covered by this review will be unchanged by the results of this review.

We will instruct Customs to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by this order will be the rate for that company established in the most recently completed administrative proceeding conducted under the URAA. If such a review has not been conducted, the rate established in the most recently completed administrative proceeding pursuant to the statutory provisions that were in effect prior to the URAA amendments is applicable. *See, Certain Carbon Steel Products from Sweden; Final Results of Countervailing Duty Administrative Review*, 62 FR 16549 (April 7, 1997). These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested. In addition, for the period January 1, 1997 through December 31, 1997, the assessment rates applicable to all non-reviewed companies covered by this order are the cash deposit rates in effect at the time of entry.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation. This administrative review and notice are issued and published in accordance with section 751(a)(1) and 777(i)(1) of the Act (19 U.S.C. 1675(a)(1) and 19 U.S.C. 1677f(i)(1)).

Dated: October 18, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–27685 Filed 10–21–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–834]

Final Negative Countervailing Duty Determination; Live Cattle From Canada

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

EFFECTIVE DATE: October 22, 1999.

FOR FURTHER INFORMATION CONTACT: Zak Smith, Stephanie Hoffman, James Breeden, or Melani Miller, AD/CVD Enforcement, Group I, Office 1, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0189, 482–4198, 482–1174, or 482–0116, respectively.

Final Determination

The Department of Commerce determines that countervailable subsidies are not being provided to producers or exporters of live cattle in Canada.

Petitioner

The petition in this investigation was filed on November 12, 1998, by the Ranchers-Cattlemen Action Legal Foundation (R-Calf, referred to hereafter as ''the petitioner'').

Case History

Since the publication of the preliminary determination in the **Federal Register** on May 11, 1999 (64 FR 25278) (''*Preliminary Determination*''), the following events have occurred:

We conducted verification in Canada of the questionnaire responses from the Government of Canada (''GOC''), Government of Alberta (''GOA''), Government of Manitoba (''GOM''), Government of Ontario (''GOO'') and Government of Saskatchewan (''GOS'') from June 16 through June 28 and August 5 through August 13, 1999. We aligned the final determination in this investigation with the final determination in the companion antidumping investigation (*see Countervailing Duty Investigation of Live Cattle From Canada; Notice of Alignment With Final Antidumping Duty Determination*, 64 FR 35127 (June 30, 1999)) and we postponed the final determination of this investigation until October 4, 1999 (*see Notice of Postponement of Final Antidumping Determination: Live Cattle from Canada*, 64 FR 40351 (July 26, 1999)). On October 4, 1999, the deadline for this final determination was set for October 12, 1999. See Memorandum to Richard W. Moreland from Valerie Ellis, ''Clarification and Correction of Extension of Final Determination in the Antidumping Investigation of Live Cattle from Canada.'' The petitioner and the respondents filed case briefs on September 3 and we received rebuttal briefs from the petitioner and the respondents on September 10, 1999. In addition, we invited parties to submit factual information and/or argumentation regarding the role and amount of compensation received by cattlemen leasing public grazing lands in Alberta from energy companies leasing oil and gas rights on these lands. We received submissions from both the petitioner and the GOA on September 17, 1999, and rebuttal comments from each party on September 22, 1999.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (''URAA'') effective January 1, 1995 (''the Act''). In addition, all citations to the Department of Commerce's (''the Department's'') regulations are to the current regulations codified at 19 CFR Part 351 (April 1998). Although Subpart E of 19 CFR Part 351, published on November 25, 1998 (63 FR 65348)(''*New CVD Regulations*'') does not apply to this investigation, Subpart E represents the Department's interpretation of the requirements of the Act. *See* 19 CFR 351.702(b).

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.

Injury Test

Because Canada is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, the

International Trade Commission (''ITC'') is required to determine whether imports of the subject merchandise from Canada materially injure, or threaten material injury to, a U.S. industry. *See* section 701(a)(2) of the Act. On January 25, 1999, the ITC published its preliminary determination finding that there is a reasonable indication that an industry in the United States is being materially injured, or threatened with material injury, by reason of imports from Canada of the subject merchandise (*see* 64 FR 3716).

Period of Investigation

The period for which we are measuring subsidies (the ''POI'') is the GOC's fiscal year, April 1, 1997 through March 31, 1998.

Subsidies Valuation Information

Allocation Period

We have used three years as the allocation period in this investigation. Based on information provided by the petitioner, three years is the average useful life (''AUL'') of productive assets for the Canadian cattle industry. Parties are not contesting this AUL.

Subsidy Rate Calculation

Due to the extremely large number of cattle producers in Canada, we have collected subsidy information on an industry-wide or ''aggregate'' basis (*i.e.*, the total amount of benefits provided under a particular program). Moreover, we have limited our investigation to the four largest cattle producing provinces in Canada. Therefore, unless otherwise noted, for each program found to be countervailable, we have calculated the *ad valorem* subsidy rate by dividing the total amount of the benefit attributed to cattle producers in the four relevant provinces during the POI by the total sales of all cattle in the same four provinces.

Benchmarks for Loans

In our *Preliminary Determination*, we used a previously verified benchmark interest rate charged by Canadian commercial banks on loans made to the farming sector for purposes of calculating the countervailable benefits from the provincial and federal loan guarantee programs and nonrecurring grants. *See Live Swine From Canada; Preliminary Results of Countervailing Duty Administrative Review*, 63 FR 23723, 23726 (April 30, 1998) (''*Live Swine From Canada 1998*'').

For this final determination, we have revised the benchmark rates used to evaluate the provincial loan guarantee programs. At verification, we met with private bank officials in Alberta and Saskatchewan who explained that the cattle associations participating in the loan guarantee programs receive competitive financing because the association loans are large-scale, short-term lending arrangements that provide lenders substantial security against default due to the highly structured nature of the associations. Furthermore, the private bank officials indicated that commercial lending rates obtained by the cattle associations differ among the provinces due to local economic conditions. *See* Memorandum to Susan Kuhbach from Zak Smith and James Breeden, ''Verification Report for Private Commercial Banks in the *Countervailing Duty Investigation of Live Cattle from Canada*,'' dated August 27, 1999 (''Private Commercial Bank Verification Report''). Because we believe it is reasonable to assume that the cattle associations will borrow in their home province, province-specific benchmarks offer the best measure of a comparable commercial loan that the associations could actually obtain in the market. *See* section 771(E)(ii) of the Act.

Based on our discussions with the private bank officials, we calculated a benchmark rate for the loan guarantee programs of prime plus .375 percent and prime plus one percent for Alberta and Saskatchewan, respectively. With respect to Manitoba and Ontario, we did not collect any province-specific information regarding lending rates to cattle associations and, therefore, we have averaged the benchmark rates computed for Alberta and Saskatchewan to calculate the loan guarantee benchmark rate for these provinces.

For the remaining loan programs investigated in this proceeding, we have continued to use the benchmark rate of prime plus 1.5 percent from *Live Swine from Canada 1998* because the recipients of these loans are individual livestock producers and, therefore, the benchmark rate applicable to the cattle associations does not represent a comparable commercial loan. As discussed in *Live Swine from Canada 1998*, the Department determined that prime plus 1.5 percent represents the national average of the predominant lending rates on comparable long-term, prime-based loans made to individual livestock producers in Canada. Accordingly, we have applied this benchmark rate for purposes of measuring the benefit on loans made to individual cattle producers.

We also note that we have continued to use the figures published by the Bank of Canada to calculate the average prime rate during the POI.

Loan Guarantee Programs

For certain loan guarantee programs that we have found to be countervailable, the respondents were unable to provide the specific loan information required to perform a precise calculation of the countervailable benefit attributable to cattle producers during the POI. They were unable to provide the data because of the nature of the underlying loan instrument (*i.e.*, lines of credit which had no predetermined time frame for the disbursal of principal or set repayment schedule), the extremely large number of loans provided, and the large number of transactions (withdrawals and payments) conducted pursuant to those loans. Therefore, for these programs, we have estimated the countervailable benefit by calculating the difference between the interest actually paid in the POI and the interest that would have been paid on a commercial loan absent a guarantee. *See Extruded Rubber Thread From Malaysia: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 57 FR 38472 (August 25, 1992). This approach does not yield a precise measure of the benefit because the loan instruments being examined are effectively lines of credit with balances and interest rates varying from month-to-month. Nonetheless, we believe this methodology is reasonable under the circumstances presented by this investigation.

Also, the respondents reported various fees that borrowers would have paid in connection with the guaranteed loans. However, the information they presented with respect to fees payable on commercial loans was unclear. So, to avoid a comparison of nominal benchmark rates with effective interest rates on the government-guaranteed loans, we have generally not included the fees in calculating the amounts paid under the government-guaranteed loans. Consequently, we are comparing nominal rates to nominal rates. The one exception to this is the fee specifically paid to FIMCLA for the guarantee, which is an allowable offset under section 771(6)(A) of the Act.

I. Programs Determined To Be Countervailable

Loan and Loan Guarantee Programs

A. Farm Improvement and Marketing Cooperative Loans Act (''FIMCLA'')

Under FIMCLA, the GOC provides guarantees on loans extended by private commercial banks and other lending institutions to farmers across Canada.

Created in 1987, the purpose of this program is to increase the availability of loans for the improvement and development of farms, and the marketing, processing and distribution of farm products by cooperative associations. Pursuant to FIMCLA, any individual engaged in farming in Canada and any farmer-owned cooperative are eligible to receive loan guarantees covering 95 percent of the debt outstanding for projects that are related to farm improvement or increased farm production. The maximum amount of money that an individual can borrow under this program is C$250,000. For marketing cooperatives, the maximum amount is C$3,000,000. The GOC reported that beef and hog farmers, which are categorized as one group by the FIMCLA administration, received approximately 18 to 27 percent of all guarantees between 1994 and 1998, while other users such as poultry, fruit and vegetables, and dairy producers received less than ten percent of the guarantees.

A loan guarantee is a financial contribution, as described in section 771(5)(D)(i) of the Act, which provides a benefit to the recipients equal to the difference between the amount the recipients of the guarantee pay on the guaranteed loans and the amount the recipients would pay for a comparable commercial loan absent the guarantee, after adjusting for guarantee fees. Because the beef and pork industries received a disproportionate share of benefits between 1994 and 1998, we determine that the program is specific under section 771(5A)(D)(iii) of the Act. Therefore, we determine that these loan guarantees are countervailable subsidies to the extent that they lower the cost of borrowing, within the meaning of section 771(5) of the Act.

Because of the large number of guarantees granted under this program, we agreed to use a sample generated by the GOC of loans guaranteed under the program for beef producers throughout Canada. At verification, we examined the GOC's sampling methodology and have determined that this sample yields an accurate reflection of all loans provided to beef producers that receive FIMCLA guarantees.

To calculate the benefit conferred by this program, we used our long-term fixed-rate or variable-rate loan methodology (depending on the terms of the reported loans) to compute the total benefit on the sampled loans. We then calculated the benefit per dollar loaned to beef producers. This ratio was multiplied by the total value of guaranteed loans outstanding to beef and hog producers in the POI to arrive at the total benefit. We then divided the total benefit attributable to the POI by Canada's total sales of live cattle and hogs during the POI. On this basis, we determine the total subsidy from this program to be 0.04 percent *ad valorem*.

B. Alberta Feeder Associations Guarantee Program

The Alberta Feeder Associations Guarantee Act was established in 1938 to encourage banks to lend to cattle producers. The program is administered by the Alberta Department of Agriculture, Food and Rural Development. Under this program, up to 15 percent of the principal amount of commercial loans taken out by feeder associations for the acquisition of cattle is guaranteed. Eligibility for the guarantees is limited to feeder associations located in Alberta. Sixty-two associations received guarantees on loans which were outstanding during the POI.

A loan guarantee is a financial contribution, as described in section 771(5)(D)(i) of the Act, which provides a benefit to the recipients equal to the difference between the amount the recipients of the guarantee pay on the guaranteed loans and the amount the recipients would pay for a comparable commercial loan absent the guarantee, after adjusting for guarantee fees. Because eligibility is limited to feeder associations, we determine that the program is specific under section 771(5A)(D)(i) of the Act. Therefore, we determine that these loan guarantees are countervailable subsidies to the extent that they lower the cost of borrowing, within the meaning of section 771(5) of the Act.

To calculate the benefit conferred by the loan guarantees, we applied our short-term loan methodology and compared the amount of interest actually paid during the POI by the associations to the amount that would have been paid at the benchmark rate, as described in the *Subsidies Valuation Information* section, above. We then divided the associations' interest savings by the investigated provinces' total sales of live cattle during the POI. On this basis, we determine the total subsidy from this program to be 0.01 percent *ad valorem*.

C. Manitoba Cattle Feeder Associations Loan Guarantee Program

The Manitoba Cattle Feeder Associations Loan Guarantee Program was established in 1991 to assist in the diversification of Manitoba farm operations. The program is currently administered by the Manitoba Agricultural Credit Corporation (''MACC''). The provincial government, through MACC, guarantees 25 percent of the principal amount of loans for the acquisition of livestock by feeder associations. Eligibility for the guarantees is limited to feeder associations located in Manitoba. Associations must be incorporated under the Cooperatives Act of Manitoba, have a minimum of fifteen members, an elected board of directors, and a registered brand for use on association cattle. Ten associations received guarantees on loans which were outstanding during the POI.

A loan guarantee is a financial contribution, as described in section 771(5)(D)(i) of the Act, which provides a benefit to the recipients equal to the difference between the amount the recipients of the guarantee pay on the guaranteed loans and the amount the recipients would pay for a comparable commercial loan absent the guarantee, after adjusting for guarantee fees. Because eligibility is limited to feeder associations, we determine that the program is specific under section 771(5A)(D)(i) of the Act. Therefore, we determine that these loan guarantees are countervailable subsidies, to the extent that they lower the cost of borrowing, within the meaning of section 771(5) of the Act.

To calculate the benefit conferred by the loan guarantees, we applied our short-term loan methodology and compared the amount of interest actually paid during the POI by the associations to the amount that would have been paid at the benchmark rate, as described in the *Subsidies Valuation Information* section, above. We then divided the associations' interest savings by the investigated provinces' total sales of live cattle during the POI. On this basis, we determine the total subsidy from this program to be less than 0.01 percent *ad valorem*.

D. Ontario Feeder Cattle Loan Guarantee Program

The Ontario Feeder Cattle Loan Program was established in 1990 to help secure financing for cattle producers. The program is administered by the Ontario Ministry of Agriculture, Food and Rural Affairs (''OMAFRA''). OMAFRA provides a start-up grant of $10,000 to new feeder associations and government guarantees covering 25 percent of the amount borrowed by associations for the purchase and sale of cattle. Eligibility for the guarantees is limited to feeder associations which have at least twenty individuals who own or rent land in Ontario and are not members of other feeder associations.

Eighteen associations received guarantees on loans which were outstanding during the POI.

Loan guarantees and grants are financial contributions, as described in section 771(5)(D)(i) of the Act. Loan guarantees provide a benefit to the recipients equal to the difference between the amount the recipients of the guarantee pay on the guaranteed loans and the amount the recipients would pay for a comparable commercial loan absent the guarantee, after adjusting for guarantee fees. In the case of grants, the benefit to recipients is the amount of the grant. Because eligibility for the loan guarantees and grants under this program is limited to feeder associations, we determine that the program is specific under section 771(5A)(D)(i) of the Act. Therefore, we determine that these loan guarantees are countervailable subsidies, to the extent that they lower the cost of borrowing, within the meaning of section 771(5) of the Act. Also, the grants are countervailable subsidies within the meaning of section 771(5) of the Act.

To calculate the benefit conferred by the loan guarantees, we applied our short-term loan methodology and compared the amount of interest actually paid during the POI by the associations to the amount that would have been paid at the benchmark rate, as described in the *Subsidies Valuation Information* section, above. We then divided the associations' interest savings by the investigated provinces' total sales during the POI. On this basis, we determine the total subsidy from this program to be 0.01 percent *ad valorem*.

Additionally, we determine that the grants provided under this program are non-recurring because the recipients could not expect to receive them on an ongoing basis. However, because the grant amounts were below 0.50 percent of the investigated provinces' sales in the year of receipt in each of the relevant years, we expensed the benefit from the grants. For the POI, we divided the grants received during the POI by the investigated provinces' total sales of live cattle during the POI. On this basis we determine the countervailable subsidy to be less than 0.01 percent *ad valorem*.

To calculate the total benefit to cattle producers under this program, we summed the benefit calculated for the loan guarantees and grants. On this basis, we determine the total subsidy from this program to be 0.01 percent *ad valorem*.

E. Saskatchewan Feeder Associations Loan Guarantee Program

The Saskatchewan Feeder Associations Loan Guarantee Program was established in 1984 to facilitate the establishment of cattle feeder associations in order to promote cattle feeding in Saskatchewan. The program is administered by the Livestock and Veterinary Operations Branch of the Saskatchewan Agriculture and Food Department. This agency provides a government guarantee for 25 percent of the principal amount on loans to feeder associations for the purchase of feeder heifers and steers. Eligibility for the guarantees is limited to feeder associations with at least twenty members over the age of eighteen, who are not active in other feeder associations. One hundred and sixteen associations received guarantees on loans which were outstanding during the POI.

A loan guarantee is a financial contribution, as described in section 771(5)(D)(i) of the Act, which provides a benefit to the recipients equal to the difference between the amount the recipients of the guarantee pay on the guaranteed loans and the amount the recipients would pay for a comparable commercial loan absent the guarantee, after adjusting for guarantee fees. Because eligibility for the guarantees is limited to feeder associations, we determine that the program is specific under section 771(5A)(D)(i) of the Act. Therefore, we determine that these loan guarantees are countervailable subsidies, to the extent that they lower the cost of borrowing, within the meaning of section 771(5) of the Act.

To calculate the benefit conferred by the loan guarantees, we applied our short-term loan methodology and compared the amount of interest actually paid during the POI by the associations to the amount that would have been paid at the benchmark rate, as described in the *Subsidies Valuation Information* section, above. We then divided the associations' interest savings by the investigated provinces' total sales during the POI. On this basis, we determine the total subsidy from this program to be 0.01 percent *ad valorem*.

Provision of Goods or Services

F. Prairie Farm Rehabilitation Community Pasture Program

The Prairie Farm Rehabilitation Administration (''PFRA'') was created in the 1930s to rehabilitate drought and soil drifting areas in the Provinces of Manitoba, Saskatchewan, and Alberta. The PFRA established the Community Pasture Program to facilitate improved land use through its rehabilitation, conservation, and management. The goal of the Community Pasture Program is to utilize the resource primarily for the summer grazing of cattle to encourage long-term production of high quality cattle. In pursuit of its objectives, the PFRA operates 87 separate pastures encompassing approximately 2.2 million acres. At these pastures, the PFRA offers grazing privileges and optional breeding services for fees as established by PFRA. The fees are based upon recovery of the costs associated with the grazing and breeding services.

The provision of a good or service is a financial contribution as described in section 771(5)(D)(iii) of the Act. To determine whether a benefit is conferred in the provision of the service, it is necessary to examine whether the provider receives adequate remuneration. According to section 771(5)(E) of the Act, the adequacy of remuneration with respect to a government's provision of a good or service ''* * * shall be determined in relation to prevailing market conditions for the good or service being provided or the goods being purchased in the country which is subject to the investigation or review. Prevailing market conditions include price, quality, availability, marketability, transportation, and other conditions of purchase or sale.''

To determine whether the GOC received adequate remuneration, we compared the prices charged for public pasture services to those charged by private providers of pasture services, adjusted as described below. Given the different nature of the services provided, a simple comparison of the fees charged would not be appropriate. Specifically, we adjusted the private price downward by deducting costs associated with the timing of the sale of cull cows (these costs arise because on private pastures, users are able to remove and cull those cows which do not become pregnant earlier in the season when prices are higher. PFRA patrons, however, have less access to their herds and are only allowed to cull cows at the end of the season when prices are lower.

The GOC argued that there were other differences that should be taken into account for such things as early weaning and timing of the sale of calves (allegedly, PFRA patrons would prefer to wean and cull calves earlier in the season when prices are higher, but PFRA access rules only allow them to cull at the end of the season when prices are lower), transportation to the pasture (allegedly, PFRA patrons live further away from the pastures and, thus, incur greater transportation expenses), and disease associated with commingled pastures. However, we have not made adjustments for such costs because either the GOC did not establish that such costs were faced solely by public pasture patrons or because the GOC was unable to quantify them.

Comparing the public pasturing price to the adjusted private pasturing price, we determine that the price for private pastures is higher than the price for public pastures. This provides a benefit to the recipients equal to the difference between the amount the recipients pay for public pastures and the amount the recipients would pay for comparable private pasturing.

Because use of Community Pastures is limited to Canadian farmers involved in grazing livestock, we determine that the program is specific under section 771(5A)(D)(i) of the Act. Therefore, we determine that the provision of public pasture services is a countervailable subsidy within the meaning of section 771(5) of the Act.

To measure the benefit, we calculated the difference between the price for public pasture service and the adjusted price for privately provided pasture service. This difference was multiplied by the total number of cow/calf pairs serviced by the PFRA during the POI. We treated the resulting amount as a recurring benefit and divided it by the investigated provinces' total sales during the POI. On this basis, we determine the countervailable subsidy to be 0.02 percent *ad valorem*.

H. Saskatchewan Crown Lands Program

Agricultural Crown land managed by Saskatchewan Agriculture and Food (''SAF'') is made available to all Saskatchewan agricultural producers for lease. Activities carried out on the land include: grazing, cultivation, community pastures, and additional multiple-use activities.

Leases for grazing dispositions range from one to 33-year terms. Beginning in 1997, SAF set rental rates using a formula which takes account of the average price of cattle marketed over a period in the previous year, the average pounds of beef produced from one animal unit month (''AUM''), the AUM productivity rating of the land in question, reduced stocking expectations, and a fair return for the use of the land and resources. AUMs are defined as the amount of forage required to feed one animal for one month while maintaining the vegetative state of the land in good condition. Lessees are responsible for paying taxes, developing and maintaining water facilities and fences, and providing for public access to the land.

The provision of a good or service is a financial contribution as described in section 771(5)(D)(iii) of the Act. As discussed above in connection with the PFRA, a benefit is conferred in the provision of a good or service when the prices charged for government-provided goods or services are less than the prices charged by private suppliers. In the case of the Saskatchewan Crown Lands Grazing Program, a simple comparison of the fees charged would not be appropriate because the grazing rights being offered by the GOS differ from those offered by private suppliers. In this regard, the GOS has provided certain quantifiable adjustments. Specifically, we adjusted the private price downward by deducting costs for the construction of fences and water dugouts, and the cost of paying property taxes. Although the GOS argued that there were other differences that should be taken into account for such things as multiple-use requirements, we have not made adjustments for such costs because the GOS was unable to quantify them. Comparing the public grazing lease rate to the adjusted private lease rate, we determine that the price for private leases is higher than the price for a public grazing lease.

Because the cattle industry is a predominant user of the Saskatchewan Crown Lands Program, we determine that the program is specific under section 771(5A)(D)(iii) of the Act. Therefore, we determine that the provision of public grazing rights is a countervailable subsidy within the meaning of section 771(5) of the Act.

To measure the benefit, we calculated the difference between the price per AUM for a public grazing lease and the adjusted price per AUM for a private grazing lease. We multiplied this difference by the total AUM provided by SAF. We treated the resulting amount as a recurring benefit and divided it by the investigated provinces' total sales during the POI. On this basis, we determine the countervailable subsidy to be 0.02 percent *ad valorem*.

I. Manitoba Crown Lands Program

Agricultural Crown land is managed by Manitoba Agriculture Crown Lands (''MACL'') whose primary objective is to administer the disposition of Crown lands and to improve the lands' productivity. Crown agricultural land is made available to farmers through cultivation and grazing leases. Lease holders are required to pay an amount-in-lieu of municipal taxes as well as to construct and maintain fences and watering facilities. Also, the public has access to Crown lands at all times without prior permission of the lessee for such activities as wildlife hunting, forestry, winter sports, hiking, and berry picking. During the POI, MACL administered 1.6 million acres of grazing leases accounting for 707,699 AUMs.

Leases for grazing dispositions range from one to fifty year terms. MACL sets rental rates each year by multiplying the number of AUMs the leased land is capable of producing in an average year by an annual AUM rental rate. The AUM rental rate is based on recovering the administrative costs for the program using the previous year's actual costs.

The provision of a good or service is a financial contribution as described in section 771(5)(D)(iii) of the Act. As discussed above in connection with the PFRA, a benefit is conferred in the provision of a good or service when the prices charged for government-provided goods or services are less than the prices charged by private suppliers. In the case of the Manitoba Crown Lands Program, a simple comparison of the fees charged would not be appropriate because the grazing rights being offered by the GOM differ from those offered by private suppliers. In this regard, the GOM has provided certain quantifiable adjustments. Specifically, we adjusted the private price downward by deducting costs for the construction of fences and watering facilities, and the cost of paying an amount-in-lieu of municipal taxes. Although the GOM argued that there were other differences that should be taken into account for such things as multiple-use requirements, we are not making these adjustments because the GOM was unable to quantify them. Comparing the public grazing lease to the adjusted private lease price, we determine that the price for private leases is higher than the price for a public grazing lease.

Because livestock industries, including cattle, are predominant users of the Manitoba Crown Lands Program, we determine that the program is specific under section 771(5A)(D)(iii) of the Act. Therefore, we determine that the provision of public grazing rights is a countervailable subsidy within the meaning of section 771(5) of the Act.

To measure the benefit, we calculated the difference between the price per AUM for a public grazing lease and the adjusted price per AUM for a private grazing lease. We multiplied this difference by the total AUM provided by MACL. We treated the resulting amount as a recurring benefit and divided it by the investigated provinces' total sales during the POI. On this basis, we determine the countervailable subsidy to be less than 0.01 percent *ad valorem*.

J. Alberta Crown Lands Basic Grazing Program

Over time, Alberta has developed a system for granting grazing rights on public land. Grazing rights began to be issued on public lands in the early 1930s. Today, through Alberta Agriculture and Municipal Affairs, over 10.5 million acres of land are managed by the GOA including a grazing component of approximately two million AUMs.

Leases for grazing rights range from one to twenty year terms, but, in practice, all leases are renewed if the lessee is in good standing. Alberta's Public Lands Act dictates how rental prices will be set. Specifically, section 107 states that annual rent will be equal to a percentage of the forage value of the leased land. When determining the forage value of the land, the administering authority is required to consider the grazing capacity of the land, the average gain in weight of cattle on grass, and the average price per pound of cattle sold in the principal livestock markets in Alberta during the preceding year. Beyond paying the lease fee, lessees are also required to construct and maintain capital improvements necessary for livestock and must comply with all multiple-use and conservation restrictions imposed by the government on the land. Lastly, lessees must pay school and municipal taxes charged on the land being leased.

As noted above, Crown lands have various multiple-use elements, from recreation to oil and gas operations, which are often in conflict with one another. The legislation that manages these diverging interests is the Surface Rights Act. Under Alberta law, the surface of land in the province can be owned by either private entities or the government, but all rights to the subsurface of the land have been reserved to the government. On occasion, the GOA leases subsurface rights to industrial operators (*e.g.*, oil and gas companies) and the Surface Rights Act lays the ground rules for resolving differences between those who control the surface rights and those who lease the subsurface rights.

Section 12(1) of the Surface Rights Act reads that, ''no operator has a right of entry in respect of the surface of any land* * *until the operator has obtained the consent of the owner and the occupant of the surface of the land or has become entitled to right of entry by reason of an order of the Board.* * *'' It appears from the record that consent from the owner and occupant is usually contingent upon a compensation package being agreed upon between the operator and the owner and occupant. That is, the operator will agree to pay a certain amount of compensation for damages, disruption, access, and other factors to the owner and occupant. If the operator is unable to reach an agreement with the owner and occupant, the operator can ask the Surface Rights Board for a right of entry. In such cases, the Surface Rights Board will issue a right of entry and determine the appropriate amount of compensation. In determining the amount of compensation payable, the Board may consider the market value of the land, the loss of use by the owner or occupant of the area granted to the operator, the adverse effect of the area granted to the operator on the remaining land, the nuisance, inconvenience, and noise caused by the operations, damage to the land granted to the operator, and any other factors the Board considers relevant.

We determine that grazing leases granted under the Albert Crown Lands Basic Grazing Program are being provided to ranchers grazing livestock, a specific group, within the meaning of section 771(5A)(D)(i). Moreover, we determine that the provision of grazing leases is a financial contribution as described in section 771(5)(D)(iii) of the Act (provision of a good or service). Therefore, to determine whether these grazing leases result in a countervailable subsidy it is necessary to examine whether they confer a benefit on the recipients of the leases.

As discussed above in connection with the PFRA, a benefit is conferred in the provision of a good or service when the government receives less than adequate remuneration. Normally adequacy of remuneration can be measured by reference to the prices being charged for the good or service by private suppliers. In the case of grazing rights provided by the GOA, however, a simple price comparison would not be appropriate.

First, as discussed in connection with the grazing programs of other provinces, certain adjustments must be made to reflect the different costs imposed on the lessees of private and public land. Specifically, we adjusted the average private price downward by deducting costs for the construction of fences and water improvements, the cost of paying property taxes, and a multiple-use cost associated with limitations on forage (we have also taken into account multiple-use income, as noted below). Although the GOA argued that there were other differences that should be taken into account for such things as differences in operating and capital costs, we have not made adjustments for such costs because the GOA did not adequately support these claimed adjustments. Comparing the public grazing lease price to the adjusted private lease price, we determine that the price for private leases is higher than the price for a public grazing lease.

Second, we believe the compensation paid by oil and gas operators to lessees of private and public land to gain access to the oil and gas resources must be accounted for. In response to our request for information and argumentation about so-called ''Bill 31'(which will amend the Public Lands Act and the Surface Rights Act), the GOA pointed to provisions in the Surface Rights Act that appear to give owners and lessees of private and public land equal rights to compensation. In both cases, the oil and gas operator is to negotiate compensation agreements with the owners and lessees before gaining access to the land. If agreement cannot be reached, the operator appeals the matter to the Surface Rights Board. In deciding the amount of compensation to be awarded to the owners and lessees of private or public land, the Surface Rights Board applies the same rules. Moreover, the GOA claims, the amount of compensation received by any owner or lessee cannot be considered excessive, because if the owner or lessee attempts to obtain too large an amount, the oil and gas operator can simply apply to the Surface Rights Board to set the correct amount of compensation.

Although the statutory provisions in the Surface Rights Act cited by the GOA are consistent with the arguments it has put forward, other information on the record suggests that the compensation received by lessees of public land is excessive. Beginning in March 1997, the GOA undertook a study to examine agricultural leases in the province. One of the main issues examined in the study was compensation for ranchers leasing grazing rights on public lands. The study resulted in a report and, eventually, legislation (Bill 31). Although Bill 31 has not yet been put into effect, it seems clear that one concern the legislation seeks to address is that the province, as owner of the public land, should receive some portion of the compensation now received by lessees of the public land.

While this, in itself, does not necessarily mean that the compensation currently received by lessees of public land is excessive when compared to the compensation received by lessees of private land, statements made at the time that Bill 31 was proposed and debated, lead us to conclude that the compensation received by lessees of private and public land is not equivalent. Specifically, the government's spokesperson on behalf of the bill stated: ''It (Bill 31) does another thing as well: it ensures that public land leasing arrangements are more equitable with private land leasing arrangements. Since the province is the landowner of public land in the right of all Albertans, we were told by our colleagues and those making submissions that the province should act like a landowner. This means that leasing arrangements should be more comparable to the private sector'' (statement by Mr. Thurber, Alberta Hansard, April 14, 1999, page 1035). Similarly, ''the intent of amendments to the Surface Rights Act are to redistribute payments to the landowner (the province) and the agriculture disposition holder (the lessee of public land) more in line with private land arrangements' (statement by Mr. Thurber, Alberta Hansard, May 3, 1999, page 1396).

These statements appear to support the conclusion that private owners receive more in compensation than the GOA does as owner. There is no indication in the record that the amount of compensation paid by oil and gas operators for private lands exceeds the amount of compensation paid for public lands. Therefore, we conclude that the lessees of public land receive greater compensation than their counterparts on private land.

If our conclusions are correct, then the differences in compensation amounts to lessees of public and private land would not be reflected in a comparison of fees for the two types of grazing rights. This is because the relatively lower level of compensation received by the lessees of private land will cause that fee to be lower than it would be if they received the higher amount of compensation.

Therefore, to calculate the difference in compensation amounts that is not reflected in a comparison of fees for the two types of grazing rights, we have attempted to measure the remuneration that we believe the GOA would have received, as owner of the public land, if its leasing arrangements were ''in line with private land arrangements.'' We note that because such information regarding compensation is not available on the record of this investigation, our calculation is an estimate based upon the facts available.

Information that is on the record indicates that total compensation earned by public lessees is approximately C$40 million per year. It appears that this amount represents compensation for damages, disruption, access, and other factors. Because the law indicates that both private and public lessees are entitled to compensation for damages and disruption we expect that a portion of this C$40 million represents an amount of compensation that would be paid to any lessee regardless of whether the land being leased was private or public. Thus, it would be inappropriate to assume that the C$40 million figure represents compensation that is only obtained by public lessees because they are leasing public land.

Therefore, it is necessary to estimate the portion of the compensation received by lessees of public land attributable to damages and disruption (which would be the same for a private lessees) versus compensation for access and other factors. In this respect, the GOA has stated that the average compensation package determined by the Surface Rights Board for both public and private lessees amounted to C$1,100 per year. Given the number of grazing leases on public land affected by subsurface operations, the total amount attributable to compensation for damages and disruption on public land would be approximately C$15.9 million per year. According to the rules followed by the Surface Rights Board in establishing the amount of compensation, this amount would represent the compensation for damages and disruption only. The remainder of the compensation (C$24.1 million) would be for access and other factors.

We recognize that this is a crude estimate of the amount of compensation that could be expected to flow to the GOA if it received the compensation that we believe currently flows to holders of public land leases. For example, while the C$40 million amount is widely reported, it is not clear where the estimate came from or how it was calculated. Moreover, the amount we have selected, C$24.1 million, is at the upper end of the possible range of estimates. (*See* statement by Dr. Pannu, a member of the Alberta legislature, as reported in the Alberta Hansard, May 11, 1999, page 1627: ''it's difficult at this point to make a reliable assessment of what additional revenues these changes in the leasing arrangements proposed in this bill will generate for the public treasury. I have seen different figures. I think it could be close to $13 million to $15 million or perhaps more * * *'') We believe that a conservative estimate is appropriate in light of the limited information available to the Department to ensure that a negative final determination is warranted.

Therefore, because public lessees can expect to receive C$24.1 million more in compensation by renting public land as opposed to private land, the public land is more valuable. However, as noted above, we have concluded that the differences in compensation amounts to lessees of public and private land are not reflected in a comparison of fees for the two types of grazing rights. That is, the government is not charging a higher price for its land to capture this value and, thus, is not being adequately remunerated for its provision of public land.

To measure the benefits received under the Alberta Crown Lands Basic Grazing Program, we have combined the difference calculated by comparing the grazing fees paid for public and private land with the difference in compensation described above. We treated the resulting amount as a recurring benefit and divided it by the investigated provinces' total sales during the POI. On this basis, we determine the countervailable subsidy to be 0.65 percent *ad valorem*.

Other Programs

K. Northern Ontario Heritage Fund Corporation Agriculture Assistance

The Northern Ontario Heritage Fund Corporation (''NOHFC'') was established in 1988 as a Crown corporation. Its purpose is to promote and stimulate economic development in northern Ontario. NOHFC focuses on funding infrastructure improvements and development opportunities in northern Ontario. Assistance for these projects is available through forgivable performance loans, incentive term loans, and loan guarantees.

With respect to agricultural projects, all assistance provided by NOHFC is in the form of forgivable performance loans. The types of agricultural projects funded include capital projects, marketing projects and research and development projects. Fifty percent of a project's capital costs are eligible for funding, up to a maximum of C$2.5 million. For marketing projects, fifty percent of the project costs may receive funding, up to a maximum of C$500,000. For research and development projects, 75 percent of the project costs may receive funding, up to a maximum of C$500,000. The loans made available for these projects are interest-free and normally forgiven after two to three years. The extent of debt forgiveness is dependent upon the project meeting its target of increasing the value of farm production by an amount equal to the NOHFC contribution.

Debt forgiveness is a financial contribution as described in section 771(5)(D)(i) of the Act, which provides a benefit to the recipients equal to the amount of the debt forgiven. Because benefits under this program are only available in northern Ontario, we determine that the program is regionally specific under section 771(5A)(D)(iv) of the Act. Therefore, we determine that this debt forgiveness is countervailable within the meaning of section 771(5) of the Act.

We further determine that this debt forgiveness is non-recurring because the recipients could not expect to receive it on an ongoing basis. However, because the benefit to cattle producers in Ontario was below 0.50 percent of the investigated provinces' sales in the year of receipt in each of the relevant years, we expensed the debt forgiveness in the year received. To calculate the benefit for the POI, we divided the total amount of the forgiven debt by the investigated provinces' total sales during the POI. On this basis, we determine the countervailable subsidy to be less than 0.01 percent *ad valorem*.

Additionally, we determine that a countervailable subsidy is conferred because no interest is charged on these loans. Under section 771(5)(E)(ii) of the Act, a benefit arises when loan recipients pay less on government provided loans than they would pay on comparable commercial loans. Pursuant to section 355.49(f) of the 1989 Proposed Regulations, we have treated the balances outstanding during the POI as interest-free, short-term loans. We calculated the benefit from these loans by dividing the amount of interest due at the benchmark rate by the investigated provinces' total sales during the POI. On this basis, we determine the countervailable subsidy to be less than 0.01 percent *ad valorem*.

To calculate the total benefit to cattle producers under this program, we summed the benefit calculated for the forgiven debt and the interest-free loans. On this basis, we determine the total subsidy from this program to be less than 0.01 percent *ad valorem*.

L. Ontario Livestock, Poultry, and Honeybee Protection Act

This program, which is administered by the Ontario Ministry of Agriculture, Food and Rural Affairs, provides compensation to livestock producers whose animals are injured or killed by wolves or coyotes. Producers apply for, and receive, compensation through the local municipal government. The Ontario Ministry of Agriculture, Food and Rural Affairs reimburses the municipality. Grants for damage to live cattle cannot exceed C$1,000 per head. Although the Ministry of Agriculture does not track the proportion of benefits under this program going to dairy cattle or beef cattle producers, the GOO has reported that beef cattle producers are believed to derive the majority of the benefits from the program.

A grant is a financial contribution as described in section 771(5)(D)(i) of the Act, which provides a benefit to recipients in the amount of the grant. Because this program is limited by law to livestock producers, poultry farmers, and beekeepers, we determine that the program is specific under section 771(5A)(D)(i) of the Act. Therefore, we determine that these grants are countervailable within the meaning of section 771(5) of the Act.

We treated the grants received as a recurring benefit because livestock producers can expect to receive the grants every year. To calculate the benefit, we divided the total amount of grants received by the investigated provinces' total sales of live cattle during the POI. On this basis, we determine the countervailable subsidy to be 0.01 percent *ad valorem*.

M. Ontario Rabies Indemnification Program

This program is administered by the Farm Assistance Branch of the Ontario Ministry of Agriculture, Food and Rural Affairs. It is designed to encourage farmers to report cases of rabies in livestock by compensating livestock producers for damage caused by rabies. Farmers may receive grants up to a maximum of C$1,000 per head of cattle under this program. Sixty percent of the grants are funded by the GOO and 40 percent by the GOC.

A grant is a financial contribution as described in section 771(5)(D)(i) of the Act which provides a benefit to recipients in the amount of the grant. Because the legislation establishing this program expressly limits these grants to livestock producers, we determine that the program is specific under section 771(5A)(D)(i) of the Act. Therefore, we determine that these grants are countervailable within the meaning of section 771(5) of the Act.

We treated the grants received as a recurring benefit because farmers can expect to receive the grants every year. To calculate the benefit, we divided the total amount of grants received by the investigated provinces' total sales of live cattle during the POI. The amount of the total amount of grants was taken from updated information supplied to the Department at verification. On this basis, we determine the countervailable subsidy to be less than 0.01 percent *ad valorem*.

N. Saskatchewan Livestock and Horticultural Facilities Incentives Program

The purpose of this program is to promote the diversification of Saskatchewan's rural economy by encouraging investment in livestock and horticultural facilities. This program allows for an annual rebate of education and health taxes paid on building materials and stationary equipment used in livestock operations, as well as greenhouses, and vegetable and raw fruit storage facilities.

A tax benefit is a financial contribution as described in section 771(5)(D)(ii) of the Act which provides a benefit to the recipient in the amount of the tax savings. Because the legislation establishing this program expressly limits the tax benefits to the livestock and horticulture industries, we determine that the program is specific under section 771(5A)(D)(i) of the Act. Therefore, we determine that this tax benefit is countervailable within the meaning of section 771(5) of the Act.

In calculating the benefit, we treated the tax savings as a recurring benefit and divided the tax savings received by the investigated provinces' total sales during the POI. On this basis, we determine the countervailable subsidy to be less than 0.01 percent *ad valorem*.

II. Programs Determined To Be Not Countervailable

A. Canadian Wheat Board

Introduction

The Canadian Wheat Board ("CWB") has the exclusive authority to market Canadian feed and malting barley in export markets. In the Canadian domestic market, the CWB has exclusive marketing authority only with respect to malting barley. The petitioner alleges that the CWB's pooling system (described below) sends distorted market signals to Canadian farmers. Further, the petitioner argues that the system of marketing feed barley in Canada imposes excessive costs on farmers, with the result that less feed barley is exported than there otherwise would be. Consequently, the petitioner alleges, more feed barley is available on the domestic market, which artificially lowers prices paid by Canadian cattle producers. Although the CWB system may not involve the explicit export restriction present in *Certain Softwood Lumber Products from Canada,* 57 FR 22570 (May 28, 1992) ("*Lumber*") and *Leather from Argentina,* 55 FR 40212 (October 2, 1990) ("*Leather*"), in the petitioner's view, the CWB's control over, and operations in, the feed barley market have the same result as the export restrictions which the Department found countervailable in those cases.

In the *Preliminary Determination,* we preliminarily concluded that, even if the CWB controlled exports, it nonetheless did not provide a benefit to Canadian producers of live cattle because Canadian domestic prices were not lower than prices in the United States in the POI. In making our price comparisons for the *Preliminary Determination,* we compared U.S. prices for feed barley in Great Falls, Montana, with several Canadian domestic prices. We preliminarily found that Canadian domestic prices were comparable to U.S. prices.

Since the *Preliminary Determination,* we have conducted a thorough analysis of all aspects of the Canadian feed barley market and its relation to the cattle industry. We analyzed where barley is produced and consumed within Canada, the total production of both feed and malting varieties of barley, marketing options available to barley farmers, exports of feed barley, the operations of the CWB, feed barley prices within and outside the area in Canada under the control of the CWB (*i.e.*, the ''designated area''), and additional feed barley prices in the United States. We find that the CWB has extensive control over the feed barley export market and that its operations in that market can, and do, have a major impact in the domestic feed barley market. However, as in the *Preliminary Determination,* we find that the operations of the CWB did not provide a benefit to the producers of live cattle during the POI.

Canadian Barley Production

There are two primary agricultural areas in Canada: the prairies in western Canada (Alberta, Saskatchewan and Manitoba), and southern Ontario and Quebec. Eighty percent of Canadian farmland is in the prairies. The large majority of Canadian grain is grown on the prairies, although some grain is also grown in the southernmost portions of Ontario and Quebec.

The growing conditions in western Canada and the eastern provinces are very different, which leads to different growing patterns in each area. The climate in the prairies is drier and cooler with a shorter growing season; the predominant crops are barley, wheat, and oilseeds. Conversely, because Ontario is warmer and receives more rainfall, the climate there is more conducive to growing corn and soybeans. While Ontario has some barley production, barley is not the predominant crop in the area.

In the most recent crop year (1998/1999), Canada produced a total of 12.7 million metric tons of barley. Over ninety percent of this barley was grown in the prairies; 400,000 metric tons were grown in Ontario. The percentage of prairie production by province was: 48 percent in Alberta, 37 percent in Saskatchewan, 14 percent in Manitoba, and less than one percent in British Columbia. Although 70 percent of Canadian barley is seeded as malting varieties (for which higher prices can be obtained), only 30 percent is actually sold as malting barley. The malting barley that is not sold for malting is consumed as feed barley.

Almost half of all Canadian barley production occurs in Alberta, in a north-south belt extending from Lethbridge in the south to Edmonton in the north. From Edmonton, the barley growing area arcs in a southeastwardly direction towards Winnipeg. A small portion of southeastern Alberta and a much larger section of southern Saskatchewan are less productive for growing barley because of less rainfall and warmer temperatures.

In Ontario, the barley growing area is primarily located on the peninsula that extends south between Lake Huron, on the west, and Lakes Erie and Ontario, on the east. Some grain is also grown around Ottawa. The primary crop grown in Ontario is corn; barley production occurs on the fringe of the growing area where corn cannot grow because of cooler temperatures or unfavorable soil conditions.

Canadian Cattle Production

Canadian beef cattle production is primarily concentrated in western Canada (82 percent), with 12 percent in Ontario, and 5 percent in Quebec. Western Canadian beef production by province is: 46 percent in Alberta, 21 percent in Saskatchewan, 11 percent in Manitoba, and 5 percent in British Columbia. Similar to barley production, almost half of all Canadian beef cattle production occurs in Alberta. Many farmers throughout the prairies produce both cattle and barley. The primary consumers of feed barley are feedlots, and the majority of Canadian feedlots (approximately 70 percent) are located in southern Alberta, between Lethbridge and Calgary.

CWB Organizational Principles and History

The CWB had its origins in the early 1900s. It was during this time that two of the fundamental principles of the CWB and the marketing of Canadian barley were established: single-desk selling and the ''pooling'' of costs and revenues. Since we are only concerned with feed barley, single-desk selling in the context of this investigation means that the CWB is the sole exporter of western Canadian feed barley. This authority requires barley farmers to sell via a single entity in export markets rather than competing against one another. Barley farmers can compete with each other with respect to feed barley sales in Canada—though not with respect to malting barley sales in Canada. In theory, according to the CWB, the absence of multiple sellers and the ability to sell at different prices in different markets allows the single desk seller to obtain a higher overall price for Canadian grain.

The pooling mechanism is perhaps the defining feature of the CWB's operations. The CWB operates a separate ''pool'' for each of the four crops under its authority (wheat, durum wheat, feed barley and ''designated'' or malting barley). Pooling means that the CWB pays every farmer the same amount for a given quantity and quality of grain based on the weighted-average price received for all the barley marketed in the pool year, regardless of when in the crop year the farmer sells to the CWB and regardless of the specific sales prices the CWB realizes on the individual sales of that grain. (The payment mechanism—involving initial, adjustment, interim and final payments—is discussed below.) According to the CWB, the pooling mechanism is a risk management tool designed to protect farmers from adverse price fluctuations that may occur throughout the year.

Prior to 1974, the CWB controlled all sales of barley, including domestic sales of feed barley. Responding to pressure from eastern livestock producers who wanted access to western grain and western grain producers who wanted to sell grain in the east, the GOC removed domestic sales of feed barley from the CWB's jurisdiction in 1974. In the same year, the GOC established the Reserve Stock Program, apparently to ensure that western livestock producers would continue to have a reliable source of feed barley. This program was terminated in 1979.

In 1984, the Western Grain Transportation Act (''WGTA'') came into effect. Under this program, the GOC paid the difference between the ''crow rate'' (a ceiling on rail rates dating back to 1897) and an unregulated rate. In 1985, the province of Alberta began the Crow Benefit Offset Program to offset the higher local grain prices caused by the WGTA. The program essentially subsidized the purchase of barley by livestock producers and may have resulted in an increase of livestock production in the province. The WGTA subsidies continued until 1995.

On August 1, 1993, the GOC permitted non-CWB entities to export barley, thereby creating the so-called ''Continental Barley Market'' (''CBM''). As a result of Canadian judicial intervention, the CBM lasted only until September 10, 1993. During the CBM, exports of Canadian feed barley to the United States increased dramatically compared to prior periods. Whether this was due to the ability of individual farmers to export or other factors (*e.g.,* flooding in the United States) has been subject to much dispute. Economists also differ on the impact of the CBM on U.S. and Canadian prices, specifically, whether the CBM resulted in the convergence of U.S. and Canadian domestic feed prices. The petitioner suggests that the CBM is indicative of the market that would exist in the absence of the CWB.

CWB Act

The current statutory authority for the CWB was enacted in 1935. The CWB Act: (1) Codifies the CWB's exclusive control over feed and malting barley exports; (2) establishes the governance structure and mission of the CWB; and (3) delineates the relationship between the GOC and CWB. Under section 45 of the CWB Act, ''no person shall export from Canada [wheat or barley] owned by a person other than the Board.'' This provision grants the CWB its export monopoly authority with respect to all barley produced in Canada. Section 45 of the CWB Act also grants the CWB authority over interprovincial trade in barley.

During the POI, the CWB was a Crown corporation governed by five commissioners appointed by the GOC. Farmers were represented on an advisory board that could only make recommendations to the commissioners. Pursuant to section 7 of its statutory authority, the CWB's mandate is to sell grain ''for such prices as it considers reasonable with the object of promoting the sale of grain produced in Canada in world markets.''

The CWB Act establishes the following three financial relationships between the CWB and the GOC: (1) The GOC guarantees all approved borrowings of the CWB, (2) the GOC guarantees the initial payment, adjustments, and interim payments made to farmers (discussed further below), and (3) the GOC guarantees credit extended to purchasers of CWB grain. (*See* sections 6, 7 and 19 of the CWB Act.)

In addition to the financial ties between the GOC and the CWB, the CWB Act promulgates other means by which the GOC may exert authority over CWB operations. Section 18 of the CWB Act allows for GOC policy directions via an order by the Governor-in-Council (''GIC''). Under section 32, the amount of the initial payment must be approved by the GOC. Finally, the CWB is required to provide a proprietary, detailed annual reporting of the CWB's operations to the GIC.

1998 Amendment to the CWB Act

In 1996, the GOC established the Western Grain Marketing Panel (''WGMP'') to review the marketing system of western Canadian grain. As a result of the WGMP, an amendment to the CWB Act (''the amendment'') was passed in June 1998 and became operational on December 31, 1998. Parts of the amendment were implemented in June and December 1998, while others have yet to be formally implemented. Below is a discussion of certain key WGMP recommendations and the provisions that were passed to implement these recommendations.

Change in legal status. As noted, under the old CWB Act, the CWB was a Crown corporation. Pursuant to the amendment, it became a ''shared-governance'' corporation. The new governance structure created by the amendment granted more direct control of the CWB to the farmers through the Board of Directors. Specifically, ten members of the new Board of Directors are elected by grain producers and the remaining five members, including the president, are appointed by the GOC. The new Board of Directors is responsible for managing the business and affairs of the CWB and directing strategic planning. The old Advisory Board was disbanded.

Removal of feed barley from CWB jurisdiction. The WGMP recommended that the CWB should remain solely responsible for marketing malting barley, but that farmers should be allowed to export feed barley directly or sell it to the CWB. In 1997, the GOC held a plebiscite asking farmers if they wanted to continue the current marketing system or sell their barley without the CWB. Sixty-three percent of farmers voted to maintain the current system. Thus, the CWB's exclusive control over both feed and malting barley exports has continued.

Early closing of pools. Under the old CWB Act, the CWB could only make final payments on pools in January following the end of the crop year (*e.g.,* January 1999 for the 1997–98 crop year). The amendment grants the CWB the authority to close a pool early (*i.e.,* prior to the end of the crop year). The CWB wanted the ability to close a pool in situations where export prices decline precipitously. Under these circumstances, the CWB could terminate the existing pool once it became apparent that prices were steadily declining. Farmers who delivered their barley to the pool would receive the weighted-average price received during the time the pool was open. After the old pool was closed, a new pool could be established. The first pool would reflect the higher prices in the beginning of the year, and the second pool would reflect the lower prices at the end of the year. By ending a pool early, the pool payment farmers receive for their grain would be more reflective of their initial expectations. Ending pools early in a falling market could also be used as a mechanism to ensure that the GOC would not have to cover a pool deficit (*i.e.,* reimbursing the CWB for the difference between the payments made to farmers in the course of the crop year and the actual revenues received on barley pool sales).

Cash Purchase Option. As recommended by the WGMP, the amendment allows the CWB to make cash purchases from farmers and other participants on the open market. The reason for this change is to allow the CWB to purchase grain directly from farmers when the CWB has selling opportunities but the CWB's estimates of the final pool payment the farmer will receive—the Pool Return Outlooks and Estimated Pool Returns (the PROs and EPRs, discussed below)—are not attracting sufficient supplies to take advantage of those opportunities. However, prior to the adoption of the amendment in 1998, the livestock industry expressed concern that use of this provision by the CWB might raise feed barley prices to the Canadian livestock industry. This provision has not yet been proclaimed in force by Parliament. Therefore, the cash purchase option has not yet been exercised by the CWB.

CWB Operations

The Canadian crop year is from August 1 to July 31. Barley is normally planted in the spring. Harvesting begins the first or second week of August and may continue through October, depending on the weather. Once the grain is harvested, the farmer can begin to deliver grain immediately through the acreage-based system, or through the ''delivery contract system'' throughout the year. Relatively small amounts of grain are delivered under the acreage-based system. The primary method of sale and delivery to the CWB is through the delivery contract system.

Under the delivery contract system, there are four contract series throughout the year, each with a different deadline (for the 1997–98 crop year, the deadlines were: series A, October 31; series B, December 31; series C, February 27; and series D, May 29). On the contract, the farmer identifies, *inter alia,* the station to which he normally delivers (he can deliver anywhere he wants), the series for which he is offering grain, and the net amount he expects to deliver. Because the farmer will not know the exact weight of his barley until it is delivered, the CWB allows an 85 percent tolerance.

After the CWB receives all contracts offered under a particular series, it tabulates the offers and determines whether it will accept all the grain. The factors that are taken into consideration in this analysis are: the amount and types of grain offered, the sales requirements identified up to that point, and any transportation constraints. The acceptance rate for every series in the POI was 100 percent. In the last five years, the CWB has consistently accepted all the barley offered to it, except for series C in the 1995–96 crop year, when it only accepted fifty percent of the grain offered.

Once the series contracts have been offered and accepted, delivery of the barley must be ''called'' by the CWB. A ''call'' or ''delivery call'' is essentially an instruction issued by the CWB to farmers telling them when and where to deliver their barley. The CWB must issue a call before a farmer can deliver his grain.

A number of factors are analyzed by the CWB in determining when the grain should be called into the handling system: the total amount offered, immediate sales commitments, the quantity of grain already in the handling system, where grain is located, any transportation constraints, and outstanding delivery calls (if any). Any one call can be less than 100 percent of the accepted series amount. However, acceptance of a farmer's offer commits the CWB to call all the grain accepted at some point before the end of the crop year. Once a call is announced, farmers may deliver their grain.

Pursuant to section 24 of the CWB Act, farmers are legally prevented from delivering to a grain elevator unless, *inter alia,* they have a permit book, the grain was produced on the lands described in the permit book, and the quantity of grain delivered does not exceed the amount authorized by the CWB. When the farmer delivers the grain to the elevator, the elevator manager grades it, and makes the initial payment (discussed below) on behalf of the CWB to the farmer. The delivery is recorded in the farmer's permit book and applied against the contract the farmer established with the CWB to calculate the net outstanding balance of grain due under that contract.

Every farmer that sells into the pool receives the payment for his crop in installments. Upon delivery of the grain to the elevator, the farmer receives the published initial payment adjusted for freight to either Vancouver or St. Lawrence (the two primary export points), less any grain company deductions for elevation and cleaning. The initial payment set by the CWB is based on market projections, CWB-specific sales prospects, and an evaluation of export prices. While there is no fixed rule, initial payments historically have been set at 70–75 percent of the projected final return. As noted above, the initial payment must be approved by the GOC.

During the year, the CWB may make adjusted or interim payments. After the pool year is closed, the farmer normally receives a final payment. The sum of these payments equals the ''pool payment,'' which is the total return the farmer receives for barley delivered to the CWB.

Once the barley has been called, delivered and stored, it must eventually be moved to an export point. This is generally done by rail. The allocation of the two Canadian railroads' resources is arranged by a government/private sector committee called the Car Allocation Policy Group (''CAPG''). This group sets policies and coordinates the movement of barley and other grain through the system. CAPG has representatives from grain companies, railways, farmers, small shippers, and the CWB. It performs capacity planning for four-month and one-year periods. It evaluates market demand information from shippers and supply information from railroads to determine where and when the transportation constraints will arise. During high usage periods, the CAPG attempts to allocate resources equally; in other words, access is not rationed by price. (*See* section 28 of the CWB Act, which enables the CWB to ''provide for the allocation of railway cars.'')

Pricing Signals

Starting in late February to early March prior to the crop year (*e.g.,* February 1997 for the August 1,1997/July 31, 1998 crop year), the CWB publishes, on a monthly basis, the Pool Return Outlook (PRO), which is a range within which the CWB expects the final pool return to fall. The monthly PROs are the main tool a farmer has in determining how much barley to grow and in deciding whether to sell his grain domestically, or to the CWB for export. Once the pool year is in progress and sales have been completed, the CWB has a better idea of the final pool return. In March of the crop year (*e.g.,* March 1998 for the August 1, 1997/July 31, 1998 crop year), the CWB announces the Estimated Pool Return (EPR), which is a fixed number, not a range. EPRs are issued again in June and September.

When determining the PROs and EPRs for feed barley, many factors are examined, including: harvest conditions, foreign subsidies, carryover stocks from the previous year, and the quality and quantity of the U.S. corn crop. (The price of corn and barley are closely related over time because both are used as livestock feed and both have similar nutritional value for livestock. In the United States, corn is the primary feed for cattle.) Both the PROs and EPRs generally reflect prices in export markets rather than the domestic market.

The Producer Direct Sales Program

The Producer Direct Sales (''PDS'') Program allows farmers to export barley on their own account to the U.S. market. Section 46 of the CWB Act and section 14 of the CWB regulations provide the mechanism by which the CWB grants export licenses under the PDS program to individual farmers both inside and outside the designated area (*i.e.,* the area under the control of the CWB).

Pursuant to section 46(d) of the CWB Act, the terms and conditions for the granting of licenses can include:

> * * * recovery from the applicant by the Board * * * of a sum that, in the opinion of the Board, represents the pecuniary benefit enuring to the applicant pursuant to the granting of the license, arising solely by reason of the prohibition of exports of [the covered products] without a license and the then existing differences between prices of [the covered products] inside and outside Canada.

We discussed this section of the CWB Act extensively at verification. One literal interpretation of section 46(d) is that it requires that any difference between the price the CWB offers a farmer and the price the farmer can obtain by exporting his barley independently must be paid to the CWB in return for the granting of the export license. Obviously, such an interpretation would discourage the exportation of barley by any entity other than the CWB. In practice, the CWB has interpreted this provision to mean that the farmer wishing to export independently must pay the difference between the total pool return and a price set under the PDS program. Although the precise manner by which the CWB determines this price is proprietary, in essence, the PDS price is based upon the export opportunities of the CWB.

In order to export barley under the PDS program, farmers within the designated area must (at least, on paper) deliver their grain to the CWB—for which they will receive the normal pool payments—and then repurchase that barley at the posted daily PDS price. In the 1997–1998 crop year, a very small percentage of Canadian feed barley exports went through the PDS program.

Analysis of CWB Operations

The Canadian grain marketing system—of which the CWB is an integral part—is highly regulated and institutionalized. Certain CWB policies and programs indicate that the operations of the CWB, with respect to feed barley, may have goals other than promoting the interests of barley farmers. Moreover, while there may not be an overt restraint on exports by the CWB, there are certain aspects of the CWB pooling system and Canadian grain marketing system overall that could have the same result as an overt restraint on exports.

As noted above, the CWB's mandate is to sell grain ''for such prices as it considers reasonable with the object of promoting the sale of grain produced in Canada in world markets.'' According to its annual reports (*see*, for example, page 2 of the CWB's 1997–1998 Annual Report in Exhibit CWB–34), the CWB's mission is to maximize returns to western Canadian grain farmers. However, the CWB has also stated that it must balance this objective with the need of processors to source grain at a price that allows them to compete in the finished product market (*see*, for example, page 17 of the CWB's 1995–1996 Annual Report in the petitioner's November 6, 1998 submission at exhibit A–1 and verification exhibit CWB–14). Arguably, this pricing policy with respect to downstream processors, along with the CWB value-added program discussed below, demonstrates that the operations of the CWB may be guided by government policy objectives inconsistent with the actions expected of a normal market actor.

Similarly, we verified that the CWB has a value-added program intended to increase the domestic value-added of the cereal grains it markets. Although the current objective of the value-added program relates primarily to the milling and malting industries, the value-added program is very broad and includes anything involved in processing cereal grains. Some value-added programs have centered on the livestock industry.

During the 1997–1998 crop year, the CWB held its second annual ''Moving Up Market'' conference. At this conference, the livestock feeding industry was one area of focus. Brochures from the conference and copies of the presentations given by two CWB officials and a private sector representative from the hog industry were collected on verification. Included in the presentation by the Chief Commissioner of the CWB were the following statements:

> The government in this province [Alberta] is encouraging the processing of raw products into fully processed consumer goods to capture the value which is added by processing rather than simply exporting bulk agricultural goods.
>
> The CWB shares the same desire to see Canadian processors using as much of Prairie farmers' cereal grains as possible * * *.
>
> The western Canadian livestock feeding industry secures virtually all of its feed grain requirements from Prairie farmers. In an open and competitive environment, this huge and growing market for feed grains may eventually make the export of feed barley from western Canada a thing of the past.

(*See* verification exhibit CWB–14.)

These statements indicate, at a minimum, that the CWB supports a policy of increased domestic value-added for barley grown on the prairies.

With respect to the CWB pooling mechanism, one CWB-commissioned study notes that if prices in the export markets suddenly rise, the PRO/EPRs, which are estimates of the average price to be received by the CWB throughout the year, will not rise commensurately. (*See The CWB and Barley Marketing* by Schmitz, *et al.*, in verification exhibit CWB–7.) As a result, farmers, who might otherwise attempt to take advantage of the higher prices, might not offer their barley to the CWB to be sold in the export market. Under these circumstances, the impact on the market would be the same as an overt export restriction: more feed barley will be supplied to the domestic market and domestic feed barley prices will be potentially lower.

In general, some economists maintain that the heavily regulated nature of the Canadian marketing system for grain has slowed productivity in grain handling, increased marketing costs and reduced farm returns. They argue that the CWB does not pursue improvements in the marketing and handling system the same way that private entities would in response to market forces. (*See*, for example, Carter and Loyns, *The Economics of Single Desk Selling of Western Canadian Grain*, attached as Exhibit 5k, to the R-Calf petition.) A 1995 study by KPMG Management Consulting estimated that up to twenty percent of operational costs could be saved annually through reduced regulation, the introduction of transparent incentives, and improved accountability (*See Rapid Grain Flow-Transfoming Grain Logistics* prepared for the Western Grain Elevator Association, April 1995). If unnecessary or additional costs are imposed on the farmer when he seeks to export, the impact on the market would be the same as an overt export restriction: more feed barley will be supplied to the domestic market and domestic feed barley prices will be potentially lower.

Some economists also argue that the ''selection rate'' for malting barley is lower in Canada relative to other countries. (The ''selection rate'' is the percentage of malting barley that is actually sold as malting barley; malting barley not selected for malting is sold as feed barely.) As a result, more barley grown as malting barley is sold as feed barley in both the domestic and export markets. (*See*, for example, D. Demcey Johnson, *Single Desk Selling of Canadian Barley*, in the petitioner's July 29,1999 submission at Exhibit 6.) Arguably, this scenario might also depress feed prices in the domestic market. The CWB argues that the determination of what qualifies as malting barley is made by private entities and other public entities of the Canadian government. However, while the record indicates that the CWB is not directly involved in the selection of malting barley, the CWB does seek to ensure that barley it sells as feed barley is not re-sold in another market as malting barley.

Pricing Analysis

To determine if the operations of the CWB have provided a benefit to the producers of live cattle in Canada during the POI, we made numerous price comparisons between Canadian domestic prices, several U.S. domestic prices (some of which are representative of the largest feed barley consumer markets in the world), and the CWB export price to the United States. Specifically, the benchmark prices we used were the prices in Portland, an average price in the U.S. based on several different price series, and CWB export prices to the United States. We did not make any adjustments to the reported prices other than freight, where appropriate.

First, we compared the domestic and export marketing options that would be available to a barley farmer in Saskatoon, Saskatchewan in an open market. We used a farmer in Saskatoon as representative of Canadian barley farmers because Saskatoon is located in the center of the Canadian barley growing area and because the best data we have for freight adjustments pertain to Saskatoon. We compared domestic and export opportunities, as represented by Lethbridge and Portland, respectively. We used Portland prices because these prices are representative of export prices to large, traditional global consumers of feed barley (*e.g.*, Saudi Arabia and Japan) (*see* September 22, 1999, Memorandum to File, ''Portland and Pacific Northwest (PNW) prices'').

We adjusted both the domestic and export prices back to Saskatoon by freight (rail freight for export, truck freight for domestic). *See* October 12, 1999, Memorandum to Susan Kuhbach, ''Pricing Analysis for the Canadian Wheat Board (CWB) for the Final Determination'' (''CWB Analysis Memorandum'') and Final Calculations. We observed that, during the POI the export prices in Portland were similar to those in Lethbridge. Although Lethbridge prices have been lower historically, especially in the 1995–1996 crop year, there is no consistent pattern of the Portland prices significantly exceeding the Canadian price. Beginning in November 1997, the Canadian domestic price has been higher.

Second, we compared the CWB export price to the U.S. with the domestic price in Lethbridge. We observed the same price relationships described above during the POI and the prior two years.

Third, we compared the weighted average price in the designated area with the average price of barley in the United States during the POI without making any adjustments for freight. To calculate the designated area price, we took various Canadian ''Off-Board'' prices in the designated area (Lethbridge, Calgary, Saskatoon, Melfort and Winnipeg) and weighted them by cattle production in the different areas. We used cattle production as a proxy for barley consumption because the majority of barley consumed in Canada is consumed by cattle. For U.S. prices, we calculated a simple average of prices for feed barley at various locations (Duluth, Bottineau, Cando, Churchs Ferry, Rugby, Stanley, Great Falls, Golden Triangle, Northcentral, and Portland). We used all U.S. pricing points on the record except Minneapolis, East Coast (Norfolk Terminal) and PNW. We did not include the Minneapolis price series as those prices are for malting barley. East Coast prices were omitted because no data is reported for most months during the POI. We did not have sufficient information to weight average the U.S. prices by consumption. We observed that, during the POI, the average price in the U.S. was usually lower than the average price in the designated area.

Finally, we compared an average price in the two primary growing areas in Canada with geographically comparable growing areas in the United States which are approximately the same distance from export ports. Specifically, we compared an average price in Alberta with an average price in Montana, and an average price in Saskatchewan with an average price in North Dakota. In both of these comparisons, we observed that, during the POI (the only period for which we have all the needed data), the Canadian price was often higher than the U.S. price.

Thus, based on the above price comparisons, we determine that the operations of the CWB did not provide a benefit to the producers of live cattle during the POI. Therefore, we determine that the operations of the CWB during the POI did not provide an indirect countervailable subsidy.

Provision of Goods or Services

B. Saskatchewan Pasture Program

The Saskatchewan Pasture Program has been in place since 1922. It is designed to provide supplemental grazing to Saskatchewan livestock producers and to maintain grazing and other fragile lands in permanent cover to promote soil stability. Saskatchewan Agriculture and Food operates 56 provincial community pastures encompassing 804,000 acres. At these pastures, the SAF offers grazing, breeding, and health services for fees established by SAF. Fees are based upon recovery of the costs associated with the grazing and breeding services of each pasture.

The provision of a good or service is a financial contribution as described in section 771(5)(D)(iii) of the Act. As discussed above in connection with the PFRA, a benefit is conferred in the provision of a good or service when the prices charged for government-provided goods or services are less than the prices charged by private suppliers. In the case of the Saskatchewan Pasture Program, a simple comparison of the fees charged would not be appropriate because the pasture services being offered by the SAF differ from those offered by private providers. In this regard, the GOS has provided a quantifiable adjustment. Specifically, we adjusted the private price downward by deducting costs associated with the timing of the sale of cull cows. Although the GOS argued that there were other differences that should be taken into account for such things as commingling, pasture condition, delivery and pickup periods, we have not made adjustments for such costs because either the GOS did not establish that such costs were faced solely by public pasture patrons or because the GOS was unable to quantify them.

Comparing the public pasturing price to the adjusted private pasturing price, we determine that the price for private pastures is lower than the price for public pastures. Therefore, we determine that the government is adequately remunerated for its provision of pasture services. Thus, no countervailable subsidy exists.

C. Alberta Grazing Reserve Program

Like the federal government's PFRA Community Pasture Program, Alberta developed community pastures (reserves) on which multiple ranchers' herds can graze. Grazing reserves also provided multiple-use opportunities to other users.

Traditionally, government employees supervised and managed the animals on the reserves, and maintained and built range infrastructure. However, as of April 1, 1999, the GOA ceased to perform management activities on 32 of its 37 grazing reserves as a result of a privatization initiative. Under the privatization initiative, livestock management responsibilities were shifted to grazing associations and new, negotiated fees have been established. However, during the POI, the government operated 20 reserves, accounting for approximately 170,000 AUMs. The 17 remaining reserves were privately operated and accounted for approximately 150,000 AUMs.

Priority in issuing permits for use of the reserves is given to residents who operate a ranch or farm. The Minister of Lands and Forests establishes the amount to be paid for stock grazing on each pasture operated by the GOA. The GOA reported that the grazing revenues obtained from this program exceed the cost of the grazing aspects of the program and cover many of the multiple-use functions of the land.

The provision of a good or service is a financial contribution as described in section 771(5)(D)(iii) of the Act. As discussed above in connection with the PFRA, a benefit is conferred in the provision of a good or service when the prices charged for government-provided goods or services are less than the prices charged by private suppliers. In the case of the Alberta Grazing Reserve Program, we determine that the government is charging more than the private providers of the same services. Specifically, the fees charged by the private grazing associations to its members were lower than those charged by the government. Based on the above, we determine that the government is receiving adequate remuneration for its provision of grazing services. Thus, no countervailable subsidy exists.

We also examined whether the amount charged by the GOA to the private grazing associations for the reserves they operate provided adequate remuneration tot he GOA. We found that the fee charged is comparable to the adjusted private grazing lease price discussed under the ''Alberta Crown Lands Basic Grazing Program'' section above. Therefore, we determine that the government is being adequately remunerated for its provision of grazing land to grazing associations. Thus, no countervailable subsidy exists.

Green Box Programs

Under section 771(5B)(F) of the Act, domestic support measures provided with respect to the agricultural products listed in Annex 1 to the 1994 WTO Agreement on Agriculture (''Agriculture Agreement'') shall be treated as noncountervailable if the Department determines that the measures conform fully with the provisions of Annex 2 of the Agriculture Agreement. Our *New CVD Regulations* further state that we will determine that a particular domestic support measure conforms fully to the green box criteria in the Agriculture Agreement if we find that the measure (1) is provided through a publicly-funded program (including government revenue forgone) not involving transfers from consumers; (2) does not have the effect of providing price support to producers; and (3) meets the relevant policy-specific criteria and conditions laid out in Annex 2 of the Agriculture Agreement. As was noted above in the *Applicable Statute and Regulations* section, although Subpart E of 19 CFR Part 351 of our *New CVD Regulations* does not apply to this investigation, Subpart E represents the Department's interpretation of the requirements of the Act and is, thus, referenced here.

The GOC requested ''green box'' treatment for three programs in this investigation: The Canada-Alberta Beef Industry Development Fund (''CABIDF''), the Feed Freight Assistance Adjustment Fund (''FFAF''), and the Saskatchewan Beef Development Fund (''SBDF''). Because the FFAF was not used during the POI, we do not reach the issue of green box treatment for FFAF. *See* the *Programs Preliminarily Determined To Be Not Used* section, below. The claims made relating to CABIDF and SBDF are discussed in detail below. A more detailed discussion of the Department's analysis of this issue can be found in the Department's Memorandum to Richard Moreland: ''Green Box Claims Made by the Government of Canada,'' dated May 3, 1999, which is on file in the Central Records Unit.

D. Canada-Alberta Beef Industry Development Fund

CABIDF, which was established by the GOC and the GOA in April 1997, supports research, development, and related activities connected to the beef industry in Alberta. It is administered by the Alberta Department of Agriculture, Food, and Rural Development and run by the Alberta Cattle Commission and the Alberta Agricultural Research Institute. To receive funding through this program, applicants must submit a series of research proposals that are evaluated on the basis of the project's relationship to the Funds's research priorities (which are discussed in the *Preliminary Determination*), its scientific merits, and the usefulness of the project results to the beef industry, directly or indirectly. Final proposals are evaluated for technical merit by a scientific committee consisting of industry experts and scientists, and are then approved or rejected based on these evaluations by CABIDF's governing committee.

In order to determine whether CABIDF qualifies for green box treatment under section 771(5B)(F) of the Act, we examined whether CABIDF met the criteria specified in the Act and further detailed in the Agriculture Agreement. With regard to the first criterion noted above, in the original and supplemental questionnaire responses, the GOC and the GOA stated that all monies used to fund this program came directly from the government, whether on a provincial or on a federal level. We verified that no funds for this program were received from any entity other than federal and provincial governments during the POI. The funds went directly to CABIDF applicants. No transfers from consumers were involved.

As for the second criterion, none of the projects that have been approved by CABIDF have the effect of providing price support to producers.

With regard to the last criterion, the policy-specific criteria that must be met in this case are those listed under paragraph 2, Annex 2 of the Agriculture Agreement. Paragraph 2 focuses on policies that provide services or benefits to the agriculture or rural community. It includes sub-paragraph (a), which covers projects for research, including general research, research in connection with environmental programs, and research programs relating to particular products (sub-paragraph (a)).

According to its authorizing statute, the purpose of CABIDF is to ''provide financial contributions in the form of grants to enhance research and industry development activities with the objective of promoting and enhancing the competitiveness of the beef industry in Alberta.'' Officials confirmed that each project approved through CABIDF is approved solely because of its potential scientific research value to the Alberta beef industry, and that projects approved are all research-related projects. We verified that all of the projects that have been funded by CABIDF since the program's inception in April 1997 have been related to scientific research activities for the beef industry and the agriculture industry in general. All of the approved projects consisted of grants, not revenue forgone, and we verified that none were paid directly to producers or processors.

Based on our analysis, we find that CABIDF is eligible for green box treatment under section 771(5B)(F) of the Act, and, thus, is not countervailable.

E. Saskatchewan Beef Development Fund

SBDF, which is administered by the Agriculture Research Branch of the Saskatchewan Ministry of Agriculture and Food, supports the development and diversification of Saskatchewan's beef industry through the funding of various projects related to production research, technology transfer, and development and promotion of new products. The ministry-appointed, producer-run governing board, the Saskatchewan Beef Development Board, meets once a year to review and approve project proposals that it deems to be of general benefit to the cattle and beef industries. Priority is given to public research institutions conducting research, development, and promotion activities that will be generally available to the industry.

In order to determine whether SBDF qualifies for green box treatment under section 771(5B)(F) of the Act, we examined whether the SBDF met the criteria specified in the Act and further laid out in the Agriculture Agreement, which were described in detail above. With regard to the first criterion, in the original and supplemental questionnaire responses, the GOS reported that all monies used to fund this program came directly from the provincial government. We verified that no funds for this program were received from any non-public entity during the POI. The funds went directly to SBDF applicants. No transfers from consumers were involved.

As for the second criterion, none of the projects that have been approved by SBDF have the effect of providing price support to producers.

Finally, with regard to the last criterion, the policy-specific criteria that must be met in this case are also those which are listed under paragraph 2, Annex 2 of the Agriculture Agreement. In particular, the relevant criteria are contained in sub-paragraphs (a), (c), (d), and (f) of paragraph 2, which focus on programs relating to research, training services, extension and advisory services, and marketing and promotion services.

The regulations governing SBDF state that the purpose of the program is to provide for the enhancement of the Saskatchewan beef and beef cattle industry through research, development, and promotional activities that the board considers to be in the best interests of the industry. We verified that each of the thirteen projects that received funding distributions through the SBDF during the POI was either a research or an extension and advisory program. All of the approved projects consisted of grants, not revenue forgone, and we confirmed that none were paid directly to producers or processors.

Based on our analysis, we find that SBDF is eligible for green box treatment under section 771(5B)(F) of the Act and, thus, is not countervailable.

Other Programs

F. Net Income Stabilization Account

The Net Income Stabilization Account (''NISA'') is designed to stabilize an individual farm's overall financial performance through a voluntary savings plan. Participants enroll all eligible commodities grown on the farm. Farmers may then deposit a portion of the proceeds from their sales of eligible NISA commodities (up to three percent of net eligible sales) into individual savings accounts, receive matching government deposits, and make additional, non-matchable deposits, up to 20 percent of net sales. The matching deposits come from both the federal and provincial governments.

NISA provides stabilization assistance on a ''whole farm'' basis. This means that a farmer's eligibility to receive assistance depends on total farm profits, not the profits earned on individual commodities. A producer can withdraw funds from a NISA account under a stabilization or minimum income trigger. The stabilization trigger permits withdrawal when the gross profit margin from the entire farming operation falls below an historical average, based on the previous five years. If poor market performance of some products is offset by increased revenues from others, no withdrawal is triggered. The minimum income trigger permits the producer to withdraw the amount by which income from the farm falls short of a specific minimum income level.

In *Live Swine From Canada; Final Results of Changed Circumstances Countervailing Duty Administrative Review, and Partial Revocation,* 61 FR 45402 (August 29, 1996), we found that NISA is not *de jure* specific. Moreover, for hog producers, we found that NISA was not *de facto* specific. Therefore, the issue in this investigation is whether NISA is *de facto* specific with respect to cattle producers.

To make our determination, we have examined whether cattle producers are dominant users of the program, or whether cattle producers receive disproportionately large benefits under the program. We found no evidence that cattle producers are dominant users or receive disproportionate benefits from the NISA program. Specifically, the GOC provided information on farmer withdrawals of NISA funds during the POI and the two preceding years. Because NISA does not collect or maintain information concerning withdrawals on a commodity-by-commodity basis, the GOC reported farmer withdrawals by categorizing farms by the source of the majority of their revenues. That is, a farm with over fifty percent of its revenues from a particular commodity's sale, such as cattle, was classified as a farm of that commodity. On this basis the GOC reported that, during the POI, cattle farms accounted for 7.7 percent by value of total withdrawals from NISA.

We have also analyzed whether NISA is regionally specific because certain commodities, including cattle, in certain provinces are not eligible commodities under the program. In that regard, we determine that NISA is not limited to a particular region. While certain commodities are not eligible for matching funds within certain provinces, the producers of these commodities elect not to participate at their own choice, not because the program is limited to an enterprise or industry located in a particular region.

Based on the above analysis, we determine that NISA assistance is not limited to a specific enterprise or industry, or group of enterprises or industries. Therefore, we determine that assistance received by cattle producers under the NISA program is not countervailable.

G. Alberta Public Grazing Lands Improvement Program

Established in 1970 and terminated in 1995, this program provided a partial credit toward the payment of rent on a public grazing land disposition if the lessee undertook certain pre-approved capital range improvement projects. The leaseholder was required to pay for all the costs incurred for these capital improvements, and was reimbursed for 25 to 50 percent of these costs through credits on the rental fees otherwise due annually. All improvements belong to the government and, once the improvements are created, the lessee is required to maintain them at his or her own expense.

In order for a financial contribution to exist under this program, the GOA must forego rental fees, or a portion thereof, that are otherwise due as described in section 771(5)(D)(ii) of the Act. However, in this case the reduction in the rental fees corresponds to range improvements on behalf of the government. Furthermore, the increased value of the land as a result of the improvements is captured upon the next setting of rental fees. Based on the above analysis, we determine that this program does not provide a financial contribution and, therefore, we determine that the program is not countervailable.

H. Saskatchewan Crown Land Improvement Policy

The Crown Land Improvement Policy is designed to provide rental adjustments when Crown land lease holders make capital improvements to the land, such as clearing, bush removal, or breaking and reseeding. In return for the lessee's funding of these improvements, Saskatchewan Agriculture and Food (''SAF'') agrees not to increase the rental rate for a certain period of time, depending on the length of the improvement project or may reduce the basis for rent. SAF is willing to reduce the rental rate or freeze the rate because during the improvement project the actual stocking rate of the land is lower than the potential, the improvements do not result in an immediate increase in the productive value of the land, and any improvements belong to the Crown.

In order for a financial contribution to exist under this program the GOS must forego rental fees, or a portion thereof, that are otherwise due as described in section 771(5)(D)(ii) of the Act. However, in this case the reduction in the rental fees corresponds to a reduction in the land's carrying capacity while improvements are undertaken. The increased value of the land as a result of the improvements is captured upon the next setting of rental fees. Based on the above analysis, we determine that this program does not provide a financial contribution and, therefore, we determine that the program is not countervailable.

I. Saskatchewan Breeder Associations Loan Guarantee Program

The Saskatchewan Breeder Associations Loan Guarantee Program was established in 1991 to facilitate the establishment of cattle breeder associations, in an effort to promote cattle breeding in Saskatchewan. The program is administered by the Livestock and Veterinary Operations Branch of the Saskatchewan Agriculture and Food Department. This agency provides a guarantee on 25 percent of the principal amount of loans to breeder associations for the purchase of certain breeding cattle. Eligibility is limited to breeder associations which consist of at least twenty individuals who are residents of Saskatchewan and over the age of eighteen. One hundred and seven associations received guarantees on loans which were outstanding during the POI.

Breeding livestock is not covered by the order of this investigation. Therefore, we determine that this program does not provide a countervailable subsidy to the subject merchandise because any potential subsidy would benefit merchandise other than that covered by this investigation.

III. Programs Determined To Be Not Used

Based upon the information provided in the responses, we determine that the producers of the subject merchandise under investigation did not apply for or receive benefits under the following programs during the POI.

A. Feed Freight Assistance Adjustment Fund

Of the four responding provinces in this investigation, only one, Ontario, participated in the Feed Freight Assistance Adjustment Fund program. Specifically, in the year prior to the POI, the first year of the FFAF, a grant was provided to Ontario producers. However, because the benefit was below 0.5 percent of the investigated provinces' total sales, we expensed this grant in the year received. Thus, cattle producers received no benefit during the POI from grants received prior to the POI. We verified that, during the POI, Ontario did not receive benefits under FFAF. Therefore, we determine that the FFAF program was not used during the POI.

B. Canadian Adaptation and Rural Development (CARDS) Program in Saskatchewan

C. Western Diversification Program

IV. Programs Determined To Be Terminated

A. Ontario Export Sales Aid Program

V. Other Programs Reviewed

The GOC demonstrated that, for the following programs, any benefit to the subject merchandise would be so small that there would be no impact on the overall subsidy rate, regardless of a determination of countervailability. In light of this, we do not consider it necessary to determine whether benefits conferred under these programs to the subject merchandise are countervailable.

A. Ontario Bear Damage to Livestock Compensation Program

B. Ontario Livestock Programs for Purebred Dairy Cattle, Beef, and Sheep Sales Assistance Policy/Swine Assistance Policy

C. Ontario Artificial Insemination of Livestock Act

Interested Party Comments

Canadian Wheat Board

Comment 1: Indirect Subsidies

The petitioner argues that, according to *Georgetown Steel Corp.* v. *United States,* 801 F.2nd 1308, 1315 (Fed. Cir. 1986), a subsidy is defined as any action that distorts or subverts the market process and results in a misallocation of resources. In determining the existence of a countervailable subsidy, according to Section 771(5)(C) of the Act, it is irrelevant whether the subsidy was provided directly or indirectly.

The petitioner further contends that the SAA and Department precedent make clear that the Department intends to countervail indirect subsidies, such as export restraints. As such, the GOC need not compel Canadian barley growers to supply the cattle industry. According to the petitioner, it is sufficient that feed barley is produced and sold only to cattle and other livestock producers. Specific end-use market control over exports, and the resulting depression of domestic prices, is sufficient to direct lower-priced feed barley to Canadian cattle producers. The provision of goods, albeit by a private party, may be countervailed when the price of those goods is the result of a government program distorting the market.

The GOC argues that the URAA added a definition of ''countervailable subsidy'' to U.S. law which requires that a ''financial contribution'' and a resulting benefit be conferred before a ''subsidy'' can be said to exist. Further, a financial contribution may be only one of four specifically enumerated forms of government action, including the ''provision of goods,'' which is the allegation in this case. This requirement may result from private action in situations in which the government ''entrusts or directs a private entity to make a financial contribution'' such as the provision of goods. The GOC argues that neither the GOC nor the CWB entrusted or directed Canadian barley producers to do anything. To the contrary, barley producers have complete discretion over decisions concerning whether to offer barley to the CWB, to sell it to domestic cattle or other livestock producers, to use it as feed on one's own farm, or, for that matter, to do nothing with it at all. Indeed, according to the GOC, barley producers remain free to produce another product, or to change their line of business altogether. According to the GOC, since the CWB is neither providing goods to cattle producers nor entrusting or directing any private entity to do so, no financial contribution exists in this instance and, thus, no subsidy.

Department's Position: It is our position that indirect subsidies, such as export restraints, are potentially countervailable. In the preamble of the *New CVD Regulations,* we stated that while export restraints ''may be imposed to limit parties'' ability to export, they can also, in certain circumstances, lead those parties to provide the restrained good to domestic purchasers for less than adequate remuneration'' (at 65351). Thus, the provision of a good, whether provided directly or indirectly, for less than adequate remuneration constitutes a financial contribution under section 771(5)(D) of the Act. In this case, although we have found no benefit during the POI, record evidence indicates that the CWB is not immune to the interests of cattle producers in its policy determinations.

Comment 2: CWB Control, Inefficiency, and Market Distortions

The petitioner states that the CWB is legally and operationally in a position to control the barley market, restrain exports, oversupply the domestic market, and thereby reduce the costs incurred by Canadian cattlemen. The petitioner argues that, whether or not the CWB's control amounts to a direct and utter restriction on exports, the Canadian marketing and handling system, of which the CWB is a key institution, prevents exports which otherwise would have occurred because it creates a disincentive for Canadian barley farmers to offer feed barley for export.

Specifically, the petitioner suggests that the CWB system creates inefficiencies and increased marketing costs, which causes less barley to be exported than would be in the absence of the CWB. The petitioner provides economic studies which show that the CWB's control limits the ability of the Canadian market to arbitrage with export markets. The petitioner further argues that theory and empirical evidence show that the CWB's control of exports lowers domestic feed barley prices.

The petitioner argues that the ''direct and discernible effect'' on prices caused by the CWB's control is that export price signals to barley farmers (the PROs and EPRs) are distorted. Thus, because barley producers perceive export demand to be at price levels far below actual export prices, less barley is offered to the CWB and more is available on the domestic market at lower prices. The effect of the CWB barley export control is made evident in the long-term, substantial disparity between domestic and export prices. The petitioner further argues that this price differential was not affected by the cessation of rail freight subsidies and that the effects of U.S. Export Enhancement Program (EEP) and E.U. subsidies are independent from the question whether the CWB's restraints on exports have distorted barley prices in Canada.

The GOC states that the CWB system itself does not create a disincentive to offer barley as the petitioner alleges. Regarding the argument that the CWB system is inefficient, the GOC points to other studies on the record that refute this conclusion. The GOC also points to the fact that the allegedly inflated distribution costs that lead to inefficiencies relate to activities outside of the CWB's jurisdiction. Nonetheless, the GOC claims, any effect of an alleged inefficiency cannot be equated with an export restriction and cannot give rise to a subsidy.

The GOC further states that record evidence shows that PROs and EPRs do, in fact, provide adequate pricing signals to barley farmers. There is nothing on the record to suggest that the pricing signals during the POI did not reflect the market realities in export markets. Furthermore, any alleged price differentials are caused by the removal of freight subsidies and U.S. EEP and E.U. subsidies, distortions which are outside of the CWB's control, according to the GOC.

Department's Position: As discussed above, we agree that certain aspects of the CWB system can be market-distorting and can have the same result as an overt export restraint. For example, Canadian barley farmers are not able to respond to sudden increases in export prices because of the rigidity of the CWB's pricing system for barley. Regarding the alleged inefficiency of the system arising from increased marketing costs, the evidence on the record is not necessarily conclusive. Nonetheless, as described in the CWB section above, we did not find significant price differentials between prices inside the designated area and U.S. prices, some of which reflect prices to the major consumers of feed barley in world markets. Thus, we determine that Canadian cattlemen did not receive a benefit during the POI.

Comment 3: Canadian Barley Producers as a Private Entity

The GOC states that Canadian barley producers cannot qualify as a ''private entity'' under any normal meaning of the term. Thus, the Department cannot conclude that they were ''entrusted or directed'' to provide an indirect subsidy.

The petitioner states that both *Lumber* and *Leather*, as well as Department practice, have shown that the term ''private entity'' is and has been interpreted to encompass inducement of more than one private entity.

Department's Position: Although we have found that the CWB system did not provide a benefit to Canadian cattlemen during the POI, we believe that barley farmers may be considered a private entity. We further note that both the SAA (at 926) and the preamble to the *New CVD Regulations* (at 65350) make clear that the Department considers the phrase ''private entity'' to include groups of entities or persons.

Comment 4: Cross-Border Comparisons

The petitioner states that the Department erred in its preliminary analysis of prices by relying on a comparison of Canadian domestic prices to only U.S. interior prices in Great Falls. According to the petitioner, a rational exporter would not ship to Great Falls, which is a surplus barley area, but would seek out the highest export prices (*i.e.*, the U.S. PNW/Portland, Saudi Arabia or Japan). Moreover, in prior cases such as *Lumber*, the Department has relied on prices from the most important export markets for comparison purposes. Without this type of cross-border comparison, the petitioner argues, it would be impossible to measure benefits conferred on the domestic industry.

The GOC argues that cross-border comparisons should not be used at all in this analysis. Any analysis should be made by looking at prevailing market conditions for the good or service being provided in the country subject to the investigation, Canada. The proper inquiry is the price cattlemen would otherwise pay in Canada, not alternate markets.

Department's Position: We agree with the petitioner that a comparison of only Great Falls and Canadian domestic prices does not necessarily answer the question of whether domestic feed barley prices in Canada are lower than prices outside of Canada. A thorough analysis should also account for other U.S. and world market prices. As described in the CWB section above, we made several price comparisons, some of which are similar to those suggested by the petitioner, and found no price differential.

We disagree with the GOC that cross-border comparisons are inappropriate to test whether Canadian domestic feed barley prices are artificially low. When confronted with an adequate remuneration issue, the Department will normally seek to measure the adequacy of remuneration by comparing the government price to market-determined prices within the country. However, in certain circumstances, market prices may not exist in the country or it may be difficult to find a ''market'' price that is independent of market distortions caused by government action. With respect to export restriction programs in particular, international prices are not necessarily the benchmarks we use to determine if a benefit exists; in such cases, international prices are merely the starting point of our analysis. See *Lumber*.

The only domestic barley prices on the record that may be independent of the CWB's influence are prices for barley grown in Ontario. However, we verified that the Ontario barley market is very different from that in the designated area because the barley market in Ontario is very thin and is subject to significant price fluctuations. Additionally, to the extent that cattle are raised in Ontario, they are primarily fed corn rather than barley. Thus, we do not believe Ontario provides a reliable comparison price.

Because there is not an appropriate market price within Canada, we used other prices against which to compare barley prices in the designated area. Given that these price comparisons did not yield significant, consistent price differentials through the POI, further analysis of whether Canadian domestic feed barley prices are lower than they would be absent the CWB is unnecessary.

Comment 5: The CWB's Producer Direct Sales (''PDS'') Program

The petitioner argues that the PDS program eliminates any economic or rational incentive to export unless the exporter can obtain an export price that is substantially higher than the Canadian domestic price and the PDS price. Thus, it acts as a substantial restraint on exports.

The GOC argues that the PDS program is a safety valve for producers to allow them to pursue higher returns that they find through export spot opportunities. Furthermore, the CWB actively assists producers in pursuing this option.

Department's Position: Based on our analysis, the PDS program does not encourage farmers to export independently. In theory, the PDS program allows barley farmers to export for their own account. However, as a practical matter, in order to benefit from the PDS program, farmers essentially have to find extraordinary sales opportunities because the PDS price is set relatively high and consistently higher than the CWB pool return. Thus, it is unlikely that a barley farmer would be able to find sales opportunities sufficiently attractive to make the PDS program a worthwhile endeavor. Nevertheless, as noted above, we have concluded that, even assuming a restraint on exports, the operations of the CWB did not provide a benefit to Canadian cattlemen during the POI.

Comment 6: Freight Adjustments

The GOC states that any comparisons of barley prices must account for freight. Although the petitioner did attempt to make a freight adjustment in a few of its price comparisons, the adjustments were ''absurdly low'' and, after proper adjustments for freight are made, the price differentials alleged by the petitioner disappear.

The petitioner provides several price comparisons which show a significant, long-term price differential between prices in the designated area and prices in export markets. In a few of these comparisons, the petitioner made an adjustment for freight based upon freight costs from Calgary to Vancouver. According to the petitioner, even after one accounts for freight, there is still a significant price differential.

Department's Position: Freight is a key element in the price of Canadian feed barley; all feed barley prices throughout the designated area track the price in Lethbridge. To reflect this market reality, for example, feed barley futures contracts traded on the Winnipeg Commodity Exchange are designed with ''regional discounts'' which account for the location of barley and the cost of shipping that barley to Lethbridge (as well as local supply and demand factors). *See* CWB Verification Report at 16. Therefore, any comparison of prices at different geographic locations must account for freight costs.

Although the petitioner adjusted an average price in the designated area for freight, the adjustments did not adequately reflect the real cost of transporting grain grown throughout the designated area to Vancouver. Specifically, the petitioner used the freight rate from Calgary to Vancouver to adjust an average price based on prices throughout the designated area. The train route from Calgary to Vancouver is shorter than all other points in the designated area and, therefore, freight costs from this point are likely to be lower than everywhere else. Record evidence shows that freight costs to Vancouver from other points in the designated area can be substantially more than the cost of freight from Calgary.

Therefore, in making our point-to-point price comparisons, we made freight adjustments which corresponded with the specific location of the barley price used in the comparison (*i.e.,* Saskatoon or Lethbridge). After adjusting for freight in our point-to-point comparisons, we found no consistent pattern of price differentials when comparing the prices of feed barley sold in the designated area and the prices of feed barley outside of Canada.

Comment 7: Export Price Benchmarks

The petitioner argues that the Department should use several pricing series to represent export prices: (1) Canadian export statistics, (2) U.S. Portland and PNW prices, (3) PDS prices, and (4) U.S. import statistics. With respect to Canadian export statistics, the petitioner first notes that Canadian ''exports'' to the U.S. are in fact U.S. import statistics prepared by the U.S. Census Bureau and argues that the Department should not disregard the U.S. import data as it did in the *Preliminary Determination* in calculating Canadian export prices to the U.S. Furthermore, the petitioner argues that this data provides a better basis for computing overall available export opportunities than the actual transaction data reported by the CWB by virtue of the additional charges incurred by the CWB on the transaction data and because any reporting errors in the U.S. import data due to freight would be minor.

The petitioner further suggests that U.S. prices in Portland or the PNW should be used over prices in Great Falls (as was done in the *Preliminary Determination*) because, as stated in comment 4 above, a rational exporter would not ship to Great Falls, but to the market that provides the highest price. Moreover, according to the petitioner, record evidence indicates that Portland prices may be indicative of the best export opportunity available.

Finally, the petitioner suggests that PDS prices could be used as an export price because the PDS prices represent the best determination of the CWB as to its own export opportunity price. In addition, the petitioner states that because PDS prices are posted daily at all elevators, they are not affected by freight charges and, thus, do not need to be adjusted for freight costs.

The GOC argues that each of the petitioner's export price suggestions suffers from numerous factual and legal shortcomings. First, the Canadian export statistics and U.S. import statistics are unreliable because they reflect shipments, not sales, and thus cannot be compared with Canadian domestic sales prices. Moreover, as established at verification, some values reported in the U.S. import statistics do, in fact, include freight. Second, there is no evidence on the record to suggest that Portland or PNW prices are the prices that Canadian cattlemen would pay in the absence of the CWB. Moreover, when proper freight adjustments are made to this price series, the differential disappears. Third, PDS prices do not reflect conditions in Canada or the price that Canadian cattlemen would pay, and there is no evidence that significant quantities of barley could be sold at PDS prices. In addition, the petitioner is incorrect in stating that PDS prices would not need to be adjusted for freight because they are posted at all elevators. PDS prices are based in Vancouver and St. Lawrence and, thus, would have to be adjusted for freight when comparing them to prices within the designated area. Fourth, with respect to U.S. import statistics, it is not reasonable to assert that these statistics are more reliable than actual CWB transaction data, especially in light of the known deficiencies with the U.S. data.

Department's Position: As described in the CWB section above, we made several price comparisons. In doing so, we used prices from a variety of sources (including the petitioner's second suggestion to use Portland prices), making appropriate adjustments for freight when necessary. For further discussion of the prices selected for our comparisons, see CWB Analysis Memorandum.

With respect to PDS prices, although they are posted at every elevator throughout the designated area, PDS prices are based in Vancouver or St. Lawrence and the amount a farmer would have to pay to ''repurchase'' his barley from the pool would be net of freight from that location to either Vancouver or St. Lawrence. Thus, to compare accurately PDS prices with prices in the designated area, PDS prices need to be adjusted for freight. We note that if one were to employ the petitioner's suggestion and compare PDS prices to designated area prices, after adjusting for freight, there is not a consistent price differential. *See* Final Calculations.

With respect to the petitioner's first and fourth pricing suggestions, the evidence on the record makes clear that there are problems with both the Canadian export statistics and U.S. import statistics. For example, the import/export statistics reflect shipments, not sales, and thus, cannot reliably be compared with domestic sales prices. In addition, the Canadian export statistics to Japan include values for both feed and malting barley. We further note that although the export/import statistics are reported f.o.b. at the port, the particular port is unknown so there is no means to adjust those figures precisely for freight to make an appropriate comparison with domestic prices.

Furthermore, we determine that the actual CWB export sale transactions to the U.S. that we verified are more reliable than prices derived from secondary sources such as U.S. import statistics. We conducted a thorough verification of the CWB's export sales and confirmed that all prices were reported accurately and that all freight adjustments were reasonable. In addition, record evidence demonstrates that, in certain instances, freight is improperly included in the values reported in the U.S. statistics. For these reasons, we did not rely on derived prices from the volume and value figures reported in the export/import statistics.

Comment 8: Use of Actual Versus Bid or Offer Prices

The petitioner suggests that, in determining the proper domestic pricing series to use for comparison purposes, the Department should rely on pricing series based on ''bid'' or ''offer'' prices as well as pricing series that measure actual transactions. (''Bid'' prices are the prices at which elevators are willing to purchase barley from the producer; ''offer'' prices are the prices at which the elevator is willing to sell (or offer) barley to consumers. The difference between bid and offer prices is the elevator margin.) Moreover, the Department should not exclude particular pricing series on the grounds that they include elevation charges. According to the petitioner, if there is a high level of competition among elevators, some may absorb elevation charges and others may not. Since there is no means to adjust for these differentials, there would be no reason to exclude certain price series that are based on commercial elevator offer prices.

The GOC, while it does not object to the use of pricing series based on bids or offers, believes that the other pricing series, especially those based on cash or transaction prices, are equally or more reliable and should not be discarded in favor of bid or offer prices.

Department's Position: We have used both price series based on actual transactions and those based on bid or offer prices in our calculations to determine a domestic price for comparison purposes. Further, we agree with the petitioner that there is no means on the record to adjust precisely for elevation charges. *See* CWB Analysis Memorandum.

Comment 9: Reliance on Lethbridge as a Domestic Pricing Point

The petitioner states that the Department should not rely too heavily on Lethbridge prices in calculating Canadian domestic prices for the final determination. The petitioner argues that, since Lethbridge is a net import market for barley, Lethbridge prices would be indicative of the high-water mark, not of overall price levels in the designated area.

The GOC argues that, since barley transactions are carried out by private barley producers and not by the GOC, there is no real ''government barley price'' in Canada to which any comparison can be done. However, if prevailing prices in the designated area are construed as a government price, Lethbridge prices are the most obvious to use as a domestic point since Lethbridge is the point in Western Canada from which all other feed barley is priced.

Department's Position: Although we agree with the petitioner that we should not rely exclusively on Lethbridge prices as the measure of the domestic prices for barley in Canada, we agree with the GOC that Lethbridge is an important pricing point in the designated area. Therefore, we have used, but not relied exclusively upon, Lethbridge prices in our various comparisons.

As discussed in the CWB section above, in the first comparison, we adjusted the Lethbridge price downward to account for truck freight from Saskatoon. In the second comparison, we relied entirely on Lethbridge because certain CWB export sales were reported only on a Lethbridge basis, which made Lethbridge the only useable Canadian comparison price. In the third and fourth comparisons, we combined the Lethbridge price with other Canadian prices to calculate average prices. Thus, in the last two comparisons, we accounted for barley prices throughout the designated area.

Comment 10: Prices of Western Canadian Barley Sold in Ontario

The petitioner states that an analysis of domestic prices within the designated area should not include the Ontario locations of Thunder Bay and Georgian Bay because these points are not within the designated area.

The GOC argues that, although the Ontario pricing points to which the petitioner refers are physically located outside of the designated area, prices in these locations represent prices of Western Canadian barley and can be properly included in the analysis.

Department's Position: For the final determination, we have modified the average price for the designated area to exclude Ontario prices. Although the GOC is correct in stating that Ontario prices for Thunder Bay and Georgian Bay are for barley produced in the designated area and shipped to Ontario, these prices would include freight to Ontario. Thus, the inclusion of these prices in the average designated area price that we calculated for use in one of our price comparisons would not be appropriate.

Comment 11: Use of Facts Available To Determine Export Prices to Japan

The petitioner argues that the Department should use adverse facts available when determining the export price to Japan because the CWB failed to provide pricing information that it maintains as the sole exporter of Canadian barley.

The GOC states that, to its knowledge, it has submitted information that has been satisfactory to the Department. Moreover, the GOC asserts that the information it has submitted has allowed the Department to sufficiently address the major issues at hand.

Department's Position: Although we would have preferred to obtain CWB third country pricing data, we have determined that, for the purposes of this investigation, there is sufficient pricing information on the record to make appropriate price comparisons based upon published pricing surveys at specific locations. Thus, the use of adverse facts available based upon deficient secondary sources is not warranted.

Comment 12: Countervailability of Provincial Loan Guarantee Programs

The GOA, GOS, GOM and GOO contend that their respective loan guarantee programs do not provide a countervailable benefit as defined in Section 771(5)(E)(iii) of the statute because the programs do not lower the cost of borrowing. Respondents state that the Department confirmed at verification that it is the highly structured nature and security requirements of the associations participating in the loan guarantee programs, and not the guarantees, that determine the interest rates charged to participants. Specifically, respondents argue that the guarantee is commercially insignificant when compared to other aspects of the program such as the substantial security provided to lenders by the associations, the local monitoring undertaken by each associations' staff and the branding requirements with respect to the cattle purchased by association members.

The petitioner argues that, contrary to respondents' assertion, the verification record does not establish that the loan guarantee programs are not countervailable. Absent the loan guarantee programs, individual cattle producers would be seeking to obtain loans rather than large cattle associations. These small cattle operations would face dramatically higher interest rates and stringent loan terms. This is evidenced by the Saskatchewan Agricultural Value-Added Loan Fund, where borrowers pay prime plus 4 percent. The petitioner urges the Department to use this as the benchmark for the provincial loan guarantee programs.

In the event that the Department uses information obtained from banks at verification to derive the benchmark rate, the petitioner contends that the Department should, at a minimum, apply a benchmark rate of prime plus 2.25 percent for purposes of the final determination. Petitioner asserts that this interest rate, derived from comments made by Saskatchewan commercial lenders at verification, more accurately reflects the cost of borrowing for association members than the benchmark rate used at the *Preliminary Determination*.

Department's Position: At verification, private bank officials explained that several attributes of the associations were considered in setting the interest rate on association loans. Specifically, bank officials mentioned that the administrative and managerial features of the associations provide lenders with substantial security against default. We agree that these attributes would make these loans attractive to lending institutions, even absent the guarantees. Nevertheless, the provincial governments do provide the guarantees on these loans. As discussed in the ''Programs Determined To Be Countervailable'' section, the guarantees are financial contributions and specific to cattle producers. Therefore, we have analyzed whether the guarantees confer a benefit by measuring the difference between the amount the associations pay on the guaranteed loans and the amount they would pay for a comparable commercial loan absent the guarantee.

Regarding the petitioner's claim, we disagree that we should use interest rates that would be paid by individual farmers as a benchmark for loans taken out by associations. This is because loans to individual cattle producers do not represent ''comparable commercial loans'' to loans taken out by associations. Thus, we have not incorporated the lending rates available under the Saskatchewan Agricultural Value-Added Loan Fund into our analysis. Moreover, we verified that this program does not currently exist and that cattle producers never participated in it. Consequently, loan rates established by that program are not relevant to this investigation.

Comment 13: Alberta Feeder Association Loan Guarantee

First, the GOA contends that the Department failed to take into account the marginal nature of the government guarantee. The GOA explains that the program only guarantees 15 percent of the total amount of the loan and, therefore, it is not credible for such a small guarantee to have the economic impact reflected in the Department's preliminary benchmark rate.

Second, the GOA argues that the Department should incorporate the discounted lending rates obtained by Alberta feeder associations from bank marketing efforts into its calculation of the provincial benchmark rate. The GOA notes that the identical interest rate was offered to a variety of borrowers throughout Canada during the POI and, therefore, the Department should not treat these lending arrangements as a subsidy.

Finally, the GOA contends that because the benchmark rates obtained at verification are fixed rates, the Department should adjust the floating rate feeder association loans to the equivalent fixed rate. The GOA states that the Department confirmed at verification that lenders offer borrowers a choice of fixed or variable rate loans, and that banks set the two rates so they present equivalent financial risk to the loans. Consequently, the GOA argues, the Department can adjust the variable interest rates on loans that are guaranteed to what they would be if they had been taken out as fixed rate loans and compare them to the fixed rate benchmark.

Department's Position: As discussed in the *Subsidies Valuation Information* section, we have revised the benchmark interest rate used at the *Preliminary Determination* with respect to the provincial loan guarantee programs and have calculated province-specific benchmark rates based on verified information. The Alberta benchmark rate was calculated by averaging the verified range of lending rates the associations could obtain in the market absent the government guarantee. Accordingly, the benchmark rate we derived from the information collected at verification captures the marginal nature of the guarantee. In addition, our revised benchmark included the discounted lending rates the feeder associations received from bank marketing efforts because the association membership was eligible for these rates regardless of the government guarantee.

With respect to the GOA's assertion that we should adjust variable rate association loans to the equivalent fixed rate, it is not clear from the verification record that the benchmark information we collected was expressed in terms of fixed rates only. Therefore, we have not made an upward adjustment to the floating rate loans for our final results.

Comment 14: The Base Prime Rates Should Be Adjusted To Reflect Bank Prime Rates

The petitioner argues that the Department should upwardly adjust the prime rate used in the *Preliminary Determination* to reflect the commercial prime rate available to borrowers during the POI. Petitioner states that the Department verified that the base-lending rate used to calculate the interest charged on association loans is the bank prime rate, which is typically the Bank of Canada prime rate plus a spread of .25 percent to .5 percent. Therefore, for purposes of the final determination the Department should add the average of this range, or .375 percent, to the prime rate used in the *Preliminary Determination.*

The GOC, GOA and GOS each comment that the petitioner is mistaken and that the rate the Department used in its *Preliminary Determination* was the commercial prime rate of interest charged by private Canadian banks. Respondents note that this information was discussed and confirmed at verification.

Department's Position: As noted by the respondents, we verified that the prime rate used as the base-lending rate in our calculations at the *Preliminary Determination* was ''bank prime,'' or the prime rate charged by private commercial banks in Canada. Accordingly, we have not adjusted the prime rate for purposes of our final results.

Comment 15: Exclusion of Saskatchewan Breeder Association Loan Guarantee Program

The GOS argues that because the Department specifically excluded breeding livestock from the scope of this investigation, the Department should exclude the Saskatchewan Breeder Association Loan Guarantee program from further consideration. The respondent notes that the Department verified that this program is available only in connection with the purchase of breeding stock. Furthermore, the respondent notes that in previous determinations related to livestock the Department has declined to countervail programs related to breeding livestock because breeding stock was not covered by the order. *See Live Swine from Canada; Preliminary Results of Countervailing Duty Administrative Reviews,* 55 FR 20812, 20817 (May 21, 1990) (''*Live Swine from Canada 1990*'').

The petitioner contends that the respondent's argument fails to recognize that participants in the Saskatchewan Breeder Association Loan Guarantee program can sell the calves born to breeding livestock purchased with loans made available under this program. Because calves need not be sold for breeding purposes and may be placed directly into the production cycle, the benefits from this program accrue to all cattle producers. In addition, the petitioner argues that the respondent's reference to *Live Swine from Canada 1990* should be disregarded by the Department because the program in question was limited to veterinary care provided directly to breeding stock.

Department's Position: We agree with the GOS and have not countervailed this program because breeding livestock is not covered by the scope of this investigation. As noted by the GOS, we verified that loans from this program are limited to the purchase of breeding stock. As in *Live Swine from Canada 1990,* any benefits would thus be tied to breeding stock only. While we agree with the petitioner that the program in question is different from that examined in *Live Swine from Canada 1990,* the fact remains that in both cases the alleged benefits from each program go directly to non-subject merchandise and, thus, are not covered by the scope of the respective investigations.

Comment 16: Specificity of FIMCLA

The GOC argues that the FIMCLA program is not specific because the value of the benefits received by the hog and cattle industries are in proportion to these producers share of the Canadian agricultural economy. The GOC notes that in the *Preliminary Determination,* the Department compared the number of FIMCLA loan guarantees obtained by the cattle and hog industries to the total number of FIMCLA loan guarantees approved during the POI, without reference to any benchmark of proportionality. The GOC contends that this analysis is flawed for two reasons.

First, the GOC argues that it is Department practice to compare the benefits received by a particular enterprise with some objective benchmark in order to determine proportionality. *See Certain Steel Products from Korea,* 58 FR 37338, 37343 (July 9, 1993) (''*Korean Steel*''). Second, the GOC contends that the Department recently emphasized that it looks to the value, not the number, of guaranteed loans for purposes of assessing disproportionality of loan guarantees. *See Stainless Steel Plate from South Africa,* 64 FR 15553, 15564 (March 31, 1999).

The GOC states that use of the farm cash receipts statistics submitted to the Department would permit the Department to address these flaws. The GOC explains that this data demonstrates that, during the POI, the share of FIMCLA benefits received by the cattle and hog industries was significantly less than the share of farm cash receipts generated by those industries. Accordingly, the Department should find that FIMCLA is not specific and, therefore, not countervailable.

The petitioner counters that the GOC's argument is flawed for various reasons and that the Department should continue to find the FIMCLA program *de facto* specific in accordance with section 771(5A)(D)(iii) of the Act. With respect to the GOC's argument for an objective benchmark, the petitioner contends that only in unusual circumstances will the Department resort to examining *de facto* specificity by determining whether the benefits received by a particular enterprise or industry or group were disproportionate in relation to the economy as a whole. In support of its argument, the petitioner cites 19 CFR 351.525 of the *New CVD Regulations,* which discusses that the type of subsidy under investigation in *Korean Steel,* governmental use of the economy-wide banking system to direct credit to steel producers, required a broader analysis. (*See Countervailing Duties; Final Rule,* 63 FR 65348, 65359 (November 25, 1998). The petitioner argues that unlike *Korean Steel,* the FIMCLA program targets only one sector of the Canadian economy rather than the entire economy. Therefore, use of an external reference point is not warranted in this situation. Rather, the Department should continue with its standard methodology of examining the level of benefits received by one industry in comparison to other industries participating in the program.

The petitioner further argues that, in case an outside reference point is applied, the use of farm cash receipts is not reasonable. The petitioner notes that to the extent the farm cash receipts simply reflect the effects of subsidization, it would not be surprising that the amount of subsidies would parallel the dispersion of income. Moreover, long-term loans should not be measured on this basis because the GOC has reported this information for only one year, which was a calender year and not the POI.

Finally, the petitioner contends that the starting point of the Department's analysis of specificity is the number of users. (*See Countervailing Duties; Final Rule,* 63 FR 65348, 65359 (November 25, 1998)). Using this methodology, the beef and hog industries have historically received between 25 and 30 percent of the FIMCLA loan guarantees and, as such, the Department's *Preliminary Determination* regarding FIMCLA should be upheld.

Department's Position: We disagree with the GOC in part. Disproportionality is fact-specific and determined on a case-by-case basis. As noted by the petitioner, the nature of the subsidy being investigated in *Korean Steel* was unusual and required a special analytical framework. Our typical specificity analysis examines disproportionality by reference to actual users of the program. In other words, we compare the share of the subsidy received by producers of the subject merchandise to the shares received by other industries using the program. *See Final Negative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Laminated Hardwood Trailer Flooring (LHF) from Canada,* 62 FR 5201, 5209 (February 4, 1997). Consistent with our usual practice, we have compared the level of benefits received by the beef and hog sectors under the FIMCLA program to the assistance received by the other agricultural industries participating in the program.

We agree, however, with the GOC that our disproportionality analysis should focus on the level of benefits provided rather than on the number of subsidies given to different industries. Therefore, we have revised our analysis to compare the value of the loan guarantees provided to industries participating in the FIMCLA program. Based on this comparison, we continue to find that the beef and hog industries received a disproportionate amount of assistance under the FIMCLA program during the POI. Accordingly, we confirm our preliminary finding that the FIMCLA program is *de facto* specific to the beef and hog sectors in accordance with section 771(5A)(D)(iii) of the Act.

Provision of Goods or Services

Comment 17: PFRA

The GOC argues that the Act does not permit the Department to countervail the public pastures provided under the PFRA if the price charged by the government for their use is consistent with the prevailing market. PFRA rates are comparable to the private pasture rates reported for Manitoba and Saskatchewan, according to the GOC, when the factors that diminish the value of public pastures are taken into account. The GOC argues that PFRA pastures have the following disadvantages: cows are commingled, cattle owners' access to their cattle is restricted, the PFRA forage is of poorer quality, certain specialty services are not provided, and public pastures are subject to multiple use. Because of such factors, according to the GOC, many of the surveyed ranchers indicated that they prefer private land over PFRA pastures and that many PFRA patrons move to private land when it becomes available.

The GOC requests that adjustments be made to private pasture rates to account for the differences between the two types of pasture services. The GOC notes that it has provided information on adjustments for three differences relating to: (1) The timing of the sale of cull cows, (2) early weaning and timing of the sale of calves, and (3) transportation to the pasture. The GOC urges the Department to make these adjustments and contends that when the adjustments are made, the Department will conclude that PFRA pasture services are not provided for less than adequate remuneration.

Lastly, while the GOC was only able to quantify the factors mentioned above, the GOC states that the Department should also consider other factors (disease associated with commingled pastures and the failure to provide specialized services offered by private pastures) that diminish the value of PFRA pastures.

The petitioner urges the Department to examine closely the differences in the public and private pastures alleged by the GOC. Specifically, according to the petitioner, the GOC has not established that cattle producers using private pastures have greater flexibility than public pasture users with respect to the timing of cattle removal. According to the petitioner, the timing of cattle removal on public pastures is not as rigid as portrayed by the GOC because roundup dates on public pastures are not necessarily set at the same time for all lessees and can be negotiated with the Pasture Manager. To support its argument, the petitioner cites to the PFRA Rules and Regulations, which state that when round up dates are not set the resulting date will be "a matter of mutual agreement between the patrons and the Pasture Manager and will depend upon pasture operation at the time." Thus, according to the petitioner, the GOC has not established that cattle producers cannot remove cattle from public pastures on request.

Moreover, the petitioner claims that the GOC has failed to support the amount of the adjustment for culled cows. Specifically, the GOC has not established that producers cull one cow in ten on private pastures or that owners place older cows on public pastures.

Lastly, the petitioner states that the GOC has not supported its claim that private pastures provide grazing within 25 miles from the patron's farm or that transportation costs between private and public pastures are materially different.

The petitioner also challenges the GOC's reliance on a survey conducted for the purposes of this investigation to substantiate the need for these adjustments. According to the petitioner, the Department should not make adjustments that reflect the personal preferences of a limited survey of cattlemen. The petitioner argues that the personal preferences of the surveyed ranchers are not sufficient to establish that the PFRA pastures do not have an advantage over private pastures.

Department's Position: In accordance with section 771(5)(E) of the Act, when comparing the prices charged for public pasture services to those charged by private providers we have attempted to ensure that the prices compared are for nearly identical services. That is, when feasible, we have taken into account prevailing market conditions which include price, quality, availability, marketability, transportation, and other conditions of purchase or sale. In this regard, when it appears that a difference exists between a public good or service and a benchmark good or service, we will consider making an adjustment when the difference is quantifiable and is clearly demonstrated by evidence on the record. *See* Lumber at 22595.

In this case, we agree that the GOC has identified and supported certain adjustments that should be made. Specifically, we adjusted for the difference in costs associated with the timing of the sale of cull cows on private and public pastures. Since ranchers using private pastures have access to their herds and, hence, can cull cows in mid-summer, they receive a different service and a price adjustment is warranted. While the GOC argued that this adjustment should be larger, the information on the record did not fully substantiate the calculations suggested by the GOC. For example, while the GOC suggested that old cows would be culled in mid-summer, while cow prices are at their peak, we agree with the petitioner that there is no evidence that a patron would actually pay to have an old cow pastured for a season if the cow was already planned to be culled. Finally, while the petitioner has argued that PFRA patrons may be able to manage their herds and benefit from the early sale of culled cows and calves in the same manner as private pasture patrons, we found at verification that the PFRA roundup and drop off procedures are quite rigid and do not generally allow for the management that the petitioner suggests.

With respect to the transportation adjustment urged by the GOC, the record does contain evidence that nearly ten percent of community pasture patrons incur high transportation costs because they live further than 50 miles from their respective pastures. However, the GOC did not provide evidence that this was unique to users of public pastures. Regarding the requested adjustment for differences in weaning and the timing of the sale of calves, the GOC did not provide evidence indicating that the majority of private pasture patrons choose to wean their calves early or that they actually sell calves at different times than community pasture patrons. Finally, as in the *Preliminary Determination* and as noted above, we have not made adjustments for costs that the GOC was unable to quantify.

With respect to the petitioner's challenge of the GOC's survey, while the number of people surveyed was limited, we determine that the survey conducted by the GOC provides an objective and representative measure of the costs faced by patrons of private pastures in Canada.

Comment 18: Appropriate Benchmark for Provincial Public Lease and Pasturing Rates

With respect to all three provinces which offer Crown lands for grazing and pasturing, the petitioner argues that the Department should rely on an average of the private rates for full-service pasturing in Manitoba and Saskatchewan and the private lease rate for land reported by the GOA as a representative benchmark. According to the petitioner, the statute specifically requires the Department to determine the adequacy of remuneration based on prevailing conditions ''in the country.''

The GOA contends that, not only is there no justification for using the hybrid number the petitioner has developed on areas outside of Alberta, but that the petitioner's data do not meet the criteria outlined in the Department's regulations at 19 CFR 351.511(a) for a proper benchmark because they simply do not represent the value of comparable land. The GOA further states that the Department is obliged by the Act and its regulations to use a benchmark that represents the prevailing market value of the good or service being evaluated. According to the GOA, the goods are public grazing leases in the various provinces and the only ''prevailing market value'' for a good with such inherently local value is a local, provincial benchmark.

Department's Position: As stated in the *Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Wire Rod From Italy,* 63 FR 40474, 40481 (July 29, 1998), ''the adequacy of remuneration is normally determined in relation to local prevailing market conditions as defined by section 771(5)(E) of the Act to include, ''* * * price, quality, availability, marketability, transportation, and other conditions of purchase or sale.'' Consequently, the lease rates for private land in each province, when accurate and available, are an appropriate starting point for comparison to the respective lease rates for public land in each province.

Comment 19: Use of Facts Available With Respect to Alberta Crown Lands Basic Grazing Program

The petitioner argues that the Department should reject the GOA's entire response with respect to the leasing of Crown lands and instead apply adverse facts available because the GOA failed to report benefits, in the form of excess compensation from oil and gas companies, from the leasing of such lands.

The GOC and the GOA argue that the petitioner's comments on this issue and the petitioner's August 25, 1999, submission which first raised Bill 31 should be stricken from the record because the petitioner's submission was untimely. Specifically, the GOA cites to the Department's regulations at 19 CFR 351.301(b)(1) pointing out that the deadline for submission of factual information related to the GOA was June 9, 1999, which was seven days prior to the Alberta verification.

Department's Position: We disagree with the respondents that the petitioner's information regarding Bill 31 and the compensation system for lessees of public and private land should be stricken from the record. Although it was initially submitted after the deadline, we subsequently requested the information under section 351.301(c)(2)(i) of our regulations. Moreover, we believe this bill was highly relevant to the information sought in the our questionnaire. Bill 31 amends, among other acts, Alberta's Public Lands Act and the Surface Rights Act, the legislation underlying one of the programs being investigated in this proceeding (the Alberta Crown Lands Basic Grazing Program). Although the change in the Act may have occurred after the period of investigation and may not yet be in effect, our questionnaire specifically requested that the GOA describe any anticipated changes in the program and asked for documentation substantiating the GOA's answer.

We believe that disclosure of Bill 31 would have given the Department a fuller understanding of the lease system in effect during the POI. In particular, information regarding the passage of Bill 31 includes statements implying that cattlemen who graze their livestock on public lands in Alberta receive excessive compensation from oil and gas operators who lease the subsurface rights. As the petitioner originally alleged, and we sought to investigate, the question of whether the GOA was adequately remunerated for its provision of Crown lands has been a central issue throughout this case. Therefore, as stated above, we believe this information was highly relevant to our enquiry.

In light of this, the petitioner has argued that the Department should reject all of the GOA's response with respect to the Alberta Crown Lands Basic Grazing Program. However, we do not believe the criteria for making such a determination have been met. In particular, section 782(e) of the Act states that we shall not decline to consider information that is necessary to the determination if the information is timely, verifiable, not so incomplete that it cannot serve as a reliable basis for a determination, can be used without undue difficulties, and the interested party has demonstrated that it acted to the best of its ability. All of the information presented by the GOA, other than information regarding the Surface Rights Act and Bill 31, complies with these criteria and, thus, it would be inappropriate for us to disregard the information in making our determination.

However, with respect to the impact the Surface Rights Act and Bill 31 have on our adequacy of remuneration determination, we are using the facts otherwise available. The use of facts available is supported under section 776(a) of the Act because the necessary information is not available on the record. Although interested parties were given the opportunity and did submit information on this issue, the approaching deadline for determination did not provide us the opportunity to make the additional inquiries necessary for us to make a determination that does not rely on the facts available. In choosing the appropriate facts available, the petitioner has argued that we should use an inference that is adverse to the interests of the GOA. However, we do not agree that the GOA failed to cooperate by not acting to the best of its ability. While the GOA did not provide information that we believe was relevant to our determination, its conclusion that the information was not relevant, particularly in light of the fact that Bill 31 is not yet in effect, does not imply that the GOA did not act to the best of its ability and, thus, failed to cooperate. We also note that when the Department specifically asked parties to submit information regarding Bill 31, the GOA did so. Therefore, an adverse inference in this instance would not be appropriate when determining the appropriate facts available.

Comment 20: Oil and Gas Compensation and the Adequacy of Remuneration

The petitioner argues that if the Department continues to accept the response of the GOA, the Department should include the benefit from oil and gas compensation when determining the countervailability of the program. According to the petitioner, the application of Alberta's Surface Rights Act and Public Lands Act results in lessees of public land profiting from excess compensation paid by oil and gas companies for access to leased land. In support of its argument, the petitioner cites to the legislative history of Bill 31 and articles published at the time of its passage. The petitioner argues that the approximately C$40 million of compensation received annually, as cited in the articles, exceeds any actual compensation for damages to lessee property or disruption suffered from oil and gas operations. Furthermore, the petitioner argues that the GOA has not submitted any evidence that private lessees receive the same amount of compensation as public lessees. In fact, the petitioner asserts that oil and gas companies compensate public lessees as they would compensate private landowners, not lessees.

The GOA contends that the petitioner's characterization of the application of Alberta's Surface Rights Act and Public Lands Act, especially in relation to Bill 31, is misinformed and based on public misperceptions about surface compensation rights in Alberta. According to the GOA, the Alberta Surface Rights Act gives equal rights to all owners and occupants of both public and private land to obtain compensation from industrial operators for the damages caused when industrial operations interfere with existing land use. The GOA contends that public lessees do not have any advantage over private lessees with respect to obtaining compensation and, thus, no adjustment is necessary when comparing public rates for the leasing of land to private rates for the leasing of land. The GOA also states that Alberta law does not permit cattle ranchers on public grazing leases to charge access fees to anyone. Specifically, the GOA notes that the Surface Rights Act reads, ''an operator who proposes to exercise a right of entry on land, other than land owned by the Crown * * * shall pay * * * an entry fee. * * *'' The GOA also notes that, under the Surface Rights Act, any compensation paid to a tenant is for loss of use and other damages to the leasehold operations and does not include any payment for the value of the land itself or for access to that land. Lastly, the GOA argues that there is no basis for crediting the petitioner's C$40 million figure as fact because none of the many quotations that cite it give a source for the number and Alberta officials have been unable to find any source for it.

Department's Position: As noted in the program write-up, we found that, under the current application of the Surface Rights Act, lessees of public land benefit from the provision of the land at less than adequate remuneration. Specifically, public lessees appear to receive more compensation from oil and gas companies for use and access to the land than they would if leasing the same land from a private provider. Hence, public land is more valuable to a lessee than private land and this value is not reflected in the rate charged by the government. Therefore, the government is not adequately remunerated for the provision of the land.

Comment 21: Appropriate Benchmark for Alberta's Public Lease Rates

The petitioner argues that the Department should look to other provinces if the private lease rate data provided for a specific province is inadequate. In this regard, the petitioner argues that the GOA has not established that the lease rate it reported for private land is a ''full-service'' rate that requires an adjustment for development costs, such as fences and water. To the contrary, according to the petitioner, there is evidence that the private lease rate is not a ''full-service'' rate. The petitioner notes that the lease rate for private land reported by the GOA is much lower than the rate for private full-service pasturing reported by the GOC for Manitoba and Saskatchewan.

Moreover, the petitioner contends that the GOA's reported lease rate for private land is based on a limited survey (the Custom Rates Survey) which could only account for .04 percent of Alberta's cattle population.

The GOA argues that the data from the Whole Farm Data Base, which represents a far larger sample of private leases than the Custom Rates Survey used in the *Preliminary Determination,* demonstrate that the private rental rate reported in the Custom Rates Survey is higher than the norm in Alberta. Regardless of which survey information the Department feels is the most appropriate, however, the GOA argues that all of the Alberta-specific numbers were generated from longstanding government surveys and, thus, provide a far more reliable benchmark than any non-Alberta data.

Department's Position: With respect to the two studies reported by the GOA, we note that both the Custom Rates Survey and the Whole Farm Enterprise Analysis were both conducted prior to the initiation of this investigation and, while limited in the number of those surveyed, we determine that they are objective and representative of the costs faced by lessees of private and public land in Alberta. Therefore, we have averaged the lease rates for private land from the Custom Rates Survey and the Whole Farm Enterprise Analysis for purposes of identifying an appropriate benchmark.

We agree with the petitioner that the lease rate for private land reported by the GOA is lower than the rate for full-service private pasturing in Manitoba and Saskatchewan, as reported by the GOC. However, we do not believe the comparison is on point. The two rates which the petitioner has compared are prices for two very different things. The lease rate for private land is a price for the provision of a specific good: land. The rate for full-service private pasturing is a price for the provision of a type of service: pasturing. Therefore, the comparison suggested by the petitioner does not undermine the reliability of the lease rate for private land reported by the GOA.

Comment 22: Appropriate Adjustments to Benchmark for Alberta's Public Lease Rates

The GOA argues that the Department correctly adjusted the benchmark rate for taxes and developmental costs in the *Preliminary Determination,* and that both testimony from government experts and the results of the GOA's survey, which was confirmed at verification, indicate that lease holders of private land do not incur these developmental costs. Thus, in order to develop a fair comparison between public and private leases, the GOA argues that these adjustments should continue to be made.

In addition, the GOA posits that the Department should make additional adjustments. First, the GOA notes that lessees of public land are only allowed to forage up to 50 percent of the land due to the multiple-use restraints placed on Crown lands. This requirement means that to get the same amount of forage, the lessees must fence in more land and develop additional dugouts, all of which contribute to added costs. According to the GOA, this was supported at verification, where it was demonstrated that lease holders on private land can utilize a far higher percentage of their leased forage for cattle grazing than can lease holders on public land. To further support its argument, the GOA notes that the Whole Farm Data Base indicated that grazing leases for public land support fewer AUMs per acre than grazing leases for private land. Second, the GOA argues that the Whole Farm Data Base also established significant differences between operating costs incurred by lessees of private and public lands. Again, the GOA argues that an adjustment should be made for this difference as well.

The petitioner argues that the Department should reject the GOA's proposed adjustments in their entirety. First, the petitioner states that adjustments for multiple-use costs of leasing land are unjustified unless the Department adjusts for multiple-use income such as compensation related to oil and gas exploration and extraction (*see Comment 20: Oil and Gas Compensation and the Adequacy of Remuneration,* above). Second, the petitioner contends that the GOA has not established that a lessee of public land must fence and water at least 50 percent more land to graze the same number of cattle since the GOA has not established that private lessees are not required to preserve forage for other users as well. Finally, the petitioner argues that the Department should not adjust for operating and capital costs because, even if grazing lessees on public land incur more operating and capital costs than private lessees, these costs have not been shown to be directly related to conditions only on public pasture. According to the petitioner, the cost differences could arise because the lessees of public land are less adept managers or less prudent buyers than private lessees.

Department's Position: In order to make the comparison required by section 771(5)(E) of the Act, we found it necessary to adjust the lease rate for private land downward to account for differences between the leases of public and private land. Specifically, we adjusted for differences in costs associated with the paying of taxes, construction of fences, construction of water dugouts, and a multiple-use cost for limits on forage. While the respondent has argued that the multiple-use cost adjustment should include expenses for additional fencing and water facilities, we note that there is no evidence supporting the contention that an additional dugout is necessary other than an anecdotal statement that ''cattle will not travel more than one-half mile for water.'' However, contrary to the petitioner's claim, there is evidence on the record supporting the contention that additional acres must be used by a public land lessee to obtain the same amount of forage as a private land lessee and, thus, additional fencing would be required. Specifically, public land lessees may only forage 50 percent of their land, which results in fewer AUM being available per acre than a lessee of private land has at his or her disposal.

With respect to additional adjustments for differences in operating and capital costs, while we did make some of these adjustments in the *Preliminary Determination,* we have not done so for this final determination. While the GOA was able to quantify them, the GOA did not provide adequate explanation as to why differences exist for such expense. Nor did the GOA adequately demonstrate that the difference is solely attributable to the fact that one group of farmers leases public land while another group leases private land. Therefore, we have not made adjustments for these costs. Finally, as in the *Preliminary Determination* and as noted above, we have not made adjustments for costs that the GOA was unable to quantify.

Lastly, with respect to the petitioner's argument that the Department should only make adjustments for multiple-use costs if we take into account multiple-use income, such as excess compensation from oil and gas companies, as noted in Comment 24, we have taken into account the application of the Surface Rights Act and the resulting differences in compensation between private and public lessees when examining the adequacy of remuneration.

Comment 23: Alberta Grazing Reserves

The petitioner argues that the Department should not use the rates charged by privatized reserves as a benchmark for the full-service rates for Alberta's public grazing reserves. In the petitioner's view, such a comparison would be inappropriate because the privatized reserve rates may be subsidized through a ''sublease.'' With respect to this ''sublease,'' the petitioner argues that, as facts available, the Department should compare the average rate charged by the GOA to privatized reserves for government land to the unadjusted average rate noted above in order to ascertain the subsidy provided to the privatized reserves.

The petitioner also argues that rather than calculating an average rate for full-service public grazing reserves in Alberta, the Department should calculate five average full-service rates for Alberta's public grazing reserves based upon the four regions of Alberta's Traditional Community Pasture program and the Special Areas pastures.

The GOA argues that evidence on the record demonstrates that Alberta's privatized reserves are charging their clientele lower prices than the government was charging when the reserves were in government hands. According to the GOA, this evidence confirms that the government-run reserves have been charging rates consistent with the commercial market. The GOA argues further that the government's charge to the privatized reserves for use of government land is not subsidized. According to the GOA the rates qualify as being market-determined because they were developed through arm's-length negotiations and the rates are also consistent with properly adjusted private grazing lease benchmarks.

Department's Position: We have examined the possibility of whether the rates for private pasturing may be subsidized through the government's provision of land at less than adequate remuneration to the operators of the privatized reserves. In doing so, we have looked at the rental fees charged by the government to the privatized reserves (less maintenance fees). The resulting average rental charge was higher than the adjusted rate for leases on private land derived from our examination of the Alberta Crown Lands Basic Grazing Program. Therefore, we determine that the government is adequately remunerated for its provision of land to the privatized reserves.

With respect to the petitioner's argument that we should calculate five separate full-service public pasture rates, we note that such a task is unnecessary as the range of prices charged by the government for the public pastures are all lower than the private pasturing rate reported by the GOA.

Comment 24: Specificity of the Provision of Crown Lands in Manitoba and Saskatchewan

Both the GOS and the GOM argue that the provision of Crown lands in the two provinces is neither *de jure* nor *de facto* specific. According to the GOM and the GOS, Crown lands are available to all agriculture and objective criteria and conditions are used to determine agricultural producers' eligibility for the various uses of Crown lands. Both governments note that not all land is suitable for agriculture and that determinations on suitability are made by professional agrologists. Based on the above, the two governments contend that the provision of Crown lands is not specific because Crown lands are available to the entire agricultural sector.

The petitioner argues that the provision of Crown lands in both provinces is specific. With respect to Manitoba, the petitioner notes that the Manitoba Crown Lands Act expressly limits access to farmers through forage and cropping leases. According to the petitioner, because forage leases are provided for the grazing of livestock, including cattle, the law expressly limits forage leases to the livestock industry. Additionally, the petitioner argues that all leases are limited to a group of enterprises or industries in accordance with the Act and the Department's precedent.

With respect to Saskatchewan, the petitioner notes that Saskatchewan's Provincial Lands Act makes leases available only for purposes of grain farming, cattle grazing, or perennial hay production. As for Saskatchewan's pasture program, the petitioner notes that the Saskatchewan Provincial Community Pasture Regulations define livestock as cattle or sheep only. Thus, according to the petitioner, the laws and regulations governing Saskatchewan's Crown lands expressly limit access to grazing leases and community pastures to the cattle industry specifically, or a group of enterprises or industries, including the cattle industry.

Department's Position: While the respondents have argued that both the Saskatchewan Crown Lands Program and the Manitoba Crown Lands Program are not specific, we have found otherwise. The programs are limited by law and regulation to certain subsets of agricultural producers. Moreover, both provinces' programs are specific as a matter of fact in accordance with section 771(5A)(D) of the Act.

The GOS reported that, during the POI, approximately 800,000 acres of Crown lands were leased for cultivation and 5.4 million acres were leased for grazing. The GOM reported that, during the POI, 21,716 acres of Crown lands were leased for cultivation and approximately 1.6 million acres were leased for grazing. Based on the above, we find that those industries which utilize grazing leases, livestock industries such as cattle, are predominant users of both programs and, thus, the programs are *de facto* specific.

Comment 25: Use of Facts Available With Respect to Manitoba Crown Lands Program

The petitioner argues that while the GOM did submit the underlying data from Manitoba Agriculture's 1997 survey at verification, it failed to do so prior to verification despite Department requests. The petitioner further argues that, in light of this, the GOM failed to establish that the Department should make adjustments to the lease rates for private land. Consequently, the petitioner urges the Department to reject the GOM's response with respect to this program and to rely on alternative lease rates for private land as ''facts otherwise available.''

The GOM argues that it fully cooperated with the Department and never withheld information. The GOM contends that it could not ''provide copies of any reports or summaries related to this study'' because there were no formal reports and, thus, none were available to provide. In support of its position, the GOM cites to the Department's verification report which states, ''because results of the survey were never published or distributed, no reports of the data were prepared or published * * *. However, they have the computer tabulated results from the survey and provided a spreadsheet of those results.'' Therefore, according to the GOM, nothing was withheld from the Department.

Department's Position: We have found the GOM to be fully cooperative throughout this proceeding. The underlying data, which supports the lease rates for private land reported by the GOM, was reviewed and taken as an exhibit at verification. The data was not in the form of a report or a summary related to the study, which is what we asked for in our supplemental questionnaire. Rather, as noted in the verification report, no reports of the data were prepared or published and, thus, the GOM did not ignore a request for information when it responded to our supplemental questionnaire.

Comment 26: Appropriate Benchmark for Manitoba's Public Lease Rates

The GOM argues that the Department did not use the correct benchmark in its Preliminary Determination because it blended core and fringe private lease rates. Instead, the GOM states that the Department should use the lease rate for private fringe lands only. The GOM notes that at verification, the Department found that the fringe areas are typical of the areas where most (85 percent) Crown lands are located and, thus, the fringe areas are more directly comparable.

If the Department uses the information submitted by the GOM, the petitioner argues that the Department should not accept the GOM's claim that the rental rate for private fringe land, as reported in the 1997 survey, is more comparable to the rate charged for Crown lands. According to the petitioner, the claim is an assertion, not supported in the record. Furthermore, the petitioner contends that the location of the land is immaterial because if Crown lands are located in the fringe area, then the number of AUMs the Minister could permit to graze on the land would presumably be less than in the core area. Thus, the Department should continue to use the average lease rate for private land in the fringe and core areas, as was done in the *Preliminary Determination.*

Department's Position: We agree with the GOM that the majority of Crown lands are located in fringe areas. At verification we reviewed maps and vegetation inventories that supported the GOM's claim with respect to fringe and core areas. However, we do not agree that the lease rate for public grazing land should be compared solely to the private fringe area rate because not all of the GOM's Crown lands are located in fringe areas. Instead, we have used a weighted average lease rate for private land based on both core and fringe area rates.

Comment 27: Appropriate Adjustments to Benchmark for Manitoba's Public Lease Rates

The petitioner states that the Department should only adjust lease rates for private land downward if the GOM establishes that the lease rates for private land include additional services that are not covered by lease rates for public land. In the petitioner's view, the GOM failed to do this. The petitioner notes, for example, that a majority of the private land lessees questioned for the 1997 survey indicated that they are required to pay for fence and water system maintenance and yet, the GOM is requesting an adjustment for these items.

The GOM responds by noting that the Department reviewed in detail at verification, in three provinces, the various reasons why lessees are willing to improve public Crown lands available for lease, and why the adjustments made by the Department are appropriate. The GOM also notes that the 1997 survey asked lessees whether they were required to pay for the repairs and maintenance on the fence and/or watering system, not the installation of fences or watering systems, which is what the adjustment is attempting to capture.

Department's Position: Based on our review of the information, we are persuaded that it is necessary to adjust the lease rate for private land downward to account for differences between the leases on private and public land. Lease rates for private land are generally for land which is fenced, has a water system, and where the owner of the land pays local taxes. Conversely, the lessees of public land are expected to construct fences and watering systems and pay local taxes. Thus, we adjusted for differences in costs associated with the paying of taxes, construction of fences and construction of water dugouts. While the petitioner notes that the 1997 survey indicates that lessees of private land are required to pay for fence and water system maintenance, we agree with the GOM that the claimed adjustment is for fence and water system construction, not maintenance.

Comment 28: Appropriate Benchmark for Saskatchewan's Public Lease Rates

With respect to Saskatchewan's Crown lands, the petitioner argues that the no-service lease rate for private land reported by the GOC does not include additional costs such as fencing, water provision, and taxes. Thus, it is inappropriate as a benchmark rate. Nonetheless, if it is used as a benchmark, it should not be adjusted.

The GOS contends that ''no-service'' refers only to livestock management and does not mean that rates for leases on private land do not cover additional costs. The GOS contends that the petitioner is merely attempting to confuse the issue by suggesting that the Department compare the cost of both renting land and pasturing cattle with the cost of simply renting land.

Department's Position: We agree with the GOS that the GOC's survey refers to whether pasture services are provided and not whether taxes are paid by the landlord or whether some of the land is already fenced with dugouts. Therefore, the no-service rate is an appropriate benchmark and adjustments for these differences are appropriate.

Comment 29: Appropriate Adjustments to Benchmark for Saskatchewan's Public Lease Rates

The petitioner argues that the adjustments to the lease rate for private grazing land reported by the GOS are unreasonable because they are higher than the difference between the no-service and full-service pasturing rates in Saskatchewan, and higher than the estimated adjustment costs in Manitoba. Therefore, according to the petitioner, any adjustment for alleged costs included in lease rates for private land should be capped at the difference between the no-service and full-service pasturing rates. When comparing the lease rate for public land to an adjusted full-service lease rate for private pasturing, the petitioner notes that a benefit is found.

The GOS states that because a private no-service lease still includes various responsibilities of the private landlord, which are not included in a Crown lands lease, adjustments are necessary in order to assure the ''comparability'' contemplated by the Department's regulations.

Department's Position: We adjusted the lease rate for private land downward to account for costs associated with the paying of taxes, construction of fences and construction of water dugouts. However, while the respondent has argued that we should make a full adjustment for these expenses, we note that the no-service rate being relied upon as a benchmark does not always include the provision of fences. At verification, we learned that no-service ''was identified as the simple rental of land, which may or may not be fenced.'' *See* Page Eight of the Memorandum to Susan Kuhbach from James Breeden and Zak Smith, ''Verification Report for the Government of Canada in the Countervailing Duty Investigation of Live Cattle from Canada,'' dated August 27, 1999. While we acknowledge that the overwhelming evidence in this investigation indicates that leased private land has fences, in this case, because the rate being relied upon is a ''no-service'' rate and the record indicates that this particular rate does not always include the provision of fences, we have not made a full adjustment for fencing costs. Rather, we have made a partial adjustment by dividing the fence expense in half.

While we agree with the petitioner that the adjustments to the lease rate for private land are greater than the difference between the no-service private pasturing rate and the full-service private pasturing rate in Saskatchewan, and greater than the claimed adjustments in Manitoba, we do not agree that this comparison is appropriate. First, the petitioner is comparing pasturing rates and land leasing rates, two different things. Second, the petitioner is comparing experiences in two different provinces. There is no reason to expect that local tax rates will be similar across provinces or that the cost of construction materials and/or labor will not vary amongst provinces, especially when there is evidence to the contrary. In that regard, we note that the information on these adjustments is fully supported by the record evidence and verification. Specifically, the GOS provided supporting source documentation for each adjustment in the form of audited financial statements, invoices, and contracts.

Comment 30: Saskatchewan's Community Pastures

The GOS argues that while it previously suggested that full-service private pastures were most similar to the GOS' community pastures, it now believes that partial-service private pastures provide a better comparison. According to the GOS, Saskatchewan's community pastures do not offer the same range of services as full-service private pastures and instead more closely resemble partial-service private pastures which have shared responsibility and work between the customer and the land owner.

The GOS cites to several factors in support of its argument. First, the GOS contends that the full-service rate provided by the PFRA study does not include any commingled herds, while its community pastures are commingled. Second, the GOS contends that the majority of private pastures used to generate the full-service rate consist of improved pasture, while community pastures are generally less productive native range. Third, the GOS asserts that while a full-service pasture will move cattle to more productive land and offer supplemental feed when forage becomes less productive, such services are not offered by community pastures. Fourth, the GOS states that in full-service private pastures calves are often weaned early, placed on higher quality feed, and that producers have general control over the breeding program. According to the GOS, such options are not available on community pastures. Lastly, the GOS argues that, full-service private pastures allow producers to deliver and pick up cattle at their convenience. According to the GOS such flexibility allows private users to cull cows (usually ten percent of a herd) which are not bred by mid-summer, a time when culled cows yield a higher price than at the end of the season. According to the GOS we should adjust for this difference because community pastures require pickup and delivery on a fixed schedule and do not allow pickup mid-summer.

The petitioner argues that the GOS has not established that partial-service pastures are more comparable to community pastures. According to the petitioner, the GOC survey data, upon which the GOS is relying, does not provide information indicating which rate, if any, includes improved pasture or convenient owner access to herds for the control of calves, breeding, and removal times. The petitioner contends that because the GOS has failed to establish that full-service private pastures offer materially different services than the GOS' community pastures, the Department should continue to compare the full-service private pasture rate to the community pasture rate.

With respect to possible adjustments to the full-service rate, the petitioner argues that the GOS has failed to quantify the value of the alleged costs associated with commingling and access, failed to establish that on private pastures cows are culled in July (mid-summer), and has failed to establish that ten percent of cows are culled each year.

Department's Position: We agree with the petitioner that the GOC survey data do not provide information indicating that partial-service private pasturing is more similar to GOS community pasturing than full-service pasturing. As noted in the verification report, with respect to the GOC survey, ''full-service was identified as situations where the cows are cared for during the entire season and the customer only needs to drop off his or her cows and pick them up. Partial-service was identified as shared responsibility and work between the customer and the land owner.'' Thus, while it may be true that full-service private pasturing in Saskatchewan offers more services than GOS community pasturing, there is no information on the record that would indicate that partial-service private pasturing offers a better comparison to the pasturing services offered by the GOS.

We have made certain downward adjustments to the full-service private pasture rate to account for differences between full-service pasturing offered on private land and public pasturing. Specifically, we adjusted for the difference in costs associated with the timing of the sale of cull cows. While the GOS argued that this adjustment should be larger, the information on the record did not fully substantiate the calculations suggested by the GOS. For example, the GOS relied upon the GOC's statement that ten percent of cows are culled each year to support its argument for making an adjustment to account for differences in access to those cows which do not become pregnant. However, there is no evidence to support the assumption that the ten percent of cows culled each year are only those cows which do not become pregnant. Rather, it is reasonable to believe that some of these cows are culled on the basis of age alone and were never planned to be bred. In that regard, there is no evidence that a patron would actually pay to have an old cow pastured for a season if the cow was already planned to be culled. Finally, as in the *Preliminary Determination* and as noted above, we have not made adjustments for costs that the GOS was unable to quantify.

Other Comments

Comment 31: Allocation of Benefits By Total Sales Value Of Cattle

The GOC argues that the Department's regulations require it to distribute the benefits from those programs found to be countervailable across all products that have received the alleged benefits (19 CFR 351.525). The respondent contends that the Department's calculation of the denominator in the *Preliminary Determination* did not comply with this standard because certain programs that were found to be countervailable and included in the numerator did not correspond to any component included in the denominator. In support of its argument, the respondent refers to *Industrial Phosphoric Acid from Israel,* in which the Department reaffirmed the necessity that the ''calculation of a subsidy reflect the same universe of goods. Otherwise, the rate calculated will either over or understate the subsidy attributable to the subject merchandise.'' *See Industrial Phosphoric Acid from Israel,* 63 FR 13626, 13630 (March 20, 1998). Because the benefits in this investigation have been attributed to five commercially distinct products (calves, feeder cattle, backgrounded cattle, slaughter cattle, cull cows and bulls), the respondent argues that the sales value of all five of these products must be included in the denominator for purposes of correctly attributing benefits to the subject merchandise.

The petitioner argues that respondents have not demonstrated that benefits from particular programs impact any one of the ''distinct'' cattle production stages it identifies, or should only be allocated to that phase. Furthermore, petitioner explains that the use of total Canadian cattle sales during the POI will likely count the same animal more than once because cattle are moved through the different production stages within the same year, thereby capturing multiple sales of the same animal. Therefore, the sales figures advocated by respondents are inflated. The petitioner contends that the Department should continue to allocate subsidies over finished cattle or, alternatively, compute the subsidy rate on a production, or volume, basis rather than a value basis.

Department's Position: Contrary to respondent's assertions, the attribution approach applied in this investigation accurately measures the countervailable benefits conferred and is consistent with the countervailing duty statute. Although we recognize that there are distinct commercial segments within the cattle industry, the respondent incorrectly implies that the total value of the animal is equal to the sum of transactions specific to the animal as it moves through the different stages of the production cycle, thereby inflating the universe of sales to which the benefits apply. This flaw in the respondent's argument is illustrated by the petitioner's assertion that using total cattle sales will likely result in the double counting of certain animals due to the nature of the production cycle. Therefore, in order to avoid overvaluing the denominator, we have continued to apply the methodology used in our *Preliminary Determination* in which we calculated total sales value by adding domestic slaughter and international export statistics.

Based on information collected at verification, we have also included an amount for on-farm consumption to this figure. As a result, we have allocated the countervailable benefits received by cattle at each stage of the production cycle over the sales value of ''finished'' cattle, or animals that have completed the production cycle. We believe this attribution method most accurately captures a comparable universe of goods as discussed in *Industrial Phosphoric Acid from Israel.*

Comment 32: NISA and Regional Specificity

The petitioner argues that NISA benefits provide a regional subsidy because producers' geographic location determines eligibility under the program. The petitioner notes that cattle and calves are eligible commodities for NISA benefits in a select number of provinces and to the extent that a producer is eligible for the NISA program based on its geographic location, the program is regionally specific. According to the petitioner it is most important to note that, while Alberta cattle are not eligible commodities under the program, Alberta is the largest provincial producer. Based on this fact, the petitioner contends that NISA is targeted to cattle producers in other regions where cattle production is less intensive. According to the petitioner, the rationale for why cattle are not eligible commodities in certain provinces is not relevant to an examination of specificity. Instead, for the petitioner, the key questions is whether ranchers in over half of Canada receive NISA benefits for their livestock. As this is not the case, the petitioner contends that the Department should recognize the specific nature of the program.

The GOC argues that the Department's precedent demonstrates that a ''program is determined to be regional, and, therefore, limited only when its funding is specifically authorized by the central government to benefit only some regions within its jurisdiction.* * *'' *See Certain Granite Products from Spain,* 53 FR 24340 (June 28, 1988). Thus, according to the GOC, only when the granting authority has excluded certain regions from participating in programs will regional specificity be found. The GOC notes that, while the petitioner has said that a producer's geographic location determines its eligibility under NISA,'' NISA operates in all provinces and no provinces are excluded (noting that Yukon and the Northwest Territories can join if they so choose).

The GOC further notes that a large number and wide variety of commodities are covered by NISA and the fact that not every producer commodity group in every province participates in NISA does not transform NISA into a regional subsidy. First, the GOC argues that farmers in all of the provinces participate and the lack of participation by some provinces as to certain commodities does not alter the fact that all provinces are eligible and that producers in all provinces receive benefits. With respect to those provinces (Alberta, British Columbia, and Quebec) for which cattle are not eligible commodities, the GOC notes that other agricultural commodities in each of these provinces are covered by NISA. Lastly, the GOC argues that to avoid any further re-investigation of NISA, the Department should make clear in the final determination that the program is non-specific not only to cattle but as to all other agricultural commodities.

Department's Position: Section 771(5A)(D)(iv) of the Act reads, ''where a subsidy is limited to an enterprise or industry located within a designated geographical region within the jurisdiction of the authority providing the subsidy, the subsidy is specific.'' We have found that NISA operates in all Canadian provinces. That is, NISA benefits are not limited to an enterprise or industry located within a specific geographical region within Canada. First, NISA is a whole-farm program in which any farmer that produces an eligible commodity can participate. The number of eligible commodities is exhaustive and demonstrates that the benefits are not limited to a particular enterprise or industry. Furthermore, the eligibility of commodities is dependent on a particular commodity associations desire to participate. Thus, no commodities are excluded by federal or provincial government action. Second, the farmers that may participate in NISA are not located within a specific geographical region. Rather, producers in all provinces receive benefits, regardless of their location. Eligibility for NISA participation is based upon the commodities that a farmer produces, not his or her geographic location. Therefore, as noted in the *Preliminary Determination,* benefits provided through the NISA program are not limited to a particular region. While certain commodities are not eligible for matching funds within certain provinces, it is because the producers of these commodities choose not to participate, not because the program is limited to an enterprise or industry located in a particular region.

With respect to the GOC's comment that we should find NISA non-counteravailable for all products, we note that our investigation of NISA only related to whether cattle receive a counteravailable subsidy. We have not examined whether the program is counteravailable to other commodities.

Comment 33: Saskatchewan Livestock and Horticultural Facilities Incentives Program

The GOS argues that the Livestock and Horticultural Facilities Incentives Program (''LHFIP'') is an adjustment to, and is integrally linked with, the provincial sales tax. According to the GOS, the provincial sales tax (the Education and Health Tax (''E&H Tax'')) offers a standard tax exemption to all agricultural production. Thus, the GOS argues that LHFIP is not limited only to the livestock and horticultural industries and, therefore, is not counteravailable. The GOS contends that the LHFIP was introduced as part of a series of adjustments to the E&H Tax, and is intended to put livestock operations on the same footing as other agricultural operations with respect to the E&H Tax exemption for agricultural inputs and the lack of an exemption for certain construction materials.

Citing to the *New CVD Regulations,* the GOS argues that all of the Department's conditions for integral linkage are met. According to the GOS, the LHFIP has the same purpose and same effective benefit as the E&H Tax legislation and was linked with the E&H Tax at inception.

Lastly, the GOS notes that the functioning of the LHFIP is analogous to a VAT rebate program that the Department found noncountervailable in *Standard Chrysanthemums From the Netherlands; Final Results of Countervailing Duty Administrative Reviews,* 61 FR 47886 (September 11, 1996).

Department's Position: In examining the legislation and regulations governing both the LHFIP and the E&H Tax, we find that, even if the two programs were found to be integrally linked under the regulations governing this case, the program would still be specific, and, thus, countervailable. According to the laws and regulations for the E&H Tax and the GOS itself, although most agricultural inputs to production (such as machinery, fertilizer, seed, chemicals, and livestock) are exempt from the E&H Tax, the E&H Tax continues to be levied on certain construction materials and equipment for all agricultural products that could be used for both agricultural and non-agricultural purposes. Although the LHFIP created an exemption from the E&H Tax for livestock and horticultural producers, the tax on these types of construction materials is apparently still levied on other agricultural producers not related to livestock and horticulture production. Thus, even if the programs were integrally linked, because the legislation administering these programs expressly makes them available to only certain industries, they would still be specific. Therefore, any determination on the integral linkage of these programs is not necessary.

Verification

In accordance with section 782(i) of the Act, we verified the information used in making our final determination. We followed standard verification procedures, including meeting with government officials, and examining relevant accounting records and original source documents. Our verification results are outlined in detail in the public versions of the verification reports, which are on file in the Central Records Unit of the Department of Commerce, Room B–099.

Summary

The total net countervailable subsidy rate for all producers or exporters of live cattle in Canada is 0.77 percent, ad valorem, which is de minimis. Therefore, we determine that countervailable subsidies are not being provided to producers or exporters of live cattle in Canada.

Return or Destruction of Proprietary Information

This notice will serve as the only reminder to parties subject to Administrative Protective Order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 705(d) and 777(i) of the Act.

Dated: October 12, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–27570 Filed 10–21–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcement of a Meeting To Discuss an Opportunity To Join a Cooperative Research and Development Consortium on Characterization and Modeling of the Interface/Interphase of Polymeric Materials and Systems

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of public meeting.

SUMMARY: The National Institute of Standards and Technology (NIST) invites interested parties to attend a meeting on November 30, 1999 and December 1, 1999 to discuss the possibility of setting up a cooperative research consortium on Characterization and Modeling of the Interface/Interphase of Polymeric Materials and Systems. The goal of the consortium is to develop: advanced measurement techniques for evaluating surface mechanical properties of polymeric materials, computer models for interface and interphase characterization of multiphase polymer processing, and nanoscale probes for characterizing the interphase region in polymer systems.

DATES: The meeting will take place on November 30, 1999 and December 1, 1999 at 8:30 a.m. Interested parties should contact NIST to confirm their interest at the address, telephone number or FAX number shown below.

ADDRESSES: The meeting will take place in the Advanced Chemical Sciences Laboratory (ACSL), Room 302, National Institute of Standards and Technology, Gaithersburg, MD 20899–0001.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Cavanagh, Chemistry Building (222), Room B366, National Institute of Standards and Technology, Gaithersburg, MD 20899–0001. Telephone: 301–975–2368; FAX: 301–216–1134; e-mail: cavanagh@nist.gov.

SUPPLEMENTARY INFORMATION: Any program undertaken will be within the scope and confines of The Federal Technology Transfer Act of 1986 (Pub. L. 99–502, 15 U.S.C. 3710a), which provides federal laboratories including NIST, with the authority to enter into cooperative research agreements with qualified parties. Under this law, NIST may contribute personnel, equipment, and facilities but no funds to the cooperative research program. This is not a grant program.

The R&D staff of each industrial partner in the Consortium will be able to interact with NIST researchers to develop:

(1) Advanced measurement techniques for evaluating surface mechanical properties of polymeric materials and systems as a function of time and loading rate, and to correlate deformation scales from molecular to visual, including the development of mathematical models to assess the impact of surface deformation on the appearance of polymeric materials.

(2) Realistic computer modeling program(s) for interface and interphase characterization and prediction for the needs of multi-phase polymer processing under shear flow and temperature gradients; to carry out necessary measurements for obtaining parameters to input for the modeling; to develop characterization techniques and procedures for evaluating the interphase structure and its formation during the processing of a polymer paint/coating on a structured substrate surface formed by a process described above, and to develop protocols for interactive optimization.

(3) Nanoscale chemical and mechanical probes for characterizing the interphase region in polymer coating/substrate systems, to model interphase development in terms of the controlling thermodynamics and kinetics, including the effects of additives, and to develop a database of important characterization and modeling parameters.

Dated: October 18, 1999.

Karen H. Brown,

Deputy Director.

[FR Doc. 99–27680 Filed 10–21–99; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 100499C]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of an application for a scientific research permit (1227); receipt of an application to modify a permit (1051); and issuance of a permit (1219).

SUMMARY: Notice is hereby given of the following actions regarding permits for takes of endangered and threatened species for the purposes of scientific research and/or enhancement:

NMFS has received a permit application from Dr. Peter Dutton, of NMFS-Southwest Fisheries Science Center (SWFSC) (1227); NMFS has received an application for modifications to an existing permit from Mr. Jorgen Skjeveland, of the U.S. Fish and Wildlife Service (FWS) (1051); and NMFS has issued a permit to Mr. Larry Goodman, of the U.S. Environmental Protection Agency (EPA) (1219).

DATES: Written comments or requests for a public hearing on either the new application or the modification request must be received on or before November 22, 1999.

ADDRESSES: The applications and related documents are available for review in the following office, by appointment: Office of Protected Resources, Endangered Species Division, F/PR3, 1315 East-West Highway, Silver Spring, MD 20910 (301–713–1401).

FOR FURTHER INFORMATION CONTACT: Terri Jordan, Silver Spring, MD (301–713–1401).

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) (ESA), is based on a finding that such permits/modifications: (1) Are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are