written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This notice is issued and published in accordance with 19 CFR 351.213(d)(4) and section 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: October 15, 2004.

Jeffrey May,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E4–2729 Filed 10–19–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–850]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Live Swine From Canada

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

ACTION: Notice of preliminary determination of sales at less than fair value.

SUMMARY: We preliminarily determine that live swine from Canada are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733(b) of the Tariff Act of 1930, as amended (''the Act'').

Interested parties are invited to comment on this preliminary determination. Since we are postponing the final determination, we will make our final determination within 135 days of the date of publication of this preliminary determination in the **Federal Register**.

EFFECTIVE DATE: October 20, 2004.

FOR FURTHER INFORMATION CONTACT: Cole Kyle, Ryan Langan, or Andrew Smith, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1503, (202) 482–2613, or (202) 482–1276, respectively.

SUPPLEMENTARY INFORMATION:

Background

Since the initiation of this investigation (*Notice of Initiation of Antidumping Duty Investigation: Live Swine from Canada,* 69 FR 19815 (April 14, 2004) (''*Initiation Notice*''), the following events have occurred:

On April 26, 2004, we solicited comments from interested parties regarding the criteria to use for model-matching purposes. We received comments from all interested parties on our proposed matching criteria in April and May, 2004.

On May 4, 2004, the Government of Canada (''GOC'') submitted a scope exclusion request. On August 4, 2004, the petitioners submitted comments on the GOC's scope exclusion request. *See* ''Scope Comments'' section, below. We held discussions on the issue of model matching with officials from the United States Department of Agriculture (''USDA'') and industry experts on May 6 and 11, 2004, respectively.

On May 14, 2004, we selected Excel Swine Services, Inc. (''Excel''), Ontario Pork Producers' Marketing Board (''Ontario Pork''), Hytek, Inc. (''Hytek''), and Premium Pork Canada, Inc. (''Premium Pork'') as mandatory respondents in this proceeding. For further discussion, *see* Memorandum to Jeffrey May, ''Respondent Selection'' dated May 14, 2004 (''*Respondent Selection Memorandum*''), which is located in the Department of Commerce's (''the Department'') Central Records Unit, located in Room B–099 of the main Department building (''CRU''), and the ''Respondent Selection'' section below.

On May 17, 2004, the United States International Trade Commission (''ITC'') preliminarily determined that there is a reasonable indication that imports of live swine from Canada are materially injuring the United States live swine industry (*see* ITC Investigation Nos. 701–TA–438 and 731–TA–1076 (Publication No. 3693)).

We issued the antidumping questionnaire to Excel, Ontario Pork, Hytek, and Premium Pork on May 27, 2004. Also, on May 27, 2004, the Department adopted the model match criteria and hierarchy for this proceeding. *See* Memorandum to Susan Kuhbach, ''Selection of Model Matching Criteria for Purposes of the Antidumping Duty Questionnaire,'' dated May 27, 2004, which is on file in the CRU.

On June 4, 2004, Ontario Pork submitted comments regarding the selection of companies to respond to the Department's cost questionnaire. On June 16, 2004, we solicited comments from the Illinois Pork Producers Association, the Indiana Pork Advocacy Coalition, the Iowa Pork Producers Association, the Minnesota Pork Producers Association, the Missouri Pork Association, the Nebraska Pork Producers Association, Inc., the North Carolina Pork Council, Inc., the Ohio Pork Producers Council, and 119 individual producers of live swine [1] (hereinafter ''the petitioners''), Excel, and Ontario Pork on the methodology for selecting cost respondents. We received parties' comments on June 21, 2004, and rebuttal comments on June 24 and June 30, 2004.

On June 21, 2004, Premium Pork submitted a request to the Department that it use Premium Pork's transfer price as the constructed export price rather than deriving a constructed export price. On June 29, 2004, the petitioners submitted comments on Premium's request. The Department rejected this request.

On July 2, 2004, the Office of Accounting notified Ontario Pork and Excel of the companies selected to respond to the Department's cost questionnaire. This selection is described in a July 15, 2004 Memorandum to Jeffrey May, entitled ''*Cost Respondent Selection Memo.*''

In June and July, 2004, the Department received responses to sections A, B, and C of the Department's

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

original questionnaire from Excel, Ontario Pork, Premium Pork, and Hytek. The Department issued supplemental questionnaires to the respondents in July, August, and September 2004, and received responses in September and October 2004.

Pursuant to section 733(c)(1)(B) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act effective January 1, 1995 (''the Act''), we determined that this proceeding is extraordinarily complicated and that additional time was necessary to make our preliminary determination. Therefore, on August 9, 2004, we postponed the preliminary determination until no later than October 14, 2004. *See Notice of Postponement of Preliminary Antidumping Duty Determination: Live Swine from Canada,* 69 FR 48201 (August 9, 2004).

In September and October, 2004, the Department received pre-preliminary determination comments from Excel, Ontario Pork, Hytek, Premium Pork, and the petitioners regarding the Department's calculation methodologies for the preliminary determination.

Postponement of Final Determination

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise. Section 351.210(e)(2) of the Department's regulations requires that exporters requesting postponement of the final determination must also request an extension of the provisional measures referred to in section 733(d) of the Act from a four-month period until not more than six months.

On September 21, 2004, we received requests from Excel, Ontario Pork, Hytek, and Premium Pork to postpone the final determination to 135 days after the date of publication of this preliminary determination notice. In their requests, the respondents consented to the extension of provisional measures to no longer than six months. Since this preliminary determination is affirmative and the request for postponement is made by exporters who account for a significant proportion of exports of the subject merchandise we have extended the deadline for issuance of the final determination until the 135th day after the date of publication of this preliminary determination in the **Federal Register**.

Scope of Investigation

The products covered by this investigation are all live swine from Canada except breeding swine. Live swine are defined as four-legged, monogastric (single-chambered stomach), litter-bearing (litters typically range from 8 to 12 animals), of the species *sus scrofa domesticus.* This merchandise is currently classifiable under *Harmonized Tariff Schedule of the United States* (''*HTSUS*'') subheadings 0103.91.0010, 0103.91.0020, 0103.91.0030, 0103.92.0010, 0103.92.0090.[2]

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

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

Scope Comments

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

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

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

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

[2] Prior to June 30, 2003, *HTSUS* subheadings 0103.91.0010, 0103.91.0020, and 0103.91.0030 were all included under one heading, *HTSUS* 0103.91.0000.

swine, except for the excluded products, are included in the scope.

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

Period of Investigation

The period of investigation (''POI'') is January 1, 2003, through December 31, 2003. This period corresponds to the four most recent fiscal quarters prior to the filing of the petition on March 5, 2004.

Selection of Respondents

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. However, section 777A(c)(2) of the Act gives the Department discretion, when faced with a large number of exporters/producers, to limit its examination to a reasonable number of such companies if it is not practicable to examine all companies. Where it is not practicable to examine all known producers/exporters of subject merchandise, this provision permits the Department to investigate either: (1) A sample of exporters, producers, or types of products that is statistically valid based on the information available at the time of selection, or (2) exporters and producers accounting for the largest volume of the subject merchandise that can reasonably be examined.

After consideration of the complexities expected to arise in this proceeding, including the industry practice of sourcing subject merchandise from multiple producers, the intricate corporate structures of exporters and producers, and the potential for collapsing respondents with multiple affiliated producers/exporters, as well as the resources available to the Department, we determined that it was not practicable in this investigation to examine all known producers/exporters of subject merchandise. Therefore, we selected the four producers/exporters with the greatest export volumes to receive antidumping duty questionnaires and, as such, to be mandatory respondents.

As discussed in the *Respondent Selection Memorandum*, we selected these companies because they were the largest Canadian exporters of subject merchandise who also had their own, or affiliated party, production of the merchandise under investigation. In addition, we did not select as respondents trading companies that did not produce (or have affiliated producers that produced) live swine because of the need to gather information from unaffiliated producers that supplied these trading companies. Further, we did not select M&F Trading, Inc. (''M&F'') and Maximum Swine Marketing, Inc. (''Maximum'') as respondents because they were not engaged in the production of live swine. Instead, M&F and Maximum acted merely as brokers between the customer and supplier (*i.e.*, producer), and the customer and supplier set the terms of sale independently of M&F or Maximum. We noted that this selection methodology was consistent with that used in the previous antidumping duty investigation of live cattle from Canada. *See Notice of Preliminary Determination of Sales at Less than Fair Value: Live Cattle from Canada*, 64 FR 36847 (July 8, 1999), citing a memorandum on the official file, ''Selection of Respondents,'' dated March 1, 1999, affirmed in the *Notice of Final Determination of Sales at Less than Fair Value: Live Cattle from Canada*, 64 FR 56739 (October 21, 1999).

Excel was included in the list of producing exporters and, after excluding M&F and Maximum, Excel was among the four largest exporters. We believed that Excel was a producing exporter because Excel reported that it was ''partly'' a producer of the merchandise under investigation because of common shareholders among Excel and its suppliers. Excel also reported that it was a ''cooperative-like'' company. Based on our understanding of Excel's situation at the time of our respondent selection, Excel was included as a mandatory respondent.

The Department believed that the selection of Excel as a mandatory respondent would allow the Department to collect complete data for the ''largest volume of subject merchandise from the exporting country that can reasonably be examined.'' *See Respondent Selection Memorandum* at 5. However, given the information we obtained from Excel after its selection as a mandatory respondent, we preliminarily determine that Excel should not have been included in the list of producing exporters nor should we have selected Excel as a mandatory respondent.

The record evidence shows that Excel's role in sales of merchandise produced by unaffiliated producers is that of a broker rather than that of a central selling unit in a ''cooperative-like'' company. We have reached this conclusion because the information on the record indicates that for sales of merchandise produced by unaffiliated companies, Excel merely generates sales invoices and arranges transportation in accordance with the terms of the sales contracts. These sales contracts are between swine producers unaffiliated with Excel and customers (also not affiliated with Excel). Excel is not a signatory to these sales contracts. Consequently, Excel does not determine or influence the pricing or other terms of sale for sales of merchandise produced by companies that are not affiliated with Excel. We also preliminarily determine that the unaffiliated suppliers who sold their merchandise through Excel knew, at the time of the sale, that the merchandise was destined for the United States. Therefore, Excel cannot be considered the exporter for these sales.

Excel's remaining sales to the United States, *i.e.*, Excel's sales of live swine produced by affiliated suppliers, are extremely small such that Excel does not fall among the largest exporters of live swine to the United States. Had we known at that time of our selection of respondents that Excel's volume of sales to the United States was so low, we would not have selected Excel as a mandatory respondent.

Excel's situation is further complicated by the fact that, based on our understanding of Excel's ''cooperative-like'' relationship to its unaffiliated suppliers, we selected a subset of those suppliers to respond to our cost questionnaires. *See* ''Background'' section, above, and *Cost Respondent Selection Memo*. None of the selected suppliers is affiliated with Excel and, as explained above, all had knowledge that their swine sales were destined for the United States. Therefore, we preliminarily determine that section 773(b) of the Act precludes us from using those suppliers' costs in analyzing whether sales made by Excel in Canada of live swine produced by its affiliated suppliers are below cost.

Given the very small volume of Excel's sales to the United States of merchandise produced by affiliated producers, plus our inability to perform a cost test on its home market sales, we are rescinding our selection of Excel as a mandatory respondent. Consequently, we do not plan to verify Excel's response and we are assigning Excel the ''all-others'' rate, the rate Excel would have received had it not initially been selected as a mandatory respondent. This is not intended to be punitive to Excel. Instead, the rescission merely restores Excel to the position it would have been in, had all of the information now on the record about its organization and sales processes been known to the Department at the time of the respondent selection. Nor do we believe that adverse, punitive, action is required in this situation because there is no record evidence that Excel deliberately misled the Department.

Although we are eliminating Excel from our analysis, we preliminarily determine that the Department is meeting the statutory obligation to examine exporters and producers accounting for the largest volume of the subject merchandise that can reasonably be examined under section 777A(c)(2) of the Act by investigating the sales of the remaining respondents, Ontario Pork, Hytek and Premium Pork. That is because the volume of sales for which Excel is the exporter is very small, so that its elimination has little effect on the coverage of our investigation. We also note that the products exported by the remaining respondents during the POI cover the entire scope of the subject merchandise. Therefore, the ''all-others'' rate will reflect sales of all of the subject merchandise.

Fair Value Comparisons

To determine whether sales of live swine from Canada to the United States were made at less than fair value (''LTFV''), we compared the export price (''EP'') or constructed export price (''CEP'') to the normal value (''NV''), as described in the ''Export Price and Constructed Export Price'' and ''Normal Value'' sections of this notice, below. In accordance with section 777A(d)(1)(A)(I) of the Act, we compared POI weighted-average EPs and CEPs to NVs. Any specific adjustments to the EP, CEP and NV calculations are discussed in the October 14, 2004, respondent-specific calculation memoranda (''*Calculation Memoranda*''), which are on file in the CRU.

In an October 1, 2004, submission, Ontario Pork requested that the Department compute monthly weighted-average EPs and NVs, rather than POI averages, for comparison purposes. Ontario Pork states that as a result of fluctuations in prices in the U.S. and home markets, and skewed sales volumes during the POI, the Department's normal methodology will lead to a severely distorted measure of dumping.

Ontario Pork contends that the Department has the authority to deviate from its normal practice ''when normal values, export prices, or constructed export prices differ significantly over the course of the period of investigation,'' under section 351.414(d)(3) of the Department's regulations. Ontario Pork points to *Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27373 (May 19, 1997) (''Preamble''), in which the Department explained that ''[i]n general, we believe it is appropriate to average prices across the period of investigation, though there are circumstances in which other averaging periods are more appropriate. Accordingly, the proposed rule is designed to ensure that the time periods over which price averages and comparisons are made comports with circumstances of the case, while maintaining a preference for period wide averages.'' Ontario Pork also cites *United States—Antidumping Measures on Stainless Steel Plate in Coils and Stainless Steel Sheet and Strip from Korea,* WTO/DS179/R (December 22, 2000) (''WTO Ruling''), in which the WTO Panel provided an example of how averaging on a POI basis, where price and volume fluctuations occur in both the export and home markets, can distort dumping margin calculations.

The petitioners responded to Ontario Pork's comments on October 6, 2004. They argue that there is no basis for using monthly averages in this case, particularly given that the Department rarely exercises its authority to deviate from POI averages, and only does so in extreme cases. One such case occurred when the value of the Korean won fell precipitously against the U.S. dollar during the period of investigation in *Stainless Steel Sheet and Strip in Coils from Korea; Final Determination of Sales at Less Than Fair Value,* 64 FR 30664, 30676 (June 8, 1999) (''*Stainless Steel*''). In *Stainless Steel* the Department averaged prices for two distinct periods, before and after the precipitous decline in the won-dollar exchange rate. In this case however, the petitioners contend, there is no compelling reason to average prices on a monthly basis, particularly given that U.S. and home market prices are tied to the same daily USDA market price benchmarks. In addition, the petitioners argue that Ontario Pork's prices varied on many bases—annually, monthly, weekly and daily—and that these variations do not constitute an extreme case that necessitates a departure from the Department's preferred averaging period.

We note that Ontario Pork did not raise this issue with the Department until shortly before the deadline for this preliminary determination and, therefore, we have not had sufficient time to consider the implications of Ontario Pork's proposal. In addition, while the petitioners have commented on this issue, other interested parties have not had sufficient time or information to provide the Department with comments on Ontario Pork's proposal. Therefore, we have not adopted monthly averaging periods in our analysis of Ontario Pork's sales for this preliminary determination.

While we acknowledge the Department's authority to calculate averages over shorter periods than the POI, our practice is generally to calculate POI averages except in certain situations, such as when there are external events that clearly define distinct periods for which different market conditions prevailed. Also, with the exception of our use of monthly averages in situations with high inflation, we have not used monthly averaging periods.

Therefore, we intend to consider this issue further for the final determination and invite parties to comment further on the circumstances in which it would be appropriate for the Department to select shorter averaging periods, and whether the use of shorter averaging periods should be limited to situations where the shorter periods are defined by external events.

Selection of Comparison Market

Section 773(a)(1) of the Act directs that NV be based on the price at which the foreign like product is sold in the home market, provided that the merchandise is sold in sufficient quantities (or value, if quantity is inappropriate), that the time of the sales reasonably corresponds to the time of the sale used to determine EP or CEP, and that there is no particular market situation that prevents a proper comparison with the EP or CEP. The Act contemplates that quantities (or value) will normally be considered insufficient if they are less than five percent of the aggregate quantity (or value) of sales of the subject merchandise to the United States.

We found that Ontario Pork and Hytek each had a viable home market for sales of subject merchandise. In deriving NV, we made adjustments as detailed in the *Calculation of Normal Value Based on Home Market Prices* and *Calculation of Normal Value Based on Constructed Value* sections below.

For Premium Pork, we preliminarily determine that the home market is not an appropriate comparison market because a particular market situation exists with respect to Premium Pork's sales in Canada. Premium Pork is in the business of producing isoweans for export to the United States and raising live swine for sale as market hogs in the United States. On the other hand, Premium Pork's home market sales overwhelmingly consist of substandard and defective swine, and spent sows and boars (*i.e.,* sows and boars that are no longer useful in producing isoweans for raising market hogs). Therefore, the company's sales in Canada are incidental to the respondent and, moreover, are not appropriate for comparison with the U.S. sales. As further evidence of Premium Pork's focus on the U.S. market, the company did not have sales to any third country market during the POI. Therefore, because a particular market situation exists with respect to Premium Pork's home market sales and because Premium Pork did not have third country sales during the POI, Premium Pork's NV is based on constructed value (''CV''). *See* Memorandum to Jeffrey May, ''Appropriateness of Canadian Market as a Comparison Market for Premium Pork,'' dated October 14, 2004.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced and sold by Ontario Pork and Hytek in the home market during the POI that fit the description in the ''Scope of Investigation'' section of this notice to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. For the reasons discussed above, we did not consider products produced and sold by Premium Pork in the home market. We compared U.S. sales to sales of identical merchandise made in the home market, where possible. Where there were no sales of identical merchandise in the home market, made in the ordinary course of trade, to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade.

To identify identical and similar merchandise for purposes of comparing U.S. and home market sales, we considered several product characteristics. Specifically, we asked the respondents to report information on type (*e.g.,* gilt/barrow, sow or boar), weight, and weight band, for each sale made during the POI.

Export Price and Constructed Export Price

For the price to the United States, we used, as appropriate, EP or CEP, as defined in sections 772(a) and 772(b) of the Act, respectively. Section 772(a) of the Act defines EP as the price at which the subject merchandise is first sold before the date of importation by the producer or exporter outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection 722(c) of the Act.

Section 772(b) of the Act defines CEP as the price at which the subject merchandise is first sold in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections 772(c) and (d) of the Act.

For all respondents, we calculated EP and CEP, as appropriate, based on the prices charged to the first unaffiliated customer in the United States or for shipment to the United States. We found that all the respondents made EP sales during the POI. These sales are properly classified as EP sales because they were made outside the United States by the exporter or producer to unaffiliated customers in the United States, or to unaffiliated customers in Canada for exportation to the United States, prior to the date of importation. Moreover, the constructed export methodology was not otherwise warranted based on record evidence. We also found that Hytek and Premium Pork made CEP sales during the POI. These sales are properly classified as CEP sales because they were made through the respondents' respective U.S. affiliate(s).

In accordance with section 772(c)(2) of the Act, we made deductions from the starting price for movement expenses, and export taxes and duties, where appropriate. Section 772(d)(1) of the Act provides for additional adjustments to calculate CEP. Accordingly, where appropriate, we deducted the cost of further manufacturing, and direct and indirect selling expenses incurred in selling the subject merchandise to the United States. Pursuant to section 772(d)(3) of the Act, where applicable, we made an adjustment for CEP profit.

(1) Ontario Pork

Ontario Pork is, by law, the only entity permitted to sell slaughter hogs produced in Ontario, and Ontario Pork controls the pricing and terms of sale for all of these sales. Therefore, we have treated Ontario Pork as the exporter for these sales.

We based EP for Ontario Pork on the delivered price to unaffiliated purchasers in the United States, as adjusted upon receipt to reflect grading by the customer. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act. These expenses included, where appropriate, foreign inland freight (trucking from farm to assembler), warehousing/assembling fees, international freight, freight insurance, and brokerage and handling (including U.S. duties, customs fees, and fees mandated by the U.S. Pork Promotion Research and Consumer Information Act of 1985). *See* Calculation Memoranda.

(2) Hytek

As stated above, Hytek made both EP and CEP sales during the POI. We treated Hytek's sales to Canadian trading companies not affiliated with Hytek as EP sales because Hytek knew, at the time of the sale to the trading companies, that the merchandise was destined for the United States. We calculated a CEP for sales made by Hytek's affiliated reseller or affiliated further processor after the importation of the subject merchandise into the United States. We disregarded sales by Hytek of live swine from producers not affiliated with Hytek because those producers knew that the merchandise was destined for the United States at the time of sale through Hytek. Therefore, the U.S. sales analyzed for Hytek consist of subject merchandise that was produced by Hytek or one of its affiliates.

For EP and CEP transactions, we made deductions from the starting price for billing adjustments and movement expenses in accordance with section 772(c)(2)(A) of the Act. The billing adjustments were made, where appropriate, for invoice corrections, end-of-month accounting adjustments, quantity discrepancies, product quality, under-weight pigs, errant products, incorrect weight-band, insurance premiums, breeder adjustments, and farrowed pigs. Movement expenses included inland freight (including insurance) in Canada and in the United States, international freight, brokerage fees, U.S. customs duties and fees (including USDA vet fees).

For CEP sales, in accordance with section 772(d)(1) of the Act, we also deducted from the starting price those selling expenses that were incurred in selling the subject merchandise in the United States, including direct expenses (National Pork Producer's Council (''NPPC'') fees,[3] bank charges and credit expenses), the cost of further manufacturing, and indirect selling expenses incurred by the affiliated further processor in the United States. We also deducted from CEP an amount

[3] Despite Hytek's claim that NPPC fees were used to fund the antidumping duty case against live swine from Canada, the record evidence does not demonstrate that NPPC fees collected during the POI were spent for that purpose. Therefore, we have deducted NPPC fees as a direct selling expense.

for profit, in accordance with section 772(d)(3) of the Act.

(3) Premium Pork

As stated above, Premium Pork made both EP and CEP sales during the POI. We disregarded sales by Premium Pork of subject merchandise from producers not affiliated with Premium Pork because those producers knew that the merchandise was destined for the United States at the time of sale to Premium Pork. Therefore, the U.S. sales analyzed for Premium Pork consist of sales of subject merchandise produced by Premium Pork's affiliates.

For EP and CEP transactions, we made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. Movement expenses included inland freight (including insurance) in Canada and in the United States, international freight, brokerage fees incurred in Canada and in the United States, and U.S. customs duties and fees.

For CEP sales, in accordance with section 772(d)(1) of the Act, we also deducted from the starting price those selling expenses that were incurred in selling the subject merchandise in the United States, including direct expenses (pork check-off fees [4] and credit expenses), and the cost of further manufacturing incurred by the affiliated further manufacturer in the United States. Because no profit was earned on these sales, none was deducted. *See* Statement of Administrative Action, H. DOC. No. 103–465, Vol. 1 at 669 (1994) *reprinted in U.S.C.A.N.* 3773, 4163 (hereinafter, ''SAA'').

Among its sales of further manufactured products, Premium Pork reported sales of substandard or defective merchandise. Because (1) the matching criteria for this investigation do not currently account for substandard or defective merchandise; (2) no interested parties have provided comments on the appropriate methodology to match these sales; and (3) the quantity of such sales does not constitute a significant percentage of Premium Pork's U.S. sales, we have excluded these sales from our analysis for purposes of the preliminary determination. We invite comments from the interested parties regarding our treatment of these sales for our consideration in the final determination.

In comments submitted to the Department on September 28, 2004, the petitioners assert that the Department should reduce Premium Pork's U.S. sales prices for CEP transactions to account for rejects. However, Premium Pork reported that it excluded rejected hogs from the sales and production quantities reported to the Department. Therefore, we did not make a downward adjustment to Premium Pork's U.S. sales prices. We intend to confirm the quantities reported at verification.

Normal Value

A. Cost of Production Analysis

As noted in the initiation notice, we found that there were reasonable grounds to believe or suspect that sales of live swine in the home market were made at prices below their cost of production (''COP''). Accordingly, pursuant to section 773(b) of the Act, we initiated a country-wide sales-below-cost investigation to determine whether sales of live swine were made at prices below their COP.

As discussed above, Ontario Pork is the sole marketer of slaughter hogs produced in Ontario. Because there are nearly 3,000 slaughter hog producers in Ontario, it was not possible for the Department to examine the costs of all Ontario Pork suppliers. Therefore, the Department developed a methodology to calculate a representative COP and CV for the merchandise sold by Ontario Pork.

To do this, we excluded all producers with 1,000 or fewer hogs delivered per year and producers with more than 200,000 hogs delivered per year. We then stratified the remaining producers of live swine into large (*i.e.*, delivered 10,000 or more hogs annually) and small (*i.e.*, delivered less than 10,000 hogs annually) producers. Pursuant to this methodology, we selected four producers from the list of Ontario Pork's hog suppliers, two of which are small producers and two of which are large producers. For further discussion, see Cost Respondent Selection Memo.

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated a single weighted-average COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for general and administrative (''G&A'') expenses, interest expenses, and home market packing costs for the selected cost respondents. To calculate the weighted average COP for Ontario Pork, we first took a simple average of the COPs within each stratum (*i.e.*, size group). Then, we weight averaged each stratum's simple average cost by the total respective volume of hogs delivered within each stratum.

2. Cost Respondent Adjustments

We relied on the COP data submitted by each cost respondent in its cost questionnaire response, except in specific instances where the submitted costs were not appropriately quantified or valued, or where the costs otherwise required adjustment, as discussed below:

a. Common to All Swine Producers for All Respondents

1. Some of the producers expensed in their entirety the acquisition cost of the sows and boars used for breeding purposes during the POI. Other producers treated the sows and boars used for breeding purposes as productive assets and amortized the acquisition cost over the breeding life of the hogs. For the preliminary determination, we capitalized the cost of acquiring the sows and boars used for breeding purposes (net of salvage values) and amortized the cost over their productive breeding life. The amortization expenses and all other costs incurred in the sow barns during the POI were allocated to the weanlings produced during the POI. *See* Memorandum to Neal M. Halper, ''Cost of Production and Constructed Value Adjustments for the Preliminary Determination,'' dated October 14, 2004 (''*COP/CV Adjustments Memorandum*'').

2. As we are treating the sows and boars as productive assets and we have assigned the portion of the cost that is recovered at the end of their productive life, the salvage value (*i.e.*, sales value), to the cost of the culled sows and boars. *See COP/CV Adjustments Memorandum.*

b. Respondent Specific Adjustments

If a particular cost respondent is not mentioned below, we only made the common cost adjustments, discussed above, for that cost respondent.

Ontario Pork: [5]

Farm A

1. We allocated Farm A's indirect costs based on the direct costs incurred in each of the different farm operations. We did not include the cost of feeder purchases or the labor costs imputed for

[4] Despite Premium Pork's claim that the ''pork check-off'' fees (*i.e.*, NPPC fee) were used to fund the antidumping duty case against live swine from Canada, the record evidence does not demonstrate that NPPC fees collected during the POI were spent for that purpose. Therefore, we have deducted NPPC fees as a direct selling expense.

[5] Due to the proprietary nature of the name of each producer, we have assigned an alphabetic character to each farmer (''cost respondent'') that will be used throughout this notice when referring to that specific farmer. A list or code key identifying the name associated with each cost respondent number can be found in the *COP/CV Adjustments Memorandum.*

the owners of Farm A in the direct costs used in the allocation ratio.

2. We adjusted the reported financial expense ratio to include an imputed interest expense on the interest free loan obtained from an affiliated party.

3. We decreased the cost of goods sold denominator used in the following calculations by the value of purchased swine: (1) The G&A expense ratio; (2) the interest expense ratio; and (3) the income offset for net income stabilization account (''NISA''). In addition, we increased the cost of goods sold denominator by the breeding stock amortization expense in the same three calculations. We also removed from the cost of goods sold denominator the salvage value of sows and boars sold from breeding stock.

Farm B

1. We revised the G&A expense ratio to reflect a gain on the disposal of sows.

2. We excluded the investment income claimed by Farm B as an offset to its reported interest expense.

3. Following the productive asset methodology for sows and boars, we allocated the general expenses and NISA income offset to market hogs only.

Farm D

1. The cost respondent submitted two cost of production calculations. The first calculation included each affiliate's cost of inputs supplied to Farm D. The second calculation reported the transfer price between Farm D and its affiliates for the inputs. For the preliminary determination, we applied section 773(f)(3) of the Act, the major input rule. In accordance with the major input rule, we adjusted the reported costs to the higher of the affiliated supplier's cost of production, the transfer price charged to Farm D or the market value of the input or service provided. *See COP/CV Adjustments Memorandum.*

2. The cost respondent allocated a portion of labor for an individual's management services between Farm D and the individual's own operations. For the preliminary determination, we revised the allocation methodology based on the ratio of expenses incurred by Farm D and the individual's own operations.

Hytek:

1. For purposes of reporting costs, Hytek collapsed all of its affiliated producers, suppliers and management companies. We have revised Hytek's reported costs by collapsing only the producing companies. For the remaining affiliates we applied the transactions disregarded rule or the major input rule, in accordance with section 773(f)(2) and (3) of the Act, respectively.

2. We revised the reported costs to allocate feed based on weight and all other costs based on the number of head produced.

3. In accordance with the major input rule, section 773(f)(3) of the Act, we have examined the major inputs (*i.e.*, feed and contract barns) received by Hytek (*i.e.*, the collapsed entities as a whole) from its affiliated parties and have revised the cost of the feed and contract barns to reflect the higher of the transfer price, COP, or market price (where available).

4. We increased Hytek's reported total G&A expenses by including certain non-operating expenses.

5. We revised Hytek's allocation of its reported further manufacturing labor costs. Hytek allocated labor costs solely based on the average number of growing weeks (*e.g.*, the number of weeks it takes an isowean to grow to market weight). We revised Hytek's allocation by first determining the total growing weeks for the total head produced for each type of swine (*i.e.*, average number of weeks multiplied by the total number of head produced). We then determined the relative labor costs for each type of swine based on the proportion of total growing weeks for each type of swine to the total number of growing weeks for all swine produced. For further discussion of the adjustments above see each respondent's *COP/CV Adjustments Memorandum.*

3. Test of Home Market Sales Prices

On a product-specific basis, we compared the adjusted weighted-average COP to the home market sales of live swine, as required under section 773(b) of the Act, in order to determine whether the sale prices were below the COP. The prices were adjusted for any applicable freight revenue, interest charges/allowances, cleaning allowances, cost of moving charges, late shipment storage charges, rail freight allowances, movement charges, billing adjustments, and direct and indirect selling expenses. In determining whether to disregard home market sales made at prices less than their COP, we examined whether such sales were made (1) within an extended period of time in substantial quantities, and (2) at prices which did not permit the recovery of all costs within a reasonable period of time.

With respect to testing home market sales prices, Ontario Pork maintains that live swine are highly perishable agricultural products and, thus, the Department should perform the substantial quantities test in accordance with section 773(b)(2)(C)(ii) of the Act (*i.e.*, compare the weighted average home market sales prices to weighted average COPs). In support of its position, Ontario Pork explains that market hogs have a very short ''shelf life,'' because they must be delivered within a 5 to 10 day window and if they are not sold within this window period, they lose significant value. In addition, Ontario Pork argues that live swine producers are price takers who cannot slow production or store inventory.

The petitioners claim that live swine are not highly perishable products and accordingly, the Department should not apply the weighted-average price-to-cost test in this case. The petitioners note that Ontario Pork has provided no evidence that its prices were actually affected by having to make deliveries outside the optimum window period. In addition, the petitioners note that Ontario Pork has provided no information as to how rapidly and significantly prices decline when sales are made outside the optimum window period.

For the preliminary determination, we have denied Ontario Pork's request to perform the substantial quantities test in accordance with section 773(b)(2)(C)(ii) of the Act. While the scenario discussed by Ontario Pork might support the alternative application of the substantial quantities test, there is not enough factual information on the record to support treating live swine as a highly perishable agricultural product. For example, more information is needed concerning the precise optimum sales window period, how quickly and significantly the swine loses value when sales are made outside this window period, and the extent to which home market prices were driven by this window period concern versus other factors. We will solicit more information from parties after the preliminary determination and will continue to analyze the issue for the final determination.

4. Results of the COP Test

Pursuant to section 773(b)(1), where less than 20 percent of the respondent's sales of a given product in the home market are at prices less than the COP, we do not disregard any below-cost sales of that product, because we determine that in such instances the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP, we determine that the below-cost sales represent ''substantial quantities'' within an extended period of time, in accordance with section

773(b)(1)(A) of the Act. In such cases, we also determine whether such sales were made at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1)(B) of the Act. If so, we disregard the below-cost sales.

We found that, for certain live swine producers, more than 20 percent of the home market sales within an extended period of time were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

B. Calculation of Normal Value Based on Home Market Prices

We determined price-based NVs for Ontario Pork and Hytek as follows. For these respondents, we deducted home market movement expenses pursuant to sections 773(a)(6)(A) and 773(a)(6)(B)(ii) of the Act. In addition, where applicable in comparison to EP and CEP transactions, we made adjustments for differences in circumstances of sale (''COS'') pursuant to section 773(a)(6)(C)(iii) of the Act.

The company-specific COS adjustments are described below.

1. Ontario Pork

We made COS adjustments for Ontario Pork's EP transactions by deducting direct selling expenses incurred for home market sales (credit expenses, advertising expenses, and grading fees) and adding U.S. direct selling expenses (credit expenses). We also made adjustments by adding or subtracting billing adjustments reported as ''window pricing adjustments'' which Ontario Pork makes pursuant to cash flow clauses in certain supply agreements. For matches of similar merchandise, we made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act.

Ontario Pork reported sales of organic slaughter hogs, which it made exclusively in the home market during the POI. To determine if these sales were made in the ordinary course of trade, within the meaning of section 771(15) of the Act, we compared organic sales to Ontario Pork's sales non-organic merchandise. Specifically, we compared the volume of sales, prices, types of customers, and customers' and end-users' expectations. We found that Ontario Pork's organic hog sales (1) constituted a negligible volume in comparison to non-organic hogs sold in the home market; (2) were priced significantly higher than non-organic hogs; (3) were sold to a single Canadian customer who specializes in processing and distributing organic products; and (4) were eventually sold to organic food retailers whose customers/end-users perceive the organic swine products to provide health benefits from the organic raising, feeding and production of the end-product. For these reasons, we preliminarily determine that Ontario Pork's sales of organic hogs were made outside the ordinary course of trade. Therefore, we have disregarded these sales for purposes of calculating normal value.

2. Hytek

For comparison to Hytek's EP sales, we made COS adjustments to Hytek's home market prices by deducting direct selling expenses incurred for home market sales (credit expenses, Provincial Pork Council fees, and Canadian Food Inspection Agency fees) and adding U.S. direct selling expenses (credit expenses and bank charges). For comparisons made to CEP sales, we deducted home market direct selling expenses, but did not add U.S. direct selling expenses. When comparing U.S. sales to home market sales of similar merchandise, we made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act.

C. Calculation of Normal Value Based on Constructed Value

Section 773(a)(4) of the Act provides that, where NV cannot be based on comparison-market sales, NV may be based on CV. Accordingly, for live swine for which we could not determine the NV based on comparison-market sales because there were no sales of a comparable product or because all sales of the comparison products failed the COP test, we based NV on CV.

Section 773(e)(1) of the Act provides that CV shall be based on the sum of the cost of materials and fabrication for the imported merchandise plus amounts for selling, general, and administrative expenses (''SG&A''), profit, and U.S. packing expenses. We calculated the cost of materials and fabrication for Ontario Pork and Hytek based on the methodology described in the COP section of this notice. We based SG&A and profit on the actual amounts incurred and realized by the respondents in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the comparison market, in accordance with section 773(e)(2)(A) of the Act, where possible.

For Premium Pork, we followed the methodology described in the ''Cost Respondent Adjustments: Common to All Swine Producers for All Respondents'' section, above. Additionally, we made the following adjustments to Premium Pork's reported costs:

1. For reporting purposes, Premium Pork collapsed all of its affiliated producers, suppliers and management companies. We have revised Premium Pork's reported costs by collapsing only the producing companies. For the remaining affiliates, we applied the transactions disregarded rule or the major input rule, in accordance with sections 773(f)(2) and (3) of the Act, respectively.

2. We revised the reported costs to reflect the higher of transfer or market price for purchases of semen inputs and leased facilities from affiliated companies in accordance with section 773(f)(2) of the Act. In the absence of a market price, we compared the transfer price to the affiliate's cost of production.

3. We weight-averaged the gross unit prices for Premium Pork's sales of culled sows and boars to calculate the salvage value for culled sows and boars.

4. We revised the reported costs to allocate feed based on weight and all other costs based on the number of head produced.

5. We revised the G&A expense ratio to exclude the costs of the affiliated management companies. Instead, we included the fees paid by the collapsed production companies to the affiliated management companies.

6. We revised the financial expense ratio to exclude the expenses incurred by the affiliated management companies. Instead, we included the expenses paid by the collapsed production companies to the affiliated management companies and shareholders.

7. We revised the reported further manufacturing G&A expense ratio to exclude costs of the affiliated management companies. Instead, we included the fees paid by the production companies to the affiliated management companies.

8. We revised the further manufacturing financial expense ratio to exclude the expenses incurred by the affiliated management companies. Instead, we included the expenses paid by the production companies to the affiliated management companies.

9. Because we preliminarily determine that a ''particular market situation'' exists with respect to Premium Pork's home market, the Department cannot determine the company's profit under section

773(e)(2)(A) or (B)(i) of the Act. Therefore, we calculated profit based on the weighted average actual profit incurred and realized by Ontario Pork and Hytek, the other two producers and exporters of the subject merchandise in this investigation, in accordance with section 773(e)(2)(B)(ii) of the Act. We used the weighted average, instead of a simple average, because a simple average would reveal proprietary information.

10. We based Premium Pork's CV selling expenses on the weighted average selling expenses incurred and realized by Ontario Pork and Hytek.

For Ontario Pork and Hytek, we made adjustments to CV for differences in COS in accordance with section 773(a)(8) of the Act and section 351.410 of the Departments regulations.

Company-specific adjustments are described below.

(1) Ontario Pork

For EP comparisons, we deducted direct selling expenses incurred for home market sales (credit expenses, advertising expenses, and grading fees) and added U.S. direct selling expenses (credit expenses) to the NV.

(2) Hytek

For CEP and EP comparisons, we deducted direct selling expenses incurred for home market sales (credit expenses, Provincial Pork Council fees, and Canadian Food Inspection Agency fees). For EP sales, we added U.S. direct selling expenses (credit expenses, and bank charges) to the NV.

(3) Premium Pork

Because we are disregarding Premium Pork's home market sales, we weight-averaged the home market direct selling expense ratios for Ontario Pork and Hytek to calculated a proxy for Premium Pork's COS adjustments. Using this proxy, we deducted direct selling expenses incurred for home market sales for CEP and EP comparisons. For EP sales, we added U.S. direct selling expenses (credit expenses) to the NV.

D. Affiliated-Party Transactions and Arm's Length Test

(1) Ontario Pork

Ontario Pork does not have any affiliates and, therefore, Ontario Pork did not report home market sales to affiliates. However, in some instances during the POI, Ontario Pork sold slaughter hogs in the home market to customers affiliated with producers of the merchandise sold by Ontario Pork.

Ontario Pork is a non-profit organization established by the Farm Products Marketing Act and the Agricultural Products Marketing Act to market and sell all slaughter hogs produced in Ontario. Pursuant to these Acts, all sales of Ontario-produced slaughter hogs, including sales to producers' affiliates, are controlled by Ontario Pork in terms of invoicing, pricing, quantity, quality, payment terms, delivery and other essential terms of sale. Therefore, we preliminarily determine that all of Ontario Pork's home market sales of the foreign like product were sales to unaffiliated customers, and we have treated them accordingly.

(2) Hytek

Hytek did not report home market sales of the foreign like product to affiliates because all of its sales to affiliates that were subsequently resold in the same form were sales of breeding swine, which have been excluded from the scope of investigation, or were substantially transformed (*e.g.*, from a feeder hog to a full-weight market hog) by the affiliate before being resold. In the latter instances, Hytek has reported the affiliate's sale to the unaffiliated customer.

(3) Premium Pork

As stated above, we preliminarily determine that a ''particular market situation'' exists with respect to Premium Pork's home market and we have disregarded the company's home market sales. Therefore, we have not analyzed whether Premium Pork's home market prices were at arm's length.

E. Level of Trade/CEP Offset

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade as the EP or CEP transaction. The NV level of trade is that of the starting-price sale in the comparison market or, when NV is based on CV, that of the sale from which we derive SG&A expenses and profit. For EP sales, the U.S. level of trade is also the level of the starting-price sale, which is usually from exporter to importer. For CEP transactions, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different level of trade than EP or CEP transactions, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different level of trade and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the level of trade of the export transaction, we make a level-of-trade adjustment under section 773(a)(7)(A) of the Act. For CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP-offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61733, 61746 (November 19, 1997).

In implementing these principles in this investigation, we obtained information from the respondents about the marketing stages involved in the reported U.S. and home market sales, including a description of the selling activities performed by the respondents for each channel of distribution. In identifying levels of trade for EP and home market sales, we considered the selling functions reflected in the starting price before any adjustments. For CEP sales, we considered only the selling activities reflected in the price after the deduction of expenses pursuant to section 772(d) of the Act.

In conducting our level-of-trade analysis for each respondent, we examined the specific types of customers, the channels of distribution, and the selling practices of the respondent. Generally, if the reported levels of trade are the same, the functions and activities of the seller should be similar. Conversely, if a party reports levels of trade that are different for different categories of sales, the functions and activities may be dissimilar. We found the following with respect to each respondent:

(1) Ontario Pork

Ontario Pork reported the same channel of distribution and one level of trade for sales in the home market and to the United States. For all of its home market and EP sales, the selling functions Ontario Pork performed for its different customer categories were virtually identical, differing only with respect to whether Ontario Pork arranged transportation or the producer transported the merchandise sold. Therefore, we preliminarily determine that Ontario Pork's EP and home market levels of trade are the same and that none of the additional adjustments described in section 773(a)(7)(B) of the Act are warranted for Ontario Pork.

(2) Hytek

Hytek reported one channel of distribution for the home market sales. Hytek sells to finishing barns, packers, and culled sow coordinators and sausage producers. To determine whether separate levels of trade exist in the home market, we examined the stages in the marketing process, customer categories, and selling functions along the chain of distribution between Hytek and its customers. Based on this examination, we preliminarily determine that Hytek sold merchandise at one level of trade in the home market during the POI because the selling functions incurred for each product type and to each customer category were identical.

In the U.S. market, Hytek reported two channels of distribution. The channels of distribution are: (1) EP and CEP sales to U.S. customers and (2) further manufactured CEP sales by Hytek's U.S. affiliate to U.S. customers. Hytek's first channel of trade includes feeder pigs sold directly, or through unaffiliated Canadian trading companies, to U.S. finishers, and market hogs sold directly to U.S. packers through unaffiliated Canadian trading companies or through companies affiliated with Hytek.

To determine whether separate levels of trade exist for sales to the United States, we examined the selling functions, the chains of distribution, and the customer categories reported for sales to the United States. With regard to the U.S. sales of further manufactured products, which were all CEP sales, we considered only the selling activities reflected in the price after the deduction of expenses and profit covered in section 772(d) of the Act.

We preliminarily determine that EP and CEP sales by Hytek were made at the same level of trade because they involve the same selling functions for each customer category and channel of distribution. In addition, we preliminarily determine that Hytek's home market and U.S. sales were made at the same level of trade because the selling activities were virtually identical in each market. Therefore, we preliminarily determine that none of the additional adjustments described in section 773(a)(7)(B) of the Act are warranted for Hytek.

(3) Premium Pork

We based Premium Pork's NV on CV because a particular market situation exists in it's home market and Premium Pork did not have a viable third country market. When NV is based on CV, the NV LOT is that of the sales from which we derive SG&A expenses and profit. *See Notice of Preliminary Determination of Sales at Less Than Fail Value and Postponement of Final Determination: Fresh Atlantic Salmon from Chile*, 63 FR 2664 (January 16, 1998). Because we based the selling expenses and profit for Premium Pork on the weighted-average selling expenses incurred and profit earned by the other respondents in this investigation, we are unable to determine the LOT of the sales from which we derived selling expenses and profit for CV. Hence, there is insufficient record information to determine whether there is a difference between any U.S. sale by Premium Pork and CV. Therefore, we did not make a LOT adjustment to NV or a CEP offset.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve.

Verification

As provided in section 782(i) of the Act, we will verify all information to be used in making our final determinations.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing the U.S. Bureau of Customs and Border Protection (''CBP'') to suspend liquidation of all imports of subject merchandise from Canada, except imports of subject merchandise produced and exported by Hytek, Inc., which has a *de minimis* rate, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP or CEP, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
Ontario Pork Producers' Marketing Board	13.25
Hytek, Inc.	*0.38
Premium Pork Canada, Inc.	15.01
All Others	14.06

* *De minimis.*

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether imports of live swine are materially injuring, or threaten material injury to, the U.S. swine industry.

Disclosure

We will disclose the calculations used in our analyses to parties in these proceedings in accordance with section 351.224(b) of the Department's regulations.

Public Comment

Case briefs for these investigations must be submitted to the Department no later than 50 days after the date of publication of this preliminary determination or one week after the issuance of the last verification report, whichever is later. Rebuttal briefs must be filed five days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

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

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

As discussed in the ''Postponement of Final Determination'' section, above, we have extended the deadline for issuance of the final determination until the 135th day after the date of publication of this preliminary determination in the **Federal Register**. These determinations are published pursuant to sections 733(f) and 777(i) of the Act.

Dated: October 14, 2004.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E4–2731 Filed 10–19–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–816]

Certain Stainless Steel Butt-Weld Pipe Fittings From Taiwan: Extension of Time Limit for Final Results of Antidumping Duty Administrative Review

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

ACTION: Notice of extension of time limit for final results of antidumping duty administrative review.

SUMMARY: The Department of Commerce (''the Department'') is extending the time limit for the final results of the review of stainless steel butt-weld pipe fittings from Taiwan. This review covers the period June 1, 2002, through May 31, 2003.

EFFECTIVE DATE: October 20, 2004.

FOR FURTHER INFORMATION CONTACT: Irene Gorelik, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–6905.

Background

On July 7, 2004, the Department published the preliminary results of the administrative review of the antidumping duty order on stainless steel butt-weld pipe fittings from Taiwan. *See Certain Stainless Steel Butt-Weld Pipe Fittings From Taiwan: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent To Rescind in Part,* 69 FR 40859 (July 7, 2004). The final results of this administrative review are currently due no later than November 4, 2004.

Extension of Time Limit for Final Results

Section 751(a)(3)(A) of the Act states that if it is not practicable to complete the review within the time specified, the administering authority may extend the 120-day period, following the date of publication of the preliminary results, to issue its final results by an additional 60 days. Completion of the final results within the 120-day period is not practicable for the following reasons: (1) This review involves certain complex constructed export price (''CEP'') adjustments including, but not limited to CEP profit and CEP offset; and (2) this review involves a complex affiliation issue.

Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time period for issuing the final results of review by 45 days until no later than December 20, 2004.

Dated: October 14, 2004.

Jeffrey A. May,

Deputy Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–502]

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

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

SUMMARY: On April 8, 2004, the Department of Commerce (''the Department'') published in the **Federal Register** the preliminary results of its administrative review of the antidumping duty order on certain welded carbon steel pipes and tubes from Thailand (69 FR 18539). This review covers Saha Thai Steel Pipe Company, Ltd. (''Saha Thai''), a manufacturer/exporter of the subject merchandise. The period of review (POR) is March 1, 2002, through February 28, 2003.

Based on our analysis of the comments received, the final results differ from the preliminary results of review. The final weighted–average dumping margin for the reviewed firm is listed below in the section entitled ''Final Results of the Review.''

EFFECTIVE DATE: October 20, 2004.

FOR FURTHER INFORMATION CONTACT: Javier Barrientos or Mark Hoadley, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–2243 and (202) 482–3148, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 8, 2004, the Department published its preliminary results in this administrative review. *See Certain Welded Carbon Steel Pipes and Tubes From Thailand: Preliminary Results of Antidumping Duty Administrative Review*, 69 FR 18539 (April 8, 2004). On April 27, 2004, we issued Saha Thai's sales verification report. *See Memorandum to the File, from Javier Barrientos, AD/CVD Financial Analyst, and Jaqueline Arrowsmith, Case Analyst, through Sally Gannon, Program Manager; Verification of Questionnaire Responses submitted by Saha Thai Steel Pipe Company, Ltd. (''Saha Thai'')*, April 27, 2004. We invited parties to comment on the preliminary results. The petitioners, Allied Tube & Conduit Corporation and Wheatland Tube Co., and Saha Thai submitted timely case briefs on May 24, 2004. Timely rebuttal briefs from both parties were submitted on June 2, 2004. Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (hereinafter, ''the Act''), the Department extended the final results of review to October 5, 2004. *See Certain Welded Carbon Steel Pipes and Tubes from Thailand: Notice of Extension of Time Limit for Final Results of Antidumping Duty Administrative Review*, 69 FR 48454.

(August 10, 2004).

The Department has conducted this administrative review in accordance with section 751 of the Act, as amended.

Scope of the Antidumping Order

The products covered by this antidumping order are certain welded carbon steel pipes and tubes from Thailand. The subject merchandise has an outside diameter of 0.375 inches or more, but not exceeding 16 inches. These products, which are commonly referred to in the industry as ''standard pipe'' or ''structural tubing,'' are hereinafter designated as ''pipe and tube.'' The merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) item numbers 7306.30.1000, 7306.30.5025, 7306.30.5032, 7306.30.5040, 7306.30.5055, 7306.30.5085, and 7306.30.5090. Although the HTSUS subheadings are provided for convenience and purposes of U.S. Customs and Border Protection (CBP), our written description of the scope of the order is dispositive.