members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that you forward your public presentation materials two weeks prior to the meeting to Lee Ann Carpenter at *Lcarpent@bis.doc.gov* For more information, please call Ms. Carpenter on (202) 482–2583.

Dated: August 18, 2004.

Lee Ann Carpenter,

Committee Liaison Officer.

[FR Doc. 04–19273 Filed 8–20–04; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–851]

Preliminary Negative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination: Live Swine From Canada

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

ACTION: Notice of preliminary negative countervailing duty determination and alignment of final countervailing duty determination with final antidumping duty determination.

SUMMARY: The Department of Commerce preliminarily determines that countervailable subsidies are not being provided to producers or exporters of live swine from Canada. We are also aligning the final determination in this investigation with the final determination in the companion antidumping duty investigation of live swine from Canada.

DATES: Effective August 23, 2004.

FOR FURTHER INFORMATION CONTACT: Melani Miller or S. Anthony Grasso, Office of Antidumping/Countervailing Duty Enforcement, Group 1, Import Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0116 and (202) 482–3853, respectively.

Petitioners

The petitioners in this investigation are the Illinois Pork Producers Association, the Indiana Pork Advocacy Coalition, the Iowa Pork Producers Association, the Minnesota Pork Producers Association, the Missouri Pork Association, the Nebraska Pork Producers Association, Inc., the North Carolina Pork Council, Inc., the Ohio Pork Producers Council, and 119 individual producers of live swine [1] (collectively, ''the petitioners'').

Case History

The following events have occurred since the publication of the notice of initiation in the **Federal Register**. *See Notice of Initiation of Countervailing Duty Investigation: Live Swine From Canada,* 69 FR 19818 (April 14, 2004) (''*Initiation Notice*'').

On May 3, 2004, the Government of Canada (''GOC'') notified the Department of Commerce (''the Department'') that certain programs under investigation in this proceeding were not countervailable because they qualified for ''green box'' status under Article 13 and Annex 2 of the World Trade Organization (''WTO'') Agreement on Agriculture (''Agriculture Agreement''). *See also* section 771(5B)(F) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act effective January 1, 1995 (''the Act''), and 19 CFR 351.522. On May 6, 2004, the petitioners submitted comments on the GOC's green box filing. *See infra,* section on ''Green Box Claims.''

On May 4, 2004, the Department received a request from the GOC to amend the scope of this investigation to exclude hybrid breeding stock. On August 4, 2004, the petitioners submitted comments on the proposed exclusion. On August 9, 2004, both the respondent companies (identified below) and the GOC responded to the petitioners' August 4, 2004 submission. The petitioners filed further comments on August 12, 2004. *See infra,* section on ''Scope Comments.''

On May 5, 2004, we issued the countervailing duty (''CVD'') questionnaires in this proceeding. Due to the large number of producers and exporters of live swine (''swine'' or ''subject merchandise'') in Canada, we decided to limit the number of respondents. *See* May 4, 2004 memorandum to Jeffrey May entitled *Respondent Selection or Aggregation* (''*Respondent Selection Memo*''), which is on file in the Department's Central Records Unit in Room B–099 of the main Department building (''CRU''). As discussed in the *Respondent Selection Memo,* we issued questionnaires to producer/exporters Premium Pork Canada Inc. (''Premium'') and Hytek Ltd. (''Hytek''), as well as the two largest suppliers of each M & F Trading Inc. (''M&F''), Maximum Swine Marketing (''Maximum''), and Excel Swine Services (''Excel'') (all of which are trading companies or cooperatives). Thus, in addition to Hytek and Premium, the Department issued questionnaires to Hart Feeds Limited (''Hart''), Elite Swine Inc. (''Elite'')/ Maple Leaf Foods Inc. (''Maple Leaf'') (collectively, ''Maple Leaf/Elite''), Sureleen-Albion Agra Inc. (''Sureleen'')/ Bujet Sow Group (''BSG''), Park View Colony Farms Ltd. (''Park View''), and Willow Creek Colony Ltd. (''Willow Creek''). We also issued separate questionnaires to M&F, Maximum, and Excel in order to confirm that they did not receive any of the subsidies alleged in this investigation.

In our questionnaire that was issued to the GOC on May 5, 2004, we indicated that, because the company respondents' operations were located only in Manitoba, Ontario, Saskatchewan, and Alberta according to record information, we were limiting our requests for information to GOC programs, joint federal/provincial

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

programs, and provincial programs relating to these four provinces only and were not requesting information about programs administered by New Brunswick, Prince Edward Island (''PEI''), or Quebec which were included in our initiation. On May 19, 2004, all of the above company respondents confirmed that none of their companies that could be considered to be ''cross-owned'' under 19 CFR 351.525(b)(6)(vi) were located in New Brunswick, PEI, or Quebec. (Maple Leaf/Elite filed follow-up comments on its May 19, 2004 submission on May 28, 2004.) Thus, we have not investigated the following programs included in our *Initiation Notice:* Quebec Farm Income Stabilization Insurance/Agricultural Revenue Stabilization Insurance Program, La Financiere Agricole du Quebec Loans (Preferred Rate Loans, Secure Rate Development Loans, and Advantage Rate Loans), New Brunswick Livestock Incentive Program, PEI Hog Loan Programs (Bridge Financing Program, Expansion Loan Program, and Depop-Repop Loan Program), and PEI Swine Quality Improvement Program.

On May 21, 2004, we published a postponement of the preliminary determination in this investigation until August 16, 2004. *See Live Swine From Canada: Postponement of Preliminary Countervailing Duty Determination,* 69 FR 29269 (May 21, 2004).

We received responses to the Department's questionnaire from the companies on June 18, June 30, and July 2, 2004; and from the GOC (which included responses from the Governments of Alberta, Manitoba (''GOM''), and Saskatchewan (''GOS'')) on June 30, 2004. On July 13, 2004, the petitioners submitted comments regarding these questionnaire responses. The Department issued supplemental questionnaires to the governments and the companies in June and July 2004 and received responses to those questionnaires in July and August 2004.

In their July 13, 2004 comments on the questionnaire responses, the petitioners submitted a new subsidy allegation. Specifically, the petitioners claimed that information from the Ontario Pork Production Marketing Board submitted in the companion antidumping duty (''AD'') case to this proceeding indicated that the provincial marketing boards have been the recipients of large government subsidies to the pork industry. Under 19 CFR 351.301(d)(4)(A), new subsidy allegations are due no later than 40 days prior to a preliminary determination, a deadline which had passed by July 7, 2004. Therefore, this allegation is untimely. Beyond the untimeliness of this allegation, the petitioners have not identified a financial contribution or a benefit provided by the GOC or any of the provincial governments to any of the respondents in this proceeding pursuant to sections 771(5)(D) and (E) of the Act. The provincial marketing boards to which the petitioners' allegation relates are not respondents in the CVD proceeding. Moreover, the petitioners have not alleged that any program through which benefits were conferred was specific according to section 771(5A) of the Act. Consequently, the petitioners have not properly alleged the elements necessary for the imposition of countervailable duties as required by section 701(a) of the Act and we have no basis to initiate an investigation with regard to this allegation. Finally, we note that, even if the allegation were timely and the elements of a countervailable subsidy were properly alleged, we would not examine the alleged subsidy because the Ontario Pork Production Marketing Board is not a respondent in this proceeding. *See Respondent Selection Memo.*

On August 6 and August 9, 2004, respectively, the GOC and the petitioners submitted comments on the upcoming preliminary determination. The GOC submitted further comments on August 10, 2004.

Finally, on August 12, 2004, the petitioners requested that the Department align the final determination in this investigation with the final determination in the companion AD investigation of live swine from Canada. For further information, *see infra* section on ''Alignment with Final Antidumping Duty Determination.''

Period of Investigation

The period for which we are measuring subsidies, or the period of investigation (''POI''), is calendar year 2003.

Scope of Investigation

The merchandise covered by this investigation is all live swine from Canada except breeding stock 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 domesticus.* This merchandise is currently classifiable under *Harmonized Tariff Schedule of the United States* (''*HTSUS*'') subheadings 0103.91.00 and 0103.92.00.

Specifically excluded from this scope are breeding stock, including U.S. Department of Agriculture (''USDA'') certified purebred breeding stock and all other breeding stock. The designation of the product as ''breeding stock'' indicates the acceptability of the product for use as breeding live swine. This designation is presumed to indicate that these products are being used for breeding stock only. However, should the petitioners or other interested parties provide a reasonable basis to believe or suspect that there exists a pattern of importation of such products for other than this application, end-use certification for the importation of such products may be required.

Although the *HTSUS* headings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Scope Comments

In the *Initiation Notice,* we invited comments on the scope of this proceeding. As noted above, on May 4, 2004, we received a request from the GOC to amend the scope of this investigation and the companion AD investigation. Specifically, the GOC requested that the scope be amended to exclude hybrid breeding stock. According to the GOC, domestic producers use hybrid breeding stock instead of purebred stock to strengthen their strains of swine. The GOC stated that no evidence was provided of injury, or threat of injury, to the domestic live swine industry from the importation of hybrid breeding stock. Furthermore, the GOC noted that the petition excluded USDA certified purebred breeding swine from the scope of the above-mentioned investigations. The GOC argued that the documentation which accompanies imported hybrid breeding swine makes it easy to distinguish hybrid breeding swine from other live swine.

On August 4, 2004, the petitioners submitted a response to the GOC's scope exclusion request and proposed modified scope language. The petitioners stated they do not oppose the GOC's request to exclude hybrid breeding stock, but are concerned about the potential for circumvention of any AD or CVD order on live swine from Canada through non-breeding swine entering the domestic market as breeding stock. Thus, the petitioners proposed modified scope language that would require end-use certification if the petitioners or other interested parties provide a reasonable basis to believe or suspect that there exists a pattern of importation of such products for other than this application. Moreover, on July 30, 2004, the petitioners submitted a request to the International Trade Commission (''ITC'') to modify the *HTSUS* by adding a

statistical breakout that would separately report imports of breeding animals other than purebred breeding animals, allowing the domestic industry to monitor the import trends of hybrid breeding stock.

On August 9, 2004, both the GOC and the respondent companies submitted comments to respond to the petitioners' proposed revised scope. Both the GOC and the respondent companies stated that they generally agree with the petitioners' modified scope language, with the two following exceptions: (1) They contend that the petitioners' language setting forth the mechanics of any end use certification procedure is premature and unnecessary, and (2) they argue that the petitioners' language stating that ''all products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope'' is unnecessary because the physical description of the merchandise in scope remains determinative.

On August 12, 2004, the petitioners submitted a response to the August 9, 2004 comments from the GOC and the respondents. The petitioners reiterated their support for their proposed modification to the scope language. They argued that (1) their proposed language has been used before by the Department in other proceedings; (2) since U.S. importers bear the burden of paying the duties, the importers should be required to certify to the end use of the product; and (3) with the petitioners' concerns about circumvention, the ''physical description'' language provides an important clarification that all live swine except for the excluded products are included in the scope.

As further discussed in the August 16, 2004 memorandum entitled ''*Scope Exclusion Request: Hybrid Breeding Stock*'' (on file in the Department's CRU), we have preliminarily revised the scope in both the CVD and companion AD proceedings based on the above scope comments. The revised scope language is included in the ''Scope of Investigation'' section, above.

Injury Test

Because Canada is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, the ITC is required to determine whether imports of the subject merchandise from Canada materially injure, or threaten material injury to, a U.S. industry. On May 10, 2004, the ITC transmitted to the Department its preliminary determination that there is a reasonable indication that an industry in the United States is being materially injured by reason of imports from Canada of the subject merchandise. *See Live Swine From Canada,* 69 FR 26884 (May 14, 2004).

Alignment With Final Antidumping Duty Determination

On August 12, 2004, we received a request from the petitioners to postpone the final determination in this investigation to coincide with the final determination in the companion AD investigation of live swine from Canada.

The companion AD investigation and this countervailing duty investigation were initiated on the same date and have the same scope. *See Initiation Notice* and *Notice of Initiation of Antidumping Investigation: Live Swine from Canada,* 69 FR 19815 (April 14, 2004). Therefore, in accordance with section 705(a)(1) of the Act, we are aligning the final determination in this investigation with the final determination in the companion AD investigation of live swine from Canada.

Green Box Claims

According to section 771(5B)(F) of the Act, domestic support measures that are provided with respect to products listed in Annex 1 of the WTO Agriculture Agreement, and that the Department determines conform fully to the provisions of Annex 2 of that same agreement, shall be treated as noncountervailable. The Department's regulations at 19 CFR 351.522(a) further elaborate, stating that the Department will determine that a particular domestic support measure conforms fully to the provisions of Annex 2 if the Department finds that the measure (1) is provided through a publicly-funded government program (including government revenue foregone) not involving transfers from consumers; (2) does not have the effect of providing price support to producers; and (3) meets the relevant policy-specific criteria and conditions set out in paragraphs 2 through 13 of Annex 2. According to 19 CFR 351.301(d)(6), a claim that a particular agricultural support program should be accorded ''green box'' status under section 771(5B)(F) of the Act must be made by the competent government with the full participation of the government authority responsible for funding and/or administering the program.

As noted above, on May 3, 2004, the GOC notified the Department that certain programs under investigation in this proceeding qualified for green box treatment. Specifically, the GOC has requested green box treatment for the following programs: the Canadian Farm Income Program (''CFIP'')/Agricultural Income Disaster Assistance (''AIDA'') Program, the Alberta Hog Industry Development Fund, the Producer Assistance 2003 Program/Canadian Agricultural Income Stabilization (''CAIS'') Program, and a portion of the Transitional Assistance Program. In its notification, the GOC indicated that, in accordance with 19 CFR 351.301(d)(6), it was filing these claims with the full participation of the provincial governments that share in the funding and/or administration of the programs for which the green box claims were made.

The green box issues with respect to the CFIP/AIDA Program and the Transitional Assistance Program are discussed in the relevant program-specific sections, below. However, because we have preliminarily found that the Alberta Hog Industry Development Fund and the Producer Assistance 2003 Program/CAIS Program were not used during the POI, we have not addressed the issue of whether these two programs should be accorded green box status in this preliminary determination.

Subsidies Valuation Information

Allocation Period

The average useful life (''AUL'') period in this proceeding as described in 19 CFR 351.524(d)(2) would be three years according to the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System. No party in this proceeding has disputed this allocation period.

Attribution of Subsidies

The Department's regulations at 19 CFR 351.525(b)(6)(i) state that the Department will normally attribute a subsidy to the products produced by the corporation that received the subsidy. However, 19 CFR 351.525(b)(6) directs that the Department will attribute subsidies received by certain other companies to the combined sales of those companies if (1) cross-ownership exists between the companies and (2) the cross-owned companies produce the subject merchandise, are a holding or parent company of the subject company, produce an input that is primarily dedicated to the production of the subject merchandise, or transfer a subsidy to a cross-owned company.

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. This section of the Department's regulations

states that this standard will normally be met where there is a majority voting interest between two corporations or through common ownership of two (or more) corporations. The *Preamble* to the Department's regulations further clarifies the Department's cross-ownership standard. (*See Countervailing Duties; Final Rule,* 63 FR 65348, 65401 (November 25, 1998) (''*Preamble*'').) According to the *Preamble,* relationships captured by the cross-ownership definition include those where

> the interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same way it can use its own assets (or subsidy benefits) * * * Cross-ownership does not require one corporation to own 100 percent of the other corporation. Normally, cross-ownership will exist where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) or a ''golden share'' may also result in cross-ownership.

Thus, the Department's regulations make clear that the agency must look at the facts presented in each case in determining whether cross-ownership exists.

Furthermore, the Court of International Trade (''CIT'') has upheld the Department's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits. *See Fabrique de Fer de Charleroi* v. *United States,* 166 F.Supp 2d, 593, 603 (CIT 2001).

The responding companies in this investigation have presented the Department with novel situations in terms of the relationships that exist between the exporters and their suppliers. Our preliminary findings regarding cross-ownership and attribution for individual respondents follow.

Maple Leaf/Elite: Elite is a live swine management and marketing company. It is a wholly-owned subsidiary of Maple Leaf, a Canadian food processing company, and is part of Maple Leaf's Agribusiness Group (one of Maple Leaf's three main operating groups, along with the Meat Products and Bakery Products groups).

In addition to Elite, Maple Leaf has other wholly-owned operating subsidiaries that are involved in the production of live swine, including Shur-Gain and Landmark Feeds Inc. (''Landmark''). These companies produce and sell animal feed and nutrients, including animal feed for swine production. Additionally, in September 2003, Maple Leaf signed an agreement to purchase the Schneider Corporation (''Schneider''), a Canadian food processing company. The acquisition of Schneider was not concluded until April 2004, subsequent to the POI. Finally, certain of Maple Leaf's wholly-owned subsidiaries have ownership positions in companies involved in the production of live swine. (For a more detailed discussion of these equity investments, whose details are proprietary, *see* the August 16, 2004 memorandum entitled ''Attribution Issues'' (''*Attribution Issues Memo*'') (which is on file in the Department's CRU).)

Maple Leaf/Elite has reported that no subsidies were received by Maple Leaf, Elite, Shur-Gain, and Landmark. Therefore, there are no benefits to these companies that require attribution. With regard to Schneider, because this company's purchase was not completed until after the POI, we are preliminarily not including subsidies received by Schneider or Schneider's sales in our subsidy calculations. Also, for the reasons explained in the *Attribution Issues Memo,* we are not finding cross-ownership with respect to the companies owned, in part, by Maple Leaf subsidiaries other than Elite.

Turning to Elite, as noted above, Elite is the principal operating subsidiary of Maple Leaf involved in live swine production. Elite holds an equity position in Genetically Advanced Pigs of Canada (Inc.) (''GAP''), a company which provides genetic services to Elite's suppliers and to other hog producers. Maple Leaf/Elite has reported that GAP received no subsidies. Therefore, we do not need to determine whether cross-ownership exists between Maple Leaf/Elite and GAP.

Elite also has equity positions in many of its suppliers and, depending on the supplier, may also provide operations and/or financial management services. The details of these relationships are proprietary and are discussed further in the *Attribution Issues Memo.*

For purposes of this preliminary determination, we are finding cross-ownership between Maple Leaf/Elite and those suppliers in which Elite both owns shares and provides operations and/or financial management. *See Attribution Issues Memo.* Consequently, we are attributing the subsidies received by these companies to their combined sales.

Hytek: Hytek presents itself as a group of companies, including production operations, feed mills, genetics companies, and marketing companies, that are involved in swine production and sales. Hytek, which was created in 1994 by a small ownership group, has expanded its operations over time and has added new companies to the group each time an expansion occurred. In 2002, the ownership group reorganized its operations in order to simplify the company structure. In addition to the companies within the Hytek group, Hytek uses several contract suppliers in its production and sales of live swine. Hytek has no ownership in or control over these companies, which provide products or services to Hytek on a contract basis.

Hytek has some level of equity interest in all of the companies within the Hytek group. According to Hytek, production and supply among group companies is captive based on long-term, exclusive contracts; most Hytek group companies sell their production to, or purchase their supplies from, Hytek and do business only with companies in the Hytek group. (The distribution companies are one exception to this.) Hytek makes all management decisions regarding the operations of the companies in the group, including what genetics are used, where and when the pigs move throughout the group, how they are raised and fed, and what veterinary services are used. Hytek managers and employees monitor barn management for the entire group and direct the operations of the group companies. Hytek also supplies all feed to the sow and finishing operations.

Financial management of the companies within the group is largely centralized at the Hytek headquarters. A common accounting system for the companies is maintained on the Hytek server, with most of the books and finances managed by Hytek. All financial and company records are kept on Hytek's server. Employees throughout the group are paid through a payroll system on Hytek's server, and Hytek does the banking for almost all of the group companies.

Whether we treat the Hytek group companies individually or collectively would not affect the results in this preliminary determination because, either way, the countervailable subsidy rates for the companies in the Hytek group are *de minimis.* Therefore, we have accepted Hytek's characterization of these companies as a group. Hytek reported its responses that almost all production in the Hytek system was sold to Hytek and/or its marketing

companies for resale. Therefore, we are attributing any subsidies received only to the combined sales of Hytek and its marketing companies. *See also Attribution Issues Memo.*

Premium: Premium consists of a group of companies organized into one system dedicated primarily to the production and sale of live swine. This production system has the following units: operations, multiplication, genetics, and commercial sow barns. The companies of the Premium group are contractually bound to each other through management contracts with Premium and production contracts with the operating companies of the Premium group. In addition, certain group companies manage the overall operations, sales, logistics, customer relations, exports, invoicing, accounting, and financing for the group. Premium is related with each of the companies in the group through direct ownership and/or common shareholders, officers, and directors. The details of these relationships are proprietary and are discussed further in the *Attribution Issues Memo.*

As discussed in the *Attribution Issues Memo,* Premium has reported sales for the Premium group of companies, not for the individual companies that make up the Premium group. Therefore, for purposes of this preliminary determination, we are not able to calculate countervailable subsidy rates on an individual company basis and are accepting Premium's characterization of these companies as a group consistent with our treatment of other respondents who produce live swine as an integrated production unit. Because Premium reported in its responses that almost all production in the Premium system was sold to Premium's operating companies for resale, we are attributing any subsidies received only to the combined sales of these operating companies.

BSG: BSG is a production cooperative made up of ten family-owned farms organized around a local management company, Sureleen. There is no common ownership or shared board members among the eleven BSG companies. There are no contracts or agreements establishing the terms of the BSG arrangement. Instead, BSG's operations are conducted based on verbal agreements among the members.

The members of BSG use a common genetic line and multiplier barn, which ensures a uniform stock of swine among the farms of BSG. As noted above, the members of BSG are linked by common management under Sureleen. Specifically, Sureleen coordinates production, distribution, marketing, and pricing on behalf of the group. Sureleen organizes all bulk purchases of vaccines and makes available to the other BSG members goods such as feed ingredients, tattoo supplies, and other farm supplies. Sureleen also works with the other BSG members to fill in open spaces in the farrowing schedule. Sureleen collects the revenue from sales and allocates the pooled profits to each member on the basis of pigs supplied.

Whether we treat the BSG companies individually or collectively would not affect the results in this preliminary determination because, either way, the countervailable subsidy rates for the companies in the BSG group are *de minimis*. Therefore, we have accepted BSG's characterization of these companies as a group and have attributed subsidies received by the BSG group companies to the combined sales of those companies.

Hart: Hart is primarily engaged in the manufacture and marketing of livestock feed and, as discussed further below, is also involved in the production of live swine. Hart is a wholly-owned subsidiary of Unifeed Limited (''Unifeed''), which is also primarily a livestock feed producer. Unifeed, in turn, is a wholly-owned subsidiary of the United Grain Growers Inc., a grain handling and merchandising, crop production services, and livestock feed and services company which operates under the name of Agricore United (''AU''). AU also has an equity ownership interest in the Puratone Corporation (''Puratone''), a commercial hog and feed producer. Hart, Unifeed, and Puratone together comprise AU's livestock division.

Hart has reported that neither it nor Unifeed received subsidies during the POI. Therefore, there are no benefits to these companies that require attribution.

With regard to Puratone, Hart claims that cross-ownership does not exist with this company. AU has a minority equity interest in Puratone, and no other AU company has an equity interest in Puratone. Similarly, Puratone has no equity interest in any AU companies. AU has only two of six representatives on Puratone's six-person board. Neither AU nor any other company in the AU group supplies feed or live swine to, or purchases swine from, Puratone. Finally, Puratone's operations are in open competition with Hart's operations. Based on the above information, we preliminarily determine that cross-ownership does not exist with regard to Puratone because there is no indication that Hart, Unifeed, or AU can use or direct the assets of Puratone in the same way in which they can use their own assets (*see* 19 CFR 351.525(b)(6)(vi)).

The swine sold by Hart are produced by two swine production groups, the Pro Vista Group and the Russ Fast Group. Companies within the Pro Vista Group are in the business of producing weanlings. The Russ Fast Group companies are dedicated to feeding weanling pigs. Hart does not have an equity interest in any of the ProVista or Russ Fast group companies and does not share or appoint managers or board members for either one of these groups. Instead, their relations are governed by long-term contracts and other mechanisms. The details of these relationships are proprietary and are discussed further in the *Attribution Issues Memo.*

Whether we treat the Hart group companies individually or collectively would not affect the result in this preliminary determination because, either way, the countervailable subsidy rates for the companies in the Hart group are *de minimis*. Therefore, we have accepted Hart's characterization of these companies as a group and have attributed subsidies received by the Hart group companies to the combined sales of those companies.

Park View: Park View, a producer of the subject merchandise, has responded on behalf of itself and the other companies in its group, *i.e.*, the Park View Colony of Hutterian Brethren Trust (''the Trust''), Mountain View Holding Co. Ltd., Beresford Creek 93 Ltd., and P.V. Hogs Ltd. All of the Park View companies are wholly-owned by the Trust. We have thus attributed the subsidies received by these entities to their combined sales. *See* 19 CFR 351.525(b)(6).

Willow Creek: Willow Creek, a producer of the subject merchandise, has responded on behalf of itself and the other companies in its group, *i.e.*, Willow Creek Colony of Hutterian Brethren Trust (''the Trust''), Willow Creek Holding Co. Ltd., Stoney Hill 93 Ltd., and Canuck Trailer Manufacturing Ltd. All of the Willow Creek companies are wholly-owned by the Trust. We have thus attributed the subsidies received by these entities to their combined sales. *See* 19 CFR 351.525(b)(6).

Benchmarks for Loans

Pursuant to 19 CFR 351.505(a), the Department will use the actual cost of comparable borrowing by a company as a loan benchmark, when available. According to 19 CFR 351.505(a)(2), a comparable commercial loan is one that, when compared to the loan being examined, has similarities in the structure of the loan (*e.g.*, fixed interest rate v. variable interest rate), the maturity of the loan (*e.g.*, short-term v.

long-term), and the currency in which the loan is denominated. In instances where a respondent has no comparable commercial loans to use as a benchmark, 19 CFR 351.505(a)(3)(ii) allows the Department to use a national average interest rate for comparable commercial loans.

Companies being investigated in the instant proceeding reported receiving both long-term fixed and variable-rate loans that were denominated in Canadian currency under certain of the programs being investigated (with the one exception noted below). As benchmarks, in accordance with 19 CFR 351.505(a), we used the actual cost of comparable borrowing by a company, when available. In instances where no comparable commercial loans had been taken out by the recipient, we used a national average interest rate for comparable commercial loans as provided for under 19 CFR 351.505(a)(3)(ii).

Where we relied on national average interest rates as benchmarks, for long-term fixed-rate loans, we used a simple average of the monthly long-term corporate bond rates published by the Bank of Canada (''BOC'') for the year in which the government loan was approved. For long-term variable-rate loans, we have used a previously verified benchmark interest rate charged by Canadian commercial banks on loans made to the farming sector. This rate is equal to the prime rate as published by the BOC plus one and one-half percentage points. *See, e.g., Final Negative Countervailing Duty Determination; Live Cattle from Canada*, 64 FR 57040, 57041 (October 22, 1999) (''*Cattle from Canada*'') and *Live Swine From Canada; Preliminary Results of Countervailing Duty Administrative Review,* 63 FR 23723, 23726 (April 30, 1998) (unchanged in *Live Swine From Canada; Final Results of Countervailing Duty Administrative Review,* 63 FR 47235, 47236 (September 4, 1998)).

For the Saskatchewan Short-Term Hog Loan Program (''STHLP''), we have treated the amounts outstanding during the POI as series of short-term loans. To measure the benefit from these loans, consistent with past proceedings, we used the prime rate as our short-term benchmark. *See, e.g., Final Affirmative Countervailing Duty Determinations: Certain Durum Wheat and Hard Red Spring Wheat from Canada,* 68 FR 52747 (September 5, 2003). Under 19 CFR 351.505(a)(2)(iv), we will normally use an annual average of short-term rates as our benchmark. However, because these loans are advances and repayments on individual lines of credit throughout the POI, we have preliminarily determined that use of monthly benchmarks will yield a more accurate calculation of the benefits.

Analysis of Programs

Based upon our analysis of the petition and the responses to our questionnaires, we determine the following:

I. Programs Preliminarily Determined To Be Countervailable

A. Farm Credit Canada Financing (''FCC''): Flexi-Hog Loan Program (''FHLP'')

The FHLP program, administered by the FCC, was established in May 2000. This program offered hog producers fixed or variable-rate, long-term loans with flexible repayment terms. Specifically, swine producers had the option of deferring their principal repayments for these loans for as much as one year up to three separate times during the life of the loan. These deferrals helped the swine producers to deal with market fluctuations and to manage temporary downturns. Interest payments were required to be made during these ''principal holidays'' and could not be deferred under the program. FHLP loans were available for terms of up to fifteen years for new facilities construction. The FHLP program was merged into the FCC's Flexi-Farm product in December 2003.

Both Hart and BSG companies reported that they had loans through this program that were outstanding during the POI.

We preliminarily determine that these loans are a direct transfer of funds within the meaning of section 771(5)(D)(i) of the Act. These loans are also specific as a matter of law within the meaning of section 771(5A)(D)(i) of the Act because they are limited to producers of live swine.

Finally, we preliminarily determine that a benefit exists for these loans pursuant to section 771(5)(E)(ii) of the Act and 19 CFR 351.505. In order to determine whether loans under this program conferred a benefit, we used our long-term fixed-rate or variable-rate loan methodology, depending on the terms of the reported loans. For long-term fixed rate loans given under this program, we found a difference between what the recipient would have paid on a benchmark loan during the POI and the amount paid on the government-provided loan (see 19 CFR 351.505(a)(1)). For long-term variable-rate loans, in accordance with 19 CFR 351.505(a)(5), we first compared the benchmark interest rate to the rate on the government-provided loan for the year in which the government loan terms were established, *i.e.*, the origination year. This comparison showed that the government loan provided a benefit. Accordingly, we preliminarily find that these loans confer countervailable subsidies pursuant to section 771(5) of the Act.

In order to calculate the countervailable subsidy rates, we divided the benefit received by each company during the POI by each company's total sales during the POI. To calculate the benefit from these loans, we computed the difference between the amount that would have been paid on the benchmark loans to the amounts actually paid on the government loans (*see* 19 CFR 351.505(c)(2) and (c)(4)). On this basis, we preliminarily determine the countervailable subsidy from the FHLP loans to be 0.14 percent ad valorem for Hart and 0.03 percent ad valorem for BSG.

B. Manitoba Agricultural Credit Corporation (''MACC'') Financing: Diversification Loan Guarantee (''DLG'') Program and Enhanced Diversification Loan Guarantee (''EDLG'') Program

MACC administers both the DLG and the EDLG programs. The DLG program was introduced in December 1995 and was terminated on March 31, 2001. The EDLG program replaced the DLG program on April 1, 2001. Both programs assist producers in diversifying their current operations and/or adding value to commodities produced on the farm.

The DLG program was initially open to all Manitoba individuals, corporations, partnerships, limited partnerships, and cooperatives engaged in agriculture production. In 1998, eligibility was extended to include non-residents of Manitoba that were Canadian citizens or permanent residents as long as the majority of care and control of the project was held by Manitoba agriculture producers. Under the DLG program, the GOM, through MACC, provided a loan guarantee for 25 percent of the principal provided by private sector lenders for the lesser of the term of the loan or 15 years. The maximum amount of money that a participant could borrow under this program was C$3,000,000. Additionally, the maximum number of shareholders permitted per project was 25.

The EDLG Program operates in much the same manner as the DLG Program with a few differences. Under the EDLG program, there are no limits on the amount of money that a participant in the program can borrow, and the limitation on the number of shareholders per project was eliminated.

However, applications for guarantees in excess of C$750,000 (25 percent of a C$3,000,000 loan) are subjected to additional review.

Hytek, Premium, and Hart companies all reported that they had loans that were guaranteed under these programs outstanding during the POI.

The GOM reported that hog farmers received approximately 62 to 73 percent of all guarantees given under the DLG and EDLG programs from 2000 through 2003. Based on this, we preliminarily determine that the swine industry received a disproportionate share of benefits from 2000 through 2003, and, consequently, that these programs are specific under section 771(5A)(D)(iii)(III) of the Act.

A loan guarantee is a financial contribution, as described in section 771(5)(D)(i) of the Act. Furthermore, these guarantees provide a benefit to the recipients equal to the difference between the amount the recipients of the guarantee pay on the guaranteed loans and the amount the recipients would pay for a comparable commercial loan absent the guarantee, after adjusting for guarantee fees. *See* section 771(5)(E)(iii) of the Act and 19 CFR 351.506. Therefore, we preliminarily determine that these loan guarantees are countervailable subsidies, to the extent that they lower the cost of borrowing, within the meaning of section 771(5) of the Act.

To calculate the benefit conferred by these programs, we used our long-term, fixed-rate or variable-rate loan methodology (depending on the terms of the reported loans) as specified in 19 CFR 351.505. *See* 19 CFR 351.506(a). To calculate the POI subsidy amount, we divided the total POI benefit from these loan guarantees for each company by each company's total sales during the POI.

On this basis, we preliminarily determine the countervailable subsidy from these programs to be 0.11 percent ad valorem for Hart, 0.03 percent ad valorem for Hytek, and 0.01 percent ad valorem for Premium.

C. Saskatchewan Short-Term Hog Loan Program

The STHLP was created by the GOS in October 2002 in order to assist Saskatchewan swine producers with high feed prices brought on by a severe drought in 2001 and 2002 and low market prices in 2002 and 2003. Under the program, hog producers could receive three-year, variable-rate loans that did not require repayment until either (1) hog prices rose above C$150 per hundred kilograms or (2) no later than May 1, 2004, with all loans and accrued interest going into repayment at that time. No payments were made on these loans by producers of mature hogs during the POI except during a single two-week period in June 2003; weanling producers began making continuous repayments starting at the time of the June 2003 trigger period.[2]

In order to receive loans through this program, producers were required to complete a single application for a loan similar to a line of credit. Once approved, the producers could then submit invoices on hogs marketed monthly between September 3, 2002 and April 30, 2003 to draw down on their approved loan, with interest on the draw-down amounts accumulating monthly. The individual draw-down amounts were per-hog amounts based on sales of either weanlings or mature hogs (defined as slaughter hogs or breeding hogs) only, with the loan amount differing depending on whether it was a mature hog or a weanling. The last date that a company could apply for benefits under the program was June 15, 2003, in connection with hogs sold prior to April 30, 2003.

Only companies that were part of the Hytek group had outstanding loans through this program during the POI.

We preliminarily determine that these loans are a direct transfer of funds within the meaning of section 771(5)(D)(i) of the Act. These loans are also specific as a matter of law within the meaning of section 771(5A)(D)(i) of the Act because they are limited to producers of mature and weanling hogs.

Because the recipients of these loans might have to begin repayment whenever the price of weanlings or mature hogs rose above pre-established trigger prices during the POI, we have preliminarily determined to treat the drawdowns taken during the POI as short-term loans that were rolled over each time new amounts were taken out or interest accumulated. Comparing the interest charged on these loans to the interest that would have been paid on a short-term benchmark loan, we preliminarily determine that the STHLP conferred a benefit on the recipients (*see* 19 CFR 351.505(a)(1)).

To calculate the POI subsidy amount, we divided the total POI benefit from these loans by Hytek's total sales of subject merchandise in the POI. On this basis, we preliminarily determine the countervailable subsidy from the STHLP loans to be 0.00 percent ad valorem for Hytek.

D. Saskatchewan Livestock and Horticultural Facilities Incentives Program (''LHFIP'')

The LHFIP was created by the GOS in June 1997 to rebate the provincial sales tax (''PST'') paid on construction materials and equipment for livestock and horticultural facilities. Specifically, this program allowed for an annual refund of the PST (which was called the education and health tax at the time of the program's creation) paid on building materials and stationary equipment used in livestock operations, greenhouses, or storage facilities for vegetables, raw fruits, medicinal plants, herbs and spices. The purpose of this program was to assist in the diversification of Saskatchewan's rural economy by encouraging investment and job creation.

In order to receive this tax rebate, producers in the above industries had to submit applications to the GOS along with all purchase receipts to verify the types of materials purchased and the amount of the PST paid at the time of the purchase. Once the GOS confirmed that the application was for materials for eligible facilities on which the PST had been paid, the GOS then refunded to the producer the amount of the PST paid. The LHFIP expired on December 31, 2003, and the last date on which a producer could apply for benefits under this program was June 30, 2004.

Only companies that were part of the Hytek group reported receiving assistance through the LHFIP during the POI.

The Department found that LHFIP tax rebates were countervailable subsidies in *Cattle from Canada* (*see* 64 FR 57040, 57047). Specifically, the Department found that the tax benefits under this program were financial contributions as described in section 771(5)(D)(ii) of the Act which provided a benefit to the recipient in the amount of the tax savings. Also, because the legislation establishing this program expressly limited the tax benefits to the livestock and horticulture industries, we determined that the program was specific under section 771(5A)(D)(i) of the Act. The facts on the record with respect to this program are the same as in *Cattle from Canada*.

In the instant proceeding, the GOS has claimed that the LHFIP is integrally linked to the tax exemptions permitted under the Provincial Sales Tax Act. According to 19 CFR 351.502(c), unless the Department determines that two or

[2] Repayment schedules during the POI were triggered only once during a two-week period from June 1, 2003 to June 15, 2003 when market prices for slaughter hogs exceeded the base of C$150 per hundred kilograms. After prices went back below the base rate, mature hog producers were again allowed to defer payments until the next time prices exceeded the base rate or until May 1, 2004; weanling producers were required to continue making repayments followign the trigger period.

more programs are integrally linked, the Department will determine the specificity of a program under section 771(5A)(D) of the Act solely on the basis of the availability and use of the program in question. This section of the Department's regulations states that the Department may find two or more programs to be integrally linked if (1) the subsidy programs have the same purpose; (2) the subsidy programs bestow the same type of benefit; (3) the subsidy programs confer similar levels of benefits on similarly situated firms; and (4) the subsidy programs were linked at inception. *See* 19 CFR 351.502(c).

Based on a review of record information, we preliminarily determine that the LHFIP and the tax exemptions permitted under the Provincial Sales Tax Act are not integrally linked. Under the Provincial Sales Tax Act, all agricultural producers are exempt from paying the PST on select inputs (*e.g.*, machinery and fertilizer) used in their production. In addition, livestock and horticultural operators receive PST refunds for materials used in the construction of new facilities. According to the GOS, this additional tax relief is given to livestock and horticultural operators because they do not benefit as much as other agricultural producers from the more broadly available tax exemption. Thus, the GOS is seeking to balance the treatment of all agricultural producers. Furthermore, the GOS deemed that it was too difficult to require that the vendors of construction materials identify if such purchases were for agricultural or non-agricultural use. Thus, the LHFIP was created to provide PST tax refunds on materials used to construct facilities for livestock and horticultural operators without requiring vendors to identify if the end-use of such facilities was for agricultural purposes.

In accordance with 19 CFR 351.502(c)(1), the subsidy programs must have the same purpose to qualify for integral linkage treatment. Because the LHFIP provides tax refunds to a subset of users that can obtain the tax exemptions permitted under the Provincial Sales Tax Act for an activity that does not qualify for a tax exemption in the Provincial Sales Tax Act (*i.e.*, the construction of facilities), the programs have different purposes.

Additionally, in accordance with 19 CFR 351.502(c)(3), integrally linked programs must confer similar levels of benefits on similarly situated firms. Under the LHFIP, tax refunds are available for livestock and horticultural operators who make specified purchases in conjunction with building facilities. While PST exemptions are available to numerous consumers for purchases of specified items, there is no exemption or rebates of the PST for other companies purchasing construction materials. Thus, similarly-situated firms, *i.e.*, those undertaking construction, are not receiving similar levels of benefits.

Based on the above analysis, we preliminarily find that these programs are not integrally linked in accordance with 19 CFR 351.502(c). Consistent with our findings in *Cattle from Canada*, discussed above, the current record indicates that the tax benefits under this program were financial contributions as described in section 771(5)(D)(ii) of the Act which provided a benefit to the recipient in the amount of the tax savings. Also, the legislation establishing this program expressly limited the tax benefits to the livestock and horticulture industries. Thus, based on the record evidence, which provided no new information that would cause us to depart from our previous determination on this program from *Cattle from Canada*, we preliminarily find that LHFIP tax rebates are countervailable subsidies within the meaning of section 771(5) of the Act.

In calculating the benefit, consistent with 19 CFR 351.524(c)(1), we treated the tax savings as a recurring benefit and divided the tax savings received during the POI by Hytek's total sales during the POI. On this basis, we determine that a countervailable benefit of 0.00 percent *ad valorem* exists for Hytek for this program.

II. Programs Preliminarily Determined To Be Not Countervailable

A. Canadian Farm Income Program/ Agricultural Income Disaster Assistance Program

The CFIP and the AIDA program provided income support to agricultural producers in Canada. The AIDA program was in effect only for the 1998 and 1999 tax years; the CFIP replaced the AIDA program in 2001, extending the assistance through the 2000, 2001, and 2002 tax years. These programs were national programs that were available in all provinces, and were jointly funded by the federal and provincial governments. The GOC directly administered these programs for producers in some provinces; in the remaining provinces, the provincial governments administered the programs on behalf of their own province (or another province) and the GOC. The last date that a company could apply for an AIDA program payment was September 29, 2000; the last date a company could receive an AIDA program payment was March 31, 2003 (except for appeals). The last date that a company could apply for a CFIP payment was October 13, 2003; the last date a company can receive a CFIP payment is March 31, 2005.

The purpose of these programs was to provide short-term income support to eligible applicants who, due to circumstances beyond their control, experienced a dramatic reduction in their farming income relative to previous years. To be eligible for these benefits, a producer's farming income for the year had to fall below 70 percent of the producer's average farming income level in a historical reference period (consisting of either the producer's average farming income over the three preceding years, or the average farming income in three of the preceding five years after eliminating the high and low years). Payments under the programs were intended to bring the producer's farming income back to 70 percent of the historical average, and were calculated by subtracting program year farming income from 70 percent of the historic average. If producers were also participating in the Net Income Stabilization Account (''NISA'') program,[3] program payments under these programs were reduced by an amount equivalent to three percent of the applicant's claim year eligible net sales in order to eliminate duplicate support payments.

All agricultural producers who filed a tax return with the Canada Customs and Revenue Agency (''CCRA''), had been actively engaged in farming for six consecutive months in the province for

[3] The Department examined the NISA program in both *Cattle from Canada*, 64 FR 57040, 57054, and *Live Swine from Canada; Final Results of Countervailing Duty Administrative Reviews*, 61 FR 52408, 52410 (October 7, 1996) *(''Live Swine 91/92, 92/93, 93/94 Review'')* and found that this program was neither *de facto* nor *de jure* specific in accordance with section 771(5A) of the Act separately with respect to the cattle and live swine industries and, thus not countervailable. As described in *Cattle from Canada*, NISA is designed to stabilize an individual farm's overall financial performance through a voluntary savings plan. Farmers can deposit a portion of the proceeds from their sales of eligible, enrolled NISA commodities (up to three percent of net eligible sales) into individual savings accounts, receive matching government deposits, and make additional, non-matchable deposits, up to 20 percent of net sales. A producer can withdraw funds from a NISA account under a stabilization or a minimum income trigger. The stabilization trigger permits withdrawal when the gross profit margin from the entire farming operation falls below an historical average, based on the previous five years. If poor market performance of some products is offset by increased revenues from others, no withdrawal is triggered. The minimum income trigger permits the producer to withdraw the amount by which income from the farm falls short of a specific minimum income level.

which they were applying, and had completed one production cycle for an agricultural product could apply to receive funds under the CFIP and the AIDA program. In order to receive funds, participating producers were required to submit an application each time they wanted to receive a program payment. However, approval was automatic as long as the applicants met the eligibility criteria and the program requirements noted above and discussed in the program handbooks.

Hytek, Maple Leaf/Elite, BSG, and Park View companies all received funds through the CFIP during the AUL period. Hytek, Maple Leaf/Elite, BSG, Premium, Hart, and Park View companies all received payments under the AIDA program during the AUL period.

Under 19 CFR 351.524(c), the Department first looks to the illustrative list of recurring and non-recurring subsidies to determine whether a particular subsidy should be treated as recurring or non-recurring. Income support payments are not included in the illustrative list. Therefore, we have turned to the test described in 19 CFR 351.524(c)(2) for determining whether payments under CFIP and the AIDA program should be allocated over time or expensed in the year of receipt. First, although each program was in effect for a limited period of time, there is no information to suggest that agricultural income support payments would terminate. *See* 19 CFR 351.524(c)(2)(i). Second, according to the GOC, as long as producers met the pre-established eligibility criteria, discussed above, they could expect to receive additional subsidies under these program on an ongoing basis notwithstanding the fact that an application was required. *See* 19 CFR 351.524(c)(2)(ii). Finally, the subsidy was not provided to, or tied to, the recipients' capital structure or assets. *See* 19 CFR 351.524(c)(2)(iii). Thus, we have preliminarily determined that these programs are recurring subsidies under 19 CFR 351.524(a).[4]

Because none of the responding companies received AIDA benefits during the POI, we preliminarily find that no benefit was provided during the POI under the AIDA program. Thus, the AIDA program did not confer a countervailable subsidy.

With regard to the CFIP, we examined whether this program was specific within the meaning of section 771(5A) of the Act. As noted above, any agricultural producer who filed a tax return with the CCRA, had been actively engaged in farming for six consecutive months in the province for which it was applying, had completed one production cycle for an agricultural product, and whose farming income for the year fell below 70 percent of its average farming income level in a historical reference period could receive funds under this program. According to 19 CFR 351.502(d), the Department will not regard a domestic subsidy as being specific under section 771(5A)(D) of the Act solely because it is limited to the agricultural sector. Moreover, the funds provided under the CFIP were neither export subsidies nor import substitution subsidies according to sections 771(5A)(B) and (C) of the Act, nor is there any basis to find that assistance under the CFIP program is *de jure* specific within the meaning of section 771(5A)(D) of the Act.

We next examined whether the CFIP was *de facto* specific according to section 771(5A)(D)(iii) of the Act. Based on record information, thousands of Canadian farmers across many different agricultural sectors received benefits under the CFIP. Thus, CFIP recipients were not limited in number within the meaning of section 771(5A)(D)(iii)(I) of the Act. As noted above, eligibility was based on established criteria and receipt was automatic as long as the above-noted requirements were met. Thus, the criteria in section 771(5A)(D)(iii)(IV) of the Act are also not met.

We also examined the sectoral distribution of benefits under these programs within the agricultural community in accordance with sections 771(5A)(D)(iii)(II) and (III) of the Act. With regard to the usage data reported by the GOC for this program, the petitioners have argued that certain usage categories reported by the GOC were overly broad. The petitioners have also pointed to *Cattle from Canada,* where the Department found a program to be specific for certain years because the beef and pork industries together received a disproportionate share of the assistance provided under the program. *See Cattle from Canada,* 64 FR 57040, 57042. In light of this precedent, the petitioners argue that the Department should not examine hogs separately and should instead classify hogs together with other livestock.

We disagree with the petitioners' arguments and have based our specificity examination on the categories as they have been reported by the GOC. First, with regard to the categories that the petitioners claim are too broad, we have examined the record evidence and found that the types of category breakdowns used by the GOC in reporting usage data are used in the normal course of business and were not created for the purposes of this investigation. For example, we found in examining record evidence that the types of categories supplied by the GOC are also used in tax documents not related to these programs, program applications, annual reports, and other documents.

We also disagree with the petitioners' arguments that we should combine categories and make our determination based on whether ''livestock'' was a predominant user or a disproportionate beneficiary of this program. In *Cattle from Canada,* we examined specificity for the Farm Improvement and Marketing Cooperatives Guaranteed Loans (''FIMCLA'') program by looking at both hogs and cattle because, at the time, the FIMCLA administration did not keep separate records on the cattle industry and could not break out cattle separately. *See Cattle from Canada,* 64 FR 57040, 57042. Those categories are now separately broken out. Thus, our treatment of the FIMCLA program in *Cattle from Canada* should not be viewed as a preference for combining product categories and aggregating data. Indeed, as noted above, in that same case, the Department found that the NISA program was not *de facto* specific to cattle by examining cattle separately from other livestock. *See Cattle from Canada,* 64 FR 57040, 57054. Moreover, as also noted above, in a prior proceeding on live swine from Canada, the Department found that the NISA program did not benefit swine disproportionately. *See Live Swine 91/92, 92/93, 93/94 Review,* 61 FR 52408, 52410. Thus, where the data could be disaggregated, the Department has not combined different livestock categories for purposes of its specificity analysis.

Finally, according to data from Statistics Canada, swine producers collected 9.94 percent of total agricultural cash receipts in 2003. *See* the August 16, 2004 proprietary memorandum entitled ''Specificity Issues for Certain Programs: Canadian Farm Income Program, Farm Improvement and Marketing Cooperatives Guaranteed Loans, and Transitional Assistance'' (''*Specificity Memo*''), which is on file in the Department's CRU. Because this

[4] The petitioners have argued that the income support payments can be likened to coverage for operating losses and, hence, should be deemed non-recurring subsidies. We disagree with the petitioners' analogy because the payments under the AIDA program and the CFIP are not based on operating losses. Instead, they are based on income and, as such, may be more analogous to price support payments, which are included on the illustrative list as recurring benefits. In any case, because income support payments are not included in the illustrative list, we have based our decision on 19 CFR 351.524(c).

program is available to all agricultural producers, it may be reasonable to assume that the producers would receive benefits in amounts proportional to their role in the overall agricultural economy. In fact, based on the GOC's usage data, the swine industry actually receives less than 9.94 percent of the total benefits provided under this program.

The petitioners' claim and the Department's position are discussed further in the *Specificity Memo*.

Based on our analysis of the usage data for the CFIP (which is proprietary), we preliminarily find that the live swine industry was not a predominant user of the CFIP nor did it receive a disproportionately large share of the benefits under the CFIP. *See* sections 771(5A)(D)(iii)(II) and (III) of the Act. Thus, the CFIP is not *de facto* specific according to section 771(5A)(D)(iii). Consequently, because assistance under the CFIP is not specific as a matter of law or fact, we preliminarily determine that the CFIP does not confer a countervailable subsidy on live swine from Canada.

The GOC has claimed that both the CFIP and the AIDA program are entitled to green box treatment under section 771(5B)(F) of the Act and are, therefore, not countervailable. However, because we preliminarily determine that neither program conferred a countervailable subsidy during the POI, we have not addressed the GOC's claim.

B. Transitional Assistance Program

The Transitional Assistance program (also called Risk Management Funding), which was created in 2002, was a GOC-funded program that provided stop-gap assistance to the Canadian agricultural sector to transition producers from prior programs that had already expired (*e.g.*, CFIP and the AIDA program) to the CAIS Program, which was still in the process of being implemented.

Transitional Assistance was provided to producers in two tranches, each using a different delivery method. Most of the first tranche of funds was deposited into new or existing accounts held for producers under the NISA program; the remainder of the first tranche went to non-NISA participating producers in Quebec as direct payments. The tranche one Transitional Assistance funds were deposited into NISA fund two (the government contribution fund). Once deposited, the tranche one payments were indistinguishable from the other NISA fund two monies.[5] The second tranche of payments was made directly to producers. For administrative purposes, the payments were recorded as payments into and immediate withdrawals from NISA. However, unlike the first tranche, these payments were not subject to any NISA requirements and were paid directly to producers in the form of checks.

All agricultural producers were eligible to receive Transitional Assistance except those whose products are subject to supply management (dairy and poultry producers). Producers with existing NISA accounts did not need to apply to receive benefits because the information needed to calculate the Transitional Assistance could be obtained from the NISA database. NISA account holders automatically received their payments under tranches one and two. Producers that did not have NISA accounts had to open one to receive benefits, except for producers in Quebec; producers in Quebec that did not have a NISA account had to submit an application to receive benefits under this program.

The payment amounts for all producers were calculated as a percentage of eligible net sales (as computed under NISA) for the previous five years; for tranche one, the payment was 4.25 percent of the average of eligible net sales from 1997 through 2002, and for tranche two, the payment was 3.85 percent of the same sales for 1998 through 2003. Approval for benefits under this program was automatic if producers met the above-noted criteria. The last date that a company could apply for or claim a payment under this program was December 31, 2003.

Hytek, Maple Leaf/Elite, BSG, Premium, Willow Creek, Hart, and Park View companies all reported receiving funds through the Transitional Assistance Program during the AUL period.

As described above, producers of virtually all agricultural products were eligible to receive funds under this program. According to 19 CFR 351.502(d), the Department will not regard a domestic subsidy as being specific under section 771(5A)(D) of the Act solely because it is limited to the agricultural sector. Moreover, these Transitional Assistance funds were neither export subsidies nor import substitution subsidies according to sections 771(5A)(B) and (C) of the Act, nor is there any basis to find that Transitional Assistance is de jure specific within the meaning of section 771(5A)(D) of the Act.

Next, we examined whether Transitional Assistance was de facto specific according to section 771(5A)(D)(iii) of the Act. According to record information, thousands of Canadian farmers across many different agricultural sectors received Transitional Assistance. Thus, recipients of Transitional Assistance were not limited in number within the meaning of section 771(5A)(D)(iii)(I) of the Act. As noted above, eligibility was based on established criteria and receipt was automatic as long as the above-noted requirements were met. Thus, the criteria in section 771(5A)(D)(iii)(IV) of the Act are also not met.

Finally, we examined the sectoral distribution of benefits under these programs within the agricultural community in accordance with sections 771(5A)(D)(iii)(II) and (III) of the Act.[6] According to data on the distribution of benefits under this program across producers of different agricultural products, we preliminarily find that the live swine industry was not a predominant user of the Transitional Assistance program, nor did it receive a disproportionately large share of the benefits under the Transitional Assistance program. *See* sections 771(5A)(D)(iii)(II) and (III) of the Act. *See also* the *Specificity Memo* for our analysis of the proprietary usage data. Also, as noted above, while swine producers collected 9.94 percent of total agricultural cash receipts in 2003 their share of Transitional Assistance benefits was less than that. Thus, the Transitional Assistance program is not de facto specific under section 771(5A)(D)(iii) of the Act.

Consequently, because assistance under the Transitional Assistance Program is not specific as a matter of law or fact, we preliminarily determine that this program does not confer a countervailable subsidy on live swine from Canada. *See* section 771(5A) of the Act.

The GOC has claimed that the funds disbursed as part of tranche two of the Transitional Assistance Program are entitled to green box treatment under section 771(5B)(F) of the Act and are, therefore, not countervailable. However, because we preliminarily determine that Transitional Assistance does not provide a countervailable subsidy during the POI, we have not addressed the GOC's claim.

[5] NISA accounts consist of two funds. The first fund holds all producer deposits; the second fund holds all government matching contributions and earned interest. Withdrawals are taken first from fund two (the government matching funds) and then from fund one (the producer's own funds).

[6] The petitioners raised the same arguments as described above in connection with the CFIP and the AIDA program regarding the specificity of Transition Assistance. Our position is also described there.

C. Farm Improvement and Marketing Cooperatives Guaranteed Loans

Under FIMCLA, the GOC provides guarantees on loans extended by private commercial banks and other lending institutions to farmers across Canada. Enacted in 1987, the purpose of this program is to increase the availability of loans for the improvement and development of farms, and the marketing, processing, and distribution of farm products by cooperative associations. Pursuant to FIMCLA, any individual, partnership, corporation, or cooperative association engaged in farming in Canada is eligible to receive loan guarantees covering 95 percent of the debt outstanding for projects that are related to farm improvement or increased farm production. The maximum amount of money that an individual can borrow under this program is C$250,000. For marketing cooperatives, the maximum amount is C$3,000,000; however, any amount above C$250,000 is subject to prior approval by the GOC.

BSG, Premium, and Maple Leaf/Elite companies all had loans outstanding during the POI that were guaranteed under FIMCLA.

A loan guarantee is a financial contribution, as described in section 771(5)(D)(i) of the Act. Furthermore, these guarantees provide a benefit to the recipients equal to the difference between the amount the recipients of the guarantee pay on the guaranteed loans and the amount the recipients would pay for a comparable commercial loan absent the guarantee, after adjusting for guarantee fees. *See* section 771(5)(E)(iii) of the Act and 19 CFR 351.506. In order to determine whether this program conferred a benefit, we used our long-term fixed-rate or variable-rate loan methodology (depending on the terms of the reported loans) to compute the total benefit on the reported loans. *See* 19 CFR 351.505 and 19 CFR 351.506(a). We preliminarily determine that the guaranteed loans under this program taken out in 1997, 1998, 1999, 2000, and 2003 did not provide a benefit to the respondent companies. Therefore, we preliminarily determine that the FIMCLA loan guarantees issued on these loans do not provide a countervailable subsidy according to section 771(5)(B) of the Act. Because these loan guarantees did not confer a benefit on live swine from Canada during the POI, there was no need for the Department to further examine whether these guarantees were specific within the meaning of section 771(5A) of the Act.

The only other year for which respondents had FIMCLA-guaranteed loans was 2001. We preliminarily determine that these guarantees are not specific with regard to the swine industry in 2001 under section 771(5A)(D) of the Act. As described above, the FIMCLA program is available to any individual, partnership, corporation, or cooperative association that is engaged in farming in Canada. According to 19 CFR 351.502(d), the Department will not regard a domestic subsidy as being specific under section 771(5A)(D) of the Act solely because it is limited to the agricultural sector. Moreover, the guarantees under this program were neither export subsidies nor import substitution subsidies according to sections 771(5A)(B) and (C) of the Act, nor is there any basis to find that these guarantees were de jure specific within the meaning of section 771(5A)(D) of the Act.

Next, we examined whether this program was de facto specific with regard to the swine industry in 2001 according to section 771(5A)(D)(iii) of the Act. According to record information, thousands of Canadian farmers across many different agricultural sectors received guarantees under this program. Thus, recipients of these guarantees were not limited in number within the meaning of section 771(5A)(D)(iii)(I) of the Act. Eligibility was based on established criteria and was automatic as long as the eligibility criteria were met. Thus, the criteria in section 771(5A)(D)(iii)(IV) of the Act are also not met.

Finally, we examined the sectoral distribution of benefits under these programs within the agricultural community in accordance with sections 771(5A)(D)(iii)(II) and (III) of the Act.[7] According to data on the distribution of benefits under this program across producers of different agricultural products, we preliminarily find that the live swine industry was not a predominant user of the FIMCLA program in 2001, nor did it receive a disproportionately large share of the guarantees under the FIMCLA program in 2001. *See* sections 771(5A)(D)(iii)(II) and (III) of the Act. *See also* the *Specificity Memo* for our analysis of the proprietary usage data. In this connection, while swine producers collected 10.54 percent of total agricultural cash receipts in 2001, their share of FIMCLA guaranteed loans in 2001 was less than that. Thus, the FIMCLA program is not de facto specific with regard to the live swine industry in 2001 under section 771(5A)(D)(iii) of the Act.

Based on the above analysis, we find that FIMCLA loan guarantees did not confer a countervailable subsidy on live swine from Canada during the POI.

III. Programs Preliminarily Determined Not To Have Been Used

Based on the information provided in the responses, we determine no responding companies applied for or received benefits under the following programs during the POI:

A. *Producer Assistance 2003 Program/ Canadian Agricultural Income Stabilization Program*
B. *Farm Credit Canada Financing: Enviro-Loan Program*
C. *Alberta Agricultural Financial Services Corporation Financing: Developing Farmer Loan Program*
D. *Alberta Disaster Assistance Loan Program*
E. *Alberta Hog Industry Development Fund Program*
F. *Alberta Livestock Industry Development Fund Program*
G. *Ontario Bridge Funding Program*

In October 2002, the Government of Ontario (''GOO'') established the Ontario Bridge Funding Program to provide one-time transition funding to Ontario producers to assist them in making the transition from the former set of safety-net programs to the new CAIS program. All agricultural producers participating in NISA in 2001 were eligible for payments as long as their eligible net sales totaled at least C$2,985. Payments were made automatically to NISA participants; no application was required to receive funding under this program. Payments were made for all commodities except for supply-managed commodities (dairy and poultry) and were calculated at a rate of 0.335 percent of eligible net sales. Both Maple Leaf/Elite and BSG companies received funds under this program in 2002.

Pursuant to 19 CFR 351.524(b)(2), the Department will normally expense non-recurring benefits to the year in which benefits are received if the total amount approved under the program is less than 0.5 percent of relevant sales during the year in which the subsidy was approved. Moreover, according to 19 CFR 351.524(a), the Department will allocate (expense) a recurring benefit to the year in which the benefit is received. If benefits under this program were treated as recurring benefits, under 19 CFR 351.524(a), they would have been allocated to 2002, the year in

[7] The petitioners raised the same arguments as described above in connection with the CFIP and the AIDA program regarding the specificity of FIMCLA. Our position is also described there.

which the benefits were received, and would not have provided a benefit during the POI. If the Department treated these grants as non-recurring, because the amount of the bridge funding grants approved by the GOO for these companies under this program was less than 0.5 percent of each company's sales in the year in which the grants were approved, these grants would be expensed prior to the POI in accordance with 19 CFR 351.524(b)(2). Thus, regardless of whether they were treated as recurring or non-recurring, no countervailable benefit was provided to either Maple Leaf/Elite or BSG during the POI under this program.

Verification

In accordance with section 782(i)(1) of the Act, we will verify the information submitted by the respondents prior to making our final determination.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

In accordance with section 705(b)(3) of the Act, if our final determination is affirmative, the ITC will make its final determination within 75 days after the Department makes its final determination.

Public Comment

Case briefs for this investigation must be submitted no later than one week after the issuance of the last verification report. Rebuttal briefs must be filed within five days after the deadline for submission of case briefs. A list of authorities relied upon, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

Section 774 of the Act provides that the Department will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in this investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

This determination is published pursuant to sections 703(f) and 777(i) of the Act.

Dated: August 16, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–19278 Filed 8–20–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–002]

Continuation of Antidumping Duty Order: Chloropicrin From the People's Republic of China

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

ACTION: Notice of Continuation of Antidumping Duty Order: Chloropicrin from the People's Republic of China.

SUMMARY: As a result of the determination by the Department of Commerce (''the Department'') and the International Trade Commission (''Commission'') that revocation of this antidumping duty order would be likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States, the Department is publishing notice of the continuation of the antidumping duty order on chloropicrin from the People's Republic of China (''PRC'').

EFFECTIVE DATE: August 23, 2004.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW, Washington, DC 20230; telephone: (202) 482–5050.

SUPPLEMENTARY INFORMATION:

Background

On March 1, 2004, the Department initiated and the Commission instituted a sunset review of the antidumping duty order on chloropicrin from the PRC, pursuant to section 751(c) of the Tariff Act of 1930, as amended, (''the Act'').[1] As a result of its review, the Department found that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margins likely to prevail were the order revoked.[2]

On August 10, 2004, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on chloropicrin from the PRC would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[3]

Scope of the Order

The merchandise subject to this antidumping duty order is chloropicrin, also known as trichloronitromethane. A major use of the product is as a pre–plant soil fumigant (pesticide). Such merchandise is currently classifiable under Harmonized Tariff Schedule (''HTS'') item number 2904.90.50. The HTS item number is provided for convenience and customs purposes. The written description remains dispositive.

Determination

As a result of the determinations by the Department and the Commission that revocation of this antidumping duty order would likely lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty order on chloropicrin from the PRC. The effective date of continuation of this order will be the date of publication in the **Federal Register** of this Notice of Continuation. Pursuant to sections 751(c)(2) and 751(c)(6) of the Act, the Department intends to initiate the next five–year review of this order not later than July 2009.

---

[1] *See Initiation of Five-year (≥Sunset≥) Reviews*, 69 FR 9585 (March 1, 2004).

[2] *See Chloropicrin from the People's Republic of China; Final Results of the Expedited Sunset Review*, 69 FR 40601 (July 6, 2004).

[3] *See Chloropicrin from China*, 69 FR 48520 (August 10, 2004) and USITC Publication 3712 (August 2004), Investigation No. 731-TA-130 (Second Review).