

Pursuant to section 773(b)(3) of the Act, the COP consists of cost of manufacture plus amounts for selling, general, and administrative expenses and packing costs. The petitioners calculated the COP based on the same publicly available data as the NV price calculation, "Swine Enterprise Budgets," published by the Government of Ontario's Ministry of Agriculture and Food. The "Swine Enterprise Budgets" provides estimates for the COP for a swine enterprise for the year 2003. Because the provincial government is the source for the information, we found this information reasonable for use in the COP calculation. We relied on the COP calculations submitted by the petitioners except as follows. Petitioners in their calculations used the cost of "finished pig" as shown in the "Swine Enterprise Budgets" based on the cost of a finishing barn which purchases feeder pigs rather than raising pigs from farrow to finish. We revised the petitioners' calculation of the COP for "finished pig" by substituting the COP of "farrow-to finish pig", also shown in the "Swine Enterprise Budgets," which more accurately reflects the total cost of producing a finished pig.

Based upon a comparison of the prices of the foreign like product in the home market to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product in the home market were made below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation for the Canadian home market.

Pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, the petitioners also based NV for sales in the home market on CV. The petitioners calculated CV starting with the same COP figure used to compute home market costs. Consistent with section 773(e)(2) of the Act, the petitioners also included in CV an amount for profit. For profit, the petitioners state that they were unable to obtain financial statements from any Canadian swine farming operation. As a result, they based CV profit on a company in a related field of production, pork processing. However, we revised the petitioners' CV profit calculation. Instead of basing CV profit on a pork processor, we based our profit calculation on the "Swine Enterprise Budgets" because it represents the profit for the "same general category of products" as the merchandise listed in the scope of this initiation, consistent with Section 773(e)(2)(B) of the Act. For

further discussion, see the *Initiation Checklist*.

Based upon the comparison of EP to CV, after adjustments by the Department, the petitioners calculated estimated dumping margins ranging from 13.22 to 66.48 percent.

#### *Fair Value Comparisons*

Based on the data provided by the petitioners, there is reason to believe that imports of live swine from Canada are being, or are likely to be, sold at less than fair value.

#### *Initiation of Antidumping Investigation*

Based upon our examination of the petition on live swine from Canada, we have found that it meets the requirements of section 732 of the Act. Therefore, we are initiating an antidumping investigation to determine whether imports of live swine from Canada are being, or are likely to be, sold in the United States at less than fair value. Unless this deadline is extended pursuant to section 773(c)(1) of the Act, we will make our preliminary determination no later than 140 days after the date of this initiation.

#### *Distribution of Copies of the Petition*

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the petition has been provided to the representatives of the Government of Canada. We will attempt to provide a copy of the public version of the petition to each exporter named in the petition, as provided for under 19 CFR 351.203(c)(2) (2004).

#### *International Trade Commission Notification*

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

#### *Preliminary Determination by the ITC*

The ITC will preliminarily determine, within 25 days after the date on which it receives notice of this initiation, whether there is a reasonable indication that imports of live swine from Canada are causing material injury, or threatening to cause material injury, to a U.S. industry.

See section 733(a)(2) of the Act. A negative ITC determination will result in the investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: April 7, 2004.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

#### **The Manufacturing Council: Establishment of The Manufacturing Council**

**AGENCY:** International Trade Administration, U.S. Department of Commerce.

**ACTION:** Notice of establishment.

**SUMMARY:** The Department of Commerce, having determined that it is in the public interest in connection with the performance of duties imposed on the Department by law, and with the concurrence of the General Services Administration, announces establishment of The Manufacturing Council. This advisory committee will provide oversight and advice regarding implementation of the "President's Manufacturing Initiative," announced January 16, 2004.

**FOR FURTHER INFORMATION CONTACT:** J. Marc Chittum, Room 2015B, Washington, DC, 20230 (Phone: 202-482-1124).

Dated: April 6, 2004.

**J. Marc Chittum,**

*Designated Federal Officer, Office of Advisory Committees.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[C-122-851]

#### **Notice of Initiation of Countervailing Duty Investigation: Live Swine From Canada**

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

**ACTION:** Initiation of countervailing duty investigation.

**SUMMARY:** The Department of Commerce is initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters of live swine from Canada receive countervailable subsidies.

**EFFECTIVE DATE:** April 14, 2004.

**FOR FURTHER INFORMATION CONTACT:**

Melani Miller, Blanche Ziv, or S. Anthony Grasso, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-0116, (202) 482-4207, and (202) 482-3853, respectively.

**Initiation of Investigation***The Petition*

Between March 5 and 31, 2004, the Department of Commerce ("the Department") received a petition, and amendments to the petition, filed in proper form by the Illinois Pork Producers Association, the Indiana Pork Advocacy Coalition, the Iowa Pork Producers Association, the Minnesota Pork Producers Association, the Missouri Pork Association, the Nebraska Pork Producers Association, Inc., the North Carolina Pork Council, Inc., the Ohio Pork Producers Council, and 119 individual producers of live swine<sup>1</sup> (collectively, "the petitioners"). The

<sup>1</sup> Alan Christensen, Alicia Prill-Adams, Aulis Farms, Baarsch Pork Farm, Inc., Bailey Terra Nova Farms, Bartling Brothers Inc., Belstra Milling Co. Inc., Berend Bros. Hog Farm LLC, Bill Tempel, BK Pork Inc., Blue Wing Farm, Bornhorst Bros. Brandt Bros., Bredehoeft Farms, Inc., Bruce Samson, Bryant Premium Pork LLC, Buhl's Ridge View Farm, Charles Rossow, Cheney Farms, Chinn Hog Farm, Circle K Family Farms LLC, Cleland Farm, Clougherty Packing Company, Coharie Hog Farm, County Line Swine Inc., Craig Mensick, Daniel J. Pung, David Hansen, De Young Hog Farm LLC, Dean Schrag, Dean Vantiger, Dennis Geinger, Double "M" Inc., Dykhuis Farms, Inc., E & L Harrison Enterprises, Inc., Erle Lockhart, Ernest Smith, F & D Farms, Fisher Hog Farm, Fitzke Farm, Fultz Farms, Gary and Warren Oberdiek Partnership, Geneseo Pork, Inc., GLM Farms, Greenway Farms, H & H Feed and Grain, H & K Enterprises, LTD, Ham Hill Farms, Inc., Harrison Creek Farm, Harty Hog Farms, Heartland Pork LLC, Heritage Swine, High Lean Pork, Inc., Hilman Schroeder, Holden Farms Inc., Huron Pork, LLC, Hurst AgriQuest, J D Howerton and Sons, J. L. Ledger, Inc., Jack Rodibaugh & Sons, Inc., JC Howard Farms, Jesina Farms, Inc., Jim Kemper, Jorgensen Pork, Keith Berry Farms, Kellogg Farms, Kendale Farm, Kessler Farms, L.L. Murphrey Company, Lange Farms LLC, Larson Bros Dairy Inc., Levelvue Pork Shop, Long Ranch Inc., Lou Stoller & Sons, Inc., Luckey Farm, Mac-O-Cheek, Inc., Martin Gingerich, Marvin Larrick, Max Schmidt, Maxwell Foods, Inc., Mckenzie-Reed Farms, Meier Family Farms Inc., MFA Inc., Michael Farm, Mike Bayes, Mike Wehler, Murphy Brown LLC, Ned Black and Sons, Ness Farms, Next Generation Pork, Inc., Noecker Farms, Oaklane Colony, Orangeburg Foods, Oregon Pork, Pitstick Pork Farms Inc., Prairie Lake Farms, Inc., Premium Standard Farms, Inc., Prestage Farms, Inc., R Hogs LLC, Rehmeier Farms, Rodger Schamberg, Scott W. Tapper, Sheets Farm, Smith-Healy Farms, Inc., Square Butte Farm, Steven A. Gay, Sunnycrest Inc., Trails End Far, Inc., TruLine Genetics, Two Mile Pork, Valley View Farm, Van Dell Farms, Inc., Vollmer Farms, Walters Farms LLP, Watertown Weaners, Inc., Wen Mar Farms, Inc., William Walter Farm, Willow Ridge Farm LLC, Wolf Farms, Wondraful Pork Systems, Inc., Wooden Purebred Swine Farms, Woodlawn Farms, and Zimmerman Hog Farms.

Department received supplements to the March 5, 2004 petition on March 18, 22, 30, and 31, 2004. On March 25, 2004, the Department announced that it was extending the deadline for the initiation determination to not later than April 14, 2004 in order to establish whether the antidumping and countervailing duty petitions were filed by or on behalf of the domestic industry. See March 25, 2004 memorandum from Jeffrey May, Deputy Assistant Secretary for Import Administration, Group I, to James J. Jochum, Assistant Secretary for Import Administration, entitled "Antidumping and Countervailing Duty Petitions on Live Swine from Canada: Extension of Deadline for Determining Industry Support" ("*Initiation Extension Memo*"), which is on file in the Department's Central Records Unit ("CRU") in Room B-099 of the main Department building.

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act effective January 1, 1995 ("the Act"), the petitioners allege that manufacturers, producers, or exporters of live swine ("swine" or "subject merchandise") from Canada receive countervailable subsidies within the meaning of section 701 of the Act, and that such imports are materially injuring, or threatening material injury to, an industry in the United States.

The Department finds that the petitioners filed this petition on behalf of the domestic industry because they are interested parties, as defined in sections 771(9)(E) and (F) of the Act, and have demonstrated sufficient industry support in accordance with section 702(c)(4)(A) of the Act. See *infra*, "Determination of Industry Support for the Petition."

*Scope of Investigation*

The products covered by this investigation are all live swine from Canada except U.S. Department of Agriculture ("USDA") certified purebred breeding swine. Live swine are defined as four-legged, monogastric (single-chambered stomach), litter-bearing (litters typically range from 8 to 12 animals), of the species *sus scrofa domestica*. This merchandise is currently classifiable under *Harmonized Tariff Schedule of the United States* ("HTSUS") subheadings 0103.91.0010, 0103.91.0020, 0103.91.0030, 0103.92.0010, 0103.92.0090.<sup>2</sup>

Although the HTSUS subheadings are provided for convenience and customs

<sup>2</sup> Prior to June 30, 2003, HTSUS subheadings 0103.91.0010, 0103.91.0020, and 0103.91.0030 were all included under one heading, HTSUS 0103.91.0000.

purposes, the written description of the merchandise under investigation is dispositive.

As discussed in the preamble to the Department's regulations (see *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all parties to submit such comments within 20 days of publication of this notice. Comments should be addressed to Import Administration's Central Records Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of our preliminary determination.

*Consultations*

Pursuant to section 702(b)(4)(A)(ii) of the Act, the Department invited representatives of the Government of Canada ("GOC") for consultations with respect to the petition filed. The Department held consultations with the GOC on March 19, 2004. The points raised in the consultations are described in the consultation memorandum to the file dated March 19, 2004 and in the GOC's March 23, 2004 submission to the Department, both of which are on file in the Department's CRU.

*Determination of Industry Support for the Petition*

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) At least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (1) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A), or (2) determine industry support using a statistically valid sample.

Section 771(4)(A) of the Act defines the "industry" as the producers of a domestic like product. Thus, to determine whether the petition has the requisite industry support, the Act directs the Department to look to producers and workers who account for production of the domestic like product. The International Trade Commission ("ITC"), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (see section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the domestic like product, such differences do not render the decision of either agency contrary to the law. See *USEC, Inc. v. United States*, 132 F. Supp 2d 1 (CIT 2001), citing *Algoma Steel Corp. Ltd. v. United States*, 688 F. Supp. 639, 642-44 (CIT 1988).

Section 771(10) of the Act defines the domestic like product as "a product that is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation" (i.e., the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

The domestic like product referred to in the petition is the domestic like product defined in the "Scope of Investigation" section above. No party has commented on the petition's definition of the domestic like product, and there is nothing on the record to indicate that this definition is inaccurate. The Department, therefore, has adopted the domestic like product definition set forth in the petition.

As noted above, on March 25, 2004, the Department announced that it was extending the deadline for the initiation determination to not later than April 14, 2004 in order to establish whether the antidumping and countervailing duty petitions were filed by or on behalf of the domestic industry. See *Initiation Extension Memo*. The Department has determined that, pursuant to section 702(c)(4)(A) of the Act, the petition contains adequate evidence of industry support. See April 7, 2004 memorandum "Office of AD/CVD

Enforcement Initiation Checklist" ("*Initiation Checklist*"), which is on file in the CRU. We determine that the petitioners have demonstrated industry support representing over 50 percent of total production of the domestic like product, requiring no further action by the Department pursuant to section 702(c)(4)(D) of the Act. Therefore, the domestic producers or workers who support the petition account for at least 25 percent of the total production of the domestic like product, and the requirements of section 702(c)(4)(A)(i) of the Act are met. Furthermore, the domestic producers or workers who support the petition account for more than 50 percent of the production of domestic like product produced by that portion of the industry expressing support for or opposition to the petition. Thus, the requirements of section 702(c)(4)(A)(ii) are met. The Department received no opposition to the petition. Accordingly, we determine that the petition is filed on behalf of the respective domestic industry within the meaning of section 702(b)(1) of the Act.

#### *Injury Test*

Because Canada is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from Canada materially injure, or threaten material injury to, a U.S. industry.

#### *Allegations and Evidence of Material Injury and Causation*

The petitioners allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise. The petitioners contend that the industry's injured condition is evident in the declining trends in financial indicators, depression of prices, declining profitability, production volume and value, lost market share, and lost jobs. The petitioners further allege threat of injury due to excess production in Canada and increased import volumes and market penetration, causing further price depression. The allegations of injury and causation are supported by relevant evidence including U.S. Census Bureau import data, USDA and University of Iowa data, hog statistics from *Statistics Canada*, and a report by the Chicago Mercantile Exchange. We have assessed the allegations and supporting evidence regarding material injury and causation and have determined that these allegations are properly supported by

accurate and adequate evidence and meet the statutory requirements for initiation (see *Initiation Checklist*).

#### *Initiation of Countervailing Duty Investigation*

Section 702(b) of the Act requires the Department to initiate a countervailing duty proceeding whenever an interested party files a petition on behalf of an industry that (1) alleges the elements necessary for an imposition of a duty under section 701(a) of the Act and (2) is accompanied by information reasonably available to the petitioners supporting the allegations.

The Department has examined the countervailing duty petition on live swine from Canada and found that it complies with the requirements of section 702(b) of the Act. Therefore, in accordance with section 702(b) of the Act, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters of live swine from Canada receive countervailable subsidies. For a discussion of evidence supporting our initiation determination, see also *Initiation Checklist*.

We are including in our investigation the following programs alleged in the petition to have provided countervailable subsidies to producers and exporters of the subject merchandise in Canada:

- A. Canadian Farm Income Program
- B. Producer Assistance 2003/Transitional Funding Program
- C. Canadian Agricultural Income Stabilization Program
- D. Farm Credit Canada Financing
  1. Flexi-Hog Loan Program
  2. Enviro-Loan Program
- E. Quebec Farm Income Stabilization Insurance/Agricultural Revenue Stabilization Insurance Program
- F. La Financiere Agricole du Quebec Loans
  1. Preferred Rate Loans
  2. Secure Rate Development Loans
  3. Advantage Rate Loans
- G. Farm Improvement and Marketing Cooperatives Guaranteed Loans
- H. Alberta Agricultural Financial Services Corporation ("AFSC") Financing: Developing Farmer Loan Program
- I. Alberta Disaster Assistance Loan Program
- J. Alberta Hog Industry Development Fund Program
- K. Alberta Livestock Industry Development Fund Program
- L. Manitoba Agricultural Credit Corporation ("MACC") Financing: Diversification Loan and Enhanced Diversification Loan Guarantee Programs
- M. Saskatchewan Short-Term Hog Loan Program
- N. Saskatchewan Livestock and Horticultural Facilities Incentives Program
- O. New Brunswick Livestock Incentive Program
- P. Prince Edward Island ("PEI") Hog Loan

## Programs

1. Bridge Financing Program
2. Expansion Loan Program
3. Depop-Repop Loan Program
- Q. PEI Swine Quality Improvement Program

We are not including in our investigation the following programs alleged to benefit producers and exporters of the subject merchandise in Canada:

#### A. Alberta Agricultural Financial Services Corporation Financing: Farm Development Loan Program

According to the petition, the Farm Development Loan program is a Government of Alberta program that offers short, medium, and long-term loans to farmers in amounts up to C\$250,000 at a "reasonable cost."

The information relied upon by the petitioners in making this allegation related only to the Developing Farmer Loan Program (included above) and not to this program. We find that the petitioners did not provide sufficient evidence, as required by section 702(b) of the Act, that (1) this program was designed for the benefit of live swine producers, (2) swine producers were predominant users of the program, or (3) swine producers received disproportionate benefits under this program. Therefore, because the evidence provided is not sufficient to support the allegations of the elements necessary for the imposition of a countervailing duty imposed by section 701(a) of the Act, we are not investigating this program.

#### B. Manitoba Agricultural Credit Corporation Financing

##### 1. Direct Lending Program

The MACC Direct Lending Program is intended for the purchase of land or buildings, construction or renovation of farm buildings, breeding stock, debt consolidation, supply-managed quota, and share financing. Manitoba farmers whose annual off-farm income does not exceed C\$70,000 and whose net worth is C\$650,000 or less are eligible to obtain these loans. The maximum amount of the loans are C\$400,000 for individuals and joint farm units and C\$800,000 for partnerships, corporations, or cooperatives.

As we noted in the *Initiation Checklist*, the petitioners withdrew their allegation in regard to this program. See Memorandum from Team to File dated March 29, 2004, "Ex-Parte Meeting with Counsel for Petitioners: Antidumping and Countervailing Duty Petitions on Live Swine from Canada." Moreover, the petitioners did not provide sufficient evidence to support the

allegation. Therefore, we are not initiating an investigation of this program.

##### 2. Bovine Spongiform Encephalopathy ("BSE") Recovery Program

The BSE Recovery Program provides financing to Manitoba cattle and other ruminant producers to address feed purchase requirements and accounts payable which may otherwise jeopardize the continuity of the operation due to the impact of the detection of BSE in Canada. Qualified applicants must be ruminant producers and must demonstrate an agricultural-related financial setback as a consequence of BSE. Loans under this program are capped at C\$50,000 or C\$75,000 depending on whether a shorter or a longer-term loan is needed.

According to the program description, loans issued under this program are limited to ruminant producers only (e.g., cattle or sheep producers). Because swine producers are not ruminant producers, this program would not benefit subject merchandise production. Although the petitioners contend that, because Manitoba's hog producers have been adversely impacted by BSE, this program may have been extended to swine producers, the petitioners do not provide sufficient evidence, beyond mere speculation, to support this allegation. Therefore, because the petitioners have not met the requirements of section 702(b) of the Act, we are not initiating an investigation of this program.

#### C. Saskatchewan Farm Fuel Program

Under this program, farmers in Saskatchewan are eligible to purchase farm gasoline and propane, as well as marked diesel fuel, tax free from bulk dealers. To qualify for the fuel tax exemption, an individual must have a Fuel Tax Exemption Permit number issued by the Farm Fuel Program and must present that number when making a purchase. Farmers can also obtain the fuel tax rebate on farm gasoline and propane purchased from a retail outlet by applying for the rebate at the end of each year and submitting their fuel purchase receipts.

The petitioners claim that this program is *de facto* specific according to sections 771(5A)(D)(iii)(II) and (III) of the Act because live swine producers are the predominant users of this program and receive a disproportionate share of the program's benefits. According to record information and the description of the program itself, it appears that benefits through this program are available to all farmers in Saskatchewan. The petitioners have not

adequately supported their claims that swine producers received a disproportionate share of the farm fuel tax exemptions or that swine producers are the predominant users of the program. Because the petitioners have not sufficiently supported their claims regarding the specificity of this program, we are not including this program in our investigation.

#### Distribution of Copies of the Petition

In accordance with section 702(b)(4)(A)(i) of the Act, a copy of the public version of the petition has been provided to the GOC. We will attempt to provide a copy of the public version of the petition to each exporter named in the petition, as provided for under 19 CFR 351.203(c)(2).

#### ITC Notification

We have notified the ITC of our initiation, as required by section 702(d) of the Act.

#### Preliminary Determination by the ITC

The ITC will preliminarily determine, within 25 days after the date on which it receives notice of this initiation, whether there is a reasonable indication that imports of live swine from Canada are causing material injury, or threatening to cause material injury, to a U.S. industry. See section 703(a)(2) of the Act. A negative ITC determination will result in the investigation being terminated; otherwise, these investigations will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: April 7, 2004.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

#### United States and Foreign Commercial Service; United States Commercial Center in Shanghai. Notice of Availability of Office Space on a User-Fee Basis for the Period May 2004 to June 2005

**AGENCY:** United States and Foreign Commercial Service (the US&FCS).

**ACTION:** Notice.

**Authority:** 15 U.S.C. 4723a.

**SUMMARY:** The US&FCS operates a United States Commercial Center in Shanghai, China (the Shanghai USCC).