FRESH, CHILLED, OR FROZEN PORK FROM CANADA

Determination of the Commission in Investigation No. 701-TA-298 (Final) 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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UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation No. 701-TA-298 (Final)

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 705(b) of the Tariff Act of 1930 (19 U.S.C. § 1671d(b)) (the act), that an industry in the United States is threatened with material injury 3/ 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 have been found by the Department of Commerce to be subsidized by the Government of Canada.

Background

The Commission instituted this investigation effective May 8, 1989, following a preliminary determination by the Department of Commerce that imports of fresh, chilled, or frozen pork from Canada were being subsidized within the meaning of section 701 of the act (19 U.S.C. § 1671). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of May 25, 1989 (54 F.R. 22634). The hearing was held in Washington, DC, on August 1, 1989, and all persons who requested the opportunity were permitted to appear in person or by counsel.

1/ The record is defined in sec. 207.2(h) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(h)).
2/ Chairman Brunsdale and Vice Chairman Cass dissenting. Commissioner Lodwick did not participate.
3/ Commissioners Eckes, Rohr, and Newquist further determine that, pursuant to section 705(b)(4)(B), they would not have found material injury by reason of the imports subject to the investigation but for the suspension of liquidation of the entries of the subject merchandise.

VIEWS OF COMMISSIONERS ECKES, ROHR AND NEWQUIST

We determine, pursuant to section 705(b) of the Tariff Act of 1930 ("the Act")(19 U.S.C. § 1671d(b)), that an industry is threatened with material injury by reason of imports of fresh, chilled, or frozen pork from Canada which have been found by the Department of Commerce to be subsidized.

Like Product

To determine whether material injury or threat of material injury to a domestic industry exists, the Commission must first make factual determinations as to like product and domestic industry. Section 771(10) of the Act defines "like product" as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to investigation." 1/

The Department of Commerce has defined the imported products subject to investigation as "fresh, chilled and frozen pork". 2/ In our preliminary determination we determined that the like product was "fresh, chilled or frozen pork." 3/ The parties to this final investigation did not challenge the like product definition as defined in the preliminary determination. No information arose in this investigation to support a contrary

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1/ 19 U.S.C. § 1677(10).
2/ These items are currently provided for under HTS item numbers 0203.11.00, 0203.12.90, 0203.19.40, 0203.21.00, 0203.22.90, and 0203.29.40. 54 Fed. Reg. 30775 (July 24, 1989). We note that although Commerce's investigation is entitled "fresh, chilled, and frozen pork" our investigation is entitled "fresh, chilled, or frozen pork". We do not think there is any substantive difference between these designations.
3/ Fresh, Chilled, or Frozen Pork from Canada, Inv. No. 701-TA-298 (Preliminary), USITC Pub. 2158 (Feb. 1989)("Preliminary Determination") at 5.

definition. Accordingly, we find that the appropriate like product is fresh, chilled, or frozen pork from Canada.

Domestic Industry

The domestic industry determination is built on the definition of the like product. The domestic industry consists of "the domestic producers as a whole of a like product, or those whose collective output of the like product constitutes a major proportion of the total domestic production of that product." 4/

Section 1326(a) of the Omnibus Trade and Competitiveness Act of 1988 ("the 1988 Act") amended the statutory definition of domestic industry in cases involving processed agricultural products. 5/ The amended statute provides that the Commission may include the growers of the raw agricultural product in a domestic industry consisting of the producers of the processed product if: (1) there is a single continuous line of production from the raw agricultural good to the processed agricultural product and (2) there is a substantial coincidence of economic interest between the growers and the processors. 6/

Single Continuous Line of Production

Section 771(4)(E)(ii) establishes two criteria for finding a single continuous line of production:

> (I) the raw agricultural product is substantially or completely devoted to the production of the processed agricultural product; and

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4/ 19 U.S.C. § 1677(4)(A).
5/ 19 U.S.C. § 1677(4)(E).
6/ 19 U.S.C. § 1677(4)(E)(i).

(II) the processed agricultural product is produced substantially or completely from the raw product. 7/

There has been virtually no debate in this investigation over whether pork fits the single line of production test. Almost all swine are eventually sent to slaughter and pork is derived exclusively from swine. 8/ We determine, as in the Commission's 1985 Live Swine and Pork from Canada decision, affirmed in National Pork, 9/ and as in the preliminary determination in this investigation, 10/ that the single continuous line of production test has been met.

Substantial Coincidence of Economic Interest

To determine whether a substantial coincidence of economic interest exists, the statute directs the Commission to consider "relevant economic factors, which may, in the discretion of the Commission, include price, added market value, or other economic interrelationships..." 11/ The statutory language reflects and legislative history expresses Congress' intent to codify the Commission's analytical framework for defining domestic industry in processed agricultural product cases. 12/ While codifying the Commission's approach, the drafters of the legislation were careful to preserve the Commission's discretion in applying the analysis.

7/ 19 U.S.C § 1677(4)(E)(ii).
8/ Petitioner's prehearing brief at 11; respondents do not address the issue.
9/ Live Swine and Pork from Canada, Inv. No. 701-TA-224 (Final), USITC Pub. 1733 (July 1985)("Live Swine")) aff'd sub nom. National Pork Producer Council v. United States, 661 F. Supp. 633 (CIT 1987) (National Pork)(affirming the Commission's definition of domestic industry excluding swine growers in Live Swine.)
10/ Preliminary Determination at 6.
11/ 19 U.S.C. § 1677(4)(E)(i)(II).
12/ See H.R. Rep. 40, Part 1, 100th Cong. 1st Sess. (1988) at 122; S. Rep. 71, 100th Cong. 1st Sess. (1988) at 110; 133 Cong. Rec. S 1254 (daily ed. Jan. 28, 1987).

Amended section 771(4)(E) of the Act 13/ provides that "producers or growers of the raw agricultural product may be considered part of the industry producing the processed product ...", that the Commission should consider "such other factors it considers relevant ..." and adds recommendations as to how the Commission should evaluate price if it looks at price, and value added, if it considers value added. 14/ The Senate Finance Committee clearly intended to create "a flexible standard, [in which] no one factor is necessarily determinative." 15/

Petitioner argues that Congress intended for the Commission to emphasize price correlation and value added in assessing substantial coincidence of economic interest. 16/ Petitioner asserts that because there is a high correlation between the price of swine and the price of pork (between 90.5 percent and 98.8 percent) 17/ and low market value added by the processors to the raw product (between one and ten percent) 18/ the Commission should include in the domestic industry both growers and processors. 19/ Respondents, arguing that the 1988 Act "does little more than codify the test previously applied by the Commission in Live Swine," 20/ suggest that value added and price correlation are not indicative of a coincidence of

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13/ 19 U.S.C. § 1677(4)(E).
14/ Section 1326 of the 1988 Act, codified at 19 U.S.C. § 1677(4)(E)(iii) (emphasis added).
15/ S. Rep. 71 at 111.
16/ Petitioner's prehearing brief at 12.
17/ Petitioner's prehearing brief at 13.
18/ Petitioner applies a very narrow definition of value added in reaching its finding of 1 percent value added. Petitioner's prehearing brief at 14. For the purposes of the investigation, the staff found the average ratio of raw materials to cost of goods sold to be 10 percent. Report at A-30.
19/ Petitioner's prehearing brief at 16.
20/ Canadian Meat Council (CMC) prehearing brief at 52.

economic interest in this case. 21/ Rather, respondents suggest the divergence of profitability denotes a lack of common economic interest. 22/

Analysis

In defining the domestic industry in agricultural cases prior to the implementation of the 1988 Act, the Commission developed a two-part test to determine whether growers of the raw material should be treated as producers of the processed agricultural product. The Commission included growers in the domestic processed product industry when it found a single continuous line of production and a commonality of economic interest. 23/ The Commission has employed this second test to distinguish those cases in which growers and processors operate as a single industry from those in which the growers are merely suppliers of a product to the processors with divergent economic interests. 24/

Applying these criteria to the swine and pork industry four years ago, the Commission determined that the swine growers were not producers of processed pork and that the processed pork industry consisted exclusively of packers. 25/ That determination was upheld by the Court of International Trade on appeal which held that

21/ CMC prehearing brief at 56-60.
22/ CMC prehearing brief at 60-61. See also, Statement of Larry Martin at 8.
23/ See, e.g., Citrosuco Paulista, S.A. v. United States, 704 F.Supp. 1075, 1089-1092 (CIT 1988)(Citrosuco); see also, Frozen Concentrated Orange Juice from Brazil, Inv. No. 731-TA-326 (Final), USITC Pub. 1970 (April 1987)(FCOJ); Certain Fresh Atlantic Groundfish from Canada, Inv. No. 701-TA-257 (Final) USITC Pub. 1844 (May 1986)(Groundfish); Certain Red Raspberries from Canada, Inv. No. 731-TA-196 (Final) USITC Pub. No. 1707 (June 1985)(Red Raspberries); Lamb Meat from New Zealand, Inv. No. 701-TA-80 (Preliminary), USITC Pub. 1191 (Nov. 1981)(Lamb Meat).
24/ Groundfish at 6.
25/ Live Swine at 7.

> substantial evidence on the record exists to support the Commission's determination that there is insufficient economic integration between swine growers and pork packers to justify including the growers with the packers. 26/

The Court pointed to the following Commission findings:

> (1)'[l]ess than 5 percent of packing facilities are owned by growers;' (2)'[v]irtually none of the grower facilities are owned by packers;' and (3)'the petitioners have conceded that the prices for hogs are not linked by contract to the prices received by the packers.' 27/

The Court further noted that the packers benefitted from low prices and a large supply of swine whereas hog growers preferred limited supplies and high swine prices; that domestic producers require Canadian pork to satisfy domestic demand; that not all packers supported the petition; and that some packers engage in further processing of the pork and need the additional supply of pork to fulfill orders. 28/ In conclusion, the Court found that the exclusion of the growers from the domestic pork producing industry due to insufficient economic integration was "supported by substantial evidence and in accordance with law." 29/

Since that decision, Congress passed the 1988 Act, which, inter alia amended the definition of domestic industry as to processed agricultural products. Both the House Ways and Means Committee Report and the Senate Finance Committee Report explained that "[t]he purpose of including [the new provisions] in the statute is to give explicit congressional endorsement of their consideration, and to encourage their application." 30/ In our view, each element "added" by the 1988 Act had

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26/ National Pork, 661 F.Supp. at 638.
27/ National Pork, 661 F.Supp. at 638, quoting Live Swine at 6-7.
28/ National Pork, 661 F.Supp. at 638.
29/ National Pork, 661 F.Supp. at 638.
30/ H.R. Rep. 40, at 122; S. Rep. 71 at 110.

previously been considered in Commission decisions and already was part of the Commission's analytical framework. 31/ Furthermore, the law specifically leaves within the discretion of the Commission the decision as to which economic factors it will examine in determining coincidence of economic interest. 32/

In light of the new provisions of the 1988 Act, we determine that the domestic pork industry is composed of pork packers alone. 33/ We believe the nature of the industry has not changed in four years since the Live Swine decision. Revisiting the criteria applied in the Live Swine case, the packers and growers continue to profit at different points in the cycle, packers continue to need Canadian pork to fulfill demand, 34/ and while the record shows only one packer in opposition to the petition, many stated no position. 35/ Notwithstanding high price correlation and low value added, 36/ vertical integration remains at a minimum, 37/38/ trading

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31/ See Lamb Meat at 8 (single continuous line of production); Citrosuco, 704 F.Supp at 1092 (value added and price correlation)
32/ 19 U.S.C. § 1677(7)(E)(i)(II) (the Commission should consider the "relevant economic factors, which may, in the discretion of the Commission, include...")(emphasis added).
33/ Commissioner Newquist determines that the domestic industry is composed of packers and growers. See Additional Views of Commissioner Newquist.
34/ Compare, Report at A-22, Table 3 (pork production) to Report at B-29, Table D-3 (domestic swine production).
35/ Report at A-20.
36/ There is evidence of a trend toward increased value added at the processing stage.
37/ A few small packing plants are owned by swine producers and there is one fairly large cooperative, Farmland Foods, accounting for a small percent of U.S. production of pork. There are no other major examples of interlocking ownership.
38/ The Commission considers such legal arrangements, not as a separate criterion, but as an indication that growers and processors have undertaken to share economic risks and benefits. The 1988 Act recommends that the Commission look to "relevant economic relationships, and not necessarily legal relationships." (S. Rep. 71 at 110.) Thus, Congress did not prohibit the Commission from considering legal relationships, but suggested that it
(continued...)

is still conducted at arms length, 39/ and, according to testimony at the hearing, profitability figures of the packers and the growers continue to show an inverse relationship. 40/ We therefore find that the second test, that requiring a substantial coincidence of economic interest, is not met in this case.

Thus, we define the domestic industry to include only pork packers.

Condition of the Domestic Industry

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. 41/ The 1988 Act also amended section 771(7)(C)(iii) by directing the Commission to "examine all relevant economic factors described in this clause within the context of the business cycle and conditions of competition that are distinctive to the affected industry." 42/ Moreover, the 1979 legislative history directing the Commission to pay particular attention to livestock cycles is still

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38/(...continued)
do so in the context of considering economic relationships, as we have done here.

39/ Tr. at 96-98.

40/ Tr. at 107. Commissioner Rohr notes that while it is not clear that there is, in fact, an inverse relationship between the financial performance of the packers and growers, the evidence is clear that there is no positive correlation. This suggests at least that while some economic interest may by held in common, many more interests and risks are not common to both and these divergent factors have a more significant impact on the economic performance of each than those which are common.

41/ 19 U.S.C. § 1677(7)(C)(iii).

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

valid, 43/ and we must account for the relationship between growers and packers to understand the nature of supply in the pork industry. 44/ Consequently, we consider the cyclical nature of the hog industry as it relates to the pork industry.

Public data were used whenever possible to assess the condition of the packing industry. 45/ According to U.S. Department of Agriculture (USDA) data, domestic pork production rose 11.6 percent during the period of investigation, from 14.0 billion pounds in 1986 to 15.6 billion pounds in 1988. Production continued to expand into interim 1989, but at a slower pace, from 3.8 billion pounds in January-March 1988 to 3.9 billion pounds in January-March, 1989, an increase of only 2.6 percent over the same period in 1988. 46/

43/ 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 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).

44/ The hog cycle is explained in the Report at Appendix D. The existence of the hog cycle is generally well accepted, and in particular by the parties. See e.g., Tr. at 21, 38, 76 (petitioner) and at 114-115, 122, 142-144.

45/ We note, however, that the Commission received usable questionnaire responses from 15 packers that accounted for 64 percent of the domestic production in 1988. Report at A-19. In general, the questionnaire data corroborate public data.

46/ Report at A-22, Table 3.

Data received through questionnaires indicate that domestic pork processing capacity declined in 1987 to 6.1 billion pounds from 6.8 billion pounds in 1986, but rose to 6.6 billion pounds in 1988, an increase of 7.1 percent. 47/ Capacity has remained stable into 1989, however, the figures showing a rise of less than one percent from January-March, 1988 as compared to January-March 1989. 48/ Capacity utilization ratios generally reflect the variations in absolute capacity, falling from 116 percent 49/ in 1986 to 114 percent in 1987 and rising again to 122 percent in 1989; although absolute capacity figures remained virtually level during the interim periods, capacity utilization rose by almost 3 percentage points from interim 1988 to interim 1989. 50/

Official statistics from USDA indicate a slow rise in domestic shipments from 1986 to 1988 (13.8 billion pounds in 1986, to 14.0 billion pounds in 1987, and to 15.2 billion pounds in 1988). Shipments for the first quarter of 1989 show an increase over the first quarter of 1988, from 3.66 billion pounds to 3.74 billion pounds, respectively. 51/

The Commission notes that while the data in years 1986 and 1987 obtained from questionnaire responses indicate differing trends, the most recent data obtained from questionnaires parallel that in the public data. According to the Commission's questionnaire data, the quantity of total shipments 52/ fell from 8.1 billion pounds in 1986 to 7.5 billion pounds in 1987 but rose to 8.5 billion pounds in 1988. Responding firms report an

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47/ Report at A-24, Table 5.
48/ Report at A-24, Table 5.
49/ Capacity above 100 percent is achieved by running more than one shift.
50/ Report at A-24, Table 5.
51/ Report at A-22, Table 3
52/ Total shipment figures from questionnaire responses include company transfers

increase of shipments in January-March 1989 of 2.9 percent over domestic shipments of January-March, 1988. 53/

The value of total shipments reported by responding firms shows opposite trends from the quantity figures, rising from $ 5.0 billion in 1986 to $ 5.6 billion in 1987 and then falling to $ 5.5 billion in 1988. Whereas total value rose slightly from $ 1.33 billion in January-March 1988 to $ 1.34 billion for the same period in 1989, the average unit value fell from $ 0.72 to $ 0.65, respectively, indicating that the rise in supply resulted in a price decline. 54/

As a highly perishable item, fresh pork is not stored for long periods of time. 55/ Inventories usually reflect seasonal variations, with inventories as a percentage of monthly production reaching peaks of 30 percent; monthly inventories rarely exceed 2 percent of annual consumption. 56/ Nevertheless, according to USDA data, ending cold storage stocks of pork for every month in 1988 were higher than those for 1986 and 1987, and higher yet in the first five months of 1989 for which there are data, indicating an oversupply situation beyond what is normal for the pork industry. 57/ Furthermore, a domestic packer testified for the petitioner that inventories of frozen hams and bellies are 25 percent higher than last year, a level which, he opined, would depress prices for those fresh products. 58/

53/ Report at A-25, Table 6.
54/ Report at A-25, Table 6.
55/ Report at A-26.
56/ Report at A-26.
57/ Report at A-26, Table 7.
58/ Transcript at 56; see also Review the Inspection and Increased Importation of Canadian Market Swine and Pork Products: Hearing before the Subcommittee on Livestock, Dairy and Poultry of the House Committee on
(continued...)

Employment figures compiled from questionnaire responses indicate that overall employment of production and related workers rose from 11,151 in 1986 to over 13,681 in 1988. 59/ The number of workers in interim 1989 was 6.2 percent higher than interim 1988. 60/ Although hours worked showed a similar increase, both hourly wages paid and total compensation paid decreased over the period under investigation. 61/

The financial performance of the firms answering questionnaires reveals an industry that historically operates at low margins, is sensitive to the changes in the market and is entering a period of vulnerability to the effects of subsidized imports of Canadian pork. 62/

Aggregate operating income declined from $12.2 million to $ 10.7 million from 1986 to 1987, a decrease of 12 percent, but then jumped to $84.0 million in 1988. 63/ Interim 1989 shows a drastic decline of operating income from $45.5 million in January-March 1988 to $18.1 million in January-March 1989.

Operating income margins remained steady at 0.2 percent in 1986 and

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58/(...continued)
Agriculture, 101st Cong. 1st Sess. (1989)("Subcommittee Hearing") at 52 (Statement of Eugene Leman, Executive Vice-President, Iowa Beef Producers).

59/ Report at A-27, Table 8.

60/ Report at A-27, Table 8.

61/ Hourly total compensation paid did rise $ .01 from interim 1988 to 1989, but the yearly figure for 1988 remained over $ 1.00 below that for 1986. Report at A-27, Table 8.

62/ *See generally* Report at A-31, Table 10. Firms responding to questionnaires report that gross profits rose from 1986 to 1988, but in the first quarter of 1989 were down almost 30 percent compared to gross profits in the first quarter of 1988. Report at A-31, Table 10. We note that from 1987 to 1988, total cost of goods sold decreased (Report at Table 10) and the percentage share of raw materials decreased from 1987 to 1988, (Report at A-30) supporting the conclusion that declines in hog prices account for increases in packer profitability.

63/ Report at A-31, Table 10.

1987, but then rose to 1.4 percent in 1988. 64/ However, reflecting the absolute figures, operating income fell to 0.7 percent in January-March 1989, compared to 1.7 percent in January-March 1988, a decline of 60 percent. 65/ These figures, in light of the hog cycle, portend a period in which tighter supplies will restrict the number of hogs for processing and increase their cost, thereby inhibiting the packers' ability to lower marginal costs. This will result in very narrow margins, and frequently in operating losses. 66/ The majority of the firms reporting experienced some loss over the three year period of investigation, and five out of twelve experienced losses in the first three months of 1989. 67/

Data compiled from questionnaires sent to pork packers shows that, on their operations producing pork, cash flow 68/ increased from a deficit of over $7 billion in 1986 to a positive cash flow of over $68 billion by 1988. 69/ This increase can partly be explained by the increase in supply of swine, from both U.S. and Canadian sources, thereby increasing packers' margins. 70/ Nevertheless, data for interim 1988 and 1989 show a sharp decline in cash flow of over fifty percent, from $35.2 billion to $12.9 billion. 71/

In evaluating whether these indicators depict an industry experiencing material injury, we are mindful of the cyclical nature of this

64/ Report at A-31, Table 10.
65/ Report at A-31, Table 10.
66/ Report at A-32, Table 11.
67/ Report at A-32, Table 11.
68/ Cash flow is defined as net income or loss plus depreciation and amortization.
69/ Report at A-31, Table 10.
70/ <u>See</u> Report at A-41, Table 18; B-29, Table D-3.
71/ Report at A-31, Table 10.

industry, 72/ and its historically low profit margins. 73/ The overall picture of this industry over much of the period of investigation is of an industry operating at a reasonable level, given expected fluctuations in the hog cycle. It is also an industry whose most recent trends are downward, particularly in terms of profitability. Although these trends may in part be due to the natural progression of the hog cycle, 74/ we conclude they reflect an industry that is particularly vulnerable to the possible effects of increased imports of subsidized pork from Canada. 75/

Threat of Material Injury

Section 612 of the Trade and Tariff Act of 1984 contains subparagraph 771(7)(F) which directs the Commission to consider a number of economic factors in assessing threat of material injury. 76/ Such factors include:

> (I) the nature of the subsidy and whether the subsidy is an export subsidy inconsistent with the GATT;

72/ See footnote 43, infra.
73/ See 19 U.S.C. § 1677(7)(c)(iii) ("The Commission shall evaluate all relevant economic factors ... within the context of the business cycle and condition of competition that are distinctive to the affected industry.")(emphasis added)

Commissioner Rohr notes that the performance of this industry is substantially improved from what it was in 1985 during the Commission's prior investigation.
74/ We note that the Canadian subsidies have the effect of distorting the natural progression of the hog cycle. See Other Demonstrable Adverse Trends, infra, at text accompanying notes 110-111.
75/ Commissioner Rohr notes that in 1985 he concluded that while the pork industry was injured Canadian pork was not a cause of that injury. He notes that had he found the condition of the pork industry to be materially injured, he would still have concluded that Canadian pork imports were not a cause of that injury. While Canadian imports have increased their market share by 1-2 percentage points, the other factors have not substantially changed and he believes there is insufficient evidence to conclude that there is a causal connection between the imports and the present condition of the industry.
76/ 19 U.S.C. § 1677(7)(F).

(II) 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;

(III) any rapid increase in penetration of the U.S. market by imports and the likelihood the penetration will increase to injurious levels;

(IV) 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;

(V) any substantial increases in inventories of imported merchandise in the United States;

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

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

(VIII) 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); 77/

(IX) In an investigation involving both raw and processed agricultural products, the likelihood of increased imports by product shifting between raw and processed products; and 78/

(X) Actual and potential negative effects on existing development efforts to make a more advanced or derivative version of the like product. 79/

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. 80/ As

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77/ 19 U.S.C. § 1677(7)(F).
78/ 19 U.S.C. § 1677(7)(F)(i)(IX), as amended, 1988 Act § 1326(b).
79/ 19 U.S.C. § 1677(7)(F)(i)(X), as amended, 1988 Act § 1329; S. Rep. 71 at 118.
80/ 19 U.S.C. § 1677(7)(F)(I). See Citrosuco 704 F. Supp. 1094 (Commission must consider each of the threat factors but it is not always necessary for Commission to discuss each threat of injury factor) citing Asociacion

(continued...)

the Court of International Trade has recognized, "since a threat of material injury analysis involves projection of future events, it is inherently 'less amenable to quantification' than the material injury analysis." 81/

Nature of the Subsidies

The first factor we consider is the nature of the subsidies found by Commerce. The Department of Commerce found eighteen federal and provincial subsidy programs which offered benefits to the pork producers. 82/ These subsidies generally are aimed at and have the effect of decreasing the cost of producing hogs which decreases the cost of producing pork. 83/ Pork production and exportation are thereby enhanced. 84/ Indeed, we note that USDA statistics show that production of pork in Canada increased by 600 million pounds from 2.0 billion pounds in 1986 to 2.6 billion pounds in 1988, while apparent consumption in Canada increased by only 110 million

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80/(...continued)
Colombiana de Exportadores de Flores v. United States, 704 F. Supp. 1068, 1073 (CIT 1988).

81/ Hannibal Industries, Inc. v. United States, 710 F. Supp. 332, 338 (CIT 1989), citing Rhone Poulenc, S.A. v. United States, 592 F. Supp. 1318, 1329 (CIT 1984).

82/ 54 Fed. Reg. 30774 (July 24, 1989); Report at Appendix B.

83/ Three programs have the direct effect of supporting hog prices to encourage hog production. See, e.g. The Agricultural Stabilization Act/National Tripartite Red Meat Stabilization Program (creates a floor price for hogs) 54 Fed. Reg. 30774, 30776 July 24, 1989; Quebec Farm Income Stabilization Insurance Program (guarantees income) 54 Fed. Reg. 30774, 30781 July 24, 1989; Saskatchewan Hog Assured Return Program (creates a floor price for hogs) 54 Fed. Reg. 30774, 30782 July 24, 1989. Commerce found one countervailable grant which specifically decreased pork production. (Alberta Grant to Fletcher's Fine Foods) 54 Fed. Reg. 30774, 30780 July 24, 1989. See generally 54 Fed. Reg. 30774, July 24, 1989.

84/ Commissioners Rohr and Newquist find especially unpersuasive respondents' argument that the subsidies do not create an incentive to produce. Instead, they believe that any time a farmer is guaranteed a return on his investment even if that guaranteed return does not cover his full costs of production, he has incentive to produce more. See Tr. at 164-166.

pounds, from 1.56 billion pounds to 1.68 billion pounds during the same period. 85/ Total exports during that period increased by 225 million pounds in 1986 from 474 million pounds in 1986 to 703 million pounds in 1988; as a share of total Canadian production, exports increased from 24 percent of production to 26 percent of production. 86/ To the extent that the subsidies increase production in Canada, and because Canadian production is largely dependent on export sales, particularly to the United States, the effect of such subsidies is to enhance the likelihood of increased subsidized imports to the U.S. market. 87/

Likelihood of Increased Imports

The likelihood of further imports of Canadian pork is increased not only by the nature of Canadian subsidies, but also by underutilization of Canadian production capacity. A large pork packing plant in the Prairie provinces, owned by Fletcher's Fine Foods, was closed for part of 1988 and into 1989 due to a work stoppage. This not only created underutilized capacity in Canada, but also contributed potentially to the decline in pork imports during 1988. 88/ We note that a plant closure due a strike represents idle capacity, contributing to underutilization of capacity. The return of Fletcher's plant to production due to the settlement of the strike in March 1989 will be likely to increase the quantity of pork

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85/ Report at A-40, Table 17.
86/ Report at A-40, Table 17.
87/ While we consider the nature of the subsidies as required by the statute, we base our determination not on those subsidies but on subsidized imports. Alberta Pork Producers Marketing Board v. United States, 669 F. Supp. 445, 465-6 (1987).
88/ Report at A-39. Respondent testified at the hearing that cooler capacity was up only 10 percent in 1988 as compared to 1985, but that figure does not take account of the idle packing capacity. Tr. at 129.

produced in Canada. 89/ Canada already produces 50 percent more pork than it consumes, 90/ and ships more than 50 percent of its exports to the United States. 91/ Therefore, an increase in production due to the return to production of underutilized capacity following settlement of Fletcher's strike, will in all likelihood result in increased exports to the United States.

In addition to the return to slaughtering by Fletcher's, the record shows that the Gainers plant in Alberta has been authorized to receive a grant to renovate that plant. 92/ This too will increase production in Canada which already substantially exceeds Canadian consumption. Thus increased exports to the United States are likely.

Increase of Market Penetration Ratios

We note that although market penetration ratios have shown modest declines in the most recent period of time, we believe the likelihood of further penetration poses a threat to the industry. Three specific factors lead us to believe that there is a threat of an increase in market penetration ratios to an injurious level.

First, we note that Canadian exports as a percentage of Canadian production have increased over the period of investigation. 93/ Because the United States is the largest foreign consumer of Canada's pork exports, it is likely that exports to the U.S. will increase as the export market increases in importance to Canadian producers.

89/ Available data do not permit a specific quantification of the effects of strikes at pork packing plants in Canada.
90/ Report at A-40, Table 17.
91/ In 1987 and 1986, however, Canada shipped over 90 percent of its exports to the United States. Report at A-40, Table 17.
92/ Report at A-39; Tr. at 183-184.
93/ Report at A-40, Table 17.

Second, there was an increase of Canadian exports to the Japanese market during the spring and summer of 1988, because pork from Taiwan, Japan's normal source of supply, was experiencing problems with drug residue. 94/ Taiwan now appears to have solved this problem and USDA figures show that Japan has resumed importation of pork from Taiwan. 95/ Although Canadian exports to Japan may continue, they are not likely to be as high as they might have been had Japan not recommenced importation from Taiwan. It is therefore likely that imports not sent to Japan will be diverted to the United States.

Last, the return to production of Fletcher's plant likely will increase Canadian production, which, because exports as a share of production are rising, 96/ will lead to an increase in exports to the United States. These three factors suggest a rise in pork imports from Canada is likely. Because U.S. consumption of pork has decreased slightly over the past ten years, 97/ an increase in supply, due to increased imports, cannot be easily absorbed by the market. Instead, such imports will displace domestic products, increasing Canada's share of the market.

Price Depression or Suppression

We note first that the pork market in the United States and Canada is highly competitive 98/ and that pork prices in the United States and Canada are closely correlated. 99/ The record, in fact, shows examples of both

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94/ Report at A-39.
95/ Report at A-39.
96/ Report at A-40, Table 17.
97/ Report at A-8, Table 1.
98/ Economics Memorandum EC-M-315 at 4; Subcommittee Hearing at 62 (Statement of James E. Dailey, National Director, South Dakota Pork Packers Council).
99/ Report at A-45.

under- and overselling by Canadian pork in the U.S. market. 100/ We note, however, that of the 28 comparisons made, there were 17 periods in which Canadian pork undersold domestic pork and 11 periods in which Canadian pork oversold domestic pork. 101/ Pork is a relatively fungible product and the market in the United States and Canada is highly competitive. 102/ In a commodity type market for a fungible product such as pork, price is often the determining factor in a successful sale. 103/ Because the pork market is a price sensitive market, the likely increase in imports will have a price suppressing effect. 104/ This is particularly significant in light of the vulnerability of the industry.

Inventories

Fresh pork is a highly perishable item which is generally not held in storage for long periods of time. Therefore, inventories are typically low. 105/ We find it noteworthy that although U.S. inventories of Canadian pork have declined in general, 106/ cold storage stocks of frozen bellies

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100/ Report at A-60, Table 22. See Negev Phosphates, Ltd. v. U.S. Department of Commerce, 699 F.Supp. 938, 948-949 (1988)(Although price trends were mixed the Commission's conclusions on underselling are supported by substantial evidence.)
101/ Report at A-60.
102/ Economics Memoranda, EC-M-314 at 3; EC-M-315 at 4.
103/ Gifford-Hill Cement Co. v. United States, 615 F. Supp. 577, 580 (CIT 1985).
104/ We note, as indicated in the Trade Agreements Act of 1979 that

> For one industry, an apparently small volume of imports may have a significant impact on the market; for another, the same volume might not be significant.

H.R. Rep. 317, 96th Cong., 1st Sess. 46 (1979) cited in USX v. United States, 655 F.Supp 487,490 (1987).

Commissioners Eckes and Rohr do not share the staff's economic assumptions and conclusions contained in footnote 3, page A-47 of the Report.
105/ Report at A-26, A-39.
106/ Report at A-39.

are the highest they have been in 25 years. 107/ Nonetheless, because the nature of the industry does not lend itself to large inventories, we note that the existence or lack of inventories is not a major factor in our finding of threat.

Other Demonstrable Adverse Trends

In 1985, we decided that for imports of pork to increase "new channels of transportation, distribution, and sales would have to be put into place." 108/ Four years later, this is one aspect of the pork market that has changed. Importation data indicate that the Canadians have developed the means of transporting, distributing and selling their pork products in the United States. 109/ Moreover, Canadian firms have purchased packing facilities in the United States --Goerhings in Lodi, California (now Victor's Fine Foods) and Western Iowa Pork Co. in Harlan Iowa-- gaining access to those distribution networks. Therefore, the absence of a channel of distribution, which partially accounted for the Commission's negative determination in 1985, is no longer a constraint on Canadian production and exportation of pork.

Another adverse trend is the countercyclical nature of the hog cycle of swine production to pork imports from Canada. 110/ At least three of the

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107/ Tr. at 56; see also, Subcommittee Hearing at 52 (Statement of Eugene Leman, Executive Vice-President, Iowa Beef Producers).
108/ Live Swine at 18.
109/ See Live Swine at A-38.
110/ Commissioners Eckes and Rohr first note that although they have excluded hog growers from the definition of the domestic industry, the hog cycle is nevertheless an important factor in the analysis of the threat of material injury to the pork industry. The legislative history to the 1979 Act indicates that Congress recognized the "special nature of agriculture." S. Rep. 249, 96th Cong. 1st. Sess. 88 (1979). See footnote 43 supra. The hog cycle is critical to the study of the pork industry because pork, like many agricultural processed products, is a supply sensitive product. In (continued...)

programs which Commerce found countervailable are directly targeted at increasing payments to swine growers when economic returns decline due to market forces, i.e., at the bottom of the hog cycle, thereby leveling the hog cycle by eliminating the deep troughs. 111/ Hence, because the Canadian and the U.S. hog cycles run on generally parallel schedules, Canadian production, and hence exportation, is being encouraged just at that point of the hog cycle when the U.S. industry is the most vulnerable. Because the hog cycle is currently still at a peak, perhaps just beginning its downward trend, we find that although there is no present injury, the threat of injury is real and imminent. As domestic prices begin to fall and domestic growers reduce their production, domestic producers will face supply contraction and higher hog costs, resulting in lower margins. At the same time, due to subsidies, Canadian producers can afford to maintain artificially high levels of production. Thus, in a countercyclical manner, Canadian hog prices are depressed, which in turn depresses imported pork prices, further squeezing domestic packers' margins.

Potential for Product Shifting

The question of the threat of product shifting was one especially noted by Commissioner Eckes in his dissenting views in Live Swine. In that earlier determination, Commissioner Eckes pointed out that "[i]mposition of a countervailing duty on imports of subsidized Canadian swine... will give

110/(...continued)
examining the hog cycle in this manner, we do not suggest that growers and packers constitute a single industry, but that we must consider an industry's source of supply, which in this case is governed by the hog cycle.

111/ Namely, The Agricultural Stabilization Act/National Tripartite Red Meat Stabilization Program (creates a floor price for hogs); Quebec Farm Income Stabilization Insurance Program (guarantees income); Saskatchewan Hog Assured Return Program (creates a floor price for hogs). See 54 Fed. Reg. 30774, July 24, 1989.

Canadian growers an extraordinary economic incentive to slaughter increasing quantities of swine in Canada and then ship the resulting pork products to U.S. processors." 112/

Investigations of Raw and Processed Agricultural Goods

This factor is not relevant to this case because the raw and the processed product are not the subject of the same investigation.

Negative Effects on Existing Development Efforts

Packers are concentrating on adding further market value to the pork in an effort to increase income. To date, we do not believe this trend has been substantially influenced by imports from Canada.

Dumping in Other Markets

This last factor is not applicable.

Material Injury "But For" Suspension of Liquidation

Section 705(b)(4)(B) states that:

> If the final determination of the Commission is that there is no material injury but that there is threat of material injury, then its determination shall also include a finding as to whether material injury by reason of imports of the merchandise with respect to which the administering authority has made an affirmative determination under subsection (a) of this section would have been found but for any suspension of liquidation of entries of that merchandise. 113/

The narrow question posed by the statute is whether the condition of the industry would have deteriorated to the point of material injury had not the level and/or price of imports been affected by suspension of liquidation. The available data indicate that while the threat of material

112/ Live Swine at 31. (Dissenting Views of Commissioner Eckes).
113/ 19 U.S.C. 1671d(b)(4)(B).

injury is imminent, there is neither present injury nor would there have been had liquidation not been suspended.

Conclusion

Based on the analysis of the above-discussed factors, we find that an industry in the United States is threatened with material injury by reason of imports of fresh, chilled, or frozen pork from Canada which Commerce has found to benefit from countervailable subsidies. 114/

114/ We note that Article 1902 of the U.S.-Canada Free-Trade Agreement ("FTA") allows each country to retain the right to apply its antidumping and countervailing laws to goods imported from the territory of the other party, including "relevant statutes, legislative history, regulations, administrative practice, and judicial precedents." H.R. Doc. No. 216, 100th Cong., 2d Sess. 208 (1988) reprinted in 27 ILM 281 (1988). In addition, section 102 of the implementing act states that the laws of the United States are to prevail in a conflict with the FTA. H.R. Doc 216, 100th Cong., 2d Sess. 43, 47 (1988). An FTA panel reviewing Commission determination will apply the same standard of review as would the Commission's reviewing courts. FTA Article 1904, H.R. Doc. No. 216 at 514; FTA, Statement of Administrative Action, H.R. Doc 216 at 258.

ADDITIONAL VIEWS OF COMMISSIONER DON E. NEWQUIST

For the reasons set forth in the Commission majority's opinion, I determine that domestic packing firms that process live swine into fresh, chilled or frozen pork are threatened with material injury by reason of subsidized pork imports from Canada. I also determine, however, that domestic swine producers should be included in the domestic industry which faces a threat of material injury from the subject imports.

As discussed in the majority opinion, in investigations involving imports of agricultural products processed from a raw agricultural product, Section 771(4)(E) of the statute, as amended by Section 1326 of the Omnibus Trade and Competitiveness Act of 1988, 1/ authorizes the Commission to include producers or growers of the raw agricultural product within the domestic industry producing the processed "like product." The Commission, in its discretion, may do so 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 or growers and the processors. 2/

1/ Pub. L. No. 100-48, 102 Stat. 1107 (1988).

2/ 19 U.S.C. § 1677(4)(E). In determinations rendered prior to enactment of the 1988 Act, the Commission sought to determine whether there was a "commonality" or "integration" of economic interests between growers and processors. See, e.g., Frozen

In this case, there is no dispute among the parties that there exists a single continuous line of production. Live swine, the raw agricultural product, are used solely for the production of fresh, chilled or frozen pork, which products are produced entirely from live swine. The more difficult question concerns whether swine growers and pork packers share a substantial coincidence of economic interest.

To answer this question, the 1988 Act directs the Commission to consider "relevant economic factors, which may, in the discretion of the Commission, include price, added market value, or other economic interrelationships[.]" 3/ If price is taken into account, the Commission is to consider the degree of correlation between the price of the raw agricultural commodity and that of the processed product. If added market value is taken into account, the Commission is to consider whether the value of the raw agricultural product constitutes a "significant percentage" of the value of the processed agricultural product. 4/ Further, Congress has emphasized that the Commission

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Concentrated Orange Juice from Brazil, Inv. No. 731-TA-326 (Final), USITC Pub. No. 1970 (April 1987) at 11-12; Live Swine and Pork from Canada, Inv. No. 701-TA-224 (Final), USITC Pub. No. 1733 (July 1985) at 6. Although the statute now directs us to consider whether there exists a "substantial coincidence" of economic interest, it does not appear that this revision is intended to create a more stringent standard. See H.R. Rep. 40, Part I, 100th Cong., 1st Sess. (1988) at 122; S. Rep. 71, 100th Cong., 1st Sess. (1988) at 110.

3/ 19 U.S.C. § 1677(4)(E)(i)(II).

4/ 19 U.S.C. § 1677(4)(E)(iii).

is to focus on relevant economic relationships, not necessarily legal relationships, pointing out that high price correlation may result from market factors as well as contractual relationships.5/

According to petitioner, from 1984 to 1988 the correlation between hog and pork prices was between 90.5 and 98.8 percent. 6/ Data from the USDA Economic Research Service show that from January 1975 through May 1989, fluctuations in the price of live swine "generally coincided with similar fluctuations in the wholesale price of unprocessed pork and the price of processed and retail cuts of pork." 7/ Commission staff further calculates that the degree of monthly price correlation between live swine prices and a weighted average price of three unprocessed wholesale pork cuts (bellies, hams and loins) equals 95 percent. 8/ I conclude that such price correlation is high.

With regard to the value added to live swine by producers of wholesale pork, data from the American Meat Institute show that the cost of live swine equals approximately 89 percent of the total cost of goods sold by packers and packer/processors whose

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5/ See H.R. Rep. 40, Part I, 100th Cong., 1st Sess. at 122 (1987); S. Rep. 100-71, 100th Cong., 1st Sess. at 110-111 (1987).

6/ Petition at 24-27.

7/ Report at A-45-A-46.

8/ Investigations Memorandum INV-M-090 at 1. The correlation between swine prices and "carcass cut out value" -- that is, a measure of the cost of the pork cuts from the swine carcass -- is 98 percent. Id.

fresh meat sales constituted more than 67 percent of total sales. 9/ Data obtained from responses to Commission producer questionnaires also show that from 1986 to 1988, hogs accounted for an average of 89.6 percent of the cost of goods sold, which in turn accounted for roughly 96 percent of the value of net sales. 10/ Thus, the value of swine constitutes a significant percentage of the value of wholesale pork. 11/ In my view, the limited value added by packers constitutes evidence of coincidence of economic interests. 12/

Respondents contend that hog producers and pork packers do not have substantially coincident economic interests, primarily for two reasons. First, they point out that the profitability of growers and packers may differ due to different cost structures. Thus, the one sector's profitability may be adversely affected by increases in certain costs (feed prices, labor costs, government regulation, etc.) that may have little or no impact on the other

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9/ Report, Table 13. Petitioner calculates that hogs represent "at least 84.8 percent" of the value of fresh pork produced over the period 1986-1988. Petitioners' Prehearing Brief at 15.

10/ Report at A-30-A-31.

11/ This reinforces the claim by petitioners and the conclusion by the Department of Commerce that packers essentially perform a finishing operation that does not substantially alter the commercial character of live swine. See Petitioners' Prehearing Brief at 15-16, 21, 43; Commerce Final CVD Determination at 9-10 (Claimed 20 percent value added by Canadian packers/processors found not to alter the essential character of live swine and determined to be limited.)

12/ See S. Rep. No. 100-71, 100th Cong., 1st Sess. 111 (1987).

sector. 13/ I am not persuaded, however, that this demonstrates the absence of substantially coincident economic interests. Growers and processors are likely to have different cost factors in any agricultural industry, even those where growers and processors are vertically integrated.

Respondents also argue that, due to the hog cycle, packers' profits are greatest when growers are least profitable, and vice versa. As in other agricultural industries where there are normal cycles in the production of the raw agricultural input, the performances of hog growers and packers do appear to follow different trends at certain points in the cycle. During the expansion phase of the hog cycle, for example, when hog supplies are low, hog prices may increase rapidly while wholesale pork prices increase more slowly, thereby squeezing the packers' profit margins. At the peak of the hog cycle, when hogs are in oversupply, hog prices may decline so rapidly that growers are unable to cover their costs of production. 14/ As this occurs, packers' profit margins may actually increase, because wholesale pork prices may decline more slowly than hog prices and herd liquidation enables packers to run more animals through their

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13/ See Tr. at 134.

14/ There are no other markets wherein growers may sell their product profitably and, as prices decline, it also is unprofitable to withhold hogs from the market. As a result, growers are forced to liquidate their herds, which depresses prices even further. See Report, Appendix D.

packing plants, thereby reducing their unit costs. 15/ Thereafter, however, as further contraction reduces the supply of animals to levels that are inadequate to meet demand, packers' earnings and profit margins may decline, because packers are running fewer animals through their plants over which to spread their fixed costs and because they bid up the price of hogs. Thus:

> When producer prices are lowest with production up, packer margins and profits are greatest. When producer prices are highest, packers margins and profits are smallest. 16/

In my view, the fact that packers and growers may be most profitable at different points in the hog cycle does not necessarily establish the absence of a substantial coincidence of economic interests. The demand for hogs is dependent on the demand for wholesale pork. The two indicators of coincident economic interests specifically cited by Congress in the statute -- high price correlation and low value added -- are present in this industry. In addition, both growers and packers (assuming they can maintain their profit margins) prefer higher prices, which serve to guarantee plentiful sources of supply.

15/ For a discussion of studies indicating that price changes at the wholesale pork level lag behind price changes at the farm level, see Boyd & Brorsen, "Dynamic Relationship of Weekly Prices in the United States Beef and Pork Marketing Channels," Canadian Journal of Agricultural Economics (Nov. 1985).

16/ Petitioners' Posthearing Brief, Attachment A at 4.

Also relevant to this issue, I believe, is the question of whether, over the longer term, there exists a substantial coincidence of economic interest vis-a-vis the subject imports. Sales of subsidized pork imports may displace sales by domestic packers of pork processed from domestic hogs. Also, given the relatively inelastic demand for wholesale pork, an increase in subsidized Canadian pork exports to the United States can have a significant, adverse impact on domestic hog and pork prices. 17/ In the short term, packers may be better able than growers to reduce the adverse impact of lower prices on their profit margins. Nevertheless, lower prices will ultimately lead to a contraction in domestic supply, at which point packers also may suffer reduced operating margins. 18/ Thus, both growers and

17/ See, e.g., Petitioners' Prehearing Brief, Attachment 1 at 2. Even a relatively small increase in domestic hog production, or in the sale of pork imports that displace the sale of pork slaughtered from domestic hogs, may cause the supply of animals available for slaughter to be too large to clear the market at the prevailing price, resulting in price declines. See "Review the Inspection and Increased Importation of Canadian Market Swine and Pork Products," Hearing before the Subcommittee on Livestock, Dairy, and Poultry of the House Committee on Agriculture, May 19, 1989, Report No. 89-896 at 79. Increased imports also may force an even deeper contraction (trough) in the hog cycle, by requiring domestic hog producers to reduce their production even further before domestic prices can begin to rise again. Canadian production and exports therefore threaten to exacerbate the costs of the hog cycle to U.S. producers. See Petitioners' Prehearing Brief at 2, 6.

18/ At the point where the contraction in hog supplies leads to shortages, packers will bid up the price of hogs. To the extent price competition from the subject imports prevents packers from passing on such price increases, packers' profit margins will decline.

packers are susceptible to injury by reason of an increase in subsidized Canadian pork imports.

Moreover, the statutory scheme granting the Commission discretion to include growers within a domestic industry producing a downstream agricultural product explicity recognizes that, at any given point in a production cycle or in response to an increase in the subject imports, one sector of the industry may be doing better than the other. 19/ Where this occurs, I do not believe we should define the domestic industry in such a manner as to

> focus our assessment of the impact of the allegedly subsidized imports on that segment of the . . . production process most able to minimize the impact of the imports, thereby disregarding the impact of such

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19/ As noted in the legislative history to the Trade Agreements Act of 1979:

> Because of the special nature of agriculture, including the cyclical nature of much agricultural production, special problems exist in determining whether an agricultural industry is materially 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, 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 herd unprofitable.

S. Rep. 249, 96th Cong., 1st Sess. at 88. See also, S. Rep. No. 100-71, at 111 ("[I]njury to the growers or producers of the raw agricultural product is relevant in determining injury to the domestic industry.")

imports on the growers, that segment least able to adjust[.]" 20/

With regard to whether hog growers are threatened with material injury by reason of the subject imports, the evidence indicates that U.S. swine production is in, or is about to enter, a modest contraction phase. 21/ In 17 of the past 19 months, U.S. feeders have suffered negative net operating margins. Farrow-to-finish growers also have suffered negative operating margins in every month since September 1988. 22/ Under these present conditions, I believe that domestic hog producers are particularly vulnerable to the adverse volume and price effects of increased pork imports from Canada. Therefore, I conclude that the domestic industry --consisting of both packers and growers -- faces a real and imminent threat of material injury from the subject imports from Canada. 23/

20/ Lamb Meat from New Zealand, Inv. No. 701-TA-80 (P), USITC Pub. No. 1191 (1981) at 8. See also, S. Rep. 249, 96th Cong., 1st Sess. at 90-91. In National Pork Producers Council, the Court of International Trade upheld the Commission's finding of two separate industries in Live Swine and Pork from Canada, Inv. No. 701-TA-224 (Final), USITC Pub. No. 1733 (1985). However, I do not read the Court's decision to preclude a contrary determination, based on substantial evidence, in this case. Roses, Incorporated v. United States, ___ CIT ___ (No. 84-10-013711) Slip Op. at 4 (August 18, 1989).

21/ Report, Appendix D.

22/ In April 1989, U.S. feeders' net margin was -$11.79, and farrow-to-finish growers' net margin was -$11.11, per hundredweight. Id.

23/ Even if I had defined the domestic industry to include only packers, substantial evidence in this investigation indicates that packers are threatened with material injury.

DISSENTING VIEWS OF CHAIRMAN BRUNSDALE AND VICE CHAIRMAN CASS

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

We dissent from the Commission's affirmative determination in this final investigation because we do not agree that the record before us presents sufficient evidence that an industry in the United States is materially injured or threatened with material injury by reason of subsidized imports of fresh, chilled or frozen pork from Canada. In these Dissenting Views we explain our delineation of the appropriate like product and domestic industry, and our analysis of the current and future impact of subsidized pork imports on that industry.

I. LIKE PRODUCT AND DOMESTIC INDUSTRY

A. Like Product[1]

In this case both Petitioners and Respondents agree that the domestic products most "like" the imports subject to investigation are fresh, chilled,

[1] Under Title VII of the Tariff Act of 1930, as amended, the Commission must assess the effects of subsidized 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." 19 U.S.C. § 1677(4). Title VII further defines "like product" 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." 19 U.S.C. § 1677(10).

and frozen pork.[2] Swine, the raw agricultural product from which pork is produced, and pork that has been processed beyond the slaughter and cut stage, such as ham, bacon and sausage, were not investigated by the Commerce Department[3] and the parties have not argued that either of these should be included in the like product in this final investigation. We therefore find, as we did in the preliminary determination, that the like product is domestically produced fresh, chilled, and frozen pork.[4]

B. Domestic Industry

Here, as in the preliminary investigation and prior proceedings,[5] the dispute between the parties centers on whether live swine growers should be included in the domestic industry along with packers that slaughter, cut, and pack pork for further processing or retail sale. Although Title VII of the Tariff Act of 1930,[6] clearly requires attention to this issue, in the ordinary case the statute does not appear to contemplate that technical

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[2] Petitioners' Prehearing Brief at 9-10; Prehearing Brief of the Canadian Meat Council and its members and Canada Packers Inc. at 48 ("CMC" Prehearing Brief"); Prehearing Brief of the Canadian Pork Council and its Members and Moose Jaw Packers Ltd. at 2 ("CPC Prehearing Brief").

[3] See Final Affirmative Countervailing Duty Determination: Fresh, Chilled, and Frozen Pork from Canada, 54 Fed. Reg. 30774 (July 1989)

[4] See Fresh, Chilled or Frozen Pork from Canada, Inv. No. 701-TA-298 (Preliminary), USITC Pub. 2158 (February 1989), Dissenting Views of Acting Chairman Anne E. Brunsdale at 40; Dissenting Views of Commissioner Ronald A. Cass at 55-56.

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

[6] The countervailing duty provisions of the Act are codified at 19 U.S.C. § 1671.

judgments on issues such as industry definition will dictate the disposition of our investigations. If the injury caused by the dumped or subsidized imports is analyzed critically, apart from mere description of aggregate trends or overall conditions in a given industry, there is much less likelihood that industry definition will determine the outcome. Nonetheless, before voting on investigations such as this where industry definition is seriously at issue, we take the precaution of assessing the facts to determine the outcome appropriate under either arguably proper definition. Though we will not detail both analyses in our discussion of material injury, we note that we reach the same conclusion regarding the impact of imports whether we include only packers in the domestic industry or whether we include both growers and packers.

Both the parties and Congress have devoted considerable thought to the proper definition of the domestic industry in this case. In recognition of this, we believe it important to give a full exposition of our reasons for determining that live swine growers and pork packers do not constitute a single industry, despite our conclusion that the outcome of the case is not affected by the industry definition.

Petitioners argue that the Commission should include growers in the domestic industry[7] in light of Section 1326(a) of the Omnibus Trade and Competitiveness Act of 1988 (OTCA).[8] Section 1326(a) provides that the domestic industry producing a "processed agricultural product" may include

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[7] Petitioners' Prehearing Brief at 9-10.

[8] Pub. L. No. 100-418, § 1326(a), 102 Stat. 1107, 1203-04, codified at 19 U.S.C. § 1677(4)(E).

both the growers of the raw agricultural product and the packers or processors of the finished product if the processed product is produced from the raw product "through a single continuous line of production" and growers share a "substantial coincidence of economic interest" with processors.[9] According to Petitioners, OTCA reverses the Commission's decision in Live Swine, as affirmed in National Pork,[10] that growers and packers do not share the "requisite economic interests" to be treated as a single industry producing the like product, and therefore requires us in this investigation to include both in the domestic industry.[11]

In defining the domestic industry in this investigation, we therefore undertake a twofold analysis. First we examine whether, as Petitioners

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[9] The relevant portion of the statute 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).

19 U.S.C. § 1677(4)(E)(i).

[10] 661 F. Supp. 663.

[11] Petitioners' Prehearing Brief at 18-42.

argue, OTCA imposes a new standard on the Commission different from its traditional approach to the definition of agricultural industries, or whether, as Respondents believe, OTCA merely codifies this approach.[12] Second, having formulated our reading of the statutory test, we apply the test to the evidence before us regarding the manner in which hog growers and pork packers function in today's market to determine whether they should be included in the same domestic industry.

1. Interpretation of OTCA

Turning to the question of the proper interpretation of OTCA, we discuss below the development of the Commission's two-part test for including growers and packers in the same domestic industry and the legislative history of Section 1326 in light of the parties' arguments on the Commission's interpretation of that provision.[13]

Prompted by congressional expressions of concern in the 1979 Trade Agreements Act regarding the "special problems" of accurately determining whether agricultural industries are materially injured by imports,[14] the Commission developed an alternative to the analysis used in cases involving

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[12] CMC Prehearing Brief at 48-49, 52-53; CPC Prehearing Brief at 3-4.

[13] The Dissenting Views of Vice Chairman Cass to the preliminary determination contain a lengthy discussion of the pre-OTCA development of the Commission's two-part test for defining agricultural industries.

[14] In its report on the Trade Agreements Act of 1979, the Senate Finance Committee noted that the "special nature" of agriculture creates "special problems" for 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). Though these statements concern the material injury determination, the Commission referenced them when deciding like product and domestic industry questions.

component suppliers and end-product manufacturers. In agricultural cases the Commission began considering on a case-by-case basis whether to include both growers and packers in the domestic industry.[15] In order for both producers and processors of the raw agricultural product to be included in a single domestic industry, the Commission had to find (1) a single, continuous line of production from the raw agricultural product to the processed product; and (2) a sufficient coincidence of economic interest between the packers and growers such that the two were adversely affected by the offending imports in a like manner. Unless both parts of this test were satisfied, the Commission included producers and processors in separate domestic industries.[16]

The Commission applied this test in Live Swine and found that growers and packers were two separate industries with respect to hog and pork production.[17] Though the Commission found that pork was produced through a "single, continuous line of production" from growers to packers, it determined that growers and packers did not share the "requisite integration

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15 See, e.g., Certain Table Wine from France and Italy, Inv. Nos. 701-TA-210-211 and 731-TA-167-168 (Preliminary), USITC Pub. 1502 at 4-10 (March 1984)("Table Wine"); see also Live Swine; Certain Red Raspberries from Canada, Inv. No. 7331-TA-196 (Final), USITC Pub. 1707 (June 1985)("Raspberries"); Frozen Concentrated Orange Juice from Brazil, Inv. No. 701-TA-184 (Final), USITC Pub. 1406 (July 1983)("Orange Juice"); Lamb Meat from New Zealand, Inv. No. 701-TA-80 (Preliminary), USITC Pub. 1191 (Nov. 1981)("Lamb Meat"); Fish, Fresh, Chilled or Frozen from Canada, Inv. No. 701-TA-40 (Final), USITC Pub. 1066 (May 1980)("Fish from Canada").

16 See e.g., Table Wine, Raspberries, Orange Juice, Lamb Meat, and Fish from Canada.

17 Live Swine involved subsidized imports of both live hogs and fresh, chilled, and frozen pork. The Commission found that while hog growers were materially injured by imports of live swine, packers were not injured by imports of pork products. Live Swine at 3.

of economic interest."[18] The Commission therefore included only packers in the domestic industry producing pork.[19]

Petitioners in that investigation, the National Pork Producers Council (the NPPC, who are also Petitioners here), appealed the Commission's definition of the like product and domestic industry producing pork to the Court of International Trade.[20] The court specifically ruled that substantial evidence on the record supported the Commission's finding that insufficient integration of economic interests between the growers and packers justified including only the packers in the pork producing industry.[21]

Immediately after the Commission's decision in Live Swine, Senator Grassley introduced legislation that would have required the Commission to include both growers and packers in the domestic industry in cases in which the Commission found that the processed agricultural product like the subject import was produced from the raw product in a single continuous line of production.[22] In his comments introducing this legislation Senator Grassley explained his understanding that the Commission's traditional test for determining whether to include growers in the domestic industry required a single line of production or other evidence of economic interdependence.[23]

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[18] Live Swine at 6-7.

[19] Id. at 7.

[20] See National Pork Producers Council v. United States, 661 F.Supp. 633 (Ct. Int'l Trade 1987).

[21] 661 F. Supp. at 638.

[22] S. 1629, 99th Cong., 1st Sess., 131 Cong. Rec. 23338 (1985).

[23] Id.

After hearings were held on the proposed legislation, at which witnesses from the Commission and the Office of the United States Trade Representative testified, Senator Grassley introduced amendments to the bill in order to correct this misinterpretation of Commission practice.[24] Specifically, Senator Grassley noted that the "bill would maintain the two-part test currently applied by the International Trade Commission."[25] He explained further that this test required that the processed product be produced through a single line of production <u>and</u> that a coincidence of economic interest exist between growers and packers.[26] In addition, the bill provided that the Commission determine coincidence of economic interest "based upon relevant economic factors, which <u>may</u> include price, market value added... or other economic interrelationships...," rather than directing the Commission to consider specific factors.[27]

Petitioners make much of these amendments to the definition of domestic industry for cases involving processed agricultural products. Also pertinent, however, is what Congress did <u>not</u> do. Congress could have mandated that, in every case involving a processed agricultural product like pork, the growers automatically be included in the domestic industry.[28] The amendments fall far short of that imperative, outlining only a series of

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[24] S. 2244, 99th Cong., 2d Sess., 132 Cong. Rec. 6347 (1986).

[25] <u>Id.</u>

[26] <u>Id.</u>

[27] <u>Id</u>. (emphasis added).

[28] Indeed, Congress has so mandated in connection with wine and grape products subject to investigation. 19 U.S.C. § 1677(4)(A).

circumstances in which the Commission "may" join growers and producers into one domestic industry. Further, in articulating those circumstances, Congress did not alter the focus of the industry definition. It did not, for instance, suggest that the Commission determine what industry definition would best identify the set of domestic producers most likely to have been injured by the import practice being investigated. While there is reason to believe that our industry definition usually does indeed identify that group of domestic producers,[29] Congress continued to suggest that the domestic industry be defined on the basis of general factors rather than factors more narrowly focused on the affects of specific imports and trade practices.

Despite some expression of congressional dissatisfaction with the Commission's determination in Live Swine, after Congress investigated the issues it passed legislation that actually retained the Commission's traditional approach. The Statement of the Senate Finance Committee regarding the final bill confirms this interpretation:

> The amendments contained in section 326 of the bill directly relate to the inquiry made by the ITC under Title VII of whether agricultural industries are being materially injured by dumped or subsidized imports. Many of the concepts embodied in these amendments have been derived from ITC practice in past cases involving agricultural products. The purpose of including them in the statute is to give explicit congressional endorsement of their consideration, and to encourage their application.[30]

There is little doubt that the bill as enacted contains at least

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[29] See, e.g., Generic Cephalexin Capsules from Canada, Inv. No. 731-TA-423 (Final), USITC Pub. 2211 (August 1989) at 30-33 (Additional Views of Chairman Anne E. Brunsdale).

[30] S. Rep. No. 100-71, 100th Cong., 1st Sess. 108-111 (1987).

a mild admonishment to the Commission to place more emphasis than it did in Live Swine on economic indices of integration, as opposed to legal ones, in its industry determination.[31] The new law specifically informs the Commission that it may find a coincidence of economic interest based on relevant economic factors "regardless of whether such coincidence of economic interest is based upon any legal relationship."[32] The Commission is also told that if it takes price into account, it must "consider the degree of correlation between the price of the raw agricultural product and the price of the processed agricultural product," and that if it takes value added into account it must "consider whether the value of the raw agricultural product constitutes a significant percentage of the value of the processed agricultural product."[33]

These provisions in no way, however, reduce the Commission's discretion to examine and give weight to whatever factors it deems relevant in light of the circumstances of the specific case. They certainly do not expressly or otherwise overturn the Commission's decision in Live Swine. In light of the amendments to the law previously made on behalf of wine grape growers, it is clear that had Congress wanted to ensure that hog growers would be included

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[31] In Live Swine the Commission disposed of the question of economic interest 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. In addition, the Commission expressly found evidence that the high price correlation between live swine and fresh, chilled, or frozen pork was not probative as to the existence of economic integration of growers and packers. Live Swine at 6-7.

[32] 19 U.S.C. § 1677(4)(E)(i)(II).

[33] 19 U.S.C § 1677(4)(E)(iii)(I) & (II).

in the domestic industry with packers, it could have passed legislation more specifically directed to that end.

2. Application of OTCA Test

Having said that Congress did not greatly alter the test for inclusion of raw agricultural producers in the industry arguably injured by processed imports, we should be quite clear in stating that application of the statutory test in this investigation is far from easy. The evidence does not unequivocally support either inclusion or exclusion of hog growers from the domestic industry. Indeed, the one prong of the industry definition that is readily applied here suggests a result that we believe, on balance, is not compatible with the second prong.

The first issue is the existence of a single, continuous line of production.[34] There is no dispute that fresh, chilled, and frozen pork are produced through a single continuous line of production beginning with the growing of the hogs and concluding with the slaughtering of the hogs and the cutting and packing of the meat. Hogs are completely devoted to the production of pork and, conversely, pork is produced entirely from hogs.

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[34] 19 U.S.C. § 1677(4)(E)(ii) provides that:

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.

Both Petitioners and Respondents essentially agree on this point,[35] and we believe that the evidence compels this conclusion. Prior to enactment of OTCA, the Commission in Live Swine reached this conclusion based on its traditional reasoning. The parties have not asked us to revisit this issue in light of OCTA.

The parties have instead devoted their arguments to the more difficult question of whether packers and growers share the requisite degree of economic interest for both to be included in the domestic industry. Petitioners urge the Commission to deem price and value added not only to be relevant considerations in this investigation, but the key indicators of the claimed correspondence between the economic interests of growers and packers.[36] Petitioners stress that the Commission should not disregard these factors, the only two named in the statute, in favor of an analysis of other economic factors such as relative profitability and costs.[37] Petitioners place further emphasis on the statutory directive to the Commission, should it choose to evaluate price and value added, to consider "the degree of correlation between the price of the raw agricultural product and the price of the processed agricultural product," and "whether the value of the raw agricultural product constitutes a significant percentage of the value of the processed agricultural product."[38]

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35 Petitioners' Prehearing Brief at 10-11. Respondents do not argue the point.

36 Petitioners' Prehearing Brief at 14-15.

37 Id. at 12, 59-60.

38 Id. at 14-15. See 19 U.S.C. § 1677(4)(E)(iii). Chairman Brunsdale notes that Petitioners' arguments would apply to a lesser or greater degree (continued...)

With respect to price, Petitioners point to the extremely high statistical correlation, usually above 90 percent, between the price of hogs and the price of pork over the last ten years.[39] They argue that this correlation in price movement is exactly the evidence of a high degree of convergence in economic interests contemplated by the statute.[40] Similarly, Petitioners note that hogs constitute over 85 percent of the value of the finished fresh, chilled, or frozen pork product.[41] Petitioners believe these two facts indicate that packers are in essence "finishers" that Congress intended to include in the domestic industry only with growers.[42] In light of the statutory scheme for the treatment of agricultural products, Petitioners argue that "the producer and the finisher cannot logically be evaluated separately."[43]

Respondents, however, look beyond these facial indicators of similar economic interest to the actual business conditions of the industry, arguing that statistical price correlation and the amount of value added are not

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[38](...continued)
depending on the extent to which a product satisfies the first, continuous-line-of-production prong of the statute; indeed, the more the product satisfies this prong, the higher the correlations identified by Petitioners are likely to be. In Senator Grassley's original bill, this would have been sufficient. See n.23, supra, and accompanying text. But Congress made the second, coincidence-of-economic-interest prong a requirement rather than an alternative, indicating that more than a correlation in prices and high value added are necessary.

[39] Id.

[40] Id.

[41] Id. at 16-17.

[42] Id.

[43] Petitioners' Prehearing Brief at 44.

indicative of a coincidence of economic interest between growers and packers.[44] They stress the divergence of interests between growers and packers based on their competing motivations with respect to hog prices and the differences between the costs and production constraints faced by each.[45] They argue further that value added is not germane to the Commission's determination on the industry issue because whatever the value added by packers, the adversity of packer and grower interests remains the same.[46] Moreover, they assert that whether packers are "finishers" is not the standard enunciated by the statute.[47]

With respect to the seeming correlation between the movement of pork and hog prices, Respondents point to evidence that hog prices rise and fall faster than retail pork prices and that, as a result, packer margins are squeezed during a period of rising hog prices until hog supplies increase, bringing hog prices down.[48] Respondents note that because packers have high fixed costs, increased production allows them to gain economies of scale and increase margins relative to pork prices.[49] Packers profit most when pork prices remain high as hog supplies increase and hog prices drop. Conversely, Respondents argue, such conditions reduce growers' profitability and are a

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[44] CMC Prehearing Brief at 49, 57-58; Attachment A at 7-8; CPC Prehearing Brief at 3-4.

[45] CMC Prehearing Brief at 49, 58; CPC Prehearing Brief at 4-7.

[46] CMC Prehearing Brief at 59-60, Attachment A at 8-9.

[47] CMC Posthearing Brief at 7.

[48] CMC Prehearing Brief at 57, 60-61, Attachment A at 4-6; CPC Prehearing Brief at 3, 5-7.

[49] CMC Prehearing Brief at 49, 58.

signal to growers to reduce production.[50] Respondents conclude that this inverse relationship between profit margins for packers and growers leads the two groups to different production decisions reflecting their different interests and costs of production.[51] As a result, Respondents argue that packers and growers are not necessarily affected by external influences on pork prices, such as imports, in the same way.[52]

We find that Respondents depict the interests of growers and packers more realistically than Petitioners and therefore have the more persuasive arguments on this issue. The record evidence overwhelmingly supports Respondents' contention that packers profit when the supplies of hogs are up and prices are correspondingly low. Growers, on the other hand, suffer under these conditions, profiting from exactly the opposite situation when hog supplies are down and prices are correspondingly high. Because the demand

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50 Id.

51 Respondents note that

> [n]umerous factors have been identified that affect the two industries differently. Hog growers, as an agricultural business, are greatly affected by feed prices, weather (particularly drought), disease, and the like. These agricultural factors are of little concern to pork packers, who essentially run manufacturing enterprises. As manufacturers, packers have greater concerns with labor costs and disputes, OSHA regulations, and government meat inspection regulations.
>
> Analysis of these factors simply highlights ... that hog growers and pork packers operate separate businesses requiring different skills, applying different inputs and technologies, to produce different products.

CMC Prehearing Brief at 62-63.

52 CMC Prehearing Brief at 62-64.

for pork is relatively inelastic -- that is, an increase in the supply of pork may cause pork prices to drop dramatically because consumers do not expand their purchases proportionate to the increase in supply -- growers actually receive higher overall revenues when they produce fewer hogs.[53]

The record further indicates that growers and packers not only face different costs of production, as would be expected, but that there is no shared cost structure. The price of feed corn may influence a grower's decision to produce a certain number of hogs in light of forecast prices for live swine, but because live swine prices are set by overall supply and demand for hogs, these costs are not necessarily passed directly to the packers. Packers experience changes in grower costs only indirectly through the growers' supply response.

By the same token, the record indicates that pork packers do not directly pass changes in pork prices back to growers. While we agree with Petitioners that the statute does not require the simple temporal alignment of economic interests between growers and packers,[54] our definition of the domestic industry in this case is informed by our conclusion that growers and packers do not necessarily respond to retail sales volumes and prices of pork products in the same manner at any time in either's business cycle.

Petitioners themselves supplied some of the most cogent evidence in the record that the primary short and mid-term (one to five years) determinant of

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[53] Report at Appendix D.

[54] Petitioners' Posthearing Brief at 4.

hog prices in the United States is the hog cycle itself.[55] On a year-to-year

basis, hog growers make production decisions in response to changes in their own costs based on expectations regarding prices that result not from the price of pork, but from the supply of hogs.[56] Packers compete for hogs, driving hog prices up relative to wholesale pork prices, to the point where packer capacity is sufficiently utilized. At that point hog prices begin to drop.[57]

In discussing the circumstances under which growers are likely to experience injury from imports, Petitioners quote the Additional Views of former Chairman Liebeler in the Live Swine case:

> The share of the injury incurred by the growers will depend on the share of their product that goes into the final product and the relevant elasticities of supply.... If the packers' supply curve is infinitely elastic, then all of the injury will be passed to the growers.[58]

While we agree that this is a correct understanding of when packers will pass changes in the market for retail pork back to hog growers, we do not agree with Petitioners that packers in this case face a perfectly inelastic demand curve; we thus disagree with the premise for Petitioners'

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[55] See Petitioners' Posthearing Brief at Attachment A, "Pork Industry Handbook," Cooperative Extension Service, Purdue University (1978).

[56] Changes in the consumer demand for pork, which until recently was constant, have only a long-term impact on the number of hogs that pork packers can profitably turn into pork products. Petitioners' Posthearing Brief at Attachment A, p. 1, 3.

[57] Id. at 4.

[58] Petitioners' Prehearing Brief at 86.

assertion that packers do not operate as would businesses following a supply curve and that hog growers bear the full cost of changes in the market for pork.[59] Rather, the evidence before us indicates that the packers also are responsive to changes in the market for pork; their supply curve depends on their operating costs, on the prices and quantities of hogs available from domestic hog production, and on the prices and availability of imported hogs.[60] The evidence suggests that the supply curve for domestic pork production is affected by changes in any of these variables and that it is highly, but not completely, inelastic.[61]

This does not mean that packers are the only ones affected by the subsidized imports of pork or even that they are more affected than growers. The record contains an extraordinary amount of evidence on this point. A fair reading of it could sustain almost any proposition. What seems to us most consistent with the evidence is that a shift in the demand for domestic retail pork due to imports will change the packers' derived demand for hogs,

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[59] Id. at 87. Petitioners argue that packers simply slaughter whatever hogs are made available to them in any given period and posses no ability to alter pork production in response to changes in the price of pork products.

[60] Memorandum to the Commission from the Office of Economics, EC-M-315, dated August 24, 1989 ("Economics Memorandum") at 5.

This memorandum notes that the packers' supply curve is also dependent on the costs of other factors such as capital and labor, and on available capacity and alternative production options.

We note that even after the imposition of countervailing duties on imported Canadian swine, domestic pork processors still import a certain amount of swine each year. Whatever the merits of the Live Swine decision, the result can only have had a negative impact on the pork producers. Their continued importation of swine despite the duty strongly suggests that processors perceive benefits from the Canadian trade. This is a further indication that the interests of the processors and the growers are not "coincident."

[61] Id.

affecting <u>both</u> growers and packers, but affecting them in different ways.

The packers experience the effects of subsidized imports as a decrease in the price obtainable for pork. So long as the packers are able to cover their operation costs, this decrease does not directly affect demand for hogs in the short term. The price of hogs will continue to be set principally by capacity-driven packer demand and the available hog supply, which is relatively invariant over the short term. Packers, thus, find their profit margins squeezed in response to imports of pork at a time when hog growers are unaffected.

Growers, however, may be affected by imports of pork in one or both of two ways. They may experience a decline in the demand for hogs in the short term; this decline will be slight if all packers remain in operation, but operate at slightly lower levels of capacity utilization.[62] If some packers currently operate at a marginal level of profitability while other packers currently operate near full capacity, the effect of any pork imports might be to so reduce packer profitability as to cause a reduction in packing capacity and a larger consequent decline in the demand for hogs. It is not certain that packers would reduce pork production or, secondarily, capacity for production; but if that occurred the short-term change in packers' capacity would reduce demand for domestic hogs and exert downward pressure on hog prices. Over the longer term, the impact on growers will be tied to changes in the supply of hogs produced in anticipation of the effects of reduced demand for domestic pork. It is important to emphasize the word

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[62] Of course, if packers continue to operate at current capacity utilization levels, with similar demand for hogs but lower returns on pork, the packers will experience all and the growers none of the effects of the imports.

"anticipation," because the actual effect on hog growers depends as much on the reaction of other hog growers to the packers' anticipated response to pork prices as it does on the packers' actual response. If hog growers as a group are overly pessimistic, hogs will be in short supply relative to packer demand at the initial hog price and hog prices consequently will rise, not fall, in adjusting to imported pork. This, in essence, is the story of the "hog cycle."

Under a different statutory instruction, the fact that growers can experience harm from the subject imports might incline us to include growers in the domestic industry. It appears, however, that the difference between packers and growers is more significant under the present law. It may be that ultimately the hog-growing industry, which is more price-elastic, will experience a greater decline in revenues than the pork-packing industry. The competitive nature of hog-growing means that this revenue effect may not greatly affect what now shows up as growers' profits, but this does not appear to negate the relevance of revenue effects under the statute. What matters here is that this effect in both the long and short run is only ambiguously related to the direct effects of the subsidized imports. Even if growers could be said ultimately to be <u>more</u> affected, the record here does not clearly establish any such effect but does establish that packers bear the primary (and perhaps full) direct impact of price changes for pork.[63]

[63] The degree to which this is true depends on the supply of hogs relative to packers' capacity for pork production. As packers more closely approximate full production prior to any increase in subsidized imports, they feel more, and growers less, economic effect of pork imports over the near term, as the likely effect of imports will be to decrease net returns to packers but not so much as to take a marginal packer out of production thereby reducing demand for domestic hogs.

Given the current statutory test, this disparate impact of imports militates in favor of excluding growers. The lack of correspondence in the impact of imports on growers and packers, resulting as it does from the underlying divergence in their economic interests, demonstrates that growers and packers do not function as a single industry in the marketplace, which is the issue we must address here.

Petitioners' other arguments do not establish a legal basis for rejecting the conclusion that growers and packers have insufficiently coincident interests to be a single industry under the law. The concept advanced by Petitioners that packers add so little value to hogs that they are merely "finishers" that "Congress has chosen to include with the industry producing the product which is 'finished'"[64] has no basis in the statute, the legislative history or past Commission practice. In a case involving processed agricultural products, the processors are the industry, with the possible inclusion of the growers. Perhaps one might argue that processing involves so little economic activity that it cannot be considered an industry. In this instance, however, the value added by the packers of around 15 percent is more than de minimis. Moreover, in light of the other indications that packers are an industry independent of the growers, the value added figures become less significant. Clearly, as discussed above, the statute does not require that the Commission treat evidence regarding value added as determinative of the coincidence of economic interests between packers and growers.

64 Petitioners' Prehearing Brief at 16.

Petitioners also argue that under Commission precedent the consideration of relative profitability is inappropriate in this investigation.[65] This argument misconstrues the Commission's examination of the allocation of revenues in prior cases. For example, in Orange Juice, cited by Petitioner to demonstrate that relative profitability is not germane to coincidence of economic interest,[66] both the growers and processors derived their income from the sale of the final product and allocated the revenues according to the cost of processing the fruit, a specified toll charge, or some other formula. The profits of the growers and processors were clearly linked to an agreed division of the price received for the processed product, orange juice, and thus relative profitability was not important. Here, the inverse relationship in the profitability of hog growers and pork packers indicates that the fortunes of the two are not linked. In both cases the Commission's focus is not on profitability *per se* but on the evidence of a shared economic fate in the market for the processed product *vis a vis* external factors such as imports that impact on sales and prices for that product.

Petitioners overstate their case by arguing that the opposition of interests between growers and packers with respect to the price of the raw product is inherent in any buyer/seller relationship and therefore will exist for all agricultural products.[67] According to Petitioners, if we find that the inverse relationship in profitability and competing interests with regard

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[65] Petitioners' Posthearing Brief at 2.

[66] *Id.*

[67] Petitioners' Prehearing Brief at 12-13, 58-59.

to the price of the raw product are determinative of the lack of economic interest between growers and packers, then we have essentially negated the statute.[68] In making this argument we believe Petitioners erroneously assume that the relationship between the growers and processors of all processed agricultural products that come before the Commission will be characterized by the same adversity that exists between hog growers and pork packers. The fact that the Commission has in other cases included growers and packers in the same industry, using essentially the same analysis called for by the statue, belies Petitioners' argument.

We agree with Petitioners' that the OTCA amendments -- allowing growers to be included as interested parties and as part of the domestic industry; providing special provisions for the evaluation of threat; and, specifying the circumstances under which Commerce must attribute subsidies on raw products to the processor -- "constitute an articulation by Congress of the proper countervailing duty theory to be applied in the context of agricultural products such as pork."[69] Interpreted as an integrated whole, however, these amendments do not create a scheme under which it would be "illogical" for the Commission to evaluate packers and growers separately, even in cases in which Commerce passed subsidies on the raw product forward to packers and the Commission found the potential for product shifting.[70]

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68 Id.

69 Petitioners' Prehearing Brief at 18.

70 The legislative history of the provisions appears to acknowledge this. The report of the Senate Finance Committee states with respect to the new provision on threat:

(continued...)

The latter inquiries concern the degree of harm or potential harm to the domestic industry from subsidized imports. It remains for the Commission to delineate the members of that industry based on the statutory two-part test. One of the primary considerations under that test is not simply whether growers and packers both are affected by imports of the processed product, but whether they experience the impact of imports of the processed product in a like manner.

Given the history of this issue with respect to pork dating from the <u>Live Swine</u> case in 1985, it is not surprising that the instant case has attracted wide attention not only from members of the affected industries but from Congress as well. While several members of Congress have indicated in connection with this investigation that the Commission should give considerable weight to the interests of hog growers, we believe that an even-handed application of the principles expressed in the statute requires us to find that growers are not a part of the domestic pork producing industry.

II. <u>MATERIAL INJURY BY REASON OF SUBSIDIZED IMPORTS</u>

A. <u>Introduction</u>

Title VII, for all its complexity, commands the Commission to answer one question: Is a domestic industry materially injured or threatened with material injury (or is the growth of a domestic industry materially retarded)

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[70](...continued)

> It should be noted that this amendment is not necessarily restricted to raw and processed agricultural products whose producers are determined to be part of the same industry pursuant to the new section 771(4)(E).

S. Rep. No. 100-71, 100th Cong., 1st Sess. 108-111 (1987).

by reason of the unfair imports under investigation? The various provisions of Title VII mainly provide definitions of terms relevant to this inquiry and procedures to be employed in Commission proceedings.

The key provision in Title VII consists of instructions to the Commission, encompassing a full page in the U.S. Code Annotated, that tell us generally what to look at in order to determine whether the imports are causing "material injury" to a domestic industry in the United States.[71] The statute instructs the Commission to focus on the volume of imports, the effect of imports on prices in the United States for domestic like products, and the impact of imports on domestic producers,[72] and further specifies numerous subsidiary factors that should be helpful in assessing facts bearing on these topics. To that end, the statute directs our attention to facts indicating whether import volumes are rising absolutely or relative to domestic production or consumption, whether there has been price suppression or depression, and whether the imports have had an impact on a series of specific employment and financial indicators. The statute, as recently amended, also asks that we look at evidence on the three generic factors in the context of each industry's particular operation and that we be mindful of business cycles' effects on the new data. The statute further authorizes the Commissioners to consider "other economic factors" they deem relevant.[73]

The statute does not prescribe a method for drawing together the specific evidence regarding the three specified factors -- volume, price, and

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[71] 19 U.S.C. § 1677(7)(A).

[72] 19 U.S.C. § 1677(7)(B).

[73] 19 U.S.C. § 1677(7)(C).

impact -- in order to assess whether the domestic industry has experienced "harm which is not inconsequential, immaterial, or unimportant" by reason of the subsidized imports under investigation. The law does, however, require each Commissioner to explain his or her method of analysis and, more specifically, to address in each investigation how each of the three statutory factors supports the ultimate conclusion.[74]

We have typically addressed these issues in a similar fashion. Although the particulars of our presentation of the analysis sometimes differ,[75] we both conduct the same three-part inquiry into the existence of material injury by reason of the unfair imports, comparing the conditions experienced by the domestic industry to the conditions that would have existed had there been no unfairly traded imports.[76] First, we examine the volume of the subsidized imports; given the causal requirement of the statute, special attention is paid to the extent to which the volume of the subject imports, and correlatively their prices, were affected by the alleged unfair trade practices. Second, we assess the effect of these apparent changes in the market for the subject imports on prices, and concomitantly on

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[74] 19 U.S.C. § 1677(7)(B).

[75] See, e.g., Light-Walled Rectangular Pipes and Tubes from Taiwan, Inv. No. 731-TA-410 (Final), USITC Pub. 2169 (March 1989) at 3, 9 (Views of Acting Chairman Anne E. Brunsdale and Commissioner Ronald A. Cass).

[76] For explanation of these approaches and the difference between these and other approaches, see, e.g., Certain Electrical Conductor Aluminum Redraw Rod from Venezuela, Inv. No. 701-TA-287 (Final), USITC Pub. 2103 (August 1988) at 35-49 ((Dissenting Views of Acting Chairman Anne E. Brunsdale); 3.5" Microdisks and Media Therefor from Japan, Inv. No. 731-TA-389 (Preliminary) USITC Pub. 2076 (April 1988) (Additional Views of Commissioner Cass), at 70-74; Digital Readout Systems and Subassemblies Thereof from Japan, Inv. No. 731-TA-390 (Final), USITC Pub. 2150 (Jan. 1989) at 95-119.

sales, of the domestic like product. Finally, we consider the impact of these changes in prices and sales of the domestic like product on employment and investment in the domestic industry and determine whether these effects on the domestic industry are "material" within the meaning of the statute. In doing so, we pay careful attention to the evidence of record, including that explicitly couched in economic terms as well as evidence phrased in ways that implicitly, but not explicitly, convey information about the economic forces operating in the particular markets relevant to the investigation.[77] In this investigation, the evidence on these factors considered together requires a negative determination of material injury by reason of the subsidized imports subject to investigation.[78]

B. Material Injury from Subsidized Pork Imports

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[77] As our reviewing court has noted in reference to one such approach, explicit advertence to economic principles "has the potential for explaining, within the confines of the statutory framework and in an improved manner, how [unfair] imports affected the domestic industry." USX Corp. v. United States, 682 F. Supp. 60, 69 (Ct. Int'l. Trade 1988).

Whether other methods of analysis satisfy the statutory criteria has been the subject of scholarly debate. See, e.g., Morkre & Kruth, "Determining Whether Dumped or Subsidized Imports Injure Domestic Industries: International Trade Commission Approach," 7 Contemporary Policy Issues 78 (July 1988).

[78] Though in this case we were given access to the majority's views on like product and domestic industry, we were not permitted to see the majority's views on material injury and threat of material injury. Commission practice has been to withhold the majority opinion from those in the minority. We believe that members of the Commission should freely circulate their opinions, including the majority opinion, for comment and response by other Commissioners. The Court of International Trade recently added its voice to this debate, expressly disapproving current Commission practice in Borlem v. United States, No. 87-06-00693, slip op. at 24 (Ct. Int'l Trade June 29, 1989)("Borlem II"). After noting its frustration with this practice because of the difficulty it adds to the task of judicial review of Commission determinations, the Court of International Trade expressed "the hope that this practice will come to an end." We share that hope.

1. Volumes and Prices of the Subsidized Imports

The record evidence confirms that only a small volume of subsidized pork from Canada entered the United States during the period investigated by the Commission. In calendar year 1988, 469,814,000 pounds of Canadian pork was imported.[79] This constituted less than 3 percent of U.S. consumption by volume,[80] down slightly from the figure a year earlier, but roughly comparable to the volume of imports in 1986. Although Petitioners claim that the 1988 figures are understated due to a strike at a major Canadian packing plant,[81] Respondents introduced evidence demonstrating that labor disputes at packing plants have occurred frequently in the past and that overall production and export figures for 1988 were not distorted.[82] In all events, the relative consistency of imports over the period of our investigation suggests that attention to 1988 volume figures is unlikely to be misleading.

In looking at import volumes, it is critical to understand the manner in which the subsidies at issue affected these volumes. The Department of Commerce does not calculate this effect, nor does it determine the amount by which foreign subsidies lowered the imports' prices when sold into the United States. Commerce calculates only the amount of the foreign subsidy. The final subsidy level calculated by Commerce for these imports of Canadian pork

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[79] Report at A-41, Table 18.

[80] Report at A-43, Table 19.

[81] Petitioners Prehearing Brief at 66.

[82] CMC Prehearing Brief at 18-20.

is CAN $ .036 per pound, and includes subsidies to Canadian hog growers.[83] This has been computed as equivalent to a 2.9 percent ad valorem subsidy.[84]

This subsidy calculation, while essential to determining the subsidies' effect on import volumes and prices in the United States, cannot be taken uncritically as equivalent to a determination of the effect of the foreign subsidies on the U.S. price of the foreign imports. As Congress recognized in directing the Commission to consider the type of subsidy at issue in evaluating threat of material injury,[85] different types of subsidies will have different effects on the price and volume of the subsidized product. Some subsidies may be direct payments to exporters based on the amount of the subject product exported, while others may be payments for production regardless of the market for which the product is produced. Still other subsidies may be payments for the use of particular inputs to production, including subsidies based on the location of the manufacturing operation. In each case a careful evaluation of the manner in which the subsidy operates is necessary to determine its price and volume effects.[86]

In this case the primary component of the subsidy calculated for pork consists of various subsidies to Canadian hog production. The parties to this investigation draw opposite conclusions about the extent to which these

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[83] See Final Affirmative Countervailing Duty Determination: Fresh, Chilled and Frozen Pork from Canada, 54 Fed. Reg. 30774 (July 1989).

[84] Report at A-15, n. 1.

[85] 19 U.S.C. § 1677(7)(E)(i).

[86] See New Steel Rails from Canada, Inv. No. 701-TA-297 (Preliminary), USITC Pub. 2135 (November 1988) at 42 (Additional Views of Commissioner Ronald A. Cass).

subsidies are passed forward to packers and then to consumers, and their consequent effects on import volumes and prices. Respondents rightly observe that the impact of the subsidy on price depends on the supply and demand elasticities for Canadian hogs and pork in the relevant market.[87] Respondents also rightly note that because the Canadian pork supply is relatively inelastic, as it is in the United States, the full amount of the subsidies calculated by Commerce will not "pass through" as an equivalent reduction in the price of the subsidized pork offered to consumers in the United States.[88] This does not, of course, answer the more difficult question: What effect do the subsidies have on that price?

Disagreement about the way in which the subsidies operate underlies the parties' arguments over the degree to which supply varies in Canada with a cyclical breeding and slaughtering pattern.[89] The evidence on this issue is mixed, but resolution of it is unnecessary to the ultimate determination here. Although some analysis of subsidy effects on U.S. prices and sales has

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[87] CMC Prehearing Brief at Attachment A. Information on the estimated supply and demand elasticities is available in the Economics Memorandum.

[88] Id.

[89] Respondents and Petitioners have each argued strenuously during this investigation regarding whether subsidies have eliminated the "hog cycle" for Canadian hog producers, forcing the U.S. producers to bear the brunt of the decrease in production necessary to start hog prices back on their way up. Petitioners' Prehearing Brief at 6, 84-85; CMC Prehearing Brief at 23-26; CMC Posthearing Brief at 4-7; CPC Posthearing Brief at 4. As discussed below in connection with our threat determination, it is very unlikely that the subsidies bestowed on hog growers resulted in an increase in the supply of swine to packers over the period of our investigation sufficient to significantly affect the price of the exported pork.

Hog production is inelastic as a result of the biological restraints on increasing production in the short term. Before growers can respond to a price rise with increased output, they must retain more sows for breeding and then wait 14-16 months for the offspring to mature. Economics Memorandum at 6.

been offered predicated on import price effects of less than the full amount of the subsidies calculated by Commerce,[90] for the purposes of our analysis here we simply use the full amount of the ad valorem subsidy rate of 2.9 percent. The evidence suggests that this production subsidy, even if it reduced import prices by its full amount, did not significantly increase the volumes of Canadian pork in the U.S. market. Many facts of record here point to this conclusion: the smallness of the subsidy, its generality across production (rather that being targeted to exports), and the absence of clear distinction between U.S. demand and Canadian demand for Canadian pork together with the great dominance of home market over export sales of such pork all suggest minimal effects of the subsidy on import prices and volumes.

2. Domestic Prices and Sales

As described above, the share of the U.S. market for fresh, chilled and frozen pork held by imports from Canada is quite low. In addition, there is substantial evidence in the record that Canadian pork products are priced comparably to similar U.S. products. The Commission staff was unable to confirm Petitioners' lost sales allegations, and found that while the Canadian product sometimes undersells domestic pork, it often oversells the domestic product.[91] For certain cuts the Canadian product may demand a premium because it is leaner and of more consistent quality.[92] For the most

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[90] The staff performed this analysis as more fully explained in the Memorandum to Commissioner Eckes from the Office of Economics, EC-M-316, dated August 24, 1989. We note that these calculations indicate that the partial pass through effect of the subsidies is approximately one quarter of the full pass through effect.

[91] Report at A-61-63.

[92] Id.

part, however, those who purchase these types of pork products, essentially processors and supermarket retailers, view the U.S. and Canadian products as virtually interchangeable.[93]

Petitioners argue that this high degree of substitutability between the products, coupled with an inelastic consumer demand for retail pork products,[94] has magnified the impact of Canadian imports in the U.S. marketplace.[95] Generally, imports have the greatest impact on domestic like product prices and sales where consumer demand is relatively insensitive to changes in price and the products are viewed by the consumer as very close substitutes. In this situation, a decrease in the price of the import relative to that of the domestic like product will, unless there is a compensating reduction in the price of the like product, cause more consumers to substitute the import for the domestic like product, rather than increase overall purchases of the product.

Although Petitioners' argument on these tendencies is well taken, the magnitude of the effect in this investigation is severely constrained by the imports' low penetration of the U.S. market and by the limited effect, noted above, of the subsidization on the volumes and prices of the imports. Overall, subsidized Canadian imports appear to have reduced the prices and

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[93] Report at A-3.

[94] Substitutability is a measure of the extent to which consumers view the domestic and imported product as similar. Elasticity is a measure of the degree to which consumers change their purchasing decisions with respect to these products (as a class) based on variations in the price of these products. Inelastic demand is evidenced by an unwillingness of consumers to increase their purchases of a product in an amount proportionate to a decrease in price.

[95] Petitioners' Prehearing Brief at 81-82, Attachment 1 at 1-2.

sales volumes of the domestic like product only by very small amounts. Pork prices have not remained constant over the period of the investigation, but there is no credible evidence that links the Canadian subsidies to price and sales fluctuations in the U.S. market for the like product. Rather, the fluctuations in pork prices that occurred over the period of investigation, both up and down, appear to be part of the normal "hog cycle" in which growers respond to changes in the price of hogs by increasing or decreasing production, thereby stimulating further changes in the prices of hogs and retail pork products.

Petitioners advance a number of arguments to the contrary. Many of these arguments rely on the joint assessment of effects from imports of Canadian pork and imports of Canadian hogs.[96] No matter how the domestic industry is defined, we are not free to consider the effects of hog imports. Only pork imports are within the scope of the import investigation specified by Commerce. Neither under the relevant provisions of the General Agreement on Tariffs and Trade, which Title VII implements, nor under the terms of U.S. law is there authority for assessing the effects of imports not subject to investigation.[97] Imports of Canadian hogs are not under investigation currently, and indeed are subject to countervailing duties when entering the United States. These duties already influence the effects of such imports. Petitioners' argue that, nonetheless, the existence of hog imports from Canada should be considered among the other "relevant economic factors" that

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[96] Petitioners' Prehearing Brief at 67-68, 78-81.

[97] The cumulation provisions of U.S. law allow in some circumstances for joint consideration of the effects of imports subject to different investigations, but none of these applies to this investigation.

Title VII authorizes the Commission to evaluate.[98] This argument cannot be credited under the governing law and, given the countervailing duties, would not alter the determination here in any event.

3. Investment and Employment

The third factor to which Title VII directs our attention is the effect of subsidized imports on various measures of the domestic industry's performance. At a general level, these effects can be inferred from analysis of the subsidized imports' effects on prices and sales of the domestic like product. In addition, our investigation gathered data on gross measures of industry performance. These data are consistent with the finding that imports have not materially injured the domestic industry. Industry trends, standing alone, are not probative of whether the industry is materially injured by imports, but such information can usefully be reviewed in relation to the other factors analyzed under Title VII. Here, overall industry production and revenues have climbed significantly over the period of the Commission's investigation, corresponding to an upswing in the industry's business cycle.

Production of fresh, chilled and frozen pork increased from 1986 through 1988, with the biggest increase in 1988.[99] The number of production workers also increased as did the number of hours worked.[100] Wages declined slightly, however.[101] Capacity utilization was reported to be over 100

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[98] Petitioners' Prehearing Brief at 78-81.

[99] Report at A-22, Table 3.

[100] Report at A-27, Table 8.

[101] Id.

percent in each of the three years of the investigation period.[102] In conjunction with increases in production and high capacity utilization, packers' revenues skyrocketed from 1986 to 1988, though they may decline somewhat in 1989.[103] Return on investment remained moderate, as has historically been true in this industry, but went from a small negative return in 1986 to a nearly 5 percent positive return in 1988.[104] Capital expenditures in the industry declined in 1987 and then increased in 1988 to levels exceeding those in 1986.[105]

Petitioners have called the Commission's attention to plant closures in the industry over the period of investigation.[106] The increase in 1988 capital expenditures indicates, however, that the industry is reinvesting in new plants and equipment. Viewed in the context of industry wide moves toward increased concentration (with each facility packing more pork) and combined packer/processor operations, these closings appear to be part of long-term industry rationalization and restructuring, as Respondents argue.[107] Given the other information in the record, the plant closings do not provide a basis for concluding that the domestic industry is materially injured by reason of subsidized pork from Canada.

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[102] Report at A-24.

[103] Report at A-31, Table 10.

[104] Report at A-35, Table 14.

[105] Report at A-36.

[106] Petitioners' Prehearing Brief at 71-73.

[107] CMC Prehearing Brief at 4.

IV. THREAT OF MATERIAL INJURY BY REASON OF SUBSIDIZED IMPORTS

A. Introduction

The Petitioners also assert that, even if not materially injured by the subsidized imports at issue, the domestic industry is threatened with such injury. Title VII clearly contemplates that the judgment on threatened injury will require additional information about the behavior of the foreign industry exporting to the United States and the changes in the domestic industry that are likely to follow from the exporters' predicted actions. The threat provisions of Title VII call on the Commission to assess whether, in light of that information and the particular factual circumstances of the case, the subsidized imports are likely to injure the domestic industry materially in the near future.

Prognostication of this sort is incredibly demanding in the best of circumstances. Commission proceedings make the process no easier. The Commission faces statutorily imposed time deadlines that make the collection of the data necessary to evaluate the foreign industry most difficult. The Commission is not in a position to verify the data submitted by Respondents, cannot use its subpoena power to extract more information from them, and is, in any case, faced with the task of interpreting data on a foreign industry with which the Commission may not be very familiar. The decision made respecting actual injury from subsidized imports, like any decision that includes a causal element, requires some judgment on matters that cannot be established with certainty. Given the additional uncertainties inherent in assessment of threatened future injury, there is a natural temptation to impute threat where the evidence on the record almost suffices to sustain a finding that subsidized imports materially injured the domestic industry but does not quite pass the threshold for that determination.

That is precisely the circumstance in which the law provides for a finding of threatened injury if, but only if, changes in the behavior of the foreign industry and in the domestic market are clearly established and would generate sufficiently increased injury to be material. Congress plainly did not want "threat analysis" to be used to avoid difficult judgments on the injury actually caused by subsidized imports. Moreover, it clearly did not intend threat determinations to be a basis for affirmative decisions where the domestic industry is not materially injured by the subsidized imports but is instead plainly suffering financial decline for other reasons (such as a change in consumer demand away from pork and toward fish and poultry).

When crafting the threat provisions of the statute, Congress signalled its concern that these provisions not be used as an escape valve from the remainder of Title VII. It noted in the legislative history that a

> determination of threat will require a careful assessment of identifiable current trends and competitive conditions in the marketplace. This will require the ITC to conduct a thorough, practical, and realistic evaluation of how it operates, the role of imports in the market, the rate of increase in unfairly traded imports, and their probable future impact on the industry.[108]

To ensure that the Commission would focus on information necessary to this determination, Congress set forth specific factors that, together with information obtained for examining actual effects of the subsidized imports, should provide a sound basis for threat determinations:

> (I) if a subsidy is involved, such information as may be presented by the administering authority as to the

[108] Conf. Rep. 1156, 100th Cong., 2d Sess. 174-75.

nature of the subsidy (particularly as to whether the subsidy is an export subsidy inconsistent with the Agreement [on Subsidies and Countervailing Measures],

(II) any increase in production capacity or existing or 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 have a depressing or suppressing effect on domestic prices of the merchandise,

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

(VI) the presence of unused 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 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 under [the dumping or countervailing duty laws] or to final orders . . . are also used to produce the merchandise under investigation,

(IX) in any investigation under this title which involves imports of both a raw agricultural product . . . 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 . . . with respect to either the raw agricultural product or the processed agricultural product, but not both[,]

(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.[109]

These factors fall into two categories, one bearing on the likelihood that the foreign industry will sustain or increase its penetration into the United States market (including inquiry into the nature of any subsidies), and the other concerning the sensitivity of the domestic industry to those imports. As the legislative history quoted above suggests, these factors do not constitute a checklist. Congress has provided no normative criteria for elevating one factor over another and the statute does not set out the combinations of factors that will amount to a threat. The factors are guides designed to keep the Commission focused on the proper question: will future imports materially injure the domestic industry?

The standard for that determination is high. The decision must be based on evidence that "the threat of injury is real and that actual injury is imminent."[110] The decision may not be based on "mere conjecture or supposition."[111] As the Commission's reviewing court has ruled, the mere possibility of future material injury does not meet the "real and imminent" standard set forth in the statute.[112]

With these propositions in mind, we turn to the information respecting the statutory threat factors.

B. The Canadian Pork Industry and the Subsidies Found by Commerce

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109 19 U.S.C. § 1677(7)(F).

110 19 U.S.C. § 1677(7)(F)(i).

111 19 U.S.C. § 1677(7)(F)(ii).

112 Alberta Gas Chemicals, Inc. v. United States, 515 F. Supp. 780, 791 (Ct. Int'l Trade 1981).

The parties to this case agree with the Commission staff that the U.S. and Canadian pork industries together comprise a North American market for pork. In that North American market, the domestic industry accounts for approximately 85 percent and the Canadian industry approximately 15 percent of pork production. Because of the relative sizes of the Canadian and U.S. industries, Canada would have to expand its production by more than 5 percent and export all of the increase to the United States in order to capture an additional 1 percent of apparent U.S. consumption. In order to double its peak 3.4 percent penetration of the U.S. market, the Canadian industry would have to expand its production by nearly 20 percent. The essential issue is whether the evidence on the record indicates that expansion of Canadian production and exports to the United States in quantities that would have a material impact on the domestic industry is imminent.

In a subsidies case, the statute directs the Commission's attention first to an assessment of the subsidies to determine whether they are likely to generate more imports into the United States.[113] In this regard, Petitioner points to several Canadian programs that were deemed not to be countervailable by the Commerce Department.[114] The statute makes clear that our consideration of subsidies is limited to "such information as may be presented . . . by the administering authority [Department of Commerce] as to

[113] 19 U.S.C. § 1677(7)(F)(I). Future citations to 19 U.S.C. § 1677(7)(F) identify the specific factors listed in that section to which the discussion relates. Several of the factors listed in the section, including VII, VIII and IX, are inapplicable to this case.

[114] Petitioner's Prehearing Brief at 90-02.

the nature of the subsidy."[115] We will therefore rely on the Commerce Department determination[116] in this matter and consider only those programs determined by that agency to confer countervailable subsidies.

Commerce found eighteen federal and provincial subsidies to be countervailable. In the aggregate, these subsidies conferred benefits amounting to CAN $0.036 per pound of pork produced in five Canadian provinces. In all but two of these programs, Commerce calculated the benefits of the subsidy to be on the order of tenths, hundredths, or even thousandths of a cent per pound. We will limit our discussion to the two programs whose benefits exceed CAN $0.01 per pound.

The first of these programs is the Canadian federal government's tripartite agreement program. Under these agreements, the federal government, provincial governments, and/or producers agree to contribute to a fund from which hog growers can receive payments if the market price of hogs falls below a "support price." The support price is calculated by a formula derived from the cash costs of production during a 13-week period; Commerce calculated that this program confers a benefit on hog producers of CAN$0.012486 per pound.[117]

The second subsidy program deemed to confer benefits greater than CAN $0.01 per pound was the Quebec Farm Income Stabilization Insurance Program. As the name implies, this fund was established to guarantee Quebec farmers

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[115] 19 U.S.C. § 1677(7)(F)(I).

[116] Final Affirmative Countervailing Duty Determination: Fresh, Chilled, and Frozen Pork from Canada, 54 Fed. Reg. 30,774 (July 24, 1989), reprinted in Report at appendix B.

[117] Id. at 30,777-8, Report at B-8-10.

who meet the size criteria (300 insurable hogs or 15 insurable sows) a net annual income. The benefit amounts to CAN$0.019582 per pound of pork.[118]

Two initial points are germane to an assessment of these subsidies. First, the subsidies are not export subsidies in that they do not provide greater benefits for pork exported from Canada than for pork sold in that country. Second, the benefits conferred are relatively small, amounting to only 2.9 percent of the average price of pork in the North American market during 1988.

Both these subsidy programs confer benefits on the production of hogs, not the production of pork. A subsidy of this kind would affect U.S. pork producers if it resulted in lower costs of hogs to pork producers.[119] However, Petitioners' own arguments refute this theory. According to Petitioners, "packers respond to changes in prices of pork prices [sic] by making immediate changes in the price they pay for hogs, rather than in the amount of pork they 'produce'."[120] In other words, Petitioners maintain that the price of hogs is driven by the price of pork, with the supply of pork remaining relatively constant in the short term. By Petitioners' own testimony, therefore, Canadian subsidies may insulate hog growers from fluctuations in pork prices, but, assuming Petitioners' analysis of the

118 Id. at 30,781, Report at B-13.

119 But for the countervailing duties on Canadian swine imports, these benefits would also be available to U.S. pork processors.

120 Petitioner's Prehearing Brief at 88.

market to be correct, the subsidies provide no cost advantage to pork producers in Canada.[121]

Perhaps recognizing this dilemma, Petitioners argue that the impact of the subsidy is to insulate the hog grower from the "hog cycle," meaning that growers will constantly have a large supply of hogs available for the packers, and that the threatened injury flows from this fact. The argument runs that this assured supply of hogs allows the packers to operate at peak capacity and to produce more pork for export.

The evidence does not support this proposition,[122] but even if it did, there would be no credible basis for predicting any increased threat to the United States pork industry. For one thing, Petitioners' own arguments suggest that the principal effect of changes in hog supply is to change the price paid to the hog grower, rather than to change packers' operations. Second, the subsidy has been in effect for some time and there is no basis for presuming that it threatens a harm that has not yet been observed. Third, the magnitude of the subsidy and the size of the Canadian and U.S. industries strongly suggest that increased shipments of pork from Canada to the United States would be insufficient to constitute a material threat to

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[121] Indeed, according to the U.S. Department of Agriculture, the price of pork in Canada and the United States is approximately the same after adjusting for differences in transportation costs and exchange rates. Report at A-45.

[122] If anything, the Canadian hog cycle appears <u>worse</u> than the U.S. hog cycle. Petitioner agrees that the Canadian hog cycle during the 1980s resulted in fluctuations in production of 291,000 hogs. Petitioner's Post-Hearing Brief at 6. Canadian hog production at its 1980s peak amounted to 1,428,000 head (1989 estimate). Petitioner's Prehearing Brief at 66-B. The cycle in Canada therefore resulted in a 20 percent decline in the hog population measured from the peak population. In 1981-82, hog production in the United States dropped from a peak of 93,853,000 to 85,189,000, less than a 10 percent decline from the peak year. <u>Live Swine</u>, <u>supra</u>, USITC Pub. 1733 at A-22.

the domestic pork industry. In 1984, Canadian pork exports to the United States peaked at 3.4 percent of U.S. domestic consumption during the period of investigation.[123] While the 1985 countervailing duty on swine may have encouraged a shift from swine to pork imports, the Canadian penetration of the pork market has never surpassed the 3.4 percent figure.[124] To surmise on the basis of subsidy programs with a very small (2.9 percent) benefit relative to the price of the supported product that the market penetration is poised to increase over historic levels would be entirely speculative.[125]

Furthermore, the threat issue must be addressed in the context of the relative sizes of the Canadian and U.S. shares of the North American market. The percentage of Canadian pork production exported to the United States reached its peak of 25 percent in 1987. This constituted only 3.4 percent of apparent U.S. domestic consumption that year. In 1988, Canadian exports to the United States dropped to 18 percent of production as the Canadians expanded their pork exports to Japan. Petitioner claims that the 1988 Japan export binge was a one-time opportunity presented by a problem with pork production in Japan's traditional source market, Taiwan. However, even if all of Canada's 1988 exports had been directed to the United States, Canadian imports still would have amounted to less than 5 percent of 1988 apparent

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[123] Live Swine and Pork from Canada, Inv. No. 701-TA-224 (Final), USITC Pub. 1733 at A-40 (July 1985). This figure includes shipments of fresh, frozen, or chilled pork and pork processed in the United States from Canadian hogs.

[124] If one adds in the imports of swine subject to a countervailing duty, the ratio of pork from Canadian swine to apparent domestic consumption reaches approximately 4 percent in 1988. Report at A-41.

[125] 19 U.S.C. § 1677(7)(F)(III),(IV).

domestic consumption. Petitioners indeed recognize the different sizes of the United States and Canadian markets, stating that "excess Canadian hog production is insufficient to offset [the] reduction in the U.S. hog supply" during the bottom portion of the hog cycle.[126]

The ability of Canadian pork packers to generate even larger quantities of pork for export to the United States is unclear.[127] The Canadian industry has suffered persistent labor disputes during the past three years, a factor that apparently caused the increase in the export of live swine to the United States. However, as mentioned above, even if those swine otherwise would have been imported as fresh, frozen, or chilled pork, Canadian imports would not have reached levels sufficient to injure the U.S. pork industry materially.[128]

Finally, the Commission has received scant evidence regarding increased capacity to process pork in Canada.[129] According to the Canadian Pork Council, an initial report received by the Commission of a new processing plant in Alberta was erroneous.[130] Although there is testimony that two plants in Alberta were recently renovated, the Commission has no evidence regarding the amount of increased capacity resulting from these renovations.

C. Sensitivity of the Domestic Industry to Increased Imports.

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[126] Petitioner's Prehearing Brief at 5.

[127] 19 U.S.C. § 1677(7)(F)(III).

[128] See note 125, supra.

[129] 19 U.S.C. § 1677(7)(F)(II).

[130] Report at A-39.

The domestic pork packing industry is in a transitional phase. As one observer noted, the industry is becoming "more industrialized, streamlined, cost-conscious."[131] To achieve this goal, the industry is consolidating its operations, resulting in pork packing conducted "on a massive scale."[132] In 1988, 2.3 percent of the hog slaughter facilities were responsible for 66 percent of all commercial slaughter.[133] Furthermore, in order to insulate themselves from the vicissitudes of the packing business, many pork packers are starting or expanding their processing operations to take advantage of the higher value added by downstream products.[134]

This process has not been without associated pains. Labor problems surfaced as new owners of packing operations opened labor agreements for renegotiation.[135] New companies have entered the packing industry as others have departed. However, while several packing plants have closed, one partnership associated with an integrated hog raising-pork packing operation expects to increase its holdings of sows from 10,000 to 25,000 in the near term, with a goal of 2 million hogs by 1993.[136] Another company that accounts for 10 percent of domestic fresh pork production has opened five

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[131] "SIPCO's Pork Move: The Changes It Brings," Meat and Poultry, April 1988, p.22, quoted in the Report at A-17.

[132] Id.

[133] Report at A-17.

[134] Report, Appendix E (excerpts from Securities and Exchange Commission filings of Wilson Foods and Farmland Foods).

[135] Report at A-18.

[136] Report at A-19.

packing plants since 1982.[137] The problems facing the domestic industry therefore are the result of internal reorganization; they are neither the result of import competition nor do they indicate a particular sensitivity to such imports. Rather than suggesting a particular weakness in the domestic industry, these changes indicate that the industry is becoming increasingly competitive. Indeed, one processor that recently closed its packing facilities to concentrate on processing,[138] complained that its prices of raw pork "were among the highest ever experienced."[139]

Because pork is expensive to store, pork packers do not keep inventories.[140] The concepts corresponding to inventory in the packing industry are hours worked and capacity utilization, i.e., because fresh pork is sold immediately, a lag in sales that suggests an industry susceptible to threat will result in lay-offs and unused capacity rather than an increase in inventory stocks. Neither data on employment nor computations of capacity utilization, however, remotely suggest the likelihood that the industry is in imminent danger of material injury. During the three years under investigation, capacity utilization was consistently over 100 percent, and the number of workers and hours worked increased every year.[141] The only

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137 Report at A-30 - A-32.

138 Apparently, this decision was motivated at least in part by labor-management difficulties. Report at A-19.

139 Report at B-35 (Securities and Exchange Commission filing of Geo. A. Hormel & Co.).

140 Report at A-26.

141 Report at A-24, A-27.

conclusion possible is that the U.S. pork industry is not in imminent danger of material injury.

CONCLUSION

For the foregoing reasons we conclude that the U.S. industry producing pork is neither materially injured nor threatened with material injury by reason of subsidized imports of pork from Canada.

INFORMATION OBTAINED IN THE INVESTIGATION

Introduction

On May 8, 1989, the United States Department of Commerce (Commerce) published in the Federal Register (54 F.R. 19582) its preliminary determination that producers and exporters in Canada of fresh, chilled, or frozen pork (pork) 1/ are being provided benefits that constitute subsidies within the meaning of the countervailing duty law. Accordingly, effective that date, the United States International Trade Commission (Commission) instituted countervailing duty (CVD) investigation No. 701-TA-298 (Final) under the provisions of the Tariff Act of 1930 to determine whether an industry in the United States is materially injured, or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of such merchandise into the United States. Commerce made its final determination with respect to subsidies on July 24, 1989; the Commission notified Commerce of its final determination with respect to injury on September 5, 1989.

Notice of the Commission's investigation and the public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of May 25, 1989 (54 F.R. 22634). 2/ The hearing was held in Washington, DC, on August 1, 1989. 3/

Background

This investigation results from a petition filed on January 5, 1989, with the Commission and Commerce by counsel on behalf of the National Pork Producers Council (NPPC), Des Moines, IA, and others 4/ alleging that an industry in the United States is materially injured, or is threatened with material injury, or

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1/ Fresh and chilled pork are provided for in subheadings 0203.11.00, 0203.12.90, and 0203.19.40 of the Harmonized Tariff Schedule of the United States (HTS); frozen pork is provided for in HTS subheadings 0203.21.00, 0203.22.90, and 0203.29.40. This definition encompasses fresh, chilled, or frozen pork that is not otherwise processed, prepared, or preserved.
2/ A copy of the Commission's Federal Register notice is presented in app. A; a copy of Commerce's Federal Register notice is presented in app. B.
3/ A list of witnesses who appeared at the Commission's hearing is presented in app. C.
4/ 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.

the establishment of an industry in the United States is materially retarded, by reason of imports of pork from Canada that are alleged to be subsidized by the Government of Canada. In response to that petition, 1/ 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)). On February 21, 1989, the Commission notified Commerce that there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, by reason of such imports (54 F.R. 8835, March 2, 1989).

Previous Investigations Involving Fresh, Chilled, or Frozen Pork

The Commission has conducted one previous countervailing duty investigation on 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 2/ 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, 3/ by reason of subsidized imports of fresh, chilled, or frozen pork from Canada (USITC Publication 1733, July 1985).

On August 15, 1985, the U.S. 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 investigation are still in effect. 4/

The Commission also conducted an investigation under section 332 of the Tariff Act of 1930 on the "Conditions of Competition between the U.S. and Canadian Live Swine and Pork Industries" (Inv. No. 332-186). The Commission reported its finding to the Senate Committee on Finance in November 1984 (USITC Publication 1615, November 1984).

1/ On Mar. 8, 1989, counsel for the petitioners notified the Commission that Farmland Foods was also a petitioner and on Aug. 2, 1989, counsel for the petitioners notified the Commission by letter that, due to recent changes in each company, Illinois Pork and Dakota Pork wished to withdraw as petitioners in this proceeding. Illinois Pork has recently become the subject of an assignment for the benefit of creditors, a liquidation procedure under Illinois state law. Dakota Pork recently experienced a change in ownership, with a concomitant change in name and corporate restructuring.
2/ Commissioner Liebeler dissenting.
3/ Commissioner Eckes dissenting.
4/ On May 19, 1989, the Subcommittee on Livestock, Dairy, and Poultry of the Committee on Agriculture, U.S. House of Representatives, held a public hearing in Sioux City, IA, to "review the inspection and increased importation of Canadian market swine and pork products." The transcript of that public hearing (Serial No. 101-16) has been incorporated into the Commission's record of this investigation.

The Product

Description and uses

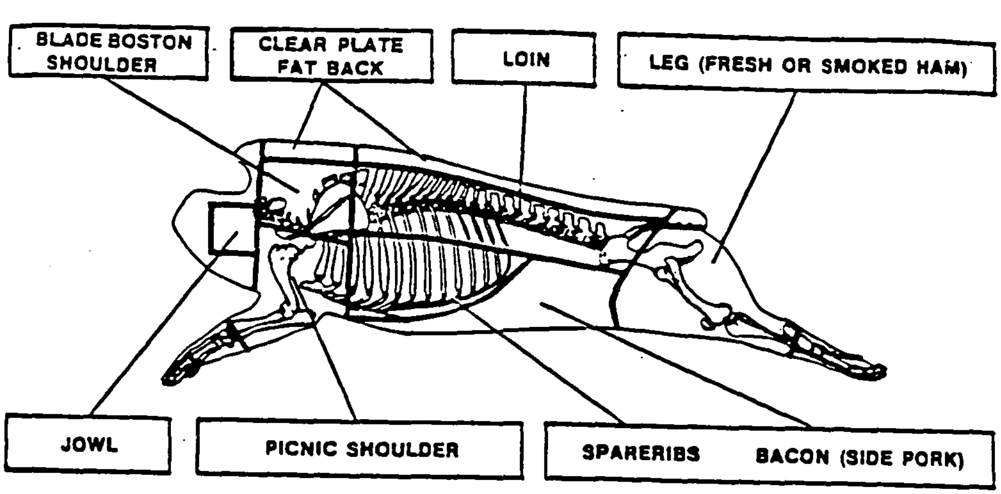
This investigation includes all fresh, chilled, or frozen meat (edible muscle) of swine that has not been processed, prepared, or preserved and that is fit for human consumption. Processed fresh, chilled, or frozen pork and prepared or preserved meat of swine, such as cured ham, bacon, and sausage, is 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.

Meat of swine.--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. 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 Hog Carcass Grading/Settlement System, which rewards leaner animals that are typically somewhat smaller than U.S. swine animals. The smaller and leaner Canadian animals yield smaller and leaner pork cuts. The CPC officials further contend that the leaner Canadian swine reflect in large measure genetic improvement through selective breeding. Thus, they contend that Canadian swine are relatively leaner independent of slaughter weights.

The current Canadian Hog Carcass Grading/Settlement System, which became effective on March 31, 1986, is a program administered by the Canadian Federal Government and is used to evaluate carcasses of an estimated 99 percent of all Canadian swine sold for slaughter, and it 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.

Figure 1.
PRIMAL (WHOLESALE) CUTS AND BONE STRUCTURE OF PORK

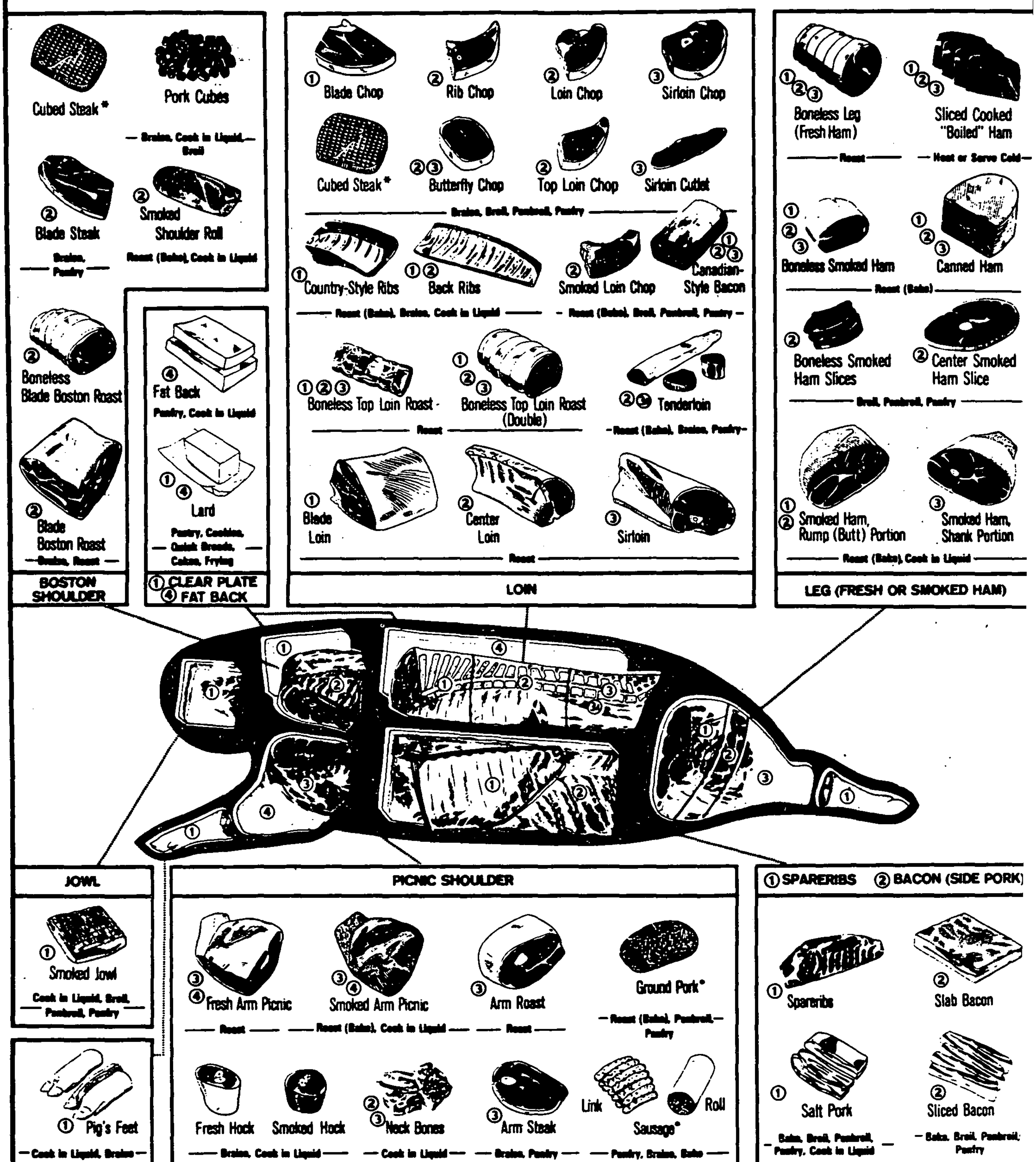


1/ A trade association representing swine growers in Canada.

Figure 2

RETAIL CUTS OF PORK

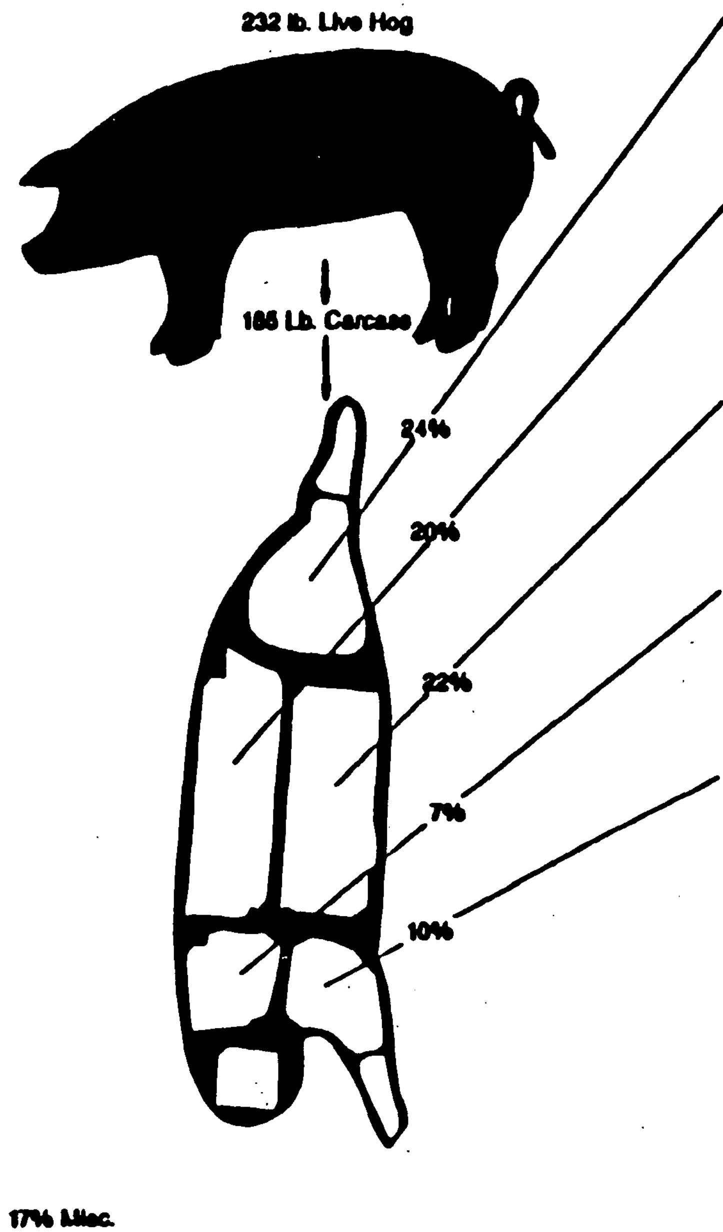
WHERE THEY COME FROM AND HOW TO COOK THEM



*May be made from Boston Shoulder, Picnic Shoulder, Loin or Leg.

This chart approved by
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

Index points are deducted for undesirable characteristics, 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 an additional 1 percent for each index point above "index 100" and are reimbursed 1 percent for each index point less than 100. In the United States, carcasses and live swine are graded by the U.S. Department of Agriculture 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. 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. 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, thus accounting for the differences between the two yields.

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 NPPC, 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 the age of 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

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1/ At the staff conference in the preliminary 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.

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.

Although the Canadian pork cuts exported to the United States during 1986-88 were quite similar to the U.S. cuts, the mix of such cuts was not proportionate to U.S. production. As shown in figure 3, there is greater U.S. production of loins and bellies and less of hams and shoulders than in Canada. The mix of cuts exported from Canada to the United States remained rather stable during 1986-88, as presented in the following tabulation (in percent):

Item	1986	1987	1988
Hams	38	35	37
Shoulders	28	29	30
Loins	10	13	14
Bellies	13	13	10
Side and regular spare ribs	6	5	5
Carcasses and sides	5	5	4
Total	100	100	100

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 as shown in figures 1 and 2.

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.

Table 1
Beef, pork, and poultry meat: Apparent per capita consumption in the United States, 1979-88, January-March 1988, and January-March 1989

	Quantity (pounds)				
	Beef		Pork		Poultry Meat 1/
Period	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
Jan - Mar:					
1988...	25.6	18.1	16.3	15.3	19.4
1989...	24.1	17.1	16.2	15.4	19.7

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

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

by introducing "lite" pork products, with lower amounts of fat and fewer calories, and by attempting to build brand loyalties.

U.S. Regulatory Treatment

U.S. tariff treatment

The products covered by this investigation are fresh, chilled, and frozen pork, classifiable under Harmonized Tariff Schedule subheadings 0203.11.00, 0203.12.90, 0203.19.40, 0203.21.00, 0203.22.90, and 0203.29.40 and previously provided for under Tariff Schedules of the United States Annotated items 106.4020 and 106.4040. The column 1-general rate of duty (the duty rates applicable to imports from Canada) for these HTS subheadings is free. 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 and the U.S. Customs Service 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.

With respect to the preparation of the products covered, section 20 of the Federal Meat Inspection Act (21 U.S.C. 620 and 661) requires that foreign countries exporting meat to the United States 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. The act also requires that the imported products be subject to inspection and other requirements upon arrival in the United States in order to identify these products 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.

Although many countries are eligible to export meat to the United States, not all plants within each country are so eligible. In Canada, virtually all federally inspected plants are eligible to export to the United States. As a country, Canada has long been eligible to export meat to the United States, and as of December 31, 1988, 615 plants within Canada were so eligible.

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).

During 1988, 2.7 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.

Nature and Extent of Subsidies

On July 24, 1989, Commerce published in the Federal Register (54 F.R. 30774) its final determination that benefits that constitute subsidies within the meaning of section 701 of the Tariff Act of 1930 are being provided to producers and exporters in Canada of fresh, chilled, or frozen pork products. Accordingly, Commerce directed the U.S. Customs Service to continue to suspend liquidation of all entries of the subject merchandise from Canada until further notice. Liquidation was originally suspended when Commerce made its preliminary subsidy determination on May 8, 1989. The period for which Commerce measured subsidization (i.e., the review period) was calendar year 1988. The estimated net subsidy, as determined by Commerce, is Can$0.08/kg. (Can$0.036/lb.) 1/ for all producers and exporters in Canada of fresh, chilled, and frozen pork, and de minimis for all producers and exporters in Canada of fresh, chilled, and frozen sow and boar meat.

The following programs were determined by Commerce to confer subsidies: 2/

National Programs

1. Agricultural Stabilization Act/ National Tripartite Red Meat Stabilization Program
2. Feed Freight Assistance Program
3. Western Diversification Program
4. Western Transportation Industrial Development Program

Federal/Provincial Program

5. Canada/Quebec Subsidiary Agreement on Agri-Food Development

Provincial Programs

6. Alberta Crow Benefit Offset Program
7. Alberta Department of Economic Development and Trade Act
8. Alberta Grant to Fletcher's Fine Foods
9. Ontario Farm Tax Rebate Program
10. Ontario (Northern) Livestock Improvement and Transportation Programs
11. Ontario Pork Industry Improvement Plan
12. Ontario Marketing Assistance Program for Pork
13. Quebec Farm Income Stabilization Insurance Program
14. Quebec Productivity Improvement and Consolidation of Livestock Production Programs
15. Quebec Regional Development Assistance
16. Saskatchewan Hog Assured Returns Program
17. Saskatchewan Livestock Investment Tax Credit Program

1/ Commission staff estimate, on the basis of the average exchange rate and imports in 1988, that the average ad valorem equivalent would be 2.9 percent for fresh, chilled, and frozen pork from Canada.
2/ None of these subsidies are considered by Commerce to be export subsidies.

18. Saskatchewan Livestock Facilities Tax Credit Program

Brief descriptions of the programs follow:

Agricultural Stabilization Act/ National Tripartite Red Meat Stabilization Program.--The Agricultural Stabilization Act (ASA) provides for the price stabilization of certain agricultural commodities, including hogs. The tripartite scheme and the provincial program provide for a 5-year phase-in period to adjust the differences between the tripartite scheme and the provincial programs. The tripartite agreements on hogs are administered by the Stabilization Committee (Committee) in conjunction with the Agricultural Stabilization Board (Board). The Committee calculates the stabilization payments on a quarterly basis in the following manner. First it calculates a "support price," which is equal to the cash costs of production in the current 13-week period plus 93 percent of the average margin in the same 13-week period for the preceding 5 years. The margin for any given period is equal to the national average market price for the period minus the national average cash costs in the period. The difference between the support price and the average market price is the amount of the stabilization payment. Stabilization payments are triggered in any 13-week period during which the market price falls below the support price. Payments are made only on hogs indexing 80 or above.

To determine the benefit under this program, Commerce calculated the dressed-weight equivalent of all hogs marketed in the five Provinces 1/ during the review period (less sows and boars). To obtain the dressed-weight equivalent, Commerce used the conversion factor of 79.5 percent as provided in the Government of Canada's questionnaire response. Since the stabilization payments are paid out from a pool of funds which are made up of equal contributions from the Federal Government, Provincial Governments, and producer premiums, plus interest, Commerce multiplied the stabilization payments made during the review period by two-thirds to factor out the producer premiums and allocated the result over the dressed-weight equivalent of hogs marketed during the review period to obtain an estimated subsidy of Can$0.027486/kg. (Can$0.012468/lb.). Because sows and boars are ineligible for benefits under this program, Commerce determined the benefit to be zero for sow and boar meat. 2/

Feed Freight Assistance Program (FFAP).--The Canada Livestock Feed Board oversees the FFAP. The board ensures the availability of feed grains to meet the needs of livestock feeders, the availability of adequate storage space in eastern Canada for feed grain, and price stability for feed grain in eastern Canada, British Columbia, Yukon, and the Northwest Territories. Only users of grain, i.e., those who buy grain to feed livestock (commercial mills and livestock producers), are eligible for assistance. Of the five Provinces, livestock owners in only Ontario and Quebec are eligible for assistance under the program. Commerce found that no benefits were provided to hog producers in Ontario. Therefore, Commerce considered only the assistance provided to Quebec producers.

1/ Alberta, Manitoba, Ontario, Quebec, and Saskatchewan.
2/ Net payments to producers under the tripartite program, calculated by deducting one-third of the payment made to producers, equaled Can$31.38, Can$25.49, and Can$24.18 per hog for the fourth quarter of 1988 and the first two quarters of 1989, respectively. Petitioner's posthearing brief, p. 8.

Commerce verified that 2.7 percent of all payments under this program went to livestock growers in Quebec. At verification Commerce found that 50 percent of feed grains were consumed by hogs. Therefore, to calculate the benefit to hog producers, Commerce used 1.35 percent, 50 percent of 2.7 percent of total payments as the benefit to hog producers. Commerce divided this amount by the dressed-weight equivalent of hogs marketed during the review period in the five Provinces to obtain an estimated net subsidy of Can$0.000034/kg. (Can$0.000016/lb.).

Western Diversification Program.--This program was established as a 5-year program with a $1.2 billion diversification fund. Assistance is provided in the form of "contributions," either repayable or nonrepayable. Commerce verified that, of the projects approved to date, only one provided benefits on the production of hogs or the processing of pork during the review period.

To calculate the benefit, Commerce used as best information available the nonrepayable contribution disbursed to the one hog/pork-related project during fiscal year 1988-89 and divided it by the dressed-weight equivalent of hogs marketed during the review period in the five Provinces to obtain an estimated net subsidy of Can$0.000105/kg. (Can$0.000048/lb.) for fresh, chilled, and frozen pork and for sow and boar meat.

Western Transportation Industrial Development Program.--This program expired in June 1988 and was incorporated into the Western Diversification Program. To calculate the benefit under this program, Commerce divided the grants attributable to pork production during the review period by the dressed-weight equivalent of hogs marketed during the review period in the five Provinces to yield an estimated net subsidy of Can$0.000054/kg. (Can$0.000025/lb.) for fresh, chilled, and frozen pork and for sow and boar meat.

Canada/Quebec Subsidiary Agreement on Agri-Food Development.--The agreement is pursuant to an Economic and Regional Development Agreement between the Government of Canada and the Province of Quebec. Three programs and seven subprograms are funded under the agreement. To calculate the benefit, Commerce summed the grants provided to hog-related projects under subprogram 2A during the review period and multiplied this sum by one-half to factor out the Government of Quebec contribution. Commerce divided the result by the dressed-weight equivalent of hogs marketed in the five Provinces during the review period to obtain an estimated net subsidy of Can$0.000019/kg. (Can$0.000009/lb.) for fresh, chilled, or frozen pork and for sow or boar meat.

Alberta Crow Benefit Offset Program.--The purpose of this program, which is administered by Agriculture Alberta, is to eliminate market distortions in feed grain prices created by the government's policy on grain transportation. The Government of Alberta estimated that 15 percent of benefits provided under this program went to swine producers. Therefore, to calculate the benefit, Commerce took 15 percent of the total amount of benefits to feed grain users in Alberta and allocated it over the dressed-weight equivalent of hogs marketed during the review period in the five Provinces. On this basis, Commerce calculated an estimated net subsidy of Can$0.003228/kg. (Can$0.001464/lb.).

Alberta Department of Economic Development and Trade Act.--The purpose of this program is to foster economic development in the Province. Assistance may be provided in the form of grants, loans, or loan guarantees. However, only loans and loan guarantees have been provided under the program. Loans and loan guarantees are only provided to firms that cannot receive financing or equivalent financing from commercial sources. Two pork producers in Alberta have received benefits under the program. Gainers, Inc. has received both a loan and a loan guarantee from the Province under this program, and Fletcher's Fine Foods has received a loan guarantee.

During the review period, two loan guarantees and one loan were provided to pork packers. One loan guarantee was used to obtain a short-term loan; the other was used to obtain a long-term loan. Commerce totaled the net benefits provided from this program and divided the result by the dressed-weight equivalent of hogs marketed in the five provinces during the review period to yield an estimated subsidy of Can $0.000018 kg. (Can $0.000008/lb.) for fresh, chilled, and frozen pork and for sow and boar meat.

Alberta Grant to Fletcher's Fine Foods.--During verification Commerce found that Fletcher's Fine Foods had received a grant from the Province of Alberta. Company officials stated that the grant was received prior to the review period, but no supporting documentation was provided. Because Commerce was unable to verify that this grant was provided prior to the review period, as best information available Commerce attributed the full amount of the grant to the review period. Commerce divided this grant by the dressed-weight equivalent of hogs marketed in the five provinces during the review period to yield an estimated net subsidy of Can$0.000066/kg. (Can$0.000030/lb.) for fresh, chilled, and frozen pork and for sow and boar meat.

Ontario Farm Tax Rebate Program.--This program replaced the Ontario Farm Tax Reduction Program. Whereas the Ontario Farm Tax Reduction Program provided a rebate of 60 percent of total property taxes levied on eligible farm properties, the current program provides a rebate of 100 percent of taxes levied on outbuildings and properties only. Taxes levied on the residence and one acre of land are no longer rebated. Any resident of Ontario who owns and pays taxes on eligible properties may receive a rebate. Eligible properties are farming enterprises that produce farm products with a gross value of Can$8,000 in southern and western Ontario and Can$5,000 in northern and eastern Ontario. Since all farmers in Ontario with a gross value of at least Can$8,000 are eligible to receive a rebate under this program, the program is limited to a specific enterprise or industry, or group of enterprises or industries, and is countervailable only to the extent that farmers in northern and eastern Ontario whose gross output is between Can$5,000 and Can$8,000 receive benefits.

On the basis of data taken from the 1986 Census of Agriculture, Statistics Canada, the last year for which complete information is available, the Government of Ontario estimated that 4.7 percent of all Ontario swine farmers have sales valued within the Can$5,000-Can$8,000 range. To calculate the benefit, Commerce multiplied the total amount paid to swine producers in eastern and northern Ontario by 4.7 percent during the review period. Commerce divided the result by the dressed-weight equivalent of hogs marketed during the review period in the five Provinces to obtain an estimated net subsidy of Can$0.000020/kg. (Can$0.000009/lb.) for both fresh, chilled, or frozen pork and for sow and boar meat.

Ontario (Northern) Livestock Improvement and Transportation Programs.--The purpose of these programs is to aid livestock producers in northern Ontario by increasing production through herd improvement. Livestock producers in northern Ontario are reimbursed up to 20 percent of the cost of purchasing breeding stock and 50 percent of the transportation cost associated with the purchase of such breeding stock.

To calculate the benefit to swine producers, Commerce allocated the reimbursements made to swine producers during the review period, as reported in the questionnaire response, over the dressed-weight equivalent of hogs marketed during the review period in the five Provinces to obtain an estimated net subsidy of less than Can$0.000001 in either kilograms or pounds for fresh, chilled or frozen pork and for sow and boar meat.

Ontario Pork Industry Improvement Plan (OPIIP).--The purpose of the OPIIP is to foster excellence in farm business management and in the adoption of improved production technologies. Assistance is provided under a number of subprograms. To be eligible for any of the subprograms, a producer must have at least 20 sow equivalents (one sow equivalent is equal to one sow or 15 market-weight hogs marketed annually) and must submit the required production records.

To calculate the benefit, Commerce summed the grants provided under this program during the review period and divided the result by the dressed-weight equivalent of hogs marketed in the five Provinces during the review period to calculate an estimated net subsidy of Can$0.002324/kg. (Can$0.001054/lb.).

Ontario Marketing Assistance Program for Pork (MAPP).--This program assists Ontario pork processors in their efforts to improve market prospects for pork sales and to sustain and enhance their ability to compete in global pork markets. Pork processors and packers receive grants of 25 percent of the total cost of plant upgrading, new technology adoption, or new product development.

To calculate the benefit, Commerce summed the grants provided under this program during the review period and divided the result by the dressed-weight equivalent of hogs marketed in the five Provinces during the review period to calculate an estimated net subsidy of Can$0.000613/kg. (Can$0.000278/lb.) for fresh, chilled, and frozen pork and for sow and boar meat.

Quebec Farm Income Stabilization Insurance Program (QFISIP).--This program stabilizes the income of growers who operate in accordance with certain production and marketing standards. The support level is calculated according to a cost-of-production model. The program is funded two-thirds by the provincial government and one-third by producer assessments.

Commerce calculated the benefit by multiplying the total amount of stabilization payments made during the review period by two-thirds to factor out the producer assessments. Commerce then divided the result by the dressed-weight equivalent of hogs marketed during the review period in the five Provinces to obtain an estimated net subsidy of Can $0.043170/kg. (Can $0.019582/lb.) for fresh, chilled, and frozen pork. Because sows and boars slaughtered for meat are ineligible for benefits under this program, Commerce determined the benefit to be zero for sow and boar meat.

Quebec Productivity Improvement and Consolidation of Livestock Production Programs (QPICLP).--The program is divided into eight subgroups. Swine growers are only eligible for one subprogram, the Farm Buildings Improvement Program. Under this subprogram, grants are provided to convert existing piggeries to farrow-to-finish operations. Grants cover up to 30 percent of the actual cost of conversion. Producers operating farrowing piggeries must maintain between 40 and 80 sows, and finishing piggeries must maintain between 500 and 1,000 hogs. Maximum assistance is Can$200 per sow and Can$25 per hog, with a maximum of Can$15,000 per farm operation for the duration of the program.

To calculate the benefit, Commerce summed the grants provided under this program during the review period and divided the result by the dressed-weight equivalent of hogs marketed in the five Provinces during the review period to calculate an estimated net subsidy of Can$0.000010/kg. (Can$0.000005/lb.) for fresh, chilled, and frozen pork and for sow and boar meat.

Quebec Regional Development Assistance (QRDA).--This program consists of four subgroups. Swine growers are only eligible for the Assistance for Transporting Livestock subprogram. This subprogram provides eligible farmers financial assistance for transporting animals to a slaughterhouse or to a public market. To be eligible for assistance under this program, swine growers must be located in one of the five agricultural regions. The assistance offered varies according to the zone in which the applicant's operation is located.

To calculate the benefits, Commerce divided the amount of payments made to hog producers during the review period by the dressed-weight equivalent of hogs marketed during the review period in the five Provinces to obtain an estimated net subsidy of Can$0.000025/kg. (Can $0.000011/lb.) for fresh, chilled, and frozen pork and for sow and boar meat.

Saskatchewan Hog Assured Return Program (SHARP).--This program provides stabilization payments to Saskatchewan hog producers when market returns fall below a designated "floor price." To be eligible, a grower must own market hogs that are raised and finished to slaughter weight on the production unit, or that are purchased as weaning or feeder hogs and fed a minimum of 60 days. Coverage is limited to 1,500 hogs per producer per quarter. The program is funded through producer premiums and matching funds from the Provincial Government.

To calculate the benefit, Commerce multiplied the total amount of stabilization payments made to hog producers in 1988 by one-half to factor out producer premiums and divided the result by the dressed-weight equivalent of hogs marketed during the review period (less sows and boars) in the five Provinces to obtain an estimated net subsidy of Can$0.001408/kg. (Can$0.000639/lb.) for fresh, chilled, and frozen pork. The estimated net subsidy is zero for sow and boar meat because sows and boars are ineligible for benefits under this program.

Saskatchewan Livestock Investment Tax Credit Program (SLITC).--This program provides tax credits to livestock growers who pay income taxes and whose livestock are fed in Saskatchewan. Hog growers are eligible for a tax credit of Can$3.00 per hog. There is a Can$100 deduction from the credit in each year the tax credit is claimed. If any portion of the tax credit is not used, it may be carried forward for up to 7 years.

To calculate the benefit, Commerce divided the tax credits net of deductibles by the dressed-weight equivalent of hogs marketed during the review period (less sows and boars) in the five Provinces to obtain an estimated net subsidy of Can$0.000721/kg. (Can$0.000327/lb.) for fresh, chilled, and frozen pork. The estimated net benefit is zero for sow and boar meat because sows and boars are ineligible for benefits under this program.

Saskatchewan Livestock Facilities Tax Credit Program (SLFTCP).--This program provides tax credits to livestock growers for investment in livestock production facilities. The credits are deductible only from Provincial taxes. Investments covered under this program include new buildings, improvements to existing livestock facilities, and any stationary equipment related to livestock facilities. During the review period, livestock growers were eligible for a tax credit of 15 percent of 95 percent (14.25 percent) of the total facilities investment. Participants may carry forward any unused credit for up to 7 years.

To calculate the benefit, as best information available, Commerce divided the total tax credits claimed by hog producers by the dressed-weight equivalent of hogs marketed during the review period in the five Provinces to obtain an estimated net subsidy of Can$0.000355/kg. (Can $0.000161/lb.) for fresh, chilled, and frozen pork and for sow and boar meat.

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 that 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.

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.

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, Jan. 6, 1989.

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 D of this report. In brief, it appears that the U.S. industry has been in a modest 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 sizes 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 small 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 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 involved primarily in the manufacture and sale of processed pork meats. 1/

There appears to be a trend in the meatpacking industry toward consolidation, specialization, and a division between "commodity slaughterers," such as ConAgra, IBP, and Excel, and "branded processors," such as Hormel and Oscar Mayer. In 1988, there were 1,150 federally inspected hog slaughter facilities. Of these, 26 facilities, or 2.3 percent, accounted for 66 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/

1/ Meat Facts, American Meat Institute, 1988 ed., p. 42.
2/ Livestock Slaughter, 1988 Summary, USDA, p. 55.
3/ "SIPCO's Pork Move: The Changes it Brings," Meat & Poultry, April 1988, p. 22.

During the 1980s the U.S. pork-packing and processing sector has experienced nearly continuous changes in corporate ownership, name changes, and operating procedure. New companies have entered the sector and some companies have departed.

Representatives of organized labor report that many of the changes resulted in termination of labor-management agreements and initiation of subsequent agreements that were less favorable to workers. Some labor representatives contend that the termination of the labor-management agreements was the motivation of some company decisions. Some management interests contend that competitive factors in the meat industry dictated changes in the sector.

Probably the most complicated corporate change involved ConAgra, Inc. and the Swift Independent Packing Company (SIPCO). The Swift Co. has been a major meat packer in the United States for about 125 years. Swift grew into a large, diversified holding company, Esmark, a publicly owned company. In 1983 Esmark divided Swift into two companies--SIPCO, the packing division, and Swift Processed Meats, which specialized in prepared or preserved products, and spun-off the 2 companies. SIPCO was subsequently purchased by an individual and became a private company in September 1987. SIPCO was purchased from the individual by Monfort of Colorado, a beef and lamb growing and packing company, in October 1987. Monfort of Colorado, which had been a publicly owned company, had been purchased by ConAgra, Inc., also a publicly owned company, in 1986. All of ConAgra's pork operations are now administratively part of Monfort Pork Division.

IBP, Inc. (formally Iowa Beef Processors), a large-volume U.S. beef and pork packing company, became a publicly owned company in 1961. The company was subsequently purchased by an individual and became a private company. In 1981 IBP, Inc. became a wholly-owned subsidiary of Occidental Petroleum, a publicly owned company, through a reorganization and plan of merger. In October 1987, IBP, Inc. sold 23,500,000 shares of its common stock in an initial public offering and Occidental's ownership was thereby reduced to a 50.5 percent interest.

John Morrell & Co., another large-volume pork-packing company, is a subsidiary of United Brands, a publicly owned company. John Morrell & Co., unlike the two previously mentioned companies, sells processed brand-name products. Company brand names include John Morrell, Nathan's Famous, Tobin's First Prize, Hunter, Tom Sawyer, Krey, Krey Gourmet, Peyten, Buckboard, Rath Black Hawk, Partridge, Rodeo, Scott Peterson, Bob Ostrew, E-Z Cut, Table Trim, and Golden Smoked.

Smithfield Foods, Inc., a publicly owned company, is the largest volume pork packer and processor in the Eastern United States. Its subsidiaries include Gwaltney of Smithfield, Ltd.; Patrick Cudahy, Inc., Schluderberg-Kurdle, Inc.; and, Smithfield Packing Co., Inc. Smithfield Foods, Inc. distributes pork under the following labels: Esskay, Great, Gwaltney, Hamilton, Luter, Patrick Cudahy, Smithfield, and Williamsburg. Patrick Cudahy filed for bankruptcy in December 1987 and permanently ceased its swine slaughtering and pork canning operations in the latter half of 1987. Smithfield Foods, Inc. is a partner in Smithfield-Carroll's joint venture. The partnership is a swine-raising venture with Carroll's Foods, Inc., and is reportedly designed to assure a supply of swine for slaughter. According to

Smithfield's 1987 annual report the partnership had 10,000 sows, a near-term goal of 25,000, and a 1993 goal of raising 2 million swine per year.

Wilson Foods Corp. has been a major U.S. meatpacking company for over 130 years. Wilson became a publicly held company in 1983, subsequently was declared bankrupt, and was purchased by Doskocil, a food products company, in 1988. In July 1989, Doskocil sold Wilson's fresh and retail meats businesses to a private individual. During the late 1980s Wilson had reduced its pork-packing operations to support its processing operations.

Farmland Industries, Inc. is a regional agricultural cooperative. One subsidiary, Farmland Foods Inc., is the largest pork packing and processing cooperative in the United States. 1/ Its brand-name products include Jefferson County, Farmland, and Maple River. Farmstead Foods, another large-volume pork packer, is a privately owned company.

Sara Lee, a diversified publicly owned company, is a large-volume pork packer and processor through its subsidiaries Bryan Foods, Hillshire Farm Co., Kahn's and Co., and Jimmy Dean. Sara Lee's brand labels include Bil Mar, Smoky Hollow, Jimmy Dean, Khans, Bryan, and Mr. Turkey.

Thorn Apple Valley, Inc., formally known as Frederick & Herrud, is a publicly owned large-volume pork packer and processor that has emphasized further processing in recent years.

Geo. A. Hormel & Co., a publicly owned company, is another example of a company that has decided to specialize in pork processing rather than pork packing. One of Hormel's packing plants was closed by a strike in March 1986, reopened in August 1987, and closed again in early 1989. The plant was leased to another company and reopened on June 19, 1989. The company's remaining packing plant is scheduled to close August 31, 1989. Hormel's brand names include Spam, Top Shelf, Hormel, Mary Kitchen, Dubuque, and Dinty Moore. 2/

Oscar Mayer Foods Corp. is a pork packer but purchases additional quantities of pork for processing. Oscar Mayer, a publicly owned company, was first purchased by General Foods, also a publicly owned company, and then by Philip Morris, another publicly owned company.

The Commission received usable questionnaire responses from 15 packers or packer/processors that, according to official statistics of the U.S. Department of Agriculture, accounted for 64 percent of U.S production of fresh, chilled, or frozen pork in 1988. The questionnaire requested information from these firms on any plant openings, relocations, expansions, acquisitions, consolidations, closures, or prolonged shutdowns because of strikes or equipment failures; or any other change in the character of operations or organization relating to the production of fresh, chilled, or frozen pork since January 1, 1986. Firms' responses to that question as well as each firm's 1988 production and share of total 1988 production are presented in table 2:

1/ No other major porkpacking or processing firms are owned by growers. Farmland Foods accounted for *** percent of U.S. production in 1988.
2/ Hormel did not respond to the Commission's questionnaire.

Table 2
Questionnaire responses of petitioners and nonpetitioners

Item	Position on petition	U.S. production in 1988	Share of total production
		Million pounds	Percent
Petitioners:			
ConAgra Red Meats 1/.......	Supports	***	***
Farmland Foods.............	Supports	***	***
Farmstead..................	Supports	***	***
IBP 2/.....................	Supports	***	***
Thorn Apple Valley.........	Supports	***	***
Wilson Foods 3/.	Supports	***	***
Total or average.........		***	***
Nonpetitioners:			
American Meat Packing......	* * *	***	***
Excel Corp. 4/.............	* * *	***	***
Fresh Mark, 5/.............	* * *	***	***
Illinois Pork 6/...........	* * *	***	***
John Morrell & Co..........	* * *	***	***
Oscar Meyer 7/.............	* * *	***	***
Sara Lee Corp..............	* * *	***	***
Smithfield Foods & Co......	* * *	***	***
Valley Dale Packers, Inc 8/..................	* * *	***	***
Total questionnaire responses....................		10,068	64.4
All others..................		5,555	35.6
Total, U.S. production.......		15,623	100.0

1/ * * *.
2/ * * *.
3/ * * *.
4/ * * *.
5/ * * *.
6/ Withdrew as a petitioner on August 2, 1989. Company has recently become the subject of an assignment for the benefit of creditors, a liquidation procedure under Illinois state law.
7/ * * *.
8/ * * *.

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:

Year	Federally inspected plants
1986.......	1,250
1987.......	1,182
1988.......	1,150

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.

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 1 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 Commission received questionnaire responses from 19 firms that were either the importer of record or that purchased fresh, chilled, and frozen pork directly from meat packers or brokers in Canada. According to official statistics, those firms accounted for about 25 percent of the imports of fresh, chilled, and frozen pork from Canada in 1988.

The Domestic Market

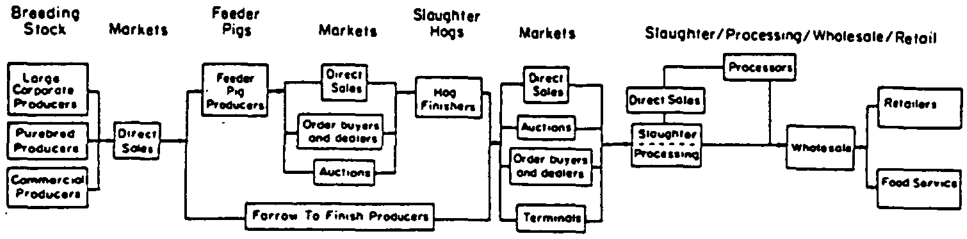
Channels of distribution

In both the United States and Canada, fresh, chilled, or 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. They 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 less than 1 week after the animal is slaughtered. Some pork packers are also processors that process pork products such as bacon, canned hams, sausages, and so forth.

Figure 4 shows the swine and pork sector production and marketing system. Production may be viewed as beginning with animals for breeding purposes. Such animals are raised by various types of growers and are then sold to growers, who raise swine for slaughter for pork. Most of the sales by growers who raise animals for breeding purposes consist of male animals inasmuch as most growers obtain their female animals for breeding purposes by selecting and retaining the most desirable animals from the litters they raise. Corporations, including animal-health-product producers and animal feed companies, account for a significant share of male animals (boars) sold for breeding purposes. Also, some growers specialize in the raising of purebred animals for breeding purposes. Some growers specialize in the raising of animals that are not purebred but are nonetheless kept for breeding purposes.

As shown in the figure, swine may be raised from birth to slaughter weights by farrow-to-finish enterprises and may then be sold for slaughter through the various marketing channels. Alternatively, swine may be raised from birth to about 40 to 60 pounds (so-called feeder pigs) and may then be sold through various marketing channels to finishers, who raise them to slaughter weights. Slaughterers may sell pork to processors, but many slaughterers are integrated enterprises that further process the pork for sale to wholesalers, retailers, or food service enterprises.

Figure 4
Production and marketing system



Source: The U.S. Pork Sector: Changing Structure and Organization; Marvin Hayenga, V. James Rhodes, Jon A. Brandt, Ronald E. Deiter, 1985.

Apparent U.S. consumption

Data on apparent consumption of fresh, chilled, or frozen pork were compiled from publicly available sources. Table 3 shows apparent consumption of fresh, chilled, or frozen pork as calculated from data compiled by the Economic Research Service of the U.S. Department of Agriculture. During 1986-88, apparent consumption increased by 9.5 percent, with consumption in 1987 increasing 1.6 percent over 1986 and consumption in 1988 increasing 7.8 percent over 1987. Consumption in January-March 1989 continued to increase, rising 0.5 percent from consumption in January-March 1988.

Table 3
Pork: U.S. packers' production derived from U.S.-grown swine, U.S. packers' production derived from Canadian swine slaughtered in the United States, net inventory changes, exports, imports, and apparent U.S. consumption, 1986-88, January-March 1988, and January-March 1989

(In millions of pounds)

Item	1986	1987	1988	January-March 1988	January-March 1989
U.S. packers' production derived from U.S.-grown swine 1/	13,910	14,237	15,488	3,764	3,820
U.S. packers' production derived from Canadian swine slaughtered in the United States	88	75	135	26	67
Total	13,998	14,312	15,623	3,790	3,887
Net inventory change	(41)	99	66	72	57
Exports 2/	218	233	330	55	90
Domestic shipments 3/	13,821	13,980	15,227	3,663	3,740
Imports	1,122	1,195	1,137	310	251
Apparent U.S. consumption 4/	14,943	15,175	16,364	3,973	3,991

1/ Includes farm slaughter.
2/ Includes shipments to Puerto Rico and the U.S. Virgin Islands.
3/ Domestic shipments figure is derived by subtracting net inventory change and exports from total U.S. producers' production.
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 Commerce.

Consideration of Material Injury to an Industry in the United States

The Commission received usable questionnaire responses from 15 meatpackers and packer/processors that, according to official statistics of the U.S. Department of Agriculture, accounted for 64 percent of U.S. production of fresh, chilled, and frozen pork in 1988. Information presented in this section of the report was compiled from both publicly available sources and from questionnaire responses.

Data on the condition of swine growers are presented in appendix D, since the petitioner alleged in the preliminary investigation and again in this final investigation that swine growers are part of the domestic industry. 1/ Counsel for respondents argues that swine growers should not be included in the definition of the domestic industry. 2/

U.S. production

Table 4 shows U.S. pork production and the U.S. swine crop for the years 1986-88. Pork production rose by 11.6, percent from 14.0 billion pounds in 1986 to 15.6 billion pounds in 1988. Pork production continued to increase in January-March 1989, rising 2.6 percent from production in January-March 1988.

Table 4
U.S. commercial pork production (including pork derived from Canadian swine) and U.S. swine crop, 1986-88, January-March 1988, and January-March 1989

Period	Pork production	Swine crop
	Million pounds	Thousand animals
1986...............	13,998	82,443
1987...............	14,312	88,067
1988...............	15,623	92,661
January-March:		
1988............	3,790	1/ 46,834
1989............	3,887	2/ 46,488

1/ December 1987-May 1988.
2/ December 1988-May 1989.

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

However, firms that responded to the Commission's questionnaires reported that production declined by 8.5 percent from 8.5 billion pounds in 1986 to 7.8 billion pounds in 1987, then increased by 15.7 percent to 9.0 billion pounds in 1988. Production in January-March 1989 continued to increase, rising 10.7 percent from production in January-March 1988 (table 5). 3/

1/ Petition, p. 6., transcript of hearing, p. 28.
2/ Respondent's postconference brief, p. 39, transcript of hearing, p. 106.
3/ Trends in production and domestic shipments by questionnaire respondents show a decline in 1987 whereas official statistics show an increase. According to questionnaire responses, six firms, * * *, all had lower production and shipments in 1987 than in 1986. Those firms accounted for *** percent of production in 1988.

Table 5
Fresh, chilled, and frozen pork: U.S. capacity, production, and capacity utilization, 1986-88, January-March 1988, and January-March 1989

Item	1986	1987	1988	January-March 1988	January-March 1989
Average-of-period capacity (million pounds)..	6,772	6,143	6,580	2,210	2,211
Production (million pounds)..	8,472	7,754	8,975	2,265	2,508
Capacity utilization (percent) 1/..............	115.9	113.8	122.2	91.8	94.7

1/ Computed from data of firms providing data on both capacity and production.

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

U.S. capacity and capacity utilization

Questionnaire respondents reported that capacity at their establishments declined by 9.3 percent from 6.8 billion pounds in 1986 to 6.1 billion pounds in 1987, then increased by 7.1 percent to 6.6 billion pounds in 1988. Capacity rose slightly (less than 1 percent) from January-March 1988 to January-March 1989. Capacity utilization by the responding firms declined from 116 percent in 1986 to 114 percent in 1987, then rose to 122 percent in 1988 (table 5). 1/ Capacity utilization exceeds 100 percent because * * *.

U.S. producers' domestic shipments 2/

According to official statistics, producers' domestic shipments of fresh, chilled, and frozen pork increased by 1.2 percent from 13.8 billion pounds in 1986 to 14.0 billion pounds in 1987, then increased an additional 8.9 percent to 15.2 billion pounds in 1988. Domestic shipments continued to rise in January-March 1989.

According to questionnaire responses, total domestic shipments (including company transfers) declined by 7.9 percent from 8.1 billion pounds in 1986 to 7.5 billion pounds in 1987, then increased by 12.8 percent to 8.5 billion pounds in 1988. Domestic shipments by the responding firms totaled 2.2 billion pounds in January-March 1989, representing an increase of 2.9 percent from January-March 1988 (see table 3).

Company transfers by the responding firms as a share of their total quantity of domestic shipments declined from 25.6 percent in 1986 to 23.1 percent in 1987, 21.1 percent in 1988, and 18.8 percent in January-March 1989 (table 6).

1/ Due to the nature of the swine-growing industry, there are no discernable trends regarding capacity and employment. Most U.S. swine growing enterprises are family-owned firms that, typically, raise more than one agricultural product. Report on 1985 investigation, p. 8.
2/ Data on swine slaughter (shipments) are presented in app. D.

Table 6
Fresh, chilled, and frozen pork: Domestic shipments by U.S. producers, 1986-88, January-March 1988, and January-March 1989

Item	1986	1987	1988	January-March 1988	January-March 1989
	Quantity (million pounds)				
Company transfers...........	2,074	1,736	1,790	434	413
Domestic shipments..........	6,027	5,783	6,695	1,529	1,780
Total	8,101	7,519	8,485	1,963	2,193
	Value (million dollars)				
Company transfers...........	1,621	1,397	1,278	325	275
Domestic shipments..........	3,427	4,178	4,227	1,006	1,064
Total....................	5,048	5,575	5,505	1,331	1,339
	Unit value (cents per pound)				
Company transfers...........	84	86	77	80	73
Domestic shipments..........	63	79	69	70	64
Average..................	69	80	70	72	65

1/ Computed from data of firms providing data on both quantity and value of shipments.

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

U.S. producers' export shipments

According to official statistics, U.S. pork exports increased by 6.9 percent from 218 million pounds in 1986 to 233 million pounds in 1987, and then jumped by 41.6 percent to 330 million pounds in 1988. Exports in January-March 1989 totaled 90 million pounds, representing an increase of 63.6 percent from exports in January-March 1988. 1/ Respondents to the Commission's questionnaire report that exports increased annually during 1986-88 and continued to rise in January-March 1989. Exports by responding firms increased by 19.6 percent from 92 million pounds in 1986 to 110 million pounds in 1987. Exports in 1988 increased by 76.4 percent to 184 million pounds; they continued to increase in January-March 1989, reaching 73 million pounds, representing an increase of 69.8 percent from the 43 million pounds exported in January-March 1988. Principal export markets for U.S.-produced fresh, chilled, and frozen pork in recent years have been Japan and Mexico. U.S. exports, as compiled from data submitted in response to Commission questionnaires, are presented in the following tabulation:

1/ U.S. exports of fresh, chilled, and frozen pork accounted for 1.6 percent of U.S. production in 1986 and 1987, 2.0 percent in 1988, and 2.3 percent in January-March 1989.

Period	Quantity (million pounds)	Value (million dollars)	Unit value (per pound)
1986...........	92	63	$0.82
1987...........	110	89	.90
1988...........	194	190	1.05
January-March:			
1988.........	43	35	.87
1989.........	73	55	.79

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

Table 7 shows that ending stocks of pork were larger in every month in 1988 than in the corresponding months of 1987 and 1986, and that stocks were higher during the first 5 months of 1989 than in the corresponding months of 1986-88. The larger 1988 monthly inventories, which are small compared with production, probably reflect increased pork production during 1988.

At the Commission's conference during the preliminary 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 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.

Table 7
Pork: Cold-storage stocks 1/ in the United States, by months, January 1986-May 1989

(In millions of pounds)

Month	1986	1987	1988	1989
January..............	235	218	287	381
February.............	239	229	308	397
March................	254	221	346	394
April................	282	218	397	438
May..................	276	219	389	432
June.................	248	189	363	2/
July.................	215	181	337	2/
August...............	185	175	287	2/
September............	186	186	288	2/
October..............	216	212	321	2/
November.............	206	252	361	2/
December.............	197	285	358	2/

1/ End of month.
2/ Not available.

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

1/ Transcript of conference for the preliminary investigation at pp. 65-69.

U.S. packers and packer/processors responding to the Commission's questionnaire reported that their yearend inventories increased annually during 1986-88 but declined by March 1989. Inventories declined by 15.9 percent in March 1989, dropping to 74.5 million pounds from 88.6 million pounds in March 1988. The ratio of inventories to U.S. shipments by the responding firms increased annually from 0.8 percent in 1986 to 1.0 percent in 1988 as shown in the following tabulation:

Period	Quantity (million pounds)	Ratio, inventories to shipments (percent)
1986	61.6	0.8
1987	65.9	.9
1988	77.9	1.0
January-March--		
1988	88.6	1.2
1989	74.5	.9

U.S. employment, wages, and productivity

The number of production and related workers producing fresh, chilled, and frozen pork at firms that responded to the Commission questionnaire increased annually, rising by 22.7 percent from 11,151 in 1986 to 13,681 in 1988. Employment continued to increase in January-March 1989, rising by 6.2 percent from employment in January-March 1988. Hours worked by production workers also increased during the period, rising by 31.2 percent from 1986 to 1988.

Average hourly wages paid to production and related workers declined from $9.00 in 1986 to $8.00 in 1987 and 1988. Average hourly total compensation paid to those workers also declined, dropping from $11.21 in 1986 to $9.97 in 1988 (table 8).

Table 8
Fresh, chilled, and frozen pork: Average number of production and related workers, hours worked, average hourly wages paid, average hourly total compensation (including fringe benefits) paid to those employees, and unit labor costs, 1986-88, January-March 1988, and January-March 1989

Item	1986	1987	1988	January-March 1988	January-March 1989
Production workers (numbers) 1/	11,151	12,005	13,681	11,952	12,694
Hours worked (thousands)	21,246	22,812	27,882	7,448	7,897
Hourly wages paid	$9.00	$8.00	$8.00	$8.00	$8.00
Hourly total compensation paid	$11.21	$10.32	$ 9.97	$ 9.95	$ 9.96
Unit labor costs (per pound) 2/	$0.03	$0.03	$0.03	$0.03	$0.02

1/ Includes hours worked plus hours of paid leave time.
2/ Computed from data supplied by firms providing data for both production and total compensation paid.

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

Financial experience of U.S. producers 1/

Twelve producers, 2/ accounting for 60 percent of production of pork in 1988, provided usable income-and-loss data on the overall operations of their establishments and on their operations producing fresh, chilled, or frozen pork. 3/

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 were 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. 4/

Overall establishment operations.--Several of the companies transfer a portion of their production to processing operations. Establishment income-and-loss data provided by the producers were either the same as fresh pork operations or combined both pork and processing operations. These data are presented in table 9.

Establishment net sales rose by 9 percent from 1986 to 1987 but declined by 1 percent in 1988 from 1987. During interim periods ended March 31, such sales fell by 4 percent from 1988 to 1989. Aggregate operating income jumped by 90 percent from 1986 to 1988, whereas such income dropped by 27 percent from interim 1988 to interim 1989. Operating income margins increased from 1.2 percent in 1986 and 1987 to 2.2 percent in 1988. Such income margins decreased from 2.5 percent in interim 1988 to 1.9 percent in interim 1989.

1/ For a discussion and tabulation of net returns to hog producers, refer to app. D, "The Hog Cycle."
2/ These firms are * * *.
3/ One of the largest packers, IBP, Inc., was visited for verification. No material discrepancies were found in its reported data.
4/ Excerpts from annual reports are presented in app. E.

Table 9
Income-and-loss experience of U.S. producers 1/ on the overall operations of their establishments within which pork is produced, accounting years 1986-88 and interim periods ended March 31, 1988, and March 31, 1989

Item	1986	1987	1988	Interim period ended March 31-- 1988	Interim period ended March 31-- 1989
	Value (1,000 dollars)				
Net sales	8,901,483	9,697,805	9,571,976	4,414,702	4,230,599
Cost of goods sold	8,405,314	9,195,862	8,929,735	4,066,258	3,914,626
Gross profit	496,169	501,943	642,241	348,444	315,973
General, selling, and administrative expenses	387,024	390,186	434,525	237,514	234,649
Operating income	109,145	111,757	207,716	110,930	81,324
Startup or shutdown expense	***	***	10,554	***	***
Interest expense	32,243	30,217	38,964	15,643	14,807
Other expense, net	***	***	59,222	***	***
Net income before income taxes	32,146	60,648	98,976	69,455	52,281
Depreciation and amortization included above	51,118	52,086	54,960	28,496	29,768
Cashflow 2/	83,264	112,734	153,936	97,951	82,049
	Share of net sales (percent)				
Cost of goods sold	94.4	94.8	93.3	92.1	92.5
Gross profit	5.6	5.2	6.7	7.9	7.5
General, selling, and administrative expenses	4.3	4.0	4.5	5.4	5.5
Operating income	1.2	1.2	2.2	2.5	1.9
Net income before income taxes	0.4	0.6	1.0	1.6	1.2
	Number of firms reporting				
Operating losses	3	2	2	3	5
Net losses	5	3	2	3	5
Data	11	11	12	12	12

1/ * * *.
2/ Cashflow is defined as net income or loss plus depreciation and amortization.

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

Operations on fresh, chilled, or frozen 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 10. Net sales rose 11 percent from $5.5 billion in 1986 to $6.1 billion in 1987, and then declined by 3 percent to $5.9 billion in 1988. During interim periods ended March 31, net sales decreased slightly, by 0.4 percent from $2.61 billion in 1988 to $2.60 billion in 1989. Aggregate operating income declined by 12 percent from $12.2 million in 1986 to

Table 10
Income-and-loss experience of U.S. producers 1/ on their operations producing pork, accounting years 1986-88 and interim periods ended March 31, 1988, and March 31, 1989

Item	1986	1987	1988	Interim period ended March 31-- 1988	1989
	Value (1,000 dollars)				
Net sales	5,480,001	6,076,690	5,918,645	2,612,914	2,601,588
Cost of goods sold	5,349,419	5,933,315	5,690,582	2,490,824	2,513,097
Gross profit	130,582	143,375	228,063	122,090	88,491
General, selling, and administrative expenses	118,392	132,638	144,016	76,575	70,430
Operating income	12,190	10,737	84,047	45,515	18,061
Startup or shutdown expense	***	***	***	***	***
Interest expense	15,684	16,095	21,460	9,827	9,802
Other expense, net	***	***	***	***	***
Net income or (loss) before income taxes	(33,441)	(22,931)	40,424	21,813	(972)
Depreciation and amortization included above	26,128	27,284	27,976	13,363	13,837
Cash flow 2/	(7,313)	4,353	68,400	35,176	12,865
	Share of net sales (percent)				
Cost of goods sold	97.6	97.6	96.1	95.3	96.6
Gross profit	2.4	2.4	3.9	4.7	3.4
General, selling, and administrative expenses	2.2	2.2	2.4	2.9	2.7
Operating income	0.2	0.2	1.4	1.7	0.7
Net income or (loss) before income taxes	(0.6)	(0.4)	0.7	0.8	(0.04)
	Number of firms reporting				
Operating losses	7	5	4	3	5
Net losses	7	6	5	3	5
Data	11	11	12	12	12

1/ These firms are * * *.
2/ Cash flow is defined as net income or loss plus depreciation and amortization.

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

$10.7 million in 1987, but it jumped to $84.0 million in 1988. Operating income margins rose from about 0.2 percent in 1986 and 1987 to 1.4 percent in 1988. Operating income dropped by 60 percent from $45.5 million, or 1.7 percent of net sales, in interim 1988, to $18.1 million, or 0.7 percent of net sales, in interim 1989. Key income-and-loss data of each reporting firm are presented in table 11. * * *. Pretax net income margins followed a similar trend to that of operating income margins during the period covered by the investigation. However, because of high startup and shutdown expenses and interest expenses, pretax net income margins are much lower than operating income margins and were negative for 1986, 1987, and interim 1989. Four firms sustained operating losses in 1988, compared with seven firms in 1986. During the interim periods ended March 31, five firms suffered operating and net losses in 1989, whereas three firms sustained such losses in 1988.

Table 11
Key income-and-loss data of U.S. producers on their operations producing fresh, chilled, and frozen pork, by producers, accounting years 1986-88 and interim periods ended March 31, 1988, and March 31, 1989

*   *   *   *   *   *   *

Eleven of the reporting firms, which accounted for 52 percent of production in 1988, supplied data on the major components of their cost of goods sold. * * * did not provide such data. Those components, as a share of cost of goods sold by the reporting firms, are presented in the following tabulation (in percent):

Item	1986	1987	1988	Average for 1986-88
Raw materials.........	90.1	90.5	88.0	89.6
Direct labor..........	3.6	3.5	4.4	3.8
Other factory costs...	6.2	6.0	7.6	6.6
Cost of goods sold..	100.0	100.0	100.0	100.0

As stated earlier, the meatpacking industry has a history of low profit margins. In the previous investigation of these products, operating income (loss) margins, as a percent of sales, were 0.4, (0.2), and (0.2) in 1982, 1983, and 1984, respectively. 1/ However, the industry has changed; IBP, Inc. is now one of the largest hog slaughterers even though the company only entered the business in 1982. IBP has been a beef processor for many years. * * *. Data from IBP's public financial reports are discussed below in order to explain its long-term objectives. Its pork plant locations, slaughter capacity (head per day), and initial year of operation are presented in the following tabulation: 2/

1/ U.S. International Trade Commission , Live Swine and Pork from Canada, Inv. No. 701-TA-224 (Final), USITC Publication 1733, (1985), p. 33.
2/ IBP Form 10-K 1987 from the item titled "Facilities," on p. 6.

Plant location	Capacity	Year
Storm Lake, IA	13,407	1982
Council Bluffs, IA	5,077	1986
Louise County, IA	13,593	1986
Madison, NE	7,500	1987

The company added a fifth plant in 1988.

> "This growth will continue with the addition of a fifth pork plant. We intend to begin construction this spring of a $40 million state-of-the-art pork plant in northeastern Iowa. The plant will be located in the center of one of the largest hog-producing regions in the country, with an estimated 10 million hogs fed within a 100-mile radius of the proposed site. The facility will employ 1,200 to 1,500 people and have the capacity to slaughter and convert 4 million hogs a year." 1/

As for future pork industry expansion, IBP stated:

> "IBP produces approximately 22 percent of the nation's output of fresh beef. Extending its processing technology to pork, IBP by the end of 1987 was producing more than 10 percent of the nation's fresh pork products, and expects to expand until its percentage of overall fresh pork production approximates its percentage of total beef production." 2/

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. 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:

	1987	1988
United States:		
Pounds.......	9,055,458	10,807,188
Cost.........	$4,985,900	$4,918,485
Unit cost per pound..	$0.551	$0.455
Canada		
Pounds.......	***	***
Cost.........	***	***
Unit cost		

1/ 1987 IBP Annual Report from the letter of the chairman of the board to shareholders, p. 3.
2/ 1987 IBP Annual Report from the item titled "IBP: A Strategic Perspective," p. 5. For excerpts from additional firms' annual reports, refer to app. E.

The American Meat Institute (AMI) publishes a financial operating survey for the meat industry as a whole. AMI changed its reporting format in 1986, therefore comparable data are not available for 1985. AMI classifies firms as either cattle or hog packers or packer/processors if the slaughter of identified species represents at least 75 percent of the firms live-weight slaughter. Data presented for hog packers and packer/processors in table 12 are based on the above classification. Data in table 12 represent not only fresh, chilled, or frozen pork but also include processed pork. Hence, in table 13, data are further classified on the basis of share of fresh meat sales.

Data in table 12 show that from 1986 to 1987, for fresh and processed pork operations, total sales rose by 5.5 percent and pre-tax income increased by 8.3 percent. As a share of net sales, pre-tax income rose from 2.54 percent to 2.60 percent.

Table 12
Average breakdown of value of sales for hog packers and packer/processors, 1986 and 1987 1/

(In percent)

Item	1986	1987	Point change	Percent change in dollars
Sales	100.00	100.00		+$5.51
Cost of goods sold:				
Cost of livestock/raw materials	69.23	69.88	.65	+6.50
Supplies and containers	5.67	5.54	-.13	+3.09
Production labor	5.65	5.30	-.35	-1.03
Total	80.55	80.72	.17	+5.74
Gross margin	19.45	19.28	-.17	+4.59
Other expenses:				
Other wages and salaries	4.28	3.80	-.48	-6.41
Employee benefits	2.79	2.69	-.10	+1.61
Interest	.37	.34	-.03	-3.77
Depreciation	1.03	.99	-.04	+1.60
Rents	.43	.39	-.04	-4.78
General/administrative insurance	.15	.17	.02	+19.41
Taxes 2/	.19	.17	-.01	-.46
All other expenses	7.67	8.12	.45	+11.76
Total	16.91	16.68	-.23	-0.30
Net income before income taxes	2.54	2.60	.07	+8.30
Income taxes	1.31	1.14	-.17	-8.18
Net income	1.23	1.47	.24	+25.79

1/ Data are for 32 firms, which, according to the American Meat Institute, accounted for about 60 percent of producers' domestic sales in 1986 and 1987.
2/ Other than social security and income tax.

Source: American Meat Institute, Meat Industry Financial Operating Survey, 1987.

As shown in table 13, pretax net income margins were lowest for hog packers and packer/processors that sold the highest percentage of fresh meat. However, average return on sales for such firms doubled from 1986 to 1987, primarily because of a decline in the cost of livestock/raw materials.

Table 13
Average breakdown of value of sales for hog packers and packer/processors by share of fresh meat sales, 1986 and 1987 1/

(In percent)

Item	Greater than 67 percent 1986	1987	34-66 percent 1986	1987	Less than 33 percent 1986	1987
Average fresh meat sales as a share of total sales........	70.69	78.69	51.99	49.25	24.46	23.19
Sales........................	100.00	100.00	100.00	100.00	100.00	100.00
Cost of goods sold:						
Cost of livestock/raw materials.................	81.32	78.38	75.42	76.94	60.24	62.07
Supplies and containers.....	4.05	4.10	4.35	4.53	7.53	6.73
Production labor............	5.55	6.05	5.01	5.03	5.95	5.21
Total.....................	90.92	88.52	84.78	86.51	73.72	74.01
Gross margin..................	9.08	11.48	15.22	13.49	26.28	25.99
Other expenses:						
Other wages and salaries....	1.69	2.22	3.29	3.54	5.32	4.55
Employee benefits...........	1.80	2.78	2.90	1.92	3.16	3.17
Interest....................	.71	.28	.35	.42	.34	.31
Depreciation................	.83	.61	.65	.77	1.50	1.28
Rents.......................	.15	.51	.59	.42	.42	.32
General/administrative insurance..................	.56	.27	.16	.17	.13	.14
Taxes 2/....................	.10	.14	.12	.08	.27	.25
All other expenses..........	3.14	4.48	6.11	4.94	10.41	11.58
Total.....................	8.98	11.29	14.18	12.26	21.56	21.59
Net income before income taxes.......................	.10	.19	1.04	1.23	4.72	4.40
Income taxes..................	.02	.02	.73	.45	2.18	2.00
Net income....................	.08	.17	.31	.78	2.54	2.40

1/ Data are for 30 firms in 1986 and 32 firms in 1987, which, according to the American Meat Institute, accounted for about 60 percent of producers' domestic sales.
2/ Other than social security and income tax.

Source: American Meat Institute, Meat Industry Financial Operating Survey, 1986 and 1987.

Investment in productive facilities.--The value of property, plant, and equipment for the U.S. producers is shown in table 14. The return on book value of fixed assets and the return on total assets are also presented in table 14.

Table 14
Pork: Value of property, plant, and equipment of U.S. producers, accounting years 1986-88 and interim periods ended March 31, 1988, and March 31, 1989

(In thousands of dollars)

Item	As of end of accounting year-- 1986	1987	1988	Interim period ended Mar. 31-- 1988	1989
	Value (1,000 dollars)				
All products of establishments:					
Fixed assets:					
Original cost.........	664,279	679,211	735,934	661,340	695,053
Book value............	387,485	369,828	384,624	358,078	370,498
Total assets 1/.........	752,448	760,932	822,906	789,208	768,279
Fresh, chilled, or frozen pork:					
Fixed assets:					
Original cost.........	309,002	321,479	350,525	333,359	334,545
Book value............	185,656	191,773	207,652	199,138	193,965
Total assets 2/.........	331,191	341,500	388,388	379,875	344,639
	Return on book value of fixed assets (percent) 3/				
All products of establishments:					
Operating return 4/.....	24.8	30.2	49.2	27.1	22.2
Net return 5/...........	5.4	16.8	20.8	15.7	14.7
Fresh, chilled, or frozen pork:					
Operating return 4/.....	(1.1)	4.0	29.9	14.7	5.8
Net return 5/...........	(24.3)	(12.8)	9.5	2.7	(3.8)
	Return on total assets (percent) 3/				
All products of establishments:					
Operating return 4/.....	12.9	14.7	23.4	12.4	10.9
Net return 5/...........	2.8	8.2	9.9	7.2	7.2
Fresh, chilled, or frozen pork:					
Operating return 4/.....	(0.6)	2.2	15.3	7.4	3.1
Net return 5/...........	(13.5)	(6.8)	4.8	1.4	(2.0)

1/ Defined as book value of fixed assets plus current and noncurrent assets.
2/ Total establishment assets are apportioned, by firm, to product groups on the basis of the ratio of the respective book values of fixed assets.
3/ Computed using data from only those firms supplying both asset and profit-and-loss information, and as such, may not be derivable from data presented.
4/ Defined as operating income or loss divided by asset value.
5/ Defined as net income or loss divided by asset value.

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. producers are presented in table 15. Some firms closed plants, but others acquired facilities and purchased equipment during the period of investigation.

Table 15
Pork: Capital expenditures by U.S. producers, accounting years 1986-88 and interim periods ended March 31, 1988, and March 31, 1989 1/

(In thousands of dollars)

Item	1986	1987	1988	Interim period ended Mar. 31-- 1988	1989
All products of establishments:					
Land and land improvements	***	1,327	2,231	768	***
Building and leasehold improvements	***	14,265	32,860	12,003	***
Machinery, equipment, and fixtures	65,199	50,632	75,474	51,231	40,094
Total	87,481	66,224	110,565	64,002	45,170
Fresh, chilled, or frozen pork:					
Land and land improvements	***	***	***	705	***
Building and leasehold improvements	***	***	***	10,518	***
Machinery, equipment, and fixtures	38,373	27,178	44,103	25,366	10,219
Total	54,915	38,810	63,306	36,589	12,887

1/ Fourteen firms * * * provided data for establishments and all except * * * supplied such data for pork. * * * did not provide data for either interim period.
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 the U.S. producers are presented in table 16.

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 F.

Table 16
Pork: Research and development expenses of U.S. producers, 1/ accounting years 1986-88 and interim periods ended March 31, 1988, and March 31, 1989

(In thousands of dollars)

Item	1986	1987	1988	Interim period ended Mar. 31-- 1988	1989
All products of establishments	2,311	2,629	2,717	1,178	1,173
Fresh, chilled, or frozen pork	266	413	484	155	185

1/ These firms are * * *. Only 4 out of 8 reporting firms incurred research and development expenses for fresh, chilled or frozen pork.

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

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,

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."

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

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

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

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

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

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

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."

U.S. inventories of fresh, chilled, or frozen pork from Canada

U.S. inventories of fresh, chilled, and frozen pork from Canada have been small. According to questionnaire responses, yearend inventories held by U.S. importers declined by 13.6 percent from 272,000 pounds in 1986 to 235,000 pounds in 1987, then increased by 22.6 percent to 288,000 pounds in 1988. As a share of imports from Canada, importers' inventories dropped annually, from 1.4 percent in 1986 to 0.5 percent in 1988.

The industry in Canada and its ability to generate exports

As shown in table 17, total exports of pork from Canada rose from 474 million pounds in 1986 to 703 million pounds in 1988. As a share of Canadian production, exports rose from 24 percent in 1986 to 27 percent in 1988. Whereas 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 470 million pounds in 1988 (18 percent of Canadian production).

Exports to all other markets increased from 16 million pounds in 1986 and 13 million pounds in 1987 to 233 million pounds in 1988. The increase in exports to other markets reflects developments in the Japanese market which, combined with the U.S. market, has 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 there 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; 1/ this closure apparently contributed 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. Mr. David Adams, General Manager of the Canadian Pork Council, stated at the Commission's hearing that contrary to the Commission's prehearing report, 2/ no hog-slaughtering plants have been built in Alberta since 1960. 3/

Petitioners state that a plant in Alberta, the Red Deer plant (Fletcher's Fine Foods), was recently renovated with subsidies from the Alberta Government and went on stream again in the last month or two. Petitioners also contend

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1/ The strike closed the plant in August 1988, and the plant remained closed until March 1989. Mr. David Adams of the Canadian Pork Council stated at the Commission's hearing that there have been at least 3 disruptions in every year since 1987, which had only 1 major strike. Transcript p. 128.
2/ The Commission's prehearing report stated that a large-volume swine-slaughtering plant had recently been built in Alberta (Prehearing report, p. A-49).
3/ Transcript, p. 128.

that the Gainers plant, in Alberta, has been authorized a grant of $4 million from the Government along with certain other loan guarantees to renovate that plant. 1/

Table 17
Pork: Canadian production, imports, exports, apparent consumption, and exports to the United States and all other markets as a share of production, 1986-88

Item	1986	1987	1988
	Quantity (million pounds)		
Production................	2,004	2,066	2,619
Imports..................	31	37	35
Exports to:			
United States 1/........	458	512	470
All others.............	16	13	233
Total................	474	525	703
Apparent consumption 2/...	1,563	1,578	1,676
	Exports as a share of production (percent)		
United States............	23	25	18
All others...............	1	1	9
Total..................	24	25	26

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

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.

Inventories of the Canadian producers

Detailed data are not available concerning inventories of Canadian pork. Officials of the American Meat Institute, a trade association representing meat packers and processors, 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 less than 1 week after the animal is slaughtered.

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

U.S. imports

As shown in table 18, U.S. imports of fresh, chilled, or frozen pork from Canada rose by 11.8 percent from 458 million pounds in 1986 to 512 million pounds in 1987, then declined by 8.2 percent to 470 million pounds in

1/ Transcript, pp. 183-184.

1988. During 1988, quarterly imports declined steadily from 137 million pounds during January-March to 91 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 57 percent of annual imports. 1/

Table 18
Swine and pork: U.S. imports from Canada, by quarters, January 1986-March 1989

(In thousands of pounds)

Period	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....	45,233	90,894	136,127
Total, 1988.......	134,807	469,814	604,621
January-March 1989....	67,544	118,374	185,918

1/ Carcass-weight equivalent.

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

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 18 shows that the quantity of such imports declined from 88 million pounds in 1986 to 75 million pounds in 1987 but increased to 135 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 605 million pounds in 1988. Principal customs districts for U.S. imports of fresh, chilled, and frozen pork from Canada in 1988 and January-May 1989 were Ogdensburg, NY, Great Falls, MT, Buffalo, NY, and Pembina, ND (table 19).

1/ Fresh and chilled pork accounted for 62 percent of the total quantity of imports of fresh, chilled, or frozen pork in 1986, 65 percent in 1987, 65 percent in 1988, and 85 percent in January-March 1989. Virtually all of those imports were chilled. U.S. imports of pork from boars and sows have been negligible.

Table 19
Fresh, chilled and frozen pork: U.S. imports from Canada for consumption, by principal customs districts, 1988 and January-May 1989

Customs district	1988 Quantity	1988 Customs value	1988 Unit value	January-May 1989 Quantity	January-May 1989 Customs value	January-May 1989 Unit value
	1,000 pounds	1,000 dollars	Cents per pound	1,000 pounds	1,000 dollars	Cents per pound
Ogdensburg, NY.....	171,829	127,173	74.0	70,271	48,418	68.9
Great Falls, MT....	80,540	63,313	78.6	27,390	20,373	74.4
Buffalo, NY........	70,422	49,957	70.9	28,353	18,580	65.6
Pembina, ND........	61,597	42,906	69.7	30,631	19,826	64.7
Detroit, MI........	44,945	24,309	54.1	21,074	10,756	51.0
Seattle, WA........	15,268	13,486	88.3	10,205	8,406	82.4
St. Albans, VT.....	14,049	11,300	80.4	5,999	4,637	77.3
Portland, ME.......	10,539	8,145	77.3	3,256	2,696	82.8
Honolulu, HI.......	533	539	101.2	234	264	112.8
All other..........	92	46	51.7	83	58	69.7
Total/average....	469,814	341,174	72.6	197,496	134,014	67.9

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

According to official statistics of the U.S. Department of Commerce, U.S. imports of live swine from Canada in 1988 and January-May 1989 entered principally through the customs districts of Pembina, ND, Great Falls, MT, and Detroit, MI, as shown in table 20:

Table 20
Live swine: U.S. imports from Canada, by principal customs districts, 1988 and January-May 1989

Customs district	1988 Quantity	1988 Customs value	1988 Unit value	January-May 1989 Quantity	January-May 1989 Customs value	January-May 1989 Unit value
	1,000 pounds	1,000 pounds		1,000 pounds	1,000 pounds	
Pembina, ND......	475	43,585	$91.76	343	29,622	$86.36
Great Falls, MT..	253	26,528	104.85	137	13,687	99.91
Detroit, MI......	90	7,397	82.19	66	6,096	92.36
All others.......	17	1,226	72.12	4	342	85.50
Total/average..	835	78,736	$94.30	550	49,747	90.44

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

The U.S. Department of Agriculture veterinarian responsible for inspection of live animals imported into the United States through port of entry in Montana reports that ***. 1/

1/ ***.

*** reports that the distribution of recent imports of live swine through North Dakota is as follows (in percent):

Source	Percent swine imports
South Dakota.....	51
Iowa............	43
Illinois.........	3
Minnesota........	2
North Dakota.....	1

During the Commission's hearing, petitioners argued that imports of both hogs and pork are increasing dramatically and should be considered by the Commission as one industry. Counsel for the petitioners states that the only difference, essentially, between whether a hog is slaughtered in Canada or the United States is 24 hours. 1/ Respondents contend that imported hogs should not be considered and that the Commission should find two separate industries. 2/ Figure 5 presents U.S. imports of Canadian pork and U.S. production of pork derived from Canadian live swine, by months, during 1986-88.

U.S. market penetration by imports

Table 21 shows that the market penetration by imports from Canada increased from 3.0 percent in 1986 to 3.4 percent in 1987, then declined to 2.9 percent in 1988. Market penetration by the imports from Canada was 3.0 percent in January-March 1989, representing a decline from market penetration of 3.4 percent in January-March 1988. 3/

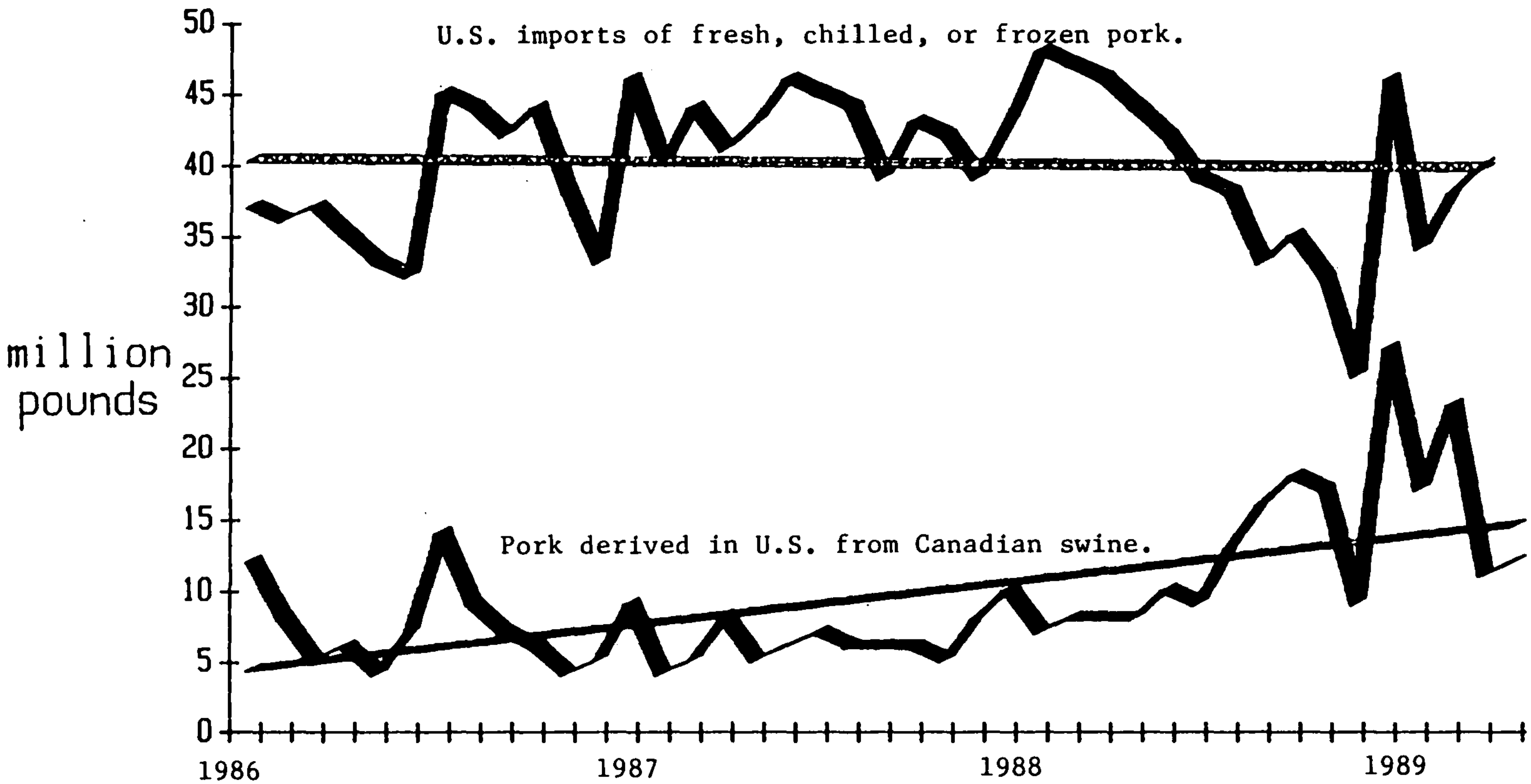
Table 21
Pork: U.S. apparent consumption, imports of Canadian pork, and U.S. market penetration by imports from Canada, and by U.S. producers, 1986-88, January-March 1988, and January-March 1989

Item	1986	1987	1988	January-March-- 1988	January-March-- 1989
U.S. apparent consumption (million pounds)............	14,943	15,175	16,364	3,973	3,991
Imports of Canadian pork (million pounds)............	458	512	470	137	118
U.S. market penetration by-- Canada (percent)............	3.0	3.4	2.9	3.4	3.0

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

1/ Transcript, pp. 24-25 and 99.
2/ Transcript, p. 106.
3/ Data on the value of consumption are not available from official statistics.

Figure 5.-- Pork: U.S. imports of fresh, chilled, or frozen pork from Canada, and U.S. production derived from live swine imported from Canada, by months, January 1986-May 1989.



Source: Compiled from Official Statistics of the U.S. Department of Commerce.

Prices

Demand for fresh, chilled, and frozen 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 consumer income will increase the demand for pork. 1/ Commission questionnaire responses indicated, in recent years, 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 away from red meat in general will decrease the demand for pork. However, changes in consumer preferences to leaner cuts will increase the demand for leaner cuts of pork. 2/

The major supply-side influence on the price fluctuation of pork is the price of swine. As shown in the following figure, fluctuations in the price of swine between January 1975 and May 1989 generally coincided with similar fluctuations in the wholesale price of unprocessed pork and the retail price of processed and retail cuts of pork (fig. 6). 3/ There is 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 over the 14-year, 5-month period.

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 as separate U.S. and Canadian markets. Until the imposition of temporary duties on pork accompanying Commerce's preliminary determination, there were no barriers to trade in either the United States or Canada, nor are there any restrictions between States or between Provinces. 4/ Agricultural economists at USDA state that the price of pork sold in Canada follows the same trend and is at a price level similar to that in the United States when adjusted for

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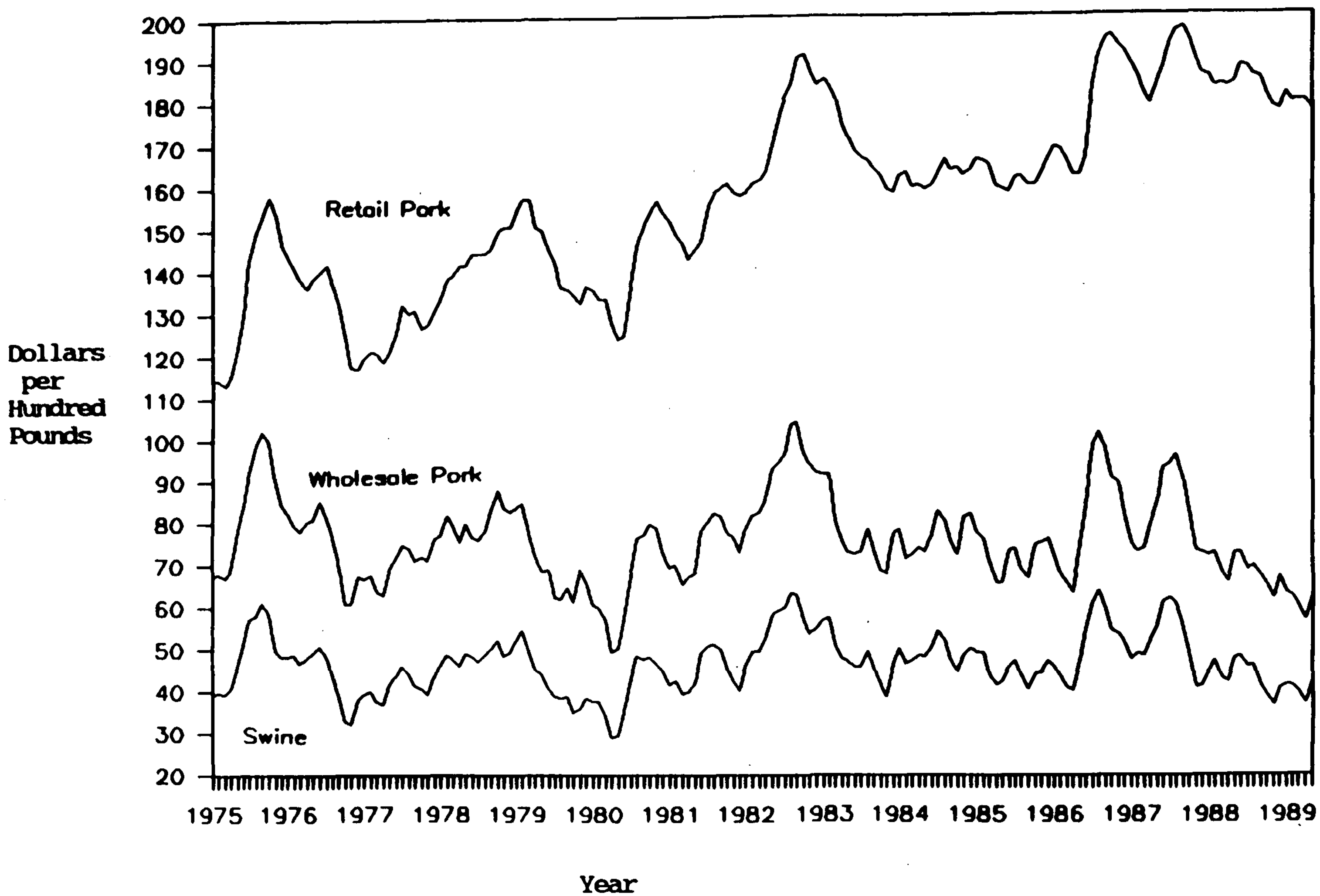
1/ A review of the economic literature indicates that the relationship between pork and consumer income is smaller than that between pork and substitute products.
2/ * * * stated that one of the reasons for the declining pork belly price has been that demand has fallen because consumers perceive that the pork products derived from bellies, e.g., bacon, have too much fat.
3/ The three price series shown in fig. 6 are based on different underlying weights and are not completely comparable, although the influence of the swine price can clearly be seen in each. 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. See app. G for the three price series.
4/ There are barriers in the live swine trade between the United States and Canada. Canada has a 30-day quarantine for pseudorabies on U.S. live swine shipped to Canada, and the United States has a countervailing duty on live swine imported from Canada.

Figure 6
Weighted-average prices for swine, wholesale pork, and retail pork, by months, January 1975-May 1989



Source: USDA, Economic Research Service.

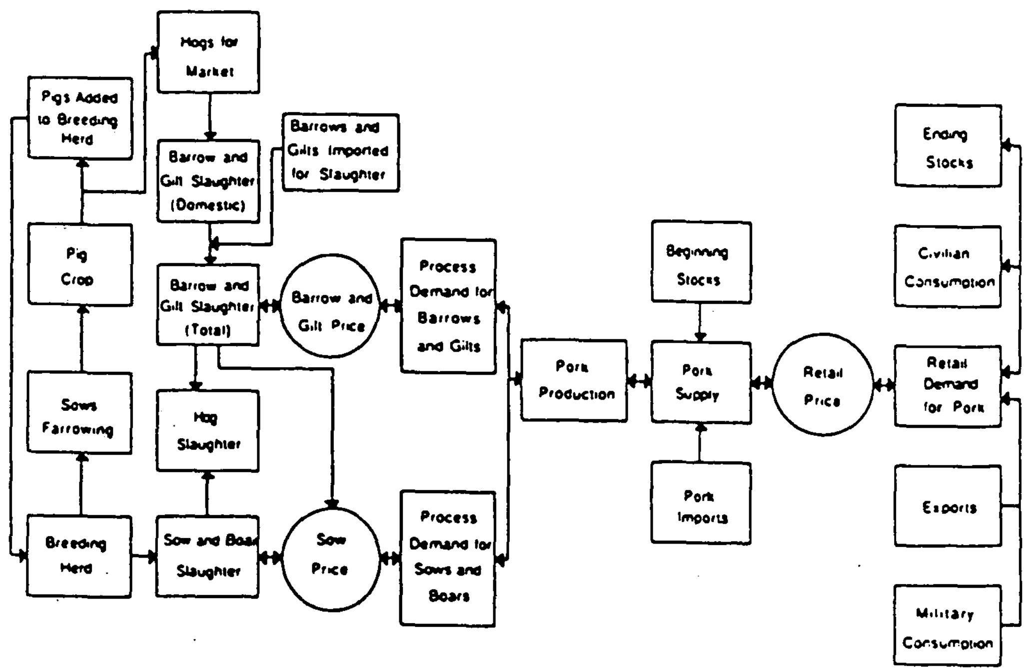
differences in transportation costs and fluctuations in the U.S.-Canadian exchange rate. 1/ U.S. importers contacted during this investigation that purchased both U.S.- and Canadian-produced pork agreed that the prices are similar. Moreover, the petitioner also agreed that there is a North American pork market. 2/ 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. 3/

Demand, supply, and pricing relationships for the hog/pork sector are presented in figure 7. 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. 4/ Industry sources generally agree that the wide fluctuations in swine production associated with the hog cycle affect demand, supply, and pricing relationships throughout the sector. 5/ As swine production and slaughter increase, the retail price for pork declines, causing an increase in the retail demand for pork.

There are essentially two markets for pork in the United States: an open market, where pork is sold to unrelated retailers and processors, and a captive market, in which the pork producers supply related pork-processing operations with the unprocessed pork product. Approximately one-third of pork production is sold to retailers, one-third is sold to unrelated processors, and, according to industry sources, one-third is captive sales within related companies. Questionnaire data received by the Commission indicate that captive sales declined annually, from 25.6 percent of total sales in 1986 to 21.1 percent in 1988. 6/

1/ Conversations with Shayle Shangum and Kevin Bost, USDA Economic Research Service.
2/ Hearing transcript, p. 20.
3/ Commission staff note that 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 and not exported to the United States. 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.
4/ 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 chart. Jon Brandt, a professor at the University of Missouri who assisted in creating the model, has stated that the model should treat pork imports as endogenous.
5/ See section of this report entitled "The Hog Cycle" for a complete description of this phenomenon.
6/ See section of this report entitled, "U.S. producers' domestic shipments."

Figure 7
The hog/pork sector



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

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.

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 are based on a "total" selling price negotiated between the producer and purchaser, e.g., 85 cents per pound for a 14-16 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 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 differentiates 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 are 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 14-16 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. The reference time period typically used by U.S. producers and importers to determine the published market price is either day of shipment or day prior to shipment. However, purchasers contacted during the investigation reported that some Canadian producers will also sell pork at a firm price 2 weeks prior to shipment.

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., 14-16 pounds, 17-20 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 in crates. 2/

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. 3/ Pork that is skinned, boneless, or shankless is more expensive

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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 collects information only if an actual sale is made, whereas the National Provisioner incorporates bid-and-ask information regardless of whether the sale is made.

2/ At the hearing, a question was raised regarding the impact of pork traded on the commodity markets on the price of pork. Only pork bellies are traded on the commodity market. Industry sources have stated that the level of bellies traded on the market is low and does not greatly affect current price for bellies. Glenn Grimes, the economist for the petitioner, reported in the petitioner's posthearing brief that the commodity market for pork bellies has a limited impact upon the current cash market for pork bellies but does offer a procedure to shift risks on storing bellies for future use. At the hearing, Grimes stated that bacon processors and speculators use the commodity market for pork bellies. Hearing transcript, p. 71.

3/ Some U.S. producers and importers reported that although frozen pork has not affected the current price of fresh pork, it is possible that a high level of frozen stocks of a particular pork cut may have a limiting effect on the price of that pork cut, adjusting for seasonality, if the frozen product is considered to be of equal quality to the fresh pork cut. The example that producers cited most often was that the increasing stocks of frozen pork bellies may eventually have a limiting effect on the current price for fresh pork bellies if the demand for this product should increase. Seasonal fluctuations in the level of other frozen pork products will have a minor effect on the current price for the specific pork cut. For example, stocks of frozen spareribs increase during the winter, when demand and price fall, and 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. 1/ 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 was Canadian produced or U.S. produced.

Transportation costs.--Fresh, chilled, and frozen pork are generally shipped by truck within the United States. 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. U.S. producers and importers reported that transportation costs typically range from approximately 1 percent to 4 percent of the total f.o.b. price for pork, depending on the distance of the customer from the production facility. 2/

Respondents have argued that Canadian producers of fresh, chilled, and frozen pork have a freight cost advantage over the U.S. producers when shipping to specific regions of the United States, mainly the border area between Canada and the United States, but including the northeastern and northwestern United States. * * * U.S. producers, * * *, reported that transportation costs affected their price competitiveness with the imported Canadian pork primarily in these regions. The closer proximity of Canadian packing facilities to the Northeast, Northwest, and border areas of the United States can be seen in the following map (fig. 8). This map identifies the locations of the slaughtering facilities for Canadian plants that slaughter over 1,000 hogs a week and for those U.S. producers that responded to the Commission's questionnaire. 3/

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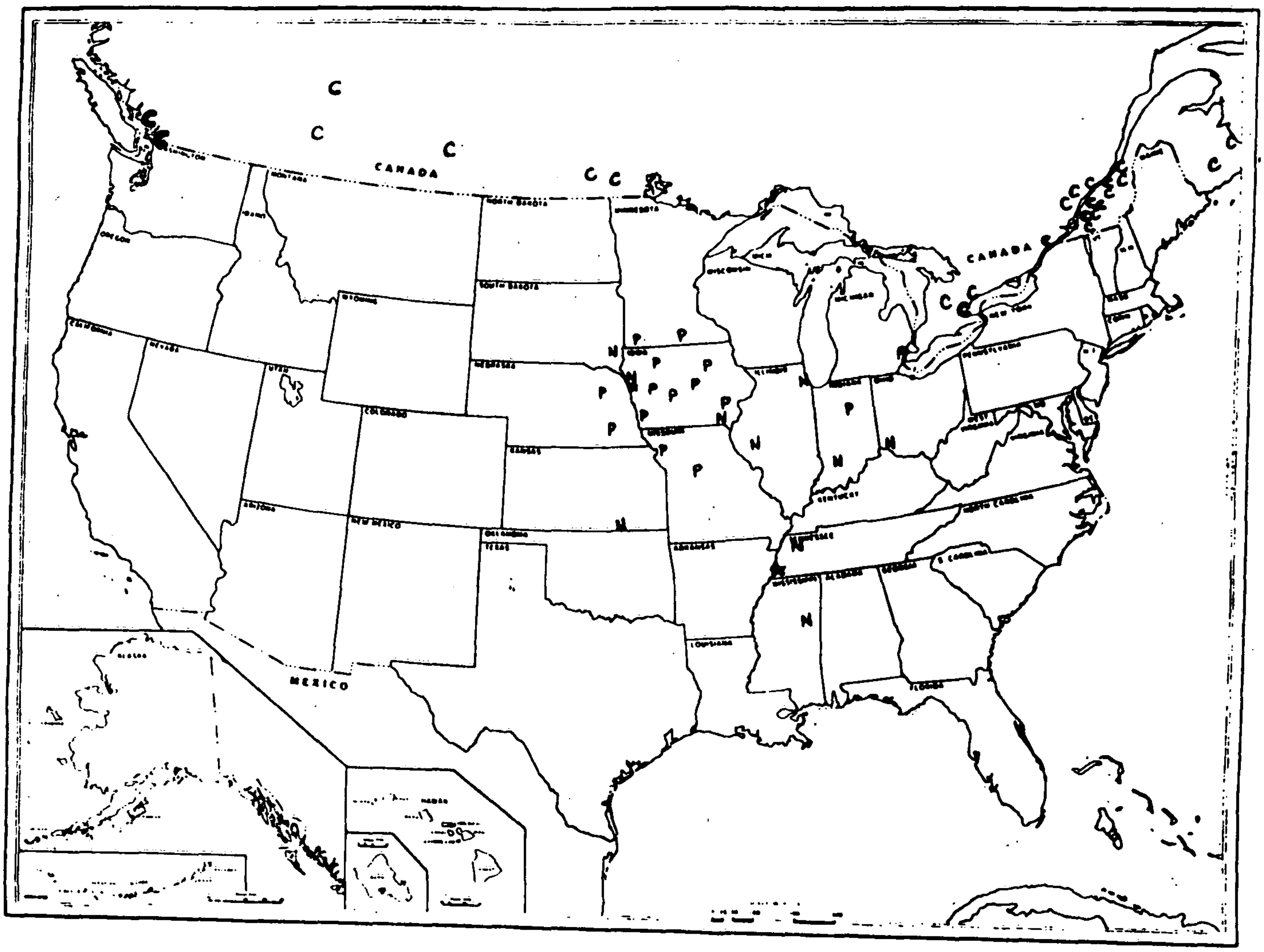
decrease during the summer, when demand and price increase.
1/ * * *.
2/ * * *.
3/ These 15 U.S. producers accounted for 64.4 percent of U.S. production of fresh, chilled, or frozen pork in 1988. Pork production from the identified Canadian facilities represents most of total Canadian pork production.

Figure 8
Canadian slaughtering facilities that slaughter over 1,000 hogs per week and U.S. slaughtering facilities for those firms that responded to questionnaires of the U.S. International Trade Commission



<u>Slaughtering Facilities</u>
P - Petitioner
N - Nonpetitioner
* - Closed U.S. plant
C - Canadian

Source: Agriculture Canada and data submitted in response to questionnaires of the U.S. International Trade Commission.

Published price trends for pork and swine. 1/--Published price data for six different pork cuts are presented on a monthly basis for January 1975 to May 1989. The six pork cuts are fresh hams (17-20 pounds), fresh loins (14-18 pounds), fresh bellies (14-16 pounds), picnics (4-8 pounds), Boston butts (4-8 pounds), and fresh trimmings (combination 72 percent). Published price data for one classification of swine were also compiled on a monthly basis for January 1975 to May 1989. The swine price series is the U.S. barrow/gilt 7-market price. 2/

Published U.S. market prices are presented for the long-term January 1975-May 1989 period as well as for the January 1986-May 1989 investigation period. Prices fluctuated for the six pork products and one swine classification during the entire 14-year, 5-month period, January 1975-May 1989 (figs. 9-15). 3/ 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.

During the period of investigation, U.S. market prices for fresh hams showed noticeable seasonal fluctuations in 1986 and 1987, with a more moderate pattern occurring in 1988 (fig. 9). 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 (fig. 10). Prices for this product were somewhat higher during January 1986-May 1989 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 (fig. 11 and 12). 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. Prices for fresh pork bellies continued to decline during 1989, whereas the prices for fresh Boston butts increased. Industry sources reported that the downward price trend

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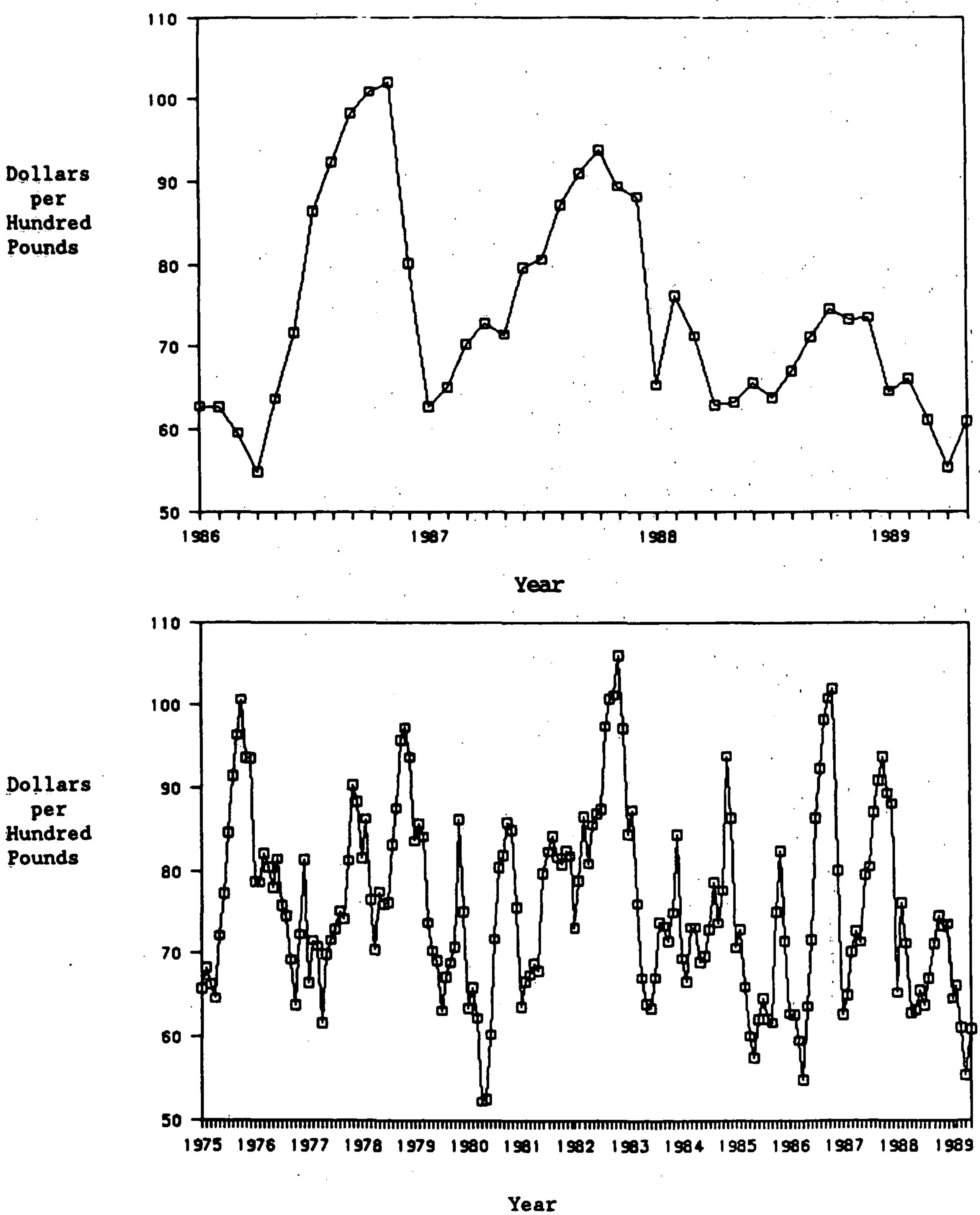
1/ During this final investigation, the Commission gathered price data from public sources and through questionnaires. Usable questionnaire price data were received from 13 U.S. producers and from 8 importers/purchasers of the Canadian product. Due to the incompleteness of the questionnaire data, staff believe published data provide a more accurate depiction of pork price trends in the U.S. marketplace. Questionnaire price data gathered during this investigation follow the same trends as that from the published sources. Comparisons of prices of U.S. and Canadian pork based on purchasers' questionnaire responses are shown in the following section of this report. Prices of pork, as a commodity product, are known to change continually, and quarterly data gathered in the Commission's questionnaires do not necessarily represent simultaneous sales. Therefore, price differences calculated from producer and importer questionnaire data cannot reliably be said to represent differences based on country of origin. Producer and importer questionnaire price data are presented in app. H.

2/ The published price data include imports of pork and swine.

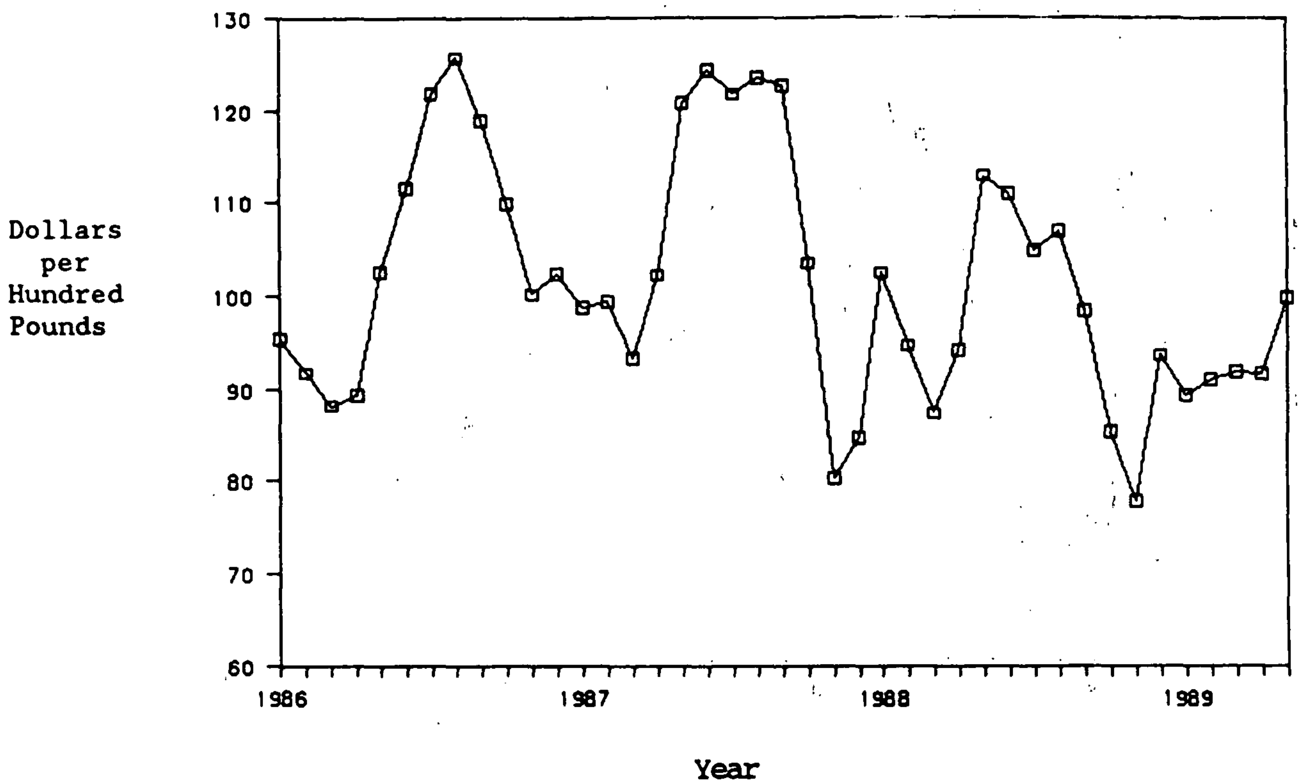
3/ See app. G for the six pork products and one swine classification price series.

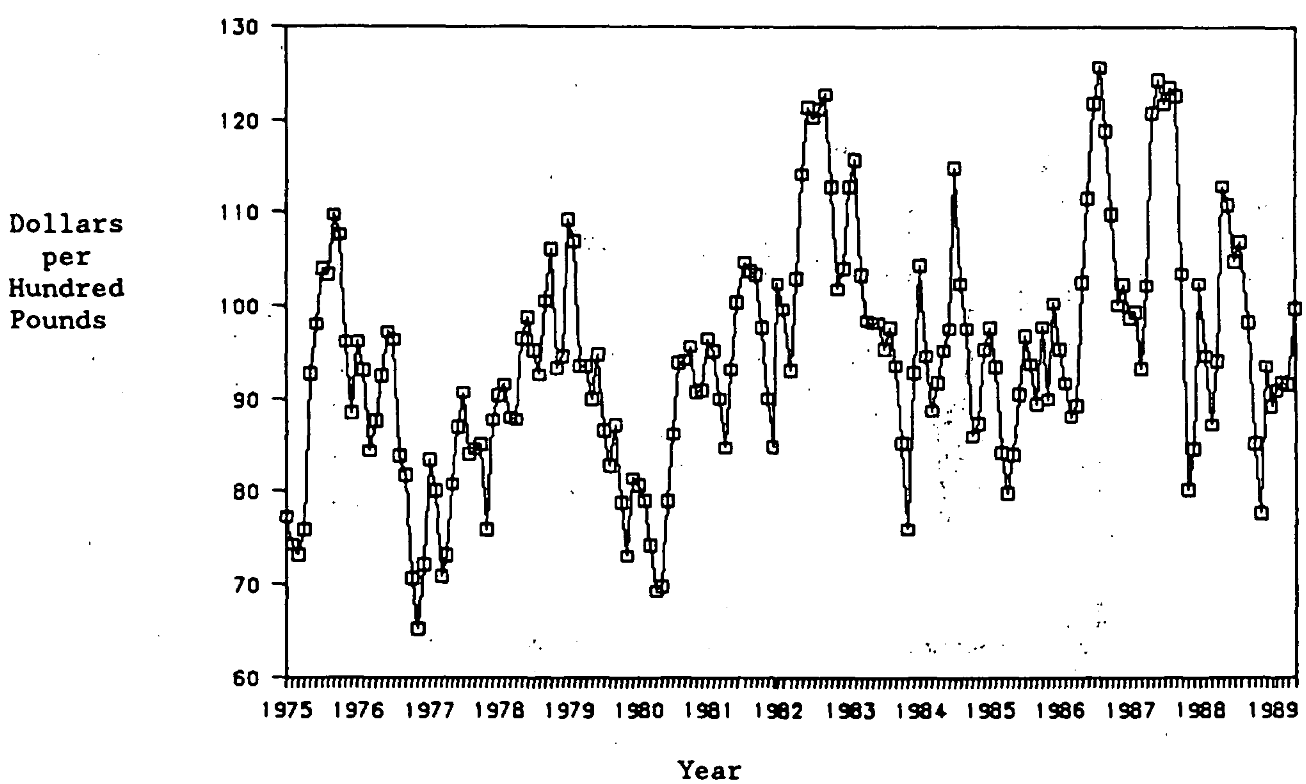
Figure 9
Fresh ham published prices, 17-20 pounds, sold in the U.S. market, by months, January 1986-May 1989 and January 1975-May 1989



Source: USDA Economic Research Service

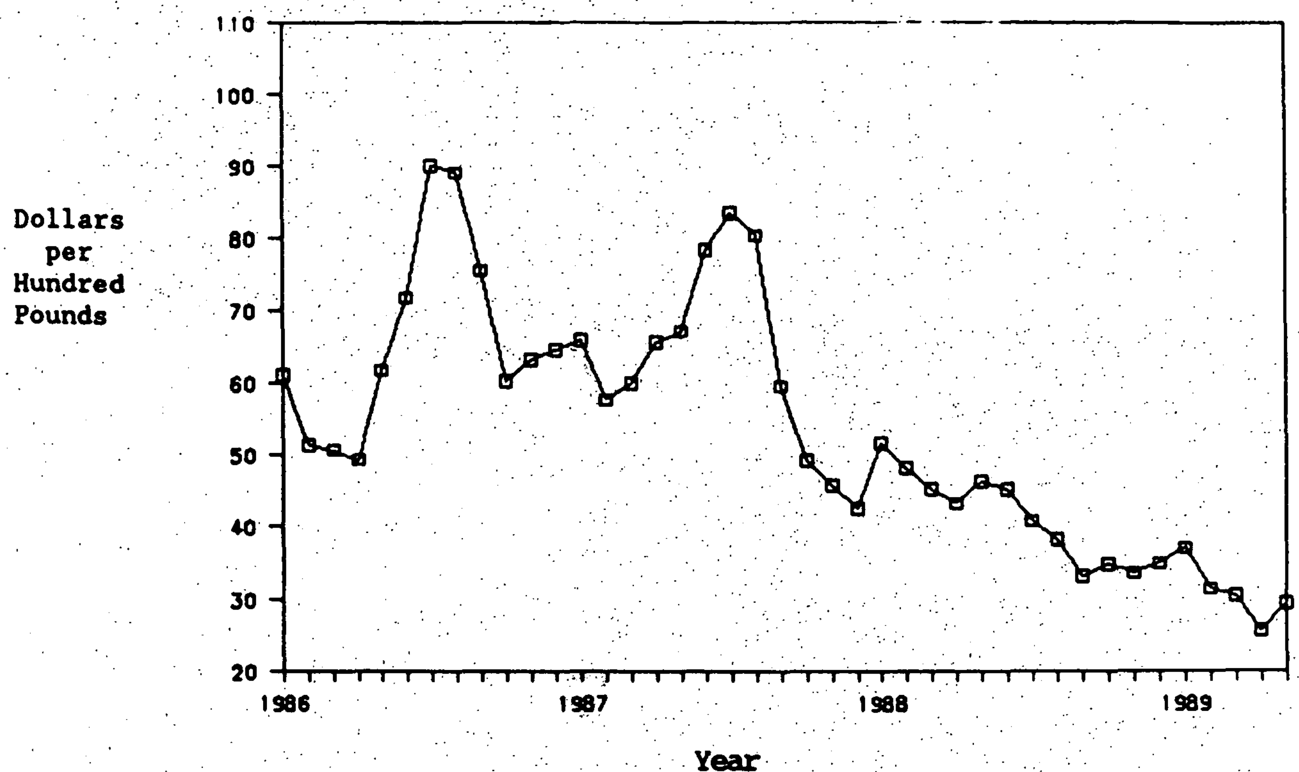
Figure 10
Fresh loins published prices, 14-18 pounds, sold in the U.S. market, by months, January 1986-May 1989 and January 1975-May 1989

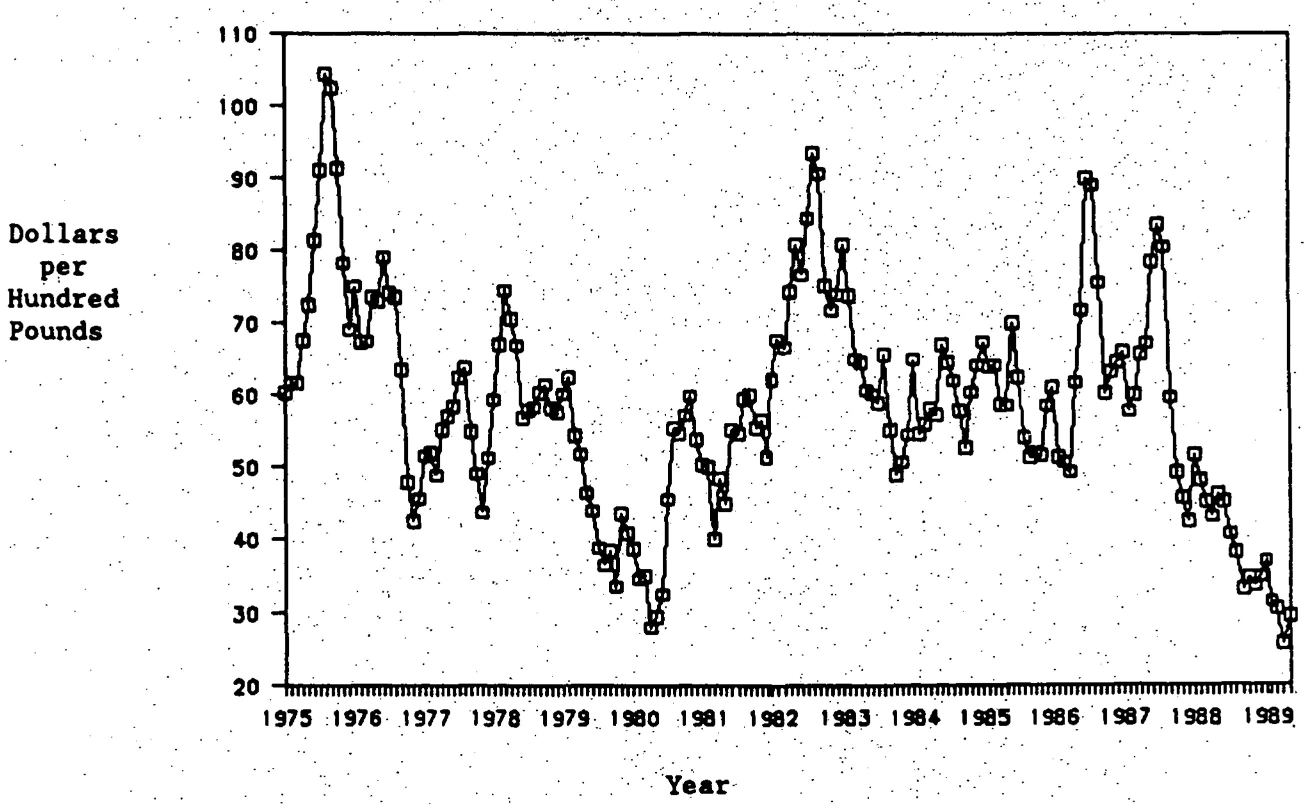




Source: USDA Economic Research Service

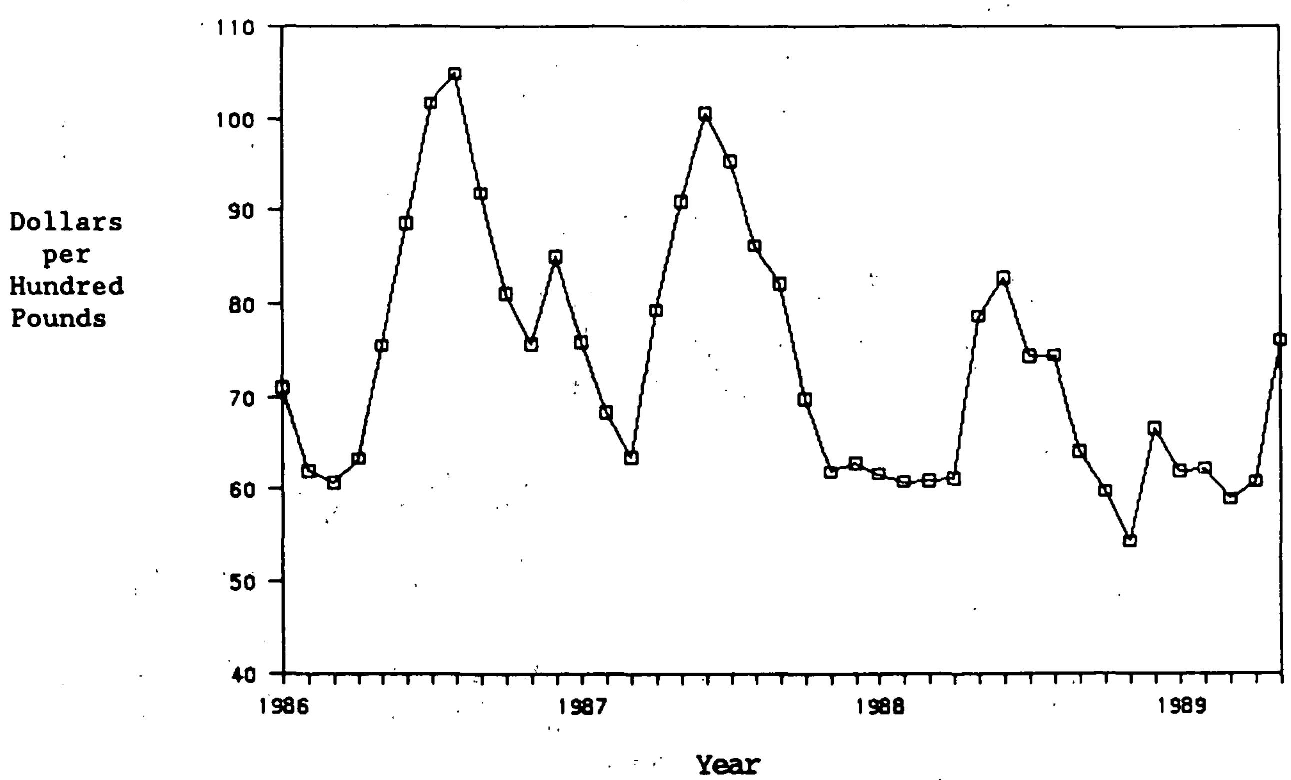
Figure 11
Fresh pork belly published prices, 14-16 pounds, sold in the U.S. market, by months, January 1986-May 1989 and January 1975-May 1989

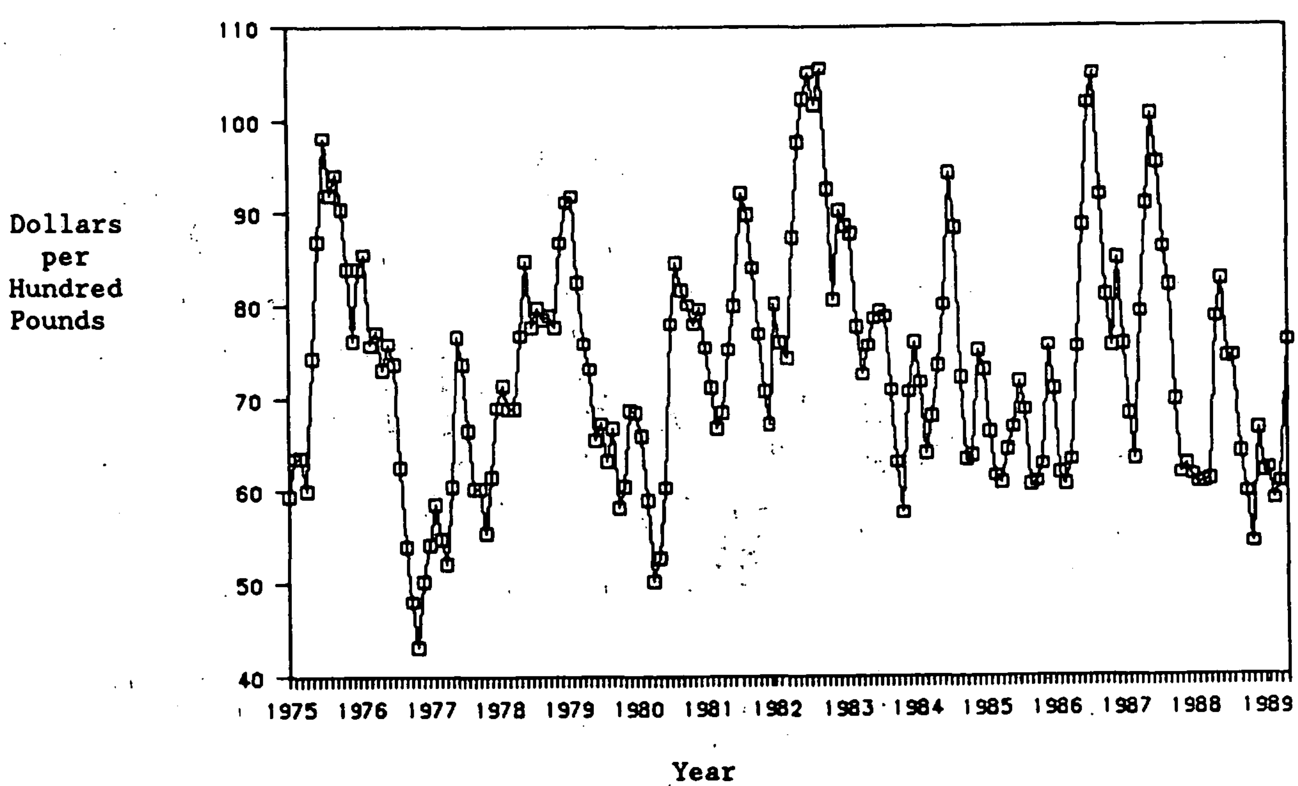




Source: USDA Economic Research Service

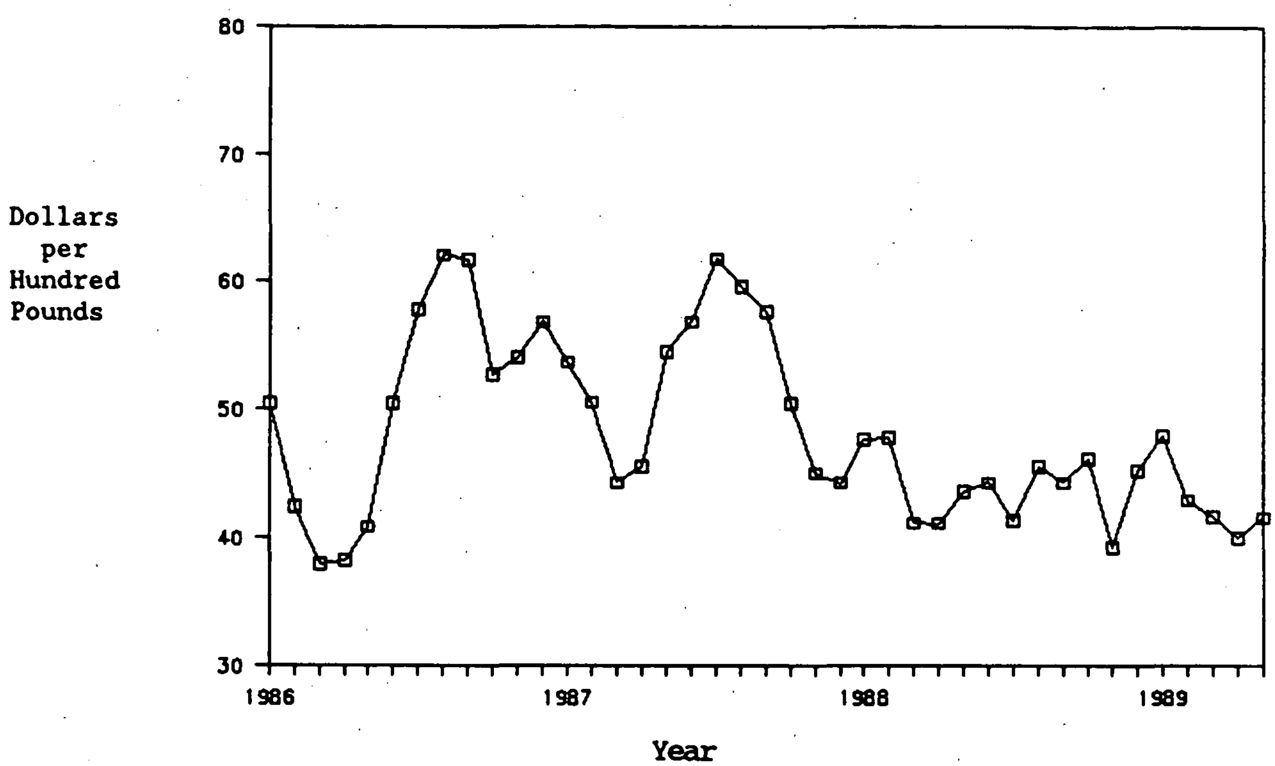
Figure 12
Fresh Boston butts published prices, 4-8 pounds, sold in the U.S. market, by months, January 1986-May 1989 and January 1975-May 1989

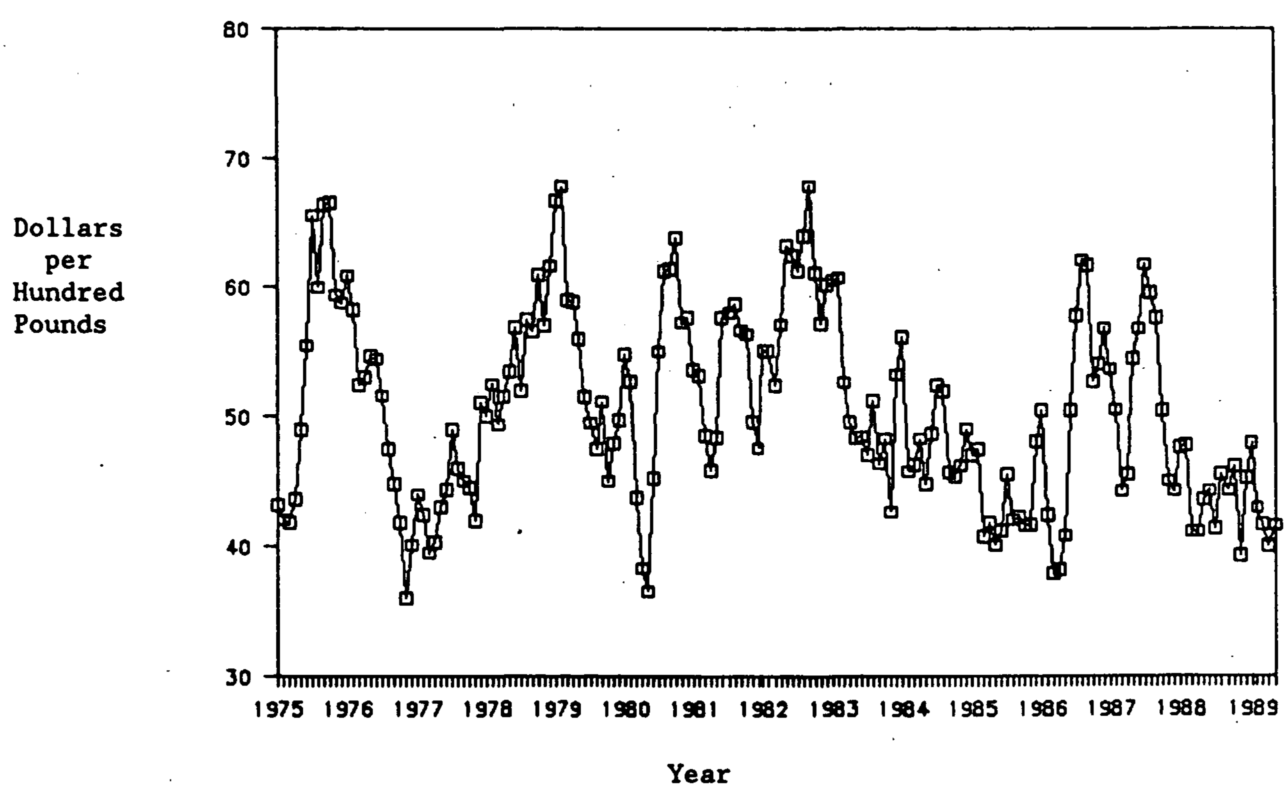




Source: USDA Economic Research Service

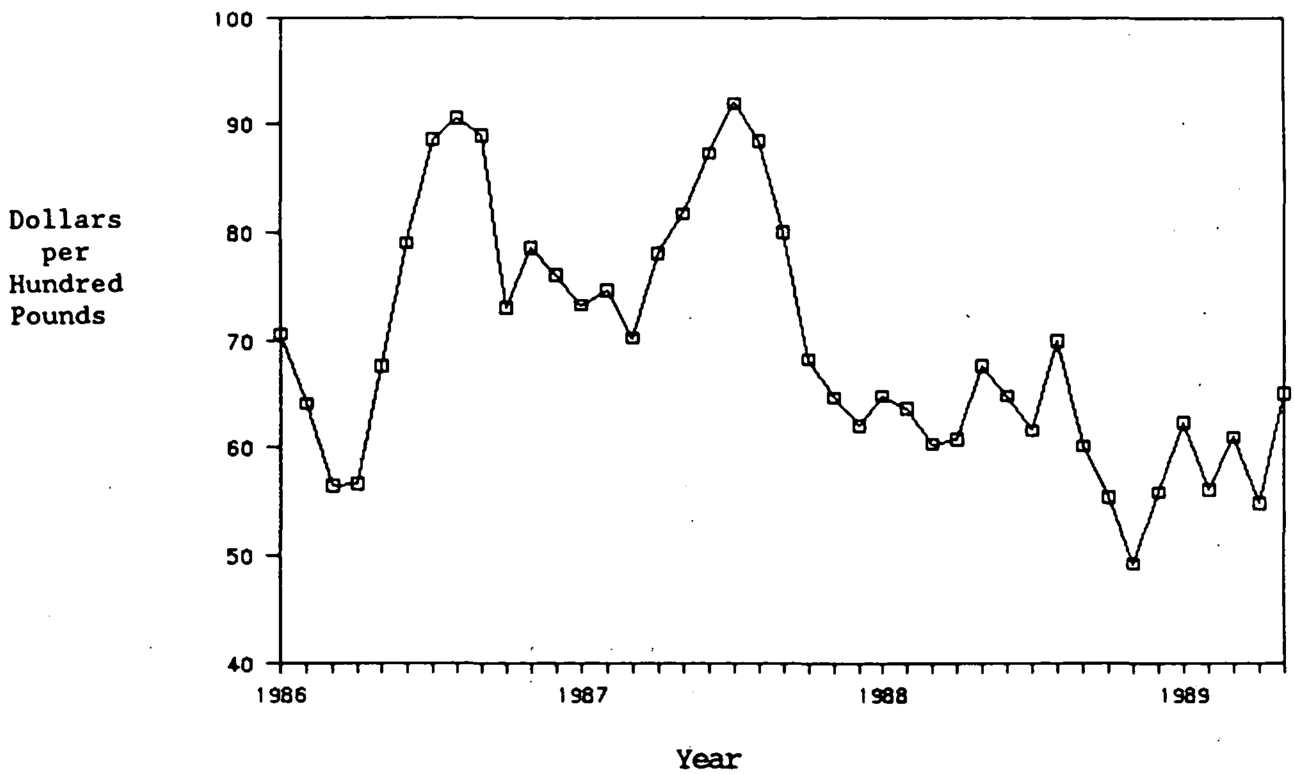
Figure 13
Fresh picnics published prices, 4-8 pounds, sold in the U.S. market, by months, January 1986-May 1989 and January 1975-May 1989

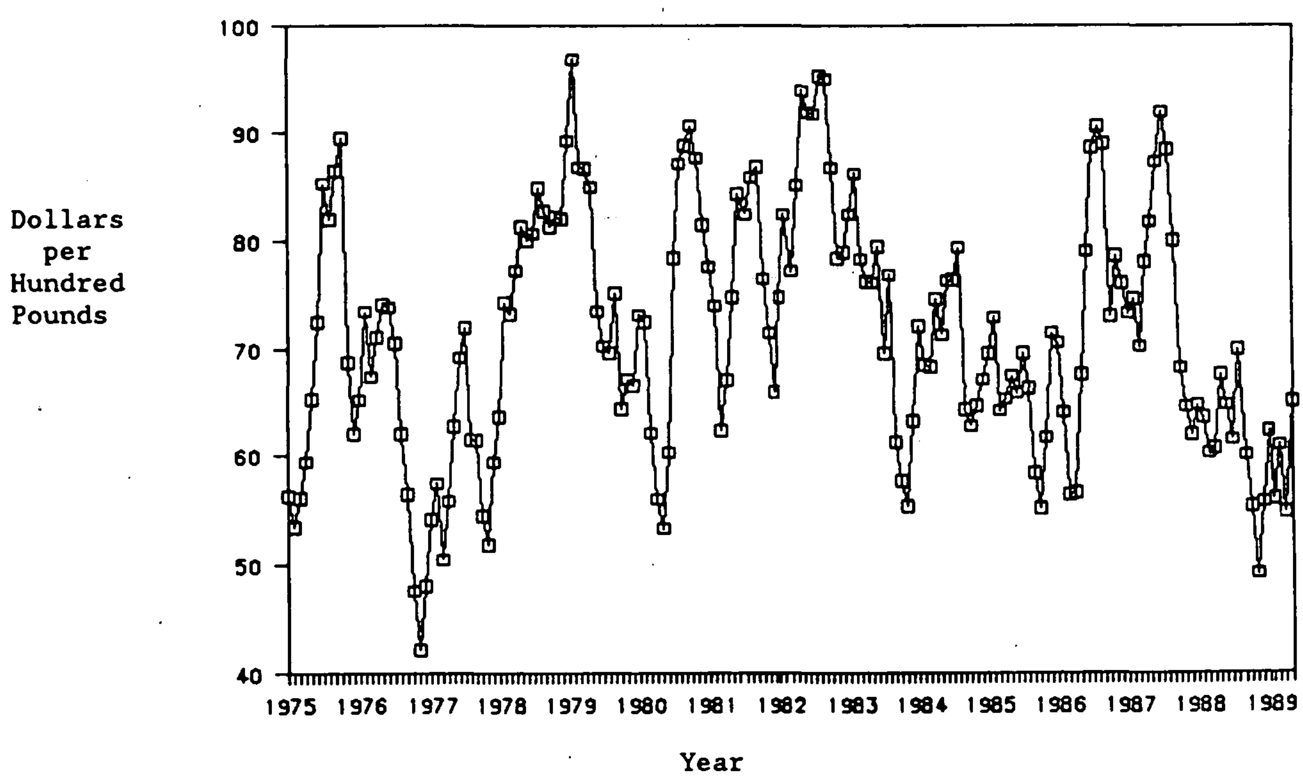




Source: USDA Economic Research Service

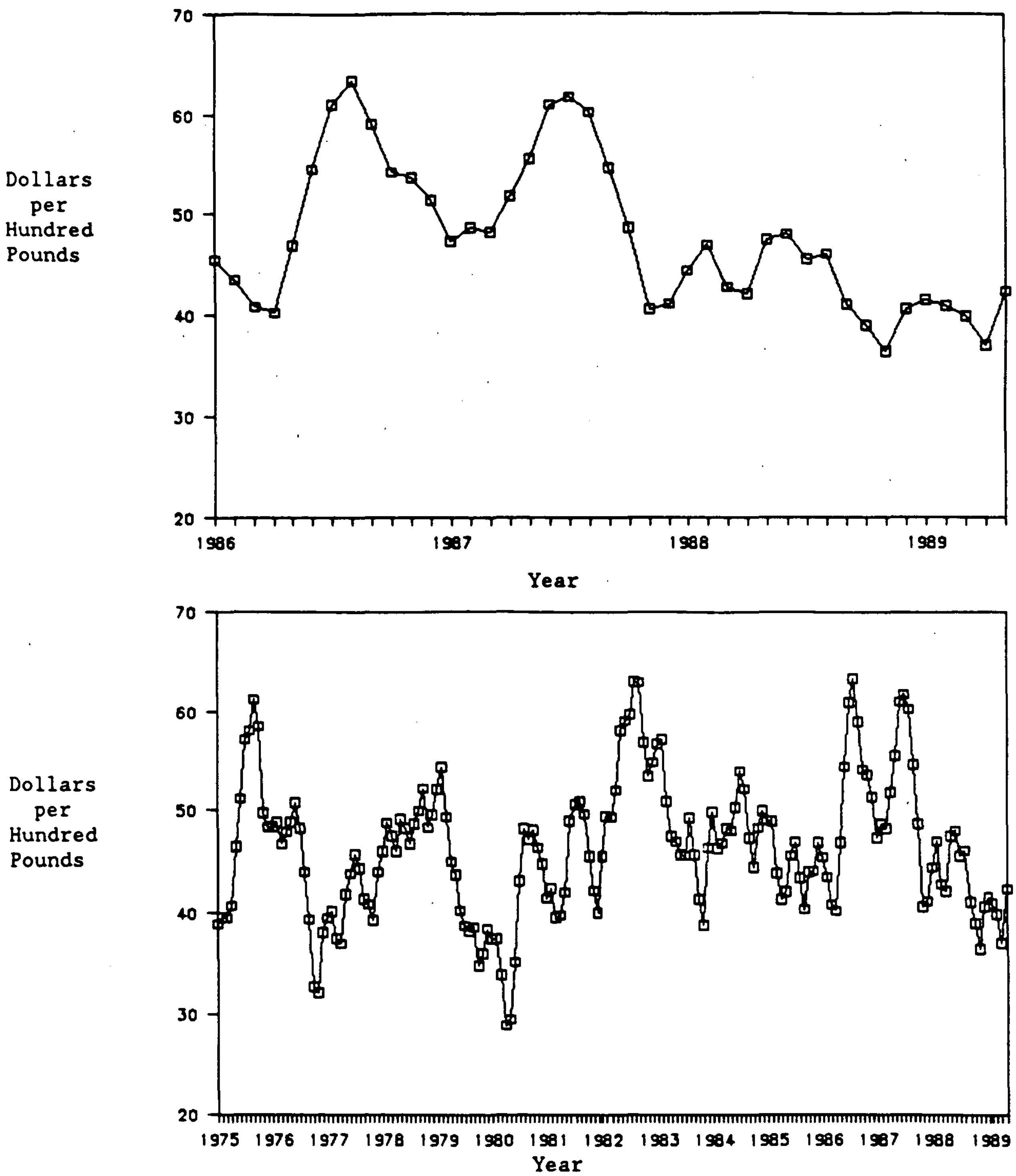
Figure 14
Fresh trimmings published prices, combination 72 percent, sold in the U.S. market, by months, January 1986-May 1989 and January 1975-May 1989





Source: USDA Economic Research Service

Figure 15
Live swine published prices sold in the U.S. market, by months, January 1986-May 1989 and January 1975-May 1989 1/



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

Source: USDA Economic Research Service

for fresh pork bellies was a function of the increased supply of frozen pork bellies as well as the movement by consumers toward leaner pork cuts.

U.S. market prices for fresh picnics also showed seasonal variations during 1986-87 before leveling off during January 1988-May 1989 (fig. 13). Prices for picnics during January 1988-May 1989 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 (fig. 14).

U.S. market prices also fluctuated for live swine during the period of investigation (fig. 15). Prices for live swine during 1986-87 reached their highest point since late 1982 before decreasing and leveling off during mid-1987-May 1989.

Purchasers' responses concerning competition between the domestic and imported fresh, chilled, or frozen pork product.--The Commission contacted 38 purchasers through questionnaires and phone interviews and requested that they report on competitive conditions between the domestic and Canadian fresh, chilled, or frozen pork on the basis of their actual purchase experience during 1986-89. 1/ Purchasers were asked to report and compare the delivered purchase prices for domestic and Canadian pork and to give reasons why they purchased the subject imported or domestic products. Quarterly purchase unit values were requested for five specific commodity-specification products. 2/

Pricing differences.--* * * reported quarterly delivered unit values for their purchases of two U.S. and Canadian pork products: fresh chilled 17-20-pound hams and fresh chilled 14-18-pound loins (table 22). 3/ The reported quantity of U.S. and Canadian pork purchased in these transactions represented 1.1 percent of total apparent U.S. consumption during 1988. Of the 28 quarterly delivered purchase unit-value comparisons, there were 17 periods in which the three purchasers reported that their Canadian-produced pork was lower in value than the comparable U.S.-produced pork and 11 periods in which the unit values for Canadian-produced pork were higher than those for the comparable U.S.-produced pork. Margins of underselling ranged between 0.1 percent and 10.8 percent. Margins of overselling ranged between 0.1 percent and 27.8 percent.

Table 22
Pork: Delivered purchase unit values and quantities of products 1 and 5 reported by purchasers of U.S. and Canadian pork, by companies, and by quarters, January 1986-March 1989

*   *   *   *   *   *

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

1/ 20 processors, 4 retailers, and 14 distributors/brokers.
2/ See app. H for a description of the five products.
3/ * * *.

* * *. 1/ * * *. 2/ * * *. 3/

Purchasers were also requested to comment on delivered purchase prices of domestic and Canadian pork. Of the 34 purchasers that responded, 11 indicated that the delivered prices of Canadian pork were similar to those of U.S. pork, 11 reported that the price for Canadian pork was higher than that for U.S. pork, 8 indicated that the price for Canadian pork was lower than that for U.S. pork, and 4 reported that the price of the Canadian product was lower than the price for the U.S. product on some pork cuts, but higher on other pork cuts.

Exchange rates

Quarterly data reported by the International Monetary Fund indicate that during the period January 1986 through March 1989 the value of the Canadian dollar increased by 17.8 percent against the U.S. dollar (table 23). 4/ Adjusted for relative movements in producer price indexes in the United States and Canada, the real value of the Canadian currency appreciated 16.8 percent relative to the dollar from January-March 1986 through January-March 1989.

Lost sales and lost revenues

* * * allegations of lost sales and lost revenues involving * * * purchasers were cited by * * * U.S. producers of fresh, chilled, or frozen pork. 5/ The Commission staff contacted all purchasers cited.

* * *, a petitioning party, cited * * * allegations of lost sales and revenues to * * *, a warehouse distributor of meat products located in * * *, involving * * * during * * *. * * *, purchaser of pork products for * * *, could not recall the specific allegations but stated that * * * does purchase approximately * * * of its pork requirements from * * * Canadian supplier, * * *, and * * * of its requirements from * * * U.S. suppliers, * * *. * * * reported that nearly * * * percent of the Canadian pork purchased by his firm is sold to a * * *. * * * reported that the three major factors considered by * * * in purchasing pork are customer preference, price, and freshness.

* * * reported that in general the price of Canadian pork is very similar to the price of U.S. pork. Canadian-produced pork loins are * * * per pound less expensive than U.S.-produced loins; however, the Canadian product has more bone in its product, providing less value than the domestic product. Canadian-produced spareribs are * * * cents per pound more expensive than U.S.-produced spareribs because the Canadian product has smaller ribs. Canadian-produced fresh trimmings are more expensive than U.S.-produced trimmings because of the better consistency of the Canadian product. * * * stated that the Canadian trimmings will be between 78 percent and 80 percent lean, whereas the U.S. product will be 72 percent lean. Although Canadian-produced pork butts are less expensive than U.S.-produced butts, * * * reported that these two products

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1/ * * *.
2/ * * *.
3/ * * *.
4/ International Financial Statistics, August 1989.
5/ * * *.

Table 23
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-March 1989

Period	U.S. Producer Price Index	Canadian Producer Price Index	Nominal exchange-rate index	Real exchange-rate index 3/
1986:				
January-March.......	100.0	100.0	100.0	100.0
April-June..........	98.2	98.5	101.4	101.8
July-September......	97.7	98.7	101.3	102.4
October-December....	98.1	99.4	101.4	102.8
1987:				
January-March.......	99.2	99.8	104.9	105.6
April-June..........	100.8	101.1	105.3	105.6
July-September......	101.9	102.6	106.2	106.8
October-December....	102.3	103.6	107.1	108.4
1988:				
January-March.......	102.9	103.9	110.8	111.8
April-June..........	104.8	105.2	114.1	114.6
July-September......	106.2	106.3	115.1	115.2
October-December....	106.7	107.2	116.4	116.9
1989:				
January-March......	109.0	108.2	117.8	116.8

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 indexes 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 Indexes in the United States and Canada. Producer prices in the United States and Canada increased 9.0 percent and 8.2 percent, respectively, between January 1986 and March 1989.

Note.--January-March 1986=100.

Source: International Monetary Fund, International Financial Statistics, August 1989.

are not comparable because the Canadians cut this product differently than U.S. producers do, e.g., they leave more of the jowl on the product.

* * * cited * * *, a warehouse distributor located in * * *, in a lost revenues allegation involving * * *, but it was unable to provide any specific information regarding the specific sale, the quantity, or price offered. * * *.

* * * reported that currently * * * of * * * purchases of fresh pork product * * * is from a Canadian supplier, * * *, and * * * are from domestic suppliers, * * *. * * * stated that * * * started to purchase Canadian product in * * * as a secondary supplier to * * *. * * * explained that the domestic producers were unreliable suppliers and that he needed to insure a constant supply of fresh pork product for his customers. The Canadian product also provided a better trimmed product, thereby producing a better yield than the pork product from domestic sources.

* * * reported that the price of the Canadian product is approximately * * * per pound below comparative domestic product. Although * * *, another domestic supplier, prices its product competitively with the Canadian pork, * * * product is not trimmed sufficiently. The domestic pork purchased by * * * is priced on a formula basis (USDA plus a premium from * * * and the National Provisioner plus a premium from * * *). The Canadian product is priced on a total price basis. * * * stated that he is aware of the USDA and National Provisioner price when negotiating for the Canadian product.

* * *, a petitioning party, cited * * * allegation of lost sales involving * * * to * * *, a processor of pork located in * * *. * * * could not recall the specific sale but reported that between * * * percent of its purchases are from Canadian suppliers. * * * stated that the Canadian product is too expensive, * * * cents per pound higher than its U.S. suppliers, for * * * to purchase more Canadian product. The advantage of the Canadian product is that the supplier will sell its product 2 weeks in advance on the basis of current price, whereas U.S. producers will only sell on a day-prior or day-of-shipment basis.

* * * reported that the three major factors considered by * * * in purchasing pork are price, current availability, and quality of product. * * * stated that the Canadian pork product is generally leaner than the U.S. product. * * * purchases fresh pork from the following domestic companies: * * *.

APPENDIX A

COMMISSION'S FEDERAL REGISTER NOTICE

[Investigation No 701-TA-298 (Final)]

Fresh, Chilled, or Frozen Pork from Canada

AGENCY: United States International Trade Commission.

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

SUMMARY: The Commission hereby gives notice of the institution of final countervailing duty investigation No. 701-TA-298 (Final) under section 705(b) of the Tariff Act of 1930 (19 U S.C. 1671d(b)) (the act) to determine whether 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 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 have been found by the Department of Commerce, in a preliminary determination, to be subsidized by the Government of Canada. Commerce will make its final subsidy determination in this investigation on or before July 17, 1989, and the Commission will make its final injury determination by September 5, 1989 (see sections 705(a) and 705(b) of the act (19 U.S.C. 1671d(a) and 1671d(b))).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and C (19 CFR part 207), as amended, 53 FR 33041 (August 29, 1988) and 54 FR 5520 (February 2, 1989), and part 201, subparts A through E (19 CFR part 201), as amended, 54 FR 13672 (April 5, 1989).

EFFECTIVE DATE: May 8, 1989

FOR FURTHER INFORMATION CONTACT: Bruce Cates (202-252-1187), 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 as a result of an affirmative preliminary determination by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 701 of the act (19 U S.C. 1671) are being provided to manufacturers, producers, or exporters in Canada of fresh, chilled, or frozen pork. The investigation was requested in a petition filed on January 5, 1989, by the National Pork Producers Council (NPPC), Des Moines, IA, and others.[1] In response to that petition the Commission conducted a preliminary countervailing duty investigation and, on the basis of information developed during the course of that investigation, determined that there was a reasonable indication that an industry in the United States was materially injured or threatened with material injury by reason of imports of the subject merchandise (54 FR 8835, March 2, 1989).

Participation in the Investigation

Persons wishing to participate in this 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 twenty-one (21) days after the 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

[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.

filing entries of apppearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3, as amended, 53 FR 53041 (August 29, 1988) and 54 FR 5222 (February 2, 1989)), 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 section 207.7(a) of the Commission's rules (19 CFR § 207.7(a), as amended 53 FR 53041, August 29, 1988) and 54 FR 5222 (February 2, 1989)), the Secretary will make available business proprietary information gathered in this final investigation to authorized applicants under a protective order, provided that the application be made not later than twenty-one (21) 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.

Staff Report

The prehearing staff report in this investigation will be placed in the nonpublic record on July 12, 1989, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on August 1, 1989, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m) on July 19, 1989. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on July 24, 1989, at the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is July 24, 1989.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonbusiness proprietary summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any business proprietary materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written Submissions

All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of section 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on August 7, 1989. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before August 7, 1989.

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 Commission's 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 Secretary 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 as amended, 53 FR 33041 (August 29, 1988) and 54 FR 5222 (February 2, 1989).

Parties which obtain disclosure of business proprietary information pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a) as amended, 53 FR 33041 (August 29, 1988) and 54 FR 5222 (February 2, 1989)) may comment on such information in their prehearing and posthearing briefs, and may also file additional written comments on such information no later than August 14, 1989. Such additional comments must be limited to comments on business proprietary information received in or after the posthearing briefs.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20)

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: May 15, 1989.

[FR Doc. 89-12487 Filed 5-24-89; 8:45 am]

BILLING CODE 7020-02-M

APPENDIX B

COMMERCE'S FEDERAL REGISTER NOTICE

International Trade Administration

[CV-122-807]

Final Affirmative Countervailing Duty Determination: Fresh, Chilled, and Frozen Pork from Canada

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to producers or exporters in Canada of fresh, chilled, and frozen pork, as described in the "Scope of Investigation" section of this notice. The estimated net subsidy is Can$0.08/kg. (Can$0.036/lb.) for all producers or exporters in Canada of fresh, chilled, and frozen pork and *de minimis* for all producers or exporters in Canada of fresh, chilled, and frozen sow and boar meat.

EFFECTIVE DATE: July 24, 1989.

FOR FURTHER INFORMATION CONTACT: Kay Halpern or Rick Herring, 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) 377-0192 or 377-2438.

SUPPLEMENTARY INFORMATION:

Final Determination

Based on our investigation, we determine that certain benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to producers or exporters in Canada of fresh, chilled, and frozen pork. For purposes of this investigation, the following programs are found to confer subsidies:

Federal Programs

- Tripartite Stabilization Programs under the Agricultural Stabilization Act.
- Feed Freight Assistance Program.
- Western Diversification Program.
- Western Transportation Industrial Development Program.

Federal/Provincial Program

- Canada/Quebec Subsidiary Agreement on Agri-Food Development.

Provincial Programs

- Alberta Crow Benefit Offset Program.
- Alberta Economic Development and Trade Act.
- Alberta Grant to Fletcher's Fine Foods.
- Ontario Farm Tax Rebate Program.
- Ontario Marketing Assistance Program for Pork Producers.
- Ontario (Northern) Livestock Improvement and Transportation Assistance Programs.
- Onterio Pork Industry Improvement Program.
- Quebec Farm Income Stabilization Insurance Program.
- Quebec Productivity Improvement and Consolidation of Livestock Production Program (Farm Building Subprogram).
- Quebec Regional Development Assistance Program (Livestock Transportation Subprogram).
- Saskatchewan Hog Assured Returns Programs.
- Saskatchewan Livestock Investment Tax Credit Program.
- Saskatchewan Livestock Facilities Tax Credit Program.

We determine the estimated net subsidy to be Can$0.08/kg. (Can$0.036/lb.) for all producers or exporters in Canada of fresh, chilled, and frozen pork and *de minimis* for all producers or exporters in Canada of fresh, chilled, and frozen sow and boar meat.

Case History

Since the last Federal Register publication pertaining to this investigation (*Preliminary Affirmative Countervailing Duty Determination: Fresh, Chilled, and Frozen Pork from Canada*, 54 FR 19582, May 8, 1989) (*Preliminary Determination*), the following events have occurred. Respondents submitted a supplemental response to our third supplemental/deficiency questionnaire on May 11, 1989. We conducted verification of the questionnaire responses of the Government of Canada and the provincial governments of Alberta, Manitoba, Ontario, Quebec and Saskatchewan in Canada from May 15 to June 1, 1989. Respondents submitted amended responses and additional clarifying information requested at verification on May 24, June 13, June 14, June 15, June 22 and June 30, 1989.

Both petitioner and respondents requested a public hearing in this investigation. Case briefs were filed by petitioner and respondents on June 23 and rebuttal briefs were filed on June 2[illegible] 1989. The hearing was held on June 28, 1989.

During the hearing, one party presented oral arguments which had n[illegible] been included in a rebuttal brief. Und[illegible] section 355.38(b) of the Commerce Department's regulations, published i[illegible] the Federal Register on December 27, 1988 (to be codified at 19 CFR 355.38(l[illegible] during the hearing "an interested party may make an affirmative presentation only on arguments included in that party's case brief and may make a rebuttal presentation only on arguments included in that party's rebuttal brief." For this reason, that party's rebuttal presentation has been stricken from the transcripts of the hearing. We wish to remind all interested parties that, in all hearings before the Department, we will strictly enforce the requirements of section 355.38(b).

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 the *Harmonized Tariff Schedule* (HTS), and all merchandise entered or withdrawn from warehouse for consumption on or after that date is now classified solely according to the appropriate HTS item number(s). The Department is providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item number(s) and the appropriate HTS item number(s) with product descriptions for convenience and Customs purposes. The Department's written description of the products under investigation remains dispositive as to the scope of the products covered by this investigation.

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.

Application of Section 771B

Section 1313 of the Omnibus Trade and Competitiveness Act of 1988 amended the Tariff Act of 1930 to include a new section 771B. This section reads as follows:

> In the case of an agricultural product processed from a raw agricultural product in which—
> (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,
> 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.

The subject merchandise in this investigation is an agricultural product, fresh, chilled, and frozen pork, processed from a raw agricultural product, live swine. Therefore, in this investigation, we must analyze the elements of section 771B to determine whether the subsidies provided to producers or processors of live swine shall be deemed to be provided with respect to the manufacture, production, or exportation of fresh, chilled, and frozen pork. For the reasons discussed below, we determine that the elements of section 771B are met.

Prior to the enactment of section 771B, the Department considered a benefit to producers of a raw agricultural product as a benefit to producers of a processed agricultural product. See *Certain Fish from Canada: Final Countervailing Duty Determination* (43 FR 25996, June 16, 1978); *Lamb Meat from New Zealand: Preliminary Affirmative Countervailing Duty Determination* (46 FR 58128, November 30, 1981); *Final Affirmative Countervailing Duty Determination: Live Swine and Fresh, Chilled, and Frozen Pork Products from Canada (Swine)* (50 FR 25098, June 15, 1985); *Final Affirmative Countervailing Duty Determination and Order: Lamb Meat from New Zealand (Lamb Meat 1985)* (50 FR 37708, September 17, 1985); *Preliminary Affirmative Countervailing Duty Determination: Red Raspberries from Canada* (50 FR 42574, October 21, 1985); *Final Affirmative Countervailing Duty Determination and Order: Rice from Thailand* (51 FR 12356, April 10, 1986); and *Final Affirmative Countervailing Duty Determination: Certain Fresh Atlantic Groundfish from Canada (Groundfish)* (51 FR 10041, March 24, 1986). For example, in *Swine*, respondents argued that the Department should apply the upstream subsidy provision, section 771A of the Act, to determine if benefits to hog producers passed through to pork producers. We disagreed because we did not consider live swine to be an "input" into unprocessed pork. Instead, we considered benefits to hog producers as direct benefits to pork producers. Therefore, since we otherwise did not find reasonable grounds to believe or suspect that an upstream subsidy was being paid or bestowed with respect to unprocessed pork, we did not conduct an upstream subsidy investigation.

We clearly spelled out in *Swine* our reasons for determining that benefits to hog producers directly benefit pork producers. "We believe there are two characteristics which evidence that live swine should not be considered an 'input' into fresh, frozen, and chilled pork products. These characteristics are level of value added and the role of the producer." First, in our discussion of value added we said, "A low level of value added at a given level of processing is an indication that the prior stage product entering that level is not an input into the processed product." Second, in our discussion of the role of the processor and whether the processor merely makes the product ready for the next consumer we said, "The salient criterion is the degree to which the demand for the prior stage product is dependent on the demand for the latter stage product."

Respondents in *Swine* appealed the Department's decision not to apply the upstream subsidies provision. The Court of International Trade (CIT) remanded *Swine* to the Department of conduct an upstream subsidy investigation. The CIT ruled that Commerce had to apply the upstream subsidy provision because it found no exception to that provision for agricultural products either in the statute or in the legislative history. *See, Canadian Meat Council* v. *United States*, 661 F. Supp. 622 (1987). The decision of the CIT can only be considered advisory, however, because its later decision to uphold the ITC's negative injury determination regarding the domestic industry for pork products mooted its remand instructions. *See, National Pork Producers Council* v. *United States*, 661 F. Supp. 633 (1987). In light of the Court's decision, Congress amended the Act by adding section 771B to codify the Department's practice. 133 Cong. Rec. S8814–16 (daily ed. June 16, 1989).

In this investigation, we determine that the first criterion of section 771B is met because the demand for live swine depends substantially upon the demand for fresh, chilled, and frozen pork. Swine producers raise most swine for slaughter. Pork constitutes the primary product of the slaughtered pig. Thus, the demand for pork and for live swine are inextricably linked, a fact recognized by the provincial hog marketing boards, which actively promote the consumption of pork to increase the demand for live swine. The demand for live swine to be processed further, *e.g.*, into canned ham or sausage, still requires that the live swine first be processed as fresh, chilled, and frozen pork. In this regard, the demand for fresh, chilled, and frozen pork incorporates both the retail customer who demands fresh, chilled, and frozen pork for consumption and the wholesale customer who demands fresh, chilled, and frozen pork for further processing.

The second criterion of section 771B is also met in this investigation because the processing operation used to manufacture fresh, chilled, and frozen pork adds limited value to the live swine. We verified that pork producers in Canada add, on average, approximately 20 percent in value to the live swine. This figure, however, encompasses various levels of processing that often go beyond the initial steps needed to first make a pig into pork. That is, to make the product under this investigation, the pork manufacturer immobilizes, kills, washes, dehairs, eviscerates, and splits the hog. After the pork producer weighs the carcass, he then removes the head and kidneys and trims air pockets or diseased portions. The split carcass now classifies as fresh, chilled, and frozen pork.

While a percentage figure for value added helps focus our evaluation of the second element of section 771B, it does not resolve the question of whether the processing operation adds only *limited* value to the raw commodity. The pork producers incur most of their cost in processing the live swine into split carcasses. The additional cost associated with processing the split carcass into primal or trimmed cuts is small relative to the price which these cuts receive in the market. For example, we verified that, in some cases, a flick of the knife transformed a primal cut into a more expensive, trimmed cut. As explained by the General Manager for the Canadian Meat Council, "It has made practical and economic sense for the industry to do this additional fat trimming at the plant level due to high returns for the fat credits and, in many cases, the fat is removed without additional labour." Thus, the figure of 20 percent value added to a degree corresponds to the higher profits earned in the marketplace by product presentation, and not the cost of processing the split carcass into primal or trimmed cuts. For these reasons, we find in this investigation that the processing operation adds only limited value to the raw commodity because the processing represented by the figure of 20 percent has not changed the essential character of the live swine.

Therefore, for the reasons set forth above, we determine that subsidies found to be provided to live swine shall be deemed to be provided with respect to the manufacture, production, or exportation of fresh, chilled, and frozen pork in accordance with section 771B of the Act.

Analysis of Programs

We streamlined this investigation because of the large number of programs involved, the large number of swine and pork producers in Canada, and the fact that we have previously examined most of the programs upon which we initiated, and decided to examine only swine and pork producers in the provinces of Quebec, Ontario, Alberta, Manitoba, and Saskatchewan. These five provinces accounted for 92.5 percent of hogs slaughtered in Canada in 1987, the most recent year for which such information is available.

We used our standard methodology to calculate benefits under grant programs. Grants provided on a recurring basis are expensed in the year of receipt. For non-recurring grants, we totalled the grants provided under each program and divided that amount by the total sales value of the subject merchandise from the five provinces examined for purposes of this investigation. If the sum was less than 0.5 percent of the sales concerned, we expensed such grants in the year of receipt. Since we have not received sales information for the years prior to the review period, we used as best information available the sales value for 1988, as reported in the response, to determine if grants received prior to 1988 should be allocated over time or expensed in the year of receipt. Based on this methodology, all grants were expensed in the year of receipt.

In both *Swine* and this investigation, we have used a conversion factor to calculate the percentage of pork yield from live swine. This percentage is then used in calculating the subsidy. Both respondents and petitioner have made suggestions as to the appropriate conversion factor. We have selected a conversion factor of 79.5 percent as verified for the review period.

We believe that 79.5 percent is the most appropriate conversion factor to use because the two largest countervailable programs in this investigation, the tripartite program and the Quebec Farm Income Stabilization Insurance Program, both use similar conversion factors. Of the conversion factors which have been proposed in this investigation, the factor of 79.5 percent most closely approximates the conversion factor used by the stabilization programs and the provincial marketing boards and packers in determining the final price to be paid for the live swine.

In the *Final Results of Countervailing Duty Administrative Review; Live Swine from Canada*, 54 Fed. Reg. 651 (1989) *(Live Swine Review)*, separate rates were calculated for market hogs and for sows and boars. Sows and boars were determined to be a distinct subclass of merchandise. Both respondents and petitioner have argued that a separate rate should be applied for sow and boar meat. In light of the practice established in the administrative review, and the arguments provided by respondents and petitioner, we have calculated a separate rate for sow and boar meat. For those programs where sows and boars are not eligible for benefits, we have allocated payments only to market hogs. For additional information on this issue, see Comment 11.

We discovered the Quebec Reimbursement of Municipal and Educational Taxes Program, which may provide different levels of tax rebates to farmers based on regional criteria, too late in the investigation to gather sufficient information to be used in this determination. If a final countervailing duty order is issued in this investigation, we will examine this program in any subsequent 751 review.

For purposes of this final determination, the period for which we are measuring subsidies ("the review period") is calendar year 1988.

Based upon our analysis of the petition, the responses to our questionnaire, verification, and written comments from respondents and petitioner, we determine the following:

I. Programs Determined To Confer Subsidies

We determine that subsidies are being provided to producers or exporters in Canada of fresh, chilled, and frozen pork under the following programs:

A. Federal Programs

1. *Tripartite Programs under the Agricultural Stabilization Act.* The Agricultural Stabilization Act (ASA) of 1958 was passed by the federal government to provide for the price stabilization of certain agricultural commodities. In 1975, the ASA was amended to revise the list of named commodities to cattle, hogs, sheep, industrial milk and cream, corn, soybeans, and oats and barley grown outside the Canadian Wheat Board designated areas. The support formula was update to a minimum of 90 percent of a five year average market price plus an index to reflect production cost changes.

In January 1985, the ASA was further amended by Bill C-25, which authorized the Minister of Agriculture, with the approval of the Governor in Council, to enter into tripartite agreements with the provinces and/or producers to provide price stabilization schemes for any natural or processed product of agriculture. The Minister may enter into a tripartite agreement only after he determines that it 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 it will not provide an incentive to overproduce. The Bill also amended the Act by (1) changing "sheep" to "lamb and wool," (2) adding to the list of named commodities spring and winter wheat grown outside the Canadian Wheat Board designated areas, and (3) providing for different support periods with respect to different commodities (*e.g.* quarterly periods for livestock).

Tripartite agreements on hogs were signed effective January 1, 1986, with Alberta, Saskatchewan, Manitoba, and Ontario. An amended agreement was signed on February 8, 1989, adding the Provinces of British Columbia, Quebec, New Brunswick, Prince Edward Island, and Nova Scotia. Under the terms of the tripartite agreements on hogs, the provinces, with the exception of Quebec, may not offer separate stabilization plans or other *ad hoc* assistance for hogs, nor may the federal government offer compensation to hog producers in a province not a party to the agreement. The tripartite scheme provides for a five-year phase-in period to adjust for differences between the tripartite scheme and previously existing provincial programs. Existing provincial stabilization plans, with the exception of the Quebec Farm Income Stabilization Program, are to be completely phased out by 1991.

The tripartite agreements on hogs are administered by the Stabilization Committee ("Committee") in conjunction with the Agricultural Stabilization Board ("Board"). The Committee calculates the stabilization payments on a quarterly basis in the following manner. First, it calculates a "support price," which is equal to the cash costs of production in the current 13-week period plus 95 percent of the average margin in the same 13-week period for the preceding five years. The margin for any period is equal to the national average market price for the period minus the national average cash costs in that period. The difference between the support price and the average market price is the amount of stabilization payment. Stabilization payments are triggered in any 13-week period that the market price falls below the support price. Payments are made only on hogs indexing 80 or above, thereby automatically excluding sows and boars.

To date, tripartite ageements have been signed for the following commodities: hogs, cattle, cows/calves, lambs, sugar beets, apples, white pea beans and other dry edible beans, honey, and yellow seeded onions. We verified that producers of one commodity, asparagus, requested a tripartite agreement and were rejected. Producers of two other commodities, sour cherries and corn, have also requested agreements, but no agreements are being drawn up for these commodities.

Support payments under the tripartite agreements for various commodities are calculated in the manner described above, using a formula ranging from 85 to 95 percent of the average market price over the past five years plus an index to reflect production cost changes. We verified that the support level for beef and apples, both of which are covered under tripartite agreements, is 85 percent, as compared to the 95 percent used for hogs.

As federal and provincial payments to hog producers are now made pursuant to tripartite agreements, rather than as named commodities under the ASA, we must, as respondents have argued, focus on the tripartite program and consider whether it is, *de jure* or *de facto*, limited to a specific enterprise or industry, or group of enterprises or industries, within the meaning of section 771(5)(B) of the Act.

We typically consider three factors in determining whether a program is limited to a specific enterprise or industry or group of enterprises or industries: (1) The extent to which a foreign government acts (as demonstrated in the language of the relevant enacting legislation and implementing regulations) to limit the availability of a program; (2) the number of enterprises, industries, or groups thereof that actually use a program, which may include the examination of disproportionate or dominant users; and (3) the extent, and manner in which, the government exercises discretion in making the program available.

Pursuant to the first factor, we verified that there is no *de jure* limitation as to which commodities may be covered under tripartite agreements. Thus, we find that the federal government did not act to limit the availability of the tripartite program.

Pursuant to the second factor, by its terms, the ASA, as amended, provides that any agricultural product may be covered under a tripartite agreement. However, since the January 1985 amendment authorizing tripartite agreements, only nine out of an innumerable number of agricultural commodities have been incorporated under such agreements. Furthermore, not all producers who request tripartite agreements for their commodities obtain such agreements. For example, agreements for sour cherries and corn have not been drawn up because of "administrative difficulties" involving the valuation of land and other factors, despite the fact that an agreement already exists for apples, a commodity with similar valuation problems. Asparagus growers were rejected because government officials deemed there was little need for an asparagus agreement due to the rising price of asparagus and the relatively small value of asparagus sales.

Pursuant to the third factor, we found that discretion in the administration of the tripartite program, which results in different treatment for different commodities, is exercised in the following ways. First, there are no explicit or standard criteria for evaluating tripartite agreement requests. Neither the ASA, as amended, nor the regulations and guidelines concerning tripartite agreements, establish procedures or criteria for when a commodity is to become subject to a tripartite agreement. In practice, it is ultimately at the Ministry's discretion whether to implement a request for a tripartite agreement (see Comment 7).

Second, we verified that the level of price stabilization and the terms of each scheme varies, at the discretion of the government, from commodity to commodity. For parity of benefits among the producers of different commodities to exist, it is essential that the cost of production elements in the stabilization formulas for various commodities be comparable to one another. That is, the cost of production model used for the swine program should reflect the actual cost of production experience of swine producers to the same extent that the model for other commodities reflects the actual cost of production experience of producers of those commodities. At verification, we learned that cost of production models do not necessarily reflect the experience of the relevant producer group.

Furthermore, the support level has varied historically for the same product and is ofter different for different commodities. For example, the support level for hogs was raised from 93 percent to 95 percent in an effort to get Quebec to sign a tripartite agreement on hogs. Moreover, as noted above, the suport level for apples and beef is only 85 percent., We were told during verification that the Committee worked with different support models for these commodities, and that a model was originally devised for beef in which the support level would be 50 percent. However, due to opposition to that support level, it was raised to the present level but elements in the cash cost component of the model were dropped. Thus, the incomes of producers of certain covered commodities are being stabilized to a significantly greater or lesser extent than those of others for no objective reasons.

Even among swine producers, benefits are not available on equal terms. Indeed, it appears that, by allowing Quebec to keep its provincial hog stabilization program, the Ministry is undermining the general guidelines of the tripartite program by giving an advantage to some producers in the production of hogs not enjoyed by other producers of the same product in Canada.

For the foregoing reasons, we determine the tripartite program to be limited to a group of enterprises or industries, and therefore countervailable.

To calculate the benefit under this program, we first calculated the dressed-weight equivalent of hogs marketed during the review period in the five provinces examined for purposes of this investigation (less sows and boars). To obtain the dressed-weight equivalent, we used the live-weight to dressed-weight conversion factor of 79.5 percent as verified for the review period. Since the stabilization payments are disbursed from a pool of funds made up of equal contributions from the federal government, provincial governments, and producer premiums, plus interest, we multiplied the stabilization payments which we verified were made to hog producers during the review period by two-thirds to factor out the producer premiums. We then allocated the result over the dressed-weight equivalent of hogs marketed in the five provinces during the review period (less sows and boars) to obtain an estimated net subsidy of Can$0.027486/kg. (Can$0.012468/lb.) for fresh, chilled, and frozen pork. Because sows and boars are ineligible for benefits under this program, we determine the benefit to be zero for sow and boar meat.

2. *Feed Freight Assistance Program.* The Feed Freight Assistance Program was administered by Agriculture Canada until 1967, when the Livestock Feed Act (LFA) was passed and the Livestock Feed Board was formed to administer the program. Parliament enacted the LFA in response to domestic feed grain supply problems and price fluctuations in eastern Canada and British Columbia. The Board ensures the availability of feed grain to meet the needs of livestock feeders, the availability of adequate storage space in eastern Canada for feed grain, and price stability for feed grain in eastern Canada, British Columbia, the Yukon, and the Northwest Territories. Only users of feed grain, *i.e.*, those who buy it to feed livestock (commercial mills and livestock producers), are eligible for assistance.

Eligibility for the program is restricted to feed grain millers in "designated areas" (Manitoba, Saskatchewan, Alberta and parts of British Columbia) whose grain is fed to livestock, and to livestock owners in parts of eastern Canada and British Columbia, and in the Yukon Territory and the Northwest Territories.

To qualify for assistance, the feed grain must be transported outside the farm where it is grown and moved through commercial channels. Commercial channels are defined as transactions that provide an invoice, weight certificate, grade certificate, and bill of lading. Payments are made only on grain that will be fed to livestock.

Benefits are provided for transporting and storing feed. Payments for feed grain transportation are set per ton according to the destination of the grain. Feed grain storage payments are made on a product-specific basis.

Because this program is limited to feed grain millers in the above described "designated areas" whose grain is fed to livestock, and to livestock owners in parts of eastern Canada and British Columbia, and in the Yukon Territory and the Northwest Territories, we determine that it is limited to a specific enterprise or industry, or group of enterprises or industries, and is therefore countervailable.

Of the five provinces we are examining for purposes of this investigation, livestock owners in only Ontario and Quebec are eligible for assistance under the program. We found that no benefits were provided to hog producers in Ontario. Therefore, we are only considering the assistance provided to Quebec producers. We verified that 2.7 percent of all payments under this program went to livestock owners in Quebec. At verification we found that 50 percent of feed grains were consumed by hogs. Therefore, to calculate the benefit to hog producers, we used 1.35 percent (50 percent of 2.7 percent) of total payments as the benefit to hog producers. We divided this total by the dressed-weight equivalent of hogs marketed during the review period in the five provinces to obtain an estimated net subsidy of Can$0.000034/kg. (Can$0.000016/lb.) for fresh, chilled, and frozen pork and for sow and boar meat.

3. *Western Diversification Program.* The Western Diversification Program was established by the federal government in August 1987 to diversify the economic base of western Canada (British Columbia, Alberta, Saskatchewan and Manitoba). The program was established as a five-year program with a $1.2 billion diversification fund. Assistance is provided in the form of "contributions," either repayable or non-repayable. The amount of funding provided, as well as the terms and conditions attached to it, are determined on a project-by-project basis. The federal government funds the program; provincial governments do not. Interest is rarely charged on repayable assistance. Eligible projects include new product development, plant establishment, new market development, industry-wide productivity improvement, feasibility studies or new technology. Upon approval of a project, an offer of financial assistance is made. Contributions are disbursed quarterly, usually after the project is completed.

Because this program is limited to western Canada, we determine that it is limited to enterprises or industries located in a specific region of Canada, and is therefore, countervailable. We verified that, of the projects approved to date, only one provided benefits on the production of hogs or the processing of pork during the review period.

To calculate the benefit, since we do not have the calendar year 1988 figures, we used as best information available the non-repayable contribution disbursed to the one hog/pork-related project during fiscal year 1988–1989 and divided it by the dressed-weight equivalent of hogs marketed during the review period in the five provinces to obtain an estimated net subsidy of Can$0.000105/kg. (Can$0.000048/lb.) for fresh, chilled, and frozen pork and for sow and boar meat.

4. *Western Transportation Industrial Development Program.* Under this program, assistance was provided by the federal government to manufacturing, processing and related service industries in Manitoba, Saskatchewan, Alberta and British Columbia. This program expired in Jun 1988 and was incorporated into the Western Diversification Program.

Because this program is limited to firms in the four provinces of western Canada, we determine that it is limite to enterprises or industries located in specific region of Canada, and is therefore countervailable.

To calculate the benefit under this program, we divided the grants attributable to pork production during the review period by the dressed-weight equivalent of hogs marketed during the review period in the five provinces to yield an estimated net subsidy of Can$0.000054/kg. (Can$0.000025/lb.) for fresh, chilled, and frozen pork and for sow and boar meat.

B. Federal Provincial Program

1. *Canada/Quebec Subsidiary Agreement on Agri-Food Development*: The Subsidiary Agreement on Agri-Food Development is pursuant to an Economic and Regional Development Agreement (ERDA) between the Government of Canada and the Province of Quebec. Programs funded under the Subsidiary Agreement include the following:

Program 1: Research and Development: A. Contract Research; B. Food Research

Program 2: Technological Innovations and New Initiatives; A. Agricultural Production; B. Conservation, Processing and Marketing

Program 3: Soil Conservation and Improvement: A. Inventory of Soil Degradation Problems; B. Soil and Water Conservation Research; C. Technology Transfer in Soil and Water Conservation

Funding for each program and subprogram for the duration of the Subsidiary Agreement is estimated at Can$35 million, and is split evenly between the federal and provincial governments.

Of the seven subprograms available, we verified that only three, 1.A., 2.A. and 3.B., include hog-related projects. Of these projects, those under subprogram 1.A. were contracted with universities or research institutions, and the one under subprogram 3.B. was contracted with a consulting firm. We verified that the projects under these two subprograms included provisions for making the research results publicly available. (See Section II of the notice, *Programs Determined to be Not Countervailable*, concerning subprograms 1.A. and 3.B.) The hog-related projects under subprogram 2.A. were contracted with private individuals or farmers, and do not involve research.

Because projects under subprogram 2.A. are limited to Quebec, we determine that the federal government's contribution is limited to enterprises or industries located in a specific region of Canada and is therefore countervailable. Because we verified that projects in subprogram 2.A. involve a large number and a wide variety of agricultural products, we determine that the provincial government's contribution is not limited to a specific enterprise or industry, or group of enterprises or industries, and is therefore not countervailable.

To calculate the benefit, we summed the grants provided to hog-related projects under subprogram 2.A. during the review period and multiplied this sum by one-half to factor out the Government of Quebec contribution. We divided the result by the dressed-weight equivalent of hogs marketed in the five provinces during the review period to obtain an estimated net subsidy of Can$0.000019/kg. (Can$0.000009/lb.) for fresh, chilled, and frozen pork and for sow and boar meat.

C. Provincial Programs

1. *Alberta Crow Benefit Offset Program*. The purpose of this program, which is administered by Agriculture Alberta, is to eliminate market distortions in feed grain prices created by the federal government's policy on grain transportation.

Assistance is provided on feed grain produced in Alberta, feed grain produced outside Alberta but sold in Alberta, and feed grain produced in Alberta to be fed to livestock on the same farm. The government provides certificates to registered feed grain users and registered feed grain merchants, which can be used as partial payments for grains purchased from grain producers. Feed grain producers who feed their own grain to their own livestock submit a claim directly to the government for payment.

Hog producers receive benefits in one of three ways. Hog producers who do not grow any of their own feed grain receive certificates which are used to cover part of the cost of purchasing grain. Hog producers who grow all of their own grain submit a claim to the Government of Alberta for direct payment. Finally, hog producers who grow part of their own grain but who also purchase grain receive both certificates and direct payments.

Because this program is limited to feed grain users, we determine that it is limited to a specific enterprise or industry, or group of enterprises or industries, and is therefore, countervailable.

Since we do not have precise data on hog consumption of feed grain, as best information available, we are using data published in *Agriculture in Alberta*, which states that hogs consumed 15 percent of the province's barley production and that barley is the primary grain fed to hogs. Therefore, to calculate the benefit, we allocated 15 percent of the total amount of benefits to feed grain users in Alberta over the dressed-weight equivalent of hogs marketed during the review period in the five provinces. On this basis, we calculated an estimated net subsidy of Can$0.003228/kg. (Can$0.001464/lb.) for fresh, chilled, and frozen pork, and for sow and boar meat.

2. *Alberta Department of Economic Development and Trade Act*. The purpose of this program is to foster economic development in the province. Assistance may be provided in the form of grants, loans, or loan guarantees. However, only loans and loan guarantees have been provided under the program. Loans and loan guarantees are only provided to firms which cannot receive financing or equivalent financing from commercial sources. Two pork producers in Alberta have received benefits under this program. Gainers Inc. has received both a loan and a loan guarantee from the province under this program, and Fletcher's Fine Foods has received a loan guarantee.

In order to determine whether a domestic program confers a countervailable subsidy, we must determine whether the benefits provided under the program are limited to a specific enterprise or industry, or group of enterprises or industries, in accordance with section 771(5)(B) of the Act. We typically consider three factors when making this determination: (1) The extent to which a foreign government acts (as demonstrated in the language of the relevant enacting legislation and implementing regulations) to limit the availability of a program; (2) the number of enterprises, industries, or groups thereof that actually use a program, which may include the examination of disproportionate or dominant users; and (3) the extent, and manner in which, the government exercises discretion in making the program available. (See, *Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Carbon Steel Wire Rod from Malaysia (Wire Rod)*, 53 FR 13303, April 22, 1988, and the DOC Position to Comment 7.)

During verification, we found no standard criteria for either the approval or rejection of applicants under this program. We were unable to review applications of successful and rejected companies under this program. We were also unable to determine why certain companies were approved for either a loan or a loan guarantee, including both pork packers under investigation in Alberta. Provincial officials were unable to provide us with a list of rejected companies. They were also unable to determine the number of companies that have applied for benefits under this program. In addition, we noted that there was no formal or standard application process.

Since we were unable to review the documents necessary to make an adequate evaluation of two of the three factors cited above, as best information available, we determine that the program is limited to a specific enterprise or industry, or group of enterprises or industries. In making this determination, we note that, of the amount of loans granted under this program from its inception in 1986 through March 1989, approximately 75 percent went to Gainers. Also, in any given year there were only a limited number of loan guarantees provided.

We determine this program to be countervailable because the terms of the loan and loan guarantees are inconsistent with commercial considerations. During the review period, two loan guarantees and one loan were provided to pork packers. In considering the guaranteed loans, we assumed that the packers would not have received loans at the interest rates provided without these guarantees because this program is available only to companies that could not otherwise receive financing. In addition, we found that loan guarantees are not provided as a normal banking practice in Alberta.

One loan guarantee was used to obtain a short-term interim loan. Therefore, to calculate the benefit from this loan, we used our standard short-term loan methodology, comparing the interest rate on this guaranteed loan to a benchmark rate for non-guaranteed loans. No guarantee fee was paid on this loan during the review period; therefore, we did not deduct a guarantee fee from the net benefit.

The other loan guarantee was used to obtain a long-term loan, and we therefore used our standard long-term loan methodology. We used as our benchmark the average long-term corporate bond rate during the review period. To that, we added our standard risk premium to reflect the fact that this program is available only to uncreditworthy companies. We considered as the principal of this loan only the amount attributable to pork operations. Because the firm paid part of the guarantee fee during the review period, we subtracted that portion of the fee attributable to the loan for pork operations from the net benefit.

We followed the same methodology for the one loan provided under this program without a guarantee, except that no guarantee fee was subtracted from the benefit.

We then totalled the net benefits from this program and divided the result by the dressed-weight equivalent of hogs marketed in the five provinces during the review period to yield an estimated net subsidy of Can$0.000018/kg. (Can$0.000008/lb.) for fresh, chilled, and frozen pork and for sow and boar meat.

3. *Alberta Grant to Fletcher's Fine Foods.* During verification we found that Fletcher's Fine Foods had received a grant from the province of Alberta. Company officials stated that the grant was received prior to the review period, but no supporting documentation was provided. They were unable to tell us under which program this grant was provided.

The grant from the province of Alberta is limited specifically to Fletcher's, and is therefore countervailable. Because we were unable to verify that this grant was provided prior to the review period, as best information available, we are attributing the full amount of the grant to the review period. We divided this grant by the dressed-weight equivalent of hogs marketed in the five provinces during the review period to yield an estimated net subsidy of Can$0.000066/kg. (Can$0.000030/lb.) for fresh, chilled, and frozen pork and for sow and boar meat.

4. *Ontario Farm Tax Rebate Program.* The Ontario Farm Tax Rebate Program replaced the Ontario Farm Tax Reduction Program. While the Ontario Farm Tax Reduction Program provided a rebate of 60 percent of total property taxes levied on eligible farm properties, the current program provides a rebate of 100 percent of taxes levied on outbuildings and properties only. Taxes levied on the residence and one acre of land are no longer rebated.

Any resident of Ontario may receive a rebate if he or she owns and pays taxes on eligible properties. Eligible properties are farming enterprises that produce farm products with a gross value of at least Can$8,000 in southern and western Ontario and Can$5,000 in northern and eastern Ontario. We determine that this program is limited to enterprises or industries located in a specific region within the province, and is thus countervailable. However, since all farmers in Ontario whose gross output is at least Can$8,000 are eligible to receive a rebate under this program, the program is countervailable only to the extent that farmers in northern and eastern Ontario whose gross output is between Can$5,000–8,000 receive benefits.

Based on data taken from the *1986 Census of Agriculture, Statistics Canada*, the last year for which complete information is available, the Government of Ontario estimated that 4.7 percent of all Ontario swine farmers have sales valued within the Can$5,000–8,000 range. To calculate the benefit, we therefore multiplied the total amount paid to swine producers in eastern and northern Ontario during the review period by 4.7 percent. We divided the result by the dressed-weight equivalent of hogs marketed in the five provinces during the review period to obtain an estimated net subsidy of Can$0.000020/kg. (Can$0.000009/lb.) for both fresh, chilled, and frozen pork and for sow anc boar meat.

5. *Ontario (Northern) Livestock Improvement and Transportation Assistance Programs.* The purpose of these programs is to assist livestock producers in northern Ontario by reducing their relatively high costs of maintaining and improving herd quality Livestock producers in northern Ontari are reimbursed up to 20 percent of the cost of purchasing breeding stock and 5 percent of the transportation cost associated with the purchase of such breeding stock.

Because these programs are limited t livestock producers in northern Ontaric we determine that they are limited to a specific enterprise or industry, or group of enterprises or industries, and therefore countervailable.

To calculate the benefit to swine producers, we allocated the reimbursements made to swine producers during the review period ove the dressed-weight equivalent of hogs marketed in the five provinces during the review period to obtain an estimat net subsidy of less than Can$0.000001 i either kilograms or pounds for fresh, chilled, and frozen pork and for sow a boar meat.

6. *Ontario Pork Industry Improveme Plan (OPIIP).* The purpose of this program is to foster excellence in farm business management and the adoptio of improved production technologies. Assistance is provided under a numbe of subprograms. To be eligible for any the subprograms, a producer must hav at least 20 sow equivalents (one sow equivalent is equal to one sow or 15 market-weight hogs marketed annuall and must submit the required product records.

Grants are provided to hog produce under the following subprograms: Sw Production Analysis, Enterprise Analysis, Swine Ventilation, Productivity and Quality Improvemer Artificial Insemination, Rodent Contr Private Veterinary Herd Health, Education, Feed Analysis and Herd Health Improvement.

In addition to the above subprogra there are three other subprograms un OPIIP. One provides grants to the

Ontario Swine Artificial Insemination Association, a farmer cooperative organized for the purpose of developing swine semen production facilities. This Association is the only licensed producer of swine semen in the province. The other two subprograms provide grants to support (1) research projects related to swine production and (2) local chapters of the Ontario Pork Producers' Marketing Board. (For additional information on these last two subprograms, see Section II of the notice, *Programs Determined to be Not Countervailable.*)

Because the OPIIP provides grants under the remaining subprograms only to swine producers, we determine that these remaining subprograms are limited to a specific enterprise or industry, or group of enterprises or industries, and are therefore, countervailable.

To calculate the benefit, we summed the grants provided under these subprograms during the review period and divided the result by the dressed-weight equivalent of hogs marketed in the five provinces during the review period to obtain an estimated net subsidy of Can$0.002324/kg. (Can$0.001054/lb.) for fresh, chilled, and frozen pork and for sow and boar meat.

7. *Ontario Marketing Assistance Program for Pork (MAPP).* This program, instituted in 1986, assists Ontario port processors in their efforts to improve domestic market prospects for pork sales and to sustain and enhance their ability to compete in global pork markets. Pork processors receive grants of 25 percent of the total cost of plant upgrading, new technology adoption or new product development.

Because this program provides grants to only pork processors, we determine that it is limited to a specific enterprise or industry, or group of enterprises or industries, and is therefore, countervailable.

A consumer survey was also financed under MAPP. For additional information on that project, see Section II of this notice, *Programs Determined to Be Not Countervailable.* In addition, there was an export promotion subprogram which was not used during the review period.

To calculate the benefit, we summed the grants provided under this program during the review period and divided the result by the dressed-weight equivalent of hogs marketed in the five provinces during the review period to obtain an estimated net subsidy of Can$0.000613/kg. (Can$0.000278/lb.) for fresh, chilled, and frozen pork and for sow and boar meat.

8. *Quebec Farm Income Stabilization Insurance Program.* This program was started in 1976 to guarantee a net annual income to participating producers. It is administered by the Regie des Assurances Agricoles du Quebec (the Regie). The program covers calves, feeder cattle, potatoes, piglets, feeder hogs, corn, oats, wheat, barley, heavy veal, and sheep. There are no established criteria and no authorization for designating additional commodities to be covered. To be eligible for the piglet or feeder hog programs, a producer must own the hogs or sows he insures, be personally involved in raising the hogs or piglets, own at least 300 insurable hogs or 15 insurable sows, and enroll in the scheme for at least five years. The coverage year runs from April 1 to March 31, for the feeder hog program, and runs from July 1 to June 30 for the piglet program.

The support level 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. Payments to growers are calculated on a yearly basis and are made at the end of the coverage year. The program is funded two-thirds by the provincial government and one-third by producer assessments. Producer and government contributions are made once a year and are kept in one account from which all disbursements are made. Pursuant to an amendment of July 13, 1988, producer assessments and the stabilized net annual income are set according to the size of production, effective in the 1988-89 coverage years. Payments received from another source, *e.g.*, under a tripartite agreement, are deducted from any stabilization payments made by the Regie.

Since several major agricultural commodities, such as eggs, dairy products, and poultry, are not covered under this program, we determine that it is limited to a specific enterprise or industry, or group of enterprises or industries, and is therefore countervailable.

We calculated the benefit by multiplying the total amount of stabilization payments made under the piglet and feeder hog programs during the review period by two-thirds to factor out producer assessments. We then divided the result by the dressed-weight equivalent of hogs marketed in the five provinces during the review period (less sows and boars) to obtain an estimated net subsidy of Can$0.043170/kg. (Can$0.019582/lb.) for fresh, chilled and frozen pork. Because sows and boars slaughtered for meat are ineligible for benefits under this program, we determine the benefit to be zero for sow and boar meat.

9. *Quebec Productivity Improvement and Consolidation of Livestock Production Program (Farm Building Improvements Subprogram).* This program was started in 1987 and is designed to aid small producers. It is divided into eight subprograms. Swine growers are only eligible for one subprogram, the Farm Building Improvements Subprogram. With regard to hogs, this subprogram provides grants to consolidate production so that the process from farrowing to finishing takes place on the same farm. The grants cover up to 30 percent of the actual cost of the conversion.

To be eligible for assistance, applicants must be recognized farm producers according to the Farm Producer's Act and be registered with the Bureau de Renseignements Agricoles. Producers operating farrowing facilities must maintain between 40 and 80 sows, and finishing farms must maintain between 500 and 1,000 hogs. The maximum assistance is Can$200 per sow and Can$25 per hog, with a maximum of Can$15,000 per farm operation for the duration of the program.

Because this subprogram is limited to livestock producers, we determine that it is limited to a specific enterprise or industry, or group of enterprises or industries, and is therefore countervailable.

To calculate the benefit, we summed the grants provided under this program during the review period and divided the result by the dressed-weight equivalent of hogs marketed in the five provinces during the review period to obtain an estimated net subsidy of Can$0.000010/kg. (Can$0.000005/lb.) for fresh, chilled, and frozen pork and for sow and boar meat.

10. *Quebec Regional Development Assistance Program (Livestock Transportation Subprogram).* This program was started in 1987 to promote regional development in Quebec. The program consists of four subprograms, only one of which, the Livestock Transportation Subprogram, is available to hog producers. This subprogram provides financial assistance to eligible producers for transporting animals to a government inspected slaughterhouse. Quebec is divided into twelve agricultural regions, only five of which (three full regions and parts of two others) are eligible for aid under the subprogram. These five regions are divided into seven zones based on the distance from the Montreal-Quebec triangle, where most of the slaughterhouses are located. The assistance offered varies according to

the zone in which the applicant's operation is located.

Because this subprogram is limited to livestock producers in specific regions of Quebec, we determine that it is limited to a specific group of enterprises or industries located in a specific region within the province, and is therefore countervailable.

To calculate the benefit, we divided the amount of payments made to hog producers during the review period by the dressed-weight equivalent of hogs marketed in the five provinces during the review period to obtain an estimated net subsidy of Can$0.000025/kg. (Can$0.000011/lb.) for fresh, chilled, and frozen pork and for sow and boar meat.

11. *Saskatchewan Hog Assured Returns Program (SHARP).* SHARP was established in 1976 pursuant to the Saskatchewan Agricultural Returns Stabilization Act. SHARP provides stabilization payments to Saskatchewan hog producers when market returns fall below a designated "floor price." The program is administered by the Saskatchewan Pork Producers' Marketing Board on behalf of the provincial Department of Agriculture. Under the Saskatchewan Agricultural Returns Act, the provincial government may establish a stabilization plan for any agricultural commodity. However, in practice, only hogs and cattle have such plans.

To be eligible, a producer must own market hogs raised and finished to slaughter weight on the production unit or purchased as weanlings or feeder hogs and fed a minimum of 60 days. Coverage is limited to 1,500 hogs per producer per quarter.

The program is funded by producer premiums and matching funds from the provincial government. When Saskatchewan joined the tripartite agreement on hogs effective January 1, 1986, SHARP payments were reduced by the amount of payments received through the tripartite program. No producers have been eligible to join SHARP since December 31, 1985. SHARP payments are being phased out and will be terminated by March 31, 1991.

Stabilization payments are based on the sum of the producer's cash costs plus 75 percent of the sum of non-cash costs for each quarter. Payments are made approximately four weeks after the end of each quarter. Unlike the tripartite program, under which all producers of a commodity receive the same payment per unit of that commodity, each producer under SHARP is paid the difference between his average market price and the support price.

Although the Saskatchewan Agricultural Returns Act allows the provincial government to establish stabilization plans for any agricultural commodity, in practice, only hog and cattle producers have such plans. Because stabilization payments under this program are limited to only hogs and cattle, we determine that the program is limited to a specific group of enterprises or industries, and therefore countervailable.

To calculate the benefit, we multiplied the total amount of stabilization payments made to hog producers during the review period by one-half to factor out producer premiums. We then divided the result by the dressed-weight equivalent of hogs marketed in the five provinces during the review period (less sows and boars) to obtain an estimated net subsidy of Can$0.001408/kg. (Can$0.000639/lb.) for fresh, chilled, and frozen pork. The estimated net subsidy is zero for sow and boar meat because sows and boars are ineligible for benefits under this program.

12. *Saskatchewan Livestock Investment Tax Credit Program.* The Saskatchewan Livestock Investment Tax Credit Program was introduced in March 1984, under the Saskatchewan Livestock Investment Tax Credit Act. The program is administered by the Economics Branch of Saskatchewan Agriculture. It provides incentives for the finishing of livestock in Saskatchewan. The program provides a tax credit on a per head basis for feeder cattle, hogs and lambs sold for slaughter. Dairy cows, hogs and lambs used for breeding purposes do not qualify for assistance. Poultry is also not eligible for tax credit under this program.

To be eligible for a tax credit, hogs must index 80 or above and be owned by a resident of Saskatchewan for at least 60 days. (This qualification automatically excludes sows and boars.) There is a credit of $3.00 per hog and a $100 deductible per claimant per year. Any unused portion of the tax credit can be carried forward for seven years and applied to provincial tax payable.

Because this program is limited to livestock producers, we determine that it is limited to a specific enterprise or industry, or group of enterprises or industries, and is therefore countervailable.

To calculate the benefit, we divided the tax credits net of deductibles claimed by swine producers during the review period by the dressed-weight equivalent of hogs marketed in the five provinces during the review period (less sows and boars) to obtain an estimated net subsidy of Can$0.000721/kg. (Can$0.000327/lb.) for fresh, chilled, and frozen pork. The estimated net benefit is zero for sow and boar meat because sows and boars are ineligible for benefits under this program.

13. *Saskatchewan Livestock Facilities Tax Credit Program.* This program, implemented on January 1, 1986, provides tax credits to livestock producers for investment in livestock production facilities. The credit may only be used to offset provincial taxes and applications for tax credits must be received by Saskatchewan Agriculture no later than six months after the project is completed.

Unlike the Investment Tax Credit Program, livestock covered under this program can be raised for either breeding or slaughter. Eligible livestock include cattle, horses, sheep, swine, goats, poultry, bees, fur-bearing animals raised in captivity, or any other designated animals. Investments covered under the program include new buildings, improvements to existing livestock facilities and any stationary equipment related to livestock facilities.

The program pays 15 percent of 95 percent of project costs, or 14.25 percent of total costs, in order not to overlap the Business Investment Tax Credit Program, a federal program. As with the Livestock Investment Tax Credit Program, participants may carry forward any unused credit for up to seven years.

Because this program is limited to livestock producers, we determine that it is limited to a specific enterprise or industry, or group of enterprises or industries, and is therefore countervailable.

To calculate the benefit, we divided the total tax credits claimed by hog producers by the dressed-weight equivalent of hogs marketed in the five provinces during the review period to obtain an estimated net subsidy of Can$0.000355/kg. (Can$0.000161/lb.) for fresh, chilled, and frozen pork and for sow and boar meat.

II. Programs Determined To Be Not Countervailable

1. *Special Canada Grains Program.* The Special Canada Grains Program 1987 Extension provides grants to grain, oilseed, special crop and honey producers who have experienced dramatic drops in income due to international agricultural policies. To be eligible, farmers must have seeded acreage in Canada of eligible crops harvested in 1987 or have seeded acreage which was cut for silage, greenfeed, ploughed down, or left for summerfallow due to a natural disaster.

Eligible crops include wheat, oats, barley, mixed grains, rye, corn, and high moisture grains which are intended to be harvested as grains or fed to livestock.

Because this program is based on seeded acreage of eligible crops, we determine that it does not provide a countervailable benefit with respect to the production or exportation of pork. To determine whether this program provides a benefit to hog producers, it would be necessary to conduct an upstream subsidy investigation. However, petitioner did not make a sufficient upstream subsidy allegation, and we therefore did not undertake such an investigation.

This program is distinguished from the Feed Freight Assistance Program (FFA), which we did find countervailable. Under the FFA, the benefit was provided directly to the hog producer for the purpose of purchasing feed. Under the Special Canada Grains Program, payment is made to a grain farmer based on his grain production.

2. *Research Projects under the Canada/Quebec Subsidiary Agreement on Agri-Food Development.* At verification, we examined three subprograms under the Subsidiary Agreement, 1.A., 2.A. and 3.B., which include hog-related projects. Of these projects, those under subprogram 1.A. were contracted with universities or research institutions, and those under 3.B. were contracted with a consulting firm. We verified that the research results of projects under these two subprograms are made available to the public, including producers of fresh, chilled, and frozen pork in the United States. Therefore, we determine that projects under subprograms 1.A. and 3.B. are not limited to a specific enterprise or industry, or group of enterprises or industries, and are thus not countervailable. Subprogram 2.A. is discussed under Section I of the notice, *Programs Determined to be Countervailable.*

3. *Research Projects under the Canada/Saskatchewan Agricultural Development Subsidiary Agreement.* Under the Canada/Saskatchewan Agricultural Development Subsidiary Agreement, pursuant to the ERDA between the federal government and the Province of Saskatchewan, a variety of research projects are funded. These projects involve crops, livestock, soil, irrigation, and human resources. The livestock projects include a number of hog/pork-related projects, including the Swine Herd Technology Transfer Program. Some projects are 100 percent funded by the federal government, while others are 100 percent funded by the provincial government. In the end, however, dollar amounts for all projects work out to be split 50/50 between federal/provincial financing.

We verified that the research results of projects related to hogs or pork funded under the Subsidiary Agreement are made available to the public, including producers of fresh, chilled, and frozen pork in the United States. Therefore, we determine that projects under the Subsidiary Agreement are not limited to a specific enterprise or industry, or group of enterprises or industries, and are thus not countervailable.

4. *Alberta Processed Food Market Expansion Program.* This program promoted consumer awareness of Alberta products throughout the province. The promotion was for all agricultural products produced in Alberta. Because this promotion is designed to increase domestic awareness, and therefore is tied to the sale of products to a market other than the United States, we determine that it does not provide a countervailable benefit to the production or exportation of fresh, chilled, and frozen pork.

5. *Alberta Food Processors' Promotion Assistance Program.* This program replaced the Processed Food Market Expansion Program. The objective of the program is to promote Alberta agricultural products within Alberta. Because this promotion is designed to increase domestic awareness, and therefore is tied to the sale of products to a market other than the United States, we determine that it does not provide a countervailable benefit to the production or exportation of fresh, chilled, and frozen pork.

6. *MAPP Consumer Survey.* The Ontario Ministry of Agriculture and Food commissioned a survey on U.S. consumer attitudes toward pork. The cost of the survey was Can$250,000 and was financed under MAPP. The results of the survey are publicly available both inside and outside of Canada. Therefore, we determine that the benefits from this project are not limited to a specific enterprise or industry, or group of enterprises or industries, and are thus not countervailable.

7. *Research Grants under the OPIIP.* Research grants under OPIIP are provided to support research projects related to swine production. We verified that the results of such research are publicly available both inside and outside Canada. Therefore, we determine that the benefits of such research grants are not limited to a specific enterprise or industry, or group of enterprises or industries, and are thus not countervailable.

8. *Education Grants to the Ontario Pork Producers' Marketing Board under the OPIIP.* Grants are given to local chapters of the Marketing Board to help defray the costs of general agricultural education programs. The amount of the grants is determined by the membership of the organization. Because these grants are paid to the marketing boards for agricultural education programs, we determine that there is no countervailable benefit to the production or exportation of pork.

9. *Grants to the Pork Producers' Marketing Boards.* During verification we found that some marketing boards had received funds from the provincial governments to defray the cost of pork promotion campaigns. Because these promotions were designed to increase domestic consumption, and therefore were tied to the sale of products to a market other than the United States, we determine that they do not provide a countervailable benefit to the production or exportation of fresh, chilled, and frozen pork.

III. Programs Determined Not To Be Used

We determine that the following programs were not used by producers or exporters in Canada of fresh, chilled, and frozen pork during the review period:

1. *Export Expansion Fund.* This fund covers the costs of federal government travel to foreign countries for trade consultations or technical seminars. The fund also brings foreign officials to Canada. No funds were used to finance travel related to the exportation of pork to the United States during the review period.

2. *Canada/Alberta Subsidiary Agreement on Agricultural Processing and Marketing.* This subsidiary agreement operates under the ERDA between the Government of Alberta and the Government of Canada, which became effective June 8, 1984. The agreement is jointly funded and administered by the federal and the provincial government. The purpose of the agreement is to enhance the agricultural processing sector of Alberta's economy.

Applicants who carry out approved projects within the agricultural processing sector receive non-repayable contributions toward eligible costs incurred. Eligible projects include the establishment, expansion, and modernization of processing operations and testing and research facilities, as well as feasibility studies and product research and development.

We verified that no assistance was provided to federally-inspected pork producers (the only pork producers eligible to export) during the review period.

3. *Canada/Alberta Livestock Drought Assistance Program.* This program provided relief to livestock producers in certain areas affected by drought. The program was jointly funded by the provincial and federal governments. Eligible livestock included beef cattle, dairy cattle, bison, sheep, goats and horses. Hog producers were not eligible for benefits under this program.

4. *Alberta Livestock Assistance Program.* This program provided assistance to livestock producers living in areas not covered by the joint federal-provincial drought program. Livestock eligible for this program were the same as for the joint program. Hog producers were not eligible for assistance under this program.

5. *Alberta Red Meat Stabilization Program.* This interim program provided assistance to livestock producers before the tripartite agreements were signed. We verified that no assistance was provided to hog or pork producers during the review period, as all payments were made during 1985.

6. *Alberta Grants to Pork Producers.* The province of Alberta agreed to provide funds to two pork producers in the province under the same terms and conditions as the Canada Alberta Subsidiary Agreement on Agricultural Processing and Marketing. However, the grants are to be fully funded by the province. We verified that no funds were disbursed during the review period.

7. *Manitoba Development Corporation.* During verification, we discovered that East-West Packers received a forgiveable loan from the Manitoba Development Corporation. We requested additional information on the Manitoba Development Corporation but none was submitted. However, using our methodology, the forgiveable loan was received too late to have provided a benefit to the company during the review period.

8. *Manitoba Hog Income Stabilization Program.* This program provided income support payments to hog producers when the market price for hogs fell below an established price support level. It was funded by premiums from participating producers and from the provincial government. This program was terminated effective June 28, 1988. We verified that no assistance was provided to hog producers during the review period, as the last payout under this program was made in July 1988.

9. *Ontario Export Sales Aid.* This program assists agriculture and food producers and processors in developing markets abroad by providing financial and technical support for various promotional activities. We verified that no assistance was provided to hog or pork producers during the review period.

10. *Ontario Small Food Processors Assistance Program.* This program assists eligible small food processing companies by improving their access to market information, strengthening their business planning skills and capabilities, and providing financial assistance on eligible capital investments. We verified that no assistance was provided to hog or pork producers during the review period.

11. *Quebec Meat Sector Rationalization Program.* Under this program, the Ministry of Agriculture assumed part of the eligible capital costs of investments for the establishment, standardization, expansion, modernization or amalgamation of slaughterhouses and meat processing plants. The program started in 1975 with a three-year mandate, after which it was renewed four times for one year at a time. The program officially terminated in 1982, with financial assistance granted until 1984. We verified that there were no benefits to slaughterhouses or pork packers under this program during the review period.

Comments

All written comments submitted by the interested parties in this investigation which have not been previously addressed in this notice are addressed below.

Comment 1. Respondents assert that the application of section 771B in this investigation is inconsistent with U.S. obligations under the General Agreement on Tariffs and Trade (GATT) which states that a signatory cannot impose a duty in excess of the subsidy. Respondents maintain that unless it can be shown that benefits completely pass through from the producers of the raw agricultural product to the processors of that product, the countervailing duty on the procesed product may be greater than the actual subsidy to the producers of the processed product.

Petitioner argues that the application of section 771B is not a violation of the GATT because the type of analysis contained in that section has been used in several previous agricultural cases where a "pass through" analysis was deemed inappropriate. According to petitioner, in cases involving agricultural products which are closely related, such as hogs and pork, any subsidy paid on the raw product is itself paid on the initially processed product. Moreover, petitioner claims that the government of Canada has applied a similar analysis in a countervailing duty investigation involving boneless beef from the European Economic Community. Petitioner contends that in that investigation the Canadians considered benefits to cattle producers as direct benefits to producers of boneless beef.

DOC Position. Section 771B is consistent with Article VI(3) of the GATT. Article VI(3) of the GATT holds, in part, "No countervailing duty shall be levied on any product * * * in excess of an amount equal to the estimated bounty or subsidy determined to have been granted, directly or indirectly, on the manufacture, production or export of such product in the country of origin or exportation * * *" First, section 771B simply recognizes that, due to the nature of the market for certain agricultural products, the subsidy on such products is deemed to be provided directly to the manufacture, production, or exportation of the processed product. See *Application of Section 771B.* Second, section 771B does not inflate the subsidy given on the raw or processed product. In fact, to accurately measure the subsidy, we used a conversion factor to calculate the percentage of pork yield from live swine. For these reasons, section 771B remains consistent with the GATT.

Comment 2. Respondents contend that section 771B supersedes any prior administrative practice regarding raw and processed agricultural products. Respondents argue that the Department's practice in such cases was not consistent and consequently could not be considered to be codified in section 771B.

DOC Position. The criteria codified in section 771B are the same criteria used in *Swine.* In fact, as the legislative history clearly shows, Congress passed this amendment in order to codify the Department,s practice in past investigations regarding agricultural products, particularly the *Swine* investigation. For these reasons, we consider previous final and preliminary determinations that discussed these pas[t] practices to be relevant to this investigation.

Comment 3. Petitioner argues that the Department's determination that 20 percent value added was not limited in *Initiation of Countervailing Duty Investigation: Certain Table Wine from France* (50 FR 40480, October 4, 1985) (*Table Wine*), is not relevant to this cas[e] because, unlike hogs, grapes have several other end uses. Petitioner argue[s] that the value added threshold for a product with multiple alternative retail uses is not necessarily the same as for a product dedicated to a single end use.

Respondents argue that the Department should find the 20 percent value added by pork packers to be more than limited, as it found in the initiation notice for *Table Wine*. Respondents argue that in *Table Wine* the Department refused to consider benefits to grape growers as benefits to wine producers because the value added by wine producers was at least 20 percent.

DOC Position. We have determined that, in this investigation, it is reasonable to consider the 20 percent added by pork producers to live swine to be limited value, as the term is defined under section 771B. Because we never reached a preliminary or final determination following the initiation of *Table Wine*, the initiation notice for that investigation carries no precedential weight.

Comment 4. Petitioner contends that the Alberta Crow Benefit Offset Program is countervailable because it provides direct benefits to livestock producers who use either farm-fed or purchased grains.

Respondents assert that the Alberta Crow Benefit Offset Program is not countervailable because the program only partially offsets the disadvantage to grain users created by the federal Crow Benefit Program. Respondents argue that it is consistent with Department practice to find such offsetting programs not countervailable when there is no gross subsidy to the producer. Respondents cite the *Final Affirmative Countervailing Duty Determinations: Certain Steel Products from the Federal Republic of Germany* (47 FR 39345, September 7, 1982) (*FRG Steel*), and the *Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Belgium* (47 FR 39304, September 7, 1982) (*Belgium Steel*), as examples of cases involving offsetting programs which were found not countervailable. In addition, respondents claim that if there is any benefit to hog producers, that benefit goes to an input, grain, and therefore an upstream subsidy investigation is required. Since no upstream investigation has been carried out, respondents contend that any possible benefit to hog producers cannot be measured.

DOC Position. Unlike the Special Canada Grains Program, this program is not tied to grain production: it is limited to feed grain users and merchants. Therefore, we have determined that it is countervailable.

The fact that a program is designed to offset the economic effects of another government program or policy does not exempt it from investigation under the countervailing duty law. For example, programs designed to exempt certain companies from income taxes in order to offset the effect of an extremely high national income tax policy are still potentially countervailable. In order to be considered an offset, the criteria of the offset provisions of section 771(6) of the Act must be met. Clearly, these provisions were not met here.

We reject respondents' claim that this program is analogous to *FRG Steel*. In that investigation, the German Government chose to impose an import ban on coal and to subsidize coal production. We found no countervailable benefit to steel producers resulting from the coal subsidy because the price that steel producers were paying for coal was higher than the world price. Since the *FRG Steel* determination, we have adopted an upstream subsidy analysis, which would now be applied to determine whether benefits to coal producers passed through to steel producers. In this investigation, the benefit is paid directly to grain users and not to grain producers. Thus, there is no need to conduct an upstream subsidy analysis.

The precedent set in *Belgium Steel* also does not apply to this investigation. In *Belgium Steel*, the government assumed responsibility for funding the cost it imposed on the steel companies by mandating early retirement of certain workers. We determined in that case that this assistance was not countervailable because it benefitted only the workers and not the steel companies.

Comment 5. Petitioner asserts that the Department should determine that at least 50 percent of all benefits under the Alberta Crow Benefit Offset Program are paid to hog producers because hogs account for about 50 percent of total feed consumption in both eastern and western Canada. Petitioner contends that the 12 percent figure used in the preliminary determination should be rejected because it is based on the relative value of swine with respect to other livestock and, therefore, is not relevant to the amount of feed grains consumed by hogs.

Respondents argue that the Department should not use the 50 percent figure requested by petitioner because (1) it is unverified, (2) it relates to feed consumption in western Canada and not Alberta, and (3) it is unclear whether this 50 percent figure relates to all feed grains or just corn and barley. Moreover, respondents claim that the 12 percent figure used in the preliminary determination was based on the cash receipts for hog producers over the cash receipts for all livestock producers. Respondents argue that it would be more accurate to use the cash receipts for hog producers over cash receipts for all agricultural production because this program benefits grain producers and not livestock producers. Respondents claim that the correct percentage of payouts which can be attributed to hog producers is 5.48 percent.

DOC Position. We have used, as best information available, data contained in the publication *Agriculture in Alberta*, which stated that hogs accounted for 15 percent of the consumption of the province's barley production, and that barley is the primary grain fed to hogs in Alberta. We consider this to be the most appropriate measure of the benefits conferred on hog production under this program. We have rejected respondents' 5.48 percent figure because the relative value of hogs to other agricultural commodities bears no relationship to the amount of grains fed to hogs. The 15 percent figure published in *Agriculture in Alberta* is the only data we have on the amount of grain consumed by hogs in Alberta and represents the best information available to measure the countervailable benefit under the program.

Comment 6. Petitioner argues that the full amount of rebates to hog producers under the Ontario Farm Tax Rebate Program should be found countervailable because some farmers, namely those with a gross value of production of less than Can$5,000, are ineligible for benefits. Petitioner maintains that in two prior cases, *Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Lime from Mexico* (49 FR 35672, September 11, 1984) and *Groundfish*, programs which provided higher benefits to certain groups or classes of producers were found countervailable to the extent that there was a differential between the most and the least preferred producer. Since the least preferred producer in this program receives no benefits, petitioner contends that all benefits to hog producers should be found countervailable.

Respondents argue that this program is generally available to all *bona fide* farmers and that only rebates to swine producers in northern and eastern Canada with a gross value of production between Can$5,000 and Can$8,000 are countervailable. Respondents also claim that the programs cited by petitioner are not relevant in this investigation because under those programs, even the least preferred producer was included in the program, whereas those farmers with a gross value of production of less than Can$5,000 are not even eligible under this program. Respondents assert that these farmers are not eligible because they are not considered to be bona fide farmers.

DOC Position. For purposes of this program, the province of Ontario has defined a bona fide farmer as one with a gross value of production of at least Can$5,000 a year. We find that definition to be reasonable and one that does not restrict benefits to any specific group within agriculture. However, we do find the program countervailable to the extent that farmers in southern and western Ontario need a gross value of production of Can$8,000 to qualify for the program. Our decision is consistent with the cases cited by petitioner. In each of those cases, we only countervailed the difference in the level of benefits based on regional distinction.

Comment 7. Respondents argue that the Department is not authorized to examine the process by which benefits are conferred in determining whether benefits under the tripartite program are limited to a specific enterprise or industry or group of enterprises or industries. They state that the CIT has "never approved * * * the examination of governmental discretion or intent" in determining whether a program is limited to a specific enterprise or industry or group of enterprises or industries. They cite *Cabot Corp.* v. *United States*, 620 F. Supp. 722, 730 (1985)(*Cabot I*), in which the Court ruled that the Department "must examine the actual results or effects of assistance provided by foreign governments and not the purposes or intentions."

Petitioner counters that the *Cabot I* citation is part of a larger discussion having nothing to do with the role of intent or discretion, and that "the passing reference to intent" is therefore *dicta*. Petitioner argues that, "in the absence of any reliable evidence of specific criteria for extending tripartite coverage to given commodities, the Department must examine discretion and intent in order to determine how the tripartite schemes, as a group, operate."

DOC Position. We typically consider three factors in determining whether a program is limited to a specific enterprise or industry or group of enterprises or industries: (1) The extent to which a foreign government acts (as demonstrated in the language of the relevant enacting legislation and implementing regulations) to limit the availability of a program; (2) the number of enterprises, industries, or groups thereof that actually use a program, which may include the examination of disproportionate or dominant users; and (3) the extent, and manner in which, the government excercises discretion in making the program available. With respect to the third factor, it is our general policy when verifying domestic programs to review the procedures for approving or rejecting applications for benefits. We must examine relevant documents to ensure that a situation does not exist where a program, which based on the statute appears to be available to all companies in a country, is being administered in a manner that is distortive. See, for example, *Wire Rod.*

At verification, we found no standard criteria for establishing or operating tripartite agreements. Instead, we found that (1) tripartite agreements only exist for nine agricultural commodities; (2) tripartite agreements do not exist for all commodities requested by producers; (3) different levels of stabilization exist among commodities covered by tripartite agreements, and (4) even among swine producers, benefits are not available on equal terms, due to the fact that Quebec is allowed to maintain its provincial stabilization program while other provincial stabilization programs must be phased out.

Comment 8. Petitioner argues that the benefit from the tripartite program should be calculated on a credits-as-earned basis. Petitioner states that this methodology is consistent with the Department.s past practice, and cites *Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Certain Steel Wire Nails from New Zealand* (52 FR 37196, October 5, 1987), in which benefits under the Export Performance Taxation Incentive (EPTI) program, a New Zealand tax program, were calculated in this manner because there was "no uncertainty as to eligibility, no need for complex tax accounting, and no dependence on ultimate tax liability." Petitioner asserts that the tripartite program is similar in that there is "no uncertainty as to eligibility, no need for complex accounting, and no adjustments for individualized circumstances." Petitioner adds that the credits-as-earned methodology would yield the most accurate cash deposit rate because it is "based on market conditions which actually existed during the review period."

The Canadian Pork Council (CPC) argues that, if the Department does determine that the tripartite program and provincial stabilization programs are countervailable, the benefits should be based only on government contributions to the stabilization fund, regardless of payments to producers. It characterizes the tripartite program as an insurance scheme in which "the actual benefit to producers * * * should be viewed as the income security that is available on a continuing basis" which "should be measured not by the amount of any particular payment a producer may receive in any given year, but by the funds available in the 'insurance' plan, made up of premiums paid by producers, provincial and Federal governments, and any interest on the accumulated funds." The CPC counters petitioner by stating that this methodology would result in "a more predictable level of countervailable duties from year to year, and avoid significant differences between deposits and assessed duties."

The Canadian Meat Council and Canada Packers, Inc., (CMC and CP) agree with the CPC but add that if the Department decides not to use the government contribution approach, it should use the credits-as-earned methodology suggested by petitioner. The CMC and CP qualify this point by arguing that the time period used should be fiscal year 1988/89 (April 1, 1988–March 31, 1989). They state that the credits-as-earned method and the fiscal year 1988/89 time period would result in a deposit rate "that is most consistent" with any final duties which might later be assessed in an administrative review.

DOC Position. The Department has consistently used the cash flow method in determining when benefits are received.

There are two exceptions. One applies to certain situations involving big ticket items, the production and delivery of which may extend over several years. In such situations, the application of the cash flow method would enable certain countervailable subsidies to go unremedied. *See Final Affirmative Countervailing Duty Determination: Offshore Platform Jackets and Piles from Korea*, 51 FR 11779 (1986). This is not the case with payments under the tripartite program, which would be captured at the time they are paid out to producers.

The second exception involves an export benefit provided as a percentage of the value of the exported merchandise (such as a cash payment or an overrebate of indirect taxes) on the date of export. This exception is based on the New Zealand EPTI program cited by petitioner. The EPTI example is not applicable here, however, because the recipients of the EPTI payments knew at the time they made their export sales what their cash payment would be. By contrast, hog producers enrolled in the tripartite plan for hogs do not know what cash payments, if any, they will receive until their checks are sent out. Certainty as to the amount to be received does not occur when the federal and provincial governments contribute to the stabilization fund or when hogs are sold.

Regarding our use of the cash-flow methodology for determining when benefits are received, we note that under Article VI(3) of the GATT we are not allowed to countervail more than the actual amount of a subsidy. Our cash-flow methodology ensures that we do not exaggerate the actual subsidy paid on a product during the period under review. The accrual method suggested by respondents could lead the Department to finding a subsidy when, in fact, pig farmers have received no payments at all or to finding no benefit when pig farmers actually received substantial payments.

As for the argument made by the CMC and CP that we change our review period to the Government of Canada's 1988/89 fiscal year, the Department has consistently refused to change the review period in an investigation after the preliminary determination. To change the review period after the preliminary determination would substantially prejudice the position of all parties to the proceeding by decreasing their ability to comment on our findings.

Comment 9. Petitioner states that there are discrepancies between the tripartite payouts reported in the March 9, 1989 response and those reported in a subsequent response. Petitioner argues that the Department should therefore use the higher figures contained in the later response.

Respondents state that the Department verified the figures reported in the March 9 response and that the figures contained in the subsequent response are hypothetical amounts based on 100 percent participation in the tripartite program, *i.e.*, participation of all ten provinces and all federally and provincially inspected plants and all exports of market hogs, rather than the actual amounts paid out under the program.

DOC Position. We have based our calculations on verified information.

Comment 10. Respondents argue that we should allocate the benefits provided to the production of swine over the entire live weight of swine. Citing *Groundfish*, respondents contend that when analyzing benefits from a domestic subsidy, the Department's practice is to allocate those benefits over all domestic production. They state that the Department allocated the benefit over all fresh fish and shellfish, even though shellfish was not under investigation. They also cite *Lamb Meat 1985*, in which the Department allocated the domestic subsidy over all products produced during the slaughter operation, including the meat, pelts, wool and offal.

DOC Position. Respondents cite *Lamb Meat 1985* as an instance where the Department allocated the domestic subsidy over all products produced during the slaughter operation. This case is not relevant to the present investigation, however, as hogs are raised for the sole purpose of producing pork. Lambs, on the other hand, are raised for two primary purposes, their meat and wool. *Groundfish* also has no relevance to this investigation. In *Groundfish*, the Department did allocate certain program benefits over fish and shellfish. We did so because benefits under those programs were provided to both fish and shellfish and could not be segregated to the subject merchandise.

Comment 11. Petitioner argues that slaughter sows and boars should be excluded from the denominator used to calculate benefits under any program that does not cover sows and boars. Sows and boars are not eligible under the tripartite program and were considered a distinct subclass of merchandise in the Department's first administrative review of the countervailing duty order on live swine. For that review, the rate for all programs under investigation was recalculated by deducting 2.1 percent of production to account for sows and boars.

Respondents, citing the *Live Swine Review*, also argue that the Department should calculate a separate rate for sows and boars and, in addition, determine which benefits pass through to producers of sow and boar meat. They maintain that if the Department does not calculate a separate rate for sows and boars, it will be determining that benefits from programs for which sows and boars are ineligible pass through to sow and boar meat. They maintain that sow and boar meat should not be subjected to any countervailing duty on fresh, chilled, and frozen pork produced from market hogs. They contend that sow and boar meat is distinguishable from market hog meat by its color, weight, and consistency, and that boar meat must be stamped as such.

DOC Position. We have calculated a separate rate for sows and boars. Sows and boars are not eligible for stabilization under the tripartite and other subsidy programs. Additionally, sows and boars were considered a distinct subclass of merchandise in the Department's *Live Swine Review*. Following the methodology used in that review, we have deducted 2.1 percent of hog production to account for sows and boars, where appropriate, from our subsidy calculations.

Comment 12. Respondents contend that the Department's use of total pork production in the five provinces as the denominator is accurate. They maintain that, unlike imports of live swine, pork imports are not identified by their province of origin. Additionally, hogs often originate in one province but are exported as pork by another province. For these reasons, respondents state that calculating the countervailing duties using the trade-weighted approach would be inaccurate.

DOC Position. We agree. We verified that hogs are often shipped across provincial boundaries for slaughter and cutting into pork. Therefore, any countervailing duties based on the trade-weighted approach would overstate or understate the level of benefit depending on whether the province is a net importer or exporter of hogs.

Verification

In accordance with section 776(b) of the Act, except where noted in this determination, we verified the information used in making our final determination. We followed standard verification procedures, including meeting with government and company officials, examination of relevant accounting records, and examination of original source documents. Our verification results are outlined in detail in the public versions of the verification reports, which are on file in the Central Records Unit (Room B-099) of the Main Commerce Building.

Suspension of Liquidation

In accordance with section 703(d) of the Act, we instructed the U.S. Customs Service to suspend liquidation of all entries of fresh, chilled, and frozen pork from Canada which is entered, or withdrawn from warehouse, for consumption, on or after May 8, 1988, the date of publication of our preliminary determination in the Federal Register. The liquidation of all entries, entered or withdrawn from warehouse, for consumption will continue to be suspended, and as of the date of publication of this notice in the Federal Register, the Customs Service will require a cash deposit or bond for all entries of fresh, chilled and frozen pork equal to Can$0.08/kg. (Can$0.036/lb.), and zero for all entries of fresh, chilled, and frozen sow and boar meat.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

If the ITC determines that material injury, or the threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that such injury does exist, we will issue a countervailing duty order, directing Customs officers to assess countervailing duties on all entries of fresh, chilled, and frozen pork from Canada entered, or withdrawn from warehouse, for consumption, as described in the "Suspension of Liquidation" section of this notice.

This determination is published pursuant to section 705 (d) of the Act (19 U.S.C. 1671d(d)).

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

July 17, 1989.

[FR Doc. 89-17278 Filed 7-21-89; 8:45 am]

BILLING CODE 3510-DS-M

APPENDIX C

CALENDAR OF WITNESSES

CALENDAR OF PUBLIC HEARING

Those listed below appeared as witnesses at the United States International Trade Commission's hearing:

Subject	:	FRESH, CHILLED OR FROZEN PORK FROM CANADA
Inv. No.	:	701-TA-298 (Final)
Date and time	:	August 1, 1989

Sessions were held in connection with the investigation in the Main Hearing Room 101 of the United States International Trade Commission, 500 E Street, S.W., in Washington.

Congressional Appearance:

Thomas J. Tauke, U.S. Congressman, Second District, State of Iowa

In support of the imposition of countervailing duties:

Thompson, Hine and Flory
Washington, D.C.
on behalf of

Pork Producers:

National Pork Producers Council (NPPC)
Arkansas Pork Producers Council
Colorado Pork Producers Council
Idaho Pork Producers Association
Illinois Pork Producers Association
Iowa Pork Producers Association
Michigan Pork Producers Association
Minnesota Pork Producers Association
Nebraska Pork Producers Association
North Carolina Pork Producers Association
North Dakota Pork Producers Council
Ohio Pork Producers Council
Pennsylvania Pork Producers Council
Wisconsin Pork Producers Association
National Pork Council Women

- more -

In support of the imposition of countervailing duties:

Pork Packers:

ConAgra Red Meats, Inc.
Dakota Pork Industries, Inc.
Farmland Foods, Inc.
Farmstead Foods
IBP, Inc.
Illinois Pork Corporation
Thorn Apple Valley
Wilson Foods, Inc.

Jeremey Kinross-Wright
Pork Producer, Big Timber, Montana

Bob Baker
Pork Producer, State Center, Iowa

Edward Brems
Vice President for Processor Sales,
ConAgra Red Meat, Greeley, Colorado

Glenn Grimes
Professor Emeritus of Agricultural Economics
University of Missouri, Columbia, Missouri

Doyle Talkington, National Pack Producers Council

Mark Roy Sandstrum)—OF COUNSEL

- more -

<u>In opposition to the imposition of countervailing duties:</u>

Arnold & Porter Minutes
Washington, D.C.
<u>on behalf of:</u>

The Canadian Meat Council
(Members and Canada Packers, Inc.)

Larry J. Martin, Professor of Agricultural Economics, University of Guelph, Ontario, Canada

David M. Adams, General Manager, Canadian Meat Council

Alan O. Sykes, Assistant Professor of Law, University of Chicago Law School

Lawrence A. Schneider)
Michael T. Shor)—OF COUNSEL
Susan G. Lee)

Cameron, Hornbostel & Butterman
Washington, D.C.
<u>on behalf of:</u>

The Canadian Pork Council

Martin Rice, Executive Secretary, Canadian Pork Council

William Ince)
)—OF COUNSEL
Michele C. Sherman)

- end -

APPENDIX D

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 January 1985-April 1989 are shown in table D-1 and table D-2, which are based on official statistics of the U.S. Department of Agriculture. Table D-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. Such data were included in the previously described Commission analysis of the hog cycle between January 1979 and early 1985 and are included in this analysis to provide continuity with that report.

Table D-1
Swine: Net margins 1/ to U.S. feeders, by months, January 1985-April 1989

(Per hundredweight)

Month	1985	1986	1987	1988	1989
January........	-$1.10	$1.83	-$6.71	-$5.22	-$7.60
February.......	1.28	- 2.29	- 1.62	0.44	- 9.06
March..........	- 4.77	- 3.40	- 1.15	- 1.75	- 5.94
April..........	- 6.69	- 2.67	3.41	- 0.56	-11.79
May............	- 8.95	2.36	7.83	1.13	2/
June...........	- 6.74	6.95	10.27	- 2.38	2/
July...........	- 6.50	11.34	10.10	- 6.82	2/
August.........	- 8.75	15.44	7.45	- 8.76	2/
September......	- 9.26	9.58	3.23	-11.59	2/
October........	- 3.93	4.08	- 0.06	- 8.45	2/
November.......	- 1.81	0.97	- 8.87	-13.45	2/
December.......	- 0.94	- 2.27	- 8.88	- 8.39	2/

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.
2/ Not available.

Source: Compiled from official statistics of the USDA.

Table D-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 D-2 was first published by the USDA in May 1987, and the statistical data in the table are updated monthly.

Table D-2
Swine: Net margins 1/ to farrow-to-finish growers, 1,600 head annual sales, North Central region, by months, January 1985-April 1989

(Per hundredweight)

Month	1985	1986	1987	1988	1989
January.........	-$0.74	$2.41	$8.60	$6.32	-$5.61
February........	0.70	1.46	9.70	7.73	- 6.56
March...........	- 3.07	- 0.79	8.37	4.28	- 7.69
April...........	- 4.81	- 1.50	11.20	3.39	-11.11
May.............	- 4.27	3.99	15.43	5.98	2/
June............	- 0.82	10.10	20.99	7.09	2/
July............	0.90	16.39	20.50	4.44	2/
August..........	- 1.46	19.32	19.31	3.31	2/
September.......	- 3.65	15.08	15.64	- 1.72	2/
October.........	- 0.15	10.52	11.90	- 5.37	2/
November........	0.01	11.50	3.32	-10.15	2/
December........	1.56	11.27	4.39	- 6.88	2/

1/ Receipts less cash expenses and replacement.
2/ Not available.

Source: Compiled from official statistics of the USDA.

Table D-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 D-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 D-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 June 1 1989, and when compared with previous year levels, suggests developments in the hog cycle. Table D-5 shows, among other things, the estimated annual slaughter of animals grown in the United States during 1984-88 and part of 1989, and provides a convenient overview of developments in the cycle.

Table D-3
Pork: U.S. production derived from domestic live swine, by months, January 1985-March 1989

(In million of pounds)

Month	1985	1986	1987	1988	1989
January	1,249	1,254	1,235	1,234	1,283
February	1,080	1,098	1,066	1,176	1,187
March	1,195	1,193	1,221	1,351	1,350
April	1,274	1,286	1,162	1,255	1/
May	1,309	1,207	1,066	1,223	1/
June	1,107	1,058	1,080	1,222	1/
July	1,129	1,049	1,075	1,124	1/
August	1,199	1,028	1,069	1,268	1/
September	1,188	1,130	1,221	1,343	1/
October	1,352	1,279	1,353	1,424	1/
November	1,234	1,113	1,307	1,445	1/
December	1,204	1,216	1,382	1,409	1/
Total	14,520	13,911	14,237	15,474	1/

1/ Not available.

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

Table D-4
Live swine for breeding purposes: U.S. inventories as of June 1, and December 1, 1984-89

Inventory as of--	1984	1985	1986	1987	1988	1989
June 1	7,401	6,997	6,420	7,040	7,530	7,325
December 1	6,933	6,783	6,671	7,153	7,040	1/

1/ Not available.
Source: Compiled from official statistics of the USDA.

Net margins (the profit levels) shown in table D-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 D-3 shows that pork production during January-April 1986 exceeded production during the corresponding period of 1985. Table D-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 D-5).

Table D-5
Swine: U.S. slaughter, imports from Canada, and estimated slaughter of domestically grown swine, 1984-88, January-March 1988, and January-March 1989

Swine--	Quantity (In 1,000 animals)						
						Jan-Mar-	
	1984	1985	1986	1987	1988	1988	1989
U.S. slaughter...	85,168	84,492	79,598	81,081	87,795	21,358	21,886
U.S. imports from Canada..........	1,322	1,227	501	446	836	156	410
Estimated U.S. slaughter of swine grown in the U.S.....	83,846	83,265	79,097	80,635	86,959	21,202	21,471

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 October 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. Margins were negative for at least the first four months of 1989 in contrast to the positive margins in the corresponding months of 1988. The June 1, 1988, inventory of animals kept for breeding purposes was higher han the corresponding inventory of 1987, but the December 1, 1988, inventory was lower than the December 1, 1987, inventory. The June 1, 1989 inventory of animals for breeding purposes at 7.3 million animals was 3 percent below the corresponding inventory in 1988. 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 a modest 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.

Pork production during January-March 1989 amounted to 3,820 million pounds compared to 3,761 million pounds in the corresponding period of 1988. Slaughter of U.S. grown swine during January-March 1989 was 21.9 million animals compared to 21.4 million animals in the corresponding period of 1988. Data for January-March 1989 suggest that the U.S. swine industry continued to be in a contraction phase.

APPENDIX E

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 and 1988 10-K from the item titled "Business" on p. 1.
2/ Wilson Foods 1988 10-K from the item titled "Products and Brands" on p. 4.
3/ IBP 1987 annual report from the letter of chairman of the board to shareholders on p. 2.
4/ Farmland Industries 1988 annual report from the general discussion of Farmland Foods on 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.

APPENDIX F

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 effects, 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 * * *.

*   *   *   *   *   *   *

APPENDIX G

PUBLISHED PORK AND LIVE SWINE PRICE SERIES

Table G-1

Pork and live swine prices in the United States, by pork cut and month, January 1975-May 1989

(In cents per pound)

Year	Loins 14-18 lbs	Hams 17-20 lbs	Bellies 14-16 lbs	Picnics 4-8 lbs	Butts 4-8 lbs	Trimmings 72% lean	7 mkt Omaha price	Est. Wholesale price	Retail price
1975:									
January...........	77.2	65.8	60.4	43.2	59.5	56.3	38.9	67.4	114.6
February..........	74.3	68.2	61.8	42.0	63.5	53.5	39.6	67.9	114.5
March.............	73.1	66.3	61.7	41.8	63.6	56.1	39.5	66.9	113.3
April.............	75.9	64.6	67.7	43.6	60.2	59.5	40.7	68.9	115.4
May...............	92.7	72.2	72.5	49.0	74.3	65.3	46.4	78.3	122.6
June..............	98.0	77.3	81.3	55.5	86.9	72.5	51.2	84.7	130.1
July..............	104.1	84.6	91.1	65.5	98.1	85.4	57.2	92.4	143.3
August............	103.4	91.4	104.4	60.0	91.9	82.0	58.1	99.1	149.7
September.........	109.8	96.4	102.3	66.4	94.2	86.5	61.2	102.3	153.3
October...........	107.6	100.7	91.4	66.6	90.5	89.6	58.5	99.8	158.2
November..........	96.2	93.6	78.3	59.4	84.0	68.8	49.7	89.4	153.5
December..........	88.5	93.7	69.1	58.8	76.3	62.0	48.3	84.3	147.1
1976:									
January...........	96.2	78.7	75.1	60.9	83.9	65.2	48.4	82.6	143.9
February..........	93.1	78.6	67.4	58.2	85.5	73.5	48.9	79.3	141.3
March.............	84.4	82.2	67.5	52.5	75.7	67.4	46.7	78.1	138.4
April.............	87.6	80.5	73.6	53.0	77.2	71.0	47.9	80.4	136.3
May...............	92.4	78.0	73.0	54.6	73.1	74.1	48.9	80.6	138.3
June..............	97.2	81.5	79.2	54.5	75.9	73.8	50.8	85.4	140.1
July..............	96.3	75.9	74.1	51.6	73.7	70.5	48.3	81.3	141.8
August............	83.9	74.6	73.6	47.5	62.6	62.1	44.0	77.0	137.1
September.........	81.7	69.2	63.6	44.8	54.0	56.5	39.4	71.1	132.4
October...........	70.6	63.8	47.9	41.8	48.0	47.6	32.7	60.7	124.6
November..........	65.2	72.3	42.6	35.9	43.2	42.1	32.1	60.7	117.3
December..........	72.1	81.5	45.7	41.0	50.2	48.1	38.1	67.2	117.0
1977:									
January...........	83.4	66.5	51.6	44.0	54.2	54.1	39.5	66.6	119.5
February..........	80.1	71.6	52.1	42.4	58.6	57.5	40.2	67.8	121.0
March.............	70.9	70.9	48.9	39.5	54.8	50.5	37.5	63.8	120.9
April.............	73.1	61.6	55.2	40.3	52.1	55.9	37.0	62.9	118.8
May...............	80.8	69.9	57.1	43.0	60.5	62.8	41.8	69.0	120.8
June..............	86.9	71.6	58.5	44.4	76.6	69.2	43.9	71.9	125.6
July..............	90.6	72.9	62.6	49.0	73.7	72.0	45.8	74.8	132.0
August............	84.1	75.2	64.0	46.0	66.6	61.5	44.4	74.2	130.2

Pork and live swine prices in the United States, by pork cut and month, January 1975-May 1989

(In cents per pound)

Year	Loins 14-18 lbs	Hams 17-20 lbs	Bellies 14-16 lbs	Picnics 4-8 lbs	Butts 4-8 lbs	Trimmings 72% lean	7 mkt Omaha price	Est. Wholesale price	Retail price
1977:--continued									
September.........	84.6	74.2	55.0	45.0	60.3	61.5	41.4	71.1	130.7
October...........	85.1	81.4	49.2	44.5	60.3	54.5	40.8	72.1	126.8
November..........	75.8	90.3	43.8	41.9	55.4	51.8	39.3	71.1	127.4
December..........	87.8	88.4	51.3	51.0	61.6	59.5	44.0	76.3	130.5
1978									
January...........	90.3	81.6	59.4	50.0	69.0	63.6	46.0	77.0	133.8
February..........	91.5	86.4	67.1	52.5	71.4	74.3	48.8	81.7	138.0
March.............	87.9	76.6	74.6	49.4	69.0	73.3	47.5	79.3	139.2
April.............	87.8	70.5	70.6	51.5	68.9	77.3	46.0	75.6	141.6
May...............	96.5	77.5	67.0	53.5	76.8	81.3	49.2	79.7	141.4
June..............	98.7	76.0	56.9	57.0	84.8	80.0	48.3	76.5	144.2
July..............	95.2	76.2	57.9	52.0	77.7	80.7	46.8	75.9	144.2
August............	92.6	83.2	58.4	57.6	79.8	84.9	48.8	78.0	144.4
September.........	100.5	87.6	60.5	56.7	78.6	82.8	50.0	82.7	145.5
October...........	106.1	95.8	61.6	61.0	79.0	81.3	52.2	88.0	149.4
November..........	93.2	97.3	58.3	57.1	77.7	82.2	48.4	83.6	150.4
December..........	94.6	93.8	57.7	61.6	86.8	82.1	49.6	82.4	150.5
1979:									
January...........	109.2	83.7	60.2	66.6	91.2	89.3	52.1	83.6	154.2
February..........	106.9	85.7	62.5	67.8	91.8	96.9	54.4	84.5	157.1
March.............	93.6	84.2	54.5	59.1	82.5	86.8	49.4	77.4	156.9
April.............	93.5	73.8	51.9	58.9	76.0	86.7	45.0	72.5	150.7
May...............	90.0	70.3	46.5	56.1	73.1	85.0	43.8	68.4	149.3
June..............	94.8	69.1	44.1	51.6	65.5	73.5	40.3	68.6	144.5
July..............	86.6	63.1	39.0	49.5	67.3	70.3	38.7	62.2	142.4
August............	82.9	67.2	36.5	47.4	63.2	69.7	38.2	61.9	135.9
September.........	87.3	68.9	38.6	51.2	66.8	75.2	38.6	64.6	135.6
October...........	78.9	70.8	33.5	45.0	58.2	64.4	34.7	61.2	134.3
November..........	73.0	86.3	43.7	48.0	60.5	67.2	36.0	68.7	132.2
December..........	81.5	75.2	40.9	49.7	68.7	66.6	38.5	66.0	136.3
1980:									
January...........	80.7	63.5	38.8	54.8	68.5	73.1	37.5	60.6	135.3
February..........	79.1	65.9	34.6	52.8	66.0	72.5	37.5	59.7	133.2
March.............	74.2	62.3	35.0	43.7	59.0	62.2	33.9	57.0	133.3
April.............	69.3	52.2	27.9	38.3	50.2	56.0	28.9	49.4	127.8

Table G-1

Pork and live swine prices in the United States, by pork cut and month, January 1975-May 1989

(In cents per pound)

Year	Loins 14-18 lbs	Hams 17-20 lbs	Bellies 14-16 lbs	Picnics 4-8 lbs	Butts 4-8 lbs	Trimmings 72% lean	7 mkt Omaha price	Est. Wholesale price	Retail price
1980:--continue									
May...............	69.7	52.4	29.4	36.5	52.8	53.3	29.5	50.1	123.6
June..............	79.0	60.3	32.5	45.2	60.4	60.3	35.2	56.9	124.4
July..............	86.3	71.8	45.7	55.1	78.0	78.5	43.2	67.7	136.2
August............	93.9	80.5	55.6	61.2	84.7	87.2	48.3	76.4	145.7
September.........	94.2	82.0	54.7	61.4	81.7	88.9	47.2	76.8	150.7
October...........	95.7	85.9	57.1	63.8	80.1	90.7	48.2	79.6	153.8
November..........	90.8	84.9	60.0	57.3	78.0	87.7	46.4	78.6	156.3
December..........	91.0	75.6	53.9	57.7	79.7	81.5	44.8	73.2	153.8
1981:									
January...........	96.5	63.7	50.4	53.6	75.5	77.6	41.4	69.0	151.5
February..........	95.2	66.7	50.2	53.2	71.1	74.0	42.4	69.8	148.4
March.............	90.1	67.5	40.2	48.5	66.8	62.4	39.5	65.3	146.2
April.............	84.8	68.9	48.6	45.9	68.5	67.1	39.8	67.0	142.7
May...............	93.1	67.9	45.1	48.3	75.3	74.8	42.1	68.0	144.9
June..............	100.4	79.8	55.3	57.7	80.0	84.4	49.0	78.0	146.6
July..............	104.7	82.4	54.7	58.1	92.2	82.5	50.7	80.1	154.9
August............	103.8	84.3	59.5	58.7	89.9	85.9	50.9	82.1	158.1
September.........	103.4	81.7	60.1	56.7	84.1	86.9	49.7	81.1	159.5
October...........	97.7	80.9	55.4	56.4	77.0	76.6	45.6	77.6	160.4
November..........	90.0	82.6	56.7	49.6	70.7	71.5	42.2	76.4	158.2
December..........	84.9	81.9	51.5	47.6	67.2	66.0	40.1	73.0	157.4
1982:									
January...........	102.4	73.2	62.2	55.1	80.1	74.9	45.6	78.2	158.2
February..........	99.7	78.9	67.8	55.1	76.1	82.5	49.5	81.5	160.7
March.............	93.1	86.6	66.7	52.4	74.4	77.3	49.4	82.1	161.4
April.............	103.0	81.0	74.4	57.1	87.4	85.2	52.1	85.3	163.0
May...............	114.2	85.6	80.8	63.2	97.7	94.0	58.1	92.6	169.6
June..............	121.4	87.0	76.7	62.5	102.2	92.0	59.2	93.8	175.4
July..............	120.2	87.5	84.5	61.3	105.0	91.8	59.8	96.1	181.1
August............	121.2	97.5	93.5	63.9	101.6	95.3	63.1	103.2	183.5
September.........	122.8	100.8	90.7	67.8	105.5	95.1	63.0	104.0	190.3
October...........	112.8	101.3	75.2	61.1	92.6	86.8	56.9	96.3	190.9
November..........	101.8	106.1	71.9	57.2	80.7	78.5	53.5	93.8	187.0
December..........	104.0	97.2	74.0	60.2	90.3	78.9	54.9	91.7	183.5

Table G-1

Pork and live swine prices in the United States, by pork cut and month, January 1975-May 1989

(In cents per pound)

Year	Loins 14-18 lbs	Hams 17-20 lbs	Bellies 14-16 lbs	Picnics 4-8 lbs	Butts 4-8 lbs	Trimmings 72% lean	7 mkt Omaha price	Est. Wholesale price	Retail price
1983:									
January...........	112.8	84.5	80.9	60.6	88.6	82.5	56.8	91.6	185.0
February..........	115.8	87.4	73.9	60.7	87.7	86.3	57.3	91.4	183.3
March.............	103.3	76.1	65.1	52.7	77.8	78.3	50.9	80.6	180.7
April.............	98.4	67.1	64.7	49.6	72.6	76.2	47.5	75.5	173.9
May...............	98.2	64.0	60.8	48.4	75.7	76.2	47.0	73.0	171.1
June..............	98.2	63.4	60.2	48.5	78.6	79.5	45.7	72.6	168.2
July..............	95.4	67.1	59.1	47.0	79.5	69.6	45.7	72.8	166.6
August............	97.7	73.9	65.7	51.2	78.8	76.9	49.4	78.2	165.7
September.........	93.6	73.4	55.3	46.4	70.9	61.4	45.7	73.5	163.9
October...........	85.4	71.5	49.1	48.3	63.1	57.7	41.4	68.4	162.3
November..........	76.0	75.0	50.9	42.6	57.7	55.4	38.8	67.6	159.0
December..........	92.9	84.5	54.6	53.2	70.6	63.3	46.4	77.3	158.1
1984:									
January...........	104.4	69.5	65.0	56.2	76.1	72.1	49.9	78.3	162.2
February..........	94.7	66.7	54.7	45.8	71.7	68.6	46.3	71.0	162.9
March.............	88.8	73.2	56.0	46.3	64.1	68.4	46.8	72.3	159.4
April.............	91.9	73.2	58.3	48.3	68.1	74.7	48.3	73.9	159.8
May...............	95.3	69.0	57.4	44.8	73.5	71.3	48.1	73.0	158.6
June..............	97.6	69.7	67.1	48.7	80.1	76.4	50.4	77.1	159.9
July..............	114.9	72.9	64.8	52.4	94.3	76.5	54.0	82.6	162.2
August............	102.4	78.8	62.2	52.0	88.4	79.4	52.1	80.4	166.1
September.........	97.6	73.8	58.0	45.7	72.3	64.4	47.3	75.7	163.6
October...........	86.1	77.7	52.8	45.4	63.4	62.9	44.5	72.2	163.9
November..........	87.4	93.9	60.5	46.2	63.8	64.7	48.3	81.2	162.4
December..........	95.4	86.4	64.3	49.0	75.1	67.2	50.1	82.0	163.5
1985:									
January...........	97.7	70.7	67.5	47.0	73.1	69.6	49.1	77.6	166.0
February..........	93.5	73.0	64.1	47.5	66.4	73.0	49.0	76.2	165.6
March.............	84.2	66.1	64.3	40.7	61.7	64.3	43.9	70.8	164.7
April.............	79.9	60.1	58.8	41.8	61.0	65.4	41.4	65.5	159.3
May...............	84.0	57.4	58.6	40.1	64.5	67.6	42.2	65.6	158.7
June..............	90.6	62.2	70.2	41.1	66.9	65.9	45.7	73.1	157.9
July..............	96.9	64.7	62.5	45.6	71.8	69.7	47.0	73.4	161.7
August............	93.8	62.2	54.2	42.0	68.8	66.4	43.5	68.9	161.8

Table G-1

Pork and live swine prices in the United States, by pork cut and month, January 1975-May 1989

(In cents per pound)

Year	Loins 14-18 lbs	Hams 17-20 lbs	Bellies 14-16 lbs	Picnics 4-8 lbs	Butts 4-8 lbs	Trimmings 72% lean	7 mkt Omaha price	Est. Wholesale price	Retail price
1985:--continue									
September..........	89.4	61.7	51.4	42.3	60.7	58.5	40.4	66.5	159.8
October..........	97.9	75.1	52.1	41.7	61.0	55.2	44.1	74.4	160.0
November..........	90.0	82.5	51.7	41.6	62.9	61.8	44.1	74.8	162.4
December..........	100.3	71.5	58.6	48.1	75.7	71.5	46.9	75.8	166.5
1986:									
January..........	95.4	62.8	61.3	50.5	71.0	70.6	45.5	71.9	169.0
February..........	91.8	62.7	51.5	42.4	62.0	64.1	43.6	67.6	168.3
March..........	88.1	59.6	50.8	37.9	60.7	56.5	40.9	65.1	165.8
April..........	89.3	54.8	49.5	38.2	63.3	56.7	40.3	63.2	162.2
May..........	102.5	63.7	61.8	40.8	75.5	67.6	46.9	74.5	162.3
June..........	111.6	71.8	71.8	50.5	88.6	79.1	54.5	83.5	166.5
July..........	121.8	86.4	90.1	57.8	101.8	88.7	61.0	98.0	183.4
August..........	125.7	92.4	89.1	62.1	104.9	90.6	63.4	101.1	190.3
September..........	118.8	98.3	75.6	61.8	91.8	89.0	59.0	97.0	194.4
October..........	109.8	100.9	60.3	52.7	81.1	73.0	54.2	90.5	194.9
November..........	100.1	102.1	63.3	54.1	75.6	78.6	53.6	89.0	192.5
December..........	102.3	80.2	64.7	56.8	85.0	76.1	51.4	81.7	191.3
1987:									
January..........	98.7	62.7	66.1	53.7	75.8	73.3	47.4	74.4	188.1
February..........	99.4	65.1	57.8	50.5	68.2	74.7	48.7	72.8	185.6
March..........	93.3	70.2	60.0	44.3	63.5	70.3	48.2	73.7	181.3
April..........	102.2	72.8	65.8	45.5	79.3	78.1	51.9	79.2	178.9
May..........	120.8	71.4	67.2	54.5	90.9	81.8	55.6	84.5	183.7
June..........	124.4	79.6	78.4	56.8	100.6	87.3	61.1	92.4	187.6
July..........	121.7	80.6	83.6	61.8	95.3	92.0	61.9	93.6	193.6
August..........	123.5	87.1	80.5	59.6	86.2	88.5	60.4	95.7	196.2
September..........	122.7	90.9	59.7	57.7	82.0	80.1	54.7	90.2	196.9
October..........	103.5	93.8	49.4	50.5	69.7	68.3	48.8	82.4	194.4
November..........	80.4	89.4	45.9	45.0	61.9	64.7	40.7	72.7	189.2
December..........	84.7	88.1	42.6	44.3	62.9	62.0	41.1	72.5	185.6
1988:									
January..........	102.4	65.4	51.8	47.7	61.6	64.8	44.4	71.9	185.3
February..........	94.7	76.2	48.2	47.8	60.8	63.7	47.0	72.6	183.1
March..........	87.3	71.2	45.3	41.1	60.9	60.3	42.8	67.6	183.3
April..........	94.1	62.9	43.2	41.1	61.1	60.8	42.1	65.7	182.9

Table G-1

Pork and live swine prices in the United States, by pork cut and month, January 1975-May 1989

(In cents per pound)

Year	Loins 14-18 lbs	Hams 17-20 lbs	Bellies 14-16 lbs	Picnics 4-8 lbs	Butts 4-8 lbs	Trimmings 72% lean	7 mkt Omaha price	Est. Wholesale price	Retail price
1988:--continue									
May...............	112.9	63.3	46.4	43.6	78.6	67.7	47.6	72.4	183.6
June..............	110.9	65.6	45.2	44.3	82.7	64.8	48.1	72.4	187.9
July..............	104.9	63.7	40.9	41.4	74.4	61.6	45.6	68.4	187.4
August............	107.0	67.0	38.2	45.6	74.4	70.0	46.1	69.5	185.5
September.........	98.4	71.2	33.2	44.3	64.1	60.2	41.0	66.9	184.9
October...........	85.3	74.6	34.7	46.1	59.8	55.4	39.0	64.9	181.6
November..........	77.8	73.4	33.6	39.3	54.3	49.2	36.5	61.9	178.0
December..........	93.6	73.6	34.9	45.2	66.6	55.9	40.6	67.0	177.4
1989:									
January...........	89.3	64.6	37.1	48.0	62.0	62.4	41.6	63.0	181.1
February..........	91.0	66.2	31.4	42.9	62.3	56.1	40.9	62.3	179.3
March.............	91.8	61.1	30.5	41.7	58.9	61.1	39.9	60.2	179.7
April.............	91.7	55.4	25.6	40.0	60.8	54.8	37.1	56.5	179.5
May...............	99.8	60.9	29.3	41.6	76.1	65.2	42.4	62.2	177.1

Source: USDA, Economic Research Service.

APPENDIX H

QUESTIONNAIRE PRICE DATA

The Commission requested U.S. producers and importers to provide quarterly unit value data from January 1986 through March 1989 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 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 for 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, 17-20 pounds, skinned (skin collar), bone in, regular shank.

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

Product 3: Pork belly (side)--Fresh chilled bellies, 14-16 pounds, skin on.

Product 4: Pork belly (side)--Fresh chilled bellies, 16-18 pounds, skin on.

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

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

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

Thirteen U.S. producers and 8 U.S. importers reported unit value data for the pork and swine products during the investigation. The responding U.S. producers accounted for over 55 percent of all U.S.-produced domestic shipments of pork and 40 percent of all U.S. purchases of live swine in 1988. Their shipments of products 1-5 accounted for 10 percent of the total U.S. producer shipments of pork in 1988. The responding U.S. importers accounted for less than 1 percent of the total 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.

Quarterly net f.o.b. price data collected through questionnaires for U.S.-produced pork products (table H-1) showed the same relative price fluctuations and seasonality as did the USDA data (figs. 9-15). 1/ Prices for the U.S.-produced fresh ham (products 1 and 2) typically increased toward the

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1/ Sales quantities are shown in table H-2.

Table H-1
Pork: Weighted-average net f.o.b. unit values of products 1-5 reported by U.S. producers and importers of Canadian pork, by products, and by quarters, January 1986-March 1989

(In dollars per hundred pounds)

	Product 1		Product 2	Product 3	Product 4	Product 5		
						2,000 lb crates	70-80 lb boxes	
Period	U.S.	Canada 1/	U.S.	U.S.	U.S.	U.S.	U.S.	Canada 1/
1986:								
Jan.-Mar.....	63.73	-	60.20	57.53	50.55	* * *	107.54	-
Apr.-June....	63.29	-	60.72	61.69	55.85	* * *	116.53	-
July-Sept....	95.03	* * *	93.21	90.41	77.05	* * *	134.76	-
Oct.-Dec.....	98.61	* * *	94.28	64.44	58.75	* * *	120.93	-
1987:								
Jan.-Mar.....	66.62	* * *	63.04	64.31	58.66	* * *	115.04	* * *
Apr.-June....	76.67	* * *	75.37	69.51	68.75	125.37	132.16	* * *
July-Sept....	89.17	* * *	86.39	75.14	74.71	113.11	139.68	* * *
Oct.-Dec.....	90.78	* * *	78.86	50.60	47.92	90.18	108.66	* * *
1988:								
Jan.-Mar.....	72.06	* * *	68.41	49.96	46.28	99.58	111.77	* * *
Apr.-June....	65.95	* * *	63.70	50.69	43.63	* * *	121.10	* * *
July-Sept....	69.16	* * *	68.11	38.62	36.98	117.63	117.74	* * *
Oct.-Dec.....	74.93	* * *	70.00	36.54	33.93	95.80	101.87	* * *
1989:								
Jan.-Mar.....	65.65	* * *	61.78	36.04	34.59	102.37	106.97	* * *

1/ One importer reporting.

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

Table H-2
Pork: Sale quantities of products 1-5 reported by U.S. producers and importers of Canadian pork, by products, and by quarters, January 1986-March 1989

(In thousands of pounds)

	Product 1		Product 2	Product 3	Product 4	Product 5		
						2,000 lb crates	70-80 lb boxes	
Period	U.S.	Canada 1/	U.S.	U.S.	U.S.	U.S.	U.S.	Canada 1
1986:								
Jan.-Mar.....	58,253	-	134,193	69,564	27,336	* * *	122,078	-
Apr.-June....	57,024	-	140,738	63,604	26,505	* * *	115,226	-
July-Sept....	51,216	* * *	110,757	53,890	21,596	* * *	93,931	-
Oct.-Dec.....	50,720	* * *	123,046	65,455	24,348	* * *	106,774	-
1987:								
Jan.-Mar.....	61,351	* * *	115,689	68,809	28,123	* * *	126,745	* * *
Apr.-June....	50,835	* * *	104,778	57,617	26,658	1,987	118,998	* * *
July-Sept....	56,359	* * *	109,115	56,971	23,335	569	123,322	* * *
Oct.-Dec.....	52,995	* * *	136,698	60,616	31,265	422	139,658	* * *
1988:								
Jan.-Mar.....	51,596	* * *	123,384	59,438	30,772	508	131,873	* * *
Apr.-June....	41,317	* * *	115,724	61,294	33,111	* * *	127,660	* * *
July-Sept....	44,754	* * *	103,949	51,083	26,018	633	131,763	* * *
Oct.-Dec.....	55,455	* * *	136,190	66,628	39,160	1,012	113,201	* * *
1989:								
Jan.-Mar.....	44,426	* * *	113,694	28,612	19,496	796	82,709	* * *

1/ One importer reporting.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission end of each year. Prices for the U.S.-produced lighter ham product 1 (16-20 pounds) were higher on a per pound basis than the heavier ham product 2 (20-26 pounds). Overall, prices for products 1 and 2 were 3 percent higher between January-March 1986 and January-March 1989. 1/ Prices for the Canadian-produced ham product 1, although representing only one response, remained relatively stable through each year of the investigation. Prices for the Canadian ham in 1988-89 were approximately * * * percent lower 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 37 percent and 32 percent lower, respectively, between January-March 1986 and January-March 1989.

Prices for U.S.-produced fresh loins (product 5) varied during each year of the period of investigation. Loins packed in boxes holding 70-80 pounds were more expensive per pound than loins packed in crates holding 2,000 pounds. Prices for Canadian-produced fresh loins packed in boxes holding 70-80 pounds, although representing only one response, also showed price fluctuations similar to prices of U.S.-produced loins.

Delivered purchase prices for the live swine varied for both U.S.- and Canadian-produced swine (table H-3). Overall, prices for the U.S.- and Canadian-produced swine were 5 percent and 10 percent lower, respectively, at the end of the period of investigation.

1/ Because of 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.

Table H-3
Swine: Weighted-average delivered unit values of U.S.- and Canadian-produced product 6 purchased by U.S. pork producers, by quarters, January 1986-March 1989 1/

(In dollars per hundred pounds)

Period	United States	Canadian 2/
1986:		
Jan.-Mar................	43.90	45.32
Apr.-June...............	46.76	49.37
July-Sept...............	60.08	61.37
Oct.-Dec................	53.78	52.82
1987:		
Jan.-Mar................	48.96	49.76
Apr.-June...............	56.25	54.68
July-Sept...............	58.98	59.24
Oct.-Dec................	44.67	47.07
1988:		
Jan.-Mar................	45.93	46.64
Apr.-June...............	47.10	48.70
July-Sept...............	45.83	45.46
Oct.-Dec................	40.14	40.99
1989:		
Jan.-Mar................	41.68	41.00

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.