FRESH, CHILLED, OR FROZEN PORK FROM CANADA

Determination of the Commission in Investigation No. 701-TA-298 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation

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United States International Trade Commission
Washington, DC 20436

UNITED STATES INTERNATIONAL TRADE COMMISSION

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<u>Note</u>.--Information that would reveal business proprietary operations of individual concerns may not be published and, therefore, has been deleted from this report. Such deletions are indicated by asterisks.

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation No. 701-TA-298 (Preliminary)

FRESH, CHILLED, OR FROZEN PORK FROM CANADA

Determination

On the basis of the record 1/ developed in the subject investigation, the Commission determines, 2/ pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. § 1671b(a)), that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports from Canada of fresh, chilled, or frozen pork, provided for in subheadings 0203.11.00, 0203.12.90, 0203.19.40, 0203.21.00, 0203.22.90, and 0203.29.40 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Government of Canada.

Background

On January 5, 1989, a petition was filed with the Commission and the Department of Commerce by the National Pork Producers Council (NPPC), Des Moines, IA, and others, alleging that an industry in the United States is materially injured by reason of subsidized imports of fresh, chilled, or frozen pork from Canada. Accordingly, effective January 5, 1989, the Commission instituted preliminary countervailing duty investigation No. 701-TA-298 (Preliminary).

1/ The record is defined in sec. 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(i)).
2/ Acting Chairman Brunsdale and Commissioner Cass determine that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports from Canada of fresh, chilled, or frozen pork that are alleged to be subsidized by the Government of Canada. Commissioner Lodwick did not participate in this investigation.

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of January 11, 1989 (54 F.R. 1014). The conference was held in Washington, DC, on January 26, 1989, and all persons who requested the opportunity were permitted to appear in person or by counsel.

VIEWS OF COMMISSIONER ECKES, COMMISSIONER ROHR, AND COMMISSIONER NEWQUIST

On the basis of the information gathered in this preliminary investigation, we determine that there is a reasonable indication that the domestic industry producing fresh, chilled, or frozen pork is materially injured 1/ by reason of the allegedly subsidized imports from Canada that are subject to this investigation.

Like product

To determine whether a "reasonable indication of material injury" exists, the Commission must first make threshold factual determinations with respect to "like product" and "domestic industry." Section 771(4)(A) of the Tariff Act of 1930 defines the relevant domestic industry as the "domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product." 2/ "Like product" is defined as "[a] product that is like, or in the absence of like, most similar in characteristics and uses with the article subject to investigation." 3/

1/ Commissioner Rohr determines that there is a reasonable indication that the domestic industry is materially injured or threatened with material injury by reason of the subject imports.

2/ 19 U.S.C. § 1677(4)(A).

3/ 19 U.S.C. § 1677(10).

The "article subject to an investigation" is defined by the scope of the investigation initiated by the Department of Commerce. In this investigation, the articles subject to investigation are fresh, chilled, and frozen pork (pork). 4/ Specifically excluded from the scope of the investigation are processed or otherwise prepared or preserved pork products such as canned hams, cured bacon, sausage, and ground pork. Domestic unprocessed pork clearly is most similar in characteristics and uses to the Canadian product. 5/ Thus, we determine that domestic pork is like pork from Canada.

Turning now to the composition of the like product, we note that during the slaughtering operation, live swine are inspected, stunned, bled, eviscerated, scalded, dehaired, and partially decapitated. The carcass is then generally split along the spinal column and chilled. 6/

In this investigation, both parties assert that the Commission should employ the same like product definition (i.e. fresh, chilled, or frozen pork) as in the Commission's prior

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4/ 54 Fed. Reg. 5537 (Feb. 3, 1989).

5/ Although evidence in the record indicates that the Canadian product is perceived by some to be a higher quality and leaner product than the U.S. product, Transcript of the Conference (Tr.) at 59, 104; Post-Conference Memorandum of the Canadian Meat Council (CMC Memorandum) at 19, Attachment C at 3; Post-Conference Statement on Behalf of the Canadian Pork Council (CPC Statement) at 5-6, Canadian pork and U.S. pork are essentially the same. Report of the Commission (Report) at A-2-3. Moreover, none of the parties in this investigation has asserted that, as a result of leanness or quality considerations, domestic pork is not like Canadian pork.

6/ Report at A-8.

determination involving Live Swine and Pork from Canada, Inv. No. 701-TA-224 (Final), USITC Pub. 1733 (1985). 7/ In light of these assertions and the evidence of record in this investigation, we determine that the appropriate like product is fresh, chilled, or frozen pork.

Definition of the domestic industry

Section 1326(a) of the Omnibus Trade and Competitiveness Act of 1988 (the 1988 Act) amends the statutory definition of domestic industry to provide that in an investigation involving a processed agricultural product produced from a raw product, the producers or growers of the raw agricultural product may be considered part of the industry producing the processed product if: (1) there is a single continuous line of production from the raw agricultural product to the processed product and (2) there is a substantial coincidence of economic interest between the producers and growers and the processors. 8/

Single Continuous Line of Production

Section 771(4)(E)(ii) of the 1988 Act specifies that the processed agricultural product shall be considered to be

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7/ Tr. at 71, 92-93; CMC Memorandum at 39. In Live Swine and Pork, the Commission found that live swine and fresh, chilled, or frozen pork constituted two distinct like products. USITC Pub. 1733 at 4. This determination was based upon differences in characteristics and uses between the products. The Commission also found that the products are produced in different facilities and that the packing operations (described above) add substantial value by transforming the live animal into pork. The Commission further found that the products sell to different markets.

8/ See new § 771(4)(E)(i) of the statute, to be codified at 19 U.S.C. § 1677(4)(E)(i).

processed from a raw agricultural product through a single continuous line of production if: (1) the raw agricultural product is substantially or completely devoted to the production of the processed product and (2) the processed product is produced substantially or completely from the raw product. 9/ Petitioners assert that pork is processed through a single continuous line of production because: "[t]here is absolutely no other use for swine other than producing pork and . . . you cannot get a pork chop from anything but a hog." 10/ Respondents did not specifically address this issue.

We conclude that swine is primarily sold in only one market, and the primary purpose of raising slaughter hogs is to produce pork meat. Accordingly, we determine as we did in Live Swine and Pork, 11/ that the single continuous line of production standard has been met.

Substantial Coincidence of Economic Interest

With respect to the question of a substantial coincidence of economic interest, the 1988 Act directs the Commission to consider "relevant economic factors, which may include, in the

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9/ See new § 771(4)(E)(ii) of the statute, to be codified at 19 U.S.C. § 1677(4)(E)(ii).

10/ Tr. at 36; Petition for the Imposition of Countervailing Duties on Pork from Canada (Petition) at 11-12.

11/ USITC Pub. 1733 at 6.

discretion of the Commission, price, added market value, or other economic interrelationships. . . ." 12/

In Live Swine and Pork, the Commission determined that there was not the requisite integration of economic interest. The Commission stated:

> Less than 5 percent of packing facilities are owned by growers. . . Virtually none of the grower facilities are owned by packers. . . Further, the petitioners have conceded that the prices for hogs are not linked by contract to the prices received by the packers. . .
>
> While the absence of a legal relationship between growers and packers is not determinative of the absence of economic integration, we are unpersuaded by the petitioners' contention that an integration of economic interest can be reflected solely by a high price correlation between live swine and fresh, chilled, or frozen pork . . . We, therefore, cannot find that growers should be included into a single industry with packers producing pork. . . 13/

The record in this preliminary investigation reveals essentially the same facts. Few of the packing companies are owned and operated by live swine growers. Of these few companies, most are cooperatives. 14/

The Parties' Arguments

Petitioners contend that this second test is met in this investigation by virtue of the fact that the price correlation between hog and pork prices between 1984 and 1988 was between

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12/ See new § 771(4)(E)(i)(II) of the statute, to be codified at 19 U.S.C. § 1677(4)(E)(i)(II).

13/ USITC Pub. 1733 at 6-7 (citations omitted).

14/ Report at A-12-13; See Confidential memorandum from Fred Rogoff to Randi Field dated February 10, 1989.

90.5% and 98.8% and because the meat packers add relatively little value to the hog in the slaughtering process. 15/ Petitioners contend that the small amount of value added by the pork packers is corroborated by "(1) the near identity of unprocessed pork and live hog prices, as well as (2) the very close unprocessed pork and live hog price correlation." 16/ Petitioners assert that because of these economic factors, hog producers are directly affected by changes in pork prices and, therefore, have a direct economic interest in the market conditions affecting pork. 17/

The Canadian Meat Council and the Canadian Packers (hereinafter the CMC) assert that a high price correlation "means only that prices generally move in the same direction, but does not establish that the movements are of comparable magnitude," and, in fact, "those movements are not of comparable magnitude, and thus affect growers and processors quite differently." 18/ One witness who testified at the conference at the request of the CMC, asserts:

> Hogs are produced by independent growers in separate facilities, and are sold to packers in

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15/ Petition at 24, 27-30. In this regard, we note that the initial slaughtering phase represents only a small part of the packing process. See Confidential memorandum from David E. Ludwick to Randi Field, dated February 10, 1989 ("Ludwick memorandum").

16/ Petition at 27 (emphasis in original).

17/ Post-Conference Response of Petitioners (Petitioners' Response) at 3-4.

18/ CMC Memorandum at 50.

> arms-length transactions. In general, packers are dependent upon the spread between their selling prices for cuts and their purchasing prices for hogs. The profits of growers depend upon the spread between the selling price of their hogs and their production costs. Thus, low hog prices are beneficial to packers, and high hog prices are beneficial to growers: the interests of the two sets of producers are thus dramatically opposed. 19/

The CMC, therefore, asserts that "there is a clear inverse relation between if not the profitability in the aggregate, . . . at least the profit margins of the growers and packers." 20/

The CMC also contends that there are many variables that affect the well-being of one segment that do not affect the other. For example, growers are deeply concerned about feed prices. In contrast, packers are concerned about certain labor, capital, and packing costs that growers are not concerned about. 21/

Regarding the amount of value added, the CMC notes that, assuming arguendo that such a factor is relevant to the issue of substantial coincidence of economic interest, packers engage in a number of activities including trimming, deboning, cutting of primals (wholesale cuts) into subprimals, and packaging, and

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19/ Statement of Professor Larry Martin, Conference Exhibit 14 at 2.

20/ Tr. at 111-12.

21/ Tr. at 113; Conference Exhibit 14 at 2.

that in recent years U.S. packers have been focusing on adding value to their product. 22/

Petitioners counter that, while in the short term the interests of the packers and the growers may not necessarily be compatible, their long range goals of obtaining a strong and profitable domestic industry are very similar. They assert that, even in the short run, both packers and growers can be harmed by pork imports because "as the prices to hog producers are lowered, the packers lose their kill and cut margins." 23/

Analysis

Prior to the 1988 Act, the statutory provision for defining the domestic industry, section 771(4), was the same for cases involving agricultural products as for cases involving all other industries. The only specific guidance regarding the disposition of agricultural cases was found in the legislative history of the Trade Agreements Act of 1979 discussion of material injury. 24/

22/ Tr. at 97 and Conference Exhibit 8. See Tr. at 57; CMC Memorandum, Attachment A at 22. We note that the actual amount of value added by the packing operations varies from company to company and from time to time. Although we have data regarding the range of value added costs accounted for by the packing operations, such data are confidential and, therefore, cannot be discussed herein. See Ludwick memorandum (February 10, 1989).

23/ Petitioners' Response at 4.

24/ In its discussion of material injury, the Senate Report of the Trade Agreements Act of 1979 states:

> Because of the special nature of agriculture . . . special problems exist in determining whether an agricultural industry is materially

(continued...)

Prior to the 1988 Act, the Commission relied on this passage in several agricultural cases to define the domestic industry to include not only processors of the like product, but also in circumstances in which the growers functioned as part of the processing industry, the growers of the unprocessed agricultural input as well. 25/ The Commission exercised caution, however, in determining whether to include growers in the definition of the domestic industry because neither the statute nor the legislative history provided an exception for the definition of an "agricultural industry."

In light of the new statutory provision for defining the industry in an investigation involving a processed agricultural product, we find that although arrangements between growers and processors such as cooperatives, interlocking ownership, and participation plans may provide clear evidence of a substantial

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> 24/(...continued)
> injured. For example, in the livestock sector, certain factors relating to the state of a particular industry within that sector may appear to indicate a favorable situation for that industry when in fact the opposite is true. Thus, gross sales and employment in the industry producing beef could be increasing at a time when economic loss is occurring, i.e., cattle herds are being liquidated because prices make the maintenance of the herds unprofitable.

S. Rep. 249, 96th Cong. 1st Sess. 88 (1979).

25/ See, e.g., Frozen Concentrated Orange Juice from Brazil, Inv. No. 731-TA-326 (Final), USITC Pub. 1970 at 11-16 (1987); Certain Red Raspberries from Canada, Inv. No. 731-TA-196 (Preliminary), USITC Pub. 1565 at 7-8 (1984); Lamb Meat from New Zealand, Inv. No. 701-TA-80 (Preliminary), USITC Pub. 1191 at 8-10 (1981). See also Certain Tomato Products from Greece, Inv. No. 104-TAA-23, USITC Pub. 1594 at 7 (1984).

coincidence of economic interest, 26/ other less well-defined economic relationships may also satisfy the test. For the purpose of this preliminary investigation, we accept the indicia set forth by the petitioner as satisfying this test. We note, however, that we will closely examine this issue in the event that this case returns for a final investigation and request the parties to address the issue of what other types of economic relationships may satisfy this test in this investigation.

Condition of the Domestic Industry

Before addressing the condition of the domestic industry, we shall consider the question whether -- having defined the domestic industry to include both swine growers and pork packers -- the Commission in its material injury determination may give greater weight to the condition of one segment of the industry over another.

The Parties' arguments

Counsel for petitioners asserts that the legislative history of the new act directs the Commission to focus on that portion of the industry which accounts for the significant amount of value added and "the figures for the hog producers themselves are clear in terms of injury." 27/ Petitioners argue that even if the packing industry were found to be relatively healthy, given the small amount of value added by packers in producing pork and the serious difficulties experienced by the hog

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26/ *See supra* note 25.

27/ Tr. at 55; Petition at 69.

producers, the condition of the packers should not preclude a finding of injury with respect to the overall packing industry. 28/

The CMC asserts that Commission lacks statutory authority to find that unfavorable conditions in one segment of an industry can warrant an affirmative determination regardless of the conditions of another segment. 29/ It further argues that under the countervailing duty law, the only situation in which the Commission may make an affirmative determination when only a portion of the industry is experiencing injury is the case of a regional industry. 30/ Thus, the CMC asserts that the statute does not allow the Commission to give greater weight to conditions of the hog growing segment of the combined industry. 31/

Analysis

The legislative history referred to by petitioners states:

> Also relevant in [cases involving processed agricultural products] is the relative importance, on the basis of value-added, of the

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28/ Petition at 69.

29/ CMC Memorandum at 21.

30/ 19 U.S.C. § 1677(4)(C).

31/ *Id*. at 22. The CMC argues that petitioners' theory must be that imports of pork depress pork prices which, in turn, depress the demand for hogs and depress hog prices. The CMC argues that, as a matter of logic, the imports must depress or suppress the domestic pork price before there can be any upstream effect on growers. Therefore, the CMC contends that the Commission must give considerable weight to the condition of the packing sector of the domestic industry. Tr. at 128; CMC Memorandum at 22-23.

> growers or producers and of the processors within the industry producing such product. In making its injury determination, the ITC may give greater weight to one or the other group within the industry, in proportion to their relative importance, if either group accounts for a significant portion of the total value of the processed product. 32/

The legislative history indicates that the Commission may, but is not required to give greater weight to one segment of an industry on the basis of value added. Nonetheless, we agree with the CMC that the condition of the packers cannot be ignored in the Commission's injury analysis. For the purpose of this preliminary investigation, we exercise our discretion not to give greater weight to one industry group over another and, instead, have generally examined the trends with respect to both segments of the industry. In the event that this case returns for a final investigation, however, we will scrutinize this issue carefully and request the parties to address the issue more exhaustively.

In evaluating the condition of the domestic industry, the Commission considers, among other factors, U.S. production, capacity, capacity utilization, domestic shipments, inventories, employment, and financial performance. 33/ The 1988 Act also amends section 771(7)(C)(iii) by directing the Commission to "examine all relevant economic factors described in this clause

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32/ S. Rep. 71, 100th Cong., 1st Sess. 111 (1987); H.R. Rep. 40, Part I, 100th Cong., 1st Sess. 122-23 (1987) (emphasis added).

33/ 19 U.S.C. § 1677(7)(C)(iii).

within the context of the business cycle and conditions of competition that are distinctive to the affected industry." 34/

In this investigation, the condition of the domestic industry must be assessed against the backdrop of the U.S. hog cycle. 35/ The hog cycle may be described as a change in the population or inventory of live animals and a concomitant but opposite change in pork production. The cycle reflects the decisions of growers to expand or reduce production in response to fluctuations (and anticipated fluctuations) in prices or profits. 36/

For example, as the price for live animals rises, growers typically respond by retaining additional animals for breeding purposes so that ultimately they have more animals to sell at the higher prices. 37/ As a result, fewer animals are available for slaughter which puts an upward pressure on price and encourages more retention of animals for breeding purposes. The expanded number of animals retained for breeding results in supplies of animals that are too large to clear the market at the prevailing price and, therefore, price declines. As the price declines, growers typically respond by retaining fewer animals for breeding purposes and slaughtering mature animals

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34/ See § 1328 of the 1988 Act, to be codified at 19 U.S.C. § 1677(7)(C)(iii).

35/ Report at Appendix H.

36/ The rate of expansion or contraction in production is also influenced by biological constraints such as the gestation period for hogs and the time it takes for hogs to reach slaughter weight. Report at B-54.

37/ Report at B-54-55.

that had been retained in breeding herds. As supplies are reduced, the price begins to rise initiating the next phase of the hog cycle. In the United States, a hog cycle is four years from peak to peak. 38/ Biological constraints and current economic signals suggest that the hog cycle is in the contraction phase. 39/

Data on net margins (profit levels) were collected for U.S. feeders as well as for farrow-to-finish growers. 40/ Net margins for farrow-to finish growers were negative or marginally positive during 1985 though April 1986. 41/ Net margins became more positive in June 1986 through December 1986. 42/ The first three months of 1987 evidenced smaller net margins than the previous seven months of 1986 but were still higher than the corresponding first three months of 1986. Margins rose in April 1987 and were at historically high levels in the summer of 1987. Net margins then declined beginning in November 1987, however, and were lower in every month of 1988 than the corresponding months in 1987. Net margins were actually negative during the last four months of 1988. The net margins of the U.S. feeders

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38/ Report at B-54.

39/ Report at B-59.

40/ See Report at B-55 (Table H-1) and B-56 (Table H-2). U.S. feeders raise feeder animals of about 40 pounds to 50 pounds to slaughter weights of about 220 pounds to 240 pounds. Farrow-to-finish hog producers raise animals from birth to slaughter weights

41/ Report at B-56 (Table H-2), B-57.

42/ Report at B-56 (Table H-2), B-58.

generally were negative throughout much of the period of investigation. 43/

Before examining the data regarding the pork packers we note with concern that the Commission received complete questionnaire responses from only six firms, accounting for approximately 34 percent of production in 1988. Two producers who are petitioners did not respond to the Commission's questionnaire. Two others responded only partially. Should this investigation return for a final determination, we will anticipate more comprehensive responses. 44/

Due to the limited amount of questionnaire responses and the availability of public data, public data were used whenever possible to assess the condition of the packing industry. According to U.S.D.A. data, pork production rose 2.3 percent from 14 billion pounds in 1986 to 14.4 billion pounds in 1987

43/ We note that cost-of-goods-sold data for packers suggests that during 1988, at the same time packers were increasing production and growers were liquidating, prices paid by packers to growers declined. In that same period, increased sales by packers reflects increases in volume, not increases in prices received. This information suggests that the scenario of herd liquidation and illusory packer profitability discussed in the Senate Finance report set forth, supra, may be present in this industry.

44/ In this regard, we caution members of the packing industry that when faced with a firm's failure to cooperate with the Commission's efforts to obtain data relevant to its statutory investigations under Title VII, the Commission may draw the reasonable inference that the evidence being sought is unfavorable to the party withholding such evidence. See International Union v. N.L.R.B., 459 F.2d 1329 (D.C. Cir. 1972); Weighing Machinery and Scales from Japan, Inv. No. 701-TA-7 (Final), USITC Pub. 1063 (1980).

and then rose by 8.7 percent to 15.8 billion pounds in 1988. 45/ Domestic shipments increased by 1.1 percent from 13.9 billion pounds in 1986 to 14.0 billion pounds in 1987 and then increased by 8.8 percent to 15.3 billion in 1988. 46/

Data on capacity utilization were collected from a study commissioned by the American Meat Institute, a trade association representing meat packers and processors. 47/ The study, which was based on responses of packers accounting for 50 percent of swine slaughter in 1987, estimated capacity utilization rates in 1987 to be at 63.1 percent per week for packers slaughtering barrows and gilts, and 58.3 percent for packers slaughtering sows and boars. According to projected 1988 figures, capacity utilization rates in 1988 were 68.0 percent for packers slaughtering barrows and gilts, and 63.8 percent for packers slaughtering sows and boars. 48/

Employment data compiled from questionnaire responses indicates that overall employment rose from 6,745 employees in 1986 to 7,231 employees in 1988, and the hours worked increased from 13.4 million in 1986 to 15.6 million in 1988. We note,

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45/ Report at A-15, Table 2.

46/ Report at A-15, Table 2.

47/ Report at A-17.

48/ Because respondents in the study accounted for a larger share of U.S. swine slaughter in 1988, however, actual capacity utilization rates were probably higher than estimated. We note that capacity data obtained from questionnaire responses showed that capacity rose from 5.07 billion in 1986 to 5.26 billion pounds in 1987 to 5.35 billion in 1988. Report at A-16, Table 3.

however, that total compensation paid remained relatively static rising from $158.4 million in 1986 to only $163.1 million in 1988. 49/

Financial data gathered on the operations of U.S. producers include all hog-slaughter operations. We note that the meat packing industry has had traditionally low profit margins; 50/ however, of the seven firms reporting usable income-and-loss data, five reported operating losses. Other financial data gathered from the questionnaires indicates that net sales were roughly $3.6 billion in 1986 rising to $3.8 billion in 1988, and that cost of goods as a ratio to net sales were in excess of 97 percent in all three years under investigation. Although operating income had gone from a deficit in 1986 to surplus in 1988, operating income as a ratio to net sales was only 0.7 percent in 1988. 51/

Reasonable indication of material injury by reason of allegedly subsidized imports

As an initial matter, we note that counsel for petitioners asserts that the Commission should examine imports of hogs when engaging in its causation analysis. 52/ However, the countervailing duty statute is directed at the class or kind of imported merchandise that is being unfairly traded. Inasmuch as

49/ Id.

50/ Id. at A-21.

51/ Id. at A-22, Table 6.

52/ See Petition at 59-60; Tr. at 72, 73.

there currently exists a countervailing duty order with respect to imports of hogs from Canada, 53/ such imports must be deemed to be the equivalent of fairly traded. 54/ Moreover, inclusion of imports that are already covered by an order will "most likely distort the accuracy" of the Commission's findings and could result in the issuance of an order based on imports that are not subject to investigation. We, therefore, do not include imports of hogs in our causation analysis. 55/

53/ Report at A-11.

54/ Cf. Chaparral Steel Co. v. United States, 698 F. Supp. 254, 262 (C.I.T. 1988) ("the relevant inquiry is whether unfairly traded imports are present in the market and subject to investigation during the period of investigation concerning material injury to the domestic industry.")

55/ Recently, in MTN Bearing Corp. of America v. United States, slip. op. 89-13 (C.I.T. Feb. 1, 1989), the Court of International Trade addressed the issue of whether a category of merchandise that was already subject to an antidumping order may be included within the scope of a new investigation. Although this decision involved a Commerce determination, language in the court's opinion is particularly relevant here. The court stated in pertinent part:

> An affirmative antidumping duty determination should only be based on a class of merchandise which actually will be subject to a resulting antidumping duty order. See Badger-Powhatan . . . v. United States, 10 CIT 241, 633 F. Supp. 1364 (1986), appeal dismissed, 808 F.2d 823 (Fed. Cir. 1986).
>
> A contrary rule, whereby an investigation subsumes within its scope a class of merchandise which later must be excluded from the resulting order because another order already covers that merchandise, will most likely distort the accuracy of the administrative findings and the resulting dumping margins. As plaintiffs note, allowing ITA to "temporarily include [plaintiffs'] 0 to 4 inch TRBs in [the second investigation may lead to] the existence of an antidumping order based upon investigations by the ITA and the ITC of merchandise the

(continued...)

In reaching its decision as to whether there is a reasonable indication of material injury by reason of allegedly subsidized imports, the Commission considers, among other factors, the volume of imports, the effect of imports on prices in the United States for the like product, and the impact of such imports on the relevant domestic industry. 56/

U.S. imports of pork from Canada jumped 12 percent from 458 million pounds in 1986, to 512 million pounds in 1987. Imports then declined by 5 percent to 486 million pounds in 1988 but remained 6 percent above the level of imports in 1986. 57/

Market penetration by imports of Canadian pork increased from 3.1 percent in 1986 to 3.4 percent in 1987 before declining to 3.0 percent in 1988. 58/

Another statutory factor in our determination is the effect that imports of Canadian pork have had on domestic prices. U.S. importers that were contacted during this investigation are in

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55/(...continued)
vast majority of which is not even subject to the resulting antidumping order."

Slip. op. at 8-9.

56/ 19 U.S.C. § 1677(7)(C).

57/ Report at A-30-31. The decline in imports of pork in 1988 may have reflected, in part, the fact that two Canadian producers were experiencing strikes. Report at A-27-28. Moreover, Canadian exports to Japan increased in 1988 because Taiwan, which previously had supplied Japan with increasing quantities of pork, was experiencing a drug residue problem with its pork. The residue problem was resolved in the fall of 1988, however, at which time Japanese imports from Taiwan began to increase. Report at A-28.

58/ Report at A-33.

agreement that the prices for U.S. and Canadian-produced pork are similar. 59/ Petitioners have alleged, however, that the increased pork exports to the United States have depressed U.S. pork prices.

In this preliminary investigation, the Commission collected price data from published sources and questionnaires from U.S. producers and importers of pork and swine products. Published U.S. market prices were collected for the period of 1975-88 in addition to the period under investigation.

During the period of investigation, U.S. market prices for fresh hams and fresh loins showed seasonal fluctuations, although prices for fresh loins were somewhat higher during 1986-88 as compared to 1975-85. 60/ U.S. market prices for fresh pork bellies and fresh Boston butts also showed seasonal fluctuations during the period of investigation. Prices for these products increased during 1986-87 to their highest level since 1982, but then declined in 1988 to their lowest level since 1980. 61/ U.S. market prices for picnics also showed seasonal variations during 1986-87 but then leveled off in 1988 to prices that were lower than 1986-87. 62/ U.S. market prices

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59/ Report at A-34, 37.

60/ Report at A-39-40, A-41 (Figure 7) and A-42 (Figure 8).

61/ Report at A-39-40, A-43 (Figure 9) and A-44 (Figure 10).

62/ Report at A-39-40, A-45 (Figure 11), and A-40.

varied for fresh trimmings during 1986-87 but then declined during 1988 to their lowest level since 1976. 63/

With regard to the questionnaire data, initially we note that the responding U.S. producers accounted for approximately 24 percent of U.S.-produced domestic shipments of pork and approximately 8 percent of shipments of the specified pork products for which price data were requested. 64/ The responding U.S. importers accounted for only about 3 percent of all reported imports of Canadian pork in 1988. For the purpose of this preliminary investigation, we note that the data collected showed the same relative price fluctuations and seasonality as did the USDA data. 65/ Finally, we note that no substantiated allegations of lost sales or lost revenues were reported by U.S. producers. 66/ In the event that this case returns for a final investigation, we would expect the packers to be in a position to substantiate any such allegations.

63/ Report at A-46 (Figure 12) and A-40.

64/ Report at A-39.

65/ Report at A-40, A-48 (Table 15).

66/ Report at A-49.

Conclusion

Based on the foregoing indicators and in the absence of more complete data, we determine that there is a reasonable indication that allegedly subsidized imports of fresh, chilled, or frozen pork from Canada are materially injuring the domestic industry.

We note that there have been significant recent changes in the statute under which this petition was filed since the Commission's earlier determination involving Live Swine and Pork from Canada. First, the statute explicitly provides the Commission with discretion to include growers together with processors in the domestic industry and suggests that the Commission may assess the relative importance of these industry groups in making its injury determination. Further, the statute directs the Commission the look at the statutory injury factors in the context of the business cycle.

We find these changes raise significant questions in the application of the trade laws in this investigation, and note that this is the first investigation to involve these changes since they were enacted. Therefore, they warrant further consideration by the Commission in a final investigation. Also, the available data in this preliminary investigation on the condition of the packer group and data on the prices of Canadian imports cannot support a negative determination in accordance with the "reasonable indication" standard of preliminary determinations approved by the Federal Circuit in American Lamb Co. v. United States. 67/ Likewise, data on the operation of the hog cycle and the relative positions of the growers and packers are deficient.

67/ 785 F.2d 994 (Fed. Cir. 1986).

ADDITIONAL VIEWS OF COMMISSIONER DAVID B. ROHR

Fresh, Chilled, or Frozen Pork From Canada
Inv. No. 701-TA-298 (P)

While I make an affirmative determination in this preliminary investigation and generally concur in the views of my colleagues, Commissioners Eckes and Newquist, I feel compelled to add these views setting forth the basis of my individual affirmative finding. Specifically, I have made an affirmative finding because I do not believe that the second prong of the *American Lamb*[1] standard for preliminary determinations, that there is no likelihood of evidence demonstrating material injury or threat thereof being obtained in a final investigation, has been met. I find that there are a number of issues on which evidence demonstrating such injury might be obtained and which might require me to make an affirmative determination in a final investigation.

Domestic Industry

The 1988 Omnibus Trade and Competitiveness Act has made certain changes in the law regarding how the Commission defines domestic industries in agricultural investigations.[2] For the most part, these changes reflect Congressional acquiesence in and approval of the two-pronged test that the Commission had been using for including growers and processors of agricultural products in single industries. I concur with my colleagues that the first prong

[1] American Lamb Co. v. United States, 785 F.2d 994 (Fed Cir. 1986).

[2] See new section 771(4)(E)(ii).

of that test, a single continuous line of production, is met. It is not, however, clear that the second prong, which involves some degree of commonality of interest, has been satisfied.

The new law specifically defines the second prong of the test to be "substantial coincidence of economic interest."[3] The legislative history of this provision, in general, appears to approve of the Commission's preexisting handling of the grower/processor issue. It is, therefore, reasonable to conclude that this language has a meaning somewhat similar to that of the term that the Commission had previously used in these cases. The language previously used by the Commission varied, but was most often expressed as a "commonality of economic interest" or "evidence of economic integration." Arguably, "commonality" or "integration" implies a higher degree of common interests than "a substantial coincidence of economic interest." It is not clear, however, how much lower the latter, current standard might be, if, in fact, it is a lower standard.

Whatever the standard may be, it does appear to me that a correlation of prices is not enough. Whatever changes are to be interpreted from the new law, they do not appear to extend to a complete reversal of the position stated in the original *Live Swine and Pork*[4] case that correlation of price is not enough. Petitioners have raised the issue of low "value added" by processors. It is not at this time clear that the value added is as low as

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[3] See new section 771(4)(E)(i) of the Tariff Act of 1930, to be codified at 19 U.S.C. 1677(4)(E)(i).

[4] Live Swine and Pork from Canada, Inv. No. 701-TA-224 (Final), USITC Pub. 1733 (1985).

petitioners suggest nor as high as respondents suggest. Additional evidence will be sought on this issue.

Petitioners argue that the long term interests of the two groups, growers and processors, are similar. Such arguments establish very little. Processors, of course, need a continuing supply of hogs from growers and so have an "interest" in a viable "grower industry." However, processors have an interest in maximizing the supply of hogs to be slaughtered at the lowest possible price, while growers have an interest in the highest possible price, which generally means keeping the supply of hogs to be slaughtered below that which the processors want. Such interests are hardly compatible, much less coincident.

Respondents argue that a better indicator of substantial coincidence of economic interest is to be found in whether profitability is correlated. The evidence for or against such a correlation is not clear at this stage of the investigation. While there areis some indications that profit margins may not move strictly together, it is not clear whether one merely lags or leads the other, or whether such lags or leads preclude the existence of a substantial coincidence of economic interest. Stated differently, while the interests may be different at any given time, the interests may be coincident over a given, relevant period of time, for example, the hog cycle. These are questions which must be addressed in any final investigation.

Condition of the Domestic Industry

I concur completely with my colleagues that if the growers and processors are eventually found to comprise a single industry the relative weights to be assigned to the two segments is an issue that must be addressed in any final investigation.[5] There are several other issues which need further investigation. First, the lack of cooperation on the part of the packing industry is troubling. While the collection of data from growers is always difficult because of the vast number of participants, the packing sector is discrete and data should be available.

Second, while it appears clear that, in general, packing is a low profit industry, the very low profits which we observe in the data may be below even those generally to be expected low margins. I intend to seek more information on which to assess the actual operations of the packers. Third, in evaluating the condition of the industry we must keep in mind the Congressional admonitions about potential distortions in economic indicators in livestock industries.[6] While production may be up during herd liquidation, herd liquidation may itself be indicative of injury. It is not clear how this concept should be applied to an analysis of the condition of the packers.

Causation

With respect to the issue of whether the allegedly subsidized imports are a cause of material injury there are several questions with respect to which additional investigation is required. First, I concur with my colleagues about the proper role of live swine imports in this investigation. To the extent petitioners argue that live swine imports should be considered in this investigation, any injury attributable to them cannot be attributed to pork.

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[5] Of course, it is also arguable that such weighing is necessary or significant only when the trends in the performance of the two segments are opposite. Of course the very fact that the trends are not consistent would itself be an argument against combining them in a single industry.

[6] See footnote 24 in the Majority Views.

Live swine imports are not the subject of this investigation and are already subject to a countervailing duty order. If the injury is attributable to live swine, it may be that there is no injury left to be attributed to pork.

Second, additional and more detailed information about pork import volumes is required. In any final investigation, we will seek to obtain such data on a monthly basis. Third, with respect to prices, it appears that, in addition to the general price levels which we have collected so far, it may be necessary to seek specific price comparisons between the Canadian and the domestic product from purchasers in selected specific regional or subregional markets in which they compete.

Reasonable indication of threat of material injury by reason of allegedly subsidized imports

Section 612 of the Trade and Tariff Act of 1984 (the 1984 Act), as amended by the 1988 Act, contains subparagraph 771(7)(F) which directs the Commission to consider a number of economic factors in assessing threat of material injury. Such factors include:

> (1) the nature of the subsidy and whether the subsidy is an export subsidy inconsistent with the GATT;
>
> (2) the ability and likelihood of the foreign producers to increase the level of exports to the United States due to increased production capacity or unused capacity;
>
> (3) any rapid increase in penetration of the U.S. market by imports and the likelihood the penetration will increase to injurious levels;
>
> (4) the probability that imports of the merchandise will enter the U.S. at prices that will have a depressing or suppressing effect on domestic prices of the merchandise;
>
> (5) any substantial increases in inventories of imported merchandise in the United States;

(6) underutilized capacity for producing the merchandise in the exporting country;

(7) any other demonstrable adverse trends that indicate the probability that importation of the merchandise will be the cause of actual injury;

(8) the potential for product shifting (i.e. the ability of exporters to shift production facilities from products subject to other investigations or subject to outstanding antidumping or countervailing duty orders to the product subject to the instant investigation); [7]

(9) In an investigation involving both raw and processed agricultural products, the likelihood of increased imports by product shifting between raw and processed products; [8]

10) Actual and potential negative effects on existing development efforts to make a more advanced or derivative version of the like product;[9] and

11) Evidence of dumping in other countries signatory to the GATT.[10]

The statutory language further provides that any threat must be real and actual injury imminent and admonishes that the Commission's determination must not be made on the basis of mere conjecture or supposition. [11]

1) Subsidies

In this investigation, petitioners have alleged the existence of some

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[7] 19 U.S.C 1677(7)(F).

[8] 19 U.S.C. 1677(7)(F)(i)(IX), as amended, 1988 Act 1326(b).

[9] 19 U.S.C. 1677(7)(F)(i)(X), as amended, 1988 Act 1329; S. Rep. 71, 100th Cong., 1st Sess. at 118.

[10] 19 U.S.C. 1677(7)(F)(iii), as amended, 1988 Act 1329; S. Rep. 71, 100th Cong., 1st Sess. 118; H.R. Rep. 40, 100th Cong., 1st Sess., pt. 1, at 133.

[11] Id.

export subsidies.[12] In general, such subsidies are more "threatening" in that they result in a greater incentive to export. This may be significant as the U.S. is the most significant export market.

2) Ability and likelihood of increasing exports from unused capacity

Counsel for petitioners assert that the Canadians "have the capability of slaughtering everything in Canada and that they are building plants in the southern points directed to do that." [13] In addition, the Commission's Report states that Canadian exports to Japan increased in 1988 because Taiwan, which previously had supplied Japan with increasing quantities of pork, was experiencing a drug residue problem with its pork. The residue problem was resolved in the fall of 1988, however, at which time Japanese imports from Taiwan began to increase. [14] Therefore capacity of Canadian packers does not appear to impose any major restraints on exports.

The import trends may also have been distorted in 1988 due to the unusual conditions of that year. These conditions include the Japanese exports indicated above and the labor problems at Fletcher Fine Foods. The decline in import volumes in 1988 may not be indicative of what is the actual trend in imports. It would be a significant factor in my threat analysis if the decline in Canadian imports in 1988 were due solely to factors such as the short term removal of Fletcher's supply from the market.

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[12] See Petition at 47 (National Workshop Program); 51 (Ontario Export Sales Aid; Ontario Marketing Assistance Program); 52 (Canada/Alberta Agreement); 54; and Attachment 15.

[13] Tr. at 61. See Report at A-28 ("In recent years, large-volume swine slaughtering plants have been built in Manitoba and Alberta, with one large-volume older plant closed in Saskatchewan.")

[14] Report at A-28.

3) Market penetration

There has not been a rapid increase in market penetration in this investigation.[15] There has however been an increase particularly since the original imposition of duties on live swine.

4) Probability of price depression

Professor Grimes, an agricultural economist who testified on behalf of petitioners, asserts that supply is a very important determinant to price.[16] Counsel for petitioners asserts that in the first five months of 1988, imports of unprocessed pork from Canada depressed hog prices somewhere between $1.53 and $3.37 per hundredweight.[17] To measure the impact on pork prices from the impact on hog prices, petitioner asserts that the Commission should look at the correlation of over 90% in those prices which means that "if the hog prices are depressed, pork prices are depressed as well."[18] Counsel alleges that given the margin, however, pork prices are probably even depressed more. Petitioners further assert that when prices fall, the hog producers cut back production, whereas in Canada they do not cut back and all of the Canadian excess of pork and hogs comes into the United States.[19]

It is also not clear to what extent additional supplies of allegedly

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[15] See Report at A-33.

[16] Tr. at 32.

[17] Tr. at 34.

[18] Tr. at 34.

[19] Tr. at 42.

subsidized Canadian pork may have had a price depressing effect in particular markets at particular times.

5) U.S. inventories

According to the responses of the three importers who responded to the Commission's questionnaire, there were no end-of-period inventories of fresh, chilled, or frozen pork.[20] It should be noted, however, that fresh pork is a perishable product and is virtually always sold within one week after the swine are slaughtered.[21] Inventories are thus unlikely to have a major effect on the market except in the very short run.

6) Underutilized capacity in exporting country

Mr. Martin Rice, Executive Secretary, Canadian Pork Council testified that to his knowledge the only major plant in Canada that has a lockout due to labor problems is Fletcher Fine Foods.[22] As noted earlier, there is some question of the significance of the lower 1988 import volumes from Canada. There is also a question, given the ease with which capacity can be expanded whether this should be viewed as a significant restraint on imports.

7) Other adverse trends

Petitioners assert that Canada is subsidizing the building of several packing plants and they are "being built on the southern border of Alberta and other western provinces, with the express intention of being able to provide

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[20] Report at A-28.

[21] Report at A-14.

[22] Tr. at 129. See also Report at A-39-41; CMC Memorandum, Attachment B at 1 (although Fletcher's has a lockout, labor disruption in the Canadian industry is not unusual). But see Petition, Attachment 1, at 3 (both Fletcher's and Gainers settled with their union employees and by December both plants were capable of killing the majority of Alberta hogs).

and ship pork to the United States." [23] They contend that the Canadians have established a "deliberate policy" of increasing production of pork in that country and that the great bulk of that production is dedicated to the United States. [24]

Petitioners' assert that Fletcher Fine Foods, which is owned by the Alberta Pork Marketing Board, has established in the United States, and the West Coast in particular, a "sophisticated distribution network" targeted to the consumer markets in California, Hawaii, the Northwest States and Arizona. [25] In the event that this case returns for a final investigation, I will seek more information on the Canadian packing industry.

A significant aspect of petitioners case is that Canadian subsidies have significantly affected the normal production decisions of the hog cycle, allegedly allowing Canadian growers and packers to ignore the production indicators of the cycle. Additional evidence is needed to determine if, in fact, this is the case. The impact of such a distortion in the hog cycle, if it occurred, on a threat analysis must also be explored in any final investigation.

8) <u>Potential for product shifting</u>

Mr. Norman Montague, a swine producer who testified on behalf of the petitioners, asserts:

> The subsidies remain where they are for say, the next three or four quarters, the next [Commerce] review which I think takes place in October will create a new

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[23] Tr. at 15. <u>See</u> petition at 73 and Attachment 26 (Toronto publication reported that the Commission's decision, in part, led to the opening of two slaughterhouses and the construction of at least two processing plants).

[24] Tr. at 16.

[25] Tr. at 18. <u>See</u> Petition, Attachment 1 at 6; Attachment 16 at 6.

> countervailing duty rate for the following year and it would, I believe, raise -- be raised on live hogs and then we'd get the product shift again. We predict this would happen if there's not a duty placed on the product. As they have demonstrated in the past, they're able to switch product and live very well depending on the conditions as they see them. [26]

There is some evidence, based on yearly data for 1988 which saw a decline in pork shipments while live swine imports increased, that there is a potential for product shifting.

In the Commission's prior opinion in the original *Live Swine and Pork* case, I noted that there were uncertainties about the possibility of product shifting due to a variety of factors affecting the distribution system.[27] In my view those factors made the immanence of threat problematic. In the intervening years, it is clear that the distribution system for Canadian pork has developed substantially. I will seek additional information in any final investigation about the extent to which the factors I indicated in my prior opinion made the possibility of product shifting too speculative continue to exist or have been overcome.

9) <u>Likelihood of increased imports by product shifting between raw and processed products</u>

As set forth, the 1988 Act adds a new subclause concerning agricultural products to the existing provisions defining threat of material injury, at 771(7)(F) of the statute, 19 U.S.C. 1677(7)(F). The provision directs the Commission to also consider whether, in any <u>investigation which involves imports of both</u> a raw agricultural product and any product processed from such agricultural product, there is a likelihood of increased imports by reason

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[26] Tr. at 78.

[27] Live Swine and Pork, supra note 3, at 18.

of product shifting if the Commission reaches an affirmative determination as to one of these two products but not to both. This provision is inapplicable to this case since both the raw product and the further processed product are not under investigation.

10) Negative effects on development efforts of the like product

As stated above, U.S. packers are focusing on adding value to their product.[28] I would not classify this focus as a necessarily negative effect.

11) Dumping in other countries

This provision does not appear to be relevant to this investigation.

In light of the above factors, as well as the incomplete data received in this investigation, I determine that there is a reasonable indication that the domestic industry is threatened with material injury by reason of the allegedly subsidized imports of fresh, chilled, or frozen pork from Canada.

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[28] Tr. at 57, 97, and Conference Exhibit 8. Report at A-38.

DISSENTING VIEWS OF ACTING CHAIRMAN ANNE E. BRUNSDALE

Fresh, Chilled, or Frozen Pork from Canada
Investigation No. 701-TA-298 (Preliminary)

February 21, 1989

On July 31, 1985, the Commission determined that the domestic industry producing fresh, chilled, or frozen pork was not materially injured, or threatened with material injury, by reason of unfair imports from Canada.1/ The present investigation, covering the same product, presents no evidence to alter the conclusion reached in the earlier investigation. In fact, the domestic industry's performance has improved, Canadian imports have remained at virtually the same level, and the alleged subsidy margins are quite similar to those found by the Department of Commerce in the previous investigation. I therefore disagree with my colleagues in the majority and determine that there is no reasonable indication that the domestic industry is materially injured, or threatened with material injury, by reason of imports of Canadian fresh, chilled, or frozen pork.

1/ See Live Swine and Pork from Canada, Inv. No. 701-TA-224 (Final), USITC Pub. 1733 (July 1985) [hereinafter cited as 1985 Pork Decision]. Because Chairwoman Stern and Commissioner Lodwick recused themselves from that investigation, the views of Vice Chairman Liebeler and Commissioner Rohr constituted the majority views of the Commission.

Like Product

The Commission determined in its previous investigation that fresh, chilled, or frozen pork was a separate like product from live swine.2/ In the present investigation, the evidence supports a finding, and parties agree, that the like product consists of fresh, chilled, or frozen pork that is not processed or preserved.3/ Therefore, I agree with the parties' definition of like product in this case.

Domestic Industry

The relevant domestic industry in this investigation is that producing fresh, chilled, or frozen pork.4/ Because the like product is a processed agricultural product, however, the Commission is required to consider whether the producers of the raw commodity from which the processed agricultural good is produced should be included in the domestic industry.5/ In cases involving processed products, the Commission may include the producers or growers if there is (1) a single, continuous line of production from the raw agricultural

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2/ See 1985 Pork decision, supra note 1, at 3-7. Imports of live swine are not at issue in this investigation.
3/ See Tr. at 39 (Mr. Sandstrom for the Petitioners), Tr. at 92-93 (Mr. Schneider for the Respondents). See also Report at A-2 - A-7 (for a complete discussion of the like product).
4/ See 19 U.S.C. 1677(4), (10).
5/ This requirement stems from a provision of the Omnibus Trade and Competitiveness Act of 1988. See Section 1326(a), which amends the definition of domestic industry by giving the Commission discretionary authority to include the producers or growers of raw agricultural commodities in cases involving processed agricultural products.

product to the processed product and (2) a substantial coincidence of economic interest between the producers or growers and the processors.6/ As in the previous investigation, it seems clear here that there is a single continuous line of production from live swine to fresh, chilled, or frozen pork.7/ However, the second part of the test for including producers of the raw commodity in the definition of domestic industry is not met, because there is not a substantial coincidence of economic interest between live swine growers and pork packers.

First, for the most part, raising live swine and slaughtering them are separate businesses.8/ Second, it appears that packers benefit when prices for live swine are low and available supplies of swine are high, while growers benefit when prices are high and the number of swine being slaughtered is low.9/ Finally, Respondent's expert witness correctly noted that growers and packers are affected differently by a wide range of variables.10/ For example,

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6/ Id.
7/ See 1985 Pork Decision, supra note 1, at 6.
8/ See Confidential Memorandum from Fred Rogoff to Randi Field, dated February 10, 1989.
9/ These two situations (high prices for live swine and low quantities available for slaughter versus low prices for live swine and large quantities available for slaughter) both occur at different points in the hog cycle, which is the business cycle in this industry. It appears that packers tend to benefit when the number of swine being sent to slaughter increases. At that point in the hog cycle, however, prices for swine are dropping. See Report, Appendix H. Therefore, growers do not benefit.
10/ See Tr. at 113.

feed prices and drought affect growers to a much greater degree than they affect packers. Similarly, packers have greater concerns with labor costs, packaging costs, and OSHA and other government regulations. Because of the clear divisions between the interests of growers and packers, I conclude that there is not a substantial coincidence of economic interest between these two groups, and the domestic industry in this investigation thus consists only of packers.

Condition of the Domestic Industry

We are fortunate in this investigation to have available a great deal of general data on the pork and swine industry.11/ All the information seems to indicate a very cyclical business, involving a predictable four-year cycle during which prices start at a high point, move downward for about two years, and then upward for the next two. Similarly, the quantities of swine available for slaughter are low at the beginning of the cycle, increase for the first two years of the cycle and then decrease during the last two years.12/

11/ *See* Report at A-3 - A-11, A-15 - A-20, Appendix H.

12/ From the growers' perspective, as prices go up, more pigs are kept out of feeder programs and are devoted to breeding. This reduces the number of animals available for slaughter and reinforces the upward price trend. Then, after a lag, more pigs will be available for slaughter because of the increased number of pigs breeding. As these increased numbers hit the marketplace, the price for swine goes down. As the price declines, the incentives for keeping more pigs available for breeding decreases, so even more swine are available for slaughter. This reinforces the downward movement in prices.

(continued...)

When prices are decreasing and the number of swine being sent to slaughter is increasing, packers benefit. Thus, one would expect packers to increase production and to show better financial results during this stage in the hog cycle. When prices are increasing and the number of swine being sent to slaughter is decreasing, however, packers fare less well. Changes in demand for processed pork appear to affect only the high and low points of the cycle, not the cyclical nature of the industry itself.13/ The pork packing industry should thus be examined in the context of the hog cycle to determine whether the industry is acting as would be expected.14/

Judging by the data collected on net margins to feeders and domestic shipments of live swine, this industry is at a point in the hog cycle where packer production and financial

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12/(...continued)
For packers, when the number of swine available for slaughter is reduced and the prices are higher, profits and production decrease. When the cycle changes and the number of swine available for slaughter increases, and the price goes down, packers' enjoy increased production and higher profits. See Report, Appendix H.

13/ See Report, Appendix H at B-54 - B-55.

14/ The Commission has long had the practice, with Congressional approval, of considering an industry within the context of the business cycle. This practice was codified by Congress in the Omnibus Trade and Competitiveness Act of 1988 in section 1328. See 19 U.S.C. 1671(C)(iii); see also S. Rep. 249, 96th Cong., 1st Sess. 88, H.R. Rep. 317, 96th Cong., 1st Sess. 46, Portland Hydraulic Cement and Cement Clinker from Colombia, France, Greece, Japan, Mexico, the Republic of Korea, Spain, and Venezuela, Invs. Nos. 731-TA-356 through 363 (Preliminary), USITC Pub. 1925 (1986) at 17, 46.

results should have improved in 1988 and should continue improving in 1989, after lean years in 1986 and 1987.15/

In fact, production by those responding to Commission questionnaires increased significantly in 1988 to 4.7 billion pounds, from 4.0 billion pounds in 1987 and 3.9 billion pounds in 1986.16/ Domestic shipments surged in 1988 to 3.6 billion pounds, from 3.0 billion pounds in 1987 and 2.8 billion pounds in 1986.17/ Employment also increased, from 6,745 workers in 1986 and 6,345 workers in 1987 to 7,231 workers in 1988.18/ Similarly, hours worked rose from 13.4 million hours in 1986 and 13.6 million hours in 1987 to 15.6 million hours in 1988.19/

Capacity utilization stood at 77.3 percent in 1986 and 76.6 percent in 1987, and then jumped to 88.2 percent in 1988.20/ Practical capacity increased throughout the period

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15/ See Report, Appendix H (Tables H-1, H-2, and H-3).
16/ See Report at A-16 (Table 3). Production data covers six of the largest 25 domestic producers. Overall domestic production followed a similar trend, increasing from 14.0 billion pounds in 1986 and 14.3 billion pounds in 1987 to 15.6 billion pounds in 1988. Report at A-17 (Table 4). The numbers used in this section of the opinion are based on responses submitted to Commission questionnaires. When available, overall industry data was used and revealed the same trends.
17/ See id.
18/ Id.
19/ Id.
20/ Id. See also id. at A-17 (discussing a capacity utilization study conducted by the American Meat Institute on all pork processors. Capacity utilization figures in this study were slightly lower, but revealed the same upward trend as found in the Commission report.).

of investigation, from 5.1 billion pounds in 1986 and 5.3 billion pounds in 1987 to 5.4 billion pounds in 1988.21/

Financial data also indicate that packers are benefitting from the increased supplies and lower prices to growers that are expected in this phase of the hog cycle. Net sales increased from $3.63 billion in 1986 to $3.78 billion in 1987 and $3.80 billion in 1988.22/ More striking evidence that the hog cycle is at work is reflected in the cost of goods sold as a percentage of net sales. This ratio has decreased over the last three years, from 98.3 percent in 1986 and 98.1 percent in 1987 to 97.2 percent in 1988.23/ Net losses dropped from $18.8 million in 1986 to $938,000 in 1987 and turned into a net profit of $26.8 million in 1988, as the hog cycle began to favor packers.24/

The production and financial data gathered in this investigation create a picture of an industry that reacts as the hog cycle predicts. It appears that pork packers benefitted in 1988 from the swing in the cycle and can expect their good fortune to continue for at least another year.25/ It is in the context of the current strong performance by the

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21/ Id.
22/ See Report at A-22 (Table 6).
23/ Id. As supplies increase and packers pay growers less, their margin for profits increases.
24/ Id. Profits in this industry are small, relative to net sales, but this has historically been a low profit industry.
25/ Following that point, if the hog cycle continues, the benefits should start flowing to swine growers, putting more of a squeeze on pork packers, similar to the situation in 1986 and 1987.

domestic industry and the expected movement of the hog cycle that I assess the effect of allegedly unfair imports from Canada in this case.

No Material Injury by Reason of Allegedly Unfair Imports

In this case, Canadian pork imports do not appear to have altered the hog cycle in any way, nor have they caused material injury to the domestic industry. Canadian imports were modest and stable throughout the investigation. Measured by volume, they rose slightly from 458 million pounds in 1986 to 512 million pounds in 1987 and fell slightly to 486 million pounds in 1988.26/ As a share of domestic consumption, they moved from 3.1 percent in 1986 to 3.4 percent in 1987 and 3.0 percent in 1988.27/ These figures indicate that Canadian imports are a stable and not very significant portion of the U.S. market.

The margins of subsidy alleged by the Petitioner in this case are quite low -- ranging from 2.5 to 4.5 cents per pound, or an average of 5 to 11 percent.28/ Subsidies this low at best could give Canadian producers only a slight price advantage over their U.S. competitors.

Finally, prices are responding as expected in this market, and as predicted by the hog cycle. Prices for swine,

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26/ Report at A-31 (Table 13).
27/ See Report at A-33 (Table 14).
28/ See Report at A-11.

pork, and pork products all peaked in late 1987 and have fallen ever since.29/ Thus, imports do not appear to have had the effect of changing the normal course of prices in this industry.30/

The issue, therefore, is whether imports have materially injured the domestic industry undergoing its traditional, cyclical pattern. If imports forced a change in the cycle, it would be reflected in adverse changes in prices for pork and the volume of pork processed by U.S. packers.31/ In general, the evidence collected in this investigation clearly indicates that unfair imports have not had any effect on the domestic pork packing industry. The normal up and down movement of prices and quantities supplied, as predicted by the hog cycle, has remained intact, despite the presence of Canadian imports. The imports enjoy only small subsidies and constitute an insignificant portion of the U.S. market. All available production and financial data indicate business as usual for U.S. packers.32/ The hog cycle is now favoring packers, and production and profits are up as expected. There is no evidence to indicate that Canadian pork has been

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29/ See Report at A-36 - A-47 (Figures 7-13). Prices collected in this investigation indicate that an approximately four-year cycle for prices does exist in this industry as shown by data from 1975 to the present.
30/ As stated, prices have reacted as predicted by the hog cycle.
31/ These changes would be different than that expected under normal conditions in the hog cycle.
32/ There is no evidence, for example, that low-priced Canadian imports drove any U.S. pork packers out of business.

a drag on domestic producers -- in fact, there is no evidence that it has had any effect. I therefore conclude that there is no reasonable indication that the domestic industry has been materially injured by reason of unfair imports of pork from Canada.

No Threat of Material Injury

In cases involving threat of material injury the Commission must consider a number of factors, including the nature of any subsidy involved, increases in production capacity and existing unused or underutilized capacity, rapid increases in market penetration and the likelihood that penetration will increase to injurious levels, price suppressing or depressing effects caused by imports, increases in inventories in the United States, product shifting, actual and potential effects on product development, and any other demonstrable adverse trends.33/ The threat must be "real" and "imminent," and may not be based on "mere conjecture or supposition."34/

The subsidies involved in the present investigation are

33/ See 19 U.S.C. 1677(7)(F)(i).
34/ See 19 U.S.C. 1677(7)(F)(ii). In antidumping investigations, the Commission must consider whether dumping in third countries, as suggested by dumping findings or antidumping remedies in these countries, suggests a threat of material injury to the domestic industry. See 19 U.S.C. 1677(7)(F)(iii). The present investigation does not involve dumping, so this factor is not relevant in the current investigation.

offered by the Canadian and provincial governments.35/ Some of the subsidies are available only to pork and hog producers, regardless of where their merchandise is sold, while other subsidies are available to a broader class of participants.36/ Some of these subsidies could cause a threat to the U.S. industry; however, the subsidy levels are so low that it is unlikely these programs will threaten the U.S. industry with material injury.

Canadian packer production of pork is up by approximately 10 percent over the period of investigation.37/ No other information is available about capacity. Canadian imports have moved sidewize during the investigation, capturing 3.1 percent of the market in 1986 and 3.0 percent in 1988.38/ Given their stable market share, it is unlikely that the Canadian imports will increase their market share to injurious levels in the foreseeable future.

Evidence collected in this investigation does not indicate that imports are having a price-suppressing or price-depressing effect in the U.S. market. The price data collected indicate that U.S. prices are responding as would

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35/ Petitioner has alleged that some of these subsidies are export subsidies. See Petition at 47.
36/ Some of the subsidy programs cover livestock production and others are intended to stabilize farm income. Id. See also Live Swine from Canada; Preliminary Results of Countervailing Duty Administrative Review, 53 Fed. Reg. 22,189 (June 14, 1988).
37/ See Report at A-29 (Table 12).
38/ See Report at A-33 (Table 14).

be expected in a normal hog cycle.39/ Information on inventories in the United States is not available and, in any event, is probably less relevant in this industry than in most, because perishable pork products are sold by packers within a week of slaughter.40/

There is no evidence of product shifting in this case. Although there is a related product under order -- live swine -- facilities used to produce live swine cannot be shifted into the production of pork. In addition, imports of live swine from Canada increased over the investigation, from 88 million pounds in 1986 and 75 million pounds in 1987 to 140 million pounds in 1988.41/ Finally, there is no evidence that imports have had any negative effects on the development and production efforts of the domestic industry. The domestic industry took significant steps to modernize during the period of investigation, moving increasingly into the processing of pork to add greater value to its product.42/

39/ *See* Report at A-36 - A-47 (Figures 7-13).
40/ *See* Report at A-28. Inventories fluctuate constantly as a result of the different rates of slaughtering.
41/ Although some of this increase is probably due to a packer workers' strike in Alberta in 1988 which reduced pork production, the data still indicate that Canadians are not shifting, in any significant way, from exporting live swine to exporting pork. *See* Report at A-15 (Table 2). In addition, 19 U.S.C. 1677(7)(F)(i)(IX) does not apply because this investigation only concerns a processed agricultural product, not both the raw material and the processed agricultural product.
42/ *See* Report at B-63 (citing Annual Reports of domestic packers), Respondent's Post Conference Brief at 5-9 (describing these efforts by domestic companies).

Although increases in production capacity and existing unused capacity may well exist in the Canadian industry, the rest of the factors point squarely to a negative determination. I therefore conclude that there is no reasonable indication that the domestic industry is being threatened with material injury by reason of Canadian imports.

DISSENTING VIEWS OF COMMISSIONER RONALD A. CASS

Fresh, Chilled, or Frozen Pork from Canada
Investigation No. 701-TA-298 (Preliminary)

I dissent from the Commission's affirmative determination in this preliminary investigation. I do not believe that the record before us provides a reasonable indication that an industry in the United States either has been materially injured or is threatened with material injury by reason of subsidized imports of fresh, chilled, or frozen pork from Canada.

In my view, an affirmative determination is not consistent with the evidence and can be reached only by misinterpreting the legal standard that controls disposition of preliminary investigations under Title VII of the Tariff Act of 1930.1/ I have discussed this standard in other opinions2/ and do not believe extended discussion again is required here.

1/ The standard is codified at 19 U.S.C. § 1671b(a) (countervailing duty investigations) and at 19 U.S.C. § 1673b(a) (antidumping investigations).

2/ See, e.g., Certain Telephone Systems from Japan, Korea and Taiwan, USITC Pub. 2156 at 53-63, Inv. Nos. 731-TA-426-28 (Preliminary) (Feb. 1989) (Additional Views of Commissioner Cass); Generic Cephalexin Capsules from Canada, USITC Pub. 2143 at 39-45, Inv. No. 731-TA-433 (Preliminary) (Dec. 1988) (Dissenting Views of Commissioner Cass); New Steel Rails from Canada, USITC Pub. 2135 at 19-31, Inv. Nos. 701-TA-297, 731-TA-422 (Preliminary) (Nov. 1988) (Additional Views of Commissioner Cass).

I. LEGAL STANDARD GOVERNING DISPOSITION OF PRELIMINARY COUNTERVAILING DUTY INVESTIGATIONS

The relevant aspects of the standard for preliminary countervailing duty investigations, however, can be stated in short compass. First, the preliminary determination requires an affirmative showing to be made that the injury necessary to imposition of countervailing duties--material injury by reason the subsidized imports--occurred or is imminent.3/ Second, less evidence is required to show the requisite injury from subsidized imports in a preliminary investigation than in a final investigation. Third, the Commission must consider all of the evidence before it, not just the evidence offered in support of an affirmative determination, in deciding whether that showing has been made. Fourth, in weighing conflicting evidence, the Commission should not reject evidence supporting a factual inference necessary to an affirmative determination unless the contrary evidence is plainly more probative or more credible. Finally, the absence of evidence necessary to an affirmative finding of injury from subsidized imports is not necessarily dispositive of a preliminary determination. Rather, the Commission must consider such evidentiary gaps in light of the likelihood that in a final determination the gap could be filled with evidence that would support an affirmative decision.

3/ Where, as here, the domestic industry producing the like product is well established, material retardation is not at issue.

II. LIKE PRODUCT AND DOMESTIC INDUSTRY

In determining whether there is a reasonable indication that a domestic industry either is threatened with, or already has suffered, material injury by reason of imports traded at less than fair value ("LTFV"), the Commission must assess the effects of the allegedly offending imports on the industry in the United States comprised of "the domestic producers as a whole of a like product or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product."4/ That in turn requires the Commission to determine the "like product," defined in Title VII as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the [imports] subject to an investigation."5/ Although the Commission majority's Views may deal adequately with the issues relevant to definition of the domestic like product and the industry that produces it, I do not have access to those Views and, therefore, will address these issues briefly.

Petitioners and Respondents agree that the product subject to investigation and the domestic like product is "fresh, chilled, or frozen pork."6/ This definition limits the range of

4/ 19 U.S.C. § 1677(4).

5/ 19 U.S.C. § 1677(10).

6/ See Petition for the Imposition of Countervailing Duties, Fresh, Chilled and Frozen Pork from Canada at 5 (Jan. 4, 198[9]) (hereinafter "Petition") (stating that this investigation covers imports of "unprocessed fresh, chilled, and frozen pork"); Official Transcript of Proceedings, Fresh, Chilled, or Frozen products to those meats from slaughtered swine that have been cut but not processed. Pork products that are processed beyond the slaughter and cut stage, such as sausage, ground pork, and cured bacon, are beyond the scope of this investigation, and the parties agree that such products are outside the ambit of the domestic like product.

The parties disagree here, as they have in prior proceedings,7/ about the proper delineation of the industry that produces the like product. Petitioners argue that the domestic "pork-producing industry" consists of both those who raise live pigs and those who slaughter, cut, and pack pork.8/ This argument invokes Section 1326(a) of the Omnibus Trade and Competitiveness Act of 1988 ("OTCA"),9/ which provides that the domestic industry producing a "processed agricultural product" may be composed of both growers of the raw agricultural product and the packers or processors of the finished product. Petitioners urge us to read that provision as reversing the Commission's earlier decision in Live Swine and Pork from

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Pork from Canada, Inv. No. 701-TA-298 (Preliminary) (Jan. 26, 1989) (hereinafter "Tr.") at 71-74; Post-Conference Memorandum of Respondents at 39 (arguing that the Commission should define the like product as fresh, chilled or frozen pork).

7/ Live Swine and Pork from Canada, USITC Pub. 1625, Inv. No. 701-TA-224 (Preliminary) (Dec. 1984); Live Swine and Pork from Canada, USITC Pub. 1733, Inv. No. 701-TA-224 (Final) (July 1985) (hereinafter "Live Swine"), aff'd sub nom. National Pork Producers Council v. United States, 11 Ct. Int'l Trade ___, 661 F. Supp. 633 (1987).

8/ Petition at 6-7.

9/ Pub. L. No. 100-418, § 1326(a), 102 Stat. 1107, 1203-04.

Canada,10/ which had treated live swine and pork as separate products produced by separate industries. Respondents, in contrast, argue that OTCA should be read as approving the Commission's decision in Live Swine, or at least as confirming the Commission's discretion to define the industry as limited to those who produce the final product.11/

The argument on this point takes place against a substantive history of debate over definition of agricultural industries. The Commission long has maintained that, although the relationship between growers of a raw agricultural product and processors of the finished product was in many ways analogous to that between suppliers of components and producers of manufactured end-products, "special problems" dictated that the Commission consider identifying the domestic industry producing processed agricultural products to include both growers and packers.12/ The Commission's treatment of agriculture as

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10/ USITC Pub. 1733, Inv. No. 701-TA-224 (Final) (July 1985).

11/ Post-Conference Memorandum of Respondents at 39. It should be noted that, although respondents argue that the definition of the domestic industry should be limited to packers, they maintain that, even if the Commission were to define the domestic industry to include growers, there still would be no material injury. Id.

12/ See, e.g., Certain Table Wine from France and Italy, USITC Pub. 1502 at 4-10, Inv. Nos. 701-TA-210-211 & 731-TA-167-168 (Preliminary) (Mar. 1984); see also Live Swine; Certain Red Raspberries from Canada, USITC Pub. 1707, Inv. No. 731-TA-196 (Final) (June 1985); Frozen Concentrated Orange Juice from Brazil, USITC Pub. 1406, Inv. No. 701-TA-184 (Final) (July 1983); Lamb Meat from New Zealand, USITC Pub. 1191, Inv. No. 701-TA-80 (Preliminary) (Nov. 1981); Fish, Fresh, Chilled or Frozen from Canada, USITC Pub. 1066, Inv. No. 701-TA-40 (Final) (May 1980).

distinct from other enterprises was predicated not on analytical differences but rather on Congressional statements to that effect.13/ Prior to enactment of the OTCA, congressional commentary generally was directed at other issues,14/ but the Commission referenced these statements in deciding like product and domestic industry questions. The Commission developed a two-factor test for defining the industry producing agricultural products, asking (1) is there a single, continuous line of production from the raw agricultural product through the processed product? and (2) is there sufficient coincidence of economic interest between the packers and growers that the two groups are adversely affected by the offending imports in a like manner? If the answer to both parts of the test was affirmative then the Commission defined the domestic industry to include both growers and packers.15/ If, however, either part of the test was not met, the Commission defined the domestic industry for the raw

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13/ In its report on the Trade Agreements Act of 1979, the Senate Finance Committee noted that, because of the "special nature" of agriculture, "special problems" exist in determining whether an "agricultural industry" is materially injured. The Committee then explained that, for example, when livestock are unfairly traded, packers may be doing well, while growers are liquidating stock because prices make maintenance of the herds unprofitable. S. Rep. No. 249, 96th Cong., 1st Sess. 88 (1979).

14/ The comments noted immediately above appear in the Committee's discussion of the definition of material injury. Id.

15/ See, e.g., Raspberries, Orange Juice, Lamb Meat, & Fish from Canada.

product to consist of growers, and identified the packers or processors as the domestic industry for the processed product.16/

This was the test applied by the Commission in its Live Swine decision. Petitioners here, the National Pork Producers Council ("NPPC"), had urged in that investigation that United States hog farmers and processors-packers constituted a single industry that was materially injured by reason of subsidized imports from Canada of both live swine and pork.17/ The Commission found live swine and fresh, chilled, or frozen pork to be separate products produced by separate domestic industries.18/ Although the Commission found that there was a "single, continuous line of production" from growers through packers,19/ it was unable to find the "requisite integration of economic interest" between the two groups.20/ Concluding that only growers constituted the domestic industry producing live swine, and only packers comprised the domestic industry producing pork,21/ the Commission determined that American growers were materially injured by reason of subsidized imports of live swine,

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16/ See, e.g., Table Wine, supra note 31.

17/ Live Swine at A-1.

18/ Id. at 4.

19/ As the Commission noted, "the 'single, continuous line of production' has been met in that the raw product is primarily sold in only one market, and that the primary purpose of raising slaughter hogs is to produce pork meat." Id. at 6.

20/ Id. at 6-7.

21/ Id. at 7.

but that domestic packers were neither materially injured nor threatened with such injury by reason of imports of subsidized fresh, chilled, or frozen pork.22/

Both the NPPC and the Alberta Pork Producers' Marketing Board appealed Live Swine.23/ The first appeal, National Pork, addressed the like product and domestic industry definitions. The Court of International Trade held that the Commission's defining live swine and pork as separate like products and growers and packers as separate domestic industries was reasonable and according to law.24/ In particular, the court found that there was substantial evidence in the record to support the Commission's finding that there was insufficient integration of economic interest between swine growers and pork packers to justify inclusion of growers in the pork-producing industry.25/

22/ Id. at 3. In anticipation of such a seemingly anomalous result, petitioners argued that imposition of countervailing duties on live swine alone will lead to attempts to circumvent such duties by the slaughter of more swine in Canada and the increase in imports in the form of pork. In response, the Commission explained that it would be too speculative at that time to determine the existence of such a threat since new channels of transportation, distribution and sales would have to be found before substantial diversion from swine to pork imports could occur. Id. at 18.

23/ See National Pork Producers Council v. United States, 11 Ct. Int'l Trade ___, 661 F. Supp. 633 (1987); Alberta Pork Producers' Marketing Board v. United States, 11 Ct. Int'l Trade ___, 669 F. Supp. 445 (1987).

24/ 661 F. Supp. at 637-38.

25/ Id. at 638.

The question presented in this investigation essentially is whether section 1326(a) of the OTCA codifies or reverses that decision. That section provides:

> [I]n an investigation involving a processed agricultural product produced from any raw agricultural product, the producers or growers of the raw agricultural product _may_ be considered part of the industry producing the processed product if--
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> (I) the processed agricultural product is produced from the raw agricultural product through a single continuous line of production; and
>
> (II) there is a substantial coincidence of economic interest between the producers or growers of the raw agricultural product and the processors of the processed agricultural product based upon relevant economic factors, which may, _in the discretion of the Commission_, include price, added market value, or other economic interrelationships (regardless of whether such coincidence of economic interest is based upon any legal relationship). 26/

This provision appears, as Respondents argue, to codify the Commission's prior two-part test for defining the domestic industry in investigations involving agricultural products. The question for us is whether that test is met.

Petitioners argue,27/ and respondents essentially concede,28/ that there is a single, continuous line of production from the growing of hogs, through their slaughter and processing for sale. This conclusion clearly is mandated under the new trade law, which states that

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26/ OTCA § 1326(a) (to be codified at 19 U.S.C. § 1677(4)(E)(i)) (emphases added).

27/ Petition at 10-21 (citing, _inter alia_, _Fish from Canada_, _Lamb Meat_, _Orange Juice_, and both the Commission determination and Court of International Trade opinion in _Table Wine_, American Grape Growers v. United States, 9 Ct. Int'l Trade 103, 604 F. Supp. 1245 (1985)).

28/ _See_ Post-Conference Memorandum of Respondents at 44.

> the processed agricultural product shall be considered to be processed from a raw agricultural product through a single continuous line of production if--
> (I) the raw agricultural product is substantially or completely devoted to the production of the processed agricultural product; and
> (II) the processed agricultural product is produced substantially or completely from the raw product.

It is clear that (1) hogs, the raw agricultural product, have little value to anyone but pork packers and are substantially or completely devoted to the production of pork, the processed agricultural product, and (2) pork, the processed product, is produced completely from hogs, the raw agricultural product.29/ There can be little argument, then, that a single, continuous line of production between hog growers and pork packers exists.30/

The more serious argument among the parties concerns the second part of the Section 1326 test, whether there is sufficient coincidence of economic interest between growers and packers so as to justify grouping them together in the definition of domestic industry. The section sets forth two factors to be considered in making this determination:

> [I]n addition to such other factors it considers relevant to the question of coincidence of economic interest, the Commission shall--
> (I) if price is taken into account, consider the degree of correlation between the price of the raw

29/ Live Swine at 6; Report to the Commission on Investigation No. 701-TA-298 (Preliminary) at A-10 (Feb. 10, 1989) (hereinafter "Report").

30/ See Live Swine at 6.

> agricultural product and the price of the processed agricultural product; and
> (II) if added market value is taken into account, consider whether the value of the raw agricultural product constitutes a significant percentage of the value of the processed agricultural product.31/

This direction constitutes at least a mild rebuke to the Commission, which disposed of the economic interest issue in Live Swine on the basis of the legal relationship between growers and packers, noting but giving very little weight to the information respecting the underlying economic relationship between growing swine and processing pork. The Commission emphasized that very few packing facilities were owned by growers, and vice versa, and that prices for swine were not linked by contract to prices for pork.32/ The Commission expressly found evidence of a high price correlation between live swine and fresh, chilled, or frozen pork not probative as to the existence of economic integration of growing and processing.33/

Were the distinction between growers and processors in this industry predicated solely on that reasoning, it is doubtful that the Commission's earlier determination could be made now consistent with the new law. The earlier determination on economic integration was, however, consistent with facts on the record in that proceeding that, if not explicitly relied on by

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31/ OTCA § 1326(a) (to be codified at 19 U.S.C. § 1677(4)(E)(iii)) (emphases added).

32/ Live Swine at 6-7.

33/ Id. at 7.

the Commission, were nonetheless instrumental in sustaining the decision on appeal. The Court of International Trade stated that the absence of a legal relationship between growers and packers is not dispositive of the issue of coincidence of economic interests, but noted that

> evidence on the record also demonstrates that (1) growers benefit from high prices during shortage situations while packers benefit from low prices during oversupply situations; (2) packers compete for market share and need imported Canadian swine in order to fully utilize their existing capacity; (3) some packers [opposed] the NPPC petition ...; and (4) some packers further process pork into other products and need Canadian imports to ensure an adequate supply of pork.34/

Petitioners argue here that the Commission's earlier decision erroneously focused on a "strictly legal/contractual relationship" and that Section 1326 reverses that focus by mandating "that economic realities (such as high price correlation or little value added), whether or not evidenced by legal or contractual relationships, should govern the Commission's inquiry in the appropriate agricultural cases."35/ Petitioners argue that the economic factors set out in the new law establish the requisite economic integration because there is an extremely high correlation between hog and pork prices36/ and "relatively little value" is added by meat packers to hogs in the slaughtering process.37/ Petitioners point out that from 1984 to

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34/ National Pork, 661 F. Supp. at 638.

35/ Petition at 22-23 (emphases deleted).

36/ Id. at 24-27.

37/ Id. at 27.

1988 the correlation between hog and pork prices was between 90.5% and 98.8%.38/

Moreover, Petitioners also claim that very little value is added in processing.39/ They assert that the Commission's finding in Live Swine that packing operations "add substantial value by transforming the live animal into pork"40/ was a mistake because it was based on U.S. Department of Agriculture data that compared net farm value to "wholesale value", which includes the value of all retail pork products, i.e., manufactured and processed pork, and not simply fresh, chilled or frozen pork.41/ In fact, Petitioners argue, the packing stage, which consists of immobilizing, stunning, dehairing, eviscerating, and splitting hogs, and, often, slicing the carcass into cuts, does not contribute "significantly" to the value of live swine.42/ Petitioners further assert that treatment of growers and packers as part of a single industry would be consistent with other Commission decisions.43/

38/ Id. at 24.

39/ Id. at 27.

40/ Live Swine at 4 (citing "Livestock and Poultry Outlook and Situation Report at 34 (May 1985)).

41/ Petition at 27; Post-Conference Response of Petitioners at 3-4.

42/ Petition at 27.

43/ Petition at 30-31. In support of their argument, Petitioners furnish a quotation that they claim is taken from Certain Red Raspberries from Canada, USITC Pub. 1565 at 8, Inv. No. 731-TA-196 (Preliminary) (Aug. 1984)). The furnished quotation not only does not appear in Raspberries, but also misrepresents the

Respondents dispute both the individual assertions offered by Petitioners and the conclusion that swine growers and pork packers have substantial coincidence of economic interest.44/ Respondents emphasize that Section 1326 only authorizes the Commission at its discretion to include in the domestic industry agricultural producers at an earlier stage of production who meet the statute's two-part test.45/

Respondents argue that the test is not met and, in the alternative, that even if the Commission were to find coincidence of economic interests between swine growers and pork packers sufficient to <u>allow</u> us to find a unitary industry, the coincidence is insufficient to provide a reasonable basis for such discretionary action.

Commission's determination. Petitioners' quotation purports that the Commission determined that there was "a reasonable indication that imports have had a negative impact on the domestic producers' incomes," Petition at 31, when, in fact, the Commission found no such injury but, rather, that there was a reasonable indication that a domestic industry was threatened with material injury. USITC Pub. 1565 at 8.

Presumably, Petitioners intended to quote the following paragraph from <u>Raspberries</u>:

> [G]rowers and packers are similarly affected by the market conditions influencing the prices at which red raspberries packed in bulk are sold. Prices are determined entirely by the prevailing market prices paid by remanufacturers, and both packers and growers are essentially price takers. If any factors, such as imports, tend to depress prices of bulk-packed raspberries, the impact would not only be felt by packers, but also by growers. [USITC Pub. 1565 at 8.]

<u>44</u>/ Post-Conference Memorandum of Respondents at 44.

<u>45</u>/ <u>Id</u>. at 42-44.

Respondents assert that several facts of record evidence the disparity of growers' and packers' economic interests. First, because growers and packers are not commonly owned, and do not share revenues or contractually link prices, but rather deal at arm's-length as buyers and sellers, their _actual_ as well as _legal_ interests are divergent.46/ Indeed. Respondents submit that there is a negative, or inverse, relationship between profit margins for packers and those for growers. Thus, the correlation coefficient between estimated packer profit margins and estimated hog grower returns since 1985 is negative, amounting to -0.50.47/

46/ _Id_. at 46. Respondents quote the following from the Senate Finance Committee report on OTCA:

> In past cases, the Commission has examined the degree of vertical integration in the industry, as manifested by common ownership between packers and processors, and the existence of contractual relationships between prices of the raw and processed agricultural commodities. It is the Committee's intent that the ITC continue to view these factors as possible evidence of coincidence of economic interests.

S. Rep. No. 71, 100th Cong., 1st Sess. 110-11 (1987).

47/ Post-Conference Memorandum of Respondents at 47-48. Respondents quote, _id_. at 47, the following from the Commission's Memorandum in Response to Plaintiff's Motion for Judgment Upon the Agency Record in _National Pork_:

> Rather than exhibiting a commonality of economic interest, the interests of the growers and packers essentially are diametrically opposed. Most of the time the growers benefit from high prices during shortage situations while packers benefit from low prices during oversupply situations. As a result, the profitability of growers varies inversely with the profitability of packers. Accordingly, when growers' prices and profits are high, packers' profits are low, and vice versa.
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> . . . .
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> . . . The two products, with few exceptions, are produced by separate sets of producers in separate

Moreover, some factors, such as feed costs, have a major impact on growers' profit margins, but do not affect packers' margins at all; and while packers are concerned about labor, capital and packaging costs for processing operations, such costs have no bearing on growers' margins.48/ Respondents assert that the most recent SEC 10-K filing of one of the largest domestic packers demonstrates the difference between growers' interests and packers' interests.49/

Respondents specifically dispute Petitioners' claims concerning a high price correlation between swine prices and pork prices.50/ They point to Petitioners' own description of conditions in the pork packing industry, contained in the Petition in this investigation, as evidence of the incongruence of grower and packer interests; Petitioners state that "[e]ven during a period of falling pork prices, it is possible for

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facilities, and these producers have separate economic and financial interests.

48/ Post-Conference Memorandum of Respondents at 49; Tr. at 113.

49/ Post-Conference Memorandum of Respondents at 48-49. Respondents quote the following passage from Smithfield Foods, Inc., Form 10-K for the Fiscal Year ended May 1, 1988, at 5-31:

> Fluctuations in the supply of hogs and in the price levels in the livestock and in meat industries generally affect the Registrant's profitability in any particular period. Historically, hog prices have been subject to greater fluctuations than the prices of either fresh pork or processed meats. Generally, as supplies of hogs decline, hog prices rise more rapidly than selling prices for fresh meat and profit margins are adversely affected. Similarly, as hog prices decline, prices of fresh meat tend to fall at a slower rate, favorably affecting earnings.

50/ Post-Conference Memorandum of Respondents at 50.

packers to be doing well at the same time that hog producers are experiencing relative economic hardship."51/

Respondents also argue that packers add considerable value in processing, largely in cutting, de-boning, and trimming, operations they assert are performed far more often than Petitioners suggest. Respondents declare that value added approached 20 percent in 1986 for those packer/processors whose sales of fresh meat accounted for more than two-thirds of their total sales.52/ Other sources confirm that there is a trend by U.S. producers to provide more of these higher value-added services.53/

I believe that the Respondents convincingly demonstrate that packers and growers do not have interests sufficiently coincident to constitute a single industry. The prices of pork and swine do appear to move in tandem, but the costs associated with the raising of swine and those associated with the processing of swine into pork do not seem to hold any defined relationship. Even if Respondents' evidence of an opposed relationship between growers' and packers' profits is not credited, there is ample and persuasive evidence that the interests of the two industries differ significantly. The record indicates, for instance, that

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51/ Id. (quoting Petition at 68).

52/ Id. at 52. Respondents also argue that, by obviously misconstruing the concept of value added when they suggest that packers "subtract" value from the hogs when processing swine into pork, Petitioners only confirm that they inaccurately calculated value added. Id. at 51.

53/ Report at A-51.

growers benefit from high swine prices during shortages, while packers benefit from low swine prices during periods of oversupply.54/

That is not to say that there is no conceivable basis for the Petitioners' claim of coincident interests in this investigation. There is, of course, a potential impact on the swine growers from the importation of subsidized pork products, given the commitment of swine to pork.

The statute as well as Commission and judicial precedent, however, make the domestic industry determination turn on more than the commitment of the upstream product to the downstream production, the essential point on which Petitioners' argument is clearly established and which they have restated in several forms. The law properly makes the industry definition dependent on economic interests that parse more finely than the simple relation of upstream and downstream production. The test of coincidence asks in effect whether it is necessarily so that the effects of imports on downstream production also are visited on upstream production (or even are disproportionately visited on upstream production).

54/ See, e.g., Tr. at 56-57 (Petitioners acknowledging that growers and packers benefit "quite differently" at different stages of the hog cycle); Post-Conference Response of Petitioners at 4(stating that "[w]hile in the short term, the interests of pork packers and hog producers are not necessarily compatible, long-run goals--a strong profitable domestic industry--are very similar.") The last quotation, though certainly unobjectionable, does prompt recall of Keynes' famous comment on what happens to all of us in the long run.

Here, the evidence does not support a conclusion of sufficient coincidence of economic interests to make the fortunes of growers and processors one and the same. It is precisely because the economic interests of swine growers and pork processors are not so closely linked that the two operate as separate legal entities under contracts that allow the fates of the two industries to diverge. While it is possible that swine growers will be harmed by pork imports, to know just what the impact of subsidized pork imports on domestic swine production in fact is, we would need considerable information on the export as well as domestic markets for the swine. I conclude that the relevant domestic industry is composed solely of pork packers and processors.

I have spent considerable time on this issue because the parties have devoted so much attention to it. I should add, however, that I do not believe that the issue is in any way dispositive of the outcome of this investigation. Even if Petitioners' suggested definition of the domestic industry were adopted, I do not believe that an affirmative determination could be justified.

III. REASONABLE INDICATION OF INJURY BY REASON OF LTFV IMPORTS

A. The "Unitary" or "Comparative" Framework for Analysis

I have explained at length the "unitary" or "comparative" approach that I employ in addressing the issues presented to the Commission in Title VII investigations and the statutory basis for that approach.55/ I see no need to repeat that explanation at length.

I do, however, believe that explication of the basis for the decision reached in this investigation is required. Like any other administrative agency, we have a duty both to articulate the major factual inferences and assumptions that form the bases for our analysis and to explain fully how the rationale we applied to such factual bases led to our determination.56/ This general duty is made explicit for Title VII investigations by the Omnibus Trade and Competitiveness Act of 1988, which directs the Commission to explain how three specified factors affect our determination whether the relevant domestic industry has been materially injured by the dumped or subsidized imports under investigation. Congress also has instructed the Commission, in performing the Title VII inquiry, to examine all relevant economic factors "within the context of the business cycle and conditions of competition that are distinctive to the affected

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55/ See, e.g., my Additional Views in 3.5" Microdisks and Media Therefor from Japan, USITC Pub. 2076, Inv. No. 731-TA-389 (Preliminary) (Sept. 1988), and Internal Combustion Engine Forklift Trucks from Japan, USITC Pub. 2082, Inv. No. 731-TA-377 (Final) (May 1988); Granular Polytetrafluoroethylene Resin from Italy and Japan, USITC Pub. 2112, Inv. Nos. 731-TA-385-386 (Final) (Aug. 1988). For a discussion of the difference between my approach and that of many other Commissioners, see, e.g., Digital Readout Systems and Subassemblies Thereof from Japan (hereinafter "Digital Readouts"), USITC Pub. 2150 at 95-119, Inv. No. 731-TA-390 (Final) (Jan. 1989).

56/ See, e.g., SEC v. Chenery Corp., 318 U.S. 80 (1943); Phelps Dodge Corp. v. NLRB, 313 U.S. 177 (1941).

industry."57/ An intuitive evaluation of the causal nexus between those imports and the present condition of the domestic industry cannot satisfy these obligations.

In contrast, the comparative approach to Title VII analysis specifically addresses the three statutory factors within the rubric of an explicit three-part inquiry into the manner in which the assertedly unfair imports affected the domestic injury and explicitly considers the effects of changing business conditions.58/ This approach structures the Title VII inquiry around three, related questions: First, to what extent have import volumes, and their prices, changed as a result of the subsidized imports? Second, how have the subsidized imports affected prices, and concomitantly sales, of the domestic like product? And, third, how have the changes in price and sales of the like product affected such variables as return on investment, employment in the domestic industry, and employee compensation? Following this three-part inquiry, the Commission must assess the

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57/ OTCA § 1328(2), 102 Stat. 1206.

58/ In assessing the causation of injury by LTFV imports, 19 U.S.C. § 1677(7)(B) directs the Commission to consider, among other factors:

> (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 on such merchandise on domestic producers of like products . . . .

significance of these effects and determine whether the injury caused or threatened by the subsidized imports is material.59/

B. Causation of Material Injury: Fresh, Chilled or Frozen Pork from Canada

1. Volumes and Prices of Subsidized Imports

In this investigation, there is no doubt that only a small volume of subsidized pork from Canada was imported into the United States. In no year during the period of investigation did the volume of imports rise above 3.4 percent of the U.S. market, and the imports' share of the market actually declined to 3.0 percent during the period that will be covered by the Department of Commerce's investigation of the subsidies. Subsidies alleged by Petitioners can have caused only a relatively small decline in the price of the subject imports, and a concomitantly small increase in the total volume of sales of subsidized Canadian pork in the United States. This conclusion follows even if we fully credit Petitioners' allegations respecting the subsidies.

Petitioners allege that the same Canadian subsidy programs found by Commerce at the time of Live Swine also apply today to imports of pork,60/ and that subsidies on fresh, chilled and frozen pork have increased.61/ They state that subsidies on

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59/ See, e.g., Digital Readouts at 117-19.

60/ Petition at 2-3; Report at A-14. In Commerce's final determination in Live Swine in June 1985, the net subsidy for pork was found to be Can$ 0.03272/lb. Report at A-14; 50 Fed Reg. 25,097 (1985), reprinted in Live Swine at A-60..

61/ Petition at 3.

swine, imports of which are covered by an existing countervailing duty order, range from Can$3.04-23.53 per head.62/ Petitioners suggest that the appropriate means for conversion of the swine subsidies into equivalent pork subsidies is to apply the swine subsidies to a dressed carcass weight of 71 percent of the live weight of the swine. This calculation would yield pork subsidies of Can$0.019-0.15 per pound of pork. In US$, the subsidy per pound of pork would be between $0.017 and $0.13.

Even if we were free in a preliminary to find some other figure a more credible statement of the subsidy level, Respondents do not provide evidence on this point sufficient to establish a subsidy level apart from what might be inferred from Petitioners' assertions. Respondents concede the existence of Canadian subsidization programs, but they do not offer specific data either on the amount of subsidies nor, for that matter, on the number of applicable programs.63/ Although the Canadian Pork Council points out that the Can$23.53 per hog stabilization payments do not apply to all hogs marketed in Canada, it does not provide further information on the extent of the subsidies applicable to pork.64/

Were our record more complete accepting Petitioners' statement of the subsidies on pork would provide only a starting point for analysis of the effect on the U.S. volumes and prices

62/ *Id*. at 45; Tr. at 14.

63/ Post-Conference Memorandum of Respondents at 34.

64/ Post-Conference Statement of Canadian Pork Council at 7-8.

of the subsidized imports.65/ The record in this investigation does not, however, at this point support use of any other figure, as the contribution of each of the numerous listed subsidy programs to the actual subsidy rate is nowhere spelled out nor is sufficient information about that provided to admit a reasonable inference to be drawn.

2. Domestic Prices and Sales

With respect to prices and sales in the United States of domestic pork, the record indicates that the subject imports had little effect. One indicator of the minimal price effect is the small volume of the subsidized Canadian pork imports.66/ Further, Respondents offer credible evidence that prices of imports of Canadian pork are "generally higher" than prices of U.S. pork.67/ While the market for pork may, as Petitioners suggest, be relatively responsive to changes in price of competing pork products, the record does not provide a basis for concluding that the limited volumes of Canadian imports selling at prices that at most were modestly lowered by the Canadian subsidies had more than *de minimis* impact on the prices of domestically produced pork.

65/ *See*, *e.g.*, Diamond, Toward an Economic Foundation for Countervailing Duty Law, Workshop Paper for Georgetown University Law Center Law and Economics Program (Oct. 1988); Goetz, Granet, and Schwartz, The Meaning of "Subsidy" and "Injury" in the Countervailing Duty Law, 6 Int'l Rev. L. & Econ. 17 (1986).

66/ Report at A-45.

67/ Post-Conference Memorandum of Respondents at 18-19.

The evidence offered by Petitioner on the relation between Canadian pork prices and U.S.-produced pork prices does not suffice to sustain a different conclusion. Petitioners have established that their product competes with the Canadian product. Despite Respondents' claim that domestic consumers perceive Canadian pork to be leaner than American pork and, thus, are willing to pay a small premium for the Canadian product,68/ the evidence as a whole supports Petitioners' contention that the two products are fungible, and are perceived as such by many, if not all, consumers.69/ Furthermore, while the evidence suggests that beef and poultry are to some extent substitutes for pork, consumers willingness to substitute these meats for domestic pork is far less than their willingness to substitute Canadian pork for domestic pork.70/ These facts, of themselves, however, do not establish a more than marginal connection between the Canadian imports and U.S. pork prices.

The conclusion that domestic pork prices have not been significantly affected by imports of subsidized Canadian pork is strengthened by examination of the fluctuation of domestic prices

68/ Id. at 19; Tr. at 104.

69/ Petition at 6.

70/ Even though the unfair practices associated with LTFV imports that are highly substitutable with the domestic product tend to have greater effects on domestic sales and prices, see, e.g., New Steel Rails at 45-49, such a tendency is not evident in the record in this investigation. Unlike New Steel Rails, where the subject imports rose by a "significant" percentage during the period under investigation, imports of Canadian pork fell in the last half of 1988.

in light of the relevant business cycle, and examination mandated by Congress.71/ The graphs depicting the patterns of both weighted-average and selected product pork prices evidence the cyclical nature of the industry.72/ The record suggests that the pork industry is affected by what is referred to as the "hog cycle," the change in the population or inventories of live swine and concomitant but opposite change in pork production.73/ The hog cycle reflects the decisions of growers to expand or contract production in response to economic signals as modified by biological constraints. In the United States, a hog cycle typically is two years from peak to trough, and four years from peak to peak.74/

Because swine growers are accustomed to fluctuating prices and profits, such fluctuations must be reasonably consistent for two to six months before growers make decisions to alter production. Although the economic signals affecting growers'

71/ OTCA § 1326(a) (to be codified at 19 U.S.C. § 1677(4)(E)(iii)); S. Rep. No. 71, 100th Cong., 1st Sess. 110 (1987).

72/ *See* Report at A-35, -41-47.

73/ *See* Report at A-12, B-54-59. *See also* Tr. at 56-57 (Petitioners conceding that hog cycle significantly affects indicators of industry performance); Tr. at 104-05 (Respondents arguing that the hog cycle "fully explains the condition of the domestic industry"); Post-Conference Memorandum of Respondents at 3; Post-Conference Statement of Canadian Pork Council at 1-2 (hog cycle exists in Canada); Report at A-48 (USDA agricultural economists and the parties state that the pork market is "best characterized as a North American market rather than separate U.S. and Canadian markets".)

74/ Report at B-54.

production decisions ordinarily reflect developments in the hog cycle, they sometimes reflect largely exogenous variables such as feed prices, changes in consumer preferences among alternative meats, credit conditions, and, indirectly, weather, e.g., drought.75/

In a typical hog cycle, as the price for live swine rises, growers will respond by retaining additional animals for breeding purposes in order to have more animals ultimately to sell at the higher price. Consequently, fewer animals are available for slaughter, putting even more upward pressure on the price, and encouraging even more retention of animals for breeding. The heightened number of animals kept for breeding eventually results in supplies that are too large to clear the market at the prevailing price, leading to a decline in prices. As the price falls, growers typically respond by retaining fewer young animals for breeding and by selling for slaughter more mature swine that previously had been kept in breeding herds. The additional numbers of swine for slaughter put even more downward pressure on prices, encouraging, in turn, growers to sell even more animals for slaughter. Ultimately, animal supplies are reduced to levels that are inadequate to meet demand, and the price begins to rise, initiating the next phase of the cycle.76/

While subsidized imports of Canadian pork may have lowered the prices of U.S. pork products and reduced the sales of such

75/ *Id*. at B-54-55.

76/ *Id*. at B-55.

products, there is no evidence that either effect was more than negligible.

3. Investment and Employment

The data relating to employment and investment in the domestic industry that have been compiled by the Commission also are consistent with a finding that there is no reasonable indication that the subject imports have caused material injury to the domestic industry. Certainly, they provide little, if any, independent support for a contrary determination. Although I do not believe that trend information standing alone are of much utility to the task Congress has set for us, the data respecting trends employment and investment in the domestic pork industry are not even arguably suggestive of material injury from the Canadian imports.

First, the number of production workers increased by nearly 14 percent in 1988.77/ Second, wages climbed 16 percent in 1988 over what they had been in 1987.78/ Significantly, too, productivity increased by 20 percent in 1987, and then by a further 7 percent in 1988.79/

Although, as Petitioners have noted, the packing industry traditionally has low profit margins,80/ one of the largest pork

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77/ Report at A-20.

78/ Id.

79/ Id.

80/ Petition at 66; Tr. at 37-38, 51.

packers has reported that it is experiencing the "best financial condition in its history"81/, and another stated in mid-1988 that its pork plants are achieving "excellent results."82/ At the same time, data from reporting producers on pork industry operations indicate that net sales rose from million dollar deficit in 1987 to a $26.8 million dollar surplus in 1988,83/ and that operating income as a percentage of net sales also reverted from a negative number in 1987 to 0.7 percent in 1988.84/

Capital expenditures on overall operations by pork packers likewise fell in 1987, only to recover strongly in 1988, i.e., from a 54.5 percent decline in 1987 to an 88.9 percent jump one year later.85/ With respect to their pork operations only, the fact that some firms closed certain plants, while others acquired facilities and purchased equipment, is partly confirmed by the 60.2 percent decline in capital expenditures on pork operations in 1987, followed by a 22.1 percent increase in such spending in 1988.86/ Furthermore, as additional evidence that the domestic pork industry is not as debilitated as Petitioners would have us believe, spending on research and development on pork products

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81/ Post-Conference Memorandum of Respondents at 11 (quoting Smithfield Foods, Inc., 1988 Annual Report at 3).

82/ Id. at 12 (quoting IBP, Third Quarter Report 1988).

83/ Report at A-21-22 (data for reporting producers only).

84/ See id. at A-22.

85/ See id. at A-24.

86/ Id.

jumped 56.3 percent in 1987, and a further 41.9 percent in 1988.87/

If one examines the changes in financial data in light of the business cycle, again the cyclical nature of the industry appears a complete explanation for such changes. The information on the swine growing industry, which Petitioners urge us to consider, is similarly explicable in terms of the "hog cycle." Increased pork production beginning in November 1987, along with the increase in costs of retention of swine for breeding consequent to the drought in the summer of 1988, resulted in increased slaughter in 1988. This in turn produced the drop in the inventory of animals kept for breeding purposes as of December 1988. The increased pork production in 1987 apparently responded to the increased retention of swine for breeding over the prior year, itself the consequence of higher profitability for hog growers. The subsequent decrease in profitability of growers in 1988 completed this cycle.88/

The evidence, viewed as a whole, strongly suggests that there is no reasonable indication that imports of the subject product have caused material injury to the domestic pork industry. There is no reason to suspect from the evidence on record that a different definition of domestic industry would yield a different result. Although Petitioners have made

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87/ See id. at A-24.

88/ Id. at A-17.

assertions to the contrary, those assertions simply are not supported by the record before us.89/

IV. THREAT OF MATERIAL INJURY

Any analysis of the issue of threat of material injury in preliminary investigations starts with the statutory command that the Commission make an affirmative determination only "on the basis of evidence that the threat of material injury is real and that actual injury is imminent."90/ Moreover, while analysis of events that we are unable to measure invariably is necessary, such a determination cannot be made on the basis of mere conjecture or supposition.91/ Of course, while it is clear that a reasonable indication of threat of material injury will suffice to reach an affirmative determination in a preliminary investigation, Congress still has made it clear that, even in that context, an affirmative determination cannot be issued

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89/ Petitioners' argument that "even if the condition of pork packers were found to be relatively healthy, given the small amount of value added to hogs by packers in producing pork, and given the very serious difficulties being experienced by hog producers, such condition should not preclude a finding of injury with respect to the overall pork-producing industry", Petition at 69, not only effectively concedes that the domestic pork industry is not injured, but also ignores the fact that Congress has mandated that we be concerned with whether material injury to the domestic industry was by reason of LTFV imports, not merely whether the domestic industry is "healthy" or not.

90/ 19 U.S.C. § 1677(7)(F)(ii).

91/ *Id*.

absent concrete evidence that imminent material injury is threatened.92/

Title VII, as amended, directs us to consider the following, specifically enumerated factors in analyzing whether the requisite threat of material injury is evident:

(1) information as to the nature of the subsidy, particularly whether it is an export subsidy;

(2) the ability and likelihood of the foreign producers to increase the level of exports to the United States due to increased production capacity or unused capacity;

(3) any rapid increase in penetration of the domestic market by imports and the probability that the penetration will increase to injurious levels;

(4) the likelihood that imports will enter this country at prices that will have a depressing or suppressing effect on domestic prices of the merchandise;

(5) any substantial rise in inventories of the merchandise in the United States;

(6) underutilized capacity for producing the merchandise in the exporting country;

(7) "any other demonstrable adverse trends" that indicate that the LTFV imports will be the cause of actual injury; and

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92/ See 19 U.S.C. § 1677(7)(F)(ii). For a fuller explanation of my views on the standard applicable to threat determinations in preliminary investigations, see Shock Absorbers and Parts, Components and Subassemblies Thereof from Brazil, USITC Pub. 2128, Inv. No. 731-TA-421 (Sept. 1988).

(8) actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the like product.93/

Having reviewed the record, I am unpersuaded that there is any conceivable basis -- other than speculation of the kind in which Congress has forbidden us to engage -- on which we might find that any of these factors suggests that there is a reasonable indication of threat of material injury to the domestic industry. Although Petitioners contend otherwise, much of their argument reiterates what they predicted in Live Swine, i.e., that the imposition of countervailing duties on imports of live swine creates the threat that Canadian growers will merely product-shift by slaughtering their herds in Canada and exporting to the United States fresh, chilled or frozen pork.94/ They now allege that events have proven them right.95/

93/ See 19 U.S.C. § 1677(7)(F)(i). Petitioners argument that 19 U.S.C. § 1677(7)(F)(i)(IX) applies is misplaced. That subparagraph applies to an investigation "which involves imports of both a raw agricultural product...and any product process from such raw agricultural product, the likelihood that there will be increased imports, by reason of product shifting, if there is an affirmative determination...with respect to either the raw agricultural product or the processed agricultural product...." Since this investigation concerns only imports of allegedly subsidized pork, the processed agricultural product, and not imports of Canadian pork, the raw product, the cited subparagraph is inapposite.

94/ Petition at 2.

95/ Id.

As Respondents correctly point out,96/ however, if in fact Petitioners' prediction had proved true, then the product-shifting no longer would constitute a threat since it already would have caused actual injury.

The statutory factors for analysis of threatened injury do not support a conclusion that such a threat exists. To begin with, the evidence in the record indicates that Canadian packers are operating at near full capacity.97/ Petitioners argument that Canadian packers will shift their excess exports from Japan to the United States is no more than speculation. Moreover, even if that were the case, given the relatively minuscule quantities involved,98/ there is no evidence that such a shift in markets would have anything more than the slightest effect on domestic producers.

Similarly, there has been no rapid increase in the market penetration of the subject imports. On the contrary, the evidence shows that imports of Canadian pork decreased in 1988. Furthermore, there is no reason to anticipate a rapid increase in 1989.99/

96/ Post-Conference Memorandum of Respondents at 35-36.

97/ Id. at 37-38.

98/ If all Canadian exports of pork in 1988 had been shipped to the United States, the total would have amounted to no more than 3.49 percent of domestic consumption. See Report at A-29, A-33.

99/ Respondents actually predict a further decline. Post-Conference Memorandum of Respondents at 37.

Likewise, there is no evidence before suggesting a probability that the subject imports might have a depressing or suppressing effect on prices of the domestic like product. As previously discussed, there is no evidence of a measurable effect on domestic prices, while there is some evidence that Canadian imports sell at higher prices in the U.S. than does domestic pork.100/ For that matter, there is no evidence that the situation is likely to change in the foreseeable future.

Analysis of inventories of imported pork does not lend itself to support a finding of threatened material injury, either. Since fresh and chilled pork is perishable, there are no meaningful inventories. With respect to frozen pork, too, the record does not indicate that inventories present any meaningful threat to domestic producers.101/

Nor is there any evidence that the subject imports have had, or potentially will have, negative effects on any existing development and production efforts by the domestic industry. It should be noted that this is not a factor of substantial importance in this industry.

In light of the considerable evidence that domestic packers by their own accounts are doing increasingly well and are optimistic about the future, Petitioners have failed to demonstrate that there is a reasonable indication of a threat of

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100/ *See* Report at A-48.

101/ *Id*. at A-27.

material injury to the domestic industry by reason of allegedly subsidized imports of fresh, chilled or frozen pork from Canada.

V. CONCLUSION

For the foregoing reasons, I find that there is no reasonable indication of material injury, or threat of such injury, to the domestic industry by reason of the subject imports of pork from Canada. Accordingly, I must dissent from the affirmative determination of the majority of my colleagues.

INFORMATION OBTAINED IN THE INVESTIGATION

Introduction

On January 5, 1989, a petition was filed with the U.S. International Trade Commission (the Commission) and the U.S. Department of Commerce by counsel on behalf of the National Pork Producers Council (NPPC), Des Moines, IA, and others. 1/ The petition alleges that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Canada of fresh, chilled, or frozen pork (pork) 2/ that are alleged to be subsidized by the Government of Canada. Accordingly, effective January 5, 1989, the Commission instituted investigation No. 701-TA-298 (Preliminary) under section 703(a) of the Tariff Act of 1930 (19 U.S.C. § 1671b(a)) to determine whether or not there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry is materially retarded, by reason of such imports.

Notice of the institution of this investigation and of a conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing a notice in the Federal Register of January 11, 1989 (54 F.R. 1014). 3/ The conference was held in Washington, DC on January 26, 1989. 4/

Effective February 3, 1989, the Department of Commerce initiated a countervailing duty investigation to determine whether the subject merchandise is being subsidized by the Government of Canada (54 F.R. 5537). 5/

1/ Arkansas Pork Producers' Council, Atkins, AR; Colorado Pork Producers' Council, Eaton, CO; Idaho Pork Producers' Association, Caldwell, ID; Illinois Pork Producers' Association, Springfield, IL; Indiana Pork Producers' Association, Indianapolis, IN; Iowa Pork Producers' Association, Clive, IA; Michigan Pork Producers' Association, Lansing, MI; Minnesota Pork Producers' Association, Albert Lea, MN; Nebraska Pork Producers' Association, Lincoln, NE; North Carolina Pork Producers' Association, Raleigh, NC; North Dakota Pork Producers' Council, Leith, ND; Ohio Pork Producers' Council, Westerville, OH; Wisconsin Pork Producers' Association, Lancaster, WI; National Pork Council Women, Des Moines, IA; ConAgra Red Meats, Inc., Greeley, CO; Dakota Pork Industries, Inc., Minneapolis, MN; Farmstead Foods, Albert Lea, MN; IBP, Inc., Dakota City, NE; Illinois Pork Corporation, Monmouth, IL; Thorn Apple Valley, Southfield, MI; Wilson Foods, Oklahoma City, OK.
2/ Fresh and chilled pork as provided for in subheadings 0203.11.00, 0203.12.90, and 0203.19.40; frozen pork as provided for in subheadings 0203.21.00, 0203.29.40, and 0203.22.90 of the Harmonized Tariff Schedule. This definition encompasses fresh, chilled, or frozen pork that is not processed, prepared, or preserved.
3/ Copy of cited Federal Register notice is presented in app. A.
4/ A list of witnesses who appeared at the conference is presented in app. B.
5/ Notice in app. A.

The Commission's briefing and vote in this investigation was held on February 15, 1989. The statute directs the Commission to make its determination within 45 days after receipt of the petition, or in this case by February 21, 1989.

Previous Investigations Involving Pork

The Commission has conducted one previous countervailing duty investigation of Live Swine and Pork from Canada. Investigation No. 701-TA-224 (Preliminary) was instituted on November 2, 1984, and resulted in an affirmative determination (USITC Publication 1625, December 1984). Investigation No. 701-TA-224 (Final) was instituted on April 3, 1985. In the final investigation, the Commission found that there were two like products, live swine and fresh, chilled, or frozen pork. The Commission determined 1/ that an industry in the United States was materially injured by reason of subsidized imports of live swine from Canada, but that an industry in the United States was not materially injured or threatened with material injury, and that the establishment of an industry was not materially retarded, 2/ by reason of subsidized imports of fresh, chilled, or frozen pork from Canada (USITC Publication 1733, July 1985).

On August 15, 1985, the Department of Commerce published a countervailing duty order on live swine from Canada (50 F.R. 32880). The import relief measures instituted as a result of the Commission's determination are still in effect. The preliminary and final results of Commerce's most recent administrative review of the outstanding order are discussed in the section of this report entitled "Nature and extent of alleged subsidies."

The Product

Description and uses

This investigation covers all fresh, chilled, or frozen meat (edible muscle) of swine, that has not been processed, prepared, or preserved, fit for human consumption. Prepared or preserved meat of swine such as cured ham, bacon, and sausage is not included in this investigation. Canadian and U.S. fresh, chilled, or frozen pork are essentially the same with certain marginal differences as described further in this section of the report.

<u>Meat of swine</u>.--In common usage, meat of swine is referred to as pork, which is light red in color. White fat covers much of the swine carcass, and some fat is dispersed throughout the meat.

1/ Commissioner Liebeler dissenting.
2/ Commissioner Eckes dissenting.

Figures 1 and 2 show the location of the various cuts of the swine carcass. Figure 3 shows the weight and share of the carcass accounted for by various cuts of a typical swine carcass.

The average live weight of Canadian swine slaughtered in the United States in 1988 was 225 pounds; it was 223 pounds for those slaughtered in Canada. The average live weight of U.S. swine slaughtered in that same year was 249 pounds. According to officials of the Canadian Pork Council (CPC), 1/ the lighter average weight of Canadian swine reflects, in part, the Canadian carcass grading/settlement system which rewards leaner and therefore more feed-efficient animals. The smaller and leaner Canadian animals yield smaller and leaner pork cuts.

The current Canadian Hog Carcass Grading/Settlement System, which became effective on March 31, 1986, is a program administered by the Canadian Federal Government that is used to evaluate carcasses of an estimated 99 percent of all Canadian swine sold for slaughter, and is the basis on which farmers are paid for swine. Under the system, swine carcasses receive a numerical rating, referred to as "the index," based on the carcass weight and the lean yield of the carcass as measured by an employee of the Canadian Federal Government. Index points are deducted for undesirable factors, such as abnormal fat color or texture and other factors. Swine are purchased on a liveweight basis; however, meatpackers pay farmers on the basis of the index number derived from the animal. Purchasers pay a 1 percent premium for each index point above "index 100" and receive a 1 percent discount for each index point fewer than 100. Appendix C explains in greater detail how this index is determined.

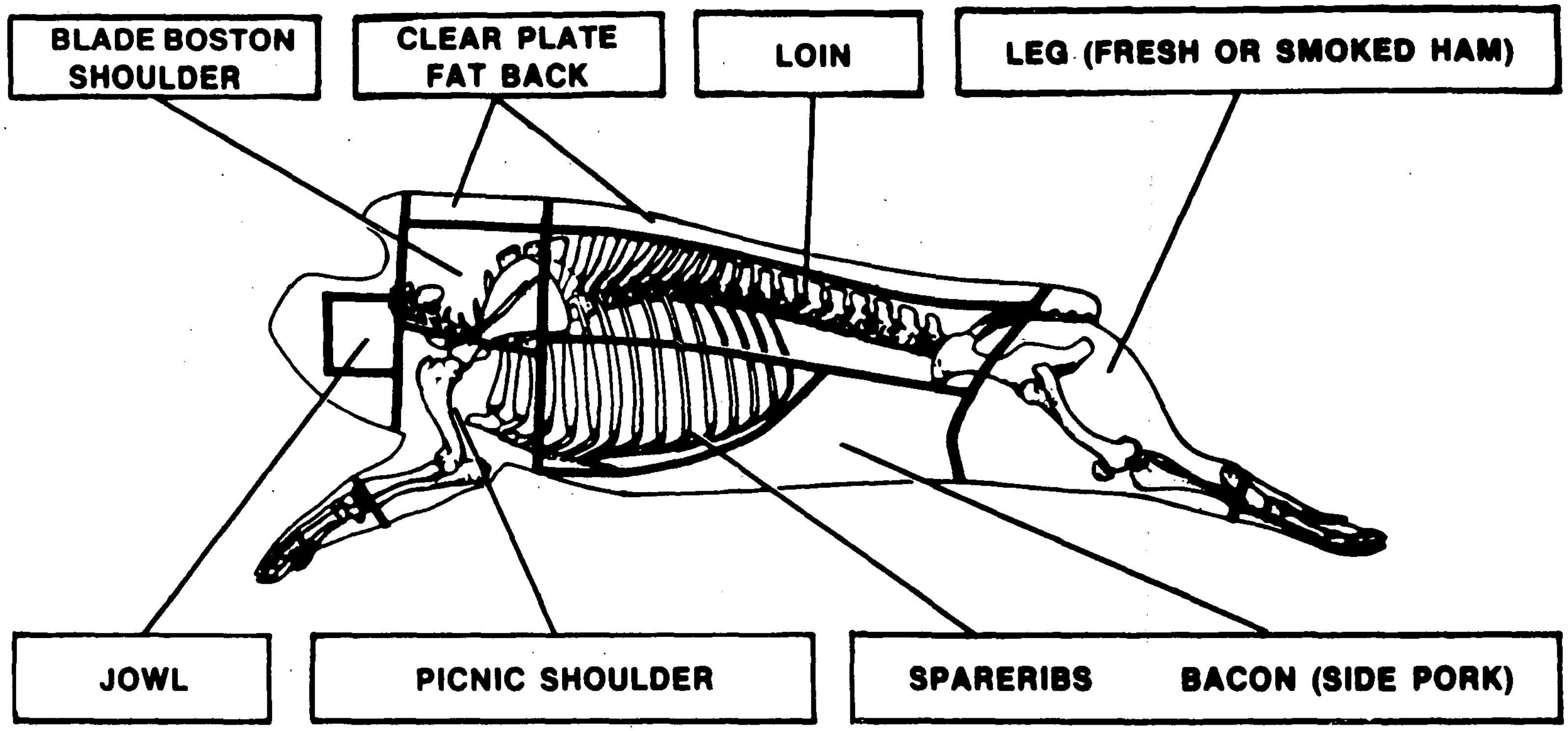
In the United States, carcasses and live swine are graded by the U.S. Department of Agriculture (USDA) on the basis of yield--meaning the percentage of primal cuts (hams, loins, picnic shoulders, etc.) obtained from the major parts of the carcass. There are five yield grades: one, two, three, four, and utility. Grade one has the highest percentage of retail cuts, and grade utility has the lowest. In place of the USDA system, many meatpacking companies administer their own grading systems. Some packers contend that the USDA grades are too broad and general. Other packers report that, by using their own grading systems, they can more effectively reward growers for producing the types of carcasses they prefer for their individual operations. Appendix D explains in more detail the official U.S. grading system of slaughtering hogs.

Most slaughtered Canadian swine yield a carcass that weighs about 176 pounds, or about 79 percent of the live weight. The Canadian carcass includes the head and kidneys as well as leaf fat, which is internal fat surrounding intestines and organs, including the kidney. Most slaughtered U.S. swine yield a carcass that weighs about 177 pounds, or about 71 percent of the live weight. The U.S. carcass does not include the head or kidneys and excludes the leaf fat, accounting for the differences between the two yields.

1/ A trade association representing swine growers in Canada.

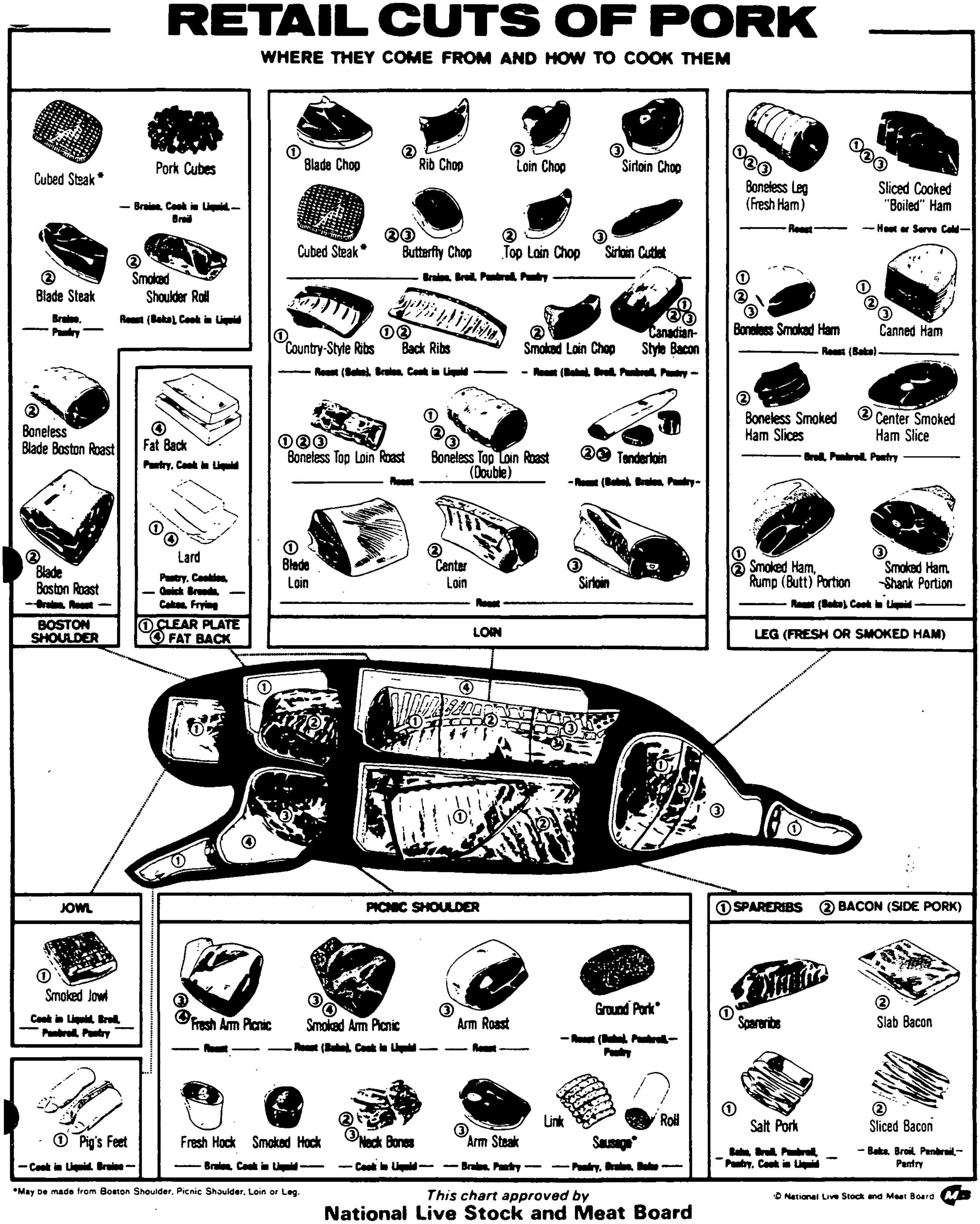
Figure 1

PRIMAL (WHOLESALE) CUTS AND BONE STRUCTURE OF PORK



Source: National Live Stock and Meat Board.

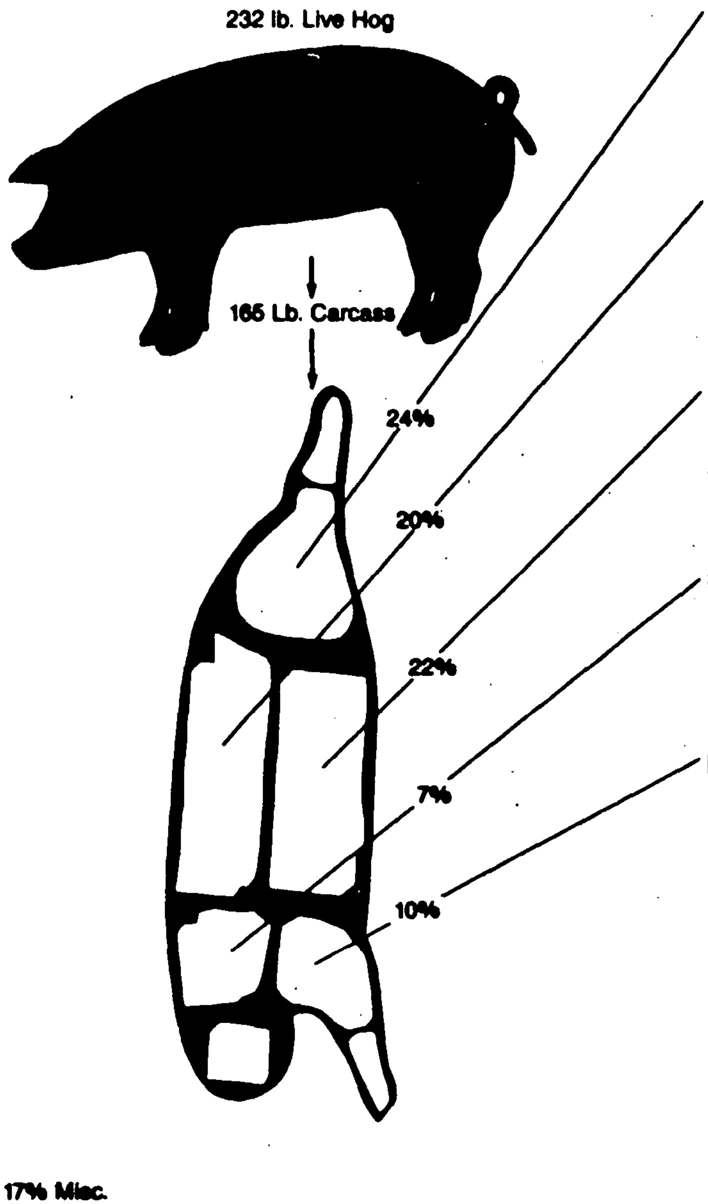
Figure 2



Source: Reproduced with the permission of the National Live Stock and Meat Board.

Figure 3

Hog Carcass Breakdown



	Retail Pork* (Lbs)	Other Products (Lbs)	Carcass Total (Lbs)
HAM (39.4 lbs)			
Cured ham	20.1		
Fresh ham	4.1		
Trimmings	3.0		
Skin, fat, bone		12.2	
Total	27.2	12.2	39.4
LOIN (32.9 lbs)			
Blade roast	8.0		
Center chops	17.3		
Sirloin roast	5.6		
Fat		2.0	
Total	30.9	2.0	32.9
SIDE (36.4 lbs)			
Cured bacon	18.6		
Spareribs	6.4		
Trimmings	9.4		
Fat		2.0	
Total	34.4	2.0	36.4
SHOULDER (28.0 lbs)			
Boston Butt			
Blade steaks	7.0		
Blade roast	4.2		
Trimmings	0.8		
Total	12.0		12.0
Picnic			
Arm roast	7.7		
Trimmings	3.7		
Skin, fat, bone		4.6	
Total	11.4	4.6	16.0
MISCELLANEOUS (28.3 lbs)			
Jowls, feet, tails, neckbones, etc.	6.5		
Trimmings	3.9		
Fat, skin, bone		14.4	
Shrink and loss		3.5	
Total	10.4	17.9	28.3
TOTAL	126.3	38.7	165.0

Source: The American Meat Institute.

Pork that is ready for cooking and consumption without further processing is referred to as fresh pork, and a significant portion of some pork cuts, such as loins, are so consumed. Overall, according to the National Pork Producer's Council, approximately two-thirds of all fresh pork ends up being further processed, prepared, or preserved. The fresh pork that is consumed in Canada and the United States is primarily from domestically raised slaughter hogs (swine slaughtered at about 6 months old).

Live swine.--In general usage, swine are referred to as hogs and pigs. The term "hogs" generally refers to mature animals and "pigs" to young animals. Swine are monogastric, litter-bearing animals that may weigh from 400 to 600 pounds at maturity, depending on breed and sex. In Canada and the United States, most swine are slaughtered for meat when they are no longer used for breeding. Carcasses of boars (male swine) sometimes acquire boar odor, an unacceptable odor that renders the meat unfit for human consumption. When such odor is detected by USDA inspectors, the carcass is condemned.

Swine are omnivorous and adapt to various types of feed (diets). They are highly efficient in converting grain and protein supplement to meat. In the United States, the typical swine feed consists of corn and soybean meal with mineral and vitamin supplements. In Western Canada, the typical feed is barley and soybean meal with mineral and vitamin supplements, and in Eastern Canada, the typical feed is corn and soybean meal with supplements. 1/

Worldwide, live swine are divided into three types on the basis of usage--meat type, lard type, and bacon type--although all three types yield at least some of the other products. For many years, almost all swine raised in Canada and the United States have been of the meat type, and meat production is virtually the only purpose for which they are kept.

Swine may be white, dark red, brown, black, or any combination, depending on breed. The most common breeds of swine in the United States are the Duroc, Yorkshire, Hampshire, Spotted Swine (commonly called "Spots"), Landrace, Chester White, Berkshire, and Poland China. Most swine in the United States are not purebred, but instead have bloodlines of two or more breeds.

Live swine are raised in Canada in much the same way as in the United States. The most common breeds of swine in Canada are the Yorkshire, which accounts for nearly one-half of the total, and Landrace, which accounts for about one-third; other breeds include the Hampshire, Duroc, and Lacombe. In Canada, the Yorkshire, Landrace, and Lacombe are referred to as white breeds, and the Hampshire (which is black with a white band around the shoulder) and Duroc (which is brick red) are referred to as colored breeds. Many farmers breed so-called colored boars with white sows. These farmers contend that the resulting litters are more hardy and profitable than purebred animals of any single breed.

1/ At the staff conference in this investigation, the petitioner maintained that the types of feed used in all parts of North America were essentially the same--grain protein supplement diets. Transcript, pp. 59-60.

While the Canadian pork cuts exported to the United States during 1986-88 were quite similar to the domestic cuts, the mix of such cuts was not proportionate to domestic production. Appendix E is a copy of portions of Canada Livestock and Meat Trade Report (Vol. 67, No. 51-52, January 1988 and Vol. 68, No. 52, January 1989), which shows, among other things, the quantity of various fresh, chilled, or frozen pork cuts exported from Canada to the United States during 1986-88. The mix of cuts exported to the United States remained rather stable during 1986-88. During 1986, 39 percent of exports to the United States consisted of hams, 28 percent consisted of shoulders, 10 percent consisted of loins, 13 percent consisted of bellies, 6 percent consisted of side and regular spare ribs, and 4 percent consisted of carcasses and sides.

During 1987, of the fresh, chilled, or frozen pork exported, 35 percent consisted of hams, 29 percent consisted of shoulders, 13 percent consisted of loins, 13 percent consisted of bellies, 5 percent consisted of side and regular spare ribs, and 5 percent consisted of carcasses and sides. During 1988, 38 percent of the exported cuts consisted of hams, 30 percent consisted of shoulders, 14 percent consisted of loins, 10 percent consisted of bellies, 5 percent consisted of regular spare ribs, and 4 percent consisted of carcasses and sides.

Manufacturing process

The manufacturing process is the same in both the United States and Canada. In the slaughtering operation, live swine are inspected, stunned (usually by an electric charge), bled, eviscerated, scalded, dehaired, and partially decapitated. The animal's carcass is then generally split along the spinal column and chilled; the carcass may be partially or fully processed at the meatpacking plant or shipped to retail outlets for processing. The carcass is cut up to yield hams, loins, chops, and other parts.

Many of the packers also process pork into sausage, ground pork, and other pork-related products. Some cuts of pork are usually prepared or preserved so as to alter the taste, consistency, or appearance of the meat and extend the shelf life. Smoking, drying, or injection of curing agents are common methods used to prepare or preserve pork. 1/

Substitute products

Domestic interests contend that live swine are substitutes for pork carcasses and pork cuts, at least for some packer/processors. As a source of animal protein, pork competes with beef and poultry. Table 1 shows that per capita consumption of beef on a retail-weight basis declined by 7 percent between 1979 and 1988; pork consumption declined by less than 1 percent, but poultry meat consumption increased by 36 percent.

1/ Pork that is cured, prepared, preserved, or processed is outside the scope of this investigation.

Table 1
Beef, pork, and poultry meat: Apparent per capita consumption in the United States, 1979-88

(in pounds)

	Beef		Pork		Poultry Meat 1/
Year	Carcass weight	Retail weight	Carcass weight	Retail weight	Retail weight 2/
1979.....	105.4	78.0	68.4	63.4	60.1
1980.....	103.2	76.4	73.2	68.0	60.3
1981.....	104.2	77.1	69.9	64.9	62.0
1982.....	103.7	76.8	62.5	58.5	63.4
1983.....	105.7	78.2	65.7	61.9	64.7
1984.....	105.5	78.1	65.3	61.5	66.5
1985.....	106.5	78.8	65.8	62.0	69.7
1986.....	107.3	78.4	62.1	58.6	72.0
1987.....	103.3	73.4	62.5	59.1	77.8
1988.....	102.2	72.5	66.9	63.2	81.9

1/ Chicken and turkey.
2/ Retail and carcass weight are virtually the same for poultry.

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

Many consumers consider poultry meat to be a good economic value in relation to red meats, and perceived health concerns among some consumers may have affected demand for pork and red meats. Another factor is the aggressive campaign by the poultry industry to cater to a convenience-conscious public by providing prepackaged products like chicken nuggets and chicken fingers, and by building brand loyalty among consumers. Brand loyalty is built by advertising and coupon campaigns, and prepackaging saves consumers time. Some pork packers, such as Wilson and ConAgra, are moving to imitate the poultry industry by introducing "lite" pork products, with lower amounts of fat and fewer calories, and attempting to build brand loyalties.

U.S. Customs Treatment

U.S. tariff treatment

The products covered by this investigation are fresh, chilled, and frozen pork, previously provided for under TSUSA item numbers 106.4020 and 106.4040, and currently classifiable under HTS item numbers 0203.11.00, 0203.12.90, 0203.19.40, 0203.21.00, 0203.22.90, and 0203.29.40. Specifically excluded from this investigation are any processed or otherwise prepared or preserved pork products, such as canned hams, cured bacon, sausage, and ground pork.

Health and sanitary regulations of the USDA

Certain health and sanitary regulations with respect to U.S. imports of live swine and pork are administered by the USDA to protect the U.S. livestock industry and to ensure an adequate supply of safe meat for the consumer. For example, sources of imports of pork are limited to those countries that have been declared free of rinderpest and foot-and-mouth diseases 1/ by the U.S. Secretary of Agriculture. 2/ Canada has been declared free of such diseases, but because of the existence of these diseases in many of the pork-producing countries of Europe, pork imported from these countries is usually cooked, canned, or cured.

Section 20 of the Federal Meat Inspection Act (21 U.S.C. 661 and 21 U.S.C. 620) requires that, with respect to the preparation of the products covered, foreign countries exporting meat to the United States must enforce inspection and other requirements that are at least equal to those applicable to the preparation of like products at Federally inspected establishments in the United States, and that the imported products be subject to inspection and other requirements upon arrival in the United States to identify them and further ensure their freedom from adulteration and misbranding at the time of entry. However, section 20 does not provide that the imported products be inspected by U.S. inspectors during their preparation in the foreign country.

As a country, Canada has long been eligible to export meat to the United States, and as of December 31, 1988, 621 plants within Canada were so eligible. Although many countries are eligible to export meat to the United States, not all plants within each country are so eligible; in Canada, however, virtually all Federally inspected plants are eligible to export to the United States. During 1987, 1.9 million pounds of fresh, chilled, or frozen pork, representing 0.4 percent of the total offered in that year, was refused entry into the United States. Approximately 1.6 million pounds of that total was from Canada.

1/ Rinderpest and foot-and-mouth diseases are highly contagious, infectious diseases that can afflict cloven-footed animals (such as cattle, sheep, swine, and deer). Because the diseases are easily transmitted and are debilitating, they are an ever-present threat to the U.S. livestock industry. The diseases do not present a direct threat to human health.

2/ Pursuant to sec. 306 of the Tariff Act of 1930 (19 U.S.C. 1306).

Nature and Extent of Alleged Subsidies

The petitioners are alleging that the same Canadian subsidy programs that have been found by the Department of Commerce to apply to imports of swine also apply to imports of pork. In its first administrative review covering the period April 3, 1985 to March 31, 1986 (53 F.R. 22189, June 14, 1988) and in its final review (54 F.R. 651, January 9, 1989), Commerce examined the Canadian subsidy programs listed in appendix G.

In the Department of Commerce's final determination on June 17, 1985, the net subsidy was found to be Can$0.03272/lb. for fresh, chilled, or frozen pork, and Can$0.02602 for live swine. The bonding rate was Can$0.025523/lb. for pork and Can$0.04390/lb. for swine. The period for which subsidization was measured was April 1, 1983, to March 31, 1984.

In Commerce's final determination of January 9, 1989, the net subsidy was found to be de minimis for slaughter sows and boars and Can$0.022 for all other live swine during the period April 3, 1985, through March 31, 1986. Cash deposits of estimated countervailing duties of Can$0.022 have been collected since January 9, 1989.

The U.S. Industry

Live swine growers

Swine are grown throughout the United States, but production is concentrated in the North Central States. 1/ In 1988, there were 333,500 swine enterprises 2/ in the United States. Of these, 166,500, or 50 percent, were located in the North Central States. These enterprises accounted for 78.7 percent of hogs raised in the United States in 1988. 3/

Pigs are born (farrowed) after a gestation period which is normally 114 days. A few days after birth, most male pigs are castrated and are thereafter referred to as barrows. The barrows and gilts (female swine that have not farrowed) are raised to a weight of about 40 to 50 pounds in about 2 months. These animals are referred to as feeder pigs, and the businesses that raise them are referred to as feeder pig producers. The feeder pigs may be sold to finishers, who raise them to a slaughter weight of about 220 to 240 pounds in about 4 months. At that point, these animals are referred to as slaughter hogs. However, many U.S. swine today are produced by "farrow-to-finish" enterprises, which combine the feeder pig production and finishing businesses into one operation. A few enterprises specialize in raising purebred animals for breeding.

1/ Ohio, Indiana, Illinois, Michigan, Wisconsin, Minnesota, Iowa, Missouri, South Dakota, Nebraska, and Kansas.
2/ An enterprise is any place having one or more swine on hand during the year.
3/ Hogs and Pigs, USDA, January 6, 1989.

Swine are hardy, adaptable animals that can be raised under minimal shelter, although the death rate for baby pigs can be quite high under those conditions. In the United States, live swine shelter systems range from small, A-frame buildings for individual sows (female swine that have farrowed) and their litters to large-volume, total confinement systems in which swine are maintained in totally environmentally controlled buildings throughout their lives. In recent years the trend has been toward more confinement in order to reduce swine labor requirements and to meet environmental protection regulations. There has also been a trend toward concentration in the live swine industry. However, even the largest swine-raising operations are believed to account for only a small share of total U.S. production.

Hog cycle

In the United States, and in many other countries and regions of the world where swine are kept, production is subject to a business cycle--generally referred to as the hog cycle. The cycle may be described as a change in the inventory of live animals and a concomitant but opposite change in pork production. The cycle is described in more detail in appendix H of this report. In brief, it appears that the U.S. industry has been in a contraction phase (in terms of animal inventory) since mid-1988, and growers have been experiencing associated reduced profits, and even losses, while pork production has been expanding.

Drought

During the feed growing season of 1988, parts of the United States, including major swine growing regions, were subject to drought, the severity of which ranged from slight to severe, and high temperatures. Although the high temperatures contributed to reduced litter size during the summer of 1988, probably the more serious effect was reduced feed grain production because of the drought, and subsequent higher grain prices. For example, corn prices rose from an average of $1.92 per bushel (#2 Yellow, Central Illinois) in March and April of 1988 to $2.59 per bushel in June 1988 and then to a peak of $2.90 in July of that year (in the previous year prices rose from an average of $1.51 in March and April to $1.71 in June but declined to $1.60 in July). Although the drought continued throughout the summer of 1988, prices stabilized, averaging about $2.65 per bushel for the remainder of 1988, reflecting a number of factors including a large wheat crop, moderate exports of grains, and release of stocks from Government and private stocks.

Meatpackers

Live swine are slaughtered and processed by meatpacking businesses. A few of the companies are owned and operated by live swine growers. Most of these are cooperatives. Many of the large packinghouses also process pork into sausage, ground pork, and other pork-related products. These operations are referred to as packer/processors. The American Meat Institute (AMI) defines packers as companies that slaughter livestock and have sales primarily of fresh meat, and packer/processors as companies that slaughter livestock and have sales of processed meats equivalent to two-thirds or more of total sales. Pork processors do not slaughter livestock and are primarily involved in the manufacture and sale of processed pork meats. 1/

There appears to be a trend in the meatpacking industry toward consolidation and a division between "commodity slaughterers," such as SIPCO, IBP, Excel and Farmland, and "branded processors," such as Hormel and Oscar Mayer. In 1987, there were 1,182 federally inspected hog slaughter facilities. Of these, 87 facilities, or 7.4 percent, controlled 95 percent of all commercial slaughter. 2/ "[A] more industrialized, streamlined, cost-conscious pork industry is developing," according to industry analysts and observers. "If you're going to be slaughtering hogs, you've got to do it on a massive scale. That's why we're seeing this consolidation." 3/

According to responses from the Commission's producers' questionnaire, over the last 3 years, two of the larger integrated packer/processors, *** and ***, have phased out their packing operations by either closing down their packing plants or by selling them off to other packers. Several of the largest swine "commodity slaughterers," such as ***, ***, and ***, have made major acquisitions over the last 3 years. These three firms slaughter other meats in addition to swine, but until now have limited themselves to the packing portion of the business.

Plant closings

The number of federally inspected swine slaughtering plants in the United States declined steadily during 1986-88 as shown in the following tabulation:

	Federally inspected plants
1986.......	1,250
1987.......	1,182
1988.......	1,175

Officials of the U.S. Department of Agriculture report that in addition to the decline in the total number of plants, there has been an increase in the share of total slaughter accounted for by the larger volume plants. A large share of the plants slaughter only intermittently and account for only a small share of total production.

1/ Meat Facts, American Meat Institute, 1988 edition, p. 42.
2/ Meat Facts, American Meat Institute, 1988 edition, p. 16.
3/ "SIPCO's Pork Move: The Changes it Brings," Meat & Poultry, April 1988, p. 22.

Eight companies responding to the Commission's questionnaires reported information on plant closings. Some companies responded with more than one instance of closure or sale: Two companies reported they sold facilities; one company reported three closures because of strikes (the plants subsequently reopened) and two closures because of "market" reasons (one such closure was for 7 days); two companies reported closures because of problems with "profitability;" and six closures were for unspecified reasons.

U.S. Importers

Information concerning the channels of distribution for U.S. imports of pork from Canada was obtained from counsel for the Canadian Meat Council, the trade association of Canadian meatpackers. The bulk of the imports are reportedly purchased directly from meatpackers in Canada by U.S. meat processors, wholesalers, or retailers; some imports, however, are handled by Canadian brokers. Most of the orders are for delivery in one week, at a price set when the agreement is made. Although purchasers often deal with the same suppliers for extended periods of time, there are typically no long-term legal commitments to purchase pork.

The Domestic Market

Channels of distribution

In both the United States and Canada, fresh, chilled, and frozen pork carcasses may be sold to pork processors by meatpackers--firms that slaughter live swine. Alternatively, in both the United States and Canada, packers may also fabricate carcasses into primal cuts for sale to other packers or retailers. Packers may also divide the primal cuts into subprimal or retail-sized cuts for sale to retailers. Because fresh or chilled pork is a perishable agricultural product, it is usually sold to the retail consumer within one week after the animal is slaughtered. Some pork packers are also processors who process pork products such as bacon, canned hams, sausages, and so forth.

Market prices for pork carcasses and cuts at various stages of processing are reported by the USDA's Agricultural Marketing Service and in Canada by Agriculture Canada, the Canadian counterpart of the USDA. Also, private commercial firms in both the United States and Canada report market prices. Because pork is a rather homogeneous commodity, price movements are typically small and closely monitored, and price discrepancies are typically quickly corrected.

Apparent U.S. consumption

Data on apparent consumption of fresh, chilled, or frozen pork were compiled from publicly available sources. Table 2 shows apparent consumption of fresh, chilled, or frozen pork as calculated from data compiled by the Economic Research Service of the USDA. During 1986-88, apparent consumption increased by nearly 9.5 percent, with consumption in 1987 increasing by 1.5 percent over 1986, and consumption in 1988 increasing by 7.8 percent over 1987.

Table 2
Pork: U.S. producers' shipments derived from U.S.-grown swine, U.S. producers' shipments derived from Canadian swine slaughtered in the U.S., net inventory change, exports, domestic shipments, imports, and apparent U.S. consumption, 1986-88

(In millions of pounds)

Item	1986	1987	1988
U.S. producers' shipments derived from U.S.-grown swine 1/	13,976	14,299	15,536
U.S. producers' shipments derived from Canadian swine slaughtered in the United States	88	75	140
Total	14,064	14,374	15,676
Net inventory change	41	(99)	(78)
Exports 2/	218	233	321
Domestic shipments 3/	13,887	14,042	15,277
Imports	1,122	1,195	1,150
U.S. apparent consumption 4/	15,009	15,237	16,427

1/ Includes farm slaughter.
2/ Includes shipments to Puerto Rico and the U.S. Virgin Islands.
3/ Domestic shipments figure is derived by adding net inventory change to total U.S. producers' shipments and subtracting exports.
4/ U.S. apparent consumption figure derived by adding imports to domestic shipments.

Source: Compiled from official statistics of the U.S. Department of Agriculture and the U.S. Department of Commrce.

Consideration of Material Injury to an Industry in the United States

In order to evaluate the condition of the U.S. industry producing fresh, chilled, or frozen pork, the Commission sent questionnaires to 26 meatpackers and packer/processors, including the 7 firms listed in the petition. These firms were believed to constitute approximately 80 percent of domestic production of fresh, chilled, or frozen pork. The Commission received usable responses from 6 firms, accounting for approximately 34 percent of production in 1988. 1/ For this reason, information presented in this section is compiled primarily from publicly available sources. The information compiled from data submitted in response to the Commission's questionnaires is presented in aggregate form in table 3.

Information on swine growers presented in this section is taken from publicly available sources. Data on the condition of swine growers are presented, since the petitioner alleges that they are part of the domestic industry. 2/ Counsel for respondents argues that swine growers should not be included in the definition of the domestic industry. 3/

Table 3
Pork: Aggregated questionnaire data, six firms reporting, 1986-88

Item	1986	1987	1988
Employment 1/	6,745	6,345	7,231
Hours worked (in thousands)	13,436	13,597	15,616
	Quantity (thousand pounds)		
Practical capacity	5,068,226	5,255,966	5,347,164
Production	3,915,555	4,025,510	4,715,835
Domestic shipments	2,774,602	3,045,576	3,592,071
End-of-period inventories	29,057	35,234	43,879
Capacity utilization (in percent)	77.3	76.6	88.2
	Value (thousand dollars)		
Domestic shipments 2/	2,077,059	2,384,022	2,400,806
Wages paid	131,521	125,010	145,013
Total compensation paid	158,356	145,126	163,114

1/ Employment, hours worked, wages paid, and total compensation reported only for production and related workers producing fresh, chilled, or frozen pork.
2/ Only five of the six firms reported this information.

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

1/ The same six firms accounted for approximately 28 percent of production in 1986 and approximately 29 percent of production in 1987.
2/ Petition at p. 6.
3/ Respondent's post-conference brief at p. 39.

U.S. production

Table 4 shows U.S. pork production and the U.S. swine crop for the years 1986 through 1988. Pork production rose from roughly 14.0 billion pounds in 1986 to 15.6 billion pounds in 1988.

Table 4
U.S. pork production and U.S. swine crop, 1986-88

Year	Pork production	Swine Crop
	(Million pounds)	(1,000 animals)
1986...............	13,998	82,389
1987...............	14,312	88,347
1988...............	15,616	92,566

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

U.S. capacity and capacity utilization

Data concerning capacity utilization for pork packers in the United States may be estimated using information collected during a study commissioned by the American Meat Institute, a trade association representing meatpackers and meat processors. That study estimated capacity utilization for packers in the United States, including pork packers, based on survey responses by packers. Pork packers who responded accounted for 50 percent of swine slaughter in 1987. The study surveyed slaughtering capacity in 1988 and compared that capacity with reported slaughter in 1987. The resultant estimate was that the U.S. pork-packing industry in 1987 operated at 63.1 percent, per week, for packers slaughtering barrows and gilts, and 58.3 percent for packers slaughtering sows and boars.

In 1987, swine slaughter in the United States amounted to 81.1 million animals. In 1988, swine slaughter amounted to 87.7 million animals. Assuming that the questionnaire respondents accounted for the same share of U.S. swine slaughter in 1988 as in 1987, capacity utilization is estimated to have amounted to at least 68.0 percent for packers who slaughtered barrows and gilts, and at least 63.8 percent for packers who slaughtered sows and boars. However, based on responses to the Commission's questionnaire in this investigation, the respondents in the AMI study apparently accounted for a larger share of total U.S. swine slaughter in 1988 than in 1987. Therefore, capacity utilization in 1988 was probably higher than the previously estimated figures.

According to questionnaire responses, capacity utilization by reporting firms declined by nearly 1 percent from 1986 to 1987. However, in 1988, capacity utilization increased by approximately 15 percent over 1987.

U.S. producers' domestic shipments

According to information compiled from the U.S. Department of Agriculture and the U.S. Department of Commerce, domestic shipments increased by 1.1 percent from 1986 to 1987, and by 8.8 percent from 1987 to 1988. According to data compiled from questionnaire responses (6 from firms accounting for approximately 24 percent of domestic shipment coverage), domestic shipments increased by 9.8 percent from 1986 to 1987, and by 17.9 percent from 1987 to 1988.

U.S. producers' export shipments

United States pork exports increased by 6.9 percent from 1986 to 1987, and by 37.8 percent from 1987 to 1988. According to questionnaire data, export shipments of pork, by reporting firms, increased by 28 percent from 1986 to 1987, and by 101 percent from 1987 to 1988.

The following tabulation compiled from official statistics of the U.S. Department of Commerce, except as noted, shows U.S. exports of live swine during the period 1986-88 (quantity in 1,000 animals, value in 1,000 dollars):

	1986	1987	1988	
			Jan.-Oct.	Jan.-Dec. 1/
Quantity...........	13	7	42 2/	50 3/
Value..............	9,207	6,211	9,674	11,609

1/ Estimated by the staff of the U.S. International Trade Commission.
2/ Includes 37,000 swine for slaughter to Mexico.
3/ Estimate of 43,000 swine for slaughter to Mexico.

U.S. producers' end-of-period inventories

Table 5 shows that ending stocks of pork were larger in every month in 1988 than in the corresponding months of 1987 and 1986. By December 1988, however, such inventories had fallen to 288 million pounds, below November 1988 inventories of 364 million pounds, and near December 1987 inventories of 285 million pounds. The larger 1988 monthly inventories probably reflect, in part, increased pork production during 1988.

At the Commission's conference on the investigation, 1/ domestic interests indicated that packers try to avoid accumulating inventories of pork, although processors may have such inventories. The domestic interests indicated that pork, as a perishable product, is expensive to store and that inventories reflect, in part, annual fluctuations in production. Although peak monthly inventories may equal as much as 30 percent of monthly production, they represent, in part, product in the distribution chain. Monthly inventories seldom exceed 2 percent of annual consumption.

According to data received from questionnaires, end-of-year inventories increased by approximately 21 percent from 1986 to 1987. In 1988, inventories increased by approximately 25 percent over 1987.

Table 5
Pork: Cold-storage stocks 1/ in the United States, by months, January 1986-December 1988

(In millions of pounds)

Month	1986	1987	1988
January	235	218	287
February	239	229	308
March	254	221	346
April	282	218	396
May	276	219	389
June	248	189	363
July	215	181	337
August	185	175	287
September	186	186	288
October	216	212	321
November	206	252	364
December	197	285	288

1/ End of month.

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

1/ Transcript at pp. 65-69.

U.S. employment, wages, and productivity

Employment.--According to data compiled from questionnaire responses, the number of production and related workers producing fresh, chilled, or frozen pork declined in 1987 by nearly 6 percent from 1986 to 1987. In 1988, however, the number employed rose by nearly 14 percent over the 1987 level.

Wages.--According to questionnaire data, wages paid declined by nearly 5 percent from 1986 to 1987. In 1988, however, wages paid increased by 16 percent over the 1987 level.

Productivity.--According to questionnaire data, productivity increased by approximately 20 percent from 1986 to 1987. In 1988, productivity increased by approximately 7 percent over 1987.

Financial experience of U.S. producers

Eight producers furnished usable income-and-loss data on the overall operations of their establishments within which fresh, chilled, or frozen pork is produced. Seven producers supplied usable income-and-loss data on their production of fresh, chilled, or frozen pork. 1/

Historically, the meatpacking industry has been characterized by low profit margins. Over the past several years there have been numerous plant closures and acquisitions of old plants by new ownership. Consequently, the sales volume of some packers has declined as plants have been divested or closed. However, some companies have expanded their meat-processing facilities. In their annual reports some firms indicated that their profit margins on processed meats are greater than the profit margins on sales of their meatpacking operations. 2/

Overall establishment operations.--Several of the companies transfer a portion of their production to processing operations. The processing of raw materials (primary swine cuts) into finished products (ham, bacon, etc.) is not covered by the scope of the investigation. Establishment income-and-loss data provided by the producers were either the same as fresh pork operations or combined both pork and processing operations. Trends were similar to those of the subject product(s). Since processing operations for firms are located both adjacent to and geographically distant from hog slaughter operations, the establishment income-and-loss data do not include all of the industry's processing operations.

1/ * * *.
2/ Excerpts from annual reports are presented in app. J.

Operations on pork.--The income-and-loss experience of the U.S. producers include all hog-slaughter operations, whether the product is sold as fresh pork or destined for further processing. These operations are presented in table 6. Net sales rose by 4.0 percent from $3.64 billion in 1986 to $3.78 billion in 1987. Estimated 1988 sales were $3.81 billion, representing an increase of 0.7 percent over 1987 sales. Operating losses of $18.8 million and $938,000 were incurred in 1986 and 1987, respectively. In 1988, operating income was $26.8 million. Operating income (loss) margins, as a share of sales, were (0.5) percent in 1986 and 0.7 percent in 1988. The operating loss margin was negligible in 1987. Operating losses were incurred by five firms in 1986 and 1988 and by four firms in 1987.

As stated earlier, the meatpacking industry has a history of low profit margins. In the previous investigation of these products, operating income and (loss) margins, as a share of sales, were 0.4, (0.2) and (0.2) percent in 1982, 1983 and 1984, respectively. 1/ * * *.

* * * * * * *

A breakdown of each producer's income-and-loss experience is shown in table 7. During the period of investigation, the industry has been affected by factors such as long strikes and adverse weather (1988 drought), the effect of which is difficult to quantify.

Four producers were unable to provide data for all three accounting periods. Their data plus the totals for all other companies are presented in table 8 (refer to the footnotes for an explanation of why these firms could not provide complete data).

1/ Investigation No. 701-TA-224 (Final), Live Swine and Pork from Canada, USITC Pub. 1733 (1985), p. 33.

Table 6
Income-and-loss experience of U.S. producers on their operations producing pork, accounting years 1986-88

Item	1986	1987	1988
	Value (1,000 dollars)		
Net sales	3,638,603	3,783,436	3,808,965
Cost of goods sold	3,578,548	3,710,577	3,700,838
Gross profit or (loss)	60,055	72,859	108,127
General, selling, and administrative expenses	78,885	73,326	81,343
Operating income or (loss)	(18,830)	(938)	26,784
Startup or shutdown expense	25,042	4,205	813
Depreciation and amortization included above	13,330	12,961	14,779
Cash-flow 1/	(5,500)	13,432	41,563
	Share of net sales (percent)		
Cost of goods sold	98.3	98.1	97.2
Gross profit	1.7	1.9	2.8
General, selling, and administrative expenses	2.2	1.9	2.1
Operating income or (loss)	(0.5)	2/	0.7
	Number of firms reporting		
Operating losses	5	4	5
Data	7	7	7

1/ Cash-flow is defined as operating income or (loss) plus depreciation and amortization.
2/ Less than plus or minus (0.05) percent.

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

Table 7
Income-and-loss experience of U.S. producers on their operations producing pork, by producer, accounting years 1986-88

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Table 8
Income-and-loss experience of U.S. producers on their operations producing fresh, chilled, or frozen pork, by producer (specific years), accounting years 1986-88

* * * * * * *

The major cost item for U.S. fresh pork producers is live swine. Virtually all reported purchases of swine were from U.S. domestic sources. These data, from questionnaire responses, are shown in the tabulation below (in thousands of units):

	1987	1988
United States:		
Pounds.......	8,273,297	8,620,482
Cost.........	$4,308,469	$3,919,321
Unit cost per pound....	$0.521	$0.455
Canada		
Pounds.......	***	***
Cost.........	***	***
Unit cost per pound....	***	***

For a discussion and tabulation of net returns to hog producers, refer to appendix H, "The Hog Cycle."

Investment in productive facilities.--The value of property, plant, and equipment for the U.S. producers is shown in table 9. Some of the larger companies did not supply information on their total assets; therefore, returns on asset ratios were not calculated.

Table 9
Pork: Value of property, plant, and equipment of U.S. producers, accounting years 1986-88

(In thousands of dollars)

Item	As of end of accounting year-- 1986	1987	1988
All products of establishments:			
Original cost................	415,712	384,314	423,445
Book value...................	237,720	217,649	231,135
Pork:			
Original cost................	216,768	220,675	235,845
Book value...................	141,721	143,005	145,751

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

Capital expenditures-- The capital expenditures reported by U.S. producer are presented in table 10. Some firms closed plants, but others acquired facilities and purchased equipment during the period of investigation.

Table 10
Pork: Capital expenditures by U.S. producers, accounting years 1986-88

(In thousands of dollars)

Item	1986	1987	1988
All products of establishments:			
Land and land improvements...	10	0	120
Building and leasehold improvements...............	9,098	1,161	10,898
Machinery, equipment, and fixtures..................	26,400	14,995	19,504
Total....................	35,508	16,156	30,522
Pork:			
Land and land improvements...	0	0	16
Building and leasehold improvements...............	6,107	665	1,044
Machinery, equipment, and fixtures..................	17,979	8,932	10,658
Total....................	24,086	9,597	11,718

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

Research and development expenses.--Research and development expenses for U.S. producers are presented in table 11.

Table 11
Pork: Research and development expenses by U.S. producers, accounting years 1986-88

(In thousands of dollars)

Item	1986	1987	1988
All products of establishments.....................	1,214	1,476	1,716
Pork.......................	151	236	335

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

Capital and investment.--The Commission requested U.S. producers to describe any actual or potential negative effects of imports of fresh, chilled, or frozen pork from Canada on their firm's existing development and production efforts, growth, investment, and ability to raise capital. Their responses are shown in appendix I.

Consideration of the Question of Threat of Material Injury

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

In determining whether an industry in the United States is threatened with material injury by reason of imports (or sales for importation) of any merchandise, the Commission shall consider, among other relevant factors 1/--

(I) If a subsidy is involved, such information as may be presented to it by the administering authority as to the nature of the subsidy (particularly as to whether the subsidy is an export subsidy inconsistent with the Agreement),

(II) any increase in production capacity or existing unused capacity in the exporting country likely to result in a significant increase in imports of the merchandise to the United States,

(III) any rapid increase in United States market penetration and the likelihood that the penetration will increase to an injurious level,

(IV) the probability that imports of the merchandise will enter the United States at prices that will have a depressing or suppressing effect on domestic prices of the merchandise,

(V) any substantial increase in inventories of the merchandise in the United States,

(VI) the presence of underutilized capacity for producing the merchandise in the exporting country,

(VII) any other demonstrable adverse trends that indicate the probability that the importation (or sale for importation) of the merchandise (whether or not it is actually being imported at the time) will be the cause of actual injury,

(VIII) the potential for product shifting if production facilities owned or controlled by the foreign manufacturers, which can be used to produce products subject to investigation(s) under section 701 or 731 or to final orders under section 736, are also used to produce the merchandise under investigation,

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

(IX) in any investigation under this title which involves imports of both a raw agricultural product (within the meaning of paragraph (4)(E)(iv)) and any product processed from such raw agricultural product, the likelihood that there will be increased imports, by reason of product shifting, if there is an affirmative determination by the Commission under section 705(b)(1) or 735(b)(1) with respect to either the raw agricultural product or the processed agricultural product (but not both), and

(X) the actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the like product. 1/

The available information on the nature of the subsidies found by the Department of Commerce (item (I) above) is presented in the section of this report entitled "The nature and extent of subsidies"; information on the volume, U.S. market penetration, and pricing of imports of the subject merchandise (items (III) and (IV) above) is presented in the section entitled "Consideration of the causal relationship between imports of the subject merchandise and the alleged material injury"; and information on the effects of imports of the subject merchandise on U.S. producers' existing development and production efforts (item (X)) is presented in the section entitled "Consideration of material injury to an industry in the United States." Available information on U.S. inventories of the subject products (item (V)); foreign producers' operations, including the potential for "product shifting" (items (II), (VI), (VIII) and (IX) above); any other threat indicators, if applicable (item (VII) above); and any dumping in third-country markets, follows.

U.S. inventories of pork from Canada

According to three responses to the Commission's importers' questionnaire, accounting for approximately 3 percent of imports in 1988, none of the reporting firms noted any end-of-period inventories of fresh, chilled, or frozen pork from Canada.

The industry in Canada and its ability to generate exports

As shown in table 12, total exports of pork from Canada rose from 474 million pounds in 1986 to 573 million pounds in 1988. As a share of production, exports rose from 24 percent in 1986 to 26 percent in 1988. Although exports to the United States increased from 458 million pounds in 1986 (23 percent of Canadian production) to 512 million pounds in 1987 (25 percent of Canadian production), exports declined to 486 million pounds in 1988 (22 percent of Canadian production).

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

Exports to all other markets increased from 16 million pounds in 1986 and 13 million in 1987 to 87 million pounds in 1988. The increase in exports to other markets reflects developments in the Japanese market that, combined with the U.S. market, have accounted for 95 percent of Canada's total exports in recent years. Until recently, Japan had been importing increasing quantities of pork from Taiwan, but because of a drug residue (sulfamethazine) problem with pork from Taiwan during the spring and summer of 1988, imports from Taiwan were sharply reduced. As an alternative, Japan imported increasing quantities of pork from other sources, including Canada and the United States. Officials of the U.S. Department of Agriculture report that the residue problem was resolved by the fall of 1988, and during the last 4 months of the year, Japanese imports from Taiwan had begun to increase.

With respect to swine-slaughtering capacity in Canada, at the Commission's conference on this investigation, both domestic and Canadian interests presented testimony that a large-volume Canadian swine-slaughtering plant in the Prairie provinces had been closed by a strike, apparently contributing to an increase in U.S. imports of live swine and possibly to a decline in U.S. imports of pork from Canada. In addition, another large-volume swine-slaughtering plant in the Province of Quebec was closed by a strike during 1988. In recent years, large-volume swine-slaughtering plants have been built in Manitoba and Alberta, and one large-volume older plant has closed in Saskatchewan. Officials of the Ontario Pork Producer's Marketing Board have expressed concern about the competitiveness of the swine-slaughtering sector in Ontario and have attempted to have a new slaughtering facility constructed there.

Inventories of the Canadian producers

Detailed data are not available concerning inventories of Canadian pork. Officials of the American Meat Institute (AMI) contend that data on inventories of fresh pork at any particular time are of limited value since such inventories are constantly fluctuating. Fresh pork is a perishable product and is almost always sold to the retail customer within one week after the animal is slaughtered.

Table 12
Pork: Canadian production, imports, exports, apparent consumption, and exports to the United States and all other markets as a share of production, 1986-88

Year	Production	Imports	Exports to— U.S. 2/	All other	Total	Apparent Consumption 1/	Exports as a share of production U.S. 2/	All other	Total
	Quantity (million pounds)						Percent		
1986	2,004	31	458	16	474	1,563	23	1	24
1987	2,066	37	512	13	525	1,578	25	1	25
1988 3/	2,194	22	486	87	573	1,638	22	4	26

1/ Includes changes in inventories.
2/ Official statistics of the U.S. Department of Commerce, (U.S. imports of fresh, chilled, or frozen pork).
3/ Preliminary.

Note.—Because of rounding, figures may not add to totals shown.

Source: Compiled from official statistics of the U.S. Department of Agriculture, except as noted.

Consideration of the Causal Relationship Between Imports of the Subject Merchandise and Alleged Material Injury

U.S. imports

As shown in table 13 (figure 4 is a graphical representation of the data in table 13), U.S. imports of fresh, chilled, or frozen pork from Canada rose from 458 million pounds in 1986 to 512 million pounds in 1987 before declining to 486 million pounds in 1988. During 1988, quarterly imports declined steadily from 137 million pounds during January-March, to 107 million pounds during October-December. The share of the annual imports entering in any quarter varied from year to year, but no quarter exceeded 29 percent of annual imports, and no 6-month period exceeded 56 percent of annual imports.

Officials of the National Pork Producer's Council contend that in assessing the impact of imports, the meat derived from live swine imported from Canada and slaughtered in the United States should be included. Table 13 shows that the quantity of such imports declined from 88 million pounds in 1986 to 75 million pounds in 1987, but increased to 140 million pounds in 1988. When imports of fresh, chilled, or frozen pork from Canada are added to the quantity of meat derived from live swine imported from Canada, the total increased steadily from 545 million pounds in 1986 to 626 million pounds in 1988. The quantity and value of pork imports from Canada, based on official statistics, are shown in the following tabulation:

Period/Year	Quantity Pork imports (in thousand lbs.)	Value Pork Imports (in thousand dollars, c.i.f.)
1986:		
January-March.......	111,025	73,681
April-June..........	100,185	70,310
July-September......	131,734	116,429
October-December....	114,654	103,794
Total, 1986......	457,597	364,216
1987:		
January-March.......	130,806	99,065
April-June..........	130,153	116,652
July-September......	127,010	115,756
October-December....	123,757	101,529
Total, 1987......	511,725	428,000
1988:		
January-March.......	137,495	101,259
April-June..........	131,184	95,417
July-September......	110,241	81,347
October-December....	106,825	74,487 1/
Total, 1988......	485,745	352,510

1/ October and November, official statistics of the U.S.Department of Commerce; December, estimated by the staff of the U.S. International Trade Commission.

Source: Compiled from official data of the U.S. Department of Commerce, except as noted.

Table 13
Swine and pork: U.S. imports from Canada, by quarters, January 1986-December 1988

(In thousands of pounds)

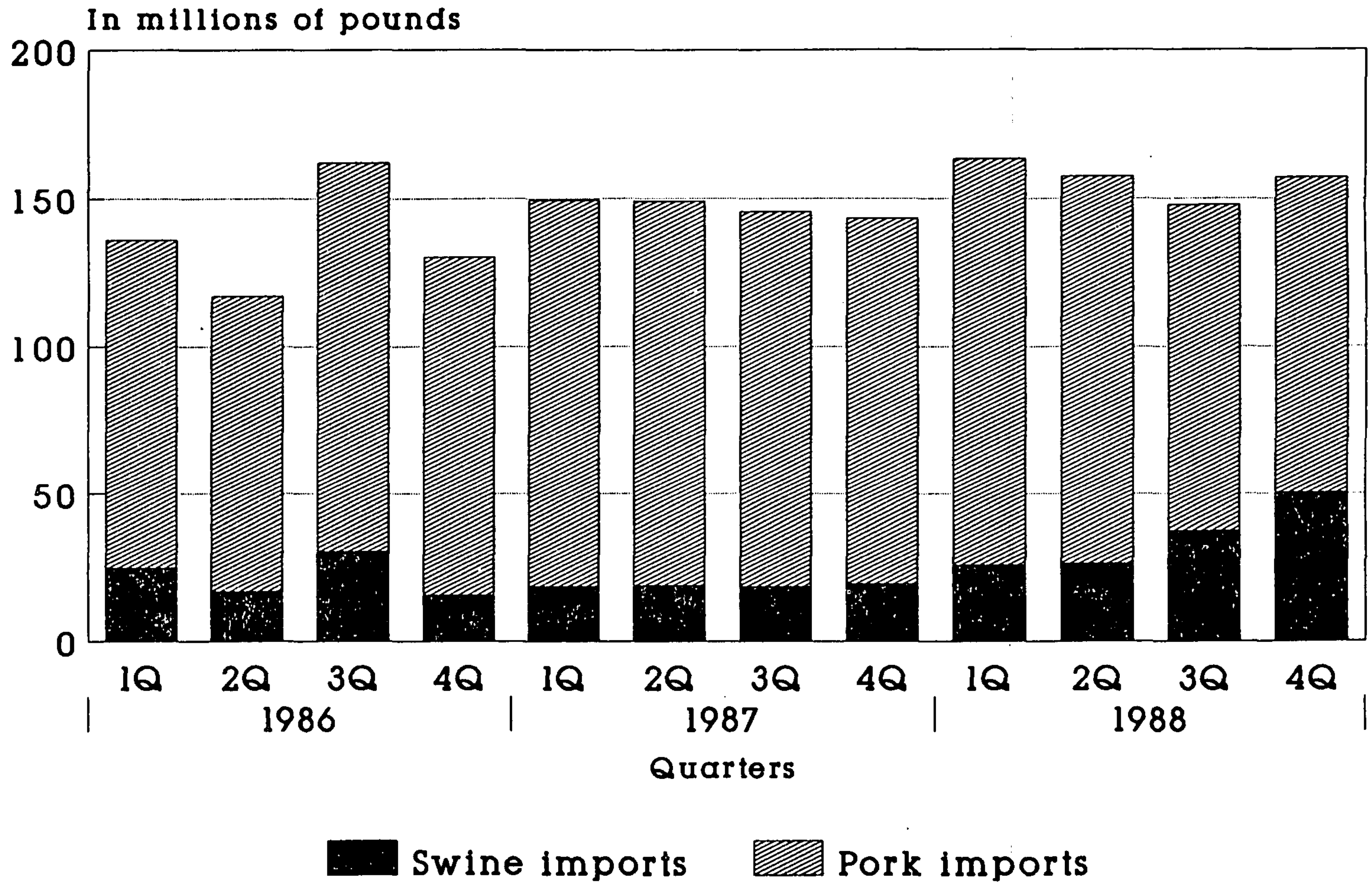
Period/Year	Swine imports 1/	Pork imports	Total imports
1986:			
January-March.......	24,853	111,025	135,878
April-June..........	16,731	100,185	116,916
July-September......	30,408	131,734	162,142
October-December....	15,562	114,654	130,216
Total, 1986......	87,555	457,597	545,152
1987:			
January-March.......	18,452	130,806	149,258
April-June..........	18,883	130,153	149,036
July-September......	18,452	127,010	145,462
October-December....	19,396	123,757	143,153
Total, 1987......	75,183	511,725	586,908
1988:			
January-March.......	25,786	137,495	163,281
April-June..........	26,382	131,184	157,566
July-September......	37,406	110,241	147,647
October-December....	50,320 2/	106,825	157,145
Total, 1988......	139,894	485,745	625,639

1/ Carcass-weight equivalent.
2/ October-November, based on official statistics of the U.S. Department of Commerce; December 1988, based on official statistics of Agriculture Canada.

Source: Compiled from official data of the U.S. Department of Commerce, except as noted.

Figure 4

Swine and pork: U.S. imports from Canada by quarters, January 1986-December 1988



Source: U.S. Department of Commerce.

U.S. market penetration by imports

Table 14 shows that the market penetration by imports from Canada increased from 3.1 percent to 3.4 percent in 1987, reflecting a rise in the quantity of imports as the quantity of U.S. production also rose. The market penetration by imports declined to 3.0 percent in 1988, reflecting both declining imports and increased U.S. production. Domestic interests contend that the increased U.S. production, especially in 1988, reflects an adverse situation in the United States as growers, dissatisfied with profitability, sold animals for slaughter that might otherwise have been kept for breeding purposes.

Table 14
Pork: U.S. apparent consumption, imports of Canadian pork, and U.S. market penetration by Canadian imports, 1986-88

Item	1986	1987	1988
	Quantity (In millions of pounds)		
U.S. apparent consumption........	15,009	15,237	16,427
Imports of Canadian pork.........	458	512	486
	(In percent)		
U.S. market penetration by Canadian imports...............	3.1	3.4	3.0

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

Prices

Demand for pork is derived from the demand for the final processed or fresh retail pork product. Among factors that affect the demand for pork are the price of substitute products, e.g. poultry and beef, consumer income, and consumer attitudes. An increase in the price of substitute products or in consumer income will increase the demand for pork. 1/ Commission questionnaire responses indicated a greater perceived health awareness by consumers and a preference toward leaner pork cuts. U.S. producers and importers report that they are unable to quantify this perceived health awareness on the demand for pork. Changes in consumer preferences from red meat in general will decrease the demand for pork. However, changes in consumer preferences to leaner cuts will increase the demand for the specific leaner pork cuts.

The major supply-side influence on the price fluctuation of pork is the price of swine. As shown in figure 5, fluctuations in the price of swine between January 1975 and December 1988 coincided with similar fluctuations in the price of wholesale (unprocessed) and retail (processed and retailed) pork. 2/ There is also a noticeable upward trend in the price of retail pork during this time period, which could represent movement by retailers and processors toward more value-added retail products. The price series for swine and for wholesale pork do not show a clear upward or downward trend.

Agricultural economists at USDA and the parties to the investigation state that the pork market is best characterized as a North American market rather than separate U.S. and Canadian markets. There are no barriers to trade in either the United States or Canada, nor are there any restrictions between states or between provinces. Agricultural economists at USDA state that the price of pork sold in Canada follows the same general trend and is at a price level similar to that in the United States, controlling for differences in transportation costs and fluctuations in the U.S.-Canadian exchange rate. U.S. importers contacted during this investigation that purchased both U.S. and Canadian-produced pork agreed that the prices are similar. Moreover, at the

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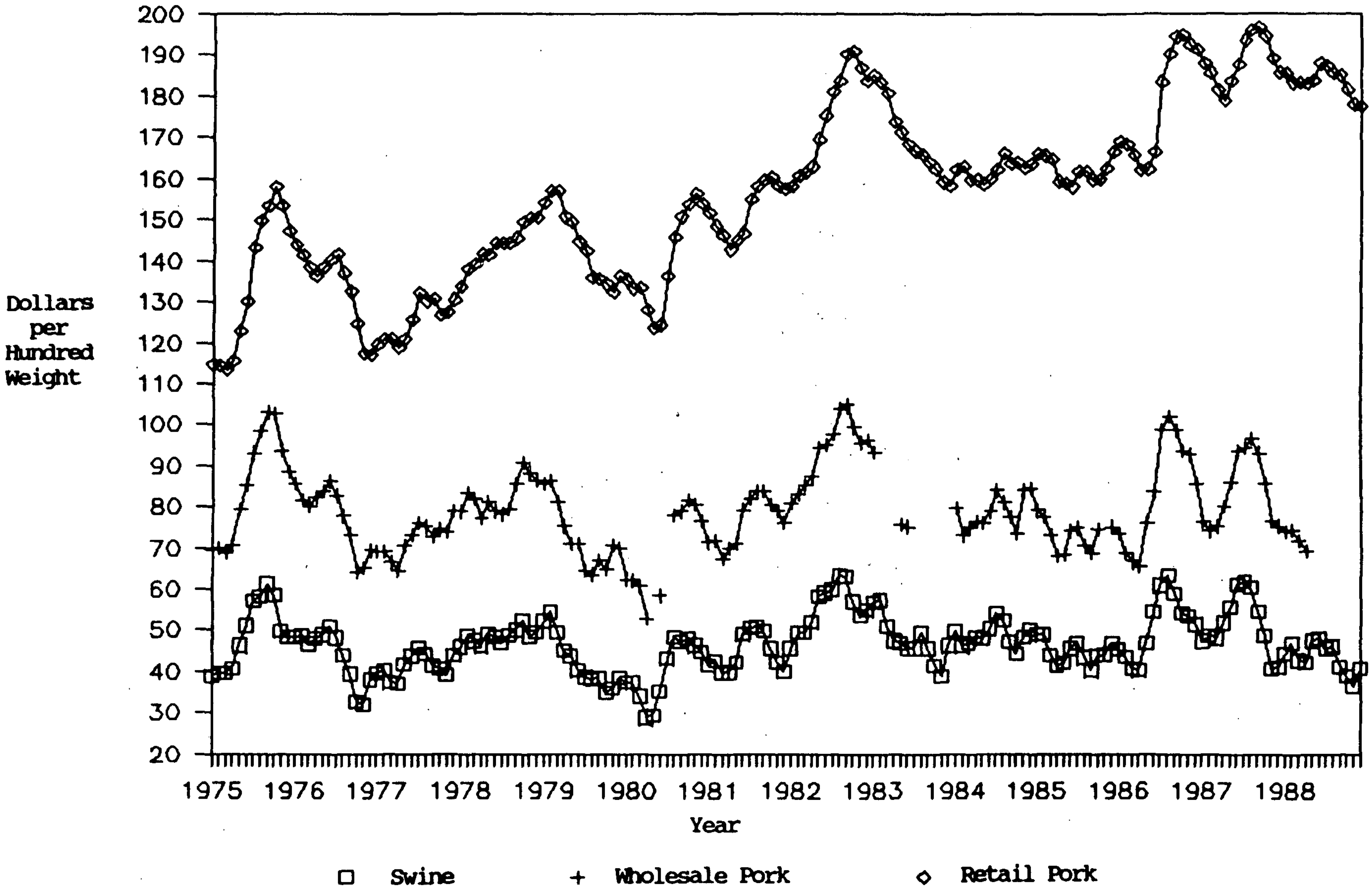
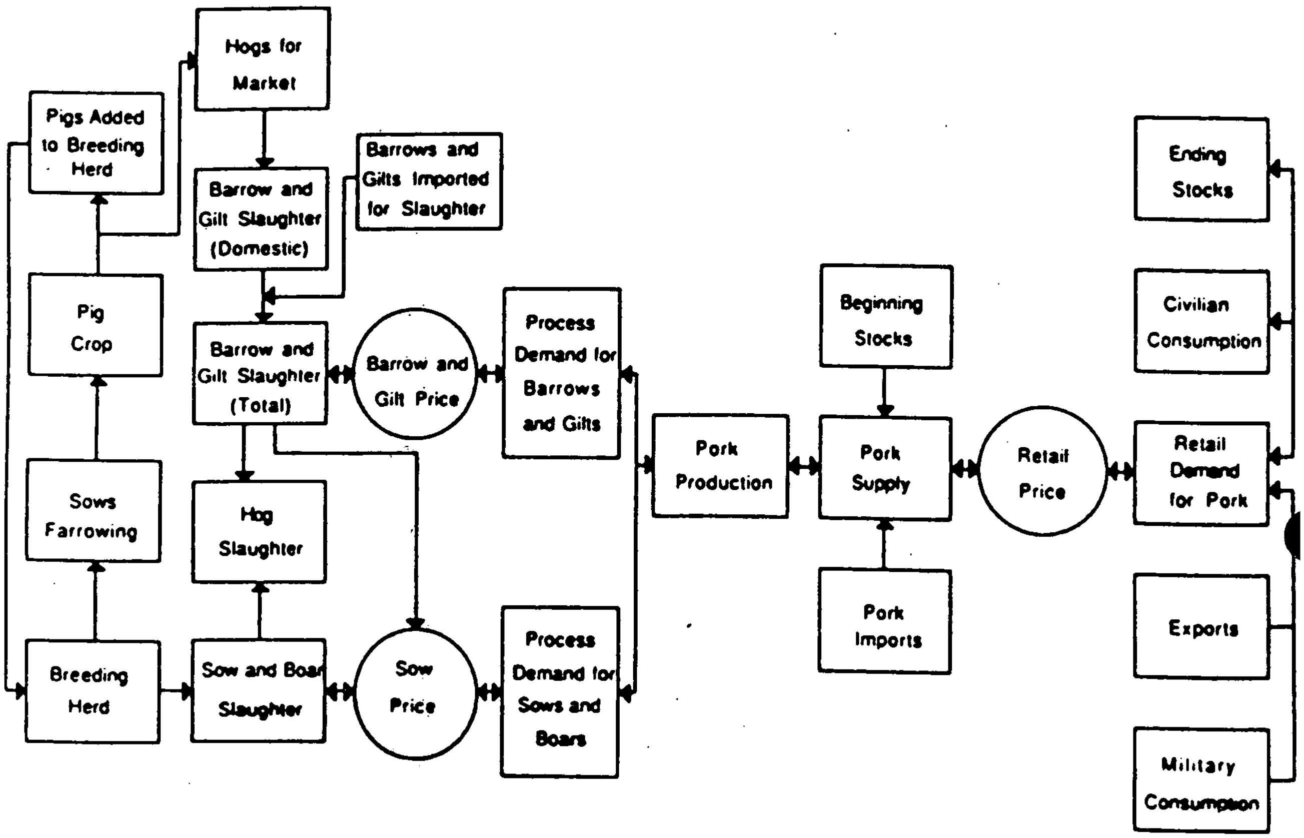
1/ A review of the economic literature indicates that the relationship between pork and consumer income is smaller than with substitute products.
2/ The three price series shown in figure 5 are based on different underlying weights and may not be completely comparable, although the influence of the swine price can clearly be seen. The swine price is based on a U.S. barrow/gilt 7-market price, live-weight basis. Wholesale pork value is a weighted-average price of three unprocessed pork cuts: hams, loins, and bellies. Retail pork prices are based on six retail pork cuts weighted by their carcass proportions: sliced bacon, pork chops, ham rump, fresh sirloin roast, smoked shoulder picnic, and sausage. The source of these price series is the USDA Economic Research Service.

Figure 5.—Weighted-average prices for swine, wholesale pork, and retail pork, by months, January 1975-December 1988 1/



Source: USDA Economic Research Service

Figure 6.--The hog/pork sector: Demand, supply, and pricing relationships



Source: Brandt, Young, Alam, and Womack, <u>Live Hog and Pork Imports: Past and Projected Consequences for the U.S. Pork Sector</u>, Southern Journal of Agricultural Economics, December 1987.

conference, the petitioner also agreed that there is a North American pork market. However, the petitioner argued that the surplus hog production in Canada is still depressing U.S. pork prices because of the high production levels and increase of pork exports to the United States. 1/

Demand, supply, and pricing relationships for the hog/pork sector are presented in the following flowchart (figure 6). This model illustrates the product flow from the breeding and slaughter of hogs through the production of pork and the retail demand for pork by consumers. 2/ Industry sources generally agree that the wide fluctuations in swine production associated with the hog cycle are inherent to this sector and affect demand, supply, and pricing relationships throughout the sector. 3/ As swine production and slaughter increase, the retail price for pork will decline, causing an increase in the retail demand for pork.

Pork is sold on a per-pound or per-hundred-pound basis in spot and multiple-shipment sales. U.S. producers and importers contacted during the investigation stated that multiple-shipment sales typically do not have written contracts; rather, these sales are long-term agreements to supply pork products on a regular basis, e.g., every Tuesday and Thursday. U.S. producers typically quote their product on a delivered basis, indicating to the purchaser both the f.o.b. price and the transportation cost. Canadian producers also generally quote their product on a delivered basis, although they are less likely to indicate freight costs separately from the f.o.b. price. Sale terms for pork are typically net 7 days. Both U.S. producers and importers report that over 90 percent of all pork shipments are by truck. The remaining pork shipments are by rail.

There are two different pricing methods by which pork is sold in the United States: a negotiated "total" price, and a formula price. Approximately 10 to 20 percent of U.S. pork sales is based on a "total" selling price negotiated between the producer and purchaser, e.g., 85 cents per pound for a 14 to 16 pound pork belly. These sales establish the basis for the market price of that specific pork product. The USDA Agricultural Marketing Service and the National Provisioner, which is an independent publisher located in

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1/ This would appear to conflict with the concept of a single North American market. If there is one North American market, all Canadian production of pork helps to increase supply and will have a depressing effect on the North American price for pork even if it is consumed in Canada. There may be price differentials in specific smaller markets, e.g., Seattle, but these would be expected to be temporary imbalances. Market forces would be expected to equalize prices subject to other influences, such as transportation.
2/ This model represents a distinct U.S. pork market. If drawn to depict a single North American pork market, the model would incorporate pork imports and Canadian production into U.S. pork production, rather than as an exogenous factor as shown in the model.
3/ See section of this report entitled "the hog cycle" for a complete description of this phenomena.

Chicago, IL., collect price and quantity information for sales of this type and publish the aggregated data for each specific pork product. 1/ Neither USDA nor the National Provisioner differentiate in their publications between U.S.- and Canadian-produced pork sold in the United States.

The remaining 80 to 90 percent of U.S. pork sales is based on a formula price mechanism, usually quoting a premium (or overage) that is added to one of the published market prices referred to above, e.g., "4 cents over next Tuesday's 14 to 16 pound pork belly price as quoted by the National Provisioner." An overage is used on sales of pork cuts not listed by these sources or in cases where the purchaser has a different specification for the pork cut.

There are several factors that determine the selling price for pork: the pork's specific cut (e.g., bellies, hams, loins, butts, picnics, spare ribs, trimmings, and byproducts), the pork cut's weight category (e.g., 14 to 16 pounds, 17 to 20 pounds), whether from a barrow/gilt or from a boar/sow, whether fresh, chilled or frozen, whether skinned, trimmed, or shankless, and whether packed in boxes or crates.

Pork from a barrow/gilt is more expensive than pork from a boar/sow. Frozen pork is generally less expensive than fresh or chilled pork, although this relationship may be reversed for some pork cuts during specific seasons. Pork that is skinned, boneless, or shankless is more expensive because these operations provide extra value to the pork product. Industry sources suggest that there is a trend by U.S. producers to provide more of these value-added services. Pork that is packed in open crates is less expensive per pound than pork packed in boxes.

The price of U.S.-produced pork is not differentiated by the country of origin of the swine. U.S. producers that purchase both Canadian- and U.S.-produced swine indicated that they price pork identically regardless of the country of origin. U.S. processors and retailers that do not have packing operations indicated that they are unlikely to know whether the swine used to produce the U.S.-supplied pork is Canadian-produced or U.S.-produced.

Pork price data.--The Commission collected price data from published sources and questionnaires from U.S. producers and importers of pork and swine products. Published price data for six different pork cuts are presented on a monthly basis for January 1975 to December 1988. The six pork cuts are as follows: fresh hams (17 to 20 pounds), fresh loins (14 to 16 pounds), fresh bellies (14 to 16 pounds), picnics (4 to 8 pounds), Boston butts (4 to 8 pounds), and trimmings (4 to 8 pounds). Published price data for one classification of swine were also compiled on a monthly basis for January 1975 to December 1988. The swine price series is the U.S. barrow/gilt 7-market price. 2/

1/ The USDA publication is the Livestock, Meat, Wool, Market News; the National Provisioner's publication is the NP Daily Market & News Service (Yellow Sheet). The USDA will collect information only if an actual sale is made, whereas the National Provisioner will also incorporate bid-and-ask information regardless of whether the sale is made.
2/ The published price data include imports of pork and swine.

The Commission requested U.S. producers and importers to provide quarterly unit-value data from January 1986 through December 1988 for five pork products and one swine product. For each pork product, producers and importers were asked to report the average net f.o.b. selling price for all U.S. shipments in that quarter. U.S. importers that processed or retailed pork in the United States were also requested to provide average delivered-purchase-price information on their imports of Canadian pork and their purchases of U.S. pork. U.S. producers were also requested to provide delivered-purchase-price information on their purchases of swine from the United States and Canada. The Canadian hog producers' provincial marketing boards and U.S. importers were requested to provide delivered-sales information on the classification of Canadian swine sold in the United States. The specified pork products and classification of swine for which price data were requested are listed below:

Product 1: Ham (pork leg)--Fresh chilled hams, 17 to 20 pounds, skinned (skin collar), bone in, regular shank.

Product 2: Ham (pork leg)--Fresh chilled hams, 20 to 26 pounds, skinned (skin collar), bone in, regular shank.

Product 3: Pork belly (side)--Fresh chilled bellies, 14 to 16 pounds, skin on, bone in, regular shank.

Product 4: Pork belly (side)--Fresh chilled bellies, 16 to 18 pounds, skin on, bone in, regular shank.

Product 5: Loins--Fresh chilled loins, 14 to 18 pounds, trimmed, bone in.

Product 6: Live swine: Barrows and gilts, 210 to 240 pounds live weight, U.S. grades #1 and #2 or equivalent.

Price data were requested for products 1 through 5 sold in 2,000-pound crates. Price data were also requested for product 5 sold in 70 to 80-pound boxes.

Ten U.S. producers and two U.S. importers reported unit-value data for the pork and swine products during the investigation. The responding U.S. producers accounted for approximately 24 percent of all reported U.S.-produced domestic shipments of pork and 39 percent of all reported U.S. purchases of live swine in 1988. Responding U.S. producers' shipments of products 1 through 5 accounted for 8 percent of the total reported U.S. producer shipments of pork in 1988. The responding U.S. importers accounted for approximately 3 percent of all reported imports of Canadian pork in 1988. Their imports of products 1 through 5 accounted for less than *** percent of the total reported imports of Canadian pork in 1988. The responding Canadian hog producers' Provincial marketing boards accounted for 100 percent of all Canadian exports to the United States of the specific classification of swine in 1988.

Published price trends for pork and swine.--Published U.S. market prices are presented for the long-term 1975-88 period as well as the 1986-88 investigation period. Prices fluctuated for the six pork products and one swine classification during the entire 14-year period 1975-88 (figs. 7-13).

The price for each pork product also showed seasonality, with the price of ham at its highest point at the end of the year and the other pork products at their highest point at midyear. However, these fluctuations were not as pronounced during 1988 as during 1986-87.

Ham prices generally increase toward the end of the year as Christmas approaches, and noticeably decline at the beginning of the year. This effect can clearly be seen over the 14-year period 1975-88.

U.S. market prices for fresh loins also showed seasonal fluctuations during the period of investigation (figure 8). Prices for this product were somewhat higher during 1986-88 as opposed to the 11-year period 1975-85. U.S. market prices for fresh pork bellies and fresh Boston butts also showed seasonal fluctuations during the period of investigation (figure 9 and 10). Prices for both of these products increased during 1986-87 to their highest point since 1982 before declining in 1988 to their lowest level since 1980. U.S. market prices for fresh picnics also showed seasonal variations during 1986-87, before leveling during 1988 (figure 11). Prices for picnics during 1988 were lower than during 1986-87. U.S. market prices varied for fresh trimmings during 1986-87 and declined during 1988 to their lowest point since late-1976 (figure 12).

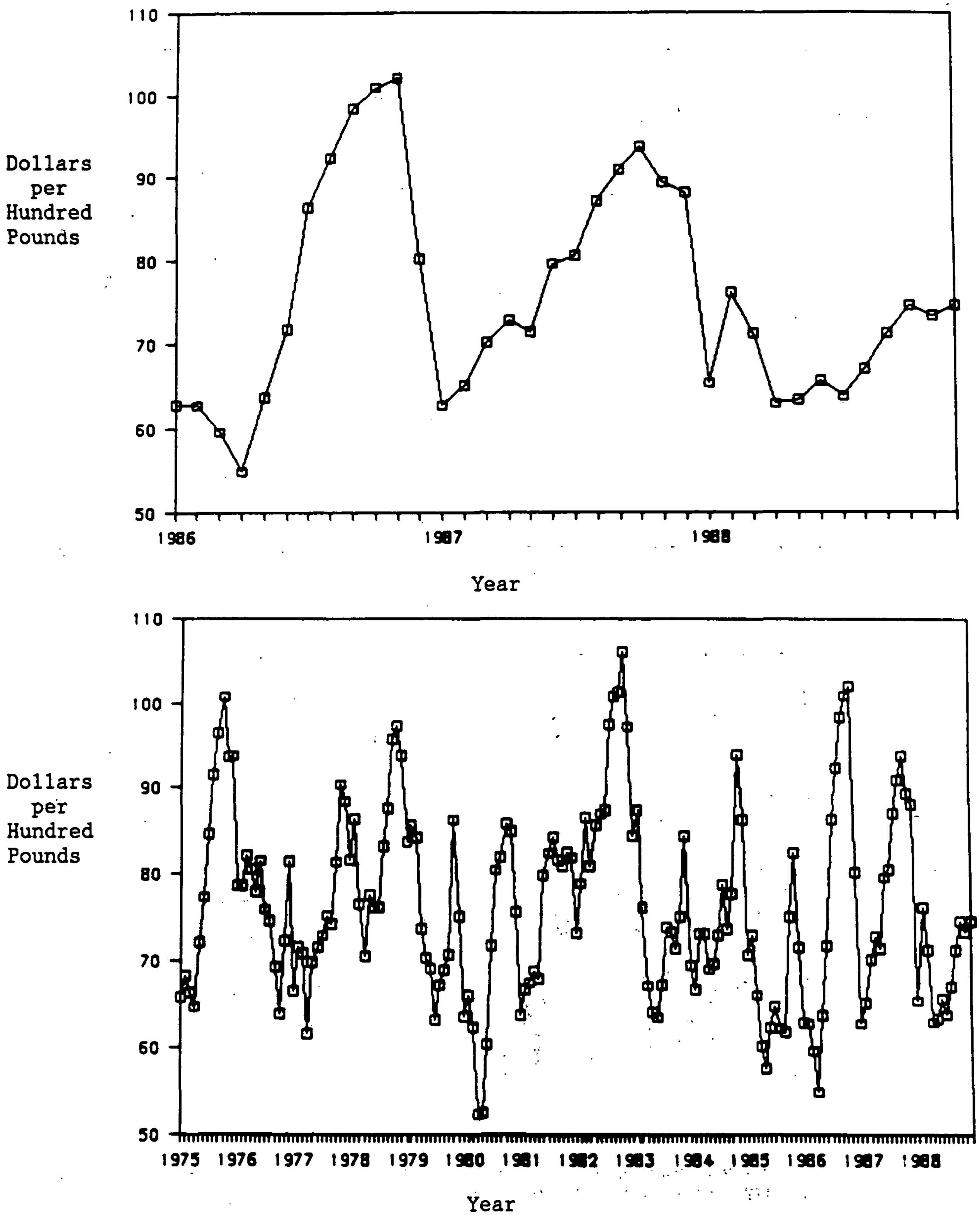
U.S. market prices also fluctuated for live swine during the period of investigation (figure 13). Prices for live swine during 1986-87 reached their highest point since late-1982 before decreasing and then leveling during 1988.

Questionnaire price trends for pork and swine.--Quarterly net f.o.b. price data collected through questionnaires for U.S.-produced pork products showed the same relative price fluctuations and seasonality as did the USDA data (table 15). Prices for the U.S.-produced fresh hams (products 1 and 2) increased toward the end of each year, although the increase was not as large during 1988. Prices for the U.S.-produced lighter ham product 1 (16 to 20 pounds) were higher on a per pound basis than for the heavier ham product 2 (20 to 26 pounds). Overall, prices for products 1 and 2 were 14.5 percent and 14.1 percent higher, respectively, between January-March 1986 and January-March 1988, and 24.4 percent and 26.2 percent lower, respectively, between October-December 1986 and October-December 1988. Prices for the Canadian-produced ham product 1 ***. Prices for the Canadian ham in 1988 were approximately *** percent *** than prices in 1986.

Prices for the U.S.-produced fresh pork bellies (products 3 and 4) increased during the first three quarters and declined during the fourth quarter in both 1986 and 1987. Prices for both products generally declined during 1988. Overall, prices for products 3 and 4 were 13.5 percent and 6.7 percent lower, respectively, between January-March 1986 and January-March 1988, and 43.4 percent and 42.5 percent lower, respectively, between October-December 1986 and the corresponding period of 1988.

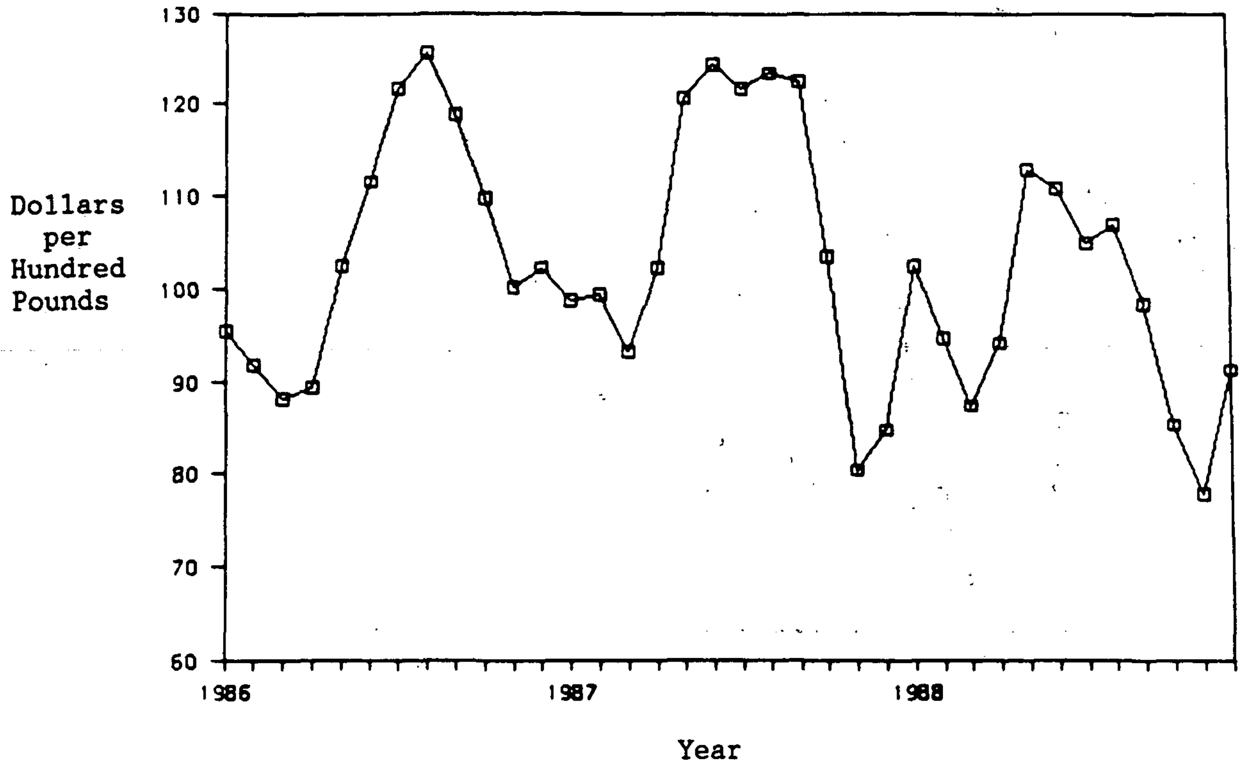
1/ Due to the seasonality of product prices, a quarter/year to quarter/year comparison is more applicable. Because of the large fluctuations, price comparisons are difficult under any circumstances.

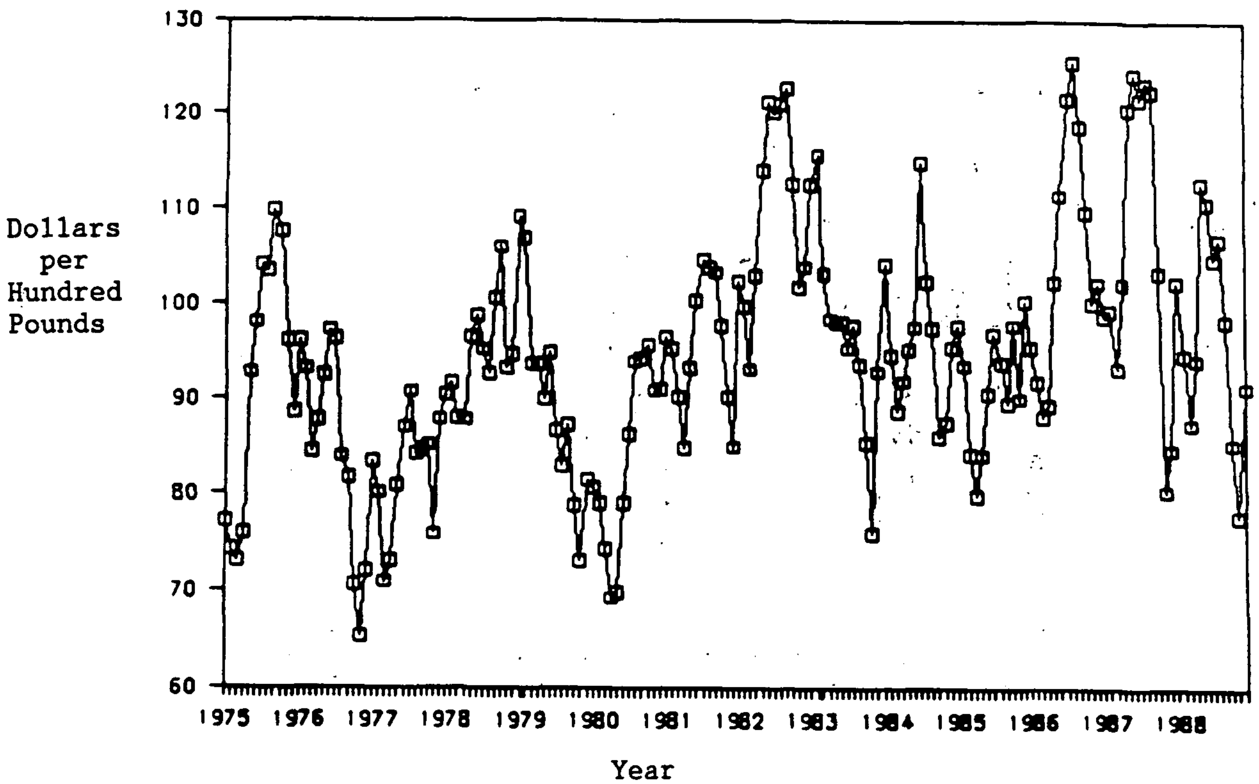
Figure 7.--Fresh ham published prices, 17 to 20 pounds, sold in the U.S. market, by months, January 1986-December 1988 and January 1975-December 1988



Source: USDA Economic Research Service

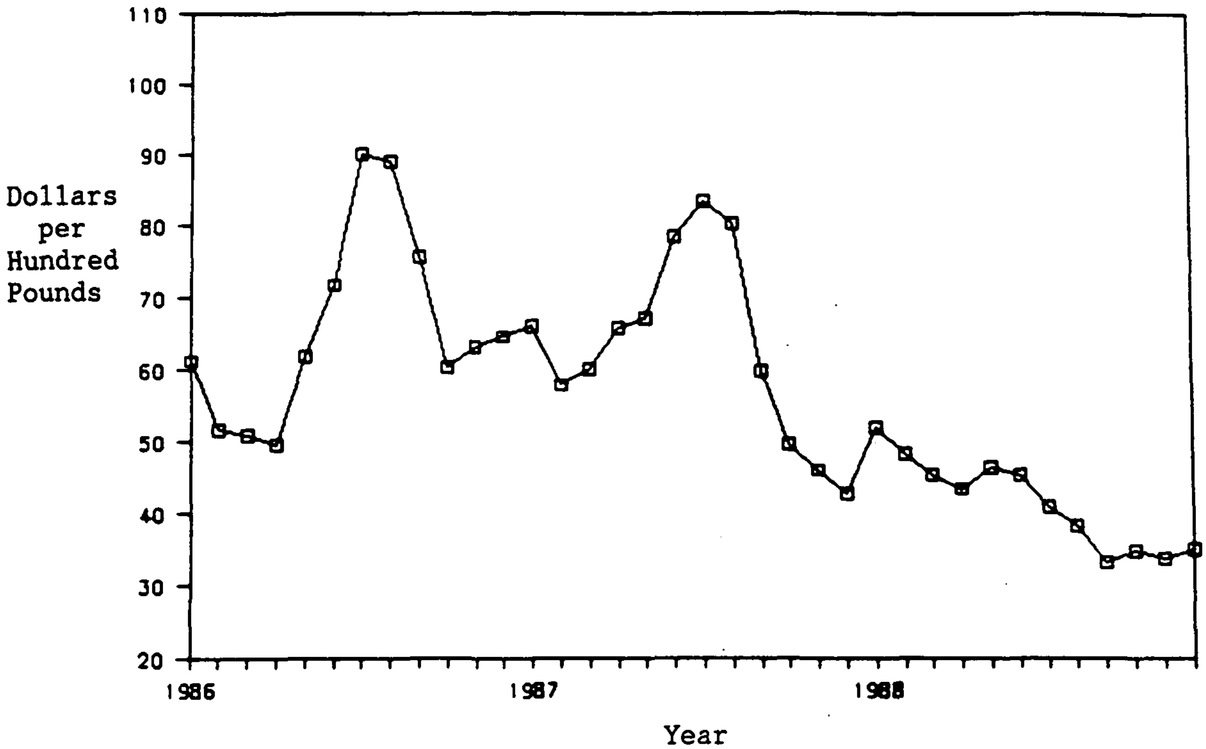
Figure 8.--Fresh loins published prices, 14 to 18 pounds, sold in the U.S. market, by months, January 1986-December 1988 and January 1975-December 1988

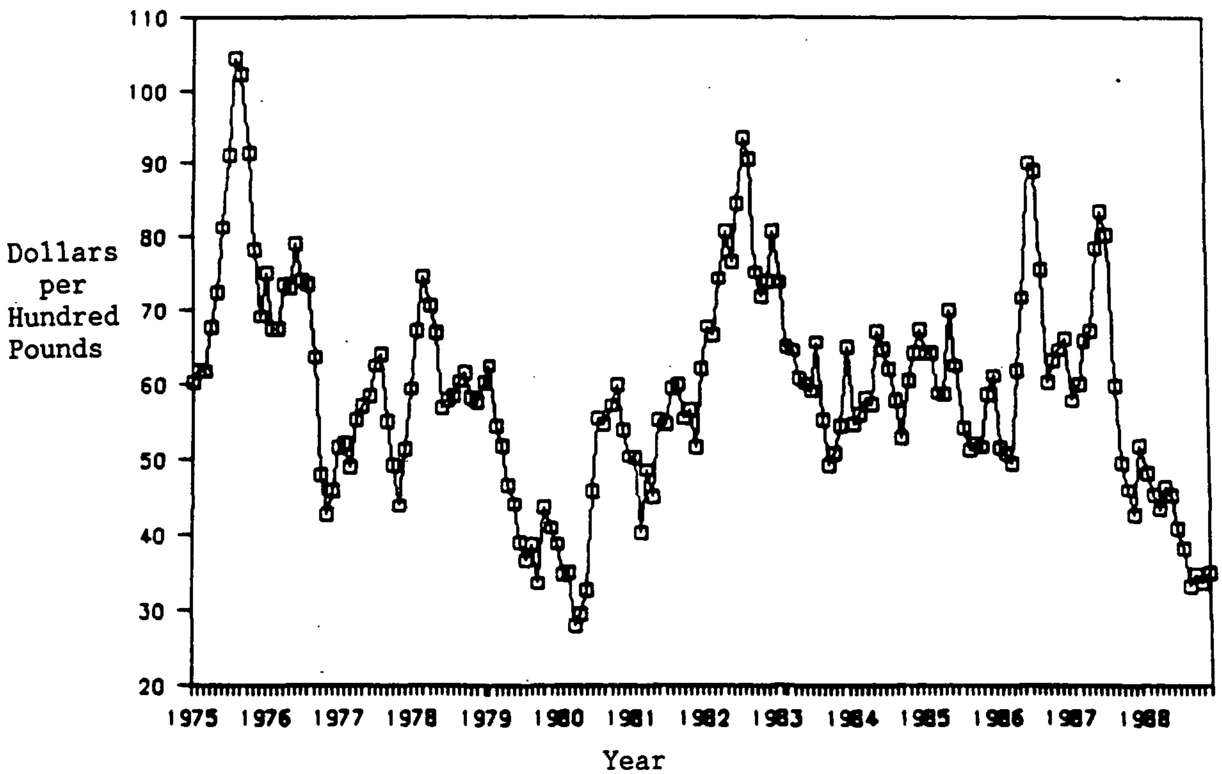




Source: USDA Economic Research Service

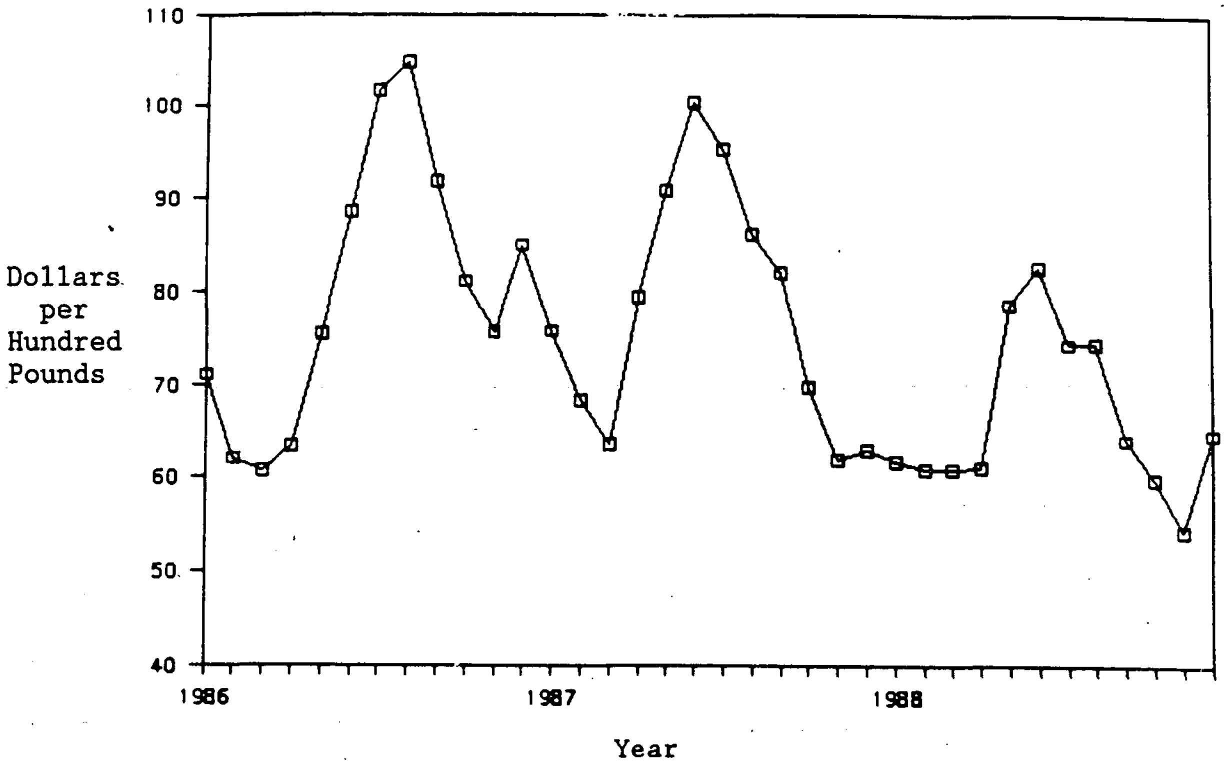
Figure 9.--Fresh pork belly published prices, 14 to 16 pounds, sold in the U.S. market, by months, January 1986-December 1988 and January 1975-December 1988

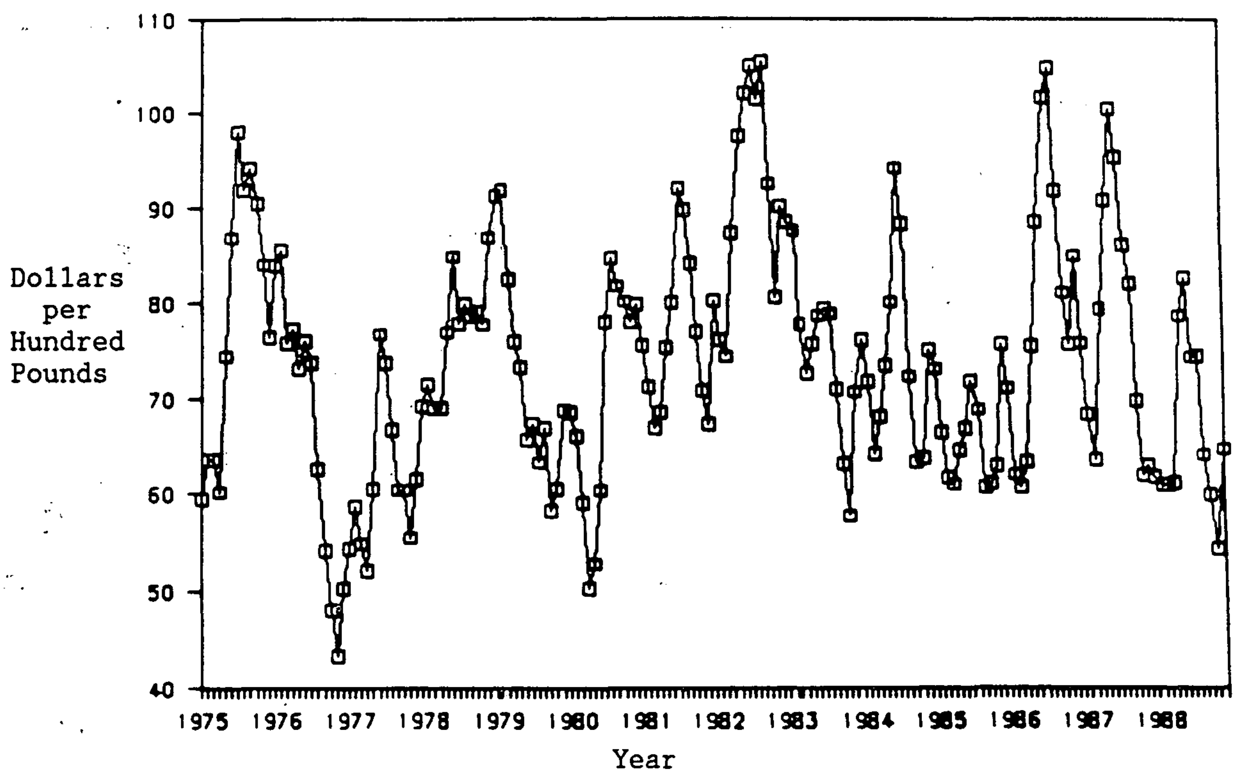




Source: USDA Economic Research Service

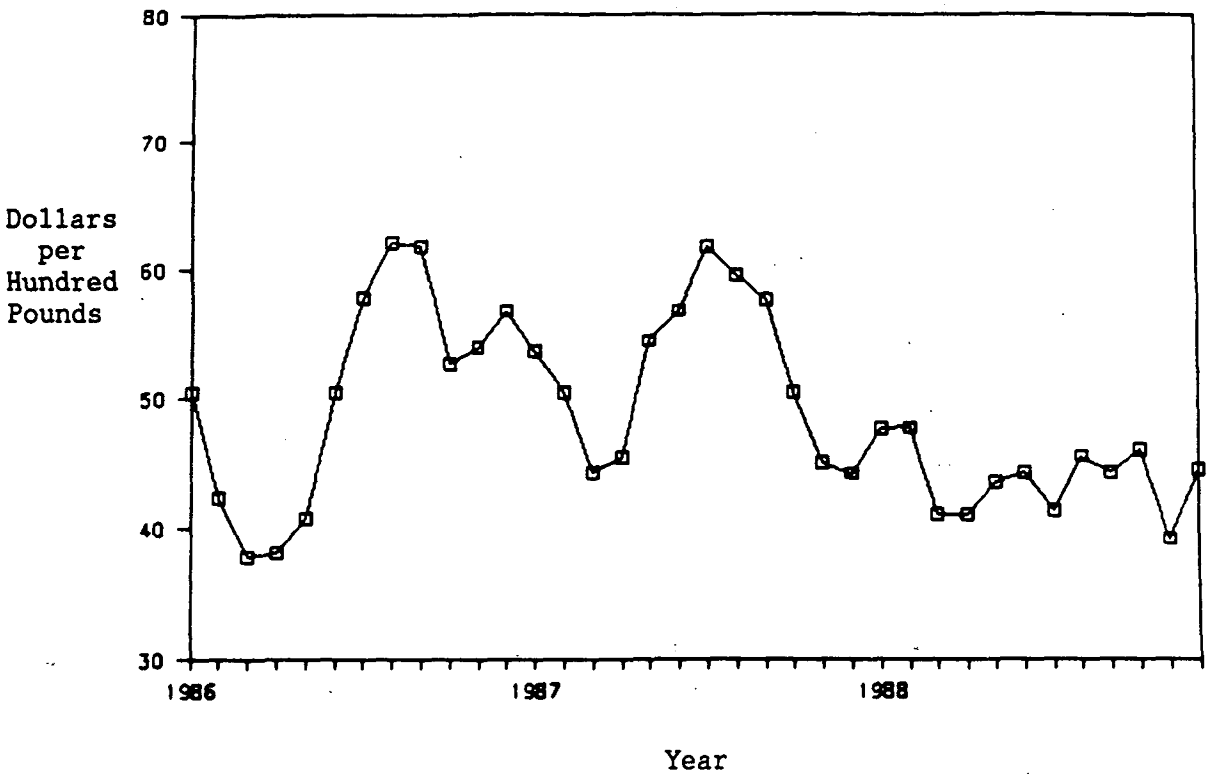
Figure 10.--Fresh Boston butts published prices, 17 to 20 pounds, sold in the U.S. market, by months, January 1986-December 1988 and January 1975-December 1988

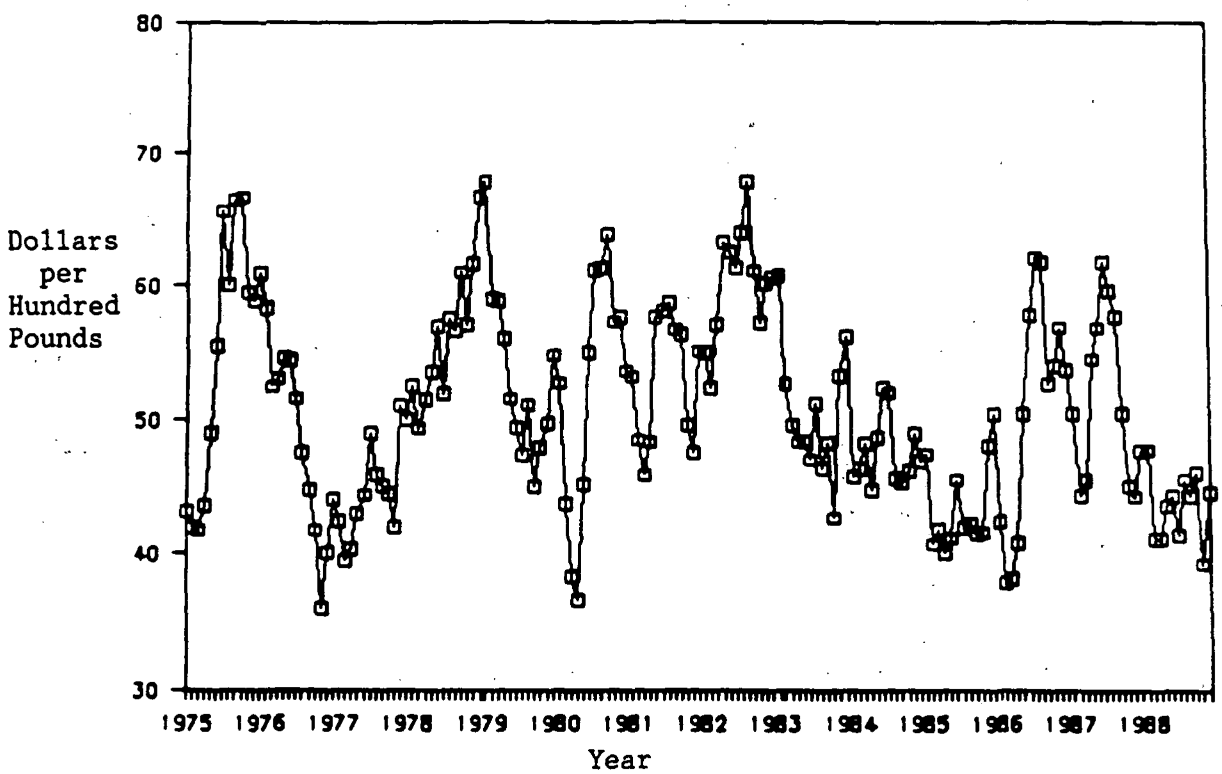




Source: USDA Economic Research Service

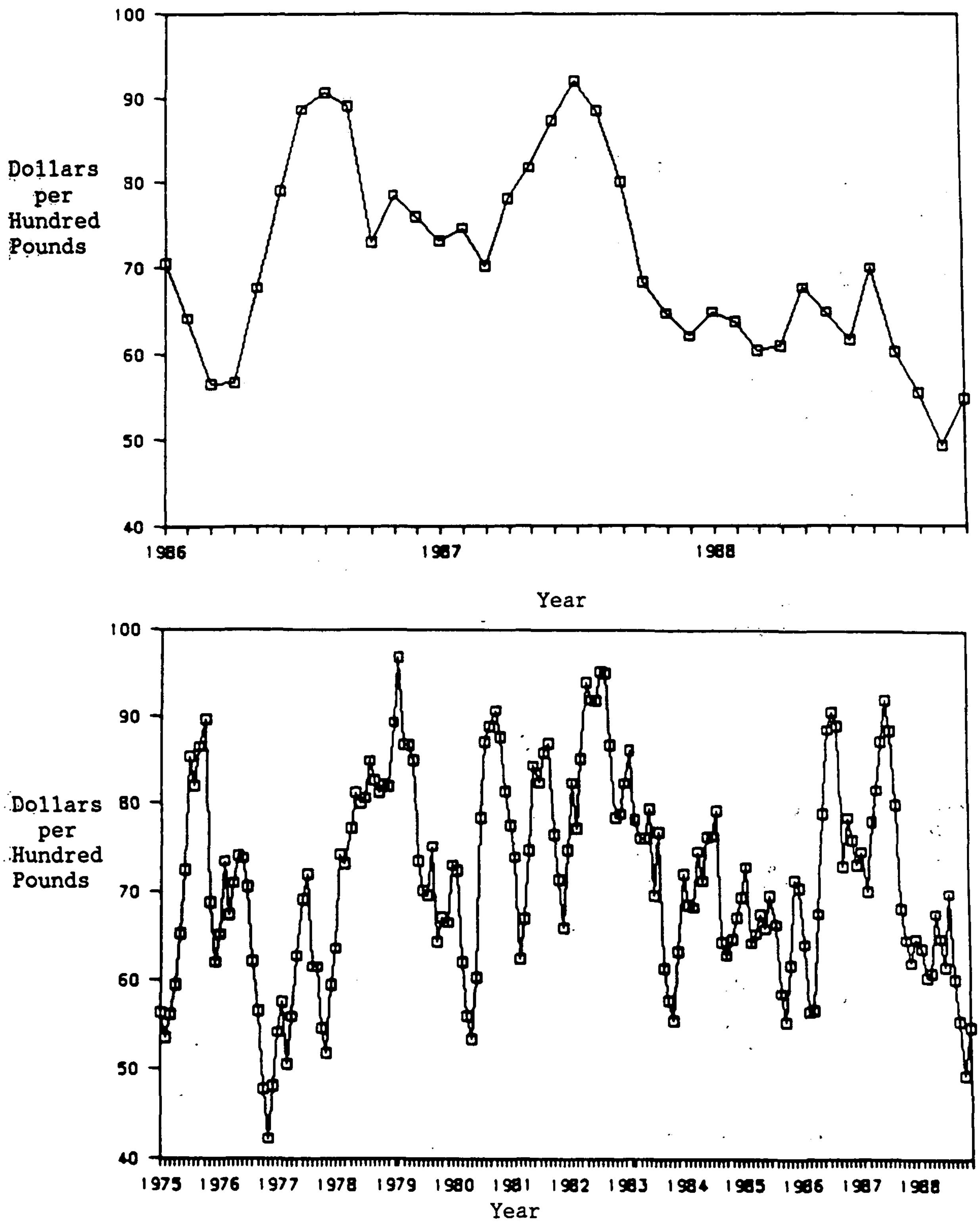
Figure 11.--Fresh picnics published prices, 4 to 8 pounds, sold in the U.S. market, by months, January 1986-December 1988 and January 1975-December 1988





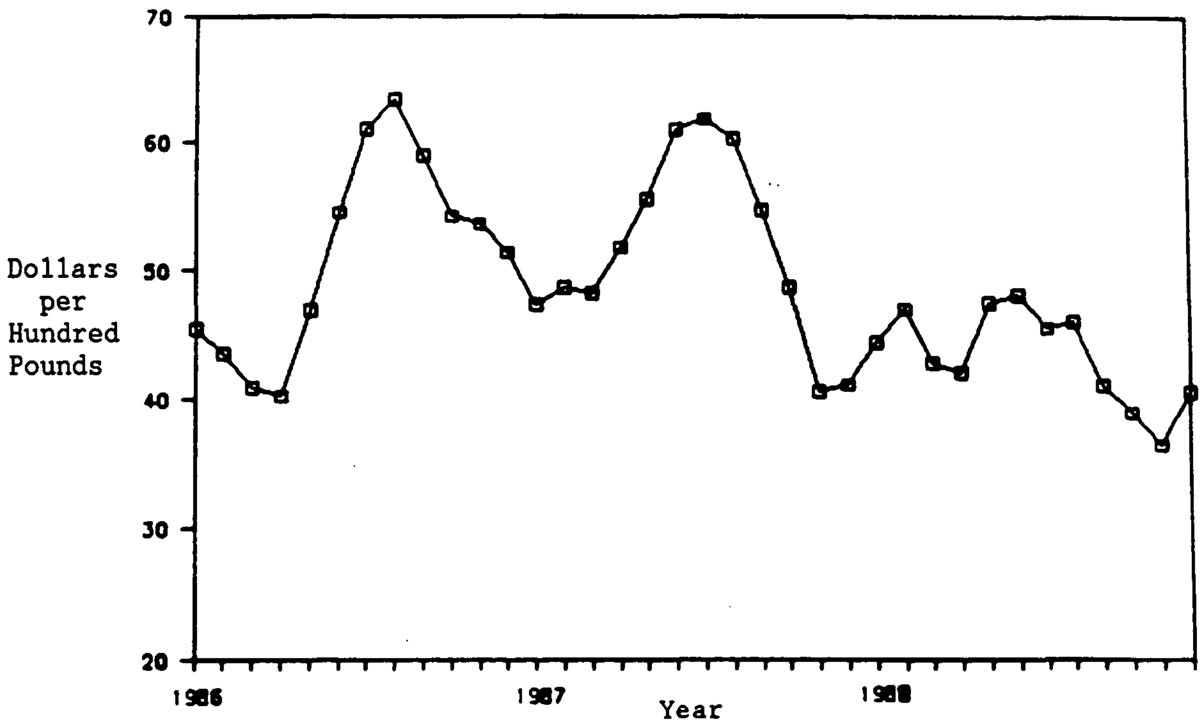
Source: USDA Economic Research Service

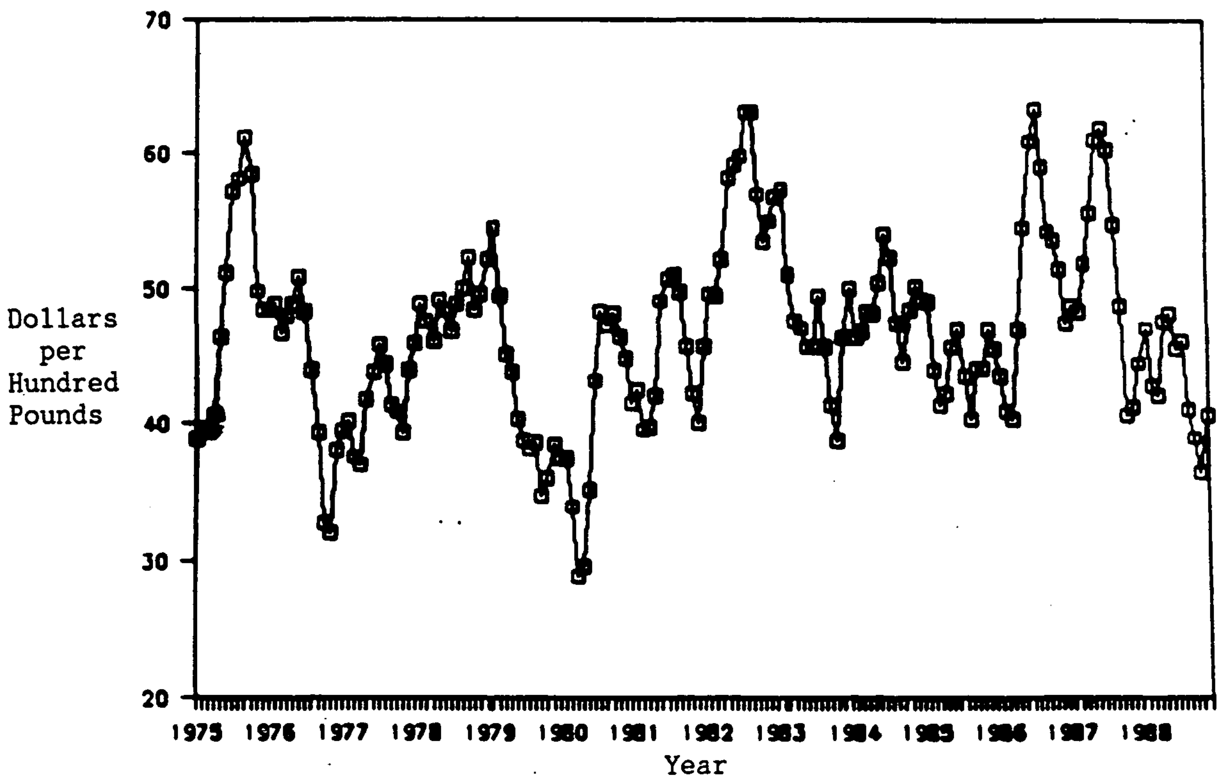
Figure 12.--Fresh trimmings published prices, combination 72 percent, sold in the U.S. market, by months, January 1986-December 1988 and January 1975-December 1988



Source: USDA Economic Research Service

Figure 13.--Live swine published prices sold in the U.S. market, by months, January 1986-December 1988 and January 1975-December 1988 1/





1/ U.S. barrows/gilts 7-market price.

Source: USDA Economic Research Service

Table 15
Pork: Weighted-average net f.o.b. unit values of products 1 through 5 reported by U.S. producers and importers of Canadian pork, by products, by crate or box, and by quarters, January 1986-December 1988

(In dollars per hundred pounds)

	Product 1		Product 2	Product 3	Product 4	Product 5		
						2,000-lb crates		60-70 lb boxes
Period	U.S.	Canada 1/	U.S.	U.S.	U.S.	U.S.	Canada 1/ 2/	U.S.
1986:								
Jan.-Mar.....	62.87	***	59.77	57.74	49.77	***	***	***
Apr.-June....	63.18	***	60.23	61.73	55.93	***	***	***
July.-Sept...	95.04	***	93.21	90.41	77.05	***	***	***
Oct.-Dec.....	98.61	***	94.28	64.43	58.75	***	***	***
1987:								
Jan.-Mar.....	66.56	***	62.77	64.33	58.60	***	***	***
Apr.-June....	76.62	***	75.31	69.46	68.86	***	***	***
July.-Sept...	89.15	***	86.06	75.22	74.87	***	***	***
Oct.-Dec.....	89.95	***	84.14	50.89	48.08	***	***	***
1988:								
Jan.-Mar.....	72.00	***	68.18	49.93	46.45	***	***	***
Apr.-June....	65.80	***	63.34	50.92	43.52	***	***	***
July.-Sept...	69.80	***	67.64	38.57	36.91	***	***	***
Oct.-Dec.....	74.55	***	69.59	36.46	33.81	***	***	***

1/ Represents response of only one importer.
2/ Delivered-purchase price data.

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

* * * * * * * *

Delivered-purchase prices for live swine varied for both U.S.- and Canadian-produced swine (table 16). Overall, prices for the U.S.- and Canadian-produced swine were 9.4 and 9.6 percent lower, respectively, at the end of 1988 than at the beginning of 1986.

Exchange rates

Quarterly data reported by the International Monetary Fund indicate that during the period January 1986 through September 1988 the value of the Canadian dollar increased by 15.1 percent against the U.S. dollar (table 17). 1/ Adjusted for relative movements in producer price index in the United States and Canada, the real value of the Canadian currency appreciated 15.2 percent relative to the dollar from January-March 1986 through the third quarter of 1988.

Lost sales and lost revenues

No specific allegations of lost sales or lost revenues were reported by U.S. pork producers.

1/ International Financial Statistics, December 1988.

Table 16
Swine: Weighted-average delivered unit values of U.S.- and Canadian-produced product 6 purchased by U.S. pork producers, by quarters, January 1986-December 1988 1/

(In dollars per hundred pounds)

Period	U.S.	Canadian 2/
1986:		
January-March...........	43.46	$45.32
April-June..............	46.42	49.37
July-September..........	59.25	61.37
October-December........	53.33	52.82
1987:		
January-March...........	49.61	49.76
April-June..............	55.94	54.68
July-September..........	59.56	59.24
October-December........	44.18	47.07
1988:		
January-March...........	45.92	46.64
April-June..............	47.01	48.70
July-Sept...............	45.70	45.46
October-December........	39.38	40.99

1/ On a live-weight basis.
2/ Canadian prices based on sales information by Canadian hog producers' provincial marketing boards.

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

Table 17
U.S.-Canadian exchange rates: 1/ Nominal exchange rates of the Canadian dollar in U.S. dollars, real exchange-rate equivalents, and producer price indicators in the United States and Canada, 2/ indexed by quarters, January 1986-December 1988

Period	U.S. producer price index	Canadian producer price index	Nominal exchange rate index	Real exchange rate index 3/
			----US dollars/Can$----	
1986:				
January-March.......	100.0	100.0	100.0	100.0
April-June..........	98.1	98.5	101.4	101.8
July-September......	97.6	98.7	101.3	102.5
October-December....	98.0	99.3	101.4	102.8
1987:				
January-March.......	99.1	99.8	104.9	105.6
April-June..........	100.7	101.1	105.3	105.7
July-September......	101.9	102.5	106.2	106.8
October-December....	102.3	103.6	107.1	108.4
1988:				
January-March.......	102.8	104.0	110.8	112.0
April-June..........	104.7	105.1	114.1	114.6
July-September......	106.1	106.1	115.1	115.2
October-December....	4/	4/	4/	4/

1/ Exchange rates expressed in U.S. dollars per Canadian dollars.
2/ Producer price indicators--intended to measure final product prices--are based on average quarterly index presented in line 63 of the International Financial Statistics.
3/ The indexed real exchange rate represents the nominal exchange rate adjusted for relative movements in Producer Price Index in the United States and Canada. Producer prices in the United States and Canada increased 6.1 percent between January 1986 and September 1988.
4/ No information available.

Note.--January-March 1986=100.

Source: International Monetary Fund, International Financial Statistics, December 1988.

APPENDIX A

FEDERAL REGISTER NOTICES

1014 Federal Register / Vol. 54, No. 7 / Wednesday, January 11, 1989 / Notices

[Investigation No. 701-TA-298 (Preliminary)]

Fresh, Chilled, or Frozen Pork From Canada

AGENCY: United States International Trade Commission.

ACTION: Institution of a preliminary countervailing duty investigation and scheduling of a conference to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary countervailing duty investigation No. 701-TA-298 (Preliminary) under section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Canada of fresh, chilled, or frozen pork, provided for in heading 0203 of the Harmonized Tariff Schedule of the United States (HTS) (previously provided for in item 106.40 of the Tariff Schedules of the United States), that are alleged to be subsidized by the Government of Canada. As provided in section 703(a), the Commission must complete preliminary countervailing duty investigations in 45 days, or in this case by February 21, 1989.

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

EFFECTIVE DATE: January 5, 1989.

FOR FURTHER INFORMATION CONTACT: Lisa Zanetti (202-252-1189) or Fred Rogoff (202-252-1179), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background. This investigation is being instituted in response to a petition filed on January 5, 1988, by The National

Pork Producers' Council. Des Moines. IA and others.[1]

Participation in the investigations. Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission. as provided in § 201.11 of the Commission's rules (19 CFR 201.11). not later than seven (7) days after publication of this notice in the Federal Register. Any entry of appearance filed after this date will be referred to the Chairman. who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list. Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)). the Secretary will prepare a service list containing the names and addresses of all persons. or their representatives. who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3). each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list). and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Limited disclosure of business proprietary information under a protective order. Pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)). the Secretary will make available business proprietary information gathered in this preliminary investigation to authorized applicants under a protective order. provided that the application be made not later than seven (7) days after the publication of this notice in the Federal Register. A separate service list will be maintained by the Secretary for those parties authorized to receive business proprietary information under a protective order. The Secretary will not accept any submission by parties containing business proprietary information without a certificate of service indicating that it has been served on all the parties that are authorized to receive such information under a protective order.

Conference. The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on January 26. 1989. at the U.S. International Trade Commission Building. 500 E Street SW.. Washington. DC. Parties wishing to participate in the conference should contact Lisa Zanetti (202-252-1189) not later than January 24. 1989. to arrange for their appearance. Parties in support of the imposition of countervailing duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written submissions. Any person may submit to the Commission on or before January 30. 1989. a written brief containing information and arguments pertinent to the subject matter of the investigation. as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submissions except for business proprietary data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretarv to the Commission.

Any information for which business proprietary treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Business Proprietary Information." Business proprietary submissions and requests for business proprietary treatment must conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules (19 CFR 201.6 and 207.7)

Parties which obtain disclosure of business proprietary information pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)) may comment on such information in their written brief. and may also file additional written comments on such information no later than February 2. 1989. Such additional comments must be limited to comments on business proprietary information received in or after the written briefs.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930. title VII. This notice is published pursuant to section 207.12 of the Commission's rules (19 CFR 207.12).

By order of the Commission.

Issued: January 6. 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-671 Filed 1-10-89: 8:45 am]

BILLING CODE 7020-02-M

[1] Arkansas Pork Producers' Council. Atkins. AR: Colorado Pork Producers' Council. Eaton. CO: Idaho Pork Producers' Association. Caldwell. ID: Illinois Pork Producers' Association. Springfield. IL: Indiana Pork Producers' Association. Indianapolis. IN: Iowa Pork Producers' Association. Clive. IA: Michigan Pork Producers' Association. Lansing. MI: Minnesota Pork Producers' Association. Albert Lea. MN: Nebraska Pork Producers' Association. Lincoln NE: North Carolina Pork Producers' Association. Raleigh. NC: North Dakota Pork Producers' Council. Leith. ND: Ohio Pork Producers' Council. Westerville. OH: Wisconsin Pork Producers' Association. Lancaster. WI: National Pork Council Women. Des Moines. IA: ConAgra Red Meats. Inc.. Greeley. CO: Dakota Pork Industries. Inc.. Minneapolis. MN: Farmstead Foods. Albert Lea. MN: IBP. Inc.. Dakota City. NE: Illinois Pork Corporation. Monmouth. IL: Thorn Apple Valley. Southfield. MI. Wilson Foods. Oklahoma City. OK.

[C-122-807]

Initiation of Countervailing Duty Investigation; Fresh, Chilled, and Frozen Pork From Canada

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether producers or exporters in Canada of fresh, chilled, and frozen pork as described in the "Scope of Investigation" section of this notice, receive benefits which constitute subsidies within the meaning of the countervailing duty law. We are notifying the U.S. International Trade Commission (ITC) of this action, so that it may determine whether imports of fresh, chilled, and frozen pork from Canada materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, we will make our preliminary determination on or before March 31, 1989.

EFFECTIVE DATE: February 3, 1989.

FOR FURTHER INFORMATION CONTACT: Roy Malmrose or Barbara Tillman, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-5414 and (202) 377-2438.

SUPPLEMENTARY INFORMATION:

The Petition

On January 5, 1989, we received a petition in proper form from the National Pork Producers Council, 13 state pork producer associations, the National Pork Council Women, ConAgra Red Meats, Inc., Dakota Pork Industries, Inc., Farmstead Foods, IBP, Inc., Illinois Pork Corporation, Thorn Apple Valley and Wilson Foods, Inc. This petition is filed on behalf of the U.S. industry producing fresh, chilled, and frozen pork. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that producers and exporters of fresh, chilled, and frozen pork in Canada receive subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act).

Since Canada is a "country under the Agreement" within the meaning of section 701(b) of the Act, Title VII of the Act applies to this investigation, and the ITC is required to determine whether imports of the subject merchandise from Canada materially injure, or threaten material injury to, the U.S. industry.

Petitioners have alleged that they have standing to file the petition. Specifically, petitioners have alleged that they are an interested party as defined under section 771(9)(C) of the Act and that they have filed the petition on behalf of the U.S. industry producing the products that are subject to this investigation. If any interested party as described under paragraphs (C), (D), (E), (F), or (G) of section 771(9) of the Act wishes to register support of or opposition to this petition, please file written notification with the Commerce official cited in the "**FOR FURTHER INFORMATION CONTACT**" section of this notice.

On January 25, 1989, we received additional information concerning some of the programs alleged in the petition. We did not have sufficient time to take this submission into account for purposes of our initiation. We will examine this submission and take appropriate action.

Initiation of Investigation

Under section 702(c) of the Act, we must make the determination on whether to initiate a countervailing duty proceeding within 20 days after a petition is filed. Section 702(b) of the Act requires the Department to initiate a countervailing duty proceeding whenever an interested party files a petition, on behalf of an industry, that (1) alleges the elements necessary for the imposition of a duty under section 701(a), and (2) is accompanied by information reasonably available to the petitioner supporting the allegations. We have examined the petition on fresh, chilled, and frozen pork from Canada and have found that most of the programs alleged in the petition meet these requirements. Therefore, we are initiating a countervailing duty investigation to determine whether Canadian producers, or exporters of fresh, chilled, and frozen pork, as described in the "Scope of Investigation" section of this notice, receive subsidies. However, we are not initiating an investigation for certain programs because the petition failed to allege the elements necessary for the imposition of a duty or in some instances failed to provide the necessary supporting information. If our investigation proceeds normally, we will make our preliminary determination on or before March 31, 1989.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted to this Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after this date will be classified solely according to the appropriate HTS item number(s).

The products covered by this investigation are fresh, chilled, and frozen pork, currently provided for under TSUSA item numbers 106.4020 and 106.4040, and currently classifiable under HTS item numbers 0203.11.00, 0203.12.90, 0203.19.40, 0203.21.00, 0203.22.90, and 0203.29.40. Specifically excluded from this investigation are any processed or otherwise prepared or preserved pork products such as canned hams, cured bacon, sausage and ground pork.

Allegations of Subsidies

Petitioners list a number of practices by the Government of Canada and the ten provincial governments which allegedly confer subsidies on producers or exporters of fresh, chilled, and frozen pork. In this regard, pursuant to section 771B of the Act, any subsidies found to be provided to either producers or processors of the product shall be deemed to be provided with respect to the manufacture, production, or exportation of the processed product if (1) the demand for the prior stage product is substantially dependent on the demand for the latter stage product, and (2) the processing operation adds only limited value to the raw commodity. The petition in this case provides evidence which indicates that the economic relationship of hog producers and pork packers satisfies the requirements of section 771B. During the course of this investigation, we will determine whether these requirements are met. If so, any subsidies found to be provided to either producers or processors of the product shall be deemed to be provided with respect to the manufacture, production, or exportation of the processed product.

We are initiating an investigation of the following programs:

A. *Federal Program*
   Agricultural Stabilization Act
B. *Joint Federal-Provincial Program*
   1. Canada/Alberta Subsidiary Agreement on Agriculture Processing and Marketing
   2. Canada/British Columbia Agri-Food Regional Development Subsidiary Agreement
C. *Provincial Programs*
   1. British Columbia Swine Producers Farm Income Plan
   2. Manitoba Hog Income Stabilization Plan
   3. New Brunswick Hog Price Stabilization Program
   4. Newfoundland Hog Price Support Program
   5. Nova Scotia Pork Price Stabilization Program
   6. Prince Edward Island Price Stabilization Program
   7. Quebec Farm Income Stabilization Insurance Program
   8. Saskatchewan Hog Assured Returns Program
   9. New Brunswick Swine Assistance Program
   10. New Brunswick Livestock Incentives Program
   11. New Brunswick Hog Marketing Program
   12. Nova Scotia Swine Herd Health Policy
   13. Nova Scotia Transportation Assistance
   14. Ontario Farm Tax Reduction Program
   15. Ontario (Northern) Livestock Improvement and Transportation Assistance Programs
   16. Prince Edward Island Hog Marketing and Transportation Subsidies
   17. Prince Edward Island Swine Development Program
   18. Prince Edward Island Interest Payment on Assembly Yard Loan
   19. Quebec Meat Sector Rationalization Program
   20. Saskatchewan Livestock Investment Tax Credit Program
   21. Quebec Productivity Improvement and Consolidation of Livestock Production
   22. Quebec Regional Development Assistance
   23. Nova Scotia Improved Sire Policy
   24. Newfoundland Grants to Regional Slaughter Facilities
   25. Newfoundland Weanling Bonus Incentive Policy
   26. Newfoundland Hog Stabilization Programs
   27. Newfoundland Hog Production Subsidies
   28. Ontario Pork Industry Improvement Plan
   29. Ontario Export Sales Aid
   30. Ontario Marketing Assistance Program for Pork
   31. Ontario Small Food Processors Assistance Program
   32. Saskatchewan Livestock Facilities Tax Credit Program
   33. British Columbia Food Industry Development Program
   34. Prince Edward Island Swine Incentive Policy
   35. British Columbia Feed Grain Market Development Program
   36. New Brunswick Swine Assistance Policy on Boars

We are not initiating an investigation of the programs listed below. Section 702(b) of the Act requires the Department to initiate a countervailing duty proceeding whenever an interested party files a petition on behalf of an industry that (1) alleges the elements necessary for the imposition of a duty under section 701(a) and (2) is accompanied by information reasonably available to the petitioner supporting the allegations. All the programs listed below were alleged to confer domestic subsidies. The elements which must be alleged for a domestic subsidy program are (1) specificity (i.e., the program is limited to a specific enterprise or industry or group of enterprises or industries) and (2) provision of a countervailable benefit (i.e., a subsidy paid or bestowed directly or indirectly on the manufacturer, producer or exporter of any class or kind of merchandise). For upstream subsidies, the initiation threshold is higher. Under section 701(e) of the Act, the Department must have reasonable grounds to believe or suspect that an upstream subsidy, as defined in section 771A of the Act, is being paid or bestowed upon merchandise under investigation. For the programs listed below, the requirements of section 702(b) or 701(e) of the Act were not fulfilled in the petition.

We have divided the programs listed below into four groups. Before each group we have provided the specific reasons why the programs in that group have not met the statutory standard for initiating an investigation.

Petitioners allege that the following general agricultural programs provide benefits to pig producers. We have previously determined that programs which benefit all of agriculture are not limited to a specific enterprise or industry or group of enterprises or industries. (See *Final Negative Countervailing Duty Determination: Fresh Asparagus from Mexico*, 48 FR 21618, May 13, 1983). We are not initiating on the programs below because petitioners have not made a sufficient allegation or provided evidence in the exhibits to the petition which indicates that these programs benefit a specific enterprise or industry or group of enterprises or industries.

1. Federal Agricultural Products Board Act Programs
2. Alberta Marketing of Agricultural Production Act Programs
3. Ontario Soil Conservation and Environmental Protection Assistance Program

We are not initiating on the following programs because the petitioners have not made a sufficient allegation with respect to how the programs provide a quantifiable benefit on the production or exportation of the subject merchandise. Furthermore, supporting documentation submitted by petitioners do not clearly demonstrate how these programs benefit the production or exportation of the subject merchandise.

1. Alberta Semen and Embryo Producers' Assistance Program
2. National Workshop on Hog Marketing Alternatives Study/Programs
3. New Brunswick Agricultural Fairs Grants Policy
4. New Brunswick Assistance to Livestock Exhibitors at the Royal Agricultural Winter Fair
5. Nova Scotia Breeders' Guarantee Policy
6. Newfoundland Swine Breeding Stations Program
7. Prince Edward Island Assistance to Livestock Exhibitors to Out-of-Province Exhibitions
8. Prince Edward Island Assistance to Livestock Breed Associations
9. Ontario Swine Sales Assistance Policy

10. Ontario Livestock Shows Assistance Program
11. Ontario Transportation of Livestock Exhibits Assistance Program
12. Ontario (Northern) Agricultural Development Programs
13. Alberta Livestock Shows and Congress Assistance Program
14. British Columbia Livestock Financial Assistance Program
15. British Columbia Exhibitions and Fall Fairs Programs
16. Alberta Competitiveness Assistance Initiatives
17. Canada/Nova Scotia Miscellaneous Pork Grants
18. Canada/Ontario Canadian Western Agribition Livestock Transportation Assistance Program
19. Canada/Alberta Swine Herd Improvement Research Study
20. Special Canada Grains Program
21. Canada/Newfoundland Livestock Feed Initiative
22. Canada/Prince Edward Island Livestock Feed Initiative

Petitioners allege that the following programs provide benefits to growers of various feedgrains. Petitioners do not allege that these programs directly provide benefits to producers of pigs. We believe that any benefit received by the producers of pigs under these programs would be in the nature of an upstream subsidy under section 701(e) of the Act, because they do not meet the standards of section 771B. We are not initiating on these programs because petitioners have not made an upstream subsidy allegation.

1. Federal Prairie Grain Advance Payments Act Program
2. Federal Canadian Wheat Board Act Initial Payments Program
3. Federal Western Grain Stabilization Act Program
4. Federal Western Grain Transportation Act Programs
5. Federal Feed Freight Assistance Program
6. Agriculture Canada Livestock Feed Board Programs
7. Alberta Crow Benefit Offset Program

We are not initiating on the following programs because they were previously found not countervailable. (See *Final Affirmative Countervailing Duty Determination: Live Swine and Fresh, Chilled, and Frozen Pork Products from Canada*, 50 FR 25097, June 17, 1985, and *Live Swine from Canada: Final Results of Countervailing Duty Administrative Review*, 54 FR 651, January 9, 1989). Petitioners have not provided any new evidence nor alleged changed circumstances with respect to these programs.

1. Quebec Special Credits for Hog Producers
2. Saskatchewan Financial Assistance for Livestock and Irrigation
3. Saskatchewan Livestock Cash Advance Program
4. Record of Performance Program

Notification of ITC

Section 702(d) of the Act requires us to notify the ITC of this action, and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will also allow the ITC access to all privileged and business proprietary information in our files, provided it confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by February 20, 1989, whether there is a reasonable indication that imports of fresh, chilled, and frozen pork materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, this investigation will terminate; otherwise, this investigation will continue according to the statutory procedures. This notice is published pursuant to section 702(c)(2) of the Act.

Timothy N. Bergan,

Acting Assistant Secretary for Import Administration.

January 25, 1989.

[FR Doc. 89-2516 Filed 2-2-89; 8:45 am]

BILLING CODE 3510-DS-M

APPENDIX B

CALENDER OF THE PUBLIC CONFERENCE

CALENDAR OF THE PUBLIC CONFERENCE

Investigation No. 701-TA-298 (Preliminary)

FRESH, CHILLED, OR FROZEN PORK FROM CANADA

Those listed below appeared at the United States International Trade Commission's conference held in connection with the subject investigation on January 26, 1989, in Courtroom 111B of the USITC Building at 500 E Street, SW, Washington, DC.

In support of the imposition of countervailing duties

Thompson, Hine and Flory--Counsel
Washington, DC
on behalf of--

National Pork Producers Council and others

Norman Montague
Pork (Swine) Producer, El Nido, CA

Edward Brems
Vice President, Processor Sales
ConAgra Red Meats

Glenn Grimes
Agricultural Economist and Professor Emeritus
University of Missouri

Doyle Talkington
Administrator, Government Affairs
National Pork Producers Council

Mark Roy Sandstrom)--OF COUNSEL
Rafael A. Madan)--OF COUNSEL

In opposition to the imposition of countervailing duties

Arnold & Porter--Counsel
Washington, DC
on behalf of--

Canadian Meat Council
Canada Packers, Inc.

Alan O. Sykes
Assistant Professor of Law
University of Chicago

Martin Rice
Executive Secretary
Canadian Pork Council

Lawrence A. Schneider)--OF COUNSEL
Susan G. Lee)--OF COUNSEL

APPENDIX C

THE CANADIAN HOG CARCASS GRADING/SETTLEMENT SYSTEM

LE SYSTÈME CANADIEN DE CLASSEMENT DES CARCASSES DE PORC

A compter du 1er avril 1986, les carcasses de porc examinées par les inspecteurs du gouvernement fédéral seront classées d'après les indices du tableau présenté au verso. Cette pratique consécutive à l'introduction du sondage électronique permettra d'évaluer le rendement des carcasses en viande maigre avec une plus grande précision que la technique classique de la règle. Il s'agit de la première grande innovation depuis la mise en place, en 1968, du système national qui prévoyait le classement des carcasses d'après l'épaisseur du gras dorsal telle que déterminée au moyen d'une règle et qui a joué un rôle prépondérant dans l'obtention progressive de porcs hybrides plus maigres, donc assimilant mieux les aliments, au Canada. La principale caractéristique du nouveau matériel est une sonde manuelle qui, lorsqu'on l'insère dans la carcasse (voir illustration), émet un rayon lumineux que les couches de gras et de muscle ne réfléchissent pas de la même façon. Le système électronique de l'appareil mesure l'épaisseur de chaque couche de tissu séparément puis, à partir de ces données, calcule la proportion moyenne de viande maigre. Par conséquent, l'épaisseur de la viande maigre est maintenant, avec la couche de gras et le poids de la longe, un facteur inhérent de l'indice attribué à la carcasse, ce qui permettra aux éleveurs de se concentrer encore plus sur la production de porcs maigres et ainsi de répondre à la tendance exprimée sur les marchés de consommation canadien et étranger

Nouveaux catégories de poids, nouveau site

Le nouveau tableau tient compte du passage au système internationale (métrique) basé sur la masse (poids) en kilos (1 kg 2,2046 lb). En raison de l'intervalle de 5 kg, les catégories de poids ont donc augmenté d'environ 10 % par rapport aux anciennes catégories dont l'intervalle était de 10 lb. En outre, la sonde électronique sera insérée entre la 11e et la 12e côte, à 7 cm de la ligne dorsale. La définition du terme carcasse aux fins du pesage reste la même.

Nouveaux indices

Les pour parlers entamés entre le Conseil des viandes et le Conseil du porc ont débouché sur l'adoption d'un indice plus faible pour les carcasses légères (moins de 70 kg ou 154 lb) et d'un indice plus élevé pour certains porcs lourds. Le tableau comporte plusieurs nouvelles valeurs et réserve l'indice 80 aux porcs les plus légers, l'indice 81 aux animaux les plus jours et l'indice 82 aux carcasses très grasses ou à faible rendement. Si on ajoute à cela le fait que les nouvelles catégories de poids ne correspondent plus aux anciennes, il est difficile de comparer le nouveau tableau à l'ancien. Le passage de la quantité de gras au rendement en viande maigre nécessitera la reclassification de certains porcs. Néanmoins, le tableau a été préparé (et testé) pour donner un indice moyen aussi près que possible de celui obtenu avec l'autre système.

Révision continue

Le Conseil canadien du porc et le Conseil des viandes du Canada surveilleront continuellement l'incidence du nouveau tableau, en collaboration avec Agriculture Canada, et entameront des négociations pour adopter les mesures appropriées si l'on venait à constater la naissance d'une tendance marquée indésirable

Utilisation du tableau

En supposant une carcasse de 78 kg et un rendement en viande maigre approximatif de 50 %, on obtiendrait un indice de 107. En comptant un prix de 1,545 $/kg (70,08 $/100 lb), le paiement serait le suivant:

$$78 \cdot \frac{107}{100} \cdot 1{,}545\ \$ \qquad 128{,}95\ \$$$

THE CANADIAN HOG CARCASS GRADING/SETTLEMENT SYSTEM

Starting April 1, 1986, hog carcasses graded by federal government officials will be settled for on the grade indices shown in the Table (over). This is in line with the introduction this year of systems for electronically assessing hog carcass quality which have been shown to measure lean yield more accurately than the traditional manual ruler technique. This marks the first major innovation since the national system was implemented in 1968, when hog carcasses began to be classified by measuring fat thickness with a ruler and which has been a major factor in the evolution since then towards much leaner and therefore more feed efficient commercial hogs being produced in Canada. The primary feature of the new equipment is a hand-held probe which when inserted through the wall of the carcass (see illustration), emits a beam of light. The light wave reflects differently when travelling through fat and muscle and the electronics within the equipment measure their thicknesses separately and from this data, then calculate the lean meat percentage. Lean depth is now an explicit factor, along with loin fat and weight, in determining the index value assigned to the hog carcass, thus permitting even greater focus on producing leaner meat in line with consumer trends in both Canada and our export markets.

New Weight Classes and Measurement Site

This new table has been developed to accommodate a change to metric measurement based on mass (weight) in kilograms (1 kg. equals 2.2046 lbs.). The weight classes in this new table at 5 kg. are about 10% wider than the 10 lb. imperial classes. In addition, the electronic grading probe will be inserted into the carcass between the 3rd and 4th last ribs, 7 cm. from the mid-line. The ruler system measured the maximum loin fat depth at the mid-line. The definition of carcass for weighing has been left unchanged.

New Indices

Negotiations between the Meat and Pork Councils have resulted in lower index values for lighter carcasses (under 70 kg. or 154 lb.) and higher ones for certain heavier ones. Several new index values are present, and with this table, Index 80 is reserved for the lightest hogs, 81 for the heaviest and 82 implies a very fat or low yielding carcass. This plus the fact that the new weight classes do not correspond with the old ones, makes it difficult to compare this table directly with the previous one. In addition, the transition from fat to lean yield will result in reclassification of some hogs. However, the table has been developed (and tested) to result in an average index which is as close as possible to that produced by the previous system.

Continuous Review

The Canadian Pork Council and Canadian Meat Council, together with Agriculture Canada, will monitor the impacts of the new table continually, and discussions undertaken to consider appropriate action if marked and undesirable trends occur.

Use of Table

If we assume a carcass of 78 kg., and an indicated lean yield of 50%, the grade index would be 107. If the bid price is \$1.545/kg. (\$70.08/cwt.), carcass settlement would be as follows:

$$78 \times \frac{107}{100} \times \$1.545 = \$128.95$$

CANADIAN PORK COUNCIL
111 SPARKS STREET, OTTAWA, K1P 5B5

Effective March 31, 1986

THE CANADIAN HOG CARCASS GRADING/ SETTLEMENT SYSTEM

SYSTÈME CANADIEN DE CLASSEMENT DES CARCASSES DE PORC

En vigueur le 31 mars 1986

CONSEIL CANADIEN DU PORC
111, RUE SPARKS, OTTAWA K1P 5B5

B-10

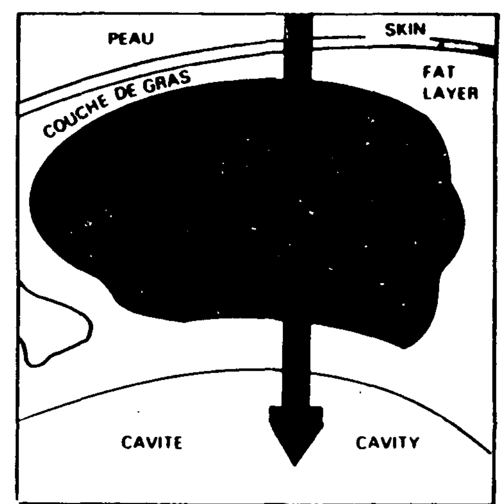


Illustration of electronic probe inserted in carcass
Insertion d'une sonde électronique dans la carcasse

THE CANADIAN HOG CARCASS GRADING/SETTLEMENT SYSTEM
SYSTÈME CANADIEN DE CLASSEMENT DES CARCASSES DE PORC

Weight Class/ Catégorie de poids		1	2	3	4	5	6	7	8	9	10
		40 - 59.99 kg	60 - 64.99 kg	65 - 69.99 kg	70 - 74.99 kg	75 - 79.99 kg	80 - 84.99 kg	85 - 89.99 kg	90 - 94.99 kg	95 - 99.99 kg	100 +
Yield Class/ Cat. de rendement	**Estimated Lean Yield/ Rendement approximatif en viande (%)**										
1	≥ 53.6	80	100	106	112	114	113	111	108	100	81
2	52.8 - 53.59	80	98	105	111	113	112	109	107	98	81
3	52.0 - 52.79	80	97	103	109	112	111	108	105	97	81
4	51.2 - 51.99	80	95	101	107	110	109	107	103	95	81
5	50.4 - 51.19	80	93	100	106	108	107	106	102	92	81
6	49.6 - 50.39	80	92	98	104	107	106	104	100	90	81
7	48.8 - 49.59	80	90	96	102	105	104	102	97	87	81
8	48.0 - 48.79	80	89	95	101	103	102	101	95	83	81
9	47.2 - 47.99	80	88	93	99	102	101	99	92	82	81
10	46.4 - 47.19	80	87	91	97	100	99	97	90	82	81
11	45.6 - 46.39	80	86	89	96	98	97	96	88	82	81
12	44.8 - 45.59	80	85	88	94	97	96	94	85	82	81
13	44.0 - 44.79	80	83	87	92	95	94	92	82	82	81
14	43.2 - 43.99	80	82	86	90	91	90	91	82	82	81
15	42.4 - 43.19	80	82	85	88	89	88	87	82	82	81
16	41.6 - 42.39	80	82	82	87	88	87	86	82	82	81
17	< 41.6	80	82	82	82	82	82	82	82	82	81

DEMÉRITS			**TARES**		
	Type	– Subnormal belly, and roughness – less 3 index points		**Conformation**	– Ventre sous la normale et rugosités: 3 points de moins à l'indice
	Quality	– Abnormal fat, colour or texture – Less 10 index points		**Qualité**	– Gras, couleur ou texture anormaux: 10 points de moins à l'indice
	Trimmable	– The actual weight reduction from the hot carcass weight if the demerit is of farm origin		**Parage insuffisant**	– Poids réel retranché du poids de la carcasse chaude si la tare est attribuée à l'éleveur
	Ridglings	-- Index 67		**Cryptorchides**	– Indice de 67
	Emaciated	– Index 80		**Émacié**	– Indice de 80

APPENDIX D

OFFICIAL UNITED STATES STANDARDS FOR GRADES OF SLAUGHTER SWINE

UNITED STATES DEPARTMENT OF AGRICULTURE
Agricultural Marketing Service

OFFICIAL UNITED STATES STANDARDS FOR GRADES OF SLAUGHTER SWINE

(Title 7, Ch. I, Pt. 53, Sections 53.150-53.155 of the Code of Federal Regulations)

The following is a reprint of the Official United States Standards for the Grades of Slaughter Swine promulgated by the Secretary of Agriculture under the Agricultural Marketing Act of 1946 (60 Stat. 1087; 7 U.S.C. 1621 et seq.) as amended and related authority in the annual appropriation acts for the Department of Agriculture. The standards are reprinted with amendments effective January 14, 1985.

DEVELOPMENT OF THE STANDARDS

A system of classifying and grading market hogs was formulated by the United States Department of Agriculture in 1918 for use in the livestock market reporting service. The system was developed with the cooperation and assistance of many interested agencies and represented the most generally accepted market groupings of the time. After meetings with producers, animal husbandmen, market representatives, and slaughterers in 1928 and 1929, revisions were made, consistent with changes in production and marketing conditions, and tentative standards were issued in 1930. Further revisions were incorporated into the tentative standards in 1940 when they were published in Circular No. 569.

The United States Department of Agriculture proposed new standards for grades of slaughter barrows and gilts in 1949. Field testing, discussion, and demonstration of the standards resulted in slight revisions prior to adoption as the official United States standards for grades of slaughter barrows and gilts, effective September 12, 1952.

The official standards were amended in July 1955 by changing the grade designations Choice No. 1, Choice No. 2, and Choice No. 3 to U.S. No. 1, U.S. No. 2, and U.S. No. 3, respectively. In addition the degree of finish or fatness was reduced for each grade and the descriptive specifications were reworded slightly to reflect the reduced degrees of finish and to facilitate more uniform interpertation of the standards.

On July 1, 1968, the official standards were revised to coordinate them with the revised pork carcass standards. The minimum backfat thickness for the U.S. No. 1 grade was eliminated and a new U.S. No. 1 grade was established to properly identify the superior pork carcasses being produced. The former No. 1, No. 2. and No. 3 grades were renamed No. 2, No. 3, and No. 4, respectively. The former Medium and Cull grades were combined and renamed U.S. Utility. Also, the maximum allowable adjustment for variations-from-normal fat distribution and muscling was changed from one-half to one full grade to more adequately reflect the effect of these factors on yields of cuts. In addition, the text of the "Application of Standards" section was reworded to more clearly define the grade-determining factors and clarify their use in determining the grade.

On January 14, 1985 the slaughter barrow and gilt grade standards were once again revised to coordinate them with concurrent changes in the barrow and gilt carcass grade standards. The barrow and gilt carcass grade standards were updated to reflect improvements in pork carcasses and changes in the pork slaughter industry since 1968. A 1980 grade survey found that over 70 percent of the pork carcasses being produced were in the U.S. No. 1 grade, indicating a large amount of variation in yield which was not being accounted for by the grades. The changes simplified the standards by basing the grade on the backfat thickness over the last rib with a single adjustment for muscling. In addition, the grades lines were tightened to more adequately sort the hogs being produced among several grades. Some minor changes in the wording of the quality requirements were also made.

SWINE

The official standards for swine developed by the U.S. Department of Agriculture provide for segregation first according to intended use—slaughter or feeder—then as to class, as determined by sex condition, and then as to grade, which is determined by the apparent relative excellence and desirability of the animal for a particular use. Differentiation between slaughter and feeder swine is based solely on their intended use rather than on specific identifiable characteristics of the swine. Slaughter swine are those which are intended for slaughter immediately or in the near future. Feeder swine are those which are intended for slaughter after a period of feeding.

SLAUGHTER AND FEEDER SWINE CLASSES

There are five classes of slaughter and feeder swine. Definitions of the respective classes are as follows:

Barrow. A barrow is a male swine castrated when young and before development of the secondary physical characteristics of a boar.

Gilt. A gilt is a young female swine that has not produced young and has not reached and advanced stage of pregnancy.

Sow. A sow is a mature female swine that usually shows evidence of having reproduced or having reached an advanced stage of pregnancy.

Boar. A boar is a uncastrated male swine.

Stag. A stag is a male swine castrated after development or beginning of development of the secondary physical characteristics of a boar. Typical stags are somewhat coarse and lack balance—the head and shoulders are more fully developed than the hindquarter parts, bones and joints are large, the skin is thick and rough, and the hair is coarse.

APPLICATION OF STANDARDS FOR GRADES OF SLAUGHTER BARROWS AND GILTS

Grades of slaughter barrows and gilts are intended to be directly related to the grades of the carcasses they produce. To accomplish this, the slaughter barrow and gilt grades are predicated on the same two general considerations that provide the basis for the grades of barrow and gilt carcasses: quality—which includes characteristics of the lean and firmness of fat, and characteristics related to the combined carcass yields of the four lean cuts (ham, loin, picnic shoulder, and Boston butt).

With respect to quality, two general levels are considered, one for barrows and gilts with characteristics which indicate that the carcass will have acceptable belly thickness and lean quality, and acceptable firmness of fat, and one for barrow and gilts with characteristics which indicate that the carcass will have unacceptable belly thickness, lean quality, and/or firmness of fat. The bellies of carcasses with acceptable quality are at least slightly thick overall and are not less that 0.6 inches thick at any point. Since carcass indices of lean quality are not directly evident in slaughter barrows and gilts, some other factors in which differences can be noted must be used to evaluate quality. Therefore the amount and distribution of external finish and indications of firmness of fat and muscle are used as quality-indicating factors.

Slaughter barrows and gilts with characteristics which indicate they will not have an acceptable belly thickness or quality of lean are graded U.S. Utility. Also graded U.S. Utility are slaughter barrows and gilts with indications that they will produce carcasses which will have oily or less than slightly firm fat.

Four grades—U.S. No. 1, U.S. No. 2, U.S. No.3. and U.S. No. 4 are provided for slaughter barrows and gilts with characteristics which indicate that their carcasses will have an acceptable level of lean quality and acceptable firmness of fat. These grades are based entirely on the combination of factors that predict the combined carcass yields of the four lean cuts—hams, loins, picnic shoulders, and Boston butts.

The official grade for slaughter barrows and gilts having acceptable quality is determined by considering two characteristics: (1) The estimated backfat thickness over the last rib, and (2) the muscling score. Values for these factors are then used in a mathematical equation to arrive at the final grade.

In evaluating barrows and gilts for fatness and muscling, variations in the degree of fatness have a greater effect on the yield of the lean cuts than do variations in muscling. The fatness and muscling evaluations can best be made simultaneously. This is accomplished by considering the development of the various parts based on an understanding of how the appearance of each part is affected by variations in muscling and fatness. While the muscling of most barrows and gilts develops uniformly, the fat is normally deposited at a considerably faster rate on some parts than on others. Therefore, muscling can be appraised best by giving primary consideration to the parts least affected by fatness, such as the hams. Differences in thickness and fullness of the hams—with appropriate adjustments for the effects of variations in fatness—are the best indicators of the overall degree of muscling. Conversely, the overall fatness can be determined best by observing those parts on which fat is deposited at a faster than average rate. These include backfat, the edge of the loin, the rear flank, the shoulder, the jowl, and the belly. As barrows and gilts increase in fatness, these parts appear progressively fuller, and thicker, and more distended in relation to the thickness and fullness of the other parts, especially the thickness through the hams.

When grading live animals it is usually necessary to consider indications of fatness on all parts of the animal in order to most accurately estimate the backfat thickness over the last rib. As slaughter barrows and gilts increase in fatness, they also become deeper bodied because of deposits of fat in the flanks, and along the underline. The fullness of the flanks, best observed when the animal walks, and the thickness and fullness of the jowl are other indications of fatness.

In slaughter barrow and gilt grading three degrees of muscling—thick (superior), average, and thin (inferior)—are considered. In previous standards six degrees of muscling (very thick, thick, moderately thick, slightly thin, thin and very thin) were recognized. The current thick (superior) muscling includes only the previous very thick degree of muscling. Current average muscling includes the previous thick and moderately thick degrees, and the current thin (inferior) muscling includes the previous slightly thin, thin, and very thin degrees.

Slaughter barrows and gilts with thick muscling and a low degree of fatness will be much thicker throught the hams than through the loins and the loins will appear full and well-rounded. Thick muscled animals with a high degree of fatness will be slightly thicker through the hams than through the loins, will be nearly flat over the back, and will have a slight break into the sides. Animals with average muscling and a low degree of fatness will be thicker through the hams than through the loins, and the loins will appear full and rounded. Animals with average muscling and a high degree of fatness will have about equal thickness through the hams and loins. Animals with thin muscling and a low degree of fatness usually are slightly thicker through the shoulders and the center of the hams than through the back and the loins will appear sloping and flat. Thin muscled animals with a high degree of fatness will be wider through the loins than through the hams and will have a distinct break from over the loins into the sides.

Slaughter barrows and gilts with average muscling will be graded according to their estimated backfat thickness over the last rib. Animals with thin muscling will be graded one grade lower than indicated by the estimated backfat thickness over the last rib.

Animals with thick muscling will be graded one grade higher than indicated by their backfat thickness over the last rib, except that animals with an estimated 1.75 inches or greater last rib backfat thickness must remain in the U.S. No. 4. grade.

The official grade standards contain a mathematical equation for calculating the grade and a table for determining a preliminary grade based on the estimated backfat thickness over the last rib. Also, the individual grade specifications describe the various combinations of muscling and last rib backfat thickness which qualify for that grade.

SPECIFICATIONS FOR OFFICIAL UNITED STATES STANDARDS FOR GRADES OF SLAUGHTER BARROWS AND GILTS

The grade of a slaughter barrow or gilt with indications of acceptable quality is determined on the basis of the following equation: Grade = (4.0 × last rib backfat thickness, inches) - (1.0 × muscling score). To apply this equation muscling should be scored as follows: thin (inferior) = 1, average = 2, and thick (superior) = 3. Animals with thin muscling cannot grade U.S. No. 1. The grade may also be determined by calculating a preliminary grade according to the schedule shown in Table 1 and adjusting up or down one grade for superior or inferior muscling, respectively.

Table 1. Preliminary Grade Based on Backfat Thickness over the Last Rib.

Preliminary Grade	Backfat Thickness Range
U.S. No. 1.	Less than 1.00 inch.
U.S. No. 2.	1.00 to 1.24 inches.
U.S. No. 3.	1.25 to 1.49 inches.
U.S. No. 4.	1.50 inches and over.[1]

[1]Animals with an estimated last rib backfat thickness of 1.75 inches or over cannot be graded U.S. No. 3, even with thick muscling.

The following descriptions provide a guide to the characteristics of slaughter barrows and gilts in each grade.

U.S. No. 1

Barrows and gilts in this grade are expected to have an acceptable quality of lean and belly thickness and a high expected yield (60.4 percent and over) of four lean cuts. U.S. No. 1 barrows and gilts must have less than average estimated backfat thickness over the last rib with average muscling, or average estimated backfat over the last rib coupled with thick muscling.

Barrows and gilts with average muscling may be graded U.S. No. 1 if their estimated backfat thickness over the last rib is less than 1.00 inch. Animals with thick muscling may be graded U.S. No. 1 if their estimated backfat thickness over the last rib is less than 1.25 inches. Barrows and gilts with thin muscling may not be graded U.S. No. 1.

U.S. No. 2

Barrows and gilts in this grade are expected to have an acceptable quality of lean and belly thickness and an average expected yield (57.4 to 60.3 percent) of four lean cuts. Animals with average estimated backfat thickness over the last rib and average muscling, less than average estimated backfat thickness over the last rib and thin muscling, or greater than average estimated backfat thickness over the last rib and thick muscling will qualify for this grade.

Barrows and gilts with average muscling will be graded U.S. No. 2 if their estimated backfat thickness over the last rib is 1.00 to 1.24 inches. Barrows and gilts with thick muscling will be graded U.S. No. 2 if their estimated backfat thickness over the last rib is 1.25 to 1.49 inches. Barrows and gilts with thin muscling must have less than 1.00 inch of estimated backfat over the last rib to be graded U.S. No. 2.

U.S. No. 3

Barrow and gilts in this grade are expected to have an acceptable quality of lean and belly thickness and a slightly low expected yield (54.4 to 57.3 percent) of four lean cuts. Barrows and gilts with average muscling and more than average estimated backfat thickness over the last rib, thin muscling and average estimated backfat thickness over the last rib, or thick muscling and much greater than average estimated backfat thickness over the last rib will qualify for this grade.

Barrows and gilts with average muscling will be graded U.S. No. 3 if their estimated backfat thickness over the last rib is 1.25 to 1.49 inches. Barrows and gilts with thick muscling will be graded U.S. No. 3 if their estimated backfat thickness over the last rib is 1.50 to 1.74 inches. Barrows and gilts with 1.75 inches or more of estimated backfat thickness over the last rib cannot grade U.S. No. 3. Barrows and gilts with thin muscling will be graded U.S. No. 3 if their estimated backfat thickness over the last rib is 1.00 to 1.24 inches.

U.S. No. 4

Barrow and gilts in this grade are expected to have an acceptable quality of lean and belly thickness and a low expected yield (less than 54.4 percent) of four lean cuts. Barrows and gilts in the U.S No. 4 grade always have more than average estimated backfat over the last rib and thick, average, or thin muscling, depending on the degree to which the estimated backfat thickness over the last rib exceeds the average.

Barrows and gilts with average muscling will be graded U.S. No. 4 if their estimated backfat thickness over the last rib is 1.50 inches or greater. Barrows and gilts with thick muscling will be graded U.S. No. 4 with estimated backfat thickness over the last rib of 1.75 inches or greater, and those with thin muscling will be graded U.S. No. 4 with 1.25 inches or greater estimated backfat over the last rib.

U.S Utility

All barrows and gilts with probable unacceptable quality of lean or belly thickness will be graded U.S. Utility, regardless of their muscling or estimated backfat thickness over the last rib. Also, all barrows and gilts which may produce soft and/or oily fat will be graded U.S. Utility.

APPLICATION OF STANDARDS FOR GRADES OF SLAUGHTER SOWS

The standards for grades of slaughter sows are based on (1) differences in yields of lean cuts and of fat cuts and (2) differences in quality of cuts. These characteristics vary rather consistently from one grade to another. The U.S. No. 1 grade has about the minimum degree of finish necessary to produce pork carcasses with quality characteristics indicative of acceptable palatability in the cuts. The U.S. No 2 grade is overfinished and the U.S. No. 3 grade is decidedly overfinished in relation to the minimum finish associated with acceptable palatability. Yields of lean cuts are lower and yields of fat cuts are higher, in proportion to the degree of overfinish, in these grades than in the U.S. No. 1 grade. Medium grade sows are underfinished and produce carcasses which are soft and have indications of insufficient quality for acceptably palatable cuts. Cull grade sows are decidedly underfinished and the pork is soft and watery with little or no marbling and low palatability.

The grades for slaughter sows are closely related to the grades for sow carcasses, and the desired objective in grading sows is the accurate prediction of the carcass grade that will be produced. Degree of finish is an important factor in grading, and the expected average backfat thickness of carcasses produced by each grade of slaughter sows forms a part of the standards. The results of study of carcass measurement and cutting data show that carcasses equal in fat thickness are approximately equal in yields of cuts regardless of differences in weight. Therefore the expected backfat thickness of carcasses from each grade of slaughter sows is the same at all weights. The following table outlines the carcass fat thickness guides for each grade of slaughter sows.

Grade	Average Backfat Thickness
U.S. No. 1	1.5 to 1.9 inches.
U.S. No. 2	1.9 to 2.3 inches.
U.S. No. 3	2.3 or more inches.
Medium	1.1 to 1.5 inches.
Cull	Less than 1.1 inches.

The standards for grades also include descriptive specifications of the characteristics of slaughter sows with the minumum degree of finish for each grade. Application of the standards requires an accurate appraisal of these live animal characteristics indicative of carcass finish and grade. No attempt is made to describe in the standards the many combinations of characteristics which may qualify an animal for a particular grade, and sound judgment is required to appropriately analyze varying combinations.

Slaughter sows that have produced several litters of pigs may show considerable roughness along the underline due to extensive development of mammary tissue. In addition, sows from which pigs were weaned only a short time prior to grading may show evidence that the mammary tissue is still active in milk production and not completely dry. Since smoothness and dryness of the underline have little effect on the basic grade determining factors, no provision is made in the standards for altering the grade of slaughter sows due to differences in these characteristics. It is recognized that the value determining factors to be considered in marketing sows include dryness and smoothness as well as such other factors as weight, degree of finish, quality, and fill. However, consideration of all such factors in determining grade would require a complicated system with a great number of grades in order to make each grade sufficiently restrictive to be practical and useful. Therefore, the grades outlined in these standards identify differences in slaughter sows with respect to yields of cuts and quality. They were designed to be practical aids in evaluating slaughter sows when used in conjunction with other factors such as weight, fill, smoothness, and dryness.

SPECIFICATIONS FOR OFFICIAL U.S. STANDARDS FOR GRADES OF SLAUGHTER SOWS

U.S. No. 1 Grade

U.S. No. 1 grade slaughter sows have an intermediate degree of finish near the minimum required to produce pork cuts of acceptable palatability. Sows with the minimum finish for U.S. No. 1 grade are moderately long and slightly wide in relation to weight. Width of body is rather uniform from top to bottom and from front to rear. The back, from side to side, is moderately full and thick with a well-rounded appearance and blends smoothly into the sides. The sides are moderately long and slightly thick; the flanks are slightly thick and full. Depth at the rear flank may be slightly less than depth at the fore flank. Hams are usually moderately thick and full with a slightly thick covering of fat. Jowls are usually moderately thick and full but appear trim. Sows in this grade produce U.S. No. 1 grade carcasses.

U.S. No. 2 Grade

U.S. No. 2 grade slaughter sows have a moderately high degree of finish that is somewhat greater than the minimum required to produce pork cuts of acceptable palatability. Sows with the minimum finish for U.S. No. 2 grade are slightly short and moderately wide in relation to weight. Width of body is often greater over the top than at the underline and tends to be slightly greater through the shoulders than through the hams. The back, from side to side, is full and thick and appears slightly flat with a noticeable break into the sides. The sides are slightly short and moderately thick; the flanks are moderately thick and full. Depth at the rear flank is nearly equal to depth at the fore flank. Hams are usually thick and full with a moderately thick covering of fat, especially over the lower part. Jowls are usually full and thick, and the neck appears rather short. Sows in this grade produce U.S. No. 2 grade carcasses.

U.S. No. 3 Grade

U.S. No. 3 grade slaughter sows have a high degree of finish that is considerably greater than the minimum required to produce pork cuts of acceptable palatability. Sows with the minimum finish for U.S. No. 3 grade are short and wide in relatation to weight. Width of body is often somewhat greater over the top than at the underline and tends to be greater through the shoulders than throught the hams. The back, from side to side, is very full and thick and appears nearly flat with a pronounced break into the sides. The sides are short and thick; the flanks are thick and full. Depth at the rear flank is equal to depth at the fore flank. Hams are usually very thick and full with a thick covering of fat especially over the lower part. Jowls are usually very full and thick, and the neck appears short. Sows of this grade produce U.S. No. 3 grade carcasses.

Medium Grade

Medium grade slaughter sows have a low degree of finish which is somewhat less than the minimum required to produce pork cuts of acceptable palatability. Sows with the minimum finish for Medium grade are long and moderately narrow in relation to weight. Width of body is often less over the top than at the underline and tends to be slightly less through the shoulders than through the hams. The back, from side to side, is moderately thin and appears rather peaked at the center with a distinct slope toward the sides. The hips are moderately prominent. The sides are long and moderately thin; the flanks are thin. Depth at the rear flank is less than depth at the fore flank. Hams are usually moderately thin and flat and taper toward the shank. Jowls are usually slightly thin and flat, and the neck appears rather long. Sows in this grade produce Medium grade carcasses.

Cull Grade

Cull grade slaughter sows have a very low degree of finish which is considerably lower than that required to produce pork cuts of acceptable palatability. Sows with the finish typical of the Cull grade are long and narrow in relation to weight. Width of body is often somewhat less over the top than at the underline and tends to be less through the shoulders than through the hams. The back, from side to side, is thin and lacks fullness and is peaked at the center with a decided slope toward the sides. The hips are prominent. The sides are very long and thin; the flanks are very thin. Depth at the rear flank is considerably less than depth at the fore flank. Hams are usually thin and flat with a definite taper toward the shank. Jowls are usually thin and flat, and the neck appears long. Sows in this grade produce Cull grade carcasses.

APPENDIX E

QUANTITY OF VARIOUS FRESH, CHILLED, OR FROZEN PORK CUTS EXPORTED FROM CANADA TO THE UNITED STATES DURING 1986-88

Agriculture Canada

B-22

Agriculture Development Branch

Direction générale du développement agricole

Canada livestock and meat trade report

Rapport sur le marché des bestiaux et de la viande au Canada

Volume 67 Number 51-52

Volume 67 Numéro 51-52

WEEKLY MARKET REVIEW:
Current Week: January 8, 1989

REVUE HEBDOMADAIRE DU MARCHE:
Semaine courante: le 8 janvier, 1989

WEEKLY SUMMARY:
Week ending December 24 and 31, 1988

REVUE STATISTIQUE:
Semaine se terminant le 24 et 31 décembre, 1988

SPECIAL IN THIS ISSUE

SPECIAL DANS CE NUMERO

DRESSED MEAT - EXPORTS (IN 000 LBS.) (PRELIMINARY)

VIANDES - EXPORTATIONS (EN 000 LIVRES) (PRELIMINAIRE)

* Less than 500 lbs.	Week Ended December 31, 1988 / Semaine terminée le 31 décembre, 1988 — 1988 U.S. E.-U.	Japan Japon	Others Autres	Total	Accumulated Totals to Date - Totaux accumulés à ce jour — 1987 U.S. E.-U.	Japan Japon	Others Autres	Total	1988 U.S. E.-U.	Japan Japon	Others Autres	Total	% Change	* Moins de 500 lb.
BEEF														BOEUF
Beef Other	59	*	38	98	3433	193	2930	6556	3860	102	3086	7048	8	Boeuf autres
Carcasses (bone-in)	598	-	136	733	48532	-	125	48657	26378	423	388	27189	-44	Carcasses (non-désossé)
Cuts (bone-in)	674	-	-	674	7189	52	750	7991	13628	78	398	14104	77	Morceaux (non-désossé)
Boneless	612	177	1	790	54982	5688	580	61249	43557	6935	466	50959	-17	Désossé
Pickled & Cured	*	-	7	7	40	7	2124	2171	12	1	2408	2421	12	Mariné et salé
Cooked Beef	-	-	-	-	180	-	1	181	44	-	1	45	-75	Cuit
Canned Beef	-	-	-	-	-	-	*	*	19	-	16	35	100+	Boeuf en conserve
Trimmings	1416	-	-	1416	35018	19	24	35061	43966	-	26	43992	26	Parures
TOTAL BEEF	3360	178	182	3720	149373	5958	6534	161866	131463	7540	6790	145793	-10	TOTAL BOEUF
VEAL														VEAU
Carcasses (bone-in)	285	-	1	286	9480	-	43	9523	9920	-	32	9952	5	Carcasses (non-désossé)
Cuts (bone-in)	-	-	-	-	76	*	23	99	26	4	35	65	-34	Morceaux (non-désossé)
Boneless	-	-	-	-	8	2	11	22	2	1	45	48	100+	Désossé
Trimmings	-	-	-	-	6	-	-	6	-	-	-	-	-100	Parures
TOTAL VEAL	285	-	1	286	9570	3	77	9650	9949	6	112	10066	4	TOTAL VEAU
MUTTON														MOUTON
Bone-in	-	-	-	-	-	-	-	-	-	-	-	-	-	Non-désossé
Boneless	-	-	-	-	*	-	-	*	-	-	-	-	-100	Désossé
LAMB														AGNEAU
Carcasses (bone-in)	-	-	-	-	*	-	3	3	-	*	3	4	33	Carcasses (non-désossé)
Cuts (bone-in)	-	-	-	-	48	-	53	101	96	-	34	130	29	Morceaux (non-désossé)
Boneless	-	-	-	-	-	-	*	*	70	-	14	84	100+	Désossé
TOTAL MUTTON & LAMB	-	-	-	-	48	-	56	104	166	*	51	217	100+	TOTAL MOUTON ET AGNEAU
PORK (FRESH & FROZEN)														PORC (FRAIS ET CONGELE)
Carcasses & Sides	-	-	1	1	21481	-	3	21484	13363	-	241	13604	-37	Carcasses et côtes
Hams	2796	-	83	2880	142335	2969	485	145789	142799	3527	2756	149082	2	Jambons
Backs, loins	459	846	82	1388	53453	35806	4747	94006	50524	41449	6646	98619	5	Dos, longes
Bellies	655	-	-	655	51997	5	406	52407	36292	38	584	36914	-30	Flancs
Shoulder, butts, picnic	1318	100	40	1458	118156	4176	1473	123805	111879	5322	1243	118444	-4	Epaules, socs, picnic
Side & regular spare ribs	258	-	16	274	19464	22	392	19878	18741	89	397	19227	-3	Bouts de côtes d'echin et ord.
PORK (PROCESSED)														PORC (TRANSFORME)
Hams, cooked	55	-	1	55	5357	105	229	5691	5403	8	295	5706	-	Jambons cuits
Hams, other cured	125	-	-	125	1174	1	16	1191	3008	*	68	3077	100+	Jambons sales
Backs, loins	5	-	-	5	317	1	9	327	435	2	22	458	40	Dos, longes
Bellies, side bacon	384	-	-	384	14395	1	483	14879	18417	9	344	18770	26	Flancs, bacon de flanc
Shldr, butts, pic, cot. rol.	19	-	-	19	594	3	26	623	1289	4	26	1320	100+	Epls, socs, pincs., socs roulés
Pickled in barrels	-	-	37	37	136	-	5172	5307	69	-	5073	5142	-3	Mariné en barils
Can. hams, shldr. & picnics	-	-	-	-	-	-	5	5	-	-	3	3	-40	Jambons, épls en boites
Other canned	-	-	-	-	-	-	1	1	1	-	1	3	100+	Autres en conserve
PORK (OTHER)														PORC (AUTRE)
Other boneless	925	90	16	1032	44163	5008	814	49985	50188	4947	1299	56434	13	Autre désossé
Other bone-in	235	-	205	441	8465	196	6369	15030	10351	68	11747	22167	48	Autre non-désossé
TOTAL PORK	7235	1037	482	8754	481487	48291	20630	550408	462761	55462	30747	548970	-	TOTAL DU PORC
Edible Animal Fat	41	93	109	243	10852	955	4930	16737	9170	2101	8753	20025	20	Graisse animale comestible

Source: Meat and Poultry Products Division

Agriculture Canada

Agriculture Development Branch

Direction générale du développement agricole

Canada livestock and meat trade report

Rapport sur le marché des bestiaux et de la viande au Canada

Volume 68 Number 52

Volume 68 Numéro 52

DRESSED MEAT - EXPORTS (IN 000 LBS.) (PRELIMINARY)

VIANDES - EXPORTATIONS (EN 000 LIVRES) (PRELIMINAIRE)

* Less than 500 lbs.	Week Ended January 2, 1988 / Semaine terminée le 2 janvier, 1988				Accumulated Totals to Date - Totaux accumulés à ce jour									* Moins de 500 lb.
	1987				1986				1987					
	U.S. E.-U.	Japan Japon	Others Autres	Total	U.S. E.-U.	Japan Japon	Others Autres	Total	U.S. E.-U.	Japan Japon	Others Autres	Total	% Change	
BEEF														BOEUF
Beef Other	40	8	-	48	3097	296	3576	6969	3433	193	2930	6556	-6	Boeuf autres
Carcasses (bone-in)	698	-	-	698	53533	-	161	53694	48532	-	125	48657	-9	Carcasses (non-désossé)
Cuts (bone-in)	247	-	-	247	4598	9	369	4976	7189	52	750	7991	61	Morceaux (non-désossé)
Boneless	627	24	-	651	71283	5952	1634	70884	54982	5688	580	61249	-14	Désossé
Pickled & Cured	-	-	32	32	96	116	2948	3046	40	7	2124	2171	-29	Mariné et salé
Cooked Beef	-	-	-	-	-	-	-	-	180	-	1	181	100	Cuit
Canned Beef	-	-	-	-	-	-	-	-	-	-	*	*	100	Boeuf en conserve
Trimmings	359	-	-	359	43749	7	59	43815	35018	19	24	35061	-20	Parures
TOTAL BEEF	1970	32	32	2034	176358	6380	8747	183385	149373	5958	6534	161866	-12	TOTAL BOEUF
VEAL														VEAU
Carcasses (bone-in)	-	-	-	-	5605	-	62	5667	9480	-	43	9523	68	Carcasses (non-désossé)
Cuts (bone-in)	-	-	-	-	157	-	48	204	76	*	23	99	-52	Morceaux (non-désossé)
Boneless	-	-	-	-	3	-	50	53	8	2	11	22	-59	Désossé
Trimmings	-	-	-	-	-	-	-	-	6	-	-	6	100	Parures
TOTAL VEAL	-	-	-	-	5764	-	160	5924	9570	3	77	9650	63	TOTAL VEAU
MUTTON														MOUTON
Bone-in	-	-	-	-	-	-	5	5	-	-	-	-	-100	Non-désossé
Boneless	-	-	-	-	-	-	10	10	*	-	-	*	-	Désossé
LAMB														AGNEAU
Carcasses (bone-in)	-	-	-	-	-	-	8	7	*	-	3	3	-57	Carcasses (non-désossé)
Cuts (bone-in)	-	-	-	-	62	-	36	98	48	-	53	101	3	Morceaux (non-désossé)
Boneless	-	-	-	-	-	-	-	-	-	-	*	*	100	Désossé
TOTAL MUTTON & LAMB	-	-	-	-	62	-	59	120	48	-	56	104	-13	TOTAL MOUTON ET AGNEAU
PORK (FRESH & FROZEN)														PORC (FRAIS ET CONGELE)
Carcasses & Sides	114	-	-	114	15031	3	95	15129	21481	-	3	21484	42	Carcasses et côtes
Hams	2261	-	-	2261	142447	367	928	143743	142335	2969	485	145789	1	Jambons
Backs, loins	528	152	-	681	34505	41919	3549	79993	53453	35806	4747	94006	18	Dos, longes
Bellies	435	-	-	435	47950	-	583	48534	51997	5	406	52407	8	Flancs
Shoulder, butts, picnic	1000	10	-	1010	102250	2245	1946	106441	118156	4176	1473	123805	16	Epaules, socs, picnic
Side & regular spare ribs	198	-	-	198	19967	42	717	20727	19464	22	392	19878	-4	Bouts de côtes d'echin et ord.
PORK (PROCESSED)														PORC (TRANSFORME)
Hams, cooked	132	-	2	135	1939	-	133	2072	5357	105	229	5691	100+	Jambons cuits
Hams, other cured	-	-	-	-	4034	24	50	4109	1174	1	16	1191	-71	Jambons salés
Backs, loins	*	-	*	1	195	-	6	201	317	1	9	327	63	Dos, longes
Bellies, side bacon	244	-	1	244	9135	2	359	9496	14395	1	483	14879	57	Flancs, bacon de flanc
Shldr, butts, pic, cot. rol.	1	-	-	1	925	-	30	956	594	3	26	623	-35	Epls, socs, pincs., socs roulés
Pickled in barrels	-	-	-	-	12	-	4177	4189	136	-	5172	5307	27	Mariné en barils
Can. hams, shldr. & picnics	-	-	-	-	-	-	31	31	-	-	5	5	-84	Jambons, épls en boites
Other canned	-	-	-	-	-	-	-	-	-	-	1	1	100	Autres en conserve
PORK (OTHER)														PORC (AUTRE)
Other boneless	364	43	-	407	42731	3664	1516	47911	44163	5008	814	49985	4	Autre désossé
Other bone-in	75	-	40	115	9617	38	7166	16822	8465	196	6369	15030	-11	Autre non-désossé
TOTAL PORK	5353	205	43	5601	430739	48305	21289	500333	481487	48291	20630	550408	10	TOTAL DU PORC
Edible Animal Fat	53	-	88	142	4301	-	217	4519	10852	955	4930	16737	100+	Graisse animale comestible

APPENDIX F

EXCERPT FROM THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

USITC Publication 2030

HARMONIZED TARIFF SCHEDULE
Of the United States

Annotated for Statistical Reporting Purposes

First Edition
Supplement 2

United States International Trade Commission
Washington, D.C. 20436

SECTION I

LIVE ANIMALS; ANIMAL PRODUCTS

Notes

1. Any reference in this section to a particular genus or species of an animal, except where the context otherwise requires, includes a reference to the young of that genus or species.

2. Except where the context otherwise requires, throughout the tariff schedule any reference to "dried" products also covers products which have been dehydrated, evaporated or freeze-dried.

CHAPTER 1

LIVE ANIMALS

Note

1. This chapter covers all live animals except:

    (a) Fish and crustaceans, molluscs and other aquatic invertebrates, of heading 0301, 0306 or 0307;

    (b) Cultures of microorganisms and other products of heading 3002; and

    (c) Animals of heading 9508.

Additional U.S. Notes

1. The expression "purebred breeding animals" covers only animals certified to the U.S. Customs Service by the Department of Agriculture as being purebred of a recognized breed and duly registered in a book of record recognized by the Secretary of Agriculture for that breed, imported specially for breeding purposes, whether intended to be used by the importer himself or for sale for such purposes.

2. Certain special provisions applying to live animals are in chapter 98.

Heading/ Subheading	Stat. Suf. & cd	Article Description	Units of Quantity	Rates of Duty 1 General	Special	2
0101		Live horses, asses, mules and hinnies:				
		Horses:				
0101.11.00		Purebred breeding animals	....	Free		Free
	10 3	Male	No.			
	20 1	Female	No.			
0101.19.00	00 7	Other	No.	Free		20%
0101.20		Asses, mules and hinnies:				
		Asses:				
0101.20.10	00 2	Purebred breeding animals	No.	Free		Free
0101.20.20	00 0	Other	No.	15%	Free (E,CA,IL)	15%
		Mules and hinnies:				
0101.20.30	00 8	Imported for immediate slaughter	No.	Free		Free
0101.20.40	00 6	Other	No.	10%	Free (E,IL) 9% (CA)	20%
0102		Live bovine animals:				
0102.10.00		Purebred breeding animals	....	Free		Free
		Dairy:				
	10 3	Male	No.			
	20 1	Female	No.			
		Other:				
	30 9	Male	No.			
	50 4	Female	No.			
0102.90		Other:				
0102.90.20	00 4	Cows imported specially for dairy purposes	No. v kg	Free		6.6¢/kg
0102.90.40		Other	....	2.2¢/kg	Free (E,IL) 1.7¢/kg (CA)	5.5¢/kg
	20 6	Weighing less than 90 kg each	No. v kg			
	40 2	Weighing 90 kg or more but less than 320 kg each	No. v kg			
	60 7	Weighing 320 kg or more each	No. v kg			
0103		Live swine:				
0103.10.00	00 4	Purebred breeding animals	No.	Free		Free
		Other:				
0103.91.00	00 6	Weighing less than 50 kg each	No. v kg	Free		4.4¢/kg
0103.92.00	00 5	Weighing 50 kg or more each	No. v kg	Free		4.4¢/kg
0104		Live sheep and goats:				
0104.10.00	00 3	Sheep	No.	Free		$3/head
0104.20.00	00 1	Goats	No.	$1.50/head	Free (E,IL) $1.20/head (CA)	$3/head
0105		Live poultry of the following kinds: Chickens, ducks, geese, turkeys and guineas:				
		Weighing not over 185 g each:				
0105.11.00		Chickens	....	2¢ each	Free (E,IL) 1.8¢ each (CA)	4¢ each
		Breeding stock, whether or not purebred:				
	10 9	Layer-type (egg-type)	No.			
	20 7	Broiler-type (meat-type)	No.			
	40 3	Other	No.			
0105.19.00		Other	....	2¢ each	Free (E,IL) 1.8¢ each (CA)	4¢ each
	20 9	Turkeys	No.			
	40 5	Ducks, geese and guineas	No.			
		Other:				
0105.91.00	00 4	Chickens	No. v kg	4.4¢/kg	Free (E,IL) 3.9¢/kg (CA)	17.6¢/kg
0105.99.00	00 6	Other	No. v kg	4.4¢/kg	Free (E,IL) 3.9¢/kg (CA)	17.6¢/kg
0106.00		Other live animals:				
0106.00.10	00 1	Birds	No.	4%	Free (A,CA,E,IL)	20%
0106.00.30	00 7	Foxes	No.	7.5%	Free (CA,E,IL)	15%
0106.00.50		Other	....	Free		15%
	10 0	Monkeys and other primates	No.			
	20 8	Worms	X			
	50 1	Other	X			

HARMONIZED TARIFF SCHEDULE of the United States

Annotated for Statistical Reporting Purposes

CHAPTER 2

MEAT AND EDIBLE MEAT OFFAL

Note

1. This chapter does not cover:

   (a) Products of the kinds described in headings 0201 to 0208 or 0210, unfit or unsuitable for human consumption;

   (b) Guts, bladders, or stomachs of animals (heading 0504) or animal blood (heading 0511 or 3002); or

   (c) Animal fat, other than products of heading 0209 (chapter 15)

Additional U.S. Notes

1. For the purposes of this chapter--

   (a) The term "processed" covers meats which have been ground or comminuted, diced or cut into sizes for stew meat or similar uses, rolled and skewered, or specially processed into fancy cuts, special shapes, or otherwise made ready for particular uses by the retail consumer.

   (b) The term "high-quality beef cuts" means beef specially processed into fancy cuts, special shapes, or otherwise made ready for particular uses by the retail consumer (but not ground or comminuted, diced or cut into sizes for stew meat or similar uses, or rolled or skewered), which meets the specifications in regulations issued by the U.S. Department of Agriculture for Prime or Choice beef, and which has been so certified prior to exportation by an official of the government of the exporting country, in accordance with regulations issued by the Secretary of the Treasury after consultation with the Secretary of Agriculture.

2. In assessing the duty on meats, no allowance shall be made for normal components thereof such as bones, fat, and hide or skin. The dutiable weight of meats in airtight containers subject to specific rates includes the entire contents of the containers.

HARMONIZED TARIFF SCHEDULE of the United States

Annotated for Statistical Reporting Purposes

Heading/ Subheading	Stat. Suf. & cd		Article Description	Units of Quantity	Rates of Duty 1 General	Rates of Duty 1 Special	Rates of Duty 2
0201	1/		Meat of bovine animals, fresh or chilled:				
0201.10.00			Carcasses and half-carcasses	....	4.4¢/kg	Free (E*,IL) 3.9¢/kg (CA)	13.2¢/kg
	10	3	Veal	kg			
	90	6	Other	kg			
0201.20			Other cuts with bone in:				
			Processed:				
0201.20.20	00	9	High-quality beef cuts	kg	4%	Free (E*,IL) 3.6% (CA)	20%
0201.20.40	00	5	Other	kg	10%	Free (E*,IL) 9% (CA)	20%
0201.20.60	00	0	Other	kg	4.4¢/kg	Free (E*,IL) 3.9¢/kg (CA)	13.2¢/kg
0201.30			Boneless:				
			Processed:				
0201.30.20	00	7	High-quality beef cuts	kg	4%	Free (E*,IL) 3.6% (CA)	20%
0201.30.40	00	3	Other	kg	10%	Free (E*,IL) 9% (CA)	20%
0201.30.60	00	8	Other	kg	4.4¢/kg	Free (E*,IL) 3.9¢/kg (CA)	13.2¢/kg
0202			Meat of bovine animals, frozen:				
0202.10.00			Carcasses and half-carcasses	....	4.4¢/kg	Free (E*,IL) 3.9¢/kg (CA)	13.2¢/kg
	10	2	Veal	kg			
	90	5	Other	kg			
0202.20			Other cuts with bone in:				
			Processed:				
0202.20.20	00	8	High-quality beef cuts	kg	4%	Free (E*,IL) 3.6% (CA)	20%
0202.20.40	00	4	Other	kg	10%	Free (E*,IL) 9% (CA)	20%
0202.20.60	00	9	Other	kg	4.4¢/kg	Free (E*,IL) 3.9¢/kg (CA)	13.2¢/kg
0202.30			Boneless:				
			Processed:				
0202.30.20	00	6	High-quality beef cuts	kg	4%	Free (E*,IL) 3.6% (CA)	20%
0202.30.40	00	2	Other	kg	10%	Free (E*,IL) 9% (CA)	20%
0202.30.60	00	7	Other	kg	4.4¢/kg	Free (E*,IL) 3.9¢/kg (CA)	13.2¢/kg
0203			Meat of swine, fresh, chilled, or frozen:				
			Fresh or chilled:				
0203.11.00	00	2	Carcasses and half-carcasses	kg	Free		5.5¢/kg
0203.12			Hams, shoulders and cuts thereof, with bone in:				
0203.12.10	00	9	Processed	kg	2.2¢/kg	Free (E,IL) 1.7¢/kg (CA)	7.2¢/kg
0203.12.90	00	2	Other	kg	Free		5.5¢/kg
0203.19			Other:				
0203.19.20	00	0	Processed	kg	2.2¢/kg	Free (E,IL) 1.7¢/kg (CA)	7.2¢/kg
0203.19.40	00	6	Other	kg	Free		5.5¢/kg
			Frozen:				
0203.21.00	00	0	Carcasses and half-carcasses	kg	Free		5.5¢/kg
0203.22			Hams, shoulders and cuts thereof, with bone in:				
0203.22.10	00	7	Processed	kg	2.2¢/kg	Free (E,IL) 1.7¢/kg (CA)	7.2¢/kg
0203.22.90	00	0	Other	kg	Free		5.5¢/kg
0203.29			Other:				
0203.29.20	00	8	Processed	kg	2.2¢/kg	Free (E,IL) 1.7¢/kg (CA)	7.2¢/kg
0203.29.40	00	4	Other	kg	Free		5.5¢/kg

1/ P.L. 88-482, as amended, provides that certain meats may be made subject to an absolute quota by Presidential Proclamation.

Heading/ Subheading	Stat. Suf.	& cd	Article Description	Units of Quantity	Rates of Duty 1 General	Special	2
0204	1/		Meat of sheep or goats, fresh, chilled or frozen:				
0204.10.00	00	2	Carcasses and half-carcasses of lamb, fresh or chilled	kg	1.1¢/kg	Free (E,IL) 0.8¢/kg (CA)	15.4¢/kg
			Other meat of sheep, fresh or chilled:				
0204.21.00	00	9	Carcasses and half-carcasses	kg	3.3¢/kg	Free (E,IL) 2.9¢/kg (CA)	11¢/kg
0204.22			Other cuts with bone in:				
0204.22.20	00	4	Lamb	kg	1.1¢/kg	Free (E,IL) 0.8¢/kg (CA)	15.4¢/kg
0204.22.40	00	0	Other	kg	3.3¢/kg	Free (E,IL) 2.9¢/kg (CA)	11¢/kg
0204.23			Boneless:				
0204.23.20	00	3	Lamb	kg	1.1¢/kg	Free (E,IL) 0.8¢/kg (CA)	15.4¢/kg
0204.23.40	00	9	Other	kg	3.3¢/kg	Free (E,IL) 2.9¢/kg (CA)	11¢/kg
0204.30.00	00	8	Carcasses and half-carcasses of lamb, frozen	kg	1.1¢/kg	Free (E,IL) 0.8¢/kg (CA)	15.4¢/kg
			Other meat of sheep, frozen:				
0204.41.00	00	5	Carcasses and half-carcasses	kg	3.3¢/kg	Free (E,IL) 2.9¢/kg (CA)	11¢/kg
0204.42			Other cuts with bone in:				
0204.42.20	00	0	Lamb	kg	1.1¢/kg	Free (E,IL) 0.8¢/kg (CA)	15.4¢/kg
0204.42.40	00	6	Other	kg	3.3¢/kg	Free (E,IL) 2.9¢/kg (CA)	11¢/kg
0204.43			Boneless:				
0204.43.20	00	9	Lamb	kg	1.1¢/kg	Free (E,IL) 0.8¢/kg (CA)	15.4¢/kg
0204.43.40	00	5	Other	kg	3.3¢/kg	Free (E,IL) 2.9¢/kg (CA)	11¢/kg
0204.50.00	00	3	Meat of goats	kg	Free		11¢/kg
0205.00.00	00	3	Meat of horses, asses, mules or hinnies, fresh, chilled or frozen	kg	Free		Free
0206			Edible offal of bovine animals, swine, sheep, goats, horses, asses, mules or hinnies, fresh, chilled or frozen:				
0206.10.00	00	0	Of bovine animals, fresh or chilled	kg	Free		30%
			Of bovine animals, frozen:				
0206.21.00	00	7	Tongues	kg	Free		30%
0206.22.00	00	6	Livers	kg	Free		30%
0206.29.00	00	9	Other	kg	Free		30%
0206.30.00	00	6	Of swine, fresh or chilled	kg	Free		30%
			Of swine, frozen:				
0206.41.00	00	3	Livers	kg	Free		30%
0206.49.00	00	5	Other	kg	Free		30%
0206.80.00	00	5	Other, fresh or chilled	kg	Free		30%
0206.90.00			Other, frozen		Free		30%
	20	9	Of sheep (including lamb)	kg			
	40	5	Of goats, horses, asses, mules or hinnies	kg			

1/ P.L. 88-482, as amended, provides that certain meats may be made subject to an absolute quote by Presidential Proclamation.

Heading/ Subheading	Stat. Suf. & cd	Article Description	Units of Quantity	Rates of Duty 1 General	Special	2
0207		Meat and edible offal, of the poultry of heading 0105, fresh, chilled or frozen:				
0207.10		Poultry not cut in pieces, fresh or chilled:				
0207.10.20	00 5	Turkeys	kg	18.7¢/kg	Free (E,IL) 16.8¢/kg (CA)	22¢/kg
0207.10.40		Other		11¢/kg	Free (E,IL) 9.9¢/kg (CA)	22¢/kg
		Chickens:				
	20 7	Young (broilers, fryers, roasters and capons)	kg			
	40 3	Other	kg			
	60 8	Ducks, geese and guineas	kg			
		Poultry not cut in pieces, frozen:				
0207.21.00		Chickens		11¢/kg	Free (E,IL) 9.9¢/kg (CA)	22¢/kg
	20 2	Young (broilers, fryers, roasters and capons)	kg			
	40 8	Other	kg			
0207.22		Turkeys:				
0207.22.20	00 1	Valued less than 88¢/kg	kg	11¢/kg	Free (E,IL) 9.9¢/kg (CA)	22¢/kg
0207.22.40	00 7	Valued 88¢ or more per kg	kg	12.5%	Free (E,IL) 11.2% (CA)	25%
0207.23.00	00 4	Ducks, geese and guineas	kg	11¢/kg	Free (A,E,IL) 9.9¢/kg (CA)	22¢/kg
		Poultry cuts and offal (including livers), fresh or chilled:				
0207.31.00	00 4	Fatty livers of geese or ducks	kg	22¢/kg	Free (E,IL) 19.8¢/kg (CA)	22¢/kg
0207.39.00		Other		22¢/kg	Free (E,IL) 19.8¢/kg (CA)	22¢/kg
	20 2	Of chickens	kg			
	40 8	Of turkeys	kg			
	60 3	Of ducks, geese or guineas	kg			
		Poultry cuts and offal other than livers, frozen:				
0207.41.00	00 2	Of chickens	kg	22¢/kg	Free (E,IL) 19.8¢/kg (CA)	22¢/kg
0207.42.00	00 1	Of turkeys	kg	22¢/kg	Free (E,IL) 19.8¢/kg (CA)	22¢/kg
0207.43.00	00 0	Of ducks, geese or guineas	kg	22¢/kg	Free (E,IL) 19.8¢/kg (CA)	22¢/kg
0207.50.00	00 0	Poultry livers, frozen	kg	22¢/kg	Free (E,IL) 19.8¢/kg (CA)	22¢/kg
0208		Other meat and edible meat offal, fresh, chilled or frozen:				
0208.10.00	00 8	Of rabbits or hares	kg	10%	Free (CA,E,IL)	20%
0208.20.00	00 6	Frogs' legs	kg	Free		10%
0208.90		Other:				
0208.90.20	00 7	Deer	kg	Free		13.2¢/kg
0208.90.30	00 5	Quail, eviscerated, not in pieces	kg	11¢/kg	Free (A,E,IL) 8.8¢/kg (CA)	22¢/kg
0208.90.40	00 3	Other	kg	10%	Free (E,IL) 9% (CA)	20%
0209.00.00	00 9	Pig fat free of lean meat and poultry fat (not rendered), fresh, chilled, frozen, salted, in brine, dried or smoked	kg	5%	Free (A,E,IL) 4.5% (CA)	20%
0210		Meat and edible meat offal, salted, in brine, dried or smoked; edible flours and meals of meat or meat offal:				
		Meat of swine:				
0210.11.00	00 3	Hams, shoulders and cuts thereof, with bone in	kg	2.2¢/kg	Free (CA,E,IL)	7.2¢/kg
0210.12.00		Bellies (streaky) and cuts thereof		2.2¢/kg	Free (CA,E,IL)	7.2¢/kg
	20 8	Bacon	kg			
	40 4	Other	kg			
0210.19.00	00 5	Other	kg	2.2¢/kg	Free (CA,E,IL)	7.2¢/kg
0210.20.00	00 2	Meat of bovine animals	kg	10%	Free (A,CA,E*,IL)	30%
0210.90.00	00 7	Other, including edible flours and meals of meat or meat offal	kg	5%	Free (A,CA,E*,IL)	20%

APPENDIX G

FEDERAL REGISTER NOTICES: DEPARTMENT OF COMMERCE'S PRELIMINARY AND FINAL RESULTS OF COUNTERVAILING DUTY ADMINISTRATIVE REVIEW

Section 703(c)(1)(A) of the Tariff Act of 1930, as amended (the Act), provides that a preliminary determination in a countervailing duty investigation may be postponed where the petitioner has made a timely request for such a postponement. Pursuant to this provision, and the timely request by petitioners in these investigations, the Department is postponing its preliminary determination until no later than July 7, 1988.

This notice is published pursuant to section 703(c)(2) of the Act.

Joseph A. Spetrini,
Acting Assistant Secretary for Import Administration.
June 3, 1988.

[FR Doc. 88-13396 Filed 6-13-88; 8:45 am]
BILLING CODE 3510-DS-M

[C-122-404]

Live Swine From Canada; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on live swine from Canada. We preliminarily determine the total bounty or grant to be *de minimis* for slaughter sows and boars and Can$0.022/lb. for all other live swine during the period April 3, 1985 through March 31, 1986. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: June 14, 1988.

FOR FURTHER INFORMATION CONTACT: Sylvia Chadwick or Bernard Carreau, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On August 15, 1985, the Department of Commerce ("the Department") published in the Federal Register (50 FR 32880) a countervailing duty order on live swine from Canada. On August 27, 1986, the Government of Canada requested in accordance with 19 CFR 355.10 an administrative review of the order. We published the initiation on September 16, 1986 (51 FR 32817). The Department has now conducted that administrative review in accordance with section 751(a) of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to the Harmonized System ("HS"). In view of this, we will be providing both the appropriate Tariff Schedules of the United States Annotated ("TSUSA") item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Imports covered by the review are shipments of Canadian live swine. Such merchandise is currently classifiable under TSUSA item 100.8500. These products are currently classifiable under HS item numbers 0103.91.00 and 0103.92.00. We invite comments from all interested parties on these HS classifications.

The review covers the period April 3, 1985 through March 31, 1986, and 28 programs.

P. Quintaine & Sons Ltd. of Brandon, Manitoba, and exporter of sows and boars, has requested that: (1) The scope of the countervailing duty order be changed to exclude slaughter sows and boars, (2) Quintaine and Sons Ltd. be excluded from the order, or (3) slaughter sows and boars be given a separate rate of zero. Quintaine contends that sows and boars are generally used for breeding and that they are used as slaughter hogs only when they can on longer be used effectively as breeding stock. Quintaine also contends that slaughter sows and boars have never received any benefits from the programs found countervailable by the Department in the final affirmative countervailing duty determination in this case (50 FR 25097, June 17, 1985).

We have considered Quintaine's arguments and come to the following conclusions: First, sows and boars are clearly within the scope of the order. The order covers all live swine except breeding swine. As stated in the TSUSA, such breeding animals must be "certified to the collector of customs by the Department of Agriculture as being pure bred of a recognized breed and duty registered in a book of record recognized by the Secretary of Agriculture for that breed, imported . . . specially for breeding purposes." During the period of review, Quintaine's animals were not certified to Customs as breeding animals. Rather, they entered the United States as slaughter animals. Since the petition and the preliminary and final determinations of both the Department and the International Trade Commission have consistently included all live swine, except breeding animals, within the same class or kind of merchandise covered by this order, we cannot now exclude the slaughter sows and boars.

Second, we cannot exclude a company from a countervailing duty order once the order is issued. Requests for company exclusions must be submitted within 30 days of publication of a notice to initiate an investigation, and the decision as to the exclusion must be made in the Department's final determination (19 CFR 355.38).

Finally, the Department has considerable discretion in determining whether to differentiate among products within a class or kind of merchandise. We only differentiate among products in exceptional circumstances. Among the criteria we consider are the extent to which the product qualifies as a distinct product subclass within the applicable class or kind of merchandise and the extent to which the subsidy on the product differs from the subsidy on the other products within the same class or kind of merchandise.

To determine the existence of a product subclass, we compare the specific product to the overall class or kind of merchandise. This comparison is made according to the following four criteria: (1) The general physical characteristics of the product; (2) the expectations of the ultimate purchaser; (3) the ultimate use of the product in question; and (4) the channels of trade in which the product moves. The differences between the products do not need to be so great as to distinguish between a separate class or kind of merchandise. However, the differences between the products must be considerable. Slaughter sows and boars are within the same class or kind of merchandise as other live swine currently provided for under TSUSA item 100.8500. Slaughter sows and boars, however, can be distinguished from other live swine generally as follows:

Most live swine are bred to be slaughtered; sows and boars are primarily used for breeding. Slaughter hogs (sometimes called "bacon" hogs), in general, are slaughtered when their carcasses yield an acceptable product value; sows and boars are slaughtered only when they can no longer be used effectively as breeding animals. Slaughter hogs, in general, are slaughtered when they weigh between 170 and 240 pounds; sows weigh, on average, 450 pounds when slaughtered, boars, as much as 700 pounds. Slaughter hogs are slaughtered when they are about six months old; sows and boars are two to five years old when they are slaughtered. Slaughter hogs are graded by an index table developed to differentiate between the yield levels in hog carcasses. The value of a carcass is primarily determined by two factors, weight and the maximum backfat thickness at the loin. Slaughter sows and boars are not graded because they are too heavy and have an unacceptably high fat content. In general, about 35 percent of a slaughter hog is sold as prime cuts while the remaining 65 percent is cured for bacon and ham. Slaughter sows and boars are ground up and used exclusively in processed meat products, such as sausage and lunchmeat.

Because of the different expectations of the ultimate purchaser for slaughter sows and boars as opposed to other live swine, and the different ultimate use of the various products in question, the plant facilities used to process the slaughter sows and boars differ substantially from the facilities used to process live swine. For example, the facilities for slaughter sows and boars must be able to grind meat for use in processed meat products. The facilities for other live swine must be able to cut fresh meat. Slaughter sows and boars are marketed separately from live swine, and they command different prices. Finally, and most importantly, it is impossible to convert a sow or boar designated for slaughter into what is generally considered a "bacon" slaughter hog. Therefore, the distinction between slaughter sows and boars and other live swine cannot be used as a means to circumvent the countervailing duty order.

Based on the considerable differences between slaughter sows and boars and other live swine, we preliminarily determine that slaughter sows and boars are a distinct subclass or kind of merchandise within the class or kind of merchandise covered by this order.

Given this conclusion, we reviewed the programs preliminarily found to be countervailable in this review in order to determine whether there are sufficient grounds for setting a separate rate. Sows and boars are not eligible for any of the federal or provincial stabilization programs, expect Quebec's. We preliminarily find the net subsidy on sows and boars from all other programs to be *de minimis*. Therefore, we preliminarily determine that it is appropriate to set a separate rate of zero for sows and boars.

Analysis of Programs

(1) Agricultural Stabilization Act (ASA)

(a) ASA Stabilization Payments

The Agricultural Stabilization Act (the "Act") of 1957–58 was passed by the federal government to provide for the price stabilization of certain agricultural commodities. On June 27, 1985, the Act was amended by Bill C–25, which changed several aspects of the program. Four groups of commodities are explicitly provided for, or "named," in the Act: cattle, hogs, lambs and wool (previously this group included cattle, hogs, and sheep); industrial milk and industrial cream; corn and soybeans; and spring wheat, winter wheat, oats and barley (previously this group did not include spring wheat or winter wheat). Other natural or processed products of agriculture may be designated by the Governor in Council as agricultural commodities for purposes of this Act. "Named" and "designated" agricultural commodities are now eligible for stabilization payments at any time. Previously, coverage was limited to those periods in which the market situation was different in one region of Canada from the rest of Canada, as determined by the Governor in Council.

Programs of the ASA are administered by the Agricultural Stabilization Board (the "Board"), the members of which are appointed by the Governor in Council. The Board calculates the stabilization payments for both named and designated products in the following manner: (1) It establishes a "base price," which is the average price of the commodity in the five-year period immediately preceding the period in review; (2) it calculates a "prescribed price" by taking a minimum of 90 percent of the base price and adjusting it by a factor reflecting differences in production costs between the five-year base period and the current review period (previously, the 90-percent minimum applied only to named commodities; it now applies to both named and designated commodities); and (3) it compares the prescribed price to the "average market return price," which is the published average sales price of the commodity in the review period. The difference between the prescribed price and the average market return price is the amount of the stabilization payment.

Stabilization payments are now calculated quarterly instead of annually. Base and prescribed prices are based on the quarterly periods in the previous five years that correspond to the quarterly review period. For example, if the Board is calculating a stabilization payment for the second quarter of 1985, it uses the average prices of the second quarters of the previous five years to calculate the base and prescribed prices.

Despite there no longer being different methodologies for calculating the rates of support for named and designated commodities, we preliminarily determine that the ASA program continues to be countervailable because it is provided to specific industries. Several major agricultural commodities, such as most wheat, dairy products, and poultry, are still ineligible for payments. Furthermore, the distinction between named and designated products still exists, and hogs are guaranteed eligibility because they are on the named product list.

In accordance with a Ministry of Justice opinion, no ASA stabilization payments are made from September 1984 until Bill C–25 was enacted (June 27, 1985). During the time that no payments were made from ASA, the provinces made payments under their own programs. In November 1985, the Board announced it would make payments retroactively for the first two quarters of fiscal year 1985–86 (April 1, 1985 to March 31, 1986). To avoid double payment, the Board reimbursed provincial governments for stabilization payments already made to producers by the provincial governments. The Board also made payments directly to producers in cases where producers' sales exceeded the maximum number of swine allowed under provincial stabilization programs or where producers were not members of a provincial marketing board.

In fiscal year 1985–86, because the average market price of hogs fell short of the prescribed price in the first two quarters, the Board made delayed payments of Can $1.58 per hunderdweight ("cwt") for the first quarter and Can $3.54 per cwt for the second quarter. No payments on hogs were made for the last two quarters of fiscal year 1985–86 because the average market price of hogs did not fall below the prescribed price during those periods. As before, the payments were made only on hogs indexing 80 or above. By definition, this exludes sows and boars, which are not indexed. Thus, no benefit accrued to sows and boars from this program during the review period.

According to Statistics Canada, 26 percent of total Canadian production of live swine was exported (to all markets) during the period of review. The Board reduced all payments on hogs (both to producers and provincial governments) during the period of review by 26 percent. Payments on other commodities were not reduced. The Canadian government argues that this 26-percent reduction eliminates any potential countervailable benefit from this program on exported swine.

We have considered the Canadian Government's arguments and preliminarily determine that this program continues to confer a benefits on swine exported to the United States. All swine marketed in Canada were eligible to receive ASA payments, regardless of whether the swine were exported or sold in the domestic market. That the payment rate was lowered by 26 percent to account for total exports does not change that fact that each hog marketed in Canada was eligible to receive a payment, albiet at a lower rate.

The federal reduction only affects Board payments made directly to producers. We have estimated that only 16 percent of Board payments was made directly to producers during the period of review. The rest was paid to provincial governments. During the period of review, the provinces continued to calculate their stabilization payments on 100 percent of sales—with no reduction for exports.

Furthermore, it is impossible to tie the federal stabilization payments to specific export or demestic sales by most swine producers. Producers who sell through marketing boards are unaware of the ultimate destination of their merchandise. According to Statistics Canada, approximately 63 percent of all hogs was sold through marketing boards during the period of review. Therefore, most stabilization payments for hogs cannot be tied to specific sales.

Finally, even for the remaining 37 percent that was sold directly by the producers during the period review, in which case the producer was aware of the ultimate destination of his hogs, the individual producer has no control over the rate of the stabilization payment made directly to him by the Board. The producer did not receive a higher payment rate from the Board if he sold more in the domestic market. From the individual producer's point of view, he simply received a lower stabilization payment on his total sales.

For these reasons, despite the 26-percent reduction, we consider the ASA payments to be a domestic subsidy benefiting all sales, not just domestic sales.

To calculate the benefit, we divided the total ASA payments made directly to individual producers in each province by the total live weight of swine (minus sows and boars) produced in that province during the period of review. The ASA payments made to the provincial governments are part of the funding for the provincial stabilization programs. ASA payments are made on a per cwt basis. We used 220 pounds as the average weight of slaughter hogs (excluding sows and boars) in Canada. We confirmed this figure with both Agriculture Canada and the United States Department of Agriculture. We weight-averaged the resulting benefits by each province's proportion of total Canadian exports of this merchandise (minus sows and boars) to the United States during the review period. On this basis, we preliminarily determine the benefit to be zero for sows and boards and Can$0.00075/lb. for all other swine during the period of review.

(b) National Tripartite Red Meat Stabilization Program Bill C–25 amended the ASA to authorize the Minister of Agriculture, with the approval of the Governor in Council (Order-in-Council PC 1985–3343), to enter into agreements with the provinces and/or producers to provide price stabilization schemes for any natural or processed product of agriculture. Previously the ASA had been purely a federal program. The Minister may enter into these "Tripartite Agreements" only after he determines that they will not give a financial advantage to some producers in the production or marketing of the product not enjoyed by other producers of the same product in Canada and that the agreements will not provide an incentive to over-produce.

All the provinces signed agreements on swine. The agreements were implemented on January 1, 1986, except for Manitoba's agreement, which was implemented on July 1, 1986. Under the terms of the Tripartite Agreements on Hogs, the provinces may not offer separate stabilization plans or other *ad hoc* assistance for hogs, nor may the federal government offer compensation to swine producers in a province not a party to an agreement. The Tripartite Scheme provides for a five-year phase-in period to adjust for differences between the Tripartite Scheme and the provincial programs. Existing provincial stabilization plans are to be completely phased out by 1990. During the period of review, all of the provincial stabilization programs remained in effect, and they all conferred benefits.

"Hogs" under the Tripartite Agreements must index 80 or above (thus, sows and boars are excluded by definition). The agreements specify that: all Canadian producers of hogs will receive the same level of support per unit or production; the schemes will be funded equally by the Government of Canada, the provinces and the hog producers; and participation will be voluntary. Payments will cover only the proportion of production used for domestic consumption, and the agreements must specify the method of determining that proportion.

During the period of review, no payments for hogs were made under the Tripartite Agreements. On January 15, 1988, the Canadian Government informed the Department that no payments have been made under the National Tripartite Stabilization Program for Hogs through December 31, 1987. Since all the provinces have signed Tripartite Agreements which have replaced the ASA stabilization program and the provincial stabilization programs, the Canadian government requests that the Department consider the lack of payment in 1987 in setting the cash deposit rates for the Tripartite programs, the ASA hog stabilization program, and the provincial stabilization programs.

We have considered the Canadian government's request. In setting cash deposit rates of estimated countervailing duties, we attempt to establish a rate which most accurately reflects the level of subsidization for entries subject to the estimated rate. Thus, it is our practice to take into account program-wide changes which occur prior to our preliminary notice.

In this case, a program-wide change has occurred. Nevertheless, we have no indication of the benefits that will result from this change because payments will fluctuate depending on swine prices and costs of production. The fact that no payments were made under the ASA or Tripartite Agreements through December 31, 1987, does not mean that payments will not be made on future shipments. Lacking specific data on how the new program will raise or lower the level of benefits now conferred under the ASA and provincial programs, we have no basis for establishing a deposit rate other than that derived from the programs which are being replaced by the Tripartite Agreements. Therefore, we preliminarily determine that the cash deposit rates for the ASA hog stabilization program and the provincial hog stabilization programs are the review period assessment rates determined for those programs.

(2) Record of Performance Program

The Canadian Swine Record of Performance Program (ROP) is a joint federal and provincial herd testing program for the purpose of improving breeding stock and developing high quality pork at minimal production costs. Purebred sows and boars are tested for backfat, growth rate, feed conversion and breeding performance. The program identifies and ranks genetically superior animals whose progeny cold potentially command increased market prices. Similar performance testing programs exist for all domesticated animals and any animals used in products sold for consumption, including beef and dairy cattle, sheep, poultry, and honey bees.

In our final determination (50 FR 25097), we found this program countervailable because it was limited to a specific group of enterprises or industries. In this review, we have obtained additional information regarding the testing conditions, the applicability of the research, and the availability of the research results.

Agriculture Canada publishes is list of ROP programs in progress, as well as detailed testing requirements regarding housing, hygiene, management, and herd health control. It also publishes detailed specifications for feed ration ingredients and carcass adjustments for weight and sex. Therefore, the test conditions and specifications can be duplicated by anyone.

The results of the tests are publicly available. The provincial governments publish the test results quarterly for producers and annually for the general public. In addition, the provincial governments send biweekly updates to those on their mailing lists. Any person, of Canadian or foreign citizenship, may be put on the mailing lists.

Although the Canadian federal and provincial governments bear most of the cost of this program, producers also contribute to the funding of the research projects. The "cost recovery fees" collected from producers cover the cost of testing, the cost of feed used during testing, and the cost of selling boars after the testing is completed. The cost recovery fee ranged from Can $10 to $50 per head during the period of review.

The International Trade Commission, in its "Conditions of Competition Between the U.S. and Canadian Live Swine and Pork Industries; Report to the United States Senate Committee on Finance on Investigation No. 332-186" (November 1984), page xiv, stated:

> The relatively free flow of information between the United States and Canadian farmers and researchers and the free flow of swine production supplies and equipment tend to result in rapid dispersal of technological innovations.

Further, on page 59:

> Because of the free flow of information between the United States and Canada, technological innovations in the live swine and meat industries in one country are usually readily available in the other country. Information is exchanged informally between U.S. and Canadian farmers through trade publications, scholarly publications and scientific research reports, and conferences . . . Also, animals for breeding purposes are exchanged between the United States and Canada, making available a common genetic pool.

Conditions for growing hogs are similar in the United States and Canada. The genetically superior sows and boars resulting from the ROP program are used in both countries, as well as in other countries. Therefore, the ROP research has broad applicability in the hog industry both inside and outside Canada.

For these reasons, we preliminarily find that this program provides no special benefit to the Canadian swine industry because the results of the research are publicly available to anyone interested, including hog producers in the United States, and because the research results have broad applicability to hog producers the world over, including those in the United States. We therefore preliminarily determine that this program is not countervailable.

(3) Canada-Ontario Stabilization Plan for Hog Producers 1985

The Canada-Ontario Stabilization Plan for Hog Producers, established under section 5 of the Ministry of Agriculture and Food Act, was an interim program set up to provide price stabilization assistance to hog producers during the period April 1, 1985 to September 30, 1985, pending the implementation of the National Tripartite Scheme. This was the only interim stabilization program in effect during the period of review. Because this program provided payments that were limited to a specific industry, we preliminarily determine that it is countervailable.

Funding for the program came from the federal Agricultural Stabilization Board, the Ontario government, and producer premiums of Can$2.80 per head. Payments, which were calculated according to ASA methodology, were made in the two quarters covered by this program. However, unlike the federal ASA payments, no reduction was made to account for exports. Payments were made on hogs indexing 80 or higher to farrow-to-finish producers and finisher producers and on weaner pigs to sow weaner producers. No payments were made on sows and boars.

To calculate the benefit from this program, we divided the gross payments, net of producer contributions, by the total live weight of swine (minus sows and boars) produced in Ontario during the period of review. We then weight-averaged Ontario's benefit by its share of total Canadian exports of this merchandise (minus sows and boars) to the United States. On this basis, we preliminarily determine the benefit to be zero for sows and boars and Can$0.0124/lb. for all other swine during the period of review.

(4) Alberta Red Meat Interim Insurance Program

The Alberta Red Meat Interim Insurance Program operated in a manner similar to the Canada-Ontario Stabilization Plan for Hogs, except that payments were calculated as specified in the proposed National Tripartite Scheme. Payments were made on cattle and on hogs indexing 80 or above (which do not include sows and boars). Cattle and hogs were the only commodities covered by an interim stabilization program in Alberta during the period of review. Because this program provided payments that were limited to specific industries, we preliminarily determine that it is countervailable.

To calculate the benefit from this program, we divided the gross payments, net of producer contributions, by the total live weight of swine (minus sows and boars) produced in Alberta during the period of review. We then weight-averaged Alberta's benefit by its share of total Canadian exports of this merchandise (minus sows and boars) to the United States. On this basis, we preliminarily determine the benefit to be zero for sows and boars and Can$0.0032/lb. for all other swine during the period of review.

(5) Saskatchewan Hog Assured Returns Program (SHARP)

SHARP was established in 1976 pursuant to the Saskatchewan Agricultural Returns Stabilization Act. It provides stabilization payments to hog roducers in Saskatchewan at times vhen market prices fall below certain production costs. The program, which is scheduled to be discontinued by 1991, is administered by the Saskatchewan Pork Producers' Marketing Board on behalf of the provincial Department of Agriculture. Participation is voluntary and is open to all hog producers in the province. Coverage is limited to 1,500 hogs per producer each calendar quarter. Under the Saskatchewan Agricultural Returns Act, the provincial government may establish a stabilization plan for any agricultural commodity. However, in practice, only hogs and beef have such plans. Because this program provides payments to specific industries, we preliminarily determine that it is countervailable.

The program is funded by levies on the sale of hogs from participating producers and by matching amounts from the provincial government. The levies are charged regardless of whether the fund is in a surplus or deficit position. Producer levies range from 1.5 to 4.5 percent of market returns on the sale of hogs covered by the program. Whenever the balance in the SHARP account is insufficient to make payments to participants, the provincial government lends the needed funds to the program. The principal and interest on these loans are repaid by the Board using the producer and provincial contributions.

The stabilization price under this program is the total of cash production costs plus 75 percent of noncash costs. This price is determined each calendar quarter. Stabilization payments are made at the end of each quarter to each participating producer whose average price for hogs marketed in that quarter is less than the stabilization price. During the period of review, payments were made in all four quarters.

In the final determination (50 FR 25105), we considered the benefit from this program to be the provincial government's contribution to the fund in fiscal year 1984. We treated the provincial government's contribution as a grant. We have reconsidered our calculation methodology. The program is funded by equal contributions from the producers and the provincial government. In theory, producer contributions over time should equal half of the total payments received by producers from the fund. When market prices are significantly lower than stabilization prices for several years in a row, as was the case during the years up to and including the review period, the fund must make payments that are much greater than the accumulated contributions of the producers and the provincial government. In such cases, the provincial government makes up the deficit in the form of a loan. Because all producer contributions are matched by the provincial government, the actual loan liability of the producers is equal to half of the net deficit of the fund. However, there is no benefit from this loan liability because the fund pays interest, at market rates, on its net deficit. Therefore, there is only a grant benefit to the producers, which is equal to half of the total stabilization payments made during the review period.

To calculate the benefit, we divided half of the total stabilization payments received by the total live weight of swine (minus sows and boars) produced in Saskatchewan during the period of review. We then weight-averaged Saskatchewan's share of total Canadian exports of this merchandise (minus sows and boars) to the United States. On this basis, we preliminarily determine the benefit to be zero for sows and boars and Can$0.0024/lb. for all other swine during the period of review.

(6) British Columbia Farm Income Insurance Plan (FIP)

The FIP was established in 1979 in accordance with the Farm Income Insurance Act of 1973 ("the Farm Act") in order to assure income for farmers when commodity market prices fluctuate below basic costs of production. The criteria for eligibility in the FIP programs, which are described in Schedule A of the Farm Act, are the same for all farmers who produce certain commodities. Schedule B of the Farm Act contains the guidelines for the individual commodities receiving benefits. During the period of review, stabilization plans were in effect for beef, blueberries, greenhouse tomatoes and cucumbers, potatoes, processing vegetables, raspberries, sheep, strawberries, swine and tree fruits.

Schedule B4 contains the guidelines for swine producers. The program is administered by the provincial Ministry of Agriculture and Food and the British Columbia Federation of Agriculture. In addition, the British Columbia Pork Producers' Association has a role in the Swine Producers' Farm Income Plan (the title of Schedule B4) in that it verifies claims, collects producer premiums, and consults with the government on matters such as premium levels and the cost of production formula. The program is funded by premiums that are paid in equal proportions by producers and by the provincial government. Producers pay premiums in all quarters regardless of market results.

Participating producers receive FIP payments in calendar quarters during which costs of production exceed market returns. The basic costs of production and market returns are calculated quarterly according to a cost of production model described in the Act. The same per unit cost of production model is used for all products receiving benefits. FIP payments are calculated quarterly based on the difference between costs of production and market returns. The Farm Act requires that ASA payments to individual producers be added to the market return price. Payments were made to hog producers in all quarters of the review period.

Because several major agricultural commodities, such as wheat, dairy products, and poultry, are excluded from the FIP, we preliminarily determine that this program provided payments that were limited to specific industries and is therefore countervailable. To calculate the benefit, we followed the same methodology as described for the Saskatchewan SHARP program (see section 5). On this basis, we preliminarily determine the benefit to be zero for sows and boars and Can$0.0003/lb. for all other swine during the period of review.

(7) Manitoba Hog Income Stabilization Plan (HISP)

The HISP was created in 1983 pursuant to the Farm Income Assurance Plans Act to provide income support payments to hog producers in Manitoba. The program was terminated on June 28, 1986. It was administered by the provincial Ministry of Agriculture and the Manitoba Hog Producers' Marketing Board. It was funded by premiums from participating producers (five-sevenths) and from the Government of Manitoba (two-sevenths). Whenever the balance in the HISP account is insufficient to make payments to participants, the provincial government lends the needed funds to the program. The principal and interest on these loans are repaid by the Board using the producer and provincial contributions.

Participation in the program was voluntary, and coverage was limited to a maximum of 1,250 hogs per quarter. Only indexed hogs were eligible for beneifts. Sows and boars were not eligible for benefits. Participating producers received payments at the end of each quarter in which the market price for hogs fell below an established price support level. The price support level was 87 percent of the cost of production model, which was revised by the Ministry of Agriculture each quarter.

Although the enabling legislation for this program permitted the Minister to establish income assurance plans for many natural products, there were only two commodites for which plans were in operation during the period of review. Because payments were limited to these two products, we preliminarily determine that this program was provided to a specific group of industries and is therefore countervailable.

To calculate the benefit, we followed the same methodology as described for the Saskatchewan SHARP program (see section 5). On this basis, we preliminarily determine the benefit to be zero for sows and boars and Can$0.0003/lb. for all other swine during the period of review.

(8) New Brunswick Hog Price Stabilization Plan (NBHPSP)

The NBHPSP was established in 1974 to assure hog producers greater income stability during periods of both high and low market prices. The plan is administered jointly by the New Brunswick Department of Agriculture Hog Stabilization Board and the New Brunswick Hog Marketing Board. Participation in the plan is voluntary. Producers who sell through the Marketing Board are eligible to receive payments on up to 7,500 hogs per year. Hogs indexing 100 or above (which do not include sows and boars) are the only agricultural commodity that received stabilization payments in New Brunswick during the period of review. Because this program provided payments that were limited to a specific industry, we preliminarily determine that it is contervailable.

The Board establishes a base price that is based on production costs. When the market price exceeds the base price by Can$5.00, farmers pay into the stabilization fund. Ninety-five percent of this amount is considered to be the farmer's equity in the program. When the average weekly market price falls below the base price, farmers receive payments to make up the difference between the two prices. Half of the payment is provided by the Government of New Brunswick as an outright grant to the farmer. The other half is drawn from the farmer's equity in the fund. When the farmer has exhausted his equity in the fund, the province assumes the producer's portion of the payment by providing an interest-free loan. This loan is only paid back when the fund is in a surplus position. In fiscal year 1985-86 the base price exceeded the market price throughout the year, and producers received both loan and grant payments from the program in all four quarters.

All outstanding interest-free loans as of April 1, 1985 were subsumed under the New Brunswick Swine Industry Financial Restructuring Program (see section 16). The benefit from the interest-free loans loans provided in fiscal year 1985–86 will accure in fiscal year 1986–87. Therefore, only the grant portion of this program provided a benefit during the review period.

The calculate the benefit, we allocated half the total stabilization payments received during the review period over the total live weight of swine produced in New Brunswick during the review period. We then weight-averaged the result by New Brunswick's share of total Canadian exports of this merchandise (minus sows and boars) to the United States. On this basis, we preliminarily determine the benefit to be zero for sows and boars and Can$0.000002/lb. for all other swine during the period of review.

(9) Newfoundland Hog Price Support Program

In April 1985, the Executive Council of Newfoundland authorized the Newfoundland Farm Products Corporation, which acts on behalf of the provincial government, to pay 85 cents per pound for all hogs indexing 80 or above (which do not include sows and boars) that were purchased by the Corporation. This price was paid regardless of the prevailing market price. The price was based on monthly determinations of input costs of production. During the period of review, costs were approximately 91 cents per pound, and the market price averaged 70 cents per pound. Producers do not contribute to this program. Hogs are the only agricultural commodity that received stabilization payments in Newfoundland during the period of review. Because the program provided payments that were limited to a specific industry, we preliminarly determine that it is countervailable.

Although Newfoundland did not export hogs to the United States directly during the review period, we verified that Newfoundland exported hogs to Ontario that were later exported to the United States during the review period. These Newfoundland hogs did not qualify for stabilization payments from the Ontario provincial government but did form the basis for stabilization payments from the Newfoundland provincial government. Therefore, to calculate the benefits, we divided the gross payments on swine by the total live weight of swine (minus sows and boars) produced in Newfoundland during the period of review. We than weight-averaged the result by Newfoundland's share (based on its exports through Ontario) of total Canadian exports of this merchandise (minus sows and boars) to the United States during the period of review. On this basis, we preliminarily determine the benefit from this program to be zero for sows and boars and Can$0.00002/lb. for all other swine.

(10) Nova Scotia Pork Price Stabilization Program (NSPPSP)

Pursuant to the Nova Scotia Natural Products Act, the NSPPSP was administered under the Pork Producers Marketing Plan of August 9, 1983. The program was terminated on September 30, 1987. The purpose of the program was to assure price stability for hogs by compensating farmers for fluctuations in hog prices and by assuring that producers consistently recover direct operating costs. Participation was open to all hog producers who sold through the Nova Scotia Pork Price Stabilization Board. Maximum eligibility was established annually according to the producers' current production levels. Indexed hogs (not sows and boars) were the only agricultural commodity that received stabilization payments during the period of review. Because the stabilization payments were limited to a specific industry, we preliminarily find them to be countervailable.

The NSPPSP was funded by producer and provincial government contributions. Each quarter, the Board set and reviewed the base price to reflect current, direct, out-of-pocket operating costs. During periods of high prices, producers built equity in the fund with their contributions. When the market price fell below the stabilization price, the producers received a deficiency payment, which equaled the difference between the two prices. Half of the payment was contributed by the provincial government. The other half was drawn from the producer's equity in the fund. When the producer's equity was exhausted, the provincial government assumed the producer's portion of the stabilization payment in the form of an interest-free loan. Because market prices did not exceed the base prices during the period of review, payments were made in all four quarters of the review period. During the period of review, the producers did not contribute to the fund. In addition, because of an extended period of low market returns with no support payments, a one-time supplementary payment of Can$2 per cwt was given to producers during the period of review.

On September 20, 1985, the Government of Nova Scotia amended this program by eliminating the interest-free loan element. The total amount of the stabilization payment is now a grant only. However, producers continue to be liable for interest-free loans provided before fiscal year 1985-86. Therefore, the benefit during the review period consists of the total stabilization payments received in the review period, which are grants, plus the interest on the outstanding loan balance as of the beginning of fiscal year 1985-86. We do not know the outstanding loan balance as of the beginning of fiscal year 1985-86. As the best information available, we have assumed that the outstanding loan balance is equal to half the amount of the total stabilization payments made during the review period.

To calculate the benefit, we considered the total amount of the stabilization payments received in the review period as a grant. We treated the outstanding loan balance as a one-year interest-free loan. We took the difference between the zero interest rate charged on these loans and the national average short-term commercial rate for comparable agricultural loans and multiplied this interest differential by the outstanding loan balance. We allocated the grant and loan benefits over the toal live weight of swine produced in Nova Scotia during the review period. We then weight-averaged the result by Nova Scotia's share of total Canadian exports of this merchandise (minus sows and boars) to the United States. On this basis, we preliminarily determine the benefit to be zero for sows and boars and Can$0.000002/lb. for all other swine during the period of review.

(11) Prince Edward Island (PEI) Price Stabilization Program

In accordance with the PEI Natural Products Marketing Act, the PEI Hog Commodity Marketing Board established the PEI Price Stabilization Program in 1974. The purpose of the program is to provide income stability to hog producers. The Stabilization Board and the provincial lending authorities meet quarterly to determine the level of support prices. Support levels are set at 95 percent of the cost of production. If the weekly market price of hogs exceeds the support price by Can$3.00, producers contribute to the fund. If the weekly market price falls below the support price plus Can$3.00, the producers do not contribute to the fund. Whenever the weekly price of hogs is below the support price, the PEI Hog Commodity Board makes stabilization payments from the fund of one-half the difference between the two prices. Half the payment is contributed by the provincial government, and the other half is drawn from the producers' equity in the fund. In the event that producers' equity in the fund is exhausted, the provincial government assumes the producers' portion of the stabilization payment in the form of an interest-free loan, which is repaid when the fund is in a surplus position. During the period of review, the producers did not contribute to the fund.

Payments are made only on hogs indexing between 67 and 114 (not sows and boars). Participation in the program is voluntary, and there are no minimum production requirements. However, producers are only eligible to receive stabilization payments on the number of hogs equal to the average number of hogs marketed in the previous quarter, up to a ceiling of 4,300 hogs per year.

The Natural Products Marketing Act established marketing boards for hogs, dairy products, tobacco, pedigreed seed, pulp trees, meat, eggs, and cole crops. However, hogs were the only agricultural commodity that received stabilization payments during the review period. Because this program provided payments that were limited to a specific industry, we preliminarily find it to be countervailable.

To calculate the benefit, we used the same methodology as described under the Nova Scotia stabilization program (see section 10). On this basis, we preliminarily determine the benefit to be zero for sows and boars and Can$0.00003/lb. for all other swine during the period of review.

(12) Quebec Farm Income Stabilization Insurance Programs (FISI)

In accordance with the "Loi sur l'assurance-stabilisation des revenus agricoles" (the FISI), the Government of Quebec established stabilization schemes for producers of various commodities, including feeder hogs and weaner pigs. The schemes are administered by the Regie des Assurances Agricoles du Quebec (the Regie), a crown corporation. The purpose of the schemes is to guarantee a positive net annual income to participants whose income is lower than the stabilized net annual income. The stabilized net annual income is calculated according to a cost of production model that includes an adjustment for the difference between the average wage of farm workers and the average wage of all other workers in Quebec. When the annual average income is lower than the stabilized net annual income, the Regie makes a payment to the participant at the end of the year.

The schemes are funded two-thirds by the provincial government and one-third by producer assessments. Participation in a stabilization scheme is voluntary. However, once a producer enrolls in a program, he must make a five-year commitment. The maximum number of feeder hogs eligible to be insured is 5,000, and a maximum of 400 sows may be insured. Whenever the balance in the FISI account is insufficient to make payments to participants, the provincial government lends the needed funds to the program. The principal and interest on these loans are repaid by the Regia using the producer and provincial contributions.

The Government of Quebec contends that, because this program covers 11 commodities that together comprise 71 percent of commercial farm production in the province of Quebec, the Department should not consider the program to be targeted to specific industries. We have considered the Government of Quebec's arguments. In calculating total commercial farm production, the Government of Quebec did not include milk products, poultry, and eggs, which made up almost half of Quebec's total agricultural production in 1985. By including these products, we find that the proportion of total farm production in Quebec covered by the FISI in 1985 was much less than that claimed by the Government of Quebec. Therefore, we are not persuaded by the Government of Quebec's arguments and preliminarily determine that this program continues to be countervailable.

To calculate the benefit, we followed the same methodology as described under the Saskatchewan SHARP program (see section 5).

On this basis, we preliminarily determine the benefit to be Can$0.0007/lb. for both sows and boars and all other swine.

(13) New Brunswick Swine Assistance Program

In 1981-82, the Farm Adjustment Board, which was created by the Farm Adjustment Act, provided interest subsidies on medium-term loans to hog producers in order to alleviate high interest charges on the producers' short-term debt for operating credit. The program was available only to hog producers who entered production or underwent expansion since 1979. The loans bore a five-year term and an effective interest rate of 10 percent. Because these loans were provided to a specific industry at noncommecial rates, we preliminarily determine that they are countervailable.

To calculate the benefit from this program, we divided the aggregate interest subsidy by the total live weight of swine produced in New Brunswick. We then weight-averaged the result by New Brunswick's share of total Canadian exports of swine to the United States in the period of review. On this basis, we preliminarily determine the benefit from this program to be Can$0.00000003/lb. for both sows and boars and all other swine.

(14) New Brunswick Livestock Incentives Program

This program, which operates under the New Brunswick Livestock Incentives Act, OC 71-544, provides free loan guarantees to producers for purchasing breeder and feeder animals. In addition, a 20-percent refund of the principal is granted to farmers upon repayment of the breeder loans. We preliminarily determine that this program is countervailable because it is provided to a specific industry on terms inconsistent with commercial considerations. This program affects only sows and boars, which are old breeders.

To calculate the benefit, we multiplied the total amount of loans given to hog producers during the period of review by 0.75 percent, which was the average commercial cost of loan guarantees in New Brunswick during the period of the investigation (we used this as the best information available because the Government of New Brunswick did not report the average cost of commercial loan guarantees for the period of review). We allocated the result, plus the total amount of refunds, over the total live weight of sows and boars produced in New Brunswick during the period of review and then weight-averaged that amount by New Brunswick's share of total Canadian exports of live swine (the only information available) to the United States during the period of review. On this basis, we preliminarily determine the benefit from this program to be Can$0.00000535/lb. for sows and boars, and zero for all other swine.

(15) New Brunswick Hog Marketing Program

Under this program, the Livestock Branch of the New Brunswick Department of Agriculture paid the New Brunswick Hog Marketing Board 64 cents for each hog sold during the review period in order to equalize the cost of transporting hogs to slaughter facilities in all areas of the province.

Because this program is provided to a specific industry and constitutes government assumption of transportation costs, we preliminarily determine that it is countervailable. To calculate the benefit, we divided the total amount granted under this program by the total live weight of hogs produced in New Brunswick during the the period of review. We then weight-averaged the result by New Brunswick's share of total Canadian exports of swine to the United States in the period of review. On this basis, we preliminarily determine the benefit from this program to be Can$0.00000019/lb. for both sows and boars and all other swine.

(16) New Brunswick Swine Industry Financial Restructuring Program

This program was created by the Farm Adjustment Act (OC 85-98) and became effective April 1, 1985. During the period of review, the Government of New Brunswick granted hog producers indebted to the Board a rebate of the interest on that portion of their total debt (the "residual debt") that, on March 31, 1984, exceeded the "standard debt load." The standard debt load is defined in the progarm regulations as the amount of debt which a swine producing unit can, in the opinion of the Board, reasonably be expected to service. The residual debt does not begin to accrue interest again until the debt load is no longer "excessive."

We preliminarily determine that this program is countervailable because it provides noncommercial loan terms to a specific industry. We consider both the interest rebate and the interest holiday to confer benefits. However, because the interest holiday did not begin until April 1, 1985, the benefit from this portion of the program does not occur until April 1, 1986, which is outside this revie period.

To calculate the benefit, we divided the amount of the rebate by the total live weight of hogs produced in New Brunswick during the period of review. We then weight-averaged the result by New Brunswick's share of total Canadian exports of swine to the United States in the period of review. On this basis, we preliminarily determine the benefit to be Can$0.00000154/lb. for both sows and boars and all other swine.

(17) Nova Scotia (NS) Swine Herd Health Policy

The Nova Scotia Department of Agriculture and Marketing administers a herd health program whereby it reimburses veterinarians for housecalls made to breeders of commercial and purebred livestock. Because this program provides payments that are limited to specific industries, we preliminarily determine it is countervailable. This program affects only sows and boars, which are old breeders. To calculate the benefit, we divided the total reimbursements by the total live weight of sows and boars produced in Nova Scotia during the period of review. We then weight-averaged the result by Nova Scotia's share of total Canadian exports of live swine (the only information available) to the United States during the period of review. On this basis, we preliminarily determine the benefit to be Can$0.00000048/lb. for sows and boars, and zero for all other swine.

(18) Nova Scotia (NS) Transportation Assistance

The NS Department of Agriculture and Marketing provides grants to the NS Hog Marketing Board, which in turn distributes the funds to producers, in order to equalize the cost of transporting hogs to slaughter facilities. The funds are available only to farmers who produce and slaughter their hogs in Nova Scotia. Because this program does not affect live swine exported to the United States, we preliminarily determine that it is not countervailable.

(19) Ontario Farm Tax Reduction Program

This program provides eligible farmers with a rebate of 60 percent of municipal property taxes levied on farm properties the products of which have a gross value of Can$5,000 in eastern or northern Ontario, and Can$8,000 elsewhere in Ontario. There is no restriction on the types of farm products that are eligible, nor is it necessary that the products actually be sold. Any resident of Ontario may receive a rebate if he owns and pays taxes on eligible properties. Because the eligibility criteria vary depending on the region of Ontario in which the farm is located, we preliminarily determine that this program is countervailable. Since all farmers in Ontario whose gross output is at least Can$8,000 are eligible to receive payments under this program, this program is countervailable only to the extent that farmers in eastern and northern Ontario whose gross output is between Can$5,000 and Can$8,000 receive benefits.

In our final determination (50 FR 25105), we were not able to determine the portion of hog farmers in eastern and northern Ontario in the $5,000 to $8,000 gross output range. Therefore, we calculated the benefit by dividing the portion of the total payout under this program that represented the proportion of swine produced in all of Ontario to total agricultural production in all of Ontario. In this review, we have collected more accurate information. From the Canadian census, we found that 16 percent of all Ontario farmers have sales valued between $5,000 and $9,999. Although the subsidy is paid to farmers in the $5,000 to $8,000 range, the census data is the only available breakdown of production according to output level. We have therefore used it as the best information otherwise available. We multiplied the 16 percent by the amount paid under this program to swine farmers in eastern and northern Ontario during the period of review. We allocated this amount over the total live weight of swine produced in Ontario during the period of review. We then weight-averaged the result by Ontario's share of total Canadian exports of this merchandise to the United States during the period of review. On this basis, we preliminarily determine the benefit from this program to be Can$0.00003182/lb. for both sows and boars and all other swine.

(20) Ontario (Northern) Livestock Programs

The Northern Livestock Improvement Program reimburses farmers for up to 20 percent of the purchase cost of breeding stock, including dairy cows, heifers, beef bulls, rams, ewes, and boars. A maximum of Can$1,500 may be reimbursed to an individual during a three-year period. Swine producers are reimbursed for a maximum of Can$100 per boar. The Northern Livestock Transportation Assistance Program reimburses the producers living in northern Ontario 50 percent of the costs of transporting high quality breeding stock from southern and northern Ontario and 33.30 percent from Quebec and western Canada. These programs affect only sows and boars, which are old breeders.

Because these programs provide payments that are limited to livestock producers in northern Ontario, we preliminarily determine that they are countervailable. To calculate the benefit, we divided the total payments to hog producers under these programs by the total live weight of sows and boars produced in Ontario. We then weight-averaged the result by Ontario's share of Canadian exports of live swine (the only information available) to the United States during the period of review. On this basis, we preliminarily determine the benefit to be Can$0.00002606/lb. for sows and boars, and zero for all other swine.

(21) Prince Edward Island (PEI) Hog Marketing and Transportation Subsidies

The PEI Department of Agriculture and Marketing provides grants to one hog packer in order to defray the cost of processing and transportation. We preliminarily determine that this portion of the program is not countervailable because it is given only to a packer of pork products, and the countervailing duty order covers only live swine.

The Government of PEI also provides transportation grants to hog producers in the western part of the province in order to equalize the cost of producing hogs in different parts of the province. Because this portion of the program provides payments that are limited to a specific industry and a specific region, and because this portion benefits live swine, we preliminarily determine that it is countervailable.

In this review, the PEI Government provided no information on this program. Therefore, as the best information available, we used the amended rate determined for the period of the original investigation. On this basis, we preliminarily determine the benefit from this program to be Can$0.00005/lb. during the period of review for both sows and boars and all other swine.

(22) Prince Edward Island (PEI) Swine Development Program

The Department of Agriculture and Marketing pays a bonus to breeders who purchase boars or purebred and crossbred gilts. The boars and gilts must meet certain Record of Performance standards and are sold as breeding stock. Because this program provides payments that are limited to a specific industry, we preliminarily determine that it is countervailable. This program affects only sows and boars, which are old breeders.

To calculate the benefit from this program, we divided the total payments by the total live weight of sows and boars produced in PEI during the period of review. We then weight-averaged the result by PEI's share of total Canadian exports of live swine (the only information available) to the United States during the period of review. On this basis, we preliminarily determine the benefit to be Can$0.00004476/lb. during the peiod of review for sows and boars, and zero for all other swine.

(23) Prince Edward Island Interest Payments on Assembly Yard Loan

The PEI government assumed the interest on a loan granted to hog producers for the purpose of constructing a hog assembly yard. Because this interest assumption is limited to a specific enterprise, we preliminarily determine that it is countervailable.

We treated the interest payment due during the review period as a grant and expensed it in the review period. We divided the grant by the total live weight of hogs produced in PEI during the period of review. We then weight-averaged the result by PEI's share of total Canadian exports of this merchandise to the United States in the period of review. On this basis, we preliminarily determine the benefit from this program to be Can$0.00000002/lb. during the period of review for both sows and boars and all other swine.

(24) Quebec Special Credits for Hog Producers

Under the terms of the "Loi favorisant un credit special pour les producteurs agricoles au cours de periodes critiques," all agricultural producers are eligible for reimbursement of interest on low-interest loans made by chartered banks or savings and loan associations during critical periods. Critical periods are defined as natural disasters, an unexpected and uncontrollable drop in prices, or a lower than designated level of production in a designated region for reasons beyond the control of producers.

In our final determination, we determined that this program was limited to specific industries and was countervailable because it requires a special government regulation in order for a particular commodity group to obtain special assistance. We have reconsidered this issue. Although a special regulation is required, we verified that this program is available to, and used by, all agricultural industries on the same terms. Therefore, we preliminarily determine that it is not countervailable.

(25) Saskatchewan Financial Assistance for Livestock and Irrigation

Pursuant to the Agricultural Credit Corporation of Saskatchewan Act, the Agricultural Credit Corporation of Saskatchewan (ACS) established the Capital Loan Program, which provides loans, grants and loan guarantees to farmers for purposes related primarily to the acquisition and production of livestock. In our final determination, we found this program countervailable because it was limited to specific enterprises or industries. On December 13, 1985, this act was amended by Bill 117, which eliminated the restrictions to livestock production and livestock products from the definition of farming. Farming now includes livetock raising, bee keeping, fur farming, dairying, tilling the soil or any other activity undertaken to produce agricultural products.

The Bill also eliminated the list of specific purposes for which loans are made. Loans and grants are now made "for prescribed purposes to farmers to assist or enable them to develop or maintain viable farming operations." In order to incorporate the changes made to the Bill, the ACS regulations now include two new programs—the Livestock Cash Advance Program and the Production Loan Program—to the existing Capital Loan Program, the Guaranteed Loan Program, and the Beef Industry Assistance Program. ACS's client base has now been expanded to include almost all Saskatchewan's farmers in a broad array of agricultural operations and in all regions of Saskatchewan. Because this program is now available to, and used by, the entire agricultural sector on equal, objective terms, we preliminarily determine that it is not countervailable.

(26) Saskatchewan Livestock Investment Tax Credit

Saskatchewan's 1984 Livestock Tax Credit Act provides tax credits to individuals, partnerships, co-operatives and corporations who own and feed livestock in Saskatchewan for slaughter. Claimants must be residents of Saskatchewan and pay Saskatchewan income taxes. Eligible claimants receive credits of Can$25 for each bull, steer or heifer, Can$2, for each lamb and Can$3 for each hog. The tax credits may be carried forward for seven years. There is a Can$100 deduction from the credit each year in which the credit is used. The credits must be included as taxable income the year after receipt. The credit is available to hogs indexing 80 or higher. We preliminarily determine that this program is countervailable because it is provided only to specific industries.

The Government of Sasketchewan estimated the aggregate amount of tax credits received by hog producers in fiscal year 1985–86. To calculate the benefit, we divided this amount, minus the Can$100 deduction for each of the estimated number of hog producer claimants, by the total live weight of live swine produced in Saskatchewan. We then weight-averaged the result by Sasketchewan's share of total exports (minus sows and boars) of this merchandise to the United States during the period of review. On this basis, we preliminarily determine the benefit to be zero for sows and boars and Can$0.00008302/lb. for all other swine.

(27) Saskatchewan Livestock Stock Advance Program (SLCAP)

The SLCAP provides livestock producers with interest-free loans to enable the producers to meet immedite cash requirements while retaining their animals for future sale. The first interest payment under this program became due in August 1986. Because there were no interest payments due in fiscal year 1985–86, we preliminarily determine that there was no benefit from this program during the review period.

(28) Ontario Weaner Pig Stabilization Plan

Pursuant to the Farm Income Stabilization Act (FISA), the Government of Ontario operated a weaner pig stabilization program from April 1, 1980 through March 31, 1985. The intent of the program was to provide producers of weaner pigs with support payments in any production peiod in which the average market price for that period fell below a certain support price. The market and support prices were based on data used by the federal government for its ASA slaughter hog program. Participation in the program was voluntary, and funding for the program was provided by the provincial government and the participating producers in the ratio of two to one.

In our final determination (50 FR 25110), we stated that this program had been statutorily terminated on March 31, 1985 and that no payments under this program had been made since 1984. From FISA's annual report for fiscal year 1986, we have learned that payments were made under this program during the review period. Lacking any further information on this program, we preliminarily determine that it is countervailable and that two-thirds of the payment is a grant. We allocated this amount over the total live weight of swine produced in Ontario during the review period and then weight-averaged that result by Ontario's share of total Canadian exports of this mearchandise to the United States during the period of review. On this basis, we preliminarily determine the benefit from this program to be zero for sows and boars and Can$0.000505/lb. for all other swine.

Preliminary Results of Review

As a result of our review, we preliminarily determine the net subsidy to be Can$0.004147/lb. for slaughter sows and boars and Can$0.022/lb. for all other swine for the period April 3, 1985 through March 31, 1986. The rate for sows and boars is equivalent to 0.32 percent *ad valorem*. The Department considers any rate less than 0.50 percent to be *de minimis*.

The Department intends to instruct the Customs Service to liquidate, without regard to countervailing duties, shipments of sows and boars and to assess countervailing duties of Can$0.0022/lb. on shipments of all other live swine entered, or withdrawn from warehouse, for consumption on or after April 3, 1985 and exported on or before March 31, 1986.

As provided by section 751(a)(1) of the Tariff Act, the Department also intends to instruct the Customs Service to waive cash deposits of estimated countervailing duties on shipments of slaughter sows and boars and to collect cash deposits of estimated countervailing duties of Can$0.022/lb. on shipments of all other live swine entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. This deposit requirement will remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request diclosure and/or a hearing within 7 days of the date of publication. Any hearing, if requested, will be held 30 days from the date of publication or the next workday following. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.10.

Date: June 3, 1988.

Joseph A. Spetrini,

Acting Assistant Secretary, Import Administration.

[FR Doc. 88-13397 Filed 6-13-88; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of issuance of an export trade certificate of review, Application #88-00003.

SUMMARY: The Department of Commerce has issued an export trade certificate of review to TradeNet International of Washington, Inc. (TradeNet). This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: John E. Stiner, Director, Office of Export Trading Company Affairs, International

Trade Administration, 202-377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. 97-290) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III are found at 15 CFR Part 325 (50 FR 1804, January 11, 1985).

The office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a certificate in the Federal Register. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the gorund that the determination is erroneous.

Description of Certified Conduct

Export Trade

Products

All products.

Related Services

Consulting, product research and design, marketing by means of specialized promotional mailings in conjunction with trade shows and catalog and video exhibits, international market research and statistics, transportation, trade documentation and freight forwarding, communication and processing of foreign orders to and for exporters and foreign purchasers, insurance, legal assistance, foreign exchange, financing, and taking title to goods.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

TradeNet may:

1. Enter into agreements with individual suppliers, whereby TradeNet agrees to act as the supplier's exclusive Export Intermediary for the export of Products and the provision of Related Services. These agreements may include the following provisions:

a. The supplier may agree not to sell, directly or indirectly, through any other Export Intermediary, to any Export Market and/or

b. TradeNet will have the exclusive right to choose whether to respond to bids, invitations, or requests for bids, or other sales opportunites.

2. Enter into exclusive agreements with other Export Intermediaries. "Exclusive" means:

a. The Export Intermediary agrees not to represent anyone except TradeNet in the sale of Products or the provision of Related Services in any Export Market, and/or

b. The Export Intermediary agrees not to buy Products or obtain Related Services from anyone except TradeNet.

3. Enter into exclusive agreements with foreign customers of the Products and Related Services. "Exclusive" means that the customer agrees not to buy Products or obtain Related Services from anyone except TradeNet.

4. Specify in the agreements described in paragraphs (1), (2), and (3) above:

a. The price at which Products will be sold and Related Services provided, and/or

b. The terms of any export sale, including quantities, territories, and customers.

5. Meet and negotiate with individual suppliers or groups of suppliers concerning the terms of their participation in each bid, invitation or request to bid, or other sales opportunity in any Export Market.

6. In the course of the negotiations described in paragraph (5) above, exchange the following information:

a. Information that is already generally available to the trade or public,

b. Information that is specific to a particular Export Market, including, but not limited to, reports and forecasts of sales, prices, terms, customer needs, selling strategies, and product specifications by geographic area and by individual customers within the Export Market,

c. Information on expenses specific to exporting to a particular Export Market (such as ocean freight, inland freight to the terminal or port, storage, wharfage and handling charges, insurance, agents' commissions, export sales documentation and service, and export sales financing),

d. Information on U.S. and foreign legislation and regulations affecting sales to a particular Export Market, and

e. Information on TradeNet's activities in the Export Markets, including, but not limited to, customers, complaints and quality problems, visits by customers located in the Export Markets, reports by foreign sales representatives, and matters concerning the contracts between TradeNet and its suppliers.

A copy of each certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Date: June 7, 1988.

George Muller,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 88-13320 Filed 6-13-88; 8:45 am]

BILLING CODE 3510-DR-M

National Oceanic and Atmospheric Administration

National Marine Fisheries Service, Marine Fisheries Advisory Committee; Meeting That Is Partially Closed to the Public

AGENCY: National Marine Fisheries Service (NMFS), NOAA.

TIME AND DATE: The meeting will convene at 8:00 a.m., June 28, 1988, and adjourn at approximately 4:00 p.m., June 29, 1988.

PLACE: Radisson Suite Resort, 12 Park Lane, Hilton Head Island, South Carolina.

Status: As required by section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1982), notice is hereby given of a meeting of the Marine Fisheries Advisory Committee (MAFAC). Parts of this meeting will be open to the public. The remainder of the meeting will be closed to the public. MAFAC was established by the Secretary of Commerce on February 17, 1971, to advise the Secretary on all living marine resource matters which are the responsibility of the Department of Commerce. This Committee ensures that the living marine resource policies and programs of this Nation are adequate to meet the needs of commercial and recreational fishermen, environmental, state, consumer, academic, and other national interests.

Matters To Be Considered

Portions Open to the Public: June 28, 1988, 8:00 a.m.-3:00 p.m., impacts of natural events on fishery resources, NOAA climate and global change program, tuna management, marine debris, model seafood surveillance program, and marine fishing license.

June 29, 1988, 8:30 a.m.-12:00 noon., interjurisdictional fisheries management proposed policy, commercial fisheries subcommittee meeting report, marine utilized for operations that do not presently require zone procedures, and the grantee needs more space to accommodate interested zone users.

No manufacturing approvals are being sought in the application. Such approvals would be requested from the Board on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Joseph Lowry (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; David L. Willette, District Director, U.S. Customs Service, South Central Region, 150 North Royal, Suite 3004, P.O. Box 2748, Mobile, Alabama 36652; and Colonel Edward A. Starbird, District Engineer, U.S. Army Engineer District, Nashville, P.O. Box 1070, Nashville, Tennessee 37202-1070.

Comments concerning the proposed expansion are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before February 21, 1989.

A copy of the application is available for public inspection at each of the following locations:

Office of the Port Director, U.S. Customs Service, Huntsville-Madison County Airport, P.O. Box 6085, Huntsville, Alabama 35806.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th and Pennsylvania Avenue NW., Room 2835, Washington, DC 20230.

Dated: December 30, 1988.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 89-375 Filed 1-6-89; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-570-801]

Postponement of Public Hearing: Antidumping Duty Investigation on Certain Headwear From the People's Republic of China

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that the Office of Antidumping Compliance has further postponed the hearing on the antidumping duty investigation on certain headwear from the People's Republic of China.

EFFECTIVE DATE: January 9, 1989.

FOR FURTHER INFORMATION CONTACT: Robin Gray or Anne D'Alauro, Office of Antidumping Compliance, Import Administration, International Trade Administration, United States Department of Commerce, 14th and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-1130/2923.

SUPPLEMENTARY INFORMATION: On November 25, 1988, we published in the Federal Register (53 FR 47741) a notice of postponement of our final antidumping duty determination on certain headwear from the People's Republic of China. The notice also stated that the public hearing was postponed until January 13, 1989.

At the request of the respondents the public hearing on this antidumping duty investigation has been further postponed until January 25, 1989. The hearing will be held at 9:30 a.m. in room 3708, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC 202030. Prehearing briefs are due to the Assistant Secretary by January 17, 1989.

This notice is published pursuant to section 774(b) of the Act.

December 28, 1988.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 89-376 Filed 1-6-89; 8:45 am]

BILLING CODE 3510-DS-M

[C-122-404]

Live Swine From Canada; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On June 14, 1988, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on live swine from Canada. We have now completed that review and determine the net subsidy to be *de minimus* for slaughter sows and boars and Can $0.022/lb. for all other live swine during the period April 3, 1985 through March 31, 1986.

EFFECTIVE DATE: January 9, 1989.

FOR FURTHER INFORMATION CONTACT: Sylvia Chadwick or Bernard Carreau, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On June 14, 1988, the Department of Commerce ("the Department") published in the Federal Register (53 FR 22189) the preliminary results of its administrative review of the countervailing duty order on live swine from Canada (50 FR 32880, August 15, 1985). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by the review are shipments of Canadian live swine. Such merchandise is currently classifiable under Harmonized Tariff Schedule items 0103.91.00 and 0103.92.00.

The review covers the period April 3, 1985 through March 31, 1986, and 28 programs:

1. Agricultural Stabilization Act
2. Record of Performance Program
3. Canada-Ontario Stabilization Plan for Hog Producers 1985
4. Alberta Red Meat Interim Insurance
5. Saskatchewan Hog Assured Returns
6. British Columbia Farm Income Insurance Plan
7. Manitoba Hog Income Stabilization Plan
8. New Brunswick Hog Price Stabilization Plan
9. Newfoundland Hog Price Support Program
10. Nova Scotia Pork Price Stabilization Program
11. Prince Edward Island Price Stabilization Program
12. Quebec Farm Income Stabilization Insurance Programs
13. New Burnswick Swine Assistance Program
14. New Brunswick Livestock Incentives Program
15. New Brunswick Hog Marketing Program
16. New Brunswick Swine Industry Financial Restructuring Program
17. Nova Scotia Swine Herd Health Policy
18. Nova Scotia Transportation Assistance
19. Ontario Farm Tax Reduction Program
20. Ontario (Northern) Livestock Programs
21. Prince Edward Island Hog Marketing and Transportation Subsidies

22. Prince Edward Island Swine Development Program
23. Prince Edward Island Interest Payments on Assembly Yard Loan
24. Quebec Special Credits for Hog Producers
25. Saskatchewan Financial Assistance for Livestock and Irrigation
26. Saskatchewan Livestock Investment Tax Credit
27. Saskatchewan Livestock Advance Program
28. Ontario Weaner Pig Stabilization Plan

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. At the request of the petitioner, the National Pork Producers Council (NPPC), we held a public hearing on August 5, 1988. The NPPC, the Canadian Pork Council (CPC), and Quintaine & Sons Ltd., the major Canadian exporter of slaughter sows and boars, took part in the hearing.

Comment 1: The CPC points out that the Department misread the financial statement of the Farm Income Stabilization Commission ("FISC") of Ontario in calculating the benefit from the Ontario Weaner Pig Stabilization Plan.

Department's Position: We agree and have revised our calculations accordingly. We determine the benefit from this program to be Can$0.00000037/lb.

Comment 2: The CPC asks the Department to clarify its rationale for determining that the Agricultural Stabilization Act ("ASA"), the National Tripartite Red Meat Stabilization ("Tripartite") Program, the British Columbia Farm Income Insurance Program, and the Quebec Farm Income Stabilization Insurance Program are limited to specific industries. The CPC also requests that the Department establish detailed criteria to explain further its specificity test by answering the following questions: If all major commodities in a jurisdiction were covered by stabilization programs, would these programs then be considered not countervailable? How is a major commodity defined? If all major commodities are covered by a stabilization or other program (*e.g.*, supply management) at the national or provincial level, should not the Department take this factor into account? On the other hand, if there are no clearly discernible major commodities in a jurisdiction, is it possible to pass the Department's specificity test if less than 100 percent of the commercial farm products are covered by a stabilization program? If so, how much less than 100 percent: 90, 80, 60, or 51 percent? How is coverage measured: by number of products, tonnage, or value?

Department's Position: As stated in our preliminary results, we continue to regard the subsidy programs referred to by the CPC as countervailable because they are provided to specific industries. Several aspects of the ASA have changed since our final determination (50 FR 25097, June 17, 1985). Furthermore, we received additional information on the Tripartite program, the British Columbia Farm Income Insurance Program, and the Quebec Farm Income Stabilization Insurance Program. However, we received no additional evidence that any of these programs are not still limited to specific industries. For example, with respect to the ASA, several major agricultural commodities, such as most wheat, dairy products, and poultry, are still ineligible for payments. Several major agricultural products are also excluded from the British Columbia Farm Income Insurance Program (*e.g.*, wheat, dairy products, and poultry) and the Quebec Farm Income Stabilization Insurance Program (*e.g.*, milk products, poultry, and eggs). Therefore, we determine that these four programs continue to be countervailable.

The request by the CPC that the Department establish detailed criteria to explain further its specificity test appears to be a request for an advisory opinion. We do not consider it appropriate to issue advisory opinions based upon hypothetical situations. Also, it is well established that the Department's specificity test cannot be reduced to a mathematical formula because domestic subsidy programs are seldom identical. The terms and conditions of domestic subsidy programs differ from case to case, as do the circumstances under which a specific program may be used. Thus, we cannot reduce our test for specificity to a single formula that would be applicable to every case, as CPC implicitly suggests we should. Instead, we must analyze each program on its own merits and weigh various factors before we can determine that a program is or is not provided, either *de jure* or *de facto*, to a specific enterprise or industry, or group of enterprises or industries.

Parties, however, are not without guidance. The determinations published by the Department provide a significant body of precedents by which a domestic subsidy program may be analyzed. Moreover, we routinely consider the following factors when we apply the specificity test: (1) The extent to which a foreign government acts to limit the availability of a program; (2) the number of enterprises, industries, or groups that actually use a program; (3) the dominant or disproportionate use of a program by certain enterprises, industries or groups; and (4) the extent to which the foreign government exercises discretion when it confers benefits under a program. *See, e.g., Preliminary Affirmative Countervailing Duty Determination: Certain Softwood Lumber Products from Canada* (51 FR 37453, October 22, 1986)).

Comment 3: The NPPC contends that the Department's preliminary determination that the Record of Performance Program (ROP) is not countervailable is based on errors of law and mistakes of fact. As long as the ROP is provided to a specific industry, the Department should find the program to be countervailable.

The NPPC claims that while the results of the ROP research are nominally available to any interested party, few, if any, parties other than the Canadian hog industry are interested in the results. Only the Canadian hog industry can benefit from the ROP research because the information generated is specifically tailored for the production practices and climatic conditions existing only in Canada. ROP data cannot be used by other industries in Canada or by the hog industry in the United States.

The NPPC argues that the Department's long-standing practice is to find research and development programs such as the ROP to be countervailable and, to support its assertion, cites Appendix 2 to *Certain Steel Products from Belgium*, 47 FR 39304, (1982); *Optic Liquid Level Sensing Systems from Canada*, 44 FR 1728, (1979); and *Certain Steel Products from France*, 47 FR 39332, (1982).

Department's Position: We disagree. In Appendix 2 to *Certain Steel Products from Belgium*, we determined that assistance provided by a foreign government to finance research and development does not confer a countervailable benefit if the research and development has broad application and yields results that are made available to the public.

In *Optic Liquid Level Sensing Systems from Canada*, we found that the research and development program provided selective treatment because the information generated was not publicly available and was only used to improve the respondent's ability to introduce a commercially successful product to market. In *Certain Steel Products from France*, we examined two research and development programs.

one publicly available and the other not. We found only the program whose research was not publicly available to be countervailable.

The NPPC submitted no information to support its claim that the availability and applicability of ROP research data are selective. The CPC, on the other hand, submitted in its rebuttal brief numerous examples of the broad application and public use outside of Canada of the research and development generated by the ROP. Among the documents submitted by the CPC are copies of scientific papers published outside Canada using ROP data; copies of papers on the results of Canadian ROP tests submitted to the National Swine Improvement Federation in St. Louis, Missouri; extensive mailing lists of recipients of ROP data, including recipients in the United States as well as other foreign countries; circulation lists of *Canadian Swine*, a Canadian industry magazine, that include many subscribers in the United States; and copies of *Canadian Swine* announcements of breeding stock sales—all with ROP data listed. The examples of the wide public use of this information supports our preliminary determination that the ROP research data are publicly available and applicable to hog producers all over the world, including those in the United States. For these reasons, we determine that the ROP program is not counteravailable.

Comment 4: The NPPC contends that the Department understated the benefit from all programs by weight-averaging benefits according to each province's proportion of total Canadian exports of live swine to the United States. The NPPC claims that weight-averaging by province rather than by producer is grossly distortive of market realities, wide open to circumvention, and improper as applied to this case. The Department should focus on the overall effect that the subsidies have on production and calculate one country-wide rate for all hogs by dividing the total amount of subsidies from all provinces by the total Canadian production of live swine. Geographic boundaries are meaningless to the production, flow and pricing of any commodity whose production is easily stimulated by government subsidies. Futhermore, weight-averaging by province creates strong incentives to circumvent or evade countervailing duties by transshipping hogs within Canada prior to exporting to the United States. The Newfoundland transshipments found by the Department in its preliminary results demonstrate that the threat of transshipment is valid.

Department's Position: We disagree. In this administrative review, as in the original countervailing duty investigation, we did not investigate individual producers, electing instead to focus on aggregate benefits provided by the federal and provincial governments to producers of live swine. We did this because of the large number of hog producers and the administrative burden imposed in analyzing and verifying numerous responses.

To calculate the subsidy, we divided, for each province, total benefits paid to hog producers in that province by total production in that province. We then weight-averaged these benefits by the provincial shares of total Canadian exports of the subject merchandise to the United States.

In our view, this method provides a better measure of the subsidy on exports to the United States than that proposed by the NPPC. This is because it gives greater weight to those provinces which ship more hogs to the United States and therefore more accurately reflects the level of subsidy on the subject merchandise.

The danger of transshipment is minimal because the same countervailing duty rate on live swine applies to all of Canada. We believe that the transshipment scenario described by the NPPC is too far removed from reality to pose any significant threat to the integrity of the countervailing duty law. As we stated in our preliminary results, the individual producer usually is not aware of the ultimate destination of his hogs. Furthermore, it is impossible for individual producers to predict which province will have the lowest benefit because the Department does not calculate provincial benefits until up to two years after the time of exportation. Finally, the Newfoundland transshipments do not support the NPPC's argument because they were made at a time that the cash deposit rate was calculated in the manner that the NPPC is now advocating.

Comment 5: The NPPC states that, although it does not challenge the Department's creation of a subclass or kind of merchandise for sows and boars, the Department should announce strict definitions of sows, boars, and slaughter hogs in order to prevent circumvention of the order by masquerading bona fide slaughter hogs as sows and boars. Quintaine opposes NPPC's request for strict definitions as unnecessary because industry standards determine the weight of sows and boars and because sows and boars are sold and shipped separately, command different prices, and have different markets.

Department's Position: We disagree with the NPPC and agree with Quintaine. In our preliminary results of review, we found that sows and boars are distinguishable from other live swine not only by their physical characteristics, but also by their ultimate use, markets and prices. Further, there is no financial incentive to sell slaughter hogs at the much lower price commanded by sows and boars.

Comment 6: The NPPC disputes the Department's estimate that sows and boars represent only one percent of Canadian production of live swine. The NPPC claims that the figure should be at least four percent, which is the approximate proportion of sows and boars to all live swine produced in the United States.

Department's Position: We agree that the one-percent figure underestimates the production of sows and boars in Canada. We requested more precise information from Canada. The CPC submitted a hog cost model developed by the Market Outlook and Analysis Division, Policy Branch, Agriculture Canada. The hog cost model was developed after the passage of the 1985 amendment to the ASA and is used for calculating the benefits from the Tripartite swine program. The model is a national average of provincial/regional costs of production of hogs. The model, which is updated yearly, was designed to reflect current industry structure and production practices. The model estimates that the proportion of sows and boars to total live swine production in Canada is 2.1 percent. We believe that this is the most accurate estimate available.

Adjusting for this change, we have recalculated the benefits from the various programs to be:

	Pound
1. Agricultural Stabilization Act	$0.00075870
2. Record of Performance Program	00000000
3. Canada-Ontario Stabilization Plan for Hog Producers 1985	01249583
4. Alberta Red Meat Interim Insurance	00322447
5. Saskatchewan Hog Assured Returns	00240900
6. British Columbia Farm Income Insurance Plan	00033810
7. Manitoba Hog Income Stabilization Plan	00130644
8. New Brunswick Hog Price Stabilization Plan	00000134
9. Newfoundland Hog Price Support Program	00002401
10. Nova Scotia Pork Price Stabilization Program	00002521
11. Prince Edward Island Price Stabilization Program	00093519

	Pound
12. Quebec Farm Income Stabilization Insurance Programs	00073368
13. New Brunswick Swine Assistance Program	00000003
14. New Brunswick Livestock Incentives Program	00000249
15. New Brunswick Hog Marketing Program	00000019
16. New Brunswick Swine Industry Financial Restructuring Program	00000151
17. Nova Scotia Swine Herd Health Policy	00000312
18. Nova Scotia Transportation Assistance	00000000
19. Ontario Farm Tax Reduction Program	00003182
20. Ontario (Northern) Livestock Programs	00001209
21. Prince Edward Island Hog Marketing and Transportation Subsidies	00000041
22. Prince Edward Island Swine Development Program	00002141
23. Prince Edward Island Interest Payments on Assembly Yard Loan	00000002
24. Quebec Special Credits for Hog Producers	00000000
25. Saskatchewan Financial Assistance for Livestock and Irrigation	00000000
26. Saskatchewan Livestock Investment Tax Credit	00008396
27. Saskatchewan Livestock Stock Advance Program	00000000
28. Ontario Weaner Pig Stabilization Plan (FISC)	00000037
Total benefits from all programs	.022

Final Results of Review

After considering all of the comments received, we determine the net subsidy to be Can$0.00011/lb. for slaughter sows and boars and Can$0.022/lb. for all other live swine for the period April 3, 1985 through March 31, 1986. The rate for slaughter sows and boars is equivalent to 0.30 percent *ad valorem*. The Department considers any rate less than 0.5 percent to be *de minimis* in accordance with 19 CFR 355.8.

Therefore, the Department will instruct the Customs Service to liquidate, without regard to countervailing duties, shipments of slaughter sows and boars, and to assess coutnervailing duties of Can$0.022/lb. on shipments of all other live swine entered, or withdrawn from warehouse, for consumption on or after April 3, 1985 and exported on or before March 31, 1986.

As provided by section 751(a)(1) of the Tariff Act, the Department also will instruct the Customs Service to waive cash deposits of estimated countervailing duties on shipments of slaughter sows and boars and to collect cash deposits of estimated countervailing duties of Can$0.022/lb. on shipments of all other live swine entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit waiver and deposit requirement will remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.10.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Dated: December 30, 1988.

[FR Doc. 89-377 Filed 1-6-89; 8:45 am]

BILLING CODE 3510-DS-M

[C-223-401]

Portland Hydraulic Cement From Costa Rica; Preliminary Results of Countervailing Duty Administrative Review and Tentative Determination To Cancel Suspension Agreement

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review and tentative determination to cancel suspension agreement.

SUMMARY: The Department of Commerce has conducted an administrative review of the agreement suspending the countervailing duty investigation on portland hydraulic cement from Costa Rica. The review covers the period October 1, 1985 through September 30, 1986.

As a result of the review, the Department has preliminarily determined that Industria Nacional de Cementos, S.A., a Costa Rican exporter of portland hydraulic cement to the United States and the sole signatory to the suspension agreement, did not account for 85 percent of the subject merchandise imported into the United States from Costa Rica during the review period.

A second firm, Cementos del Pacifico, S.A., accounted for all imports of the subject merchandise during the review period. This firm did not choose to enter into an agreement with the Department and, accordingly, the Department has tentatively determined to cancel the suspension agreement.

EFFECTIVE DATE: January 9, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia W. Stroup or Paul J. McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-3337.

SUPPLEMENTARY INFORMATION:

Background

On December 2, 1984 the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 47280) notice of an agreement suspending the countervailing duty investigation regarding portland hydraulic cement from Costa Rica. The Department stated that the suspension agreement reached with Industria Nacional de Cementos, S.A., ("INCSA") and the Department met the criteria of sections 704(b) and (d) of the Tariff Act of 1930 ("the Tariff Act"). We received no request to continue the investigation.

In March 1986, Cementos del Pacifico, S.A. ("CPSA"), also a Costa Rican producer of portland hydraulic cement, began exporting the subject merchandise to the United States.

On December 29, 1986, the petitioners, the Puerto Rican Cement Co., Inc., and the San Juan Cement Co., Inc., requested in accordance with § 355.10 of the Commerce Regulations an administrative review of this suspension agreement. We published the initiation on January 20, 1987 (52 FR 2123). The Department has now conducted that review in accordance with section 751 of the Tariff Act.

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. We will be providing both the appropriate Tariff Schedules of the United States Annotated ("TSUSA") item numbers and the appropriate Harmonized Tariff Schedule ("HTS") item numbers with our product descriptions. As with the TSUSA, the HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HTS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed Harmonized Tariff Schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Imports covered by this review are shipments of Costa Rican portland hydraulic cement. Such merchandise is currently classifiable under TSUSA item number 511.1440 and under HTS item

APPENDIX H

THE HOG CYCLE

The U.S. Hog Cycle

In the United States, and in many other countries and regions of the world where swine are kept, production is subject to a business cycle, generally referred to as the hog cycle. The hog cycle may be described as a change in the population or inventory of live animals and a concomitant but opposite change in pork production. The cycle reflects the decisions of growers to expand or reduce production in response to economic signals as modified by biological constraints. In the United States, a hog cycle is typically 2 years in duration from peak to trough and 4 years in duration from peak to peak.

Biological constraints.--Biological constraints impose a lag in production responses, especially for decisions to expand production. When female animals, called gilts, are about five months old and weigh about 180 pounds, growers normally decide whether to continue to grow them to slaughter weights of about 220-240 pounds or whether to retain them for breeding purposes. If the decision is to retain them for breeding purposes, the gilts must be raised to sexual maturity (which occurs at about 8 to 10 months of age) before they are suitable for breeding. Hogs give birth, or farrow, after a gestation period of about 4 months, or as growers typically say, 3 months, 3 weeks, and 3 days. The litters that result from the farrowing are ready for slaughter in about six months. Thus, about 14 to 16 months elapse between the time a grower decides to keep a gilt for breeding purposes and the time that increased pork production results are seen.

Economic signals.--The economic signals initiating phases of the hog cycle include fluctuations in prices or profits or even anticipation of such fluctuations. Also, because growers are accustomed to constantly fluctuating prices and profits, economic signals typically must be reasonably consistent for 2 to 6 months before production decisions are altered, depending on the magnitude of the fluctuation. The economic signals typically reflect developments occurring in the hog cycle, but may reflect largely exogenous variables. The largely exogenous variable that most often influences the cycle is the fluctuation in feed prices since feed is the largest single cost associated with raising hogs. Other exogenous variables that affect consumers include the cost and availability of alternative meats, credit considerations, and, indirectly, weather.

The economic signals that reflect developments occurring in the hog cycle are for the most part caused by changes in quantities supplied. For example, as the price for live animals rises, growers typically respond by retaining additional animals for breeding purposes in order to ultimately have more animals to sell at the higher price. Consequently, fewer animals are available for slaughter, putting even more upward pressure on the price and encouraging even more retention of animals for breeding purposes. The expanded number of animals kept for breeding purposes eventually results in supplies of animals for slaughter that are too large to clear the market at the prevailing price, and the price declines. As the price declines, growers typically respond by retaining fewer young animals for breeding purposes and by selling for slaughter mature animals that had been kept in breeding herds. The additional supplies put even more downward pressure on the price, encouraging growers to sell even more animals for slaughter. Ultimately, animal supplies are reduced to levels that are inadequate to meet demand, and the price begins to rise initiating the next phase of the cycle.

Analysis of the hog cycle could logically begin at various points along a cycle. For purposes of this investigation, an analysis could begin at January 1985. An analysis of developments between January 1979 and early 1985 is provided in appendix D of USITC publication 1733, Live Swine and Pork From Canada, July 1985, the Commission's report on Investigation No. 701-TA-224.

The changes in profits, referred to as net margins, that occurred during 1985-88 are shown in table H-1 and table H-2, which are based on official statistics of the U.S. Department of Agriculture. Table H-1 shows the net margins for Corn Belt hog feeding and represents the calculated average profit experience for growers in that region who raise feeder animals of about 40 to 50 pounds to slaughter weights of about 220 to 240 pounds.

Table H-1
Swine: Net margins 1/ to U.S. feeders, by months, 1985-88

(Per hundredweight)

Month	1985	1986	1987	1988
January........	-$1.10	$1.83	-$6.71	-$5.22
February.......	1.28	- 2.29	- 1.62	0.44
March..........	- 4.77	- 3.40	- 1.15	- 1.75
April..........	- 6.69	- 2.67	3.41	- 0.56
May............	- 8.95	2.36	7.83	1.13
June...........	- 6.74	6.95	10.27	- 2.38
July...........	- 6.50	11.34	10.10	- 6.82
August.........	- 8.75	15.44	7.45	- 8.76
September......	- 9.26	9.58	3.23	-11.59
October........	- 3.93	4.08	- 0.06	- 8.45
November.......	- 1.81	0.97	- 8.87	-13.45
December.......	- 0.94	- 2.27	- 8.88	- 8.39

1/ Difference between price received by farmers for slaughter hogs and all costs (feeder animal, feed, labor and management, interest on purchase, and so forth) for raising feeder pigs from 40 pounds to a slaughter weight of 220 pounds.

Source: Compiled from official statistics of the USDA.

Such data were included in the previously described Commission analysis of the hog cycle between January 1979 and early 1985 and is included in this analysis to provide continuity with that report.

Table H-2 shows the net margins for farrow-to-finish hog production, 1,600 head annual sales, North Central region, and represents the calculated average profit experience for growers in that region who raise animals from birth to slaughter weights. Officials of the USDA estimate that about 80 percent of all hogs grown in the United States are grown in the North Central region (which includes the States of Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, Ohio, South Dakota, and Wisconsin), where 4 out of 5 hogs are grown on farrow-to-finish operations. The format of table H-2 was first published by the USDA in May 1987, and the statistical data in the table are updated monthly.

Table H-2
Swine: Net margins 1/ to farrow-to-finish growers, 1,600 head annual sales, North Central region, by months, 1985-88

(Per hundredweight)

Month	1985	1986	1987	1988
January.........	-$0.74	$2.41	$8.60	$6.32
February........	0.70	1.46	9.70	7.73
March...........	- 3.07	- 0.79	8.37	4.28
April...........	- 4.81	- 1.50	11.20	3.39
May.............	- 4.27	3.99	15.43	6.01
June............	- 0.82	10.10	20.99	7.12
July............	0.90	16.39	20.50	4.44
August..........	- 1.46	19.32	19.31	3.34
September.......	- 3.65	15.08	15.64	- 1.40
October.........	- 0.15	10.52	11.90	- 8.64
November........	0.01	11.50	3.32	- 5.92
December........	1.56	11.27	4.39	- 3.55

1/ Receipts less cash expenses and replacement.

Source: Compiled from official statistics of the USDA.

Table H-3 shows the quantity of pork produced in the United States from domestically grown animals and demonstrates the results of the hog cycle. The statistics in table H-3 exclude pork produced in the United States from animals grown in Canada and imported into the United States for slaughter, and, hence, the statistics are not directly comparable with certain other production statistics in this report.

Table H-4 shows the number of animals kept for breeding purposes in the United States as of June 1 and December 1 of each year during 1984-88, and when compared with previous year levels, suggests developments in the hog cycle. Table H-5 shows, among other things, the estimated annual slaughter of animals grown in the United States during 1984-88, and provides a convenient overview of developments in the cycle.

Table H-3
Pork: U.S. shipments derived from domestic live swine, by months, 1985-88

(In million of pounds)

Month	1985	1986	1987	1988
January	1,249	1,254	1,235	1,234
February	1,080	1,098	1,066	1,176
March	1,195	1,193	1,221	1,351
April	1,274	1,286	1,162	1,255
May	1,309	1,207	1,066	1,223
June	1,107	1,058	1,080	1,222
July	1,129	1,049	1,075	1,124
August	1,199	1,028	1,069	1,268
September	1,188	1,130	1,221	1,343
October	1,352	1,279	1,353	1,424
November	1,234	1,113	1,307	1,445
December	1,204	1,216	1,382	1,409
Total	14,520	13,911	14,237	15,474

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

Table H-4
Live swine for breeding purposes: U.S. inventories as of June 1, and December 1, 1984-88

Inventory as of--	1984	1985	1986	1987	1988
June 1	7,401	6,997	6,420	7,040	7,530
December 1	6,933	6,783	6,671	7,153	7,040

Source: Compiled from official statistics of the USDA.

Net margins (the profit levels) shown in table H-2 were apparently somewhat discouraging to growers during 1985 through April 1986. Pork production, at 14.5 billion pounds during 1985, slightly exceeded previous-year levels. Table H-3 shows that pork production during January-April 1986 exceeded production during the corresponding period of 1985. Table H-4 shows that inventories of animals kept for breeding purposes, as of June 1, 1985, and December 1, 1985, were lower than previous-year levels. Total hog slaughter during 1985 was 83.3 million animals, compared with 83.8 million animals in 1984 (table H-5).

Table H-5
Swine: U.S. slaughter, imports from Canada, and estimated slaughter of domestically grown swine, by year, 1984-88

	Quantity (In 1,000 animals)				
Swine--	1984	1985	1986	1987	1988
U.S. slaughter.......	85,168	84,492	79,598	81,081	87,730
U.S. imports from Canada............	1,322	1,227	501	446	878 1/
Estimated U.S. slaughter of swine grown in the U.S.........	83,846	83,265	79,097	80,635	86,852

1/ Estimated by the staff of the U.S. international Trade Commission.

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

Net margins became sharply more positive beginning in June 1986. Although less pork was produced during the last 8 months of 1986 than in the corresponding part of 1985, the inventory of animals kept for breeding purposes as of June 1, 1986 and December 1, 1986, was below previous-year levels; the December 1, 1986, inventory was, however, higher than the June 1, 1986, inventory. Total pork production during 1986 was 13.9 billion pounds, and the number of animals slaughtered was 79.1 million.

Net margins during January-March 1987 were less than in the last 7 months of 1986, but still much higher than in the corresponding period of 1986; margins rose in April 1987 and were at historically high levels during the summer of 1987. Pork production during January-May was below previous-year levels, and production during June-August was only slightly more than in the corresponding period of 1986. The June 1, 1987, and December 1, 1987, inventories of animals kept for breeding purposes were higher than previous-year levels. Pork production during 1987 amounted to 14.2 billion pounds, and slaughter of U.S. hogs was 80.6 million animals.

Net margins declined sharply beginning in November 1987, were below previous-year levels during that month and December 1987, remained below previous-year levels in every month of 1988, and were negative for the last 4 months of 1988. The June 1, 1988, inventory of animals kept for breeding purposes was higher than the corresponding inventory of 1987, but the December 1, 1988, inventory was lower than the December 1, 1987, inventory. Pork production amounted to 15.5 billion pounds during 1988; slaughter was 86.9 million U.S. animals in 1988.

The increased pork production beginning in November 1987 increased slaughter in 1988, and the drop in the inventory of animals kept for breeding purposes as of December 1, 1988, suggests that the hog cycle is in the contraction phase. It appears that the profit margins of 1987 resulted in expanded inventories. These expanded inventories of animals kept for breeding contributed to larger supplies of animals for slaughter, subsequent larger pork production, and presumably, reduced profitability.

APPENDIX I

IMPACT OF IMPORTS ON U.S. PRODUCERS' EXISTING DEVELOPMENT AND PRODUCTION EFFORTS, GROWTH, INVESTMENT, AND ABILITY TO RAISE CAPITAL

IMPACT OF IMPORTS ON U.S. PRODUCERS' EXISTING DEVELOPMENT AND PRODUCTION EFFORTS, GROWTH, INVESTMENT, AND ABILITY TO RAISE CAPITAL

The Commission requested U.S. producers to describe and explain the actual and potential negative efforts, if any, of imports of fresh chilled, or frozen pork from Canada on their firm's existing development and production efforts, growth, investment, and ability to raise capital. Their responses are shown below:

* * * * * * * *

APPENDIX J

EXCERPTS FROM ANNUAL REPORTS

EXCERPTS FROM ANNUAL REPORTS

Excerpts from annual reports

Wilson Foods

"After experiencing large operating losses, Wilson adopted a strategy to redirect its business toward value-added fresh and processed pork products and to reduce its hog slaughter and commodity pork activities to those necessary to approximate the anticipated raw material needs of that business. Since 1982, the Company has sold or closed seven plants and two marketing centers thereby significantly reducing its slaughtering capacity and its work force...The Company continues to increase its percent of sales volume to the growing food service industry, reflecting management's emphasis on this higher margin channel of distribution which exhibits continued growth in demand. 1/

As far as profit margins are concerned, Wilson stated:

"During the past few years, the Company has increasingly emphasized value-added products because these products generate higher sales prices per pound, exhibit lower finished product price volatility and generally result in higher and more consistent profit margins" than commodity products." 2/

IBP

The company discussed its three new plants and stated:

"All three plants are now operating profitability, and are expected to be major contributors to IBP's earnings growth." 3/

Farmland Foods

"Extensive advertising and marketing of Farmland Foods' pork products and the integration of many value-added and convenience-added products have made 1988 a very profitable year for the company." 4/

1/ Wilson Foods 1988 Annual Report.
2/ Wilson Foods 1988 10-K, p. 4.
3/ IBP 1987 annual report, p. 2.
4/ Farmland industries 1988 annual report, p. 18.

Smithfield Foods, Inc.

"Fiscal 1988 was a very gratifying year in the history of Smithfield Foods. Both net income and net income per share reached record levels." 1/

Hormel

"Record earnings were achieved despite severe pressure on margins caused by pork raw material costs that were among the highest ever experienced. Offsetting this nearly year-long problem were higher sales volumes in many branded product lines, plant utilization efficiencies and productivity improvements, tight internal cost controls and successful new product introductions. 2/

1/ Smithfield Foods 1988 annual report, p. 2.
2/ Hormel 10-K, 1988.