company, when UES purchased the Special Steels Business (SSB), one of BSC's productive units, in an arm's-length transaction. The ITA's determination was appealed. The ITA subsequently requested, and was granted, a remand in order to reconsider its final determination. On remand, the ITA adopted its reasoning in *Certain Steel Products From the United Kingdom*, 58 FR 37,393 (July 9, 1993), in which it determined that part of the price UES paid for the productive unit purchased from BSC constituted payment for prior subsidies. On June 7, 1994, in *Inland Steel Bar Co.* v. *United States*, 858 F. Supp. 179 (CIT 1994) (*Inland I*), the CIT overturned the ITA's determination that previously bestowed subsidies passed through with a productive unit sold in an arm's-length transaction to a private party.

In *Inland Steel Bar Co.* v. *United States*, 86 F.3d 1174 (Fed. Cir. 1996) (*Inland II*), the Federal Circuit reversed and remanded *Inland I*, concluding that the lower court had erred in holding that as a matter of law a subsidy could not pass through during an arm's-length transaction. The CIT subsequently remanded the case to the ITA to make a determination pursuant to *British Steel plc* v. *United States*, 879 F. Supp. 1254 (CIT 1995) (*British Steel I*), *appeals docketed*, Nos. 96–1401 to –06 (Fed. Cir. June 21, 1996), and *British Steel plc* v. *United States*, 924 F. Supp. 139 (CIT 1996) (*British Steel II*), *appeals docketed*, Nos. 96–1401 to –06 (Fed. Cir. June 21, 1996), whether the SSB was a productive unit capable of receiving subsidies. Pursuant to *British Steel I* and *British Steel II*, the ITA determined that the SSB was not a productive unit capable of receiving subsidies. This remand was affirmed by the CIT in *Inland Steel Bar Co.* v. *United States*, Slip Op. 97–18 (Feb. 10, 1997) (*Inland Steel III*).

In its decision in *Timken Co.* v. *United States*, 893 F.2d 337 (Fed. Cir. 1990), the United States Court of Appeals for the Federal Circuit held that, pursuant to 19 USC section 1516a(e), the Department must publish a notice of a court decision which is not ''in harmony'' with a Department determination, and must suspend liquidation of entries pending a ''conclusive'' court decision. The CIT's opinion in *Inland Steel III* on February 10, 1997, constitutes a decision not in harmony with the Department's final affirmative determination. Publication of this notice fulfills the *Timken* requirement.

Accordingly, the Department will continue to suspend liquidation pending the expiration of the period of appeal, or, if appealed, upon a ''conclusive'' court decision. Absent an appeal, or, if appealed, upon a ''conclusive'' court decision affirming the CIT's opinion, the countervailing duty order will be revoked effective February 20, 1997.

Dated: March 27, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–9549 Filed 4–11–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Internal Trade Administration

[C–122–404]

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

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

ACTION: Notice of Final Results of Countervailing Duty Administrative Review.

SUMMARY: On October 7, 1996, the Department of Commerce (the Department) published in the **Federal Register** its preliminary results of administrative review of the countervailing duty order on live swine from Canada for the period April 1, 1994 through March 31, 1995 (61 FR52426). The Department has now completed this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended. For information on the net subsidy, see the *Final Results of Review* section of this notice. We will instruct the U.S. Customs Service to assess countervailing duties as detailed in the *Final Results of Review* section of this notice.

EFFECTIVE DATE: April 14, 1997.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore or Cameron Cardozo, Office of CVD/AD Enforcement VI, Import Administration International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION

Background

Pursuant to 19 C.F.R. section 355.22(a), reviews should cover only those producers or exporters of the subject merchandise for which a review was specifically requested. However, as explained in the preliminary results, the Department has determined that it is not practicable to conduct a company-specific review of this order because a large number of producers and exporters requested the review. Therefore, pursuant to section 777(e)(2)(B) of the Tariff Act of 1930, as amended, we are conducting a review of all producers and exporters of subject merchandise covered by this order on the basis of aggregate data. This review also covers the period April 1, 1994 through March 31, 1995, and 33 programs. On May 1, 1996, we extended the deadline for the final results of this review to no later than 180 days from the date of publication of the preliminary results. *See Live Swine from Canada; Extension of Time Limit for Countervailing Duty Administrative Review* (61 FR 19261).

Since the publication of the preliminary results on October 7, 1996 (61 FR 52426) the following events have occurred. We invited interested parties to comment on the preliminary results. On November 6, 1996, case briefs were submitted by the Government of Canada (GOC), the Government of Quebec (GOQ), and the Canadian Pork Council (CPC), (respondents), and the National Port Producers' Council (petitioners). On November 13, 1996, rebuttal briefs were submitted by the petitioners and the respondents. At the request of the GOQ and the CPC, the Department held a public hearing on December 11, 1996.

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995 (the Act). The Department is conducting this administrative review in accordance with section 751(a) of the Act.

Scope of the Review

On August 29, 1996, the *Final Results of Changed Circumstances Countervailing Duty Administrative Review, and Partial Revocation* were published (61 FR 45402), in which we revoked the order, in part, effective April 1, 1991, with respect to slaughter sows and boars and weanlings from Canada, because this portion of the order was no longer of interest to domestic interested parties. As a result the merchandise now covered by the order and by this administrative review is live swine except U.S. Department of Agriculture certified purebred breeding swine, slaughter sows and boars and weanlings (weanlings are swine weighing up to 27 kilograms or 59.5 pounds). The merchandise subject to the

order is classifiable under the *Harmonized Tariff Schedule* (HTS) item numbers 0103.91.00 and 0103.92.00. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Verification

As provided in section 782(i) of the Act, we verified information submitted in the questionnaire responses. We followed standard verification procedures, including meeting with government and company officials, and examination of relevant accounting and original source documents. Our verification results are outlined in the public version of the verification report (*Verification Report*), which is on file in the Central Records Unit (Room B–009 of the Main Commerce Building).

Allocation Methodology

In the past, the Department has relied upon information from the U.S. Internal Revenue Service (IRS) on the industry-specific average useful life (AUL) of assets in determining the allocation period for non-recurring grant benefits. *See General Issues Appendix* appended to *Final Countervailing Duty Determination; Certain Steel Products from Austria*, 58 FR 37063, 37226 (July 9, 1993). However, in *British Steel plc.* v. *United States*, 879 F. Supp. 1254 (CIT 1995) (*British Steel*), the U.S. Court of International Trade (the Court) ruled against this allocation methodology. In accordance with the Court's remand order, the Department calculated a company-specific allocation period for non-recurring subsidies based on the AUL of non-renewable physical assets. This remand determination was affirmed by the Court on June 4, 1996, *British Steel*, 929 F. Supp. 426, 439 (CIT 1996).

The Department has decided to acquiesce to the Court's decision and, as such, we intend to determine the allocation for non-recurring subsidies using company-specific AUL data where reasonable and practicable. In this proceeding, the Department preliminarily determined that it is not reasonable and practicable to allocate nonrecurring grants using company-specific AUL data because it is not possible to apply a company-specific AUL in an aggregate case (such as the case at hand). We invited the parties to comment on the selection of this methodology and provide any other reasonable and practicable approaches for complying with the Court's ruling. The GOQ submitted comments on this issue. The GOQ agreed with the Department that it is not feasible to allocate nonrecurring grants using company-specific data in aggregate cases and that the U.S. Internal Revenue Service tax tables are appropriate for allocating nonrecurring grants in this review. However, the GOQ also stated that, in future proceedings conducted on an aggregate basis, the Department should seek suggestions from the parties as to more appropriate methodologies for calculating the allocation period. Accordingly, in this review, the Department is using the allocation period assigned to each grant in prior reviews of this order.

Calculation Methodology for Assessment and Cash Deposit Purposes

For the review period, we calculated the net subsidy on a country-wide basis by first calculating the subsidy rate for each program subject to the administrative review. We calculate the rate on a province by province basis. We then weight-averaged the rate received by each province using as the weight the province's share of total Canadian exports to the United States of market hogs. We then summed the individuals provinces' weighted-average rates to determine the subsidy rate from each program. To obtain the country-wide rate, we then summed the subsidy rates from all programs.

Analysis of Programs

Based upon the responses to our questionnaires, the results of verification, and written comments from the interested parties, we determine the following:

I. Programs Conferring Subsidies

A. Programs Previously Determined to Confer Subsidies

I. *Feed Freight Assistance Program:* In the preliminary results, we found that this program conferred countervailable subsidies on the subject merchandise. Our review of the record and our analysis of the comments submitted by the interested parties, summarized below, has led us to modify our findings from the preliminary results for this program. We have determined that the proper calculation methodology with respect to FFA benefits is the one that the Department has used to determine the benefit for the only other ''federal'' program, NTSP, in this review. Therefore, we are first calculating a benefit per kilogram of live swine within each province eligible for FFA assistance using each province's total production. Next, we are adjusting each province's rate per kilogram based on each province's share of exports to the United States of the subject merchandise. Finally, these individual provincial rates are summed to obtain a total national rate for the FFA program. Accordingly, the net subsidy for this program has changed from Can$0.0006 per kilogram to less than Can$0.0001 per kilogram.

2. *National Tripartite Stabilization Scheme for Hogs (NTSP):* In the preliminary results, we found that this program conferred countervailable subsidies on the subject merchandise. Our review of the record and our analysis of the comments submitted by the interested parties, summarized below, has led us to modify our findings from the preliminary results for this program. In our calculation of NTSP benefits to hog producers, we have excluded payments related to other NTSP commodity plans which, in our preliminary results, were inadvertently cumulated with those for hogs. We have recalculated the NTSP benefit applicable only to hog producers during the POR using the same methodology described in the *Preliminary Results* (61 FR at 52428). Accordingly, the net subsidy for the residual NTSP payments and the retroactive NTSP surplus has changed from Can$0.0172 to Can$0.0004 per kilogram. Also, the cash deposit for this program has been adjusted to zero to reflect that this program has been terminated and there are no residual benefits. *See Final Affirmative Countervailing Duty Determination: Certain Pasta from Turkey*, 61 FR 30366, 30370 (June 14, 1996) (*Pasta from Turkey*).

3. *British Columbia Farm Income Insurance Program (FIIP):* In the preliminary results, we found that this program conferred countervailable subsidies on the subject merchandise. We did not receive any comments on this program from the interested parties, and our review of the record has not led us to change any findings or calculations. Accordingly, the net subsidy for this program of less than Can$0.0001 per kilogram remains unchanged from the preliminary results.

4. *Saskatchewan Hog Assured Returns Program (SHARP):* In the preliminary results, we found that this program conferred countervailable subsidies on the subject merchandise. Our review of the record and our analysis of the comments submitted by the interested parties, summarized below, has led us to modify our findings from the preliminary results for this program with regard to the cash deposit. The net subsidy for this program of Can$0.0028 per kilogram remains unchanged from the preliminary results. However, the cash deposit for this program has been adjusted to zero to reflect that this

program has been terminated and there are no residual benefits. *See Pasta from Turkey*.

5 *Saskatchewan Livestock Investment Tax Credit:* In the preliminary results, we found that this program conferred countervailable subsidies on the subject merchandise. We did not receive any comments on this program from the interested parties, and our review of the record has not led us to change any findings or calculations. Accordingly, the net subsidy for this program of Can$0.0001 per kilogram remains unchanged from the preliminary results.

6 *Saskatchewan Livestock Facilities Tax Credit:* In the preliminary results, we found that this program conferred countervailable subsidies on the subject merchandise. We did not receive any comments on this program from the interested parties, and our review of the record has not led us to change any findings or calculations. Accordingly, the net subsidy for this program of Can$0.0001 per kilogram remains unchanged from the preliminary results.

7 *Saskatchewan Interim Red Meat Production Equalization Program:* In the preliminary results, we found that this program conferred countervailable subsidies on the subject merchandise. We did not receive any comments on this program from the interested parties, and our review of the record has not led us to change any findings or calculations. Accordingly, the net subsidy for this program of Can$0.0011 per kilogram remains unchanged from the preliminary results.

8. *Alberta Crow Benefit Offset Program (ACBOP):* In the preliminary results, we found that this program conferred countervailable subsidies on the subject merchandise. We did not receive any comments on this program from the interested parties, and our review of the record has not led us to change any findings or calculations. Accordingly, the net subsidy for this program of Can$0.0010 per kilogram remains unchanged from the preliminary results.

9. *Ontario Livestock and Poultry and Honeybee Compensation Program:* In the preliminary results, we found that this program conferred countervailable subsidies on the subject merchandise. We did not receive any comments on this program from the interested parties, and our review of the record has not led us to change any findings or calculations. Accordingly, the net subsidy for this program of less than Can$0.0001 per kilogram remains unchanged from the preliminary results.

10. *Ontario Export Sales Aid Program:* In the preliminary results, we found that this program conferred countervailable subsidies on the subject merchandise. We did not receive any comments on this program from the interested parties, and our review of the record has not led us to change any findings or calculations. Accordingly, the net subsidy for this program of Can$0.0001 per kilogram remains unchanged from the preliminary results.

11. *Ontario Bear Damage to Livestock Compensation Program:* In the preliminary results, we found that this program conferred countervailable subsidies on the subject merchandise. We did not receive any comments on this program from the interested parties, and our review of the record has not led us to change any findings or calculations. Accordingly, the net subsidy for this program of less than Can$0.0001 per kilogram remains unchanged from the preliminary results.

12. *New Brunswick Livestock Incentives Program:* In the preliminary results, we found that this program conferred countervailable subsidies on the subject merchandise. We did not receive any comments on this program from the interested parties, and our review of the record has not led us to change any findings or calculations. Accordingly, the net subsidy for this program of less than Can$0.0001 per kilogram remains unchanged from the preliminary results.

13. *New Brunswick Swine Industry Financial Restructuring and Agricultural Development Act—Swine Assistance Program:* In the preliminary results, we found that this program conferred countervailable subsidies on the subject merchandise. We did not receive any comments on this program from the interested parties, and our review of the record has not led us to change any findings or calculations. Accordingly, the net subsidy for this program of less than Can$0.0001 per kilogram remains unchanged from the preliminary results.

14. *New Brunswick Swine Assistance Policy on Boars:* In the preliminary results, we found that this program conferred countervailable subsidies on the subject merchandise. We did not receive any comments on this program from the interested parties, and our review of the record has not led us to change any findings or calculations. Accordingly, the net subsidy for this program of less than Can$0.0001 per kilogram remains unchanged from the preliminary results.

B. New Programs Determined to Confer Subsidies

1. *National Transition Scheme for Hogs:* In the preliminary results, we found that this program conferred countervailable subsidies on the subject merchandise. Our review of the record and our analysis of the comments submitted by interested parties, summarized below, has led us to modify part of our preliminary determination on this program. The change concerns the cash deposit. The net subsidy for this program of Can$0.0042 per kilogram remains unchanged from the preliminary results. However, the cash deposit for this program has been adjusted to zero to reflect that this program has been terminated and there are no residual benefits. *See Pasta from Turkey*.

2. *Technology Innovation Program Under the Canada/Quebec Subsidiary Agreement on Agri-Food Development:* In the preliminary results, we found that this program conferred countervailable subsidies on the subject merchandise. Our analysis of the comments submitted by the interested parties, summarized below, has not led us to change our findings from the preliminary results. Accordingly, the net subsidy for this program of less than Can$0.0001 per kilogram remains unchanged from the preliminary results.

II. Programs Found Not to Confer Subsidies

Research Program under the Canada/Quebec Subsidiary Agreement on Agri-Food Development: In the preliminary results, we found that this program did not confer subsidies during the POR. Our analysis of the comments submitted by the interested parties, summarized below, has not led us to change our findings from the preliminary results.

III. Programs Found To Be Not Used

In the preliminary results, we found that the producers and/or exporters of the subject merchandise did not apply for or receive benefits under the following programs:

A. Quebec Farm Income Stabilization Insurance Program (FISI);
B. Support for Strategic Alliances Program under the Canada/Quebec Subsidiary Agreement on Agri-Food Development;
C. Agricultural Products Board Program;
D. Federal Atlantic Livestock Feed Initiative;
E. Western Diversification Program;
F. Newfoundland Hog Price Support Program;
G. Newfoundland Hog Price Stabilization Program;
H. Newfoundland Weanling Bonus Incentive Policy;
I. Nova Scotia Improved Sire Policy;
J. Nova Scotia Swine Herd Health Policy;
K. Ontario Swine Sales Assistance Policy; and
L. Ontario Rabies Indemnification Program.

Our analysis of any comments submitted by the interested parties,

summarized below, has not led us to change our findings from the preliminary results.

IV. Programs Found To Be Terminated

In the preliminary results, we found the following programs to be terminated and that no residual benefits were provided:

A. Alberta Livestock and Beeyard Compensation Program;
B. British Columbia Special Hog Payment Program; and
C. British Columbia Swine Herd Improvement Program.

We received no comments on our preliminary results and our findings remain unchanged in these final results.

Analysis of Comments

Comment 1: The GOC and the CPC argue that the Department erroneously concluded that NTSP payments were made to hog producers during the period of review (POR). They argue that in calculating a benefit for this program, the Department mistakenly used the payout figure for all NTSP plans, which included miscellaneous post-termination adjustments under the NTSP for the Hogs' plan, adjustments under the other terminated NTSP plans, payouts under the active NTSP plans, and all surplus distributions to producers under all the various terminated plans categorized as ''tripartite payments'' in the Farm Cash Receipts (FCRs) data. They also argue that the adjustments to the NTSP for hogs resulted in the GOC collecting a net of Can$41,000 from hog producers during the POR. Therefore, they argue that the Department should find that there were no benefits to hog producers under the NTSP for hogs during the POR.

The petitioners contend that the GOC's supplemental questionnaire response dated June 3, 1996 at page 3 indicates that tripartite payments that had been held over from earlier fiscal years had been paid to live swine producers during the POR, and were accounted for in the FCRs. The petitioners also contend that the Department's September 23, 1996 *Verification Report* at page 4 states that representatives of Agriculture Canada explained not only that NTSP payouts had been made, but also that some NTSP payments remained outstanding. Thus, the petitioners contend that the Department verified that hog producers received NTSP payouts during the POR based on program activities that occurred throughout the life of the program. Therefore, the petitioners contend that the record established that hog producers received NTSP payouts during the POR and, further, that these payouts were substantial. Furthermore, the petitioners contend that because the GOC has failed to submit the NTSP Annual Report for the review period, which represents the official document that presumably would outline the nature and extent of the hog account closeout adjustments and their effect on NTSP payouts, the GOC's argument is deficient.

Department's Position: We agree, in part, with the GOC and the CPC, and, in part, with the petitioners. At verification, we reviewed the ''Tripartite Payments'' line item in the FCRs, which showed an aggregate figure for payments received by producers under all NTSP plans in each province. There was no breakdown by commodity. Therefore, we examined a GOC internal document entitled ''Tripartite Payments,'' which shows the payments to producers of all commodities covered by an NTSP plan in each province (Exhibit GOC–5 to the *Verification Report*). We also reviewed an internal document entitled ''Surplus Distribution—Producer,'' which shows the NTSP surplus distribution for all commodities in each province (Exhibit GOC–6 to the *Verification Report*). We selected provinces from Exhibit GOC–5 and GOC–6 to trace to the FCRs, because the totals from both of these documents were recorded in the FCRs ''Tripartite Payments'' line item. However, when calculating the NTSP benefit for the subject merchandise for the preliminary results, we inadvertently used the total tripartite payments listed in the FCRs. Therefore, in these final results, we have recalculated the NTSP benefit applicable only to hog producers during the POR using the same methodology described in the *Preliminary Results* (61 FR at 52428). To obtain the payouts made to hog producers during the POR, we summed the payments listed for hog producers in each province in Exhibit GOC–5 to the *Verification Report.*

However, consistent with the Department's practice, we did not offset the NTSP benefit to the hog producers by the premiums the hog producers paid during the POR, as argued by the respondents. In prior administrative reviews of *Live Swine*, we only countervailed two-thirds of the payments made to swine producers because the federal government and the provincial government contributed two-thirds of the premiums from which payments were made to the hog producers. We did not countervail the remaining one-third because it represented the producers premiums. Because we only countervail two-thirds of the payments, there is no reason to make any further adjustments to the payments to hog producers. *See, Live Swine from Canada; Notice of Preliminary Results of Countervailing Duty Administrative Reviews; Initiation and Preliminary Results of Changed Circumstances Review and Intent to Revoke Order in Part*, 61 FR 26879, 26883 (May 29, 1996) and *Live Swine from Canada; Final Results of Countervailing Duty Administrative Reviews*, 61 FR 52408 (October 7, 1996).

We agree with the petitioners that payments for closing entries of the NTSP hog plan were made during the POR, and we have calculated the benefit from these payments. However, we disagree with the petitioners that the GOC official's comment, *Verification Report* at 4, that some NTSP payments remained outstanding necessarily means payments to hog producers. There are NTSP plans for other commodities, which were still in effect, and for which there could be payments due in the future. However, we verified that the plan for hogs was no longer in effect and that there will be no payments made in the future under that plan.

Comment 2: The CPC contends that the Department stated in the preliminary results that it intended to calculate a benefit from the Feed Freight Assistance Program (FFA) using the same methodology applied in the sixth review (*See Live Swine from Canada; Final Results of Countervailing Duty Administrative Review:* 59 FR 12243 (March 16, 1994), (*Swine Sixth Review Results)).* However, the CPC claims that the methodology used in the instant review is inconsistent with that used in *Swine Sixth Review Results,* and constitutes a ministerial error. In *Swine Sixth Review Results,* the Department calculated ''production in kilos'' based on the total production of live swine in provinces eligible for FFA. In the preliminary results of this review, however, the Department calculated ''production in kilos'' for three provinces using only the live swine produced in the FFA eligible areas of the three provinces: British Columbia, Quebec, and Ontario. The CPC also states that the same ministerial error was made in *Swine Seventh, Eighth and Ninth Review Results,* which the Department corrected in an amended final notice (*Live Swine from Canada; Amended Final Results of Countervailing Duty Administrative Reviews,* 61 FR 58383; (November 14, 1996) (*Amended Swine Seventh, Eighth, and Ninth Review Results)).* As a result, the CPC contends that the Department should also correct this alleged error in the preliminary results of the current review.

The petitioners argue that the Department should affirm the calculation methodology that it used in the preliminary results because it correctly ''ties'' FFA receipts to the merchandise actually benefiting from the subsidy. In Ontario, Quebec, and British Columbia, only certain counties, and, therefore, only a percentage of swine production, are eligible to receive FFA assistance. Therefore, the petitioners argue that the Department should divide the amount of FFA assistance by the total weight of live swine produced in FFA-eligible areas rather than by total production in each province. According to the petitioners, tying FFA benefits that can only be received by a subset of producers in certain provinces to all production in those provinces would yield the same absurd result as tying provincial benefits to national production.

In rebuttal, the CPC argues that should the Department decide to revise its methodology, any revision must be consistent with the Department's calculation of the benefit from other ''national'' programs providing varying benefits to individual provinces, correctly tie the benefits to eligible production and exports. According to the CPC, the revised methodology, applied by the Department to all other programs available in more than one province, should calculate a benefit per kilo per province, and then calculate a weighted average rate per kilo based on each province's share to total exports. These individual provincial rates should then be added up to obtain a total national rate. The CPC submits that any revision to the FAA benefit calculation should conform to this standard methodology.

Department's Position: In consideration of the comments received on this issue, we have reexamined our FFA calculation methodology. We have determined that the proper calculation methodology to follow with respect to FFA benefits is the one that the Department has used in this review to determine the benefit for the only other ''national'' program, NTSP. Therefore, we first calculated a benefit per kilogram for each province eligible for FFA assistance using the provinces' total production of live swine. Next, we weighted each province's benefit by each province's share of total exports of the subject merchandise to the United States. Finally, these weighted provincial rates are summed to obtain the benefit for the FFA program on live swine.

We disagree with the petitioners regarding the use of an adjusted production figure in the denominator for Ontario, Quebec, and British Columbia. This review is conducted on an aggregate basis. In this case we have treated the provinces as we treat companies in a typical case. To calculate a country-wide rate, we weight-average each province's rate by its share of exports to the United States. To calculate the province's rate for the FFA program, we obtain the same result using two different methods: (1) We can calculate a rate for the counties receiving FAA benefits and a rate for the counties that received no FAA benefits, and then derive the weighted-average rate for the province, or (2) simply calculate a rate for the province by using the amount of FAA assistance in the numerator and total swine production in the denominator. We have adopted the latter method to calculate the FFA rate for each province.

Also, we addressed this same comment in *Swine Sixth Review Results* where we stated that ''[a]lthough we recognize that FAA availability is limited to certain areas within the participating provinces, we determine it is not appropriate to adjust provincial production downward. * * * We determine that adjusting the denominator as we did in the past results is overstating the FAA benefit.'' *Id.* at 12261. Therefore, for these final results, we have calculated FAA benefits as described above.

Comment 3: The GOQ argues that the Department's preliminary determination to countervail a portion of the Canada/Quebec Subsidiary Agreement on Agri-Food Development (Agri-Food Agreement) is contrary to the Department's administrative practice. The GOQ claims that in the last five administrative reviews of this order, the Department has found the Agri-Food Agreement, in its entirety, not countervailable because it is a research program in which the results are made publicly available. The only possible change with respect to the Agri-Food Agreement is the expiration of the original Agri-Food Agreement in 1991 and its replacement in 1993 with the current Agri-Food Agreement. According to the GOQ, this change cannot justify the Department's reconsideration of the Agri-Food Agreement in this review because the current Agri-Food Agreement was already in place during the ninth administrative review when the Department found the Agri-Food Agreement non-countervailable. The GOQ asserts that the Department's long-standing policy has been not to re-examine programs previously found not countervailable absent new information or evidence of changed circumstances. Because the Department found the Agri-food Agreement non-countervailable in the ninth review and no party submitted new information in this proceeding, the GOQ contends that the Department should have continued to find it not countervailable.

The GOQ claims that, although the Department erred in investigating the Agri-Food Agreement after finding it non-countervailable in all prior administrative reviews, the record evidence once again demonstrates that the Agri-Food agreement is not countervailable. Section 355.44(1) of the *1989 Proposed Regulations* reflects the Department's long-term practice that research and development programs, such as the Agri-Food Agreement and its components, are not countervailable if the research results are made publicly available. According to the GOQ, the Agri-Food Agreement is a single program and each of its components individually meet the requirements of section 355.44(1). Thus, the GOQ argues that, in the final results of this review, the Department should not find the Agri-Food Agreement or any of its components countervailable.

The CPC argues that the Department preliminarily determined that the Technology Innovation component of the Agri-Food Agreement is countervailable without first examining whether the results of the research generated by the funded projects are generally available, and that this analysis is not in accordance with either U.S. law or the Department's practice. The CPC claims that funding for this Agri-Food Agreement is shared 50/50 by the federal government and the province, and argues that in prior reviews the Department's analysis of similar jointly funded agreements have begun with a determination as to whether the research results were made publicly available. Only if research results were not made available has the Department then gone on to examine the source of funding. The CPC contends that this analysis is as long-standing as the Department's *1989 Proposed Regulations,* and as recent as the preliminary and final results of the seventh, eighth and ninth administrative reviews of this order. As a result, the CPC concludes that the Department should analyze the Agri-Food Agreement in accordance with U.S. law and its past practice, and should find that none of the components of Agri-Food are countervailable.

The petitioners contend that in an effort to avoid the question of the countervailability of the Technology Innovation component of the Agri-Food

Agreement, the GOQ and CPC attempt to argue that the Department's past treatment of the Agri-Food Agreement, as a whole, prevents the agency from revisiting one particular component of the program in the present review. The petitioners state that the Department's past findings of countervailability are limited to instances where it has examined the Agri-Food Agreement on an aggregate basis. However, the Department has never found the Technology Innovation component of the Agri-Food Agreement, by itself, to be not countervailable, and the Department's finding in the present case does not conflict with its past treatment of this subsidy. Also, the Department's prior finding of noncountervailability was limited to the previous Agri-Food Agreement. The petitioners allege that this review presents the first time that the Department has examined the current Agri-Food Agreement at verification. Thus, the petitioners claim the record in this review provides the Department with ample basis to ''reinvestigate'' the countervailability of the new Agri-Food Agreement.

The petitioners continue that the respondents are incorrect to argue that the Technology Innovation program should be considered non-countervailable because it constitutes a research program under which research results are made publicly available. According to the petitioners, U.S. law and past Department practice support the Department's decision to treat the Technology Innovation component of the Agri-Food Agreement as a regionally specific technical assistance program provided by the Canadian federal government to the designated geographic region of Quebec. In *Final Affirmative Countervailing Duty Determination; Fresh, Chilled, and Frozen Pork from Canada,* 54 FR 30774 (July 24, 1989) (*Pork Investigation*), the Department examined the separate components of the precursor Agri-Food program and determined that the federal government's contributions to the Technology component were countervailable because the program did not involve research and was limited to the region of Quebec. Consistent application of agency practice requires the Department to treat Technology Innovation as a technical assistance subsidy for production aid. According to the petitioner, the Technology Innovation program is designed principally to provide production support. Given that the Technology Innovation program does not constitute a research subsidy, the petitioners argue that the Department has correctly not examined the public availability of this program. Only when referring to the Agri-Food program in it entirety can the program be characterized generally as a ''research'' program. However, the petitioners conclude that the Department correctly rejected this approach and based its countervailability finding on the theory that the program is regionally specific.

Department's Position: We disagree with the GOQ and CPC. The Department's preliminary finding with respect to the countervailability of the Technology Innovation program in not inconsistent with prior Department practice. In fact, the Department examined the countervailability of the predecessor Agri-Food Agreement in the *Pork Investigation*. In that case, the Department also examined the separate components of that agreement (Research and Development, Technological Innovations and New Initiatives, Soil Conservation and Improvement) as three separate programs and determined that the Technological Innovations program was countervailable because the program did not involve research, and the funding, provided by the federal government, was limited to the region of Quebec. *See Pork Investigation* at 30779. In *Live Swine from Canada; Preliminary Results of Countervailing Duty Administrative Review* 55 FR 20812, 20814 (May 21, 1990) (*Swine Second and Third Review Results*), we stated again that the Agri-Food Agreement contained three programs: Research and Development, Technological Innovations, and Soil Conservation, and that the federal government's contributions were limited to Quebec, and therefore countervailable. We examined the Agri-Food Agreement again in the fourth and seventh, eighth, and ninth reviews (the program was not used in the fifth and sixth review). Although we consistently described the Agri-Food Agreement in terms of three programs under the same agreement, we examined individual projects as if they all were financed under the Research program rather than under the other two programs. *See, e.g. Swine Seventh, Eighth and Ninth Review Results* at 26887. Our understanding was inaccurate and does not reflect a determination that the Agri-Food Agreement is one program totally related to research, as the GOQ and the CPC suggest. Furthermore, the GOQ submitted no information on the record of the ninth review showing that a new Agri-Food Agreement was in effect. It was only during the instant review that the Department learned that a new Agri-Food Agreement was in force. The fact that a new Agri-Food Agreement is in force is sufficient evidence of changed circumstances in warrant a reexamination of our prior determinations. Because we determined that it was appropriate to reexamine the Agri-Food Agreement in this review, we are not constrained by our previous examinations in earlier reviews.

Moreover, the Department has discretion in determining whether to re-investigate a program previously found to be non-countervailable. The court of International Trade in affirming this discretion, stated that the Department is ''entitled to draw upon its own knowledge and expertise and facts capable of judicial notice.'' *PPG Indus., Inc.* v. *United States,* 746 F. Supp. 119, 135 (CIT 1990). As a result, we determined that it was appropriate to examine the countervailability of the 1993 Agri-Food Agreement. In line with this decision, the GOQ was offered an opportunity to claim green light or green box status under section 771(5B) of the Act. (*See* Department's Questionnaire, September 25, 1995, Section III.4 at III.4–2).

We disagree with the respondents' claim that the Agri-Food Agreement is nothing more than a research program. The language of the Agreement conveys much broader goals than simply the research and development of new products or processes. While research and development constitute a portion of the activities under this Agreement, the Agreement itself clearly denotes broader economic development objectives. In fact, the Agreement focuses on the agri-food industry, because ''agri-food development in Quebec continues to be a priority in the economic and regional development strategies of both governments.'' (See Canada-Quebec Subsidiary Agreement on Agri-Food Development, attached as Exhibit J to the GOQ Questionnaire Response, dated December 4, 1996, at 6.) According to the Agreement, the objectives of the two governments are as follows: ''(A) to intensify the economic and regional development of Quebec and to create an environment in which Quebec and its regions can achieve their economic potential..; (B) to consolidate and improve opportunities for employment and income..; (C) to facilitate consultation and coordination of the economic and regional development policies, programs, and activities of both governments..''. (*Id* at 5–6). The purpose of the Agreement is ''to promote cooperation and coordination of the efforts of the governments of Canada and Quebec with a view to strengthening the development,

competitiveness, and profitability of the agri-food industry.'' (*Id.* at 9).

As we stated in *Memorandum on Canada/Quebec Subsidiary Agreement on Agri-Food Development*, to the Acting Assistant Secretary from CVD/AD Team dated September 25, 1996, which is on file in CRU (*Agri-Food Memorandum*), we recognize that the Research program is a research and development program, and, therefore, we applied the public availability criterion to our analysis. However, when we analyzed the Technology Innovation program, we found that its application review process, eligibility requirements, purposes, and types of projects funded were more typical of a technological assistance program than of a research and development program.

Under the Technology Innovation program, the applications are reviewed by the Quebec Ministry of Agriculture (Ministere de l'Agriculture, des Pecheries et de l'Alimentation du Quebec (MAPAQ)), to see whether they meet the eligibility criteria and the objectives of the program. (See *Verification Report* at 29.) Any organization, agricultural operation, or individual associated with agricultural production is eligible under Testing and Experimentation, except for consulting firms, specialized educational institutions or research establishments; only groups of farms are eligible under Testing Networks. The type of project that can be funded deals ''with the introduction, final adjustment, or full-scale field testing of tools, specialized equipment, new techniques and practices, or agricultural management tools based on proven technical expertise'' for the Testing and Experimentation component; there is no specific requirement for the Testing Networks component. When we then look at the project assessment criteria, we find that ''Scientific and technical validity'' is only one of nine criteria used, with no particular weight given to any one of them. (See, Canada-Quebec Subsidiary Agreement on Agri-Food Development—Technology Innovation Program, attached as Exhibit L to the GOQ Questionnaire Response, dated December 4, 1996, at 14–15). Furthermore, it appears unusual that research institutions would be specifically excluded from applying for funds under this program, if it is as claimed, a research and development program. More importantly, it is not clear in this case whether the ''new technologies'' are newly developed technologies or technologies that are new to Quebec but may be widely used in other areas.

The GOQ contends that ''[t]he Technology Innovation component of Agri-Food provides grants for applied research projects in which concepts developed in laboratories are tested under actual farming conditions.'' There is no evidence in the record indicating the projects must be tied to ''concepts developed in laboratories'' or that the tested product, technology or process be in the experimental stage. Instead, the eligibility requirements seem to accommodate products already existing in the market and being tested for use in Quebec. The types of projects financed under this program seem to support this interpretation: ''Rotational grazing versus cow-calf production,'' ''Strip grazing versus dairy farming,'' ''Enhancing the competitiveness of the goat milk industry'' or ''Ventilation of pig barn using air diffuser and low-level exhaust.''

Our reasoning becomes even more clear when we compare the Technology Innovation program with the Research program. Under the Research program, the Conseil des Recherches en Peche et en Agro-Alimentaire du Quebec (CORPAQ) reviews the applications and administers the projects. This committee, which includes three university professors and a company researcher, is the same committee that evaluates all scientific research funded by the government in Quebec. CORPAQ screens a proposal for a project based on scientific merit; for the projects that are deemed eligible, a more detailed description of the project is requested which is evaluated by a second committee made up of experts specifically ''in the fields or research disciplines concerned.'' The scientific validity of the project appears to be the only criterion for the selection of the projects receiving the funding. Eligible applicants are universities under all three components of the Research program; under the Support for Partnership Research also private enterprises or associations may apply.

Testing obviously represents a stage in the research and development process. Any new product or process developed in a laboratory has to undergo testing to see whether or not the goals of the research have been achieved. However, when testing is isolated from the research process and conducted for other purposes, such as to adapt existing technologies to specific weather conditions, it is still testing, but it is no longer part of the research and development process. The fact that the Technology Innovation program does not emphasize the scientific value of the projects but seems to stress technical expertise, further buttresses our determination that this is a program providing technological assistance to farmers in order to speed up the adoption of cutting-edge technologies in Quebec.

Moreover, we verified that during the POR, this program was funded exclusively by the GOC. *See Verification Report* at page 29. Schedule C of the Agri-Food Agreement shows how funds were allocated to the three programs and clearly shows that, since its inception, the Technological Innovation program has been funded solely by the federal government. As a result, because assistance under the program is provided by the federal government to industries located within a designated geographical region of Canada (*i.e.*, Quebec), we determined that the federal contributions were countervailable. *See* section 771(5a)(D)(iv) of the Act and Statement of Administrative Action accompanying the URAA, reprinted in H.R. Doc. No. 316, 103d Cong., 2d Sess. 932 (1994) at 262.

With respect to the Research program, we did examine the public availability of the results of research projects for purposes of making a finding that the program is not countervailable. (*See Department's Position* on *Comment 4*). However, because we have determined that the Technological Innovation program is not a ''research'' program, our ''public availability'' test is inapplicable. Therefore, we continue to find that the Technological Innovation program of the Agri-Food Agreement provided a countervailable subsidy to live swine during the POR.

Comment 4: The petitioners allege that the Department erroneously declined to countervail benefits received under the Research component of the Agri-Food Agreement. The petitioners argue that the GOQ has failed to provide sufficient evidence to establish that the results of research projects will be published as required by the *1989 Proposed Regulations*. The petitioners also state that the respondents have not shown that the results of the research projects must be made public in all instances because the program allows recipients to obtain patent protection for the results of their research. Citing to *Final Affirmative Countervailing Duty Determination: Fresh and Chilled Atlantic Salmon from Norway*, 56 FR 7678, 7682 (February 25, 1991) (*Norwegian Salmon*), the petitioners assert that in instances where research projects are ongoing, the Department has required that the results are scheduled to be publicized. Petitioners argue that no such evidence exists on the record for this review. The petitioners also argue that the

Department's failure to countervail research grants under these circumstances would be inconsistent with Department practice and would create loopholes potentially allowing subsidizing governments to avoid countervailability by delaying decisions to publish the results of subsidized research until after the three-year allocation period has expired.

The GOC and CPC counter that the petitioners' argument inappropriately assumes that the GOC would fail to discharge its domestic and its international obligations fully and in good faith. The GOC cannot avoid or delay publication of Agri-Food Agreement research results without violating the terms of the Agri-Food Agreement itself. The GOC states that in the preliminary results, the Department found that the research results are published ''upon completion.'' In prior administrative reviews, the Department similarly has found that without exception the swine-related research results under the Agri-Food Agreement or its predecessor have also been made publicly available upon completion. Also, the CPC argues that the Department has verified that no researcher has ever exercised the option to patent research results, and in so doing to limit the extent of their publication. According to the CPC, the mere possibility of a future patent for one research project is insufficient proof that no results of research under this program will ever be made publicly available, citing *Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Germany*, 58 FR 37315, 37321–22 (July 9, 1993) (*German Steel*). Therefore, the GOC and CPC request that the Department affirm its determination that the Research component of the Agri-Food Agreement is not countervailable.

The GOQ argues that the Department's practice is not to countervail an uncompleted research project unless it is known at the time of the determination that the project results will not be disseminated publicly. The GOQ continues that the petitioners' position is based upon pure speculation about what might happen in the future. In any case, leaving aside the Department's determination that the Research component is a noncountervailable research program, the GOQ argues that the Research component is neither regional, nor *de jure* or *de facto* specific. As a result, the GOQ urges the Department to reject the petitioners' argument and confirm that the Research component is not countervailable.

Department's Position: We disagree with the petitioners. Although there is no schedule for publication as in *Norwegian Salmon*, we explained and documented in our *Verification Report* and *Agri-Food Memorandum* that the results of research projects funded under the Basic Research program are required by the terms of the Agri-Food Agreement to be published in an annual report upon completion. The Agri-Food Agreement states that ''the Government of Canada and the Government of Quebec agree to announce jointly all authorized projects, as well as project and program reports and results.'' However, no swine-related research projects were completed during the POR. We find it inappropriate to countervail these projects during the instant review because there are no results to determine whether they were made publicly available. The mere possibility of a future patent for the results of a research project is not sufficient evidence to justify a finding of countervailability of an entire research program, where there is a general requirement that research results be made publicly available. *See, e.g., German Steel* at 37321–22. Therefore, we reaffirm our preliminary determination that the Research program did not confer countervailable benefits on live swine during the POR. The determination that benefits under this program are countervailable could only be made if the swine-related projects were complete. It is only upon completion that we can know whether the results of research have been made publicly available. *See, e.g., Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Sweden* 58 FR 37385 (July 9, 1993).

Comment 5: The GOP argues that the Department preliminarily determined to examine the Agri-Food Agreement as three separate programs because it incorrectly assumed that there are distinct differences in the purposes, funding, eligibility requirements, and application and approval processes across the three components of the Agri-Food Agreement. The GOQ states that the Agri-Food Agreement is a single program with a single common purpose of ''strengthening the development, competitiveness and profitability of the agri-food industry.'' According to the GOQ, the agreement provides that funds may be transferred among the various components of the agreement. Therefore, the GOQ claims that since funds are fungible among the various components of the agreement, those components in practice have the same funding.

The GOQ further argues that the Agri-Food Agreement has a single administration. According to the GOQ, the budget for administration of the agreement is provided as a single component; there is no separate administrative budget for each operative component. Further, the GOQ claims that there are common eligibility requirements applicable to all three components that are set forth in the main text of the Agri-Food Agreement. The main text of the agreement establishes a single management committee with ultimate authority over project and contract approval for all three components.

Finally, the GOQ notes that in *Swine Seventh, Eighth and Ninth Review Results*, the Department cited to the *Final Affirmative Countervailing Duty Determination on Certain Fresh Atlantic Groundfish from Canada* 51 FR 10041, 10061 (March 24, 1986) (*Groundfish*) to distinguish between ''umbrella legislation'' and ''subsidiary agreement'' in its single program analysis of Canada's Farm Income Protection Act. The GOQ claims that, in *Groundfish*, the Department examined each subsidiary agreement under Canada's Economic and Regional Development Agreements (ERDA) as a single separate program. The GOQ states that the Agri-Food Agreement is a ''subsidiary agreement'' under the umbrella of ERDA. Therefore, the GOQ argues that pursuant to the rationale established in *Groundfish* and ratified in *Swine Seventh, Eighth and Ninth Review Results*, the Department should examine the Agri-Food Agreement as a single program.

The petitioners contend that the GOQ ignores that the shared purpose of the programs is too broad to meet the Department's legal standard. According to the petitioners, the Department has expressly rejected this type of broad purpose as the basis for treating independent subsidy programs as a single program, instead requiring commonality at the program-specific level. Finally, the Department has regularly examined component parts of subsidy programs similar to the umbrella program found in the Agri-Food program on an independent basis. *See, e.g., Final Affirmative Countervailing Duty Determination on Pure Magnesium and Alloy Magnesium from Canada* 57 FR 30946 (1992); *Final Affirmative Countervailing Duty Determination on Small Diameter Circular Seamless Carbon and Alloy Steel Standard Line and Pressure Pipe from Italy* 60 FR 31922 (1995).

Department's Position: We disagree with the GOQ. First, the Department has examined the components of the predecessor Agri-Food Agreement as separate programs in prior determinations. (*See Department's Position* on *Comment 3* above). Second, the instant review represents the first opportunity for the Department to examine the new Agri-Food Agreement. As extensively explained in the *Agri-Food Memorandum,* in this review, we examined the components of the Agri-Food Agreement as three separate programs because there are distinct differences in the purposes, funding, eligibility requirements, and application and approval procedures across the three components. The fact that the three components stem from the same agreement between federal and provincial government does not detract from this finding.

The GOQ claims that the Agri-Food Agreement has a single purpose of ''strengthening the development, competitiveness and profitability of the agri-food industry.'' This is correct; however, when we examine the program areas, we find that the purpose of each component is much more specific, as we outlined in the *Agri-Food Memorandum:* the purpose of the Research component is to create major leverage effects on research; the purpose of the Technological Innovation component is to speed up the rate of adoption and dissemination of technologies and production systems; and the purpose of the Strategic Alliance Support component is to stimulate cooperation and strageic alliances in the agri-food industry (*see* Appendices K, L, and M of the GOQ's December 4, 1995 questionnaire response).

With respect to funding, we agree that at the agreement level, the funding is contributed 50/50 by the two governments. However, at the program level, Schedule C of the Agreement shows that the funding for the Research program was provided by both the GOQ and the GOC, and the funding for the Technological Innovation and Strategic Alliance Support components was provided solely by the GOC.

With respect to the administration of these programs, while it is correct that the Agreement is administered by the management committee, individual ''management subcommittees'' were also established ''for the purpose of managing and administering each program under this Agreement . . .'' (Section 4.5(b) of the Agreement). With respect to the application process, each program has distinct application forms, application processes, and evaluation systems. As we have already indicated, applications under the Research program are processed by CORPAQ, applications under the Technological Innovation program are processed by MAPAQ, and application for the Strategic Alliance Support program are processed by Agriculture Canada. As outlined in the *Agri-Food Memorandum,* each program has different eligibility requirements. Each application is then reviewed by the management subcommittee for the corresponding program for final approval.

We also disagree with the GOQ's argument that, pursuant to the rationale established in *Groundfish* and ratified in *Swine Seventh, Eighth, and Ninth Review Results,* the Department should examine the *Agri-Food Agreement* as a single program. In *Groundfish* (at 10049), the Department stated that: ''ERDA subsidiary agreements establish programs, delineate administrative procedures and set up relative funding committees of the federal and provincial governments.'' Under both the Prince Edward Island subsidiary agreement and the New Brunswick subsidiary agreement, we found multiple programs. As a result, *Groundfish* does not support the GOQ's argument for treating subsidiary agreements as single programs.

The countervailing duty law does not mandate a specific standard for determining whether government actions under review should be treated as a single program or several programs. Under these circumstances, the Department has discretion and must base its determination on a reasonable interpretation of the facts on the record. The record shows that we extensively analyzed the information submitted by the GOQ's, as well as our determinations in prior cases, in reaching our determination that we should examine the components of the Agri-Food Agreement as separate programs. Consequently, we reject the GOQ's argument and reaffirm our position in the preliminary results of the instant review.

Comment 6: The GOQ states that the Department concluded that the Technology Innovation component of the Agri-Food Agreement is countervailable because it is a federal program that is limited to a single province and, thus, is regionally specific. The GOQ claims, however, that the statutory provision provides that the determination of whether a subsidy is regionally specific must be made in relation to ''the jurisdiction of the authority responsible for the subsidy * * *'' 19 U.S.C. § 1677(5A)(D)(iv). According to the GOQ, Quebec is the authority responsible for the Basic Research and Technology Innovation components. Both components are administered on a day-to-day basis exclusively by Quebec even though the GOC also provides funding for the program. Quebec is responsible for record keeping, application for grants, and decisions regarding which projects receive funding. Consequently, the GOQ states that Quebec, rather than Canada, should be viewed as the authority responsible for the Basic Research and Technology Innovation components of Agri-Food. Therefore, the GOQ argues that neither of the program components are regionally specific because they are available everywhere in Quebec.

The GOQ claims that because the Technology Innovation component is not regionally specific, in order to determine specificity the Department would have to determine whether the component is *de jure* or *de facto* specific. The GOQ argues that the Agri-Food Agreement is not *de jure* specific because the agreement provides that its benefits are available to all sectors of Quebec's agricultural economy, including food production, processing, storage and marketing. Also, the GOQ argues that an analysis of the four factors as set forth in section 355.43(b)(2) of the *1989 Proposed Regulations* show that the Technology Innovation component of the Agri-Food Agreement is neither *de jure* nor *de facto* specific. According to the GOQ, actual recipients are not limited in number, live swine are not a dominant or disproportionate user of the program, and there is no evidence that the authorities exercised discretion so as to favor the live swine industry.

The petitioners state that U.S. law and past Department practice support the decision to treat the Technology Innovation component of the Agri-Food Agreement as a regionally specific technical assistance program provided by the Canadian federal government to the designated geographic region of Quebec. The petitioners contend the Department examined the separate components of the precursor Agri-Food Agreement and determined that the federal government's contributions to the Technology Innovation component were countervailable because it did not involve research and was limited to the region of Quebec. *See Pork Investigation* at 30774, 30779. Thus, the petitioners contend that because the instant case examines the same program, consistent application of agency practice requires the Department to treat the Technology Innovation component of the Agri-Food

program as a technical assistance subsidy for production aid. Also, the GOQ is not ultimately responsible for administering the program. According to the petitioners, the Department verified that while the GOQ is responsible for administration, the critical issue of funding lies exclusively within the jurisdiction of the federal government. Therefore, it is irrelevant whether assistance is available everywhere in Quebec. The petitioners state that the Department's regional specificity inquiry in this case has focused correctly on the availability of Agri-Food assistance vis-a-vis all of Canada, not within particular provinces. The petitioners also contend that because the Department has based its countervailability finding on the theory that the Agri-Food Agreement is regionally specific, a *de facto* specificity analysis is irrelevant.

Department's Position: We disagree with the GOQ that the Technology Innovation program is not specific under section 771(5A)(D)(iv). The SAA makes clear that this provision codifies the Department's regional specificity test. It states that ''* * * subsidies provided by a central government to particular regions (including a province or a state) are specific regardless of the degree of availability or use within the region.'' SAA, at 932. Although the Agri-Food Agreement states that the GOC and the GOQ will each contribute 50 percent of the total cost of the agreement, Schedule C of the agreement shows the allocation of those funds to the three programs and clearly shows that since its inception, the Technology Innovation program has been funded solely by the federal government. Because the Department found that the assistance under this program is being provided by the federal government to industries located within a designated geographical region of Canada (*i.e.*, Quebec), we determine that the federal contributions are specific under section 771(5A)(D)(iv), and therefore, countervailable.

Contrary to the remainder of the GOQ's claim, section 771(5A)(D)(iv) does not require the Department to analyze the specificity of a subsidy in relation to the authority responsible for managing the subsidy program. The statutory language explicitly refers to ''the jurisdiction of the authority *providing* the subsidy.'' As discussed above, the record evidence demonstrates that the GOC not the GOQ provided all funding for the Technology Innovation program during the POR. Therefore, consistent with the statutory language, we have examined the specificity language, we have examined the specificity of the program from the perspective of the GOC as the source of funding. Because we determine the program to be specific under section 771(5A)(D)(iv), there is no need to conduct a *de jure* or *de facto* specificity analysis.

Comment 7: The GOQ argues that the Department should find that the Support for Strategic Alliances component of the Agri-Food Agreement is not countervailable because it funds studies with a view to developing markets and improving competitiveness, or developing knowledge and know-how, which is research. The GOQ claims that the research results under this component are specifically conditioned upon the applicant making available and disseminating the results of the projects. Therefore, the results are publicly available. According to the GOQ, the Department should make a noncountervailable determination in the instant review so as to avoid wasting resources reinvestigating this component in future reviews.

Department's Position: We disagree with the GOQ. We reviewed the Support for Strategic Alliance projects that were outstanding during the POR, and verified that none were related to live swine. Because the program was not used during the POR, we did not determine the countervailability of the program. If we find in a future review that projects related to live swine have been approved, we will examine the countervailability of this program.

Comment 8: The GOQ agrees with the Department's preliminary determination that the Basic Research components of the Agri-Food Agreement did not confer countervailable benefits on live swine during the POR. However, the GOQ argues that, because the Department preliminarily determined that the Basic Research component does not provide countervailable benefits to live swine, the Department should not continue to investigate this component in future reviews. Because the Department found that the Basic Research component was used during the POR, the Department's determination not to countervail that component is equivalent to a decision that the Basic Research component is not countervailable. According to the GOQ, it is well-established policy that the Department will not reinvestigate programs in future reviews that did not confer countervailable benefits in prior reviews absent new evidence or changed circumstances. The GOQ argues that the Department has abandoned this well established policy in its preliminary results of this review by announcing in advance that it will continue to reinvestigate the Basic Research component of the Agri-Food Agreement.

The GOQ states that the reason the Department gave for potentially reinvestigating the program was that in the future there might be a research project the results of which may not be published. However, the GOQ argues that the Department has verified at least twice that the results of Agri-Food projects are always published. Should a future research project not be published, it would constitute a change in the program and, according to the GOQ, it would be petitioner's burden to allege a change in the program. The GOQ contends that the Department cannot keep a noncountervaliable program open to investigation on the possibility that the program might change. Therefore, the Department should announce that it will not reinvestigate the program again absent substantial allegations of a change in the program or evidence that the results of a completed research program benefitting live swine were not published.

The petitioners contend that the GOQ is wrong in suggesting that a decision not to countervail a subsidy program in a particular review constitutes a *de facto* finding of noncountervailability. This argument ignores the fact-based nature of the Department's countervailing duty inquiry and also entirely overlooks the fact that the Department frquently delays making a countervailability finding when subsidy programs are not used. The petitioners assert that the Department should reject the GOQ's attempts to preclude the Department from considering the countervailability of the Basic Research component.

Department's Position: We disagree with the GOQ. It is the Department's practice to continue to review those research and development programs where there is an indication that all results may not be made publicly avaiable. *See e.g., Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Sweden*, 58 FR 37385 (July 9, 1993). In the case of the predecessor Agri-Food Agreement, we verified in the fourth and seventh administrative reviews that research results were made publicly available. The instant review provided the Department with its first opportunity to verify whether research results are made publicly available under the new Agri-Food Agreement. However, during the POR, none of the swine related projects were completed; therefore, it will not be known whether the results of the research are publicly available until completion of the project. Also, in the instant case, we verified that under Section 8 of the Research program

guidelines participants have the right to patent protection for the results of the research, if divulging the information will reduce the commercial value of those results. As a result, we will continue to examine the countervailability of these research grants in future reviews and upon completion will determine whether they are countervailable.

Comment 9: The GOQ argues that the Department should find that the Agri-Food Agreement was not used during the POR. The GOQ claims that the Agri-Food Agreement only benefits swine produced in Quebec, and there is no verified record evidence indicating that swine produced in Quebec, that are subject to the order, were exported to the United States during the POR. All market hogs must be sold through the Quebec Federation of Pork Producers. According to the GOQ, the record shows, and the Department verified, that no swine sold through the Federation were exported to the United States during the POR. U.S. import statistics that show imports from Quebec of 1,795 hogs include nonsubject merchandise, such as weanlings, sows and boars. Therefore, the GOQ argues that the Department should determine in its final results of this review that the Agri-Food Agreement was not used during the POR.

Department's Position: We disagree with the GOQ. The Department did not state that there were no exports of subject merchandise from Quebec to the United States during the POR. Official import statistics, provided by the GOC, show that Quebec exported 1,795 animals to the United States during the POR under the HTS numbers that cover live swine. We were unable to verify that these imports did not include imports of subject merchandise. Therefore, we have included exports from Quebec in all appropriate program benefits calculations, except FISI (*see Department's Position* on *Comment 12* below). As a result, the Department appropriately examined the Agri-Food Agreement during the POR.

Comment 10: The CPC argues that the Department should adjust the cash deposit rate to take into account the program terminations of the NTSP, the National Transition Scheme for Hogs (Transition Scheme), and the Saskatchewan Hog Assured Returns Program (SHARP). In the case of SHARP, the CPC states that the last date producers received benefits under SHARP was March 31, 1996, and the only other possible benefit continuing beyond that date is a minor potential liability of $3,124 in uncashed checks. Thus, they argue that this is a program-wide change and there is no possibility that measurable benefits of any significance will continue, therefore, the cash deposit rate should be adjusted. Second, the CPC claims that the NTSP for Hogs was terminated as of July 2, 1994, the entire NTSP surplus was distributed in two fiscal years, 1994/95 and 1995/96, and that no residual benefits may continue to be bestowed under this terminated program. They also claim that all payments were made either in fiscal year 1994/95 or in 1995/96 under the Transition Scheme, which was a temporary support program. Likewise, the CPC argues that these two programs meet the Department's criteria for a program-wide change qualifying for an adjustment in the cash deposit rate.

The petitioners state that according to section 355.50(d) of the Department's *1989 Proposed Regulations*, the cash deposit rate should be adjusted if: (1) the termination of a program constitutes a program-wide change and (2) no residual benefits can be bestowed under the terminated program. The petitioners contend that while the three programs have been terminated, record evidence clearly establishes that residual benefits may be provided under these programs; therefore, they do not meet the second condition that is required for a cash deposit rate adjustment.

With respect to SHARP, the petitioners point out that the final year in the SHARP three-year allocation period extends beyond the current review period, meaning that residual benefits will continue to be distributed to hog producers. In addition, even though there is a current agreement to use a three-year allocation period for SHARP benefits, there is no guarantee that this period will not be altered in the future, thereby allowing residual benefits to continue beyond the next review period. With respect to NTSP and the Transition Scheme, the petitioners assert that the record also establishes that residual benefits will continue past the current review period. Since the CPC acknowledged that NTSP and Transition Scheme payments will be made in the next review period, the petitioners state that it would be premature to modify the cash deposit rate for these two programs.

Also, the petitioners argue that the CPC incorrectly implies that since benefits under each of the three programs can be accounted for during either the POR or the subsequent period (1995–1996), the Department should find that no residual benefits exist. The petitioners state that there is nothing in section 355.50 to suggest that the Department should define residual benefits as anything other than benefits that will be received after an instant proceeding. Also, according to the petitioners, section 355.50(d) places a much more stringent burden of proof on respondents, requiring respondents to prove, with a degree of certainty, that residual benefits will not continue to be bestowed under a particular program, rather than to confirm all currently-planned future outlays.

Department's Position: We agree with the CPC. When a program that provides countervailable benefits has been terminated and all benefits have ceased to be bestowed prior to the preliminary results of review, the Department's practice is to adjust the cash deposit rate, unless a substitute program has been introduced. *See e.g., Pasta from Turkey* at 30370. The verified record evidence demonstrates that SHARP, NTSP, and the Transition Scheme were all terminated prior to the preliminary results of this review. *See Preliminary Results* at 52428–52429.

With respect to NTSP and the Transition Scheme, the information on the record for this review demonstrates that all benefits were paid out from these terminated programs during the 1994/95 and 1995/96 fiscal years. The last day of the 1995/96 fiscal year is March 31, 1996. We verified that the NTSP and the Transition Scheme programs paid out all residual benefits prior to the publication of our October 7, 1996 *Preliminary Results.* Furthermore, there is no evidence on the record that any substitute programs have been introduced for the NTSP and the Transition Scheme. Accordingly, consistent with our practice, we are adjusting the cash deposit rates for these programs.

With regard to SHARP, the last year of our three-year allocation of the SHARP deficit corresponds with the 1995/96 fiscal year. We verified that the only potential residual benefit are a contingent liability for uncashed checks of $3,124. (*Verification Report* at page 38). As a result, we determine that the residual benefit can be added to the allocated SHARP deficit for the instant review, thus leaving no residual benefits accruing after October 7, 1996, the date of the publication of the preliminary results of the instant review.

The Department is satisfied that the verified information described in the *Verification Report* and contained in the verification exhibits demonstrates that there are no residual benefits under these programs. All cash payments under NTSP and the Transition Scheme were made in 1994/95 and 1995/96. SHARP has a potential liability which

we have accounted for as discussed above. We disagree with the petitioners' claim that the Department should define residual benefits as any benefits received in the subsequent review. Because cash deposit rates apply to future entries, we adjust the cash deposit rate to zero only when we are satisfied that no residual benefits from a terminated program will be paid out subsequent to the issuance of the notice which establishes the new cash deposit rates. In this case, these conditions have been met since the three programs were terminated and cannot pay out residual benefits after the issuance of the *Preliminary Results* of *this* administrative review. Therefore, we are adjusting the cash deposit rate accordingly.

Comment 11: With respect to FISI, the GOQ argues that the Department has the discretion to determine that a program it has investigated is not countervailable, even when the Department concludes that the program was not used during the POR. The GOQ claims that the Department has used that discretion in past cases where it has determined that an investigated program was both unused and noncountervailable. *See e.g., Certain Refrigerator Compressors from the Republic of Singapore: Final Results of Countervailing Duty Administrative Review,* 61 FR 10315 (March 13, 1996) (*Singapore Compressors*). The GOQ argues that the Department should have concluded that FISI is not used *and* is not countervailable because the Department has a complete record, including a verification, showing that FISI is not countervailable.

The GOQ argues that the Department may not rely upon its decision in *Swine Sixth Review Results* in order to find FISI countervailable in this review or continue to investigate FISI in future reviews. The GOQ states that three binational panels found FISI to be non-countervailable. According to the GOQ, a binational panel decision is the equivalent of a valid and final judgment of a court of competent jurisdiction for the purpose of applying the doctrine of collateral estoppel. Since the Department lost the issue of FISI's countervailability before a binational panel, it is estopped from claiming that FISI is countervailable in the current review. In any case, the GOQ argues that the facts on the record in the instant review demonstrate that FISI is not countervailable based on the number of users, no dominant/disproportionate use, no GOQ discretion in conferring benefits, and integral linkage with Crop Insurance.

The petitioners contend that the GOQ's arguments do not rest on new factual information or evidence of changed circumstances that would warrant the Department's reexamination of the countervailability of FISI. Furthermore, the Department rejected the same collateral estoppel argument made by the GOQ concerning FISI in *Swine Seventh, Eighth, and Ninth Review Results.* The petitioners also contend that the GOQ has not offered any arguments that are responsive to the Department's earlier finding that FISI was not linked to crop insurance in *Swine Seventh, Eighth and Ninth Review Results.*

Department's Position: We disagree with the GOQ. The record evidence establishes that FISI was not used during the POR for exports of the subject merchandise to the United States. Therefore, we follow the Department's practice, which is not to examine the countervailability of programs that are not used during the POR. *See, e.g., Live Swine from Canada; Final Results of Countervailing Duty Administrative Reviews* (56 FR 10410, 10411; March 12, 1991). For this reason, all arguments advanced by the GOQ on the non-countervailability of FISI, including collateral estoppel, are moot.

We disagree with the GOQ's contention that the Department has exercised its discretion to determine that an investigated program was both unused and noncountervailable in *Singapore Compressors.* In *Singapore Compressors,* the program referred to by the GOQ did not provide benefits to the subject merchandise, and we specifically stated that ''the Department's regulations were not intended to require the Department to discuss programs which do not apply to subject merchandise.''

Comment 12: The GOQ states that the *Verification Report* does not accurately reflect the effort made by GOQ officials at verification to demonstrate that FISI and Crop Insurance are integrally linked. The GOQ contends that its officials proved that Crop Insurance, working together with FISI, is in fact an income insurance program. The two insurance systems, FISI and Crop Insurance, are integrally linked to work together to meet a common objective of providing income insurance. However, much of this information was not reported in the *Verification Report.* The GOQ requests that the Department amend its verification report to reflect accurately and completely what occurred at verification in this administrative review.

Department's Position: We disagree with the GOQ. The purpose of verification is to confirm the accuracy of the information already submitted on the record. This practice is clearly stated in the verification outline that the Department provides to the interested parties before conducting any verifications. During verification, the GOQ deemed it appropriate to elaborate in great detail on generic statements made in the response with respect to linkage. If this information had been provided in the GOQ's questionnaire responses, the Department might have issued a supplemental questionnaire and would have checked at verification on the accuracy of this previously submitted material. In this instance, however, the argumentation and documentation presented at verification clearly went beyond what had been stated and documented in the response. Verification is not intended to be an opportunity for respondents to argue their position, nor is it intended to be an opportunity for submission of new factual information, as stated in our verification outline.

Furthermore, in this case, the record evidence establishes, and the *Verification Report* documents, that the FISI program was not used during the POR for exports of the subject merchandise to the United States. Therefore, consistent with the Department's practice, we do not examine the countervailability, and therefore integral linkage, of programs that are not used in the POR by producers of the subject merchandise (*See Department's Position* on *Comment 11*). As a result, the issue of amending the *Verification Report* is moot as FISI was not used during the POR.

Comment 13: The petitioners contend that the Department partially relied on a finding that Quebec did not export live swine during the POR as a basis for concluding that the FISI program was not used during the POR. However, the petitioners state that review of the record evidence shows that the two Canadian Government agencies responsible for reporting Quebec export data have provided contradictory responses. The GOQ identified Quebec as a province that exported 1,795 hogs to the United States during the POR. Quebec, however, provided data suggesting that no live swine were exported to the United States during the POR. Since the Department has been unable to solve this discrepancy, according to the petitioners, the record does not support the conclusion that Quebec did not export live swine. Where a respondent has submitted data that is contradictory, the Department routinely makes assumptions about these data that are unfavorable to

respondents. The petitioners conclude that, under these circumstances, the Department should assume that Quebec exported live swine to the United States during the POR for purposes of analyzing the FISI program.

The GOQ and the CPC argue that, contrary to the petitioners' assertion, the Department's determination was not based upon a finding that there were no exports of live swine from Quebec during the POR; the determination was based on finding that FISI could not have benefited any live swine that might have been exported to the United States during the POR. The GOQ and the CPC state that the Department verified that all market hogs that could have benefited from FISI payments were sold to abattoirs in Canada. Therefore, the Department correctly found the FISHI could not have benefited any subject merchandise that might have been exported to the United States during the POR.

Department's Position: We disagree with the petitioners. The Department verified that all hogs receiving FISI payments during the POR were slaughtered in Canada. *See Verification Report* at page 32. As such, no *live* swine exported from Quebec received FISI payments. Accordingly, we determined that this program was not used. However, we also verified that there were exports of live swine from Quebec. As such, for those programs where assistance was provided during the POR to all live swine in Quebec, we properly calculated a subsidy rate for the POR. (*See* Memorandum to the File from Team A regarding the *Farm Income Stabilization Program* dated September 25, 1996, which is on file in the CRU.)

Final Results of Review

For the period April 1, 1994 through March 31, 1995, we determine the total net subsidy on live swine from Canada to be Can$0.0098 per kilogram.

The Department will instruct the U.S. Customs Service to assess countervailing duties of Can$0.0098 per kilogram on shipments of live swine from Canada exported on or after April 1, 1994 and on or before March 31, 1995.

The cash deposit is Can$0.0013 per kilogram, which is *de minimis.* Accordingly, the Department will also instruct the U.S. Customs Service to waive cash deposits on shipments of all live swine from Canada entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. The cash deposit rate is different than the assessment rate because, as explained above, we have taken into account program-wide changes in calculating the cash deposit rate (*see Pasta from Turkey*).

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: April 7, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–9551 Filed 4–11–97; 8:45 am]

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DEPARTMENT OF COMMERCE

Patent and Trademark Office

Grant of Certificate of Interim Extension of the Term of U.S. Patent No. 4,197,297; CORLOPAM®

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of Term Extension.

SUMMARY: The Patent and Trademark Office has issued a certificate under 35 U.S.C. 156(d)(5) for a one-year interim extension of the term of U.S. Patent No. 4,197,297 that claims the active ingredient, fenoldopam mesylate, in the human drug product ''CORLOPAM®'' and methods of use of said active ingredient.

FOR INFORMATION CONTACT: Karin Tyson by telephone at (703) 305–9285; by mail marked to her attention and addressed to the Assistant Commissioner for Patents, Box DAC, Washington, D.C. 20231; or by fax marked to her attention at (703) 308–6916.

SUPPLEMENTARY INFORMATION: Section 156 of Title 35, United States Code, generally provides that the term of a patent may be extended for a period of up to 5 years if the patent claims a product, or a method of making or using a product, that has been subject to certain defined regulatory review. Under section 156, a patent is eligible for term extension only if regulatory review of the claimed product was completed before the original patent term expired.

On December 3, 1993, section 156 was amended by Pub. L. 103–179 to provide that if the owner of record of the patent or its agent reasonably expects the applicable regulatory review period to extend beyond the expiration of the patent, the owner or its agent may submit an application to the Commissioner of Patents and Trademarks for an interim extension of the patent term. If the Commissioner determines that, except for permission to market or use the product commercially, the patent would be eligible for a statutory extension of the patent term, the Commissioner shall issue to the applicant a certificate of interim extension for a period of not more than one year.

On March 21, 1997, Neurex Corporation, an agent of SmithKline Beecham Corporation, the owner of record of U.S. Patent No. 4,197,297, filed an application under 35 U.S.C. 156(d)(5) for interim extension of the term of U.S. Patent No. 4,197,297. The patent claims the active ingredient, fenoldopam mesylate, in the human drug product ''CORLOPAM®'' and methods of use of said active ingredient. The application indicates, and the Food and Drug Administration (FDA) has confirmed, that the product is currently undergoing a regulatory review under section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) before the FDA for permission to market or use the product commercially. The original term of the patent expires on April 8, 1997.

Review of the application indicates that, except for permission to market or use the product commercially, the subject patent would be eligible for an extension of the patent term under 35 U.S.C. 156. Since it is apparent that the regulatory review period may extend beyond the date of expiration of the patent, interim extension of the patent term under 35 U.S.C. 156(d)(5) is appropriate.

An interim extension under 35 U.S.C. 156(d)(5) of the term of U.S. Patent No. 4,197,297 is granted for a period of one year from the original expiration date of the patent.

Dated: April 7, 1997.

Bruce A. Lehman,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 97–9555 Filed 4–11–97; 8:45 am]

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