Mexico are being, or are likely to be, sold in the United States at less than fair value. Our preliminary determinations will be issued by May 11, 1999, unless the deadline for the determinations is extended.

Initiation of Cost Investigation

As explained above, the Department has found that there are ''reasonable grounds to believe or suspect'' that sales of live cattle from Canada were made below their respective COP within the meaning of section 773(b)(2)(A)(i) of the Act. Therefore, we are initiating a countrywide sales-below-cost investigation with respect to live cattle from Canada.

With respect to the allegation that there were sales of Mexican cattle below cost, we were unable to consider the cost allegation because the cost data provided in the petition were not on the same basis as the home market sales data, and thus could not be meaningfully compared. Therefore, we are not initiating a sales-below-cost investigation with respect to live cattle from Mexico at this time. However, we note that in accordance with the Department's regulations at 19 CFR 351.301(d)(2)(i), the petitioner will have until 20 days after the date on which the Department issues its antidumping questionnaire to file a country-wide cost allegation; alternatively, the petitioner will have 20 days after the filing of sales questionnaire responses by individual respondents to file company-specific cost allegations.

Distribution of Copies of the Petitions

In accordance with section 732(b)(3)(A) of the Act, copies of public versions of the petitions have been provided to the representatives of the Governments of Canada and Mexico.

International Trade Commission Notification

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

Preliminary Determination by the ITC

The ITC will determine by January 18, 1999, whether there is a reasonable indication that imports of live cattle from Canada and Mexico are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination will result in termination of the investigations; otherwise, the investigations will proceed according to statutory and regulatory time limits.

Dated: December 22, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–34468 Filed 12–29–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–834]

Initiation of Countervailing Duty Investigation of Live Cattle From Canada

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

EFFECTIVE DATE: December 30, 1998.

FOR FURTHER INFORMATION CONTACT: Zak Smith, James Breeden, or Stephanie Hoffman, Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230, telephone (202) 482–0189, (202) 482–1174, or (202) 482-4198, respectively.

Initiation of Investigation

The Applicable Statute and Regulations

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

The Petition

On November 12, 1998, the Department of Commerce received a petition filed in proper form by the Ranchers-Cattlemen Action Legal Foundation (R-Calf, referred to hereafter as the ''petitioner'').

The petitioner had filed a similar petition on October 1, 1998 (hereafter referred to as the ''original petition''), but had withdrawn it on November 10, 1998. In refiling the petition on November 12, 1998, the petitioner requested that the Department incorporate into the record all submissions made in connection with the original petition. The Department granted this request, and also incorporated into the record all submissions made by other interested parties in connection with the original petition.[1]

After refiling the petition, the petitioner made several additional filings with respect to industry support. The Department also received additional submissions on the issue of industry support from other interested parties.

In accordance with section 702(b)(1) of the Act, the petitioner alleges that manufacturers, producers, or exporters of the subject merchandise in Canada receive countervailable subsidies within the meaning of section 701 of the Act.

The Department finds that the petitioner has standing to file the petition because it is an interested party as defined in section 771(9)(E) of the Act. Further, the Department's analysis underlying its determination of industry support indicates that the petition in fact has sufficient industry support (*see* discussion below).

Scope of the Investigation

For purposes of this investigation, the product covered is all live cattle except imports of dairy cows for the production of milk for human consumption and purebred cattle specially imported for breeding purposes and other cattle specially imported for breeding purposes.

The merchandise subject to this investigation is classifiable under subheading 0102.90.40 of the Harmonized Tariff Schedule of the United States (HTSUS), with the exception of 0102.90.40.72 and 0102.90.40.74. Although the HTSUS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise is dispositive.

During our review of the petition, we discussed with the petitioner whether the proposed scope was an accurate reflection of the product for which the domestic industry is seeking relief. We noted to the petitioner that the scope in the petition appeared to exclude all purebred cattle. The petitioner subsequently notified the Department that only purebred cattle intended for breeding purposes should be excluded from the scope of the investigation. We revised the scope accordingly. The petitioner has since indicated that this revised scope accurately describes the product for which the domestic industry is seeking relief.

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[1] The Government of Canada and the Government of Quebec contested the refiling of the petition. We note, however, that there is no statutory bar to refiling a petition which has been withdrawn. While the Department possesses the inherent authority to prevent a party from improperly manipulating its procedures, we have no reason to exercise that discretion in this case, particularly given the highly fragmented nature of the live cattle industry and the resulting complexity for this industry in expressing views on the petition.

Consistent with the preamble to the new regulations, we are setting aside a period for interested parties to raise issues regarding product coverage. See *Antidumping Duties, Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997). This period is intended to provide the Department with the opportunity to amend the scope of the investigation, if warranted, such that the International Trade Commission (ITC) may be able to take the revised scope into account in defining the domestic like product for injury purposes. In addition, early amendment can partially alleviate the reporting burden on respondents and avoid suspension of liquidation and posting of securities on products of no interest to the petitioner. The Department encourages all interested parties to submit such comments within twenty days after the date of publication of this notice in the **Federal Register**.

Consultations

Pursuant to section 702(b)(4)(A)(ii) of the Act, the Department invited representatives of the Canadian government for consultations with respect to the petition. These consultations were held on November 20, 1998. The Department also held consultations regarding the original petition with the Government of Canada on October 15, and November 4, 1998. We have incorporated all materials relating to those consultations into the administrative record of this proceeding.

Determination of Industry Support for the Petition

Section 702(c)(1)(A)(ii) of the Act requires that the Department determine, prior to the initiation of an investigation, that a minimum percentage of the domestic industry supports a countervailing duty petition. A petition meets these minimum requirements if the domestic producers or workers who support the petition account for: (1) at least 25 percent of the total production of the domestic like product, and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Under section 702(c)(4)(D) of the Act, if the petitioner(s) account for more than 50 percent of the total production of the domestic like product, the Department is not required to poll the industry to determine the extent of industry support.

To determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who account for production of the domestic like product. The ITC, which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. However, while both the Department and the ITC must apply the same statutory definition of domestic like product, they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[2]

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

The petition defines the domestic like product as live cattle (Bos taurus and Bos indicus) (including calves, stocker/yearlings, feeder steers and heifers, slaughter steers and heifers, and cull cows and bulls) which are raised and fed for the purpose of the production of beef. The domestic like product does not include purebred cattle that are used for breeding, unless and until cattle are culled. The domestic like product also does not include dairy cows used to produce milk for human consumption.

No party has commented on the petition's definition of domestic like product, and there is nothing in the record to indicate that this definition is inaccurate. Therefore, we have found no basis on which to reject the petitioner's representation that all cattle intended for slaughter should be included in the domestic like product. The domestic like product is functionally the same as the scope of the investigations, with the clarification that culled cattle are to be included. The Department has, therefore, adopted the single like product definition set forth in the petition, as clarified in the petitioner's letter of October 2, 1998.

With respect to the above-cited industry support requirements, our initial review of the production data in the petition indicated that the petitioner (and supporters of the petition) did not account for more than 50 percent of the total production of the domestic like product. Therefore, in accordance with section 702(c)(4)(D) of the Act, we determined that it was necessary to poll or otherwise determine support for the petition by the live cattle industry. Pursuant to section 702(c)(1)(B), we extended the deadline for initiation until December 22, 1998, in order to allow sufficient time for this determination.

Due to, among other factors, the extraordinarily large number of individual producers of live cattle in the United States, as well as the lack of a comprehensive listing of such producers, we determined that it would not be feasible to conduct a traditional sampling of producers. We also determined that it would not be feasible to poll all individual producers. Instead, we contacted more than 150 cattle and cattle-related associations and requested that they report the views of their cattle-producing members. Where individual producers contacted the Department directly to express their views, we included those views in our calculations after making adjustments to account for overlap of production between associations and their members. For a full description of the Department's industry support methodology, *see* memorandum from Susan Kuhbach and Gary Taverman to Richard W. Moreland, ''Live Cattle from Canada and Mexico: Determination of Industry Support'' (December 22, 1998) (Domestic Support Memorandum).

The Department found that the domestic producers or workers supporting the petition account for both (1) at least 25 percent of the total production of the domestic like product, and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Therefore, we find that there is sufficient industry support for the petition. (*See* Domestic Support Memorandum.)

Injury Test

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

[2] *See Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 642–44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass Therefor from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition,* 56 FR 32376, 32380–81 (July 16, 1991).

Allegations and Evidence of Material Injury and Causation

The petition alleges that the U.S. industry producing the domestic like product is being materially injured, and is threatened with material injury, by reason of the individual and cumulated subsidized imports of the subject merchandise. The allegations of injury and causation are supported by relevant evidence including United States Department of Agriculture (USDA) data and U.S. Customs import data. The Department assessed the allegations and supporting evidence regarding material injury and causation, and determined that these allegations are sufficiently supported by accurate and adequate evidence, and meet the statutory requirements for initiation. *See* ''Countervailing Duty Initiation Checklist for Canada.''

Allegations of Subsidies

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

Initiation of Countervailing Duty Investigation

The Department has examined the petition on live cattle from Canada and finds that it meets the requirements of section 702(b) of the Act. Therefore, in accordance with section 702(b) of the Act, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters of live cattle from Canada receive subsidies.

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

1. *Canadian Wheat Board's Control of Feed Barley Exports*
2. *Ontario Feeder Cattle Loan Guarantee Program*
3. *Alberta Feeder Associations Guarantee Program*
4. *Saskatchewan Feeder Associations Loan Guarantee Program*
5. *Saskatchewan Breeder Associations Loan Guarantee Program*
6. *Manitoba Cattle Feeder Associations Loan Guarantee Program*
7. *British Columbia Livestock Feeder Loan Guarantee Program*
8. *Farm Improvement and Marketing Cooperative Loans Act (FIMCLA)*
9. *Northern Ontario Heritage Fund Corporation Agriculture Assistance*
10. *Net Income Stabilization Account*
11. *Saskatchewan Beef Development Fund*
12. *Ontario Livestock Programs for Purebred Dairy Cattle, Beef and Sheep Sales Assistance Policy/ Swine Assistance Policy*
13. *Canada-Alberta Beef Industry Development Fund*
14. *Manitoba Tripartite Cattle Stabilization/Industry Development Transition Fund*
15. *Canadian Adaptation and Rural Development (CARDS) Program in Saskatchewan*
16. *Quebec Farm Financing Act*
17. *Alberta Public Grazing Lands Improvement Program*
18. *Saskatchewan Crown Land Improvement Policy*
19. *Technology Innovation Program Under the Agri-Food Agreement*
20. *Feed Freight Assistance Adjustment Fund (FFAF)*
21. *Western Diversification Program*
22. *Ontario Livestock, Poultry and Honey Bee Protection Act*
23. *Ontario Bear Damage to Livestock Compensation Program*
24. *Ontario Rabies Indemnification Program*
25. *Quebec Farm Income Stabilization Insurance Program (FISI)*
26. *Ontario Artificial Insemination of Livestock Act*
27. *Saskatchewan Livestock and Horticultural Facilities Incentives Program*
28. *The Prairie Farm Rehabilitation Community Pasture Program*
29. *Provincial Crown Lands Program*
30. *Ontario Export Sales Aid Program*

We are not including in our investigation at this time the following programs alleged to be benefitting producers and exporters of the subject merchandise in Canada:

1. Beef Industry Development Fund

The petitioner alleges that cattle producers receive countervailable subsidies through monies provided by the government for the promotion and enhancement of the beef industry. Specifically, the petition alleges that expenditures for beef industry promotion also benefit cattle production under the Department's attribution policy, whereby subsidies paid to a corporate entity benefit related products within that company. According to the petitioner, beef promotion funds received by a corporate entity that operates feedlots should be investigated to determine whether benefits under the program benefit cattle production.

Despite the fact that the petitioner provides evidence of governmental assistance to the beef industry, the petition does not provide adequate information supporting its allegation of a benefit or financial contribution to the cattle industry. Rather, the petition refers to the Department's ''attribution'' policy, whereby benefits received for the production of an input pass onto the final product when received by the same corporate entity. *See* Final Affirmative Countervailing Duty Determination: Certain Pasta From Italy, 61 FR 30287 (June 14, 1996).

In this case, the petitioner has argued that subsidies attributable to a final product benefit the production of an input, but has not offered any evidence to support this contention. Therefore, based upon the lack of supporting information in the petition that the Beef Industry Development Fund provides a financial contribution or benefit to the producers of the subject merchandise, we are not including this program in our investigation.

2. British Columbia Farm Product Industry Act

The petitioner alleges that cattle producers receive countervailable subsidies in the form of grants, loans and loan guarantees which are designed to encourage and assist the development and expansion of the agricultural industry in British Columbia. This program is allegedly *de facto* specific because British Columbia accounts for seven percent of the beef cows produced in Canada. However, the petition does not provide any further evidence or argumentation that the actual recipients are limited in number, that the cattle industry is a predominant user, that the cattle industry receives a disproportionately large amount of assistance, or that the government has exercised discretion in favoring one enterprise or industry over another. Furthermore, because this program is not limited to a particular enterprise or industry within British Colombia, this program does not qualify as a regional subsidy under section 771(5A)(D)(iv) of the Act. Therefore, based upon the lack of supporting information in the petition that the British Colombia Farm Product Industry Act is specific on either a *de jure, de facto* or regional basis, we are not including this program in our investigation.

3. Transition Programs for Red Meats

The petitioner alleges that countervailable subsidies were provided to cattle producers through a program titled, ''Transition Programs for Red Meats.'' As was alleged with the Beef Industry Development Fund (*see* above), the petitioner states that expenditures

on behalf of the beef industry also benefit cattle production under the Department's attribution approach. However, the petitioner does not provide adequate information supporting its allegation of a benefit or financial contribution either to cattle producers or the beef industry. Therefore, based upon the lack of supporting information in the petition that Transition Programs for Red Meats provides a financial contribution or benefit to the producers of the subject merchandise, we are not including this program in our investigation.

4. British Columbia Grazing Enhancement Special Account Act

The petitioner alleges that cattle producers receive countervailable benefits through the government's maintenance and enhancement of British Columbia's public range resources. This program is allegedly *de jure* specific because it benefits only farmers with grazing livestock. However, the petition does not provide any evidence or argumentation of a financial contribution being provided directly or indirectly to cattle producers. Specifically, there is no evidence of a direct transfer of funds, the foregoing or non-collection of revenue, the provision of goods and services (other than general infrastructure), or the purchase of goods. Therefore, based upon the lack of supporting information in the petition that the British Columbia Grazing Enhancement Special Account Act provides a financial contribution to the producers of live cattle, we are not including this program in our investigation.

Uncreditworthy Allegation

The petitioner alleges that the Canadian cattle industry is not creditworthy. The petitioner bases this allegation essentially on two arguments: (1) The industry is selling below cost; and, (2) a segment of the industry, and the industry as a whole, has been unprofitable.

Normally, the Department has required that any allegation of uncreditworthiness be made on a company-specific basis. (See, e.g., *Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments, (1989 Proposed Regulations*), 54 FR 23366, 23380.) It is the Department's policy to find a company uncreditworthy if information at the time of the government-provided loan in question indicates that the firm could not have obtained long-term commercial financing from conventional sources during the period when government loans were allegedly available to them. With respect to the analysis of uncreditworthiness allegations in a petition, it has been the Department's long-standing practice to employ a heightened threshold for uncreditworthiness allegations. Specifically, the petitioner must supply information establishing a reasonable basis to believe or suspect that a company is uncreditworthy, rather than simply providing reasonably available supporting information. (See *1989 Proposed Regulations,* 54 FR 23366, 23370, 23380 and *Countervailing Duties; Final Rule,* 63 FR 65348, 65368, 65409.)

Although it is the Department's policy to require uncreditworthiness allegations on a company-specific basis, we have also recognized that such a requirement may be unreasonable in cases in which the number of respondents is very large. (See *Final Affirmative Countervailing Duty Determination: Fresh and Chilled Atlantic Salmon From Norway,* 56 FR 7678, 7683 (February 25, 1991).) In the instant case, we accept the petitioner's claim that the large number of Canadian cattle producers makes it difficult to compile company-specific information with respect to a significant (or representative) number of producers. Therefore, we have analyzed whether the petitioner has provided a reasonable basis to believe or suspect that the Canadian cattle industry, in general, was unable to obtain long-term commercial financing from conventional sources.

As noted above, the petitioner has provided information indicating that the Canadian cattle industry has been selling below its cost and, arguably, has been unprofitable in recent years. Although relevant, this information does not directly address the issue of whether the industry was unable to obtain commercial long-term financing.[3] While we recognize that the Canadian cattle industry may be selling below cost and may have been unprofitable, it could be argued that such phenomena are not unusual for agricultural producers within an industry often subject to cyclical downturns. Furthermore, the petitioner has not provided specific evidence indicating that the current financial condition of the Canadian cattle industry will continue into the future or any other information directly supporting the conclusion that the industry has been unable to obtain long-term commercial financing.

[3] The only information that the petitioner has provided which may be directly relevant is a source note from a Canadian statistics report which indicates that interest costs are computed on the basis of monthly prime rates plus a premium. The petitioner alleges that this confirms that cattle producers can only get short-term financing because of their high risk of loss. Given that the report in question was intended to estimate a Canadian cattle producer's cost and that the use of a short-term interest rate appears to be an assumption rather than an empirically derived fact, we consider this information to be of little probative value.

Distribution of Copies of the Petition

In accordance with section 702(b)(4)(A)(i) of the Act, copies of the public version of the petition have been provided to the representatives of the Government of Canada.

ITC Notification

Pursuant to section 702(d) of the Act, we have notified the ITC of our initiation of this investigation.

Preliminary Determination by the ITC

The ITC will determine by January 18, 1999, whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, by reason of imports of live cattle from Canada. A negative ITC determination will result in the investigation being terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits.

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

Dated: December 22, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–34469 Filed 12–29–98; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121698A]

Magnuson-Stevens Act Provisions; Atlantic Swordfish Fishery; Atlantic Billfish Fisheries; Atlantic Shark Fisheries; Exempted Fishing Permits (EFPs)

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

ACTION: Applications for EFPs; request for comments.

SUMMARY: NMFS announces the receipt of applications for EFPs. If granted, these EFPs would authorize, until such time that the Highly Migratory Species fishery management plan (FMP) is effective, collections of a limited number of swordfish, billfish, and sharks from the large coastal, pelagic,