70 FR 12181, March 11, 2005

A-122-850
Investigation
Public Document
O1: C. Kyle x1503
O1: A. Smith x1276

MEMORANDUM

DATE: March 4, 2005

TO: Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

FROM: Barbara E. Tillman
Acting Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Final Determination in the Antidumping Duty Investigation of Live Swine from Canada

---

SUMMARY

We have analyzed the comments in the case briefs and rebuttal briefs submitted by the Illinois Pork Producers Association, the Indiana Pork Advocacy Coalition, the Iowa Pork Producers Association, the Minnesota Pork Producers Association, the Missouri Pork Association, the Nebraska Pork Producers Association, Inc., the North Carolina Pork Council, Inc., the Ohio Pork Producers Council, and 119 individual producers of live swine[1] (collectively, hereinafter, "the petitioners"); Excel Swine

[1] Alan Christensen, Alicia Prill-Adams, Aulis Farms, Baarsch Pork Farm, Inc., Bailey Terra Nova Farms, Bartling Brothers Inc., Belstra Milling Co. Inc., Berend Bros. Hog Farm LLC, Bill Tempel, BK Pork Inc., Blue Wing Farm, Bornhorst Bros, Brandt Bros., Bredehoeft Farms, Inc., Bruce Samson, Bryant Premium Pork LLC, Buhl's Ridge View Farm, Charles Rossow, Cheney Farms, Chinn Hog Farm, Circle K Family Farms LLC, Cleland Farm, Clougherty Packing Company, Coharie Hog Farm, County Line Swine Inc., Craig Mensick, Daniel J. Pung, David Hansen, De Young Hog Farm LLC, Dean Schrag, Dean Vantiger, Dennis Geinger, Double "M" Inc., Dykhuis Farms, Inc., E & L Harrison Enterprises, Inc., Erle Lockhart, Ernest Smith, F & D Farms, Fisher Hog Farm, Fitzke Farm, Fultz Farms, Gary and Warren Oberdiek Partnership, Geneseo Pork, Inc., GLM Farms, Greenway Farms, H & H Feed and Grain, H & K Enterprises, LTD, Ham Hill Farms, Inc., Harrison Creek Farm, Harty Hog Farms, Heartland Pork LLC, Heritage Swine,

Services, Inc. ("Excel"); Hytek, Inc. ("Hytek"); the Ontario Pork Producers' Marketing Board ("Ontario Pork"); and Baxter Transport, Ltd., J. Quintaine & Son, Ltd., and Zantingh Swine Inc. (collectively, hereinafter, "Quintaine"), in the antidumping duty investigation of live swine from Canada. As a result of our analysis, we have made changes to the preliminary determination. We recommend that you approve the positions we have developed in the "Discussion of Issues" section of this memorandum. Below is the complete list of the issues in these investigations for which we received comments from the parties:

General Issues

Comment 1: Perishable Agricultural Products
Comment 2: Net Income Stabilization Account
Comment 3: Allocation of Total Production Costs

Company Specific Issues

<u>Premium Pork</u>

Comment 4: Premium Pork Withdrawal

<u>Ontario Pork</u>

Comment 5: Monthly Price-Averaging
Comment 6: Advertising Expenses
Comment 7: Bank Charges
Comment 8: Credit Expenses
Comment 9: Freight Expenses

Ontario Pork Farm A

High Lean Pork, Inc., Hilman Schroeder, Holden Farms Inc., Huron Pork, LLC, Hurst AgriQuest, J D Howerton and Sons, J. L. Ledger, Inc., Jack Rodibaugh & Sons, Inc., JC Howard Farms, Jesina Farms, Inc., Jim Kemper, Jorgensen Pork, Keith Berry Farms, Kellogg Farms, Kendale Farm, Kessler Farms, L.L Murphrey Company, Lange Farms LLC, Larson Bros Dairy Inc., Levelvue Pork Shop, Long Ranch Inc., Lou Stoller & Sons, Inc., Luckey Farm, Mac-O-Cheek, Inc., Martin Gingerich, Marvin Larrick, Max Schmidt, Maxwell Foods, Inc., Mckenzie-Reed Farms, Meier Family Farms Inc., MFA Inc., Michael Farm, Mike Bayes, Mike Wehler, Murphy Brown LLC, Ned Black and Sons, Ness Farms, Next Generation Pork, Inc., Noecker Farms, Oaklane Colony, Orangeburg Foods, Oregon Pork, Pitstick Pork Farms Inc., Prairie Lake Farms, Inc., Premium Standard Farms, Inc., Prestage Farms, Inc., R Hogs LLC, Rehmeier Farms, Rodger Schamberg, Scott W. Tapper, Sheets Farm, Smith-Healy Farms, Inc., Square Butte Farm, Steven A. Gay, Sunnycrest Inc., Trails End Far, Inc., TruLine Genetics, Two Mile Pork, Valley View Farm, Van Dell Farms, Inc., Vollmer Farms, Walters Farms LLP, Watertown Weaners, Inc., Wen Mar Farms, Inc., William Walter Farm, Willow Ridge Farm LLC, Wolf Farms, Wondraful Pork Systems, Inc., Wooden Purebred Swine Farms, Woodlawn Farms, and Zimmerman Hog Farms.

Comment 68: Interest Income

BACKGROUND

On October 20, 2004, the Department of Commerce ("the Department") published in the Federal Register the preliminary determination in its investigation of live swine from Canada. See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Live Swine From Canada, 69 FR 61639 (October 20, 2004) ("Preliminary Determination"). The period of investigation ("POI") is January 1, 2003 through December 31, 2003. We invited parties to comment on our preliminary determination. We received case and rebuttal briefs from the petitioners, Excel, Hytek, and Ontario Pork. In addition, we received a rebuttal brief from Quintaine.

DISCUSSION OF ISSUES

General Issues

Comment 1: Perishable Agricultural Products

Ontario Pork's and Excel's Argument:

Ontario Pork contends that market hogs exhibit the characteristics of highly perishable agricultural products, and therefore, in accordance with section 773(b)(2)(C)(ii) of the Act qualify for the weighted average price to cost test ("alternative substantial quantity test"). Under this test, below-cost sales are considered to be made in substantial quantities and, hence, disregarded if the weighted average per unit price of the sales under consideration for the determination of the normal value is less than the weighted average per unit cost of production for such sales. Ontario Pork maintains that the Department has made it clear that the alternate substantial quantity test is to be applied in cases involving "highly perishable agricultural products" and cites Notice of Final Results of Antidumping Duty Administrative Review: Antifriction Bearings and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom, 62 FR 2081, 2111 (January 15, 1997) ("Antifriction Bearings Final Results").

According to Ontario Pork, the Department applies the 20 percent substantial quantity test described in section 773(b)(2)(C)(i) of the Act to non-perishable products based on the assumption that producers of these items have sufficient control over their output and pricing to avoid selling their products below cost. In contrast, the Department applies the alternative substantial quantity test in cases involving highly perishable agricultural products that begin to grow old and spoil, because producers are unable to slow their output or to store their products, and are therefore, forced to occasionally sell their products below the cost of production. Ontario Pork states that in Notice of Final Determination of Sales at Less than Fair Value: Fresh Kiwi Fruit from New Zealand, 57 FR 13695, 13700 (April 17, 1992) ("Fresh Kiwi Fruit Final Determination"), the Department made it clear that the purpose of applying the alternative substantial quantity test is to account for situations where sellers frequently have no alternative but to sell at prices below cost of production because the product will rot within a few days after harvest. In Notice of Final Determination of Sales at Less than Fair Value: Fresh Winter Vegetables from Mexico, 45 FR 20512, 20515 (March 28, 1980) ("Fresh Winter Vegetable Final Determination"), the Department in addressing the substantial quantity test, noted that:

> In the fresh vegetable market, in contrast to markets for industrial products or for agricultural products with longer "shelf life," a relatively high level of sales below cost is normal and to be expected. As mentioned above, growers do not have the ability to control their output, at least over the short-term and cannot store their production. Moreover, the perishability of the product precludes systematic withholding of the growers' output from the market.

According to Ontario Pork, the key factors that are determinative in the Department's perishability analysis are: (1) the producers of the products do not have the ability to control their output, at least over the short-term; (2) the producers cannot store their production; and (3) the perishability of the products precludes systematic withholding of the growers' output from the market. Ontario Pork maintains that the Department has consistently applied these factors. In Notice of Final Determination of Sales at Less than Fair Value: Fresh and Chilled Atlantic Salmon from Norway, 56 FR 7661, 7673 (February 25, 1991) ("Fresh and Chilled Atlantic Salmon Final Determination"), the Department found that salmon is not a perishable product because salmon farmers have the ability to control the time of sale of their output by holding over the inventory and also by freezing the fresh salmon. Citing Notice of Final Results of Antidumping Duty Administrative Review: Fresh and Chilled Atlantic Salmon from Norway, 58 FR 37912, 37916 (July 14, 1993) ("Fresh and Chilled Atlantic Salmon Final Results"), Ontario Pork points out that the Department reiterated that salmon is not a perishable product because the farmers have the ability to control the time of sale of their output without materially affecting the quality of the product. Also in Fresh Kiwi Fruit Final Determination, the Department found that, because of its storable nature and the farmers' ability to control the timing of sales, kiwi fruit was not a perishable product.

Ontario Pork asserts that, consistent with prior cases, the Department should treat slaughter hogs as perishable products because: (1) sellers of slaughter hogs do not have the ability to control their output over the short-term; (2) they cannot store their products; and (3) they cannot systematically withhold their product from the market when it is ready for slaughter. In support of its claim, Ontario Pork cites statements made at the International Trade Commission Conference ("ITC Conference"). There, experts testified that slaughter hog sales must occur during a very narrow window of generally five to ten days. Because pigs grow at a steady rate that cannot be slowed, once they reach the desired weight range, they will remain in that weight range for only a matter of days. Outside that window the price drops, the quality grade changes, the ability to store declines, and the health of the pig deteriorates, while the costs of maintaining the pigs continue to mount. In order to maximize the revenues, the producers of market hogs have no choice but to sell the pigs at prices prevailing during the window period, which occasionally may be below the cost of production. The optimum value measured in terms of the revenue per kilogram of carcass weight prevails during this window period.

See Attachment 3 of the Transcript of Preliminary Conference, Inv. Nos. 701-TA-438 and 731-TA-1076 at 19, 72-73, 121-27, and 130 (March 26, 2004) ("ITC Conference Transcript").

Ontario Pork adds that it had commissioned an experienced agricultural economist specializing in the hog industry to prepare an economic analysis of the perishability of market hogs, and the findings were similar to the testimonies given by the witnesses at the ITC Conference. This analysis was placed on the record in Ontario Pork's November 1, 2004 letter to the Department. Ontario Pork further points to the International Trade Commission Preliminary determination ("ITC Preliminary Determination") and Staff Report confirm that swine are perishable products with a very short "shelf-life." According to Ontario Pork, there is no incentive for the producers to keep inventories of slaughter hogs, once they reach the desired weight and body fat composition.

Ontario Pork claims that the producers of swine adopt an all-in-all-out management in the finishing stage. Specifically, every animal is removed from a room, building or a site, which is then cleaned and disinfected before new animals are placed in the facility. Therefore, at the time of delivery to the market, the entire barn must be emptied. Underweight hogs must be sold with their optimal weight pen mates rather than wait for the underweight hogs to reach optimum weight, even though the producer will receive discounted prices for the underweight hogs. Thus, Ontario Pork maintains, like producers of highly perishable agricultural products, swine producers are compelled to sell and have very little control over the prices they receive.

Ontario Pork concludes that the evidence shows that market hogs are highly perishable agricultural products because they have to be sold during the narrow optimum weight window period. The fact that actual sales can occur outside the optimum weight window period should not be a factor in determining the perishability of market hogs, rather the circumstances that force a producer to sell during the optimum weight window period should be considered.

Excel argues that segregated isoweans are highly perishable agricultural products warranting the application of the Department's alternative substantial quantity test in evaluating sales below cost, and also for the purposes of calculating CV profit. Excel asserts that the Department recognizes it would be unreasonable to punish respondents in agricultural cases for making below cost sales when such transactions are unavoidable due to the inherently perishable nature of the products. According to Excel, its normal value will be based on CV, and CV profit is likely to be based on data submitted by other respondents in this proceeding. Excel asserts that if the Department calculates CV profit for Excel based on the data submitted by other respondents in this proceeding, then the Department should apply the alternative substantial quantity test to the respondents' sales (regardless of whether those sales are for isoweans and regardless of whether the Department finds the other products produced by those respondents to be highly perishable) for purposes of calculating CV profit for Excel. According to Excel, this would address the inequities of calculating profitability on home market sales that do not necessarily reflect the impact of distress sales, and applying that profit rate to an average U.S. price that necessarily includes these same distress sales in its average.

Similar to Ontario Pork's arguments, Excel cites Notice of Final Determination of Sales at Less Than Fair Value: Fresh Cut Roses from Ecuador, 60 FR 7019, 7025 (February 6, 1995) ("Roses Final Determination"), Notice of Final Results of Antidumping Duty Administrative Review: Certain Fresh Cut Flowers from Columbia, 62 FR 53287, 53302 (October 14, 1997) ("Fresh Cut Flowers Final Results"), Notice of Final Determination of Sales at Less Than Fair Value: Fresh Atlantic Salmon from Chile, 63 FR 31411, 31428 (June 9, 1998) ("Fresh Atlantic Salmon Final Determination"); and ("Fresh and Chilled Atlantic Salmon Final Results"), where the Department found that highly perishable agricultural products may exhibit one or more of the following characteristics: (1) the producer cannot control the time of the sale of output without materially affecting the quality of the merchandise; (2) the producer cannot accumulate inventory or withhold product from the market to await a better price; (3) the producer has little flexibility in controlling the timing of harvesting; and (4) the seller is compelled to accept whatever return he can on certain sales or destroy the merchandise. Excel asserts that because each of these characteristics is inherent in the production and marketing of isoweans, the Department should determine isoweans are highly perishable agricultural products.

Excel contends that producers of isoweans have no ability to control the time of the sale without materially affecting their value, because isoweans have a shelf life or saleable period of at most only five to seven days. Excel notes that because of pre-determined shipping schedules and the short time window for open finishing space, the sales window for isoweans in reality is much shorter and is in the range of twenty-four to forty-eight hours. Based on the National Pork Producers Council ("NPPC") study, Excel reiterates that isoweans are a very unique perishable product and the value diminishes rapidly with time. See How Can We Price Early-Weaned Pigs? Published by NPPC and available at www.porkboard.org. According to Excel, the weaning occurs after ten days and before twenty-one days of age, and the time period to sell isoweans is one week from the date of weaning. Excel points out that after twenty-one days of age, isoweans begin to lose their high health status because they lose the superior immunity status that makes them so valuable to the customer. Excel points out that in past cases, the Department recognized that the inability of the seller to control the time of sale due to the fact that the merchandise is deteriorating at the time of the transaction is indicative of a highly perishable product. Excel argues that based on its suppliers' sales contract specifications, these conditions apply to sales of isoweans.

Further, Excel asserts that producers of isoweans cannot accumulate inventory or withhold product from the market to await a better price because of the very nature of isowean production. Excel explains that isowean production is based on the principle of all-in all-out pig flow. Pigs are moved in weekly batches to different sites, making room for the next batch. Keeping different batches together in a farrowing operation would risk exposing the isoweans to foreign pathogens. Excel notes that isowean operations do not maintain nursery or other holding facilities for pigs once they are weaned. Excel maintains that in Roses Final Determination, the Department found that rose products were highly perishable because growers could not withhold the product from the market to wait for a better price, nor could the products be stored by freezing or held for weeks in cool store. Excel argues that similar to roses, isoweans are perishable products because the market pressures for roses and isoweans are the same.

Excel contends that when no buyer is available, producers of isoweans are compelled to accept whatever price they can obtain on certain sales, or destroy the merchandise, due to strict adherence with the all-in-all-out production system combined with the loss of passive immunity. Excel argues that the late stage or end-of-the-day sales are distress sales, common in markets for perishable agricultural products, and that the NPPC study advises that extra pigs should be sold on the spot market, regardless of the price they may fetch. Excel asserts that in cases where pigs cannot be sold, they will often die on their own as a result of the stress of being removed from the mother without subsequent introduction into a nursery environment. Excel further asserts that if pigs did not perish on their own they would have to be killed so as not to compromise the health of new piglets coming off their mothers.

The Petitioner's Argument Regarding Ontario Pork and Excel:

The petitioners argue that market hogs and isoweans are not highly perishable agricultural products. The petitioners claim that in <u>Fresh Winter Vegetable Final Determination,</u> there were many reasons for the Department to consider the subject merchandise as highly perishable. Some of the reasons were: (1) the rapid perishability precluded systematic withholding of output from the market when temporary oversupply depressed the price below the cost of production; (2) the crop in one year depended largely on factors beyond the control of the grower, such as weather or disease; (3) the grower did not have the ability to control the production, at least over the short-term, and could store it; (4) the price data showed significant daily price fluctuations; and (5) the daily prices depended on the quality of the produce, its color and ripeness, and the time of the day of sale. According to the petitioners, the Department also found that the growers shipped less ripe vegetables to customers farther from the farm and more ripe vegetables to customers closer to the farm because the quality of the product changed during transportation and the product could perish if the transportation took several days. Also, there was evidence that the timing of the sale on the day of sale could have a significant impact on price. Prices varied hourly and tended to dip towards the day's end as sellers sought to minimize the cost of holding merchandise overnight. Further, the petitioners maintain that there was a seasonal aspect to fresh winter vegetables. All the growers brought their product to the market at the same time (<u>i.e.</u>, during the winter season), creating a surplus. The buyer could choose to purchase only the best product and the rest would be sold at a distress price or left to rot.

The petitioners contend that live swine do not exhibit the same characteristics as fresh winter vegetables. Live swine do not rot or become unsaleable if they are held overnight or for a few days. There is no seasonal aspect to live swine production. In order to maintain a continuous flow of product for sale, live swine are produced throughout the year and not during a particular season. In addition, many of the swine producers have sale and price agreements with the packers that are determined in accordance with a prescribed formula. Thus, extreme price variations typical for sales of winter vegetables do not apply to live swine. Moreover, the producers do get a price for sales of live swine outside the short window period, whereas the producers of winter vegetables do not get any price outside the short window.

The petitioners maintain that in Fresh Kiwi Fruit Final Determination, the Department found kiwi fruit has a much longer shelf life than highly perishable agricultural products, and noted that while the commercial life of kiwi fruit is subject to what amounts to gradual increasing perishability, it was not subject to the day-to-day perishability constraints. According to the petitioners, this long-term perishability is not what the alternative substantial quantity test is intended to address.

The petitioners stress that Ontario Pork did not provide any evidence of its live swine being actually sold outside the optimum weight window period nor explain how rapidly prices decline for sales outside the window period. The petitioners claim that the all-in-all-out management is designed to ensure that swine are delivered to the packers at the optimum weight, rather than to deliver non-optimum weight hogs. The petitioners refer to the economic study cited by Ontario Pork and note that all producers of agricultural and industrial products have a strong economic incentive to sell as quickly as possible and not to hold the products in the inventory because of the holding costs. Finally, the petitioners assert that live cattle like live swine have an optimum weight window period for slaughter, and after a brief period of time the value begins to diminish. The Department in Notice of Final Determination of Sales at Less Than Fair Value: Live Cattle from Canada, 64 FR 56739, 56750 (October 21, 1999) ("Live Cattle Final Determination") rejected an interested party's argument that live cattle were highly perishable agricultural products. Therefore, for the final determination, the Department should not consider live swine (i.e., market hogs and isoweans) to be highly perishable agricultural products.

Department's Position:

We agree with the petitioners that live swine are not highly perishable agricultural products. As such, we do not consider it appropriate to apply the alternative substantial quantities test outlined in section 773(b)(2)(C)(ii) of the Act.

In analyzing whether a product is highly perishable, we must analyze the characteristics of the product being investigated, recognizing that all agricultural products are not the same. For example, even though crops and livestock are both agricultural products, their growth and harvesting cycles are very different. In Fresh Winter Vegetables Final Determination, we investigated crops that had a defined growing season. At harvest time, the grower had a large quantity of product that had to be sold over a short period of time. Sales shortly after harvest could have resulted in the highest profits, whereas sales at the end of the products' shelf life would have to be sold at whatever the farmer could get before they spoiled and became worthless. Thus, it was appropriate that the cost test looked at the growing season as a whole and whether, overall, the farmer recovered all of his costs over that period. This is precisely the point noted in Fresh Winter Vegetables Final Determination, where we said:

> In the fresh vegetable market, in contrast to markets for industrial products or for agricultural products with longer 'shelf life,' a relatively high level of sales below cost is normal and to be

> expected.... growers do not have the ability to control their output, at least over the short-term and cannot store their production. Moreover, the perishability of the produce precludes systematic withholding of the growers' output from the market. Under these circumstances, sales below cost are a normal part of a growers' operations. The grower looks to make his profit over the season as a whole; he does not expect to recover full costs on any individual sale.

In contrast, with live swine (a livestock product), we are not dealing with a product that has a specific growing season and is harvested all at once. Live swine are produced throughout the year, completely under the control of the farmer. As the gestation and growth cycle for a hog are known and predictable, the farmers are able to plan the number of swine they will have for sale each month of the year.

In the Fresh Winter Vegetables Final Determination case, the Department identified several factors that were deemed important in deciding whether to use the alternative substantial quantities test. We looked at whether the producers of the products had the ability to control their output, over the short-term, whether the producers could store their production, and whether the perishability of the product precluded systematic withholding of the growers' output from the market. While we agree that all of these factors are important in determining perishability, we disagree that the analysis ends here. As there is a wide range in the degree of perishability of agricultural products, it is important to consider other factors in the analysis such as the shelf life of the product (i.e., the length of time before the product spoils or rots), how significantly and rapidly the product loses value, and the way the product is sold.

In Fresh Kiwi Fruit Final Determination, we were more specific in describing the instances in which we intended to apply the alternative substantial quantities test. We stated that the alternative test is an exception to the rule, and the purpose of the exception is to account for situations where sellers frequently have no alternative but to sell at prices below the cost of production, as with products that will rot within a few days after harvest. The Department found that kiwi fruit had a much longer shelf life than highly perishable agricultural products because sellers did not face a window of only a few days within which to sell before significant deterioration occurred. In addition, we indicated that while the commercial life of kiwi fruit was subject to what amounts to a gradual, increasing perishability over an extended period of time, it was not subject to the short-term perishability constraints. We concluded that perishability over an extended period of time is not what the alternative test is intended to address.

In the instant case, we examined record evidence to evaluate the shelf life of market hogs and to determine how rapidly and significantly the value of hogs changes over time. Ontario Pork submitted several grading grids that show the different periods (i.e., weight bands) for selling market hogs, including the optimal window period (i.e., the weight band in which the value of the market hog per kilogram is greater than all other periods). The grading grids show for each carcass weight the percentage of the base price that Ontario Pork would receive for each hog based on minimum and maximum live weight bands (e.g., 207 to 220 pounds, 220 to 234 pounds, etc.). For example, the optimal window period for one of the grading grids is for swine between 234 and 275 pounds. In this example, Ontario Pork would receive a premium above the base price (i.e., market price) for swine sold within this optimum window period. We analyzed the data contained within these grading grids by comparing the premium received above the base price in the optimum window period for each grading grid to the reduction in the premium or discount received above or below the base price for each weight band outside the optimum window period. In addition, we calculated the number of days a hog would remain within each weight band using the assumption that live swine gain two pounds a day. This assumption was supported by information placed on the record by Ontario Pork and the petitioners' testimony at the ITC hearing. See Ontario Pork's "Information Submission" dated November 1, 2004.

We learned from these grading grids that the loss in value on a per kilogram basis is not rapid or precipitous and the optimum window period spans a much longer period of time than the five to ten day window suggested by Ontario Pork. We found that the average optimum window period for a hog is approximately 20 days and that the average number of days within each weight band prior to and after the optimum window period is approximately seven days. Further, we found that if a seller sold live swine falling within the first weight band either prior to or after the optimum window period, he would only lose, on average, three and half percent of the optimum window price, which is still above the base price. Consequently, we note that the window period referred to as the "optimum weight window," which varies for each meat packer, extends far beyond the five to ten days claimed by Ontario Pork and the reduction in the value of the swine sold prior to and after the optimum weight window is not significant.

In addition, we note that a majority of Ontario Pork's home market sales were made pursuant to long-term contracts. As such, the farmer already has a customer for the hogs being raised. The terms of these long-term contracts allow the producer of the live swine to determine the delivery date. Thus, the producer can control the production for each hog delivery to seek to ensure that a majority of the swine within each delivery fall within the optimum weight window, with a limited number of head falling only one weight band prior to or after the optimum weight. Additionally, some of the long-term contracts include a mechanism that smooths price fluctuations to a specified pricing window. Specifically, if the market prices under the agreement fluctuate outside the window limit, the difference between the actual price and the invoice price is recorded as a miscellaneous payable/receivable. This window pricing adjustment is a mechanism used by the sellers and buyers to alleviate the volatility in the market price of hogs and was included in Ontario Pork's sales database. This mechanism provides a hedge for market price fluctuations and eliminates some pricing variability.

We disagree with Ontario Pork's comment that the all-in-all-out management causes the sale of underweight pigs. The record shows that, to maintain a continuous flow of market hogs, pig producers throughout the year breed the sows on a staggered basis so that piglets are born in batches. At any point in time, the pigs in one batch are of different age and health condition than the pigs in another batch. There are systematic procedures to rear piglets to market hogs. For smooth operations, swine producers keep each batch of pigs separate from other batches in different sections within the barn, so that all the pigs in a batch attain optimum weight at the same time, and also to avoid cross contamination. The all-in-all-out management seeks to ensure that all pigs in the batch are of approximately the same weight. If there are any underweight hogs in a batch, it is due to the rearing process that requires corrective actions, and are related to quality control. In addition, there is record evidence that hog producers will take underweight pigs from their respective batches and place them in "slush barns." When the hogs attain the desired weight, they sell them. See Memorandum to Neal Halper, "Verification Report on the Cost of Production and Constructed Value Data Submitted by Hytek, Ltd." dated January 13, 2005 ("Hytek Cost Verification Report") at page 7.

Lastly, we deem as moot Excel's argument that isoweans are perishable. Excel does not have a viable home or third country market, and thus, normal value is based on CV. As such, deviating from the Department's standard practice for disregarding sales made in the home market by Excel in accordance with section 773(b)(1)(A) and (B) is not at issue here. In this instance, Excel submits that because the Department used the weighted-average CV profit of the other respondents in this case when calculating CV profit for the Preliminary Determination, and because isoweans are perishable, for the other Canadian respondents the Department should compare their weighted-average price to the weighted-average COP in calculating Excel's CV profit. However, we note that Excel's argument is irrelevant because the other Canadian respondents did not sell isoweans in the home market.

As noted above, because Excel does not have a viable comparison market, we could not determine CV profit under section 773(e)(2)(A)the Act, which requires sales by the respondent in question in the ordinary course of trade in the comparison market. Because the other two respondents in this investigation have viable home markets, we have continued to apply alternative (ii) of section 773(e)(2)(B).

Comment 2: Net Income Stabilization Account

The Petitioners' Argument Regarding Ontario Pork and Excel:

The petitioners contend that for the final determination, the Department should deny the offsets to reported costs claimed by most of the Ontario Pork's cost respondents for the subsidies provided by the Canadian government under the Net Income Stabilization Account ("NISA") program. According to the petitioners, in the associated countervailing duty investigation, the Department has preliminary determined that payments to the farm's NISA account are not countervailable because they are related to the whole farm's income, and not to the production of hogs in particular. The petitioners maintain that the payments to a NISA account are designed to supplement farmers' income, and are based on the farm's sales revenue and net income, and not the cost of producing swine. The petitioners argue that offsets to the reported costs should be allowed, provided these payments pertain to the farm's production costs and not to its sales revenue. Finally, the petitioners assert that if the Department determines in the countervailing duty investigation that these payments to NISA account are not related to hog production, then there is no basis for the Department to grant the offsets.

Moreover, the petitioners assert that the Excel cost respondents were untimely in their claim for the NISA offset. According to the petitioners, these untimely claims constitute new factual information and methodologies, and should be rejected. Additionally, the petitioners argue that NISA funds are not similar to compensating bank balances as claimed by Excel. The NISA funds are more akin to investment accounts, because the program was established to achieve long-term stability in farmers' income and was specifically designed to counter short-term income variations. The petitioners maintain that the interest income earned on the NISA funds is investment income, because the nature of interest income (i.e., short-term or not) is determined by the underlying asset that generates the income, and not by the timing of the income withdrawal. The petitioners conclude that for the final determination, the Department should not include interest income earned on NISA funds in the net interest expense ratio calculation, because it is the Department's practice to exclude investment income in calculating the ratio.

Ontario Pork's and Excel's Argument:

Ontario Pork states that NISA is an individualized whole farm program developed jointly by the agricultural producers and the Government of Canada and participating provinces to improve the farmers' long-term income stability. The program offers producers the opportunity to deposit money annually into NISA and receive matching government contributions and interest income from the NISA fund balances. Ontario Pork contends that the Department should continue to allow the offset to reported costs for the government contributions made to the NISA funds, because it is the Department's established practice to recognize government contributions that are tied to the production of subject merchandise as a legitimate offset to production costs. In support of its position, Ontario Pork cites Notice of Final Determination of Sales at Less than Fair Value: Certain Red Raspberries from Canada, 50 FR 19768, 19771 (May 10, 1985) ("Red Raspberry Final Determination") and Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Pasta from Italy, 64 FR 6615, 6626 (February 10, 1999) ("Pasta Final Results").

According to Ontario Pork, the petitioners' argument to deny the NISA income offset is based on two points: (i) that NISA payments are not specifically related to hog production, and (ii) government funds can be used to reduce production costs provided the funds are considered subsidies under the countervailing duty law. Ontario Pork maintains that these two points are without merit. First, the Department has stated clearly that payments from a government program can be used to offset production costs if these payments are related to the production and sale of the subject merchandise. The Department has not stated that these payments must only relate to the production of subject merchandise. In support, Ontario Pork cites Red Raspberries Final Determination, where the Department determined that FIIP payments were financial gains and included the gains in the reported costs because they were related to the production and sale of raspberries. Ontario Pork points out that payments from the NISA program are received when there is a specified decline in the producer's five-year gross margin or when net income falls below a certain threshold. Ontario Pork contends that both gross margin and net income result from the revenues earned from the sale of all merchandise and associated costs incurred in the production of that merchandise. Therefore, government contributions to NISA are related to the sale and production of the subject merchandise and should be included in the reported costs to benefit all products produced by the farms, not only hogs. Second, Ontario Pork argues that there is no relationship between the antidumping and countervailing duty laws. The antidumping law deals with respondent-specific sale and cost issues. The countervailing law is intended to assess the permissibility of the government-sponsored subsidy programs.

Excel contends that the government contributions to NISA and the interest income earned on NISA fund balances should be allowed as offsets to the respondents' costs. Excel states that government contributions to NISA accounts are similar to grants that the Department normally allows as an offset to the costs. See Pasta Final Results. Excel maintains that in the Preliminary Determination of this investigation, the Department allowed other cost respondents to offset the reported costs for NISA income and cites to Memorandum to Neal M. Halper, "Cost of Production and Constructed Value Adjustments for the Preliminary Determination - Ontario Pork's Cost Respondents," dated October 14, 2004 ("Ontario Pork Cost Respondent COP/CV Adjustments"). Therefore, for the final determination, the Department should extend its treatment of the NISA income offset to all respondents.

Excel also contends that the Department should reduce the cost respondents' total financing expense by the amount of interest income earned on NISA funds. Excel maintains that it is the Department's normal policy to reduce all financing expenses by interest income earned on short-term financing instruments, and cites to Notice of Final Results and Partial Recision of Antidumping Duty Administrative Review: Circular Welded Non-Alloy Steel Pipe from the Republic of Korea, 62 FR 55574, 55583 (October 27, 1997) ("Circular Welded Non-Alloy Steel Pipe Final Results"). According to Excel, interest income earned on NISA fund balances is short-term in nature, because the funds are maintained in a rolling account similar to regular bank deposits, except the withdrawals are triggered by certain events unrelated to timing. Excel asserts that the NISA funds are not investments in financial markets, but bank deposits to support the farm's operations in emergency situations. Excel points out that one of its cost respondents properly classifies NISA funds as current assets in its financial statements. Excel concludes that interest income earned on NISA fund balances is more analogous to interest income earned on compensating bank balance deposits which the Department has determined can be used to offset financial expenses.

Hytek did not comment on this issue.

Department's Position:

We agree with Ontario Pork and Excel. The NISA program was designed to stabilize an individual farm's overall financial performance through a voluntary savings plan. Participants enroll all eligible commodities grown on the farm. The farmers may deposit a portion of the proceeds from their sales of eligible NISA commodities into an individual savings account and receive matching government deposits. Government contributions to NISA are based on the profits of the total farm operations, and not on the profits earned on individual commodities. Thus, the NISA program is related to the overall farming operations.

Further, the Department normally includes the grants received from the government in the reported costs. See Notice of Final Determination of Sales at Less than Fair Value: Furfuryl Alcohol from South Africa, 60 FR 22550, 22556 (May 8, 1995) ("Furfuryl Alcohol Final Determination") and Notice of Final Determination of Sales at Less than Fair Value: Certain Pasta from Italy, 61 FR 30326, 30355 (July 14, 1996) ("Pasta Final Determination"). In Furfuryl Alcohol Final Determination, the Department included in the G&A rate calculation, the government grant received by the respondent which was recorded as grant revenue in the respondent's financial statements. Also, in Pasta Final Determination, the Department included the government grant received during the POI as an offset to the respondent's G&A expenses. Consistent with the Department's past practice, and the fact that the NISA program relates to the total farming operations, we have continued to include the government contributions received by the respondents for the fiscal year from the NISA program as an offset to respondents' reported G&A costs.

With respect to interest income earned on the NISA fund balance, it is the Department's long-standing practice to offset interest expense by short-term interest income generated from a company's working capital. In calculating a company's cost of financing, we recognize that, in order to maintain its operations and business activities, a company must maintain a working capital reserve to meet its daily cash requirements (e.g., payroll, suppliers, etc.). The Department further recognizes that companies normally maintain this working capital reserve in interest-bearing accounts. The Department, therefore, allows a company to offset its financial expense with the short-term interest income earned on these working capital accounts. In Notice of Final Results of Antidumping Duty Administrative Review: Circular Welded Non-Alloy Steel Pipe from Mexico, 65 FR 37518 (June 15, 2000), and accompanying Issues and Decision Memorandum at Comment 3, the Department allowed the respondent to offset its financial expenses with the interest income earned on the working capital.

In the instant case, the farmers' and the government's contributions are maintained in saving accounts and are used for farm operations. These saving accounts are part of the farmers' working capital. Thus, an offset for interest income earned in the NISA fund accounts should be allowed, and we have included the interest income earned on the NISA fund balances as an offset to the cost respondents' financial expenses. However, the Department normally only allows short-term interest income to offset financial expenses up to the amount of such financial expenses. See Notice of Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors from Taiwan, 63 FR 8909, 8933 (February 23, 1998) ("SRAM Final Determination"). Consistent with the SRAM Final Determination, we did not use a negative net interest expense ratio. Instead, we set the ratio to zero.

Comment 3: Allocation of Total Production Costs

Hytek's and Excel's Argument:

Hytek and Excel assert that the Department incorrectly treated culled sows and boars as depreciable assets in the preliminary determination. Hytek and Excel argue that this treatment considers a live animal to be subject merchandise for sales purposes but then considers the same live animal to be a depreciable asset for cost purposes. Hytek and Excel contend that culled sows and boars must be assigned a cost because they are subject merchandise. Hytek and Excel claim that the culled sows and boars are co-products of the isoweans, market hogs, and feeder hogs. Therefore, they claim, the culled sows and boars must be valued at initial acquisition cost plus a share of feeding and care cost until the date of sale. Further, Hytek and Excel assert that boars are not productive assets because all breeding is done by artificial insemination and boars in the sow barns only act to enhance the production process. Hytek and Excel argue that the boars simply feed while in the sow barns and then are sold for slaughter.

Hytek contends that the Department's questionnaire requested a specific cost of production for each control number ("CONNUM") reported in Hytek's home market and U.S. sales databases. Because Hytek reported sows and boars in its sales databases, Hytek asserts that a cost of production must be assigned to the CONNUMs that include sows and boars (i.e., market hogs). Hytek and Excel claim that isoweans, sows, and boars are produced as part of a single production process. Because isoweans, sows, and boars are all subject merchandise, Hytek and Excel assert that the statute requires the Department to allocate total production costs to all three products in order to calculate normal value. Hytek concludes that the issue, therefore, is not whether to allocate production costs to sows and boars but rather by what methodology to allocate total production costs of the sow barns to the different types of subject merchandise produced there.

According to Hytek and Excel, the Court of Appeals for the Federal Circuit ("CAFC") made it clear that when several different types of subject merchandise are produced in the same production process using the same inputs, the total cost of production must be allocated across all types of subject merchandise, without regard to their relative sales value (i.e., subject merchandise can not be treated as byproducts or capitalized assets). See IPSCO v. United States, 965 F.2d 1056 (Fed Cir 1992) ("IPSCO"). Hytek argues that the Department has followed this precedent in subsequent cases even in situations of second grade merchandise that was sold in the home market but not in the United States. See Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from India, 63 FR 72246 (December 31, 1998) ("Mushrooms from India"); Final Determination of Sales at Less Than Fair Value: Certain Carbon and Alloy Steel Wire Rod from Canada, 59 FR 18791 (April 24, 1994); Final Determination of Sales at Less Than Fair Value: Fresh Atlantic Salmon from Chile, 63 FR 31411 (June 9, 1998) ("Salmon from Chile"); and Final Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe from Korea, 57 FR 42942 (September 17, 1992).

Hytek and Excel argue that a weight-based allocation methodology is the most appropriate methodology to allocate total production costs between the three types of subject merchandise produced. In allocating costs, Hytek and Excel used weight as the basis because it is the information kept in the normal course of business and there is a link between feed consumption rates and production weight. According to Hytek and Excel, all the principal manufacturing cost elements are directly linked to weight for all three types of subject merchandise.

Hytek and Excel contend that the Department's methodology of treating sows and boars as depreciable assets is unreasonable because it shifts all production costs to the isoweans and fails to account for the costs of maintaining and growing the sows and boars to their output weight. Further, Hytek and Excel argue that this methodology is in direct conflict with the statute's explicit requirement that production costs be calculated for all subject merchandise. Hytek and Excel argue that in the underlying less than fair value investigation related to IPSCO (see Final Determination of Sales At Less Than Fair Value: Oil-Country Tubular Goods from Canada, 51 FR 15029 (date,1986) ("OCTG from Canada")), the Department rejected a similar approach (i.e., the treatment of subject merchandise as a byproduct). Hytek and Excel note that the CAFC upheld the Department's position in that case stating that the constructed value was computed by the Department according to the unambiguous terms of Title 19 (see IPSCO at 1061). Hytek and Excel distinguish OCTG from Canada from the Final Determination of Sales At Less Than Fair Value: Oil-Country Tubular Goods from Argentina, 60 FR 33539 (June 28, 1995) ("OCTG from Argentina"), stating that the Department correctly classified the byproducts in OCTG from Argentina because these products were pulled from the scrap pile and used for different purposes other than for drilling applications (i.e., the primary use of the subject merchandise in that case).

Finally, Hytek contends that while it might be appropriate to consider sows and boars as productive assets for financial or cost accounting purposes, the U.S. dumping law is concerned with allocation of cost across all subject merchandise. Therefore, Hytek concludes that the Department must assign costs to all three types of subject merchandise: sows, boars, and isoweans.

The Petitioners' Argument Regarding Excel:

The petitioners assert that, if the Department includes Excel in its final determination analysis, the Department should continue to include the full barn costs and the depreciation of sows and boars in the cost of isoweans, as presented in the Memorandum to Neal M. Halper, "Cost of Production and Constructed Value Calculation Memorandum - Excel Swine Services, Inc. / Riverbend Colony of Hutterian Brethren Trust, Rainbow Colony of Hutterian Brethren Trust, and Big Boulder Creek Farms Ltd.," dated November 3, 2004 ("Excel Cost Calculation Memorandum"). The petitioners note that one major component of the Department's methodology was to depreciate parent animals as farm assets using a useful life of 2.33 years. The petitioners note that no information corroborating or challenging this rate was found at the Rainbow Colony verification because the company did not keep such data, but information from Big Boulder supported the rate. The petitioners state that Riverbend

Colony presented an estimated useful life that ignored the POI because the culling rate and replacement rate for the POI were unfavorable. The petitioners assert that a company's good, bad, and average farm experiences in different years must be included to obtain the true life span over operations. The petitioners conclude that Big Boulder's life span calculation and a corrected life span calculation for Riverbend Colony which includes the POI, provide further corroboration for the Department's industry average value of 2.33 years.

The petitioners rebuff Excel's notion that culled sows and boars are co-products, stating that this directly conflicts with the fact that breeding stock are not subject merchandise. The petitioners point out that Excel's cost respondents do not raise their own gilts and boars but purchase their breeding swine. The petitioners point out that in Salmon from Chile the cost for the various grades of final product produced were the costs to raise all grades of salmon to mature salmon. The petitioners note that in Salmon from Chile there was no spent mother fish being culled and sold as a byproduct, only various qualities of the offspring raised in the fish farms. The petitioners further contend that even if Excel's three cost respondents used 100 percent artificial insemination, the purpose of boars as fertility enablers and enhancers would still be entirely for producing isoweans. The petitioners argue that breeding sows and boars are not within the scope of subject merchandise and that when the culled animals enter into commerce as the like product, their cost is not the cost to maintain them as productive assets for 2.33 years. The petitioners contend that the cost of maintaining the productive assets is properly assigned to the production of the piglets. The petitioners contend that the remaining cost of a spent production asset is the salvage value. The petitioners argue that the Department can avoid even the impression of circular valuation by costing the culled animals at their average per-unit purchase price as they originally proposed. The petitioners suggest that to establish a public value that reflects the broadest experience possible, the Department could average the per-head cost of purchasing breeding stock across all respondents, establishing the fair value per sow and per boar to apply as the cost of animals that are later culled and sold for their salvage value as spent production assets.

The petitioners argue that Excel's citation of Mushrooms from India, to support its argument for the necessity to cost products irrespective of quality differences, is wrong. The petitioners point out that in Mushrooms from India, the differences were in the quality of mushrooms at their fresh stage and there are no spent parent mushrooms. The petitioners note that quality differences arise from the size and shape of mushrooms growing in the same house and same growing medium, and that these differences more closely resemble producing isoweans of different sizes.

The petitioners assert that parallels cannot be drawn between this case and IPSCO or Silicon Metal from the Russian Federation because in those cases the finished product was the result of the identical production process. In this case, sows and boars do not result from the same production process as isoweans. The petitioners further assert that because breeding swine are not in the scope, and because the breeding stock are not off-specification isoweans but their producing parental units, neither OCTG from Canada nor IPSCO is applicable.

The petitioners argue that Excel's position that the Department cannot depreciate sows and boars even if Canadian and U.S. generally accepted accounting principles ("GAAP") consider them to be production assets, is based on the same faulty logic as the argument that breeding stock in the barns are subject merchandise, when in fact they are not. The petitioners stress that during their useful lives as productive assets creating isoweans, the sows and boars are not subject merchandise, but assets, and thus GAAP applies to them. The petitioners assert that in their September 10, 2004 submission, they detailed how the Canadian hog industry and the governmental agencies overseeing the industry treat breeding stock as productive assets which upon culling are a byproduct. Moreover, the petitioners note that at no time do the Canadian or U.S. industries treat parent sows and boars as co-products with their offspring.

The Petitioners' Argument Regarding Hytek:

The petitioners refer to their brief on this issue for Excel.

Quintaine's[2] Argument:

Quintaine argues that the Department in the Preliminary Determination correctly capitalized the cost of acquiring the sows and boars used for breeding purposes (net of salvage values) and amortized the net cost over the productive breeding lives. Quintaine states that in treating sows and boars as production equipment, the Department recognizes that at the end of their useful lives, spent sows and boars are only worth salvage or scrap value. These spent sows and boars are a fixed overhead item and are a byproduct of the live swine production process. Quintaine asserts that this treatment is consistent with the test used to differentiate between co-products and byproducts by the Department in OCTG from Argentina. Quintaine argues that applying this test to the sows and boars reveals that the culled sows and boars have much less sales value on a per-pound basis in comparison to the sales value of market hogs, feeder hogs, or isoweans.

Department's Position:

We have continued to treat sows and boars as productive assets in the final determination and have allocated the maintenance costs of these assets to the cost of manufacturing ("COM") of the isoweans produced. The Department's practice, in accordance with section 773(f)(1)(a) of the Act, is to rely on a respondent's normal books and records where such records are kept in accordance with the GAAP

[2]The Department's regulations at 19 CFR 351.309(d)(2) state that the "rebuttal brief may respond only to arguments raised in case briefs." In its rebuttal brief, Quintaine made an affirmative argument relating to calculating a separate margin for sows and boars. This argument was not raised by any other parties in the case briefs. Since this argument was untimely filed, the Department did not address it in the final determination. Moreover, Quintaine presents no evidence for its argument that sows and boars should receive a "separate margin at the lowest dumping margin calculated."

of the exporting country and reasonably reflect the costs associated with the production and sale of the subject merchandise. See e.g., Greenhouse Tomatoes, and Greenhouse Tomatoes Final Decision Memorandum, at Comment 3. In instances where a respondent does not maintain its accounting records in accordance with the GAAP of the exporting country, the Department must determine the appropriate costing methodology. The Department's practice in such instances is to look to the exporting country's GAAP for guidance. If the exporting country's GAAP does not prescribe an accounting treatment, the Department then looks to U.S. GAAP for guidance. See Statement of Administrative Action Accompanying the Uruguay Round Agreement Act, H. Doc. No. 103-315, Vol. 1 ("SAA"), at 164.

Hytek maintains its normal books and records in accordance with Canadian GAAP. As such, Hytek accounts for sows and boars (i.e., breeding stock) as productive assets. As productive assets, the acquisition costs (or production costs up to the point the animal is placed into the breeding cycle) of sows and boars are capitalized in Hytek's financial accounting records and these costs are amortized over the productive lives of the sows and boars, which is typically between 2 and 3 years. As the breeding stock generate revenues (i.e., from the production of isoweans) over this 2 to 3 year period, we deem it reasonable to allocate the cost of the breeding stock over the same period in order to properly match revenues with expenses. Therefore, we have included in the COM of Hytek's isoweans the amortization of its breeding stock as recorded in its normal books and records. With regard to expenses incurred to maintain these productive assets (e.g., feed and veterinary costs), we note that Hytek does not capitalize these expenses in its normal books and records but instead considers these expenses to be production expenses. Consequently, these expenses are properly matched against the revenues earned from the production of isoweans. Thus, we have continued to include these expenses in the calculation of COM for Hytek's isoweans.

With respect to Hytek's argument concerning the allocation of costs to culled sows and boars, we note that in the preliminary determination, we assigned the average salvage values to Hytek's culled sows and boars (i.e., those sows and boars no longer used in production) based on the best available record evidence (i.e., the salvage values reported by Ontario Pork). In Hytek's normal books and records, as verified by the Department (see Hytek Cost Verification Report), salvage values are used to calculate the amortization of the breeding stock. Acquisition costs (or production costs up to the point the animal is placed into the breeding cycle) less salvage values result in the values of the breeding stock to be depreciated over their productive lives. When the breeding stock are fully depreciated, the remaining costs in Hytek's normal books and records for the breeding stock are the salvage values. Therefore, the salvage values of the breeding stock represent those costs not matched against prior revenues. When the fully depreciated animals are sold, the salvage values are expensed against the revenues earned. For the final determination, we have relied on the salvage values shown in Hytek's normal books and records (rather than the salvage values reported by Ontario Pork) and have assigned those values as the COM of Hytek's culled sows and boars.

We note that, unlike Hytek, the cost respondents for Excel (i.e., Riverbend Colony, Rainbow Colony, and Big Boulder) do not maintain their accounting records in accordance with Canadian GAAP. Therefore, the Department must determine what the appropriate costing methodology is for Excel's cost respondents. In this instance, Canadian GAAP prescribes a specific costing methodology for breeding livestock.

Canadian and U.S. GAAP both treat breeding stock as productive assets. The American Institute of Certified Public Accountants ("AICPA") publication "Audits of Agricultural Producers and Agricultural Cooperatives" (May 1, 1998) states that the accounting principles for breeding animals include: 1) the purpose of breeding animals is to produce young animals, and thus accounting for livestock operations requires accumulation of the annual maintenance costs (including feed, veterinary care, medicines, labor, land, depreciation of the herd, and facilities) of the breeding herd as a means of establishing the cost of young animals; 2) the accounting system should provide the costs of animals culled; 3) costs for breeding herd animals are accumulated until the animal is mature and the breeding process has begun, and then costs become part of the depreciable cost of the breeding herd; 4) generally, breeding animals are fixed assets and their costs should be depreciated over their useful lives. AICPA Statement of Position 85-3 states that all direct and indirect costs of developing animals should be accumulated until the animals reach maturity and are transferred to a productive function. At that point the accumulated development costs, less any estimated salvage value, should be depreciated over the animals' estimated useful life.

In a research study published by the Canadian Institute of Chartered Accountants ("CICA"), "Accounting and Financial Reporting by Agricultural Producers" (1986), CICA states that there are no authoritative pronouncements in Canada on productive livestock assets including hogs. The CICA, however, references a prior version of the AICPA guide cited above, as well as the AICPA Statement of Position, and its study group recommends that productive animals should be reported at cost, net of accumulated amortization. In addition, the CICA study recognizes that because the purpose of productive livestock is to produce offspring and/or livestock products, the annual maintenance costs of the productive herd must be accumulated as a means of establishing the cost of young animals, the costs of the production of the livestock products, or both.

In the instant case, the purpose of Excel's cost respondents' breeding stock is to produce young animals. Therefore, we find that Canadian GAAP, as outlined above, is the appropriate costing methodology and have relied on this methodology for purposes of the final determination. Consequently, similar to the preliminary determination, we have considered Excel's cost respondents' breeding sows and boars to be productive assets and have attributed their annual maintenance costs to the cost of their offspring (i.e., isoweans). We have also continued to consider salvage values to be the average sales prices of Excel's cost respondents' culled sows and boars. Because the salvage values represent the unamortized cost of the culled sows and boars, we have assigned the salvage values as the COM of the culled sows and boars. We have not followed Excel's suggested cost methodology (i.e., the COM of the culled sows and boars should include acquisition costs plus maintenance costs) because that methodology does not comply with Canadian GAAP.

We disagree with Hytek and Excel that sows and boars are co-products or byproducts and, as such, should be allocated production costs based on their relative weights. Co-products or joint products, as defined by Charles T. Horngren and George Foster in Cost Accounting: A Managerial Emphasis (Prentice Hall: New Jersey, 1991, 7th ed.), are products produced simultaneously in the same production process that are not clearly identifiable until the split-off point. Byproducts are defined as those products produced in the same production process as the main product but have a low sales value in comparison to the main product. In this case, culled sows and boars are not produced in the same production cycle as isoweans, feeders, or market hogs. Instead, breeding sows and boars are the assets that are used to produce the isoweans, feeders, and market hogs. The breeding stock are not cared for and fed to fatten them up for sale like isoweans, feeder, and market hogs. They are cared for and fed in order to produce healthy piglets which are grown to isoweans, feeders, and market hogs. The breeding sows and boars become culled sows and boars after their productive lives are exhausted. The important distinction here is that the culled sows and boars are not produced in the same production cycle as the isoweans, feeders, and market hogs. They are what remains of the productive assets when their productive useful lives are over. Further, the culled sows and boars are not produced at the same time as the isoweans, feeders, and market hogs. Mature breeding stock (i.e., productive assets) are required to begin the production cycle. To assume that breeding stock is produced at the same time as it is producing piglets, as Hytek alleged, is illogical. Therefore, we also find Hytek's argument that production costs should be allocated to both breeding stock and its production based on weight to be unreasonable.

We also find Excel's argument that IPSCO stood for the proposition that the Department must use weight as the cost allocation factor for co-products to be incorrect. In IPSCO, the CAFC upheld the Department's use of the company's normal books and records which were maintained in accordance with Canadian GAAP. It just so happened that the cost allocation methodology used by Ipsco was weight-based. In the underlying Court of International Trade ("CIT") decision of IPSCO, the trial judge ordered the Department to ignore the Canadian GAAP cost allocation methodology and substituted another cost allocation methodology. In its decision in IPSCO, the CAFC explicitly reversed the CIT, finding that it had improperly substituted its judgement for that of the Department.

Additionally, Excel's reliance on Salmon from Chile and Mushrooms from India to support its position that all pigs (i.e., isoweans, culled sows and boars, market hogs, and feeders) should bear costs in proportion to their weight is misplaced. In Mushrooms from India, the differences between mushrooms (e.g., size and shape) resulted only from the way the mushroom grew in its environment. All of the mushrooms grew at the same time in the same place, with the same soil and nutrients. In the same way, the different grades of salmon were produced in the identical environment. The pigs in this case (i.e., isoweans, culled sows and boars, market hogs, and feeders) do not result from identical production. Unlike the production process in Mushrooms from India, the production process for isoweans, market hogs, and feeders is vastly different.

Company Specific Issues

Premium Pork

Comment 4: Premium Pork Withdrawal

The Petitioners' Argument:

The petitioners urge the Department to include Premium Pork's preliminary antidumping duty rate of 15.01 percent in the calculation of the all-others rate in the final determination to prevent Premium Pork from manipulating the final all-others rate.

The petitioners state that the Department selected Premium Pork as one of four mandatory respondents in this investigation in May 2004. According to the petitioners, Premium Pork went into receivership in August 2004, after it had responded to the Departments initial questionnaire but before the Preliminary Determination. The petitioners state that, despite its continued participation in the companion countervailing duty ("CVD") investigation of live swine from Canada, Premium Pork withdrew from this investigation a full six weeks after the October 20, 2004, Preliminary Determination.

The petitioners state that Premium Pork's withdrawal occurred after it received the highest antidumping duty rate in the Preliminary Determination. The petitioners contend that Premium Pork's withdrawal has not been fully explained by its financial status. Specifically, the petitioners contend that, if Premium Pork's withdrawal was solely related to its financial condition, it would not have agreed to participate in this investigation at the outset, or, in the alternative, would have withdrawn from this investigation and the CVD investigation at the time it went into receivership (i.e., August 2004). The petitioners also contend that Premium Pork would not have participated in the CVD verification had its withdrawal been exclusively linked to its receivership status. In addition, the petitioners contend that Premium Pork was fully aware of the impact its dumping margin could have on the calculation of the all-others rate because it was one of only four mandatory respondents in this investigation. Therefore, the petitioners contend, Premium Pork's withdrawal may be related to its intention to manipulate the all-others rate.

The petitioners argue that the circumstances in this case are similar to those in the antidumping duty investigation of live cattle from Canada, a case in which a respondent withdrew from the investigation, refused verification, and attempted to withdraw its information from the record. See Notice of Preliminary Determination of Sales at Less Than Fair Value: Live Cattle from Canada, 64 FR 36847, 36852 (July 8, 1999) and Notice of Final Determination of Sales at Less Than Fair Value: Live Cattle from Canada, 64 FR 56739, 56744-56745 (October 21, 1999) (collectively, hereinafter, "Live Cattle"). The petitioners also distinguish this case from Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil, 67 FR 55792 (August 30, 2002) ("Brazilian Rod") because, unlike Brazilian Rod, Premium Pork's actions would affect the all-others rate in this investigation. The petitioners highlight the

Department's statement in Brazilian Rod that "{t}he only producer affected by the withdrawal" of the producer is the producer itself." See Brazilian Rod at 67 FR 55792, 55796.

In addition, the petitioners assert that the instant case is different from the recent antidumping duty investigation of wooden bedroom furniture from the People's Republic of China where the Department determined that the company's data was not reliable and was not usable for purposes of calculating the all-others rate. See Final Determination of Sales at Less Than Fair Value: Wooden Bedroom Furniture from the People's Republic of China, 69 FR 67313 (November 14, 2004) ("Bedroom Furniture") and accompanying Decision Memorandum at Comment 5. The petitioners argue that the record in this investigation does not contain evidence showing that Premium Pork's information is unreliable, unrepresentative, or otherwise unusable for calculating the all-others rate even though the information was not verified. The petitioners argue that the Department used the Live Cattle respondent's data to calculate the all-others rate even though the Department did not verify it.

Therefore, the petitioners contend, the Department should follow the methodology it used in Live Cattle and include Premium Pork's preliminary dumping margin in its calculation of the all-others rate.

Excel's Argument:

Excel asserts that it expects to be assigned its own antidumping duty rate in the final determination of this investigation. Nevertheless, Excel argues that, given the possibility that the Department may choose not to assign a rate to Excel, Excel has substantial interest in the calculation of the all-others rate and, thus, is compelled to rebut the petitioners' case brief with respect to Premium Pork.

Excel argues that the Department should not include Premium Pork's preliminary antidumping duty rate of 15.01 percent in the calculation of the final all-others rate. Excel argues that, as demonstrated by the record evidence, Premium Pork was cooperating with the Department to the best of its ability in this investigation and the CVD investigation because it had hoped to emerge from receivership. According to Excel, the possibility of restructuring Premium Pork hinged upon the ability of its existing management and shareholders to purchase its assets.

Citing Premium Pork's letter of withdrawal, Excel states that offers to purchase the majority of Premium Pork's assets were not received until late October 2004, after the Preliminary Determination and after the CVD verification, which was conducted on October 20 and 21, 2004. See Premium Pork's November 24, 2004 withdrawal of participation letter ("Withdrawal Letter"). Excel contends that it was not until the end of October 2004 that it became apparent that Premium Pork's management and shareholders were not among the winning bidders for its assets. Excel further contends that Premium Pork's letter indicates that Premium Pork's withdrawal from this investigation was determined by the final sale of most of its assets to multiple purchasers. Excel claims that these final sales meant that Premium Pork would not emerge from receivership and would cease to exist as an integrated entity. Therefore, Excel contends that the petitioners' allegations of attempts to manipulate the all-others rate are without merit.

Excel contends that the petitioners' reliance on Live Cattle is misplaced because Premium Pork's actions and the actions of the respondent at issue in that case, Schaus, are not alike. According to Excel, Schaus' withdrawal in Live Cattle left a patent appearance of manipulation that required a special departure from the Department's normal practice. Excel states that Schaus submitted a supplemental response that contained substantially revised information on the same day that the preliminary determination was due. Excel further states that Schaus' new information would have resulted in a preliminary antidumping duty rate of over 15 percent had it been used. However, because the Department did not use the new information in its preliminary determination, Schaus' antidumping duty rate was only 5 percent. Nine days after the preliminary determination in Live Cattle, Schaus withdrew from the investigation.

According to Excel, the exclusion of Schaus' rate of 15 percent would significantly distort the all-others rate because the all-others rate was 4.73 percent in Live Cattle. However, in this investigation, Premium Pork's preliminary antidumping duty rate was 15.01 percent, while the all-others rate was 14.06 percent. See Preliminary Determination at 69 FR 61639, 61648. Therefore, Excel contends, there is no basis to find that Premium Pork intended to manipulate the all-others rate or that excluding its preliminary rate from the all-others rate would have a significant impact.

Department's Position:

We disagree with the petitioners that the fact pattern of this case is similar to that of Live Cattle. Therefore, the Department has not used Premium Pork's rate in the calculation of the all-others rate in the final determination.

The record shows that Premium Pork's reason for withdrawing from this investigation is clear: its impending dissolution. In comments filed before the Preliminary Determination, the petitioners acknowledged that Premium Pork was in receivership. The Department announced its Preliminary Determination on October 15, 2004. The Department conducted its verification of Premium Pork in the companion CVD investigation on October 20 and 21, 2004. On October 28, 2004, seven days after the completion of the CVD verification and thirteen days after the Department announced its Preliminary Determination, Premium Pork requested that its antidumping verification take place the week of December 13, 2004, because its "officials were tied up with matters related to the company's liquidation." See October 28, 2004 memorandum to the file. On November 29, 2004, a month and a half after the Preliminary Determination was announced, one month after Premium Pork's request to postpone verification, and two weeks before verification, Premium Pork withdrew from this investigation because, as explained by KPMG, the appointed interim receiver and manager, Premium Pork would "no longer continue integrated operations." See Withdrawal Letter. Further, KPMG explained that "{a}n en bloc sale of the assets was not economically feasible in the circumstances." Id. Thus, the Department finds that the information on the record demonstrates that Premium Pork participated in this investigation up until the point in time when its dissolution was imminent.

Live Cattle involved unique circumstances which compelled the Department to take the unusual step of including a respondent's antidumping duty rate in the all-others rate even though that rate was based on information that was not verified. As evidenced above, the Department finds that the circumstances in this case are significantly different than the unique circumstances of Live Cattle. See Live Cattle at 64 FR 56739, 56741-56745. Thus, we have not included Premium Pork's preliminary rate in the calculation of the all-others rate in the final determination.

Ontario Pork

Comment 5: Monthly Price-Averaging

Ontario Pork's Argument:

Pursuant to section 351.414(d)(3) of the Department's regulations, "when normal values, export prices, or constructed export prices differ significantly over the course of the period of investigation, the Secretary may calculate weighted-averages for such shorter periods as the Secretary deems appropriate." Ontario Pork argues that the facts of this case dictate that the Department use monthly price averaging periods in the margin calculations for the final determination.

Ontario Pork argues that the Department's normal practice with regard to the calculation of dumping margins has been to use an average export price and normal value based on the entire twelve-month POI. However, Ontario Pork argues that the unique circumstances in this case demand that the Department depart from normal practice. According to Ontario Pork, its home market and export sales prices exhibited a pronounced seasonal variation over the course of the POI with prices peaking in the summer months and declining in the winter months. Ontario Pork argues that these variations were parallel in both the U.S. and home markets.

In addition, Ontario Pork states that home market sales volumes remained stable from month to month while its export sales volumes increased dramatically toward the end of the POI. Ontario Pork claims that this was caused by the unexpected closure of one of its Canadian customers. Ontario Pork contends that this event was an external event and outside of its control.

Ontario Pork argues that the confluence of these events, i.e., the seasonal price variations and the unexpected increase in export sales, will distort the dumping margin calculations if the Department uses annual averages in its final margin calculations. Therefore, Ontario Pork argues, the Department should use monthly averaging periods to avoid distorting its dumping margin.

Citing the October 6, 2004, letter that the petitioners filed before the Preliminary Determination, Ontario Pork argues that the petitioners themselves stated that it is within the Department's discretion to use shorter averaging periods where the facts clearly demonstrate that the dumping calculations would be distorted by the use of annual averaging. Ontario Pork then notes that, in the Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from Korea, 64 FR 30664 (June 8, 1999) ("Coils from Korea"), the Department divided the POI into two periods for comparing U.S. and home market prices to account for the precipitous decline in the Korean won. Ontario Pork acknowledges that the facts of Coils from Korea are different from the facts of this case. Nevertheless, Ontario Pork argues that both cases present similar characteristics with respect to the Department's authority and the obligation to use a different averaging period to avoid distortions in the margin calculation.

Ontario Pork argues that the World Trade Organization ("WTO") upheld the Department's general discretion to use shorter averaging periods in the WTO Panel report, United States - Antidumping Measures on Stainless Steel Plate in Coils and Stainless Steel Sheet and Strip WT/DS179/R (December 22, 2000) ("WTO Panel Report"). In Coils from Korea and the Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils from Korea, 64 FR 15444 (March 31, 1999), both of which were before the WTO Panel, the Department justified this bifurcation of the POIs because the significant differences in the normal values and export prices of the different periods rendered them non-comparable. Ontario Pork notes that, in its report, the WTO Panel asserted that fluctuations in normal value and export prices may require the use of multiple averaging periods if they are correlated with fluctuations in volumes between the two markets being compared. Ontario Pork contends that the variations in its U.S. and home market prices and export volumes are precisely the facts that the WTO Panel envisioned when it found that "the use of shorter averaging periods is permissible, indeed is necessary, in order to maintain the 'fair comparison' required under Article 2.4 of the WTO Antidumping Agreement, where differences in volumes over the period of investigation combine with variations in price to distort the calculation of average prices." See WTO Panel Report.

In addition, Ontario Pork argues that the Department's discretion to use shorter averaging periods should not be limited to situations in which external events corrupt the viability of annual average prices. Ontario Pork argues that the Department has used shorter averaging periods despite the absence of external events in past cases, such as the Final Determination of Sales at Less Than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above from the Republic of Korea, 58 FR 15467 (March 23, 1993) and the Preliminary Determination of Sales at Less Than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above from Taiwan, 64 FR 28983 (May 28, 1999). Ontario Pork argues that the Department found monthly average prices to be the most accurate measure of dumping even though price variations in these cases were not attributable to external events, but, rather, were attributable to declining production costs and prices.

Ontario Pork argues that the use of monthly averaging periods, as opposed to weekly or daily periods, ensures that the Department satisfies its legal obligation to avoid distortions in the margin calculations while also avoiding overly burdensome methodologies to achieve this obligation. Ontario Pork argues that the use of monthly averages is a fairly common averaging methodology for the Department. Citing the Final Determination of Sales at Less Than Fair Value: Fresh Roses from Ecuador, 60 FR 7019 (February 6, 1995), Ontario Pork argues that the Department's primary goal in using monthly price averaging, rather than daily averaging periods, was to reduce the burden while still avoiding any distortion of prices that arises through the use of annual averaging periods.

Lastly, citing the petitioners' October 6, 2004, Ontario Pork argues that the use of monthly average prices does not mask dumping or injury caused to the U.S. industry. Claiming that the factual underpinnings of the petitioners' arguments regarding the potential for masked dumping are incorrect, Ontario Pork argues that the monthly-price comparison methodology is not a simple average of the twelve individual monthly margins. Rather, Ontario Pork argues that the monthly averaging methodology contemplates a weighted-average of the monthly margins based on the monthly sales volumes. Ontario Pork argues that this methodology is accurate and should allay the petitioners' concerns about masking dumping.

The Petitioners' Argument:

The petitioners argue that the Department's standard practice is to weight-average normal values and U.S. prices across the entire twelve-month period of investigation. The petitioners acknowledge that it is permissible for the Department to deviate from this standard. However, the petitioners argue, the Department may deviate from this standard only when normal values, export price, or constructed export prices differ significantly over the course of the period of investigation or review. The petitioners claim that the Department rarely deviates from this practice and requires the factual elements of a case to clearly demonstrate that the dumping calculations would be distorted by the use of annual averaging to do so. The petitioners contend that Ontario Pork failed to demonstrate that such exceptional circumstances exist in this case and, therefore, urge the Department not to use shorter period averages in the margin calculations for the final determination.

The petitioners argue that Ontario Pork failed to provide a valid explanation of why a monthly averaging methodology is more effective at minimizing margin distortions than other alternatives, such as semi-annual, quarterly, weekly, or daily price averaging. The petitioners submit that Ontario Pork's advocation of a monthly methodology seems to contradict its allegation earlier in this proceeding that its pricing formula is tied to daily market price benchmarks. According to the petitioners, Ontario Pork's claimed pricing formula dictates the use of a daily pricing average, rather than a monthly pricing average.

In Coils from Korea, the petitioners argue, the Department deviated from its normal practice to take into account the impact of one significant event on all prices during the POI. The petitioners claim that Ontario Pork failed to provide substantive evidence in this case that a similarly significant external event commands a monthly price averaging period, rather than the normal annual period.

The petitioners claim that Ontario Pork's pricing data illustrates that prices vary on many bases, including annual, semi-annual, quarterly, weekly and daily. Therefore, the petitioners argue, Ontario Pork's claim that consistent monthly price trends justify the use of monthly price averages is not reason enough for the Department to deviate from its normal practice. Furthermore, the petitioners state, Ontario Pork's assertion regarding price trends is not accurate in and of itself. Specifically, the petitioners argue that the direction of these price trends did not always remain consistent in that price changes in some months of the POI were similar while price changes diverged significantly in other months. See February 4, 2005 letter from the petitioners to the Department entitled "Live Swine from Canada: Waiver of Business Proprietary Treatment." Therefore, the petitioners contend that Ontario Pork's pricing practices do not support its argument that sales prices in both markets were strictly "tied to the daily hog prices" such that the use of the Department's normal practice with regard to yearly price averaging would be improper.

The petitioners also claim that Ontario Pork's argument that the Department's normal practice with regard to price averaging would skew the distribution of relative sales volumes throughout the period and corrupt the Department's margin calculations is evidence of Ontario Pork's effort to gain a more favorable final dumping margin. The petitioners argue that Ontario Pork's pricing data illustrates that home market sales volumes remained steady throughout the POI despite the sharp increase in the U.S. market sales volumes. The petitioners submit that this increase in U.S. sales volume was accompanied by a corresponding decrease in the average monthly U.S. price resulting in a dumping margin. The petitioners argue that Ontario Pork failed to demonstrate how an alternative price averaging methodology, namely monthly price averaging, would more accurately measure the degree of price discrimination during the POI.

The petitioners claim that, while the Department has discretion to deviate from its normal practice with regard to the price averaging period, it should only do so if there are specific, clear reasons or events that cause significant price deviations over the period of investigation. The petitioners argue that no such reason or event exists in this case. As a result, the petitioners submit that there is no compelling reason for the Department to deviate from its standard averaging methodology. Therefore, the Department should apply its normal period averaging methodology for purposes of the final determination.

Department's Position:

The Department has continued to apply its standard antidumping margin calculation methodology in this case, using POI averages to calculate the overall weighted average dumping margin for Ontario Pork. Ontario Pork's request to use a shorter averaging period appears to have been prompted the fact that one of its home market customers closed during the POI. This closure led Ontario Pork to redirect sales that would have gone to this Canadian customer to the United States. This occurred at a time when hog prices were relatively low when compared to other parts of the year. For the reasons explained below, we do not agree that we should depart from our long standing practice of using annual averages to address a situation where a company decides to increase sales to the United States to compensate for lost business in its home market.

The statute and regulations express a preference for price comparisons between the U.S. price and the home market price based on weighted-average, aggregate prices for comparable merchandise over the year-long period of investigation. See Section 771A(d)(1)(A) of the Act; 19 CFR 351.414(d). Commerce has the authority, however, to use an averaging period shorter than the entire period of investigation if it finds that significant differences in prices over the POI would lead to a distorted dumping margin in a given case. The regulations provide that Commerce may "calculate weighted averages for such shorter period as the Secretary deems necessary" when "normal values, export prices, or constructed export prices differ significantly over the period of investigation or review." See 19 CFR 351.414(d)(3).

The Department's practice has been to use averaging periods of less than one year only when the-the comparisons may be distorted because general price levels change in a way that renders prices at one part of the period of investigation not equivalent to other prices for the same merchandise at other parts of the period of investigation. Examples of this type of distortion are dramatic exchange rate variations. In Coils from Korea, for instance, the Department elected to use multiple averaging periods when a major currency devaluation rendered pricing information from different time periods during the overall period of investigation inappropriate for weight averaging. ("[I]n the last five months of the POI, NV (in dollars) differed significantly from NV earlier in the POI, due primarily to the underlying dollar value of the won...consequently, it is appropriate to use two averaging periods to avoid the possibility of distortion in the dumping calculation"), Stainless Steel Sheet and Strip in Coils from Korea, 64 FR 30664, 30676 (June 8, 1999); see also Final Determination of Sales at Less Than Fair Value: Emulsion Styrene Butadiene Rubber from Korea, 64 FR 14865 (March 29, 1999). Similarly, in Dynamic Random Access Memory Semiconductors, the Department found that due to sharply declining prices over the period of investigation, the use of monthly average prices was more appropriate than annual averages. See Dynamic Random Access Memory Semiconductors at 58 FR 15467, 15476 (March 23, 1993). In contrast, the Department declined to use shorter averaging periods in the Notice of Final Determination of Sales at Less Than Fair Value: Certain Polyester Staple Fiber From the Republic of Korea, 65 FR 16880 (March 30, 2000) at Comment 3, stating, among other things, that "we were seeking to examine whether there was an overall general trend in prices of all subject merchandise sold by the respondents" and "price changes during the POI were neither significant nor consistent."

In this case, Ontario Pork does not argue that some aspect of the prices from certain time periods render them not appropriate to average with prices from different times during the period of investigation. It also does not argue that the different time periods should be used due to the seasonality of the subject merchandise. Instead, Ontario Pork argues that the decision by the company to divert significant quantities of the subject merchandise to the United States towards the end of the period of investigation (a time of year when hog prices are typically relatively low) resulted in a weighted average U.S. price that was excessively weighted with low-priced sales. Ontario Pork characterizes this phenomenon and its impact on the weighted average dumping margin as 'distortive.' We disagree.

It is an inherent characteristic of weighted-average dumping margins that they will tend to give greater weight to particular transactions or time periods with greater volumes. The effect can be to either increase or decrease the overall dumping margin, depending on the facts in a given case. This phenomenon reflects the very nature of weighted averages. In many cases, the use of weighted averages in investigations means that low export prices for large numbers of dumped transactions in one month are offset by the value of a small number of high value transactions in another month in calculating an overall weighted average margin of dumping. In such cases, the use of annual weighted averages tends to depress the overall margin of dumping. But the Department does not treat this depressive effect as a "distortion" to be corrected in the weighted average dumping margin.

Moreover, the facts that led the Department to depart from its normal practice of using annual averages in Coils from Korea, for example, are significantly different from the facts of this case. In Coils from Korea, the Department used two averaging periods because of a major, external macroeconomic event that affected the appropriateness of using period-wide averages: the precipitous decline in the value of the Korean won. In this case, however, the event at issue here is the closure of Ontario Pork's customer and Ontario Pork's business decision to divert sales to the United States.

Consequently, the Department finds that the use of shorter averaging periods is not called for in this case. Ontario Pork has not demonstrated that the prices of the subject merchandise are not appropriate for use in a weighted average, such that a departure from the Department's normal practice in investigations of using of annual averages to calculate the weighted average dumping margin is appropriate. We find that the circumstances of this case do not compel the Department to depart from our normal practice.

Comment 6: Advertising Expenses

Petitioners' Argument:

The petitioners argue that the Department should treat Ontario Pork's reported advertising expenses as indirect selling expenses because they do not meet the Department's requirements for treatment as direct selling expenses. Citing the standard antidumping duty questionnaire, the petitioners assert that respondents must substantiate that the expenses in question are directly related to the sales of the subject merchandise and are variable in nature for the Department to treat them as direct expenses. The petitioners contend that Ontario Pork failed to meet these requirements for its advertising expenses because the expenses were fixed in nature in that Ontario Pork would have incurred these expenses regardless of how many slaughter hogs it sold during the POI.

The petitioners argue that, if the Department finds that the advertising expenses are direct selling expenses, the Department should apply the same expenses to both U.S. and home market sales because the expenses relate to both markets, not just the home market. For instance, the petitioners assert that Ontario Pork's website expenses are clearly not related to just home market sales, which

Ontario Pork admitted at the sales verification.

Ontario Pork's Argument:

Ontario Pork argues that the Department's established practice is to treat advertising expenses as direct selling expenses when 1) advertising is directed toward the customer's customer and, 2) when advertising is directly related to the product under investigation. Ontario Pork argues that the degree to which the expenses are directly related to the product under investigation determines whether the Department will consider the expenses direct or indirect regardless of whether the expenses are fixed or variable. Ontario Pork asserts that the Department rejected arguments that were similar to the petitioners' in the Final Determination of Sales at Less Than Fair Value: New Minivans from Japan, 57 FR 21937 (May 26, 1992) ("New Minivans from Japan"). Ontario Pork cites New Minivans from Japan where the Department found that, "{u}ltimately, when the money is spent, the advertising is product-specific and directed at the customer's customer. Therefore, the two conditions under which the Department considers advertising to be direct have been met."

Ontario Pork contends that its home market advertising expenses pass the Department's two-pronged test. First, Ontario Pork argues that the activities funded by its advertising expenditures clearly targeted its customer's customer in Canada, a fact that the petitioners do not contest. Second, Ontario Pork contends that all of its advertising expenses were directly related to the products under investigation because it only sells market hogs. Ontario Pork further argues that the petitioners' arguments concerning access to its website are without merit because the Department verified that, "the website and various distribution materials. . . targeted Canadian markets." See Verification Report at page 26.

Citing the Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy, 61 FR 30326 (June 14, 1996); Final Results of Antidumping Administrative Review: Color Television Receivers, Except for Video Monitors, from Taiwan 58 FR 34415 (June 25, 1993); and New Minivans from Japan, Ontario Pork argues that its advertising expenditures are consistent with those that have been accepted by the Department as direct advertising expenses in past cases. Further, Ontario Pork argues that the Department confirmed that its advertising expenses targeted Canadian customers. See Verification of the Sales Response of the Ontario Pork Producers' Marketing Board in the Antidumping Duty Investigation of Live Swine from Canada, dated January 18, 2005, ("Ontario Pork Sales Verification Report") at page 26.

Ontario Pork states that it could not guarantee that certain advertising programs would not be viewed by U.S. customers. However, Ontario Pork argues that this fact is irrelevant to the determination of whether to apply direct selling expenses to U.S. or home market sales. Ontario Pork argues that the Department must focus on where Ontario Pork directed the advertising in determining the market to which advertising expenses should be allocated.

Accordingly, Ontario Pork argues that the it properly reported its advertising expenses as direct selling expenses and allocated these expenses to the home market only. Therefore, the Department should continue to consider advertising expenses as direct selling expenses and allocate these expenses to only home market sales in its final determination calculations.

Department's Position:

We agree with Ontario Pork that the advertising expenses in question were direct selling expenses and targeted at the customer's customer. However, we agree with the petitioners that certain advertising expenses were not solely related to the home market.

The Department's normal practice with regard to determining whether advertising expenses are direct or indirect selling expenses is to apply a two-pronged test. First, the Department must determine if the advertising expenses are directed at the customer's customer. Second, the Department must determine if the advertising expenses are related specifically to sales of the subject merchandise. See Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils from Japan 64 FR 30574 (June 8, 1999).

At verification, we reviewed the kinds of advertising expenses included in Ontario Pork's sub-accounts for the Consumer Marketing Department. We requested Ontario Pork to provide evidence that the types of activities included in these sub-accounts were directed at the customers' customer and were related to sales of the subject merchandise. We confirmed that Ontario Pork's reported advertising expenses were directed at the customer's customer and related specifically to the subject merchandise. See Ontario Pork Sales Verification Report at pages 25-26. Therefore, we will continue to treat the advertising expenses as direct expenses.

However, as noted in the Ontario Pork Sales Verification Report, Ontario Pork officials could not confirm that certain advertising activities were only related to sales of the merchandise under review in the home market. See Ontario Pork Sales Verification Report at page 26. Therefore, for the final determination, we allocated the costs associated with those advertising activities to both U.S. and home market sales. See March 4, 2005, Memorandum from Team to File entitled "Final Determination Calculation Memorandum for Ontario Pork Producers' Marketing Board" ("Ontario Pork Calc Memo").

Comment 7: Bank Charges

The Petitioners' Argument:

The petitioners argue that the Department should continue to include the direct selling expense related to bank charges incurred on U.S. sales in the margin calculation because Ontario Pork failed to meet the statutory provision that requires respondents to submit all data prior to verification. In addition, the petitioners argue that Ontario Pork failed to justify excluding this expense because it appears that Ontario Pork did incur bank charges on some U.S. sales. Furthermore, the petitioners argue that Ontario Pork's attempts to remove the reported expense from the margin calculation at verification constitutes a major, not a minor, correction to Ontario Pork's reported sales file and is an attempt to manipulate the statutory process of this proceeding.

Ontario Pork's Argument:

According to Ontario Pork, the petitioners' allegation that its minor correction is an attempt to manipulate the statutory process is misguided. Ontario Pork asserts that the amounts reported were not, in fact, bank charges. Rather, Ontario Pork argues that it reported the direct selling expense to account for differences between the invoiced sales value and the accounting records. Ontario Pork argues that, as the Department verified, the discrepancy was due to a lag in the accounting process. Further, Ontario Pork argues that the discrepancy was reconciled at verification.

Ontario Pork argues that the essential issue for the Department at verification was whether Ontario Pork could successfully reconcile the difference between invoiced and paid amounts. Ontario Pork argues that the Department confirmed that Ontario Pork reconciled the values through completeness tests of Ontario Pork's reported sales quantity and value and pre-selected sales traces. Therefore, the Department should not include the bank charges in its margin calculations for the final determination.

Department's Position:

We agree with Ontario Pork. At verification, we conducted multiple completeness tests in which we traced the quantity and value of specific sales transactions from the original entry of the transaction to the HAMS database and to the "settlement" of these transactions in Ontario Pork's accounting system. See Ontario Pork Sales Verification Report at pages 11-13. By doing so, we verified that the discrepancy between invoiced and paid amounts was a result of a lag in the accounting process and not related to bank charges, as was originally reported. Therefore, we did not include this direct selling expense in the margin calculations for the final determination.

Comment 8: Credit Expenses

The Petitioners' Argument:

The petitioners argue that Ontario Pork employed short-term borrowing rates using two different bases to calculate imputed credit expenses. The petitioners state that Ontario Pork used average monthly interest rates for home market sales and quarterly values for the U.S. market. To maintain accuracy and fairness, the petitioners argue that the Department should use the average POI prime interest rate published by both the United States' and Canada's central banks to calculate imputed credit expenses for the final determination.

Ontario Pork's Argument:

Ontario Pork argues that the Department confirmed at verification that Ontario Pork did not have any short-term borrowing in either the U.S. or home markets during the POI. Thus, in accordance with the Department's normal practice and longstanding policy, Ontario Pork contends that it used the quarterly average short-term lending rates during the POI for commercial and industrial loans maturing between one month and one year, as published by the U.S. Federal Reserve Board. To support its assertion, Ontario Pork cites the Import Administration Policy Bulletin 98.2: Imputed Credit Expenses and Interest Rates, dated February 23, 1998 ("Policy Bulletin 98.2").

Department's Position:

We agree with Ontario Pork that it calculated imputed credit expenses in accordance with the Department's policy. Ontario Pork reported, and we verified, that it did not have any short-term borrowing during the POI. See Ontario Pork's Sales Verification Report at page 24. In cases in which the respondent does not have short-term loans, the Department uses publicly available information to establish a short-term interest rate applicable to the currency of the transaction. For U.S. transactions, the Department will generally use publicly available weighted-average short-term lending rates for commercial and industrial loans maturing between one month and one year from the time the loan is made, as published by the U.S. Federal Reserve Bank, in calculating imputed credit expenses. See Policy Bulletin 98.2. For home market transactions, the Department relies on publicly available information that is reasonable, readily obtainable, and representative of usual commercial behavior. Id.

For U.S. transactions, Ontario Pork calculated its imputed credit expenses using quarterly data from the Federal Reserve, in accordance with Policy Bulletin 98.2. See Ontario Pork's Sales Verification Report at page 24. For home market transactions, Ontario Pork calculated its imputed credit expenses using average monthly values as reported by the Royal Bank of Canada. Id. at page 24. As recognized in Policy Bulletin 98.2, "it is not possible to develop a single consistent policy for selecting a surrogate interest rate when a respondent has no short-term borrowings in the currency of the transaction." The Department finds no reason to reject the interest rates used by Ontario Pork in its credit calculations because (1) the U.S. interest rate used was in accordance with the Department's stated policy for U.S. currency transactions and (2) the home market interest rate was reasonable, readily obtainable, and representative of usual commercial behavior. Further, the petitioners offer no evidence to the contrary.

Comment 9: Freight Expenses

The Petitioners' Argument:

The petitioners argue that Ontario Pork manipulated the verification process by failing to provide an explanation as to why its original data concerning freight expenses was not accurate. The petitioners argue that Ontario Pork made extensive, highly-specific revisions to its reported freight expenses at verification based on alleged miscalculations. Accordingly, the petitioners argue, the Department should reject Ontario Pork's verification revisions to its reported transportation costs for its U.S. and home market sales.

Ontario Pork's Argument:

Ontario Pork argues that the Department confirmed at verification that Ontario Pork fully explained the minor correction to freight expenses. Ontario Pork contends that the minor correction was caused by an error in the program Ontario Pork used to link its transportation expenses to ceratin sales transactions in the U.S. and home markets. Ontario Pork argues that the Department confirmed both the trivial nature of the error made by Ontario Pork and the impact that correction for this error had on its reported freight expenses by tracing the freight amounts for each transaction selected to the HAMS database and the financial accounting systems. Moreover, Ontario Pork argues, the Department conducted tests on Ontario Pork's methodology for linking transportation payments to the reported sales transactions through completeness tests and noted no discrepancies. Therefore, Ontario Pork argues that the Department should accept Ontario Pork's minor correction to its reported freight expenses.

Department's Position:

We agree with Ontario Pork that the minor corrections to its reported freight expenses are appropriate. At verification, we selected several of the freight transactions in question. We traced the revised freight amounts to hog manifests, producer receipts, and to the HAMS database. We confirmed the revised value for each transaction was accurately reported. See Ontario Pork's Sales Verification Report at page 2.

Moreover, at our request, Ontario Pork explained how it identified the transactions for which it incurred inland freight expenses as well as the calculation methodology it used to allocate those expenses to the appropriate transactions. To test this methodology, we selected several invoices related to transactions made during the POI and conducted completeness tests. We traced the number of hogs and expenses reported for these transactions to the appropriate hog manifests, producer receipts, and to the HAMS database and the accounting system. See Ontario Pork's Sales Verification Report at page 21.

We confirmed that this minor correction was due to a programming error and that the correction for this error resulted in very minor changes to the reported sales listing. See Ontario Pork's Sales Verification Report at Exhibit 1. Therefore, we have included Ontario Pork's reported minor corrections with regard to freight expenses in our final determination margin calculations.

Ontario Pork Farm A

Comment 10: Cost of Feed

Ontario Pork's Argument:

Ontario Pork states that the Department should not include the cost of the barley corn and soy meal purchased prior to the POI in Farm A's inventory at the beginning of the POI. Ontario Pork contends that the evidence on the record demonstrates that the barley corn and soy meal at issue could not have been in Farm A's feed inventory at the beginning of the POI. Furthermore, Ontario Pork argues that Farm A accurately estimated its beginning and ending inventory for 2003, thereby properly reporting the cost of hog feed for the POI.

Ontario Pork states that the record shows the barley corn and soy meal costs at issue were incurred in 2002, prior to the POI. Ontario Pork points out that Farm A mistakenly reported these amounts in its submissions as feed costs in the POI. However, this error was corrected in the minor corrections presented to the Department on the first day of the cost verification. Ontario Pork contends that the absence of beginning balances of these types of feed in 2003 in Farm A's normal books and records is accurate and is corroborated by evidence of deliveries of significant stocks of barley, corn and soy meal within days of the start of 2003. Ontario Pork referenced feed invoices provided at the cost verification showing a delivery of barley corn on January 2, 2003, and a delivery of soy meal on January 10, 2003. Ontario Pork asserts that Farm A would not have required deliveries of barley corn and soy meal so early in the POI if it retained significant feed stocks in inventory at the beginning of the year. Further, Ontario Pork points out that in the schedule of Farm A's feed purchases for 2003, it is evident that in December 2003 Farm A paid its main feed supplier for November and December 2003 deliveries. Ontario Pork states that the quantity of these deliveries is consistent with the existence of an inventory balance of barley corn as of December 31, 2003. From this information, Ontario Pork infers that because the value of barley corn delivered in December 2002 was one-third of the value of the barley corn delivered in November and December 2003, the amount delivered in December 2002 must have been consumed in 2002 and, therefore, was not available for consumption during the POI.

Additionally, Ontario Pork asserts that the petitioners misstated the Department's findings in its verification report. Ontario Pork states that the Department never found that the 2002 deliveries of feed stock were not consumed in 2002, nor did the Department find that Farm A should have accounted for those deliveries as part of beginning inventory. Ontario Pork argues that the petitioners have presented no evidence to question the accuracy of Farm A's normal accounting records and, therefore, the Department should rely on those records in the calculation of the reported costs.

The Petitioners' Argument:

The petitioners argue that the Department should include in Farm A's costs for the POI the entire amount of barley corn and soy meal delivered in December 2002 and paid for in January 2003. The petitioners contend that even though the barley corn and soy meal were delivered in 2002 they were not consumed until 2003 and should be included in Farm A's beginning feed inventory for the POI and accounted for as part of Farm A's feed costs during the POI. The petitioners point out that the deliveries Ontario Pork mentions in its case brief occurred on January 2, 2003, for barley corn and January 10, 2003, for soy meal. The petitioners assert that, at a minium, the barley corn used to feed the hogs on January 1, 2003, and the soy meal used from January 1 to 10, 2003, had to be from barley corn and soy meal purchased in 2002 and placed in inventory by Farm A. The petitioners state that Farm A's assertions regarding its beginning inventories of feed and its January 2003 purchases are not consistent with the quantity of feed it purchased in November and December 2002 and throughout the rest of 2003.

Department's Position:

We agree with Ontario Pork in part. Section 773(f)(1)(A) of the Act states that costs shall normally be calculated based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the GAAP of the exporting country and reasonably reflect the costs associated with the production and sale of the merchandise. Based on our analysis of Farm A's deliveries of barley corn during January 2003, the deliveries of barley corn made in December 2002 were consumed in December 2002. We reached this conclusion by analyzing the record evidence related to Farm A's total purchases and monthly consumption of barley corn. In addition, we reviewed Schedule 2 of Farm A's 2003 Canadian Agricultural Income Stabilization Program ("CAIS") application, see the Memorandum to Neal M. Halper, "Verification Report on the Cost of Production and Constructed Value Data Submitted by the Cost Respondent, Farm A" dated January 14, 2005 ("OP Farm A Cost Verification Report") at CVE 14, and noted that it had reported an inventory for barley corn consistent with Farm A's books and records. Therefore, we determined that the inventory amounts for barley corn recorded in the ledger reasonably reflect Farm A's barley corn feed costs for the POI.

For soy meal, we compared the inventory balance in Farm A's books and records to the inventory records reported in Schedule 2 of Farm A's 2003 CAIS application. In the CAIS application, Farm A reported a larger inventory of soy meal on hand at the beginning of the POI than it recorded in its books and records. We also did the same analysis of the total purchases and monthly consumption for soy meal and determined that the beginning inventory balance reported in the CAIS application appeared reasonable. Finally, the soy meal inventory balance from the CAIS application is consistent with the fact that the first January 2003, delivery of soy meal to Farm A did not occur until January 10.

As such, the record evidence shows that a portion of the deliveries of soy meal made in December 2002 were consumed during the POI. Therefore, for the final determination, we relied on the inventory values for soy meal reported in the CAIS application and adjusted the reported costs accordingly.

Comment 11: Imputed Labor Costs

Ontario Pork's Argument:

Ontario Pork states that the Department should not increase Farm A's imputed labor costs based on the labor costs published in the Manitoba Agriculture Report. Ontario Pork argues that the labor rates from the Manitoba Agriculture Report are inappropriate because they reflect a different region of the country and the labor categories in the survey are not as comparable as the imputed labor rates submitted by Farm A. Ontario Pork contends that the imputed labor rates reported by Farm A reasonably reflect the cost of comparable labor for farms in Ontario. Further, Ontario Pork points out that in its analysis of Farm A's labor costs, the Department, for the preliminary determination, only compared Farm A's imputed labor costs to the total labor costs based on the Manitoba Agriculture Report. However, if the Department compared Farm A's total labor costs, which included the part-time labor costs plus the imputed labor costs, to the total labor costs from the Manitoba Agriculture Report, the costs would be virtually identical and no adjustment would be necessary.

Further, Ontario Pork states that the Department made an error in the preliminary determination when it used the Manitoba Agriculture Report results published in February 2002. Ontario Pork argues that if the Department continues to use the Manitoba Agriculture Report as a benchmark, it would be more appropriate to use the results published in April 2004 as a benchmark for labor costs incurred during the POI.

The Petitioners' Argument:

The petitioners state that the Department should adjust Farm A's imputed labor costs to reflect the amounts in the Manitoba Agriculture Report. The petitioners argue that the Manitoba Agriculture Report is a better source for Farm A's labor cost because the amounts were specific to hog production, whereas the Statistics Canada data used by Ontario Pork was for labor for general farm operations. In addition, because Ontario and Manitoba are simply two separate provinces in a highly commercialized economy with few restrictions on the free flow of labor, the petitioners conclude that it is reasonable for the Department to rely on the Manitoba Agriculture Report as a source for the calculation of Farm A's labor costs in the final determination.

Department's Position:

The owner-operator of Farm A did not receive wages for his labor and management of farm operations. Also, much of the farm labor was performed by other family members and no compensation was recorded. Farm A did not have records documenting all of the tasks performed on the farm and the amount of time spent on each. Therefore, Farm A reported an imputed labor cost based on a Statistics Canada Survey that reported 2003 average hourly labor rates, the average number of hours worked on a farm per week in Ontario, and the actual wages paid to a part-time worker. The owner-operator of Farm A estimated the time spent working on each of his farm's operations (i.e., swine, crops, livestock) and used these estimates to allocate the imputed labor costs to each farm operation. It must be noted, however, that the total reported labor costs for Farm A cannot be tied to its books and records and the estimated hours worked on the farm are unverifiable.

Lacking cost records and recognizing that the majority of the labor costs were imputed amounts based on estimates, we tested the reasonableness of Farm A's estimated cost of labor for producing swine. Specifically, we used the Manitoba Agriculture Report, published in April 2004, as a benchmark.[3] As noted by the petitioners, the cost of labor in the Manitoba Agriculture Report is specific to hog production. Accordingly, the labor cost on the Manitoba Agriculture Report serves as a reasonable benchmark to compare to the labor cost reported by Farm A for its hog operations. Based on this comparison, we determined that Farm A's reported labor cost was reasonable.

We have used the Manitoba Agriculture Report published in April 2004, as suggested by Ontario Pork because it is based on 2003 information and, hence, contemporaneous with our POI. Despite Ontario Pork's claim that the Manitoba Agriculture Report is not representative of labor costs for operations in Ontario, there is no evidence on the record to indicate that the labor costs differ based on the province.

Comment 12: Cost of Breeding Stock

Ontario Pork's Argument:

Ontario Pork argues that the Department made an error in implementing the methodology used in the preliminary determination to capitalize and amortize Farm A's breeding stock. Specifically, Ontario Pork states that the Department failed to adjust Farm A's market hog production costs to account for the replacement gilts that were transferred from Farm A's market herd to its breeding stock during the POI.

[3] It is also appropriate to test the imputed value for owner- and family-provided labor, because this value is effectively a transfer price. See section 773(f)(2) of the Act.

The Petitioners' Argument:

The petitioners refute Ontario Pork's argument that the Department's preliminary cost calculations failed to adjust Farm A's hog production costs for the transfers of replacement gilts from the market herd to breeding stock. Instead, the petitioners assert that the Department's productive asset valuation accounted for the total cost of breeding stock, including the transferred gilts, through the use of the average POI sow inventory. The petitioners contend that the use of an average incorporates both the transfers in and out of inventory during the POI. Thus, the petitioners argue that an additional deduction for the cost of the transferred gilts would double count the value of breeding stock and understate the cost of market hogs. The petitioners also point out that Ontario Pork calculated the cost of Farm A's replacement gilts using the average unit sow price rather than the reported per-unit cost of manufacturing for market hogs.

Department's Position:

We agree with Ontario Pork that the Department made an error in the preliminary determination by failing to properly account for the replacement gilts that were transferred from Farm A's market herd to its breeding stock during the POI. In the preliminary determination, the Department calculated the cost of the average number of sows held in inventory during the POI by multiplying Farm A's average purchase price of sows during the POI by the average number of sows held in inventory. However, we agree with Ontario Pork that this methodology overstates the cost of sows held in inventory because a portion of those sows were self-produced and transferred from Farm A's market hog inventory and not purchased. Thus, when calculating the amount that should be capitalized and amortized for Farm A's breeding stock, the self-produced sows should be valued at the cost of producing the productive assets, not the purchase price. As such, for the final determination, we have valued the number of sows transferred from Farm A's market herd to its breeding stock at the cost of producing the sows during the POI. We then revised the amortization costs. <u>See</u> Memorandum to Neal M. Halper, "Final Determination Cost Calculation Memorandum for Ontario Pork Producers Marketing Board," dated March 4, 2003 ("<u>Ontario Pork Final Calculation Memorandum</u>").

Comment 13: Denominator Used for the General and Administrative Expense Ratio

Ontario Pork's Argument:

Ontario Pork argues that the Department should not reduce the cost of sales used in the denominator of the G&A and interest expense ratio calculations by the proceeds received by Farm A from the sales of culled sows and boars. Ontario Pork contends that in the preliminary determination, the Department double counted the impact of the breeding stock salvage value for Farm A. First, Ontario Pork notes that the Department deducted the estimated salvage value of the culled sows and boars from the amount capitalized and then amortized the net amount over the productive life of the animals. Second, Ontario Pork states that the salvage value of culled sows and boars was used to reduce the cost of sales in calculation of the amount of the G&A and interest expense ratios. Alternatively, Ontario Pork states that the Department could have capitalized and amortized the full amount of Farm A's breeding stock (without a deduction for the salvage value), which would have resulted in a higher amortization expense being included in the cost of goods sold, and then deducted from the cost of goods sold the amount of any proceeds received during the POI from the sale of culled sows and boars.

The Petitioners' Argument:

The petitioners deny Ontario Pork's claim that the Department overstated Farm A's G&A and financial expense rates in the preliminary determination by deducting the salvage value of culled breeding stock from the cost-of-sales denominator used in the calculations. While acknowledging that the Department did account for salvage value in their productive asset methodology, the petitioners insist that because Farm A's financial statements, the source for the denominators used in the G&A and financial expense rate calculations, did not account for salvage value, it is reasonable for the Department to adjust the denominator for the sales of culled breeding stock. Therefore, in the final determination, the petitioners urge the Department to deduct the salvage value of breeding stock from the denominators used in the G&A and financial expense rate calculations.

Department's Position:

We agree with Ontario Pork. The Department's practice is to adjust the cost of goods sold used in the denominator of the G&A, financial expenses, and Net Income Stabilization Act ("NISA") offset rate calculations to attain symmetry between the COGS denominator used to calculate these rates and the reported COM to which it was applied. <u>See</u> <u>Final Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils From Mexico</u>, 70 FR 3677, 3679 (January 2005). The salvage value of the breeding stock was deducted from the average cost of the breeding stock in order to calculate the net cost of the breeding stock to be capitalized and amortized. We agree with Ontario Pork that the salvage value of culled sows and boars is accounted for in the cost of sales by the reduction of the amount of current amortization expense. Therefore, for the final determination, we have adjusted the COGS denominator so as to not double-count the salvage value.

Comment 14: Breeding Stock Salvage Value

The Petitioners' Argument:

The petitioners argue that the Department incorrectly calculated the salvage value for sows and boars during the POI. The petitioners state that the Department calculated the salvage value of sows and boars in breeding stock by multiplying the average number of total sows and boars in breeding stock during the POI by the average sales price of the sows and boars sold during the POI. The petitioners contend that because a breeding sow will be sold only once in three years and a breeding boar will be sold only once every two to three years, the Department's methodology double or sometimes triple counted the salvage value for breeding stock that would be used to offset costs each year. The petitioners argue that the Department should correct its methodology of computing the salvage value, and only calculate salvage value for those sows and boars sold in the current year.

Ontario Pork's Argument:

Ontario Pork points out that the petitioners' argument ignores fundamental accounting practices. Ontario Pork asserts that the Department acted in accordance with normal accounting practices by deducting the estimated salvage value of the sows and boars from the total capitalized costs before calculating the amortization expense. Ontario Pork asserts that the Department's methodology does not deduct the same salvage value in each year of the sows and boars' useful lives, but rather deducts the salvage value from the amount of sow and boar costs capitalized in the POI.

Department's Position:

We agree with Ontario Pork that the methodology the Department used to calculate the amortizable value of breeding stock does not double or triple count the salvage value of the breeding stock and is consistent with normal accounting practices. Salvage value is the estimated amount that will be received at the time the breeding stock is sold or removed from service. It is the amount to which the asset must be written down or amortized during its useful life. See Kieso & Weygandt, *Intermediate Accounting* (John Wiley & Sons, Inc, 1995), eighth edition, page 529. To calculate the amortization expense on the breeding stock, we calculated the average cost of the herd, as discussed in Comment 12 above, then deducted the estimated salvage value of the herd, and amortized the remaining net amortizable value over the productive useful life of the assets. The salvage value is included only once to calculate the net amortizable value of the asset which is then spread over the useful life of those assets. Thus, only a portion of the net amortizable cost (i.e., cost less salvage value) is recognized in the POI.

Comment 15: Sows Supplied by Affiliates

The Petitioners' Argument:

The petitioners contend that the Department should apply the major input rule in valuing the sows Farm A received from affiliated parties in accordance with 19 CFR 351.407(b). The petitioners state that Farm A purchased sows for breeding from an affiliated party. The petitioners maintain that these transactions were not reported at arm's-length prices and should be adjusted to the higher of the affiliated parties' costs, transfer prices or market values. The petitioners suggest using a market price for sows from the Manitoba Agriculture Report.

Ontario Pork's Argument:

Ontario Pork argues that there is no evidence to support the petitioners' assertion that the market price in the Manitoba Agriculture Report is comparable to the market price for breeding sows in Ontario. Furthermore, Ontario Pork contends that the price Farm A reported for its purchased sows included a premium over the market price for market hogs at the time the sows were purchased. Therefore, the Department should not make an adjustment to the reported purchase price Farm A paid for the sows it purchased from an affiliate.

Department's Position:

We have determined that sows should not be treated as a major input in the production of the subject merchandise due to the insignificant quantity of sows purchased from an affiliate of Farm A. Instead, we have applied section 773(f)(2) of the Act (i.e., transactions-disregarded rule) rather than section 773(f)(3) of the Act (i.e., the major-input rule) to the transactions between Farm A and its affiliated supplier for the final determination.

Section 773(f)(2) of the Act provides that the Department may value minor inputs obtained from affiliated parties at the higher of the transfer or market price. Because neither Farm A nor the other cost respondents for Ontario Pork made purchases of sows from an unaffiliated party during the POI, we relied upon the weighted-average sow purchase price from unaffiliated suppliers from the cost respondents of Excel, another respondent within this proceeding. Therefore, for the final determination, we valued the sows Farm A purchased from its affiliate at the higher of Excel's market price or Farm A's reported transfer price.

The information from the Manitoba Agriculture Report related to sow purchases is not on the record in this proceeding. Thus, the sow purchase price for the other cost respondents provides the best measure of a market price for sows.

Comment 16: Hogs Used for Personal Consumption

The Petitioners' Argument:

The petitioners state that the Department should not include the hogs slaughtered and used for personal consumption in the calculation of Farm A's unit cost of production. The petitioners argue that the hogs consumed for personal use did not generate any revenue; therefore, the costs of producing those hogs should be absorbed by the hogs that were sold and generated revenue for Farm A. The petitioners assert that a hog slaughtered for personal use is in no way different from a pig that died from natural causes and is, therefore, not marketable and did not generate revenue for Farm A's hog operations. Alternatively, if the Department continues to calculate a cost for the hogs consumed for personal use, the petitioners contend that the cost of hogs consumed for personal use should be treated like free samples provided by producers in order to promote their products. The petitioners note that in such instances, the Department normally includes the cost associated with free samples as part of the respondent's indirect selling or G&A expenses, see Notice of Final Determination of Sales at Less Than Fair Value: Certain Color Television Receivers from Malaysia, 69 FR 20592 (April 16, 2004) ("CTVs Final Determination"), and accompanying Issues and Decision Memorandum (April 16, 2004) ("CTVs Final Decision Memorandum"). Finally, the petitioners contend that the cost of the hogs consumed for personal use could also be considered a payment-in-kind to the owners of Farm A.

Ontario Pork's Argument:

Ontario Pork states that Farm A incurred the same costs to produce the hogs consumed for personal use from farrowing to nursing to finishing as incurred for the market hogs sold. Therefore, Farm A should allocate the same costs to those hogs as it allocated to its market hogs. Ontario Pork argues that these hogs did not die before reaching slaughter weight and were part of Farm A's total production quantity for the POI. Further, Ontario Pork asserts that if the Department allocates costs to these hogs and treats the cost as a form of payment-in-kind, the in- kind payment should be deducted from the labor costs imputed for Farm A.

Department's Position:

We agree with Ontario Pork, and, for the final determination, have allocated production costs to the pigs used for personal consumption by Farm A. In addition, we consider these pigs to be a payment-in-kind to the owner-operator of Farm A. As such, we have treated the cost of producing these pigs as remuneration to the owner-operator of Farm A and deducted the cost of the consumed pigs from the overall labor costs imputed for Farm A to avoid double counting. We see no basis for treating the pigs consumed personally as free samples as suggested by the petitioners. The pigs were provided to the owner of Farm A for personal consumption not to customers or employees for promotional purposes; therefore, they should not be considered samples.

Comment 17: Per-unit Finishing Costs Adjusted by the Feeders Sold

The Petitioners' Argument:

The petitioners state that the Department should not include the feeder hogs that were sold before they reached slaughter-weight in the calculation of Farm A's per-unit finishing costs. The petitioners contend that because these feeder hogs were sold before they reached Farm A's finishing process, they should not be allocated any finishing costs. The petitioners point out that Ontario Pork's methodology of valuing the changes in inventory of feeders acknowledges that feeder hogs were work-in-process and should have only a portion of the cost of finished hogs.

Ontario Pork's Argument:

Ontario Pork argues that the feeder hogs the petitioners want to exclude fall within the same control number as the other slaughter weight pigs produced during the period. Ontario Pork points out that it is the Department's practice to report costs by control number, and to develop a single weighted-average cost for each unique combination of product characteristics that comprise a single control number. Furthermore, Ontario Pork asserts that Farm A had incurred nearly the same amount of costs for the feeder pigs as was incurred to produce the market hogs sold by Farm A through Ontario Pork. Ontario Pork states that the production quantity for the feeder pigs at issue properly belongs in Farm A's total production quantity and any exclusion of these hogs would distort costs.

Department's Position:

We agree with Ontario Pork and have not removed the quantity of feeder pigs sold from Farm A's per-unit finishing cost calculation. The evidence on the record supports Ontario Pork's claim that the weight of the feeder pigs sold by Farm A falls within the weight band for market hogs based on the product characteristics determined by the Department. Therefore, these pigs had the same product characteristics as the slaughter-weight market hogs Farm A sold to Ontario Pork. In the section D cost questionnaire, the Department instructed Farm A to "Calculate reported COP and CV figures on a weighted-average basis using the CONNUM specific production quantity, regardless of market sold, as the weighting factor. Thus, each CONNUM should be assigned only one cost, regardless of the market or markets in which the product(s) were sold." See the Department's July 2, 2004 section D cost questionnaire at page D-15. Therefore, for the final determination, these hogs were correctly included in the same control number as the slaughter-weight market hogs and should not be removed from the quantity used to calculate the per-unit costs of this control number.

Comment 18: Farm A's Change in Inventory Values

The Petitioners' Argument:

The petitioners state that the Department should use the POI cost of manufacture to value the change in isowean and feeder hog inventory because the average base cost reported by Farm A was inaccurate. The petitioners argue that Farm A's actual cost of manufacture for the POI reasonably measures the change in inventories. The petitioners also contend that the Department should not include the change in sow inventory in the reported costs because sows are productive assets and should not be included in the finished goods or work-in-process inventory.

Ontario Pork's Argument:

Ontario Pork did not comment on this issue.

Department's Position:

We agree with the petitioners, and for the final determination we are using the POI cost of manufacturing to value the change in isowean and feeder hog inventory. We also agree with the petitioners that the change in sow inventory should not be included in the calculation of the cost of manufacturing finished pigs. In this investigation, the Department treated breeding stock as productive assets and amortized the cost of these assets over their useful lives.

Comment 19: Livestock Purchases in the Indirect Cost Allocation

Ontario Pork's Argument:

Ontario Pork argues that the Department improperly excluded Farm A's livestock purchases and imputed labor costs from the total direct costs of each operation used in the allocation of indirect costs with the result that a disproportionate share of indirect costs was allocated to the swine operations. Ontario Pork states that Farm A had five primary farm operations during the POI, hogs, cattle, work horses, chickens and crops. Ontario Pork states that Farm A reviewed each of its farm-related expenses and, whenever possible, charged the expenses directly to one of the five farm operations. However, Ontario Pork points out that for a small group of costs, Farm A was unable to identify a reasonable cost driver and, thus, allocated those costs based on the relative direct costs incurred for each of the farm operations. Ontario Pork contends that the imputed labor costs and the costs to purchase livestock should be included in the direct costs of each operation used in the allocation. Ontario Pork claims that the Department's methodology is inconsistent with the relative levels of farm activity in the five farm operations as reflected in the cost of sales or the labor hours devoted to each operation. Ontario Pork argues that there is no evidence to support the Department's conclusion that the hog operations should absorb the majority of the indirect costs.

Ontario Pork acknowledges the <u>Wheat Final Determination</u> in which the Department similarly elected to exclude cattle purchases and imputed labor costs from the direct costs of the Canadian wheat farmers when allocating variable and fixed production overhead costs among farm operations. However, according to Ontario Pork, it is not appropriate to use such a methodology in the current case. Ontario Pork contends that in the <u>Wheat Final Decision Memorandum</u>, the Department reasoned that including purchased cattle as part of direct costs in the allocation of production overhead costs could result in a distortion of such costs among the farmers' cattle and wheat operations since, from year to year, the farmers' decision to buy or not to buy new livestock could cause fluctuations in direct costs and thus result in an understatement or overstatement of allocated overhead costs between one operation or the other. Ontario Pork states that the evidence on the record of this investigation demonstrates that such a concern is entirely misplaced with regard to Farm A's operations. Ontario Pork states that Farm A's cattle herd is maintained at a relatively constant headcount by selling a few cows to market and using the proceeds to buy new feeder cattle. Therefore, based on Farm A's past farming practices, its cattle operation is highly unlikely to fluctuate significantly and will not cause yearly changes in the relative amount of direct costs allocated among the farm operations.

Ontario Pork also asserts that the Department's decision in the <u>Wheat Final Determination</u> was premised on the fact that a significant portion of farm overhead costs were allocated among cattle and wheat operations on the basis of direct costs. Therefore, any yearly fluctuations in cattle operations would have a significant impact on the total cost of production. Ontario Pork states that in this investigation, Farm A has only allocated a limited amount of indirect expenses that could not be readily associated with a particular operation.

Finally, Ontario Pork argues that if the Department continues to assert that livestock purchases and imputed labor should be excluded from the basis used to allocate indirect costs, the Department should allocate Farm A's indirect costs using a methodology similar to that used for allocating G&A expenses. Ontario Pork contends this allocation would be appropriate because Farm A's indirect costs cannot easily be associated with one product or another.

The Petitioners' Argument:

Contrary to Ontario Pork's argument, the petitioners assert that in the preliminary determination, the Department properly excluded both livestock purchases and imputed labor costs from the total direct costs used as the basis for allocating indirect costs to Farm A's specific farm operations. The petitioners point out that this methodology is consistent with the Department's prior practice. See Wheat Final Determination.

Similar to the fact pattern in Wheat Final Determination, the petitioners believe that the inclusion of livestock purchases and imputed labor costs in the allocation basis in this case would also result in a distortion of the indirect costs allocated to the various farm operations. In the current case, the petitioners argue that the livestock purchases in the cattle and hog operations vary significantly in relation to the direct costs experienced in each operation. While Farm A only purchases replacement breeding stock for its hog operations, the petitioners point out that Farm A's cattle operations maintain a steady influx of feeder cattle. The petitioners explain that Farm A's cattle operation encompasses the purchase of feeder cattle to raise to finished weight, whereas Farm A's hog operation covers the entire production process from farrowing to finishing. Consequently, the petitioners argue that much of the final value associated with cattle was merely passed-through, (i.e., the value came through the purchase of feeders), and limited value was added by Farm A in its cattle operations. Thus, the petitioners contend that the value added in Farm A's hog operations far outweighed the value added in its cattle operations.
According to the petitioners, to include the value of the purchased feeder cattle in the allocation basis for indirect costs would therefore distort the actual experience of Farm A in its hog and cattle operations. The petitioners believe that based on the nature of Farm A's cattle and hog operations, it is not unreasonable to allocate more indirect costs to swine. Therefore, for the final determination, the petitioners urge the Department to continue to exclude both livestock purchases and imputed labor from the direct costs used as the basis for allocating indirect costs to Farm A's various operations.

Department's Position:

Consistent with the methodology followed in the Wheat Final Determination, we have continued to exclude Farm A's feeder livestock purchases and imputed labor costs and include the amortized cost of the breeding stock in the total direct costs of each operation used to allocate indirect costs (e.g., depreciation, equipment repairs, snow removal) to the various production operations of the farm. In its normal books and records, Farm A did not allocate overhead costs to specific products or farm operations, and thus we must evaluate the allocation method used by Ontario Pork for reporting purposes. To determine whether an allocation method is reasonable, cost accounting typically looks to the relationship between the cost pool being allocated and the allocation factor or base. The stronger the association between the expenses in the cost pool and the allocation factor, the more reasonable the method. For example, factory overhead costs are often allocated based on machine hours because it is assumed that this measure of time is a good indicator of production activity and that overhead expenses would be incurred, more or less, in relation to the machine hours.

In its submissions, Ontario Pork allocated certain Farm A variable and fixed overhead costs to the various farm operations using relative direct costs. Direct costs are costs that can be traced to a single product, while costs that can benefit several products are considered indirect costs. The determination of an appropriate allocation factor is complicated in this case by several factors. First, Farm A keeps its records on a cash basis. That is, it recognizes an expense when cash is paid, and revenue when cash is received. As a result, the expenses recorded on the books do not necessarily match either the period of time in which they would normally be recognized or the revenue to which the expense was associated. Second, Farm A does not keep detailed cost records. For example, Farm A does not record the labor costs for work performed by the owner-operator or family members, equipment loaned to or borrowed from others, or production quantities associated with a set of costs. Third, Farm A does not allocate costs to specific products in its normal records. Finally, the dissimilar nature of products produced on the farm makes it difficult to determine appropriate allocation factors over which to allocate common costs.

Consider that the cash basis accounting practiced by Farm A (as well as its tax basis accounting followed in its tax returns) recognizes the expense of the cattle on the date of purchase; however, the animal is retained and cared for over a period of time. The economic conditions in a certain year may dissuade a farmer from increasing his herd. In fact, Farm A may retain its herd, with no sales or purchases of feeder cattle in a particular year, and still incur direct costs related to finishing the cattle and indirect costs related to the general farm operations (e.g., depreciation, equipment repairs, snow removal). In addition, if Farm A turned over its entire herd of feeder cattle steadily throughout the year, it still would not incur any additional direct costs related to the finishing of the cattle nor would it incur any additional indirect costs related to the general farm operations. Therefore, because the level of indirect expenses would not fluctuate with the turnover of the herd, it does not seem reasonable to include the purchase price of livestock in the direct costs used to allocate the indirect costs.

We considered the types of expenses that were included in Farm A's variable and fixed overhead. Fixed overhead costs almost exclusively consisted of depreciation expense, while significant variable overhead costs included machinery repairs, machinery fuel, and small tools, etc. In attempting to find an appropriate cost driver (i.e., some factor that is closely associated with incurring these costs), we reviewed the various production activities associated with Farm A's operations. We noted that the maintenance of the feeder cattle herd appears to require a moderate level of attention over time (i.e., feeder cattle are just fed to a specified weight gain and then resold), with limited value being added from the time of purchase to the time of sale. However, in contrast, the swine operations require more attention (e.g., maintenance of the breeding herd, farrowing activities, nursery activities, etc.), and the value added from the time of birth to sale is significant. Thus, we believe that direct operating costs (e.g., feed, vet bills, insemination costs, etc.), exclusive of feeder cattle purchases, are the best measure of the value added by Farm A. Therefore, we have relied upon direct operating costs to allocate indirect costs in the final determination.

Additionally, in accordance with section 773(f)(1) of the Act, the Department has a preference for using the normal records of a respondent, when possible. As such, we deem it appropriate to exclude imputed labor from the allocation base. Because the owner of Farm A did not pay a wage for his farm activities and Farm A did not keep records of the hours worked or the tasks performed, the reported labor cost was imputed based on estimates and public sources. While we tested the estimated labor value assigned to the swine operations, we did not test the estimated labor value allocated to the other farm operations. Therefore, for the final determination we do not think it is appropriate to allocate indirect costs based on these unverified estimates.

We disagree with Ontario Pork's suggestion that we use the cost of manufacturing as the allocation base for indirect costs (similar to the method used for allocating G&A expenses). The purchase price of the feeder cattle is included in the cost of manufacturing, thus using this as an allocation basis for indirect costs continues to distort the allocation of indirect costs between the different farm operations.

Given the problems identified with the reported direct cost method, the Department revised the allocation base (i.e., the direct costs) used to allocate indirect costs to farm operations by excluding the feeder livestock acquisition costs and imputed labor costs. For the final determination, the Department continues to use the direct cost method excluding imputed labor and feeder livestock purchases to allocate indirect costs to the farm operations.

Comment 20: Lease of Crop Land

Ontario Pork's Argument:

Ontario Pork argues that if the Department imputes a lease expense for the land Farm A leased from an affiliated party, the lease expense should be allocated between the hog and cattle operations according to the acreage allocation factors on the record. Furthermore, Ontario Pork contends that any land lease costs should be net of the value that should be received by Farm A during the POI for the exchange of the use of the equipment for the use of the land. Specifically, the market value of the land lease should be offset by the market value of the diesel engine used by the affiliated party in exchange for the use of the land.

Further, Ontario Pork states that the originally estimated market rental price of the tiled land is reasonable. Ontario Pork asserts that if the Department decides to make an adjustment, it should use this original amount as the basis for its adjustment.

The Petitioners' Argument:

The petitioners contend that the Department should apply the major input rule according to 19 CFR 351.407(b) to the land Farm A leased from affiliated parties. The petitioners state that Farm A leased tiled land for growing crops and that this transaction was not reported at an arm's-length price and should be adjusted to the higher of the affiliated party's cost, transfer price, or market value.

Further, the petitioners believe the Department should deny Ontario Pork's requested offset to land lease costs for the affiliated party's use of Farm A's diesel tractor. In support of their position, the petitioners point out that the same diesel tractor was rented to an unaffiliated party during the POI. Therefore, it is unclear, in the petitioners' opinion, when the tractor was actually available for the affiliated party's use. Moreover, the petitioners contend that the record does not hold sufficient information regarding the details of the affiliated party's use of the tractor to warrant the offset. Therefore, due to the lack of information on the record documenting the affiliated party's use of the tractor, the petitioners insist that the Department has no basis for allowing the adjustment to Farm A's affiliated land leasing costs in the final determination.

Department's Position:

We have determined that the leased land should not be treated as a major input. Instead, we have applied section 773(f)(2) of the Act (i.e., transactions-disregarded rule) to the land lease between Farm A and its affiliate for the final determination. Farm A provided a market price per acre to rent tiled land. In this case, the market value of the land lease exceeded the transfer price recorded on Farm A's books. Therefore, for the final determination, we adjusted Farm A's crop costs to reflect the market price of tiled land.

In addition, we are not persuaded by the petitioners' argument that because the engine was at some point during the year rented to an unaffiliated party, the engine could not have been loaned to the affiliated party. Based on the amount of the offset, and the evidence on the record, we agree with Ontario Pork that the engine was available for loan to the affiliated party in exchange for the land lease. Therefore, we have offset Farm A's imputed land lease expense by the market value of the diesel engine loaned to the affiliated party.

Comment 21: Optional Inventory Adjustment

The Petitioners' Argument:

The petitioners argue that the Department should make an adjustment to Farm A's reported costs for the Optional Inventory Adjustment which is reported on Farm A's Canadian tax return. The petitioners point out that Farm A used the Optional Inventory Adjustment to adjust its taxable income to maximize the tax benefits received from the Canadian government through NISA in 2003. The petitioners state that Farm A's NISA income in 2003 was in part dependent upon the results of the Optional Inventory Adjustments made in its tax returns in 2002 and 2003. Because of this correlation, the petitioners assert that Farm A should either include the Optional Inventory Adjustment in its reported cost of production or the NISA income offset should be reduced by the Optional Inventory Adjustment.

Ontario Pork's Argument:

Ontario Pork argues that the Optional Inventory Adjustment was nothing more than a tool used in the calculation of Farm A's taxable income. Ontario Pork states that the Optional Inventory Adjustment allows individuals to adjust their taxable costs up or down in any given year in order to maximize their tax benefits in a particular year. Ontario Pork points out that the adjustment is not recorded in Farm A's normal books and records, and must always be reversed in the subsequent years' tax return. Ontario Pork disagrees with the petitioners that Farm A's Optional Inventory Adjustment contributed to the size of Farm A's NISA income. Ontario Pork asserts that the tax records specifically identify Farm A's Optional Inventory Adjustment as a non-eligible expense for inclusion in the calculation of NISA funds. Therefore, the Optional Inventory Adjustment had no impact on the calculation of the NISA funds Farm A received in the POI.

Department's Position:

We agree with Ontario Pork and have not made an adjustment for Farm A's Optional Inventory Adjustment in the final determination. Based on the evidence on the record, the Department determined that Farm A's Optional Inventory Adjustment is a tax adjustment which allows individuals to adjust their taxable costs in order to maximize their tax benefits. The Department does not normally include income taxes, or income tax based cost adjustments in its COP and CV calculations. See Final Results of Antidumping Administrative Review: Stainless Steel Bar From Japan, 65 FR13717, 13718 (March 2000). Furthermore, we note that the Optional Inventory Adjustment does not impact the NISA income received by Farm A, as it is included in the "non-allowable expenses" section of Farm A's NISA application. See Farm A Cost Verification Report, at CVE 14, page 30. Therefore, for the final determination, we have not made an adjustment for Farm A's Optional Inventory Adjustment.

Comment 22: Additional Accrued Cost Items

The Petitioners' Argument:

The petitioners argue that the Department should include additional costs for feed and small tools that were paid in 2004 but should have been accrued in 2003.

Ontario Pork's Argument:

Ontario Pork did not comment on this issue.

Department's Position:

We agree with the petitioners and have included the additional costs for feed and small tools for Farm A in the final determination.

Comment 23: G&A Expenses

The Petitioners' Argument:

The petitioners assert that the Department should not include income from the sale of logs as an offset in calculating the G&A expense ratio because the sale occurred in 2002, which is prior to the POI.

Ontario Pork's Argument:

Ontario Pork did not comment on this issue.

Department's Position:

We agree with the petitioners that the sale of logs related to a period prior to the POI. Thus, we did not include the income from the sale of logs as an offset in calculating the G&A expense ratio for Farm A for the final determination.

Comment 24: Interest Rates

The Petitioners' Argument:

The petitioners state that Farm A holds a mortgage on its farm property that is due to a related party and is non-interest bearing. The petitioners point out that in its reported costs, Farm A used the conventional one-year mortgage rates published by the Bank of Canada for January 2002 and January 2003 to calculate an imputed interest expense. The petitioners argue that the Department should revise

Farm A's calculated interest expense by using the January 2003 interest rate. The petitioners argue that it is inappropriate to use an interest rate from January 2002 to calculate the interest for January 2003.

Ontario Pork's Argument:

Ontario Pork argues that because Farm A signed its mortgage at the end of January 2002, the one-year mortgage interest rate of 4.55% for January 2002 was applicable to Farm A's mortgage through the end of January 2003. Ontario Pork asserts that for the rest of the POI, the one-year mortgage interest rate for January 2003 was applicable to the mortgage.

Department's Position:

We agree with Ontario Pork and have used the reported interest rates for the final determination. Based on when the farm was purchased and when the loan was obtained, we believe that the one-year conventional mortgage rate as published by the Bank of Canada for January 2002 and January 2003 is a reasonable estimation of the prevailing interest rates. We note that the deed and loan were obtained at the end of January 2002. Therefore, the rate from January 2002 is appropriate for the 12 months ending in January 2003 (i.e., this rate is appropriate for the first month of the POI) and the rate from January 2003 is appropriate for the 12 months ending in January 2004 (i.e., this rate relates to the remaining eleven months of the POI).

Ontario Pork Farm B

Comment 25: Affiliated Feed Company

The Petitioners' Argument:

The petitioners argue that Ontario Pork cost respondent Farm B, may have under-reported its COM. The petitioners note that, for example, Farm B capitalized and depreciated a tile drainage system for reporting purposes which the petitioners assert should have been expensed. The petitioners add that additional misstatements by Farm B may not be measurable. For example, the petitioners note that Farm B disclosed the existence of a previously unidentified affiliated party at verification, and the petitioners state that this admission was untimely. The petitioners maintain that the affiliated party may have incurred expenses on behalf of Farm B, which were unreported to the Department.

Additionally, the petitioners argue that Farm B failed to identify certain silos and storage facilities prior to verification. The petitioners maintain that Farm B's inventory may be misstated as a result, as the inventory amounts are based on an estimated portion of used storage capacity. Thus, the petitioners argue that the Department should correct Farm B's errors to the extent that they are correctable, and should make appropriate adjustments to account for errors and omissions in the data.

Ontario Pork's Argument:

Ontario Pork argues that Farm B explained at verification that it incorporated the affiliated feed company at the end of the POI in order to purchase feed and other inputs for Farm B in future years. See Memorandum to Neal M. Halper, "Verification Report on the Cost of Production Data Submitted by Farm B" dated January 19, 2005 ("Farm B Cost Verification Report"), at page 4. Ontario Pork asserts that, aside from receiving a prepaid deposit from Farm B at the end of the POI, the Department verified that the affiliated feed company conducted no business during the POI. Further, Ontario Pork cites the Farm B Cost Verification Report to argue that the Department properly confirmed that no expenses associated with the setup of the subsidiary feed company were incurred during the POI, and that such expenses would have been identifiable in the records of Farm B and the affiliated feed company.

The Department's Position:

Regarding the affiliated feed company, we agree with Ontario Pork. We found no evidence at verification that the affiliated feed company conducted any business during the POI, other than receiving the prepaid expenses from Farm B. Further, we reviewed the bank statements of the affiliated feed company and verified that the company opened a bank account and received the deposit from Farm B prior to the end of the POI. However, the subsidiary did not make any disbursements during the POI, and the subsidiary incurred expenses related to the purchase of feed only after the POI. See Farm B Cost Verification Report, at page 4. There is no evidence on the record to indicate that the affiliated feed company incurred any expenses during the POI on behalf of Farm B. Accordingly, we have not revised Farm B's reported costs of production with respect to the transactions or activities of the affiliated feed company.

We disagree with the petitioners that the identification of certain silos and storage facilities at verification may lead to under-reported inventories of feed. Farm B inadvertently did not include certain feed storage facilities on the diagram of Farm B's swine facilities which was prepared and submitted in response to the original section D questionnaire. See Farm B Cost Verification Report, at page 5. Farm B explained at verification that, for inventory purposes, it estimates the quantity of feed in storage at year end, including feed stored in the facilities which were inadvertently excluded from the original diagram.

Comment 26: Tile Drainage

The Petitioners' Argument:

The petitioners argue that the Department should capture the entire cost related to the construction of the tile drainage system in COM. The petitioners note that Farm B expensed the entire amount of the tile drainage system in its income statement and tax return, but capitalized and depreciated it in Farm

B's reported COM. The petitioners assert that Ontario Pork should report the cost of production in accordance with Farm B's normal books and records compiled in accordance with the home market country's GAAP.

The petitioners note that the Canadian tax code states that tile drainage may either be capitalized or expensed during the year of construction. See Farm B Cost Verification Report, at 13. Citing the Canadian tax code, the petitioners argue that Canadian GAAP allows Farm B to choose to expense or capitalize and depreciate the system in its normal books and records, and they note that Farm B chose to expense the entire system. The petitioners claim that an antidumping investigation should not present opportunities for respondents to selectively change their normal accounting methods in order to manipulate their reported cost of production. The petitioners also note that, under U.S. GAAP, companies which change their accounting principles are required to report the effects of the change on prior periods, and that such treatment emphasizes the importance of the consistency of accounting principles.

Further, the petitioners emphasize that Farm B has not provided any evidence about whether it expensed or capitalized and depreciated similar assets which were installed in prior periods. As such, due to a lack of information, the Department should not accept Farm B's attempt to change its accounting principles with respect to one specific asset for an isolated reporting period. Rather, the petitioners argue that the Department should rely on Farm B's normal books and records, and capture the entire amount of the tile drainage system in Farm B's POI COM.

Ontario Pork's Argument:

Ontario Pork argues that the Department should only capture Farm B's reported amount of depreciation expense related to the tile drainage system in the COM. Ontario Pork states that Canadian GAAP requires the capitalization and depreciation of fixed assets, such as tile drainage, and argues that expensing the full amount during the first year is not in accordance with Canadian GAAP. Additionally, Ontario Pork asserts that expensing the entire amount in the first year would not reasonably reflect the actual costs of production for Farm B during the POI, because the asset has a useful life which extends beyond one year. Thus, benefits associated with the asset will be realized in future periods. Finally, Ontario Pork argues that the Department's practice is to use the respondent's normal books and records to the extent that they reflect the home market country's GAAP, and that, in this case, the normal books and records of Farm B must be adjusted in accordance with Canadian GAAP.

Further, Ontario Pork emphasized that Canadian GAAP requires that property such as a tile drainage system be capitalized and depreciated. Specifically, Ontario Pork cites Section 3061.04 of the Canadian GAAP, which provides that property, plant, and equipment used in the ordinary course of business operations be capitalized and depreciated. Ontario Pork notes that the petitioners' argument that Canadian GAAP allows for the option of either expensing or capitalizing and depreciating tile drainage is based on a reading of the Canadian tax code, which Ontario Pork argues is not Canadian GAAP.

Department's Position:

We agree with Ontario Pork that we should capitalize and depreciate the tile drainage system in accordance with U.S. and Canadian GAAP. We agree that the tile drainage system is a tangible fixed asset, as asserted by Ontario Pork, which provides benefits beyond the period of one year. In general, costs incurred which provide future benefits should be capitalized. Therefore, the cost of the fixed asset should be allocated to the periods it benefits through depreciation.

It is the Department's practice pursuant to section 773(f)(1)(A) of the Act to rely on data from a respondent's normal books and records where those records are prepared in accordance with home country GAAP and reasonably reflect the costs of producing the merchandise. However, in those instances where it is determined that a company's normal accounting practices result in a misallocation of production costs, the Department will adjust the respondent's costs or use alternative calculation methodologies that more accurately capture the actual costs incurred to produce the merchandise. In the instant case, the costs in question were expensed in the current period in Farm B's financial statements and tax return based on Canadian tax law. However, Canadian GAAP states that when future benefits of a tangible fixed asset are reasonably assured, such costs are to be capitalized and amortized over their useful life.

As for the petitioners' argument that Farm B fully expensed similar assets in prior periods and we would not be capturing an amortized portion of those assets, we note that the Canadian tax regulations generally require that tangible capital property used in farming activities be capitalized and depreciated. Farm B's tile drainage system is the exception not the rule. See Income Tax Regulations (C.R.C. c.945) Part XVII: Capital Cost Allowances, Farming and Fishing and Schedule II: Capital Cost Allowances. Therefore, we have no basis to believe that the costs from prior periods that should have been amortized were expensed.

Comment 27: Interest Income Earned on NISA and Risk Management Funding

The Petitioners' Argument:

The petitioners argue that the Department should include only an allocable amount of interest income earned on NISA Fund two in the NISA offset. The petitioners note that NISA Fund one and NISA Fund two had equivalent balances during the POI, but interest income earned was deposited only into the taxable NISA Fund two. The petitioners argue that only a proportional amount of interest income, based on average balances of the NISA Fund one and NISA Fund two, should be determined to be due to NISA Fund one, and excluded from COM.

In addition, the petitioners argue that, pursuant to the matching principle, interest income must be matched to the assets which generate the income. Accordingly, the petitioners argue that GAAP does not allow Farm B to attribute the NISA interest income solely to NISA Fund two. Because the balances in NISA Fund one were not contributed by the Canadian government, the petitioners argue that the interest earned on balances in NISA Fund one should be considered to be interest income on non-working capital funds, rather than subsidies from the government.

The petitioners also argue that the Department should not include the Risk Management Funding ("RMF") amount in the NISA offset. The petitioners claim that this amount was not recorded in Farm B's income statement or tax return during the POI, and argue that the Department should base Farm B's COM on the cost respondent's normal books and records.

The petitioners further argue that Ontario Pork's assertion that the RMF was recognized as a receivable in Farm B's 2003 fiscal year end ("FYE") balance sheet is unconvincing and unreasonable. The petitioners also maintain that Ontario Pork's argument that the RMF is 2003 income that should be included as an offset amount to a *post hoc* justification which does not reflect Farm B's normal books and records. The petitioners argue that the Department should rely on Farm B's normal books and records and on the Department's verification findings, which indicate that the RMF was not recorded as income in 2003.

Ontario Pork's Argument:

Ontario Pork states that the petitioners' methodology of allocating a portion of interest income earned on the NISA deposits to NISA Fund one is not reasonable. Ontario Pork asserts that this methodology seems to be based on the fact that contributions to NISA Fund one are non-taxable. Ontario Pork is unaware of any law or case precedent which holds that government derived income should be treated differently depending upon whether it is taxable or non-taxable. Further, Ontario Pork states that there is no legal basis for the Department to distinguish between interest income earned on Fund one balances from interest income earned on Fund two balances, as all NISA interest income is part of the total NISA derived income for the period. Finally, Ontario Pork notes that interest earned on Fund one balances are, in fact, taxable. Thus, Ontario Pork concludes that the taxable/non-taxable distinction is baseless.

Further, Ontario Pork emphasizes that, regardless of the allocation of interest between NISA Fund one and NISA Fund two, all interest income is earned on NISA derived income, and should be included as an offset to Farm B's COP.

Ontario Pork also argues that the RMF income was deposited into Farm B's NISA account in 2003 and was recorded as a receivable in Farm B's 2003 financial statements. Because the receivable did not clear the bank until the following year, it was recorded as income in Farm B's 2004 cash basis tax return. Therefore, Ontario Pork argues that the RMF should be included in Farm B's NISA offset for the POI.

Department's Position:

We agree with Ontario Pork that we should not distinguish between the interest income earned on NISA Fund one and NISA Fund two balances. The total NISA interest income was generated based on short-term assets and, therefore, should be included as an offset to Farm B's net financial expenses to the extent that it does not reduce Farm B's net financial expenses below zero. See e.g., Notice of Preliminary Results of Antidumping Duty Administrative Review: Certain Softwood Lumber Products from Canada 69 FR 33235 (June 14, 2004) and Notice of Preliminary Results of Antidumping Duty Administrative Review: Porcelain-on-Steel Cookware from Mexico 65 FR 63562 (October 24, 2000). Consequently, for the final determination, we have included Farm B's total NISA interest income in its financial expenses but only to the extent that it offsets Farm B's financial expenses.

With regard to the RMF, we agree with Ontario Pork and disagree with the petitioners. Farm B's 2003 NISA statement clearly indicates the entire amount of RMF was deposited by the Canadian government into Farm B's NISA Fund two during the POI. See Farm B Cost Verification Report, at CVE 12. We have included government contributions in NISA Fund two as an offset to the COM. The tax return contains withdrawals from the NISA account, rather than contributions into the NISA account. Because the tax return does not reflect the government contribution amounts, the timing of Farm B's recognition of income related to RMF in its income statement and tax return has no bearing on whether the RMF was a contribution into NISA Fund two during the POI.

Comment 28: Prepaid Feed Costs

The Petitioners' Argument:

The petitioners argue that the Department should capture the full prepaid feed expenses in Farm B's COM. The petitioners note that Farm B under-reported its prepaid feed expenses at the preliminary determination and corrected the reported amounts as a minor correction at verification. See Farm B Cost Verification Report, at CVE 1.

Ontario Pork's Argument:

Ontario Pork notes that Farm B corrected the amount of prepaid feed expenses as a minor correction at verification. Further, Ontario Pork notes that some of the prepaid feed expenses were refunded and, thus, were not incurred during the POI. See Farm B Cost Verification Report, at CVE 1. Ontario Pork argues that only the prepaid costs of feed which was delivered and consumed during the POI should be included in Farm B's COM.

Department's Position:

We agree with Ontario Pork that only the prepaid feed which was delivered and consumed during the POI should be included in Farm B's COM. We verified that a certain amount of prepaid feed expenses were refunded in January 2003, and thus was not delivered and consumed during the POI.

See Farm B Cost Verification Report, at page 3 and CVE 1. As a result, we have adjusted Farm B's COM feed costs to reflect the amount of prepaid expenses for feed delivered and consumed during the POI.

Comment 29: Donated Hogs

The Petitioners' Argument:

The petitioners argue that the Department should exclude the quantity of donated hogs from the denominator when computing the per-head COM of subject merchandise. The petitioners contend that the cost of the donated hogs should be absorbed in the cost of the hogs which were sold by Farm B in return for revenues. The petitioners argue that the donated hogs represent lost revenues. Additionally, the petitioners argue that the donated hogs may be equivalent to an indirect selling expense for promotional activities, citing Notice of Final Determination of Sales at Less Than Fair Value: Certain Color Television Receivers from Malaysia, 69 FR 20592 (April 16, 2004) and accompanying Issues and Decision Memorandum (April 12, 2004) ("CRV Receivers Final Determination"), at Comment 14. Also, the petitioners argue that the donations of merchandise are equivalent to a cash donation, which would generally be included in a company's G&A expenses. The petitioners compared Farm B to companies which donate merchandise to generate goodwill, and they claim that the expenses associated with such donations would generally be recorded as G&A expenses.

Ontario Pork's Argument:

Ontario Pork asserts that the petitioners did not properly justify why the donated hogs should not be included in the denominator when computing the per-head COM of subject merchandise. Ontario Pork notes that all hogs, including the donated hogs, were raised to market weight, incurring the same cost. Ontario Pork argues that the amount of income earned on the hogs has no bearing on whether they should be included in the production quantity for cost calculation purposes.

Ontario Pork also argues that the petitioners' assertion that the donated hogs can be compared to an indirect selling expense is incorrect. Ontario Pork claims that the donation of the hogs was not a selling activity. Further, even if it were a promotional selling activity, Ontario Pork argues that the Department's normal practice is to include donations of merchandise made for promotional activities in the total production quantity, and that transactions involving free samples relate to sales reporting, not COP. See CRV Receivers Final Determination.

Finally, Ontario Pork argues that the petitioners' assertion that the cost of the donated hogs should be considered a G&A expense is incorrect. Ontario Pork states that Farm B's management's decision to donate the hogs amounts to a personal expense that does not relate to the G&A expenses of the company. Ontario Pork argues that Farm B cannot be compared to large companies which donate products to improve their marketing and public relations. In conclusion, Ontario Pork states that the

Department should continue to include the quantity of donated hogs in the denominator for purposes of calculating the per-unit COP.

Department's Position:

We agree in part with both the petitioners and Ontario Pork. We agree with Ontario Pork that the production quantity related to the donated hogs should be included in the denominator used to calculate the per-head COM. The donated hogs were produced by Farm B in the normal course of operations, incurring production costs equivalent to any other market hog. Thus, the donated hogs should be included in the total production quantity.

However, we also agree with the petitioners that Farm B's COP should capture the cost of the donated hogs, which is a measurable cost incurred by Farm B. The act of donating hogs is equivalent to a donation of cash or other property and should appropriately be captured in Farm B's G&A expenses as a donation expense.

In the preliminary determination, we included the number of donated hogs in the denominator used to calculate the per-head COM, but did not capture the cost of the donated hogs as a G&A expense. Consistent with the SSB Final Determination, donations expense should be captured in a respondent's G&A expenses. See SSB Final Determination, at Comment 16. Therefore, for the final determination, we have continued to calculate the per-unit COM of subject merchandise by including the number of donated hogs in the denominator, and captured the costs of the donated hogs, by including the costs of the donated hogs in Farm B's G&A expenses.

Comment 30: Misallocated Costs

The Petitioners' Argument:

Citing page 11 of the Farm B Cost Verification Report, the petitioners note that auto expense and small tools & supplies expense relate to the general operations of Farm B, and were missallocated by Farm B to crop-specific expenses, rather than to general expenses. The petitioners state that Farm B's G&A expenses should be recalculated to include these expenses.

Ontario Pork's Argument:

Ontario Pork argues that the auto and small tools expenses were allocated to crop-specific costs because they are used primarily for crop operations. Ontario Pork argues that, if the auto and small tools expenses are allocated to general costs, the majority of those expenses would subsequently be allocated to Farm B's hog operations, rather than the crop operations, which Ontario Pork argues, would be distortive. Additionally, Farm B notes that, because nearly all crops are introduced as feed into the hog operations, whether the expenses are allocated to general costs or crop-specific costs does not substantially affect the final result.

Ontario Pork also maintains that the petitioners' proposed methodology double-counts the auto and small tools expenses for Farm B, because the petitioners did not recalculate the cost of the internally-produced feed, which initially included those expenses. Ontario Pork argues that, should the Department choose to allocate Farm B's auto and small tools expenses between crops and hog operations, it should allocate them based on estimated usage of each operation. Ontario Pork proposes that 50 percent of the auto and small tools expenses be allocated to crops, and that 50 percent be allocated to hogs. Additionally, Ontario Pork notes that under this alternative methodology, the Department should recalculate the cost of internally produced feed to avoid double-counting the auto and small tools expenses.

Department's Position:

We agree with the petitioners that the auto and small tools expenses are general expenses. We verified that the auto and small tools expenses relate to the general operations of the company, and we have allocated auto and small tools expenses to general costs, accordingly. See Farm B Cost Verification Report, at page 19. Also, see Memorandum to Neal M. Halper, "Cost of Production and Constructed Value Adjustments for the Final Determination - Ontario Pork Producers' Marketing Board Cost Respondents," dated March 4, 2005 ("Ontario Pork Final Cost Calculation Memorandum").

We disagree with Ontario Pork's argument that we should allocate 50 percent of the auto and small tools expenses for Farm B to crops and 50 percent to hogs. Ontario Pork has not justified incorporating an alternative methodology by which all general expenses are allocated, and it is not appropriate to treat the auto and small tools expenses in a different manner from any of Farm B's other general expenses. Therefore, in the final determination, we included all general expenses in Farm B's G&A expense ratio.

Further, we agree with Ontario Pork that, in allocating the auto and small tools expenses to Farm B's general costs, we should remove them from crop-specific costs in order to avoid double-counting. We have recalculated the cost of internally produced feed by excluding the auto and small tools expenses from the direct crop costs.

Comment 31: Reconciliation Error

The Petitioners' Argument:

The petitioners argue that the minor difference resulting from the reconciliation of the total COM to Farm B's financial statements should be included in Farm B's COM. See Farm B Cost Verification Report, at page 8.

Ontario Pork's Argument:

Ontario Pork did not comment on this issue.

Department's Position:

We agree with the petitioners. The Farm B Cost Verification Report at page 8 notes that the reconciliation difference is due to a mis-reported amount for feed costs in the reconciliation worksheets. We have avoided incorporating the reconciliation error into Farm B's COM for the final determination by calculating Farm B's COM beginning with information in the worksheet in the Farm B Cost Verification Report at CVE 4, page 31. The error in question occurs in the following reconciliation worksheet at page 32 of CVE 4. Thus, by beginning with the costs presented in the worksheet prior to the worksheet with the error, we did not repeat the reconciliation error, and used the correct amount for Farm B's COM. See Ontario Pork Final Cost Calculation Memorandum

Comment 32: Imputed Labor

The Petitioners' Argument:

The petitioners note that imputed labor for one of Farm B's owners was not included in COM, citing Farm B Cost Verification Report at pages 7 to 8. Therefore, the petitioners argue that the Department should adjust COM to include imputed labor for both owners of Farm B.

Ontario Pork's Argument:

Ontario Pork argues that, in fact, the imputed labor for the owner in question was included in Farm B's G&A expenses, as reported to the Department in the September 21, 2003, supplemental Section D response. Ontario Pork maintains that this is the proper treatment of the imputed labor for the particular owner, as the primary responsibility for that individual is bookkeeping, which relates to the general operations of the company. Ontario Pork notes that it properly reported the imputed labor amount in the supplemental response, but that it was inadvertently excluded from the G&A expense factor submitted at verification.

Department's Position:

We agree with Ontario Pork that the imputed labor of the bookkeeper should be included in Farm B's G&A expenses. The Farm B Cost Verification Report notes at CVE 6 that both owners worked for Farm B during the POI, one of them providing services as a bookkeeper. The Farm B Cost Verification Report also notes that the imputed labor from the bookkeeper was not included in the COM at verification. See Farm B Cost Verification Report, at page 8. We agree with the petitioners that the imputed labor for the bookkeeper should be captured in Farm B's reported costs, however, because the activities of a bookkeeper relate to the general operations of the company, we agree with Ontario Pork that the imputed labor for that individual should be included in the G&A expenses of the company, and not in Farm B's COM. We have revised Farm B's G&A expenses to include the imputed labor of the bookkeeper.

Comment 33: Interest Expense for Loan

The Petitioners' Argument:

The petitioners argue that the Department should impute interest expenses for an interest-free family loan which they assert was outstanding during the POI. The petitioners argue that Farm B's financial statements show that the loan was forgiven as a gift during 2003. However, Farm B did not pay or accrue interest on the loan during 2003, prior to its reclassification as a gift. See Ontario Pork's September 20, 2004, supplemental Section D response, at page 10. The petitioners also note that Farm B's management reported at verification that the loan was actually forgiven as a gift during 2002, prior to the POI, but the petitioners' argue that this assertion was not supported by evidence. The petitioners contend that the Department should rely on Farm B's financial statements, which indicate that the amount was in fact outstanding as a loan during the POI. Accordingly, the petitioners claim that the Department should impute interest using the same interest rate that Farm B applied to a separate outstanding loan to the owners' children, and that the imputed interest expense should be included in the net financial expense ratio in Farm B's COP.

Ontario Pork's Argument:

Ontario Pork argues that the affiliated party loan was forgiven as a gift to Farm B prior to the POI. Ontario Pork cites a signed statement prepared by Farm B's management, included in the Farm B Cost Verification Report, at CVE 11, page 157. That statement indicates that the loan was gifted in 2002, and that Farm B's management failed to properly inform the accountant, who compiled Farm B's financial statements, until 2003. Ontario Pork notes that the liability for the loan was removed from Farm B's 2003 year-end balance sheet, and that this fact provides additional evidence that the loan was forgiven as a gift.

Department's Position:

We agree with Ontario Pork. The year-end adjusting entry made in preparation of Farm B's 2003 financial statements, which eliminates the loan from the 2003 year-end balance sheet, indicates in a memorandum that the loan was forgiven as a gift, but does not explicitly indicate the date that the loan was forgiven. See Farm B Cost Verification Report, at page 62 of CVE 4. However, as asserted by Farm B's management, we note that the adjusting entry made in preparation of the 2003 statements is consistent with the correction of a prior period error or a prior period restatement in accordance with GAAP. See Accounting Principles Board Opinion 20 and Statement of Financial Accounting Standards 16. In eliminating the loan, Farm B did not record a gain or income for 2003, but instead charged the amount directly to owners' equity. This treatment indicates that the adjustment was related to a prior period. Had the loan been gifted during 2003, Farm B's accountant would have instead appropriately recorded income or a gain for 2003.

The treatment with respect to this adjusting entry in Farm B's normal books and records corroborates management's assertion that the loan in question was forgiven as a gift prior to 2003, and that the error was communicated to the accountant in preparation of the 2003 financial statements. We note that the 2003 financial statements were completed on April 23, 2004, prior to the selection of cost respondents in this investigation. See Farm B Cost Verification Report, at CVE 4, page 23. For the final determination, we have relied on Farm B's normal books and records, which indicate that the loan was forgiven prior to the POI. Thus, because the loan was not outstanding during the POI, we have accordingly not imputed interest expenses relating to the loan.

Comment 34: Interest Income

Ontario Pork's Argument:

Ontario Pork notes that Farm B's reported interest income was excluded from the net financial expense ratio at the preliminary determination, because the Department stated that such amounts represented "investment income." Ontario Pork argues that the Department verified that Farm B's interest income was earned on cash deposits in Farm B's bank accounts, which are clearly not long-term investments. See Farm B Cost Verification Report, at page 20. Accordingly, Ontario Pork argues that the Department should include Farm B's reported interest income as an offset to the financial expense ratio.

The Petitioners' Argument:

The petitioners assert that Ontario Pork's argument that the interest income should be included as an offset to Farm B's financial expenses is unjustified. The petitioners argue that the Department preliminarily disallowed the offset because Farm B reported that the income was earned on an investment. See Ontario Pork's September 20, 2004, supplemental Section D response at pages 9 to 10. Further, the petitioners argue that the Farm B Cost Verification Report did not address whether the interest income could be legitimately used as an offset to Farm B's reported interest expenses. Accordingly, the petitioners argue that Department should deny the offset.

Department's Position:

We agree with Ontario Pork. At verification, the Department found that the reported amount of interest income was earned on cash deposits in Farm B's bank accounts and, thus, were appropriately classified as short-term interest income. See Farm B Cost Verification Report, at page 20. For the final determination, we have revised Farm B's financial expenses to include as an offset this short-term interest income to the extent that it does not reduce Farm B's net financial expenses below zero.

Ontario Pork Farm C

Comment 35: Claimed Offsets for Subsidies

The Petitioners' Argument:

Ontario Pork's cost respondent, Farm C, claimed an offset to its COM for contributions received from the Canadian Government, under the NISA program, during the POI and for an accrued amount that was not received during the POI. The petitioners argue that the Department should not allow Farm C to claim an offset related to subsidies (i.e., NISA) provided by the Canadian government. The petitioners further argue that if the Department allows the offset, then it should be limited to the amount actually received during the POI and not include amounts anticipated to be received as claimed by Farm C.

The petitioners assert that if the Department finds that the income stabilization programs are not specifically attributable to hog operations, no offset should be allowed. The petitioners further assert that even if the Department finds these payments are specific to hog farmers, Farm C significantly understated its G&A expenses by claiming "NISA Funds" as an offset or reduction to its G&A expenses. The petitioners contend that there is no basis for Farm C to use its NISA revenues to offset its G&A expenses.

The petitioners cite Memorandum to Neal M. Halper, "Verification Report on the Cost of Production and Constructed Value Data Submitted by the Cost Respondent," dated January 18, 2005 ("Farm C Cost Verification Report"), that states that a portion of the claimed offset was not actually received and therefore it may not be appropriate to include this amount in the offset. The petitioners note that these additional amounts were not received during the POI and also were not recorded in Farm C's June 2003 FYE financial statements. The petitioners cite the SAA at 834 that states that the Department will rely on a respondent's accounting records provided those records are kept in accordance with the GAAP of the exporting or producing country. The petitioners claim that page 6 of the Farm C Cost Verification Report states that Farm C prepares annually reviewed financial statements in accordance with Canadian GAAP. The petitioners contend that given the additional NISA amounts were not recorded in Farm C's financial records during the POI, there is no basis for the Department to allow Farm C's revised claim during verification for additional amounts as an offset to Farm C's COP.

Ontario Pork's Argument:

Ontario Pork asserts that the Department should continue to offset Farm C's hog production costs for NISA Funds received during the POI. However, if the Department determines instead that it would be more appropriate to offset Farm C's COP with NISA and other government funding programs related to the POI (but not necessarily received during the POI), then Ontario Pork claims that the Department reviewed information during verification showing that the farm was eligible to receive funds which related to the POI. Ontario Pork contends that the petitioners' arguments that the offset should be denied are without merit and refers to its discussion in the common issues where it addresses the issue further. Lastly, Ontario Pork points out that Farm C did not use NISA revenues to offset G&A expenses but rather reported the revenues in a separate field called NISA.

Department's Position:

Ontario Pork's cost respondent Farm C as well as other cost respondents in this case claimed offsets to the cost of producing market hogs for income received from NISA and similar programs of the Canadian government. As explained in the general issues section of this memorandum, the Department has allowed an offset to the COP for NISA income, and the offset is based on amounts actually received by the producing farms from the Canadian government during the fiscal year. In addition to the offset that Farm C claimed for the receipt of NISA income during the fiscal year, Farm C also claimed an offset for an amount anticipated but not yet received from the Canadian government. Because we are allowing an offset for amounts actually received it would be inappropriate to also allow Farm C to claim amounts anticipated to be received. Therefore, for the final determination we will disallow Farm C's claimed offset for NISA income anticipated to be received subsequent to the fiscal year.

Comment 36: Failure to Report all Feed Costs

The Petitioners' Argument:

Ontario Pork's cost respondent Farm C submitted a minor correction at the cost verification related to the omission of certain feed costs. The petitioners refer to the Farm C Cost Verification Report which discusses these certain feed costs and contend that the Department should revise Farm C's COP to include these feed costs which the petitioners allege were not reported by Farm C.

Ontario Pork's Argument:

Ontario Pork did not comment on this issue.

Department's Position:

We agree with the petitioners that the cost in question should be included in the COM. We note that Ontario Pork had already included these expenses in the revised COP worksheets obtained at the cost verification. Specifically, per adjusting journal entries 24 through 34 on CVE 8, pages 6 and 7, Farm C adjusted its feed costs to include the costs of feed delivered in December 2003 but not recorded in the general ledger until January 2004. Thus, for the final determination we will use the adjusted COM that includes the expenses related to this minor correction.

Comment 37: Capitalized Feed Costs

The Petitioners' Argument:

The Department stated in its cost verification report that Ontario Pork's cost respondent Farm C excluded from COM an amount for feed purchased for one of its finishing barn contractors in December 2003. The petitioners, referring to the Farm C Cost Verification Report, state that Farm C excluded the cost of this feed because it was used to feed swine that were not shipped during the POI, and therefore were not included in the reported production quantity. The petitioners also cite the cost verification report that states that excluding this cost in reconciling total costs to the cost of manufacture may result in a double-counting of the costs because Farm C also reduced its costs to account for increases in swine inventory (pigs in process) and feed inventories. The petitioners assert that the Department should not allow Farm C to double-count the reductions to its costs.

Ontario Pork's Argument:

Ontario Pork did not comment on this issue.

Department's Position:

We agree with the petitioners that the cost of feed purchased near the end of the POI and consumed during the POI should be included in the reported COP. While feed was consumed during the POI, not all of the consuming swine were shipped during the POI and included in the reported production quantity. However, Farm C already accounted for the swine fed at the end of the POI but not shipped until after the POI through its work-in-process adjustment. To exclude the cost of this feed as a reconciling item and to apply a work-in-process adjustment results in a double adjustment for these costs. We therefore included these feed costs in the reported costs and have continued to apply Farm C's reported work-in-process adjustment.

Comment 38: Errors Revealed During Verification Should be Corrected

The Petitioners' Argument:

The petitioners cite pages 3 and 4 of the Farm C Cost Verification Report which identify the minor corrections that Farm C reported on the first day of verification. The petitioners contend that the Department should include these corrections in its final analysis of Farm C's data.

Ontario Pork's Argument:

Ontario Pork did not comment on this issue.

Department's Position:

We agree with the petitioners that the minor corrections described on pages 3 and 4 of the Farm C Cost Verification Report should be included in the COP. We note that Ontario Pork had already included these expenses in the revised COP worksheets obtained at the cost verification. Thus, for the final determination, we have used the adjusted COM that includes the expenses related to these minor corrections.

Comment 39: Proper Treatment of "Credit to Barn Quality" Account

The Petitioners' Argument:

Ontario Pork's cost respondent Farm C excluded amounts related to a pricing agreement adjustment (i.e., credit to barn quality or window price) from the reported COP. The petitioners assert that the Department should include in the COP the increase to Farm C's "credit to barn quality" account during the POI. The petitioners cite the Farm C Cost Verification Report at pages 6 and 7 which explains that the "credit to barn quality" refers to adjustments under a price agreement whereby Farm C incurs a liability to repay amounts to this customer whenever the market price falls below a floor price. The petitioners claim that the cost verification report makes clear that during the POI the actual market prices for sales under the pricing agreement were below the floor price and as a result Farm C increased its liability owed to this customer. The petitioners argue that the Department should not allow Farm C to exclude these costs from its reported COM because these costs were recorded in Farm C's accounting records and the Department accepted these accounting records as the basis for Farm C's costs. Moreover, the petitioners contend that the Department confirmed the amount of these expenses during verification and the liability for payment is directly related to the hogs shipped during the POI.

Ontario Pork's Argument:

Ontario Pork argues that Farm C's "credit to barn quality" or "window-price" account balance was properly recorded as a sales price adjustment in Ontario Pork's sales file and should not be included in the COP. Ontario Pork contends that in reporting its sales transactions involving window-pricing arrangements to the Department during the POI, Ontario Pork included a computer field, "WINADJH," that recorded the difference between the actual market price at the time of sale and the window price reflected in the invoice amount paid by the packer. Ontario Pork explains that Farm C received funds that it likely would have to pay back and
properly recorded the balance due to the packer during the POI under the window-pricing arrangement in the farm's general ledger under the "credit to barn quality" account. Ontario Pork asserts that the amount was not recorded as a production cost because it had nothing to do with production.

Department's Position:

We agree with Ontario Pork. As described in the Farm C Cost Verification Report at pages 6 and 11, Farm C has an agreement with a packer whereby amounts due to and from the packer were tracked in an account called "credit to barn quality" as prices for hogs fluctuated outside an agreed upon window. The debit balance at FYE 2003 shows that Farm C owed an amount to the packer because actual prices during the period had fallen below the limits set by the window. The amount in question clearly relates to Farm C's selling activities, not the cost of producing the merchandise under investigation. As such, Ontario Pork properly reported this activity as a price adjustment in the field "WINADJH."

Comment 40: G&A Expenses

The Petitioners' Argument:

The petitioners argue that Farm C under-reported G&A expenses. First, the petitioners claim that it is unclear why Farm C omitted certain marketing costs when calculating the G&A expense ratio even though the marketing costs were noted (on the G&A ratio calculation worksheet) to have been reclassified from the COM to G&A expenses. Next, the petitioners allege that it is unclear why Farm C omitted certain bank charges in its G&A expenses. Lastly, the petitioners claim that in order for the G&A ratio to be calculated and applied on the same basis, the G&A expense ratio should be calculated using the COM as the denominator rather than the cost of sales from the 2003 FYE income statement. The petitioners then assert that the G&A expense ratio should be calculated by dividing total administrative expenses from the general ledger accounts by the total COM.

Ontario Pork's Argument:

Ontario Pork contends that each of the three points raised by the petitioners in claiming that G&A expenses were under-reported are without merit and that the Department should continue to rely on Farm C's reported G&A expenses for the final determination.

First, Ontario Pork claims that it made clear in its response to the Department's September 20, 2004 Supplemental Section D questionnaire ("OP Supplemental Section D"), at pages SD-C 10 and 11, that for accounting and financial statement presentation purposes Farm C recorded as sales revenue the gross amount that it received from Ontario Pork for hog sales and recorded separately all of the fees and charges by Ontario Pork as marketing expenses. Ontario Pork contends that as all of the selling, movement, and other expenses were reported in Ontario Pork's sales files, the amount of marketing costs shown in Farm C's June 2003 financial statements is properly excluded from Farm C's reported G&A expenses and that including these expenses when calculating the G&A ratio would result in double-counting of the costs.

Next, Ontario Pork contends that the bank charges that the petitioners claim that Farm C failed to report reflect bank charges that were incurred by Farm C during calendar year 2003 (i.e., the POI) and not the amount of bank charges that were incurred by Farm C during fiscal year 2003. Ontario Pork points out that Farm C used the bank charges incurred during fiscal year 2003 from the 2003 FYE income statement when calculating the G&A ratio in accordance with the Department's practice. Further, Ontario Pork points out that as noted in the 2003 FYE financial statements, the amount listed as bank charges includes both bank charges and interest expenses paid by Farm C during the fiscal year. Ontario Pork then points out that the interest expenses were reported when calculating the interest expense ratio while the bank charges were reported in the G&A expense ratio.

Lastly, Ontario Pork contends that Farm C calculated the G&A ratio using the 2003 FYE cost of goods sold ("COGS") as the denominator in accordance with the Department's instructions rather than the COM as the petitioners claim Farm C should have. Ontario Pork claims that when arguing its position the petitioners failed to take into account that the cost of the swine sold by Farm C during the fiscal year was removed when calculating the reported COM but that G&A expenses relate to these costs as well as the reported costs.

Department's Position:

We agree with Ontario Pork. Because Ontario Pork's reported selling, movement, and other expenses (which are listed collectively on Farm C's 2003 financial statements as Ontario Pork Producers Marketing Board ("OPPMB") marketing charges) were reported in its sales files, these charges would be double-counted if they were also included in the G&A expense ratio calculation for Farm C. The reported POI OPPMB marketing charges are detailed at exhibit SD-4 of the OP Supplemental Section D response.

We also agree with Ontario Pork that bank charges were properly reported. First, the petitioners argue that the G&A expense ratio should be calculated using the amount for bank charges incurred during the POI. However, it is the Department's practice to calculate G&A expenses based on the FYE financial statements that most closely correspond to the POI. In this case, Ontario Pork properly calculated the G&A ratio based on Farm C's 2003 FYE income statement. Second, we disagree with the petitioners that bank charges were under-reported. Bank charges were combined with interest expenses on Farm C's 2003 financial statements. Therefore, for reporting purposes Farm C separated the bank charges from the interest expenses and reported the bank charges in the G&A expense ratio and reported the interest expenses in the interest expense ratio.

We disagree with the petitioners that the Department should use the COM as the denominator in the calculation of the G&A expense ratio. Using COGS as the denominator is consistent with the Department's well-established practice of calculating the G&A ratio. Section 773(b)(3)(B) of the Act provides the general description of calculating G&A expense. However, the statue does not prescribe a specific method for calculating the G&A expense ratio. When the statue is silent or ambiguous, the determination of a reasonable and appropriate method is left to the discretion of the Agency. Because there is no bright-line definition in the Act of what a G&A expense is or how the G&A expense ratio should be calculated, the Department has, over time, developed a consistent and predictable practice for calculating and allocating G&A expenses. This practice is to calculate the ratio based on the company-wide cost of sales. It is identified in the Department's standard section D questionnaire, which instructs that the G&A expense ratio be calculated as the ratio of total company-wide G&A expenses divided by cost of goods sold. See Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from Thailand, 69 FR 76918 (December 23, 2004), and accompanying Issues and Decision Memorandum (December 17, 2004), at Comment 12. Further, the Department's methodology avoids any distortions that may result if, for business reasons, greater amounts of company-wide general expenses are allocated disproportionally between divisions.

As with many cost allocation issues that arise during the course of an antidumping proceeding, there may be more than one way to allocate the costs at issue reasonably. This is precisely why we have developed a consistent and predictable approach to calculating and allocating G&A costs. The Department's normal practice of calculating G&A expenses based on the COGS rather than COM affords consistency across cases and is not results driven. We recognize that a unique fact pattern may present itself where it may be appropriate to deviate from our normal practice. However, that fact pattern does not exist in this case. In this case G&A expenses related to some products that were not subject merchandise and were not included in reported costs, and so to use the COM of only subject merchandise in the denominator instead of the COGS of all products when calculating the G&A ratio would distort the results. Because the Department considers G&A expenses to be period costs and extracts them from the financial statements for the period most closely corresponding to the POI, the G&A expense ratio should be calculated based on expenses (i.e., COGS) that are also reflected in the financial statements for the same period. Thus, the Department's normal methodology for calculating a respondent's G&A expense ratio is reasonable, predictable and applicable in this case. Consequently, for the final determination, the Department continues to use COGS as the denominator in calculating Farm C's G&A expense ratio.

Comment 41: Collapsing the Operations of Affiliated Suppliers

Ontario Pork's Argument:

Ontario Pork's cost respondent Farm C purchases isoweans from affiliates and uses both affiliated and unaffiliated subcontractors to add value to the isoweans in producing market hogs. Ontario Pork argues that the facts in this case necessitate that Farm C should be collapsed with its affiliated subcontractors for the purpose of reporting the swine production cost for Farm C. Ontario Pork contends that the subcontractors were affiliated with Farm C through family relationships, overlapping management, and intertwined operations, and they therefore comprise a single economic entity for the production of swine.

Ontario Pork states that according to section 351.401(f) of the Act, the Department treats two or more producers as a single entity where the producers are affiliated, the producers have production facilities that would not require substantial retooling for producing similar or identical products, and there is significant potential for manipulation of price or production. Ontario Pork alleges that in order to determine whether there is significant potential for manipulation of price or production the Department considers the level of common ownership; the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and, whether operations are intertwined with respect to sharing of sales information, involvement in production and pricing decisions, sharing of facilities or employees, or significant transactions between the affiliated producers. The respondent claims that all of these factors are present in this case.

Ontario Pork contends that Farm C is a closely held company and each of its affiliated subcontractors are tightly affiliated through direct family relationships, common ownership, and overlapping management. Ontario Pork then describes the familial relationships and common ownership among the affiliated suppliers. Ontario Pork cites the Wheat Final Determination where the Department determined that collapsing of affiliates was appropriate because of the potential risk of manipulation of production due to the commingling of production among affiliated producers as a similar situation to the instant case. Ontario Pork points out that Farm C coordinated all of the nursery barn feed deliveries and nearly all of the finishing barn feed deliveries during the POI through a common supplier. Ontario Pork claims that Farm C did not own production facilities for hogs or any other livestock. Rather, it coordinated the production of hogs utilizing affiliated and non-affiliated subcontractors to produce isoweans and provide nursery and finishing barn services. Ontario Pork asserts that the inventory and delivery of swine to and from the affiliated suppliers were intertwined and describes the production process to illustrate its assertion. Ontario Pork states that as the Department observed at verification Farm C officials maintained records containing detailed information on pig production including feed consumption and mortality figures for each group of swine processed. Ontario Pork then alleges that Farm C officials provided the Department with monthly records that showed the beginning and ending inventory, the mortality, the number of market hogs shipped, and the number of isoweans received at each of Farm C's finishing barns (including affiliated finishing barns). Ontario Pork claims that the affiliated suppliers were able, with no retooling, to substitute production facilities when needed. Ontario Pork supports its claim by giving the example that each of Farm C's sow barns shipped subject merchandise to entities not related to Farm C during the POI. Ontario Pork also points out that the Department verified that one of Farm C's affiliates is a producer of isoweans as well as nursery and finishing pigs. Ontario Pork claims that Farm C's affiliated entities could easily modify their barns to produce nursery pigs, slaughter hogs, or a combination of the two.

Finally, Ontario Pork argues that the record demonstrates that the legal criteria for collapsing has been met in this case and, therefore, the Department should treat Farm C and its affiliated suppliers as a single entity in the final determination and should use each supplier's COP to value inputs used in the production of subject merchandise.

The Petitioners' Argument:

The petitioners argue that the Department correctly determined that it should not collapse Farm C and its affiliated suppliers for the purpose of calculating the production costs for Farm C. The petitioners contend that none of the claims submitted by Ontario Pork justify a decision to collapse Farm C and its affiliated suppliers. The petitioners allege that the types of commingling and intertwining of operations described in the Wheat Final Decision Memorandum do not occur with respect to Farm C. The petitioners contend that in this case there is no commingling of Farm C's hogs with the hogs bred or owned by its affiliated suppliers whereas in the Canadian wheat case farmers commingled their production with affiliates in shared bins, delivered grain jointly, split elevator receipts, pooled expenses, shared crop insurance policies, shared labor, and shared management. See Wheat Final Decision Memorandum, at Comment 10. The petitioners argue that Farm C did not commingle its operations with its affiliates but rather coordinated the production process of hogs first by purchasing isoweans and then using various contractors, including the affiliated contractors, to raise the isoweans to slaughter weight.

The petitioners cite Wheat Final Decision Memorandum where the Department determined that section 353.401(f) of the Act was not relevant in the context of whether there was significant potential for the manipulation of price because the Canadian Wheat Board ("CWB") was the sole exporter of Canadian wheat to the United States and due to the structure of the Canadian system, Canadian farmers had no option for distributing their wheat to the United States except through the CWB. The petitioners contend that similarly in this case the Ontario farmers are required to market their hogs through Ontario Pork, and therefore individual farms are not in the position to influence the price of subject merchandise.

The petitioners assert that other information in Ontario Pork's responses show that Farm C was operated as an independent entity. The petitioners give the example that Farm C maintained its own accounting records and prepared its own financial statements. The petitioners also point out that Farm C recorded its purchases of isoweans and other services from its affiliated suppliers at the transfer price rather than at the supplier's costs, thus Farm C's accounting methods do not support Ontario Pork's claim that Farm C and its affiliates comprised a single economic entity.

Finally, the petitioners contend that the Department's normal practice is to rely on a respondent's normal books and records unless the normal records distort the cost of production. The petitioners claim that in instances where an affiliated party supplies major inputs used in the production of the subject merchandise, the Department will apply the major input rule and will not collapse the affiliates unless the respondent establishes that the affiliated parties meet the criteria for collapsing. The petitioners assert that in this case the evidence on the record demonstrates that Farm C and its affiliates do not meet the Department's requirements for collapsing, therefore the Department should not collapse Farm C's transactions with its affiliated suppliers.

Department's Position:

We agree with the petitioners. We have determined that 19 CFR 353.401(f) is not relevant in this case in the context of whether there is significant potential for the manipulation of price or production. Similar to the situation discussed in the Wheat Final Decision Memorandum, Ontario Pork is the sole exporter of market hogs from the Province of Ontario in Canada to the United States and due to the structure of the Canadian system, farmers who sell market hogs from Ontario have no option for distributing their hogs to the United States except through Ontario Pork. Thus, the individual farmers, who are simply sampled cost respondents, are not in a position to either influence the price of the subject merchandise or circumvent the potential antidumping duties that may be put in place as a result of this investigation.

Further, we find that there is not a significant potential for the manipulation of production. In making this determination in the instant case, we have analyzed the facts surrounding the operations of Farm C and its affiliates to determine the extent to which the affiliated parties are involved in the operations of the selected cost respondent. Farm C produces market hogs by purchasing isoweans from affiliated sow barns and sending them to numerous affiliated and unaffiliated barn subcontractors for feeding. Farm C maintained title to its swine throughout the feeding cycle and controlled who provided what services and when. The services provided by affiliates were tracked by Farm C, and payments were made based on the specific number of hogs fed. In addition, at no time were Farm C's swine commingled with other producers' swine. While the operations of Farm C and its affiliates were intertwined through significant transactions, we do not believe this automatically translates into there being a significant potential for manipulation of production. The facts in this case are no different than any other case where a respondent uses the services of affiliates in the production of subject merchandise. It is through section 773(f)(2) and (3) of the Act that we are able to test these transactions to ensure the farmers did not receive preferential treatment.

Accordingly, because the Department's purpose for collapsing affiliated parties is to eliminate the potential for manipulation of the antidumping duty order, the Department agrees with the petitioners that this concern is absent in this case. Therefore, the Department finds it unnecessary to collapse those suppliers that are affiliated with Farm C. As such, for the final determination, for this farm we continued to treat the entities as affiliates and, thus, applied section 773(f)(2) of the Act to ensure that such affiliated party transactions occurred at arm's-length prices.

Ontario Pork Farm D

Comment 42: Costs Related to Transporting Hogs to the Farm

Ontario Pork's Argument:

During the POI, Ontario Pork's cost respondent Farm D used its own trucks to transport purchased isoweans from the supplier to the farm. However, Farm D did not include any transportation costs related to the transport of isoweans in its reported costs. Although all interested parties agree that transportation costs for Farm D's purchases of isoweans should be included in the reported cost, the issue is the value that should be used to calculate that cost.

Ontario Pork states that Farm D resold a portion of the isoweans it purchased to affiliated and unaffiliated farms and charged these parties a fee for trucking. Ontario Pork asserts that Farm D typically charged a particular rate for trucking services based on the distance from the isowean supplier to Farm D. Ontario Pork notes that a higher rate was charged for trucking services to its unaffiliated farm compared to that charged to its affiliated farm. However, Ontario Pork maintains that the distance that Farm D's trucks travel in order to deliver the isoweans to the unaffiliated farm is significantly farther than the distance to the affiliated farm, which is adjacent to Farm D. Thus, Ontario Pork argues that the rate charged on the transportation invoices to the unaffiliated farm is not representative of the rate Farm D would likely be charged by unaffiliated transporters, and is an invalid benchmark for transportation costs. Further, Ontario Pork argues that there is no evidence on the record that the amounts charged for transportation over similar routes for the affiliated farm were not at market prices. Therefore, Ontario Pork maintains that for the final determination, the Department should use the arm's-length transportation rate charged to the affiliate rather than the rate charged to the unaffiliated farm which reflects a farther distance.

The Petitioners' Argument:

The petitioners contend that there is nothing in the verification exhibits indicating that the trucking fee charged by Farm D was based on the distance to the farms. The petitioners argue that the amounts involved for the trucking fee show that these charges are stated as a flat fee and if the fee was based on the distance traveled, then the invoice for each shipment should have indicated the actual distance between locations and the actual mileage for each delivery.

The petitioners also argue that there is nothing on the record to suggest that the fee Farm D charged to its affiliate was an arm's-length price. The petitioners assert that fees and prices between affiliated parties are inherently suspect and the burden is not on the Department to prove that the affiliated prices are not at arm's-length, but rather the respondent's burden to prove that they are arm's-length transactions. The petitioners contend that Farm D could have submitted other information on trucking fees in Canada, but it chose not to. Thus, there is no information on the record to support Farm D's claim that the trucking fee it charged its affiliated party was an arm's-length price.

Department's Position:

We agree with the petitioners that the trucking fees charged to the unaffiliated customer by Farm D should be used as a surrogate value for calculating the transportation expenses related to its purchased isoweans. In the instant case, Farm D operates its own trucks and did not report a cost for the transportation of its purchased isoweans from the supplier to its farm. See Memorandum to Neal M. Halper, "Verification Report on the Cost of Production and Constructed Value Data Submitted by Ontario Pork for Farmer D," dated January 12, 2005 ("Farm D Cost Verification Report"). Both Ontario Pork and the petitioners agree that transportation costs related to the purchased isoweans should be included in the reported costs. However, the argument before the Department is what value to use to calculate the transportation costs, the trucking fees charged to its affiliated customer or those charged to its unaffiliated customer.

As noted earlier, we agree with the petitioners that the trucking fees charged to the unaffiliated customer should be used to calculate the transportation costs because it is an arm's length transaction. Ontario Pork contends that the Department should use the trucking fees charged to the affiliated customer as the surrogate because there is no reason to suspect that the transaction between the affiliated customer was not a market price and, therefore, not at arm's length. Further, Ontario Pork maintains that the distance that Farm D's trucks travel in order to deliver isoweans to the unaffiliated customer is significantly farther than to the affiliated customer which is adjacent to Farm D. Thus, Ontario Pork asserts that it must be a shorter distance traveled to the affiliated farm due to the farm's proximity to Farm D. However, we note that the transportation charges at issue are related to the distance between the isowean supplier and Farm D, not Farm D and either of its customers. We agree with the petitioners that there is no evidence on the record that the distance between the isowean supplier and the unaffiliated farm is significantly greater than the distance between the isowean supplier and the affiliated farm. For that matter, there is no evidence on the record pertaining to the distance or location of the unaffiliated farm. It is possible that the unaffiliated farm is between the isowean supplier and Farm D, in which case the distance would be less. Therefore, for the final determination we have calculated the trucking expenses for transporting isoweans from the supplier to Farm D based on the fees charged to the unaffiliated farm.

Comment 43: Vaccination Costs of Resold Isoweans

Ontario Pork's Argument:

Ontario Pork argues that Farm D's vaccination costs for isoweans that are purchased and resold should not be included in the reported costs. Ontario Pork maintains that the invoices collected during verification for the resold isoweans show that Farm D charges an amount for the vaccination. Thus, these costs do not relate to the cost of producing Farm D's hogs and should not be included in the cost of production.

The Petitioners' Argument:

The petitioners argue that Ontario Pork uses the case brief to submit a new claim for a reduction to Farm D's reported costs. The petitioners maintain that the Department's verification report contains no discussion of the amounts recovered for the cost of vaccinations on isoweans that Farm D purchased and resold. Moreover, the amount that Ontario Pork is requesting to be subtracted from the cost of production is not apparent from the verification exhibits cited.

The petitioners argue that the Department should reject this new claim as untimely submitted and as unverified. According to the petitioners, Ontario Pork had an opportunity to submit changes to its costs at the beginning of verification and it is not appropriate to allow a respondent to submit new claims for adjustments to its cost data after verification. The petitioners argue that if Ontario Pork had submitted this claim in a timely manner it could have been examined at verification. Finally, the petitioners contend that Ontario Pork submitted this claim after the deadline for submission of new information and this information was not requested by the Department. Therefore, the Department should not consider this new claim in its final determination.

Department's Position:

We agree with the petitioners that Farm D's cost of production should not be reduced by the amount Ontario Pork claims is related to vaccination costs of the purchased and resold isoweans. Ontario Pork claims for the first time in its case brief that the vaccination expenses related to the resold isoweans should be deducted from Farm D's reported cost of producing hogs. However, there is no evidence on the record that the costs reported for producing hogs are inclusive of the vaccination amounts shown on the Farm D invoices for the resold isoweans. Moreover, the vaccination amounts described by Ontario Pork for the resold isoweans were not verified. There is no evidence on the record that these expenses are at cost (i.e., the expenses may include profit or other administrative expenses) or that these expenses were even incurred by Farm D. Therefore, for the final determination we have not adjusted the cost of producing hogs by the vaccination expenses in question for the purchased and resold isoweans.

Comment 44: Cost of Feed Produced by the Partners

Ontario Pork's Arguments:

According to Ontario Pork, the corn inputs (i.e., swine feed) supplied by Farm D's partners from the partners' own farms should be valued at the partners' cost of producing the corn. Farm D is a partnership between four partners. In addition to Farm D, each partner has its own farm. Ontario Pork maintains that all of Farm D's corn inputs produced by the partners involved in the hog operation and those partners are working directly for the hog operation when producing the corn. Ontario Pork argues that the recorded values in Farm D's books and records for corn harvested by the partners are not transfer prices, but instead represent a rough accounting of the contributions of each of the partners in the hog operation. Ontario Pork argues that the partners producing the corn at their farms and the same partners producing hogs at Farm D are operating as a single entity.

Ontario Pork asserts that in order to invoke the "major input rule" there must be a transaction between two affiliated parties and that in the case of Farm D, there is no such transaction because the corn and the hogs are produced as part of the same integrated operation. They assert that the original intention was for all Farm D partners to contribute corn in equal amounts and after it became apparent that corn contributions could not be equal, it became necessary to distribute payments for the corn contributions. Ontario Pork argues that these corn payments are like dividends provided to shareholders and Farm D tracks the corn contributions of each partner so that the equity ownership remains in balance.

Ontario Pork argues that there is no evidence of a transaction between the partners and Farm D as is needed to apply the major input rule because the partner, and not Farm D, maintains a log of the volume of corn delivered to the hog operation. Ontario Pork maintains that Farm D does not make any entry into its books for the receipt of corn, nor does it maintain any inventory records showing the amount of corn held at the hog operation.

In addition, Ontario Pork maintains that the corn operations are an essential and integral part of the same Farm D economic undertaking. Because the partners are producing the corn as part of, not separate from, the hog operation, there is no basis for applying the major input rule. Thus, Ontario Pork argues that the Department should calculate the costs of producing corn based on the actual cost of production incurred by Farm D.

The Petitioners' Argument:

The petitioners maintain that the Department should continue to apply the major input rule to determine the appropriate cost of corn consumed by Farm D. The petitioners argue that statements and information in the verification report contradict the claims in Ontario Pork's case brief that there is no transaction between the affiliated parties. The petitioners contend that the verification report includes a discussion of the prices and states that the affiliated parties used spot prices as the basis for their agreed upon prices.

The petitioners argue that Ontario Pork's descriptions in the case brief demonstrate that the agreed upon prices are transfer prices. The petitioners cite Ontario Pork's statement that if a certain partner contributes higher amounts of corn one year, he will be given greater equity and may request payment at any date after the price of corn is set. The petitioners contend that this statement means that the partner who contributes more corn will be paid more money and that the amount of this distribution will be based on the number of bushels and the price. Thus, the petitioners argue that Ontario Pork's description of its operations disproves its claim that there are no transfer prices and no transactions for the corn.

The petitioners note that the affiliated parties' independent farm operations are not consolidated in Farm D's financial statements and that each of the affiliated parties owns and operates their own farming operations. Thus, the petitioners contend that Farm D and the crop growing activities are considered as separate operations. Also, the petitioners argue that Ontario Pork failed to establish that Farm D and its affiliated corn suppliers have similar or identical production facilities that do not need substantial retooling. The petitioners note that Ontario Pork excluded from its collapsing argument the partner with its own hog operations, even though this affiliate is closer to meeting the requirements.

Department's Position:

We agree with the petitioners that the Department should continue to apply the major input rule to determine the appropriate cost of corn consumed by Farm D. The Department's normal practice, in accordance with section 773(f)(3) of the Act, is to value affiliated party transactions of major inputs (in this instance, corn acquired for hog feed) at the higher of the affiliated party's transfer price, the market price of the inputs, or the actual costs incurred by the affiliated supplier in producing the inputs. See Notice of Final Determination of Sale at Less Than Fair Value: Fresh Atlantic Salmon from Chile, 63 FR 31411, 31426 (June 9, 1998).

Ontario Pork argues that the partners producing the feed at their farms and the same partners producing hogs are operating as a single entity. Evidence on the record, however, contradicts this argument. Each feed supplier and Farm D are responsible for preparing and maintaining its own individual financial statements. Moreover, each partner's own operations is a separate legal entity (i.e., either limited companies or incorporated). Each partner that supplies feed prepares and files a separate tax return. Although Farm D allocates its revenues and expenses to each partner and does not file its own tax return, this is a common practice in Canada, as the individual partners and not the partnership are required to file the tax returns. Farm D's outside accountant further noted at verification, that it is also common practice for Canadian partnerships to not have formal agreements or corporate registrations. See Farm D Cost Verification Report. Moreover, each of the partners has a substantial farming operation unrelated to the corn supplied to the Farm D partnership. We note that producing corn is only a portion of each of the partner's overall farming operations. In fact, the majority of the partner's farming operations are dedicated to crops other than corn. See Ontario Pork's response to the Department's supplemental section D questionnaire, dated September 20, 2004, chart at page 6. Furthermore, Ontario Pork itself refers to the partners as a "separate affiliated company" in its rebuttal brief at page 58.

Additionally, the partners that supply feed to Farm D do not qualify to be collapsed under the Department's regulations. The collapsing regulations typically apply to affiliated entities that are both producers and have production facilities for similar or identical products that would not require substantial retooling. See 19 CFR 351.401(f). Similar to the situation discussed in the Wheat Final Decision Memorandum, Ontario Pork is the sole exporter of market hogs from the Province of Ontario Canada to the United States due to the structure of the Canadian system. Farmers who sell market hogs from Ontario have no option for distributing their hogs except through Ontario Pork. Thus, the individual farmers, who are sampled cost respondents, are not in a position to either influence the price of the subject merchandise nor circumvent the potential antidumping duties that may be put in place as a result of the investigation. Moreover, the partners that supply feed do not produce hogs. Thus, because the partners do not produce the subject merchandise, there is not a significant potential for manipulation of production.

Finally, we disagree with Ontario Pork that the transactions for the supplied corn between Farm D and the partners are not transfer prices. In response to the Department's supplemental questionnaire, Ontario Pork stated that the partners meet and agree upon corn prices annually and based on the agreed upon values each partner may later withdraw funds from the partnership. Thus, the amount of funds that a partner may withdraw from the partnership is based on the volume and agreed upon value of corn supplied by each partner. By definition, this process established the price at which one entity is transferring the goods it produced (in the instant case, corn) to another entity. The record also shows, contrary to Ontario Pork's assertion, that a sales transaction did occur. Moreover, we verified that each partner was actually paid at the per bushel price agreed upon during the POI. The fact that there is no invoice does not negate the fact that the partner was paid based on the volume and value of feed supplied. See Farm D Cost Verification Report. The fact that the prices were negotiated and payments made at some later point in time is also irrelevant. Therefore, for the final determination, we have continued to calculate the cost of feed supplied by the affiliated partners in accordance with the major input rule under section 773(f)(3) of the Act.

Comment 45: Price of Corn Set by the Partners for November and December 2003

Ontario Pork's Arguments:

Ontario Pork contends that if the Department determines that the major input is applicable in determining the value of the corn inputs from Farm D's partners, the POI average value used to determine the transfer price should include the agreed upon price for the last two months of the POI. Ontario Pork maintains that the partners for Farm D meet and agree on a value for the corn supplied by the partners to the hog production process normally months after the corn has been processed and consumed. However, for the last two months of the POI, Ontario Pork reported in its submissions to the Department a price paid to an unaffiliated supplier during those two months. Thus, for the months January through October of the POI, Farm D reported the partners agreed upon values and for the months of November and December of the POI, Farm D reported the price paid to an unaffiliated supplier as the transfer price. Prior to verification, however, the partners of Farm D met and confirmed the price for the corn that was consumed in the November and December months. Ontario Pork asserts that the partners set the price based on the spot corn price for that day.

Ontario Pork asserts that Farm D's agreed upon price was often set several months after the corn was delivered and that payment to the partners was made months after the agreed upon price was set. Ontario Pork argues that Farm D partners met on November 10, 2004, and agreed on a price for the corn that was consumed during November and December 2003. Consistent with prior business practice, Ontario Pork maintains that Farm D would not normally remit payment to the partners until months after the agreed upon price is set. Ontario Pork argues that because the agreed upon price was paid in every instance reviewed by the Department, there is no basis for concluding that Farm D will not pay the agreed upon price for the November and December 2003 corn delivered by the partners. Thus, when determining the cost of corn inputs for Farm D, Ontario Pork argues that the Department should use the agreed upon price as set by the partners for the months of November and December 2003.

The Petitioners' Argument:

The petitioners argue that the Department should use the price of corn based on the price Farm D actually paid an unaffiliated supplier during the last two months of the POI because this price was verified by the Department. Also, the unaffiliated price is an arm's length price that is contemporaneous to the cost period being examined. The petitioners contend that Ontario Pork failed to submit any supporting documentation that any of the partners were paid the new lower price for corn during November and December 2003. The petitioners point out that the lower price is based on a spot price more than ten months after the end of the POI, thus, the price advocated by Ontario Pork is unverified and not contemporaneous.

Department's Position:

We agree with the petitioner that we should not rely on the November and December price for corn submitted by Ontario Pork's Farm D at verification. At verification we examined supporting documentation of the transfer and market prices paid by Farm D. Record evidence provided by Farm D supports the January through October 2003 transfer prices and the January through December 2003 unaffiliated market prices submitted by Farm D. Although Ontario Pork asserts that the transfer price provided at verification for the partner-supplied corn consumed in November and December of the POI was based on the spot price of corn on November 10, 2004, there is no evidence on the record that the partners ever received payments based on this price. Therefore, for the final determination, when applying the major input rule, we have relied on the transfer prices that have verifiable payments from Farm D to its affiliated corn suppliers (i.e., January through October 2003). As such, we adjusted Farm D's feed costs to the higher of the transfer price, market price, or cost of producing the feed.

Comment 46: Depreciation Cost

Ontario Pork's Argument:

Prior to verification, Ontario Pork's Farm D reported its depreciation expenses based on Farm D's June 30, 2003 FYE. However, Ontario Pork maintains that the Department should use Farm D's depreciation expenses as submitted at verification based on the POI (i.e., calender year 2003). Farm D's FYE is June 30, thus six months of costs for one FYE and six months of the next FYE fall within the POI. Therefore, at verification Farm D revised its depreciation expense to reflect half of its FYE 2003 and an estimated half of its FYE 2004. Ontario Pork notes that since Farm D had not completed its FYE 2004 financial statements at the time of verification, Farm D estimated the FYE 2004 deprecation expenses based on the declining balance depreciation method normally used in its accounting records.

Further, Ontario Pork notes that Farm D's reviewed financial statements were submitted to the Department on January 18, 2005, as requested. Ontario Pork asserts that the depreciation expenses for Farm D's hog operations are the same as those reported during verification and Farm D did not have any hog farming asset additions or disposals. Therefore, Ontario Pork argues that the Department should rely on Farm D's POI depreciation expense, as revised at verification, for its hog production costs.

The Petitioners' Argument:

The petitioners contend that the 2003 FYE depreciation cost that was originally reported for Farm D is the amount that was recorded in its financial statements and verified. The petitioners continue that the Department was not able to verify the revised depreciation cost presented at verification because an asset ledger for Farm D's 2004 FYE was not provided and the Department could not trace the 2004 FYE depreciation expense to Farm D's records.

The petitioners also argue that the Department should reject Ontario Pork's revised depreciation expense submitted at verification for Farm D because it is not a correction of an error, but a change in methodology and is unverified. The petitioners continue that Ontario Pork is attempting to circumvent the Department's regulations and practice for submission of new factual information by submitting Farm D's FYE 2004 financial statements more than two months after the verification was completed. <u>See</u> Ontario Pork's submission of Farm D financial statements, dated January 18, 2005. Moreover, the petitioners contend that the financial statements were submitted after Ontario Pork had received the Department's verification report and it is inappropriate for the Department to accept new information for its analysis after the respondent has received the Department's report.

Department's Position:

We agree with Ontario Pork that the depreciation expense related to the POI should be used in calculating Farm D's cost of producing hogs. It is the Department's normal practice to calculate a respondent's cost of manufacturing based on the POI. Depreciation expenses are an element of the cost of manufacturing and, thus, it is appropriate to calculate this expense on the same basis as the other manufacturing expenses (<u>i.e.</u>, the POI).

Contrary to the petitioners' claim that the change from the FYE to the POI depreciation expense should be rejected because it was a change in methodology, we find that the change amounts to a correction of an error. Ontario Pork erroneously reported the depreciation expenses for the incorrect time period (<u>i.e.</u>, the fiscal year and not the POI). Ontario Pork has not changed the methodology in which the depreciation expense was calculated. That is, the originally reported deprecation expense for the fiscal year and the corrected depreciation expense for the POI are both calculated based on the declining balance depreciation method normally used in its books and records. Upon receiving Farm D's financial statements for the 2004 fiscal year, we were able to verify that no additions or disposal of assets related to the hog operations occurred during the 2004 fiscal year.

In regards to the petitioners' contention that the 2004 FYE financial statements were new factual information, we note that the Department requested this information prior to and during the verification. As prescribed in the Department's regulations, the Secretary may request any person to submit factual information at any time during the proceeding. See 19 CFR 351(c)(2). Although the requested financial statements were received by the Department on January 18, 2005, after the Department's verification report was issued on January 12, 2005, we note that the financial statements were prepared and signed by an independent auditor on January 3, 2005, prior to the issuance of the verification report. See Ontario Pork's submission of Farm D's financial statements, dated January 18, 2005. Therefore, for the final determination we have calculated Farm D's depreciation expense based on the POI.

Comment 47: G&A Offset for Land Rental Income

Ontario Pork's Argument:

Ontario Pork argues that the record shows that a payment for rental income received by Farm D in FY 2004 was income earned in the FYE June 30, 2003. Therefore, the full amount of rental income should be included as an offset to Farm D's G&A expenses. Specifically, Ontario Pork argues that Farm D's general ledger for fiscal year 2004, shows that Farm D received land rental income on February 17, 2004, and May 4, 2004, for fiscal years 2003 and 2004, respectively. For the final determination, Ontario Pork asserts that the Department should allow the rental income offset to Farm D's reported G&A expense.

Further, Ontario Pork contends that Farm D did not include rental income in its 2003 FYE financial statements because it was included in the accrual adjustment for receivables. Ontario Pork contends that Farm D maintains its individual accounts on a cash basis and makes all accrual adjustments in a specific account. Ontario Pork asserts that while the account for rental income does not show a payment during the fiscal year, the rental income was included in the end of the year accrual adjustments.

The Petitioners' Argument:

The petitioners argue that the Department's antidumping duty questionnaire makes it clear that the stated policy is to base G&A expenses on the amounts reflected in the full-year financial statements for the most recently completed fiscal year. The petitioners maintain that Farm D received land rent on

February 17, 2004, and on May 4, 2004, and that these payments were recorded in its general ledger for the period covered by its FYE June 30, 2004. Thus, the petitioners contend that Ontario Pork is asking the Department to abandon its policy for calculating G&A expenses and to selectively include entries recorded in a later fiscal period. The petitioners argue that it is improper to allow a respondent to attempt to cherry-pick the data it wishes the Department to use for its analysis by selectively including post fiscal year and post POI entries to its accounting records.

Department's Position:

We agree with Ontario Pork that Farm D's G&A expenses should be offset by land rental income received. Farm D's normal books and records are maintained on a cash basis and adjusted to an accrual basis of accounting by an independent auditor at year end. As Ontario Pork contended, land rental income for the 2003 fiscal year was paid and reported in the 2004 FYE general ledger. Thus, based on the accounting principle of revenue recognition, it is appropriate to include in the 2003 G&A expenses the revenue received for rental income related to the 2003 fiscal year in order to recognize the revenue when it was earned (i.e., over the passage of time), as opposed to when it was paid. See Horngren & Harrison, *Accounting* (Prentice-Hall, 1992), second edition, page 552. Therefore, for the final determination, we have offset Farm D's G&A expenses with the land rental income related to the 2003 fiscal year.

Comment 48: Labor Allocation

Ontario Pork's Argument:

Ontario Pork maintains that in the preliminary determination, the Department allocated one of Farm D's partner's labor costs for management services to the hog farm operations by attributing a majority of his time to Farm D and the remainder of his time to his personal hog farm operations. Ontario Pork asserts that this Farm D partner not only has his own hog operation, but has other farm operations (i.e., crops) that are labor intensive. Ontario Pork asserts that the labor intensive crops require the majority of the partner's time. Additionally, Ontario Pork claims that the Farm D partner does a majority of his own work at his hog operations, whereas, Farm D has full time employees that do all of the work. Thus, Ontario Pork argues that the Department's preliminary determination overstates the partner's contribution, in terms of labor, to the hog operations of Farm D and that Ontario Pork's reported imputed labor allocation methodology should be used.

The Petitioners' Argument:

The petitioners contend that the preliminary analysis memorandum put Ontario Pork on notice that the Department would not accept unsupported estimates and that Farm D should provide some evidence to support its claim of allocating its partners' time for hog management services. See Memorandum to Neal Halper, "Cost of Production and Constructed Value Adjustments for the Preliminary Determination, Ontario Pork Producers' Marketing Board Cost Respondents," dated October 14, 2004 ("OP Preliminary Calculation Memorandum"). The petitioners also contend that the Department's verification outline put Ontario Pork on notice that the Department expected to obtain some evidence from Farm D to support the allocation percentage of the partner's hours. See Farm D Cost Verification Report. However, according to the petitioners, Ontario Pork submitted no documents and no evidence to corroborate the estimate used to allocate the partner's labor cost.

Department's Position:

We agree with the petitioners that Ontario Pork has provided no verifiable evidence to support its allocation methodology. In the preliminary determination, we allocated the uncompensated labor for management services to Farm D and the partners' own operations in proportion to the total costs incurred by each operation. See OP Preliminary Calculation Memorandum. During verification, Ontario Pork merely reasserted its original claim for allocating the labor costs between Farm D's managing partner's two entities. See Farm D Cost Verification Report. However, Ontario Pork's assertions related to the allocations were merely estimates and were unverifiable. Unlike the unsubstantiated estimates, total cost is a reasonable and verifiable basis for allocating management costs between the two entities. The Department often applies this methodology (i.e., total costs) when allocating company-wide G&A expenses between divisions or subsidiaries. Further, this methodology avoids any distortions that may result if, for business reasons, greater amounts of general expenses are allocated disproportionally. See Notice of Final Determination of Sale at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan, 64 FR 24329, 24354 (May 6, 1999). The same logic applies in the instant case for allocating management services between affiliated parties. Therefore, for the final determination, we have continued to allocate the labor cost for hog management services for one of Farm D's partners based on the proportion of total costs incurred by each entity.

Comment 49: G&A Expenses Related to Fines

The Petitioners' Argument:

The petitioners contend that the expenses related to a fine paid in 2003 by Farm D should be included in the reported G&A expenses. The petitioners argue that Farm D provided no information to support the claim that the fine should be excluded from its G&A expenses. According to the petitioners, the fine was paid during Farm D's 2003 fiscal year and was recorded in its accounting records. The petitioners argue that consistent with the Department's policy, Farm D's 2003 financial statements should be used as the basis for calculation of its G&A expenses. The petitioners contend that the liability for the fine occurred during Farm D's 2003 fiscal year and this expense should be included in its G&A expenses. Further, the petitioners argue that the G&A expenses are part of the general operations of Farm D and fines fall under this definition.

Ontario Pork's Arguments:

Ontario Pork argues that although the fine was paid in 2003 by Farm D, it was for an offense that occurred between August 26 and August 28, 2000, and was in litigation regarding the offense in 2002. Ontario Pork continues that it is appropriate for a company to recognize this type of contingent liability at the time of the dispute and, therefore, the Department should exclude this fine from the POI cost calculations for Farm D.

Department's Position:

We agree with Ontario Pork that Farm D's fine relating to a prior period should be excluded from the POI costs. Farm D's normal books and records are maintained on a cash basis. As Ontario Pork contended, the offense that generated the fine occurred in a prior period and the payment was made in the 2003 fiscal year. However, the liability for the offense was known and quantifiable in 2002. Therefore, in accordance with accrual basis accounting, it is reasonable to expect that the contingent liability should have been recognized in the prior period. Therefore, for the final determination we have excluded from Farm D's G&A expenses the costs for the fine related to the 2000 fiscal year.

Excel

Comment 50: Mandatory Respondent Status

Excel's Argument:

Excel argues that the Department improperly rescinded its decision to include Excel as a mandatory respondent in the Preliminary Determination because the Department mistook Excel for a broker when, in fact, Excel operates a cooperative system in which the cooperative group collectively produces live swine. Excel argues that it has substantial control over its suppliers' sales and production processes regardless of whether the supplier is an affiliate through equity ownership. Therefore, Excel contends that it is an appropriate mandatory respondent in this investigation, and the Department should assign Excel its own antidumping duty rate for the final determination. Further, Excel asserts that the Department's "knowledge test," as applied in the Preliminary Determination, is inappropriate for Excel's circumstances because (1) there is only one sales transaction to the U.S. customer and (2) the Department did not apply the knowledge test to Ontario Pork, an entity which Excel claims is similarly situated to it.

Excel states that the Department selected it as a mandatory respondent because Excel was one of the largest Canadian exporters of live swine and because Excel was affiliated with two[4] of its suppliers of live swine. Excel asserts that the verified record evidence demonstrates that Excel is, in fact, a producer of subject merchandise by virtue of its affiliation with two of its suppliers. These two suppliers and Excel, or Excel's affiliated genetics companies, Keystone Pig Advancement ("KPA") and Can Am Genetics ("Can Am"), have common shareholders. In addition, Excel argues that the Department verified that Excel is intimately involved in the production of swine for all of its suppliers by virtue of its contractual breeding swine provisions. Excel asserts that, in addition to the breeding swine provisions, the Department verified Excel's direct involvement in managing the suppliers' herds with respect to health maintenance, troubleshooting difficulties with mating and other production processes, and

[4]The actual number of Excel's affiliated suppliers was made public at the public hearing held at the Department on February 7, 2004. The verbatim transcript of this hearing is on the Department's official file.

procuring veterinary services and certifications.

Excel states that it only sells isoweans that are produced from its own breeding swine (i.e., breeding swine from KPA genetics). In other words, all of Excel's suppliers purchase and use KPA breeding swine to, in turn, sell isoweans through Excel. Excel also notes that the Department verified that all of the sales contracts between its suppliers and customers require that all isoweans sold to be bred from KPA breeding swine. Therefore, Excel contends that the breeding swine and isowean sales contracts, which are signed in tandem, require Excel to have significant involvement in the production (and sale) of the isoweans bred from KPA breeding swine for all of the suppliers. Excel argues that brokers or trading companies are not similarly situated to it because they do not take part in actual sales transactions and do not have intimate influence over the production process. Therefore, Excel contends that the Department should not treat it as broker or trading company.

In addition to its involvement in the production process, Excel argues that it controls the pricing and sale of all KPA isoweans to the United States that are produced by all of its suppliers. Excel argues that the record evidence verified by the Department demonstrates Excel's extensive role in negotiating sales contracts and in the sales process overall. According to Excel, the record shows that the sales process begins with Excel identifying buyers and matching them to suppliers. Excel states that it uses the reputation of its genetics brand name to market the isoweans produced by all of its suppliers. Excel further states that it negotiates the price mechanism, freight terms, quality/weight adjustment provisions, price floors and ceilings, and other terms of the isowean sales contracts. Excel asserts that the Department verified that, in some cases, the supplier does not meet the customer and that the supplier merely signs the sales contract as presented to it by Excel. Excel argues that the Department verified that Excel developed its standard, long-term isowean contract with one of its customers and that Excel uses this contract for all suppliers and buyers. According to Excel, this evidence confirms its control over pricing and the sales process. Moreover, Excel argues that it would be unreasonable to conclude that it is the supplier and not Excel who sets the U.S. price.

Excel also argues that the Department verified that Excel's involvement in selling isoweans continues throughout the sales process and after the sales are completed. According to Excel, the record shows that it receives reports each week from its suppliers, projects production and shipment quantities, and makes adjustments to meet contractual obligations. Excel states that it tracks all isowean shipments to prevent the co-mingling of herds for health and safety reasons and that it ensures that each supplier meets health and safety requirements imposed by the Government of Canada. In addition, Excel contends that it issues the sales invoices to U.S. customers, receives payments, distributes money to cover all selling expenses including transportation, and disburses the remainder of payments received to the suppliers. Lastly, Excel states that it is responsible for mediating post-sales disputes between the suppliers and customers. Therefore, Excel contends that it effectively controls the entire sales process and plays a significant role in setting the material terms of sale.

According to Excel, Ontario Pork and Excel are similarly situated and, therefore, the Department should assign Excel its own antidumping duty rate, as it did for Ontario Pork. Excel contends that the failure of the Department to assign Excel its own antidumping duty rate in the final determination would result in disparate treatment of similarly situated respondents. Citing Carpenter Technology Corp. v. United States, 2002 Ct. Int'l Trade LEXIS 76, SLIP OP. 2002-77 (Ct. Int'l Trade, July 30, 2002), citing NEC Corp. v. U.S. Dep't of Commerce, 151 F.3d 1361 (1998); Melamine Chemicals v United States, 732 F.3d 924, 933 (1984); and Torrington Co. v. United States, 44 F.3d 1572, 1579 (1995) (collectively, "Carpenter Ruling"), Excel argues that respondents have a right to expect fair, impartial, and consistent treatment in agency proceedings and that it was incumbent upon the Department to apply its rationale to all respondents similarly situated.

Excel argues that Ontario Pork made many of its sales pursuant to direct supply agreements, in which its supplier negotiated directly with U.S. customers. Excel asserts that, for these sales, Ontario Pork's supplier knew the ultimate destination at the time of sale and was a party to setting the terms of the sale. Nevertheless, Excel asserts, the Department was not compelled to rescind its selection of Ontario Pork as a mandatory respondent on this bases. Yet, Excel contends, the Department found that Excel was not an appropriate respondent because Excel's supplier knew the ultimate destination of the merchandise at the time of sale.

According to Excel, the Department acknowledged in the Preliminary Determination that Ontario Pork has no affiliates and does not own or operate any swine production facilities. Excel states that the Department verified that Excel has affiliates that produce live swine. Yet, according to Excel, part of the Department's rationale for not calculating an antidumping duty rate for Excel was the extremely small volume of Excel's sales that were produced by its affiliates. Therefore, Excel contends that its affiliation with its two suppliers should make it a more appropriate respondent than Ontario Pork, which has no affiliation with any of its suppliers.

Excel also argues that the Department selected cost respondents for both Excel and Ontario Pork from similar lists of suppliers but insisted in the Preliminary Determination that it was precluded by the Act from using Excel's suppliers' costs. Excel argues that the Department cannot rationalize its disparate treatment of Ontario Pork and Excel.

Given the Carpenter Ruling, Excel contends that the Department must reconcile the disparate treatment of Ontario Pork and Excel, two similarly situated respondents, by assign Excel its own antidumping duty rate.

Excel concludes that, if the Department determines that Excel should not be assigned its own antidumping duty rate, the Department should calculate a margin for Excel using the sales data of its two suppliers that are affiliated through equity ownership. Excel argues that there is nothing in the statute that permits the Department to refuse to calculate a rate for a fully cooperative respondent. Excel argues that the small volume of its sales of live swine produced by its affiliates does not permit the Department to avoid its obligations under section 773(d)(1)(A)(i) of the Act to calculate a rate for each exporter and producer individually investigated. Further, Excel argues that section 777A(c)(2)(B) of the Act requires that the "all-others" rate be based on the rates for exporters and producers accounting for the largest volume of subject merchandise that can be reasonable examined. Excel argues that, since the Department never requested cost data from the affiliated suppliers, the Department should use the cost data from the three selected cost respondents as facts otherwise available to calculate a rate for Excel.

The Petitioners' Argument:

The petitioners contend that the Department's preliminary decision to rescind its selection of Excel as a mandatory respondent was correct because Excel is not the producer or exporter of the merchandise under investigation. The petitioners argue that the statute and the Department's longstanding practice are clear: export price is based on the price of the producer or exporter to the first unaffiliated purchaser and that normal value is based on that same producer's price to the home market customer or based on constructed value using costs from that same producer. The petitioners argue that any exception to these statutory requirements and longstanding practice would be the result of extremely unique circumstances, such as that of Ontario Pork.

The petitioners claim that all parties to this investigation agree that Excel is not an exporter, does not take title to the merchandise prior to export, and is not a party to the sales contracts. In addition, the petitioners contend that Excel should not be considered a producer of live swine merely based on its affiliation with two of its suppliers.

The petitioners argue that the record evidence does not support a conclusion that Excel and its suppliers operate like a cooperative. According to the petitioners, most cooperatives involve several small producers who mutually agree to combine their production and operate as a larger cohesive entity in order to establish marketing power and pricing leverage for their mutual benefit. The petitioners assert that the central selling unit of a cooperative is generally run and maintained by the producers and, as a general rule, is "affiliated" with the production operations.

The petitioners argue that Excel is not a cooperative because it was created by two of its affiliated breeding swine companies, KPA and Can Am, for their own benefit and not for the benefit of the suppliers. The petitioners argue that the Department verified that KPA and Can Am's primary business focus is the sale, marketing, and genetic improvement of breeding swine. The petitioners also note that the Department verified that KPA and Can Am started Excel to ensure a constant revenue stream for their breeding swine and genetic products. The petitioners contend that, while all members of the Excel system work together, Excel would stop selling KPA breeding swine and genetics to the suppliers if they decided to sell isoweans outside the Excel system. The petitioners argue that these are not the actions of a cooperative formed for the benefit of hog producers. Rather, these are the actions of a company that has been formed to promote the breeding stock sales of KPA and Can Am. Thus, the petitioners argue, the record demonstrates that Excel does not function as a cooperative selling unit for the producers. Contrary to Excel's assertions, the petitioners contend that Excel is simply a sales broker and nothing more.

In support of their conclusion that Excel is merely a broker, the petitioners contend that Excel does not establish the terms of sale and that Excel has no control over the sales of subject merchandise. The petitioners contend that Excel's involvement in the sale of isoweans (coordinating shipments, identifying customers, collecting payments, providing standardized contracts for negotiation, and distributing proceeds to the suppliers and to cover sales expenses) is exactly that of a broker. Citing the California Food and Agriculture Code § 18650-18677, the petitioners note that a livestock broker is "any person that is engaged in the business of buying or selling any livestock product...on commission, or otherwise negotiating any purchase or sale of any livestock product..., other than for his own account or as an employee of another person." The petitioners argue that, under this definition, Excel is unquestionably a broker because Excel does not sell live swine for its own account. The petitioners claim that Excel acts on behalf of the supplier as a communication link for establishing pricing, freight, and other terms of sale. The petitioners argue that the fact that Excel provides consultations that provide a market-driven pricing structure does not mean it controls either the supplier's or the buyer's pricing decisions. The petitioners argue that Excel cannot prove that it controls market conditions or the unaffiliated suppliers and, thus, cannot be said to control the sales process.

In response to Excel's claim that it would withhold breeding swine and genetic sales to a supplier if that supplier sold isoweans outside Excel, the petitioners contend that this merely demonstrates that Excel has influence or control over the sale of KPA's breeding stock to the suppliers and fails to prove that Excel has control over the sales terms of isoweans from the suppliers to the customer. The petitioners assert that any broker may establish fees and other conditions for its involvement in a sale and that suppliers and customers can freely accept or decline these terms. Similarly, the petitioners note, the Department verified that Excel's suppliers can choose to leave the Excel system. This, according to the petitioners, is not how true cooperatives function and, therefore, the Department should not treat Excel as a cooperative.

The petitioners argue that Excel's activities to support its suppliers' production, such as establishing mating protocols, access to veterinarians, and facilitating inspections, constitute actions that any responsible consultant to a swine producer could undertake. According to the petitioners, Excel's involvement in its suppliers' production process is similar to that of AgStar Swine Business Group, an agricultural business consultant. The petitioners contend that these types of consulting activities clearly show that Excel is more like a broker/consultant and that Excel is not a producer or exporter of live swine.

The petitioners argue that Excel is not similarly situated to Ontario Pork. The petitioners argue that Ontario Pork was established under the Canadian Farm Products Marketing Act as a not-for-profit organization to act as a central selling agency on behalf of the individual live swine producers in Ontario. The petitioners argue that Ontario Pork has been granted the authority to regulate all domestic swine produced in Ontario with the exception of hogs marketed for any purpose other than slaughter. The petitioners argue that, under all of Ontario Pork's marketing arrangements including the direct supply agreements mentioned by Excel, Ontario Pork plays a key role in negotiating, establishing, arranging and/or approving the terms of sale for all slaughter hogs produced in Ontario. The petitioners argue that, for direct supply agreements, Ontario Pork reviews, approves, and signs all written contracts and, after doing so, implements the terms of the contract by arranging delivery and payments throughout the course of the contract. The petitioners assert that, unlike Ontario Pork, Excel was not a full participant in the sale but, rather, a facilitator of sales negotiations.

The petitioners further argue that Ontario Pork has the authority to determine and/or influence the pricing or other terms of sale, even to withdraw the approval of certain agreements tentatively agreed upon by the producers and the packers, for all sales require final approval by Ontario Pork. The petitioners assert that, for U.S. sales, Ontario Pork independently negotiated the price formula, the length of the contract, and the quantity and delivery schedule including the direct supply agreements. Accordingly, the petitioners assert that an Ontario producer could not sell its market hogs to any domestic or U.S. customer even if it knew the ultimate destination of the merchandise unless the sale is through Ontario Pork.

The petitioners assert that, if the Department includes Excel in the final determination, the Department should calculate separate antidumping duty rates for each of the cost respondents. The petitioners assert that the Department should assign the "all-others" rate to the other suppliers that shipped through Excel because these suppliers were not investigated by the Department. Further, the petitioners argue that Excel cannot be assigned its own rate, even using its own, affiliated sales, because the affiliated suppliers were not verified by the Department.

Department's Position:

In the Preliminary Determination, the Department rescinded its selection of Excel as a mandatory respondent because "Excel's role in sales of merchandise produced by unaffiliated producers is that of a broker." See Preliminary Determination at 69 FR 61639, 61641. The Department stated that "Excel merely generates sales invoices and arranges transportation in accordance with the terms of the sales contracts" which "are between swine producers unaffiliated with Excel and customers (also not affiliated with Excel)." Id. Shortly after the Preliminary Determination, Excel requested that the Department reconsider its decision. See Excel's October 25, 2004, submission, "Excel Swine' Request for Reconsideration" ("Reconsideration Request"). The Department determined it would verify Excel's questionnaire responses and the information submitted in its Reconsideration Request and then render a final decision in the final determination. See Memorandum to James J. Jochum, Assistant Secretary for Import Administration, "Verification of Excel Swine Services, Inc.," dated November 3, 2004. After reexamining all of the evidence on the record, as verified, we agree with Excel that it is an appropriate mandatory respondent in this investigation. Consequently, we have calculated a company-specific antidumping duty rate for Excel based on the sales of the entire Excel/KPA system for the final determination.

To identify the correct respondent in an antidumping investigation, the Department must first "determine the identity of the producer making the sale." See Taiwan Semiconductor Manufacturing Co. Ltd. v. United States, 143 F.Supp. 958, 966. (Ct. Int'l Trade, 2001) ("SRAMS"). The Department determines which entity constitutes the producer making the sale based on the "totality of the circumstances." See Polyvinyl Alcohol From Taiwan: Final Results of Antidumping Duty Administrative Review, 63 FR 32810, 32813 (June 16, 1998). The essential question is whether the entity exercises substantial control over the production and price of the subject merchandise and, by so doing, the decision to sell at less than fair value in the United States.

The Department's regulations provide the criteria for deciding whether affiliation through "control" exists in a market economy setting. The factors include, inter alia, corporate or family groupings, franchise or joint venture agreements, debt financing, and close supplier relationships. See 19 CFR 351.102(b). The record of this case, as discussed in greater detail below, demonstrates that Excel exercises effective control over the production and pricing of the subject merchandise by its producers/suppliers through its role as the exclusive supplier of genetically engineered breeding swine and boar semen sold by Excel's affiliate, KPA. KPA breeding swine form the core of the suppliers' production process. The record shows that Excel exercises considerable control over the production process through contractual arrangements relating to the use of KPA breeding swine. Moreover, the record demonstrates that Excel controls the sales process of its suppliers to the United States. U.S. customers seek to buy Excel isoweans that are created from KPA genetics, and rely on Excel to identify the Canadian supplier who will supply those isoweans. Although Excel's suppliers nominally enter into bilateral contracts with U.S. customers, these contracts are standard forms supplied by Excel and require that all isoweans be the progeny of Excel/KPA breeding swine. Excel's suppliers do not play a substantial role in setting the U.S. price or any aspect of the sales process; U.S. sales are managed by and go through Excel.

The nature of Excel's operation, and its relationship with its suppliers and customers, is not unusual in the swine industry. In recent years, the swine industry has moved from large farrow-to-finish operations to farms specializing in one segment of the swine production process (i.e., breeding and farrowing, nursery, and finishing). See Memorandum to The File, "Telephone Conversation with the United States Department of Agriculture," dated May 6, 2004 at 1. In the current marketplace, breeders of live swine understand and manipulate, through artificial insemination, the genetic make-up and breed of swine to encourage the development of swine with specific characteristics. The farrowing and nursery operations' customers, finishing operations, often form personal relationships with certain breeders (and/or nurseries) based on the hybrid swine they produce because the finishing operations desire swine that will ultimately yield the type of meat their customers (slaughterers) require. Id. at 2.

The record shows that Excel is affiliated through ownership equity with two genetics companies, KPA and Can Am. See Memorandum to The File, "Sales Verification Report - Excel Swine Services," dated January 13, 2005 ("Excel Sales Verification Report") at 7. Excel, KPA, and Can Am are all located in the same building, have the same employees, and use the same computer server to store all of their financial information. Id. at 3 and 6; see also Excel's June 29, 2004 section A questionnaire response at Exhibit 3. The record shows that Excel/KPA has developed an established trademark name for its genetics and its breeding swine. See Excel's June 29, 2004 section A questionnaire response at Exhibits 9, 15, and 17; see also Excel Sales Verification Report at 7-8. The breeding swine and genetics from KPA provide the essential qualities in the production of the isoweans sold by Excel that the U.S. customers expect and require. Even though Excel does not formally take title to the isoweans it sells, the Department finds that Excel/KPA has ultimate control over how the isoweans are produced and the manner in which they are ultimately sold. Through a close supplier relationship with its suppliers, Excel/KPA maintains control over the intellectual property – the KPA genetics – that impart the essential characteristics of the isoweans that Excel sells.

The close supplier relationship begins at the start of the production process, the breeding swine farms. KPA manages the nucleus herds from which the master, pure-bred breeding swine are developed. See Excel's June 29, 2004 section A questionnaire response at 7. KPA provides the barns with genetics expertise, semen services, and the equipment needed to produce the master breeding stock. Id. at 8. KPA takes title to the master breeding stock and sells it to multiplication units. Id. at 8. The multiplication units take title to the master breeding stock and produce hybrid breeding stock. KPA then takes title to the resulting breeding stock from the multiplication units and sells it to the commercial sow barns (i.e., the isowean suppliers), where title passes to the barn. Id. at 8. At the isowean farm, the breeding swine are artificially inseminated from KPA boars. Once the breeder gives birth, the piglets nurse off the breeder for approximately 15 to 20 days. During this time, the piglets are completely dependent upon the breeding swine. As soon as the piglets are done nursing, they are loaded onto trucks arranged by Excel (or the U.S. customer), title passes to the U.S. customer, and Excel is paid the export price, as defined by Section 772(a) of the Act. Excel deducts its own fees, certain selling expenses, and transportation expenses and remits the remaining balance back to the isowean farm.

Excel's isowean sales contract, which was developed with the largest U.S. customer and is used in largely identical form by all Excel suppliers in sales to U.S. customers, requires that all isoweans "shall be singled-sourced," "progeny from KPA genetics," and "artificially inseminated from KPA boars." See Excel's June 29, 2004 section A questionnaire response at Exhibit 8; Excel's September 7, 2004 supplemental questionnaire response at Exhibits 3 and 4; and Excel Sales Verification Report at 8 and Exhibits 7, 11, and 12.[5] The contract also requires a minimum replacement rate of the supplier's breeding herd, which must come from KPA. Id. With regard to maintaining the breeding herd, the record shows that KPA provided direct and indirect assistance to the farms. At verification, the Department selected several charges from KPA's veterinary expense account and confirmed, through

[5]This information was made public in Excel's January 26, 2005 case brief at Exhibits A and B.

review of original invoices, that the assistance was paid for or directed by KPA. See Excel Sales Verification Report at 4.

Excel exercises considerable control over the production process of its suppliers through its agreement with the suppliers to provide KPA breeding swine and genetics, and the terms of its exclusive agreement to sell the suppliers' isoweans that are created from KPA genetics in the United States. These two agreements operate in tandem. Excel's suppliers must agree to all of KPA's breeding swine and genetics provisions before they will be allowed to produce isoweans for the Excel/KPA system and before the payment mechanism for the isoweans is set. For example, in a letter from Excel to a new entrant to the system, Excel explained that, "{p}rior to the first sew's [isoweans] being scheduled for delivery, this arrangement must be signed." See Excel Sales Verification Report at Exhibit 11. The letter explains that "{i}n the event that this agreement is not signed and returned. . .arrangements *can not and will not* be made for the purchase and sale of your [isoweans]" {emphasis added}. Id. The letter goes on to explain that "genetic requirements shall be sourced solely from KPA," "genetic sourcing and breed shall be *determined by KPA* in a manner to best *meet the requirements of the buyer*," "logistics, trucking, delivery times, dates, and load mixes to be determined by KPA to best advantage of the *entire system*" {emphasis added}. Id. Further, the long-term sales contract is signed in tandem with the long-term KPA breeding swine contract. Id. Thus, if a supplier opted not to use KPA genetics and breeding swine, it would be in breach of its sales contract which was set up by Excel, and Excel would not sell the isoweans.

An official from one of Excel's isowean suppliers explained at verification that "Excel and KPA find customers in the United States" and that "Excel delivers all of the sales documents. . . prepared for their officials to sign." See Excel Sales Verification Report at 9. The isowean sales contract contains a mostly formulaic pricing structure designed by Excel and based on commodity market prices. See Excel's June 29, 2004 section A questionnaire response at Exhibit 8; Excel's September 7, 2004 supplemental questionnaire response at Exhibits 3 and 4; and Excel Sales Verification Report at 8 and Exhibits 7, 11, and 12. Further, while not mentioned explicitly in the contract, the price is inclusive of Excel's fees. See Excel Sales Verification Report at Exhibit 6, 11, and 12. With regard to quantity, the number of head of swine to be sold is listed on the contract and is based on the isowean supplier's capacity, which is directly related to the number of piglets the supplier's KPA breeding swine farrow and the number of KPA breeding swine the supplier's commercial sow barn can accommodate.

Although suppliers are free to enter or exit the Excel/KPA system at any time, the record shows that the suppliers must abide by the rules of the Excel/KPA system, as dictated by Excel/KPA, when in the system. To the extent that a supplier leaves the Excel/KPA system, KPA will stop providing it breeding swine and genetics and Excel will not sell its products. See Excel Verification Report at 8, 11-13, and 15. For instance, Big Boulder entered the system halfway through the POI. See Excel Sales Verification Report at 11-12. The Department confirmed that, when in the system, Big Boulder procured its breeding swine from KPA and the resulting isoweans produced by the breeding swine were sold through Excel. Id. The Department reconciled all of Big Boulder's breeding swine purchases from its records to those of KPA. Id. In addition, the Department reconciled Big Boulder's isowean revenue from its records to the total revenue reported in Excel's U.S. sales database (less Excel's fees and other charges). Id. Further, through four complete sales reconciliations, the Department confirmed at verification that the isoweans produced by the suppliers using KPA breeding swine and genetics are sold by Excel pursuant to the long-term isowean sales contracts which were set up by Excel. See Excel Sales Verification Report at 4-6 and 8-15.

Therefore, for the aforementioned reasons, the Department finds that Excel/KPA has ultimate control over how the isoweans containing Excel/KPA genetics are produced and the manner in which they are ultimately sold through a close supplier relationship with the isowean suppliers. Excel's U.S. customers seek to purchase from Excel genetically engineered isoweans bred from KPA breeding swine. Excel's suppliers are required to use exclusively KPA breeding swine for any sales made to the United States through Excel. The nominal terms of the sales contracts notwithstanding, the record shows that through its control of an essential characteristic of the subject merchandise from the U.S. customer perspective – KPA genetics – Excel controls the production and sales process of its suppliers. Accordingly, the Department has calculated a company-specific antidumping duty rate for Excel based on the sales of the entire Excel/KPA system for the final determination.

Comment 51: Sales Exclusions

Excel's Argument:

Excel argues that the Department verified that certain sales were substandard or defective products. Excel asserts that the Department excluded similar sales in its margin analysis for Premium Pork in the Preliminary Determination because the model matching criteria in this case do not account for substandard or defective merchandise. Furthermore, the quantity of such sales did not represent a significant percentage of Premium Pork's sales. Excel argues that these sales represented only a small portion of its total reported sales and that they are easily distinguishable in the sales database because they were priced at a certain amount. Therefore, Excel urges the Department exclude these sales from its margin analysis in the final determination.

The Petitioners' Argument:

The petitioners argue that the Department did not verify that the sales in question were substandard or defective. The petitioners argue that Excel's customer was using the possibility of the merchandise being defective or substandard as a bargaining tool to obtain a market price discount. The petitioners argue that Excel's customer negotiated discounts not because the merchandise was defective but, rather, because the farm could not absolutely prove that all the merchandise was not defective. The petitioners argue that the market conditions, not the actual state of the goods, resulted in the price received for the goods.

The petitioners also argue that the Department regularly calculates margins on both prime and non-prime materials. Citing Certain Alloy Steel Wire Rod from Trinidad and Tobago, 67 FR 55788, 55709 (August 30, 2002), the petitioners assert that non-prime products that can still be used as intended are kept in the margin analysis. The petitioners argue that it is only when a product is proven to be so defective that it is sold for other purposes that it may be excluded from the margin analysis.

Finally, the petitioners argue that, if the Department determines that these sales should be excluded from the sales analysis, it should remove the quantity of these sales from the cost denominators of the cost respondents, in effect, treating the merchandise in the same manner as the cost verification reports said the Department would treat rejects.

Department's Position:

We agree with Excel that the merchandise in question should be excluded from the margin pricing analysis. The Department finds no evidence on the record that suggests that Excel's customer was using the possibility that the merchandise was substandard or defective to obtain discounts, as the petitioners suggest. Rather, the circumstances surrounding these sales indicate that the customer would have legitimate concerns about the quality of the merchandise. See Excel Sales Verification Report at Exhibit 12 at 48 and 56-66.

In less-than-fair-value (LTFV) investigations, the Department is not required to examine all sales transactions. For this reason, our practice has been to disregard unusual transactions when they represent a small percentage (i.e., typically less than five percent) of a respondent's total sales. See e.g., Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China, 69 FR 20594 (April 16, 2004), Issues and Decision Memorandum at Comment 27;[6] Final Determination of Sales at Less than Fair Value: Pure Magnesium from the Russian Federation, 66 FR 49347 (September 27, 2001), Issues and Decision Memorandum at Comment 10; and Notice of Preliminary Determination of Sales at Less Than Fair Value Hot-Rolled Flat-Rolled Carbon Quality Steel Products from Japan, 64 FR 8291, 8295 (February 19, 1999). Because the volume of this merchandise does not constitute a significant percentage of Excel's total sales, we have excluded such sales in the margin pricing analysis for the final determination. However, we note that, if we issue an antidumping duty order in this case, we expect to reexamine this issue during the first administrative review conducted in this proceeding if sales are made under these circumstances.

Furthermore, we disagree with the petitioners' argument that these swine should be excluded from the

[6] This decision was upheld in the amended final determination. See Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Color Television Receivers From the People's Republic of China, 69 FR 28879 (May 19, 2004).

production quantity denominator used in the calculation of the COP if they are excluded from the sales analysis. The Department notes that the rejects referenced by the petitioners in their citations to past cases were considered unsaleable and, thus, the equivalent of a scrapped item. In the instant case, however, the swine sold with quality concerns, although a nonstandard transaction, were indeed sold as isoweans. Thus, for the final determination, we have continued to include the isoweans sold with quality concerns in the production quantity denominator used for the COP calculations.

Comment 52: Fertilizer as a Credit to the Cost of Producing Live Swine

Excel's Argument:

Excel requests a byproduct offset for the swine manure produced during the POI and spread on crop lands as a fertilizer. According to Excel, the expenses associated with managing and eventually spreading the manure on the crops are accounted for in the swine operations. Therefore, Excel concludes that the benefit received by the crop operations should offset the related costs absorbed by the swine operations.

In support, Excel references Notice of Final Determinations of Sales at Less Than Fair Value: Certain Durum Wheat and Hard Red Spring Wheat from Canada, 68 FR 52741 (September 5, 2003) ("Wheat Final Determination") and accompanying Issues and Decision Memorandum (August 28, 2003) ("Wheat Final Decision Memorandum"), at Comment 20, where the Department allowed a byproduct offset for the straw used in other operations unrelated to the production of the subject merchandise. Excel argues that manure, like straw, is also an unavoidable byproduct that benefits the non-subject operations of the farm.

Although it did not initially assign a value to this byproduct, Excel emphasizes that its submissions stated that the swine manure was used as a fertilizer on the farms' crop lands. At verification, Excel presented a valuation of the byproduct using public data for both the quantity of manure produced by a sow and the potential nutrient content of that manure. Excel argues that while all the costs associated with the collection and management of manure were included in the reported costs, the unsophisticated record keeping of Excel's cost respondents did not allow for separate identification of those costs (thus explaining why the cost respondents did not originally claim this offset). However, Excel maintains this situation was specifically addressed in the Wheat Final Determination, where the Department stated that when a respondent's submitted costs do not reasonably reflect the costs of producing the merchandise due to limitations in the respondent's records kept in the ordinary course of business, the Department's practice is to take a non-adverse facts available approach to more accurately reflect the cost of producing the merchandise.

Finally, Excel notes that one of its cost respondents, the Rainbow Colony, did not pump its manure lagoon onto crop lands during the POI. However, Excel argues that the Rainbow Colony should be granted an offset regardless, because nutrients were produced during the period.

The Petitioners' Argument:

The petitioners argue that the Department should not entertain the use of the manure byproduct offset as this constitutes new factual information. Because the information was not presented until verification, the petitioners state that they have not had a chance to comment or provide alternatives to any component of this new claim. Furthermore, Excel's assertion in support of this new claim, that manure was identified as a byproduct in the cost respondents' submissions, is inaccurate according to the petitioners. Instead, the petitioners contend that Excel merely points to one respondent that characterized its manure, not as a byproduct, but as a co-product.

Continuing, the petitioners also argue that Excel's cost respondents neither made an attempt to value the manure byproduct in their submissions, nor inventoried the manure in their normal books. Furthermore, the petitioners note that one of Excel's cost respondents, the Rainbow Colony, did not even pump its lagoon and spread the manure on crops during the POI.

Additionally, the petitioners believe that Excel's reliance on the Wheat Final Determination is not relevant. Whereas in wheat, a farmer raises one plant that creates both a main product, wheat, and a byproduct, wheat straw, in swine, the manure is overwhelmingly produced by the productive assets (i.e., the breeding stock), not the main product, the tiny isoweans. Thus, the petitioners contend that manure is an unintended and environmentally dangerous waste product, not a desired byproduct like straw.

Consequently, the petitioners argue that the byproduct offset requested by Excel should be disallowed for the final determination.

Department's Position:

For the final determination, we have granted Excel's cost respondents a revised byproduct offset for the manure spread as fertilizer on crop lands. Based on our cost verifications and on a review of the public information referenced by both the petitioners and the respondents to this proceeding, we note that the application of livestock manure to crop lands serves both as a viable substitute for commercial, inorganic fertilizer and as a desirable method for disposing and recycling the byproducts generated in the swine operations. See "Land Application of Manure" published by the Manitoba Agriculture, Food and Rural Initiatives (May 2001) ("Manitoba Agriculture Report"), at section 4. In their submissions, all three of Excel's cost respondents described manure as a live swine co-product (we note that the manure is more appropriately characterized as a byproduct) that is applied as organic fertilizer to crop lands, thus reducing the need for the application of inorganic fertilizers that would otherwise need to be purchased for the crop operations. See e.g., August 13, 2004 section D response for Excel cost respondent the Rainbow Colony ("Rainbow Section D"), at 5, 14, and 18. Furthermore, at the cost verifications for all three of Excel's cost respondents, the Department confirmed with company officials the use of the swine manure on the farms' various crop lands as a fertilizer. See e.g., Memorandum to Neal M. Halper, "Verification Report on the Cost of Production and Constructed Value Data Submitted by Excel Swine Services, Inc. for Cost Respondent the Rainbow Colony of the Hutterian Brethren Trust," dated January 19, 2005 ("Rainbow Colony Cost Verification Report"), at 19. Therefore, we agree with Excel that the cost respondents' crop operations benefitted from the use of the manure as a fertilizer and that the reported swine costs should reflect an offset for the value of this byproduct.

However, while we agree that the manure holds value as an organic fertilizer, we disagree with Excel's suggested valuation of the manure. Based on the Manitoba Agriculture Report, the typical swine nutrient content of manure varies quite dramatically. In fact, the report notes that this information should only be used "as a last resort" for determining the nutrient content of manure to be spread on crop lands. See Manitoba Agriculture Report, at Table 4. In their suggested calculation of the offset, Excel relied upon the average nutrient contents published in the report. However, while the farms could verify that manure was pumped and spread on the crop lands, Excel could provide no documentation of the specific nutrient content of the cost respondents' manure. Again, relying on the public source referenced by both parties, we note that the nutrient content of manure varies based on animal age, feed type, and even the storage and handling of the manure itself. Furthermore, other variables such as the weather, the season of the year, and the application method also impact nutrient content and utilization. Because an imbalance of soil chemistry can lead to reduced crop yields, "{i}t is important to know what the nutrient content of the manure is before applying the manure to land... ." See Manitoba Agriculture Report, section 4.1.3. The report goes on to state that "{g}iven the differences in feed rations, amount of washwater used and the way manure is handled and stored from one operation to another, it is crucial to conduct a manure analysis of one's own operation." Thus, based on this public source used by both parties during the proceeding, a farm should conduct an analysis of the composition of manure used as fertilizer on an annual basis to ensure that the application rate meets crop nutrient requirements. However, at verification, the Excel cost respondents were unable to produce such an analysis. Therefore, in its calculation, Excel estimated that the cost respondents' manure contained the average potential nutrient content.

We note that in Mushrooms from India, 63 FR 72246 72254, the Department rejected an allocation methodology because it relied purely on unsubstantiated estimates. Also, in the Final Determination of Sales at Less Than Fair Value: Greenhouse Tomatoes from Canada, 67 FR 8781 (February 26, 2002) ("Greenhouse Tomatoes Final Determination") and accompanying Issues and Decision Memorandum (February 19, 2002) ("Greenhouse Tomatoes Final Decision Memorandum") at Comment 23, the Department rejected certain allocations because they were based on suppliers' representations or management's experience, and the respondent in that case was unable to produce any reports or records to substantiate the allocation factors. Therefore, due to Excel's lack of evidence substantiating the actual nutrient composition of the manure used as fertilizer, we believe it is reasonable to assume that the Excel cost respondents' manure contained the minimum nutrient content. For the final determination, the Department has offset the reported costs for the value of the manure based on the minimum nutrient contents published in the Manitoba Agriculture Report. Additionally, we note that the byproduct offset was calculated net of the cost to pump and spread the manure on the crop lands. For the Rainbow Colony, we agree with Excel that nutrients (i.e., manure) were produced during the POI. Therefore, a related offset should be recognized in the POI. However, we note that we offset the value of the manure with Excel's estimated cost of pumping and spreading the manure on the Rainbow Colony's crop lands.

Regarding petitioners' claim that the proposed byproduct offset submitted at verification is new information, we note that the calculation is based on information on the record and on information from a public source referenced by the petitioners during the proceedings. See e.g., the September 10, 2004 filing by the petitioners, at 4, 5, 11, and at attachments 3, 4, and 5. In addition, we believe that petitioners had ample opportunity to comment on the proposed methodology in their briefs. Furthermore, as mentioned previously, all three of Excel's cost respondents described manure as a co-product used as organic fertilizer on crop lands in their respective section D responses. See e.g., Rainbow Section D, at 5, 14, and 18.

Finally, with regard to the petitioners' distinction between manure and the wheat straw produced and allowed as a byproduct offset in the Wheat Final Determination, we note that in previous cases the Department has distinguished a byproduct as a secondary product recovered in the course of manufacturing a primary product. See Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium From Israel, 66 FR 49349 (September 27, 2001) and accompanying Issues and Decision Memorandum (September 14, 2001) ("Magnesium from Israel"), at Comment 3. Therefore, we disagree with the petitioners that whether a byproduct is generated by the productive asset (i.e., the sow) or by the primary products itself (i.e., the isowean or the wheat) is relevant to the consideration of a byproduct offset. The important point is that the manure was a result of the production process of the live swine.

Excel Rainbow Colony

Comment 53: Production Quantity

The Petitioners' Argument:

The petitioners request that the Department reduce the production quantity used as the denominator in the Rainbow Colony's cost calculations for the rejected underweight and diseased swine.

Excel's Argument:

Excel did not comment on this issue.

Department's Position:

We agree with the petitioners. At verification, we noted that the Rainbow Colony's customer rejected and refused payment for an entire shipment of swine due to problems with disease. See Rainbow Colony Cost Verification Report, at page 12. Based on the testwork performed at the cost verification, we also noted that swine delivered underweight to the Rainbow Colony's customer were not included in the sales files reported to the Department. See Rainbow Colony Cost Verification Report, at page 12. Therefore, for the final determination, we have likewise excluded the diseased and underweight rejected swine from the production quantity denominator used in the Rainbow Colony's cost calculations.

Comment 54: Insurance Premiums

The Petitioners' Argument:

The petitioners request that the Department adjust the Rainbow Colony's reported costs to include the insurance premiums allocable to the farrow to isowean barn.

Excel's Argument:

Excel did not comment on this issue.

Department's Position:

We agree with the petitioners. At verification, we found that the Rainbow Colony had failed to allocate a portion of the livestock insurance premiums to the farrow to isowean barn (i.e., to the merchandise under consideration). See Rainbow Colony Cost Verification Report, at page 20. Therefore, for the final determination, we have adjusted the Rainbow Colony's reported costs to include the livestock insurance premiums allocable to the farrow to isowean barn.

Comment 55: Accrued Labor Costs

The Petitioners' Argument:

The petitioners request that the Department adjust the Rainbow Colony's reported costs to include the labor costs accrued at the end of the year.

Excel's Argument:

Excel did not comment on this issue.

Department's Position:

We agree with the petitioners. At verification, we found that the Rainbow Colony had failed to accrue the end of the year labor costs. See Rainbow Colony Cost Verification Report, at page 21. Therefore, for the final determination, we have adjusted the Rainbow Colony's reported costs to include the end of the year accrued labor costs.

Comment 56: Productive Assets Quantity

The Petitioners' Argument:

The petitioners argue that the Department should include in the Rainbow Colony's cost of production the costs associated with the dead animals not accounted for in the Pig Champ program. The petitioners state that since there is no possibility of obtaining the salvage value for these animals through culling, the entire acquisition cost for the dead animals not entered in Pig Champ should be accounted for in the POI productive asset valuation.

Excel's Argument:

Excel states that two alternatives are available for determining the number of sows (i.e., the productive assets) that were used by the Rainbow Colony during the POI: using the number of sows purchased and sold based on invoices or using the inventory information recorded in Pig Champ. While admitting that neither source accurately tracks the number of deaths (the invoice method would also have to rely on the Pig Champ death figures), Excel expresses a preference for the use of the Rainbow Colony's Pig Champ reports by stating that they contain internally consistent and ready-to-use inventory information. Still, Excel acknowledges the discrepancy in the inventory numbers between the two sources. However, Excel posits that this difference may not pertain solely to animals that died prior to entering the Rainbow Colony's Pig Champ system as surmised by the Department in its verification report. Instead, Excel speculates that the discrepancy could have been caused by an entry error in Pig Champ rather than anything else. Regardless of the Department's ultimate selection for the source of sow inventory, Excel urges the Department to use a consistent source throughout the Rainbow Colony's cost calculations.

Department's Position:

In the November 3, 2004 cost calculation for the Rainbow Colony, the Department used the average number of sows from the Pig Champ reports to value the POI productive assets. See Excel Cost Calculation Memorandum, at Rainbow Attachments, Tab L. However, as noted in the verification report, Pig Champ does not account for the animals that were purchased but died prior to being placed into service. See Rainbow Colony Cost Verification Report, at page 6. Thus, the Rainbow Colony would have purchased more animals during the POI than were accounted for in the Pig Champ program. See Rainbow Colony Cost Verification Report, at page 15, for the Department's comparison of the total number of sows based on the purchase and sales invoices to the net sows in inventory from Pig Champ.

Under the Department's cost calculation methodology, the POI average number of sows recorded in the Pig Champ inventory records were capitalized and depreciated over their useful life. The actual POI purchase costs of sows were then excluded from the reported costs in favor of the POI depreciation calculated under the productive asset methodology. As a result, the quantity and cost of any animals that were purchased but never entered the Pig Champ system would not have been accounted for through the productive asset methodology. Thus, regardless of the reasoning behind the discrepancy between the two systems, whether the sows died prior to being entered into Pig Champ, or whether a key punch error occurred in the Pig Champ system, a specific number of assets purchased have not been accounted for under the current cost calculation methodology. We have assumed that the difference between the net purchases from the invoices and the December 31, 2003 inventory from Pig Champ reflects productive assets that were both purchased and disposed of during the POI. Consequently, these dead or disposed assets hold no future economic benefit to the company, and instead represent an additional current period expense. Therefore, for the final determination, we have revised the reported costs to reflect the full expense of these disposed assets in the current period.

Finally, we agree with Excel that a consistent source for the swine inventory should be used throughout the cost calculations. Therefore, based on our assumption that the difference between the two sources represents disposals of assets (as explained above), we have relied upon the Pig Champ inventory figures for all calculations involving sow inventories.

Comment 57: Disputed Fertilizer Purchases

The Petitioners' Argument:

The petitioners maintain that the Rainbow Colony's legal settlement regarding fertilizer costs should be included in the G&A expense rate calculation. The petitioners argue that regardless of when the dispute arose, the settlement occurred during the POI. Arguing that legal disputes relate to the long-term cost of operating a farm, the petitioners conclude that these costs are, therefore, general in nature and should be included in the Rainbow Colony's G&A calculation.

Excel's Argument:

Excel argues that the Rainbow Colony's lawsuit expenses should not be included in the reported costs because they are fertilizer purchases used in the crop operations, not a general expense item, and, because the purchases were made prior to the POI.

Department's Position:

We agree with Excel and have excluded the POI settlement for fertilizer purchases from the Rainbow

Colony's cost of production in the final determination. Based on the information placed on the record and affirmed during the cost verification, the costs at issue were related to litigation surrounding disputed fertilizer bills from 1998 and 1999. During the POI, the courts ruled on the case and directed the Rainbow Colony to submit the settled amount to its supplier. See Rainbow Colony Cost Verification Report, at page 9.

While the petitioners are correct that the settlement and payment occurred during the POI, we disagree with the petitioners' characterization of these fertilizer purchases as related to the general operations of the farm simply because the final settlement of the invoiced bill was arrived at through litigation concluded during the POI. We note that GAAP requires "that all expenses incurred in the generation of revenue should be recognized in the same accounting period as the related revenues are recognized."[7] This is called the matching principle whereby expenses are "matched" to the accounting periods that benefitted from the transaction, event, or circumstance. It is undisputed that the amount under issue was related to fertilizer purchases made and used on the Rainbow Colony's crops during 1998 and 1999. Thus, the accounting periods that benefitted from these purchases clearly pre-date the POI, and, under the matching principle, the fertilizer purchases should have been recognized by the Rainbow Colony when the crops were harvested regardless of when the cash outlay was made.

In addition, we note that the Rainbow Colony maintains a cash basis accounting system. See Rainbow Colony Cost Verification Report, at page 7. While the Rainbow Colony's accountants prepare annual financial statements, these statements are not audited to determine their fairness of presentation or their conformity with GAAP. Under GAAP the company would have used an accrual basis of accounting, whereby the litigated fertilizer expenses would have been recognized in 1998 and 1999 accounting periods as a contingent liability. As such, we consider these costs to relate to periods prior to the POI. Accordingly, for the final determination, we have excluded these fertilizer expenses from the calculation of the Rainbow Colony's G&A expense rate.

Comment 58: Startup Adjustment

Excel's Argument:

Excel argues that the Rainbow Colony's costs must be matched to its production. Because of the nearly four month gestation period for swine and because the Rainbow Colony's new isowean facility began its initial production during the POI, Excel states that the Rainbow Colony's records reflect eleven months of expenses, but only seven months of production. Excel believes that this misalignment of costs and production must be rectified through either the requested startup adjustment or through capitalizing the end of year work-in-process.

---

[7] Delaney PR, Epstein BJ, Nach R, Budak SW (2001) **Wiley GAAP 2002 Interpretation and Application of Generally Accepted Accounting Principles 2002** John Wiley & Sons, Inc., New York, p69.

First, Excel notes that section 773(f)(1)(C)(ii) of the Act outlines two conditions that must be present for a company to be granted a startup adjustment. According to the statute, a producer must be using a new facility or producing a new product requiring substantial additional investment, and, production levels must be limited by technical factors associated with the initial phase of the commercial production. Excel asserts that the Rainbow Colony's new farrow to isowean barn meets both requirements of the statute.

Excel claims that the Department's cost verification report clearly supports that the Rainbow Colony's new barn meets the first criteria for a new facility. Regarding the second criteria, Excel points to the verification findings of a decreased number of farrowings for May 2003, a lower June 2003 production level, and no production from February to May, as evidence of the technical difficulties associated with the new facility. Furthermore, Excel states that the need to stagger the introduction of gilts to achieve a continuous flow of farrowings, the effects of stress experienced by gilts entering a new versus established facility, and the need to fine tune production and management are inherent technical difficulties in a startup situation that contribute to lower production levels. Consequently, Excel maintains that the Rainbow Colony has established its qualification for a startup adjustment. Should the Department fail to grant the startup adjustment, Excel proposes a work-in-process inventory adjustment as an alternative. Excel points out that agricultural enterprises typically employ simple record keeping practices for the principal purpose of filing their annual income tax returns. As a result, Excel states that it is standard practice for isowean producers to use the cash basis of accounting whereby they expense costs as incurred and minimize the taxes paid in any given year. Excel maintains that this cash basis approach does not distort costs for an established facility with a steady level of production because output is remarkably constant. However, Excel argues that the potential for distortion is great in a facility's first year of operation. Excel contends that even though isowean producers have substantial end of year work-in-process, they typically do not capitalize their work-in-process, because incomplete or in-process units (i.e., unborn and un-shipped isoweans) at the end of the year usually match the incomplete units from the beginning of the year. However, in the case of the Rainbow Colony, Excel points out that the beginning work-in-process at the new facility was zero. Thus, because costs were not capitalized, the facility incurred production expenses for the first few months with no matching revenues. To properly match costs and revenues, Excel states that work-in-process costs should have been capitalized on a monthly basis, then matched to the related revenues.

Thus, Excel concludes that to expense rather then capitalize these end of the POI work-in-process costs will overstate the Rainbow Colony's costs because the related matching production was recognized outside of the POI. Therefore, Excel argues that its suggested work-in-process methodology would allow for the proper matching of expenses and revenues. Additionally, Excel believes that this proposed methodology is conservative because it accounts only for the capitalization of direct materials and labor.

The Petitioners' Argument:

The petitioners dispute Excel's argument that disallowing both the startup and work-in-process adjustments would create a misalignment of costs with production. Furthermore, the petitioners refute Excel's claim that the period of gestation is a zero production period. Instead, the petitioners point to the Department's methodology in the Excel Cost Calculation Memorandum as proof that sows are production units during their pregnancy as well as when they are weaning their offspring. As such, the production units (i.e., the isoweans) should be absorbing costs through the sows. Thus, the production units for February through May are the same isoweans that are farrowed and weaned in June of that year.

Regarding the requested startup adjustment, the petitioners concur with the finding in the Excel Cost Calculation Memorandum where the Department determined that the Rainbow Colony did not meet the conditions set out in the statute for a startup adjustment. Moreover, the petitioners allege that the verification report does not present any data contradicting the Department's finding. Instead, the petitioners argue that the verification report confirms that the new barn was simply an expansion of the already established farm rather than a new facility within the meaning of the statute. In support of their argument, the petitioners refer to an similar case where the Department denied a startup adjustment to an Indian mushroom farm for new growing houses. See Mushrooms from India, 63 FR 72246, 72253.

While allowing that the Rainbow Colony's production levels may partially reveal the presence of technical factors, the petitioners argue that the limits on production were not significant enough to warrant a startup adjustment. Furthermore, the petitioners proffer that staggering the introduction of sows into the new barn could have been the result of financial rather than technical factors. Additionally, the petitioners argue that there were eight, rather than seven months of production, since the first farrowings occurred in May 2003.

Next, the petitioners state that the proposed work in process adjustment constitutes new factual information. The petitioners argue that verification is intended for the examination of reported data, not for collecting new information or methodologies. Regardless, the petitioners protest the need for such an adjustment, claiming instead that the sow barn costs during the gestational period are costs allocable to the offspring. In fact, the petitioners note that in the Excel Cost Calculation Memorandum the Department stated "...we consider the producing sows and boars to be productive assets. Therefore, we re-allocated the COM in the sow barns to the pigs produced." See Excel Cost Calculation Memorandum, at page 2. Therefore, the petitioners conclude that there is no sound basis for calculating a work in process adjustment. However, should the Department consider such an adjustment, the petitioners urge the Department to exclude the change in isowean inventory, as noted in the Rainbow Colony Cost Verification Report, at page 23.

Department's Position:

We disagree with Excel that the Rainbow Colony meets the criteria set out in section 773(f)(1)(C)(ii) of the Act for a startup adjustment. As noted by both parties, the statute outlines two conditions that must be met for a company to receive a startup adjustment. Based on subclause (I), the company must be using a new production facility or producing a new product that requires substantial additional investment. Second, under subclause (II), the company must demonstrate that production levels are limited by technical factors associated with the initial phase of commercial production. Based on the cost verification findings the new barn may meet the first requirement for a new facility; however, the Department disagrees with Excel that the Rainbow Colony experienced technical difficulties that significantly limited production levels during the POI. At verification, the Department reviewed the Rainbow Colony's farrowings, total pigs per litter, and the number of weanings. See Rainbow Colony Cost Verification Report, at pages 22 to 23. These statistics clearly fail to support Excel's claim that the Rainbow Colony's production levels were significantly limited during the initial phase of commercial production.

For purposes of subclause (II), the initial phase of commercial production ends at the end of the startup period. In determining whether commercial production levels have been achieved, the administering authority shall consider factors unrelated to startup operations that might affect the volume of production processed, such as demand, seasonality, or business cycles. Moreover, the SAA, at 836, directs that attainment of peak production levels will not be the standard for identifying the end of the startup period because the startup period may end well before a company achieves optimum capacity utilization. In addition, the SAA indicates that the Department will not extend the startup period so as to cover improvements and cost reductions that may occur over the entire life cycle of the product. The SAA also states that the burden is on the respondent to demonstrate its entitlement to a startup adjustment; specifically, the respondent must demonstrate that production levels were limited by technical factors associated with the initial phase of commercial production and not by factors unrelated to startup, such as marketing difficulties or chronic production problems.

While recognizing that the number of farrowings for the month of May 2003 was lower than the remaining months in the POI, the Department notes that this number is directly related to the number of sows that were initially placed into service. The Department does not believe that the Rainbow Colony's limited placement of sows into the new barn conveys a production facility hampered by technical difficulties, rather the number of sows placed into service at the startup of the operation was to ensure a "continuous production flow." See Rainbow Colony Cost Verification Report, at page 22. This practice would even be followed in an established facility so that a steady rate of production is achieved and all sows would not be farrowing at the same time of the year. Thus, the staggered introduction of sows that resulted in a lower number of farrowings during May 2003 does not imply lower production levels due to technical difficulties with the initial phase of production, but rather a typical practice followed by swine operators.

Furthermore, the Department believes that the cost verification report clearly demonstrates that the total pigs per sow and the number of monthly weanings while showing slight differences in the production levels during certain months of the POI, do not vary substantially from the statistics that the Rainbow

Colony provided as indicating commercial production levels.

Thus, based on our above analysis, we have disallowed Excel's requested startup adjustment to the Rainbow Colony's reported costs in the final determination.

With regard to the proposed work in process adjustment, we disagree with the petitioners' argument that the data provided was new information. First, we note that all data used in the work in process alternative methodology was previously reported on the record to this proceeding. See the September 23, 2004 supplemental section D response, ("Rainbow Supplemental D Response"), at exhibits 2, 6, and 10. The verification discussions regarding the misalignment of expenses and production for the barn's initial year was also previously submitted by the Rainbow Colony. See Rainbow Section D, at exhibit 5. These discussions reviewed alternatives for the cost calculation methodology that were already on the record. We also note that the per-unit costs reported by the Rainbow Colony and presented at verification were not revised for the work in process methodology. The verifiers simply reviewed the information that was on the record, noted the problems associated with the cost response, and reviewed alternative solutions to the problems. While the petitioners are correct that verification is not intended for the collection of new factual information, the Department's standard cost verification report clearly indicates that the intent of verification is also to review the respondent's cost calculation methodologies with the aim of ultimately determining whether they are appropriate methodologies. See Rainbow Colony Cost Verification Report, at 2.

While we disagree with Excel's approach, (i.e., the requested startup adjustment), the Department does acknowledge the matching problem that was essentially the focus of the intended adjustment. We note that the petitioners are correct in that the sow barn costs incurred during the gestation period should be allocated to the offspring. However, the Department must determine how to treat the sow costs incurred at the end of the POI. Under GAAP, "...all expenses incurred in the generation of revenue should be recognized in the same accounting period as the related revenues are recognized."[8] Thus, according to GAAP, the costs incurred during the gestation and weaning period for sows whose offspring were shipped after the POI, must be accounted for in the same period as the related revenues. In this case, because the production quantity denominator does not include these post-POI production quantities, the production cost numerator should not include these costs.

Therefore, for the final determination, we have adjusted the Rainbow Colony's reported costs to reflect the work in process inventory of the end of the year. Additionally, we note that we agree with the petitioners' arguments with regard to production quantities and have adjusted the reported per-unit costs to reflect the use of a denominator that excludes ending isowean inventory because these swine have been accounted for in the work in process inventory.

---

[8] Delaney PR, Epstein BJ, Nach R, Budak SW (2001) **Wiley GAAP 2002 Interpretation and Application of Generally Accepted Accounting Principles 2002** John Wiley & Sons, Inc., New York, p 69.

Excel Riverbend Colony

Comment 59: Foreign Exchange Expense

The Petitioners' Argument:

The petitioners argue that the Department should adjust the interest ratio to account for the correction of foreign exchange expenses presented as a minor correction at verification.

Excel's Argument:

Excel did not comment on this issue.

Department's Position:

We agree with the petitioners and are including the foreign exchange expenses in the interest ratio for the final determination.

Comment 60: GST Audit Adjustment

Excel's Argument:

Excel argues that the Department must exclude Riverbend Colony's payment of general sales tax ("GST") (GST audit adjustment) from isowean production costs. Excel notes that in the preliminary cost calculations for Excel, the Department added this expense to Riverbend Colony's production costs. Excel asserts that the GST audit adjustment should not be included in the costs because GST itself is not included. Excel argues that the GST audit adjustment cannot in any way relate to the subject merchandise because all of its isowean production is exported and export sales are exempt from GST. According to Excel, because there is no GST payment assessed by the government on isowean production, the Department should exclude all GST-related expenses from its final determination.

Excel argues that the GST audit adjustment was classified as member withdrawals in the financial statements which were excluded by the Department as the basis for Riverbend Colony's labor costs. Excel explains that Riverbend Colony requested GST refunds on purchases that, upon audit, were determined to be personal in nature. Excel notes that the GST audit adjustment is only a reconciling item between the company's unadjusted trial balance and the trial balance prepared by the outside accountants to create the financial statements. Excel notes that in the reported costs, Riverbend Colony classified these member withdrawals as labor costs. Excel asserts that if the Department excludes Riverbend Colony's reported labor costs and substitutes an imputed figure, then the GST audit adjustment should be disregarded as well.

Moreover, Excel argues that the entire GST payment relates to pre-POI activities. Excel asserts that despite Riverbend Colony's statements in its supplemental section D response that the GST audit adjustment applied to the years 2000, 2001, and 2002, the Department included this item in Riverbend Colony's costs in its preliminary cost calculations. Excel asserts that neither the GST assessment nor the penalties and interest should be included in the cost of isoweans because they all relate to periods prior to the POI. Excel asserts that if the Department decides to treat the penalty and interest as period costs, it should not include them entirely but should prorate them from the beginning of 2000 to July 7, 2003. Additionally, Excel contends that Riverbend Colony paid less than the Statement of Audit

Adjustments showed because the tax authority forgave some of the penalties.

The Petitioners' Argument:

The petitioners argue that the Department should continue to include GST costs for Riverbend Colony as period costs. The petitioners argue that the GST costs should not be excluded because they pertain to non-export sales. The petitioners also argue that the Department should not exclude the GST audit adjustment simply because Riverbend Colony recorded these costs as member withdrawals and the Department did not use member withdrawals for labor. The petitioners note that the Department treated GST audit costs that the farm incurred as general expenses, separate from any member withdrawals.

The petitioners assert that it would be wrong for the Department to exclude the GST audit principal amount recognized in the POI because the Department regularly rejects proposals to re-align costs. The petitioners argue that the costs recognized for the period are the costs which should be included for the period.

The petitioners state that if the Department is satisfied that the amount of the audit adjustment is that which Excel says Riverbend Colony actually paid, instead of the amount recorded in the Statement of Audit Adjustments, the Department may use the amount actually paid in its calculations.

Department's Position:

For the final determination, we are including in G&A and interest expenses, respectively, a portion of the penalties and interest associated with Riverbend Colony's GST audit adjustment. We are not including the principal of the GST adjustment. We noted at verification that the GST adjustment paid was different from the audit assessment report (i.e., Statement of Audit Adjustments). While Riverbend Colony personnel stated that the difference was because the penalties were reduced, it was unable to provide any documentation in support of this claim. In the absence of any documentation showing that the difference was related to penalties alone, we have calculated the percentages that principal GST, penalties, and interest comprise of the amount on the Statement of Audit Adjustments, and applied those percentages to the amount actually paid, to derive the amount of penalties and interest that we have included in Riverbend Colony's G&A and interest expenses in the final determination.

In this case, it is not appropriate to include the assessed GST taxes for 2000 through 2002. Section 773(e) of the Act states that the cost of materials shall be determined without regard to any internal tax in the exporting country imposed on such materials or their disposition which are remitted or refunded upon exportation of the subject merchandise produced from such materials. Riverbend Colony explained in its August 13, 2004, section D response that GST is a value added tax and GST generally does not enter into any of Riverbend Colony's cost statements, except in those cases where Riverbend Colony is not entitled to the GST as an input tax credit. In addition, Riverbend Colony also explained that it is required to remit the excess of GST collected on taxable sales over GST paid on business expenses. But when GST paid on business expenses exceeds the GST collected on taxable sales, Riverbend Colony is entitled to a refund. The GST is recorded as a liability and a receivable of the company and not a cost. The GST audit adjustment was the result of an accounting to the government of the actual amounts of GST taxes paid on purchases and collected on sales.

We disagree with Excel that the GST penalties and interest should not be included in reported costs simply because they related to GST assessments from prior periods. We also disagree that they were personal expenses. To obtain a GST refund, a company has to be in business and has to have overpaid the GST it owed. That is, the ultimate consumer of goods is not entitled to refunds of GST. The costs associated with filing GST documentation and claiming refunds are costs related to the general operations of the company and are a general cost of doing business. Therefore, the GST-related penalties and interest are related to the general operations of the business and not personal expenses. The accounting treatment afforded the GST audit adjustment in Riverbend Colony's records does not overcome the character of these expenses. While Riverbend Colony treated these amounts as member withdrawals and recorded them directly to the equity section of the balance sheet per its unaudited financial statements, this was not appropriate GAAP treatment for such an item. Under Canadian and U.S. GAAP, these items should have been reflected on the current period income statement as an expense.

Riverbend Colony in essence borrowed the money from the Canadian government. Therefore, it was assessed a charge for using the money. In addition, while the amounts relate to GST which was not paid in prior years, it was not recorded until 2003, during the POI. Under GAAP (see e.g., Statement of Financial Accounting Standards No. 5 issued by the Financial Accounting Standards Board ("FASB")), a contingent loss shall be accrued if the impairment or liability is probable and if the amount can be reasonably estimated. Therefore, under GAAP, costs are not recorded until they can be quantified. In the case of the GST audit adjustment, the amount of penalties and interest was not known until the government issued its Statement of Audit Adjustments in July 2003. Therefore, we recognize these as period costs of 2003 because this is when they were first quantified and recorded.

Comment 61: Labor

Excel's Argument:

Excel argues that the Department should use Riverbend Colony's member withdrawals as the labor cost. Excel explains that Riverbend Colony does not pay its members traditional wages, but rather directly pays for all personal and living expenses of the members. According to Excel, these member withdrawals are compensation for the work the members perform in the colony.

Excel claims that in its preliminary cost calculations, the Department erroneously applied the transactions disregarded provision (see section 773(f)(2) of the Act) to Riverbend Colony's reported labor costs. Excel argues that this provision does not apply to transactions between Riverbend Colony and its members because they consider themselves a single entity. Excel states that all of the colony's expenses, whether personal or related to farming operations, are paid through one bank account for the entire colony. Excel continues that member withdrawals for personal expenses, as well as member contributions for tax credits, health insurance claims, etc., are recorded in the colony's financial statements. Excel asserts that the colony's members have no separate identity outside of the colony and, therefore, should be treated as a collapsed entity to which the transactions disregarded rule does not apply. See Final Results of Antidumping Administrative Review: Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea, 65 FR 13359 (March 13, 2000) and the accompanying Issues and Decision Memorandum, at Comment 10.

If the Department chooses to not use Riverbend Colony's reported labor cost, then, Excel argues, it should use the Rainbow Colony's labor expense as a representative labor cost. Excel contends that the Rainbow Colony is an almost precise match for Riverbend Colony because the sizes of the isowean operations are comparable and both producers are Hutterian colonies, which means they have similar lifestyles dictating similar production practices. Excel asserts that because the Rainbow Colony hires outside labor to operate its isowean barn, it is a good surrogate for Riverbend Colony.

Excel asserts that if the Department decides to use labor costs from the Manitoba Department of Agriculture, it should use information from this source that more closely reflects Riverbend Colony's operations. Excel asserts that the data used from this source in the preliminary cost calculation is flawed because: 1) it was for a farrow to finish operation; 2) it was for a 300 sow facility, while Riverbend Colony has over 1400 sows; and, 3) it assumed that the farmer mixed his own feed while Riverbend Colony purchases its feed. Excel notes that the Manitoba Department of Agriculture also prepared cost studies for 600 sow and 3000 sow isowean facilities. Excel argues that since Riverbend Colony falls close to the middle of these two points, it would be appropriate to take a simple average of the two to estimate a labor cost for Riverbend Colony.

The Petitioners' Argument:

The petitioners argue that the Department should continue to value Riverbend Colony's labor costs using the methodology in its preliminary cost calculations. The petitioners argue that Riverbend Colony and its members do not meet the requirements of 19 CRF 351.401(f)(1) of the Department's regulations for collapsing because its members are not producers. The petitioners assert that the Department's methodology recognizes that the members are affiliated separate legal entities from the farm to which the transactions disregarded rule applies.

The petitioners assert that the Department should not value Riverbend Colony's labor using the proprietary values of the Rainbow Colony. The petitioners state that Excel's calculation uses data which it placed in the public domain in its January 21, 2005, submission. The petitioners argue that the January 21, 2005, submission was untimely and that both it and the calculations in the Excel case brief should be stricken from the record.

The petitioners argue that the Department should not use the outdated studies cited by Excel to value labor, but if it does, it should calculate the labor cost based on the correlation between sizes for contemporaneous costs, not a simple average of non-contemporaneous data. The petitioners assert that Riverbend Colony used verification to present new factual information regarding the labor rate to value its non-market work-force labor.

Department's Position:

Because Riverbend Colony paid affiliated parties' (i.e., its colony members) living expenses and personal costs in lieu of wages, section 773(f)(2) of the Act dictates that the Department must determine a fair market value associated with that labor and compare it to the transfer price between the affiliates. 19 CR 351.407(b) directs the Department to rely on the wages paid to affiliated parties only if they exceed the market value for such services. See Wheat Final Determination.

We disagree with Excel that section 773(f)(2) of the Act does not apply to the transactions between Riverbend and its members because they are a single entity. Riverbend Colony's members are essentially the owners and operators of the farming operations. In this respect, the colony members are no different than the owner-operators of any other family-owned farming operation, such as many of the cost respondent farmers in the Wheat Final Determination. Therefore, in accordance with section 773(f)(2) of the Act, we have compared the "wages" (personal and living expenses) paid to Riverbend Colony's owner-operator members (i.e., the transfer price) to the market price determined from Manitoba provincial agricultural guides. We found Riverbend Colony's average transfer price was below the average market price. Therefore, we have recalculated Riverbend Colony's labor based on market prices.

We analyzed the different options available to determine a market price for Riverbend Colony's member labor and have determined that the Manitoba provincial agricultural guides submitted by Riverbend Colony at verification proved the best alternative. While the agricultural guides rely on some estimates, they are regularly prepared by the provincial government and are based on recommended practices and individual producer records.

We disagree with Excel that we should use the Rainbow Colony's labor expense as the basis for Riverbend Colony's labor calculation. While Rainbow may be a suitable surrogate for Riverbend Colony because the sizes of the isowean operations are comparable, there are other problems with using the Rainbow Colony data. First, the labor calculation submitted by Excel uses Rainbow Colony's hourly wage rates, which were made public in Excel's January 21, 2005, letter to the Department, and applies them to an estimate of the annual hours worked by Riverbend Colony. We note that Riverbend Colony has no records documenting the amount of time spent on all the tasks at the farm, therefore, the estimate of annual hours worked for Riverbend Colony's swine labor was unsubstantiated. Second, we do not have public information available on the number of the Rainbow Colony's isoweans sold or sows in inventory in order to calculate a per sow or per isowean labor cost. Third, we cannot use the Rainbow Colony's total labor costs paid for the isowean operation during the period because the Rainbow Colony only started paying labor in March 2003 for its isowean operation and it was stocking the isowean operation with sows in 2003. There is no public information on the record demonstrating when during the POI the operation reached its full inventory of sows. In addition, we cannot use the proprietary data of the Rainbow Colony to calculate the labor costs of Riverbend Colony because it would reveal business proprietary information of the Rainbow Colony. While both the Rainbow and Riverbend Colonies are cost respondents for Excel, we calculate costs for each cost respondent separately and then weight average the total costs for each, along with Big Boulder's costs to arrive at a single cost for Excel.

While the petitioners assert that the Manitoba government reports submitted by Riverbend Colony at verification were new information, we note that we asked the company at verification if it had anything to present on a surrogate market labor rate. In addition, the information provided was public information, from the same source as information provided by the petitioners in their September 10, 2004, letter, and the petitioners had an opportunity to comment on this information in their brief.

As noted above, for Riverbend Colony's labor in the final determination, we imputed labor based on the Manitoba government reports submitted at verification. See Memorandum to Neal M. Halper, "Verification Report on the Cost of Production and Constructed Value Data Submitted by Riverbend Colony of Hutterian Brethren, a cost respondent for Excel Swine Services," dated January 19, 2005 ("Riverbend Cost Verification Report"), cost verification exhibit ("CVE") 10, at pages 52 to 65. Specifically, we used the report for the 3000 sow farrow to wean operation published in June 2001 and the 600 sow farrow to wean operation published in April 2004. Rather than taking a simple average, we are extrapolating between the labor amounts (labor cost per pig sold) in the two reports, to account for the actual number of sows owned by Riverbend Colony. See Final Cost Calculation Memorandum. We did not adjust the 2001 report to account for outdated costs, as suggested by the petitioners, because both the 2001 and the 2004 reports use the same labor rate per hour.

Excel Big Boulder

Comment 62: Rental Income G&A Offset

The Petitioners' Argument:

The petitioners assert that the Department should exclude the rental income offset to G&A expenses that was claimed by Excel's cost respondent, Big Boulder Creek, Ltd. ("Big Boulder"). The petitioners argue that the rental income does not pertain to the general operations of Big Boulder and should be excluded, see Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Round Wire from Taiwan, 64 FR 17336, 17338, (April 9, 1999). Further, the petitioners argue that if the

Department decides to include the rental income offset to G&A, it should only include the offset which was supported at verification.

Excel's Argument:

Excel did not comment on this issue.

Department's Position:

We disagree with the petitioners that Big Boulder's rental income is unrelated to its general operations and should be excluded. Big Boulder's rental income is derived from land which is owned by Big Boulder. The rental income is a minor activity not related to a separate line of business but to general operations of the company. Big Boulder's G&A expenses included in the ratio include the land lease expenses. We note that the rental income earned on that land should offset Big Boulder's total G&A expenses. However, we agree with the petitioners that we should only include the verified amount of Big Boulder's rental income. In the Memorandum to Neal M. Halper, "Verification Report on the Cost of Production Data Submitted by Big Boulder, Ltd.," dated January 19, 2005 ("Big Boulder Cost Verification Report"), at page 17, we noted that only a portion of the total rental income offset claimed by Big Boulder was supported by receipts and recorded in Big Boulder's financial statements. For the final determination, we have included as an offset to G&A expenses, the verified amount of Big Boulder's rental income.

Comment 63: Fiscal Year G&A and Financial Expense Ratios

The Petitioners' Argument:

The petitioners note that Big Boulder divided fiscal year 2003 G&A and financial expenses by a POI COM denominator. Petitioners argue that it would be more appropriate for the Department to calculate the ratios using the fiscal year cash basis financial statements.

Excel's Argument:

Excel did not comment on this issue

Department's Position:

We agree with the petitioners. To avoid distortion from using a fiscal year numerator and a POI denominator, we have recalculated Big Boulder's G&A and financial expense ratios by using a consistent numerator and denominator (i.e., based on fiscal year numerators and fiscal year denominators, in accordance with the Department's standard practice). See Memorandum to Neal M. Halper, "Cost of Production and Constructed Value Adjustments for the Final Determination - Excel

Swine Services, Ltd. Cost Respondents," dated March 4, 2005 ("Excel Final Cost Calculation Memorandum").

Comment 64: Insurance and Donations

Excel's Argument:

Excel argues that insurance and donation expenses recognized in Big Boulder's financial statements are personal in nature and should be excluded from Big Boulder's reported costs. Excel asserts that if the Department concludes that personal expenses cannot be the basis for Riverbend Colony's labor costs, then the Department should exclude personal expenses paid by Big Boulder. Excel cites CVE 5 to claim that Big Boulder's owners made personal donations from the company's accounts. Excel notes that these donations were mostly to religious organizations which do not impact Big Boulder's isowean business. Further, Excel asserts that the only business purpose for these donations would be promotional, in which case they should be considered an indirect selling expense and excluded from the COP and CV. Excel argues that life insurance premiums paid from Big Boulder's accounts are unrelated to the operations of the company. Further, Excel argues that life insurance was not required by Big Boulder's lenders and was not deducted for tax purposes.

The Petitioners' Argument:

The petitioners cite Big Boulder's CVE 5 to show that Big Boulder recognized both personal and corporate donations. The petitioners argue that the Department's normal practice is to include company donations in a respondent's G&A ratio. See Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar From India, 68 FR 47543 (August 11, 2003) and accompanying Issues and Decision Memorandum (August 4, 2003) ("SSB Final Determination"), at Comment 16. The petitioners argue that the personal activities of Big Boulder's owners and the company's operations are intertwined, and that differentiating between personal and company accounts allows potential manipulation of the reported costs. Should the Department choose to distinguish between personal and company donations, the petitioners argue that the donations recognized as corporate on Big Boulder's tax return, as well as the amount recognized internally as personal should be included in Big Boulder's G&A expenses. Regarding the insurance expense, the petitioners argue that Big Boulder's cost verification report does not corroborate Excel's description of its insurance expense except that it was not deducted for tax purposes.

Department's Position:

Regarding the donations expense, we disagree with Excel's assertion that the donations recognized in Big Boulder's financial statements are personal expenses. Big Boulder's normal books and records clearly distinguish between corporate donations and personal donations. See Big Boulder Cost Verification Report, at CVE 5, pages 13 to17. In preparing Big Boulder's financial statements, its accountant made adjusting entries to reclassify certain corporate donations as personal, thus removing them from Big Boulder's records. Big Boulder has reported only the donations which management identified as corporate donations as an expense in both the company's financial statements and tax returns. For the final determination, we have relied on Big Boulder's normal books and records to identify Big Boulder's corporate donation expense. In accordance with SSB Final Determination, we have included the company's corporate donation expense as part of the G&A expenses incurred by the company. Although Excel argues that donations are not required for the operations of the company, we note that Big Boulder did in fact incur these expenses, and that these expenses are general in nature.

We disagree with the petitioners' claim that we should also include Big Boulder's personal donations in Big Boulder's G&A expenses. While the operations of the company and the activities of the owners may be closely related, the owners have separated donations which are personal expenses from donations which are corporate expenses, and removed the personal donations from the company's books. We have not included those donations which the company determined to be personal donations, and which are not reflected in Big Boulder's accounting records.

Regarding the insurance expense, we agree with the petitioners and disagree with Excel. Although Excel argues that life insurance premium expenses are not required for the operations of the company, we note that Big Boulder incurred these expenses and recognized them in its financial statements as costs related to the company. Further, for dumping purposes we generally do not distinguish expenses which are deductible for tax purposes from expenses which are not deductible for tax purposes. The fact that Big Boulder's life insurance premium expenses are not deductible for Canadian tax reporting is irrelevant to whether Big Boulder actually incurred the expenses. As we deem insurance premiums to be related to the general operations of the company, we have included the entire amount of Big Boulder's life insurance premium expense in the company's G&A expenses.

Hytek

Comment 65: CEP Profit

Hytek's Argument:

Hytek asserts that the Department's calculation and application of the constructed export price ("CEP") profit ratio is in error. Hytek asserts that the Department cannot, on the one hand, calculate the profit ratio exclusive of imputed expenses and then, on the other hand, apply that ratio to U.S. expenses which include imputed expenses. Citing the Department's Policy Bulletin 97.1, Hytek asserts that the Department attempts to justify this methodology by including actual interest expenses in the COP, thus making the inclusion of imputed expenses in the profit calculation unnecessary. Hytek argues that imputed expenses and actual interest expenses are fundamentally different. Hytek asserts that, in order to harmonize the calculation mathematically, the Department should include imputed expenses in the profit calculation.

Petitioners' Argument:

The petitioners did not comment on this issue.

Department Position:

We disagree with Hytek that the Department's calculation and application of CEP profit for Hytek was in error. The Department believes that it is appropriate to base the CEP profit ratio on actual expenses, as indicated in the wording of section 772(f)(1) of the Act. This provision of the Act directs the Department to calculate CEP profit based on "total actual profit." The Department relies on normal accounting principles to calculate "actual profit." Normal accounting principles do not allow for the inclusion of imputed expenses. Since the cost of the U.S. and home market merchandise includes an amount for interest expenses, the inclusion of imputed interest amounts would result in double counting to a certain extent and overstate the cost attributable to sales of the merchandise under investigation. This overstatement of cost would understate the ratio of U.S. selling expenses to total expenses and, consequently, understate the amount of actual profit allocated to selling, distribution, and further manufacturing activities in the United States.

The Federal Circuit has upheld the Department's methodology with respect to the calculation and application of CEP profit. See U.S. Steel Group, 225 F.3d 1284, 1290 (CAFC August 20, 2000). Specifically, the Federal Circuit ruled that the statute "does not require or even vaguely suggest symmetry between the definitions of 'U.S. expenses' and 'total expenses.'" Id. Further, the Federal Circuit stated that the statutory definitions themselves "undercut symmetrical treatment of 'total U.S. expenses' and 'total expenses.'" Id. Further, the CIT "accepted the government's avoidance-of-double-counting theory." See Ausimont SpA v. United States, Slip Op. 01-92 at 44-51 (CIT August 2, 2001), citing Thai Pineapple Canning Industry Corp., Ltd. v. United States, Slip Op. 00-17 at 19-20 (CIT February 10, 2000). In addition, the Department has upheld this methodology in recent cases. See Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and Singapore: Final Results of Antidumping Duty Administrative Reviews, Rescission of Administrative Review in Part, and Determination Not To Revoke Order in Part, 68 FR 35623 (June 16, 2003) and accompanying Decision Memorandum at Comment 8 and Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Final Results and Final Rescission in Part of Antidumping Duty Administrative Review, 68 FR 69996 (December 16, 2003) and accompanying Decision Memorandum at Comment 19.

Therefore, for the final determination, we have continued to calculate the CEP profit rate based on actual revenues and expenses. Further, we have continued to apply this rate to the total CEP selling expenses to arrive at the per-unit amount of profit deducted from U.S. price.

Comment 66: Further Manufacturing Costs

The Petitioners' Argument:

The petitioners assert that the Department should revise the denominators of Hytek's further-manufacturer's G&A and financial expense ratios to exclude the value of swine purchases. The petitioners reference the Department's findings described in the Memorandum to Neal M. Halper, "Verification Report on the Further Manufacturing Cost Data Submitted by Hytek, Ltd." dated January 19, 2005 ("Hytek FMG Cost Verification Report").

Hytek's Arguments:

Hytek agrees with the petitioners that swine purchases should be excluded from the denominators of the further-manufacturer's G&A and financial expense ratios. However, Hytek argues that the value excluded should be based on swine purchases for the fiscal year contemporaneous to the expense ratios rather than the POI as referenced in the Department's findings.

Department's Position:

We agree with the petitioners and Hytek that the denominators of Hytek's further-manufacturer's G&A and financial expense ratios should exclude the value of swine purchases. The Department's practice is to calculate G&A and financial expense ratios using a denominator that should approximate as closely as possible the same body of expenses as the number to which the ratios are applied (see e.g., Notice of Final Results of Antidumping Duty Administrative Review: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled from Germany, 66 FR 11557 (February 26, 2001) and Notice of Final Results of Antidumping Duty Administrative Review: Brass Sheet and Strip from Canada, 65 FR 37520 (June 15, 2000)). Therefore, because Hytek's further-manufacturing COM does not include purchases of swine, we have excluded the purchases of swine from the denominators of Hytek's further-manufacturer's G&A and financial expense ratios. We also agree with Hytek that the fiscal year purchases, rather than the POI purchases, should be deducted from the denominator of the ratios because the ratios are based on the fiscal year rather than the POI.

Comment 67: Certain Payments to Owners

Hytek's Argument:

Hytek contends that the Department incorrectly included certain payments to its owners in the calculation of Hytek's G&A expenses. According to Hytek, these payments were dividends and, as such, should have been excluded from the G&A expense calculation in accordance with section 773(f)(1)(A) of the Act and the Department's normal practice (see Greenhouse Tomatoes Final Decision Memorandum). Hytek asserts that, in the Greenhouse Tomatoes Final Determination, the

Department rejected the characterization of management bonuses as dividends because the respondent was unable to demonstrate that the bonuses were profit distributions, the bonuses were treated as ordinary expenses in the respondent's financial statements, and the payments were not made in proportion to the shareholdings. Hytek argues that in the instant case, it has adequately demonstrated that these payments are in fact dividends, that the payments were not included in the cost of sales or expenses on the face of Hytek's financial statements (i.e., these payments were presented separately from cost of sales and expenses), and that the payments were made in proportion to the owners' shares. See Hytek Cost Verification Report. Further, Hytek argues that the Department should recognize the difference between the extraordinary distributions to its owners and ordinary bonuses paid to non-owners and barn workers in the normal course of business. The ordinary bonuses are recorded as ordinary expenses and treated as such in the financial statements. If the Department does adjust Hytek's G&A expenses for these payments, Hytek asserts that the Department should include only those amounts that Hytek labeled other distributions in its supporting payment documentation. See Hytek Cost Verification Report at Exhibit 14.

The Petitioners' Argument:

The petitioners assert that Hytek should include certain payments to its owners in the numerator of Hytek's G&A expense ratio. The petitioners refute Hytek's claim that these payments were dividends and not period expenses. As evidence, the petitioners point to Hytek's audited financial statements where these payments were recognized as expenses. Further, the petitioners argue that Hytek's reliance on the Greenhouse Tomatoes Final Determination is misplaced.

Department's Position:

We agree with the petitioners and have included certain payments made to Hytek's owners in Hytek's calculation of its G&A expenses. Pursuant to section 773(f)(1)(a) of the Act, the Department's normal practice is to rely on a respondent's normal books and records where such records are kept in accordance with the GAAP of the exporting country and reasonably reflect the costs associated with the production and sale of the subject merchandise. See e.g., Greenhouse Tomatoes Final Determination, and Greenhouse Tomatoes Final Decision Memorandum, at Comment 3. In the instant case, the payments in question were recorded as period expenses, not dividends, on Hytek's audited financial statements. Further, consistent with the Department's practice, we find that these payments reasonably reflect the costs associated with the production and sale of the merchandise under review. See e.g., Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan, 63 FR 8909 (February 28, 1998) ("SRAMs from Taiwan"). We disagree with Hytek that these payments represent dividends because, similar to SRAMs from Taiwan, the payments are identified as expenses on Hytek's financial statements. We also note that Hytek's audited financial statements, prepared in accordance with Canadian GAAP, recognized dividends paid as a deduction to retained earnings rather than period expenses.

Further, we disagree with Hytek's argument that the instant case differs from the facts in the Greenhouse Tomatoes Final Determination. In that case, the Department rejected a similar argument that management bonuses were dividends because the payments were characterized as management bonuses on the respondent's financial statements, the respondent's had historically recognized these expenses as bonuses, and nowhere in the companies' financial records were these items shown as dividends. Similar to the Greenhouse Tomatoes Final Determination, the payments in question in the instant case are reflected on Hytek's financial statements as period expenses. In addition, these expenses were never recorded as dividends in Hytek's normal books and records. Although these payments were reported on the financial statements separately from Hytek's other operating expenses, we believe this distinction in itself does not relay to the reader of the financial statements that these expenses are actually dividends, similar to those dividends recognized on the financial statements as dividends. Finally, we disagree with Hytek that only a portion of the payments should be included in the numerator of Hytek's G&A expense ratio. The entire value of the payments in question are reflected on Hytek's financial statements as period expenses and as such, we have included the entire value of the payments in the numerator of Hytek's G&A expense ratio.

Comment 68: Interest Income

The Petitioners' Argument:

The petitioners assert that certain revenue items, claimed by Hytek as offsets to its financial expenses, pertain to elements normally classified as non-operating or other income. The petitioners contend that the Department's practice is to offset financial expenses with only short-term interest income. Therefore, any revenue items that are long-term in nature should not be included in Hytek's offset to its financial expenses. Furthermore, the petitioners argue that the Department does not normally offset G&A or financial expenses with other miscellaneous income items because these items are not related to the company's general operations. See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Round Wire from Taiwan, 64 FR 17336 (April 9, 1999).

Hytek's Argument:

Hytek did not comment on this issue.

Department's Position:

We agree with the petitioners. Because the non-operating and other income items in question are either long-term in nature or relate to investments, we have excluded the non-operating and other income offsets from the numerator of Hytek's financial expense ratio.

RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above positions and adjusting all related margin calculations accordingly. If these recommendations are accepted, we will publish the final determination of this investigation and the final weighted-average dumping margins for all firms investigated in the Federal Register.

AGREE __________ DISAGREE __________

____
Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

____
Date