Dated: January 8, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

International 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 September 9, 1997, the Department of Commerce 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, 1995 through March 31, 1996 (62 FR 47460). The Department has now completed that administrative review in accordance with section 751(a) of the Tariff Act. For information on the net subsidy, please see the *Final Results of Review* section of this notice. We will instruct the Customs Service to assess countervailing duties as detailed in the *Final Results of Review* section of this notice.

EFFECTIVE DATE: January 14, 1998.

FOR FURTHER INFORMATION CONTACT: Rick Herring or Gayle Longest, Office of CVD/AD Enforcement 6, 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:

Applicable Statute and Regulations

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). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR § 355 (1997). The Department has conducted this administrative review in accordance with section 751(a) of the Act.

Background

Pursuant to 19 CFR § 355.22(a), this review should cover only those producers and/or exporters of the subject merchandise for which a review was specifically requested. However, as explained in the preliminary results, the Department of Commerce (the Department) has determined that it is not practicable to conduct a company-specific review of this order due to the large number of producers and/or exporters that requested a review. See Live Swine from Canada; Preliminary Results of Countervailing Duty Administrative Review, 62 FR 47469 (September 9, 1997) (preliminary results). Therefore, pursuant to section 777(e)(2)(B) of the Act, we are conducting a review of all producers and/or exporters of subject merchandise covered by this order on the basis of aggregate data. This review covers the period April 1, 1995, through March 31, 1996, and 31 programs.

Since the publication of the preliminary results on September 9, 1997, the following events have occurred. We invited interested parties to comment on the preliminary results. On October 23, 1997, the Government of Canada (GOC), the Government of Quebec (GOQ), and the Canadian Pork Council (CPC) (respondents) submitted case briefs. On October 30, 1997, the National Pork Producers Council (petitioner) submitted a rebuttal brief. We requested a revised brief from the GOQ because the initial case brief contained untimely new factual information. See Letter from Barbara E. Tillman to Pepper, Hamilton and Scheetz dated November 4, 1997 (public document on file in the Central Records Unit, Room B–099 of the Main Commerce Building). See also 19 CFR § 355.31(a)(1)(ii). The Department has not considered the returned new factual information for these final results of review. See 19 CFR § 355.3(a). On November 7, 1997, the GOQ submitted a revised case brief. The comments addressed in this notice are those presented in the revised case brief. At the request of the respondents, the Department held a public hearing on November 17, 1997.

Scope of the Review

The merchandise covered by this order 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) from Canada. The merchandise subject to the order is classifiable under 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 of the scope remains dispositive.

Verification

We verified information provided by the GOC and the GOQ related to their claim, pursuant to section 771(5B)(F) of the Act, for ''green box'' treatment of the programs covered by the Canada/Quebec Subsidiary Agreement on Agri-Food Development (Agri-Food Agreement). We followed standard verification procedures, including meeting with government officials, and examining relevant accounting and original source documents. Our verification results are outlined in the public version of the verification report, which is on file in the Central Records Unit.

Allocation Methodology

In the past, the Department has relied on information from the U.S. Internal Revenue Service (IRS) on the industry-specific average useful life of assets in determining the allocation period for nonrecurring 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 nonrecurring subsidies based on the average useful life (AUL) of non-renewable physical assets. This remand determination was affirmed by the Court on June 4, 1996. See *British Steel,* 929 F. Supp. 426, 439 (CIT 1996).

The Department has not appealed the Court's decision and, as such, we intend to determine the allocation period for nonrecurring subsidies using company-specific AUL data where reasonable and practicable. In Live Swine from Canada; Preliminary Results of Countervailing Duty Administrative Review, 62 FR 52426 (October 7, 1996) and Live Swine from Canada; Final Results of Countervailing Duty Administrative Review, 62 FR 18087 (April 14, 1997) (Swine Tenth Review Results), the Department determined that it is not reasonable or practicable to allocate nonrecurring subsidies 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). Accordingly, in this review, the Department has continued to use, as the allocation period, the average useful life of depreciable assets for the swine industry, as set forth in the U.S. IRS Class Life Asset Depreciation Range System. See Swine Tenth Review Results. We invited interested parties to comment on the selection of this methodology and to 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 the IRS tax tables are appropriate for allocating nonrecurring grants in this review.

Calculation Methodology for Assessment and Cash Deposit Purposes

For the period of review (POR), we calculated the net subsidy on a country-wide basis by determining the subsidy rate for each program subject to the administrative review in the following manner. We first calculated the subsidy rate on a province-by-province basis; we then weight-averaged the rate received by each province using the province's share of total Canadian exports to the United States of market hogs. We then summed the individual provinces' weight-averaged rates to determine the subsidy rate of each program. To obtain the country-wide rate, we then summed the subsidy rates from all programs.

Analysis of Programs

I. Programs Conferring Subsidies

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

Programs Previously Determined to Confer Subsidies

In the preliminary results, we found that the following programs conferred countervailable benefits on the subject merchandise. We did not receive any comments on these programs 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 each of these programs (less than Can$0.0001 per kilogram, except for the Saskatchewan Hog Assured Returns Program, which is Can$0.0015 per kilogram), remains unchanged from the preliminary results.

1. Feed Freight Assistance Program
2. Saskatchewan Hog Assured Returns Program (SHARP)
3. Alberta Crow Benefit Offset Program (ACBOP)
4. Ontario Livestock and Poultry and Honeybee Compensation Program
5. Saskatchewan Livestock Investment Tax Credit
6. Saskatchewan Livestock Facilities Tax Credit
7. Ontario Bear Damage to Livestock Compensation Program
8. New Brunswick Livestock Incentives Program
9. New Brunswick Swine Industry Financial Restructuring and Agricultural Development Act—Swine Assistance Program
10. New Brunswick Swine Assistance Policy on Boars
11. Nova Scotia Improved Sire Policy
12. Nova Scotia Swine Herd Health Policy

In the preliminary results, we also found the following programs conferred countervailable benefits on the subject merchandise. Our review of the record and our analysis of the comments submitted by the interested parties summarized below, have led us to modify our calculation methodology from the preliminary results for the following three programs:

13. *National Tripartite Stabilization Program for Hogs (NTSP)*

We have changed the methodology to calculate the benefit resulting from the distribution of the surplus after the termination of this program. This methodological change is discussed in the *Department's Position* on *Comment 9*, below. As a result of this change, the net subsidy for this program is now less than Can$0.0001 per kilogram.

14. *National Transition Scheme for Hogs*

We have changed the calculation methodology for this program as discussed in the *Department's Position* on *Comment 9*, below. As a result of this change, the net subsidy for this program is now Can$0.0047 per kilogram.

15. *Quebec Farm Income Stabilization Insurance Program (FISI)*

We have changed the calculation methodology for this program as discussed in the *Department's Position* on *Comment 6*, below. As a result of this change, the net subsidy for this program is now Can$0.0008 per kilogram.

II. Programs Found Not To Confer Subsidies

In the preliminary results, we found that this program did not confer countervailable benefits 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.

1. Research Program Under the Canada/Quebec Agri-Food Agreement

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:

1. Western Diversification Program
2. Federal Atlantic Livestock Feed Initiative
3. Agricultural Products Board Program
4. Ontario Export Sales Aid Program
5. Ontario Rabies Indemnification Program
6. Ontario Swine Sales Assistance Policy
7. Newfoundland Hog Price Support
8. Newfoundland Weanling Bonus Incentive Policy
9. Newfoundland Hog Price Stabilization Program

We did not receive any comments on these programs from the interested parties, and our review of the record 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 being provided. We received no comments on our preliminary results with respect to these programs, and our findings remain unchanged in these final results.

1. Prince Edward Island Hog Price Stabilization Program
2. Canada/British Columbia Agri-Food Regional Development Subsidiary Agreement
3. Canada/Manitoba Agri-Food Development Agreement
4. New Brunswick Agricultural Development Act-Swine Assistance Program

V. Other Programs Examined

On November 5, 1996, the GOQ made a submission, pursuant to section 771(5B)(F) of the Act, claiming that the Agri-Food Agreement met the criteria for ''green box'' treatment under Annex 2 of the Agreement on Agriculture of the World Trade Organization (WTO). On January 21, 1997, the GOQ indicated that the GOC also supported the green box claim.

Under section 771(5B)(F) of the Act, domestic support measures provided with respect to the agricultural products listed in Annex 1 to the 1994 WTO Agreement on Agriculture shall be treated as noncountervailable if the Department determines that the measures conform fully with the provisions of Annex 2 to the same

agreement. Accordingly, the GOQ and the GOC posited that funding under the Agri-Food Agreement should be noncountervailable pursuant to section 771(5B)(F) of the Act.

During the POR, producers of the subject merchandise received assistance under the three component programs of the Agri-Food Agreement for which the GOC and the GOQ have requested green box treatment: (1) Research, (2) Technology Innovations, and (3) Support for Strategic Alliances.

Specifically, with regard to the Research program under the Agri-Food Agreement, as discussed above in section II, we have determined that this program does not confer countervailable benefits because the results of the research are publicly available. *See e.g.,* Certain Carbon Steel Products from Sweden; Preliminary Results of Countervailing Duty Administrative Review, 60 FR 44014 (August 24, 1995) and Certain Carbon Steel Products From Sweden; Final Results of Countervailing Duty Administrative Review, 61 FR 5378 (February 12, 1996). As such, there is no need to address whether benefits provided under the Research program are noncountervailable in the context of section 771(5B)(F) of the Act. With regard to the Technology Innovations program and the Support for Strategic Alliances program, any benefit to the subject merchandise under either program would be so small (Can$0.00000045 and Can$0.00000055 per kilogram, respectively) that there would be no impact on the overall subsidy rate. Accordingly, because there is no change to the overall subsidy rate in the instant review, we have not included the benefits from TI and SSA in the calculated subsidy rate for the POR, and do not consider it necessary to address the issue of whether benefits under these programs are noncountervailable as green box subsidies pursuant to section 771(5B)(F) of the Act. See, *e.g.,* Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Germany, 62 FR 54990, 54995 (October 22, 1997); Certain Carbon Steel Products from Sweden; Preliminary Results of Countervailing Duty Administrative Review, 61 FR 64062, 64065 (December 3, 1996); Certain Carbon Steel Products from Sweden; Final Results of Countervailing Duty Administrative Review, 62 FR 16549 (April 7, 1997) (Certain Steel from Sweden); Final Negative Countervailing Duty Determination: Certain Laminated Hardwood Trailer Flooring (LHF) from Canada, 62 FR 5201 (February 4, 1997); Industrial Phosphoric Acid from Israel; Preliminary Results of Countervailing Duty Administrative Review, 61 FR 28845 (June 6, 1996); and Industrial Phosphoric Acid from Israel; Final Results of Countervailing Duty Administrative Review, 61 FR 53351 (October 11, 1996) (IPA from Israel).

Analysis of Comments

Comment 1: Green Box Claim. The GOC argues that, although the Department declined to make the ''green box'' determination on the three component programs under the Agri-Food Agreement based on there being no impact on the overall subsidy rate, we still treated these programs as actionable and thereby made prejudicial findings. These prejudicial findings include the Department's preliminary determination that the Technology Innovations (TI) program was specific and conferred a countervailable benefit, and that the Support for Strategic Alliances (SSA) program was used in the review period. The GOC argues that, if the Department wishes to decline making a green box decision on the three component programs under the Agri-Food Agreement because of the very small level of benefits, then it must also decline making prejudicial rulings on these programs' countervailability. Furthermore, the GOC claims that when an agency declares a particular policy, it is required to follow that policy in order to maintain administrative consistency, citing *Hussey Copper, Ltd.* v. *United States,* 834 F. Supp. 413, 418 (CIT 1993). The GOC contends that, once the Department determines programs under the Agri-Food Agreement to have no impact on the overall subsidy rate, the Department should omit all findings on these programs from the final results, and thereby treat them as programs determined not to have been used during the POR. In the case that the Department does not apply the ''no impact policy'' consistently, then the GOC argues that the Department is required to consider their green box claim.

Similarly, the GOQ argues that the Department cannot refuse to consider the green box claim on the grounds that TI and SSA would have no effect on the overall subsidy rate in this review. This criterion of no impact, according to the GOQ, cannot be found anywhere in U.S. or international law. The GOQ further claims that the verified record demonstrates that the three component programs under the Agri-Food Agreement meet the green box criteria. The GOQ argues that the Department cannot countervail TI without first having considered the program for green box treatment; neither the law nor the cites used in preliminary determination support the Department's decision.

Petitioner raised three arguments in support of the Department's preliminary determination. First, petitioner argues that the Department's countervailability findings with respect to the Agri-Food program were not prejudicial because only the TI program was found to confer a countervailable subsidy, which was less than Can$0.0001 per kilogram. Under these circumstances, petitioner argues that respondents did not suffer any practical harm by the Department's decision not to conduct a green box analysis, citing *Sharp Elecs. Corp.* v. *United States,* 720 F. Supp. 1014, 1016–17 (CIT 1989) in support of its argument. Second, petitioner notes that the Department is not required by law to consider a green box claim. Finally, petitioner asserts, that contrary to the GOQ's claim, the results of the Department's verification do not conclusively prove that the programs under the Agri-Food Agreement meets the green box criteria.

Department's Position: Based on the particular facts of this case, the Department appropriately determined that a green box determination on the programs under the Agri-Food Agreement was unwarranted in this review. Neither the statute (section 771(5B)(F)) nor the Statement of Administrative Action Accompanying the Uruguay Rounds Agreement Act (SAA) mandates the Department to make a green box determination each time an interested party raises such a claim. The statute simply codifies the ''due restraint'' obligations under the WTO Agreements on Agriculture, and Subsidies and Countervailing Duty Measures, that certain domestic support measures be exempt from the imposition of countervailing duties, *i.e.,* non-actionable. The omission of an explicit mandate to make green box determinations provides the Department with considerable discretion to determine whether such an examination is warranted in each particular case.

In the instant review, the Department has determined that, because the benefit provided under the TI and SSA programs (the benefit provided under the Research program was found noncountervailable) has no impact on the overall subsidy rate attributable to the subject merchandise during the POR, a green box determination is not warranted because neither program has benefit amounts that would be subject to countervailing duties. In making this determination, the Department has not violated either the statute or the WTO ''due restraint'' obligations, and the GOC and GOQ have suffered no

practical harm. See *Georgetown Steel Corp.* v. *United States,* 810 F. Supp. 318 (CIT 1992) (denying judicial review of the respondent's challenge to the Department's specificity determination on the grounds that no duties or cash deposits were imposed).

We also disagree with the GOC's and GOQ's assertions that our decision was inappropriate because the Department made ''prejudicial findings'' with respect to TI and SSA. In the case of TI, the Department did not make a new specificity finding in this POR. In the case of SSA, based upon the verified record evidence, the Department determined that the program was used during the POR. In both instances, the preliminary results reflect the Department's normal practice, *e.g.,* reiterating a previous specificity finding and determining a program's usage during the POR. Neither of these findings trigger an obligation to make a green box determination when we have determined that the benefits provided under these programs are so small that they will not be subject to countervailing duties.

Further, we find no inconsistency between these findings and a finding that the cumulative benefit provided under these programs has no impact on the overall subsidy rate because the amount of the benefit provided is unrelated to whether a program is specific or used during the POR. The Department has always conducted these analyses simultaneously (specificity and usage). However, until we actually complete the calculation (*i.e.,* determining the amount of benefit provided and dividing it by the relevant production figures) it is not possible to determine whether the benefit under a particular program will have any impact on the overall countervailing duty rate. As such, there is nothing unusual in the Department making a determination that a program is used or specifically provided, but then, finding that the benefit provided is too small to have any impact on the overall net subsidy rate (*e.g., IPA from Israel* and *Certain Steel from Sweden*). Further, those determinations are in no way prejudicial with respect to any green box claims the parties might make in future administrative reviews. Thus, we find no basis to deviate from our practice by omitting such findings as suggested by the GOC.

Comment 2: Whether the Agri-Food Programs are Research Programs. The GOQ claims that the evidence on the record for this review proves that all three component programs (Research, TI, and SSA) under the Agri-Food Agreement are noncountervailable because each component is a research program and the results are publicly available. Of the three component programs, the GOQ agrees with the Department's determination that the Research program has been determined to be a research and development program, and therefore is noncountervailable. In the case of TI, the GOQ contends that the Department's determination in the *Swine Tenth Review Results* that TI did not constitute a research program, which contradicts findings in six previous reviews, is unfounded. The GOQ urges the Department to reexamine its countervailability finding on TI in this review.

The GOQ claims that the Department did not conduct an analysis of the new information regarding TI in the record of this review, and has instead adopted the conclusion made in the tenth review that TI is a regionally-specific federal program. The GOQ argues that, even if TI is regionally specific, the program is noncountervailable as a research program since research results under the TI program are publicly available. The GOQ further argues that new and verified information in this review demonstrates that the TI program funds publicly available research.

Also, the GOQ argues that TI is similar to other programs the Department has determined to be research programs. (See Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Mexico, 58 FR 37352, 37360 (July 9, 1993) (Certain Steel from Mexico). The GOQ claims that Certain Steel from Mexico confirms that non-laboratory applied research constitutes research, and when results are publicly disseminated, such programs are not countervailable. Similarly, the GOQ argues that in Final Affirmative Countervailing Duty Determinations; Certain Carbon Steel Products from Sweden, 50 FR 33375, 33379 (August 19, 1985) the Department found that the testing of laboratory concepts in two pilot plants partially funded by the Swedish Government was noncountervailable research because the results were publicly available. Therefore, the GOQ argues, the Department's past practice requires a finding that applied research in the field, such as research funded under TI, is research, which is noncountervailable when the results are publicly available. Further, the GOQ argues that, at verification, the GOC demonstrated that SSA is a research program with publicly disseminated results.

Department's Position: We disagree that the Department should reconsider its finding on TI. In the cases cited by the GOQ (Certain Steel from Mexico and Steel Products from Sweden), the only issue was whether the programs were countervailable (*i.e.,* whether results were publicly available), not whether the program funded ''research.'' As outlined in the *Swine Tenth Review Results,* the latter issue entails a more complex analysis. We analyzed TI in detail and determined that its application review process, eligibility requirements, purposes, and types of projects funded were more typical of a technological assistance program than that of a research and development program. We continue to find that TI is appropriately classified as a technical assistance program, which accommodates products already existing in the market and which tests them for their usage in a specified geographic area, Quebec.

We find that the GOQ has presented no new information or evidence of changed circumstances that warrant the Department's reexamination of the countervailability of TI. Therefore, consistent with long-standing practice, the Department did not reexamine the countervailability of TI in this administrative review. With regard to SSA, as discussed above, because the benefit from this program is so small that it has no impact on the overall subsidy rate, a determination of whether this program is countervailable was not warranted.

Comment 3: Reexamination of Programs found Noncountervailable. The GOQ asserts that, if the Department determines a program does not confer countervailable benefits, the Department should then determine the program noncountervailable, and thus should not reinvestigate this program in future reviews. This implies that, since the Department found Research and SSA to not confer countervailable benefits, these programs are not countervailable. With regard to Research, the GOQ further argues that once the Department determines that research results are publicly available, the program is noncountervailable and there is no justification to revisit this program in future reviews.

Department's Position: We disagree with the GOQ that reexamination of the Research and SSA programs is not warranted in future reviews. The Department's current practice with regard to research and development programs is that research results must be publicly available with no restrictions. Since the verified standard contracts under the Research program of the Agri-Food Agreement contain a patent clause authorizing non-

disclosure of research results with commercial value, the Department cannot make a determination on the public availability of research results until projects are completed in subsequent reviews. Therefore, we will continue to examine the Research program in future reviews. In addition, we have never made a finding on the countervailability of the SSA program. Therefore, we will continue to examine the SSA program in subsequent reviews.

Comment 4: Whether FISI is Countervailable. The GOQ claims that the Department may not rely upon its prior countervailability determination for FISI in the sixth review as the basis for finding FISI countervailable in this review. (FISI—Farm Income Stabilization Insurance—is an income insurance program for farmers, financed by the provincial government, Quebec and the producers.) The GOQ argues that, because in the two review periods prior to the sixth review and also in the pork investigation, three binational panels found FISI noncountervailable, collateral estoppel precludes the Department from continuing to investigate FISI. See Live Swine from Canada; Amendment to Final Results of Countervailing Duty Administrative Review, 58 FR 26115, 26116 (April 30, 1993); Live Swine from Canada; Amendment to Final Results of Countervailing Duty Administrative Review, 58 FR 47123 (September 7, 1993); *In the Matter of Fresh, Chilled and Frozen Pork from Canada,* 13 I.T.R.D. 1655, 1661–1662 (March 8, 1991). The GOQ contends that reconsideration of the facts on the record in the instant review demonstrates 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.

Petitioner asserts that the GOQ has made the same arguments regarding the countervailability of FISI in previous reviews. Because the record in this review does not provide evidence that FISI is not countervailable, petitioner maintains that the Department should continue to treat this program as a countervailable subsidy.

Department's Position: We agree with petitioner that FISI is countervailable. A full analysis of the Department's countervailability determination is discussed in Live Swine from Canada; Final Results of Countervailing Duty Administrative Review, 59 FR 12243 (March 16, 1994) (Swine Sixth Review Results). As we explained in Live Swine from Canada; Final Results of Countervailing Duty Administrative Reviews, 61 FR 52408 (October 7, 1996) (Swine Seven, Eight, and Nine Review Results), the remand determinations issued pursuant to panel decisions in prior reviews requested the Department to reconsider certain aspects of the underlying methodology used in those determinations. Because panel decisions are binding only on the proceeding of that respective review, none of these remand determinations require the Department to establish a policy affecting all subsequent reviews, as they are based on different administrative records.

Furthermore, as explained in Swine Seven, Eight, and Nine Review Results, where the Department has determined a program to be countervailable, it is the Department's policy not to reexamine the issue in subsequent reviews unless new information or evidence of changed circumstances is submitted which warrants reconsideration. In this review, the GOQ has presented the same arguments as in previous reviews but provided no new information or evidence of changed circumstances concerning the countervailability of FISI. Therefore, the Department has not reexamined the countervailability of FISI in this administrative review.

Comment 5: Whether FISI, Crop Insurance, and Supply Management are Integrally Linked. The GOQ argues that FISI, Crop Insurance, and Supply Management work together to meet a common objective of providing income insurance, and are therefore, integrally linked even though they may not meet the current standard set by the Department. Because the integral linkage test is so narrowly defined and constantly being refined, the GOQ contends that the standard for integral linkage can never be met. Nevertheless, the GOQ maintains that these three programs should be found to be integrally linked in this review because the legislative history demonstrates that the intention of Quebec's National Assembly was to create a scheme of income protection.

Petitioner contends that the same arguments were raised by the GOQ in several previous proceedings where the Department correctly determined that these programs were not integrally linked. Therefore, petitioner maintains that the Department should continue to countervail FISI benefits in full.

Department's Position: We disagree with the GOQ that FISI, Crop Insurance, and Supply Management are integrally linked. In Swine Seven, Eight, and Nine Review Results, we explained in detail our integral linkage analysis of FISI, Crop Insurance, and Supply Management. In these previous reviews, we found the programs were not integrally linked because of differences in the purposes of the programs, manners of funding, and the lack of conclusive evidence of a government policy to treat industries equally. There is no new evidence on the record of this review that would warrant the reconsideration of our finding that these programs are not integrally linked.

Comment 6: Whether the Department Double-Counted Benefits under FISI. The GOC, the GOQ, and the CPC argue that the Department double-counted Transition Scheme benefits paid by the GOC and the GOQ into Quebec's FISI fund. Furthermore, according to the GOQ and the CPC, after the liquidation of NTSP (National Tripartite Stabilization Program is a federal program which provided price support payments), the GOQ transferred their share of the NTSP surplus to the FISI account using this to match the additional assessment paid into FISI by producers. The GOQ contends that the Farm Income Stabilization Act dictates that the GOQ shall pay into FISI an amount double that of the amount paid by insured farmers, no more and no less. Since the Department did not countervail the NTSP surplus payouts for producers enrolled in FISI that were transferred into the FISI account in Swine Tenth Review Results, CPC argues that the Department should apply this same practice and only countervail FISI payouts to producers.

When the National Transition Scheme for Hogs (Transition Scheme), a temporary successor program to NTSP funded by the federal and provincial governments, provided payments to hog producers during the POR, the producer members of FISI decided that their payouts should be transferred to the FISI account and become a portion of their required contribution. Thus, the GOC and the CPC contend that this transfer of funds should not be countervailed until the producers receive FISI payouts. In sum, respondents argue that the producers' contribution is being countervailed twice, once going into the FISI account and the second time going out of the FISI account to the producers.

Petitioner claims that, although Quebec producers did not receive a tangible contribution from the Transition Scheme in the form of a cash payment, they benefitted from these funds because they were not required to make their normal contribution to FISI out of their own monies. Petitioner further argues that the decision by Quebec's hog producers to use their Transitions Scheme payments to meet their financial obligation to FISI was a

question of form that did not reduce or eliminate the benefit accruing to the producers as a result of the Transition Scheme program. Therefore, petitioner supports the Department's view in accounting for this anomaly in the distribution mechanism of the subsidy.

With respect to the additional infusion of funds into the FISI account by the Quebec government, petitioner argues that, despite the GOQ's argument that these funds are the Quebec Government's regular assessment, the language in the Regie's Annual Report is clear that there are two separate contributions, the Quebec Government's regular assessment for the fiscal year and these additional funds. Petitioner further argues that the GOQ did not address the point that in making the infusion, the government did not stipulate that these additional Quebec Government funds would be repaid by producers, either by an increase in producer premiums or a decrease in producer payouts. Petitioner asserts that absent such conditions, the Department's decision to treat the infusion as a grant is lawful and should be preserved in its final determination.

Department's Position: The Department agrees with the respondents, in part, that there was double-counting with regard to the GOQ's contribution into FISI of their share of the NTSP Surplus. However, the Department disagrees that the Transition Scheme benefits to the producers were incorrectly countervailed.

The FISI program, by law, must be funded one-third by the producers enrolled in the program and two-thirds by the GOQ. Therefore, when FISI payments are made to participating producers, the Department only calculates a benefit equal to two-thirds of the payouts in order to countervail only the portion of the payment contributed by the government. During the POR, the producers and the GOQ made their regular contributions into the FISI fund. FISI also received additional assessments on behalf of both the producers and the GOQ. In the preliminary results, we determined that the GOQ's additional contribution to FISI was countervailable in full. After further examination of the record evidence in this review, we have determined that the GOQ's contribution represents the GOQ's share of NTSP surplus funds. Any benefit that will result from the GOQ's portion of the NTSP surplus will be countervailed when future payments are made to the enrolled producers under FISI. Therefore, for the final results, we are not countervailing the GOQ portion of the NTSP surplus.

With regard to the Transition Scheme, we have appropriately countervailed payments due to the producers (both federal and provincial portions), including payments due to producers enrolled in FISI, as benefits under the Transition Scheme. The Transition Scheme provided one-time payments to producers for hogs marketed between April 3, 1994, and December 31, 1994. Under the Transition Scheme, hog producers received Can$1.50 from the GOC and a matching Can$1.50 from the provincial governments. During the POR, producers in the provinces of Alberta, Manitoba, New Brunswick, Ontario, Quebec (who were not enrolled in FISI), and Saskatchewan received their Transition Scheme payments directly. Quebec producers enrolled in FISI were also entitled to a direct payment for each hog marketed during the applicable period. As explained in the preliminary results, however, the portion of Transition Scheme funds due to producers who participated in FISI was transferred to FISI, rather than paid out directly to the producers as was the case with non-participants in FISI. See, Regie des assurances agricoles du Quebec 1995–1996 Annual Report, at 24, Exhibit F of the December 20, 1996 Questionnaire Response of the Government of Quebec. Because the Transition Scheme payouts were government funds which were specifically provided to hog producers, the payments are countervailable in full. Whether the producers received the money directly (as non-FISI producers did), or whether they chose to have it deposited in their FISI account to cover their required contribution to FISI, this does not change the fact that the payments made under the Transition Scheme constitute financial contributions which benefit hog producers. Instead of receiving the money directly under the Transition Scheme and using it to pay their FISI assessments, the producers simply instructed the Government to deposit the money due to them into their FISI account. Under either scenario, the Transition Scheme payments are fully countervailable. Moreover, there is no double-counting of FISI payouts because we are only countervailing two-thirds of the FISI payouts, which reflects the portion contributed by the GOQ, and we are not countervailing the one-third portion for which producers are responsible.

Comment 7: Cash Deposit Adjustment for the National Transition Scheme Program. The GOC and the CPC argue that the Department should be consistent with its previous decision stated in the Swine Tenth Review Results by adjusting the cash deposit for this program to zero "to reflect that this program has been terminated and there are no residual benefits." The GOC and the CPC contest the Department's preliminary determination in this review that residual benefits may continue to accrue under this program even though the program has been terminated and there was no new information or evidence of changed circumstances.

Department's Position: We disagree with the GOC and CPC that the cash deposit rate for the Transition Scheme should be adjusted to zero in this review. As we explained in the previous review, we adjust the cash deposit rate only when there has been a program-wide change, such as termination, and there are no residual benefits. In the tenth review, we expensed the benefit received from this program and verified that all the payouts under the Transition Scheme had been made prior to our preliminary results in that review. On this basis, we did not include the Transition Scheme in the cash deposit. (See Swine Tenth Review Results.) In the instant review, however, we found that the payouts made during this POR were greater than 0.5 percent of total sales of swine for the POR, and, as such, must be allocated over time. When a subsidy is allocated over time, there will, of course, be benefits continuing under a program for the entire allocation period, which in this case is three years. (See Allocation Methodology section of this notice.) Because there will still be benefits accruing from this program in two subsequent reviews periods (until March 1998) due to the allocation period, we appropriately have not adjusted the cash deposit rate to zero. This is consistent with our treatment of adjusting the cash deposit rate for the SHARP program in Swine Tenth Review Results.

Comment 8: De Minimis Calculation. The CPC disagrees with the Department's new *de minimis* calculation and argues that (1) the previous long-standing methodology was never challenged; (2) there is no new evidence requiring reexamination of the Department's standard practice; and (3) the Department failed to provide any explanation to support its change in practice in its preliminary results. Particularly, the CPC questions the new methodology used to calculate the weighted-average selling price in which the Department had adjusted the price to account for dressed weight (*i.e.*, the prepared hog after slaughter); whereas in previous reviews no adjustment, with

regard to dressed weight, had been made to the reported average selling price.

The CPC cites several cases, (*e.g., Secretary of Agriculture* v. *United States,* 347 U.S. 645, 653–54 (1954); *Alhambra Foundry Co.,* v. *United States,* 685 F.Supp. 1252, 1258 (CIT 1988); *Cinsa, S.A. de C.V.* v. *United States,* 966 F. Supp. 1230, 1238 (CIT 1997); *Mantex* v. *United States,* 841 F. Supp. 1290 (CIT 1993) *Micron Technology* v. *United States,* 893 F. Supp. 21 (CIT 1995); *Queen's Flowers de Colombia, et al.* v. *United States,* Slip Op. 97–120 (1997 WL 633824) (CIT Aug. 25, 1997)) supporting their argument that the Department must conform to prior decisions or explain its reason for departing from past practice. The CPC also bolsters its arguments by citing a North American Free Trade Agreement Binational Panel decision (*In the Matter of: Live Swine from Canada,* Panel No. USA–94–1904–01, at 8 (May 30, 1995)) that states that Commerce must provide ''a comprehensive and reasoned analysis for reversing its former policy.'' Lastly, the CPC argues that principles of administrative law require the Department to ''supply a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored.'' *Greater Boston Television Corp. F.C.C.,* 44 F.2d 841, 852 (D.C. Cir. 1970), *cert. denied,* 403 U.S. 923.

If the Department decides to maintain the calculation methodology used in its preliminary results, the CPC argues that the Department must also then take into account an additional adjustment for a quality premium. Otherwise, the Department must return to its prior *de minimis* calculation methodology where no adjustment is made to the weighted-average selling price of dressed weight.

Petitioner argues that changes in methodology are just minor revisions of the Department's calculation methods in this review, and the Department should continue to follow this adjustment in the final results.

Department's Position: We disagree with the CPC that we have inappropriately changed the *de minimis* calculation in this review. The methodology used to calculate the *de minimis* level remains basically the same as that applied in prior reviews, except for an adjustment which has become necessary as a result of an inconsistency detected by the Department in this review, related to the weight of the hog before and after slaughter.

As duly noted by the CPC, since the fourth annual review of this order, our calculation of the *de minimis* rate was as follows: (1) For each province, we calculated an average selling price for the POR; (2) we then multiplied the average selling price by the province's percentage of total exports of market hogs to the United States; (3) we then summed the provinces' weight-averaged prices to derive at a Canada-wide weighted-average price for market hogs; (4) we finally derived the *de minimis* rate by multiplying the weighted-average selling price per kilogram by one half of one percent; and (5) we then compared that per kilogram rate to the calculated per kilogram subsidy rate to determine whether the calculated subsidy rate was above or below *de minimis.*

However, until this review, we had overlooked the fact that, although we had requested information on live swine (market hogs weigh on the average 100 kilograms, according to industry standards) with regard to average selling prices and average weights during the POR, the data provided in the response was based on dressed weight (*i.e.,* the weight of the prepared hog after slaughter, which is approximately 80 kilograms). Prices based on dressed weight are inappropriate for our calculations because the benefit rate is calculated and applied on a live swine basis. In preparing the preliminary results in this review, we realized that in order to be consistent between the per kilogram subsidy rate calculation and the *de minimis* calculation, we should have been adjusting the selling price, provided in the response and clearly labeled ''Canadian dollars per kilogram dressed weight,'' to align it with the calculation of the per kilogram subsidy rate, which is based on live swine. Therefore, as explained in the calculation memorandum for the preliminary results, to make this adjustment, we multiplied the weighted-average selling price per kilogram, (provided in the response) by the weighted-average dressed weight of the market hog to obtain the total price paid to the producer for one hog. We divided this amount by 100 kilograms to construct the average per kilogram price of a live hog (as stated above, the average weight of a market hog is 100 kilograms). As in prior reviews, we then derived the specific *de minimis* rate for live swine by multiplying the adjusted weighted-average selling price per kilogram by one half of one percent.

This change makes a necessary refinement in our methodology in that the average prices used in our calculations are now congruous with the basis of the subsidies reported. In fact, when we calculate the subsidy rate per kilogram, we use the number of market hogs produced in Canada multiplied by 100 kilograms which is the reported average weight of a live hog. Similarly, in assessing the duties, the Customs Service applies the applicable duty rate to the weight of the live swine entering the United States. Therefore, the weighted-average prices used in our calculations now appropriately correspond to the finding of subsidization and imposition of countervailing duties.

In the final results of this review, we made two further minor changes to our methodology to ensure consistency in the calculations. The first change affects the average Canadian dressed weight of a hog. In the preliminary results, the average Canadian dressed weight was calculated as a simple average of the provincial average weights, even though the selling price was calculated on a weighted-average basis. To be consistent in the final results, both the Canada-wide weight and the Canada-wide selling price are calculated on a weighted-average basis.

The second change affects the calculation of the value of total Canadian production of live swine for purposes of determining whether grants should be expensed or allocated. In the final results of review, to derive the value of total Canadian production of live swine, we have used the adjusted price rather than the dressed weight price used in the preliminary results. This change did not result in a different outcome for the expensing of grants received during the POR.

By making the adjustments described above, we corrected the discrepancy between price and weight so that now the weighted-average selling price used in the *de minimis* calculation and the grant calculations reflects the weight of a live swine. This allows us to make an apples-to-apples-comparison, *i.e.,* the subsidy benefit, the duty rate, the selling price used in calculating the *de minimis* rate, and the grant calculations are now all based on the weight of a live swine.

We are not persuaded by the CPC's arguments that if we adjust for dressed weight, we must also make an adjustment for a quality premium. In previous reviews, as in this review, the GOC has reported average selling prices per kilogram and average weights for market hogs (based on dressed weight) with no qualifications. We examined Table 29 ''Hogs: Price Range of Sales at Marketing Boards'' in the Livestock Market Review (Appendix 2 of the GOC's December 23, 1996 questionnaire response) and determined that the average prices for the industry of a hog correspond to the weighted-average

price provided in Appendix 14 of the GOC's December 23, 1996 questionnaire response, on which our *de minimis* calculation is based. There was no mention in the response that further adjustments were necessary to the figures provided. Moreover, in previous administrative reviews, none of the parties made the argument or presented information demonstrating that further adjustments should be made to the price. Any such adjustments, if warranted, would have been appropriate regardless of whether any adjustment from dressed weight to live weight is made.

As demonstrated above, the adjustment to the weighted-average selling price in this review was a necessary methodological adjustment to correct the identified discrepancy between our *de minimis* calculation and calculation of subsidy benefits. It is a well-settled principle of administrative law that an agency must be accorded substantial flexibility to refine and reformulate its practice, and that such methodological changes survive judicial scrutiny as long as the agency provides an explanation for its departure from prior practice and has not otherwise acted arbitrarily. See *Cultivos Miramonte S.A.* v. *United States*, No. 96–09–02222, 1997 Ct. Intl. Trade LEXIS 136, at *12 (CIT Sept. 17, 1997) (citing *Davila-Bardales* v. *INS*, 27 F.3d 1 (1st Cir. 1994)); *British Steel plc* v. *United States*, 879 F. Supp. 1254, 1306–07 (CIT 1995); *Mantex, Inc. et al.* v. *United States*, 841 F. Supp. 1290, 1302–03 (CIT 1993). In the instant review, we explained the basis for our change in the preliminary results, which enabled interested parties to comment on this change in the context of the final results. We have fully considered these comments, but as detailed above, we continue to find that the adjustment to the weighted-average selling price used in our *de minimis* calculation is a necessary refinement to ensure consistency in our calculations. Moreover, our examination of the record evidence did not reveal that an additional adjustment is necessary to account for differences in quality premium. Unlike the cases cited by the CPC—all of which are instances where the reviewing authority determined that the agency failed to provide an explanation to support its deviation from prior practice—we have fully explained the rationale for our change in the calculation methodology, and this explanation is supported by the record evidence of this case. Under these circumstances, we have not arbitrarily changed our *de minimis* calculation in violation of long-standing administrative principles. See *e.g., Cultivos Miramonte*, at *13, n.7 (stating that an agency arbitrarily changes its practice when (1) the factual findings supporting the changes are not supported by record evidence, (2) the rationale provided violates administrative law, or (3) the agency has offended standards of procedural fairness.) Therefore, we are continuing to apply the new methodology in calculating the *de minimis* rate.

Comment 9: Change in Calculation Methodology for National Transition Scheme Program. The CPC argues that the Department has significantly changed its calculation methodology of the Transition Scheme program whereby the grant amount received is no longer compared to the total value of live swine sales in Canada but to the value of live swine sales in only the provinces receiving grants during the POR. Such major changes in methodology, the CPC asserts, either require new information indicating the need for the change or an explanation. Therefore, because the Transition Scheme is a national program, the CPC argues that the calculation determining whether to expense grants received or to allocate them to the year of receipt should compare the grant amount received to the value of total live swine sales in Canada. The CPC also contends that the Department's formula for allocation of grants uses an incorrect national average selling price, Can$1.28, in analyzing the Transition Scheme and the NTSP surplus.

In contrast, petitioner argues that the changes in methodology to achieve a more accurate countervailing duty rate are nothing more than minor revisions, which are not unlawful and are in the realm of the Department's discretion. Thus, petitioner maintains the Department should continue to follow the preliminary results methodology in the final results.

Department's Position: We agree with the CPC, in part. Because the Transition Scheme is a nation-wide program, the grant amount received should be compared to the total value of live swine sales in Canada which we have constructed for the POR. See Swine Tenth Review Results. Accordingly, we have made the necessary adjustment in these final results by comparing the benefit to the value of the total national production during the POR. We made the same correction to the calculations of the benefit received by producers from the distribution of the NTSP surplus, which is also a nation-wide program. Therefore, the grant amount received under this program is also compared to the total value of live swine sales in Canada.

However, we do not agree with the CPC that we have used an incorrect selling price of Can$1.28 to analyze whether the Transition Scheme and the NTSP surplus should be allocated over time. In our preliminary results, the selling price used for this calculation was based on a live hog. In these final results of review, the Department has determined that the Can$1.54 national weight-averaged selling price based on dressed weight should be changed to Can$1.29 to reflect the weight of a live swine. (See *Department's Position* in *Comment 8* above). The applicable provincial average selling price should likewise be adjusted in the grant allocation calculations for provincial programs. Therefore, for these final results, we have adjusted the selling price to reflect that of a live hog rather than a dressed hog.

Final Results of Review

For the period April 1, 1995 through March 31, 1996, we determine the net subsidy for live swine from Canada to be Can$0.0071 per kilogram.

We will instruct the Customs Service to assess countervailing duties of Can$0.0071 per kilogram on shipments of live swine from Canada exported on or after April 1, 1995 and on or before March 31, 1996. The cash deposit is Can$0.0055 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 we have taken into account program-wide changes in calculating the cash deposit rate. These program-wide changes are the termination of the following programs with no residual benefits: Feed Freight Assistance Program, SHARP, ACBOP, Saskatchewan Livestock Investment Tax Credit, Saskatchewan Livestock Facilities Tax Credit, and NTSP Surplus.

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)).

Dated: January 7, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–945 Filed 1–13–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of revocation of Export Trade Certificate of Review No. 88–00002.

SUMMARY: The Secretary of Commerce issued an export trade certificate of review to Olde South Traders, Inc. Because this certificate holder has failed to file an annual report as required by law, the Secretary is revoking the certificate. This notice summarizes the notification letter sent to Olde South Traders, Inc.

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, 202/482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (''the Act'') (Pub. L. 97–290, 15 U.S.C. 4011–21) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III (''the Regulations'') are found at 15 CFR part 325 (1997). Pursuant to this authority, a certificate of review was issued on May 23, 1988 to Olde South Traders, Inc.

A certificate holder is required by law to submit to the Department of Commerce annual reports that update financial and other information relating to business activities covered by its certificate (Section 308 of the Act, 15 U.S.C. 4018, § 325.14(a) of the Regulations, 15 CFR 325.14(a)). The annual report is due within 45 days after the anniversary date of the issuance of the certificate of review (§ 325.14(b) of the Regulations, 15 CFR 325.14(b)). Failure to submit a complete annual report may be the basis for revocation (§ 325.10(a) and 325.14(c) of the Regulations, 15 CFR 325.10(a)(3) and 325.14(c)).

On May 13, 1997, the Department of Commerce sent to Olde South Traders, Inc. a letter containing annual report questions with a reminder that its annual report was due on July 7, 1997. Additional reminders were sent on August 7, 1997 and on September 12, 1997. The Department has received no written response from Olde South Traders, Inc. to any of these letters.

On November 20, 1997, and in accordance with § 325.10(c)(1) of the Regulations, (15 CFR 325.10(c)(1)), the Department of Commerce sent a letter by certified mail to notify Olde South Traders, Inc. that the Department was formally initiating the process to revoke its certificate for failure to file an annual report. In addition, a summary of this letter allowing Olde South Traders, Inc. thirty days to respond was published in the **Federal Register** on November 26, 1997 at 62 FR 63074. Pursuant to 325.10(c)(2) of the Regulations (15 CFR 325.10(c)(2)), the Department considers the failure of Olde South Traders, Inc. to respond to be an admission of the statements contained in the notification letter.

The Department has determined to revoke the certificate issued to Olde South Traders, Inc. for its failure to file an annual report. The Department has sent a letter, dated January 8, 1998, to notify Olde South Traders, Inc. of its determination. The revocation is effective thirty (30) days from the date of publication of this notice. Any person aggrieved by this decision may appeal to an appropriate U.S. district court within 30 days from the date on which this notice is published in the **Federal Register** (325.10(c)(4) and 325.11 of the Regulations, 15 CFR 324.10(c)(4) and 325.11 of the Regulations, 15 CFR 325.10(c)(4) and 325.11).

Dated: January 8, 1998.

Morton Schnabel,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 98–825 Filed 1–13–98; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of revocation of Export Trade Certificate of Review No. 91–00003.

SUMMARY: The Secretary of Commerce issued an export trade certificate of review to Fabiano & Associates, Inc. Because this certificate holder has failed to file an annual report as required by law, the Secretary is revoking the certificate. This notice summarizes the notification letter sent to Fabiano & Associates, Inc.

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, 202/482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (''the Act'') (Pub. L. 97–290, 15 U.S.C. 4011–21) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III (''the Regulations'') are found at 15 CFR part 325 (1997). Pursuant to this authority, a certificate of review was issued on May 29, 1991 to Fabiano & Associates, Inc.

A certificate holder is required by law to submit to the Department of Commerce annual reports that update financial and other information relating to business activities covered by its certificate (Section 308 of the Act, 15 U.S.C. 4018, § 325.14(a) of the Regulations, 15 CFR 325.14(a)). The annual report is due within 45 days after the anniversary date of the issuance of the certificate of review (§ 325.14(b) of the Regulations, 15 CFR 325.14(b)). Failure to submit a complete annual report may be the basis for revocation (Sections 325.10(a) and 325.14(c) of the Regulations, 15 CFR 325.10(a)(3) and 325.14(c)).

On May 20, 1997, the Department of Commerce sent to Fabiano & Associates, Inc. a letter containing annual report questions with a reminder that its annual report was due on July 14, 1997. Additional reminders were sent on August 7, 1997 and on September 12, 1997. The Department has received no written response from Fabiano & Associates, Inc. to any of these letters.

On November 20, 1997, and in accordance with § 325.10(c)(1) of the Regulations, (15 CFR 325.10(c)(1)), the Department of Commerce sent a letter by certified mail to notify Fabiano & Associates, Inc. that the Department was formally initiating the process to revoke its certificate for failure to file an annual report. In addition, a summary of this letter allowing Fabiano & Associates, Inc. thirty days to respond was published in the **Federal Register** on November 26, 1997 at 62 FR 63074. Pursuant to 325.10(c)(2) of the Regulations (15 CFR 325.10(c)(2)), the Department considers the failure of Fabiano & Associates, Inc. to respond to be an admission of the statements contained in the notification letter.

The Department has determined to revoke the certificate issued to Fabiano