## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–122–833]**

### Notice of Final Determination of Sales at Less Than Fair Value: Live Cattle From Canada

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

**EFFECTIVE DATE:** October 21, 1999.

**FOR FURTHER INFORMATION CONTACT:** Gabriel Adler or Steven Presing, Office of AD/CVD Enforcement 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1442 or (202) 482–5288, respectively.

**The Applicable Statute and Regulations**

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department of Commerce (the Department) regulations refer to the regulations last codified at 19 CFR part 351 (April 1998).

**Final Determination**

We determine that live cattle from Canada are being sold, or are likely to be sold, in the United States at less than fair value (LTFV), as provided in section 735 of the Act. The estimated margins are shown in the *Continuation of Suspension of Liquidation* section of this notice.

*Case History*

The preliminary determination in this investigation was issued on June 30, 1999. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Live Cattle from Canada,* 64 FR 36847 (July 8, 1999) (*Preliminary Determination*). Since the publication of this determination, the following events have occurred.

On July 12, 1999, respondent Schaus Land and Cattle Company (Schaus) filed a letter stating that it was ceasing its participation in this investigation. On July 16, 1999, the Department issued an amended preliminary determination, including a recalculated preliminary margin for Schaus that relied on data filed by the respondent on the eve of the issuance of the preliminary determination. *See Amended Antidumping Determination: Live Cattle from Canada,* 64 FR 39970 (July 23, 1999) (*Amended Preliminary Determination*). See also Schaus Sales Comment 1 (Facts Available), below.

In July 1999, we conducted on-site verifications of the questionnaire responses submitted by Cor Van Raay Farms Ltd. and Butte Grain Merchants Ltd. (Cor Van Raay); Pound-Maker Agventures, Ltd. (Pound-Maker); Riverside Feeders Ltd. and Grandview Cattle Feeders Ltd. (Riverside/Grandview); Jameson, Gilroy and B & L Livestock Ltd. (the JGL Group); and Groenenboom Farms, Ltd. (Groenenboom).

On August 13, 1999, we received case briefs from (1) the Ranchers-Cattlemen Action Legal Fund (R–CALF or the petitioners), (2) the Canadian Cattlemen's Association (CCA) and the named respondents in this investigation, and (3) the Free Market Beef Council (FMBC), an alliance of U.S. packers that import live cattle from Canada. On August 20, 1999, we received rebuttal briefs from the same parties. On August 30, 1999, the petitioners filed a letter alleging that Canadian producers of the subject merchandise were engaged in a scheme to reimburse importers for antidumping duty deposits relating to subject merchandise. We held a public hearing on September 1, 1999. At the hearing, the Department requested that parties submit comments regarding the allegation of reimbursement of duty deposits. The petitioners and the CCA filed such comments on September 10, 1999. *See* Sales Comment 3 (Reimbursement of Dumping Duty Deposits) below.

*Scope of Investigation*

The scope of this investigation covers live cattle from Canada. For purposes of this investigation, the product covered is all live cattle except imports of (1) bison, (2) dairy cows for the production of milk for human consumption, and (3) purebred cattle and other cattle specially imported for breeding purposes.

The merchandise subject to this investigation is classifiable as statistical reporting numbers under 0102.90.40 of the *Harmonized Tariff Schedule of the United States (HTSUS),* with the exception of 0102.90.40.10, 0102.90.40.72 and 0102.90.40.74. Although the *HTSUS* subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

*Period of Investigation*

The period of investigation (POI) is October 1, 1997, through September 30, 1998. This period corresponds to each respondent's four most recent fiscal quarters prior to the filing of the petition (*i.e.,* November 12, 1998).

*Fair Value Comparisons*

To determine whether sales of live cattle from Canada to the United States were made at less than fair value, we compared the export price (EP) to the normal value. Our calculations followed the methodologies described in the *Preliminary Determination*, except as noted below and in company-specific analysis memoranda dated October 4, 1999, which have been placed in the file.

*Export Price*

JGL Group

We did not rely on the U.S. sales data reported by Prairie Livestock, one of the three collapsed parties comprising the JGL Group. *See* JGL Group Comment 2 (Facts Available) below.

Pound-Maker

We used the live quantities as reported for Pound-Maker's home market sales (whereas in the preliminary determination, we had made an adjustment for ''negative shrink''). *See* Pound-Maker Comment 1 (Negative Shrink) below.

*Normal Value*

JGL Group

1. We excluded from the home market sales database certain paper transactions involving the ''sale'' and ''repurchase'' of cattle. *See* JGL Group Comment 1 below (Misreported Sales).

2. We did not rely on the home market sales data reported by Prairie Livestock, one of the three collapsed parties comprising the JGL Group. *See* JGL Group Comment 2 (Facts Available) below.

3. We did not add various reported income items to the reported gross unit price, as those income items were already included in the reported price. *See* JGL Group Comment 4 (Sales Revenue Items) below.

*Cost of Production*

JGL Group

We increased JGL's reported acquisition cost to reflect the producers' cost of production (COP), by applying the ratio of the five suppliers' aggregate net loss on cattle over their net cattle revenues. *See* Cost Issues, JGL Group Comment 1 (Traded Cattle) below.

Pound-Maker

1. We adjusted feed costs to allocate costs to certain by-products used in

production. *See* Cost Issues, Pound-Maker Comment 1 (By-Product Costs) below.

2. We adjusted feed costs to correct an error in the allocation ratio. *See* Memorandum Regarding Cost of Production and Constructed Value Adjustments for the Final Determination, dated October 4, 1999.

3. We adjusted the denominator used to calculate the general and administrative expenses rate and financial expenses rate to reflect costs on the company's financial statements. *See* Cost Issues, Pound-Maker Comment 2 (Cost of Sales Denominator) below.

Riverside/Grandview

1. We adjusted feeder cattle costs for cost offsets and other cost adjustments identified at verification. *See* Cost Issues, Riverside/Grandview Comment 4 (Accounting Errors) below.

2. We adjusted feed costs for cost adjustments identified at verification. *See* Id.

3. We adjusted other costs to exclude a submitted offset. *See* Cost Issues, Riverside Grandview Comment 2 (Claimed Cost Offset) below.

4. We adjusted the respondent's single reported cost to take into account cost differences associated with gender. *See* General Cost Issues Comment 3 (Gender Adjustment) below.

5. We adjusted the financial expense calculation by including bank penalties incurred during the cost reporting period and by adding arms-length interest expenses on non-interest bearing loans to shareholders. *See* Cost Issues, Riverside Grandview Comment 3 (Bank Penalties) below. *See* also General Cost Issues Comment 2 (Shareholder Advances) below.

Groenenboom

1. We adjusted the respondent's single reported cost to take into account cost differences associated with gender. *See* General Cost Issues Comment 3 (Gender Adjustment) below.

2. We adjusted the financial expense calculation by adding arms-length interest expenses. *See* General Cost Issues Comment 2 (Shareholder Advances) below.

Cor Van Raay

1. We adjusted the respondent's single reported cost to take into account cost differences associated with gender. *See* General Cost Issues Comment 3 (Gender Adjustment) below.

2. We adjusted the financial expense calculation by adding arms-length interest expenses. *See also* General Cost Issues Comment 2 (Shareholder Advances) below.

*Currency Conversions*

As in the preliminary determination, we made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales, in accordance with section 773A of the Act. We relied on exchange rates certified by the Federal Reserve Bank.

**Interested Party Comments**

*Industry Support*

The Canadian Cattlemen's Association (CCA) argues that the Department should not have initiated this antidumping duty investigation. According to the CCA, the petition did not meet industry support requirements set by statute, and the Department's estimation of industry support was flawed.

The petitioners argue that the Department should not consider challenges to industry support determinations at this stage of the proceeding, and that in any event, the Department's measurement of industry support to initiate was conservative and sound.

*DOC Position:* Section 732(c)(4)(E) of the Act provides that, after the administering authority determines that it is appropriate to initiate an investigation, the determination regarding industry support shall not be reconsidered. Therefore, we have not reconsidered our determination regarding industry support. We refer interested parties to our notice of initiation and companion memorandum, which set forth in detail the methodologies followed in establishing industry support. *See Initiation of Antidumping Duty Investigations: Live Cattle from Canada and Mexico,* 63 FR 71885 (December 30, 1998); *see also* Memorandum Regarding Determination of Industry Support, dated December 22, 1998.

*Sales Issues—General*

1. Date of Sale

The petitioners contend that the Department erred in basing the date of sale for U.S. and home market sales made pursuant to futures contracts on the date that prices were ''locked in.'' According to the petitioners, the date of contract is a more appropriate date of sale.

The petitioners contend that in previous cases where prices were set by contract and subject to change per an agreed formula, the Department has based the date of sale on the date of contract, because no more negotiation is necessary in order to determine the essential terms of sale.

The respondents also object to the Department's use of the ''lock-in'' date as date of sale for the transactions in question. However, the respondents contend that the date of invoice or shipment, depending on the circumstances,[1] is more appropriate as the date of sale for these transactions.

According to the respondents, the Department's regulations establish a rebuttable presumption for the use of date of invoice as the date of sale, and there is no reason to depart from the use of the date of invoice (or, as appropriate, the date of shipment) in this case. The respondents contend that contracts are entered into for future delivery months in advance, and the month of delivery is an essential factor in establishing the price of cattle. According to the respondents, two contracts entered into on the same date will have different prices depending on the month of delivery, since monthly cattle prices vary according to seasonal trends. Further, the respondents argue that the material terms of sale are subject to change even after prices are ''locked in.''

In their rebuttal comments, the petitioners argue that the respondents' concerns about monthly price fluctuations are irrelevant, since the Department's practice in antidumping investigations is to compare POI average prices. The petitioners contend that if the Department rejects the date of contract as the date of sale, it should continue to rely on the date that prices are ''locked in,'' since the terms of sale are specified on that date.

In their rebuttal comments, the respondents do not address the precedent cited by the petitioner in support of the use of the date of contract as date of sale. Instead, the respondents contend that the petitioners' proposal to rely on the date of contract is contrary to the statutory mandate to measure price discrimination, because it ignores that cattle prices made pursuant to contracts on a given date will vary in price depending on the date of delivery.

*DOC Position:* As in the preliminary determination, we have continued to rely on the lock-in date as the date of sale for the transactions in question. For the reasons explained below, we continue to believe that the lock-in date is the date on which the essential terms of sale are set.

The Department's regulations provide that the date of invoice is the presumptive date of sale, except where the material terms of sale are established

[1] For certain sales, the respondents do not generate invoices, but rather receive settlement reports after the date of shipment. For such sales, the respondents argue for reliance on the date of shipment.

on some other date. *See* 9 CFR 351.401(i). In this case, the evidence on the record indicates that on the date of contract the respondents (*i.e.*, the sellers) agree to deliver a specified number of head of cattle in a specified month, at a price to be determined by the respondents by reference to the Chicago Mercantile Exchange Board's future cattle prices. From the time that the contract is signed until a specified number of days prior to delivery, the respondents/sellers retain control over price with their ability to ''lock in'' a specific future cattle price. Under this fact pattern, it is evident that on the date of contract the respondents have not yet set the price of the cattle. The case precedent referenced by the petitioners, involving reliance on the date of contract as the date of sale, is distinguishable, because in those cases the sellers did not retain any discretion to set prices after the date of contract. *See Final Determination of Sales at Less Than Fair Value: Emulsion Stryrene-Butadiene Rubber from Mexico,* 64 FR 14972, 14879 (March 29, 1999) (date of contract was date of sale where price terms of long-term contracts were based on set formula of published monthly prices for major inputs that were outside either contracting party's control); *see also Final Determination of Sales at Less Than Fair Value: Offshore Platform Jackets and Piles from Japan,* 51 FR 11788, 11793 (April 7, 1986) (at the time contract was issued, contract price was determinable since there was nothing more on which the parties to the contract needed to agree).

The evidence on the record of this case further establishes that on the lock-in date, the respondents (the parties whose alleged price discrimination is at issue in this investigation) select a price that is binding on both parties. On this date, all the essential terms of sale are known, and are altered only rarely. Therefore, we believe that the lock-in date is the date on which the essential terms of sale are set, and is a more appropriate date of sale than the date of invoice.[2]

We note that the respondents have raised concerns that on any given lock-in date the prices for cattle to be shipped in different months will vary, and that therefore the use of the lock-in date is distortive. As the respondents themselves concede, these concerns are not relevant to an antidumping investigation, where prices are averaged across the entire period of investigation, but may have implications for an eventual administrative review. Whatever the implications of this issue for a review, they do not impinge on this segment of the proceeding.

2. Reimbursement of Antidumping Duty Deposits

The petitioners allege that U.S. packers are forcing Canadian producers and exporters of subject merchandise to absorb the costs of antidumping duty deposits, and that such deposits should be deducted in calculating export value. According to the petitioners, Canadian producers of subject merchandise have indicated at meetings in Canada that an antidumping duty order on cattle would have no effect because the Canadian producers absorb the cost of any duties. The petitioners contend that the reimbursement of the deposits would be considered a reduction to price in any future review, and that the cash deposit rate applied in the investigation should reflect such reimbursements, even if they did not occur during the POI. The petitioners further argue that the Department routinely modifies cash deposit rates in countervailing duty cases where a program-wide change has occurred, and should take similar account of the alleged post-POI price change in the instant antidumping proceeding. Finally, the petitioners argue that, while its arguments and accompanying evidence were submitted after the normal deadline, the Department has the discretion to extend this deadline. The petitioners contend that the evidence in question was only discovered after the filing of case and rebuttal briefs, and that given its implications, the Department should consider it.

The CCA argues that the Department should not consider the petitioners' factual information and argument regarding alleged reimbursement because the Department's regulations require the return of untimely filed information. The CCA further argues that reimbursement concerns are not applicable to investigations, since the Department's regulations regarding reimbursement apply only to duties assessed after the imposition of an antidumping duty order. According to the CCA, there is no legal basis to adjust cash deposit rates at this stage of the proceeding to account for alleged pricing changes after the POI. The CCA contends that any number of changes to both U.S. and home market prices may take place after the POI, and that one cannot assess the effect of any one change in isolation. The CCA further contends that the CVD post-POI modification regulation does not have a counterpart in the antidumping duty regulations.

Finally, the CCA argues that the documentation submitted by the petitioner does not evidence the reimbursement claimed, but rather indicates that a Canadian producer/exporter is acting as importer of record, and thus paying antidumping duty cash deposits. According to the CCA, the Department has held in recent cases that when the exporter and the importer are the same legal entity, there can be no duty reimbursement.

*DOC Position:* We have accepted into the record the petitioners' submission alleging reimbursement of cash duty deposits, as the allegation was based on information that became available only after submission of the case and rebuttal briefs, and could not have been made prior to the normal deadline. However, the reimbursement regulation applies only to duty assessments, not cash deposits. *See Stainless Steel Sheet and Strip in Coils from France: Notice of Final Determination of Sales at Less Than Fair Value,* 64 FR 30820, 30833 (June 8, 1999); *see also Stainless Steel Round Wire from Taiwan: Notice of Final Determination of Sales at Less Than Fair Value,* 64 FR 17336, 17341 (April 9, 1999). Therefore, adjustment of the cash deposit rate is not appropriate. In the event that an antidumping order is issued in this case, the Department will examine allegations of reimbursement of antidumping duty cash deposits at the appropriate time. This notice also serves as a reminder to the importing public of the regulatory provisions regarding reimbursement of antidumping duty assessments, set forth in 19 CFR 351.402(f). We further note that, if we find the exporter, by acting as the importer of record, is absorbing dumping duties on behalf of the U.S. customer, we may consider the duties absorbed to be a selling expense.

*Sales Issues: Company-Specific*

Schaus

1. Facts Available

The petitioners argue that the Department should calculate the dumping margin for respondent Schaus based at least in part on Schaus' own data, so as to ensure that the ''all others rate'' reflects Schaus'' margin. The petitioners allege that Schaus deliberately withdrew from this investigation in anticipation that its data would reveal high dumping margins, and in expectation that by withdrawing and receiving a dumping margin based entirely on facts available, it would

[2] We note that for certain sales where prices were locked-in on the date of the contract, the ''lock-in'' date and the contract date are the same.

avoid inclusion of its dumping margin in the calculation of the all others rate.[3]

The petitioners argue that the pricing data submitted by Schaus are not on their face unreliable, and that the Department has the discretion to rely on those data even absent verification. According to petitioners, the exercise of that discretion is particularly appropriate when the complete rejection of submitted data might actually leave the respondent in a better position, and the statute was not intended to create a loophole for respondents to manipulate the final margins.

The petitioners further note that at the outset of the case they had argued for the selection of a pool of respondents including all major Canadian producers/exporters of subject merchandise, and that the CCA, by contrast, had argued to limit the pool of respondents to no more than six companies. According to the petitioners, the Department's acceptance of a respondent pool limited to six respondents enabled the CCA to manipulate the all others rate through selective withdrawal of high-margin respondents.

The petitioners request that the Department rely on Schaus' submitted U.S. data, and base normal value on adverse facts available (either the highest alleged normal value in the petition, or the highest normal value submitted by Schaus for any product). The petitioners argue that, at a minimum, the Department should rely on the margin found in the preliminary determination for purposes of the final determination.

Schaus argues that its final dumping margin should be excluded from the calculation of the all others rate. According to Schaus, the statute requires that the Department reject information that was not verified, and instead rely on the facts available; further, the statute requires that margins based entirely on facts available be excluded from the calculation of the all others rate. Schaus argues that since none of its data was verified, its dumping margin must be based entirely on facts available, and cannot be included in the calculation of the all others rate.

Schaus further argues that the statutory requirement that margins based entirely on facts available be excluded from the all others rate calculation is balanced by the requirement that *de minimis* margins also be excluded from that calculation. Schaus notes that the petitioners have not argued for the inclusion of Pound-Maker's preliminary *de minimis* margin in the calculation of the all others rate.

Schaus also contends that its final deposit rate should be no higher than its amended preliminary determination rate, which was based on Schaus' own data. According to Schaus, the adoption of the amended preliminary determination rate would constitute a reasonable application of adverse facts available, since it is more adverse than the highest margin calculated in the petition.

*DOC Position:* The facts surrounding Schaus' decision to withdraw from participating in this proceeding are unusual and have significant ramifications for the agency's administration of the antidumping law. At the outset of this case, faced with an overwhelming number of Canadian producers of the subject merchandise, the Department sought to limit its investigation to only as many producers and exporters as was administratively feasible within the statutory time limits. While the petitioners sought the investigation of dozens of producers, we accepted the proposal by the CCA that we investigate only the 5 or 6 largest producers or exporters, one of which was Schaus. The results of our investigation of these six producers must be applied to ''all other'' producers. Thus, the ''all others'' rate, which would apply to the majority of exports in this highly fragmented industry, will be a critical component in the effectiveness of the antidumping remedy should the investigation lead to an antidumping duty order.

On June 30, 1999, the day on which the Department was scheduled to issue its preliminary determination, Schaus submitted a supplemental response and pre-verification corrections that, among other things, substantially altered its reported costs. These corrections were accompanied by certifications as to their completeness and accuracy by Schaus' president, and Schaus' legal counsel certified that he had no reason to believe the submission contained any material misrepresentation or omission. Schaus and its counsel knew or should have known that the preliminary determination which the Department was scheduled to issue based on the earlier submission—and which would set the bonding rate in effect during the provisional measures period—would substantially understate the margin applicable to Schaus (and, consequently, the ''all others'' rate). Nevertheless, at no point prior to filing its revised response did Schaus or its counsel notify the Department that substantial revisions to its costs were appropriate.[4]

Given the timing of the submission, the Department had no opportunity to incorporate these corrections into its preliminary determination. Nevertheless, the Department stated in its preliminary determination that its initial examination of the Schaus data indicated that the antidumping rate calculated using such data may differ significantly from the preliminary rate of 5.43 percent applied to Schaus based on the original submission. *See Preliminary Determination* at 36848. The Department announced its intention to ''examine this [revised] data further and, if we find that the errors corrected result in a rate that differs substantially from the rates as calculated for this preliminary determination, we may issue an amended preliminary determination * * *.'' *Id.*

On July 1, 1999, the Department confirmed that the corrections filed by Schaus, including cost items that had been omitted from the original submission, resulted in a substantial increase in its antidumping rate from 5.43 percent to 15.69 percent. On July 9, 1999, counsel for Schaus verbally notified Department staff that Schaus had decided to decline verification and withdraw all questionnaire responses from the record of the investigation. As explained in a subsequent letter, counsel stated that

> Schaus has determined that, despite its best efforts and its nonstop preparatory work * * *, the Department's methodology in this investigation and its verification standards for certain accounting requirements cannot be satisfied when applied to Schaus, a small, family-owned business that does not have internal accountants or computerized sales and cost record-keeping. The way that Schaus conducts its business and maintains its books and records in the ordinary course of its business has led Schaus to conclude reluctantly that it cannot participate in verification.

*See* Letter from Blank Rome Comisky & McCauley LLP to Secretary of Commerce, dated July 12, 1999.

On July 20, 1999, the Department issued its determination that amendment of the preliminary determination was appropriate. *See Amended Preliminary Determination* at 39970. The Department stated that Schaus' withdrawal from the proceeding did not preclude correction of the preliminary determination to accurately

[3] Section 735(c)(5)(A) of the Act provides that the all others rate shall exclude any zero and *de minimis* margins, as well as any margins determined entirely on the basis of facts available.

[4] As indicated throughout the antidumping questionnaire and as a matter of administrative practice, parties are required to notify the official-in-charge immediately where significant issues or corrections are identified.

reflect the corrected information which Schaus had submitted on the day of the determination. As the Department explained, ''To do otherwise would allow manipulation of the administrative process in a manner that prevents the determination of accurate antidumping rates, and would thwart the proper administration of the antidumping law.'' *Id.* As a result, the Department amended its preliminary determination to revise the antidumping rate for Schaus to 15.69 percent and to make a corresponding correction to the ''all others'' rate from 4.73 percent to 5.57 percent.

If the Department were to base Schaus' final margin on the facts available rather than the proprietary information in its questionnaire responses, Schaus' margin would be excluded from the calculation of the ''all others'' rate, in accordance with section 735(c)(5)(A) of the Act. Thus, regardless of the reasons for Schaus' decision to cease participating in this proceeding, its desire to withdraw its questionnaire responses from the record could seriously undermine the effectiveness of the antidumping remedy in this case should the investigation result in an antidumping order. Thus, the Department has examined whether it is appropriate to deny Schaus' request to withdraw its business proprietary information from the record of the proceeding given that substantially all exports will fall under the ''all others'' rate and respondent's withdrawal would significantly distort that rate. For the reasons discussed below, the Department determines that Schaus' information should remain on the record and form the basis for its final margin.

The Department is tasked with administering the antidumping law and possesses the inherent authority to protect the integrity of that process. In determining whether to permit Schaus to withdraw information, the agency must weigh competing interests, both of which are important to administration of the antidumping law. The Department must balance any potential negative impact that refusing to allow a respondent to withdraw information may have on its ability to obtain business proprietary information in future proceedings, against any negative impact on the integrity of the proceeding if withdrawal is permitted, and determine where the public interest lies.

The Department does not have subpoena power. The submission of information is voluntary. To administer the antidumping law, the Department depends heavily upon the willingness of the parties to provide extensive business proprietary information. As a result, there is a public interest in preserving the trust of companies subject to its proceedings that such information will have limited use and will remain largely within the control of the companies submitting such information. However, once a party voluntarily submits business proprietary information in an antidumping proceeding, the submitting party relinquishes some control over that information to the Department. For example, after the Department issues a final determination, a submitting party may not withdraw its proprietary information. Once the record of a proceeding is closed, no information may be added to, or withdrawn from, the administrative case record.

Equally compelling is the public's interest in the agency enforcing the antidumping law and preserving the integrity of its proceedings. While there is no statutory provision expressly dealing with the withdrawal of business proprietary information once it has been submitted, the courts have recognized ''the inherent power of an administrative agency to protect the integrity of its own proceedings.'' *Alberta Gas Chemicals, Ltd. v.* Celanese Corp., 650 F.2d 9, 12. Thus, the agency has the discretion to deny a respondent's request to withdraw information where it is necessary to preserve the fundamental integrity of the process and the remedial purpose of the law.

In practice, the Department has allowed submitting parties to withdraw their business proprietary submissions from the administrative record. *See, e.g., Silicomanganese From Brazil,* 59 FR 55,432, 55,434; *Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From France,* 58 FR 6203, 6204 (Jan. 27, 1993); *Certain Hot-Rolled Carbon Steel Flat Products from Japan,* 58 FR 7103, 7104 (Feb. 4, 1993); *Certain Small Business Telephone Systems from Japan,* 54 FR 42541, 42542 (Oct. 17, 1989); and *Industrial Belts from Israel,* 54 FR 15509, 15512 (Apr. 28, 1989). In such cases, the Department bases the company's margin on facts available, using an adverse inference where warranted. It is the Department's ability to use adverse facts available that ensures that a company will not benefit by a refusal to participate in a proceeding.[5] Because the investigated companies normally account for substantially all exports to the United States, the elimination of the non-cooperative company from the ''all others'' rate in that situation is likely to be of marginal significance. Thus, the adverse facts available rule normally enables the Department to permit withdrawal of proprietary information while protecting the integrity of the process.

In the present case, however, the adverse facts available rule cannot serve that function. Substantially all future exports of live cattle, which will be subject to the ''all others'' rate if an antidumping duty order is issued, would inappropriately benefit from Schaus' refusal to participate. Section 735(c)(5)(A) provides that the ''estimated all others'' rate shall be:

> an amount equal to the weighted average of the estimated weighted average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 1677e of this title.[6]

The Department has expressed particular concern that the ''all others'' rate is susceptible to manipulation. Thus, for example, the Department excludes voluntary respondents from the calculation of the all-others rate ''to prevent manipulation and maintain the integrity of the all-others rate.''[7] The withdrawal of Schaus' data raises similar concerns. If Schaus' business proprietary information is withdrawn, the Department must base its margin entirely on facts available and eliminate Schaus' margin from the ''all others'' rate. As a result, the withdrawal of Schaus' corrected information would have the effect of significantly distorting the rate that will apply to substantially all exports of the subject merchandise to the United States.

Given that withdrawal of Schaus' data would significantly distort the ''all others'' rate and that the ''all others'' rate will apply to substantially all exports of the subject merchandise, the Department has determined that retention of that data is necessary to preserve the integrity of the process and the remedial purpose of the law. Therefore, the Department has based Schaus' margin on its revised questionnaire response and included

[5] ''The Department's potential use of [facts available] provides the only incentive to foreign exporters and producers to respond to the Department's questionnaires.'' *See* SAA at 868.

[6] This provision reflects a similar requirement in Article 9.4 of the Agreement on Implementation of Article 6 of GATT 1994 (the Antidumping Agreement) that the rate applicable to non-examined exporters or producers shall not include margins determined based upon the facts available.

[7] *Antidumping Duties; Countervailing Duties; Proposed Rule,* 61 Fed. Reg. 7307, 7315 (Feb. 27, 1996); *see also Antidumping Duties; Countervailing Duties; Final Rule,* 62 Fed. Reg. 27295, 27310 (May 19, 1997).

that margin in the calculation of the ''all others'' rate.

We disagree with Schaus that its corrected information must be rejected because it was not verified. While section 782(i) requires that the Department verify information relied upon in making its final determination, the statute does not define what constitutes sufficient verification. *Micron Technology, Inc.* v. *United States,* 117 F.3d 1386, 1394. *Cf. American Alloys, Inc.* v. *United States,* 30 F.3d 1469, 1475 (Fed. Cir. 1994)(''the statute gives the Department wide latitude in its verification procedures''). Similarly, the Department's implementing regulation is general in nature and does not specify any methods, procedures or standards to be used for verification. *See* 19 CFR 351.307(1998). The purpose of verification is to test information provided by a party for accuracy and completeness, and does not require that the Department audit every figure in a response. *See Bomont Indus.* v. *United States,* 733 F. Supp. 1507, 1508 (CIT 1990). Moreover, while the agency's practice is to conduct on-site verifications of each investigated company, there are circumstances in which the agency may verify only a limited sample of the investigated companies.[8] Thus, in limited circumstances, data not specifically verified may be used in an investigation to calculate a company's dumping margin.

In the present case, the information at issue was voluntarily submitted by Schaus and the company certified that the information was complete and accurate. Because Schaus submitted this information knowing that it would substantially increase its dumping margin, we find the information is much like a statement against interest and, therefore, highly credible. Moreover, there is no evidence on the record to suggest that the data submitted by Schaus, when compared to the pricing and cost data submitted by other respondents, as well as to general industry trends during the period, are aberrational or suspect on their face. As a result, given the circumstances presented in this investigation, the Department finds that the information submitted by Schaus is reliable, and we have continued to rely upon it for purposes of this final determination.

[8] *See* 19 CFR § 351.307(b)(3)(1998).

JGL Group

1. Misreported Sales

The petitioners note that the Department found at verification that certain reported home market transactions involved the ''sale'' and ''repurchase'' of cattle, and that the nature of these transactions was such that they should not have been included in the submitted sales database. The petitioners contend that unless the Department is certain that the transactions in question can be adequately identified and excluded from the sales listing and the calculation of costs, it should deem the JGL Group's data to be generally unreliable and rely on adverse facts available.

The JGL Group agrees that the transactions in question should be excluded from the sales listing, and contends that all such transactions have been properly identified. The respondent also contends that these transactions did not affect the calculation of unit costs for cattle that it produced, and also did not affect the calculation of unit costs for traded cattle.

*DOC Position:* We agree with both parties that the transactions in question should not have been reported. At verification, we obtained a listing of these transactions, and performed several tests to confirm that the listing was complete. Satisfied that the listing provided was complete, we have excluded these sales from the reported database. We are also satisfied that the transactions in question did not affect the reported unit costs for cattle.

2. Facts Available

The petitioners argue that the Department should calculate JGL's dumping margin in part on the basis of facts available, given the pervasive and systematic errors found at verification with respect to data submitted by Prairie Livestock, one of the Canadian producers of live cattle that has been collapsed with the JGL Group. According to the petitioners, the Department found errors on every one of the pre-selected transactions examined at verification, as well as on additional transactions selected on-site.

The petitioners further contend that the errors systematically understated home market prices and overstated U.S. prices, thus favoring the respondents. The petitioners propose that the Department assign to sales by Prairie (and include in the weighted average JGL Group margin) the highest margin found in the petition, or alternatively rely on either (1) the average margin in the petition or (2) the highest margin found for any other respondent.

The JGL Group concedes that the Prairie data contained errors, but argues that these were clerical in nature and minor in scope. According to the JGL Group, the errors contained in the preselected sales were identified and corrected at the outset of verification, and the additional errors found during verification were promptly corrected. The JGL Group contends that total quantity and value of its reported sales data was verified in the aggregate without exception.

Further, the JGL Group argues that the Department should gauge its cooperation on the basis of all the companies that comprise the JGL Group, rather than on Prairie alone. According to the JGL Group, the clerical errors identified by other JGL companies did not all favor the respondent, and in the aggregate, the effect of the errors was negligible.

*DOC Position:* We agree with the petitioners that the use of partial, adverse facts available is appropriate with respect to the sales data submitted by Prairie. As explained below, the errors found at verification were sufficient in number and magnitude to call into question the general reliability of the Prairie data, and we have not relied on those data.

At the outset of verification, we requested that the JGL Group companies identify any clerical errors in their submitted sales data. Prairie provided us with a list of such errors, which involved the reported gross unit price, sales expenses, customer identification, and product identification for specific sales. We noted that these errors affected almost all of the sample transactions preselected for verification several weeks prior to the start of verification. We asked company officials whether such errors might affect the remainder of the database, and they replied that they had checked the database, and had not found the errors to be pervasive.

Given the high incidence of errors affecting the preselected transactions, we examined a number of additional Prairie sales and found that there were several systemic errors affecting those sales. These included a significant error that, contrary to the statements made by Prairie at the outset of verification, also applied to the preselected sales, and in fact extended to half of all U.S. sales reported by Prairie. These errors involved the reporting of the gross unit price and multiple expense and other income items. The errors are described in detail in the Department's verification report. *See* Memorandum

Regarding Verification of JGL Sales Data, dated August 10, 1999, at 1 and 9–10.

On the whole, verification revealed a troubling incidence of error in the compilation of the Prairie sales data. If we could be sure that the database contained only those errors identified at verification, we would consider correcting those errors based on record data. However, the extent of the errors found with respect to the Prairie sales data at verification was such that we cannot reach such a conclusion with any degree of confidence. Therefore, for purposes of this final determination, we have not relied on the Prairie sales data.

We do not conclude, as argued by the petitioners, that the record evidence establishes an attempt by Prairie to systematically manipulate dumping margins, inasmuch as certain of the errors made by the respondent were against interest. At the same time, the statute requires that respondents act to the best of their ability in providing information to the Department, and we do not believe that the respondent did so in reporting the Prairie sales data. At verification, Prairie acknowledged that it had made inadvertent errors in the compilation of those data but claimed that they were due to inexperience with the company's record-keeping. While this may be the case, the extent of the errors found at verification indicate that the respondent did not, in reporting the Prairie sales data, act to the best of its ability.

We have determined that it is appropriate to rely on partial, rather than total, facts available in calculating a dumping margin for the JGL Group, given that (1) the other JGL Group companies were able to provide support for their sales data at verification, and otherwise cooperated in this investigation, and (2) the total quantity and value of Prairie's U.S. sales was confirmed, on the aggregate, at verification. *See id.* at 7–8. As partial facts available, we have assigned to the sales of Prairie the highest margin calculated for any respondent (*i.e.*, the 15.69 percent margin calculated for Schaus). We relied on the data submitted by the other JGL Group companies to calculate a weighted-average margin for the JGL Group, exclusive of Prairie. We then averaged the two rates, weighted by the relative total value of sales to the United States.

3. Feeder Cows and Bulls

The JGL Group argues that the Department should distinguish cull cows and bulls that are sold to be fed prior to slaughter (''feeder cows and bulls'') from other cull cows and bulls that are sold for immediate slaughter. According to the JGL Group, it demonstrated early on in the investigation that there are significant physical and commercial differences between the two types of cattle, and these differences should have been recognized in the Department's model match hierarchy.

The JGL Group contends that feeder cows and bulls are cull animals with the capacity to gain at least 300 or 400 pounds of weight. According to the JGL Group, feeder cows and bulls sell for higher prices than other cull cattle, but for lower prices than normal feeder animals (*i.e.*, heifers and steers). The JGL Group contends that the Department should therefore treat feeder cows and bulls as separate and distinct from normal feeder animals.

The petitioners argue that the respondent's argument is predicated on untimely data provided during verification, in the guise of verification exhibits, and should therefore be rejected. The petitioners also argue that, at any rate, feeder cows and bulls are not sufficiently distinct to be treated as separate products. The petitioners contend that feeder cows and bulls are sold at prices approximately equal to the prices of normal cull animals, and that feeder cows and bulls are not necessarily fed long before being slaughtered, especially in times of high cull prices.

*DOC Position:* For this final determination, we have not differentiated between feeder cows/bulls and regular cull cows and bulls. At the outset of this case, interested parties submitted detailed proposals on product characteristics to be used for matching purposes. The CCA made only very brief mention of a possible distinction between feeder cows/bulls and regular cull cattle. *See* letter from the CCA to the Department of Commerce, dated January 20, 1999, at 7–8. The Department, in establishing the product matching criteria in this investigation, was unpersuaded by the CCA's argument, and did not incorporate this distinction. JGL provided certain evidence at verification that on occasion cull cattle are sold for additional feeding prior to slaughter. However, there is insufficient evidence on the record to establish that feeder cows/bulls have distinctly different physical characteristics, cost differences, or sales prices. Should this investigation result in an antidumping duty order, the Department will revisit this issue in the context of an administrative review.

4. Sales Revenue Items

The JGL Group alleges that the Department overstated normal value because it added to the unit price certain revenue items that were already included in that price. According to the JGL Group, the Department confirmed this at verification.

The petitioner argues that the Department examined the error in question only with respect to one of the three companies that comprise the JGL Group (JGL itself), and that any correction made with respect to this error should be limited to that company.

*DOC Position:* We agree with the JGL Group that the error in question should be corrected. The error arose because of conflicting statements in the JGL section B and C questionnaire responses, submitted on April 20, 1999. At page B–20, the respondent stated that the gross unit price included all revenue items. However, at page B–35, the respondent provided a formula indicating that the revenue items were not included in the gross unit price. The Department relied on the latter statement. At verification, the Department determined that the formula in question was incorrect, and that for sales by JGL and Iron Springs, the revenue items had indeed been included in the reported sales price. *See* Memorandum Regarding Verification of JGL Sales Data, dated August 10, 1999, at 9. As the error applied to sales by JGL and Iron Springs, and we have corrected the error for these companies.

5. Traded Cattle Sales

The JGL Group argues that the Department should exclude sales of traded cattle (*i.e.*, cattle purchased and resold by the JGL Group) in calculating margins for the final determination. According to the JGL Group, the antidumping statute contemplates producer-specific rates. JGL argues that although the Department analyzed separately the JGL Group's sales of traded and own-produced cattle, it calculated impermissibly a single weighted-average cash deposit rate that reflected the dumping margins on these distinct sets of sales.

The JGL Group contends that the Department has determined in past cases (such as *Pasta from Italy*) not to include sales of traded products in its calculations, noting the potential for circumvention, particularly when the reseller rate is lower than the all other rate. Further, the JGL Group argues that a producer is deemed the appropriate respondent when it has knowledge that its merchandise is destined for the United States, and the Department is unable, based on the record, to make such a determination with respect to the producers of any cattle traded by the JGL Group.

The JGL Group argues that, in the event that the Department determines it appropriate to calculate margins for its traded cattle, it should calculate separate margins for own-produced and traded cattle. For this purposes, JGL proposes that all sales of traded cattle be included in the calculation of a single dumping margin, regardless of the specific producer.

The petitioners argue that the Department should include sales of traded cattle in its analysis, inasmuch as the dumping margin assigned to the JGL Group should be representative of all facets of the respondent's selling activities.

*DOC Position:* We have continued to include sales of traded cattle in the calculation of a single dumping margin assigned to all sales by the JGL Group.

The Department regards a producer of subject merchandise as a respondent provided, *inter alia,* that the producer has knowledge that its merchandise is destined for the United States. If the producer, without knowledge of the ultimate market of destination, sells its merchandise to another company in the comparison market, which in turns sells the merchandise to the United States, the Department looks to the latter company as a potential respondent. In the instant case, if a respondent were able to demonstrate that its resales involve cattle purchased from a supplier that had knowledge of the ultimate destination of the cattle, the Department would exclude such sales from its analysis. The JGL Group has not provided evidence that any of its suppliers were aware that their cattle were destined for the U.S. market. On the contrary, the JGL Group has argued in other contexts that because it purchases cattle in the Canadian market at auction, it is generally unable to identify the supplier. *See* JGL Group Section A Questionnaire Response, dated March 23, 1999, at A–3. Thus, based on the record, and absent evidence of knowledge of destination by the ultimate supplier, we find that the JGL Group is the appropriate respondent for the sales in question.[9]

Similarly, we do not believe it would be appropriate to calculate a separate dumping margin for sales of own-produced versus traded cattle. The record establishes that the JGL Group is the appropriate respondent for all the transactions in question, since the cattle were sold by JGL and there is no evidence that the producer knew that the cattle were destined for the United States. Consistent with the Department's practice, we have continued to calculate a single weighted-average margin for the respondent.

6. Affiliation

The JGL Group argues that Kirk Sinclair's cattle operations should not be collapsed with the respondent because Kirk Sinclair is not affiliated with the JGL Group as a whole. According to the JGL Group, the Department does not normally collapse a company with a group of affiliated/collapsed companies simply because it is affiliated with one company in that group. The JGL Group contends that Kirk Sinclair is affiliated with Prairie Livestock, but not with the other companies that make up the JGL Group, and thus does not meet the requirements for collapsing.

The petitioners argue that Kirk Sinclair, through Prairie Livestock, purchases, custom feeds, and sells finished cattle for the JGL Group as a whole. The petitioners contend that, given this, Kirk Sinclair is in a position to control the JGL Group, and should therefore be considered an affiliate of and collapsed with the JGL Group.

*DOC Position:* We agree with the petitioners that Kirk Sinclair meets the test for collapse with the JGL Group. The JGL Group is comprised of four operating companies, owned and operated by a handful of individuals. Kirk Sinclair is the majority owner of Prairie, one of the four operating companies of the JGL Group. Through Prairie, Mr. Sinclair also purchases, custom feeds, and sells finished cattle for the JGL Group as a whole. Given this, he is affiliated with Prairie through section 771(33)(E) of the Act (*i.e.,* affiliated through stock ownership), and is affiliated with the JGL Group as a whole through section 771(33)(G) of the Act (*i.e.,* affiliated through control, defined to exist where one party is ''legally or operationally in a position to exercise restraint or direction over the other person,'' as evidenced by his integral role in purchasing, custom feeding, and selling finished cattle for the JGL Group as a whole).

The Department's regulations provide for the treatment of affiliated producers as a single entity where: (1) Those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities, and (2) The Department concludes that there is a significant potential for the manipulation of price or production. *See* 19 CFR 351.401(f)(1). In identifying a significant potential for the manipulation of price or production, the Department may consider such factors as: (i) The level of common ownership; (ii) The extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and (iii) Whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers. *See* 19 CFR 351.401(f)(2). These factors are illustrative, and not exhaustive.

Kirk Sinclair's position within the JGL Group is such that he meets both prongs of this test. First, his facilities allow for the production of cattle indistinguishable from other cattle produced by the JGL Group. Second, Mr. Sinclair, in his capacity as manager and principal owner of Prairie, is engaged in the purchase, fattening, and sale of cattle for the JGL Group as a whole, such that he and his partners in the JGL Group share sales and production information, and his operations are intertwined with those of the JGL Group. Therefore, if this investigation should result in the imposition of an antidumping order, the JGL Group's cash deposit rate would apply to any entries of cattle produced by Kirk Sinclair.[10]

Pound-Maker

1. Negative Shrink

The petitioners argue that the Department should not rely on Pound-Maker's reported live quantities for sales involving ''negative shrink'' (*i.e.,* sales in which the cattle appear to have gained weight in transit from the feedlot to the packing plant). The petitioners assert that we should continue to use

[9] This case is distinguishable from *Pasta from Italy,* where the Department excluded resales where evidence demonstrated that the producer had knowledge that the pasta was destined for the United States. In that case, the Department found that ''* * * the producer of the purchased pasta would have knowledge that the product was destined for the U.S. because it had vitamins added (vitamin enriched pasta is usually sold in the U.S.) and because the packaging would clearly indicate that it was destined for the U.S. market.'' *See* Memorandum Regarding Treatment of Purchased Pasta, dated July 31, 1998, in case A–475–818. In this case, by contrast, the producers of the cattle sell their merchandise at auction, and do not know the ultimate destination.

[10] We note that although Kirk Sinclair meets the test for collapse with the JGL Group, we have not included his sales in our analysis. The Department explicitly instructed the JGL Group that in view of the small volume of sales by Kirk Sinclair to unaffiliated parties, those sales need not be reported. *See* supplemental questionnaire to the JGL Group, issued on May 14, 1999, at 28.

the reported feedlot weight for these sales, as we did at the preliminary determination, and that we should apply an average shrink factor to these sales. Alternatively, the petitioners argue that we should disregard all reported live quantities, and use the full weight at the packing plant less a standard five percent shrink for all home market sales.

Pound-Maker contends that negative shrink was verified by the Department, and that we should accept its live quantities as reported on these sales for purposes of the final determination.

*DOC Position:* We agree with Pound-Maker. The live weight for the cattle sales in question was verified to be accurately reported based on what the cattle weighed at the packing plant as indicated on the settlement report.

2. Commission Payments to Affiliates

Pound-Maker argues that the Department has no legal basis for adjusting the reported commission paid to one of Pound-Maker's sales agents that was found by the Department to be affiliated with Pound-Maker. Pound-Maker contends that the company in question is not affiliated with Pound-Maker within the meaning of the Act. Although Pound-Maker agrees that it is affiliated with the president and owner of the company in question because he is on Pound-Maker's board, the respondent asserts that the affiliation does not extend to the company that is wholly-owned by that board member and his two sons. Furthermore, Pound-Maker argues that even if the company in question is an affiliate of Pound-Maker, we still should not adjust the commission rate because (1) There is no material ownership relationship between the affiliate and Pound-Maker, and (2) There is no statutory or regulatory basis to adjust selling expenses paid to an affiliated party.

The petitioners contend that the Department properly adjusted the commission rate on sales made through the company in question. The petitioners agree with the Department that the company is an affiliate of Pound-Maker per section 771(33)(B) of the Act (which provides that any director of an organization and such organization are affiliated), and assert that the only issue is whether the commissions paid to the affiliated party were arms-length transactions. The petitioners further allege that the respondents have submitted information on the record indicating that the transactions in question were not at arms-length.

*DOC Position:* We disagree with Pound-Maker that there is no statutory or regulatory basis to adjust selling expenses paid to an affiliated party. *See Floral Trade Council* v. *United States,* Slip Op. 99–10 (May 26, 1999) at 10 (sustaining the Department's practice of treating commissions paid to an affiliated trading company as an intra-company transfer). At the same time, because whether the adjustment is made or not is immaterial, we have not adjusted the reported commission paid to this sales agent for the final determination.

Riverside/Grandview

1. Facts Available

The petitioners assert that we should draw an adverse inference based on a verification finding involving an understatement of live quantity in a single shipment of cattle that contained both Riverside-owned cattle and Grandview-owned cattle. The single shipment was reported to the Department as two sales transactions (one Grandview sale and one Riverside sale), and the error was reflected in one of the two transactions. The petitioners claim that we reviewed too few sales to determine whether this error was systemic and that we should therefore make an upward adjustment to total quantities for all shipments involving a mix of both Riverside and Grandview cattle.

The respondents assert that we obtained the relevant information to correct any such errors, and no adverse inference is warranted.

*DOC Position:* We agree with respondents. After verification, the Department is satisfied that the error in question was isolated. Contrary to the petitioners assertion, we reviewed a significant number of sales at verification, including 20 preselected sales and numerous additional sales selected on site, and found no evidence to indicate that the error in question was systemic. We have therefore corrected the error discovered at verification, and have drawn no adverse inferences in this regard.

*Cost Issues—General*

1. Collapsed Entities

The petitioners argue that permitting the JGL Group, Riverside-Grandview, and Cor Van Raay's collapsed entities to eliminate inter-company transactions and to report the collapsed entity's cost of production net of inter-company revenues and expenses violates the language and intent of the statute. The petitioners maintain that section 773(f)(1)(A) of the Act requires the Department to use the costs from the normal books and records of the ''producer,'' unless the records are not consistent with generally accepted accounting principles (GAAP) or do not reasonably reflect costs associated with the production of subject merchandise. The petitioners note that these three respondents departed from their normal accounting records and collapsed their operations by eliminating inter-company transactions.

The petitioners argue that this collapsing of the various entities' costs violates the language and intent of the statute by permitting collapsed respondents to obtain a lower cost than would be found between unaffiliated parties. The petitioners maintain that the Department may ignore the transfer price between affiliated parties only when the charges do not fairly reflect the amount usually charged between unaffiliated parties. The petitioners contend that, in the instant case, the amounts reflected in the normal books and records of the exporter or producer are arm's length and above cost, such that the exceptions do not apply.

The petitioners argue further that, in the case of JGL, the collapsing memorandum did not indicate that Thompson and JGL or Thompson and Iron Springs were collapsed, and should be considered to be merely affiliated parties.

Finally, the petitioners contend that there is no reason to extend the practice of collapsing affiliated parties beyond normal accounting practice. The petitioners complain that this collapsing of records was used by companies that are not wholly-owned subsidiaries, who are not consolidated for accounting purposes, and are affiliated, in some cases, in only an indirect manner. The petitioners argue that while the Department has calculated entity-wide costs of production in circumstances where the affiliated parties are corporate divisions, the rules of collapsing should not be allowed to trump the statutory scheme of valuing affiliated transactions at arm's length prices. The petitioners conclude that sections 773(f)(1)(A) and 773(f)(2) and (3) make no distinction between affiliated companies that are or are not collapsed.

The respondents contend that it is the Department's well-established practice to treat collapsed companies as a single entity, and to disregard inter-company transactions in determining the single entity's weight average cost of production. The respondents note that the petitioners are urging the Department to treat each company within the collapsed JGL Group as individual companies for cost reporting purposes, but to combine them as a group for purposes of the sales comparison for calculating and applying one single dumping margin. The respondents contend that both the Department and the court have rejected such inconsistent treatment, and cite *AK Steel Corp.* v. *United States,* 34 F. Supp. 2d 756, 765–66 (CIT, 1998); and *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod From Korea,* 63 FR 40404, 40421 (July 29, 1998)(Comment 7) (''[T]reating affiliated producers as a single entity for dumping purposes obviates the application of the major-input rule and transactions-disregarded rule because there are no transactions between affiliated persons'').

The respondents further argue that the petitioners are ignoring the fact that, for a collapsed group of producers, ''the exporter or producer'' is the collapsed group of producers, and not each producer individually. The respondents contend that if the Department were to regard each individual producer as the ''exporter or producer'' within the meaning of the statute, it would have no basis for examining sales of all members of the Group, or in applying a single weighted average dumping margin to the entire group. According to the respondents, the courts have held that the ''transactions disregarded'' provision of the statute is inapplicable in the case of collapsed producers because that provision applies only between the collapsed ''exporter or producer'' and its affiliated suppliers.

Finally, respondents argue that it has never been the Department's policy to extend the cost side of the collapsing of affiliated parties beyond companies that are consolidated for accounting purposes, and that such an idea is inconsistent with the Department's regulation governing the issue and is not supported by any sound policy basis. The respondents argue that, moreover, when the Department collapses affiliated companies for sales comparison purposes, it also collapses for costs purposes because it recognizes the underlying commercial reality that inter-company profits are not a cost to the overall collapsed group.

*DOC Position:* We agree with the respondents that it is proper, when reporting sales and cost data, to eliminate inter-company transactions between companies that the Department is treating as a single entity (*i.e.*, is making a single antidumping duty rate determination for). While sections 773(f)(2) and (3) of the Act, the ''transactions disregarded'' and ''major input'' rules, allow the Department to review whether transactions between affiliates are at market prices or above cost, respectively, it does not follow that these rules should be applied to collapsed entities. The transactions disregarded and major input rules apply to transactions between the respondent and an affiliated raw material supplier or service provider. Also, sections 773(f)(2) and (3) of the Act refer specifically to ''affiliated persons,'' which is a term defined in the statute. Therefore, use of an accounting or consolidation standard of affiliation is inappropriate. In applying the collapsing rule for reporting sales and cost data, not only must the parties be affiliated under the statute, but they must both be producers of the subject merchandise. This requirement limits the application of the collapsing rule, including the reporting of costs, to a few specific cases. Moreover, the transactions disregarded and major input rules still apply to all other suppliers or service providers affiliated to the collapsed entity.

Once the Department decides to collapse two or more producers into one entity and to apply one margin to their combined sales, the inter-company sales and costs must be eliminated because the home market sale prices of the group must be above the actual cost of production of the group. In short, it would be illogical to include inter-company profits in the actual cost of production of the group. The Department's collapsing policy was upheld by the court in *AK Steel Corp. et al.* v. *United States,* 34 F. Supp. 2d 756, 763–66 (CIT, 1998) (the Department's decision to treat affiliated parties as a single entity necessitates that transactions among the parties also be valued based on the group as a whole and as such, among collapsed entities the fair-value and major input provisions are not controlling). Further, as noted by the CIT, ''to treat collapsed parties as no longer separate affiliates for purposes of 19 U.S.C. section 1677B(f)(2)–(3)'' is ''not only permissible but preferable as a more logical, integrated application of the statute.''

As for the petitioners' suggestion that the Department never explicitly recognized Iron Springs and Thompson Livestock to be collapsed with the JGL Group, we note that from the outset of this proceeding that the JGL Group has appropriately responded to the Department's questionnaires on behalf of an entity that included these companies. Since the record evidence clearly supported the collapsing of Iron Springs and Thompson Livestock with the JGL Group (given their affiliation, interchangeable production, and potential for manipulation),[11] and since no interested party objected to this treatment, the Department did not issue a formal memorandum approving of the ''self-collapse'' of these parties. The Department has continued to regard these parties as a single collapsed entity for the final determination.

Given the above, we have relied on actual costs in determining the cost of manufacturing (COM) for each of the collapsed entities in the final determination.

2. Shareholder Advances

Respondents Riverside-Grandview, Pound-Maker, Groenenboom, and Cor Van Raay argue that the Department should treat non-interest bearing shareholder advances to the respective companies as equity rather than debt, and therefore should not calculate interest expenses on these advances. The respondents assert that the touchstone of the distinction between debt and equity is whether a repayment obligation exists. *See Porcelain-On-Steel Cooking Ware from Taiwan,* 51 FR 36425, 36432 (October 10, 1986), in which the Department found no reason to classify loans as equity ''since repayment of the principal was part of the terms for these loans.'' The respondents claim that the Department's practice is to focus on repayment obligations, citing *British Steel PLC* v. *United States,* 936 F. Supp. 1053, 1069 (CIT, 1996), in which ''Commerce argues its classification * * * as debt is supported by substantial evidence first because '[t]he hallmark of debt is the obligation to repay.' '' The respondents also cite *Inland Steel Industries, Inc.* v. *United States,* 967 F. Supp. 1338, 1355 (CIT, 1997), in which the CIT noted that, ''plaintiffs fail to point to any record evidence which definitively establishes the existence of a repayment obligation * * * [A]s defendant notes, the record contains 'no evidence of loan or repayment agreements, payment schedules or actual principal or interest payments being made, nor was there any other evidence tending to show that the GOF or Usinor Sacilor contemplated a repayment obligation.' ''

The respondents argue that the Department has also considered other factors in determining how to treat advances by shareholders. In *Low-Fuming Brazing Copper Rod and Wire from South Africa; Final Determination of Sales at Less Than Fair Value,* 50 FR 49973, 49975 (December 6, 1985), the

[11] Iron Springs is a cattle producing consortium that is operated entirely by the JGL Group; Thompson Livestock is principally owned by members of the JGL Group, through a holding company.

Department determined that advances from shareholders were not traditional debt instruments primarily because of the indeterminate duration of the transactions and their treatment as equity in respondent financial statements. The respondents note that the Department has concluded that certain advances, even if subordinated to other debt, should still be identified as debt if they have a specific maturity date and require the payment of interest, citing *Elemental Sulphur from Canada; Final Results of Antidumping Duty Administrative Review*, 64 FR 37737, 37741 (July 13, 1999). The respondents argue that GAAP and the Department's past practice make clear that funds provided by shareholders to respondents should be treated as equity unless the record evidence shows an actual genuine obligation to repay the advance. The respondents assert that they had no obligation to repay, and thus the advances received from shareholders should be treated as equity, not debt.

The petitioners note that the Department normally relies on data from a respondent's normal books and records where those records are prepared in accordance with the home country's GAAP, and where they reasonably reflect the cost of producing the merchandise, consistent with Section 773(f)(1)(A) of the Act. The petitioners claim that the issue under consideration is whether the shareholder advances created an obligation of repayment of principal, or whether the advances established a right or claim to share in any dividends or other disbursements and the right to share in assets of the company in the event of liquidation, as set forth in *Interpretation and Application of Generally Accepted Accounting Principles 1998* (Delaney, Epstein, Adler, and Foran 1998). The petitioners argue that if, in the ordinary company books, the shareholder advances were not treated as equity or, more importantly, if the advances did not change the shareholder's rights and did not increase its share of the company, then the advances should not be treated as equity.

The petitioners claim that advances by Riverside-Grandview shareholders should be treated differently from those by Pound-Maker shareholders. The petitioners note that cash advances by Pound-Maker shareholders were treated as equity on the company's books and financial statements and, in return for the funds, the shareholders presumably obtained some additional claim on corporate assets or control. In contrast, the petitioners argue that advances to Riverside-Grandview, although subordinated to other loans, were not treated as equity on the company's books, but rather as liabilities or loans. The petitioners note that the balance of shareholder advances decreased during the POI, suggesting that repayment by Riverside-Grandview had occurred. The petitioners argue that there is no evidence that shareholders making the advances obtained a greater stake in Riverside-Grandview and that the record indicates that these advances are loans. The petitioners contend that advances to Groenenboom by its shareholders were not treated as equity in the company books and records, nor is there any evidence that the parties intended to create or increase shareholder claims to corporate assets.

*DOC Position:* We agree with the petitioners. In the instant investigation, there is no evidence that a repayment schedule exists for shareholder advances made to any of the four respondents. However, the absence of such a schedule, in and of itself, does not prove that a repayment obligation does not exist, or is not anticipated by the parties. The absence or existence of a repayment obligation may be determined from the manner in which a respondent has recorded the amounts received from shareholders in its accounting records.

The advances made to Pound-Maker by its shareholders are classified as equity in its audited financial statements. For Pound-Maker, there is no evidence of a repayment schedule or obligation, and there is no evidence that either principal or interest payments have been made. Since we do not have any basis for changing Pound-Maker's classification of these advances, we have determined that they should be treated as equity rather than debt and we have not included any interest expenses related to these advances in Pound-Maker's cost of production.

Conversely, on Riverside's audited financial statements and on Grandview's reviewed financial statements, the advances to Riverside and Grandview from their shareholders have been classified as liabilities, rather than equity. In addition, the shareholder advances balance outstanding decreased during the cost reporting period, indicating that a portion had been repaid. Furthermore, we disagree with the respondents that the lender's subrogation of these loans to the bank's debt virtually converts the loans into equity. To the contrary, the fact that a bank required the parties to sign subrogation agreements indicates that, from the bank's perspective, these advances reflect an obligation for the companies to the lenders. Presumably, the bank would not have required the subrogation agreements if this were not the case. Accordingly, we have no reason to believe that the respondent's normal classification of these advances as debt is inappropriate. Therefore, as in the preliminary determination, we have treated these advances as debt, consistent with Riverside-Grandview's classification.

As demonstrated in *Shop Towels from Bangladesh; Final Results of Antidumping Duty Administrative Review*, 60 FR 48966, 48967 (September 21, 1995), our practice is to impute interest expense on transactions when the rate charged by a related party lender does not reflect a fair market rate. In this case, we do not consider the respondents' interest-free related party loans to be reflective of the fair market rate in Canada since such loans typically involve some cost to the borrower. Therefore, we calculated interest expenses on the advance balances using a market rate.

We have also determined that the shareholder advances related to Groenenboom and Cor Van Raay should be classified as debt, and therefore we calculated interest expense on these balances using market rates of interest. The discussion of the advances to Groenenboom and Cor Van Raay involves proprietary information. *See* Memorandum from William Jones to The File, dated October 4, 1999.

3. Gender Adjustment

Riverside-Grandview notes that the Department adjusted its reported costs in the preliminary determination to account for cost differences associated with the gender of the cattle, and that the adjustment was based upon the average cost differences for finished steers and heifers reported by other respondents. The respondent argues that since it provided the cost data available from its own records, and since cost data by gender is not available for the entire cost calculation period, the Department should not make any gender adjustment for the final determination. Further, the respondent argues that it was inappropriate to rely, as facts available, on gender-specific costs of companies located in different provinces and operating under different circumstances. Riverside-Grandview notes that the cost differences indicated by its own data for representative sample lots of steers and heifers, which was obtained and reviewed by the Department at verification, are not significant. Riverside-Grandview further argues that, if the Department decides to make a gender adjustment to its costs, it should do so based upon its own gender-specific data. Finally, Riverside-Grandview argues that if the Department applies a gender adjustment for the final determination, it should be sure that total costs after adjustment do not exceed the total actual costs of production.

Cor Van Raay and Groenenboom also argue that if the Department applies a gender adjustment to their costs for the final determination, it should be sure that total costs after adjustment do not exceed their total actual costs of production.

The petitioners argue that the need for a gender adjustment is compelled by the failure of Riverside-Grandview, Cor Van Raay, and Groenenboom to submit information in the form and manner requested by the Department. The petitioners assert that Riverside-Grandview admits that its own data is not the most reliable basis for calculating gender cost differences as the records are incomplete and did not calculate actual costs. The petitioners argue that the average differences shown by the submissions of other respondents or the CanFax data provide a more reliable basis for adjusting the submitted costs. The petitioners also claim that the Department properly resorts to facts otherwise available in a manner that may increase the cost of production. The petitioners argue that there is no reason to abandon the gender adjustment simply because, on an aggregate basis, such an adjustment would increase total costs.

*DOC Position:* As in the preliminary determination, we have continued to make an adjustment for cost differences relating to gender. When a respondent's submitted costs do not account for cost differences associated with physical characteristics due to limitations in its production records, the Department's practice is to adjust the submitted costs using a non-adverse facts available approach to more accurately reflect the product-specific cost of production. *See Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews*, 64 FR 12927, 12949 (March 16, 1999) (Comment 19).

In the instant investigation, we adjusted Riverside-Grandview's costs as the respondent claimed that in the ordinary course of business it did not account for cost differences associated with the gender physical characteristic. *See Preliminary Determination* at 36850. We confirmed at verification that Riverside-Grandview normally does not account for such differences in its accounting records. However, we obtained and reviewed company documentation which indicates the approximate cost differences due to gender and we have used those records to adjust Riverside-Grandview's costs for the final determination.

Since Cor Van Raay and Groenenboom did not provide similar data, we have made a gender adjustment to their costs based on the average gender cost differences experienced by the respondents for whom such differences could be determined. We agree with the respondents that it would be unreasonable to allocate more costs to cattle than were actually incurred and have taken this into account in making our adjustments.

4. Cost Test

The FMBC, an interested party, presented the economic argument that the live cattle markets in the U.S. and Canada are highly developed, regulated commodity markets and, consequently, the Canadian cattlemen are price takers. Therefore, the FMBC argues that when the Department performs its sales below cost test, it should ignore periodic market fluctuations and focus instead on multiple year economic cycle specific to the cattle industry.

The petitioners argue that the FBMC would have the Department redefine ''fair value'' and ''normal value'' to fit a definition that FBMC characterizes as a ''fair return.'' The petitioners argue that in the absence of evidence that cattle are a highly perishable commodity, there is no basis to redefine terms explicitly defined by Congress. The petitioners argue that the use of the cost test described under section 773(b)(2)(C)(ii) of the Act (*i.e.*, a comparison of the weighted average unit price of all sales to the weighted average cost) applies only in instances where the product under investigation is highly perishable. *See* Statement of Administrative Action at 832. The petitioners argue that beyond the scheduled production date, cattle do not spoil, wilt or otherwise become unsaleable.

*DOC Position:* We agree with the petitioners and have applied the substantial quantities test in accordance with section 773(b)(2)(C)(i) of the Act. The Department has found that live cattle are not a highly perishable commodity and, therefore, there is no basis to apply the substantial quantities test in accordance with section 773(b)(2)(C)(ii) of the Act. The SAA, at 832, indicates that ''This latter rule closely corresponds to the current Commerce practice of determining substantial quantities of sales below cost for highly perishable agricultural products.'' Finally, section 773(b)(2)(B) of the Act states that the phrase within an extended period of time ''means a period that is normally one year, but not less than six months.

*Cost Issues—Company-Specific*

JGL Group

1. The Cost of Production for Traded Cattle

The petitioners argue that the submitted costs of five JGL Group suppliers are, at best, incomplete and are particularly inadequate with respect to labor costs, and that the Department lacks adequate costs to properly apply the cost test to sales of traded cattle. Therefore, they assert, the Department cannot rely upon home market sales of traded cattle and must resort to facts available for normal value. As facts available, the petitioners argue that the Department should compare U.S. sales of traded cattle to the estimated normal values provided in the petition. However, the petitioners argue that, if the Department believes the JGL Group suppliers were uncooperative, it should apply facts available by using the higher of the average normal values in the petition for sales of the same gender and weight, or the suppliers' costs adjusted to account for the numerous deficiencies found at verification.

The petitioners disagree with the JGL Group's assertion that its cattle acquisition value should be used as the COP and constructed value (CV) of the traded cattle. The petitioners argue that the use of acquisition costs contradicts the rationale set forth in past cases. However, the petitioners suggest that the JGL Group's acquisition costs could be used as facts available, if they are first adjusted to reflect the difference between the suppliers' costs (including labor) and the acquisition price of the JGL Group.

The petitioners argue that whether or not the sample of suppliers was statistically valid or not, the Department must rely on facts available (*i.e.*, the suppliers' cost) to complete the proceeding within the statutory deadlines. The petitioners contend that, because of the substantial number of cattle suppliers to the JGL Group, it was clear from the outset that any cost data would, at best, be proxy costs. Further, the petitioners contend that because it was never practicable for the Department to obtain the necessary information, under subsection 776(a)(1) of the Act, it was appropriate for the Department to resort to facts otherwise available by sampling five of the JGL Group's suppliers. According to the petitioners, section 776(a)(1) of the Act does not require statistical sampling.

The petitioners point out that the JGL Group is subject to this investigation at the insistence of the CCA and that it is ironic for the CCA to assert that a sample is not statistically valid, given that its own position at the outset of this investigation was for the Department to select the largest producers and not to use a statistically valid sample to choose respondents.

The JGL Group argues that there are insurmountable practical problems that preclude the Department from calculating accurate dumping margins on its traded cattle sales using cost data obtained from the JGL Group's cattle suppliers. The respondent argues that the Department simply has no usable cost of production data from suppliers, as a result of: (1) the huge number of suppliers to the JGL Group; (2) the inevitable time pressures of the investigation; (3) the simple inability of family farmers to provide meaningful data, due to the limitations of their businesses and record keeping; and (4) the Department's failure to follow statutory requirements for sampling. Therefore, the JGL Group argues that, if the Department decides to use the traded cattle sales, the only valid, complete product-specific cost data available are the JGL Group's verified acquisition costs.

The JGL Group argues that supplier data obtained by the Department is incomplete because it only covers three of the 14 products sold in both Canada and the United States. The JGL Group notes that it sold 55 different products in Canada. Moreover, the JGL Group claims that six product-specific costs obtained by the Department are critically flawed because they are not in fact product-specific, but rather are the weighted average cost per pound of all types of cattle produced by the individual supplier. The JGL Group argues that the reported supplier costs do not reflect a lack of cooperation, but rather the fact that no small producers can or do track costs on an animal-specific basis. On the other hand, the JGL Group argues that, as the Department observed, buyers like the JGL Group purchase many animals at auction and the exact weight, gender and type of each animal is known and is reflected in the price paid.

The JGL Group argues that the sample selected by the Department is not statistically valid and that the resulting data is not representative of the greater population. The JGL Group asserts that under Sections 777 f-1(a) and (b) of the Act the Department must use only ''statistically valid samples.'' In addition, the JGL Group contends that due process requires samples to be representative, citing *National Knitwear & Sportswear Ass'n* v. *United States,* 779 F. Supp. 1364, 1373 (CIT, 1991), where the court stated, ''The representativeness of the investigated exporters is the essential characteristic that justifies an ''all others'' rate based on the weighted average for such respondents.''

In regard to the statistical validity of the sample, the JGL Group asserts that the Department failed to use a sound sampling methodology in its selection process. The JGL Group asserts that: (1) The Department's sample was too small given the size and heterogeneity of the relevant producer universe (*i.e.,* five out of thousands of suppliers) and the corresponding variance in products and costs; (2) the sample suffered from a lack of strict sampling procedures; and, (3) even the minimal sampling procedures that were described were not followed. The JGL Group concludes that the Department's sample therefore violates the statutory requirement that any samples selected be statistically valid.

Furthermore, the JGL Group asserts that the Department deprived it of its procedural rights as delineated in the statute by failing to consult with exporters and producers regarding the selection method to be employed. The JGL Group asserts that under Sections 777 f–1(a) and (b) of the Act the Department is required ''to the greatest extent possible, to consult with the exporters and producers regarding the method to be used to select exporters, producers or types of products.'' The JGL Group states that at no stage of the selection process was it consulted by the Department on the supplier selection methodology. Moreover, the JGL Group asserts that to the extent that it was advised as to how the suppliers would be selected, the Department failed to adhere to its stated methodology, as it failed to identify or select from the largest producers.

The JGL Group argues that if the Department nonetheless decides to include sales of traded cattle in the antidumping analysis, then, as contemplated in its April 8, 1999, decision memorandum, it should use the JGL Group's acquisition costs as a non-adverse surrogate for the producer's cost. The JGL Group argues that the acquisition costs are product-specific (*i.e.,* providing a cost for each unique combination of weight band, gender and type), as verified by the Department. Further, the JGL Group argues that no provision in the statute requires the Department to use the COP of producers in applying the cost test to sales made by resellers.

Moreover, the JGL Group argues that economic theory supports the use of acquisition cost as a conservative estimate of production costs. The respondent argues that in competitive markets, such as the cattle market, the market price for any given animal will be reflective of the industry's average cost, plus a return on equity. Thus, the JGL Group argues that, rather than reflecting the costs of a single supplier, as gathered by the Department, market prices reflect the costs of the industry as a whole, and are a better indicator of production costs. The JGL Group argues that the Department's findings relating to the five suppliers support these economic principles, since although some of the suppliers showed marginal losses, most showed profits, and for the five overall, revenues exceeded costs. The JGL Group argues that the Department should use its cattle acquisition costs as a reasonable proxy for the cost of production as non-adverse facts available.

Further, the JGL Group asserts that the results of the Department's limited sampling confirms the appropriateness of using acquisition costs to conservatively estimate production costs. The JGL Group argues that overall revenues for the five suppliers selected by the Department were in excess of their costs and their revenues correspond to the JGL Group's acquisition costs, therefore the Department should use the acquisition values in the below cost test for the final determination.

Finally, the JGL Group argues that in order to perform a below cost test on sales of traded cattle, the Department could use the JGL Group's own production costs as a proxy for the supplier costs. The JGL Group further argues that the cost of production data for cull cows and bulls (i.e., culled cattle) is not at issue, as the supplier's cost is zero since culls are typically used as production assets for other types of products (*e.g.,* milk from dairy cows or calves for breeder cattle). The JGL Group argues that the value of such ''cull'' by-products is the acquisition price paid by the JGL Group (*i.e.,* the supplier's sale price).

*DOC Position:* In addition to the sale of its own self-produced cattle, JGL purchased and resold a large number of cattle produced by other Canadian cattle operations. Because the suppliers of JGL's traded cattle did not appear to have had knowledge of the ultimate destination of the cattle they supplied to JGL, we decided to include JGL's traded cattle sales in the calculation of JGL's weighted average margin. For a discussion of the Department's decision to include the traded cattle sales in the final determination, *see* JGL Group Sales Comment 5 above (Traded Cattle Sales). Once it was determined that these traded cattle sales were to be included in our analysis, in order to obtain the actual cost of producing these cattle, it was necessary to obtain the supplier's actual production costs. Accordingly, the Department solicited cost of production information from a sampling of JGL's suppliers.

We agree with both parties that the per-unit costs submitted by the producers of the traded cattle are unusable for purposes of determining whether the home market sales of traded cattle were made at prices above their cost of production. The Department verified three of the five selected traded cattle producers and found that, while they had cooperated to the best of their ability, what books and records they did maintain did not allow them to track and report product-specific costs. Additionally, we found that the various cattle types were raised together in the same lots, making it difficult for the producers to separate costs by cattle type or weight. As a result, the per-unit costs supplied by the producers/suppliers are critically flawed because they are not product-specific costs, but rather are simply the weighted average cost per pound of all types of cattle produced.

While we concede that a larger sample could have achieved a greater cross representation of the population of the traded cattle suppliers, two factors prevented us from expanding our sample: (1) The inability to sample traded cattle suppliers who sold to JGL through auction houses, and (2) The large size of the population of suppliers. In our discussions with the JGL Group, the respondents informed the Department that their traded cattle suppliers number in the thousands, and that the overwhelming number of these traded cattle are purchased by the JGL Group at livestock auctions. The JGL Group also stated that because the auction houses handle the paperwork between buyer and seller and they do not maintain these records in an accessible format, it would be nearly impossible to identify the individual producers of cattle purchased at auction. Thus, it was not possible to select a sample of the entire population of the producers of JGL Group's traded cattle sales.

Moreover, faced with a population of thousands, and the limited time between the submission of the JGL Group's questionnaire responses and the preliminary determination, the Department determined that it would select only a manageable number of the JGL Group's direct suppliers of traded cattle. The reasonableness of this limited sample is supported by the fact that the CCA had to hire outside accountants to assist these small farmers/cattlemen in responding to the Department. A larger sample of producers of traded cattle would simply have overwhelmed both the Department and the JGL Group. It was thought at the time that a limited sample of the JGL Group's suppliers would provide a reasonable picture of the cost structure and profitability of the farmers/cattlemen. Unfortunately, the Department found that these suppliers' limited records did not allow them to provide product-specific costs by weight band, gender, and cattle type.

However, the issues raised about our sample obscure the larger point that regardless of the sampling technique used in this case, it appears that the responding cattle suppliers would still not have been able to provide usable data. That is, we believe that if the Department had selected a larger, more scientific sample, the selected farmers/cattlemen would similarly have been unable to provide usable data. As stated above, we agree with respondents that, at this level in the industry, the farmer/cattlemen's limited records and ranch size did not allow them to provide costs by weight band, gender, and cattle type. Therefore, no matter what sampling technique or sample size the Department chose, we would still be faced with using facts otherwise available to determine actual production costs.

We disagree with the respondents' arguments that the Department violated their procedural rights and that we failed to follow our intended procedures. First, we are surprised that the respondents have concluded that they were not consulted by the Department. Contrary to their assertion, the Department was in frequent contact with respondents' counsel on this specific issue. Not only did we specifically request and obtain JGL's accounts payable listing, but we subsequently requested that JGL provide information on a short list of 50 direct suppliers of traded cattle. We also had several discussions concerning the problems of obtaining data from auction houses. Moreover, section 777A(b) states that ''[t]he authority to select averages and statistically valid samples shall rest exclusively with the administering authority.'' Thus, the final decisions on how large a sample should be and how the sample should be selected rest exclusively with the Department. Second, despite the respondents' erroneous assumption that we intended to sample JGL's largest suppliers, it is obvious that such an approach would have been impossible. As JGL asserted, it was impossible even to identify the suppliers from whom JGL purchased cattle though auction houses, let alone to identify the largest of such suppliers.

In any event, the Department is obligated to complete its investigation within the statutory deadlines, and must determine a cost of production of cattle for the JGL Group's suppliers. Unlike *Final Determination of Sales at Less Than Fair Value: Fresh Atlantic Salmon from Norway,* 56 FR 7661, 7672 (1991), the producers' actual costs are not available in this case. Section 776(a)(1) of the Act authorizes the Department to use facts otherwise available where the ''necessary information is not available on the record.'' In selecting the facts otherwise available for this case, the Department finds that, given the cooperation of the JGL Group and its five selected traded cattle producers, the application of non-adverse facts available is warranted. Also, we believe that the suppliers of traded cattle that we selected are representative of the larger population in terms of farm/ranch size and sophistication of records, and that much of the aggregate financial data is representative. Therefore, we have adjusted the JGL Group's reported acquisition price of traded cattle to reflect the producers' cost of production. Since the acquisition prices are the revenues of the suppliers, we have increased the acquisition prices by the average loss of the five producers to obtain the cost of the average supplier. The aggregate financial data supplied by the five producers do not suffer from the problems reflected in the per-unit data. In addition, the acquisition prices are product-specific and are available for all of the products reported on the sales databases.

2. Cost Adjustments for Traded Cattle

The petitioners argue that the use of incomplete or estimated production costs for the suppliers, based upon the data verified, could have the effect of rewarding respondents with a lower margin by virtue of the fact that their accounting records do not track all costs. Moreover, petitioners argue that labor expenses should be included in the cost of production of the traded cattle. The petitioners cite the SAA at 835, noting that the Department computes a ''representative measure of the materials, *labor*, and other costs, including financing costs, incurred to produce the subject merchandise'' (emphasis added). The petitioners also cite *Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from India,* 63 FR 72246, 72249 (December 31, 1998) (*Mushrooms from Indi*a) (Comment 1), where the Department stated that when a respondent's normal accounting practices result in a mis-allocation of production costs, it will adjust the respondent's costs or use alternative calculation methodologies to more accurately reflect the actual costs incurred to produce the merchandise. Thus, the petitioners argue that the ranchers incur a real economic cost through their own labor and that the Department should recognize the labor costs for purposes of the antidumping law. The petitioners argue that the Department imputes a cost to family labor since the owner of a business expects a minimum return for his labor as well as a return on his investment, and wages and costs should not be excluded from the cost of production simply because it was not a grower's practice to pay wages to family members; in support, the petitioners cite *Final Determination of Sales at Less Than Fair Value: Fall-Harvested Round White Potatoes From Canada,* 48 FR 51669 51674 (November 10, 1983); and *Final Determination of Sales at Less Than Fair Value: Fresh Kiwifruit from New Zealand,* 57 FR 13695, 13705 (April 17, 1992).

The petitioners further question various other cost elements within the suppliers' cost build-ups, such as the depreciation expense for breeder cattle. The petitioners note that with respect to the JGL Group, both the Sorensons and Mr. Anderson included some depreciation costs for their breeder cows; however, the two differed significantly on the period of depreciation. The petitioners contend that neither party included any depreciation expense for bulls and recommend the inclusion of the expense using the average life. Specific to the Sorensons, the petitioners contend that no costs were assigned for slough hay or green feed. The petitioners claim that this issue was not addressed in the cost verification report. The petitioners indicate that additional errors were noted in the cost verification report which they claim could effect the reliability of the submitted data.

Regarding Mr. Anderson, the petitioners noted that because the grain market prices used in calculating normal value were misquoted from the Saskatchewan Department of Agriculture's data, the Department should use the correct data in the COP and CV calculations for the final determination. Finally, the petitioners argue that the conclusions made by the Department for the three verified JGL Group suppliers should be applied to the two unverified suppliers.

The JGL Group contends that if the Department does decide to use the limited supplier cost data, although several adjustments would be necessary to the calculation of costs, there is no basis for imputing a labor cost for any of the chosen suppliers as they are all sole proprietor farmers. The JGL Group argues that under tax and accounting rules sole proprietors are discouraged from paying themselves wages. Furthermore, the JGL Group argues that such treatment is reasonable since none of the suppliers incur any actual labor cost, but rather as the owners of their farms take their return on investment as profits. Moreover, they assert that the Department has no clear statutory authority to impute such labor expenses for sole proprietor farmers, since farm and the sole proprietor are the same entity, and thus the affiliated party transactions rules under section 773(f)(2) of the Act would not apply.

The JGL Group argues that the suppliers provided separate cost data for 1997 and 1998, but the Department requested that they focus on calendar year 1998, as it more closely corresponded to the POI. Respondents assert, however, that in the case of Edward Steinke it is more appropriate to use 1997 costs, as all sales to the JGL Group occurred in 1997. Additionally, in the case of Sorenson, the JGL Group maintains that 1998 costs should only be used for backgrounded cattle, and that 1997 reported costs should be used for weaned cattle. In this regard, the JGL Group suggests that unless the Department uses 1997 cost data as indicated above, there will be a mismatch between the products sold to the JGL Group and the calculated costs.

In the case of Brian Donison, respondents contend that computing interest expense on a ''cost of goods sold'' basis is distortive, as it does not consider borrowing costs for land. The JGL Group argues that land, a family farmer's primary production asset, is not reflected in the cost of goods sold. Therefore, under the Department's traditional approach to interest expense, no interest expense is allocated to the purchase of land. The JGL Group suggests that it would be reasonable to allocate interest expense between Donison's grain farming and cattle feeding operations based on the asset acquisition cost methodology previously submitted by Donison.

*DOC Position:* As noted in JGL Cost Comment 1 above, we resorted to the use of non-adverse facts available for the costing of the JGL Group's traded cattle sales. However, in order to rely on the aggregate financial data provide by the five suppliers we have adjusted the data to account for minor problems found at verification.

We increased the reported cost of manufacturing for each of the suppliers to account for labor supplied by the owner. We consider labor supplied by the owners of the farms or ranches to be affiliated transactions as covered under section 773(f)(2) of the Act. In this case, the farmer-cattleman is the owner of the farm-ranch and therefore is affiliated. In accordance with section 773(f)(2) of the Act, we tested the labor cost charged between the affiliates to determine if that element of value fairly reflects the amount usually reflected for sales of that element in the market under consideration. We do not consider zero labor costs to be reflective of an arm's length price. Thus, we have adjusted the suppliers' reported production costs to include a market value for the owner's labor.

With respect to the depreciation expense calculations for Sorenson and Anderson, we agree with the petitioners that a cost should be included for the depreciation of bulls. Specific to Sorenson, we note that pasture costs were addressed in the cost verification report and certain expenses have been included in the reported costs for hay and green feed. See Verification Report on the Cost of Production Data submitted by the Sorenson Brothers from Taija Slaughter to Neal Halper, dated August 3, 1999, at 8. Additionally, the report notes a minor adjustment for repairs and maintenance expenses which should be included in Sorenson's cattle costs of manufacturing. Specific to Anderson, we agree with the petitioners that the market grain prices which were misquoted in the COM calculation should be corrected. Regarding Donison's interest expense calculation methodology, we disagree with the respondent that the interest expense should be allocated on an asset-based methodology. We point to *Notice of Final Determination of Sales at Less Than Fair Value: Fresh Atlantic Salmon From Chile,* 63 FR 31411, 31430 (June 9, 1998) (Salmon), where we ''recognized that [our] normal method of calculating financial expenses on the basis of cost of goods sold, without special allocations to specific divisions or assets, provides a reasonable measure of the cost incurred for the merchandise.'' Thus, for this final determination, we have maintained our practice to calculate financial expenses based on the cost of goods sold denominator.

We disagree with the JGL Group's argument that certain of the suppliers' data should be based on the 1997 cost data instead of the POI or 1998 data, the closest corresponding year. The Department's general policy is to use the cost of producing the merchandise during the POI or POR, rather than the cost of the sales during that period. In accordance with section 773(b)(3) of the Act, we calculate average costs incurred ''during a period which would *ordinarily permit* the production of that foreign like product in the ordinary course of business.'' (emphasis added) We note that section 773(b)(3) does not direct the Department to use the cost of goods sold, but rather, the cost of production. Consistent with this provision, we normally require respondents to report their cost of production for the subject merchandise during the period of investigation or review (*i.e.*, the cost to produce the merchandise during the period in which they are making sales, as opposed to the cost to produce each individual product sold during the reporting period).

While we recognize that we have deviated from this general policy in a few instances, these departures were due to unique circumstances surrounding the particular cases. For example, in the *Salmon from Chile* case, the Department did not calculate a cost of cultivation for the POR because a one-year period is insufficient to capture the costs of production of that foreign like product in the ordinary course of business as required by section 773(b)(3)(A), since the growing period for salmon averages from between two and three years. The Department therefore had to extend the cost calculation period to include the entire growing period most recently completed (i.e., the period which would permit the production of the product). In the instant case, feeders are usually fed for a half to a full year before being sold, such that the ordinary production period does not extend outside the POI.

In *Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Germany*, 61 FR 38166 (July 23, 1996) (*LNPP*), we computed the COP and CV based on the specific costs incurred for each sale. However, since these are custom-made products, with no two newspaper presses being the same, we had no option but to use the cost incurred for each POI sale, even though some of the costs stray outside the POI. With cattle being a commodity-type product, the reasons for deviation from our normal practice in *LNPP* clearly do not apply.

In summary, the Department has a consistent and predictable practice regarding the proper cost calculation period for COP and CV; that is, to use the actual cost of manufacturing incurred during the period of investigation or review. Only in unusual circumstances has the Department deviated from this approach. We found no similar circumstances in the cattle case. We do not consider the JGL Group's argument sufficient grounds for deviating from our normal practice.

Pound-Maker

1. By-Product Costs

In the process of producing fuel grade ethanol from wheat, water, enzymes, and yeast, Pound-Maker also produces wet distillers grain (WDG) and thin stillage (TS). The company transfers all of the WDG and TS produced in the ethanol division to its cattle division where it is used in cattle feed to reduce the amounts of barley, other grains, and silage that would otherwise be consumed. In its normal accounting system, Pound-Maker records the transfers of WDG and TS using a formula tied in part to the average monthly price of barley. These transfers are eliminated by Pound-Maker in the preparation of its audited financial statements. The petitioners and Pound-Maker disagree as to whether a cost for WDG and TS should be included in Pound-Maker's COP.

The petitioners argue that the Department's cost verification report makes it clear that there is a market value for WDG and TS, despite assertions to the contrary by Pound-Maker. The petitioners submit two publicly-available documents in support of their claim that WDG and TS are sold in the U.S. market as feed. The petitioners argue that the inter-divisional transfer prices recorded by Pound-Maker do not appear to be distorted. The petitioners note that in the preliminary determination the Department accepted Pound-Maker's claim that WDG and TS are by-products of ethanol production and have zero costs, citing *Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from South Africa*, 60 FR 22500, 22556 (May 8, 1995) (*Furfuryl Alcohol*). The petitioners argue that this case is not applicable as the Department accepted the *Furfuryl Alcohol* respondent's assignment of zero costs to a product not because it was a by-product, but rather because the cost was effectively captured elsewhere. The petitioners claim that, in the instant investigation, Pound-Maker's use of WDG and TS reduces the feed costs that the respondent would otherwise incur to feed cattle, and that the use of zero costs for these products would understate its actual cost of production.

Pound-Maker argues that its accounting treatment of WDG and TS as by-products with zero costs is fully justified. Pound-Maker claims that this treatment should be accepted since the Section 773 (f)(1)(A) of the Act requires the Department to compute costs of production using the company's own records, unless the Department concludes that Pound-Maker's accounting departs from GAAP or does not otherwise reasonably reflect production costs. Pound-Maker claims that the Department distinguishes between co-products and by-products based on their relative sales value and that by-products are assigned zero costs of production while common costs are allocated among co-products. *See Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Goods from Argentina*, 60 FR 33539, 33547 (June 28, 1995) (*OCTG from Argentina*). Pound-Maker argues that there is unrebutted record evidence that TS, in the form produced by the company (*i.e.*, five to seven percent solids), has no commercial value and is not sold anywhere in Canada. Pound-Maker states that it provided the Department with a letter from a Canadian ethanol producer that produces and sells TS, but notes that the ethanol producer further processes its TS into a concentrated syrup (20 percent solids) before it is sold. Pound-Maker argues that significant capital investment in the form of additional equipment was necessary for this company to produce the concentrated syrup and that Pound-Maker cannot produce the same TS product. Pound-Maker argues that the estimated sales value of WDG is insignificant in relation to ethanol and thus is properly treated as a by-product. Pound-Maker notes that it provided the Department with a letter from a Canadian brewery that sold a product similar to WDG known as ''brewer's spent grains'' and the market value of this product is minor in relation to the value of ethanol. Pound-Maker claims that one of the documents submitted by the petitioners supports the respondent's classification, since it refers to distillers grains as by-products. Pound-Maker argues that *Furfuryl Alcohol* also supports its assignment of zero production costs, since both *Furfuryl Alcohol* and the instant case involve a respondent that treated a low-valued product, produced by one production process and consumed in another, as a by-product. Pound-Maker argues that, if the Department were to determine that WDG or TS is a co-product rather than a by-product, the Department should allocate the costs of the wheat input based on the relative sales values of ethanol, WDG and TS. Pound-Maker claims that there is no legal basis for using its inter-divisional transfer price to value WDG and TS as it does not reflect any actual costs, but rather a value that is arbitrarily assigned based on hypothetical estimated costs for a substitute product.

*DOC Position:* This is a situation where as a result of the ethanol production process, two residual products, WDG and TS, are generated. Even though there is a market for these general type of products, they are not sold by the company. Instead, they are consumed by Pound-Maker's cattle operations. In the normal course of business, Pound-Maker assigns a value to the inter-divisional transfers of WDG and TS; however, for financial statement purposes, Pound-Maker does not allocate any of the costs to produce ethanol to the WDG and TS.

The Department's long-standing practice, now codified at section 773(f)(1)(A) of the Act, is to rely on a company's normal books and records if such records are in accordance with home country GAAP and reasonably reflect the costs associated with production of the merchandise. *See Final Determination of Sales at Less than Fair Value; Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil,* 64 FR 38756, 38787 (July 19, 1999) (Comment 47). Where we determine that a respondent's normal accounting practices result in an unreasonable allocation of production costs, the Department will make certain adjustments or use alternative methodologies to more accurately capture the costs incurred. *See Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea: Final Results of Antidumping Duty Administrative Reviews,* 64 FR 12927, 12949 (March 16, 1999)(Comment 19).

While we agree with Pound-Maker that the WDG and TS are appropriately classified as by-products of the ethanol production process, we disagree with Pound-Maker's claim that no value should be assigned to the inter-divisional transfers for use in the production of cattle. The WDG and TS are closely tied to Pound-Maker's cattle feeding operations in that WDG and TS account for a significant portion of cattle feed and TS represents the only source of water for three of Pound-Maker's six feedlot wings. To assign no value to these residual products consumed by its cattle feeding operations would result in an unreasonable allocation of costs between its two divisions. Clearly, the cattle operations are deriving a benefit from the by-products generated from the ethanol plant. This situation is akin to transfers of by-products between different operations in a steel mill. For example, coke gas is generated from a coking plant and is a by-product of the coke production process. If this coke gas is consumed in a blast furnace, the coking mill process will receive a credit for the estimated value of the gas, and the operation consuming the gas, the blast furnace in this example, will be charged the same estimated value. *See Management Accountants' Handbook* at 11–31 (Keller, Bulloch, Shultis, 4th ed. 1992). Accordingly, we have determined that it would be distortive to assign no value to the WDG and TS consumed by Pound-Maker's cattle feeding operations, and have determined that an adjustment to its reported costs is appropriate.

We disagree with Pound-Maker's assertion that the Department's decision in *Furfuryl Alcohol* supports assignment of zero cost to WDG and TS. In that case, we accepted a respondent's assignment of zero costs to bagasse, which is used in furfural production, not because it was a by-product, but rather because its cost was effectively captured in the respondent's reported coal costs.

Since we have determined that it is appropriate to assign value to the WDG and TS, the next issue is to decide on the most appropriate allocation method. The *Management Accountants' Handbook* at 11–25 offers suggestions on how to value by-products under different scenarios, including situations where there is an established market price for the by-products, situations where the by-product is an alternative to the main product being produced, and most appropriately for this case, instances where by-products are usable as substitutes for other materials. The textbook reads, ''Here the value placed on by-products is determined by working from the price of the material replaced.''

In the instant case, because the WDG and TS are being used as substitutes for barley and other grains fed to cattle on Pound-Maker's feedlots, it would be appropriate to assign costs to the WDG and TS using the value of the grains replaced in the feed mixture. An example of such treatment is provided in the *Management Accountants' Handbook* at 11–31. The text describes a steel plant that uses by-products of its coke operations in the production of other products, and values the by-products based upon the equivalent units of inputs (*e.g.,* fuel oil, coal) that are replaced. As noted earlier, Pound-Maker assigns values to transfers of WDG and TS, but these values are eliminated for purposes of its financial statements. According to Pound-Maker, these transfers ''reflect values arbitrarily assigned by PMA * * * based on hypothetical estimated costs for a substitute product * * *.'' *See* Pound-Maker rebuttal brief at 37. Although Pound-Maker seems to indicate that the arbitrary nature of the assigned values is a defect that would factor against the use of these transfer values, the *Management Accountants' Handbook* at 11–9 states that ''an allocation method must be found that, though *arbitrary,* allocates the costs on as *reasonable* a basis as possible'' (emphasis added).

We have reviewed the formula and methodology used to derive the transfer values and have determined that the amounts initially recorded for these transfers represent a reasonable value for the cattle feed replaced by WDG and TS. Pound-Maker has referred to the amounts recorded as ''theoretical protein-equivalent transfer prices.'' *See* Section D response of April 28, 1999, at D–31. The formula used to derive these amounts ''calculates an amount (value) based on the dry matter content of the by-products relative to the value of feed barley.'' *See* Section D supplemental response of June 4, 1999, at SD–10. The transfer prices thus represent Pound-Maker's own estimate of the value of cattle feed, and represent the most appropriate value to be assigned to the WDG and TS consumed during the POI.

In addition, we found that there are certain costs to produce WDG and TS that are incurred *after* the split-off point, and we, therefore, assigned those costs to the WDG and TS used in Pound-Maker's cattle feed.

2. G&A Expenses and Financial Expenses—Cost of Sales Denominator

Pound-Maker argues that the Department erred in its recalculations of Pound-Maker's general and administrative (G&A) expense rate and financial expense rate for the preliminary determination. Pound-Maker claims that in these rate calculations, all categories of cost that are in the cost of goods sold (COGS) denominator must also be in the per-unit COM figures to which the ratios are applied, and vice versa. According to Pound-Maker, the Department improperly included costs in its COM that were not included in the COGS denominator.

Pound-Maker states that, for sales of its own-produced cattle, the COGS reflects the full cost of those cattle, including the purchase cost of the input feeder cattle and all costs associated with fattening the cattle. Pound-Maker notes, however, that its COGS also includes the cost of providing custom-feeding services to outside investors, who purchase feeder cattle and pay a fee to Pound-Maker for fattening their cattle. According to Pound-Maker, the COGS for these custom-feeding services includes only the costs of fattening the cattle, and does not include the cost of the original input feeder cattle. Pound-Maker claims that since the calculated G&A and financial expense rates are to be applied to a COM figure that includes the full cost of fattened cattle, the company adjusted its COGS denominator to include the input feeder cattle costs for custom-fed cattle that were reported in Pound-Maker's sales databases.

Pound-Maker claims that the Department erroneously denied this adjustment for the preliminary determination, producing a distortive result that allocated more G&A and financial expenses than Pound-Maker actually incurred. Pound-Maker argues that either the COM for custom-fed cattle should exclude feeder cattle costs, or the G&A and financial expense rates should be calculated using an adjusted COGS figure that includes feeder cattle costs for custom-fed cattle.

Further, Pound-Maker argues that the Department routinely permits adjustments so that the COM and COGS are on the same basis. In support, Pound-Maker cites *Mushrooms from India* at 72247, in which the Department stated, ''In order to put both the G&A rate and the financial expense rate on the same basis as the per-unit cost of manufacturing, we excluded certain expense items from the cost of goods sold used by Agro Dutch as the denominator in its calculations.''

The petitioners argue that the Department properly rejected Pound-Maker's submitted adjustment to allocate G&A and financial expenses to sales of custom-fed cattle on the basis of its own COGS, plus the value of feeder cattle that it fed but did not own. The petitioners argue that the Department's long-standing practice is to ''compute G&A and interest expenses on a company-wide basis as a percentage of cost of sales,'' and cite *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Taiwan,* 63 FR 40461, 40472 (July 29, 1998). The petitioners assert that Pound-Maker sought to artificially inflate its COGS of custom-fed cattle by adding in the acquisition cost of the feeder cattle, thus reducing the G&A and financial expenses allocated to its sales of own-produced cattle. The petitioners argue that *Mushrooms from India* and other cases cited by Pound-Maker may support the Department's practice of adjusting COM or COGS, but the petitioners note that in none of Pound-Maker's cited cases was the Department asked to adjust COGS by adding costs that the respondent company did not incur and that are not recorded in its financial statements. The petitioners also note that nothing in the statute requires that COM and COGS be on the same basis.

The petitioners argue that the constructed value of custom-fed cattle should properly include all expenses that were incurred by the actual owners of the cattle and the absence of such expenses makes irrelevant Pound-Maker's arguments that the Department allocated more costs than the respondent incurred. The petitioners claim that the Department should remove Pound-Maker's overstated sales that were identified at verification and should also revise the denominator for allocating per-unit feeder cattle costs as indicated in the cost verification report.

*DOC Position:* We agree with Pound-Maker that the denominator in the G&A and financial expense rate calculations should be on a similar basis to the COM values to which the rates will be applied. However, Pound-Maker is incorrect when it states that we improperly applied the G&A and financial expense rates to a COM value that is not on the same basis as the COGS denominator used to derive the rates. Pound-Maker provides custom-feeding services to outside parties, and the COGS for these services includes only the costs of fattening the cattle (feed and other miscellaneous expenses). However, contrary to Pound-Maker's assertions, the cost of the input feeder cattle is *also* in Pound-Maker's COGS denominator. In its March 12, 1999 submission, Pound-Maker stated, ''Virtually all of our custom feeders purchase their feeder cattle from PMA.'' Therefore, the COGS denominator already includes the cost of custom-fed feeder cattle and Pound-Maker's proposed adjustment is unnecessary. As in the preliminary determination, we have adjusted the denominators in Pound-Maker's G&A and financial expense rate calculations to reflect the COGS shown on its financial statements.

Riverside-Grandview

1. Head-Days Allocation Methodology

The petitioners argue that Grandview used an unreasonable methodology to allocate certain costs between its own-produced cattle and cattle which it custom-feeds for other parties. The petitioners state that this methodology, which is based upon head-days (*i.e.,* the number of days a head of cattle was on the company's feedlot), does not, on its face, appear to be unreasonable. The petitioners cite to *Mushrooms from India* at 72248, where the Department allocated costs between co-products on a weight or volume basis. However, the petitioners claim that Grandview's head-days allocation methodology, even if mathematically accurate, produces unreasonable results and thus should be rejected by the Department. A table containing proprietary information was submitted by the petitioners in support of their claim.

The petitioners argue that the Department should neutralize the impact of this methodology by allocating costs to non-Riverside custom fed-cattle on a sales value basis.

Riverside-Grandview argues that the petitioners' arguments should be rejected. Riverside-Grandview claims that the proprietary exhibit submitted by the petitioners is incorrect in a number of respects. Riverside-Grandview claims that the Department addressed this issue previously at the preliminary determination, and Riverside-Grandview notes that it did not take issue with the Department's conclusion at that time. Riverside-Grandview argues that the petitioners' proposed methodology would substantially over-allocate costs to Riverside-Grandview.

*DOC Position:* We agree with Riverside-Grandview. We have reviewed the methodology used by the respondent to allocate certain costs and have determined that it is reasonable. Since Riverside-Grandview provides the same feed and services to its own cattle and to custom-fed cattle, we believe the number of head-days is a logical and appropriate allocation method. As we noted previously, the petitioners' analysis contains certain mathematical errors. *See Issues Summary for the Preliminary Determination,* dated June 30, 1999, at page 7. We believe that reasonable results are produced when these errors and the respondent's need to cover its variable costs are taken into account. Therefore we have continued to accept the head-days allocation methodology for purposes of calculating Riverside-Grandview's COP.

2. Claimed Cost Offset

Riverside-Grandview argues that the Department should accept its submitted cost offset for a ''disaster claim.'' Riverside notes that (1) The claim relates to its November 30, 1998, fiscal year, (2) Its auditors determined that Riverside-Grandview qualified for the payment, and (3) The Department verified Riverside-Grandview's receipt of the claimed amount. Riverside-Grandview argues that, since its outside auditors have confirmed that, in accordance with GAAP, the claim should have been reflected in its financial statements, and since the claim relates to the cost reporting period, the Department should not exclude this offset.

The petitioners argue that the statue directs the Department to first consider the company books prepared in the normal course of business prior to the antidumping investigation. The petitioners claim that such records carry the presumption of correctness and the added safeguard that they were not likely designed to minimize exposure under antidumping laws. The petitioners argue that Riverside-Grandview seeks to reduce its production costs by deducting a cost offset that was not recorded in its normal accounting records during the POI because the funds were not received until after the POI. The petitioners argue that Riverside-Grandview's failure to record the claim is not necessarily erroneous, simply because the auditors now state that recording the claim would have been consistent with GAAP. The petitioners argue that GAAP permits companies to elect how to treat various items, and if the expenses in question were not extraordinary, there is no basis to offset those expenses by income received in a later period.

*DOC Position:* We agree with the petitioners. The Department normally relies on costs recorded in a company's accounting records as long as they are recorded in accordance with GAAP and reasonably reflect the costs of production. *See* section 773(f)(1)(A) of the Act. The disaster claim that Riverside-Grandview seeks to apply as an offset to its costs was not recorded in Riverside-Grandview's normal books and records, or in its audited financial statements, and we have no basis for applying this offset to reduce its costs of production. Despite the description used for the claimed offset, Riverside-Grandview did not incur any abnormal or unusual costs during the cost reporting period and thus its submitted costs, without the claimed offset, properly reflect its normal costs of producing the subject merchandise. Further discussion of this issue involves proprietary information. *See* Memorandum from William Jones to The File, dated October 4, 1999.

3. Bank Penalties

Riverside-Grandview claims that, during the cost reporting period, it incurred penalties charged by a bank because of the respondents' early repayment of debt. The respondent argues that these penalties relate primarily to long-term loans with maturity dates beyond the cost reporting period and that outside auditors determined that a substantial portion of the bank penalties should have been recorded in the financial statements as prepaid interest with deferred recognition of the expense. According to Riverside-Grandview, full inclusion of the bank penalties would distort their costs by treating a payment that relates to future interest expenses on long-term debt as if it were a cost on the particular day when the bank penalties were paid. The respondent argues that to be consistent with GAAP, and avoid the distortion of costs, such future expenses should be matched to the time periods covered by the loans to which they related. Riverside-Grandview claims that this approach is analogous to the approach taken by the Department with respect to foreign exchange losses on long-term loans, were such losses are amortized over the remaining life of the loans; the respondent cites *Fresh Atlantic Salmon from Chile, Notice of Final Determination of Sales at Less Than Fair Value,* 63 FR 31411, 31430 (June 9, 1998).

The petitioners argue that Riverside-Grandview seeks to change its actual accounting practice in order to obtain more favorable treatment solely for purposes of this investigation. The petitioners claim that the Department verified that the early payment penalties were expensed in the cost reporting period, as they appear in the audited financial statements in accordance with Canadian GAAP. The petitioners argue that although GAAP permits such costs to be amortized over a period of time, it does not require such treatment. The petitioners argue that respondent's reference to foreign exchange losses is inapposite since the Department permits foreign exchange losses to be amortized over the remaining life of loans that continue to be repaid, whereas the bank penalties in the instant case relate to long-term loans that have already been paid off. Therefore, the petitioners claim, there is no reason to depart from the treatment of these expenses in Riverside-Grandview's financial statements.

*DOC Position:* We agree with the petitioners. Our normal practice is to rely on a respondent's normal accounting records if those records are in accordance with GAAP of the home country and reasonably reflect the costs of production. *See* section 773(f)(1)(A) of the Act. These penalties were assessed by the bank because of the respondents' decisions to pay off their loans before they were due. The fact that these loans would have extended into future periods if they were not paid early is of no significance here. The bank penalties were, in fact, expensed by the respondents in their audited financial statements covering this period, in accordance with Canadian GAAP, as they relate to events which occurred during that fiscal year. Since the loans were paid off in the current period, we see no reason to adjust these costs to reflect a hypothetical payout schedule which no longer applies. The analogy to foreign exchange losses is inappropriate for the reasons cited by the petitioners.

4. Accounting Errors

Riverside-Grandview argues that the Department should adjust its reported costs based upon verified cost offsets and other cost adjustments. Riverside argues that since most of the custom work income that it claimed as an offset relates to work that it performed for Grandview, and since the expense was reported by Grandview in the submitted costs, the Department should allow Riverside's submitted offset. Riverside-Grandview also argues that the Department should reduce its submitted costs for: (a) An accrual that was inadvertently recorded twice; (b) Wages, utilities, and telephone costs that were reported as indirect selling expenses; (c) Cattle purchases that were related to a prior period; and, (d) Revenue items that should have been reflected in the submitted costs. Riverside-Grandview also asserts that the Department should increase the reported costs for barley purchases that were not properly accrued and expense items that should have been reflected in the submitted costs.

The petitioners argue that the Department should not permit the various cost offsets that Riverside-Grandview failed to claim in their responses prior to verification, claiming that these offsets were not submitted on a timely basis.

*DOC Position:* We agree with Riverside-Grandview. Although most of the claimed adjustments were not explicitly reported in the respondent's submissions, we identified certain income and expense items at verification through our routine testing. After further inquiry and analysis, we determined that these miscellaneous income and expense items are appropriate for inclusion in the calculation of COP and have therefore included them in the COM for the final determination.

Cor Van Raay

1. Cost Test for Partnership Sales

The petitioners note that Rick Paskal, one of the three entities collapsed into respondent Cor Van Raay, entered into partnerships with producers outside Cor Van Raay to feed and sell live cattle. The petitioners argue that such sales should be compared to Rick Paskal's costs of own-produced cattle, rather than to the average cost of Cor Van Raay as a whole reporting entity. The petitioners argue that in the alternative, the Department should recalculate the Cor Van Raay average costs to reflect the additional sales of partnership cattle.

Cor Van Raay argues that the Department should not compare partnership sales to Rick Paskal's costs of own-produced cattle, because (1) the Department did not require that the cost of production incurred by the partners be reported, (2) there is no evidence that the costs incurred by Rick Paskal are any more representative of the partners' costs than the costs incurred by other companies collapsed with Cor Van Raay, and (3) in fact, other companies collapsed in the Cor Van Raay respondent entity (*i.e.*, Butte Grain Merchants) were also involved in these sales. Further, the respondent argues that, for these same reasons, it would be inappropriate to increase the average cost of the Cor Van Raay consolidated entity to reflect Rick Paskal's involvement in the partnership sales.

*DOC Position:* We agree with the respondent. The Department requested that the partnership sales in question be reported, but did not require that the partners submit a cost response. While, given the circumstances of these sales, we believe that it is appropriate to include them in our dumping margin analysis, there is no justification for comparing the sales prices to Rick Paskal's costs alone, as there is no evidence that Rick Paskal's costs are any more representative of the partner's costs than the weighted-average costs of Cor Van Raay as a whole. We have therefore continued to compare the sales prices in question to the latter costs.

Groenenboom

1. Currency Hedging Losses

Groenenboom claims there is no relation between its currency hedging losses and the purchase of any inputs used in the production of the subject merchandise. Groenenboom argues that the Department confirmed this at verification by reviewing monthly statements from the company that manages its currency hedging account. Groenenboom asserts that its gains or losses from currency hedging are wholly unrelated to any G&A activities associated with its production or sales and these gains and losses should not be treated as such in the final determination. Groenenboom cites to *Notice of Final Determination of Sales at Less Than Fair Value: Emulsion Styrene-Butadiene Rubber From the Republic of Korea,* 64 FR 14865, 14871 (March 29, 1999)(*ESBR from Korea*) where the Department excluded foreign exchange gains and losses because such gains and losses are typically included only if they ''are related to the cost of acquiring debt.'' The respondent argues that it is apparent from the documents reviewed at verification that the hedging contracts were not associated with any specific sale or group of sales to the United States. Further, Groenenboom argues that foreign exchange contracts may be taken into account for purposes of adjusting sales prices only to the extent that they are directly linked to a particular sale, and cites *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France; et al; Final Results of Antidumping Duty Administrative Reviews,* 57 FR 28360, 28413 (June 24, 1992).

The petitioners argue that Groenenboom recorded losses in a currency trading account during the POI and that these losses should be added to its G&A expenses. The petitioners claim that trading losses that are not tied to specific sales in the U.S. market or to the purchase of inputs should be analyzed for purposes of the antidumping law using the logic that is applied to any incidental income or loss to the business. The petitioners argue that Groenenboom is dedicated solely to the production of cattle, such that the funds that were traded to produce hedging gains or losses were generated in the cattle business, and that any gains or losses on such hedging affect Groenenboom's working capital, if not directly related to sales in foreign currency. The petitioners claim that if Groenenboom had taken funds and deposited them in a bank in Canada, short-term interest earned on such deposits would have been deducted from G&A expenses under normal Department practice.

Further, the petitioners argue that where a respondent invests current cash from its operations and loses money, those losses should be included in G&A expenses. The petitioners argue that Groenenboom's cite to *ESBR from Korea* is misplaced as that case involved exchange gains and losses on sales. The petitioners cite to *Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Goods from Korea,* 60 FR 33561, 33567 (June 28, 1995) in arguing that hedging gains or losses are properly included in G&A expenses. The petitioners also argue that Groenenboom's normal accounting practice is to treat gains and losses from currency hedging as part of G&A expenses and that respondents have shown no basis to depart from this treatment.

*DOC Position:* The Department's practice has been to not include investment-related gains, losses and expenses in the calculation of G&A expenses for purposes of the COP or CV calculations. In calculating COP and CV, we seek to capture the cost of production of the foreign like product and subject merchandise, and to exclude the cost of unrelated production or investment activities. The Department accounts for a respondent's investment activities that relate to the financing of working capital as part of its financial expenses, which are calculated on a consolidated basis. The record indicates that these currency hedging activities were strictly for investment purposes and, therefore, we have excluded Groenenboom's currency hedging losses from its G&A expenses.

## Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the Customs Service to continue suspending liquidation of all entries of live cattle from Canada, except for subject merchandise produced and exported by Pound-Maker (which continues to have *de minimis* weighted-average margins), that are entered, or withdrawn from warehouse, for consumption on or after July 8, 1999 (the date of publication of the preliminary determination in the **Federal Register**). The Customs Service shall continue to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds the United States price, as indicated in the chart below. These instructions suspending liquidation will remain in effect until further notice.

The weighted-average dumping margins are as follows:

| Exporter/producer | Weighted-average margin percentage |
|---|---|
| Cor Van Raay | 4.53 |

| Exporter/producer | Weighted-average margin percentage |
|---|---|
| Groenenboom | 3.86 |
| JGL Group | 5.10 |
| Pound-Maker | [1] 0.62 |
| Riverside/Grandview | 5.34 |
| Schaus | 15.69 |
| All Others | 5.63 |

[1] De minimis

Section 735(c)(5)(A) of the Act directs the Department to exclude all zero and *de minimis* weighted-average dumping margins, as well as dumping margins determined entirely on the basis of facts available under section 776 of the Act, from the calculation of the ''all others'' rate. We have excluded the dumping margin for Pound-Maker (which is *de minimis*) from the calculation of the ''all others'' rate.

## ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing the Customs Service to assess antidumping duties on all imports of the subject merchandise entered for consumption on or after the effective date of the suspension of liquidation.

This determination is published pursuant to sections 735(d) and 777(i)(1) of the Act.

Dated: October 12, 1999.

**Robert S. LaRussa,**

*Assistant Secretary for Import Administration.*

[FR Doc. 99–27410 Filed 10–20–99; 8:45 am]

BILLING CODE 3510–DS–P

**DEPARTMENT OF COMMERCE**

**International Trade Administration**

**[A–583–815]**

## Notice of Extension of Time Limit for Antidumping Duty Administrative Review of Welded ASTM A–312 Stainless Steel Pipe From Taiwan

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

**EFFECTIVE DATE:** October 21, 1999.

**SUMMARY:** The Department of Commerce (the Department) is extending the time limit for the preliminary results of the antidumping duty administrative review of the antidumping order on Welded ASTM A–312 Stainless Steel Pipe from Taiwan, covering the period December 1, 1997 through November 30, 1998.

**FOR FURTHER INFORMATION CONTACT:** Juanita Chen or Karla Whalen, AD/CVD Enforcement Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Room 7866, Washington, DC 20230, telephone (202) 482–0409, or (202) 482–1391, respectively.

**SUPPLEMENTARY INFORMATION:** On January 25, 1999, the Department initiated this administrative review of the antidumping duty order on welded ASTM A–312 Stainless Steel Pipe from Taiwan (64 FR 3682). Under section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), the Department may extend the deadline for completion of the preliminary results of an administrative review if it determines that it is not practicable to complete the preliminary results within the statutory time limit of 245 days after the last day of the anniversary month for the relevant order. On July 21, 1999, the Department extended this case sixty days (64 FR 41382, July 30, 1999). However, the Department has determined that it is not practicable to complete the preliminary results of the administrative review within that statutory time limit. See Memorandum from Joseph A. Spetrini to Robert S. LaRussa, dated September 30, 1999.

Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time limit for the preliminary results until December 15, 1999.

Dated: October 30, 1999.

**Joseph A. Spetrini,**

*Deputy Assistant Secretary, Enforcement Group III.*

[FR Doc. 99–27571 Filed 10–20–99; 8:45 am]

BILLING CODE 3510–01–P

**DEPARTMENT OF COMMERCE**

**International Trade Administration**

**[A–549–502]**

## Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review

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

**ACTION:** Notice of final results of antidumping duty administrative review.

**SUMMARY:** On April 13, 1999, the Department of Commerce published the preliminary results of the administrative review of the antidumping duty order on certain welded carbon steel pipes and tubes from Thailand. This review covers one producer/exporter, Saha Thai Steel Pipe Co., Ltd. (''Saha Thai'') and the period March 1, 1997 through February 28, 1998.

We gave interested parties an opportunity to comment on the preliminary results as discussed in the ''Analysis of Comments'' section below. Based on our analysis of comments received, we have made certain changes for the final results. The final weighted-average dumping margin is listed below in the section ''Final Results of the Review.''

**EFFECTIVE DATE:** October 21, 1999.

**FOR FURTHER INFORMATION CONTACT:** John Totaro, AD/CVD Enforcement Group III, Office VII, Room 7866, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1374.

**APPLICABLE STATUTE:** Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (''the Act'') by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations are to those codified at 19 CFR Part 351 (1998).

**SUPPLEMENTARY INFORMATION:**

## Background

On March 11, 1986, the Department published in the **Federal Register** an antidumping duty order on welded carbon steel pipes and tubes from Thailand (51 FR 8341). On March 11, 1998, the Department published a notice of opportunity to request an administrative review of this order covering the period March 1, 1997