expensive relative to domestic cattle. In such a case, if subject imports are good substitutes with other cattle, purchasers would have shifted towards the relatively less expensive products.

In these investigations, the dumping margins for the subject imports are fairly small, ranging from 0.62 percent (*de minimis*) to 15.69 percent, with an "all others" rate of 5.63 percent, and margins of less than 6 percent apply to virtually all of the subject imports. Therefore, the subject imports likely would have been priced only slightly higher had they been fairly traded. At only slightly higher prices, it is likely that there would have been only a slight shift in demand away from the subject imports. Thus, most of the subject imports' small market share, only 3.7 percent by weight in 1998,[25] would have continued to be sold at fairly traded prices. Therefore, there would have been only a small increase in demand for domestic cattle, had the subject imports been fairly traded.[26]

Any increase in demand for domestic cattle would have been limited by the moderate substitutability between the two sources. As discussed, about 88 percent of the subject imports consists of fed cattle and cull cattle, which are not good substitutes for the substantial portion of the like product that consists of calves, stockers and feeder cattle. Thus, any increase in demand for domestic cattle would have been limited primarily to domestic fed and cull cattle. Therefore, had the subject imports been fairly traded the overall increase in demand for domestic cattle would have been very small. Consequently, the increase in demand for domestic cattle would not have been significant, and it would have been too small for the domestic industry to increase its prices significantly, regardless of the conditions of competition.

Notwithstanding the substantial limitations on domestic supply discussed above, even if the domestic industry had tried to increase its prices in response to the very small increase in demand, its efforts would not have been successful. Demand is fairly elastic, and thus domestic suppliers' ability to raise prices in response to an increase in demand is limited. In addition, while there is virtually no competition from nonsubject imports, there is significant competition among producers within the domestic industry. Thus, competitive conditions indicate that price discipline exists in the market. Furthermore, the concentration of purchasing power within the packing industry supports the conclusion that domestic cattle producers are price takers. The competition among domestic producers and the purchasing power of the packing industry would have enforced price discipline in the market. In these circumstances the domestic industry likely would not have been able to increase its prices had the subject

[25] Table IV-3.

[26] Nonsubject imports are minuscule, and thus virtually all of a shift in demand away from the subject imports would have resulted in an increase in demand for domestic cattle.

imports been sold at fairly traded prices. Consequently, I find that subject imports are not having significant effects on prices for domestic cattle.

C. Impact of Subject Imports on the Domestic Industry

To assess the impact of subject imports on the domestic industry, I consider output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, research and development and other relevant factors.[27] These factors together either encompass or reflect the volume and price effects of the subsidized and dumped imports, and so I gauge the impact of the dumping through those effects.

As discussed above, only a very small portion of the demand for the subject imports from Canada would have shifted to the domestic product, had the subject imports been sold at fairly traded prices. The domestic industry would not have been able to increase its prices in response to the very small increase in demand for domestic cattle. Therefore, any impact on the domestic industry would have been on its output and sales.

Because it takes two and one-half years to raise cattle from conception to slaughter, the domestic industry could not have increased its output of cattle readily in response to the shift in demand. As discussed above, the domestic industry has no actual inventories and only extremely small levels of exports available with which it could have supplied any increase in demand. Therefore, the domestic industry could not have increased its output or sales significantly had the subject imports been fairly traded. Even assuming that the domestic industry *could have* increased its output and sales in response to the small shift in demand away from the subject imports, the increase in demand for domestic cattle would have been so small that any effect on the domestic industry's output and sales would not have been significant. Consequently, the impact on the domestic industry would not have been significant had the subject imports been fairly traded.

D. Conclusion

On the basis of the foregoing analysis, I find that the domestic industry would not have increased its prices or its output and sales, and therefore its revenues, significantly had the subject imports been fairly traded. Therefore, I find that the domestic industry would not have been materially better off if the subject imports had not been dumped. Consequently, I determine that the domestic industry producing live cattle is not materially injured by reason of LTFV imports of live cattle from Canada.

IV. NO THREAT OF MATERIAL INJURY BY REASON OF LTFV IMPORTS OF CATTLE FROM CANADA[28]

The statute requires the Commission to determine whether the U.S. industry is threatened with material injury by reason of the subject imports by determining whether "further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is

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[27] 19 U.S.C. § 1677(7)(C)(iii).

[28] Petitioner has not advanced any arguments that the domestic industry is threatened with material injury by reason of the subject imports.

issued or a suspension agreement is accepted . . ."[29] In reaching my determination, I have considered all the factors that are relevant to this investigation[30] and have determined that the domestic industry is not threatened with material injury by reason of the subject imports from Canada.

By weight, subject imports from Canada decreased from 1996 to 1997, and further decreased from 1997 to 1998. The corresponding full-year market share of the subject imports also decreased, and was quite small and stable throughout the period of investigation, between 3.7 percent and 4.2 percent.[31] Therefore, there has been no increase in the volume or market share of the subject imports. Consequently, there has not been a significant rate of increase in the volume or market penetration of the subject imports that would indicate the likelihood of substantially increased imports. There is no indication in the record of any increase in production capacity in Canada or inventories[32] of Canadian cattle that constitutes evidence of the likelihood of substantially increased imports. Although the U.S. market is Canada's primary export market for cattle, the record indicates that Canadian exports have remained fairly stable, are not projected to increase in the immediate future, and in fact have declined from 1996 to 1998.[33] For these reasons, I find that further dumped imports are not imminent.

Subject imports from Canada are not likely to enter the U.S. market at prices that are likely to have significant depressing or suppressing effects on domestic prices. As discussed above, the subject imports are entering the market in such small volumes that they are not currently having significant effects on domestic prices. There is no record evidence to suggest that the conditions of competition or the lack of significant price effects is likely to change in the immediate future. In addition, the volume of the subject imports is so small that any actual or potential negative effects on existing development and production efforts of the domestic industry would not be material. There is no evidence of any other demonstrable adverse trends that indicate the probability that there is likely to be material injury by reason of the subject imports from Canada. For these reasons, I do not find that material injury by reason of the subject imports would occur unless an order is issued or a suspension agreement is accepted.

For the reasons stated above, I do not find that further dumped imports from Canada are imminent. Furthermore, I do not find that material injury will occur unless an order is issued or a suspension agreement is accepted. Consequently, I find that the domestic industry is not threatened with material injury by reason of the LTFV imports of live cattle from Canada.

V. CONCLUSION

I determine that the domestic industry producing live cattle is not materially injured or threatened with material injury by reason of LTFV imports of live cattle from Canada.

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[29] 19 U.S.C. § 1673d(b) and 1677(7)(F)(ii).

[30] 19 U.S.C. § 1677(7)(F)(I). Factor VII regarding raw and processed agricultural products is not applicable, because this investigation does not apply to both a raw agricultural product and any product processed from it. Additionally, Factor VI regarding product shifting is not an issue in this investigation. Finally, there is no evidence in the record of dumping findings or antidumping remedies in markets of foreign countries relevant to this investigation. 19 U.S.C. § 1677 (7)(F)(iii).

[31] Table IV-3. The market share for the first 6 months of 1999 was 2.8 percent.

[32] As discussed above, the traditional concept of inventories is not applicable in the cattle market.

[33] Table VII-1.

CONCURRING VIEWS OF COMMISSIONER THELMA J. ASKEY

Based on the record in this investigation, I determine that an industry in the United States is not materially injured or threatened with material injury by reason of imports of live cattle from Canada that are sold in the United States at less than fair value ("LTFV").[1]

I concur in, and join, the Commission's findings with respect to the domestic like product and industry in this investigation. I also join the Commission's discussion of its determination that the domestic industry is not threatened with material injury by reason of the subject imports. I write separately, however, to explain my determination that the industry is not materially injured by reason of the subject imports. I do so primarily because my findings on the substitutability of the subject and domestic merchandise and the influence of the beef packing industry on market prices differ somewhat from those of my colleagues in the Commission majority. Nonetheless, I note that I agree with the general considerations outlined in my colleagues' negative determination. I emphasize that my decision to write a concurring opinion does not reflect a significant disagreement with the analysis of my colleagues in the Commission majority.

I. NO MATERIAL INJURY BY REASON OF THE SUBJECT IMPORTS FROM CANADA

In final phase antidumping duty investigations, I am required to determine whether an industry in the United States is materially injured by reason of the subject imports under investigation.[2] The statute defines "material injury" as "harm which is not inconsequential, immaterial or unimportant."[3] The Court of Appeals for the Federal Circuit has stated that the Commission may not find an industry has been materially injured by reason of the subject imports if the subject imports are responsible only for "a minimal or tangential contribution to [the] material harm" being suffered by the domestic industry."[4]

In assessing whether the domestic industry is materially injured by reason of subject imports, I must consider the volume of imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.[5] Moreover, I must consider all relevant economic factors that bear on the state of the industry in the United States.[6] No single factor is dispositive, and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."[7]

For the reasons discussed below, I determine that the domestic industry producing live cattle is not materially injured by reason of subject imports from Canada.

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[1] Material retardation of an industry is not an issue in these investigations.

[2] 19 U.S.C. § 1673d(b).

[3] 19 U.S.C. § 1677(7)(A).

[4] Gerald Metals, Inc. v. United States, 132 F.2d 716, 722 (Fed. Cir. 1997).

[5] 19 U.S.C. § 1677(7)(B)(i). The Commission "may consider such other economic factors as are relevant to the determination" but shall "identify each [such] factor . . . and explain in full its relevance to the determination." 19 U.S.C. § 1677(7)(B). See also Angus Chemical Co. v. United States, 140 F.3d 1478 (Fed. Cir. 1998).

[6] 19 U.S.C. § 1677(7)(C)(iii).

[7] 19 U.S.C. § 1677(7)(C)(iii).

A. Conditions of Competition

I have considered the following conditions of competition for purposes of assessing whether the domestic cattle industry is being materially injured by reason of the subject imports.

First, the market for live cattle in the United States consists of four distinct market segments, each reflecting a different developmental stage of live cattle.[8] During the first stage of development -- the "cow/calf" stage -- young calves are typically raised with their mothers from birth to weaning. These calves are generally weaned from their mothers when they are between five to ten months old, at which point they generally weigh between 400 to 650 pounds. During the second or "yearling/stocker" stage, newly weaned calves are removed from their mothers and kept on stocker/yearling operations or ranches. These cattle weigh between 400 pounds to 750 pounds in weight and are between 12 and 20 months of age. During the third or "feeder" stage of development, cattle are placed in feedlots or confined areas for about three to five months for the purpose of bringing them to slaughter weight. In these feedlots, they are fed high-energy grain stuffs, typically corn and protein supplements and some roughage. Feeder cattle generally weigh between 650 or 750 pounds and 1,100 to 1,300 pounds. During the final stage, cattle are removed from feedlots and made ready for slaughter when they are between 15 to 24 months old and weigh between 1,100 and 1,300 pounds.

Second, the industry producing live cattle consists of three distinct categories of producer: cow-calf producers, which maintain cow herds and raise calves from birth to weaning; stocker/backgrounder producers, which feed weaned calves in fenced pastures or on the open range; and feedlot producers, which fatten cattle for three to six months immediately prior to slaughter. Generally, there is not a significant level of vertical integration between producers in each of these market segments, especially in the downstream segments of the market, and cattle are generally transferred from one segment of the market to the next through open market purchases.[9]

Third, the members of the domestic cattle industry are numerous and relatively diffuse. In 1998, there were more than one million cattle operations in the United States.[10] Cow-calf operations are the most numerous of the three categories, but even the feedlot sector -- which is somewhat less diffuse -- consisted of 104,071 operations in 1998.[11] In this regard, no individual cattle producer, even the largest, had one-time feeding capacity that was as much as one percent of total cattle inventories in the United States.[12]

In contrast, the beef packing industry (the primary purchasers of live cattle fed for slaughter) is heavily concentrated. The four largest beef packing firms purchased nearly 81 percent of cattle fed for slaughter in the United States and 33 percent of all culled cattle slaughtered for beef in the United States

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[8] CR at I-4 -I-8, PR at I-3-I-6.

[9] CR at V-1; Petitioners' Prehearing Brief at 41 & 78. Corresponding with the different conditions in each industry segment, purchasers in each segment have somewhat different concerns depending on the stage of development of the cattle being purchased. Packer purchasers of fed cattle, the concentrated downstream industry, are concerned with the quality of the meat that the fed cattle will produce. CR at II-4; PR at II-3. Purchasers of calves, stockers, and feeder cattle, however, are principally interested in the health of the animal and its potential for weight gain. Id.

[10] The number of cattle operations declined by five percent from 1996. CR and PR at III-1.

[11] CR at III-2, PR at III-1.

[12] Compare CR and PR at Table III-2 with Table III-3. Moreover, even if one compares this one-time feed capacity to the total cattle on feed as of July 1, 1999, the largest producers would account for only 5.0 percent of total cattle on feed. Id.

in 1998.[13] My review of the record indicates that the comparative difference between the levels of concentration in the beef packing industry and the feedlot operators, in particular, leads to unequal bargaining positions between the two groups. This disparity in bargaining positions enables to beef packers to have a more significant influence on price levels in the slaughter market than the feedlot producers.[14] Accordingly, the feedlot producers are price takers in this market, primarily due to the level of concentration in the beef packing industry and the diffuse nature of the cattle industry.[15]

Fourth, the market for live cattle in the United States is subject to a predictable cycle of expansions and contractions known as the "cattle cycle." The cycle consists of a series of cyclical supply changes in the market that directly translate into price movements for live cattle. The cattle cycle generally lasts 10-12 years and has four stages: the expansionary phase, the peak year, the liquidation phase, and the consolidation phase. Generally, the cattle market enters the expansionary phase of the cycle when slaughter cattle prices are at relatively low but stable levels. At this point, cattle producers choose to retain more cattle for breeding purposes rather than marketing them for slaughter. This gradually reduces the number of slaughter cattle available in the market and therefore gradually increases the market prices paid for slaughter cattle over the course of the expansionary phase. The expansionary phase may last between three and eight years. As the expansionary phase continues and the larger number of cows retained for breeding produce larger supplies of live cattle, producers gradually market larger numbers of cattle to be slaughtered. Supplies of slaughter cattle gradually increase until the supply eventually exceeds demand during what is known as the peak year of the cycle. At this point, prices for slaughter cattle begin to decline and shortly thereafter the liquidation phase of the cycle begins.

During the liquidation phase of the cycle, which usually lasts between two to four years, cattle producers respond to the rapidly increasing supply of cattle held for slaughter by reducing their breeding herds, thus increasing the supply of slaughter cattle on the market and further reducing the price. After this process has been completed, the market enters its consolidation phase (lasting about a year), when slaughter cattle prices begin to reflect the reductions in supply resulting from the liquidation of the breeding stock during the liquidation phase. As the supply of cattle held for slaughter decreases during the consolidation phase, the prices paid for slaughter cattle begin to level off.[16] Generally, the parties

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[13] CR at IV-1-IV-4, PR at IV-1-IV-2.

[14] In this regard, I recognize that certain studies indicate that there is not a clear link between the concentrated nature of the beef packing industry and lower farm prices. See, e.g., USDA, "U.S. Beef Industry: Cattle Cycles, Price Spreads, and Packer Concentration," Technical Bulletin No. 1874 at iii & 37 (April 1999) ("Concentration Study"). As an initial matter, I note that these studies generally recognize that the data does not necessarily support a finding that the industry is actually competitive. Id. Moreover, I note that a number of studies indicate that the number of packers is one variable used by many studies in pricing models for the cattle industry. See T. Schroeder et al., "Beef Industry Price Discovery: A Look Ahead," at 2 (February 1997) (attached in Petitioners' Prehearing Brief at Ex. 6). Further, I note that the industry's Herfindahl-Hirschman Index is at a level that the Justice Department would consider to be highly concentrated and that the increasing concentration in the industry since 1970 has been accompanied by a general decline in real (i.e., adjusted for inflation) cattle prices. E.g., Concentration Study at 30-36, 21 & Beef Packers' Posthearing Brief at Ex. G. Moreover, I would add that the Concentration Study appears to recognize that the beef packing industry may not be achieving increased profit margins at the wholesale sale level but may be obtaining increasing price spreads in the retail segment because of increased retail level services being performed by the packing industry. Concentration Study at iii.

[15] CR and PR at V-1; Petitioners' Prehearing Brief at 4-5, 41 & 78.

[16] The evidence in the record indicates that the cattle cycles in the United States and Canada are similar and usually parallel each other. CR at VII-1; Tr. at 229 and 230.

agree that the cattle cycle has been in its liquidation phase during the entire period of investigation, although they disagree on whether the liquidation phase is on the verge of ending.[17]

Fifth, the cost of grain may be an important factor in a feedlot operator's decision to retain cattle or market them for slaughter. Relatively low grain prices may create an incentive for feedlot operators to retain cattle in the feedlots for slightly longer periods of time because additional weight gain to the cattle is relatively inexpensive.[18] Significantly higher grain prices, however, may encourage feedlot operators to market slaughter cattle as quickly as possible to avoid significant additional feed costs.[19] The cost of grain was relatively high in 1996 and throughout 1997 (with the highest cost in August 1997) but has subsequently declined throughout 1998 and in the first half of 1999.[20]

Sixth, cattle fed for slaughter are sold either on the spot market or by contract, although even contract sales generally set price by referring to some price index, often the spot market price in a certain location, as of the time of delivery.[21] Market prices are generally available relatively quickly throughout the market.[22]

Seventh, over 65 percent of the U.S. inventory of live cattle is located in fourteen states.[23] Moreover, nearly forty percent of cattle inventory is located in the major feeding and slaughter areas of Nebraska, Kansas, Iowa, Colorado, and Texas (the "feeder belt" states). Accordingly, since cattle prices are rapidly disseminated throughout the national cattle market, prices paid for cattle in the feeder belt states generally have a significant impact on prices within the entire national market.[24] As testimony at

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[17] Petitioner argued that the current cattle cycle is not operating in the expected fashion. Petitioner's Prehearing Brief at 57-58; Tr. at 175. Petitioner's economist alleged that "we're proceeding into the 10th year of this cattle cycle" which was expected to turn around in 1997 and USDA reports "now are stretching that out to 2001. . . this one is different. It is longer. It is more severe." Tr. at 175 and 176. According to Petitioner, "we could easily be at the bottom of the liquidation phase and start going back up, but only if we can do something about the imports . . . we're in a stagnant position in this cattle cycle." Tr. at 180 and 181; Petitioner's Posthearing Brief, Response to Questions from Commissioner Hillman at 47, and Commissioner Koplan at 73.

Conversely, the Canadian Respondent contended that "neutral observers, including the USDA, consider this cycle to have been well within the normal parameters governing recent cycles" and that this "cycle has been of average length." Canadian Respondent's Posthearing Brief at 3. According to this Respondent, "[t]here is general agreement that the liquidation phase of the cycle is either over or about to be over." Id. The Canadian Respondent maintained that two features unique to the current cycle were the heavier carcass weights and the increases in feed grain prices that occurred in 1996. Id. at 5-6. The Packer Respondents contended that "[i]n 1999, the liquidation cycle is finishing and consolidation is beginning, with the expected improvement in price and profitability." Joint Packers' Prehearing Brief at 21.

[18] CR at I-8.

[19] CR at V-9. The timing of this decision is limited by the fact that cattle will reach an optimum quality grade at a weight of approximately 1,200pounds and that they stay at this weight for a relatively short period of time. Moreover, packers prefer cattle of consistent size. In addition, from the feeders perspective, additional weight gain usually is less efficient in that it requires more feed for each pound gained and results in the cattle disproportionately gaining weight in fat rather than more valued muscle. Id.

[20] CR at VI-7 and Table VI-4.

[21] CR at V-2-5; PR at V-2-V-4.

[22] CR at V-4-6; PR at V-3-V-5.

[23] CR and PR at Table G-1. The fourteen states in descending order by number of head of cattle in inventory as of January 1, 1999 are Texas, Nebraska, Kansas, Oklahoma, California, Missouri, South Dakota, Iowa, Wisconsin, Colorado, Montana, Minnesota, Kentucky, and Tennessee. Id.

[24] Tr. at 87-88, 95-96, 98; Petitioner's Posthearing Brief, Response to Questions at 34 and 35; Petitioner's

(continued...)

the hearing indicated, "secondary markets in the Northwest and the Mid-Atlantic states draw off of the Midwestern fed cattle prices."[25] As a result, while the spot market prices in Nebraska, Kansas, and Texas are quickly transmitted to, and affect, the secondary markets, the price discovery is asymmetrical (i.e., prices in the secondary markets do not lead prices in the feeder belt states).[26]

Eighth, although the record indicates that the subject imports may be moderately good substitutes for the domestic merchandise within the same stage of development, the overall substitutability of the subject merchandise and the domestic like product is significantly limited. Most importantly, the substitutability of the subject and domestic merchandise is limited by the fact that virtually all Canadian imports of live cattle in 1998 were ready for immediate slaughter.[27] In 1998, however, only approximately 35 percent of total U.S. cattle inventory consisted of cattle ready for slaughter; the remaining 65 percent consisted of calves, stockers/yearlings and feeder cattle not yet ready for slaughter.[28] Because cattle at different stages of development are not good substitutes for one another,[29] the difference in the composition of subject and domestic merchandise significantly reduces their substitutability.

Moreover, the substitutability of the subject and domestic merchandise appears to be somewhat limited even within the same stage of development. For example, although the large majority of cattle associations and purchasers reported that Canadian and domestic cattle were generally interchangeable,[30] a majority of responding purchasers reported that there were significant, non-price differences between Canadian and domestic cattle, including quality, availability, proximity and contractual restrictions.[31] Similarly, more than two-thirds of cattle associations reported that differences in product characteristics and sales conditions between the subject and domestic merchandise affected their sales of cattle, including differences in quality levels, exchange rate issues, health and safety matters, and sales methods.[32]

Finally, demand in the live cattle market is primarily derived from downstream demand for beef products and beef by-products.[33] During the period from 1996 to 1998, demand for live cattle in the U.S. market has remained relatively stable, with apparent consumption of live cattle fluctuating only

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[24] (...continued)
Prehearing Brief at 43; Canadian Respondent's Final Comments at 3 and 4; Joint Packers' Final Comments at 4. The leading price discovery points are Nebraska and Kansas. Joint Packers' Posthearing Brief at 11 and Attachment 6, quoting USDA/GIPSA, Concentration in the Red Meat Packing Industry at 14 (Feb. 1996).

[25] Tr. at 87-88 & 98.

[26] USDA/GIPSA, Concentration in the Red Meat Packing Industry at 7 and 14 (Feb. 1996), included at Attachment 6 in Joint Packers' Posthearing Brief. See also Tr. at 98; Petitioner's Posthearing Brief at 4 ("If prices in Colorado, Nebraska and Kansas fall, prices will fall in Florida.")

[27] The record indicates that, by weight, nearly 93 percent of all live cattle imports from Canada were ready for slaughter. See CR and PR at Table J-1. Fed cattle for slaughter accounted for 65.4 percent by weight of total subject imports in 1998, and cull cattle accounted for 27.4 percent by weight of subject imports. Id. The remaining seven percent of subject imports by weight entered the United States in 1998 primarily as feeder cattle with some yearling or stocker cattle. Id.

[28] See CR and PR at Table III-3.

[29] CR at II-11, PR at II-7.

[30] CR at II-13, PR at II-8.

[31] Id.

[32] CR at II-12-13, PR at II-7-II-8.

[33] CR at II-8; PR at II-5.

minimally.[34] However, demand for live cattle for slaughter has strengthened in 1999, with apparent consumption by weight of fed cattle for slaughter increasing by 2.1 percent in interim 1999 when compared with interim period 1998.[35] Industry analysts report that there has been a significant increase in demand for beef during 1999.[36]

B. Volume of Subject Imports

Section 771(7)(C)(i) provides that the "Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant."[37]

As I did in my preliminary determination, I again find that the volume of the subject Canadian imports is not significant. Whether considered on a weight or head basis, the volume of the subject imports from Canada has been small and has declined throughout the period of investigation.[38] In absolute terms, the volume of the subject imports decreased from 1996 to 1998 and continued to decrease in interim 1999[39] when compared to interim 1998.[40] In this regard, I note that, although the volume of Canadian imports has fluctuated somewhat in the last eight years (particularly in 1994 and 1995), the volume level of imports from Canada has remained relatively stable since 1992.[41]

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[34] Apparent consumption of live cattle was 43.59 million pounds in 1996, 43.36 million pounds in 1997 and 43.3 million pounds in 1998. CR and PR at Table IV-3. As discussed below, these apparent consumption numbers are somewhat understated.

[35] CR and PR at Table B-1.

[36] See, e.g., "Here's The Beef", Cheryl Strauss Einhorn, *Barron's*, October 11, 1999, see also CR and PR at Table L-1 (beef demand in interim 1999 was 2.4 percent higher than in interim 1998.)

[37] 19 U.S.C. § 1677(7)(C)(i).

[38] For purposes of my volume and market share analysis in this investigation, I have considered volume measures on the basis of both cattle weight and head of cattle. Nonetheless, I believe that a comparison of volume trends based on weight is more instructive in this investigation because an analysis of volume based on head of cattle might mask weight variations between classes of cattle (i.e., veal calves v. steer for slaughter) or changes in the average weight of the individual cattle slaughtered. See, e.g., CR and PR at Table H-1 (showing a general increase in the average weight of cattle at slaughter since 1970). Moreover, I note that cattle are generally sold on the basis of weight, not by head.

[39] In this regard, I have considered that the volume of imports continued to decline after the filing of the petition and that prices have strengthened since that time. See, e.g., Petitioner's Prehearing Brief at 87. I note, however, that the continued decline in subject volume during interim 1999 is consistent with the decline in the volume trends exhibited by the subject imports during 1997 and 1998 and that the volume decline can be attributed in part to such factors as increased slaughter capacity added in Canada. Moreover, I note that the strengthening of prices is consistent with the fact that the record suggests that the demand for beef products is strengthening and that the liquidation phase of the cattle cycle may now be ending. Because of the pendency of the investigation, however, I have reduced the weight accorded to these volume changes after the filing of the petition for purposes of my analysis. See 19 U.S.C. 1677(7)(I).

[40] CR and PR at Table B-1.

[41] CR and PR at Table H-1. When performing my analysis, I have primarily relied on data for the Commission's traditional three-and-a-half year period of investigation, covering 1996 through 1998 and interim 1999. However, I have also given attention to all of the data in the record, including data stretching far beyond our standard period. Accordingly, I have considered, to the extent it is relevant, data for 1995 in my analysis. In this regard, I note that the volume of the Canadian imports in 1994 and 1995 was lower than in 1996 through 1998. Nonetheless, I note

(continued...)

Similarly, when considered on the basis of weight, the market share of the subject imports[42] was small and declined throughout the period of investigation, falling from 4.2 percent in 1996 to 3.7 percent in 1998, then further declining from 3.8 percent in interim 1998 to 2.8 percent in interim 1999.[43] When considered on the basis of head of cattle, the market share of the subject imports was also small, declining from 3.8 percent in 1996 to 3.4 percent in 1998, and then further declining to 2.7 percent in interim 1999 from 3.6 percent in interim 1998.[44]

Quite simply, the small and declining volume of the subject imports from Canada is not significant for purposes of the Commission's analysis under the antidumping statute. I recognize that, as petitioners argue, a small volume of agricultural imports may have a significant impact on domestic prices in a commodity market. This is, however, not such a case. As I discuss below, the record of this investigation clearly shows that the subject imports have had a minimal, if any, impact on domestic prices and the financial condition of the industry. Accordingly, given the conditions of competition in this market and my finding that the subject imports have not had a significant impact on domestic prices in this market, I again find that the volume of the subject imports has not been significant during the period of investigation.

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[41] (...continued)
that these volume levels were lower than 1992 and 1993. CR and PR at Table H-1. I further note that, although there was an increase in the volume of the subject imports increased between 1995 and 1998, the entire increase in import volume occurred between 1995 and 1996 and the volume of the subject imports has declined consistently since that year. CR and PR at Table B-1 and USITC Pub. 3155 at Table C-1.

[42] In analyzing market share in this proceeding, I have primarily relied on the market share and consumption data set forth in the Commission's report at Table IV-3. CR and PR at Table IV-3. I note, however, that the market shares in this table appear to significantly overstate the actual market share levels of the subject imports. As the Commission majority correctly notes, an accurate assessment of market share in this market would include all commercial and internal shipments of all live cattle (after elimination of any double-counting that might any shipments of cattle that may have been double-counted). The market shares calculated by the staff in the Commission's report do not include all commercial and internal shipments of all live cattle, however. Instead, the domestic shipments presented in the chart amount consist only of the volume of domestic cattle slaughtered in the domestic market. Moreover, although complete data for subject and non-subject imports at all stages of development were included in the chart, the vast majority of the subject imports consist of cattle ready for slaughter. In essence, the market share charts amount to a calculation of market shares for the domestic, subject and non-subject producers in the slaughter cattle segment of the market, not the entire market for all live cattle. For this reason, this methodology overstates the market share figures for the subject imports in the entire cattle market. In this regard, I note that, if one compares the volumes of live cattle imported from Canada to total U.S. inventories of all live cattle plus imports of live cattle, the subject imports accounted for less than 1.5 percent of all live cattle inventories throughout the period of investigation. Compare CR and PR at Table H-1 with CR and PR at Table B-1. Because of the absence of more reliable data on the actual market share of the subject imports, however, I have relied on the data in Table IV-3 for purposes of my analysis.

[43] CR and PR at Table IV-3.

[44] CR and PR at Table IV-3. Moreover, the large bulk of the subject imports entered states other than the primary feeder belt states of Texas, Kansas, Nebraska, Colorado and Iowa. Because prices in the nationwide market for cattle are influenced by price activity in the feeder belt markets, the concentration of the subject imports in non-feeder states further minimizes the volume effects of the subject imports. For a more detailed description of this aspect of the market, see my pricing analysis below.

C. Price Effects of Subject Imports

Section 771(7)(C)(ii) provides that, in evaluating the price effects of the subject imports, the Commission shall consider whether (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.[45]

As I did in the preliminary phase of this investigation, I again determine that the subject imports have not had significant adverse price effects on domestic prices during the period of investigation. In coming to this conclusion, I have carefully examined the record evidence with respect to the importance of price in the purchase decision for cattle, the substitutability of the subject and domestic merchandise in the fed cattle segment of the market, the patterns of underselling exhibited by the subject imports during the period, and the price and profitability experience of the domestic producers during the period of investigation. In particular, I note that the record evidence indicates that price remains an important aspect of the purchase decision in this market[46] and that there is a reasonable degree of substitutability between the subject and domestic merchandise within the slaughter cattle segment of the market, which is the portion of the market in which the bulk of the subject imports compete directly with the domestic industry.[47] Further, I note that record indicates that the subject imports undersold the domestic product in 54 of 79 possible quarterly price comparisons, or sixty-eight percent of the possible comparisons.[48] Finally, I note that the record indicates that, during the latter half of the period of investigation until the filing of the petition, the domestic feedlot producers, the segment of the industry most directly in competition with the subject imports, experienced an increasing cost/price squeeze, generally becoming more unprofitable over that time span.[49] Without more, these facts might suggest that the subject imports have had a significant price-suppressing or depressing effect on domestic prices during the period.

Nonetheless, the entire record of this investigation clearly demonstrates that the subject imports have not had significant adverse impacts on domestic prices during the period of investigation. First, a close review of the price comparison data indicates that the subject imports have not actually had an observable impact on domestic prices during the period of investigation. Although the subject imports fairly consistently undersold the domestic merchandise during the period of investigation, the price comparison data clearly indicates that domestic price movements, whether upwards or downwards, generally occurred independent of the existence of underselling by the subject imports.[50] In other words, none of the price movements for the domestic merchandise can be clearly and directly linked to underselling by the subject imports. Similarly, although the volume levels of the subject imports fluctuated during the period of investigation, there is no observable correlation between fluctuations in

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[45] 19 U.S.C. § 1677(7)(C)(ii).

[46] Thirteen of eighteen responding purchasers reported that price was one of the three most important factors in their purchase decision. CR at II-11, PR at II-7.

[47] As I indicated above, the record indicates that the large majority of cattle associations and purchasers reported that Canadian and domestic cattle were generally interchangeable. CR at II-13, PR at II-8.

[48] The products chosen for price comparison purposes accounted for approximately 35 percent of the weight of cattle slaughtered in the United States in 1998 and approximately 41 percent of the subject imports, by weight, in 1998. CR at V-11, PR at V-8.

[49] CR and PR at Table VI-2 and VI-3.

[50] CR and PR at Tables V-1 through V-7 and Figure V-2.

domestic prices and fluctuations in the volume of subject imports over the period of investigation.[51] Given the absence of any observable correlations between the price or volume of the subject imports and domestic prices, the pricing data indicates that the subject imports have not had a significant adverse impact on those prices.

Secondly, although the subject imports undersold the domestic merchandise in more than two-thirds of the possible price comparisons during the period of investigation, the margins of underselling were generally very small, ranging between 0.1 percent and 4.8 percent in the large majority of the instances of underselling.[52] Given that there is only a moderate level of substitutability between the subject and domestic merchandise (even within the fed for slaughter segment of the market) and that a number of purchasers indicated that the domestic product was superior to the Canadian merchandise with respect to such important considerations in the purchase decision as quality, availability and delivery time,[53] I believe that the minimal underselling margins exhibited by the subject imports simply indicate that some purchasers consider the domestic merchandise to be a better value product than the subject merchandise.[54] Accordingly, I believe that the underselling exhibited by the subject imports during the period of investigation does not indicate there has been significant adverse price competition between the subject and domestic merchandise during the period of investigation.[55]

Third, I note that any possible link between the price movements for the domestic merchandise and the subject imports is further minimized by the fact that the subject imports are concentrated in secondary regional markets. As I discussed above, the record indicates that prices in the national market are driven by market prices in the "feeder belt" states of Texas, Nebraska, Kansas, Colorado, and Iowa.[56] The subject imports, however, are more concentrated in secondary markets in the United States, such as Washington , Oregon, Pennsylvania, and Idaho, which have a less significant impact on prices in the national market.[57] In this regard, almost eighty percent of the subject imports entered the non-"feeder belt" states in 1998[58] and the subject imports held only a 1.1 percent share of the total cattle slaughtered in the five primary feeder belt states in 1998.[59] In light of the regional concentration of the subject imports, it is clear that the bulk of the subject imports can have had little impact on pricing in the main

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[51] For example, a review of the pricing comparison data for products 1 and 2, the largest volume pricing products, indicates that prices actually increased in 1996 when the market share of the subject imports was at its peak, but then declined somewhat in 1997 and 1998 as import market share declined. See CR at Tables V-2 and V-3 and Figure V-2.

[52] CR and PR at Tables V-1 through V-7.

[53] CR and PR at II-13-14.

[54] In essence, the reported levels of underselling simply reflect the moderate substitutability differences between the subject and domestic merchandise in the slaughter cattle segment of the market.

[55] CR and PR at II-12-14. In any event, I believe that the small underselling margins would be unlikely to have a significant adverse effect on domestic prices, given the small and declining volumes of the subject imports that were in the domestic market during the period of investigation.

[56] Tr. at 87-88. The evidence in the record indicates that the leading price discovery points actually are Nebraska and Kansas. USDA/GIPSA, Concentration in the Red Meat Packing Industry at 14 (Feb. 1996), included at Attachment 6 in Joint Packers' Posthearing Brief.

[57] CR at Table K-1.

[58] See CR and PR at Table K-1.

[59] See CR and PR at Tables IV-3 & K-1; USDA, Livestock Slaughter 1998 Summary at 22 and 23. The subject imports held less than 0.05 percent of the Texas slaughter market by head, 0.2 percent of the Kansas market, 2.3 percent of the Nebraska market, 3.2 percent of the Colorado market and 1.7 percent of the Iowa market.

price setting regions of the national market and, thus, had only a minimal impact, at best, on domestic prices overall in the national market.[60]

Fourth, any possible adverse impact of the subject merchandise on domestic prices is further limited by the fact the vast bulk of the subject merchandise enters the United States as cattle ready for slaughter and does not therefore directly compete with merchandise sold in the upstream segments of the cattle market, such as the cow/calf segment and the stocker/yearling segment of the market. Although the record suggests that there may be some indirect linkages between price movements in the market, the limited substitutability of the cattle in the upstream segments of the market and the slaughter segment further limits any possible price effects on domestic cattle prices by reason of the subject imports. As a result, the subject imports can have, at best, only a minimal price impact on the upstream segments of the cattle market, which comprises more than half of the overall cattle market in the United States.

Finally, the record clearly establishes that domestic price and profitability trends during the period of investigation are attributable to two significant factors that have nothing to do with the subject imports. First, as petitioner concedes, the domestic feedlot industry consists of a numerous group of relatively small producers who do not enjoy equal bargaining power with the highly concentrated beef packing industry.[61] Because of the relative disparity in bargaining power between the two segments, I find that the beef packing industry has a much more significant influence over price levels in the market than the feedlot producers. Accordingly, I agree with petitioners that the cattle producers, including the subject producers, are price takers in this market. However, given the large number of domestic feedlot producers and the relatively small size of the Canadian cattle industry compared to the domestic industry,[62] even the complete removal of the Canadian imports from the market as a bargaining entity would not significantly reduce the ability of the packers to continue exercising an important influence over domestic prices for cattle.

Second, the price of live cattle in the U.S. market is significantly affected by the existence of the cattle cycle. During the period of investigation, the domestic market for live cattle was going through the liquidation phase of the cattle cycle, during which feedlot operators reduce their herds by increasing the number of cattle they market for slaughter. During this phase, prices generally decline or stay flat, due to an increasing supply of cattle ready for slaughter in the marketplace.[63] As a result of the fact that the market was going through this phase of the cycle, prices obtained by the feedlot producers have remained somewhat flat throughout the period, even in the face of significantly rising grain costs during 1997 and the first part of 1998.[64] Accordingly, feedlot producers have suffered a significant cost/price squeeze during this period, primarily due to an excess of domestic supply in the market that was a natural consequence of the liquidation phase of the cattle cycle. In other words, I believe the record indicates that the industry would have experienced similar price and profitability levels during the period of investigation, even if the subject imports had not been present in the market. Given this, and the factors

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[60] CR at V-6. I also note that record indicates that the spot still comprises the bulk of the live cattle market in the United States. Accordingly, I do not agree that the spot market for cattle has become a "thin" one in which the subject imports have an exacerbated impact on domestic prices.

[61] See, e.g., Petitioner's Prehearing Brief at 78.

[62] The Canadian cattle industry is estimated to be one-eighth the size of the U.S. cattle industry. CR and PR at VII-1.

[63] Moreover, this imbalance in supply and demand during the liquidation phase of the cycle may have been further exacerbated by the increased supply of cattle from the Texas and southwestern United States market that were placed on the market because of drought conditions throughout the Southwest. CR and PR at II-3.

[64] See CR and PR at Table VI-3.

I have described above, the feedlot industry's flat price levels and reduced profitability cannot be clearly attributed in a more than minimal fashion to the subject imports.

In sum, I find that the subject imports have not had significant adverse effects on domestic prices in this market.

D. Impact of the Subject Imports on the Domestic Industry

Section 771(7)(C)(iii) provides that the Commission, in examining the impact of the subject imports on the domestic industry, "shall evaluate all relevant economic factors which have a bearing on the state of the industry," including actual and potential declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity; factors affecting domestic prices; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, investment, and existing development and production efforts of the domestic industry; and the magnitude of the margin.[65] I have considered these factors within the context of the conditions of competition within this market.[66]

As I previously indicated, the subject imports have had minimal, if any, volume or price effects during the period of investigation. During the period of investigation, the subject imports from Canada occupied a small and declining share of the market, concentrated almost exclusively in the slaughter cattle segment of the market. Throughout this period, the subject imports have had little or no volume impact on the domestic industry, which has maintained a consistent and dominant 95 percent share of the marketplace. Moreover, the small and declining volume of the subject imports have not had a significant depressing or suppressing effect on domestic prices and did not contribute in more than a minimal manner to the cost/price squeeze experienced by portions of the industry.[67] In sum, I cannot find that the prevailing domestic pricing levels and the financial condition of the industry can be attributed to the subject imports in a more than minimal fashion.[68] I therefore find that the subject imports have not had an adverse impact on the condition of the domestic industry.

In making this finding, I recognize, of course, that the domestic industry has experienced significant declines in many of the key domestic industry factors.[69] Indeed, many of the financial

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[65] As part of my consideration of the impact of imports, the statute specifies that the Commission is to consider in an antidumping proceeding, "the magnitude of the dumping margin." 19 U.S.C. § 1677(7)(C)(iii)(V). In making my determination, I have considered the margins of dumping announced by Commerce in its final determination in this proceeding. 64 Fed. Reg. 56739, 56,758-759 (October 21, 1999).

[66] No party has alleged that the captive production provision, 19 U.S.C. § 1677(7)(C)(iv), should be applied.

[67] Indeed, the feedlot industry, in particular, experienced its worst unit losses as imports were declining in 1997 and 1998. See CR and PR at Table VI-3.

[68] In this regard, I note that the record evidence does not support a finding that the liquidation phase of the cattle cycle has lasted for a longer period than usual due to the impact of the subject imports.

[69] CR/PR at Tables III-3 and IV-3. U.S. production (the calf crop) steadily declined from 39.8 million head in 1996 to 38.6 million head in 1998, and from 28.4 million head in interim period (Jan.-June) 1998 to 28.2 million head in interim period (Jan.-June) 1999. Production capacity for the domestic industry steadily declined from 55.0 million head in 1996 to 52.8 million head in 1998, and from 52.8 million head as of Jan. 1, 1998 to 52.2 million head as of Jan. 1, 1999. U.S. producers' shipments (slaughter of animals of U.S. origin) declined from 36.6 million head in 1996 to 35.2 million head in 1998. U.S. shipments increased slightly from 17.4 million head in interim period 1998 to 17.6 million head in interim period 1999. U.S. producers' shipments by weight followed a similar trend over the period of investigation. Mid-year and year-end inventories (total number of cattle and calves)

(continued...)

performance indicators for the industry were negative in each year of the period of investigation.[70] Nonetheless, the current state of the industry is readily explained by other factors, such as the concentration of the beef packing industry and the existence of the cattle cycle. In sum, I find that the subject imports of live cattle are too low in volume to affect domestic prices significantly. The lack of any current volume or price effects indicates to me that the subject imports have not had a more than minimal or tangential causal nexus to any injury that may be suffered by the industry.

E. Conclusion

For the foregoing reasons, I find that the domestic industry producing live cattle is not materially injured by reason of the subject imports of live cattle from Canada.

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[69] (...continued)
declined from 1996 to 1998, and were lower in interim period 1999 compared with interim period 1998. The unit value of commercially slaughtered U.S. cattle by pounds fluctuated between years but increased from $0.59 in 1996 to $0.60 in 1998, and remained at $0.62 for both interim period 1998 and interim period 1999. Id.

[70] CR/PR at Tables VI-1, VI-2, VI-3, and VI-4. Since the USDA reporting format for cow-calf production cash costs and returns has changed during the period of investigation, we considered data for the 1996 to 1997 period from Table VI-1 and data for the 1997 to 1998 period from Table VI-2 separately. The gross value of U.S. cow-calf production (comparable to revenues on a per-unit basis) increased from $312.28 per bredcow in 1996 to $405.50 per bredcow in 1997; however, it declined from $414.27 per bredcow in 1997 to $402.98 per bredcow in 1998. CR/PR at Tables VI-1 and VI-2. Total cash expenses increased from $522.24 per bredcow in 1996 to $535.92 per bredcow in 1997; however, it declined from $542.25 per bredcow in 1997 to $502.01 per bredcow in 1998. Id. While, the gross value of production less cash expenses was negative in all three years, it improved each year from 1996 to 1998. Id. The record indicates that the sharp decline in feed costs in 1998 limited the negative return in that year. CR at VI-2. The USDA estimated net returns or margins (difference between the selling price and expenses) for commercial feedlot operations generally were positive in 1996 to the middle of 1997, were negative in the second half of 1997 until October 1998, and were positive from November 1998 to June 1999. CR/PR at Table VI-3.

DISSENTING VIEWS OF CHAIRMAN LYNN M. BRAGG

I find that the domestic industry producing live cattle is materially injured by reason of imports of the subject merchandise from Canada which are sold in the United States at less-than-fair-value. Importantly, I recognize that a rote analysis based upon a comparison of absolute volumes of domestic and subject merchandise fails to capture the unique market characteristics of the domestic live cattle industry, and therefore overlooks the actual impact subject imports have had on domestic live cattle producers.

OVERVIEW

As a starting point in my analysis in this investigation, I first acknowledge that in commodity cases even a "relatively small volume of imports can have a significant effect on domestic prices."[1] This principle is central to understanding injury here because it recognizes that for "price sensitive and fungible product[s]," such as live cattle, "the impact of seemingly small volumes [of subject imports] . . . is magnified in the marketplace."[2] And in this case, the impact is magnified even further due to the liquidation phase of the cattle cycle and the importance of key pricing regions in setting national live cattle prices. It is therefore essential that the volume, price, and impact analysis in this investigation incorporate the unique conditions of competition of the live cattle industry. Once these conditions of competition are incorporated, the injury analysis necessarily begins at the regional market level and proceeds outward.

Applying this analytical framework to the facts of this investigation, I first conclude that the second and third most popular destinations for subject imports from Canada based on a percentage of total volume (i.e., Nebraska & Utah) were markets with no supply shortages. I then note that the Nebraska and Utah regions drive national cattle prices and that subject imports are mostly sold on the spot market in these regions. I further find that the volume of subject imports into these key price setting regions was equivalent to or greater than the daily slaughter for one large packer spread out each week for every week of the year. Recognizing that the price that large packers pay for cattle purchased on the spot market is immediately reported nationwide, and thus directly impacts live cattle prices nationwide, I therefore conclude that the volume of subject imports is significant.

With respect to price, I find that the subject imports consistently undersold the domestic like product, which is particularly important in the context of commodity cases where one would not expect to find evidence of pervasive underselling due to the immediacy of "price discovery." I also find that even if possible quality differences between the domestic and Canadian products are taken into consideration, significant margins of underselling remain, especially in the primary product categories examined by the Commission. I therefore find that the significant volume of undersold subject imports caused price suppression and depression among domestic live cattle prices to a significant degree.

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[1] Live Cattle from Canada and Mexico, Inv. Nos. 701-TA-386 (Preliminary) and 731-TA-812-813 (Preliminary), USITC Pub. 3155 at 21, aff'd, Ranchers-Cattlemen Action Legal Foundation v. United States, 23 CIT __, Slip Op. 99-122 (November 5, 1999). See, e.g., USX Corp. v. United States, 655 F. Supp. 487, 490 (CIT 1987) ("it is the *significance* of a quantity of imports, *and not absolute volume alone*, that must guide the ITC's analysis under section 1677(7)").

[2] USX Corp. v. United States, 655 F. Supp. 487, 490 (CIT 1987).

I conclude my analysis by finding that as a result of the significant volume of subject imports and resulting significant negative price effects on domestic live cattle prices, the liquidation phase of the domestic cattle cycle was lengthened, resulting in a significant adverse impact on an already vulnerable domestic live cattle industry.

ANALYSIS

I. LIKE PRODUCT

As I did in my preliminary determination, I define the domestic like product[3] consistent with the scope of the investigation as determined by the Department of Commerce, namely:

> all live cattle except imports of (1) bison, (2) dairy cows for the production of milk for human consumption, and (3) purebred cattle and other cattle specially imported for breeding purposes.[4]

I note that for purposes of this final investigation, no party argued for a definition of the domestic like product different from that adopted in the Commission's preliminary determination.

II. DOMESTIC INDUSTRY/RELATED PARTIES

Based on the foregoing like product definition, I find that the domestic industry consists of all "operations" engaged in the production of live cattle, including: cow-calf operators (covering the birth to weaning stage -- usually at five to ten months); backgrounders or stocker/yearling operators (which raise weaned calves until usually twelve to twenty months); and feedlot operators (which "finish" cattle during the last three to five months, until slaughter). The domestic industry does not include slaughterhouses or packers.

Having defined the domestic industry, I next consider whether to exclude any domestic producers from the industry as related parties.[5] Upon review of the record, I determine that even if a

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[3] 19 U.S.C. § 1677(10). In analyzing domestic like product issues, the Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeablilty; (3) channels of distribution; and (4) customer and producer perceptions of the products.

[4] See Notice of Final Determination of Sales at Less Than Fair Value: Live Cattle from Canada, 64 Fed. Reg. 56739 (October 21, 1999). Commission Report ("CR") at A-5.

[5] Domestic producers are "related parties" if they import subject merchandise, or if they directly or indirectly control or are controlled by a subject foreign producer or exporter. 19 U.S.C. § 1677(4)(B). In appropriate circumstances, such related parties may be excluded from the domestic industry. The primary factors the Commission examines in deciding whether appropriate circumstances exist to exclude the related parties include:

(1) the percentage of domestic production attributable to the importing producer;
(2) the reason the U.S. producer has decided to import the product subject to investigation, i.e., whether the firm benefits from the LTFV sales or subsidies or whether the firm must import in order to enable it to continue production and compete in the U.S. market; and
(3) the position of the related producers vis-a-vis the rest of the industry, i.e., whether inclusion or exclusion of the related party will skew the data for the rest of the industry.

domestic producer could be deemed to be a related party, the record generally does not include individual domestic producer data. Exclusion of a related party would therefore provide no additional insight into whether the domestic industry is materially injured by reason of subject imports. I also note that based upon the highly fragmented nature of the domestic industry, the inclusion of a related party would not skew the domestic industry data. Based upon the foregoing, I find that appropriate circumstances do not exist to exclude any related party from the domestic industry.

III. MATERIAL INJURY BY REASON OF THE SUBJECT IMPORTS

For the reasons discussed below, I find that the domestic industry producing live cattle is materially injured "by reason of" the subject merchandise from Canada which is sold in the United States at less-than-fair-value.[6] In making this determination, as directed by statute, I have considered the volume of imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.[7] I have evaluated all relevant economic factors within the context of the business cycle (i.e. the cattle cycle) and other conditions of competition distinctive to the live cattle industry.[8]

A. Conditions of Competition

An important condition of competition in this investigation is the unique business cycle, specifically referred to as the "cattle cycle." The cattle cycle historically lasts about ten years and has four distinct phases.[9] After these phases are completed, the cattle cycle begins anew.

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19 U.S.C. § 1677(4)(B).

[6] 19 U.S.C. § 1673d(b).

[7] 19 U.S.C. § 1677(7)(B)(i). The Commission "may consider such other factors as are relevant to the determination" but shall "explain in full it relevance to the determination." 19 U.S.C. § 1677(7)(B)(ii).

[8] 19 U.S.C. § 1677(7)(C)(iii).

[9] CR at II-1, II-3. The four phases of the cattle cycle include:

> The Expansionary Phase: When cattle prices are relatively high, cattle producers retain more cattle for breeding, rather than slaughtering the animals. This initially reduces the number of cattle slaughtered and typically results in increased cattle prices. This phase lasts between three and eight years.
>
> Peak Year: As a result of the expansionary phase, cattle supplies begin to increase to the optimum point where supply and demand are roughly equivalent.
>
> Liquidation Phase: This phase begins as increased supply from the expansionary phase exceeds demand. Prices begin to fall. As a result, producers reduce their herds by sending some of their breeding stock to slaughter, thereby further increasing supply and reducing prices. This phase may last two to four years.
>
> Consolidation Phase: In this phase, supply reductions from the previous phase have created a supply shortage, thereby causing prices to rise. This phase may last about a year.

Id.

The parties agree that a cattle cycle exists. The parties disagree as to whether the current cycle is in the liquidation phase (as Petitioners argue and as confirmed by questionnaire responses) or between the liquidation and expansionary phases (as Respondents argue).[10] What the parties agree upon, however, is that cattle prices will reach their lowest point in a given cattle cycle during liquidation.

Another important condition of competition is the heavy concentration of the packing industry (which purchases nearly all live cattle destined for immediate slaughter). The three largest domestic packers account for a large majority of the cattle slaughter market in the United States as well as the majority of subject imports from Canada.[11] The concentration of packers increases the packers' leverage relative to cattle producers, thus providing packers the ability to use imports to reduce domestic live cattle prices and/or prevent price increases.

In addition, the majority of packers are located in the feeder belt states (including Nebraska) which drive national live cattle prices.[12] A rise or fall in prices in this key pricing region will precipitate a rise or fall in prices nationwide. I also recognize that prices in other regions impact prices nationally, though not to the degree that feeder belt states impact prices.[13]

A further condition of competition is the linkage between the prices of fed cattle and stocker cattle. Upon review of the full record evidence in this final phase investigation, I find that fed cattle prices are directly related to stocker cattle prices.[14] I therefore determine that a change in the price of fed cattle will generally lead to a related change in the price of stocker cattle. I also conclude, however, that the relationship between fed cattle prices and stocker prices must be viewed in the context of feed grain prices. There is therefore a three part interrelationship between feed grain prices, stocker prices, and fed cattle prices.

Over the period of investigation ("POI"), prices for fed cattle and stocker cattle generally followed the same trends.[15] This was not the case in the preliminary investigation, where the record evidence reasonably led to the conclusion that the two pricing sets were not related. However, based upon the full record in this final phase investigation, it is apparent that the price divergence relied upon in the preliminary investigation to support a finding of no linkage between fed cattle and stocker cattle prices was a short-term incident resulting from a sharp decline in feed grain prices, and is not indicative of the historical relationship between fed cattle and stocker cattle prices.[16] As the record indicates, fed cattle prices and stocker cattle prices returned to equilibrium with the stabilization of feed grain prices in 1997.[17]

Another important condition of competition is the fact that the majority of both U.S. cattle and subject imports are purchased on the spot market.[18] Spot market prices in both the United States and

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[10] CR at II-3.

[11] CR at II-3, IV-1.

[12] USDA/GIPSA, Concentration in the Red Meat Packing Industry (Feb. 1996).

[13] USDA/GIPSA, Concentration in the Red Meat Packing Industry (Feb. 1996).

[14] I observe that in Ranchers-Cattlemen Action Legal Foundation v. United States, 23 CIT __, Slip Op. 99-122 (November 5, 1999), the U.S. Court of International Trade upheld the Commission majority's preliminary finding of no direct link between the prices of stocker cattle and fed cattle. I note, however, that the record in this final phase investigation contains information not contained in the record of the preliminary investigation which reasonably supports the conclusion that there is a direct link between prices for fed cattle and stocker cattle.

[15] See USDA-ER, Livestock, Dairy, and Poultry Situation and Outlook, 1996-1999.

[16] See CR at V-18, V-19; Pre-Hearing Brief of Petitioners at Exhibit 1.

[17] See USDA-ER, Livestock, Dairy, and Poultry Situation and Outlook, 1996-1999.

[18] CR at I-11.

Canada are readily available. In the United States, the United States Department of Agriculture ("USDA") provides timely spot prices of feeder steers and heifers, fed steers, and culled cows in on its Web site and over the telephone.[19] In Canada, spot prices are available from CanFax, and are updated continually.[20] In addition, prior to Canadian live cattle auctions, auction participants usually "discover" the current U.S. price of cattle.[21]

The record further indicates that there is a domestic live cattle supply shortage in the Northwest region of the United States. I therefore agree with Respondents that subject imports into the state of Washington are directly related to the supply shortage in that region. I also find, however, that there are no supply shortages in states outside the Northwest region. I note in this regard that my definition of the Northwest region does not include the state of Utah.[22]

Finally, I note that Respondents argue that imports of live cattle from Canada to the United States are directly related to Canadian slaughter capacity, and therefore directly related to imports of beef from Canada into the United States. It is argued that any decrease in imports of live cattle from Canada will result in a related increase in imports of beef.

The record shows that over the last six months of the POI, an increase in beef imports coincided with a decrease in live cattle imports. However, over the entire POI, beef imports have steadily increased while the volume of live cattle imports from Canada has fluctuated.[23] Thus, when viewed in the context of the entire POI, a compelling and direct correlation between beef and cattle imports from Canada is not apparent on the record.

B. Volume

Over the POI, Nebraska was the third largest importer of subject imports, with Washington the number one importer and Utah number two. Nebraska received 164,968 head of live cattle from Canada in 1996; 156,877 head in 1997; and 165,588 head in 1998, representing an increase of 5.6 percent from 1997 to 1998.[24]

Of the 165,588 head imported into Nebraska in 1998, 141,395 head went directly to slaughter.[25] It is important to focus on the volume of animals destined for immediate slaughter because, as I noted above, prices for slaughter animals are directly related to the price paid for live cattle at earlier stages of development. On an absolute basis, 141,395 head of cattle would appear to be an insignificant figure when one considers that approximately 7.3 million head of cattle were slaughtered in Nebraska in 1998.[26] However, the 141,395 head figure takes on more significance when one recognizes that:

1. Nebraska is one of the acknowledged primary markets for determining national live cattle prices;

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[19] CR at V-2.

[20] CR at V-2-3.

[21] CR at V-3.

[22] Based upon the USDA's reporting methodology for federally inspected slaughter, I define the Northwest region to include only Alaska, Idaho, Oregon, and Washington.

[23] Canadian Cattlemen's Association Post-Hearing Brief at Appendices D & G.

[24] CR at Appendix K-3; Preliminary Commission Report at Appendix D-3.

[25] USDA/APHIS, U.S. Imports of Slaughter and Feeder Cattle from Canada, 1998.

[26] USDA, Commercial Cattle Slaughter, 1998.

2. There was a glut of supply in Nebraska over the POI;

3. Cattle purchases by large-scale packers on the spot market, where most cattle from Canada is purchased, are immediately reported throughout North America and therefore have a significant influence on domestic cattle prices nationwide; and

4. The domestic industry was vulnerable due to the cattle cycle (see following discussion on impact).

On the issue of supply, if there was a supply glut in the Nebraska region, as the record makes clear, what incentive would Nebraska packers have to purchase cattle from Canadian suppliers located much further away than domestic supplies? As will become apparent, I believe the primary driver for these purchases was lower prices.

The next important issue in the volume analysis is the significance of large packers' spot market purchases in setting prices. I again point out that the majority of subject imports are purchased on a spot basis. It should also be noted that spot prices are generally recognized as the best indicator of live cattle prices and are often relied upon in determining prices for live cattle purchased under contract agreements. Therefore, any change in the spot price will also affect the price paid under most contract agreements.

As discussed earlier, large packers' purchases on the spot market are immediately reported across the nation. In this context, it must be recognized that even one large purchase by a large packer in a key pricing region, such as Nebraska, will influence national cattle prices. Because packers purchase most of their cattle on a weekly basis, it is important to consider the impact of imports from Canada in the context of weekly purchases rather than on an absolute volume basis.

The average daily slaughter capacity of large domestic packing facilities is approximately 2,883 head per day.[27] Dividing this figure into the total number of cattle (for immediate slaughter) imported into Nebraska in 1998 reveals that on average, in the most important price discovery market in the nation, at least one average-sized packer purchased an entire day's supply of live cattle from Canadian suppliers each week for 49 weeks of the year. I find that by impacting 49 weeks of supply for one average-sized packer in the primary U.S. price discovery region, and in the context of heavy packer concentration, the volume of subject imports is significant.

Applying this analytical framework to Utah's 1998 volume of subject imports (i.e., 177,625 head) reveals that one average-sized packing facility (based upon a national packing capacity average) in Utah purchased 3,415 head of live cattle from Canada each week, well in excess of one day's capacity.[28] I again conclude that in an environment where average-sized packers' purchases dictate market prices (as a result of heavy packer concentration), greater than one day's supply per week for an average-sized large packer is significant. Based upon my finding of significant import volumes in these two primary pricing regions, I conclude that, on the whole, the volume of subject imports is significant.

C. Price

As discussed above, national price levels are determined by spot prices. The importance of "price discovery" is twofold: (1) sellers will rapidly move to obtain even slightly higher prices in any

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[27] See CR at IV-2.

[28] See CR at Table IV-1; USDA/APHIS, U.S. Imports of Slaughter and Feeder Cattle from Canada, 1998.

market thus inflating or magnifying the importance of regional market prices; and (2) the broadcast spot market prices in turn establish the prices for a large number of contract sales.

As set forth in the Commission's Report, during the POI imports from Canada undersold U.S. products in 54 out of 79 quarters reported, or in 68.4 percent of pricing comparisons.[29] Importantly, one would not to expect to find significant evidence of underselling in commodity cases due to the immediacy of price discovery. Therefore, evidence of significant underselling, as seen in this investigation, is particularly indicative of a price advantage enjoyed by subject imports.

By consistently underselling domestic producers' prices by margins up to $4.00 per 100 lbs. and more, in important regional markets, unfairly traded imports provided packers leverage to ratchet down U.S. prices on a national basis.[30] Once a single producer agrees to a lower price set by a packer, other producers rush to supply at the same price. In this setting, offers to sell or sales of even small quantities of live cattle from Canada have a substantial and meaningful impact on spot market prices.

Average prices for domestic spot market fed cattle fell from $69.23 per hundred weight in the fourth quarter of 1996 to $59.56 per hundred weight in the third quarter of 1998.[31] Average prices for this category then rose slightly to $60.95 in the fourth quarter of 1998, arguably as a result of the filing of the petition.[32] Average prices continued to rise in the first quarter of 1999 and are now in the range of third quarter 1997 prices of approximately $65.00 per hundredweight.[33]

Respondent packers also argue that the underselling in this investigation is a result of imports from Canada grading at lower levels than U.S. products. But even if one were to assume a minimal grade deficiency for all subject imports, one would still find significant evidence of underselling.[34]

The record also indicates that average unit values for subject imports were $.08 per pound lower than domestic average unit values in 1997 and $.05 per pound lower in 1998, or $5.00 lower per hundredweight in 1998.[35] Applying this margin to an average per cattle weight of 1,250 pounds translates into an average per cattle price advantage of $62.50 for the subject merchandise. By purchasing (on average) one day's supply of live cattle from Canada each week, an average-sized domestic packer would enjoy average price savings of approximately $180,000 per week. Based on all of the foregoing, I determine that the significant volume of subject imports has both suppressed and depressed domestic live cattle prices to a significant degree.

D. Impact

The record is replete with evidence that domestic producers experienced significant losses over the POI. While it is difficult to breakdown precise financial losses, the Commission Report indicates that the gross value of domestic cow-calf production was negative in 1996,1997, and 1998, though over the course of the POI the losses were increasingly less negative.[36] In addition, the USDA reported that cash receipts from the marketing of all domestic cattle decreased from $36.0 billion in 1997 to $33.7

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[29] CR at V-23.
[30] CR at V-12.
[31] CR at V-12-13.
[32] CR at V-12-13.
[33] CR at V-12-13.
[34] CR at V-12-13.
[35] CR at IV-5.
[36] CR at VI-2.

billion in 1998, a 6 percent decrease.[37]

With respect to feedlot operators, margins were generally positive from the middle of 1996 to the middle of 1997, and were negative in the second half of 1997 and most of 1998.[38] Since the latter months of 1998 and through the middle of June 1999, margins have been positive.[39] Based upon these significant industry-wide financial losses and the existence of the liquidation phase of the cattle cycle throughout the POI, I determine that the domestic live cattle industry was, and remains, vulnerable.

The trend in subject imports and domestic prices in the first half of 1999, after this investigation commenced, underscores the correlation between import prices, total cattle supply, and domestic revenues. With the filing of the petitions, imports dropped in the second half of 1998 and fell even further in the first half of 1999. At the same time, prices and net margins for feedlot operators have steadily improved since October 1998.

As recognized in the preliminary determination and discussed above, another key condition of competition relating to the performance of the domestic industry is the cattle cycle. All parties agree that over the POI the domestic industry was, and as most would agree, continues to be, in the liquidation phase, or low point of the cattle cycle. The parties disagree, however, as to the impact of subject imports on the cattle cycle. Upon review of the record evidence, I determine that a significant volume of subject imports has suppressed and depressed domestic prices to a significant degree. Based upon the price sensitive nature of the product in the context of the cattle cycle, I conclude that by suppressing and depressing prices, subject imports forced domestic producers to refrain from rebuilding their herds with the effect of lengthening the liquidation phase of the cattle cycle, thereby amplifying the negative effects on an already vulnerable domestic industry.

CONCLUSION

Based on all of the foregoing, I find that the domestic industry producing live cattle is materially injured by reason of imports of the subject merchandise from Canada sold into the United States at less than fair value.

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[37] CR at VI-1.

[38] CR at VI-5.

[39] CR at VI-5.

PART I: INTRODUCTION

BACKGROUND

This investigation results from a petition filed on November 12, 1998, by the Ranchers-Cattlemen Action Legal Foundation ("R-Calf"), Columbus, MT,[1] alleging that an industry in the United States is materially injured by reason of imports from Canada of live cattle that were alleged to be sold in the United States at less than fair value (LTFV).[2] Information relating to the background of the investigation is provided in table I-1.[3]

SUMMARY DATA

A summary of data collected in the investigation is presented in appendix B, table B-1. U.S. industry data are based on official statistics of the U.S. Department of Agriculture ("USDA") and represent 100 percent of U.S. production during the period January 1996-June 1999.[4] Except as noted, U.S. imports are based on official Commerce statistics. Appendix D contains specific definitions of indicators for which data are presented in tables of this report, as well as a listing of data sources used.

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[1] R-Calf also filed petitions on Oct. 1, 1998, which resulted in the institution of Commission investigations Nos. 701-TA-385 and 731-TA-809-810, *Live Cattle from Canada and Mexico*. On Nov. 10, 1998, petitioners withdrew the Oct. 1 petitions, and the Commission discontinued its investigations (63 FR 64100, Nov. 18, 1998). On Nov. 12, 1998, R-Calf also filed petitions alleging that an industry in the United States is materially injured by reason of imports from Canada of live cattle that were alleged to receive countervailable subsidies and by reason of imports of live cattle from Mexico that were allegedly sold at LTFV. Accordingly, the Commission instituted countervailing duty investigation No. 701-TA-386, *Live Cattle from Canada*, and antidumping investigation No. 731-TA-813, *Live Cattle from Mexico*. On Jan. 19, 1999, the Commission made a negative determination in the antidumping investigation on Mexico and on Oct. 21, 1999, following a final determination by the U.S. Department of Commerce ("Commerce") that countervailable subsidies are not being provided to producers or exporters in Canada, the Commission terminated its countervailing duty investigation on Canada.

[2] The products covered by this investigation are all live cattle except imports of: (1) bison, (2) dairy cows for the production of milk for human consumption, and (3) purebred cattle and other cattle specially imported for breeding purposes. These products are provided for in subheading 0102.90.40 of the Harmonized Tariff Schedule of the United States (HTS), with the exception of statistical reporting numbers 0102.90.4010, 0102.90.4072, and 0102.90.4074. Although the HTS subheading is provided for convenience and customs purposes, the written description of the products is dispositive. NAFTA-originating goods of Canada under subheading 0102.90.40 are eligible to enter the United States free of duty; imports from other countries with normal trade relations are subject to a general duty rate of 1.2 cents per kilogram. Importers must claim NAFTA status and comply with all program requirements to obtain the NAFTA preferences.

[3] *Federal Register* notices cited in the table are presented in app. A.

[4] Due to impracticality and potential unreliability, the Commission did not send questionnaires to the more than 1 million domestic producers of live cattle but rather used these comprehensive and reliable secondary sources for U.S. production data.

Table I-1
Live cattle: Information relating to the background of the investigation

Date	*Action*
November 12, 1998	Petition filed with Commerce and the Commission; institution of Commission investigation (63 FR 64277, November 19, 1998)
December 30, 1998	Commerce's notices of initiation (63 FR 71886, December 30, 1998)
January 19, 1999	Commission's preliminary determination (64 FR 3716, January 25, 1999)
July 8, 1999	Commerce's preliminary determination of dumping (64 FR 36847, July 8, 1999)
July 23, 1999	Commerce's amended preliminary determination of dumping (64 FR 39970, July 23, 1999)
October 6, 1999	Commission's hearing[5]
October 12, 1999	Commerce's final determination (64 FR 56739, Oct. 21, 1999)[6]
November 9, 1999	Commission's vote
November 19, 1999	Commission's determination and views transmitted to Commerce

PREVIOUS INVESTIGATIONS

Live cattle were subject to a Commission investigation over 20 years ago under section 201 of the Trade Act of 1974.[7] The Commission has also conducted several investigations regarding live cattle under section 332 of the Tariff Act of 1930 during the past 20 years or so, as shown in table I-2.

THE PRODUCT

The imported product subject to this investigation, "live cattle," consists of all live cattle except for: (1) bison; (2) dairy cows for the production of milk for human consumption, and (3) purebred cattle and other cattle specially imported for breeding purposes. **In the remainder of this report, the term "cattle" is normally used in place of the term "live cattle."** This part of the report presents information on both imported and domestically-produced cattle, as well as information related to the Commission's "domestic like product" determination.[8]

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[5] The list of witnesses that appeared at the Commission's hearing is presented in app. C.

[6] Commerce's final dumping margins (calculated by comparing the export price to the normal value) are as follows: Cor Van Raay Farms, Ltd. and Butte Grain Merchants, Ltd. (4.53 percent); Groenenboom Farms, Ltd. (3.86 percent); Jameson, Gilroy, and B & L Livestock, Ltd. (5.10 percent); Pound Maker Agventures, Ltd. (0.62 percent, *de minimis*); Riverside Feeders, Ltd. and Grandview Cattle Feeders, Ltd. (5.34 percent); Schaus Land and Cattle Co. (15.69 percent), and all other producers and exporters (5.63 percent).

[7] The investigation resulted in a negative determination. *Live Cattle and Certain Edible Meat Products of Cattle* (inv. No. TA-201-25), USITC Pub. 834, Sept. 1977.

[8] The Commission's decision regarding the appropriate domestic product that is "like" the subject imported

(continued...)

Table I-2
Live cattle: Section 332 investigations, 1977-99

Investigation title	Inv. No.	Date of inv.	USITC Pub. No.
Conditions of Competition in the U.S. Markets Between Domestic and Foreign Live Cattle and Cattle Meat for Human Consumption	332-85	1977	842
The Competitive Position of Canadian Live Cattle and Beef in U.S. Markets	332-241	1987	1996
Live Cattle and Beef: U.S. and Canadian Industry Profiles, Trade, and Factors of Competition	332-328	1993	2591
Cattle and Beef: Impact of the NAFTA and Uruguay Round Agreements on U.S. Trade	332-371	1997	3048

Source: Publications of the U.S. International Trade Commission.

Physical Characteristics and Uses

Cattle are bovine (hollow-horned ruminant) animals of the species *Bos taurus* (common cattle) and *Bos indicus* (Zebu or hump-bearing cattle which are commonly called Brahman[9] cattle).[10] Common cattle breeds include the so-called "British" breeds (Angus, Hereford, Shorthorn, and others) and the so-called "Continental" breeds (Charolais, Gelbvieh, Limousin, and others).[11]

The physical characteristics of cattle vary depending on their age, sex, breed, and conditions under which they have been kept. Calves weigh from 40 to 125 pounds at birth, and from 400 to 650 pounds at weaning. The weaned animals (stockers) typically grow to 650 to 750 pounds before being sent to feedlots. In feedlots the steers and heifers (feeders) are raised to appropriate slaughter weights of about 1,100 to 1,300 pounds.[12] Mature cows may range from 950 to 1,500 pounds, and mature bulls from 1,400 to 2,200 pounds, depending on the breed.[13] More than 60 breeds of cattle exist in the United States, and most commercial producers use crossbreeding.[14] Breeds vary in size, color (black, white,

[8](...continued)
product is based on a number of factors including (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions; (5) common manufacturing facilities, production processes, and production employees; and, where appropriate, (6) price.

[9] In a Commission staff interview on Sept. 20, 1999, *** stated that there are relatively few purebred Brahman cattle kept in the United States because their primary advantage is heat tolerance and insect resistance in subtropical climates.

[10] Arthur L. Anderson and James J. Kiser, *Introductory Animal Science*, NY: Macmillan Pub. Co., 1967, p. 16.

[11] Robert Taylor, *Beef Production and Management Decisions*, second edition, NY: Macmillan Pub. Co., 1994, p. 277.

[12] USDA, Economic Research Service (ERS), *Dairy, Livestock and Poultry*, Dec. 28, 1998.

[13] *Beef Production and Management Decisions.*, op. cit., pp. 293-297 and 324.

[14] Ibid., pp. 279-280.

brown, gray, roan, or bi-color), and somewhat in conformation (body shape).[15] Brahman breeds and crossbreeds of common cattle breeds with Brahmans are more heat- and insect-resistant than common cattle breeds. Thus, Brahmans and crossbreeds are more suitable in the Southern and Gulf regions of the United States.[16] Very few Brahman cattle or crossbreeds of Brahman cattle are kept in Canada.[17]

Slaughter cattle are those that are intended for slaughter immediately or in the very near future. Feeder cattle are those which need to be fed more at feedlots prior to slaughter. The classes for slaughter and feeder cattle are steers, bullocks, bulls, heifers, and cows. Definitions of the respective classes are as listed below.

Steer.--A steer is a male bovine castrated when young and which has not begun to develop the secondary physical characteristics of a bull.

Bull.--A bull is a mature (approximately 24 months of age or older), uncastrated, male bovine. However, for the purpose of these standards, any mature, castrated, male bovine which has developed or begun to develop the secondary physical characteristics of an uncastrated male is also considered to be a bull.

Bullock.--A bullock is a young (under approximately 24 months of age) male bovine (castrated or uncastrated) that has developed or begun to develop the secondary physical characteristics of a bull.

Cow.--A cow is a female bovine that has developed, through reproduction or with age, the relatively prominent hips, large middle, and other physical characteristics typical of mature female cattle.

Heifer.--A heifer is an immature female bovine that has not developed the physical characteristics typical of cows.

Quality (grade) in slaughter cattle is related to the palatability of the lean meat, and is evaluated primarily by the amount and distribution of finish,[18] the firmness of muscling, and the physical characteristics of the animal associated with maturity. The quality grades of slaughter steers, heifers, and cows are as follows: Prime (cows are not eligible for the Prime grade), Choice, Select, Standard, Commercial, Utility, Cutter, and Canner.[19]

The quality grade of feeder cattle is determined by evaluating three general value-determining characteristics--frame size, thickness, and thriftiness.[20] Frame size refers to the animal's skeletal size (its height and body length) in relation to its age. Thickness refers to the development of the muscle system in relation to skeletal size. Thriftiness refers to the apparent health of the animal and its ability to grow and fatten normally. The grades of feeder cattle that have been determined to be thrifty include three separate groupings for frame size--Large Frame, Medium Frame, and Small Frame, and three separate groups for thickness--No. 1 (the thickest), No. 2, and No. 3 (the thinnest). The U.S. Inferior grade applies to all feeder cattle that have been determined to be unthrifty.

Young bovine animals are segregated for market purposes as "vealers," calves for raising to maturity, or calves for breeding. This differentiation is intended to reflect the kind of carcass they will produce.[21] The differentiation between veal and calf carcasses is based very largely on the color of their

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[15] Ibid., plates A-D.

[16] Ibid., p. 364.

[17] Commission staff interview with Edward J. Farrell, counsel for the Canadian Cattlemen's Association, Sept. 20, 1999.

[18] Finish is the fat coverage on the carcass.

[19] USDA's *United States Standards for Grades of Slaughter Cattle* eliminated the quality grade for bulls.

[20] USDA, Agricultural Marketing Service (AMS), *United States Standards for Grades of Feeder Cattle*, Sept. 2, 1979.

[21] USDA, AMS, *United States Standards for Vealers and Slaughter Calves*, Jan. 1, 1972.

lean meat; this is determined almost entirely by the extent to which the animal's diet has consisted of milk or a milk replacer. Vealers that have subsisted largely on milk are usually less than 3 months of age. Since vealers have consumed little, if any roughage, they have the characteristic trimness associated with limited paunch development. Calves are usually between 3 and 8 months of age, have subsisted partially or entirely on feeds other than milk for a substantial period of time, and have developed the heavier middles and other physical characteristics associated with maturity beyond the vealer stage. The quality grades for vealers and calves are as follows: Prime, Choice, Good, Standard, and Utility. Most vealers are male dairy calves that are not selected for breeding purposes (very few calves are retained for bulls). Very few beef-type calves are slaughtered for veal.[22]

In the United States, cattle kept for the production of beef are referred to as beef-type cattle, and cattle for the production of milk for human consumption are referred to as dairy or milk-type cattle.[23] Beef-type cattle and dairy-type cattle are different breeds. Dairy cattle are more angular, are less heavily fleshed (less muscular), and have more mammary development than beef-type cattle.[24]

Beef-type cows and beef-type heifers, kept to be beef-type cows for breeding, accounted for 40 percent of the January 1 U.S. cattle inventory annually during 1996-99; milk (dairy-type) cows and milk heifers, kept to be milk cows, accounted for 13 percent; steers and heifers to be slaughtered for beef accounted for 27 percent; bulls accounted for 2 percent; and the remainder (about 18-20 percent) consisted of calves weighing under 500 pounds and included those for which the future use had not yet been determined.[25] However, nearly all cattle in the United States, including those raised for breeding purposes or for the production of milk for human consumption, are ultimately slaughtered for beef when they are no longer suitable for the other purposes. At that later stage, such animals are commonly referred to as "culls." Death losses, which include losses to disease, predators, and severe weather, accounted for 4 to 5 percent of the cattle inventory annually during 1996-98.[26]

Production Facilities and Production Employees

The cattle-raising business is composed of a number of segments as described below.[27] Many individual cattle-raisers are involved in more than one segment. Imported Canadian cattle typically are raised and processed the same way and with similar production facilities and production workers as domestic cattle.

The seedstock segment.--The seedstock segment produces animals for breeding purposes, primarily bulls but also some cows and heifers. This segment also produces steers and heifers that are not suitable for breeding purposes and are raised for slaughter for beef. Animals kept for breeding purposes are ultimately slaughtered for beef when they are no longer suitable for breeding.

The cow-calf segment.--The cow-calf segment consists of operations that maintain cow herds and raise calves from birth to weaning. The calves are the primary source of revenue and typically the source of heifers to expand the number of animals kept for breeding purposes as replacement of cows that are

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[22] Commission staff interviews with ***.

[23] Robert E. Taylor, *Scientific Farm Animal Production*, pp. 28 and 36, MacMillan Publishing Co., 1992.

[24] *Introductory Animal Science*, op. cit., p. 257.

[25] USDA, National Agricultural Statistics Service (NASS), *Cattle*, annual issues.

[26] Ibid., p. 3.

[27] The following segment descriptions were adapted from *Beef Production and Management Decisions*, op. cit., pp. 5-13, except where noted.

culled or die. Most calves are born in February, March, or April and are weaned when they are 5 to 10 months of age.

The yearling-stocker segment.--The yearling-stocker segment (sometimes called the backgrounding segment) raises weaned calves to appropriate weights and conditions for later placement on feedlots or into the herd of animals kept for breeding purposes. Stocker cattle feed on available forage and high value roughage feeds or graze on wheat pasture. Calves typically graze in stocker operations until they are 12 to 20 months of age, when they are suitable to be placed in a feedlot. Some animals may go to a feedlot after winter feeding, at 10 to 14 months of age, whereas some require additional summer grazing and go to the feedlot in the fall, at 15 to 20 months of age. Also, heifers being retained and raised for breeding purposes may be considered to be part of the yearling-stocker segment.[28]

The feedlot segment.--Feedlots are confinement feeding operations where cattle, virtually all of which are steers and heifers, are fed primarily finishing rations, mostly grain, prior to slaughter. Depending on the weight and condition of cattle when they enter, they are typically kept in feedlots for 3 to 5 months. Also, economic conditions may influence the length of time cattle are kept in feedlots.[29] Relatively low grain prices may encourage feedlot operators to retain cattle in the feedlots for longer periods of time because additional weight gain to the cattle is relatively inexpensive. Also, some feedlot operators are tempted to retain cattle in feedlots when cattle prices are considered temporarily low, if the operators anticipate higher prices.[30]

Interchangeability and Customer and Producer Perceptions

As noted earlier, there are differences between cattle of the species *Bos taurus* and *Bos indicus* that somewhat influence their interchangeability. Cattle of the species *Bos indicus* adapt better to a hot climate, whereas cattle of the species *Bos taurus* adapt better to a colder climate. Notwithstanding species and cattle breed differences, grading and classification systems employed by the USDA and private companies generally do not differentiate between species and breed, and price reporting systems generally do not differentiate between breeds.

With regard to the interchangeability[31] of cattle of different ages and weights, the cattle-raising segments reflect the normal progression in the life-cycle of the animals. Beef cattle through different stages of development are dedicated to a single end use, fed cattle for slaughter.[32] Vealers are slaughtered at a young age and at a significantly lighter weight than other cattle, and have a specified standard of identity different from other cattle.[33] Packing plants where vealers are slaughtered generally are not plants that process other classes of cattle.[34] Stocker cattle and calves are those being raised to suitable weights and conditions for placement in feedlots. Feeders are animals being raised to appropriate slaughter weights in feedlots and are only rarely returned to pasture or other situations where

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[28] *Beef Production and Management Decisions*, op. cit., p. 152.

[29] Commission staff interview with ***.

[30] Ibid.

[31] The following discussion concerning interchangeability of cattle and calves was derived from a Commission staff interview with ***.

[32] Unless retained for breeding before slaughter.

[33] From 1995 to 1998, vealers accounted for only 4 percent annually (by head) of the number of all cattle and calves slaughtered in the United States. NASS, *Livestock Slaughter Annual Summary*, 1996-99.

[34] Commission staff interview with ***.

stockers may be kept. Most plants that slaughter fed steers and heifers cannot, with economic viability, slaughter and process cull cattle and, similarly, plants that slaughter cull cattle cannot economically slaughter fed steers and heifers because of the customer base, processing facilities, equipment, locations, and skill levels of their respective work forces.

Channels of Distribution

In the United States in 1997 (the most recent year for which data are available), 85.5 percent of cattle and 71.1 percent of calves for slaughter were purchased through nonpublic markets.[35] [36] Public markets accounted for 14.5 percent of cattle and 28.9 percent of calves purchased for slaughter. There has been a long-term increase in the share of cattle and calves purchased through nonpublic markets since 1975.[37] Feeders are purchased through auction markets and through dealers and buyer agents who contact individual cattlemen. Dealers and buying agents typically have long-term relationships with their suppliers.[38]

Price

There are clear price differences between slaughter cattle, feeder cattle, and stocker cattle, not only in absolute prices but sometimes also in the price trends. Moreover, within each of the segments, prices may vary depending on the breed, condition, and geographical location of the cattle. Information on the unit values of cattle is presented in Part III and Part IV of this report, and information on pricing and pricing trends is presented in Part V.

The Imported Product

Cattle imported from Canada are interchangeable with domestic cattle and calves used for the same purposes.[39] For example, steers and heifers imported as fed cattle for immediate slaughter from Canada are interchangeable with domestic steers and heifers at the fed cattle stage ready for immediate slaughter. Also, customers and producers generally perceive cattle imported from Canada to be closely comparable with their domestic counterparts. Additional information on the comparability of Canadian cattle with their domestic counterparts is presented in Parts II and IV of this report.

Canadian cattle imported into the United States principally include fed cattle, and cull cows and bulls, ready for immediate slaughter. Some vealers, stockers, and feeders also are imported from Canada. The calves weighing less than 90 kilograms (HTS statistical reporting numbers 0102.90.4024 and 0102.90.4028) are vealers.[40] Canadian cattle imported into the United States typically enter for

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[35] Nonpublic purchases include purchases of livestock from all sources, such as at feedlots or through forward contracts, except from terminals and auctions.

[36] USDA, Grain Inspection, Packers and Stockyards Administration (GIPSA), *Packers and Stockyards Statistical Report 1997 Reporting Year*, Oct. 1998, pp. 12-13.

[37] Ibid.

[38] Commission staff interview with ***.

[39] Commission staff interviews with ***.

[40] Commission staff telephone interview with Dr. Marianne Shea, USDA port veterinarian, Eastport, ID, Oct. 28, 1998.

immediate slaughter or as feeder cattle directly into U.S. feedlots without being grazed in the United States.[41]

Virtually all Canadian cattle imported into the United States have been purchased in Canada, either at feedlots, where feedlot operators typically receive bids from buyers for U.S. and Canadian packers, or at public livestock auctions. Some cattle may be purchased through forward contracts and marketing agreements.[42]

[41] Ibid., and Commission staff interview with ***; and Edward J. Farrell, counsel for the Canadian Cattlemen's Association, Oct. 21, 1998.

[42] Commission staff interviews with ***.

PART II: CONDITIONS OF COMPETITION IN THE U.S. MARKET

THE CATTLE CYCLE

The cattle cycle, which is a cyclical pattern of expansions and contractions in the number of cattle, is one of the most significant factors affecting the price of cattle and the profitability of cattle producers.[1] When cattle prices are relatively high, cattle producers tend to retain more cows and heifers for breeding rather than marketing them for slaughter. Initially, this reduces the number of cattle being slaughtered and increases their price; however, in 2 to 3 years, the larger number of young cattle produced from these cows and heifers will be available for slaughter. This increased supply tends to reduce the price paid for cattle; producers as a result are less willing to keep back cows and heifers for breeding, further increasing the number of cattle on the market and further reducing the price. After some time the number of cattle available for slaughter falls, and then prices begin to rise. As prices rise, cows and heifers are once more kept off the market, further increasing price.

The cattle cycle has four stages: the consolidation phase, the expansionary phase, the peak, and the liquidation phase. The consolidation phase typically lasts about a year and is the year in which prices begin to reflect reduced production and the potential for improved prices. The expansionary phase normally lasts about 5 years but can be as few as 3 years or as many as 8 years. In the expansionary phase (especially in its early stage), cow culling rates are reduced, more heifers are retained for breeding, beef supplies decline, and prices rise. However, as the number of cows and feeder cattle increase, beef supplies gradually increase to the point (the peak) where they exceed the quantity demanded, and prices begin to decline. The liquidation phase normally lasts 2 to 3 years, but may last up to 4 years. In the liquidation phase, low prices for all classes of cattle force producers to reduce their cow herds (thereby further increasing beef supplies) until supply is back in line with demand.[2]

Cattle cycles tend to be around 10 years long and, according to the petitioner, the last 4 cattle cycles have been from 10 to 13 years long.[3] Thirty U.S. cattle associations responded to a question on the existence of the cattle cycle and its duration. Fourteen reported that a cattle cycle exists (a number of these reported that cycles have become worse in recent years), 3 reported that a cattle cycle did not exist, 12 reported that the cattle cycle no longer existed as it had in the past, and 1 reported that history indicates some cattle cycle. Of the 8 that provided reasons why the cycle no longer exists or has become worse in recent years, 6 reported that imports were the cause and 2 reported that packer concentration had eliminated the cattle cycle. Sixteen associations reported on the length of the cycle, with 14 mentioning ranges that included 10 years.

Importer/purchasers were more likely to report that there was a cattle cycle, with 12 reporting a cattle cycle and 3 reporting no cattle cycle.[4] All 12 purchasers reporting the length of the cycle indicated that it was around 10 years. Eight of the 11 purchasers responding that there was a cycle indicated that the United States was in the liquidation phase of a cattle cycle, 2 reported that the cattle cycle was at the end of its liquidation phase,[5] and 1 reported that it was just starting an expansionary cycle. Only 2 purchasers reported on Canada's cattle cycle; one reported that Canada's cycle was linked to that of the

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[1] Veal calves may not be on the same cattle cycle as beef cattle.

[2] Questionnaire response of ***.

[3] Petitioner's posthearing brief, app. 10.

[4] One of these reported that there was no cattle cycle in the veal market.

[5] This includes one reporting that the cycle was 1 year past the major liquidation, and one that reported it was between the liquidation and expansion phases.

United States, and the other reported that the Canadian industry was in an expansionary phase in eastern Canada.[6] Associations and purchasers reported similar causes for the liquidation phase, including too many cattle, cattle biology, price/profitability, weather/drought, lack of feed/high feed costs, cycles in competing products, and decreased demand. A USDA study of the beef industry reports that there is still no evidence that the current cattle cycle is significantly different from or worse than other recent cattle cycles.[7]

Other factors also affect the number of cattle that producers will sell and may influence the timing of downturns and upturns in the cattle cycle. One of the most important factors is growing conditions for cow-calf operators. For example, the drought in Texas and the Southwest United States in 1998 forced ranchers to sell cattle that they might otherwise have kept. This increases the number of cattle on the market and reduces their price. If the cattle sold because of the drought are culled cows, they are sold immediately for slaughter; however, if the cattle are young heifers, these additional cattle will first affect the price of stocker and feeder cattle and later fed cattle.

MARKET SEGMENTS AND CHANNELS OF DISTRIBUTION

Cattle are sold by U.S. producers either on the spot market in auctions, by forward contracts, or by marketing agreement. Large purchasers of domestic cattle, particularly packers, frequently also import.

There are well over 800,000 cow-calf operators in the United States and also a large number of cattle stockers and feedlots; however, packing is heavily concentrated among a few firms. The 3 largest packers account for a large majority of the cattle slaughter market in the United States. There have been allegations that this small number of packers combined with their purchases by formula contract reduces competition and increases the packers' leverage relative to the cattle producers.[8] Some producers reported that packers use imports to reduce prices or prevent price increases.[9]

The typical animal raised for beef may be sold a number of times from when it is weaned, such as first to backgrounders/stockers, then to feedlots, and finally to packers for slaughter. Other cattle, such as milk cows and breed stock that are at the end of their useful life, are sold as culled cattle to packers. In addition, young milk cattle that are not needed to maintain the dairy herd are usually slaughtered for veal.[10] Most packing plants specialize in culled cattle, fed cattle, or veal calves, although

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[6] Testimony at the Commission's conference indicated that the cattle cycles in the United States and Canada are "pretty much the same cycle." Chris Mills, policy advisor with the Canadian Cattlemen's Association, conference transcript, p. 140.

[7] Kenneth Mathews et al., *U.S. Beef Industry: Cattle Cycles, Price Spreads, and Packer Concentration*, USDA, ERS, Report Technical Bulletin 1874, Apr. 1999, p. 1.

[8] However, a Federal judge denied a request by a group of 10 cattle ranchers and feeders to certify a class action suit against a major packer for collusion. "IBP Says Judge Denies Cattle Class Action," Reuters, Sept. 17, 1998, *http://mktnews.nasdaq.com/*. Also, the USDA published a report on concentration in the red meat packing industry which stated that "Congress and industry participants have expressed concerns about the effects of increased concentration among packers. Concentration increases the potential of firms to use market power." USDA, GIPSA, *Concentration in the Red Meat Packing Industry*, Feb. 1996, cited in the petition, p. 135.

[9] Chuck Kiker, President, Independent Cattlemen's Association of Texas, hearing transcript, pp. 88-91, and Ginger DeCock, Montana Beef Chair, Women in Farm Economics, conference transcript, p. 25.

[10] When the price of grain is low some of these cattle may be fed, but these fed cattle are lower priced than those bred for beef.

a number of purchasers reported slaughtering both culled cows and fed cattle.[11] Fed cattle bred for beef can be used to produce "whole muscle" cuts of meat. Meat from culled cattle is mainly used in manufactured meat such as ground beef.[12]

Packers and operations involved in either stockers or feeders have somewhat different quality concerns when they purchase cattle. Operations with stockers or feeders are interested in health and ability to gain weight, while packers are concerned with the quantity and quality of the meat.

There are a number of beef purchasers that must purchase beef made from domestic cattle.[13] These include the USDA school lunch program, the Department of Defense, the Department of Justice, the Department of Veterans Affairs, and international programs such as Food for Peace. These programs consumed less than 1 percent of domestic beef production in recent years.

SUPPLY AND DEMAND CONSIDERATIONS

U.S. Supply

Based on the available information, staff believes that U.S. producers of cattle are, in the short run, likely to respond to changes in demand with relatively small changes in shipments of U.S.-produced cattle to the U.S. market, and larger changes in prices.[14] Factors contributing to the low responsiveness of supply are discussed below and in the earlier discussion on the cattle cycle.

Capacity in the U.S. Industry

Cattle available for slaughter include culled cattle, fed beef cattle, and veal calves. The number of fed beef cattle is determined by the number of beef cattle conceived about 2.5 years earlier and the number of these fed for slaughter rather than retained for breeding purposes. Breeding and gestation requires 10 months; calves are then typically weaned at 5 to 10 months, leave the stocker phase when 10 to 20 months of age, and then spend approximately 3 to 5 months in feedlots. The number of calves born in a given year is determined mainly by the number and health of breeding cattle that year. Natural factors prevent some cattle from giving live birth in any year, but all cows that have not been culled are typically bred each year and heifers are typically bred so as to give birth at 2 years of age. When heifers are around 9 months old, producers determine how many of them to keep to maintain or increase the stock of breeding cattle. This is influenced both by the price of cattle and the ability of farms to feed cattle.[15]

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[11] Greg Benedict, President, Long Prairie Packing Co., reported that cull and fed cattle tend to be slaughtered on different lines or with different crews and that processing culled cattle requires less skill. Hearing transcript, p. 304.

[12] On average 26 percent of the meat derived from fed cattle is used for manufactured meat. Similarly, part of the meat derived from cull cattle, usually the loins, has been used for table beef. USITC staff interview with ***. Oct. 24, 1999.

[13] The USDA defines domestic cattle to include all cattle fed in the United States, so some cattle imported as either stockers or feeders are included in domestic cattle under this definition. Correspondence with Craig Morris of the USDA, Nov. 19, 1998.

[14] Long-run (within 5 to 7 years) and short-run (within a year) responsiveness to demand differ dramatically. In the long run the supply will be very responsive to changes in price, whereas in the short run it will not be.

[15] For example, during a drought producers may increase the number of heifers and culled cows sold for slaughter because they have little food for them.

The number of culled cattle is mainly related to the number of breeding beef cows and milk cows the producers want relative to the number they currently have (taking into account such factors as the age and health of the animals, and availability of feed) rather than to the price of culled cattle. The number of veal calves is related to the number of dairy cattle and the number of young cattle needed to replace dairy cattle rather than to the price of veal calves.

Production Alternatives

Beef type cows give birth to beef cattle, and produce no other products of economic value, although they are culled for slaughter. Veal calves are a byproduct of producing milk from dairy cattle since the cattle yield milk only if they have calves and these calves may not be needed to maintain the dairy herd. Some of the land occupied by beef cattle may be used to produce other products, including other grazing animals such as dairy cattle, horses, mules, sheep, or bison, or hay, grain, or irrigated crops in some areas. Dairy cattle, however, require different equipment and techniques and dairy cattle may not be appropriate in many areas used for beef cattle. Other major meat animals such as pigs, chickens, and turkeys are not grazed. Horses and mules have a relatively small market. Raising other animals such as sheep or bison would also require producers to learn about the characteristics, diseases, and needs of these animals. Bison would also require more extensive fencing than cattle. Feed facilities would also be difficult to convert to other uses.

Inventory Levels

The number of head of cattle in the United States fell from 103.5 million on January 1, 1996, to 98.5 million on January 1, 1999. The number of U.S. origin cattle slaughtered fell from 36.6 million head in 1996 to 35.2 million head in 1998. (Data through June of 1999 indicate that the number of cattle slaughtered was slightly above that of the corresponding period of 1998.) Cattle inventories must be evaluated differently than inventories of manufactured products. Most cattle are not suitable for immediate slaughter but are in the process of growing to their desired weight, around 1,200 pounds.

Export Markets

Domestic producers' exports of cattle grew from $71.9 million in 1996 to $130.8 million in 1998.[16] The very small share of exports to the industry's total production indicates that there is little ability to increase total shipments by increasing exports or to replace imports by reducing exports.

While exports of cattle are small, exports of beef have a significant effect on the demand for cattle in the United States. The moderate level of exports indicates that domestic beef packers could reduce exports of beef to supply the U.S. market. In this way they could reduce the need for subject cattle imports.

Demand for exported beef is mainly determined by other countries' import restraints, the per-capita income in importing countries, and beef production in those countries. Exports of beef were 6.0

[16] Export data are not available by weight. The number of cattle exported grew from 131,000 in 1996 to 257,000 in 1998. Exports were equal to 0.4 percent of the cattle of U.S. origin slaughtered in 1996 and 0.7 percent of the cattle of U.S. origin slaughtered in 1998.

percent of the volume of U.S. production in 1998.[17] Economic difficulties in a number of the major importing countries, including Japan, the United States' largest export market,[18] have resulted in those countries purchasing lower-priced types of meat.[19] Overall, the value of exports of beef fell by 7 percent between 1997 and 1998 even as the weight rose by 3 percent.[20] The USDA predicts that export tonnage will continue to rise from 985,000 tons in 1998 to over 1 million tons in 1999.[21] Demand in Japan for imported beef in 1999 was predicted to grow moderately with continued shifts out of more expensive U.S.-grown loin cuts into less expensive cuts.[22] On the other hand, Korean demand for leather has fallen, causing the value of hide exports to drop by 23 percent in value between 1997 and 1998.[23]

U.S. Demand

Demand for beef (and as a result cattle demand) has increased recently, and cattle prices are higher than otherwise expected.[24] Demand growth seems to be particularly great in the more expensive cuts. According to a *Barrons* report "prices of rib-eye and loin are 35 percent above last year and at their highest prices in 20 years."[25]

Demand for cattle is determined by the demand for beef and byproducts. Of the 16 purchasers responding, 6 reported that demand for products incorporating cattle had changed and 10 reported that it had not. Of the 6 reporting that demand had changed, 3 reported that demand had decreased and 2 did not report the direction of demand changes but reported changes in supply.[26] Of the 33 cattle associations responding, 9 reported that demand was down, 6 reported that demand was up, 4 reported that it was unchanged, 2 reported that demand was down through 1998 but up in 1999, and 12 cited other changes in demand.[27]

Demand for beef can shift within the beef market between different cuts and grades of beef, between these cuts and manufactured meat such as hamburger, and between beef and other meats or

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[17] "Status of U.S. Meat Product Exports in 1998," Mar. 24, 1999, *http://www.fas.usda.gov.dlp/circular/1999/99-03/usmeat.htm*, p. 2., retrieved on Oct. 13, 1999.

[18] Ibid., "Table 1. Value of U.S. Exports of Beef, by Country, 1990-1998."

[19] USDA, FAS, "Japan Livestock 1999 Annual Report - Revised 1999," Aug. 10, 1999, pp. 1-3.

[20] "Status of U.S. Meat Product Exports in 1998," Mar. 24, 1999, *http://www.fas.usda.gov.dlp/circular/1999/99-03/usmeat.htm.*

[21] FAS "Online Cattle and Beef," *http://www.fas.usda.gov.dlp/circular/1999/99-03LP/beef9923.htm,* retrieved Oct. 18, 1999.

[22] USDA, FAS, "Japan Livestock 1999 Annual Report - Revised 1999," Aug. 10, 1999, pp. 1-3, 6.

[23] "Status of U.S. Meat Product Exports in 1998," March 24, 1999, *http://www.fas.usda.gov/dlp/circular/1999/99-03/usmeat.htm.*

[24] "The Market Advisor: Beef Cow Producers Are Moving into the Driver's Seat," Sept. 16, 1999, *http://www.ag.ndsu.nodak.edu/cow/*, p. 3. Cheryl Einhorn, "Here's the Beef," *Barrons*, Oct. 11, 1999, p. MW 14. "For the first time in two decades, beef demand is up - and sharply." " 'We've never been able to absorb such meat tonnage before without decimating prices,' said Levit." "James Mintert, a Professor at Kansas State University, agrees. He expects prices for steers and heifers to remain at least in the mid-$60s for most of the fall and early winter."

[25] Cheryl Einhorn,"Here's the Beef," *Barrons*, Oct. 11, 1999, p. MW 14.

[26] One purchaser reported "supply and demand," but did not indicate how these had changed.

[27] The 12 associations that reported other changes in demand cited changes in their access to the market or had responses in which the overall direction of the change in demand was unclear.

other foods.[28] Any of these changes may affect the price of cattle. Ultimately, cattle are sold to packers to make beef and byproducts such as hides, variety meat, and tallow. Beef is produced in two main categories: "whole muscle" cuts and manufactured meat such as hamburger. Fed cattle are used for whole muscle cuts, although some parts and fat (about 1/3 of the weight of the carcass) will also be used in manufactured meat. Culled cattle are mainly used to produce manufactured meat. Beef accounted for 86 percent of the value of all cattle carcasses in 1997.[29]

Demand for veal calves is determined by demand for veal and byproducts. This is, however, a very small share of the combined beef and veal market.

Substitute Products

Seven of the 17 responding purchasers reported substitutes for cattle. The substitutes they reported included imported beef products or carcasses from other slaughter plants (3 purchasers) and other foods including pork, poultry, and seafood (3 purchasers).[30]

Cattle associations were asked how demand for cattle has changed and what factors lead to changes in demand. Seven of the 33 responding associations reported that increased competition from competing protein sources including poultry and pork had reduced demand for cattle/beef.[31] Six mentioned imported cattle; 1 of these included countries that would only export beef, not cattle, to the United States. Three reported increased demand for beef, and others mentioned the Asian crisis, growing population, growing or declining exports, and declining per-capita consumption of beef. Studies of demand for beef found that beef had been increasingly replaced by pork and chicken;[32] however, this trend seems to have changed recently and beef consumption has begun to grow and beef prices are rising in spite of the relatively high supply.[33]

Beef from cattle slaughtered in Canada could ultimately replace beef from U.S.-slaughtered cattle, thereby ultimately decreasing the number of cattle slaughtered in the United States or reducing their price. Imported beef from most countries other than Canada may not be as good a downstream substitute for whole muscle table cuts of beef from domestic fed cattle since most countries do not grain-feed a significant share of their cattle and thus their meat is mainly used in manufactured meat. Meat from countries other than Canada, however, could potentially compete with meat from culled cattle. The Canadian producers report that at least one large packing facility in Canada had recently moved to a double shift, and Canadian packing facilities are able to export more beef into the United States, thus reducing the number of Canadian cattle available for the U.S. market.[34]

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[28] One of the problems reported by cattle and beef producers is less demand for roasts. Demand for steaks and ground beef remain relatively high, but roasts are often converted into relatively low-priced ground beef. "Beef Demand Slips Amid Growing Meat Supply," Sparks Companies, Inc. paper presented at the NCBA midyear convention, Denver, CO, July 17, 1998, pp. 11-12.

[29] Beef includes both whole muscle cuts and manufactured meat. Beef does not include other parts such as offal and tallow.

[30] One additional purchaser reported synthetics for hides, vegetable proteins, and vegetable oils.

[31] Many of the 33 responding associations did not give reasons for changes in demand or gave unclear answers. In addition, some mentioned a number of different factors.

[32] E.g., "Beef Demand Slips Amid Growing Meat Supply," Sparks Companies, Inc. paper presented at the National Cattlemen's Beef Association (NCBA) midyear convention, Denver, CO, July 17, 1998.

[33] Cheryl Einhorn, "Here's the Beef," *Barrons*, Oct. 11, 1999.

[34] This capacity was reported to be available in October 1998, increasing capacity by 400,000 head annually. Dennis Laycraft, executive vice president, Canadian Cattlemen's Association, hearing transcript, p. 212.

Cost Share

The American Meat Institute reports that the cost of cattle typically accounts for *** percent of the cost of the production of beef and byproducts.[35] Since beef is the most important product produced from cattle, producers were asked for the percentage cost of cattle in beef. Eleven of the 14 responding packers reported that the cost of cattle varied between 80 and 95 percent.[36]

In 1997, per-capita expenditures on meat were 1.9 percent of disposable personal income and 18.2 percent of food expenditures. Expenditures on beef accounted for 43.7 percent of the per-capita expenditures on meat. A number of studies found that demand for beef is somewhat sensitive to changes in its price. Estimates of demand elasticity for beef vary from -0.45 to -1.03.[37]

SUBSTITUTABILITY ISSUES

Cattle of different ages are not very good substitutes for each other. Cattle that have not been fed to an appropriate size are not substitutes for fed cattle because they will not produce the same type (quality grades and sized pieces) of beef.

Purchasers were asked to name the three most important factors in their purchasing decisions. Eight of the 18 responding purchasers[38] (***) reported that quality was the most important factor and 13 reported it was one of the three most important factors.[39] Eight purchasers (***) reported that availability was the most important factor, and 11 reported that availability was one of the three most important factors. Thirteen purchasers reported that price or price value was one of the three most important factors, although only one of these reported that it was the most important factor. Other concerns reported included location/proximity, contract commitments, weighing conditions, freight costs, breed, conformation, and timing of delivery.

Purchasers were asked to evaluate the importance of 18 factors in their purchase decisions for cattle. The most important factors were availability, rated as very important by all of the 16 firms responding, followed by quality, rated as very important by 14 purchasers. Also rated as very important (by number of firms) were reliability of supply, product consistency, lowest price, and percentage choice meat (9); delivery time (7); delivery terms (5); percentage select, sold carcass weight, minimum quantity requirement, and U.S. transportation cost (4); transportation network (3); and available live weight (2).[40] ***.

Comparison of Domestic Product and Subject Imports

Cattle associations and purchasers were requested to provide information regarding the interchangeability of domestic cattle and subject imports. Purchasers of imported product were asked how much higher the price of imports would have to be for them to buy domestic product. All 4 firms

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[35] Discussion with the officials of the American Meat Institute, Oct. 13, 1998.

[36] The remaining packers reported 60 percent and 100 percent (by ***) and 53 percent (by ***). In addition, 2 feedlot operators responded, reporting *** and *** percent.

[37] William F. Hahn, *An Annotated Bibliography of Recent Elasticity and Flexibility Estimates for Meat and Livestock*, ERS Staff Paper 9611, July 1996.

[38] Responding purchasers included 15 packers and 3 feedlots.

[39] Quality includes answers such as "flesh condition" and "quality relative to our target specifications."

[40] None of the purchasers reported that available on contract, sold on formula basis, sold through marketing agreement, or able to subcontract feeding were very important.

answering this question regarding Canada reported 0 percent. In addition, 10 did not report percentages but provided comments on differences between U.S. and Canadian prices. Of the 14 responding purchasers, 6 reported that the prices of U.S. and Canadian cattle were the same or equivalent in terms of value (including ***), 2 reported that import prices were not lower, and 2 reported that if the price were the same it preferred U.S.-produced cattle.[41]

Cattle associations and purchasers were asked whether there were differences in product characteristics or sales conditions between U.S.-produced live cattle and live cattle imported from Canada that affected their sales of cattle and if so, to describe these differences. Twenty-two of the 29 responding associations reported that there were differences and 7 reported that they were the same. A number reported more than one difference: 7 reported differences in health, drugs, vaccinations, product safety, or regulations; 6 reported differences in quality; 5 reported differences in exchange rates; 4 reported Canadian subsidies, mainly of grain; and 4 reported differences in the method of sales including that Canadian cattle are not sold at auction or that packers buy imports ahead of time.

Twenty-six of the 29 responding cattle associations reported that U.S. and Canadian feeder cattle were interchangeable,[42] 27 of 30 responding cattle associations reported that U.S. and Canadian fed cattle were interchangeable,[43] and 20 of 22 responding cattle associations reported that U.S. and Canadian culled cattle were interchangeable.[44] The purchasers were asked to report if cattle were interchangeable by stage of development; however only one reported stage of development when comparing the cattle.[45] All 14 of the responding purchasers reported that U.S. and Canadian cattle were interchangeable.[46] Two purchasers reported that although they were usually interchangeable, for USDA purchases the Canadian product is not acceptable. Eight of the 12 responding purchasers reported that there were significant differences other than price between Canadian and U.S. cattle; 4 reported no significant differences.[47] The reported differences included inability to use imports in certain contracts, proximity, availability, and quality.

Fifteen purchasers compared U.S.-produced and Canadian cattle in terms of 18 factors, although a number did not respond for all factors.[48] U.S. cattle were reported to be comparable or superior to Canadian cattle by all purchasers in all factors except availability (for which U.S. cattle were rated as inferior by 3 purchasers), availability on contract, product consistency, and percentage select (U.S. cattle were rated as inferior by 1 purchaser for each of these). Five purchasers reported that U.S. cattle were superior on delivery time; 3 reported that U.S. cattle were superior in availability and product quality; and 2 reported that U.S. cattle were superior in lowest price, percentage choice, available live weight, sold on formula, sold by marketing agreement, and able to subcontract feeding. No purchasers reported

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[41] In addition, 1 (***) reported that the Canadian cattle it purchased were sometimes higher priced and sometimes lower priced, 2 reported that they needed Canadian cattle to run at full production, and 1 reported it did not purchase imported cattle.

[42] Of the 2 that reported that they were not interchangeable, 1 reported not in *** and the other reported that very few Canadian feeders were sold in the United States.

[43] Two reported that they were not interchangeable; their reasons were not clear. In addition, 1 reported that the prices of Canadian and U.S. cattle were related although it did not report if they were interchangeable.

[44] Of the 2 reporting they were not, 1 reported not in *** and 1 that trade is not reciprocal.

[45] This purchaser reported that both fed and cull Canadian and U.S. cattle were interchangeable.

[46] In addition, 1 packer reported that it was not familiar with the Canadian product.

[47] In addition, 2 reported that they were not familiar with the Canadian product.

[48] Three purchasers reported by stage of development; 1 packer reported for finished cattle, 1 packer reported for fed and cull cattle, and a feedlot operator reported for feeder cattle. ***. ***.

any differences between U.S. and Canadian cattle in percentage sold by carcass weight; for all other characteristics, one purchaser reported that U.S. product was superior.[49]

Comparison of Canadian and Nonsubject Cattle

Both of the responding purchasers, ***, reported that Canadian and nonsubject cattle are interchangeable.[50] These purchasers also reported that differences other than price were a significant difference between Canadian and nonsubject cattle.

Purchasers were asked if their buyers were aware of the country of origin of the cattle that they purchase. Of the 19 responding purchasers, 11 *** reported that their purchasers were sometimes aware of the country of origin, and 8 reported that their purchasers were never aware of the country of origin of the cattle for the beef supplied. Six reported that the country of origin was only of interest for USDA programs, one reported that some customers specify that the cattle must be slaughtered at their plant and would not accept beef from purchased carcasses, one reported that this depends on the purchaser's internal policies or marketing campaign, one reported interest when arranging transportation, one reported that since country of origin labeling has come up a few customers have asked what percent of its product comes from Canada or Mexico, and one reported that purchasers were not interested but they were sometimes aware of the origin of the cattle.

ELASTICITY ESTIMATES

This section discusses the elasticity estimates used in the COMPAS analysis (appendix E).

U.S. Supply Elasticity[51]

The domestic supply elasticity for cattle measures the sensitivity of quantity supplied by U.S. producers to a change in the U.S. market price of cattle. The elasticity of domestic supply depends on several factors including the level of excess capacity, the ease with which producers can alter capacity, producers' ability to shift to production of other products, the existence of inventories, and the availability of alternative markets for U.S.-produced cattle.[52] Analysis of these factors earlier indicates that the U.S. industry is not likely to be able to increase or decrease shipments to the U.S. market within a one-year time frame. Staff estimates that the supply elasticity is between 0 and 0.5.

U.S. Demand Elasticity

The U.S. demand elasticity for cattle measures the sensitivity of the overall quantity demanded to a change in the U.S. market price of cattle. This estimate depends on factors discussed earlier such as the existence, availability, and commercial viability of substitute products, as well as the component

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[49] These factors include delivery terms, minimum quantity requirement, product consistency, reliability of supply, available on contract, transportation network, and U.S. transportation costs.

[50] In addition, 2 packers and 1 feeder reported that they were unfamiliar with cattle from nonsubject countries.

[51] A supply function is not defined in the case of a non-competitive market.

[52] Domestic supply response is assumed to be symmetrical for both an increase and a decrease in demand for the domestic product. Therefore, factors affecting increased quantity supplied to the U.S. market also affect decreased quantity supplied to the same extent.

share of cattle in the production of downstream products, mainly beef. As noted earlier, there are several products, mainly other meats, that have been cited as potential substitutes for beef, and thus ultimately for cattle. Based on available information, demand for cattle is likely to be inelastic, estimated to be in the range of -0.3 to -1.0.

Staff initially estimated elasticities to be in the range of -0.4 to -1.1. The respondents, however, noted that this was based on the elasticity of demand for beef and that overall demand elasticity for cattle should be 80 percent of the demand for beef.

Substitution Elasticity

The elasticity of substitution depends upon the extent of product differentiation between the domestic and imported products.[53] Product differentiation, in turn, depends upon such factors as quality, consistency, and conditions of sale (e.g., sold live weight, carcass weight or on contract, location of the cattle and availability). Based on available information, the elasticity of substitution between U.S.-produced cattle and Canadian imported cattle is likely to be in the range of 3 to 5.

[53] The substitution elasticity measures the responsiveness of the relative U.S. consumption levels of the subject imports and the domestic like products to changes in their relative prices. This reflects how easily purchasers switch from the U.S. product to the subject product (or vice versa) when prices change.

PART III: CONDITION OF THE U.S. INDUSTRY

The Commission analyzes a number of factors in making injury determinations (see 19 U.S.C. § 1677(7)(B)) and 1677(7)(C)). Information on the dumping margins was presented earlier in this report and information on the volume and pricing of imports of the subject merchandise is presented in Parts IV and V. Information on the other factors specified is presented in this section and/or Part VI and (except as noted) is based on official statistics of the USDA that represent 100 percent of U.S. production of cattle during 1998. Moreover, the Commission sent 76 questionnaires to associations representing U.S. cattlemen and received 37 responses.[1] A list of associations sent the association/producers' questionnaire and responding firms is presented in appendix F. The USDA data are supplemented with qualitative responses from the associations where applicable.

U.S. PRODUCERS

Cattle are raised throughout the United States, but production is concentrated in the Western Rangelands,[2] the Corn Belt,[3] and the Southeastern States.[4] Over 75 percent of the cattle inventory is located in the Corn Belt and the Western Rangelands.[5] In 1998, there were 1,115,650 operations[6] with cattle in the United States, a decline of 5 percent from 1996. Cattle operations include cow-calf operators, stocker/backgrounder operators, and feedlot operators.[7]

Cow-calf operators maintain herds of beef cows to produce beef calves and feeder calves. Beef cow herds are usually kept in fenced pastures or on the open range. The cow-calf sector is the least concentrated of the sectors. Many of these operations are family-owned and operated. In the Midwest, East, and South, the cattle are often part of a diversified farming operation; however, in the West, cattle frequently account for nearly all of the farmers' incomes.[8] The 10 largest cow-calf operations are listed in table III-1. Backgrounders or stockers maintain pastures, pens, ranches, and fields where weaned calves are raised until they are ready to go to the feedlots. Cow-calf operators may also do their own backgrounding.

The feedlot sector is more concentrated, with 104,071 operations in 1998.[9] Feedlot operators feed the cattle until they are ready to be sold to the packing houses. They may purchase the animals they need directly from cow-calf operators, from backgrounders, or from auction markets. Some feedlot

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[1] Staff notes, however, that it is not clear what percentage of the domestic industry any of these associations represent. In addition, on Sept. 15 and 17, 1999, and in the petitioner's prehearing brief, the Commission received supplementary responses that provided detailed narrative accounts and information by cow-calf operators, feedlot operators, associations, and others involved in raising cattle on their experiences relating to injury and causation in these investigations.

[2] Arizona, California, Colorado, Idaho, Oklahoma, South Dakota, Texas, and Washington.

[3] Illinois, Iowa, Kansas, Minnesota, and Nebraska.

[4] Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, and West Virginia.

[5] *Cattle and Beef: Impact of the NAFTA and Uruguay Round Agreements on U.S. Trade*, USITC Pub. 3048, July 1997, p. 2-3.

[6] USDA defines an operation as any place having 1 or more animals on hand at any time during the year.

[7] In the relatively minor number of integrated operations, cattle are born, raised, and fed until ready for slaughter.

[8] USITC, *Cattle and Beef: Impact of the NAFTA and Uruguay Round Agreements on U.S. Trade*, op. cit., July 1997, p. 2-5.

[9] NASS, "Cattle on Feed," Feb. 1999.

Table III-1
Cattle: Cows and bred heifers, and ranch locations of the 10 largest U.S. cow-calf operations, 1999

Cow-calf operations	Cows and bred heifers	Ranch locations
Deseret Cattle and Citrus	38,000	FL
J. R. Simplot Co.	30,000	CA, ID, UT, OR, NV
King Ranch, Inc.	24,000	TX
Parker Ranch	22,352	HI
Lykes Bros., Inc., Florida Ranch Div.	20,128	FL
Briscoe Ranch, Inc.	17,000	TX
Singleton Group	15,000	CA, NM
Koch Beef Co.	15,000	KS, TX, MT
W. T. Waggoner Estate	13,800	TX
Padlock Ranch Co.	13,500	MT, WY

Source: *National Cattlemen*, July 1999.

operators feed cattle on consignment in return for a fee paid by the cow-calf operator or backgrounder, or by outside investors who purchase them. The 10 largest U.S. feedlot operations are listed in table III-2.

The majority of associations responding to the Commission's questionnaire indicated that they did not have members involved in raising cattle in Canada, importing cattle from Canada, or exporting cattle to Canada. A *** association reported that it had approximately 50 members raising cattle in Canada.[10]

U.S. PRODUCTION AND CAPACITY

As shown in table III-3, U.S. production (the calf crop) decreased by 3 percent from 1996 to 1998, and by less than 1 percent in January-June 1999 compared with the corresponding period of 1998. Capacity decreased by 4 percent from 1996 to 1998, and by 1 percent as of July 1, 1999, compared with July 1, 1998.

U.S. PRODUCERS' DOMESTIC SHIPMENTS, EXPORT SHIPMENTS, INVENTORIES, AND EMPLOYMENT

As shown in table III-3, U.S. domestic shipments (slaughter of cattle of U.S. origin) decreased by 4 percent from 1996 to 1998, then increased by 1 percent in January-June 1999 compared with the corresponding period of 1998.[11] The aggregate weight of commercial and farm slaughter of cattle of

[10] A *** association reported members importing cattle from and exporting to Canada, but did not provide the number of members.

[11] Over 99 percent of slaughter of animals of U.S. origin consists of commercial slaughter; farm slaughter is minimal.

Table III-2
Cattle: One-time feeding capacity, number of feedyards, and feedyard locations of the 10 largest U.S. feedlot operations, 1999

Feedlot operations	Capacity (head of cattle)	Feedyards	Feedyard locations
Cactus Feeders, Inc.	460,000	9	TX, KS
Continental Grain Co.	425,000	6	TX, OK, CO, KS
ConAgra Cattle Feeding Co.	345,000	4	CO, ID
Caprock Industries	284,000	4	KS, TX
National Farms	269,000	7	CO, KS
J. R. Simplot Co.	260,000	3	ID, OR, WA
Cattleco, Inc./Liberal Feeders	235,000	5	CO, TX, KS
Friona Industries, L.P.	230,000	5	TX
Agri Beef Co.	180,000	6	KS, ID, WA
AzTx Cattle Co.	172,000	4	KS, TX

Source: *National Cattlemen,* July 1999.

U.S. origin decreased by less than 1 percent from 1996 to 1998.[12] The aggregate weight of U.S. cattle slaughtered commercially decreased by less than 1 percent from 1996 to 1998, and increased by 3 percent in January-June 1999 compared with the corresponding period of 1998. The average weight (per animal) of U.S. cattle slaughtered increased from 1,134 pounds in 1996 to 1,176 pounds in 1998.

The value of U.S. animals slaughtered commercially increased by 7 percent from 1996 to 1997, decreased by 6 percent from 1997 to 1998, and increased by 3 percent in January-June 1999 compared with the corresponding period of 1998. Exports, which were relatively small, almost doubled from 1996 to 1998 but decreased in January-June 1999 compared with the corresponding period of 1998. U.S. producers' January 1 inventories decreased by 4 percent from 1996 to 1998, and decreased further by 1 percent in 1999.[13] U.S. producers' 1999 inventories of cattle and calves, by state, are presented in appendix G. Historical data on the U.S. industry are presented in appendix H. A recent USDA report indicated that record high feed grain prices in 1996 along with the severe drought in 1995 and 1996 in some major cattle-raising areas forced many producers to reduce cow herds as forage supplies declined.[14]

[12] Farm slaughter is not available for the interim periods.
[13] The peak cattle inventories for the cattle cycle of the 1990s occurred in 1996.
[14] "U.S. Beef Industry, Cattle Cycles, Price Spreads, and Packer Concentration," ERS, USDA, Apr. 1999, p. iii.

Table III-3
Cattle: U.S. producers' industry data, 1996-98, Jan.-June 1998, and Jan.-June 1999

Item	1996	1997	1998	January-June 1998	January-June 1999
Number of operations (1)	1,176,700	1,148,050	1,115,650	(2)	(2)
Capacity (1,000 head) (3)	55,018	53,876	52,834	52,834	52,225
Production (1,000 head) (4)	39,823	38,961	38,582	28,400	28,200
Inventories as of January 1 (1,000 head) (5)	103,548	101,656	99,744	99,744	98,522
Inventories as of July 1 (1,000 head) (5)	111,500	109,200	107,700	107,700	106,800
Number of cattle on feed as of July 1 (1,000 head)	7,840	8,958	9,161	9,161	9,555
Total slaughter of animals of U.S. origin (1,000 head) (6)	36,645	36,091	35,166	17,354	17,586
Weight of commercial and farm slaughter of animals of U.S. origin (1,000 pounds) (7)	41,557,990	41,400,123	41,368,121	(2)	(2)
Weight of commercial slaughter of animals of U.S. origin (1,000 pounds) (8)	41,337,637	41,181,149	41,148,949	20,374,880	20,992,772
Value of commercial slaughter of animals of U.S. origin ($1,000) (9)	24,484,546	26,181,500	24,667,365	12,689,329	13,015,024
Unit value of commercial slaughter of animals of U.S. origin (per pound)	$0.59	$0.64	$0.60	$0.62	$0.62
Exports to--					
Canada (1,000 head)	37	36	115	40	64
All other markets (1,000 head)	94	212	142	79	39
Total (1,000 head)	131	249	257	118	103
Exports to--					
Canada ($1,000)	28,568	29,239	60,061	24,184	28,300
All other markets ($1,000)	43,375	110,342	70,723	40,284	18,556
Total ($1,000)	71,943	139,581	130,784	64,467	46,856

(1) An operation, as defined by USDA, is any place having one or more head of cattle on hand at any time during the year.
(2) Not available.
(3) Capacity consists of beef cows plus milk cows plus dairy and beef replacement heifers, as of January 1.
(4) Production consists of the calf crop (calves born).
(5) Inventories consist of the total number of cattle and calves.
(6) Commercial plus farm slaughter minus the number of imported animals; assumes animals are slaughtered in same year they are imported, which in fact is not always the case. Farm slaughter, which accounted for only 0.6 percent of total slaughter in 1998, is not available for the interim periods.
(7) Commercial plus farm slaughter weight minus weight of imported animals; assumes animals are slaughtered in same year they are imported, which in fact is not always the case. Farm slaughter, which accounted for only 0.5 percent of total slaughter weight in 1998, is not available for the interim periods.
(8) Calculated as commercial slaughter weight minus weight of imported animals; assumes animals are slaughtered in same year they are imported, which in fact is not always the case.
(9) Calculated (from monthly data) as weight of commercial slaughter of animals of U.S. origin times price received. USDA price series for both beef cattle and calves were utilized.

Source: Compiled from official statistics of the U.S. Departments of Agriculture and Commerce.

There are no known data sources that specifically report on employment and wages in cattle operations. Most cow-calf operations are family operations where a significant portion of the work is done by uncompensated family members. If hired laborers are used, they generally are seasonal workers.[15]

Tabulated below are association responses regarding changes their members collectively experienced in their operations in 1997, 1998, and January-June 1999, compared to the preceding year or corresponding period.

Item	1997			1998			January-June 1999		
Production	4 I	13 D	4 N	4 I	12 D	6 N	4 I	9 D	7 N
Domestic shipments	4 I	7 D	5 N	5 I	6 D	4 N	3 I	7 D	5 N
Export shipments	1 I	3 D	1 N	2 I	2 D	1 N	2 I	1 D	2 N
Inventories	3 I	9 D	6 N	1 I	12 D	5 N	1 I	11 D	6 N
Number of workers	1 I	6 D	9 N	1 I	9 D	7 N	1 I	9 D	9 N
Hours worked	6 I	2 D	9 N	5 I	4 D	6 N	6 I	2 D	9 N
Wages paid	9 I	2 D	6 N	9 I	3 D	5 N	9 I	3 D	5 N
Costs	18 I	2 D	0 N	16 I	0 D	2 N	16 I	1 D	2 N
Revenues	4 I	15 D	1 N	2 I	18 D	0 N	6 I	9 D	4 N

Key: I = Increase, D = Decrease, N = Little to no change.

[15] Petitioner's postconference brief, p. 10.

PART IV: U.S. IMPORTS, APPARENT CONSUMPTION, AND MARKET SHARES

U.S. IMPORTERS

The Commission sent importer questionnaires to 58 U.S. firms that were believed to import cattle. Twenty-one firms responded that they are importers of cattle.[1] Eighteen of the 21 importers identified themselves as packers (four of which also identified themselves as feedlot operators or contract feeders); two identified themselves as stocker/backgrounders and feedlot operators; and one identified itself as a feedlot operator. A list of U.S. firms sent the Commission's importer questionnaire and responding firms is presented in appendix I.

U.S. beef packers import the majority of cattle imports from Canada.[2] The U.S. packing industry's 1998 annual kill capacity is estimated at 44 million head.[3] In 1998, the closure of seven packing plants removed approximately 1.4 million head from the annual slaughter capacity, and the closure of another seven plants in 1999 removed an additional 1 million head. The 10 largest-capacity U.S. beef packers are listed in table IV-1.[4] Four packers (IBP, ConAgra, Excel, and Farmland National Beef (a distant fourth)) accounted for 81 percent of fed cattle and 33 percent of cull cattle slaughter in the United States in 1998.[5] These firms slaughtered approximately 25 million head in 1998.[6] The Northwest region has an annual slaughter capacity of about 1.8 million head at four plants: Washington Beef at Toppenish, WA; IBP at Pasco, WA, and Boise, ID; and E.A. Miller at Hyrum, UT.[7] The Canadian Cattlemen's Association reported in its foreign producer questionnaire that the six largest U.S. importers of Canadian cattle are ***.

IBP, Inc. (Dakota City, NE), the largest capacity U.S. beef packer, accounted for *** percent of cattle imports from Canada in 1998. Canadian cattle represented *** percent of its 1998 U.S. cattle purchases. In 1994, IBP purchased Lakeside Farm Industries, Ltd., an agribusiness company with a packing facility and feedlots in Brooks, Alberta, Canada.[8] The slaughter capacity of the Brooks facility has recently been expanded.

E.A. Miller, Inc. (Hyrum, Utah), a packer and subsidiary of ConAgra, accounted for *** percent of cattle imports from Canada in 1998. E.A. Miller listed ***. Canadian cattle represented *** percent of E.A. Miller's 1998 cattle purchases. Respondent Washington Beef accounted for *** percent of cattle imports from Canada in 1998.[9] Canadian cattle represented *** percent of its 1998 cattle purchases. Washington Beef is ***. Washington Beef sources about *** percent of its cattle from packer

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[1] Fifteen firms responded that they did not import live cattle during 1996-98. Twenty-two firms did not respond to the Commission's request for information.

[2] Customs and brokerage firms are typically the importers of record; the beef packers are consignees.

[3] *Cattle Buyers Weekly*, Jan. 11, 1999.

[4] In 1998, there were 795 federally inspected plants that slaughtered cattle, and 339 federally inspected plants that slaughtered calves. NASS, "Livestock Slaughter 1998 Summary," March 1999.

[5] USDA, "Packers and Stockyards Statistical Report," June 1999.

[6] *Cattle Buyers Weekly*, Oct. 18, 1999.

[7] Packers' posthearing brief, p. 12.

[8] *Www.ibpinc.com,* IBP story, accessed Oct. 19, 1999.

[9] Washington Beef is the 17th largest capacity U.S. beef packer, with a daily kill capacity of 1,100 head at its one plant.

Table IV-1
Cattle: Capacity and the number of plants of the 10 largest U.S. beef packers, 1999

Packing company	Daily kill capacity (head of cattle)	Number of plants
IBP, Inc.	38,800	13
Con-Agra Beef Co.	23,000	7
Excel Corp., Div. of Cargill	22,500	5
Farmland National Beef Pkg.	9,000	2
Packerland Packing Co.	6,100	4
Nebraska Beef, Inc.	2,500	1
Rosen's Diversified, Inc.	1,950	3
Greater Omaha Packing Co.	1,925	1
Moyer Packing Co.	1,900	1
Taylor Packing Co.	1,900	1

Source: *Cattle Buyers Weekly*, Oct. 1999.

owned/fed cattle. A specialized cull packer, Long Prairie Packing Co., Inc. (Long Prairie, MN, and St. Paul, MN) accounted for *** percent of cattle imports from Canada in 1998. Canadian cattle represented *** percent of its 1998 cattle purchases. Long Prairie is owned by ***.

Taylor Packing (Wyalusing, PA) accounted for *** percent of cattle imports from Canada in 1998. Canadian cattle represented *** percent of its 1998 cattle purchases. Taylor reported that due to the geographic proximity of its plant, ***. Monfort, Inc. (Greeley, CO), accounted for *** percent of cattle imports from Canada in 1998. Canadian cattle represented *** percent of its 1998 cattle purchases. Monfort also is a subsidiary of ConAgra (Omaha, NE).[10] Monfort sources about *** percent of its fed cattle from ***.[11] Moyer Packing (Souderton, PA) accounted for *** percent of cattle imports from Canada. Canadian cattle represented *** percent of its 1998 cattle purchases. Moyer also sources cattle from packer owned/fed cattle. Excel Corporation (Wichita, KS) accounted for *** percent of imports from Canada in 1998. Canadian cattle represented *** of its 1998 U.S. cattle purchases. Excel, a subsidiary of Cargill, Inc. (Wayzata, MN), is the second largest capacity U.S. beef packer and its facility in Alberta is the largest beef packing facility in Canada.[12] [13] ***. Excel sources about *** percent of its cattle from packer owned/fed cattle. It is believed that *** account for a majority of the remaining imports of Canadian cattle.

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[10] ***.

[11] Packers' posthearing brief, attachment 1, p. 5.

[12] Kenneth L. Bull, Procurement Director, Excel Packing Co., hearing transcript, p. 295.

[13] ***.

U.S. IMPORTS

Imports shown in table IV-2 are from official statistics of the U.S. Department of Commerce. Imports of Canadian cattle (head) decreased by 15 percent from 1996 to 1998 and decreased by 25 percent during January-June 1999 compared with the corresponding period of 1998. The aggregate weight of cattle imported from Canada decreased by 12 percent from 1996 to 1998 and decreased by 25 percent during January-June 1999 compared with the corresponding period of 1998. The average weight (per animal) of imports from Canada ranged from 1,227 pounds in 1997 to 1,295 pounds in 1998 (appendix J, table J-1).[14] Historical data on U.S. imports of Canadian cattle are presented in appendix H, table H-1.

Average unit values (per pound) of cattle imports from Canada increased slightly from 1996 to 1997, decreased slightly from 1997 to 1998, and remained the same during January-June 1999 compared with the corresponding period of 1998. In 1998, 87 percent of Canada's total shipments to the United States were fed and cull cattle for immediate slaughter; cull cattle alone accounted for 25 percent of Canadian imports (appendix J, table J-1).

The destination of U.S. imports of Canadian cattle, by states, is shown in appendix K, table K-1. Seventy-nine percent of 1998 imports of cattle from Canada went to the states of Washington (25 percent), Utah (14 percent), Nebraska (13 percent), Pennsylvania (7 percent), Minnesota (7 percent), Colorado (6 percent), and Idaho (6 percent).[15] Respondents contend that imports of Canadian cattle enter into U.S. regions with insufficient fed or cull cattle for packer capacity.[16] A 1996 USDA study on regional cattle procurement markets determined that on average, packer plants obtained 64 percent of their U.S. cattle from within 75 miles of the plant, 82 percent from within 150 miles, and 92 percent from within 250 miles.[17] The average distance plants go to obtain 95 percent of their cattle is greatest in the Eastern region of the United States, where the average distance is nearly 100 miles greater than for plants in other areas of the country.

At the Commission's hearing on this investigation there was testimony that the average weight of Canadian cattle imported into the United States was more than the average weight of domestically raised animals.[18] Based on official statistics of the U.S. Department of Commerce[19] and the USDA,[20] during 1997-98 the average weight of cull cows imported into the United States from Canada exceeded the average weight of domestically raised cull cows in every month. The excess ranged from

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[14] In the 1970s the slaughter weights of U.S. cattle and imports of Canadian cattle were relatively stable because older packing plants were somewhat constrained in the size of carcasses they could process. In the early 1980s, an influx of new and updated packing plants stimulated a rather large increase in average cattle weights. USDA, *U.S. Beef Industry*, Apr. 1999, p. 6.

[15] Based on Animal and Plant Health Inspection Service (APHIS) statistics. The slight difference in USDA and APHIS statistics reflects different reporting procedures.

[16] Albert Lawrence, Senior Vice President, Washington Beef, Inc., hearing transcript, pp. 300-301, and Greg Benedict, President, Long Prairie Packing Co., hearing transcript, pp. 304-305.

[17] Packers' posthearing brief, attachment 14.

[18] Pat Goggins, Publisher, *Western Livestock Reporter* and *Agri-News,* hearing transcript, p. 184.

[19] The total number of animals imported divided by the total weight.

[20] USDA, NASS, "Livestock Slaughter 1997 Annual Summary," and "Livestock Slaughter 1998 Annual Summary:" average carcass weight of cull cows as reported, converted to live weight equivalent by the Commission staff based on a conversion factor reported by the USDA AMS, and the average weight of steers converted to live weight equivalent based on a conversion factor reported by the American Meat Institute.

Table IV-2
Cattle: U.S. imports (1), by sources, 1996-98, Jan.-June 1998, and Jan.-June 1999

Item	1996	1997	1998	January-June 1998	January-June 1999
	Quantity (1,000 head)				
Canada	1,476	1,352	1,253	652	491
All other sources	452	668	719	362	445
Total	1,928	2,020	1,972	1,014	936
	Quantity (1,000 pounds)				
Canada	1,834,376	1,659,107	1,623,172	815,131	613,127
All other sources	196,847	297,198	315,821	149,258	179,314
Total	2,031,223	1,956,305	1,938,992	964,389	792,441
	Value ($1,000)				
Canada	984,718	933,094	893,821	457,898	340,341
All other sources	121,074	177,518	207,839	95,948	128,549
Total	1,105,792	1,110,612	1,101,660	553,847	468,890
	Unit value (per pound)				
Canada	$0.54	$0.56	$0.55	$0.56	$0.56
All other sources	0.62	0.60	0.66	0.64	0.72
Average	0.54	0.57	0.57	0.57	0.59
	Average weight (pounds per animal)				
Canada	1,243	1,227	1,295	1,250	1,249
All other sources	435	445	439	413	403
Average	1,054	969	983	951	847
	Share of quantity in pounds (percent)				
Canada	90.3	84.8	83.7	84.5	77.4
All other sources	9.7	15.2	16.3	15.5	22.6
Total	100.0	100.0	100.0	100.0	100.0
	Share of value (percent)				
Canada	89.1	84.0	81.1	82.7	72.6
All other sources	10.9	16.0	18.9	17.3	27.4
Total	100.0	100.0	100.0	100.0	100.0

(1) Total imports from Canada, as presented in this table, overstate subject imports by less than *** percent. In its final determination, Commerce found the dumping margin of Pound-Maker Agventures, Ltd.'s cattle exports to the United States to be de minimis.

Note.--Data in this table consist of all live cattle excluding breeding and dairy cattle, and bison.

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

136 pounds to 259 pounds, or from 10 percent to 19 percent. Similarly, during 1997-98 the average weight of steers imported into the United States from Canada exceeded the average weight of domestically raised steers in every month. The excess ranged from 94 pounds to 182 pounds, or from 7 percent to 13 percent. The difference in the average weight between U.S. and Canadian cattle may be reflected by the genetics of the herd overall in the United States compared to Canada. In the United States a relatively large share of the cattle herd overall are so-called English breeds (or crosses of English and other breeds), which are genetically relatively small. In Canada a relatively large share of the cattle herd overall are so-called Continental breeds (or crosses of Continental breeds), which are genetically relatively large.[21] Although on average Canadian cull cows imported into the United States weigh more than average domestic cull cows, domestically raised cattle of the same breed as the imports tend to weigh about the same as the imported cows.[22]

APPARENT U.S. CONSUMPTION AND U.S. MARKET SHARES

Data on apparent U.S. consumption (U.S. commercial and farm slaughter) of cattle are shown in table IV-3. Apparent consumption (by weight) decreased by less than 1 percent from 1996 to 1998, and increased by 2 percent during January-June 1999 compared with the corresponding period of 1998.

Market shares based on slaughter of animals of U.S. origin plus U.S. imports are presented in table IV-3. U.S. producers' market share based on the total weight of animals slaughtered increased very slightly from 1996 to 1998, and increased by almost 1 percentage point during January-June 1999 compared with the corresponding period of 1998. Imports from Canada lost 0.5 percentage point of market share by weight from 1996 to 1998, and 1 percentage point during January-June 1999 compared with the corresponding period of 1998.

Staff's market share methodology overstates the market share of imports to a small degree because the imports in the numerator consist of all live cattle (i.e., not only cattle for immediate slaughter but also all other live cattle imports such as cattle to be placed in feedlots), whereas the denominator consists only of cattle slaughtered.[23] Respondents contend that the denominator should be increased to include, for example, all cattle placed in U.S. feedlots.[24] Staff did not do so because doing so would lead to substantial double-counting since cattle placed in feedlots exit the feedlots within a few months and thereby could be slaughtered in the same year. However, it is true that to the extent that some cattle placed in feedlots are not slaughtered in the same year, staff methodology could indeed somewhat overstate the market share of imports, but the methodology has more certainty and fewer methodological problems than other alternatives.

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[21] Commission staff interview with ***, Oct. 12, 1999, and Edward J. Farrell, counsel for the Canadian Cattlemen's Association, Oct. 9, 1999.

[22] Ibid.

[23] In market share calculations by weight, the additional weight gained in the United States by imported feeder cattle is included in the U.S. slaughter figure.

[24] E.g., Canadian Cattlemen's Association prehearing brief, p. 4, and final comments brief, pp. 4, 5, and 13; and the packers' final comments brief, p. 3.

Table IV-3
Cattle: U.S. shipments of domestic product, U.S. imports (1), by sources, and apparent U.S. consumption, 1996-98, Jan.-June 1998, and Jan.-June 1999

Item	1996	1997	1998	January-June 1998	January-June 1999
	Quantity (1,000 head)				
U.S. producers' shipments (2)	36,645	36,091	35,166	17,354	17,586
U.S. imports from--					
Canada	1,476	1,352	1,253	652	491
All other sources	452	668	719	362	445
Total U.S. imports	1,928	2,020	1,972	1,014	936
Apparent consumption (3)	38,573	38,111	37,138	18,368	18,521
	Quantity (1,000 pounds)				
U.S. producers' shipments (4)	41,557,990	41,400,123	41,368,121	20,374,880	20,992,772
U.S. imports from--					
Canada	1,834,376	1,659,107	1,623,172	815,131	613,127
All other sources	196,847	297,198	315,821	149,258	179,314
Total U.S. imports	2,031,223	1,956,305	1,938,992	964,389	792,441
Apparent consumption (5)	43,589,213	43,356,428	43,307,113	21,339,269	21,785,213
	Value ($1,000)				
U.S. producers' shipments (6)	24,484,546	26,181,500	24,667,365	12,689,329	13,015,024
U.S. imports from--					
Canada	984,718	933,094	893,821	457,898	340,341
All other sources	121,074	177,518	207,839	95,948	128,549
Total U.S. imports	1,105,792	1,110,612	1,101,660	553,847	468,890
Apparent consumption	25,590,338	27,292,112	25,769,024	13,243,176	13,483,914
	Share of quantity by number of head (percent)				
U.S. producers' shipments	95.0	94.7	94.7	94.5	94.9
U.S. imports from--					
Canada	3.8	3.5	3.4	3.6	2.7
All other sources	1.2	1.8	1.9	2.0	2.4
Total imports	5.0	5.3	5.3	5.5	5.1
	Share of quantity by weight (percent)				
U.S. producers' shipments	95.3	95.5	95.5	95.5	96.4
U.S. imports from--					
Canada	4.2	3.8	3.7	3.8	2.8
All other sources	0.5	0.7	0.7	0.7	0.8
Total imports	4.7	4.5	4.5	4.5	3.6
	Share of value (percent)				
U.S. producers' shipments	95.7	95.9	95.7	95.8	96.5
U.S. imports from--					
Canada	3.8	3.4	3.5	3.5	2.5
All other sources	0.5	0.7	0.8	0.7	1.0
Total imports	4.3	4.1	4.3	4.2	3.5

(1) Total imports from Canada, as presented in this table, overstate subject imports by less than *** percent. In its final determination, Commerce found the dumping margin of Pound Maker Agventures, Ltd.'s cattle exports to the United States to be de minimis.

(2) Consists of commercial and farm slaughter of cattle and calves (which includes imports slaughtered) minus imports. Interim data do not include farm slaughter, which accounted for only 0.6 percent of total slaughter in 1998.

(3) Consists of commercial and farm slaughter of cattle and calves (including imports slaughtered) for annual periods. Interim data do not include farm slaughter.

(4) Consists of total live weight of commercial and farm slaughter of cattle and calves (which includes total live weight of imports) minus imports. Interim data do not include farm slaughter, which accounted for only 0.5 percent of total slaughter weight in 1998.

(5) Consists of total live weight of commercial and farm slaughter of cattle and calves (which includes total live weight of imports). Interim data do not include farm slaughter.

(6) Value of commercial slaughter of animals of U.S. origin.

Note.--Presented consumption calculations assume imported cattle are slaughtered in same year they are imported. This pattern is reflective of most imports from Canada, since only a small percentage come in at earlier stages.

Source: Compiled from official statistics of the U.S. Departments of Agriculture and Commerce.

Data on U.S. production (calf crop) plus U.S. imports, which reflects the number of new animals added to the U.S. cattle supply, are presented in the following tabulation (in 1,000 head):

				January-June[25]	
	1996	1997	1998	1998	1999
U.S. production	39,823	38,961	38,582	28,400	28,200
U.S. imports:					
Canada	1,476	1,352	1,253	652	491
Other	452	668	719	362	445
Subtotal	1,928	2,020	1,972	1,014	936
Total	41,751	40,981	40,554	29,414	29,136
Share of total:					
Canada (percent)	3.5	3.3	3.1	2.2	1.7

[25] Most calves are born in the spring.

PART V: PRICING AND RELATED DATA

FACTORS AFFECTING PRICING

Cattle is a commodity product; prices fluctuate from day to day, and producers are price takers. A number of factors affect the price of cattle, including the cattle cycle, the volume of cattle being marketed (in terms of head of cattle and the average and aggregated weight of cattle), the demand for and the price of beef and byproducts, weather conditions, input costs, and transportation costs.[1]

Input Costs

The average cost of inputs of the U.S. producers is presented in Part VI of the report. The price of grain has a significant impact on the cost of production of fed cattle. However, the number of cattle available is not determined by the year-to-year fluctuations in the cost of grain; rather, the cost of grain affects the price of feeder cattle and sometimes the length of time cattle are fed before slaughter.

U.S. Inland Transportation Costs

Thirteen purchasers reported that U.S. inland transportation costs account for between 0.5 and 6 percent of the total delivered price of U.S. cattle.[2] The cost of transporting Canadian cattle within the United States, reported by 9 purchasers, ranged from 0.7 to 7 percent of the total delivered price.[3]

Tariff Rates

Live cattle is covered by subheading 0102.90.40 of the HTS. The tariff rate for the product from Canada is free.

Exchange Rates

Quarterly exchange rates reported by the International Monetary Fund for Canada during the period January 1995-June 1999 are shown in figure V-1.

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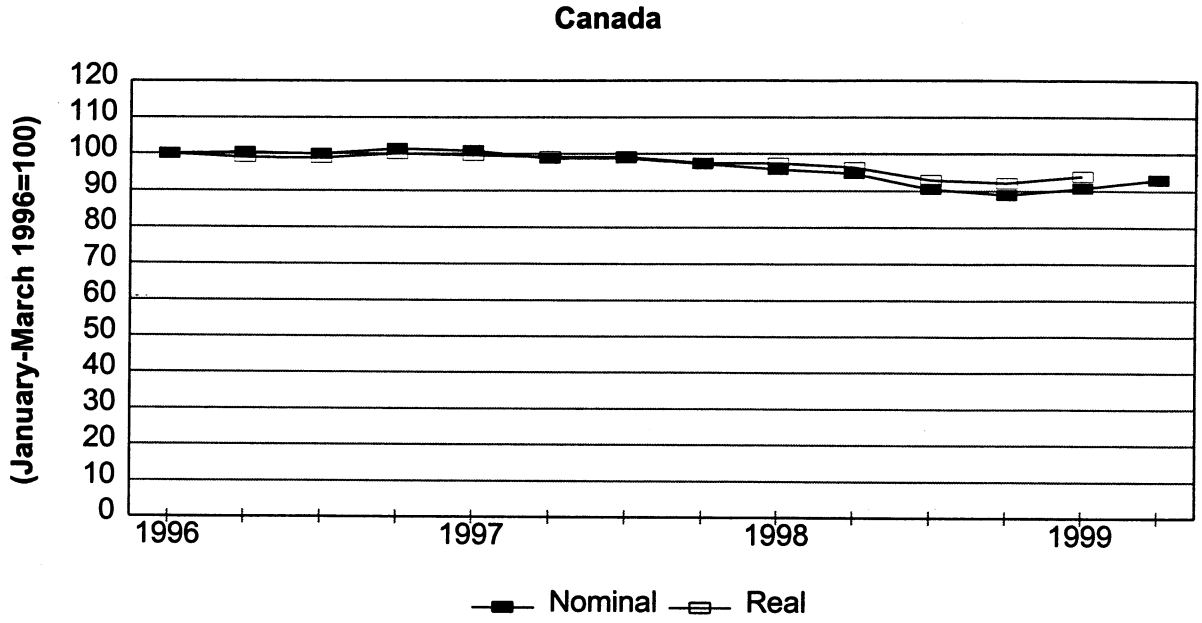
[1] At the Commission's conference, a policy advisor with the Canadian Cattlemen's Association discussed various factors alleged to have resulted in price declines for cattle in the U.S. market. For example, the lower price of byproducts may have reduced the price of cattle by approximately $2.50 per hundredweight (cwt) in 1998. The Canadians believe that the low prices and profits experienced in the cattle market in 1998 were the result of the cattle cycle and the other factors rather than imports of cattle. (Chris Mills, conference transcript, pp. 119-124.)

[2] In addition, one purchaser reported that it was 100 percent for U.S. cattle.

[3] In addition, one purchaser reported 0 percent.

Figure V-1
Exchange rates: Indexes of the nominal and real exchange rates of the Canadian dollar relative to the U.S. dollar, by quarters, Jan. 1996-June 1999



Source: International Monetary Fund, *International Financial Statistics*, August 1999.

PRICING PRACTICES

Spot market prices of cattle are readily available. The USDA provides timely spot prices of feeder steers and heifers, fed steers, and culled cows in the United States on its Web site and over the telephone.[4] Spot prices in the Canadian market are available from CanFax,[5] and these are updated continually. In addition, before a Canadian auction, individuals usually find out the current U.S. price of cattle. Cattle prices are also published and broadcast in cattle-raising areas. In addition, futures prices are available for cattle, information on these are provided in Part VII.

Cattle are sold in a variety of grades and ages with different prices per hundred pounds or hundredweight (cwt). Cow-calf operators sell smaller/younger cattle to stockers who increase their size. Stockers in turn sell their cattle to feedlots. Cattle at the stocker and feeder stages tend to cost more per cwt than fed cattle ready for slaughter. Cattle that are no longer being used for breeding or dairy are culled and slaughtered; these culled cattle cost less per cwt than fed cattle and are used mainly for manufactured meat.

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[4] The USDA Web site with current prices is *www.ams.usda.gov/lsg.mncs/ls_main.htm*. Newspapers including the *Wall Street Journal* and the *New York Times* report cattle prices in the commodity price tables of their financial sections.

[5] CanFax is a non-profit market information service that is a division of the Canadian Cattlemen's Association. Its Web site with current prices is *www.agr.ca/misb.aisd/redmeat/97toce.html*.

Pricing Methods

Cattle are sold in groups of similar-sized animals called lots. Cattle of the same weight may differ in breed, age, condition, and individual genetics. All these factors may affect the quality grade of the meat the animal produces. Cattle carcasses are graded both on the quality of the meat and the meat yield. The USDA yield grade is on a scale of 1 through 5: grade 1 animals have little waste, grade 5 have a great deal of waste. The top three quality grades for fed cattle are Prime, Choice, and Select, in that order. Culled cattle are graded on a different scale and frequently are not quality graded.

Cattle can be sold based either on live weight or carcass weight,[6] and they can be sold on either the spot market or under some type of long-term agreement. Most U.S. cattle are sold on the spot market with price based on live weight. The spot prices are determined between feedlots and packers as described below. In live weight purchases, the purchaser typically pays for transportation and bears the risk of shrinkage (death, weight loss) in transportation; in contrast, in carcass weight purchases the seller bears the shrinkage risks and typically pays for transportation.

In Canada, feedlot operators report most sales are spot prices on a sealed bid system.[7] Under this system, sellers offer different lots of cattle to be bid at potentially different prices. Lots are sold to the highest bidder; however, if bids are considered too low for a particular lot, it may be held off the market.[8] Importers frequently purchase Canadian cattle on the spot market based on grade and yield. Under grade and yield, price are set based on the carcass weight but do not vary by carcass quality.

Long-term agreements include formula sales and contract sales. Under formula prices, the packer and feedlot agree on a price formula set with a base price and adjustments for the quality and quantity of meat in each lot of cattle. When cattle are sold based on formula the base price is typically some agreed-upon publicly available spot market price reported in the week preceding or the week the cattle go to the packer. From this base, the formula adjusts for the average yield and quality grades of the cattle in a lot. The specifics differ from packer to packer.[9] Under formula pricing the feedlots typically commit to sell all their cattle to one packer and the packer commits to purchase these cattle; however, neither is bound and either can withdraw from the arrangement at any time. In contrast, contract sales tend to cover specific lots of cattle; the price is based on set prices such as the forward cattle price on the Chicago Mercantile Exchange. Contract sales have some price adjustments for the quality of the meat, and neither party can withdraw from the agreement after it is made.[10]

Some advantages of formula pricing over live weight for packers is that the price is more closely related to the value of the product, thus the packer's risk is reduced; the packer may get better quality meat; and the packer gets a committed supply. Advantages to the seller of formula pricing are that if the cattle sold are better quality, then they net a higher price, the packer gives the feedlot information on the quality of meat that may allow the feedlot to improve its procedures, and the feedlot is guaranteed a

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[6] Carcass weight may also be referred to as dressed weight.

[7] Ben Thorlakson, President, Canadian Cattlemen's Association, hearing transcript, p. 215.

[8] Ibid., pp. 215-216.

[9] *Fed Cattle Price and Value Discovery Issues*, Ted Schroeder, presented at the NCBA Beef Summit, May 21, 1998, pp. 2-3.

[10] Benefits to the feedlots from captive supply agreements include improved price risk management, better access to financing, guaranteed buyer, improved opportunity for carcass quality premiums, and reduced marketing costs. Advantages for the packer include increased predictability in some purchases, thereby improving the plant's ability to work at capacity, greater control over the type and quality of cattle slaughtered, and reduced procurement costs. *Beef Industry Price Discovery: A Look Ahead*, Ted Schroeder, et. al. Research Bulletin 1-98, Research Institute on Livestock Pricing, Blacksburg, VA, Mar. 1998, p. 37.

market for its cattle. However, the seller must rely on the packer's assessment of the carcass weights and grades of the cattle, neither party knows at the time of the sale the exact price that will be paid for the cattle, and feedlots that do not have contracts cannot compete as equals against feedlots with contracts. If a large percentage of cattle sold are covered by formula price types of agreements this may make it more difficult for small feedlots that do not have agreements. Agreements also reduce the size of the spot market. The increasing use of formula sales may make the spot price less representative of the price paid for all cattle since there is more incentive to sell the best cattle on a formula basis.[11] Finally, these sales create the risk that "when packers obtain a large percentage of their slaughter requirements from various captive supply arrangements, they may withdraw from the cash market for short time periods and rely on their captive supply to fill their slaughter needs. This elimination of a market outlet may create temporary, but at times dramatic, loss of market access for some producers (usually, though not always, for smaller feedyards who have difficulty getting more than one packer-buyer to regularly bid on cattle). *If* this behavior caused by increased concentration has a negative impact on cash prices, the cattle feeders may face reduced cash price bids. Empirical research to date suggests that this has taken place to some extent in cattle markets. For example, Schroeder et al. (93)[12] found cash market fed cattle transaction prices in western Kansas reduced by $0.22/cwt when 10% of cattle slaughtered in the region were from captive supplies."[13]

The share of cattle sold on contract and formula combined varies by region in the United States and has been rising since 1996. In Washington state, almost all the fed cattle were reported to be sold on contract or formula.[14] In Texas it was estimated that the fraction sold on contract and formula had risen from 30 percent in 1996 to 50 percent in 1999, although some of this increase was due to improved reporting.[15] In the Dodge City area it was reported that contract/formula sales had risen from 15 to 22 percent in the fall of 1996 to 35 to 45 percent in 1999.[16] Many of the largest feedlots, it was reported, preferred formula sales because these gave them bonuses for better grade and yield meat.[17] It was reported that contract sales were becoming less common while formula sales were growing.[18]

In addition, some packers purchase cattle that are not yet ready for slaughter (by live-weight), and hire feedlots to feed them. This gives the packers another way to control the cattle supply and thus guarantee capacity utilization. However, it ties up the packers' money longer than the other methods. Finally, cow-calf operators can retain ownership of the cattle, hire feeders, and sell directly to packers.

Twelve of the 19 responding purchasers reported that prices were mainly quoted on a delivered basis, and 1 reported purchasing mainly on an f.o.b. basis. The remaining 6 reported using both methods, with 1 reporting that culled cows were mostly delivered but steers are usually f.o.b., 1 reporting that live-weight and formula prices were quoted f.o.b. while carcass-weight prices were delivered, and the remaining 4 reporting that both methods were used.

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[11] Unlike spot prices and quantities, the price and quantity of cattle purchased on formula are not widely available.

[12] T.C. Schroeder, Jones, Mintert, and Barkley, "The Impact of Forward Contracting on Fed Cattle Transaction Prices." *Review of Agricultural Economics,* v.15, Spring/Summer, 1993, pp. 325-337.

[13] *Beef Industry Price Discovery: A Look Ahead*, op. cit., pp. 37-41. Footnote added, italics in the original.

[14] Staff discussions with ***, Oct. 12, 1999.

[15] Staff discussions with ***, Oct. 12, 1999.

[16] Staff discussions with ***, Oct. 12, 1999.

[17] Staff discussions with ***, Oct. 12, 1999.

[18] Ibid.

Domestic producers sell the majority of their cattle on a live-weight basis. Most purchasers purchased cattle on a number of bases. Table V-1 gives the methods of purchase by each of the reporting purchasers.

Table V-1
Cattle: Method of purchase used by packers and type of weighing method, by packer

* * * * *

All 17 responding producer associations reported spot sales; of these, 2 reported that all member sales were spot, 12 that most but not all sales were spot, and 3 that members principally sold their cattle on contract.[19] Sixteen of the 17 responding purchasers purchased cattle on the spot market; 11 of these purchased most of their cattle on the spot market, including ***.[20] One purchaser purchased mainly through marketing agreements, 1 through forward contracts, and 1, a feedlot, purchased half on forward contract and half on the spot market.[21]

Price Determination

Typically neither buyers nor sellers set cattle prices in the United States. Auctions are the main method used to determine the price of cull cattle and feeder cattle both in the United States and Canada.[22] Fed cattle tend to either to be sold on the spot market, at the feed yard, or committed to be sold in the future either on contract or formula basis. The spot sales price is typically used as the basis for the formula price, with a formula to adjust for the quality and quantity of the meat.

The majority of fed cattle are sold on the spot market directly from the feedlot. In the United States this is usually done by a bid system. Although there are sales throughout the week, the petitioners report that the vast majority of fed cattle sales occur within very short periods in a week.[23] At the beginning of a week, feeders offer cattle that are or will be ready for slaughter. Typically the packers bid a price and the feedlots request another higher price. The days of the week when most transactions occur vary.[24] However, the petitioners report that recently most transactions have occurred on Thursdays.[25] When these major sales begin and thus a price is determined, a rush of sales tends to occur. In some periods, however, some sellers/buyers may not take part in these short sales intervals if they believe the market favors them and the price does not reflect this. If they are correct, there will be more selling later in the week at a better price.[26] If feedlots wait and they are mistaken, however, they may have to take a lower price later in the week or offer their cattle again the following week. If packers wait and they are mistaken, they may have to pay more or have plants idle.

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[19] One reported that 10 percent were sold on contract but did not know the percent sold on the spot market.

[20] One firm, a feedlot, reported its selling rather than purchase method; it mainly sold on contract. One purchaser, a ***, reported purchasing all its cattle on forward contracts.

[21] One packer reported ***; the remaining purchaser split its purchases among the spot market, contracts, marketing agreements, and forward contracts, none of which were used for the majority of its purchases.

[22] Some fed cattle are sold at auction; however, very few are in the most important cattle feeding areas.

[23] Chuck Kiker, President, Independent Cattlemen's Association of Texas, hearing transcript, pp. 89-91.

[24] *Beef Industry Price Discovery: A Look Ahead*, op.cit., p. 42.

[25] Petitioner's posthearing brief, app. 1.

[26] For example, during the week of October 3-9, 1999, there were surges of fed cattle sold on Wednesday, Thursday, and Friday with the price rising over the week. Staff discussions with ***, Oct. 12, 1999.

Cattle sold on the spot market are sold to be picked up during the following week. Although sales/purchase timing is spasmodic, these cattle could be killed evenly over the week.[27] Packers and USDA sources report that cattle purchased on contract/formula and those purchased on spot tend to be spread evenly over the week.[28] The petitioners, however, report that at the beginning of the week packers may use contract cattle and only at the end will they need cattle purchased on the spot market.[29]

Fed cattle reach an optimal weight at around 1,200 pounds. Once they reach this weight it is important that they be sold quickly. There are a number of advantages to this size. Most breeds of cattle receive their best quality grades if they are slaughtered at this size. Packers prefer cattle of consistent size. If the feedlot waits to sell until after cattle have reached this optimal weight, the cattle will continue to gain weight; however, this additional weight gain usually is less efficient in that it requires more feed for each pound gained and results in the cattle gaining more weight in fat rather than more valued muscle.

Petitioners report that Canadian cattle at times caused delays in sales or slaughter of their cattle, increasing their cost and reducing their income. Producer associations were asked if they had any problems with the timing of their sales and what caused these timing problems. Of 20 responding producer associations, 14 reported delays and 6 reported no delays. Of the 14 reporting delays, 10 reported that cattle imports caused delays.[30] Purchasers were asked if they had experienced any delays in slaughter. Five purchasers reported no delays and 11 reported delays, mainly due to weather (reported by 10); 4 of these also reported delays that were due to plant/mechanical problems.[31]

PRICE DATA

The Commission requested importers/purchasers to provide quarterly quantity and value data for their purchases of both domestic and imported cattle between January 1996 and June 1999 for the following products:

Product 1.-- Beef type fed steers and heifers intended for immediate slaughter (1,100+ pounds), purchased on the spot market, purchased on a live-weight basis. (Quantity in terms of cwt live weight.)

Product 2.-- Beef type fed steers and heifers intended for immediate slaughter (1,100+ pounds), purchased on the spot market, purchased on a carcass-weight, dressed-weight, or formula basis. (Quantity in terms of cwt carcass weight/dressed weight.) (Value should include any premiums or discounts.)

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[27] Staff discussion with ***, Oct. 12, 1999.

[28] Kenneth L. Bull, Procurement Director, Excel Packing Co., hearing transcript, pp. 317-318.

[29] Chuck Kiker, President, Independent Cattlemen's Association of Texas, hearing transcript, pp. 89-91, and Mike Callicrate, owner, Callicrate Feed Yards and President, Kansas Cattlemen's Association, hearing transcript, pp. 108-110.

[30] In addition, some of the producer associations reported that imports may have caused delays but they were uncertain if they actually had. Other cited reasons for delays included inability to agree on price, weather, backlog at packers, beef imports, captive supply, slow bidding, packers failing to bid, packer concentration, and increased competition from substitutable meats.

[31] Other cited reasons for delays included negative margins, transportation difficulties, and that about twice a year there were more cattle than it could kill. These were reported by one packer each. One *** reported delays caused by a ***.

Product 3.-- Beef type fed steers and heifers intended for immediate slaughter (1,100+ pounds), purchased on contract on a carcass-weight, dressed-weight, or formula basis. (Quantity in terms of cwt carcass weight/dressed weight.) (Value should include any premiums or discounts.)

Product 4.-- Beef type feeder steers and heifers intended for immediate placement in feedlots (700 to 750 pounds), purchased on the spot market, on a live-weight basis. (Quantity in terms of cwt live weight.)

Product 5.-- Culled beef cows, purchased on the spot market, purchased on a live-weight basis. (Quantity in terms of cwt live weight.)

Product 6.-- Vealer calves/special feds,[32] intended for immediate slaughter, purchased on the spot market, on a live-weight basis. (Quantity in terms of cwt live weight.)

Importers/purchasers were asked to provide both f.o.b. and delivered purchase prices. Prices reported herein are delivered prices.

Nineteen purchasers provided usable price data for purchases of the requested products, although not for all products, all quarters, or both the United States and Canada. Weighted-average pricing data and margins of under/overselling from questionnaires, as well as USDA and Canfax price data for similar products are presented in table V-2. Tables V-5 through V-7 provide weighted-average pricing data and margins of under/overselling and USDA prices data for similar products. Tables V-3 and V-4 include only weighted-average pricing data from questionnaires and margins of under/overselling. Figure V-2 presents the data from tables V-2 through V-7.[33] Usable questionnaire pricing data for products 1 through 6 accounted for over 35 percent (by weight) of the cattle slaughtered in the United States in 1998 (including imports). Price data for imported of products 1 through 6 accounted for over 41 percent of imports, by weight, of cattle from Canada in 1998.[34]

Prices of U.S. Product and Imports

U.S. Product

In general, reported U.S. prices followed the pricing trends of USDA data. Reported prices increased between 3.0 percent and *** percent between January-March 1996 and April-June 1999 for all products except product 3, which declined by 0.4 percent. The reported prices of U.S. product 1 were similar to the average USDA prices for choice steers of 1,100 to 1,300 pounds for the Texas panhandle and Nebraska. The reported prices of product 4 were similar to USDA prices for feeder steers, 750-800 pounds. The reported prices of product 5 were similar to USDA prices for Sioux Falls, utility breaking cows. Although product 6 had a similar price trend as the USDA prices for veal carcasses, 220-280 pounds for Central United States (the only USDA price available for veal), prices for product 6 were below the USDA prices, with differences ranging from *** to ***.

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[32] Animals fed a milk-based diet.

[33] The USDA prices are simple averages for the monthly prices of the products.

[34] These percentages underestimate the percent of coverage since for products 2 and 3 the quantities were reported in carcass weight, not live weight, and these quantities were not adjusted for the difference between these methods.

Table V-2

Cattle: Weighted-average delivered spot prices (per cwt) for U.S. and Canadian product 1 reported by importers/purchasers, quantities purchased from unrelated U.S. producers and Canadian producers, margins of underselling/(overselling), USDA prices, and Canfax prices, by quarters, Jan. 1996-Sept. 1999[1]

Period	USDA[2]	United States		Canfax[3]	Canada		
	Price *(per cwt)*	Price *(per cwt)*	Quantity *(1,000 cwt)*	Price *(per cwt)*	Price *(per cwt)*	Quantity *(1,000 cwt)*	Margin[4] *(percent)*
1996:							
Jan.-Mar.	$63.10	$62.75	22,581	$56.15	$61.36	276	2.2
Apr.-June	60.30	59.95	23,702	53.16	57.05	272	4.8
July-Sept.	67.29	66.16	23,492	59.93	63.90	387	3.4
Oct.-Dec.	69.85	69.23	21,112	62.65	66.88	117	3.4
1997:							
Jan.-Mar.	66.18	65.76	22,331	61.33	65.30	242	0.7
Apr.-June	66.41	66.61	23,846	61.06	64.96	233	2.5
July-Sept.	65.33	65.00	22,836	59.41	63.24	401	2.7
Oct.-Dec.	66.72	66.65	20,424	60.68	66.28	390	0.6
1998:							
Jan.-Mar.	62.10	62.78	18,852	58.57	61.28	195	2.4
Apr.-June	64.21	64.38	20,941	59.16	61.75	220	4.1
July-Sept.	59.41	59.56	21,865	52.58	60.48	234	(1.5)
Oct.-Dec.	61.17	60.95	20,493	55.98	60.99	213	(0.1)
1999:							
Jan.-Mar.	62.87	62.54	22,123	59.52	59.83	124	4.3
Apr.-June	65.27	65.25	23,535	59.49	61.04	125	6.5
July-Sept.[5]	65.15	-	-	62.18	-	-	-

[1] Beef type fed steers and heifers intended for immediate slaughter (1,100+ pounds), purchased on the spot market, on a live-weight basis. (Quantity in terms of cwt live weight.)

[2] Simple average of the monthly price of choice steers of 1,100 to 1,300 pounds in the Texas panhandle and Nebraska.

[3] Quarterly price data, converted to US dollars, for Alberta fed steers on a live-weight basis.

[4] Margins of underselling compare prices for U.S. and Canadian cattle provided by purchasers collected in this investigation, that is U.S. prices in the second column with the Canadian prices in the fifth column.

[5] The weekly USDA price for the week of Oct. 21, 1999 for 5 areas (Texas/Oklahoma; Kansas; Nebraska; Colorado; Iowa/So. Minnesota) for live cattle was $70.24; *http://www.ams.usde.gov/mnreports/AM-LS725.txt.*

Source: Compiled from data submitted in response to Commission questionnaires, USDA data, and Canfax data.

Table V-3

Cattle: Weighted-average delivered spot prices (per cwt) for U.S. and Canadian product 2 reported by importers/purchasers, quantities purchased from unrelated U.S. producers and Canadian producers, and margins of underselling/(overselling), by quarters, Jan. 1996-June 1999[1]

Period	United States		Canada		
	Price *(per cwt)*	Quantity *(1,000 cwt)*	Price *(per cwt)*	Quantity *(1,000 cwt)*	Margin *(percent)*
1996:					
Jan.-Mar.	$99.67	9,797	$99.35	931	0.3
Apr.-June	94.90	10,755	93.85	1,227	1.1
July-Sept.	104.15	10,577	103.43	1,024	0.7
Oct.-Dec.	111.30	9,145	109.51	628	1.6
1997:					
Jan.-Mar.	105.27	10,315	104.14	606	1.1
Apr.-June	106.02	10,513	105.58	763	0.4
July-Sept.	102.75	12,507	102.60	992	0.1
Oct.-Dec.	105.55	10,278	103.12	698	2.3
1998:					
Jan.-Mar.	100.45	12,034	99.04	617	1.4
Apr.-June	100.94	12,262	101.30	829	(0.4)
July-Sept.	93.79	14,506	92.05	1,043	1.9
Oct.-Dec.	95.97	12,526	93.21	797	2.9
1999:					
Jan.-Mar.	98.65	12,760	98.50	432	0.2
Apr.-June	102.62	12,477	100.61	611	2.0

[1] **Beef type fed steers and heifers intended for immediate slaughter (1,100+ pounds), purchased on the spot market, purchased on a carcass-weight, dressed-weight, or formula basis. (Quantity in terms of cwt carcass weight/dressed weight.) (Value should include any premiums or discounts.)**

Source: Compiled from data submitted in response to Commission questionnaires.

Table V-4
Cattle: Weighted-average delivered spot prices (per cwt) for U.S. and Canadian product 3 reported by importers/purchasers, quantities purchased from unrelated U.S. producers and Canadian producers, and margins of underselling/(overselling), by quarters, Jan. 1996-June 1999[1]

Period	United States		Canada		
	Price *(per cwt)*	Quantity *(1,000 cwt)*	Price *(per cwt)*	Quantity *(1,000 cwt)*	Margin *(percent)*
1996:					
Jan.-Mar.	$102.63	1,132	***	***	***
Apr.-June	100.52	1,970	***	***	***
July-Sept.	104.49	905	***	***	***
Oct.-Dec.	107.17	1,652	***	***	***
1997:					
Jan.-Mar.	101.73	623	***	***	***
Apr.-June	103.15	982	***	***	***
July-Sept.	104.37	437	***	***	***
Oct.-Dec.	108.11	794	***	***	***
1998:					
Jan.-Mar.	106.10	1,376	***	***	***
Apr.-June	105.74	2,437	***	***	***
July-Sept.	100.38	977	***	***	***
Oct.-Dec.	101.27	977	***	***	***
1999:					
Jan.-Mar.	100.02	941	***	***	***
Apr.-June	102.21	1,632	***	***	***

[1] Beef type fed steers and heifers intended for immediate slaughter (1,100+ pounds), purchased on contract on a carcass-weight, dressed-weight, or formula basis. (Quantity in terms of cwt carcass weight/dressed weight.) (Value should include any premiums or discounts.)

Source: Compiled from data submitted in response to Commission questionnaires.

Table V-5
Cattle: Weighted-average delivered spot prices (per cwt) for U.S. and Canadian product 4 reported by importers/purchasers, quantities purchased from unrelated U.S. producers and Canadian producers, margins of underselling/(overselling), and USDA prices, by quarters, Jan. 1996-Sept. 1999[1]

Period	USDA[2]	United States		Canada		
	Price *(per cwt)*	Price *(per cwt)*	Quantity *(1,000 cwt)*	Price *(per cwt)*	Quantity *(1,000 cwt)*	Margin[3] *(percent)*
1996:						
Jan.-Mar.	$58.11	***	***	***	***	***
Apr.-June	56.79	***	***	***	***	***
July-Sept.	63.20	***	***	***	***	***
Oct.-Dec.	66.15	***	***	***	***	***
1997:						
Jan.-Mar.	69.44	***	***	***	***	***
Apr.-June	75.88	***	***	***	***	***
July-Sept.	80.44	***	***	***	***	***
Oct.-Dec.	78.98	***	***	***	***	***
1998:						
Jan.-Mar.	76.26	***	***	***	***	***
Apr.-June	74.00	***	***	***	***	***
July-Sept.	67.89	***	***	***	***	***
Oct.-Dec.	69.80	***	***	***	***	***
1999:						
Jan.-Mar.	71.93	***	***	***	***	***
Apr.-June	72.17	***	***	***	***	***
July-Sept.	77.33	-	-	-	-	-

[1] Beef type feeder steers and heifers intended for immediate placement in feedlots (700 to 750 pounds), purchased on the spot market, on a live-weight basis. (Quantity in terms of cwt live weight.)
[2] Simple average of the monthly price of feeder cattle, steers medium #1, 750 to 800 pounds in Oklahoma City.
[3] Margins compare prices provided by purchasers for U.S. and Canadian cattle collected in this investigation, that is the U.S. cattle price in the second column with the Canadian cattle prices in the fourth column.

Source: Compiled from data submitted in response to Commission questionnaires and USDA data.

Table V-6
Cattle: Weighted-average delivered spot prices (per cwt) for U.S. and Canadian product 5 reported by importers/purchasers, quantities purchased from unrelated U.S. producers and Canadian producers, margins of underselling/(overselling), and USDA prices, by quarters, Jan. 1996-Sept. 1999[1]

Period	USDA[2]	United States		Canada		
	Price *(per cwt)*	Price *(per cwt)*	Quantity *(1,000 cwt)*	Price *(per cwt)*	Quantity *(1,000 cwt)*	Margin[3] *(percent)*
1996:						
Jan.-Mar.	$37.02	$36.04	1,564	$40.87	699	(13.4)
Apr.-June	34.39	35.73	1,425	40.31	602	(12.8)
July-Sept.	33.35	36.26	1,540	41.77	600	(15.2)
Oct.-Dec.	29.79	33.33	1,741	36.24	638	(8.7)
1997:						
Jan.-Mar.	33.22	37.54	1,739	44.96	658	(19.7)
Apr.-June	38.33	41.58	1,536	51.69	608	(24.3)
July-Sept.	36.42	39.89	1,514	49.44	561	(23.9)
Oct.-Dec.	34.40	35.72	1,706	41.44	827	(16.0)
1998:						
Jan.-Mar.	40.04	38.45	1,380	46.97	730	(22.2)
Apr.-June	41.40	40.08	1,308	50.51	560	(26.0)
July-Sept.	39.09	36.85	1,426	48.53	330	(31.7)
Oct.-Dec.	35.20	33.44	1,593	44.82	480	(34.1)
1999:						
Jan.-Mar.	37.52	38.28	1,576	46.03	669	(20.2)
Apr.-June	40.82	40.84	1,487	54.44	397	(33.3)
July-Sept.	42.58	-	-	-	-	-

[1] Culled beef cows, purchased on the spot market, purchased on a live-weight basis. (Quantity in terms of cwt live weight.)
[2] Simple average of the monthly price of cows, utility breaking, Sioux Falls.
[3] Margins compare prices provided by purchasers for U.S. and Canadian cattle collected in this investigation, that is the U.S. cattle price in the second column with the Canadian cattle price in the fourth column.

Source: Compiled from data submitted in response to Commission questionnaires and USDA data.

Table V-7
Cattle: Weighted-average delivered spot prices (per cwt) for U.S. and Canadian product 6 reported by importers/purchasers, quantities purchased from unrelated U.S. producers and Canadian producers, margins of underselling/(overselling), and USDA prices, by quarters, Jan. 1996-Sept. 1999[1]

Period	USDA[2]	United States		Canada		
	Price *(per cwt)*	Price *(per cwt)*	Quantity *(1,000 cwt)*	Price *(per cwt)*	Quantity *(1,000 cwt)*	Margin[3] *(percent)*
1996:						
Jan.-Mar.	$163.86	***	***	***	***	***
Apr.-June	166.37	***	***	***	***	***
July-Sept.	172.34	***	***	***	***	***
Oct.-Dec.	162.74	***	***	***	***	***
1997:						
Jan.-Mar.	168.57	***	***	***	***	***
Apr.-June	166.96	***	***	***	***	***
July-Sept.	173.67	***	***	***	***	***
Oct.-Dec.	170.63	***	***	***	***	***
1998:						
Jan.-Mar.	169.82	***	***	***	***	***
Apr.-June	165.12	***	***	***	***	***
July-Sept.	157.01	***	***	***	***	***
Oct.-Dec.	159.38	***	***	***	***	***
1999:						
Jan.-Mar.	186.96	***	***	***	***	***
Apr.-June	188.37	***	***	***	***	***
July-Sept.	187.58	-	-	-	-	-

[1] Vealer calves/special feds, intended for immediate slaughter, purchased on the spot market, on a live-weight basis. (Quantity in terms of cwt live weight.)

[2] Simple average of the monthly price of veal carcasses, 220-280 pounds, Central United States. No USDA prices were available for live veal.

[3] Margins compare prices provided by purchasers for U.S. and Canadian cattle collected in this investigation, that is the U.S. cattle prices in the second column with the Canadian cattle prices in the fourth column.

Source: Compiled from data submitted in response to Commission questionnaires and USDA data.

Figure V-2
Weighted-average net delivered prices (per cwt) of products 1 through 6, by quarters, Jan. 1996-June 1999

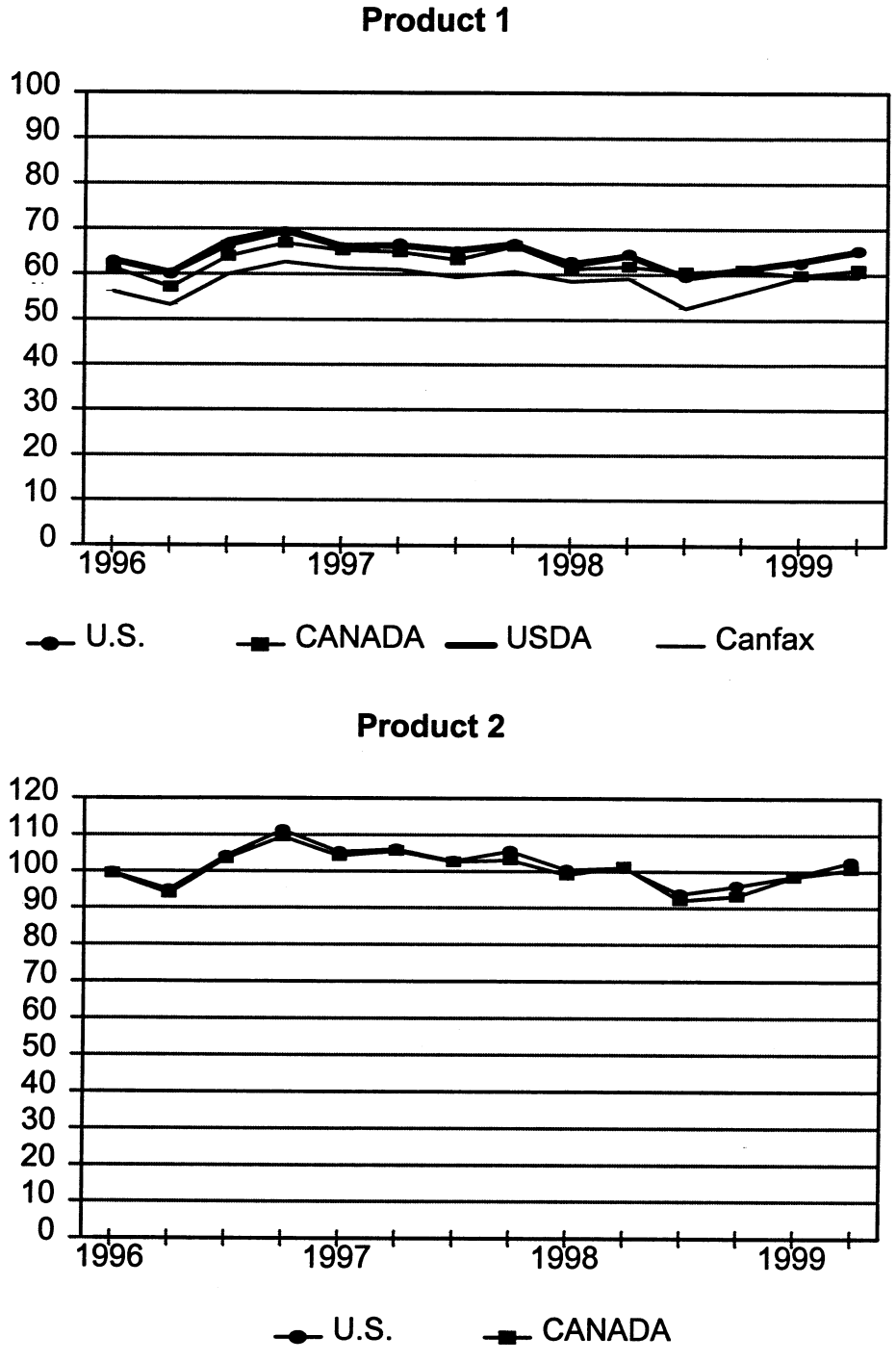


Figure continued on next page.

Figure V-2–Continued.
Weighted-average net delivered prices (per cwt) of products 1 through 6, by quarters, Jan. 1996-June 1999

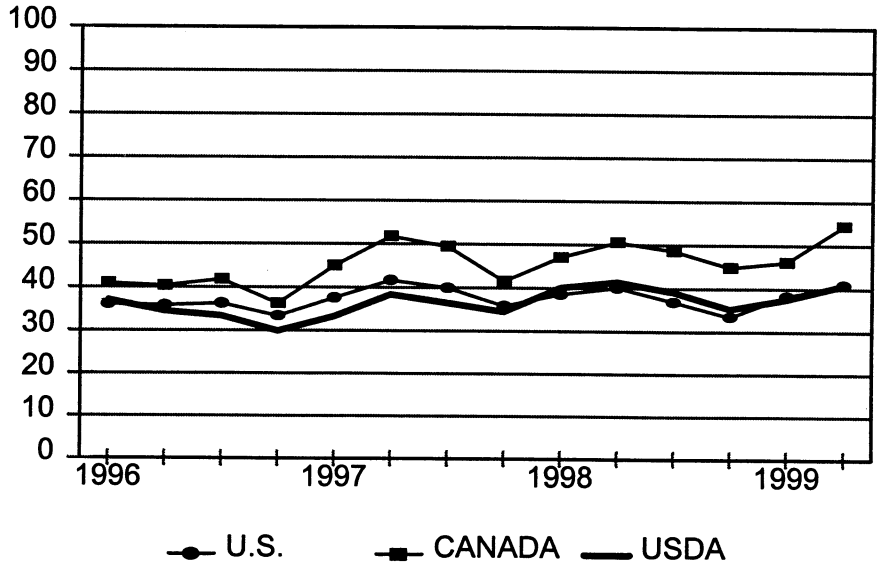
Product 3

* * * * * * *

Product 4

* * * * * * *

Product 5



Product 6

* * * * * * *

Source: Tables V-2 through V-7.

USDA prices were available through September 1999. The USDA price (similar to product 1) for fed steers 1,100 to 1,300 pounds was at its peak in the fourth quarter of 1996 at $69.85 per cwt; it hit its minimum in the third quarter of 1998 at $59.41 per cwt. The USDA price for Oklahoma City feeder steers (similar to product 4) 750 to 800 pounds ranged from $56.79 to $80.44 per cwt, reaching its lowest point in the second quarter of 1996 and its peak in the third quarter of 1997. The USDA price for Sioux Falls utility breaking cows (similar to product 5) reached its peak in the third quarter of 1999 at $42.58 per cwt; it hit its minimum in the fourth quarter of 1996 at $29.79. The USDA price for veal carcasses (the closest USDA price product to product 6) 220-280 pounds for Central United States was at its peak

in the second quarter of 1999 at $188.37 per cwt; it hit its minimum at $157.01 in the third quarter of 1998. Between January 1996 and September 1999, the USDA price for fed steers increased by 3.2 percent, the price of feeder steers increased by 33.1 percent, the price for utility breaking cows increased by 15.0 percent, and the price for veal carcasses increased by 14.5 percent.

Prices for U.S. product 1 ranged from a high of $69.23 per cwt in the fourth quarter of 1996 to a low of $59.56 per cwt in the third quarter of 1998. Product 2 prices peaked in the fourth quarter of 1996 at $111.30 per cwt and reached a low of $93.79 in the third quarter of 1998. Prices for product 3 ranged from a high of $108.11 per cwt in the fourth quarter of 1997 to a low of $100.02 per cwt in the first quarter of 1999. Product 4 prices peaked at *** per cwt in the fourth quarter of 1997 and reached a low of *** per cwt in the first quarter of 1996. Product 5 prices peaked in the second quarter of 1997 at $41.58 per cwt and reached a low in the fourth quarter of 1996 at $33.33 per cwt. Prices of product 6 ranged from a high of *** per cwt in the second quarter of 1999 to a low of *** per cwt in the third quarter of 1998.

The petitioners reported in their conference testimony that when the price of U.S. cattle was about to rise, packers would purchase large quantities of Canadian cattle (or contract cattle) and stop purchasing U.S. cattle to prevent this increase.[35] One witness (representing a packer) reported that this was not feasible for his firm (Washington Beef) or other firms in his area; he did not know about other areas.[36] Respondents also reported that this would be difficult to do because like the U.S. cattle, the Canadian fed cattle were at their best selling weight for only a very short period of time.[37]

Canadian Product

Between January-March 1996 and April-June 1999, prices increased between less than *** percent and 33.2 percent for products 2, 4, 5, and 6, and for products 1 and 3, prices declined between 0.5 percent and *** percent. Spot prices for Canadian product 1 ranged from $66.88 per cwt at their peak in the fourth quarter of 1996 to $57.05 per cwt in the second quarter of 1996. Prices for product 2 ranged from a high of $109.51 per cwt in the fourth quarter of 1996 to a low of $92.05 per cwt in the third quarter of 1998. Product 3 prices ranged from a high of *** per cwt in the second quarter of 1998 to a low of *** per cwt in the fourth quarter of 1998. Prices for product 4 ranged from *** per cwt in the second quarter of 1997 to a low of *** per cwt in the second quarter of 1996. Product 5 prices ranged from a high of $54.44 per cwt in the second quarter of 1999 to a low of $36.24 per cwt in the fourth quarter of 1996. Prices for product 6 were relatively stable with their high at *** in the second quarter of 1999 and their low in the first quarter of 1999 at ***.

Price Comparisons

The open prices and the competitive market for cattle make large margins of either over or underselling unlikely. Purchasers were asked if the price of cattle from different countries differed. Thirteen purchasers compared U.S. and Canadian prices. Ten, ***, reported that the prices were the

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[35] It was also reported that packers had flexibility to purchase different grades of cattle at the same plants. Ginger DeCock, Montana Beef Chairman, Women Involved in Farm Economics, conference transcript, p. 25.

[36] Gayland Pedhirney, President and Chief Operating Officer, Washington Beef, Inc., conference transcript, p. 143.

[37] Edward J. Farrell, counsel for Canadian Cattlemen's Association, conference transcript, p. 144.

same, 2 reported that U.S. prices were lower ***, and 1 reported that U.S. prices were higher.[38] When large margins occur for cattle, they probably indicate either errors in the data or significant differences in the products involved. In particular, the consistently large margins of overselling for the Canadian product 5, cull cattle, may reflect differences between the U.S. and Canadian cull cattle slaughtered.[39] Canadian imported cull cows consistently weigh more than U.S. cull cows, which may lead to more efficient slaughter.

Tables V-2 through V-7 show the margins of underselling/(overselling) for cattle from January-March 1996 through April-June 1999 for subject imports. Overall, there were 79 quarterly price comparisons between U.S. cattle and imports from Canada. Imports from Canada undersold U.S. products in 54 quarters, with underselling margins ranging from 0.1 percent to 14.5 percent, and oversold U.S. products in 25 quarters, with overselling margins ranging from 0.1 percent to 34.1 percent. Product 1 from Canada had 12 instances of underselling and 2 instances of overselling. The margins of underselling ranged from 0.6 percent to 6.5 percent, and overselling margins of 0.1 percent to 1.5 percent. Canadian product 2 had 13 instances of underselling and 1 instance of overselling. The margins of underselling ranged from 0.1 percent to 2.9 percent and the overselling margin was 0.4 percent. Product 3 from Canada had 9 instances of underselling and 5 instances of overselling. The margins of underselling ranged from *** percent to *** percent and the overselling margins ranged from *** percent to *** percent. Canadian product 4 had 9 instances of underselling and 2 instances of overselling. The margins of underselling ranged from *** percent to *** percent and the overselling margins were *** percent. Canadian product 5 oversold the U.S. product 5 in all 14 quarters with overselling margins ranging from 8.7 percent to 34.1 percent. Product 6 from Canada had 13 instances of underselling and 1 instance of overselling. The margins of underselling ranged from *** percent to *** percent and the overselling margin was *** percent.

LOST SALES AND LOST REVENUES

Because of the commodity nature of cattle, it was not possible for the petitioners to provide specific instances of lost sales or lost revenues. Lost revenue occurs when a seller reduces its price; however, cattle producers do not set prices in the first place, as they must take the market price. Some associations reported that the large number of imported cattle reduced the market price. Since cattle prices adjust automatically and sales contacts are relatively distant, it is difficult to identify any specific lost sales. The cattle will ultimately be sold. However, a number of associations mentioned that some of their traditional buyers were not even in the market because of imports.

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[38] In addition, one reported that it purchased by grade and yield, one reported it purchased cattle "where our value equals our bid price," and one *** reported that this question was impossible to answer since prices vary over regions and over the year.

[39] One purchaser reported that it paid more for Canadian culled cows because Canadian cattle were more likely to be exotic breeds and the Canadians sometimes feed culled cows. The feeding improved the meat quality from the culled cows. Staff discussion with ***, Oct. 7, 1999.

PART VI: FINANCIAL EXPERIENCE OF U.S. PRODUCERS

BACKGROUND

The financial data in this section are primarily derived from USDA sources, whose presentation of financial data differs from the typical results of operations (income-loss) data that the staff usually presents in its financial section. Also, there are no comparative data for the assets, capital expenditures, and research and development expenses that the Commission normally collects in its antidumping investigations.

Cattle is the largest value component of the U.S. agricultural sector. Most cattle producers are also involved in other commodities such as corn, soybeans, wheat, and other livestock such as hogs. There are over 1 million cattle operations in the United States with 1 or more animals on hand. The overall number of operations has declined between 1996 and 1998. However, the number of large operations (1,000+ head of cattle) increased during this time frame, whereas the other categories of 1-49, 50-99, 100-499, and 500-999 head of cattle declined during this period.[1]

OPERATIONS OF COW-CALF OPERATORS

The Commission's 332 investigation of the cattle industry in 1997 discussed the relationship between cattle cycles, prices, and profitability. "Changes in cattle inventories have followed a cyclical pattern referred to as the cattle cycle. The cattle cycle is characterized by the accumulated liquidation of cattle inventories, generally occurring in response to changes, or anticipated changes, in profits, i.e., prices received for cattle and prices paid for feed."[2]

The USDA reported a decline in cattle cash receipts in 1998 compared to 1997. "Cash receipts from marketing of cattle and calves decreased from $36.0 billion in 1997 to $33.7 billion in 1998, a 6 percent decrease. All cattle and calf marketings totaled 55.8 billion pounds in 1998, down 2 percent from last year (1997). The U.S. annual average price per 100 pounds live weight for cattle was $59.60, a decrease of $3.50 from the $63.10 in 1997. For calves, the annual average price decreased $0.10 to $78.80."[3] In 1998, the states of Texas, Nebraska, and Kansas had cash receipts of $5.8 billion, $4.3 billion, and $4.0 billion, respectively, and they accounted for over 40 percent of the cattle industry's total cash receipts of $33.7 billion.[4]

Since the format that the USDA uses for reporting cow-calf production cash costs and returns has changed twice in the past few years, there are two tables with overlapping 1997 data. The first table (VI-1) is for U.S. cow-calf production cash costs and returns per bredcow in 1996 and 1997. The gross value of production (comparable to revenues on a per-unit basis) rose sharply in 1997 from 1996. Total cash expenses were up slightly in 1997 from 1996. The gross value of production less cash expenses was negative in both periods but less in 1997 than in 1996. The second table (VI-2) is for U.S. cow-calf

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[1] USDA, NASS, *Statistical Highlights 1998-99: Livestock*, p. 4, retrieved Sept. 7, 1999, found at Internet address *http://www.usda.gov/nass/pubs/stathigh/1999.*

[2] *Cattle and Beef: Impact of the NAFTA and Uruguay Round Agreements on U.S. Trade.* USITC Pub. 3048, July 1997, p. 2-7. The cattle cycle is discussed in Part II of this report.

[3] USDA, NASS, *Meat Animals Production, Disposition, and Income 1998 Summary*, p. 1, retrieved May 21, 1999, found at Internet address *http://www.usda.mannlib.cornell.edu/reports/nassr/livestock.*

[4] Ibid., p. 8, by calculation from state data.

Table VI-1
U.S. cow-calf production cash costs and returns per bredcow, 1996-97

Item	1996	1997
	Per bredcow	
Gross value of production:		
Steer calves	$88.13	$128.21
Heifer calves	55.46	80.33
Yearling steers	76.97	89.86
Yearling heifers	32.93	38.24
Other cattle	58.79	68.86
Total gross value	312.28	405.50
Cash expenses:		
Feeder cattle	32.43	37.37
Feed:		
Concentrates/other feed	29.15	28.82
Supplemental feed	21.06	19.86
Harvested forages	110.72	112.65
Cropland pasture	7.64	7.79
Private pasture	90.83	88.49
Public land	6.69	6.41
Total feed costs	266.09	264.02
Other:		
Veterinary and medicine	21.68	22.27
Bedding and litter	0.36	0.37
Marketing	5.90	6.09
Custom operations	30.40	31.35
Fuel, electricity	22.29	22.33
Repairs	25.23	25.99
Hired labor	39.42	42.20
Total variable expense	443.80	451.99
General farm overhead	28.56	33.72
Taxes and insurance	17.84	17.75
Interest	32.04	32.46
Total, fixed cash expenses	78.44	83.93
Total, cash expenses	522.24	535.92
Gross value of production		
less cash expenses	(209.96)	(130.42)

Source: Compiled from official statistics of the USDA *(cow-calf costs and returns data)*.

Table VI-2
U.S. cow-calf production cash costs and returns per bredcow, 1997-98

Item	1997	1998
	Per bredcow	
Gross value of production:		
Steer calves	$130.39	$129.55
Heifer calves	80.91	80.48
Yearling steers	92.70	87.67
Yearling heifers	39.36	37.35
Other cattle	70.91	67.93
Total gross value	414.27	402.98
Cash expenses:		
Feeder cattle	38.45	36.49
Feed:		
Concentrates/other feed	29.17	26.95
Supplemental feed	19.19	15.06
Harvested forages	114.71	99.11
Cropland pasture	13.25	13.23
Private pasture	114.17	99.09
Public land	2.52	1.99
Total feed costs	293.01	255.43
Other:		
Veterinary and medicine	21.64	22.04
Bedding and litter	0.37	0.37
Marketing	5.80	5.86
Custom operations	30.48	31.02
Fuel, electricity	19.13	19.14
Repairs	24.87	25.34
Hired labor	2.98	3.12
Total variable expense	436.73	398.81
General farm overhead	63.41	60.00
Taxes and insurance production	31.13	32.92
Interest	10.98	10.28
Total, fixed cash expenses	105.52	103.20
Total, cash expenses	542.25	502.01
Gross value of production		
less cash expenses	(127.98)	(99.03)

Source: Compiled from official statistics of the USDA *(cow-calf costs and returns data)*.

production cash costs and returns per bredcow in 1997 and 1998.[5] [6] The gross value of production declined slightly in 1998 compared to 1997. Total cash expenses were down sharply in 1998 compared to 1997. The gross value of production less cash expenses was negative in both periods but less in 1998 than in 1997. There was a sharp decline in feed costs in 1998 which limited the negative return in that year.

The USDA reported (August 24, 1999) on the outlook for the cattle industry. "Continued low feed costs will help hold down production costs . . . Forage conditions in most of the country have been very favorable and hay stocks are being rebuilt . . . Cow-calf operators have lost money since 1995 and can expect only modest improvements in returns above cash costs this year."[7]

OPERATIONS OF FEEDLOTS

Cattle on feedlots are animals being fed for slaughter on grain and various concentrates, and are expected to produce a carcass that will grade Select or better. Feeder cattle purchased by feedlot operators are typically sold after 120 days, primarily to packers. Feeder cattle are the primary expense of the feedlot operator. The feed necessary to increase the weight of the feeder cattle is the next-largest expense, and combined with the cost of feeder cattle accounts for most of a feedlot operator's expenses. Labor, overhead, interest, etc. account for the remainder of a feedlot operator's expenses. A positive return for a feedlot operator depends upon the spread between its input costs and its selling price. The USDA does not maintain aggregate cash receipts and cash expense records for commercial feedlots. However, it does issue a report *(High Plains Cattle Feeding Simulator)* which shows the estimated net margins, selling prices, and costs for feeder cattle that are purchased by feedlots and marketed 4 months later. Data from this report for the marketing months of January 1996 to June 1999 are shown in table VI-3.[8] The table shows that margins were generally positive from the middle of 1996 to the middle of 1997, and were negative in the second half of 1997 and most of 1998. Since the latter months of 1998 through the middle of June 1999, margins have been positive. The highest positive margin was $9.43 per hundredweight (hundred pounds) in September 1996 and the largest negative margin was $7.86 in March 1998.

In terms of expenses, the difference between a cow-calf operator and a feedlot operator is that the cost of feed is the primary expense for a cow-calf operator whereas the cost of a feeder steer is the major expense (generally between 50 to 75 percent) for a feedlot operator. A breakdown of the expense trend for the net margin data shown in table VI-3 is shown in table VI-4.[9] [10] The financial experience of the feedlot operator may be different than that of the cow-calf operator; however, the data show that the cost of feeder steers bottomed in December 1998 and has generally risen through the first half of 1999.

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[5] The USDA does not publish Jan.-June 1999 data for this format. More current economic data in this section and other parts of the report may be more reflective of recent trends in the industry.

[6] The staff has reclassified some of the expense components in table VI-2 to make them comparable with the expense items in table VI-1. There are differences in some of the 1997 values in each table.

[7] USDA, ERS, *Livestock, Dairy, and Poultry Situation and Outlook*, Aug. 24, 1999, found at Internet address *http://www.usda.mannlib.cornell.edu/reports/erssor/livestock*. The term "this year" refers to 1999.

[8] The January 1996 to February 1997 data were based on a different format: the reported selling price, breakeven costs, and net margin.

[9] A breakdown of these data for January 1996 to February 1997 is not available.

[10] The data in table VI-4 are in dollars per head, whereas the data in table VI-3 are in dollars per hundredweight.

Table VI-3
Cattle: Estimated net margins for feedlot operators, Jan. 1996-June 1999

Item	Selling price	All costs	Net margin
	Per hundredweight		
Marketed in 1996:			
January	$64.63	$61.70	$2.93
February	63.00	63.00	0.00
March	61.77	64.12	(2.35)
April	59.85	65.20	(5.35)
May	59.70	59.95	(0.25)
June	61.37	58.49	2.88
July	64.07	56.87	7.20
August	67.15	59.13	8.02
September	71.12	61.69	9.43
October	70.95	66.31	4.64
November	70.70	68.74	1.96
December	66.05	66.97	(0.92)
Marketed in 1997:			
January	65.07	62.84	2.23
February	65.35	60.07	5.28
March	67.44	61.44	6.00
April	67.66	61.02	6.64
May	67.00	62.47	4.53
June	63.53	61.36	2.17
July	63.80	61.34	2.46
August	65.19	65.87	(0.68)
September	66.04	66.99	(0.95)
October	66.93	69.69	(2.76)
November	67.66	69.03	(1.37)
December	65.91	69.12	(3.21)
Marketed in 1998:			
January	64.57	68.41	(3.84)
February	60.77	67.99	(7.22)
March	62.05	69.91	(7.86)

Continued on next page.

Table VI-3--Continued
Cattle: Estimated net margins for feedlot operators, Jan. 1996-June 1999

Item	Selling price	All costs	Net margin
	Per hundredweight		
Marketed in 1998:			
April	$64.52	$70.67	$(6.15)
May	64.52	66.87	(2.35)
June	63.85	64.29	(0.44)
July	60.28	62.87	(2.59)
August	58.75	64.86	(6.11)
September	57.93	63.62	(5.69)
October	61.54	63.44	(1.90)
November	62.23	60.35	1.88
December	59.97	57.75	2.22
Marketed in 1999:			
January	61.46	59.16	2.30
February	63.17	60.48	2.69
March	64.75	59.83	4.92
April	65.34	60.15	5.19
May	65.00	60.80	4.20
June	66.15	60.75	5.40

Note: The January 1996 to February 1997 data were based on the reported selling price, breakeven costs, and net margin.

Source: Compiled from official statistics of the USDA *(Livestock, Dairy, and Poultry Report)*.

The data show that the highest monthly price ($627.08) for feeder steers was in November 1997 and the lowest price ($512.48) was in December 1998. They also show that the highest monthly price for feed, etc. ($192.82) was in August 1997, whereas the lowest price ($114.02) was in February 1999. The cost of a feeder steer increased in 1997 but declined in 1998. The cost of feed increased through most of 1997 then declined through 1998. However, in the first half of 1999, the cost of feeder steers increased whereas the cost of feed, etc. was relatively stable. This suggests that the increase in 1999 margins (table VI-3) was partially attributable to stable feed prices.

Table VI-4
Cattle: Breakdown of expenses for feedlot operators, Mar. 1997-June 1999

Item	Feeder steer	Feed, handling	Interest/other	Total expenses
	Per head			
Marketed in 1997:				
March	$514.43	$153.73	$35.79	$703.95
April	513.60	153.42	35.74	702.76
May	533.40	154.17	37.32	724.89
June	531.45	154.83	37.22	723.50
July	529.05	161.42	37.24	727.71
August	549.38	192.82	39.26	781.46
September	565.50	189.17	40.18	794.85
October	601.50	180.07	42.18	823.75
November	627.08	141.78	43.08	811.94
December	614.48	148.06	42.46	805.00
Marketed in 1998:				
January	599.78	147.58	41.52	788.88
February	586.60	151.72	40.76	779.08
March	603.83	155.49	41.71	801.03
April	618.00	153.28	42.55	813.83
May	589.73	145.54	40.67	775.94
June	575.10	143.26	39.70	758.06
July	565.13	141.78	39.03	745.94
August	572.70	140.95	39.37	753.02
September	565.13	134.83	38.73	738.69
October	558.75	136.87	38.39	734.01
November	529.98	133.42	35.30	698.70
December	512.48	114.92	34.78	662.18
Marketed in 1999:				
January	517.58	118.92	35.21	671.71
February	537.45	114.02	36.01	687.48
March	528.60	115.89	35.52	680.01
April	535.95	115.13	35.96	687.04
May	548.63	115.44	35.61	699.68
June	558.53	115.59	36.21	710.33

Note: The feeder steer is about 750 lbs. The category "feed, handling" also includes "management charge" and the category "interest/other" includes "death loss" and "marketing expenses."

Source: Compiled from official statistics of the USDA *(High Plains cattle feeding simulator report).*

PART VII: THREAT CONSIDERATIONS

The Commission analyzes a number of factors in making threat determinations (see 19 U.S.C. § 1677(7)(F)(i)). Information on the volume and pricing of imports of the subject merchandise is presented in Parts IV and V. Information on inventories of the subject cattle; producers' operations in Canada, including the potential for "product-shifting;" any other threat indicators, if applicable; and any dumping in third-country markets, follows.

THE INDUSTRY IN CANADA

The cattle industry in Canada, although only about one-eighth as large as that of the United States in terms of head of cattle, is very similar to that of the United States.[1] This is due, in particular, to the similar geographic conditions in Canada and the Western Rangelands and Corn Belt areas of the United States.[2] As discussed in Part II of this report, the production of cattle in both Canada and the United States is dependent upon the "cattle cycle."[3] The cattle cycles in each country usually parallel each other.

The number of cattle in Canada (based on January 1 cattle inventory data) increased slightly from 1996 to 1997, but decreased in 1998 and 1999, as indicated in table VII-1.[4] [5] The United States and Canada currently are believed to be near or at the end of the liquidation phase of their cattle cycles. It is projected that the number of cattle in Canada will slowly begin to increase in 2000 and beyond as the industry enters the consolidation phase of its cycle.[6] Production and capacity to produce cattle in Canada were lower in 1998 than in 1996.[7]

Canada is a net exporter of cattle, and virtually all of its exports of cattle are destined for the United States. Following the phaseout of Canadian grain transportation policies in the late 1980s, there was a shift in cattle feeding operations from Central to Western Canada.[8] Subsequently, the traditional movement of cattle from Western Canada to Eastern Canada has been increasingly replaced by movement of cattle from Western Canada south to the United States.[9] In 1998, 87 percent of Canada's

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[1] Canadian International Trade Tribunal, Nov. 1993 Ref. No. GC-92-001, p. 7.

[2] The cattle industry in Canada is concentrated in the Prairie Provinces (Alberta, Manitoba, and Saskatchewan) and the Central Provinces (Ontario and Quebec), all of which border the United States. The Prairie Provinces comprise 80 percent of the farmland of Canada and the region is well suited to the production of different varieties of grains, which are favorable to raising cattle. USITC, *Cattle and Beef: Impact of the NAFTA and Uruguay Round Agreements on U.S. Trade*, op. cit., p. 3-7.

[3] The cattle cycle consists of four stages: the consolidation phase, expansionary phase, the peak year, and the liquidation phase and, on average, lasts from 10 to 12 years.

[4] The trend is different based on July 1 inventory data; inventories decreased steadily from 1996 to 1999.

[5] Similar to the U.S. industry, Canadian cattle inventories peaked in 1975 at 14.3 million head.

[6] Chris Mills, Policy Advisor, Canadian Cattlemen's Association, hearing transcript, p. 230.

[7] Capacity consists of beef cows plus milk cows plus dairy and beef replacement heifers capable of producing calves in a given year. Production is defined as the calf crop.

[8] Canadian Cattlemen's Association prehearing brief, p. 17, and posthearing brief, p. 6.

[9] USITC, *Cattle and Beef: Impact of the NAFTA and Uruguay Round Agreements on U.S. Trade*, op. cit., p. 3-8; Agriculture and Agri-Food Canada Online, 1997-Livestock Market Review, Table 26--West to East Movement of Livestock, Sept. 2, 1998; Statistics Canada--Cat. No. 23-603-XPE, Livestock Statistics, Table 2.

Table VII-1
Cattle: Canada's capacity, production, inventories, and shipments, 1996-98, Jan.-June 1998, and Jan.-June 1999

Item	1996	1997	1998	January-June 1998	January-June 1999
	Quantity (1,000 head)				
Capacity (1)	7,498	7,333	7,115	(2)	(2)
Production (3)	5,630	5,379	5,290	4,396	4,308
Inventories as of January 1	13,402	13,453	13,272	13,272	12,981
Inventories as of July 1	15,096	14,945	14,747	14,747	14,505
Shipments:					
Home market (4)	3,505	3,631	3,770	1,845	1,898
Exports to:					
United States (5)	1,476	1,352	1,253	652	491
All other markets (6)	37	29	62	29	73
Total exports (7)	1,513	1,381	1,315	681	564
Total shipments	5,018	5,012	5,085	2,526	2,462
	Ratios and shares (percent)				
Share of total shipments:					
Home market	69.8	72.4	74.1	73.0	77.1
Exports to:					
United States	29.4	27.0	24.6	25.8	19.9
All other markets	0.7	0.6	1.2	1.1	3.0
Total exports	30.2	27.6	25.9	27.0	22.9

(1) Capacity consists of beef cows plus milk cows plus dairy and beef replacement heifers, as of July 1. Capacity as of July 1, 1999, was 7.0 million head.
(2) Not available.
(3) Production consists of the number of calves born.
(4) Home-market shipments consist of cattle slaughter in Canada.
(5) Exports to the United States consist of U.S. imports from Canada.
(6) Exports to all other markets consist of total exports minus exports to the United States.
(7) Total exports consist of Canadian exports to international markets.

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

total shipments to the United States were fed and cull cattle for immediate slaughter; cull cattle alone accounted for 25 percent of imports from Canada (appendix J, table J-1).[10]

Cattle exports from Canada to the United States decreased by 15 percent from 1996 to 1998, and decreased by 25 percent in January-June 1999 compared with the corresponding period in 1998. Home-market shipments of cattle in Canada increased by 8 percent between 1996 and 1999, and increased by 3 percent in January-June 1999 compared with the corresponding period in 1998.[11] The increase in home-market shipments reflects the liquidation phase of the industry in which producers reduce their herds until supply is back in line with demand, as well as increased slaughtering capacity in Canada.

Since 1996, slaughter capacity in Canada has increased by 720,000 head and now totals 3.8 million head per annum, an increase of 25 percent.[12] In Western Canada, plant capacity has increased from 2.26 million head in 1996 to 2.95 million head in 1999, an increase of 30 percent.[13]

FUTURES PRICES

Futures prices are available for feeder cattle from August 1997 through August 2000 and for slaughter cattle from December 1998 through October 2000. Feeder cattle futures prices have risen from a low of under $69 per cwt in August 1998 to above $79.50 per cwt for October 1999. Futures prices through August 2000, the last month for which they are available, are above the October 1999 futures price. Slaughter cattle futures prices have risen from a low of under $59 per cwt for December 1998, to a high of just over $71 per cwt for October 1999. After this, the futures price for fed cattle falls; however, it remains above $67 per cwt through October 2000, the last month for which these futures prices are available. The futures price for the months following October 1999 are all above the futures prices reported for December 1998 through August 1999.[14]

U.S. INVENTORIES OF PRODUCT FROM CANADA

U.S. imports of cattle from Canada are generally not held in inventory prior to slaughter. In addition, after feeder cattle from Canada enter U.S. backgrounding operations or feedlots and gain a significant amount of weight in the United States, they tend to lose their identity as foreign cattle.

ANTIDUMPING INVESTIGATIONS IN OTHER COUNTRIES

With respect to import relief investigations on live cattle in third country markets, Canada has not been subject to antidumping findings or remedies in any WTO-member countries.

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[10] Trade data on the U.S. beef industry are presented in appendix L, table L-1.

[11] Home-market sales reflect cattle slaughter.

[12] Canadian Cattlemen's Association prehearing brief, p. 28, and posthearing brief, p. 7.

[13] Canadian Cattlemen's Association prehearing brief, p. 28.

[14] Marketing Projections for 1999 Calves, Harlan Hughes Extension Livestock Economist, North Dakota State University, Oct. 22, 1999, Figures: Feeder Cattle Futures Prices and Slaughter Cattle Futures Prices: Live Cattle. *http://WWW.ag.ndsu.nodak.edu/cow/*. The futures prices reported in these figures were for every other month; the intervening months are assumed to be consistent with the patterns of the months for which data were reported.

APPENDIX A

FEDERAL REGISTER NOTICES

INTERNATIONAL TRADE COMMISSION

Investigations Nos. 701–TA–386 and 731–TA–812 (Final)

Live Cattle From Canada

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of countervailing duty and antidumping investigations.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigation No. 731–TA–812 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from Canada of live cattle.[1]

Section 207.21(b) of the Commission's rules provides that, where the Department of Commerce has issued a negative preliminary determination, the Commission will not publish a notice of scheduling of the final phase of its investigation unless and until it receives an affirmative final determination from Commerce. Although the Department of Commerce has preliminarily determined that countervailable subsidies are not being provided to producers and exporters of live cattle from Canada, for purposes of efficiency the Commission hereby waives rule 207.21(b) and gives notice of the scheduling of the final phase of countervailing duty investigation No. 701–TA–386 (Final) under section 705(b) of the Act (19 U.S.C. 1671d(b)). The Commission is taking this action so that the final phases of the countervailing duty and antidumping investigations may proceed concurrently in the event that Commerce makes an affirmative final countervailing duty determination. If Commerce makes a final negative countervailing duty determination, the Commission will terminate its countervailing duty investigation under section 705(c)(2) of the Act (19 U.S.C. 1671d(c)(2)), and section 207.21(d) of the Commission's rules.

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

EFFECTIVE DATE: July 26, 1999.

FOR FURTHER INFORMATION CONTACT: Elizabeth Haines (202–205–3200), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the

[1] For purposes of these investigations, Commerce has defined the subject merchandise as all live cattle except: (1) Imports of dairy cows for the production of milk for human consumption; and (2) purebred or other cattle specially imported for breeding purposes. The merchandise subject to these investigations is provided for in subheading 0102.90.40 of the Harmonized Tariff Schedule of the United States (HTS), with the exception of statistical reporting numbers 0102.90.40.72 and 0102.90.40.74.

Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

The final phase of the antidumping investigation is being scheduled as a result of an affirmative preliminary determination by the Department of Commerce that imports of live cattle from Canada are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The final phase of the countervailing duty investigation is being scheduled, under waiver of section 207.21(b), discussed above, for purposes of efficiency. The investigations were requested in a letter filed on November 12, 1998, by the Ranchers-Cattlemen Action Legal Foundation ("R-Calf") (Columbus, MT), and its supporting trade associations and individual cattlemen and cattlewomen. Counsel for R-Calf withdrew its petitions and addenda in countervailing duty investigation No. 701-A-385 (Preliminary) and antidumping investigations 731-TA-809-810 (Preliminary) on November 10, 1998. The letter received on November 12, 1998, petitioning for institution of antidumping and countervailing duty investigations, requested that the petition and addenda filed in the discontinued investigations be incorporated by reference in the instant investigations.

Participation in the Investigations and Public Service List

Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

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 the final phase of the investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on September 23, 1999, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on October 6, 1999, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before October 1, 1999. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on October 4, 1999, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing *testimony in camera* no later than 7 days prior to the date of the hearing.

Written Submissions

Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is September 30, 1999. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is October 14, 1999; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before October 14, 1999. On November 2, 1999, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before November 4, 1999, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (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: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

Issued: August 10, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99-21174 Filed 8-13-99; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–833]

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

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

EFFECTIVE DATE: October 21, 1999.

FOR FURTHER INFORMATION CONTACT: Gabriel Adler or Steven Presing, Office of AD/CVD Enforcement 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1442 or (202) 482–5288, respectively.

The Applicable Statute and Regulations

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

Final Determination

We determine that live cattle from Canada are being sold, or are likely to be sold, in the United States at less than fair value (LTFV), as provided in section 735 of the Act. The estimated margins are shown in the *Continuation of Suspension of Liquidation* section of this notice.

Case History

The preliminary determination in this investigation was issued on June 30, 1999. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Live Cattle from Canada,* 64 FR 36847 (July 8, 1999) (*Preliminary Determination*). Since the publication of this determination, the following events have occurred.

On July 12, 1999, respondent Schaus Land and Cattle Company (Schaus) filed a letter stating that it was ceasing its participation in this investigation. On July 16, 1999, the Department issued an amended preliminary determination, including a recalculated preliminary margin for Schaus that relied on data filed by the respondent on the eve of the issuance of the preliminary determination. *See Amended Antidumping Determination: Live Cattle from Canada,* 64 FR 39970 (July 23, 1999) (*Amended Preliminary Determination*). See also Schaus Sales Comment 1 (Facts Available), below.

In July 1999, we conducted on-site verifications of the questionnaire responses submitted by Cor Van Raay Farms Ltd. and Butte Grain Merchants Ltd. (Cor Van Raay); Pound-Maker Agventures, Ltd. (Pound-Maker); Riverside Feeders Ltd. and Grandview Cattle Feeders Ltd. (Riverside/Grandview); Jameson, Gilroy and B & L Livestock Ltd. (the JGL Group); and Groenenboom Farms, Ltd. (Groenenboom).

On August 13, 1999, we received case briefs from (1) the Ranchers-Cattlemen Action Legal Fund (R–CALF or the petitioners), (2) the Canadian Cattlemen's Association (CCA) and the named respondents in this investigation, and (3) the Free Market Beef Council (FMBC), an alliance of U.S. packers that import live cattle from Canada. On August 20, 1999, we received rebuttal briefs from the same parties. On August 30, 1999, the petitioners filed a letter alleging that Canadian producers of the subject merchandise were engaged in a scheme to reimburse importers for antidumping duty deposits relating to subject merchandise. We held a public hearing on September 1, 1999. At the hearing, the Department requested that parties submit comments regarding the allegation of reimbursement of duty deposits. The petitioners and the CCA filed such comments on September 10, 1999. *See* Sales Comment 3 (Reimbursement of Dumping Duty Deposits) below.

Scope of Investigation

The scope of this investigation covers live cattle from Canada. For purposes of this investigation, the product covered is all live cattle except imports of (1) bison, (2) dairy cows for the production of milk for human consumption, and (3) purebred cattle and other cattle specially imported for breeding purposes.

The merchandise subject to this investigation is classifiable as statistical reporting numbers under 0102.90.40 of the *Harmonized Tariff Schedule of the United States (HTSUS),* with the exception of 0102.90.40.10, 0102.90.40.72 and 0102.90.40.74. Although the *HTSUS* subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The period of investigation (POI) is October 1, 1997, through September 30, 1998. This period corresponds to each respondent's four most recent fiscal quarters prior to the filing of the petition (*i.e.,* November 12, 1998).

Fair Value Comparisons

To determine whether sales of live cattle from Canada to the United States were made at less than fair value, we compared the export price (EP) to the normal value. Our calculations followed the methodologies described in the *Preliminary Determination,* except as noted below and in company-specific analysis memoranda dated October 4, 1999, which have been placed in the file.

Export Price

JGL Group

We did not rely on the U.S. sales data reported by Prairie Livestock, one of the three collapsed parties comprising the JGL Group. *See* JGL Group Comment 2 (Facts Available) below.

Pound-Maker

We used the live quantities as reported for Pound-Maker's home market sales (whereas in the preliminary determination, we had made an adjustment for "negative shrink"). *See* Pound-Maker Comment 1 (Negative Shrink) below.

Normal Value

JGL Group

1. We excluded from the home market sales database certain paper transactions involving the "sale" and "repurchase" of cattle. *See* JGL Group Comment 1 below (Misreported Sales).
2. We did not rely on the home market sales data reported by Prairie Livestock, one of the three collapsed parties comprising the JGL Group. *See* JGL Group Comment 2 (Facts Available) below.
3. We did not add various reported income items to the reported gross unit price, as those income items were already included in the reported price. *See* JGL Group Comment 4 (Sales Revenue Items) below.

Cost of Production

JGL Group

We increased JGL's reported acquisition cost to reflect the producers' cost of production (COP), by applying the ratio of the five suppliers' aggregate net loss on cattle over their net cattle revenues. *See* Cost Issues, JGL Group Comment 1 (Traded Cattle) below.

Pound-Maker

1. We adjusted feed costs to allocate costs to certain by-products used in

production. *See* Cost Issues, Pound-Maker Comment 1 (By-Product Costs) below.

2. We adjusted feed costs to correct an error in the allocation ratio. *See* Memorandum Regarding Cost of Production and Constructed Value Adjustments for the Final Determination, dated October 4, 1999.

3. We adjusted the denominator used to calculate the general and administrative expenses rate and financial expenses rate to reflect costs on the company's financial statements. *See* Cost Issues, Pound-Maker Comment 2 (Cost of Sales Denominator) below.

Riverside/Grandview

1. We adjusted feeder cattle costs for cost offsets and other cost adjustments identified at verification. *See* Cost Issues, Riverside/Grandview Comment 4 (Accounting Errors) below.

2. We adjusted feed costs for cost adjustments identified at verification. *See* Id.

3. We adjusted other costs to exclude a submitted offset. *See* Cost Issues, Riverside Grandview Comment 2 (Claimed Cost Offset) below.

4. We adjusted the respondent's single reported cost to take into account cost differences associated with gender. *See* General Cost Issues Comment 3 (Gender Adjustment) below.

5. We adjusted the financial expense calculation by including bank penalties incurred during the cost reporting period and by adding arms-length interest expenses on non-interest bearing loans to shareholders. *See* Cost Issues, Riverside Grandview Comment 3 (Bank Penalties) below. *See* also General Cost Issues Comment 2 (Shareholder Advances) below.

Groenenboom

1. We adjusted the respondent's single reported cost to take into account cost differences associated with gender. *See* General Cost Issues Comment 3 (Gender Adjustment) below.

2. We adjusted the financial expense calculation by adding arms-length interest expenses. *See* General Cost Issues Comment 2 (Shareholder Advances) below.

Cor Van Raay

1. We adjusted the respondent's single reported cost to take into account cost differences associated with gender. *See* General Cost Issues Comment 3 (Gender Adjustment) below.

2. We adjusted the financial expense calculation by adding arms-length interest expenses. *See also* General Cost Issues Comment 2 (Shareholder Advances) below.

Currency Conversions

As in the preliminary determination, we made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales, in accordance with section 773A of the Act. We relied on exchange rates certified by the Federal Reserve Bank.

Interested Party Comments

Industry Support

The Canadian Cattlemen's Association (CCA) argues that the Department should not have initiated this antidumping duty investigation. According to the CCA, the petition did not meet industry support requirements set by statute, and the Department's estimation of industry support was flawed.

The petitioners argue that the Department should not consider challenges to industry support determinations at this stage of the proceeding, and that in any event, the Department's measurement of industry support to initiate was conservative and sound.

DOC Position: Section 732(c)(4)(E) of the Act provides that, after the administering authority determines that it is appropriate to initiate an investigation, the determination regarding industry support shall not be reconsidered. Therefore, we have not reconsidered our determination regarding industry support. We refer interested parties to our notice of initiation and companion memorandum, which set forth in detail the methodologies followed in establishing industry support. *See Initiation of Antidumping Duty Investigations: Live Cattle from Canada and Mexico,* 63 FR 71885 (December 30, 1998); *see also* Memorandum Regarding Determination of Industry Support, dated December 22, 1998.

Sales Issues—General

1. Date of Sale

The petitioners contend that the Department erred in basing the date of sale for U.S. and home market sales made pursuant to futures contracts on the date that prices were "locked in." According to the petitioners, the date of contract is a more appropriate date of sale.

The petitioners contend that in previous cases where prices were set by contract and subject to change per an agreed formula, the Department has based the date of sale on the date of contract, because no more negotiation is necessary in order to determine the essential terms of sale.

The respondents also object to the Department's use of the "lock-in" date as date of sale for the transactions in question. However, the respondents contend that the date of invoice or shipment, depending on the circumstances,[1] is more appropriate as the date of sale for these transactions.

According to the respondents, the Department's regulations establish a rebuttable presumption for the use of date of invoice as the date of sale, and there is no reason to depart from the use of the date of invoice (or, as appropriate, the date of shipment) in this case. The respondents contend that contracts are entered into for future delivery months in advance, and the month of delivery is an essential factor in establishing the price of cattle. According to the respondents, two contracts entered into on the same date will have different prices depending on the month of delivery, since monthly cattle prices vary according to seasonal trends. Further, the respondents argue that the material terms of sale are subject to change even after prices are "locked in."

In their rebuttal comments, the petitioners argue that the respondents' concerns about monthly price fluctuations are irrelevant, since the Department's practice in antidumping investigations is to compare POI average prices. The petitioners contend that if the Department rejects the date of contract as the date of sale, it should continue to rely on the date that prices are "locked in," since the terms of sale are specified on that date.

In their rebuttal comments, the respondents do not address the precedent cited by the petitioner in support of the use of the date of contract as date of sale. Instead, the respondents contend that the petitioners' proposal to rely on the date of contract is contrary to the statutory mandate to measure price discrimination, because it ignores that cattle prices made pursuant to contracts on a given date will vary in price depending on the date of delivery.

DOC Position: As in the preliminary determination, we have continued to rely on the lock-in date as the date of sale for the transactions in question. For the reasons explained below, we continue to believe that the lock-in date is the date on which the essential terms of sale are set.

The Department's regulations provide that the date of invoice is the presumptive date of sale, except where the material terms of sale are established

[1] For certain sales, the respondents do not generate invoices, but rather receive settlement reports after the date of shipment. For such sales, the respondents argue for reliance on the date of shipment.

on some other date. *See* 9 CFR 351.401(i). In this case, the evidence on the record indicates that on the date of contract the respondents (*i.e.*, the sellers) agree to deliver a specified number of head of cattle in a specified month, at a price to be determined by the respondents by reference to the Chicago Mercantile Exchange Board's future cattle prices. From the time that the contract is signed until a specified number of days prior to delivery, the respondents/sellers retain control over price with their ability to "lock in" a specific future cattle price. Under this fact pattern, it is evident that on the date of contract the respondents have not yet set the price of the cattle. The case precedent referenced by the petitioners, involving reliance on the date of contract as the date of sale, is distinguishable, because in those cases the sellers did not retain any discretion to set prices after the date of contract. *See Final Determination of Sales at Less Than Fair Value: Emulsion Stryrene-Butadiene Rubber from Mexico,* 64 FR 14972, 14879 (March 29, 1999) (date of contract was date of sale where price terms of long-term contracts were based on set formula of published monthly prices for major inputs that were outside either contracting party's control); *see also Final Determination of Sales at Less Than Fair Value: Offshore Platform Jackets and Piles from Japan,* 51 FR 11788, 11793 (April 7, 1986) (at the time contract was issued, contract price was determinable since there was nothing more on which the parties to the contract needed to agree).

The evidence on the record of this case further establishes that on the lock-in date, the respondents (the parties whose alleged price discrimination is at issue in this investigation) select a price that is binding on both parties. On this date, all the essential terms of sale are known, and are altered only rarely. Therefore, we believe that the lock-in date is the date on which the essential terms of sale are set, and is a more appropriate date of sale than the date of invoice.[2]

We note that the respondents have raised concerns that on any given lock-in date the prices for cattle to be shipped in different months will vary, and that therefore the use of the lock-in date is distortive. As the respondents themselves concede, these concerns are not relevant to an antidumping investigation, where prices are averaged across the entire period of investigation, but may have implications for an eventual administrative review. Whatever the implications of this issue for a review, they do not impinge on this segment of the proceeding.

2. Reimbursement of Antidumping Duty Deposits

The petitioners allege that U.S. packers are forcing Canadian producers and exporters of subject merchandise to absorb the costs of antidumping duty deposits, and that such deposits should be deducted in calculating export value. According to the petitioners, Canadian producers of subject merchandise have indicated at meetings in Canada that an antidumping duty order on cattle would have no effect because the Canadian producers absorb the cost of any duties. The petitioners contend that the reimbursement of the deposits would be considered a reduction to price in any future review, and that the cash deposit rate applied in the investigation should reflect such reimbursements, even if they did not occur during the POI. The petitioners further argue that the Department routinely modifies cash deposit rates in countervailing duty cases where a program-wide change has occurred, and should take similar account of the alleged post-POI price change in the instant antidumping proceeding. Finally, the petitioners argue that, while its arguments and accompanying evidence were submitted after the normal deadline, the Department has the discretion to extend this deadline. The petitioners contend that the evidence in question was only discovered after the filing of case and rebuttal briefs, and that given its implications, the Department should consider it.

The CCA argues that the Department should not consider the petitioners' factual information and argument regarding alleged reimbursement because the Department's regulations require the return of untimely filed information. The CCA further argues that reimbursement concerns are not applicable to investigations, since the Department's regulations regarding reimbursement apply only to duties assessed after the imposition of an antidumping duty order. According to the CCA, there is no legal basis to adjust cash deposit rates at this stage of the proceeding to account for alleged pricing changes after the POI. The CCA contends that any number of changes to both U.S. and home market prices may take place after the POI, and that one cannot assess the effect of any one change in isolation. The CCA further contends that the CVD post-POI modification regulation does not have a counterpart in the antidumping duty regulations.

Finally, the CCA argues that the documentation submitted by the petitioner does not evidence the reimbursement claimed, but rather indicates that a Canadian producer/exporter is acting as importer of record, and thus paying antidumping duty cash deposits. According to the CCA, the Department has held in recent cases that when the exporter and the importer are the same legal entity, there can be no duty reimbursement.

DOC Position: We have accepted into the record the petitioners' submission alleging reimbursement of cash duty deposits, as the allegation was based on information that became available only after submission of the case and rebuttal briefs, and could not have been made prior to the normal deadline. However, the reimbursement regulation applies only to duty assessments, not cash deposits. *See Stainless Steel Sheet and Strip in Coils from France: Notice of Final Determination of Sales at Less Than Fair Value,* 64 FR 30820, 30833 (June 8, 1999); *see also Stainless Steel Round Wire from Taiwan: Notice of Final Determination of Sales at Less Than Fair Value,* 64 FR 17336, 17341 (April 9, 1999). Therefore, adjustment of the cash deposit rate is not appropriate. In the event that an antidumping order is issued in this case, the Department will examine allegations of reimbursement of antidumping duty cash deposits at the appropriate time. This notice also serves as a reminder to the importing public of the regulatory provisions regarding reimbursement of antidumping duty assessments, set forth in 19 CFR 351.402(f). We further note that, if we find the exporter, by acting as the importer of record, is absorbing dumping duties on behalf of the U.S. customer, we may consider the duties absorbed to be a selling expense.

Sales Issues: Company-Specific

Schaus

1. Facts Available

The petitioners argue that the Department should calculate the dumping margin for respondent Schaus based at least in part on Schaus' own data, so as to ensure that the "all others rate" reflects Schaus" margin. The petitioners allege that Schaus deliberately withdrew from this investigation in anticipation that its data would reveal high dumping margins, and in expectation that by withdrawing and receiving a dumping margin based entirely on facts available, it would

[2] We note that for certain sales where prices were locked-in on the date of the contract, the "lock-in" date and the contract date are the same.

avoid inclusion of its dumping margin in the calculation of the all others rate.[3]

The petitioners argue that the pricing data submitted by Schaus are not on their face unreliable, and that the Department has the discretion to rely on those data even absent verification. According to petitioners, the exercise of that discretion is particularly appropriate when the complete rejection of submitted data might actually leave the respondent in a better position, and the statute was not intended to create a loophole for respondents to manipulate the final margins.

The petitioners further note that at the outset of the case they had argued for the selection of a pool of respondents including all major Canadian producers/exporters of subject merchandise, and that the CCA, by contrast, had argued to limit the pool of respondents to no more than six companies. According to the petitioners, the Department's acceptance of a respondent pool limited to six respondents enabled the CCA to manipulate the all others rate through selective withdrawal of high-margin respondents.

The petitioners request that the Department rely on Schaus' submitted U.S. data, and base normal value on adverse facts available (either the highest alleged normal value in the petition, or the highest normal value submitted by Schaus for any product). The petitioners argue that, at a minimum, the Department should rely on the margin found in the preliminary determination for purposes of the final determination.

Schaus argues that its final dumping margin should be excluded from the calculation of the all others rate. According to Schaus, the statute requires that the Department reject information that was not verified, and instead rely on the facts available; further, the statute requires that margins based entirely on facts available be excluded from the calculation of the all others rate. Schaus argues that since none of its data was verified, its dumping margin must be based entirely on facts available, and cannot be included in the calculation of the all others rate.

Schaus further argues that the statutory requirement that margins based entirely on facts available be excluded from the all others rate calculation is balanced by the requirement that *de minimis* margins also be excluded from that calculation. Schaus notes that the petitioners have not argued for the inclusion of Pound-Maker's preliminary *de minimis* margin in the calculation of the all others rate.

Schaus also contends that its final deposit rate should be no higher than its amended preliminary determination rate, which was based on Schaus' own data. According to Schaus, the adoption of the amended preliminary determination rate would constitute a reasonable application of adverse facts available, since it is more adverse than the highest margin calculated in the petition.

DOC Position: The facts surrounding Schaus' decision to withdraw from participating in this proceeding are unusual and have significant ramifications for the agency's administration of the antidumping law. At the outset of this case, faced with an overwhelming number of Canadian producers of the subject merchandise, the Department sought to limit its investigation to only as many producers and exporters as was administratively feasible within the statutory time limits. While the petitioners sought the investigation of dozens of producers, we accepted the proposal by the CCA that we investigate only the 5 or 6 largest producers or exporters, one of which was Schaus. The results of our investigation of these six producers must be applied to "all other" producers. Thus, the "all others" rate, which would apply to the majority of exports in this highly fragmented industry, will be a critical component in the effectiveness of the antidumping remedy should the investigation lead to an antidumping duty order.

On June 30, 1999, the day on which the Department was scheduled to issue its preliminary determination, Schaus submitted a supplemental response and pre-verification corrections that, among other things, substantially altered its reported costs. These corrections were accompanied by certifications as to their completeness and accuracy by Schaus' president, and Schaus' legal counsel certified that he had no reason to believe the submission contained any material misrepresentation or omission. Schaus and its counsel knew or should have known that the preliminary determination which the Department was scheduled to issue based on the earlier submission—and which would set the bonding rate in effect during the provisional measures period—would substantially understate the margin applicable to Schaus (and, consequently, the "all others" rate). Nevertheless, at no point prior to filing its revised response did Schaus or its counsel notify the Department that substantial revisions to its costs were appropriate.[4]

Given the timing of the submission, the Department had no opportunity to incorporate these corrections into its preliminary determination. Nevertheless, the Department stated in its preliminary determination that its initial examination of the Schaus data indicated that the antidumping rate calculated using such data may differ significantly from the preliminary rate of 5.43 percent applied to Schaus based on the original submission. *See Preliminary Determination* at 36848. The Department announced its intention to "examine this [revised] data further and, if we find that the errors corrected result in a rate that differs substantially from the rates as calculated for this preliminary determination, we may issue an amended preliminary determination * * *." *Id.*

On July 1, 1999, the Department confirmed that the corrections filed by Schaus, including cost items that had been omitted from the original submission, resulted in a substantial increase in its antidumping rate from 5.43 percent to 15.69 percent. On July 9, 1999, counsel for Schaus verbally notified Department staff that Schaus had decided to decline verification and withdraw all questionnaire responses from the record of the investigation. As explained in a subsequent letter, counsel stated that

> Schaus has determined that, despite its best efforts and its nonstop preparatory work * * *, the Department's methodology in this investigation and its verification standards for certain accounting requirements cannot be satisfied when applied to Schaus, a small, family-owned business that does not have internal accountants or computerized sales and cost record-keeping. The way that Schaus conducts its business and maintains its books and records in the ordinary course of its business has led Schaus to conclude reluctantly that it cannot participate in verification.

See Letter from Blank Rome Comisky & McCauley LLP to Secretary of Commerce, dated July 12, 1999.

On July 20, 1999, the Department issued its determination that amendment of the preliminary determination was appropriate. *See Amended Preliminary Determination* at 39970. The Department stated that Schaus' withdrawal from the proceeding did not preclude correction of the preliminary determination to accurately

[3] Section 735(c)(5)(A) of the Act provides that the all others rate shall exclude any zero and *de minimis* margins, as well as any margins determined entirely on the basis of facts available.

[4] As indicated throughout the antidumping questionnaire and as a matter of administrative practice, parties are required to notify the official-in-charge immediately where significant issues or corrections are identified.

reflect the corrected information which Schaus had submitted on the day of the determination. As the Department explained, "To do otherwise would allow manipulation of the administrative process in a manner that prevents the determination of accurate antidumping rates, and would thwart the proper administration of the antidumping law." *Id.* As a result, the Department amended its preliminary determination to revise the antidumping rate for Schaus to 15.69 percent and to make a corresponding correction to the "all others" rate from 4.73 percent to 5.57 percent.

If the Department were to base Schaus' final margin on the facts available rather than the proprietary information in its questionnaire responses, Schaus' margin would be excluded from the calculation of the "all others" rate, in accordance with section 735(c)(5)(A) of the Act. Thus, regardless of the reasons for Schaus' decision to cease participating in this proceeding, its desire to withdraw its questionnaire responses from the record could seriously undermine the effectiveness of the antidumping remedy in this case should the investigation result in an antidumping order. Thus, the Department has examined whether it is appropriate to deny Schaus' request to withdraw its business proprietary information from the record of the proceeding given that substantially all exports will fall under the "all others" rate and respondent's withdrawal would significantly distort that rate. For the reasons discussed below, the Department determines that Schaus' information should remain on the record and form the basis for its final margin.

The Department is tasked with administering the antidumping law and possesses the inherent authority to protect the integrity of that process. In determining whether to permit Schaus to withdraw information, the agency must weigh competing interests, both of which are important to administration of the antidumping law. The Department must balance any potential negative impact that refusing to allow a respondent to withdraw information may have on its ability to obtain business proprietary information in future proceedings, against any negative impact on the integrity of the proceeding if withdrawal is permitted, and determine where the public interest lies.

The Department does not have subpoena power. The submission of information is voluntary. To administer the antidumping law, the Department depends heavily upon the willingness of the parties to provide extensive business proprietary information. As a result, there is a public interest in preserving the trust of companies subject to its proceedings that such information will have limited use and will remain largely within the control of the companies submitting such information. However, once a party voluntarily submits business proprietary information in an antidumping proceeding, the submitting party relinquishes some control over that information to the Department. For example, after the Department issues a final determination, a submitting party may not withdraw its proprietary information. Once the record of a proceeding is closed, no information may be added to, or withdrawn from, the administrative case record.

Equally compelling is the public's interest in the agency enforcing the antidumping law and preserving the integrity of its proceedings. While there is no statutory provision expressly dealing with the withdrawal of business proprietary information once it has been submitted, the courts have recognized "the inherent power of an administrative agency to protect the integrity of its own proceedings." *Alberta Gas Chemicals, Ltd. v.* Celanese Corp., 650 F.2d 9, 12. Thus, the agency has the discretion to deny a respondent's request to withdraw information where it is necessary to preserve the fundamental integrity of the process and the remedial purpose of the law.

In practice, the Department has allowed submitting parties to withdraw their business proprietary submissions from the administrative record. *See, e.g., Silicomanganese From Brazil,* 59 FR 55,432, 55,434; *Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From France,* 58 FR 6203, 6204 (Jan. 27, 1993); *Certain Hot-Rolled Carbon Steel Flat Products from Japan,* 58 FR 7103, 7104 (Feb. 4, 1993); *Certain Small Business Telephone Systems from Japan,* 54 FR 42541, 42542 (Oct. 17, 1989); and *Industrial Belts from Israel,* 54 FR 15509, 15512 (Apr. 28, 1989). In such cases, the Department bases the company's margin on facts available, using an adverse inference where warranted. It is the Department's ability to use adverse facts available that ensures that a company will not benefit by a refusal to participate in a proceeding.[5] Because the investigated companies normally account for substantially all exports to the United States, the elimination of the non-cooperative company from the "all others" rate in that situation is likely to be of marginal significance. Thus, the adverse facts available rule normally enables the Department to permit withdrawal of proprietary information while protecting the integrity of the process.

In the present case, however, the adverse facts available rule cannot serve that function. Substantially all future exports of live cattle, which will be subject to the "all others" rate if an antidumping duty order is issued, would inappropriately benefit from Schaus' refusal to participate. Section 735(c)(5)(A) provides that the "estimated all others" rate shall be:

> an amount equal to the weighted average of the estimated weighted average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 1677e of this title.[6]

The Department has expressed particular concern that the "all others" rate is susceptible to manipulation. Thus, for example, the Department excludes voluntary respondents from the calculation of the all-others rate "to prevent manipulation and maintain the integrity of the all-others rate."[7] The withdrawal of Schaus' data raises similar concerns. If Schaus' business proprietary information is withdrawn, the Department must base its margin entirely on facts available and eliminate Schaus' margin from the "all others" rate. As a result, the withdrawal of Schaus' corrected information would have the effect of significantly distorting the rate that will apply to substantially all exports of the subject merchandise to the United States.

Given that withdrawal of Schaus' data would significantly distort the "all others" rate and that the "all others" rate will apply to substantially all exports of the subject merchandise, the Department has determined that retention of that data is necessary to preserve the integrity of the process and the remedial purpose of the law. Therefore, the Department has based Schaus' margin on its revised questionnaire response and included

[5] "The Department's potential use of [facts available] provides the only incentive to foreign exporters and producers to respond to the Department's questionnaires." *See* SAA at 868.

[6] This provision reflects a similar requirement in Article 9.4 of the Agreement on Implementation of Article 6 of GATT 1994 (the Antidumping Agreement) that the rate applicable to non-examined exporters or producers shall not include margins determined based upon the facts available.

[7] *Antidumping Duties; Countervailing Duties; Proposed Rule,* 61 Fed. Reg. 7307, 7315 (Feb. 27, 1996); *see also Antidumping Duties; Countervailing Duties; Final Rule,* 62 Fed. Reg. 27295, 27310 (May 19, 1997).

that margin in the calculation of the "all others" rate.

We disagree with Schaus that its corrected information must be rejected because it was not verified. While section 782(i) requires that the Department verify information relied upon in making its final determination, the statute does not define what constitutes sufficient verification. *Micron Technology, Inc.* v. *United States,* 117 F.3d 1386, 1394. *Cf. American Alloys, Inc.* v. *United States,* 30 F.3d 1469, 1475 (Fed. Cir. 1994)("the statute gives the Department wide latitude in its verification procedures"). Similarly, the Department's implementing regulation is general in nature and does not specify any methods, procedures or standards to be used for verification. *See* 19 CFR 351.307(1998). The purpose of verification is to test information provided by a party for accuracy and completeness, and does not require that the Department audit every figure in a response. *See Bomont Indus.* v. *United States,* 733 F. Supp. 1507, 1508 (CIT 1990). Moreover, while the agency's practice is to conduct on-site verifications of each investigated company, there are circumstances in which the agency may verify only a limited sample of the investigated companies.[8] Thus, in limited circumstances, data not specifically verified may be used in an investigation to calculate a company's dumping margin.

In the present case, the information at issue was voluntarily submitted by Schaus and the company certified that the information was complete and accurate. Because Schaus submitted this information knowing that it would substantially increase its dumping margin, we find the information is much like a statement against interest and, therefore, highly credible. Moreover, there is no evidence on the record to suggest that the data submitted by Schaus, when compared to the pricing and cost data submitted by other respondents, as well as to general industry trends during the period, are aberrational or suspect on their face. As a result, given the circumstances presented in this investigation, the Department finds that the information submitted by Schaus is reliable, and we have continued to rely upon it for purposes of this final determination.

[8] *See* 19 CFR § 351.307(b)(3)(1998).

JGL Group

1. Misreported Sales

The petitioners note that the Department found at verification that certain reported home market transactions involved the "sale" and "repurchase" of cattle, and that the nature of these transactions was such that they should not have been included in the submitted sales database. The petitioners contend that unless the Department is certain that the transactions in question can be adequately identified and excluded from the sales listing and the calculation of costs, it should deem the JGL Group's data to be generally unreliable and rely on adverse facts available.

The JGL Group agrees that the transactions in question should be excluded from the sales listing, and contends that all such transactions have been properly identified. The respondent also contends that these transactions did not affect the calculation of unit costs for cattle that it produced, and also did not affect the calculation of unit costs for traded cattle.

DOC Position: We agree with both parties that the transactions in question should not have been reported. At verification, we obtained a listing of these transactions, and performed several tests to confirm that the listing was complete. Satisfied that the listing provided was complete, we have excluded these sales from the reported database. We are also satisfied that the transactions in question did not affect the reported unit costs for cattle.

2. Facts Available

The petitioners argue that the Department should calculate JGL's dumping margin in part on the basis of facts available, given the pervasive and systematic errors found at verification with respect to data submitted by Prairie Livestock, one of the Canadian producers of live cattle that has been collapsed with the JGL Group. According to the petitioners, the Department found errors on every one of the pre-selected transactions examined at verification, as well as on additional transactions selected on-site.

The petitioners further contend that the errors systematically understated home market prices and overstated U.S. prices, thus favoring the respondents. The petitioners propose that the Department assign to sales by Prairie (and include in the weighted average JGL Group margin) the highest margin found in the petition, or alternatively rely on either (1) the average margin in the petition or (2) the highest margin found for any other respondent.

The JGL Group concedes that the Prairie data contained errors, but argues that these were clerical in nature and minor in scope. According to the JGL Group, the errors contained in the preselected sales were identified and corrected at the outset of verification, and the additional errors found during verification were promptly corrected. The JGL Group contends that total quantity and value of its reported sales data was verified in the aggregate without exception.

Further, the JGL Group argues that the Department should gauge its cooperation on the basis of all the companies that comprise the JGL Group, rather than on Prairie alone. According to the JGL Group, the clerical errors identified by other JGL companies did not all favor the respondent, and in the aggregate, the effect of the errors was negligible.

DOC Position: We agree with the petitioners that the use of partial, adverse facts available is appropriate with respect to the sales data submitted by Prairie. As explained below, the errors found at verification were sufficient in number and magnitude to call into question the general reliability of the Prairie data, and we have not relied on those data.

At the outset of verification, we requested that the JGL Group companies identify any clerical errors in their submitted sales data. Prairie provided us with a list of such errors, which involved the reported gross unit price, sales expenses, customer identification, and product identification for specific sales. We noted that these errors affected almost all of the sample transactions preselected for verification several weeks prior to the start of verification. We asked company officials whether such errors might affect the remainder of the database, and they replied that they had checked the database, and had not found the errors to be pervasive.

Given the high incidence of errors affecting the preselected transactions, we examined a number of additional Prairie sales and found that there were several systemic errors affecting those sales. These included a significant error that, contrary to the statements made by Prairie at the outset of verification, also applied to the preselected sales, and in fact extended to half of all U.S. sales reported by Prairie. These errors involved the reporting of the gross unit price and multiple expense and other income items. The errors are described in detail in the Department's verification report. *See* Memorandum

Regarding Verification of JGL Sales Data, dated August 10, 1999, at 1 and 9–10.

On the whole, verification revealed a troubling incidence of error in the compilation of the Prairie sales data. If we could be sure that the database contained only those errors identified at verification, we would consider correcting those errors based on record data. However, the extent of the errors found with respect to the Prairie sales data at verification was such that we cannot reach such a conclusion with any degree of confidence. Therefore, for purposes of this final determination, we have not relied on the Prairie sales data.

We do not conclude, as argued by the petitioners, that the record evidence establishes an attempt by Prairie to systematically manipulate dumping margins, inasmuch as certain of the errors made by the respondent were against interest. At the same time, the statute requires that respondents act to the best of their ability in providing information to the Department, and we do not believe that the respondent did so in reporting the Prairie sales data. At verification, Prairie acknowledged that it had made inadvertent errors in the compilation of those data but claimed that they were due to inexperience with the company's record-keeping. While this may be the case, the extent of the errors found at verification indicate that the respondent did not, in reporting the Prairie sales data, act to the best of its ability.

We have determined that it is appropriate to rely on partial, rather than total, facts available in calculating a dumping margin for the JGL Group, given that (1) the other JGL Group companies were able to provide support for their sales data at verification, and otherwise cooperated in this investigation, and (2) the total quantity and value of Prairie's U.S. sales was confirmed, on the aggregate, at verification. *See id.* at 7–8. As partial facts available, we have assigned to the sales of Prairie the highest margin calculated for any respondent (*i.e.*, the 15.69 percent margin calculated for Schaus). We relied on the data submitted by the other JGL Group companies to calculate a weighted-average margin for the JGL Group, exclusive of Prairie. We then averaged the two rates, weighted by the relative total value of sales to the United States.

3. Feeder Cows and Bulls

The JGL Group argues that the Department should distinguish cull cows and bulls that are sold to be fed prior to slaughter ("feeder cows and bulls") from other cull cows and bulls that are sold for immediate slaughter. According to the JGL Group, it demonstrated early on in the investigation that there are significant physical and commercial differences between the two types of cattle, and these differences should have been recognized in the Department's model match hierarchy.

The JGL Group contends that feeder cows and bulls are cull animals with the capacity to gain at least 300 or 400 pounds of weight. According to the JGL Group, feeder cows and bulls sell for higher prices than other cull cattle, but for lower prices than normal feeder animals (*i.e.*, heifers and steers). The JGL Group contends that the Department should therefore treat feeder cows and bulls as separate and distinct from normal feeder animals.

The petitioners argue that the respondent's argument is predicated on untimely data provided during verification, in the guise of verification exhibits, and should therefore be rejected. The petitioners also argue that, at any rate, feeder cows and bulls are not sufficiently distinct to be treated as separate products. The petitioners contend that feeder cows and bulls are sold at prices approximately equal to the prices of normal cull animals, and that feeder cows and bulls are not necessarily fed long before being slaughtered, especially in times of high cull prices.

DOC Position: For this final determination, we have not differentiated between feeder cows/bulls and regular cull cows and bulls. At the outset of this case, interested parties submitted detailed proposals on product characteristics to be used for matching purposes. The CCA made only very brief mention of a possible distinction between feeder cows/bulls and regular cull cattle. *See* letter from the CCA to the Department of Commerce, dated January 20, 1999, at 7–8. The Department, in establishing the product matching criteria in this investigation, was unpersuaded by the CCA's argument, and did not incorporate this distinction. JGL provided certain evidence at verification that on occasion cull cattle are sold for additional feeding prior to slaughter. However, there is insufficient evidence on the record to establish that feeder cows/bulls have distinctly different physical characteristics, cost differences, or sales prices. Should this investigation result in an antidumping duty order, the Department will revisit this issue in the context of an administrative review.

4. Sales Revenue Items

The JGL Group alleges that the Department overstated normal value because it added to the unit price certain revenue items that were already included in that price. According to the JGL Group, the Department confirmed this at verification.

The petitioner argues that the Department examined the error in question only with respect to one of the three companies that comprise the JGL Group (JGL itself), and that any correction made with respect to this error should be limited to that company.

DOC Position: We agree with the JGL Group that the error in question should be corrected. The error arose because of conflicting statements in the JGL section B and C questionnaire responses, submitted on April 20, 1999. At page B–20, the respondent stated that the gross unit price included all revenue items. However, at page B–35, the respondent provided a formula indicating that the revenue items were not included in the gross unit price. The Department relied on the latter statement. At verification, the Department determined that the formula in question was incorrect, and that for sales by JGL and Iron Springs, the revenue items had indeed been included in the reported sales price. *See* Memorandum Regarding Verification of JGL Sales Data, dated August 10, 1999, at 9. As the error applied to sales by JGL and Iron Springs, and we have corrected the error for these companies.

5. Traded Cattle Sales

The JGL Group argues that the Department should exclude sales of traded cattle (*i.e.*, cattle purchased and resold by the JGL Group) in calculating margins for the final determination. According to the JGL Group, the antidumping statute contemplates producer-specific rates. JGL argues that although the Department analyzed separately the JGL Group's sales of traded and own-produced cattle, it calculated impermissibly a single weighted-average cash deposit rate that reflected the dumping margins on these distinct sets of sales.

The JGL Group contends that the Department has determined in past cases (such as *Pasta from Italy*) not to include sales of traded products in its calculations, noting the potential for circumvention, particularly when the reseller rate is lower than the all other rate. Further, the JGL Group argues that a producer is deemed the appropriate respondent when it has knowledge that its merchandise is destined for the United States, and the Department is unable, based on the record, to make

such a determination with respect to the producers of any cattle traded by the JGL Group.

The JGL Group argues that, in the event that the Department determines it appropriate to calculate margins for its traded cattle, it should calculate separate margins for own-produced and traded cattle. For this purposes, JGL proposes that all sales of traded cattle be included in the calculation of a single dumping margin, regardless of the specific producer.

The petitioners argue that the Department should include sales of traded cattle in its analysis, inasmuch as the dumping margin assigned to the JGL Group should be representative of all facets of the respondent's selling activities.

DOC Position: We have continued to include sales of traded cattle in the calculation of a single dumping margin assigned to all sales by the JGL Group.

The Department regards a producer of subject merchandise as a respondent provided, *inter alia,* that the producer has knowledge that its merchandise is destined for the United States. If the producer, without knowledge of the ultimate market of destination, sells its merchandise to another company in the comparison market, which in turns sells the merchandise to the United States, the Department looks to the latter company as a potential respondent. In the instant case, if a respondent were able to demonstrate that its resales involve cattle purchased from a supplier that had knowledge of the ultimate destination of the cattle, the Department would exclude such sales from its analysis. The JGL Group has not provided evidence that any of its suppliers were aware that their cattle were destined for the U.S. market. On the contrary, the JGL Group has argued in other contexts that because it purchases cattle in the Canadian market at auction, it is generally unable to identify the supplier. *See* JGL Group Section A Questionnaire Response, dated March 23, 1999, at A–3. Thus, based on the record, and absent evidence of knowledge of destination by the ultimate supplier, we find that the JGL Group is the appropriate respondent for the sales in question.[9]

Similarly, we do not believe it would be appropriate to calculate a separate dumping margin for sales of own-produced versus traded cattle. The record establishes that the JGL Group is the appropriate respondent for all the transactions in question, since the cattle were sold by JGL and there is no evidence that the producer knew that the cattle were destined for the United States. Consistent with the Department's practice, we have continued to calculate a single weighted-average margin for the respondent.

6. Affiliation

The JGL Group argues that Kirk Sinclair's cattle operations should not be collapsed with the respondent because Kirk Sinclair is not affiliated with the JGL Group as a whole. According to the JGL Group, the Department does not normally collapse a company with a group of affiliated/collapsed companies simply because it is affiliated with one company in that group. The JGL Group contends that Kirk Sinclair is affiliated with Prairie Livestock, but not with the other companies that make up the JGL Group, and thus does not meet the requirements for collapsing.

The petitioners argue that Kirk Sinclair, through Prairie Livestock, purchases, custom feeds, and sells finished cattle for the JGL Group as a whole. The petitioners contend that, given this, Kirk Sinclair is in a position to control the JGL Group, and should therefore be considered an affiliate of and collapsed with the JGL Group.

DOC Position: We agree with the petitioners that Kirk Sinclair meets the test for collapse with the JGL Group. The JGL Group is comprised of four operating companies, owned and operated by a handful of individuals. Kirk Sinclair is the majority owner of Prairie, one of the four operating companies of the JGL Group. Through Prairie, Mr. Sinclair also purchases, custom feeds, and sells finished cattle for the JGL Group as a whole. Given this, he is affiliated with Prairie through section 771(33)(E) of the Act (*i.e.,* affiliated through stock ownership), and is affiliated with the JGL Group as a whole through section 771(33)(G) of the Act (*i.e.,* affiliated through control, defined to exist where one party is "legally or operationally in a position to exercise restraint or direction over the other person," as evidenced by his integral role in purchasing, custom feeding, and selling finished cattle for the JGL Group as a whole).

The Department's regulations provide for the treatment of affiliated producers as a single entity where: (1) Those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities, and (2) The Department concludes that there is a significant potential for the manipulation of price or production. *See* 19 CFR 351.401(f)(1). In identifying a significant potential for the manipulation of price or production, the Department may consider such factors as: (i) The level of common ownership; (ii) The extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and (iii) Whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers. *See* 19 CFR 351.401(f)(2). These factors are illustrative, and not exhaustive.

Kirk Sinclair's position within the JGL Group is such that he meets both prongs of this test. First, his facilities allow for the production of cattle indistinguishable from other cattle produced by the JGL Group. Second, Mr. Sinclair, in his capacity as manager and principal owner of Prairie, is engaged in the purchase, fattening, and sale of cattle for the JGL Group as a whole, such that he and his partners in the JGL Group share sales and production information, and his operations are intertwined with those of the JGL Group. Therefore, if this investigation should result in the imposition of an antidumping order, the JGL Group's cash deposit rate would apply to any entries of cattle produced by Kirk Sinclair.[10]

Pound-Maker

1. Negative Shrink

The petitioners argue that the Department should not rely on Pound-Maker's reported live quantities for sales involving "negative shrink" (*i.e.,* sales in which the cattle appear to have gained weight in transit from the feedlot to the packing plant). The petitioners assert that we should continue to use

[9] This case is distinguishable from *Pasta from Italy,* where the Department excluded resales where evidence demonstrated that the producer had knowledge that the pasta was destined for the United States. In that case, the Department found that "* * * the producer of the purchased pasta would have knowledge that the product was destined for the U.S. because it had vitamins added (vitamin enriched pasta is usually sold in the U.S.) and because the packaging would clearly indicate that it was destined for the U.S. market." *See* Memorandum Regarding Treatment of Purchased Pasta, dated July 31, 1998, in case A–475–818. In this case, by contrast, the producers of the cattle sell their merchandise at auction, and do not know the ultimate destination.

[10] We note that although Kirk Sinclair meets the test for collapse with the JGL Group, we have not included his sales in our analysis. The Department explicitly instructed the JGL Group that in view of the small volume of sales by Kirk Sinclair to unaffiliated parties, those sales need not be reported. *See* supplemental questionnaire to the JGL Group, issued on May 14, 1999, at 28.

the reported feedlot weight for these sales, as we did at the preliminary determination, and that we should apply an average shrink factor to these sales. Alternatively, the petitioners argue that we should disregard all reported live quantities, and use the full weight at the packing plant less a standard five percent shrink for all home market sales.

Pound-Maker contends that negative shrink was verified by the Department, and that we should accept its live quantities as reported on these sales for purposes of the final determination.

DOC Position: We agree with Pound-Maker. The live weight for the cattle sales in question was verified to be accurately reported based on what the cattle weighed at the packing plant as indicated on the settlement report.

2. Commission Payments to Affiliates

Pound-Maker argues that the Department has no legal basis for adjusting the reported commission paid to one of Pound-Maker's sales agents that was found by the Department to be affiliated with Pound-Maker. Pound-Maker contends that the company in question is not affiliated with Pound-Maker within the meaning of the Act. Although Pound-Maker agrees that it is affiliated with the president and owner of the company in question because he is on Pound-Maker's board, the respondent asserts that the affiliation does not extend to the company that is wholly-owned by that board member and his two sons. Furthermore, Pound-Maker argues that even if the company in question is an affiliate of Pound-Maker, we still should not adjust the commission rate because (1) There is no material ownership relationship between the affiliate and Pound-Maker, and (2) There is no statutory or regulatory basis to adjust selling expenses paid to an affiliated party.

The petitioners contend that the Department properly adjusted the commission rate on sales made through the company in question. The petitioners agree with the Department that the company is an affiliate of Pound-Maker per section 771(33)(B) of the Act (which provides that any director of an organization and such organization are affiliated), and assert that the only issue is whether the commissions paid to the affiliated party were arms-length transactions. The petitioners further allege that the respondents have submitted information on the record indicating that the transactions in question were not at arms-length.

DOC Position: We disagree with Pound-Maker that there is no statutory or regulatory basis to adjust selling expenses paid to an affiliated party. *See Floral Trade Council* v. *United States,* Slip Op. 99–10 (May 26, 1999) at 10 (sustaining the Department's practice of treating commissions paid to an affiliated trading company as an intra-company transfer). At the same time, because whether the adjustment is made or not is immaterial, we have not adjusted the reported commission paid to this sales agent for the final determination.

Riverside/Grandview

1. Facts Available

The petitioners assert that we should draw an adverse inference based on a verification finding involving an understatement of live quantity in a single shipment of cattle that contained both Riverside-owned cattle and Grandview-owned cattle. The single shipment was reported to the Department as two sales transactions (one Grandview sale and one Riverside sale), and the error was reflected in one of the two transactions. The petitioners claim that we reviewed too few sales to determine whether this error was systemic and that we should therefore make an upward adjustment to total quantities for all shipments involving a mix of both Riverside and Grandview cattle.

The respondents assert that we obtained the relevant information to correct any such errors, and no adverse inference is warranted.

DOC Position: We agree with respondents. After verification, the Department is satisfied that the error in question was isolated. Contrary to the petitioners assertion, we reviewed a significant number of sales at verification, including 20 preselected sales and numerous additional sales selected on site, and found no evidence to indicate that the error in question was systemic. We have therefore corrected the error discovered at verification, and have drawn no adverse inferences in this regard.

Cost Issues—General

1. Collapsed Entities

The petitioners argue that permitting the JGL Group, Riverside-Grandview, and Cor Van Raay's collapsed entities to eliminate inter-company transactions and to report the collapsed entity's cost of production net of inter-company revenues and expenses violates the language and intent of the statute. The petitioners maintain that section 773(f)(1)(A) of the Act requires the Department to use the costs from the normal books and records of the "producer," unless the records are not consistent with generally accepted accounting principles (GAAP) or do not reasonably reflect costs associated with the production of subject merchandise. The petitioners note that these three respondents departed from their normal accounting records and collapsed their operations by eliminating inter-company transactions.

The petitioners argue that this collapsing of the various entities' costs violates the language and intent of the statute by permitting collapsed respondents to obtain a lower cost than would be found between unaffiliated parties. The petitioners maintain that the Department may ignore the transfer price between affiliated parties only when the charges do not fairly reflect the amount usually charged between unaffiliated parties. The petitioners contend that, in the instant case, the amounts reflected in the normal books and records of the exporter or producer are arm's length and above cost, such that the exceptions do not apply.

The petitioners argue further that, in the case of JGL, the collapsing memorandum did not indicate that Thompson and JGL or Thompson and Iron Springs were collapsed, and should be considered to be merely affiliated parties.

Finally, the petitioners contend that there is no reason to extend the practice of collapsing affiliated parties beyond normal accounting practice. The petitioners complain that this collapsing of records was used by companies that are not wholly-owned subsidiaries, who are not consolidated for accounting purposes, and are affiliated, in some cases, in only an indirect manner. The petitioners argue that while the Department has calculated entity-wide costs of production in circumstances where the affiliated parties are corporate divisions, the rules of collapsing should not be allowed to trump the statutory scheme of valuing affiliated transactions at arm's length prices. The petitioners conclude that sections 773(f)(1)(A) and 773(f)(2) and (3) make no distinction between affiliated companies that are or are not collapsed.

The respondents contend that it is the Department's well-established practice to treat collapsed companies as a single entity, and to disregard inter-company transactions in determining the single entity's weight average cost of production. The respondents note that the petitioners are urging the Department to treat each company within the collapsed JGL Group as individual companies for cost reporting purposes, but to combine them as a group for purposes of the sales

comparison for calculating and applying one single dumping margin. The respondents contend that both the Department and the court have rejected such inconsistent treatment, and cite *AK Steel Corp.* v. *United States,* 34 F. Supp. 2d 756, 765–66 (CIT, 1998); and *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod From Korea,* 63 FR 40404, 40421 (July 29, 1998) (Comment 7) ("[T]reating affiliated producers as a single entity for dumping purposes obviates the application of the major-input rule and transactions-disregarded rule because there are no transactions between affiliated persons").

The respondents further argue that the petitioners are ignoring the fact that, for a collapsed group of producers, "the exporter or producer" is the collapsed group of producers, and not each producer individually. The respondents contend that if the Department were to regard each individual producer as the "exporter or producer" within the meaning of the statute, it would have no basis for examining sales of all members of the Group, or in applying a single weighted average dumping margin to the entire group. According to the respondents, the courts have held that the "transactions disregarded" provision of the statute is inapplicable in the case of collapsed producers because that provision applies only between the collapsed "exporter or producer" and its affiliated suppliers.

Finally, respondents argue that it has never been the Department's policy to extend the cost side of the collapsing of affiliated parties beyond companies that are consolidated for accounting purposes, and that such an idea is inconsistent with the Department's regulation governing the issue and is not supported by any sound policy basis. The respondents argue that, moreover, when the Department collapses affiliated companies for sales comparison purposes, it also collapses for costs purposes because it recognizes the underlying commercial reality that inter-company profits are not a cost to the overall collapsed group.

DOC Position: We agree with the respondents that it is proper, when reporting sales and cost data, to eliminate inter-company transactions between companies that the Department is treating as a single entity (*i.e.,* is making a single antidumping duty rate determination for). While sections 773(f)(2) and (3) of the Act, the "transactions disregarded" and "major input" rules, allow the Department to review whether transactions between affiliates are at market prices or above cost, respectively, it does not follow that these rules should be applied to collapsed entities. The transactions disregarded and major input rules apply to transactions between the respondent and an affiliated raw material supplier or service provider. Also, sections 773(f)(2) and (3) of the Act refer specifically to "affiliated persons," which is a term defined in the statute. Therefore, use of an accounting or consolidation standard of affiliation is inappropriate. In applying the collapsing rule for reporting sales and cost data, not only must the parties be affiliated under the statute, but they must both be producers of the subject merchandise. This requirement limits the application of the collapsing rule, including the reporting of costs, to a few specific cases. Moreover, the transactions disregarded and major input rules still apply to all other suppliers or service providers affiliated to the collapsed entity.

Once the Department decides to collapse two or more producers into one entity and to apply one margin to their combined sales, the inter-company sales and costs must be eliminated because the home market sale prices of the group must be above the actual cost of production of the group. In short, it would be illogical to include inter-company profits in the actual cost of production of the group. The Department's collapsing policy was upheld by the court in *AK Steel Corp. et al.* v. *United States,* 34 F. Supp. 2d 756, 763–66 (CIT, 1998) (the Department's decision to treat affiliated parties as a single entity necessitates that transactions among the parties also be valued based on the group as a whole and as such, among collapsed entities the fair-value and major input provisions are not controlling). Further, as noted by the CIT, "to treat collapsed parties as no longer separate affiliates for purposes of 19 U.S.C. section 1677B(f)(2)–(3)" is "not only permissible but preferable as a more logical, integrated application of the statute."

As for the petitioners' suggestion that the Department never explicitly recognized Iron Springs and Thompson Livestock to be collapsed with the JGL Group, we note that from the outset of this proceeding that the JGL Group has appropriately responded to the Department's questionnaires on behalf of an entity that included these companies. Since the record evidence clearly supported the collapsing of Iron Springs and Thompson Livestock with the JGL Group (given their affiliation, interchangeable production, and potential for manipulation),[11] and since no interested party objected to this treatment, the Department did not issue a formal memorandum approving of the "self-collapse" of these parties. The Department has continued to regard these parties as a single collapsed entity for the final determination.

Given the above, we have relied on actual costs in determining the cost of manufacturing (COM) for each of the collapsed entities in the final determination.

2. Shareholder Advances

Respondents Riverside-Grandview, Pound-Maker, Groenenboom, and Cor Van Raay argue that the Department should treat non-interest bearing shareholder advances to the respective companies as equity rather than debt, and therefore should not calculate interest expenses on these advances. The respondents assert that the touchstone of the distinction between debt and equity is whether a repayment obligation exists. *See Porcelain-On-Steel Cooking Ware from Taiwan,* 51 FR 36425, 36432 (October 10, 1986), in which the Department found no reason to classify loans as equity "since repayment of the principal was part of the terms for these loans." The respondents claim that the Department's practice is to focus on repayment obligations, citing *British Steel PLC* v. *United States,* 936 F. Supp. 1053, 1069 (CIT, 1996), in which "Commerce argues its classification * * * as debt is supported by substantial evidence first because '[t]he hallmark of debt is the obligation to repay.'" The respondents also cite *Inland Steel Industries, Inc.* v. *United States,* 967 F. Supp. 1338, 1355 (CIT, 1997), in which the CIT noted that, "plaintiffs fail to point to any record evidence which definitively establishes the existence of a repayment obligation * * * [A]s defendant notes, the record contains 'no evidence of loan or repayment agreements, payment schedules or actual principal or interest payments being made, nor was there any other evidence tending to show that the GOF or Usinor Sacilor contemplated a repayment obligation.'"

The respondents argue that the Department has also considered other factors in determining how to treat advances by shareholders. In *Low-Fuming Brazing Copper Rod and Wire from South Africa; Final Determination of Sales at Less Than Fair Value,* 50 FR 49973, 49975 (December 6, 1985), the

[11] Iron Springs is a cattle producing consortium that is operated entirely by the JGL Group; Thompson Livestock is principally owned by members of the JGL Group, through a holding company.

Department determined that advances from shareholders were not traditional debt instruments primarily because of the indeterminate duration of the transactions and their treatment as equity in respondent financial statements. The respondents note that the Department has concluded that certain advances, even if subordinated to other debt, should still be identified as debt if they have a specific maturity date and require the payment of interest, citing *Elemental Sulphur from Canada; Final Results of Antidumping Duty Administrative Review,* 64 FR 37737, 37741 (July 13, 1999). The respondents argue that GAAP and the Department's past practice make clear that funds provided by shareholders to respondents should be treated as equity unless the record evidence shows an actual genuine obligation to repay the advance. The respondents assert that they had no obligation to repay, and thus the advances received from shareholders should be treated as equity, not debt.

The petitioners note that the Department normally relies on data from a respondent's normal books and records where those records are prepared in accordance with the home country's GAAP, and where they reasonably reflect the cost of producing the merchandise, consistent with Section 773(f)(1)(A) of the Act. The petitioners claim that the issue under consideration is whether the shareholder advances created an obligation of repayment of principal, or whether the advances established a right or claim to share in any dividends or other disbursements and the right to share in assets of the company in the event of liquidation, as set forth in *Interpretation and Application of Generally Accepted Accounting Principles 1998* (Delaney, Epstein, Adler, and Foran 1998). The petitioners argue that if, in the ordinary company books, the shareholder advances were not treated as equity or, more importantly, if the advances did not change the shareholder's rights and did not increase its share of the company, then the advances should not be treated as equity.

The petitioners claim that advances by Riverside-Grandview shareholders should be treated differently from those by Pound-Maker shareholders. The petitioners note that cash advances by Pound-Maker shareholders were treated as equity on the company's books and financial statements and, in return for the funds, the shareholders presumably obtained some additional claim on corporate assets or control. In contrast, the petitioners argue that advances to Riverside-Grandview, although subordinated to other loans, were not treated as equity on the company's books, but rather as liabilities or loans. The petitioners note that the balance of shareholder advances decreased during the POI, suggesting that repayment by Riverside-Grandview had occurred. The petitioners argue that there is no evidence that shareholders making the advances obtained a greater stake in Riverside-Grandview and that the record indicates that these advances are loans. The petitioners contend that advances to Groenenboom by its shareholders were not treated as equity in the company books and records, nor is there any evidence that the parties intended to create or increase shareholder claims to corporate assets.

DOC Position: We agree with the petitioners. In the instant investigation, there is no evidence that a repayment schedule exists for shareholder advances made to any of the four respondents. However, the absence of such a schedule, in and of itself, does not prove that a repayment obligation does not exist, or is not anticipated by the parties. The absence or existence of a repayment obligation may be determined from the manner in which a respondent has recorded the amounts received from shareholders in its accounting records.

The advances made to Pound-Maker by its shareholders are classified as equity in its audited financial statements. For Pound-Maker, there is no evidence of a repayment schedule or obligation, and there is no evidence that either principal or interest payments have been made. Since we do not have any basis for changing Pound-Maker's classification of these advances, we have determined that they should be treated as equity rather than debt and we have not included any interest expenses related to these advances in Pound-Maker's cost of production.

Conversely, on Riverside's audited financial statements and on Grandview's reviewed financial statements, the advances to Riverside and Grandview from their shareholders have been classified as liabilities, rather than equity. In addition, the shareholder advances balance outstanding decreased during the cost reporting period, indicating that a portion had been repaid. Furthermore, we disagree with the respondents that the lender's subrogation of these loans to the bank's debt virtually converts the loans into equity. To the contrary, the fact that a bank required the parties to sign subrogation agreements indicates that, from the bank's perspective, these advances reflect an obligation for the companies to the lenders. Presumably, the bank would not have required the subrogation agreements if this were not the case. Accordingly, we have no reason to believe that the respondent's normal classification of these advances as debt is inappropriate. Therefore, as in the preliminary determination, we have treated these advances as debt, consistent with Riverside-Grandview's classification.

As demonstrated in *Shop Towels from Bangladesh; Final Results of Antidumping Duty Administrative Review,* 60 FR 48966, 48967 (September 21, 1995), our practice is to impute interest expense on transactions when the rate charged by a related party lender does not reflect a fair market rate. In this case, we do not consider the respondents' interest-free related party loans to be reflective of the fair market rate in Canada since such loans typically involve some cost to the borrower. Therefore, we calculated interest expenses on the advance balances using a market rate.

We have also determined that the shareholder advances related to Groenenboom and Cor Van Raay should be classified as debt, and therefore we calculated interest expense on these balances using market rates of interest. The discussion of the advances to Groenenboom and Cor Van Raay involves proprietary information. *See* Memorandum from William Jones to The File, dated October 4, 1999.

3. Gender Adjustment

Riverside-Grandview notes that the Department adjusted its reported costs in the preliminary determination to account for cost differences associated with the gender of the cattle, and that the adjustment was based upon the average cost differences for finished steers and heifers reported by other respondents. The respondent argues that since it provided the cost data available from its own records, and since cost data by gender is not available for the entire cost calculation period, the Department should not make any gender adjustment for the final determination. Further, the respondent argues that it was inappropriate to rely, as facts available, on gender-specific costs of companies located in different provinces and operating under different circumstances. Riverside-Grandview notes that the cost differences indicated by its own data for representative sample lots of steers and heifers, which was obtained and reviewed by the Department at verification, are not significant. Riverside-Grandview further argues that, if the Department decides to make a gender adjustment to its costs,

it should do so based upon its own gender-specific data. Finally, Riverside-Grandview argues that if the Department applies a gender adjustment for the final determination, it should be sure that total costs after adjustment do not exceed the total actual costs of production.

Cor Van Raay and Groenenboom also argue that if the Department applies a gender adjustment to their costs for the final determination, it should be sure that total costs after adjustment do not exceed their total actual costs of production.

The petitioners argue that the need for a gender adjustment is compelled by the failure of Riverside-Grandview, Cor Van Raay, and Groenenboom to submit information in the form and manner requested by the Department. The petitioners assert that Riverside-Grandview admits that its own data is not the most reliable basis for calculating gender cost differences as the records are incomplete and did not calculate actual costs. The petitioners argue that the average differences shown by the submissions of other respondents or the CanFax data provide a more reliable basis for adjusting the submitted costs. The petitioners also claim that the Department properly resorts to facts otherwise available in a manner that may increase the cost of production. The petitioners argue that there is no reason to abandon the gender adjustment simply because, on an aggregate basis, such an adjustment would increase total costs.

DOC Position: As in the preliminary determination, we have continued to make an adjustment for cost differences relating to gender. When a respondent's submitted costs do not account for cost differences associated with physical characteristics due to limitations in its production records, the Department's practice is to adjust the submitted costs using a non-adverse facts available approach to more accurately reflect the product-specific cost of production. *See Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews,* 64 FR 12927, 12949 (March 16, 1999) (Comment 19).

In the instant investigation, we adjusted Riverside-Grandview's costs as the respondent claimed that in the ordinary course of business it did not account for cost differences associated with the gender physical characteristic. *See Preliminary Determination* at 36850. We confirmed at verification that Riverside-Grandview normally does not account for such differences in its accounting records. However, we obtained and reviewed company documentation which indicates the approximate cost differences due to gender and we have used those records to adjust Riverside-Grandview's costs for the final determination.

Since Cor Van Raay and Groenenboom did not provide similar data, we have made a gender adjustment to their costs based on the average gender cost differences experienced by the respondents for whom such differences could be determined. We agree with the respondents that it would be unreasonable to allocate more costs to cattle than were actually incurred and have taken this into account in making our adjustments.

4. Cost Test

The FMBC, an interested party, presented the economic argument that the live cattle markets in the U.S. and Canada are highly developed, regulated commodity markets and, consequently, the Canadian cattlemen are price takers. Therefore, the FMBC argues that when the Department performs its sales below cost test, it should ignore periodic market fluctuations and focus instead on multiple year economic cycle specific to the cattle industry.

The petitioners argue that the FBMC would have the Department redefine "fair value" and "normal value" to fit a definition that FBMC characterizes as a "fair return." The petitioners argue that in the absence of evidence that cattle are a highly perishable commodity, there is no basis to redefine terms explicitly defined by Congress. The petitioners argue that the use of the cost test described under section 773(b)(2)(C)(ii) of the Act (*i.e.,* a comparison of the weighted average unit price of all sales to the weighted average cost) applies only in instances where the product under investigation is highly perishable. *See* Statement of Administrative Action at 832. The petitioners argue that beyond the scheduled production date, cattle do not spoil, wilt or otherwise become unsaleable.

DOC Position: We agree with the petitioners and have applied the substantial quantities test in accordance with section 773(b)(2)(C)(i) of the Act. The Department has found that live cattle are not a highly perishable commodity and, therefore, there is no basis to apply the substantial quantities test in accordance with section 773(b)(2)(C)(ii) of the Act. The SAA, at 832, indicates that "This latter rule closely corresponds to the current Commerce practice of determining substantial quantities of sales below cost for highly perishable agricultural products." Finally, section 773(b)(2)(B) of the Act states that the phrase within an extended period of time "means a period that is normally one year, but not less than six months.

Cost Issues—Company-Specific

JGL Group

1. The Cost of Production for Traded Cattle

The petitioners argue that the submitted costs of five JGL Group suppliers are, at best, incomplete and are particularly inadequate with respect to labor costs, and that the Department lacks adequate costs to properly apply the cost test to sales of traded cattle. Therefore, they assert, the Department cannot rely upon home market sales of traded cattle and must resort to facts available for normal value. As facts available, the petitioners argue that the Department should compare U.S. sales of traded cattle to the estimated normal values provided in the petition. However, the petitioners argue that, if the Department believes the JGL Group suppliers were uncooperative, it should apply facts available by using the higher of the average normal values in the petition for sales of the same gender and weight, or the suppliers' costs adjusted to account for the numerous deficiencies found at verification.

The petitioners disagree with the JGL Group's assertion that its cattle acquisition value should be used as the COP and constructed value (CV) of the traded cattle. The petitioners argue that the use of acquisition costs contradicts the rationale set forth in past cases. However, the petitioners suggest that the JGL Group's acquisition costs could be used as facts available, if they are first adjusted to reflect the difference between the suppliers' costs (including labor) and the acquisition price of the JGL Group.

The petitioners argue that whether or not the sample of suppliers was statistically valid or not, the Department must rely on facts available (*i.e.,* the suppliers' cost) to complete the proceeding within the statutory deadlines. The petitioners contend that, because of the substantial number of cattle suppliers to the JGL Group, it was clear from the outset that any cost data would, at best, be proxy costs. Further, the petitioners contend that because it was never practicable for the Department to obtain the necessary information, under subsection 776(a)(1) of the Act, it was appropriate for the Department to resort to facts otherwise available by sampling five of the JGL Group's suppliers. According to the petitioners, section 776(a)(1) of the Act does not require statistical sampling.

The petitioners point out that the JGL Group is subject to this investigation at the insistence of the CCA and that it is ironic for the CCA to assert that a sample is not statistically valid, given that its own position at the outset of this investigation was for the Department to select the largest producers and not to use a statistically valid sample to choose respondents.

The JGL Group argues that there are insurmountable practical problems that preclude the Department from calculating accurate dumping margins on its traded cattle sales using cost data obtained from the JGL Group's cattle suppliers. The respondent argues that the Department simply has no usable cost of production data from suppliers, as a result of: (1) the huge number of suppliers to the JGL Group; (2) the inevitable time pressures of the investigation; (3) the simple inability of family farmers to provide meaningful data, due to the limitations of their businesses and record keeping; and (4) the Department's failure to follow statutory requirements for sampling. Therefore, the JGL Group argues that, if the Department decides to use the traded cattle sales, the only valid, complete product-specific cost data available are the JGL Group's verified acquisition costs.

The JGL Group argues that supplier data obtained by the Department is incomplete because it only covers three of the 14 products sold in both Canada and the United States. The JGL Group notes that it sold 55 different products in Canada. Moreover, the JGL Group claims that six product-specific costs obtained by the Department are critically flawed because they are not in fact product-specific, but rather are the weighted average cost per pound of all types of cattle produced by the individual supplier. The JGL Group argues that the reported supplier costs do not reflect a lack of cooperation, but rather the fact that no small producers can or do track costs on an animal-specific basis. On the other hand, the JGL Group argues that, as the Department observed, buyers like the JGL Group purchase many animals at auction and the exact weight, gender and type of each animal is known and is reflected in the price paid.

The JGL Group argues that the sample selected by the Department is not statistically valid and that the resulting data is not representative of the greater population. The JGL Group asserts that under Sections 777 f-1(a) and (b) of the Act the Department must use only "statistically valid samples." In addition, the JGL Group contends that due process requires samples to be representative, citing *National Knitwear & Sportswear Ass'n* v. *United States*, 779 F. Supp. 1364, 1373 (CIT, 1991), where the court stated, "The representativeness of the investigated exporters is the essential characteristic that justifies an "all others" rate based on the weighted average for such respondents."

In regard to the statistical validity of the sample, the JGL Group asserts that the Department failed to use a sound sampling methodology in its selection process. The JGL Group asserts that: (1) The Department's sample was too small given the size and heterogeneity of the relevant producer universe (*i.e.*, five out of thousands of suppliers) and the corresponding variance in products and costs; (2) the sample suffered from a lack of strict sampling procedures; and, (3) even the minimal sampling procedures that were described were not followed. The JGL Group concludes that the Department's sample therefore violates the statutory requirement that any samples selected be statistically valid.

Furthermore, the JGL Group asserts that the Department deprived it of its procedural rights as delineated in the statute by failing to consult with exporters and producers regarding the selection method to be employed. The JGL Group asserts that under Sections 777 f–1(a) and (b) of the Act the Department is required "to the greatest extent possible, to consult with the exporters and producers regarding the method to be used to select exporters, producers or types of products." The JGL Group states that at no stage of the selection process was it consulted by the Department on the supplier selection methodology. Moreover, the JGL Group asserts that to the extent that it was advised as to how the suppliers would be selected, the Department failed to adhere to its stated methodology, as it failed to identify or select from the largest producers.

The JGL Group argues that if the Department nonetheless decides to include sales of traded cattle in the antidumping analysis, then, as contemplated in its April 8, 1999, decision memorandum, it should use the JGL Group's acquisition costs as a non-adverse surrogate for the producer's cost. The JGL Group argues that the acquisition costs are product-specific (*i.e.*, providing a cost for each unique combination of weight band, gender and type), as verified by the Department. Further, the JGL Group argues that no provision in the statute requires the Department to use the COP of producers in applying the cost test to sales made by resellers.

Moreover, the JGL Group argues that economic theory supports the use of acquisition cost as a conservative estimate of production costs. The respondent argues that in competitive markets, such as the cattle market, the market price for any given animal will be reflective of the industry's average cost, plus a return on equity. Thus, the JGL Group argues that, rather than reflecting the costs of a single supplier, as gathered by the Department, market prices reflect the costs of the industry as a whole, and are a better indicator of production costs. The JGL Group argues that the Department's findings relating to the five suppliers support these economic principles, since although some of the suppliers showed marginal losses, most showed profits, and for the five overall, revenues exceeded costs. The JGL Group argues that the Department should use its cattle acquisition costs as a reasonable proxy for the cost of production as non-adverse facts available.

Further, the JGL Group asserts that the results of the Department's limited sampling confirms the appropriateness of using acquisition costs to conservatively estimate production costs. The JGL Group argues that overall revenues for the five suppliers selected by the Department were in excess of their costs and their revenues correspond to the JGL Group's acquisition costs, therefore the Department should use the acquisition values in the below cost test for the final determination.

Finally, the JGL Group argues that in order to perform a below cost test on sales of traded cattle, the Department could use the JGL Group's own production costs as a proxy for the supplier costs. The JGL Group further argues that the cost of production data for cull cows and bulls (i.e., culled cattle) is not at issue, as the supplier's cost is zero since culls are typically used as production assets for other types of products (*e.g.*, milk from dairy cows or calves for breeder cattle). The JGL Group argues that the value of such "cull" by-products is the acquisition price paid by the JGL Group (*i.e.*, the supplier's sale price).

DOC Position: In addition to the sale of its own self-produced cattle, JGL purchased and resold a large number of cattle produced by other Canadian cattle operations. Because the suppliers of JGL's traded cattle did not appear to have had knowledge of the ultimate destination of the cattle they supplied to JGL, we decided to include JGL's traded cattle sales in the calculation of JGL's weighted average margin. For a discussion of the Department's decision

to include the traded cattle sales in the final determination, *see* JGL Group Sales Comment 5 above (Traded Cattle Sales). Once it was determined that these traded cattle sales were to be included in our analysis, in order to obtain the actual cost of producing these cattle, it was necessary to obtain the supplier's actual production costs. Accordingly, the Department solicited cost of production information from a sampling of JGL's suppliers.

We agree with both parties that the per-unit costs submitted by the producers of the traded cattle are unusable for purposes of determining whether the home market sales of traded cattle were made at prices above their cost of production. The Department verified three of the five selected traded cattle producers and found that, while they had cooperated to the best of their ability, what books and records they did maintain did not allow them to track and report product-specific costs. Additionally, we found that the various cattle types were raised together in the same lots, making it difficult for the producers to separate costs by cattle type or weight. As a result, the per-unit costs supplied by the producers/suppliers are critically flawed because they are not product-specific costs, but rather are simply the weighted average cost per pound of all types of cattle produced.

While we concede that a larger sample could have achieved a greater cross representation of the population of the traded cattle suppliers, two factors prevented us from expanding our sample: (1) The inability to sample traded cattle suppliers who sold to JGL through auction houses, and (2) The large size of the population of suppliers. In our discussions with the JGL Group, the respondents informed the Department that their traded cattle suppliers number in the thousands, and that the overwhelming number of these traded cattle are purchased by the JGL Group at livestock auctions. The JGL Group also stated that because the auction houses handle the paperwork between buyer and seller and they do not maintain these records in an accessible format, it would be nearly impossible to identify the individual producers of cattle purchased at auction. Thus, it was not possible to select a sample of the entire population of the producers of JGL Group's traded cattle sales.

Moreover, faced with a population of thousands, and the limited time between the submission of the JGL Group's questionnaire responses and the preliminary determination, the Department determined that it would select only a manageable number of the JGL Group's direct suppliers of traded cattle. The reasonableness of this limited sample is supported by the fact that the CCA had to hire outside accountants to assist these small farmers/cattlemen in responding to the Department. A larger sample of producers of traded cattle would simply have overwhelmed both the Department and the JGL Group. It was thought at the time that a limited sample of the JGL Group's suppliers would provide a reasonable picture of the cost structure and profitability of the farmers/cattlemen. Unfortunately, the Department found that these suppliers' limited records did not allow them to provide product-specific costs by weight band, gender, and cattle type.

However, the issues raised about our sample obscure the larger point that regardless of the sampling technique used in this case, it appears that the responding cattle suppliers would still not have been able to provide usable data. That is, we believe that if the Department had selected a larger, more scientific sample, the selected farmers/cattlemen would similarly have been unable to provide usable data. As stated above, we agree with respondents that, at this level in the industry, the farmer/cattlemen's limited records and ranch size did not allow them to provide costs by weight band, gender, and cattle type. Therefore, no matter what sampling technique or sample size the Department chose, we would still be faced with using facts otherwise available to determine actual production costs.

We disagree with the respondents' arguments that the Department violated their procedural rights and that we failed to follow our intended procedures. First, we are surprised that the respondents have concluded that they were not consulted by the Department. Contrary to their assertion, the Department was in frequent contact with respondents' counsel on this specific issue. Not only did we specifically request and obtain JGL's accounts payable listing, but we subsequently requested that JGL provide information on a short list of 50 direct suppliers of traded cattle. We also had several discussions concerning the problems of obtaining data from auction houses. Moreover, section 777A(b) states that "[t]he authority to select averages and statistically valid samples shall rest exclusively with the administering authority." Thus, the final decisions on how large a sample should be and how the sample should be selected rest exclusively with the Department. Second, despite the respondents' erroneous assumption that we intended to sample JGL's largest suppliers, it is obvious that such an approach would have been impossible. As JGL asserted, it was impossible even to identify the suppliers from whom JGL purchased cattle though auction houses, let alone to identify the largest of such suppliers.

In any event, the Department is obligated to complete its investigation within the statutory deadlines, and must determine a cost of production of cattle for the JGL Group's suppliers. Unlike *Final Determination of Sales at Less Than Fair Value: Fresh Atlantic Salmon from Norway*, 56 FR 7661, 7672 (1991), the producers' actual costs are not available in this case. Section 776(a)(1) of the Act authorizes the Department to use facts otherwise available where the "necessary information is not available on the record." In selecting the facts otherwise available for this case, the Department finds that, given the cooperation of the JGL Group and its five selected traded cattle producers, the application of non-adverse facts available is warranted. Also, we believe that the suppliers of traded cattle that we selected are representative of the larger population in terms of farm/ranch size and sophistication of records, and that much of the aggregate financial data is representative. Therefore, we have adjusted the JGL Group's reported acquisition price of traded cattle to reflect the producers' cost of production. Since the acquisition prices are the revenues of the suppliers, we have increased the acquisition prices by the average loss of the five producers to obtain the cost of the average supplier. The aggregate financial data supplied by the five producers do not suffer from the problems reflected in the per-unit data. In addition, the acquisition prices are product-specific and are available for all of the products reported on the sales databases.

2. Cost Adjustments for Traded Cattle

The petitioners argue that the use of incomplete or estimated production costs for the suppliers, based upon the data verified, could have the effect of rewarding respondents with a lower margin by virtue of the fact that their accounting records do not track all costs. Moreover, petitioners argue that labor expenses should be included in the cost of production of the traded cattle. The petitioners cite the SAA at 835, noting that the Department computes a "representative measure of the materials, *labor*, and other costs, including financing costs, incurred to produce the subject merchandise" (emphasis added). The petitioners also

cite *Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from India,* 63 FR 72246, 72249 (December 31, 1998) (*Mushrooms from India*) (Comment 1), where the Department stated that when a respondent's normal accounting practices result in a mis-allocation of production costs, it will adjust the respondent's costs or use alternative calculation methodologies to more accurately reflect the actual costs incurred to produce the merchandise. Thus, the petitioners argue that the ranchers incur a real economic cost through their own labor and that the Department should recognize the labor costs for purposes of the antidumping law. The petitioners argue that the Department imputes a cost to family labor since the owner of a business expects a minimum return for his labor as well as a return on his investment, and wages and costs should not be excluded from the cost of production simply because it was not a grower's practice to pay wages to family members; in support, the petitioners cite *Final Determination of Sales at Less Than Fair Value: Fall-Harvested Round White Potatoes From Canada,* 48 FR 51669 51674 (November 10, 1983); and *Final Determination of Sales at Less Than Fair Value: Fresh Kiwifruit from New Zealand,* 57 FR 13695, 13705 (April 17, 1992).

The petitioners further question various other cost elements within the suppliers' cost build-ups, such as the depreciation expense for breeder cattle. The petitioners note that with respect to the JGL Group, both the Sorensons and Mr. Anderson included some depreciation costs for their breeder cows; however, the two differed significantly on the period of depreciation. The petitioners contend that neither party included any depreciation expense for bulls and recommend the inclusion of the expense using the average life. Specific to the Sorensons, the petitioners contend that no costs were assigned for slough hay or green feed. The petitioners claim that this issue was not addressed in the cost verification report. The petitioners indicate that additional errors were noted in the cost verification report which they claim could effect the reliability of the submitted data.

Regarding Mr. Anderson, the petitioners noted that because the grain market prices used in calculating normal value were misquoted from the Saskatchewan Department of Agriculture's data, the Department should use the correct data in the COP and CV calculations for the final determination. Finally, the petitioners argue that the conclusions made by the Department for the three verified JGL Group suppliers should be applied to the two unverified suppliers.

The JGL Group contends that if the Department does decide to use the limited supplier cost data, although several adjustments would be necessary to the calculation of costs, there is no basis for imputing a labor cost for any of the chosen suppliers as they are all sole proprietor farmers. The JGL Group argues that under tax and accounting rules sole proprietors are discouraged from paying themselves wages. Furthermore, the JGL Group argues that such treatment is reasonable since none of the suppliers incur any actual labor cost, but rather as the owners of their farms take their return on investment as profits. Moreover, they assert that the Department has no clear statutory authority to impute such labor expenses for sole proprietor farmers, since farm and the sole proprietor are the same entity, and thus the affiliated party transactions rules under section 773(f)(2) of the Act would not apply.

The JGL Group argues that the suppliers provided separate cost data for 1997 and 1998, but the Department requested that they focus on calendar year 1998, as it more closely corresponded to the POI. Respondents assert, however, that in the case of Edward Steinke it is more appropriate to use 1997 costs, as all sales to the JGL Group occurred in 1997. Additionally, in the case of Sorenson, the JGL Group maintains that 1998 costs should only be used for backgrounded cattle, and that 1997 reported costs should be used for weaned cattle. In this regard, the JGL Group suggests that unless the Department uses 1997 cost data as indicated above, there will be a mismatch between the products sold to the JGL Group and the calculated costs.

In the case of Brian Donison, respondents contend that computing interest expense on a "cost of goods sold" basis is distortive, as it does not consider borrowing costs for land. The JGL Group argues that land, a family farmer's primary production asset, is not reflected in the cost of goods sold. Therefore, under the Department's traditional approach to interest expense, no interest expense is allocated to the purchase of land. The JGL Group suggests that it would be reasonable to allocate interest expense between Donison's grain farming and cattle feeding operations based on the asset acquisition cost methodology previously submitted by Donison.

DOC Position: As noted in JGL Cost Comment 1 above, we resorted to the use of non-adverse facts available for the costing of the JGL Group's traded cattle sales. However, in order to rely on the aggregate financial data provide by the five suppliers we have adjusted the data to account for minor problems found at verification.

We increased the reported cost of manufacturing for each of the suppliers to account for labor supplied by the owner. We consider labor supplied by the owners of the farms or ranches to be affiliated transactions as covered under section 773(f)(2) of the Act. In this case, the farmer-cattleman is the owner of the farm-ranch and therefore is affiliated. In accordance with section 773(f)(2) of the Act, we tested the labor cost charged between the affiliates to determine if that element of value fairly reflects the amount usually reflected for sales of that element in the market under consideration. We do not consider zero labor costs to be reflective of an arm's length price. Thus, we have adjusted the suppliers' reported production costs to include a market value for the owner's labor.

With respect to the depreciation expense calculations for Sorenson and Anderson, we agree with the petitioners that a cost should be included for the depreciation of bulls. Specific to Sorenson, we note that pasture costs were addressed in the cost verification report and certain expenses have been included in the reported costs for hay and green feed. See Verification Report on the Cost of Production Data submitted by the Sorenson Brothers from Taija Slaughter to Neal Halper, dated August 3, 1999, at 8. Additionally, the report notes a minor adjustment for repairs and maintenance expenses which should be included in Sorenson's cattle costs of manufacturing. Specific to Anderson, we agree with the petitioners that the market grain prices which were misquoted in the COM calculation should be corrected. Regarding Donison's interest expense calculation methodology, we disagree with the respondent that the interest expense should be allocated on an asset-based methodology. We point to *Notice of Final Determination of Sales at Less Than Fair Value: Fresh Atlantic Salmon From Chile,* 63 FR 31411, 31430 (June 9, 1998) (Salmon), where we "recognized that [our] normal method of calculating financial expenses on the basis of cost of goods sold, without special allocations to specific divisions or assets, provides a reasonable measure of the cost incurred for the merchandise." Thus, for this final determination, we have maintained our practice to calculate financial expenses based on the cost of goods sold denominator.

We disagree with the JGL Group's argument that certain of the suppliers' data should be based on the 1997 cost data instead of the POI or 1998 data, the closest corresponding year. The Department's general policy is to use the cost of producing the merchandise during the POI or POR, rather than the cost of the sales during that period. In accordance with section 773(b)(3) of the Act, we calculate average costs incurred "during a period which would *ordinarily permit* the production of that foreign like product in the ordinary course of business." (emphasis added) We note that section 773(b)(3) does not direct the Department to use the cost of goods sold, but rather, the cost of production. Consistent with this provision, we normally require respondents to report their cost of production for the subject merchandise during the period of investigation or review (*i.e.*, the cost to produce the merchandise during the period in which they are making sales, as opposed to the cost to produce each individual product sold during the reporting period).

While we recognize that we have deviated from this general policy in a few instances, these departures were due to unique circumstances surrounding the particular cases. For example, in the *Salmon from Chile* case, the Department did not calculate a cost of cultivation for the POR because a one-year period is insufficient to capture the costs of production of that foreign like product in the ordinary course of business as required by section 773(b)(3)(A), since the growing period for salmon averages from between two and three years. The Department therefore had to extend the cost calculation period to include the entire growing period most recently completed (i.e., the period which would permit the production of the product). In the instant case, feeders are usually fed for a half to a full year before being sold, such that the ordinary production period does not extend outside the POI.

In *Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Germany*, 61 FR 38166 (July 23, 1996) (*LNPP*), we computed the COP and CV based on the specific costs incurred for each sale. However, since these are custom-made products, with no two newspaper presses being the same, we had no option but to use the cost incurred for each POI sale, even though some of the costs stray outside the POI. With cattle being a commodity-type product, the reasons for deviation from our normal practice in *LNPP* clearly do not apply.

In summary, the Department has a consistent and predictable practice regarding the proper cost calculation period for COP and CV; that is, to use the actual cost of manufacturing incurred during the period of investigation or review. Only in unusual circumstances has the Department deviated from this approach. We found no similar circumstances in the cattle case. We do not consider the JGL Group's argument sufficient grounds for deviating from our normal practice.

Pound-Maker

1. By-Product Costs

In the process of producing fuel grade ethanol from wheat, water, enzymes, and yeast, Pound-Maker also produces wet distillers grain (WDG) and thin stillage (TS). The company transfers all of the WDG and TS produced in the ethanol division to its cattle division where it is used in cattle feed to reduce the amounts of barley, other grains, and silage that would otherwise be consumed. In its normal accounting system, Pound-Maker records the transfers of WDG and TS using a formula tied in part to the average monthly price of barley. These transfers are eliminated by Pound-Maker in the preparation of its audited financial statements. The petitioners and Pound-Maker disagree as to whether a cost for WDG and TS should be included in Pound-Maker's COP.

The petitioners argue that the Department's cost verification report makes it clear that there is a market value for WDG and TS, despite assertions to the contrary by Pound-Maker. The petitioners submit two publicly-available documents in support of their claim that WDG and TS are sold in the U.S. market as feed. The petitioners argue that the inter-divisional transfer prices recorded by Pound-Maker do not appear to be distorted. The petitioners note that in the preliminary determination the Department accepted Pound-Maker's claim that WDG and TS are by-products of ethanol production and have zero costs, citing *Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from South Africa*, 60 FR 22500, 22556 (May 8, 1995) (*Furfuryl Alcohol*). The petitioners argue that this case is not applicable as the Department accepted the *Furfuryl Alcohol* respondent's assignment of zero costs to a product not because it was a by-product, but rather because the cost was effectively captured elsewhere. The petitioners claim that, in the instant investigation, Pound-Maker's use of WDG and TS reduces the feed costs that the respondent would otherwise incur to feed cattle, and that the use of zero costs for these products would understate its actual cost of production.

Pound-Maker argues that its accounting treatment of WDG and TS as by-products with zero costs is fully justified. Pound-Maker claims that this treatment should be accepted since the Section 773 (f)(1)(A) of the Act requires the Department to compute costs of production using the company's own records, unless the Department concludes that Pound-Maker's accounting departs from GAAP or does not otherwise reasonably reflect production costs. Pound-Maker claims that the Department distinguishes between co-products and by-products based on their relative sales value and that by-products are assigned zero costs of production while common costs are allocated among co-products. *See Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Goods from Argentina*, 60 FR 33539, 33547 (June 28, 1995) (*OCTG from Argentina*). Pound-Maker argues that there is unrebutted record evidence that TS, in the form produced by the company (*i.e.*, five to seven percent solids), has no commercial value and is not sold anywhere in Canada. Pound-Maker states that it provided the Department with a letter from a Canadian ethanol producer that produces and sells TS, but notes that the ethanol producer further processes its TS into a concentrated syrup (20 percent solids) before it is sold. Pound-Maker argues that significant capital investment in the form of additional equipment was necessary for this company to produce the concentrated syrup and that Pound-Maker cannot produce the same TS product. Pound-Maker argues that the estimated sales value of WDG is insignificant in relation to ethanol and thus is properly treated as a by-product. Pound-Maker notes that it provided the Department with a letter from a Canadian brewery that sold a product similar to WDG known as "brewer's spent grains" and the market value of this product is minor in relation to the value of ethanol. Pound-Maker claims that one of the documents submitted by the petitioners supports the respondent's classification, since it refers to distillers grains as by-products. Pound-Maker argues that *Furfuryl Alcohol* also supports its assignment of zero production costs, since both *Furfuryl Alcohol* and the instant case involve a respondent that treated a low-valued product, produced by one production process and consumed in another, as a by-product. Pound-Maker

argues that, if the Department were to determine that WDG or TS is a co-product rather than a by-product, the Department should allocate the costs of the wheat input based on the relative sales values of ethanol, WDG and TS. Pound-Maker claims that there is no legal basis for using its inter-divisional transfer price to value WDG and TS as it does not reflect any actual costs, but rather a value that is arbitrarily assigned based on hypothetical estimated costs for a substitute product.

DOC Position: This is a situation where as a result of the ethanol production process, two residual products, WDG and TS, are generated. Even though there is a market for these general type of products, they are not sold by the company. Instead, they are consumed by Pound-Maker's cattle operations. In the normal course of business, Pound-Maker assigns a value to the inter-divisional transfers of WDG and TS; however, for financial statement purposes, Pound-Maker does not allocate any of the costs to produce ethanol to the WDG and TS.

The Department's long-standing practice, now codified at section 773(f)(1)(A) of the Act, is to rely on a company's normal books and records if such records are in accordance with home country GAAP and reasonably reflect the costs associated with production of the merchandise. *See Final Determination of Sales at Less than Fair Value; Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil,* 64 FR 38756, 38787 (July 19, 1999) (Comment 47). Where we determine that a respondent's normal accounting practices result in an unreasonable allocation of production costs, the Department will make certain adjustments or use alternative methodologies to more accurately capture the costs incurred. *See Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea: Final Results of Antidumping Duty Administrative Reviews,* 64 FR 12927, 12949 (March 16, 1999)(Comment 19).

While we agree with Pound-Maker that the WDG and TS are appropriately classified as by-products of the ethanol production process, we disagree with Pound-Maker's claim that no value should be assigned to the inter-divisional transfers for use in the production of cattle. The WDG and TS are closely tied to Pound-Maker's cattle feeding operations in that WDG and TS account for a significant portion of cattle feed and TS represents the only source of water for three of Pound-Maker's six feedlot wings. To assign no value to these residual products consumed by its cattle feeding operations would result in an unreasonable allocation of costs between its two divisions. Clearly, the cattle operations are deriving a benefit from the by-products generated from the ethanol plant. This situation is akin to transfers of by-products between different operations in a steel mill. For example, coke gas is generated from a coking plant and is a by-product of the coke production process. If this coke gas is consumed in a blast furnace, the coking mill process will receive a credit for the estimated value of the gas, and the operation consuming the gas, the blast furnace in this example, will be charged the same estimated value. *See Management Accountants' Handbook* at 11–31 (Keller, Bulloch, Shultis, 4th ed. 1992). Accordingly, we have determined that it would be distortive to assign no value to the WDG and TS consumed by Pound-Maker's cattle feeding operations, and have determined that an adjustment to its reported costs is appropriate.

We disagree with Pound-Maker's assertion that the Department's decision in *Furfuryl Alcohol* supports assignment of zero cost to WDG and TS. In that case, we accepted a respondent's assignment of zero costs to bagasse, which is used in furfural production, not because it was a by-product, but rather because its cost was effectively captured in the respondent's reported coal costs.

Since we have determined that it is appropriate to assign value to the WDG and TS, the next issue is to decide on the most appropriate allocation method. The *Management Accountants' Handbook* at 11–25 offers suggestions on how to value by-products under different scenarios, including situations where there is an established market price for the by-products, situations where the by-product is an alternative to the main product being produced, and most appropriately for this case, instances where by-products are usable as substitutes for other materials. The textbook reads, "Here the value placed on by-products is determined by working from the price of the material replaced."

In the instant case, because the WDG and TS are being used as substitutes for barley and other grains fed to cattle on Pound-Maker's feedlots, it would be appropriate to assign costs to the WDG and TS using the value of the grains replaced in the feed mixture. An example of such treatment is provided in the *Management Accountants' Handbook* at 11–31. The text describes a steel plant that uses by-products of its coke operations in the production of other products, and values the by-products based upon the equivalent units of inputs (*e.g.,* fuel oil, coal) that are replaced. As noted earlier, Pound-Maker assigns values to transfers of WDG and TS, but these values are eliminated for purposes of its financial statements. According to Pound-Maker, these transfers "reflect values arbitrarily assigned by PMA * * * based on hypothetical estimated costs for a substitute product * * *." *See* Pound-Maker rebuttal brief at 37. Although Pound-Maker seems to indicate that the arbitrary nature of the assigned values is a defect that would factor against the use of these transfer values, the *Management Accountants' Handbook* at 11–9 states that "an allocation method must be found that, though *arbitrary,* allocates the costs on as *reasonable* a basis as possible" (emphasis added).

We have reviewed the formula and methodology used to derive the transfer values and have determined that the amounts initially recorded for these transfers represent a reasonable value for the cattle feed replaced by WDG and TS. Pound-Maker has referred to the amounts recorded as "theoretical protein-equivalent transfer prices." *See* Section D response of April 28, 1999, at D–31. The formula used to derive these amounts "calculates an amount (value) based on the dry matter content of the by-products relative to the value of feed barley." *See* Section D supplemental response of June 4, 1999, at SD–10. The transfer prices thus represent Pound-Maker's own estimate of the value of cattle feed, and represent the most appropriate value to be assigned to the WDG and TS consumed during the POI.

In addition, we found that there are certain costs to produce WDG and TS that are incurred *after* the split-off point, and we, therefore, assigned those costs to the WDG and TS used in Pound-Maker's cattle feed.

2. G&A Expenses and Financial Expenses—Cost of Sales Denominator

Pound-Maker argues that the Department erred in its recalculations of Pound-Maker's general and administrative (G&A) expense rate and financial expense rate for the preliminary determination. Pound-Maker claims that in these rate calculations, all categories of cost that are in the cost of goods sold (COGS) denominator must also be in the per-unit COM figures to which the ratios are applied, and vice versa. According to Pound-Maker, the Department improperly included costs in its COM that were not included in the COGS denominator.

Pound-Maker states that, for sales of its own-produced cattle, the COGS reflects the full cost of those cattle,

including the purchase cost of the input feeder cattle and all costs associated with fattening the cattle. Pound-Maker notes, however, that its COGS also includes the cost of providing custom-feeding services to outside investors, who purchase feeder cattle and pay a fee to Pound-Maker for fattening their cattle. According to Pound-Maker, the COGS for these custom-feeding services includes only the costs of fattening the cattle, and does not include the cost of the original input feeder cattle. Pound-Maker claims that since the calculated G&A and financial expense rates are to be applied to a COM figure that includes the full cost of fattened cattle, the company adjusted its COGS denominator to include the input feeder cattle costs for custom-fed cattle that were reported in Pound-Maker's sales databases.

Pound-Maker claims that the Department erroneously denied this adjustment for the preliminary determination, producing a distortive result that allocated more G&A and financial expenses than Pound-Maker actually incurred. Pound-Maker argues that either the COM for custom-fed cattle should exclude feeder cattle costs, or the G&A and financial expense rates should be calculated using an adjusted COGS figure that includes feeder cattle costs for custom-fed cattle.

Further, Pound-Maker argues that the Department routinely permits adjustments so that the COM and COGS are on the same basis. In support, Pound-Maker cites *Mushrooms from India* at 72247, in which the Department stated, "In order to put both the G&A rate and the financial expense rate on the same basis as the per-unit cost of manufacturing, we excluded certain expense items from the cost of goods sold used by Agro Dutch as the denominator in its calculations."

The petitioners argue that the Department properly rejected Pound-Maker's submitted adjustment to allocate G&A and financial expenses to sales of custom-fed cattle on the basis of its own COGS, plus the value of feeder cattle that it fed but did not own. The petitioners argue that the Department's long-standing practice is to "compute G&A and interest expenses on a company-wide basis as a percentage of cost of sales," and cite *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Taiwan,* 63 FR 40461, 40472 (July 29, 1998). The petitioners assert that Pound-Maker sought to artificially inflate its COGS of custom-fed cattle by adding in the acquisition cost of the feeder cattle, thus reducing the G&A and financial expenses allocated to its sales of own-produced cattle. The petitioners argue that *Mushrooms from India* and other cases cited by Pound-Maker may support the Department's practice of adjusting COM or COGS, but the petitioners note that in none of Pound-Maker's cited cases was the Department asked to adjust COGS by adding costs that the respondent company did not incur and that are not recorded in its financial statements. The petitioners also note that nothing in the statute requires that COM and COGS be on the same basis.

The petitioners argue that the constructed value of custom-fed cattle should properly include all expenses that were incurred by the actual owners of the cattle and the absence of such expenses makes irrelevant Pound-Maker's arguments that the Department allocated more costs than the respondent incurred. The petitioners claim that the Department should remove Pound-Maker's overstated sales that were identified at verification and should also revise the denominator for allocating per-unit feeder cattle costs as indicated in the cost verification report.

DOC Position: We agree with Pound-Maker that the denominator in the G&A and financial expense rate calculations should be on a similar basis to the COM values to which the rates will be applied. However, Pound-Maker is incorrect when it states that we improperly applied the G&A and financial expense rates to a COM value that is not on the same basis as the COGS denominator used to derive the rates. Pound-Maker provides custom-feeding services to outside parties, and the COGS for these services includes only the costs of fattening the cattle (feed and other miscellaneous expenses). However, contrary to Pound-Maker's assertions, the cost of the input feeder cattle is *also* in Pound-Maker's COGS denominator. In its March 12, 1999 submission, Pound-Maker stated, "Virtually all of our custom feeders purchase their feeder cattle from PMA." Therefore, the COGS denominator already includes the cost of custom-fed feeder cattle and Pound-Maker's proposed adjustment is unnecessary. As in the preliminary determination, we have adjusted the denominators in Pound-Maker's G&A and financial expense rate calculations to reflect the COGS shown on its financial statements.

Riverside-Grandview

1. Head-Days Allocation Methodology

The petitioners argue that Grandview used an unreasonable methodology to allocate certain costs between its own-produced cattle and cattle which it custom-feeds for other parties. The petitioners state that this methodology, which is based upon head-days (*i.e.,* the number of days a head of cattle was on the company's feedlot), does not, on its face, appear to be unreasonable. The petitioners cite to *Mushrooms from India* at 72248, where the Department allocated costs between co-products on a weight or volume basis. However, the petitioners claim that Grandview's head-days allocation methodology, even if mathematically accurate, produces unreasonable results and thus should be rejected by the Department. A table containing proprietary information was submitted by the petitioners in support of their claim.

The petitioners argue that the Department should neutralize the impact of this methodology by allocating costs to non-Riverside custom fed-cattle on a sales value basis.

Riverside-Grandview argues that the petitioners' arguments should be rejected. Riverside-Grandview claims that the proprietary exhibit submitted by the petitioners is incorrect in a number of respects. Riverside-Grandview claims that the Department addressed this issue previously at the preliminary determination, and Riverside-Grandview notes that it did not take issue with the Department's conclusion at that time. Riverside-Grandview argues that the petitioners' proposed methodology would substantially over-allocate costs to Riverside-Grandview.

DOC Position: We agree with Riverside-Grandview. We have reviewed the methodology used by the respondent to allocate certain costs and have determined that it is reasonable. Since Riverside-Grandview provides the same feed and services to its own cattle and to custom-fed cattle, we believe the number of head-days is a logical and appropriate allocation method. As we noted previously, the petitioners' analysis contains certain mathematical errors. *See Issues Summary for the Preliminary Determination,* dated June 30, 1999, at page 7. We believe that reasonable results are produced when these errors and the respondent's need to cover its variable costs are taken into account. Therefore we have continued to accept the head-days allocation methodology for purposes of calculating Riverside-Grandview's COP.

2. Claimed Cost Offset

Riverside-Grandview argues that the Department should accept its submitted cost offset for a "disaster claim." Riverside notes that (1) The claim relates to its November 30, 1998, fiscal

year, (2) Its auditors determined that Riverside-Grandview qualified for the payment, and (3) The Department verified Riverside-Grandview's receipt of the claimed amount. Riverside-Grandview argues that, since its outside auditors have confirmed that, in accordance with GAAP, the claim should have been reflected in its financial statements, and since the claim relates to the cost reporting period, the Department should not exclude this offset.

The petitioners argue that the statue directs the Department to first consider the company books prepared in the normal course of business prior to the antidumping investigation. The petitioners claim that such records carry the presumption of correctness and the added safeguard that they were not likely designed to minimize exposure under antidumping laws. The petitioners argue that Riverside-Grandview seeks to reduce its production costs by deducting a cost offset that was not recorded in its normal accounting records during the POI because the funds were not received until after the POI. The petitioners argue that Riverside-Grandview's failure to record the claim is not necessarily erroneous, simply because the auditors now state that recording the claim would have been consistent with GAAP. The petitioners argue that GAAP permits companies to elect how to treat various items, and if the expenses in question were not extraordinary, there is no basis to offset those expenses by income received in a later period.

DOC Position: We agree with the petitioners. The Department normally relies on costs recorded in a company's accounting records as long as they are recorded in accordance with GAAP and reasonably reflect the costs of production. *See* section 773(f)(1)(A) of the Act. The disaster claim that Riverside-Grandview seeks to apply as an offset to its costs was not recorded in Riverside-Grandview's normal books and records, or in its audited financial statements, and we have no basis for applying this offset to reduce its costs of production. Despite the description used for the claimed offset, Riverside-Grandview did not incur any abnormal or unusual costs during the cost reporting period and thus its submitted costs, without the claimed offset, properly reflect its normal costs of producing the subject merchandise. Further discussion of this issue involves proprietary information. *See* Memorandum from William Jones to The File, dated October 4, 1999.

3. Bank Penalties

Riverside-Grandview claims that, during the cost reporting period, it incurred penalties charged by a bank because of the respondents' early repayment of debt. The respondent argues that these penalties relate primarily to long-term loans with maturity dates beyond the cost reporting period and that outside auditors determined that a substantial portion of the bank penalties should have been recorded in the financial statements as prepaid interest with deferred recognition of the expense. According to Riverside-Grandview, full inclusion of the bank penalties would distort their costs by treating a payment that relates to future interest expenses on long-term debt as if it were a cost on the particular day when the bank penalties were paid. The respondent argues that to be consistent with GAAP, and avoid the distortion of costs, such future expenses should be matched to the time periods covered by the loans to which they related. Riverside-Grandview claims that this approach is analogous to the approach taken by the Department with respect to foreign exchange losses on long-term loans, were such losses are amortized over the remaining life of the loans; the respondent cites *Fresh Atlantic Salmon from Chile, Notice of Final Determination of Sales at Less Than Fair Value,* 63 FR 31411, 31430 (June 9, 1998).

The petitioners argue that Riverside-Grandview seeks to change its actual accounting practice in order to obtain more favorable treatment solely for purposes of this investigation. The petitioners claim that the Department verified that the early payment penalties were expensed in the cost reporting period, as they appear in the audited financial statements in accordance with Canadian GAAP. The petitioners argue that although GAAP permits such costs to be amortized over a period of time, it does not require such treatment. The petitioners argue that respondent's reference to foreign exchange losses is inapposite since the Department permits foreign exchange losses to be amortized over the remaining life of loans that continue to be repaid, whereas the bank penalties in the instant case relate to long-term loans that have already been paid off. Therefore, the petitioners claim, there is no reason to depart from the treatment of these expenses in Riverside-Grandview's financial statements.

DOC Position: We agree with the petitioners. Our normal practice is to rely on a respondent's normal accounting records if those records are in accordance with GAAP of the home country and reasonably reflect the costs of production. *See* section 773(f)(1)(A) of the Act. These penalties were assessed by the bank because of the respondents' decisions to pay off their loans before they were due. The fact that these loans would have extended into future periods if they were not paid early is of no significance here. The bank penalties were, in fact, expensed by the respondents in their audited financial statements covering this period, in accordance with Canadian GAAP, as they relate to events which occurred during that fiscal year. Since the loans were paid off in the current period, we see no reason to adjust these costs to reflect a hypothetical payout schedule which no longer applies. The analogy to foreign exchange losses is inappropriate for the reasons cited by the petitioners.

4. Accounting Errors

Riverside-Grandview argues that the Department should adjust its reported costs based upon verified cost offsets and other cost adjustments. Riverside argues that since most of the custom work income that it claimed as an offset relates to work that it performed for Grandview, and since the expense was reported by Grandview in the submitted costs, the Department should allow Riverside's submitted offset. Riverside-Grandview also argues that the Department should reduce its submitted costs for: (a) An accrual that was inadvertently recorded twice; (b) Wages, utilities, and telephone costs that were reported as indirect selling expenses; (c) Cattle purchases that were related to a prior period; and, (d) Revenue items that should have been reflected in the submitted costs. Riverside-Grandview also asserts that the Department should increase the reported costs for barley purchases that were not properly accrued and expense items that should have been reflected in the submitted costs.

The petitioners argue that the Department should not permit the various cost offsets that Riverside-Grandview failed to claim in their responses prior to verification, claiming that these offsets were not submitted on a timely basis.

DOC Position: We agree with Riverside-Grandview. Although most of the claimed adjustments were not explicitly reported in the respondent's submissions, we identified certain income and expense items at verification through our routine testing. After further inquiry and analysis, we determined that these miscellaneous income and expense items are

appropriate for inclusion in the calculation of COP and have therefore included them in the COM for the final determination.

Cor Van Raay

1. Cost Test for Partnership Sales

The petitioners note that Rick Paskal, one of the three entities collapsed into respondent Cor Van Raay, entered into partnerships with producers outside Cor Van Raay to feed and sell live cattle. The petitioners argue that such sales should be compared to Rick Paskal's costs of own-produced cattle, rather than to the average cost of Cor Van Raay as a whole reporting entity. The petitioners argue that in the alternative, the Department should recalculate the Cor Van Raay average costs to reflect the additional sales of partnership cattle.

Cor Van Raay argues that the Department should not compare partnership sales to Rick Paskal's costs of own-produced cattle, because (1) the Department did not require that the cost of production incurred by the partners be reported, (2) there is no evidence that the costs incurred by Rick Paskal are any more representative of the partners' costs than the costs incurred by other companies collapsed with Cor Van Raay, and (3) in fact, other companies collapsed in the Cor Van Raay respondent entity (*i.e.*, Butte Grain Merchants) were also involved in these sales. Further, the respondent argues that, for these same reasons, it would be inappropriate to increase the average cost of the Cor Van Raay consolidated entity to reflect Rick Paskal's involvement in the partnership sales.

DOC Position: We agree with the respondent. The Department requested that the partnership sales in question be reported, but did not require that the partners submit a cost response. While, given the circumstances of these sales, we believe that it is appropriate to include them in our dumping margin analysis, there is no justification for comparing the sales prices to Rick Paskal's costs alone, as there is no evidence that Rick Paskal's costs are any more representative of the partner's costs than the weighted-average costs of Cor Van Raay as a whole. We have therefore continued to compare the sales prices in question to the latter costs.

Groenenboom

1. Currency Hedging Losses

Groenenboom claims there is no relation between its currency hedging losses and the purchase of any inputs used in the production of the subject merchandise. Groenenboom argues that the Department confirmed this at verification by reviewing monthly statements from the company that manages its currency hedging account. Groenenboom asserts that its gains or losses from currency hedging are wholly unrelated to any G&A activities associated with its production or sales and these gains and losses should not be treated as such in the final determination. Groenenboom cites to *Notice of Final Determination of Sales at Less Than Fair Value: Emulsion Styrene-Butadiene Rubber From the Republic of Korea,* 64 FR 14865, 14871 (March 29, 1999) (*ESBR from Korea*) where the Department excluded foreign exchange gains and losses because such gains and losses are typically included only if they "are related to the cost of acquiring debt." The respondent argues that it is apparent from the documents reviewed at verification that the hedging contracts were not associated with any specific sale or group of sales to the United States. Further, Groenenboom argues that foreign exchange contracts may be taken into account for purposes of adjusting sales prices only to the extent that they are directly linked to a particular sale, and cites *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France; et al; Final Results of Antidumping Duty Administrative Reviews,* 57 FR 28360, 28413 (June 24, 1992).

The petitioners argue that Groenenboom recorded losses in a currency trading account during the POI and that these losses should be added to its G&A expenses. The petitioners claim that trading losses that are not tied to specific sales in the U.S. market or to the purchase of inputs should be analyzed for purposes of the antidumping law using the logic that is applied to any incidental income or loss to the business. The petitioners argue that Groenenboom is dedicated solely to the production of cattle, such that the funds that were traded to produce hedging gains or losses were generated in the cattle business, and that any gains or losses on such hedging affect Groenenboom's working capital, if not directly related to sales in foreign currency. The petitioners claim that if Groenenboom had taken funds and deposited them in a bank in Canada, short-term interest earned on such deposits would have been deducted from G&A expenses under normal Department practice.

Further, the petitioners argue that where a respondent invests current cash from its operations and loses money, those losses should be included in G&A expenses. The petitioners argue that Groenenboom's cite to *ESBR from Korea* is misplaced as that case involved exchange gains and losses on sales. The petitioners cite to *Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Goods from Korea,* 60 FR 33561, 33567 (June 28, 1995) in arguing that hedging gains or losses are properly included in G&A expenses. The petitioners also argue that Groenenboom's normal accounting practice is to treat gains and losses from currency hedging as part of G&A expenses and that respondents have shown no basis to depart from this treatment.

DOC Position: The Department's practice has been to not include investment-related gains, losses and expenses in the calculation of G&A expenses for purposes of the COP or CV calculations. In calculating COP and CV, we seek to capture the cost of production of the foreign like product and subject merchandise, and to exclude the cost of unrelated production or investment activities. The Department accounts for a respondent's investment activities that relate to the financing of working capital as part of its financial expenses, which are calculated on a consolidated basis. The record indicates that these currency hedging activities were strictly for investment purposes and, therefore, we have excluded Groenenboom's currency hedging losses from its G&A expenses.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the Customs Service to continue suspending liquidation of all entries of live cattle from Canada, except for subject merchandise produced and exported by Pound-Maker (which continues to have *de minimis* weighted-average margins), that are entered, or withdrawn from warehouse, for consumption on or after July 8, 1999 (the date of publication of the preliminary determination in the **Federal Register**). The Customs Service shall continue to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds the United States price, as indicated in the chart below. These instructions suspending liquidation will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Exporter/producer	Weighted-average margin percentage
Cor Van Raay	4.53

Exporter/producer	Weighted-average margin percentage
Groenenboom	3.86
JGL Group	5.10
Pound-Maker	[1] 0.62
Riverside/Grandview	5.34
Schaus	15.69
All Others	5.63

[1] De minimis

Section 735(c)(5)(A) of the Act directs the Department to exclude all zero and *de minimis* weighted-average dumping margins, as well as dumping margins determined entirely on the basis of facts available under section 776 of the Act, from the calculation of the "all others" rate. We have excluded the dumping margin for Pound-Maker (which is *de minimis*) from the calculation of the "all others" rate.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing the Customs Service to assess antidumping duties on all imports of the subject merchandise entered for consumption on or after the effective date of the suspension of liquidation.

This determination is published pursuant to sections 735(d) and 777(i)(1) of the Act.

Dated: October 12, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99-27410 Filed 10-20-99; 8:45 am]

BILLING CODE 3510-DS-P

APPENDIX B

SUMMARY TABLE

Table B-1
Cattle: Summary data concerning the U.S. market, 1996-98, January-June 1998, and January-June 1999

(Value=1,000 dollars, unit values are per pound; period changes=percent, except where noted)

Item	Reported data			January-June		Period changes			Jan.-June
	1996	1997	1998	1998	1999	1996-98	1996-97	1997-98	1998-99
U.S. consumption quantity:									
Amount (1,000 head)	38,573	38,111	37,138	18,368	18,521	-3.7	-1.2	-2.6	0.8
Producers' share (1)	95.0	94.7	94.7	94.5	94.9	-0.3	-0.3	-0.0	0.5
Importers' share (1):									
Canada	3.8	3.5	3.4	3.6	2.7	-0.5	-0.3	-0.2	-0.9
All other sources	1.2	1.8	1.9	2.0	2.4	0.8	0.6	0.2	0.4
Total imports	5.0	5.3	5.3	5.5	5.1	0.3	0.3	0.0	-0.5
Amount (1,000 pounds)	43,589,213	43,356,428	43,307,113	21,339,269	21,785,213	-0.6	-0.5	-0.1	2.1
Producers' share (1)	95.3	95.5	95.5	95.5	96.4	0.2	0.1	0.0	0.9
Importers' share (1):									
Canada	4.2	3.8	3.7	3.8	2.8	-0.5	-0.4	-0.1	-1.0
All other sources	0.5	0.7	0.7	0.7	0.8	0.3	0.2	0.0	0.1
Total imports	4.7	4.5	4.5	4.5	3.6	-0.2	-0.1	-0.0	-0.9
U.S. consumption value:									
Amount	25,590,338	27,292,112	25,769,024	13,243,176	13,483,914	0.7	6.7	-5.6	1.8
Producers' share (1)	95.7	95.9	95.7	95.8	96.5	0.0	0.3	-0.2	0.7
Importers' share (1):									
Canada	3.8	3.4	3.5	3.5	2.5	-0.4	-0.4	0.0	-0.9
All other sources	0.5	0.7	0.8	0.7	1.0	0.3	0.2	0.2	0.2
Total imports	4.3	4.1	4.3	4.2	3.5	-0.0	-0.3	0.2	-0.7
U.S. imports from--									
Canada (2):									
Quantity (1,000 head)	1,476	1,352	1,253	652	491	-15.1	-8.4	-7.3	-24.8
Quantity (1,000 pounds)	1,834,376	1,659,107	1,623,172	815,131	613,127	-11.5	-9.6	-2.2	-24.8
Value	984,718	933,094	893,821	457,898	340,341	-9.2	-5.2	-4.2	-25.7
Unit value	$0.54	$0.56	$0.55	$0.56	$0.56	2.6	4.8	-2.1	-1.2
All other sources:									
Quantity (1,000 head)	452	668	719	362	445	59.0	47.7	7.6	23.0
Quantity (1,000 pounds)	196,847	297,198	315,821	149,258	179,314	60.4	51.0	6.3	20.1
Value	121,074	177,518	207,839	95,948	128,549	71.7	46.6	17.1	34.0
Unit value	$0.62	$0.60	$0.66	$0.64	$0.72	7.0	-2.9	10.2	11.5
All sources:									
Quantity (1,000 head)	1,928	2,020	1,972	1,014	936	2.3	4.8	-2.4	-7.7
Quantity (1,000 pounds)	2,031,223	1,956,305	1,938,992	964,389	792,441	-4.5	-3.7	-0.9	-17.8
Value	1,105,792	1,110,612	1,101,660	553,847	468,890	-0.4	0.4	-0.8	-15.3
Unit value	$0.54	$0.57	$0.57	$0.57	$0.59	4.4	4.3	0.1	3.0
U.S. producers':									
Capacity (1,000 head) (3)	55,018	53,876	52,834	52,834	52,225	-4.0	-2.1	-1.9	-1.2
Production (1,000 head) (4)	39,823	38,961	38,582	28,400	28,200	-3.1	-2.2	-1.0	-0.7
U.S. shipments:									
Quantity (1,000 head)	36,645	36,091	35,166	17,354	17,586	-4.0	-1.5	-2.6	1.3
Quantity (1,000 pounds)	41,557,990	41,400,123	41,368,121	20,374,880	20,992,772	-0.5	-0.4	-0.1	3.0
Value	24,484,546	26,181,500	24,667,365	12,689,329	13,015,024	0.7	6.9	-5.8	2.6
Unit value	$0.59	$0.64	$0.60	$0.62	$0.62	1.2	7.3	-5.7	-0.5
Export shipments:									
Quantity (1,000 head)	131	249	257	118	103	96.6	90.1	3.4	-13.4
Value	71,943	139,581	130,784	64,467	46,856	81.8	94.0	-6.3	-27.3
Inventories as of January 1 (1,000 head)	103,548	101,656	99,744	99,744	98,522	-3.7	-1.8	-1.9	-1.2

(1) "Reported data" are in percent and "period changes" are in percentage points.
(2) Total imports from Canada, as presented in this table, overstate subject imports by less than *** percent. In its final determination, Commerce found the dumping margin of Pound-Maker Agventures, Ltd.'s cattle exports to the United States to be de minimis.
(3) Capacity consists of beef cows plus milk cows plus dairy and beef replacement heifers, as of January 1 for annual periods and as of July 1 for interim periods.
(4) Production consists of the calf crop.

Source: Compiled from official statistics of the U.S. Departments of Agriculture and Commerce.

APPENDIX C

LIST OF WITNESSES APPEARING AT THE COMMISSION'S HEARING

CALENDAR OF PUBLIC HEARING

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

Subject:	Live Cattle from Canada
Inv. No.:	731-TA-812 (Final)
Date and Time:	October 6, 1999 - 9:30 a.m.

Sessions were held in connection with the investigation in the Main Hearing Room, 500 E Street, SW, Washington, DC.

Congressional Appearances:

The Honorable Thomas Daschle, U.S. Senator, State of South Dakota

The Honorable Max Baucus, U.S. Senator, State of Montana

The Honorable Kent Conrad, U.S. Senator, State of North Dakota

The Honorable Conrad Burns, U.S. Senator, State of Montana

The Honorable Larry E. Craig, U.S. Senator, State of Idaho

The Honorable Byron L. Dorgan, U.S. Senator, State of North Dakota

The Honorable Craig Thomas, U.S. Senator, State of Wyoming

The Honorable Tim Johnson, U.S. Senator, State of South Dakota

The Honorable Michael B. Enzi, U.S. Senator, State of Wyoming

The Honorable Earl Pomeroy, U.S. Congressman, State of North Dakota

The Honorable Helen Chenoweth, U.S. Congresswoman, 1st District, State of Idaho

The Honorable John R. Thune, U.S. Congressman, State of South Dakota

The Honorable Gregory P. Walden, U.S. Congressman, 2nd District, State of Oregon

The Honorable Michael K. Simpson, U.S. Congressman, 2nd District, State of Idaho

OPENING REMARKS

Petitioners (**Terence P. Stewart**, Stewart and Stewart)
Respondents (**Edward J. Farrell**, Blank Rome Comisky & McCauley LLP)

In Support of the Imposition of Antidumping Duties:

Panel 1

Stewart and Stewart
Washington, DC
on behalf of

Ranchers-Cattlemen Action Legal Foundation ("R-CALF")

Leo R. McDonnell, Jr., President, R-CALF, Midland Bull Test, Montana

Kathleen Kelley, Vice President, R-CALF, and Sullivan Kelley Farms, Colorado

Herman Schumacher, R-CALF Director, and Director, Livestock Marketing Association, Herried Livestock Market, South Dakota

James Schaben, Jr., President, Livestock Marketing Association, Missouri

Clarence Newcomb, Chairman, Cattle Feeders Committee, Colorado Cattlemen's Association

Pat Goggins, Publisher, *Western Livestock Reporter*, Publisher, *Agri-News*, Vice President, Livestock Marketing Association, Vermilion Ranches, Montana

Rick Kirchhoff, Executive Director, National Association of State Departments of Agriculture

Homer Buell, President, Nebraska Cattlemen's Association

Philip Klutts, President, Oklahoma Farmers Union

Chuck Kiker, President, Independent Cattlemen's Association of Texas

James McCuen, Intertribal Agricultural Council, Colville Confederated Tribes, Washington

Jim H. Magagna, Executive Vice President, Wyoming Stockgrowers Association

Robert Miller, President, Intertribal Agricultural Council

Mike Callicrate, Callicrate Feed Yard, Kansas Cattlemen's Association

Ronda Johnston, Cattle Producer, Montana

In Support of the Imposition of Antidumping Duties:–Continued

Panel 1–Continued

Arthur Douglas, President, Utah Farmers Union

Lloyd deBruycker, Cattle Producer, Montana

Margene Eiguren, Cattle Producer, Oregon

John J. VanSickle, Professor of Food and Resource Economics, University of Florida, and Director, Agricultural Trade and Development Center

Terence P. Stewart)
James R. Cannon, Jr.) --OF COUNSEL

Panel 2

National Farmers Union, Washington, DC

Leland Swenson, President

In Opposition to the Imposition of Antidumping Duties:

Panel 1

Blank Rome Comisky & McCauley LLP
Washington, DC
on behalf of

Canadian Cattlemen's Association ("CCA"),
Calgary, Alberta, Canada

Ben Thorlakson, President, CCA

Dennis Laycraft, Executive Vice President, CCA

Chris Mills, Policy Adviser, CCA

Edward J. Farrell)
Lisa J. Savitt) --OF COUNSEL

In Opposition to the Imposition of Antidumping Duties:–Continued

Panel 2

Daniel A. Sumner, Frank H. Buck, Jr., Professor of Agriculture and Economics, University of California, Davis, and Director, University of California Agricultural Issues Center

Michael K. Wohlgenant, William Neal Reynolds Professor of Agricultural Economics, North Carolina State University

Richard Boltuck, Vice President, Charles River Associates, Inc.

Seth Kaplan, Vice President, Charles River Associates, Inc.

Edward J. Farrell–OF COUNSEL

Panel 3

Olsson, Frank and Weeda, P.C.
Washington, DC
on behalf of

Free Market Beef Council

and

Collier, Shannon, Rill & Scott, PLLC
Washington, DC
on behalf of

Excel Corp.
Green Bay Dressed Beef, Inc.
Long Prairie Packing Company, Inc.
Monfort, Inc.
Moyer Packing Co.
Peck Meat Packing
Taylor Packing Co., Inc.

Greg Benedict, President, Long Prairie Packing Company, Inc.

Steven Bryce, Cattle Procurement Director, Moyer Packing Co.

Kenneth L. Bull, Vice President, North American Cattle Procurement, Excel Packing Co.

Albert Lawrence, Senior Vice President, Washington Beef, Inc.

Philip C. Olsson)
Paul C. Rosenthal)–OF COUNSEL
R. Alan Luberda)

CLOSING REMARKS

Petitioners (**Terence P. Stewart**, Stewart and Stewart)
Respondents (**Paul C. Rosenthal**, Collier, Shannon, Rill & Scott, PLLC)

APPENDIX D

DEFINITIONS AND DATA SOURCES

DEFINITIONS AND DATA SOURCES

Listed below are specific definitions of indicators for which data are presented in tables of this report, as well as the data sources used.

Table III-3:

Number of operations – an operation is any place having one or more head of cattle on hand at any time during the year. Source: National Agricultural Statistics Service (NASS) "Cattle" report, table entitled Cattle and Calves: Number of Operations by State, Jan. 1999. "Cattle Final Estimates 1994-98" report, table entitled Cattle and Calves: Number by Class, Calf Crop, and Operations.

Capacity – beef cows plus milk cows plus dairy and beef replacement heifers. Source: NASS "Cattle" report, table entitled Cattle and Calves: Number by Class and Calf Crop, Jan. 1999, July 1999, and "Cattle Final Estimates 1994-98" report, table entitled Cattle and Calves: Number by Class, Calf Crop, and Operations.

Production – calf crop (calves born). Source: NASS "Cattle" report, table entitled Cattle and Calves: Number by Class and Calf Crop, Jan. 1999 and July 1999.

Inventories – cattle plus calves. Source: NASS "Cattle" report, table entitled Cattle and Calves: Number by Class and Calf Crop, July 1998, Jan. 1999, July 1999, and "Cattle Final Estimates 1994-98" report, table entitled Cattle and Calves: Number by Class, Calf Crop, and Operations.

Number of cattle on feed – cattle and calves on feed for the slaughter market. Source: NASS "Cattle on Feed" report, table entitled Cattle on Feed: Number on Feed, Placements, Marketings, and Other Disappearance, Aug. 1998 and Aug. 1999.

Total slaughter of animals of U.S. origin – U.S. farm and commercial slaughter (which includes slaughter of imports) of cattle and calves, minus imports. Source: NASS "Livestock Slaughter" report, table entitled Number of Head Slaughtered: By Species, Mar. 1997, Mar. 1998, and Mar. 1999; table entitled Livestock Slaughter: Number and Average Weights, United States, July 1999. Official statistics of the Department of Commerce (for import data).

Weight of commercial and farm slaughter of animals of U.S. origin – total live weight of U.S. commercial cattle slaughter (which includes imports), plus total live weight of U.S. commercial calf slaughter, plus U.S. farm slaughter of cattle (animals) times average live weight, plus U.S. farm slaughter of calves (animals) times average live weight, minus total weight of imports. Source: NASS "Livestock Slaughter" report, table entitled Number of Head Slaughtered: By Species; table entitled Commercial Cattle Slaughter: Total Live Weight; table entitled Commercial Calf Slaughter: Total Live Weight; table entitled Livestock Slaughter: Number of Head Slaughtered and Average Live Weights by Species; Mar. 1997, Mar. 1998, and Mar. 1999; table entitled Commercial Cattle Slaughter: By State and United States; table entitled Commercial Calf Slaughter: By State and United States, Feb. 1999, Mar. 1999, Apr. 1999, May 1999, June 1999, and July 1999. Official statistics of the Department of Commerce (for import data).

Weight of commercial slaughter of animals of U.S. origin – total live weight of U.S. commercial cattle slaughter (which includes imports), minus total weight of imports. Source: NASS "Livestock Slaughter" report, table entitled Commercial Cattle Slaughter: Total Live Weight; table entitled Commercial Calf Slaughter: Total Live Weight; Mar. 1997, Mar. 1998, and Mar. 1999; table entitled Commercial Cattle Slaughter: By State and United States; table entitled Commercial Calf Slaughter: By State and United States, Feb. 1999, Mar. 1999, Apr. 1999, May 1999, June 1999, and July 1999. Official statistics of the Department of Commerce (for import data).

Value of commercial slaughter of animals of U.S. origin – calculated on a monthly basis, total live weight of U.S. commercial cattle slaughter (which includes imports), minus total weight of imports, times price received. Source: NASS "Livestock Slaughter" report, table entitled Commercial Cattle Slaughter: Total Live Weight; table entitled Commercial Calf Slaughter: Total Live Weight; monthly 1996, monthly 1997, monthly 1998, and monthly Jan.-June 1999. NASS "Agricultural Prices," table entitled Beef Cattle: Monthly Price Received by States; table entitled Calves: Monthly Price Received by States, July 1999; and table entitled Prices Received for Selected Agricultural Commodities, by Months, Aug. 1999. Official statistics of the U.S. Department of Commerce (for import data).

Exports – Source: Official statistics of the U.S. Department of Commerce.

Table IV-3:

U.S. producers' shipments – same as total slaughter of animals of U.S. origin described on previous page.

U.S. imports – U.S. import for consumption. Source: Official statistics of the U.S. Department of Commerce.

Apparent consumption – U.S. farm and commercial slaughter (which includes slaughter of imports) of cattle and calves. Source: NASS "Livestock Slaughter" report, table entitled Commercial Cattle Slaughter: Total Live Weight; table entitled Commercial Calf Slaughter: Total Live Weight; Mar. 1997, Mar. 1998, and Mar. 1999; table entitled Commercial Cattle Slaughter: By State and United States; table entitled Commercial Calf Slaughter: By State and United States, monthly Feb.-July 1999.

Table VII-1:

Capacity – beef cows, plus milk cows, plus dairy and beef replacement heifers. Source: Official statistics of Statistics Canada, Cat. No. 23-603-UFE, Cattle and Calves on Farms, Semi-Annually, by Province, East, West and Canada, 1996-99.

Production – calf crop. Source: Official statistics of Statistics Canada, Cat. No. 23-603UFE, Cattle and Calves, Supply-Disposition Balance Sheet, Semi-Annually, by Province, East, West and Canada, calves born January-June statistics plus June-December statistics 1996-98, and January-June 1999.

Inventories – cattle plus calves. Source: Official statistics of Statistics Canada, Cat. No. 23-603UFE, Cattle and Calves, Supply-Disposition Balance Sheet, Semi-Annually, by Province, East, West and Canada, January 1 and July 1 inventories, 1996-99.

Home-market shipments – cattle slaughter. Source: Official statistics of Statistics Canada, Cat. No. 23-603UFE, Cattle and Calves, Supply-Disposition Balance Sheet, Semi-Annually, by Province, East, West and Canada, slaughter, January-June statistics plus June-December statistics 1996-98, and January-June 1999.

U.S. exports – Canadian exports to United States. Source: Official statistics of the U.S. Department of Commerce.

Total exports – total Canadian exports. Source: Official statistics of Statistics Canada, Cat. No. 23-603UFE, Cattle and Calves, Supply-Disposition Balance Sheet, Semi-Annually, by Province, East, West and Canada, international exports, January-June statistics plus June-December statistics 1996-98, and January-June 1999.

Total shipments – home-market sales plus total exports. Source: Official statistics of Statistics Canada, Cat. No. 23-603UFE, Cattle and Calves, Supply-Disposition Balance Sheet, Semi-Annually, by Province, East, West and Canada, slaughter, January-June statistics plus June-December statistics 1996-98, and January-June 1999; and international exports, January-June statistics plus June-December statistics 1996-98, and January-June 1999.

APPENDIX E

COMPAS PRESENTATION

ASSUMPTIONS

The COMPAS model[1] is a supply and demand model that assumes that domestic and imported products are less than perfect substitutes. Such models, also known as Armington models, are relatively standard in applied trade policy analysis and are used extensively for the analysis of trade policy changes both in partial and general equilibrium. Based on the discussion contained in Part II of this report, the staff selects a range of estimates that represent price-supply, price-demand, and product-substitution relationships (i.e., supply elasticity, demand elasticity, and substitution elasticity) in the U.S. cattle market. The model uses these estimates with data on market shares, Commerce's margins of dumping, transportation costs, and current tariffs to analyze the likely effect of unfair pricing of subject imports on the U.S. domestic like product industry.

FINDINGS[2]

Estimated effects of the LTFV imports on the U.S. cattle industry are as follows: 0.3 percent to 1.8 percent reduction in revenue, 0.0 percent to 0.4 percent reduction in output, and 0.2 percent to 1.8 percent reduction in price. More detailed effects of the dumping and the full range of scenarios are shown in table E-1.

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[1] COMPAS version 1.4 (dumping, 6/1/93).

[2] Estimates are based on 1998 data. Commerce's period of investigation for the antidumping duty investigations was April 1, 1997 through March 31, 1998.

Table E-1
The estimated effects of LTFV pricing of imports from Canada

INPUTS (in percentages) 10/13		Canada	From:	To:
Margin:	5.63	Substitution Elast.		
Domestic Share:	95.7	Domestic/Unfair:	3	5
Unfair Import Share:	3.5	Domestic/Fair:	3	5
Ave. U.S. Tariff Rate:	0	Unfair/Fair:	3	5
Transportation Ratio:	1.2	Aggregate Demand Elast:	0.3	1
Domestic Content:	0	Domestic Supply Elast:	0	0.5
Dom. Capacity Util:	80	Fair Supply Elast:	10	inf

Estimated Impact of Dumping on U.S. Market (as percent of "fair" values)

SCENARIOS	#1	#2	#3	#4	#5	#6	#7	#8
Domestic Price:	-1.2%	-0.6%	-0.3%	-0.2%	-1.8%	-0.9%	-0.7%	-0.5%
Domestic Output:	-0.0%	-0.3%	0.0%	-0.1%	0.0%	-0.4%	0.0%	-0.2%
Domestic Revenue:	-1.2%	-0.8%	-0.3%	-0.4%	-1.8%	-1.3%	-0.7%	-0.7%
"BUT-FOR" ESTIMATIONS								
Domestic Share:	96.0%	96.0%	96.0%	96.0%	96.1%	96.2%	96.3%	96.3%
Unfair Import Share:	3.2%	3.2%	3.2%	3.2%	3.0%	2.9%	2.9%	2.9%
Fair Share:	0.8%	0.8%	0.8%	0.8%	0.8%	0.8%	0.8%	0.8%
Capacity Utilization:	80.0%	80.2%	80.0%	80.1%	80.0%	80.4%	80.0%	80.2%

Estimated Impact of Dumping on Imports (as a percent of "fair" values)

Unfair Import Price:	-5.3%	-5.3%	-5.3%	-5.3%	-5.3%	-5.3%	-5.3%	-5.3%
Unfair Import Output:	13.3%	15.4%	16.4%	16.7%	19.7%	24.8%	26.9%	27.9%
Unfair Import Revenue:	7.4%	9.3%	10.3%	10.5%	13.4%	18.3%	20.2%	21.1%
Fair Import Price:	-0.3%	0.0%	-0.1%	0.0%	-0.6%	0.0%	-0.2%	0.0%
Fair Import Output:	-2.8%	-1.9%	-0.8%	-0.8%	-5.9%	-4.8%	-2.2%	-2.5%
Fair Import Revenue:	-3.1%	-1.9%	-0.9%	-0.8%	-6.5%	-4.8%	-2.4%	-2.5%

INPUTS

SCENARIOS	#1	#2	#3	#4	#5	#6	#7	#8
ELASTICITIES OF SUBSTITUTION								
Dom/Unfair Imports:	3	3	3	3	5	5	5	5
Dom/Fair Imports:	3	3	3	3	5	5	5	5
Unfair/Fair Imports:	3	3	3	3	5	5	5	5
Domestic Supply Elast:	0	0.5	0	0.5	0	0.5	0	0.5
Fair Import Supply Elast:	10	inf	10	inf	10	inf	10	inf
Aggregate Demand Elast:	-0.30	-0.30	-1.00	-1.00	-0.30	-0.30	-1.00	-1.00

APPENDIX F

ASSOCIATION/PRODUCER QUESTIONNAIRE RECIPIENTS

* * * * * *

APPENDIX G

U.S. INVENTORY OF CATTLE AND CALVES, BY STATE

Table G-1
U.S. inventory of all cattle and calves, by State, as of Jan. 1, 1999

State	Inventory (1,000 head)	State	Inventory (1,000 head)
Alabama	1,500	Nebraska	6,650
Alaska	12	Nevada	510
Arizona	810	New Hampshire	48
Arkansas	1,820	New Jersey	53
California	5,000	New Mexico	1,620
Colorado	3,150	New York	1,460
Connecticut	64	North Carolina	980
Delaware	29	North Dakota	1,920
Florida	1,800	Ohio	1,220
Georgia	1,300	Oklahoma	5,200
Hawaii	173	Oregon	1,530
Idaho	1,900	Pennsylvania	1,670
Illinois	1,490	Rhode Island	6
Indiana	1,010	South Carolina	480
Iowa	3,650	South Dakota	3,850
Kansas	6,550	Tennessee	2,180
Kentucky	2,420	Texas	14,000
Louisiana	900	Utah	890
Maine	100	Vermont	310
Maryland	250	Virginia	1,700
Massachusetts	57	Washington	1,150
Michigan	1,050	West Virginia	440
Minnesota	2,500	Wisconsin	3,400
Mississippi	1,160	Wyoming	1,560
Missouri	4,400		
Montana	2,600	Total U.S.	98,522

Source: Official Agriculture statistics.

APPENDIX H

CATTLE DATA, 1970-98

Table H-1
Cattle: Salient data, 1970-98

Year	Total cattle inventory (as of Jan. 1) (1)	Calf crop (1)	Commercial cattle and calf slaughter (2)	U.S. imports of live cattle from Canada (3)	Slaughter steer price (4)	Average live cattle weight at slaughter (2)
	(1,000 head)	(1,000 head)	(1,000 head)	(1,000 head)	($/cwt)	(pounds)
1970	112,369	45,871	39,099	231	29.32	1,049
1971	114,578	46,738	39,274	238	32.54	1,041
1972	117,862	47,682	38,832	270	35.72	1,049
1973	121,539	49,194	35,938	364	44.43	1,054
1974	127,788	50,873	39,800	133	42.12	1,054
1975	132,028	50,183	46,123	192	45.32	1,010
1976	127,980	47,384	48,006	475	39.29	1,030
1977	122,810	45,931	47,375	529	40.63	1,033
1978	116,375	43,818	43,724	438	53.01	1,043
1979	110,864	42,596	36,503	352	68.56	1,068
1980	111,242	44,938	36,396	348	67.64	1,080
1981	114,351	44,666	37,752	338	64.42	1,083
1982	115,444	44,200	38,865	495	65.34	1,072
1983	115,001	43,885	39,729	359	63.63	1,077
1984	113,360	42,470	40,880	363	66.79	1,073
1985	109,582	41,050	39,679	359	59.75	1,103
1986	105,378	41,182	40,698	247	59.25	1,106
1987	102,118	40,152	38,462	262	66.28	1,109
1988	99,622	39,318	37,588	488	71.19	1,124
1989	96,740	38,817	36,090	585	73.86	1,138
1990	95,816	38,613	35,031	874	78.56	1,140
1991	96,393	38,583	34,127	905	74.21	1,167
1992	97,556	38,933	34,245	1,273	75.35	1,173
1993	99,176	39,369	34,520	1,202	76.36	1,164
1994	100,974	40,105	35,464	1,010	68.84	1,192
1995	102,785	40,264	37,069	1,133	66.26	1,187
1996	103,548	39,823	38,351	1,509	65.05	1,173
1997	101,656	38,961	37,893	1,377	66.32	1,177
1998	99,744	38,582	36,923	1,313	61.47	1,207

(1) USDA/NASS, Cattle.
(2) USDA/NASS, Livestock Slaughter.
(3) Compiled from official Commerce statistics; include imports of dairy and breeder animals.
(4) USDA/AMS (slaughter steer price, Choice 2-4, Nebraska direct, 1,100-1,300 pounds).

Source: Compiled from official statistics of the U.S. Departments of Agriculture and Commerce.

APPENDIX I

IMPORTER QUESTIONNAIRE RECIPIENTS

* * * * * *

APPENDIX J

U.S. IMPORTS, BY SOURCE AND WEIGHT

Table J-1
Cattle: U.S. imports, by source and weight, 1996-98, Jan.-June 1998, and Jan.-June 1999

Source and weight class	1996	1997	1998	January-June 1998	January-June 1999
	Quantity (number)				
Imports from Canada (1):					
Weighing less than 90 kg each (2)	16,830	16,870	14,347	7,222	7,038
Weighing 90 - 200 kg each (3)	14,583	31,609	11,832	7,621	5,340
Weighing 200 - 320 kg each (4)	74,293	107,650	47,558	36,983	15,269
Weighing 320 kg or more each:					
Steers and heifers (fed cattle) (5)	900,635	752,917	775,720	355,577	269,446
Bulls and cows (cull cattle) (6)	378,567	359,868	311,067	165,987	119,857
Feeder cattle (7)	91,065	83,062	92,447	78,927	73,885
Total	1,370,267	1,195,847	1,179,234	600,491	463,188
Total imports	1,475,973	1,351,976	1,252,971	652,317	490,835
Imports from other sources:					
Weighing less than 90 kg each (2)	213	0	46	46	142
Weighing 90 - 200 kg each (3)	286,616	385,317	424,865	250,426	333,098
Weighing 200 - 320 kg each (4)	152,752	267,273	277,522	106,788	108,230
Weighing 320 kg or more each:					
Steers and heifers (fed cattle) (5)	1,213	278	309	282	29
Bulls and cows (cull cattle) (6)	513	0	78	6	5
Feeder cattle (7)	10,738	14,984	16,088	4,003	3,314
Total	12,464	15,262	16,475	4,291	3,348
Total imports	452,045	667,852	718,908	361,551	444,818
Imports from all sources:					
Weighing less than 90 kg each (2)	17,043	16,870	14,393	7,268	7,180
Weighing 90 - 200 kg each (3)	301,199	416,926	436,697	258,047	338,438
Weighing 200 - 320 kg each (4)	227,045	374,923	325,080	143,771	123,499
Weighing 320 kg or more each:					
Steers and heifers (fed cattle) (5)	901,848	753,195	776,029	355,859	269,475
Bulls and cows (cull cattle) (6)	379,080	359,868	311,145	165,993	119,862
Feeder cattle (7)	101,803	98,046	108,535	82,930	77,199
Total	1,382,731	1,211,109	1,195,709	604,782	466,536
Total imports	1,928,018	2,019,828	1,971,879	1,013,868	935,653
	Quantity (1,000 pounds)				
Imports from Canada (1):					
Weighing less than 90 kg each (2)	1,662	1,694	1,384	692	694
Weighing 90 - 200 kg each (3)	5,588	12,606	4,582	2,990	2,131
Weighing 200 - 320 kg each (4)	44,468	62,083	27,483	21,455	8,659
Weighing 320 kg or more each:					
Steers and heifers (fed cattle) (5)	1,173,530	998,300	1,062,162	481,350	360,343
Bulls and cows (cull cattle) (6)	532,099	511,283	445,254	239,144	176,899
Feeder cattle (7)	77,029	73,142	82,306	69,500	64,400
Total	1,782,659	1,582,725	1,589,722	789,994	601,643
Total imports	1,834,376	1,659,107	1,623,172	815,131	613,127
Imports from other sources:					
Weighing less than 90 kg each (2)	40	0	9	9	26
Weighing 90 - 200 kg each (3)	104,168	139,265	155,386	91,661	120,798
Weighing 200 - 320 kg each (4)	82,853	145,931	147,848	54,281	55,817
Weighing 320 kg or more each:					
Steers and heifers (fed cattle) (5)	986	210	231	210	21
Bulls and cows (cull cattle) (6)	537	0	60	7	8
Feeder cattle (7)	8,263	11,793	12,287	3,091	2,644
Total	9,786	12,003	12,578	3,308	2,673
Total imports	196,847	297,198	315,821	149,258	179,314
Imports from all sources:					
Weighing less than 90 kg each (2)	1,701	1,694	1,392	701	720
Weighing 90 - 200 kg each (3)	109,756	151,870	159,968	94,650	122,929
Weighing 200 - 320 kg each (4)	127,321	208,014	175,331	75,736	64,476
Weighing 320 kg or more each:					
Steers and heifers (fed cattle) (5)	1,174,516	998,510	1,062,393	481,560	360,365
Bulls and cows (cull cattle) (6)	532,637	511,283	445,314	239,151	176,908
Feeder cattle (7)	85,293	84,935	94,593	72,592	67,044
Total	1,792,445	1,594,728	1,602,300	793,302	604,316
Total imports	2,031,223	1,956,305	1,938,992	964,389	792,441

See footnotes at end of table.

Table J-1--Continued
Cattle: U.S. imports, by source and weight, 1996-98, Jan.-June 1998, and Jan.-June 1999

Source and weight class	1996	1997	1998	January-June 1998	January-June 1999
	Value ($1,000)				
Imports from Canada (1):					
Weighing less than 90 kg each (2)	1,929	1,934	1,851	824	870
Weighing 90 - 200 kg each (3)	4,960	11,778	4,775	3,121	2,237
Weighing 200 - 320 kg each (4)	25,013	46,188	22,098	17,202	7,292
Weighing 320 kg or more each:					
Steers and heifers (fed cattle) (5)	702,839	619,690	632,817	291,312	214,496
Bulls and cows (cull cattle) (6)	204,968	204,639	172,271	94,812	70,107
Feeder cattle (7)	45,009	48,865	60,009	50,628	45,339
Total	952,816	873,193	865,097	436,751	329,943
Total imports	984,718	933,094	893,821	457,898	340,341
Imports from other sources:					
Weighing less than 90 kg each (2)	40	0	6	6	41
Weighing 90 - 200 kg each (3)	65,096	86,702	108,028	61,084	88,788
Weighing 200 - 320 kg each (4)	49,567	83,932	92,497	32,692	38,187
Weighing 320 kg or more each:					
Steers and heifers (fed cattle) (5)	577	159	168	147	17
Bulls and cows (cull cattle) (6)	364	0	40	5	5
Feeder cattle (7)	5,430	6,726	7,099	2,014	1,510
Total	6,371	6,885	7,307	2,167	1,532
Total imports	121,074	177,518	207,839	95,948	128,549
Imports from all sources:					
Weighing less than 90 kg each (2)	1,969	1,934	1,858	830	911
Weighing 90 - 200 kg each (3)	70,057	98,480	112,803	64,204	91,025
Weighing 200 - 320 kg each (4)	74,580	130,120	114,595	49,894	45,479
Weighing 320 kg or more each:					
Steers and heifers (fed cattle) (5)	703,416	619,848	632,985	291,459	214,514
Bulls and cows (cull cattle) (6)	205,332	204,639	172,311	94,817	70,112
Feeder cattle (7)	50,438	55,590	67,108	52,642	46,850
Total	959,187	880,078	872,404	438,918	331,475
Total imports	1,105,792	1,110,612	1,101,660	553,847	468,890
	Unit value (per pound)				
Imports from Canada (1):					
Weighing less than 90 kg each (2)	$1.16	$1.14	$1.34	$1.19	$1.25
Weighing 90 - 200 kg each (3)	0.89	0.93	1.04	1.04	1.05
Weighing 200 - 320 kg each (4)	0.56	0.74	0.80	0.80	0.84
Weighing 320 kg or more each:					
Steers and heifers (fed cattle) (5)	0.60	0.62	0.60	0.61	0.60
Bulls and cows (cull cattle) (6)	0.39	0.40	0.39	0.40	0.40
Feeder cattle (7)	0.58	0.67	0.73	0.73	0.70
Total	0.53	0.55	0.54	0.55	0.55
Total imports	0.54	0.56	0.55	0.56	0.56
Imports from other sources:					
Weighing less than 90 kg each (2)	$1.00	(8)	$0.73	$0.73	$1.60
Weighing 90 - 200 kg each (3)	0.62	0.62	0.70	0.67	0.74
Weighing 200 - 320 kg each (4)	0.60	0.58	0.63	0.60	0.68
Weighing 320 kg or more each:					
Steers and heifers (fed cattle) (5)	0.59	0.76	0.73	0.70	0.82
Bulls and cows (cull cattle) (6)	0.68	(8)	0.67	0.82	0.57
Feeder cattle (7)	0.66	0.57	0.58	0.65	0.57
Total	0.65	0.57	0.58	0.65	0.57
Total imports	0.62	0.60	0.66	0.64	0.72
Imports from all sources:					
Weighing less than 90 kg each (2)	$1.16	$1.14	$1.33	$1.18	$1.27
Weighing 90 - 200 kg each (3)	0.64	0.65	0.71	0.68	0.74
Weighing 200 - 320 kg each (4)	0.59	0.63	0.65	0.66	0.71
Weighing 320 kg or more each:					
Steers and heifers (fed cattle) (5)	0.60	0.62	0.60	0.61	0.60
Bulls and cows (cull cattle) (6)	0.39	0.40	0.39	0.40	0.40
Feeder cattle (7)	0.59	0.65	0.71	0.73	0.70
Total	0.54	0.55	0.54	0.55	0.55
Total imports	0.54	0.57	0.57	0.57	0.59

(1) Total imports from Canada, as presented in this table, overstate subject imports by less than *** percent. In its final determination, Commerce found the dumping margin of Pound-Maker Agventures, Ltd.'s cattle exports to the United States to be de minimis.
(2) HTS statistical reporting numbers 0102.90.4024 and 0102.90.4028.
(3) HTS statistical reporting numbers 0102.90.4034 and 0102.90.4038.
(4) HTS statistical reporting numbers 0102.90.4054 and 0102.90.4058.
(5) HTS statistical reporting numbers 0102.90.4062 and 0102.90.4068.
(6) HTS statistical reporting numbers 0102.90.4064 and 0102.90.4066.
(7) HTS statistical reporting numbers 0102.90.4082 and 0102.90.4084.
(8) Not applicable.

Source: Compiled from official statistics of Commerce.

APPENDIX K

DESTINATION OF U.S. IMPORTS OF SLAUGHTER AND FEEDER CATTLE

Table K-1
U.S. imports of slaughter and feeder cattle from Canada (1), by states of destination, 1998 and Jan.-June 1998-99

State of destination	1998	January-June 1998	January-June 1999	1998
	Quantity (number of animals)			Share (%)
Alaska	324	0	0	(2)
Arkansas	380	0	0	(2)
California	3,868	958	346	0.3
Colorado	76,731	20,808	56,590	6.1
Georgia	296	270	188	(2)
Idaho	75,344	39,413	15,885	6.0
Illinois	21,085	8,372	7,359	1.7
Indiana	13,609	7,383	7,058	1.1
Iowa	16,304	10,830	4,111	1.3
Kansas	16,364	12,054	1,616	1.3
Michigan	37,529	16,901	24,009	3.0
Minnesota	86,736	50,700	35,853	6.9
Missouri	1,510	24	0	0.1
Montana	9,290	8,917	4,324	0.7
Nebraska	165,588	90,998	68,994	13.2
New Jersey	1,288	648	0	0.1
New Mexico	37	37	3	(2)
New York	5,789	3,593	8,054	0.5
North Dakota	57,287	30,089	1,838	4.6
Ohio	895	123	156	0.1
Oregon	1,143	939	570	0.1
Pennsylvania	90,335	42,819	30,401	7.2
South Dakota	31,778	18,490	12,779	2.5
Texas	556	384	294	(2)
Utah	177,623	88,678	70,802	14.1
Vermont	347	347	1	(2)
Washington	316,894	175,861	117,981	25.2
Wisconsin	44,671	21,879	24,162	3.6
Wyoming	2,065	2,065	0	0.2
Unknown	325	244	39	(2)
Total	1,255,991	653,824	493,413	100.0

(1) Total imports from Canada, as presented in this table, overstate subject imports by less than *** percent. In its final determination, Commerce found the dumping margin of Pound-Maker Agventures, Ltd.'s cattle exports to the United States to be de minimis.
(2) Less than 0.05 percent.

Source: USDA, APHIS.

APPENDIX L

SALIENT DATA ON BEEF AND VEAL

Table L-1
Beef and veal: Salient data, 1996-98, Jan.-June 1998, and Jan.-June 1999

(1,000 pounds carcass weight)

Item	1996	1997	1998	January-June 1998	January-June 1999
U.S. total production (1)	25,903,000	25,824,000	26,022,000	12,861,000	13,191,000
U.S. imports from--					
Canada	585,751	711,454	822,661	397,387	443,424
All other sources	1,486,422	1,631,485	1,820,021	929,321	996,010
Total	2,072,173	2,342,939	2,642,682	1,326,708	1,439,434
U.S. exports to--					
Canada	295,424	282,725	261,210	127,361	119,249
Japan	1,015,778	1,053,553	1,118,488	563,599	553,868
Korea	203,796	261,673	153,808	54,464	135,532
All other markets	363,216	537,726	637,133	291,580	312,465
Total	1,878,214	2,135,677	2,170,639	1,037,004	1,121,114
U.S. consumption	26,241,000	25,942,000	26,568,000	13,201,000	13,521,000

(1) Includes commercial and farm production.

Source: Production and consumption data compiled from official USDA/ERS statistics (provided by fax); import and export data compiled from USDA/ERS, "Livestock, Dairy and Poultry: Situation and Outlook" (various issues).