

UNITED STATES INTERNATIONAL TRADE COMMISSION

LIVE CATTLE FROM CANADA
Investigation No. 731-TA-812 (Final)

DETERMINATION AND VIEWS OF THE COMMISSION
(USITC Publication No. 3255, November 1999)

UNITED STATES INTERNATIONAL TRADE COMMISSION

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LIVE CATTLE FROM CANADA

DETERMINATION

On the basis of the record¹ developed in the subject investigation, the United States International Trade Commission determines,² pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Canada of live cattle, provided for in subheading 0102.90.40 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

BACKGROUND

The Commission instituted this investigation effective November 12, 1998, following receipt of a petition filed with the Commission and the Department of Commerce by the Ranchers-Cattlemen Action Legal Foundation ("R-Calf") (Columbus, MT). The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by the Department of Commerce that imports of live cattle from Canada were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Notice of the scheduling of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of August 16, 1999 (64 FR 44538). The hearing was held in Washington, DC, on October 6, 1999, and all persons who requested the opportunity were permitted to appear in person or by counsel.

¹ The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

² Chairman Lynn M. Bragg dissenting.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on November 19, 1999. The views of the Commission are contained in USITC Publication 3255 (November 1999), entitled *Live Cattle from Canada: Investigation No. 731-TA-812 (Preliminary)*.

By order of the Commission.

Donna R. Koehnke

Secretary

Issued:

VIEWS OF THE COMMISSION

Based on the record in this investigation, we find that an industry in the United States is not materially injured or threatened with material injury by reason of imports of live cattle from Canada that are sold in the United States at less than fair value ("LTFV").^{1 2 3}

I. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. IN GENERAL

To determine whether an industry in the United States is materially injured or threatened with material injury by reason of imports of the subject merchandise, the Commission first defines the "domestic like product" and the "industry."⁴ Section 771(4)(A) of the Tariff Act of 1930, as amended ("the Act"), defines the relevant industry as the "producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product."⁵ In turn, the Act defines "domestic like product" as: "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation. . . ."⁶

The decision regarding the appropriate domestic like product(s) in an investigation is a factual determination, and the Commission has applied the statutory standard of "like" or "most similar in characteristics and uses" on a case-by-case basis.⁷ No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.⁸ The Commission looks for clear dividing lines among possible like products, and disregards minor

¹ Chairman Bragg determines that an industry in the United States is materially injured by reason of imports of live cattle from Canada that are sold in the United States at LTFV. See Dissenting Views of Chairman Lynn M. Bragg, *infra*. She does not join this opinion.

² Commissioner Crawford joins sections I, II.A., and II.B. of these views. See Views of Commissioner Carol T. Crawford, *infra*.

³ Commissioner Askey joins sections I, II.A., and III of these views. She writes separately to explain her determination that the domestic industry producing live cattle is not materially injured by reason of the subject imports. See Concurring Views of Commissioner Thelma J. Askey, *infra*.

⁴ 19 U.S.C. § 1677(4)(A).

⁵ 19 U.S.C. § 1677(4)(A).

⁶ 19 U.S.C. § 1677(10).

⁷ See, e.g., NEC Corp. v. Department of Commerce, Slip Op. 98-164 at 8 (Ct. Int'l Trade, Dec. 15, 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Torrington Co. v. United States, 747 F. Supp. 744, 749, n.3 (Ct. Int'l Trade 1990), aff'd, 938 F.2d 1278 (Fed. Cir. 1991) ("every like product determination 'must be made on the particular record at issue' and the 'unique facts of each case'"). The Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes and production employees; and, where appropriate, (6) price. See The Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int'l Trade 1996).

⁸ See, e.g., S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979).

variations.⁹ Although the Commission must accept the determination of the Department of Commerce (“Commerce”) as to the scope of the imported merchandise sold at LTFV, the Commission determines what domestic product is like the imported articles Commerce has identified.¹⁰

B. PRODUCT DESCRIPTION AND DOMESTIC LIKE PRODUCT

In its final determination, Commerce defined the imported merchandise within the scope of this investigation as:

all live cattle except imports of (1) bison, (2) dairy cows for the production of milk for human consumption, and (3) purebred cattle and other cattle specially imported for breeding purposes.¹¹

In the preliminary phase of this investigation, the Commission determined that there was a single domestic like product encompassing all stages of development for “live cattle,” and corresponding with the description of the subject merchandise.¹² Employing a semifinished product analysis, the Commission found that there are three primary developmental stages for cattle -- calf stage, stocker/yearling stage, and feeder stage -- prior to the immediate slaughter or fed cattle stage.¹³ The record indicated that cattle at each

⁹ Nippon Steel, 19 CIT at 455; Torrington, 747 F. Supp. at 748-49. See also S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979) (Congress has indicated that the like product standard should not be interpreted in “such a narrow fashion as to permit minor differences in physical characteristics or uses to lead to the conclusion that the product and article are not ‘like’ each other, nor should the definition of ‘like product’ be interpreted in such a fashion as to prevent consideration of an industry adversely affected by the imports under consideration.”)

¹⁰ Hosiden Corp. v. Advanced Display Mfrs., 85 F.3d 1561, 1568 (Fed. Cir. 1996) (Commission may find single like product corresponding to several different classes or kinds defined by Commerce); Torrington, 747 F. Supp. at 748-752 (affirming Commission determination of six like products in investigations where Commerce found five classes or kinds).

¹¹ See Notice of Final Determination of Sales at Less Than Fair Value: Live Cattle from Canada, 64 Fed. Reg. 56739 (October 21, 1999). Confidential Report (“CR”) at A-5; Public Report (“PR”) at A-5. The subject merchandise is all cattle and calves, regardless of breed or size, for slaughter as well as stocker and feeder cattle imported for feeding on rangelands or feedlots prior to slaughter. Cull cattle, which are milk cows and breed stock that are at the end of their useful life, that are imported for slaughter also are included. CR/PR at II-4.

¹² Live Cattle From Canada and Mexico, Inv. Nos. 701-TA-386 and 731-TA-812-813 (Preliminary), USITC Pub. 3155 at 4-7 (Feb. 1999)(“Live Cattle-Prelim.”). A subset of the calf group are calves raised to be slaughtered for veal, which also are included in the scope of the investigation. We included veal calves in the single domestic like product in our preliminary determination. No party proposed that veal cattle be considered a separate domestic like product, and we see no reason to do so based on the record before us. Accordingly, we include veal calves in the single domestic like product.

¹³ Live Cattle-Prelim., USITC Pub. 3155 at 5. The first stage consists of calves, which typically are raised with their mothers from birth to weaning at five to ten months and weigh between 400 to 650 pounds. The second stage consists of yearlings or stockers, which typically are calves weaned from their mothers and kept on stocker/yearling operations or ranches in pastures, pens, and fields and are fed on available forage and high-value roughage feeds (such as sugar beet tops and corn stalks) or grazed on wheat pasture. Cattle are considered stockers at weights between 400 pounds to 650 or 750 pounds, which generally is until they are 12 to 20 months of age. The third stage is the feeder stage, when cattle are placed in feedlots or confined areas for about three to five months and are fed on finishing, high-energy rations, typically corn and protein supplements and some roughage. Feeder cattle generally weigh between 650 or 750 pounds and 1,100 to 1,300 pounds. The final stage is fed cattle ready for immediate slaughter, when cattle are about 15 to 24 months old and weigh between 1,100 and 1,300 pounds. CR at I-4 - I-8.

stage of development are dedicated to progression to the next stage and ultimately to development as fed cattle for slaughter; thus, cattle have no independent use or function other than eventually to be slaughtered for beef. Moreover, cattle display their essential characteristics at birth, which vary depending primarily on breed and sex, and are enhanced through the development process. Customers and producers perceive one ultimate end-use market for cattle, the market for beef. However, typically cattle will be sold at different stages of development.¹⁴ While the transformation from calf to fed cattle is significant, particularly given the fact that the animal doubles or triples in size from weaned calf to slaughter, the extent of additional “processing” is not particularly complex, and principally involves providing the appropriate feed for cattle at each stage of development. Finally, the primary expenses for an operator at any one stage of production appear to be the cost of acquiring the cattle and/or the cost of feed.¹⁵

The parties do not dispute our like product finding in the preliminary determination. They presented no new evidence or new arguments to warrant changing our finding in this final phase of the investigation.¹⁶ Accordingly, for the same reasons articulated in the preliminary determination, we determine that there is a single domestic like product in this investigation, consisting of “live cattle,” corresponding to Commerce’s description of the subject merchandise.

C. DOMESTIC INDUSTRY AND RELATED PARTIES

The domestic industry is defined as “the producers as a [w]hole of a domestic like product . . .”¹⁷ In defining the domestic industry, the Commission’s general practice has been to include in the industry all of the domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market, provided that adequate production-related activity is conducted in the United States.¹⁸

In the preliminary phase of this investigation, the Commission defined the domestic industry to include all operators involved in the production of the domestic like product, including cow-calf operators, stocker/yearling operators, and feedlot operators.^{19 20} We have been presented with no new evidence or new arguments to warrant changing our finding in this final phase of the investigation.²¹ Accordingly, we

¹⁴ However, the stage at which cattle are sold varies from operation to operation, and within each operation from year to year, depending on weather, economic factors, prices for grain and/or cattle, and operation-specific factors. Live Cattle-Prelim., USITC Pub. 3155 at 6; CR/PR at III-1 and III-2.

¹⁵ CR/PR at VI-5

¹⁶ CR at I-3 - I-11. Tr. at 259 (Counsel for Canadian Cattlemen’s Association (“Canadian Respondent”) indicated that “we are not taking issue with that [preliminary determination] definition of a like product.”). Petitioner indicated that it concurred with the Commission’s preliminary determination definition of the domestic like product and domestic industry. Petitioner’s Prehearing Brief at 7-16.

¹⁷ 19 U.S.C. § 1677(4)(A).

¹⁸ See United States Steel Group, et al. v. United States, 873 F. Supp. 673, 681-684 (Ct. Int’l Trade 1994), aff’d, 96 F. 3d 1352 (Fed. Cir. 1996).

¹⁹ Live Cattle-Prelim, USITC Pub. 3155 at 8. We found that the operations involved in each of the stages of development play an integral, and roughly equivalent, role in the progression from calves to fed cattle and, thus, that such operations engage in sufficient production-related activity to be included in the domestic industry, regardless of origin of the cattle. Id.

²⁰ The statutory processed agricultural products provision is not applicable to these investigations since the domestic like product is the upstream raw agricultural product, “live cattle,” and not a downstream processed agricultural product. See 19 U.S.C. § 1677(4)(E).

²¹ Petitioner concurred in the Commission’s definition of the domestic industry in the preliminary determination and urged the Commission to “decline any invitation to engage in a segmented analysis of the domestic industry

reaffirm our definition of the domestic industry to include all producers involved in the various stages of production of the domestic like product.

We must further determine whether any producer of the domestic like product should be excluded from the domestic industry pursuant to the related parties provision in 19 U.S.C. § 1677(4)(B). That provision allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry producers that are related to an exporter or importer of subject merchandise, or which are themselves importers.²² Exclusion of such a producer is within the Commission's discretion based upon the facts presented in each case.²³

In the preliminary determination, the Commission did not exclude any domestic producers as related parties.²⁴ In the final phase of this investigation, no party argued that any domestic producers should be excluded as a related party.²⁵

While the record contains information concerning importers of cattle from Canada,²⁶ there is only limited information regarding the domestic producers with whom they have some type of a relationship.²⁷ The information on the record regarding importers generally involves imports of subject merchandise by

and the impact of subject imports." Petitioner's Prehearing Brief at 17-21. Canadian Respondents, however, suggested that the Commission should consider the different segments of the market in its analysis. Tr. at 259; Canadian Respondents' Prehearing Brief at 24 and 25; Canadian Respondents' Posthearing Brief at 12-14.

²² 19 U.S.C. § 1677(4)(B).

²³ Sandvik AB v. United States, 721 F. Supp. 1322, 1331-32 (Ct. Int'l Trade 1989), aff'd without opinion, 904 F.2d 46 (Fed. Cir. 1990); Empire Plow Co. v. United States, 675 F. Supp. 1348, 1352 (Ct. Int'l Trade 1987). The primary factors the Commission has examined in deciding whether appropriate circumstances exist to exclude the related parties include: (1) the percentage of domestic production attributable to the importing producer; (2) the reason the U.S. producer has decided to import the product subject to investigation, i.e., whether the firm benefits from the LTFV sales or subsidies or whether the firm must import in order to enable it to continue production and compete in the U.S. market; and (3) the position of the related producers vis-a-vis the rest of the industry, i.e., whether inclusion or exclusion of the related party will skew the data for the rest of the industry. See, e.g., Torrington Co. v. United States, 790 F. Supp. 1161, 1168 (Ct. Int'l Trade 1992), aff'd without opinion, 991 F.2d 809 (Fed. Cir. 1993). The Commission also has considered the ratio of import shipments to U.S. production for related producers and whether the primary interest of the related producers lie in domestic production or in importation. See, e.g., Melamine Institutional Dinnerware from China, Indonesia and Taiwan, Inv. Nos. 731-TA-741-743 (Final), USITC Pub. 3016 at 14, n.81 (Feb. 1997).

²⁴ Live Cattle-Prelim., USITC Pub. 3155 at 8-10.

²⁵ Petitioner acknowledged the practicality of the Commission's finding in its preliminary determination. Petitioner in the final phase maintained that it was not "necessary to exclude per se from the domestic industry feedlots that are owned by large integrated producers who also import Canadian cattle and/or operate feedlot and slaughter facilities in Canada. Petitioner instead proposed that the "Commission should not use the positions of such domestic producers who could be excluded from the domestic industry under the related parties provision in a manner that would be adverse to the petitioner." Petitioner's Prehearing Brief at 22-23; Petitioner's Posthearing Brief, Response to Questions by Chairman Bragg at 29. The Packer Respondents indicated that the "Commission properly recognized . . . [the] fact [that the feedlot operations of U.S. packers do not account for a 'significant share' of domestic production] in its preliminary analysis" and contended that the related party issue "should have little effect on the Commission's analysis." Joint Packers' Posthearing Brief, Attachment 1 at 28 and 29.

²⁶ Importers responding to the Commission's importers questionnaire accounted for at least 66 percent of subject imports from Canada in 1998. CR/PR at IV-2 and 3.

²⁷ For example, the largest beef packer, IBP, which accounted for *** of cattle imports from Canada in 1998, reportedly entered a risk-sharing arrangement for the production of cattle in 1997 with a cattle producer in the Northwest United States; no further information regarding identification or size of the cattle producer has been available. Commission's Prehearing Staff Report at IV-2 and CR/PR at IV-2 - IV-3.

packers, which are not members of the domestic industry, rather than by domestic producers such as feedlots. However, some domestic producers still may be deemed related parties despite not being importers of subject merchandise because they directly or indirectly control, or are controlled by, an importer, such as a packer, or an exporter of subject merchandise.

The record, however, does not contain individual domestic producer data to determine whether appropriate circumstances exist to exclude them from the domestic industry. Thus, there is no individual producer data to exclude even if appropriate circumstances were found to exist. The domestic cattle industry comprises over a million operations, and no domestic producer of live cattle accounts for more than a very small share of domestic production.²⁸ Thus, we do not exclude any domestic producers as related parties.

II. NO MATERIAL INJURY BY REASON OF SUBJECT IMPORTS

In the final phase of antidumping duty investigations, the Commission determines whether an industry in the United States is materially injured by reason of the imports under investigation.^{29 30} In making this determination, the Commission must consider the volume of imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.³¹ The statute defines “material injury” as “harm which is not

²⁸ CR/PR at Tables III-1, III-2, and III-3.

²⁹ 19 U.S.C. § 1673d(b).

³⁰ Commissioner Crawford notes that the statute requires that the Commission determine whether a domestic industry is “materially injured by reason of” the LTFV imports. She finds that the clear meaning of the statute is to require a determination of whether the domestic industry is materially injured by reason of unfairly traded imports, not by reason of the unfairly traded imports among other things. Many, if not most, domestic industries are subject to injury from more than one economic factor. Of these factors, there may be more than one that independently are causing material injury to the domestic industry. It is assumed in the legislative history that the “ITC will consider information which indicates that harm is caused by factors other than less-than-fair-value imports.” S. Rep. No. 249, 96th Cong., 1st Sess. 75 (1979). However, the legislative history makes it clear that the Commission is not to weigh or prioritize the factors that are independently causing material injury. *Id.* at 74; H.R. Rep. No. 317, 96th Cong., 1st Sess. 46-47 (1979). The Commission is not to determine if the unfairly traded imports are “the principal, a substantial or a significant cause of material injury.” S. Rep. No. 96-249 at 74 (1979). Rather, it is to determine whether any injury “by reason of” the unfairly traded imports is material. That is, the Commission must determine if the subject imports are causing material injury to the domestic industry. “When determining the effect of imports on the domestic industry, the Commission must consider all relevant factors that can demonstrate if unfairly traded imports are materially injuring the domestic industry.” S. Rep. No. 71, 100th Cong., 1st Sess. 116 (1987) (emphasis added); Gerald Metals v. United States, 132 F.3d 716 (Fed. Cir. 1997) (rehearing denied).

For a detailed description and application of Commissioner Crawford’s analytical framework, *see* Certain Steel Wire Rod from Canada, Germany, Trinidad & Tobago, and Venezuela, Inv. Nos. 731-TA-763-766 (Final), USITC Pub. 3087 at 29 (March 1998) and Steel Concrete Reinforcing Bars from Turkey, Inv. No. 731-TA-745 (Final), USITC Pub. 3034 at 35 (April 1997). Both the Court of International Trade and the United States Court of Appeals for the Federal Circuit have held that the “statutory language fits very well” with Commissioner Crawford’s mode of analysis, expressly holding that her mode of analysis comports with the statutory requirements for reaching a determination of material injury by reason of the subject imports. United States Steel Group v. United States, 96 F.3d 1352, 1361 (Fed. Cir. 1996), *aff’g* 873 F. Supp. 673, 694-95 (Ct. Int’l Trade 1994).

³¹ 19 U.S.C. § 1677(7)(B)(i). The Commission “may consider such other economic factors as are relevant to the determination” but shall “identify each [such] factor . . . and explain in full its relevance to the determination.” 19 U.S.C. § 1677(7)(B). *See also* Angus Chemical Co. v. United States, 140 F.3d 1478 (Fed. Cir. 1998).

inconsequential, immaterial or unimportant.”³² In assessing whether the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United States.³³ No single factor is dispositive, and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”³⁴

For the reasons discussed below, we determine that the domestic industry producing live cattle is not materially injured or threatened with material injury by reason of subject imports from Canada.

A. INFORMATION AVAILABLE IN THIS FINAL INVESTIGATION

The domestic live cattle industry is extremely large and dispersed.³⁵ Thus, forwarding questionnaires to all domestic producers of the domestic like product -- live cattle at any stage of development -- or developing a sampling methodology was impractical.³⁶ The Commission has reliable, comprehensive and complete information for this investigation from secondary sources.^{37 38} The necessary domestic producer data were obtained primarily from data compiled by USDA.³⁹ Official import statistics, which were divided by weight categories, were used for import data.⁴⁰ In fact, the comprehensiveness of the information available from secondary sources for this industry allowed us to obtain and analyze data

³² 19 U.S.C. § 1677(7)(A).

³³ 19 U.S.C. § 1677(7)(C)(iii).

³⁴ 19 U.S.C. § 1677(7)(C)(iii).

³⁵ In 1998, there were 1,115,650 operations (including cow-calf operators, stocker/yearling operators, feedlot operators) of live cattle in the United States. CR/PR at III-1. The feedlot sector had 104,071 operations in 1998. CR/PR at III-2. Because of significant overlap between operations that perform backgrounding and the cow-calf operators, there is no information regarding the precise number of operations in each of those segments.

³⁶ The Court of International Trade (CIT) in Chung Ling acknowledged that it would be “impractical given the time constraints for completing its investigation” for the Commission to attempt to obtain absolute coverage utilizing questionnaires for “an industry comprised of more than 1,000 producers,” in a final investigation. Chung Ling Co. v. U.S., 805 F. Supp.45, 49 (Ct. Int’l Trade 1992).

³⁷ The statute directs the Commission to “use the facts otherwise available” if the necessary information is not available on the record. 19 U.S.C. § 1677e(a). The statute further cautions that when “the Commission relies on secondary information rather than on information obtained in the course of an investigation or review . . . the Commission . . . shall, to the extent practicable, corroborate that information from independent sources that are reasonably at their disposal.” 19 U.S.C. § 1677e(c). In this case, the secondary information comes from the type of independent sources that would normally be used for corroboration.

³⁸ The CIT has supported use of secondary source data when the Commission determined that questionnaire responses did not provide an adequate basis for making its determination. Alberta Pork Producers' Mktg Bd. v. United States, 669 F. Supp. 445, 460 (Ct. Int’l Trade 1987)(“statute permits the Commission to use the best information otherwise available, and nothing in the statute or regulations prevents the Commission from using information other than questionnaire responses when the Commission determines that the responses do not provide an adequate basis for making its determination.”), aff’g, Live Swine and Pork from Canada, Inv. No. 701-TA-224 (Final). See also Ranchers-Cattlemen Action Legal Foundation v. United States, Slip Op. 99-122 at 57 (Ct. Int’l Trade Nov. 5, 1999) (Court affirmed Commission’s use of secondary sources for information rather than questionnaire responses in preliminary phase of related investigation regarding Mexico), aff’g, Live Cattle from Mexico, Inv. No. 731-TA-813 (Preliminary).

³⁹ CR/PR at I-1. The data generally involved periods through June 1999, with USDA price data as recent as September 1999, which were at least as recent if not more so than would have been obtained by questionnaire responses.

⁴⁰ CR/PR at I-1-I-2 and Appendix J.

not generally available in other investigations. In addition, the Commission has obtained some information on the domestic industry from questionnaires that asked narrative questions.⁴¹ The Commission also has obtained some information from responses to the importers'/purchasers' questionnaires regarding pricing data on both domestically-produced and imported live cattle.^{42 43}

B. CONDITIONS OF COMPETITION⁴⁴

In reaching our determination, we have considered the conditions of competition distinctive to the U.S. cattle industry that provide the context for our analysis.⁴⁵

A very important condition of competition affecting this industry is the “cattle cycle,” a “cyclical pattern of expansions and contractions” that historically lasts for approximately ten years from peak to peak and has four stages.⁴⁶ When slaughter cattle prices are relatively low and beginning to rise, cattle producers retain more cattle for breeding purposes, rather than marketing them for slaughter. This initially reduces the number of cattle slaughtered and tends to further increase cattle prices. This is the expansionary phase, which usually lasts about five years, but can last from three to eight years. In two to three years, the calves of the cows held for breeding will be available for slaughter. Thus, the supply of cattle begins to increase until a peak year, where supplies exceed demand and prices begin to decline. The industry then enters the liquidation phase, which usually lasts about two to three years, but may last up to four years, in which cattle producers reduce their herds by sending some of their breeding stock to slaughter, further increasing the supply of slaughter cattle on the market and further reducing the price. In the consolidation phase, which lasts about a year, cattle prices start to reflect the reduced supply of cattle for slaughter due to the earlier liquidation of the breeding stock, and thus, cattle prices begin to rise.⁴⁷

The parties offered differing positions in this final investigation on whether the current cycle is in the liquidation phase or is between the liquidation and expansionary phases (*i.e.*, the consolidation phase when cattle prices begin to rise). The parties also differed on the relative severity of the current cycle. Petitioner contended the cycle is still in the liquidation phase and is more severe than past cycles. Respondents maintained that the liquidation phase is finishing and that the current liquidation phase is no

⁴¹ The Commission sent questionnaires to approximately 76 U.S. associations representing U.S. cattle operations and received 37 responses. CR/PR at III-1. While these responses provide qualitative information, they are not necessarily representative of the domestic industry.

⁴² The Commission sent importer questionnaires to 58 U.S. firms that were believed to import cattle (*i.e.*, packers and feedlots); 21 firms responded with import data, 15 firms responded that they did not import during the period of investigation, and 22 firms did not respond. CR/PR at IV-1 and n.1.

⁴³ We note that the parties have not taken issue with the Commission’s reliance on secondary information in this investigation. Petitioner’s Posthearing Brief, Response to Questions from Vice Chairman Miller at 36 (Petitioner believes reliance on secondary sources of information, including USDA and Customs data, “is entirely reasonable.”); Tr. at 145 (Petitioner); Conf. Tr. at 140 (Respondent); Responses to Pub. Doc. No. 67A.

⁴⁴ Commissioner Askey does not join the remainder of Section II. *See* Concurring Views of Commissioner Thelma J. Askey, which describe her views on the lack of material injury by reason of subject imports. She joins Section III of this opinion, however.

⁴⁵ 19 U.S.C. § 1677(7)(C)(iii).

⁴⁶ *See* CR at II-1 - II-3; PR at II-1 - II-2. Petitioner contended that the last four cattle cycles have been from 10 to 13 years long. Petitioner’s Posthearing Brief at Exhibit 10.

⁴⁷ The evidence in the record indicates that the cattle cycles in the United States and Canada are similar and usually parallel each other. CR/PR at VII-1; Tr. at 229 and 230.

worse than in prior cycles.⁴⁸ The majority of importers/purchasers responding to the Commission questionnaires reported that the domestic industry is in the liquidation phase of the cattle cycle.⁴⁹ A recent USDA study on the cattle and beef industries reports that there is no evidence that the current cycle is significantly different or worse than other recent cattle cycles.⁵⁰

The dispersed nature of the cattle industry is another central condition of competition. There were 1,115,650 total cattle operations in the United States in 1998.⁵¹ As discussed in the domestic like product section, these operations include cow-calf operators, stocker/yearling operators, and feedlot operators. While the entire industry is subject to the foregoing conditions, each of these industry segments is affected by the various conditions to different degrees and each is affected by conditions of competition unique to each segment.

Cow-calf operations are the least concentrated, with many of the roughly 800,000 operations family-owned and operated.⁵² They may do their own grazing (*i.e.*, backgrounding), or sell or toll the weaned cattle to a stocker/yearling operator for grazing.⁵³ For cow-calf and stocker/yearling operators, weather and other environmental conditions that affect the cattle's growth are important factors in their operations.⁵⁴

Feedlot operations also are fragmented, with 104,071 operations in the United States in 1998.⁵⁵ For feedlots, the cost of feed (*i.e.*, price of grain) is an important factor as the cattle almost double their weight from the feeder to the fed stages.⁵⁶ The cost of feed for feedlots was relatively high in 1996 and throughout 1997 (with the highest cost in August 1997); it declined in 1998 to relatively low levels in December 1998 and the January-June 1999 period.⁵⁷ The price of grain, as well as the price for fed cattle,

⁴⁸ Petitioner argued that the current cattle cycle is not operating in the expected fashion. Petitioner's Prehearing Brief at 57-58; Tr. at 175. Petitioner alleged that "we're proceeding into the 10th year of this cattle cycle" which was expected to turn around in 1997 and USDA reports "now are stretching that out to 2001. . . this one is different. It is longer. It is more severe." Tr. at 175 and 176. According to Petitioner, "we could easily be at the bottom of the liquidation phase and start going back up, but only if we can do something about the imports. . . we're in a stagnant position in this cattle cycle." Tr. at 180 and 181; Petitioner's Posthearing Brief, Response to Questions from Commissioner Hillman at 47, and Commissioner Koplan at 73.

Conversely, the Canadian Respondent contended that "neutral observers, including the USDA, consider this cycle to have been well within the normal parameters governing recent cycles" and that this "cycle has been of average length." Canadian Respondent's Posthearing Brief at 3. According to this Respondent, "[t]here is general agreement that the liquidation phase of the cycle is either over or about to be over." *Id.* The Canadian Respondent maintained that two features unique to the current cycle were the heavier carcass weights and the increases in feed grain prices that occurred in 1996. *Id.* at 5-6.

The Packer Respondents contended that "[i]n 1999, the liquidation cycle is finishing and consolidation is beginning, with the expected improvement in price and profitability." Joint Packers' Prehearing Brief at 21.

⁴⁹ CR/PR at II-2.

⁵⁰ CR/PR at II-3 citing U.S. Beef Industry: Cattle Cycles, Price Spreads, and Packer Concentration, USDA, ERS, Report Technical Bulletin 1874 at 1 (April 1999).

⁵¹ CR/PR at III-1. The evidence on the record also indicates that only a small percentage of operations had a large herd size, *i.e.*, 500 or more head of cattle. Petition at 6.

⁵² CR/PR at II-3 and III-2.

⁵³ CR/PR at III-2.

⁵⁴ CR/PR at II-3.

⁵⁵ CR/PR at III-2.

⁵⁶ CR/PR at VI-5.

⁵⁷ CR at VI-7 and Table VI-4.

plays a role in the decision as to when a feedlot operator markets cattle for slaughter.⁵⁸ For example, relatively low grain prices may encourage feedlot operators to retain cattle in the feedlots for slightly longer periods of time because additional weight gain to the cattle is relatively inexpensive. However, there is a limited window of opportunity for marketing fed cattle for slaughter. Most breeds of fed cattle receive their best quality grades if they are slaughtered when they reach the optimal weight of about 1,200 pounds.⁵⁹ Additional weight gain usually is less efficient in that it requires more feed for each pound gained and results in the cattle disproportionately gaining weight in fat rather than more valued muscle.

The packer industry, which purchases fed cattle for slaughter, is heavily concentrated among a few firms, with purchases by the four largest packers accounting for 81 percent of the fed cattle and 33 percent of the cull cattle slaughtered in the United States in 1998.⁶⁰

Corresponding with the different conditions in each industry segment, purchasers of cattle have somewhat different concerns depending on the stage of development of the cattle being purchased. Packers are concerned with the quality of the meat that the fed cattle will produce.⁶¹ Purchasers of calves, stockers, and feeder cattle, however, are principally interested in the health of the animal and its potential for weight gain.⁶²

Within each stage of development, domestic and Canadian live cattle are a generally substitutable product.^{63 64} Prices fluctuate daily.⁶⁵ While prices are determined in a national spot market and are widely disseminated, the prices in the primary feeding and slaughter areas of Texas, Kansas, Nebraska, Iowa, and Colorado (*i.e.*, the feeder belt states) drive the national market.⁶⁶ Conversely, “secondary markets in the Northwest and the Mid-Atlantic states draw off of the Midwestern fed cattle prices.”⁶⁷ While cattle are raised throughout the United States, over 65 percent of U.S. cattle inventory (by head) is located in fourteen states, with almost 40 percent located in five states.⁶⁸ Because of the large number of cattle

⁵⁸ CR at I-8.

⁵⁹ CR at V-9. Packers also prefer cattle of consistent size.

⁶⁰ CR/PR at IV-1.

⁶¹ CR/PR at II-4. Quality grades for beef from fed cattle include prime, choice, and select. Beef from cull cattle are graded on a different scale or not at all. CR at V-3.

⁶² CR/PR at II-4.

⁶³ CR at II-13 and V-1.

⁶⁴ Commissioner Crawford concurs that live cattle from different sources generally are substitutable within each stage of development. However, cattle at *different* stages of development are not substitutable for each other. As discussed *infra*, in 1998 slaughter cattle accounted for 93 percent of the subject imports by weight. However, in 1998 slaughter cattle accounted for only about 35 percent of the domestic cattle. Calculated from CR/PR at Table III-3. Thus, the vast majority of the subject imports enter the U.S. market at a stage of development that differs from the large majority, 65 percent, of the domestic like product as a whole. Therefore, the vast majority of the subject imports is not substitutable for the large majority of the domestic like product. Consequently, Commissioner Crawford finds that the subject imports and the domestic like product, as a whole, are at best only moderate substitutes for each other.

⁶⁵ CR/PR at V-1.

⁶⁶ USDA/GIPSA, Concentration in the Red Meat Packing Industry at 14, 37 (Feb. 1996) (“Within the national fed-cattle market, price linkages are strongest within the Midwest and Plains regions, with the leading price discovery points in Nebraska and Kansas.”); Tr. at 87-88, 95-96, 98; Petitioner’s Posthearing Brief, Response to Questions at 34 and 35; Petitioner’s Prehearing Brief at 43; Canadian Respondent’s Final Comments at 3 and 4; Joint Packers’ Final Comments at 4; Joint Packers’ Posthearing Brief at 11.

⁶⁷ Tr. at 87-88.

⁶⁸ CR/PR at Table G-1. The 14 states in descending order by number of head of cattle in inventory as of January 1, 1999 are: Texas, Nebraska, Kansas, Oklahoma, California, Missouri, South Dakota, Iowa, Wisconsin,

producers and the fact that each operation is small relative to the domestic market, domestic producers are price takers.⁶⁹ In addition, fed cattle generally are marketed when they reach their optimal weight.⁷⁰ Further, primarily as a result of close geographic proximity and relatively open border policies, cattle and beef markets in the United States and Canada are highly interrelated.⁷¹

The demand for live cattle is derived from the demand for beef and beef byproducts.⁷² The demand for beef can shift within the beef market between different cuts and grades of beef, between these cuts and manufactured meat such as hamburger, and between beef and other meats or other foods.⁷³ Changes in demand for beef also can result from increased competition from competing protein sources including poultry and pork.⁷⁴ Any of these changes may affect the demand and price for cattle.⁷⁵ Changes in beef exports also may have a significant effect on the demand for cattle in the United States.⁷⁶ Economic difficulties in a number of the major importing countries of U.S. beef, including Japan and other Asian nations, have resulted in those countries purchasing lower-priced types of meat (chiefly frozen rather than fresh).⁷⁷ Therefore the value of beef exports has fallen while the weight of these exports has risen.⁷⁸ Beef demand increased by 1.2 percent from 1996 to 1998, and was 2.4 percent higher in interim period 1999 compared with interim period 1998.⁷⁹ More recent information indicates that beef demand has increased sharply in 1999.⁸⁰

U.S. apparent consumption of slaughter cattle by weight changed relatively little (declining 0.6 percent) from 1996 to 1998. However, U.S. apparent consumption of slaughter cattle by weight was 2.1 percent higher in interim period 1999 compared with interim period 1998.⁸¹ While U.S. apparent consumption by head decreased by 3.7 percent from 1996 to 1998, the average slaughter weight for cattle increased during this period.⁸² Thus, as a result of the increasingly heavier carcass weights, beef

Colorado, Montana, Minnesota, Kentucky, and Tennessee. Id.

⁶⁹ CR/PR at V-1.

⁷⁰ CR at V-9.

⁷¹ 1997 Section 332 Study at 1-1; Canadian Respondent's Prehearing Brief at 16-19.

⁷² CR at II-8.

⁷³ CR at II-9. Beef is produced in two main categories: "whole muscle" cuts, which primarily are produced from fed cattle bred for beef, and manufactured meats such as hamburger, which mainly are produced from cull cattle. Id. at II-4 and II-9.

⁷⁴ CR at II-9. Studies of demand for beef show that beef products may have been increasingly replaced by pork and chicken in the United States. CR at II-9 and II-10.

⁷⁵ CR at II-9 and II-10. Canadian Respondent's Posthearing Brief at Response F.

⁷⁶ CR at II-7.

⁷⁷ CR at II-7; USDA, FAS, "Japan Livestock 1999 Annual Report - Revised 1999," at 1-3, Aug. 10, 1999.

⁷⁸ CR at II-7. Asian demand for high-quality leather also has declined. CR at II-8.

⁷⁹ Calculated from CR/PR at Table L-1.

⁸⁰ Barrons, "Here's the Beef," Oct. 11, 1999, at MW 14.

⁸¹ CR/PR at Table B-1. U.S. apparent consumption by head decreased by 3.7 percent from 1996 to 1998, and was 0.8 percent higher in interim period 1999 compared with interim period 1998. U.S. apparent consumption by value increased by 0.7 percent from 1996 to 1998, and was 1.8 percent higher in interim period 1999 compared with interim period 1998. Id.

⁸² Average U.S. slaughter weight increased by 3.7 percent from 1,140 pounds in 1996 to 1,182 pounds in 1998, and was 1.4 percent higher in interim period 1999 (1,197 pounds) compared to interim period 1998 (1,180 pounds). Calculated from CR/PR at Tables IV-3 and J-1.

production remained relatively stable despite the reduction in number of head of cattle slaughtered during this period.⁸³ Beef production increased in 1999.⁸⁴

Virtually all of the subject imports of live cattle from Canada (93 percent by weight) entered the United States in 1998 ready for immediate slaughter.⁸⁵ Included in the category of Canadian cattle ready for immediate slaughter are fed cattle, which accounted for 65.4 percent by weight of total subject imports in 1998, and cull cattle, which accounted for 27.4 percent by weight of subject imports.⁸⁶ The remaining seven percent of subject imports by weight entered the United States in 1998 primarily as feeder cattle with some yearling or stocker cattle.⁸⁷ Subject imports accounted for 83.7 percent by weight of imports of live cattle in 1998.⁸⁸

C. VOLUME OF THE SUBJECT IMPORTS FROM CANADA⁸⁹

Section 771(7)(C)(i) of the Act provides that the “Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.”⁹⁰

The volume of subject imports from Canada is small and declined both by weight and by head during the period of investigation.⁹¹ The quantity of subject imports from Canada of live cattle by weight and by head decreased from 1996 to 1998, declining significantly in interim period 1999 compared to interim period 1998.⁹² While subject imports increased both by weight and head if we consider the expanded period of 1995 to 1998,⁹³ we do not find this increase to be significant since the increase was

⁸³ CR/PR at Table L-1.

⁸⁴ Beef production was 2.6 percent higher in interim period 1999 compared with interim period 1998. Calculated from CR/PR at Table L-1.

⁸⁵ Calculated from CR/PR at Table J-1. Cattle for immediate slaughter include: steers and heifers (fed cattle) and bulls and cows (cull cattle) under the category - weighing 320 kg or more; and the category - weighing less than 90 kg (veal calves).

⁸⁶ Calculated from CR/PR at Table J-1. Veal calves also are included in this category but accounted for less than 0.5 percent by weight of total subject imports in 1998.

⁸⁷ Calculated from CR/PR at Table J-1.

⁸⁸ CR/PR at Table IV-2. Imports from Mexico accounted for the balance. USITC Pub. 3155 at Table IV-2.

⁸⁹ Commissioner Crawford does not join the remainder of these views. See Views of Carol T. Crawford, infra.

⁹⁰ 19 U.S.C. § 1677(7)(C)(i).

⁹¹ We consider data by weight when available as the best unit of measure for comparison of data which includes cattle at different stages of development. A comparison based on head of cattle would be less appropriate since cattle are not equivalent or substitutable at different stages of development. The use of weight provides a uniform measure of size and value at each stage of development. Indeed, cattle are sold on the basis of hundredweight, not by the head.

⁹² CR/PR at Table B-1. U.S. imports of live cattle from Canada by weight were: 1.834 billion pounds in 1996, 1.659 billion pounds in 1997, 1.623 billion pounds in 1998, 815.1 million pounds in interim period (Jan.-June) 1998, and 613.1 million pounds in interim period (Jan.-June) 1999. Imports from Canada by weight decreased by 11.5 percent from 1996 to 1998. U.S. imports of live cattle from Canada by head were: 1,476,000 in 1996, 1,352,000 in 1997, 1,253,000 in 1998, 652,000 in interim period 1998 and 491,000 in interim period 1999. Imports from Canada by head decreased by 15.1 percent from 1996 to 1998. Imports from Canada by weight and by head were 24.8 percent lower in interim period 1999 compared to interim period 1998.

⁹³ Petitioner urged the Commission not to “limit its analysis only to the period 1996 to date” and in particular to consider a period including 1995. Petitioner’s Prehearing Brief at 51; Petitioner’s Posthearing Brief, Response to Questions from Vice Chairman Miller at 36-38.

small in absolute and relative terms and because subject imports declined each year after the initial increase from 1995 to 1996.⁹⁴ Slaughter capacity in Canada increased by 25 percent from 1996 to 1999.⁹⁵ Due to certain start up difficulties at two expanded Canadian slaughter facilities, a higher level of fed cattle were exported to the United States in 1996.⁹⁶ Those facilities were completed by 1997 and 1998.⁹⁷ In particular, additional capacity was brought on line in October 1998 at the IBP Lakeside plant in Brooks, Alberta, which resulted in Alberta slaughter levels 13.3 percent higher in 1999 than those of a year earlier.⁹⁸ The decline in subject imports after 1996, including the 1999 interim period, is consistent with both the increase in slaughter capacity in Canada and the ending of the liquidation phase of the cattle cycle.^{99 100 101}

Live cattle imports from Canada held a small and decreasing share of the U.S. market over the period of investigation, both by weight and by head.¹⁰² The market share for subject imports by weight

⁹⁴ U.S. imports of live cattle from Canada by weight increased from 1.454 billion pounds in 1995 to 1.623 billion pounds in 1998, for an increase of 13.9 percent, and by head increased from 1.1 million head in 1995 to 1.3 million head in 1998, for an increase of 11.7 percent. Calculated from CR at Table B-1 and USITC Pub. 3155 at Table C-1. However, subject imports initially increased by 34.2 percent and 26.2 percent by head and weight, respectively, from 1995 to 1996. USITC Pub. 3155 at Table C-1. We note that from 1992 to 1998 the volume of subject imports fluctuated between years but overall remained at the same general level. CR/PR at Table H-1 (data on imports in this Table include imports of non-subject dairy and breeder cattle).

⁹⁵ CR at VII-3.

⁹⁶ USDA, FAS Online, "A Look at Rising Cattle and Beef Trade in North America," at 2 (April 9, 1999).

⁹⁷ USDA, FAS Online, "A Look at Rising Cattle and Beef Trade in North America," at 2 (April 9, 1999).

⁹⁸ CR at VII-3; Tr. at 212 ("This increased Canadian slaughter at one plant more than accounts for the reduction in live cattle slaughter exports since that date."); Canadian Respondent's Prehearing Brief at 28; Canadian Respondent's Posthearing Brief at 7.

⁹⁹ There is evidence that the Canadian cattle cycle has "bottomed out in terms of liquidation," with 1999 the bottom of the cycle and rebuilding starting in 2000. Tr. at 230.

¹⁰⁰ We are not persuaded by Petitioner's arguments that the "[d]ecline in 1999 cattle imports is due to the antidumping investigation." Petitioner's Posthearing Brief at 11-12; Petitioner's Prehearing Brief at 87. See also 19 U.S.C. § 1677(7)(I). In addition to the evidence discussed above, we note that the decline in subject imports in 1999 was for the period (Jan.-June) prior to the affirmative preliminary determination by Commerce on June 30, 1999, and the consequent requirement that importers post bond for the duty on subject imports. The decline in subject imports when comparing the interim periods does not reflect a change in import behavior due to the pendency of the investigation, but rather a continuation of a trend. Cf. SAA at 854.

¹⁰¹ Commissioner Hillman does not join the preceding footnote. In her view, although other factors such as the increase in Canadian slaughter capacity played a part in the decline in subject imports from interim period 1998 to interim period 1999, the filing of the petition may also have played a role. Accordingly, she has given the decline in subject imports in interim 1999 less weight in her analysis. *See* 19 U.S.C. § 1677(7)(I).

¹⁰² We note that calculating market share data when the subject merchandise and domestic like product include products at different stages of development presents methodological problems and may result in overstated or understated market shares. We have used a methodology that overstated the market share of imports to a small degree. We examined Canadian share of the U.S. market for cattle for immediate slaughter (fed and cull) but also included in the Canadian import figure imports at earlier stages of development such as feeder cattle to be placed on feedlots in the United States. (U.S. apparent consumption (whether by weight or head) includes cattle slaughtered of U.S. origin plus all imports whether for immediate slaughter or at an earlier stage of development.) This methodology, which is favorable to the domestic industry, assumes that all imported cattle are slaughtered in the same year as imported, which reflects most imports from Canada; however, to the extent imports are not slaughtered in the same year, the market share of imports could be overstated.

Respondents contended that because Canadian feeder cattle are included in its market share (numerator)

declined from 4.2 percent in 1996 to 3.7 percent in 1998 and between interim periods from 3.8 percent in interim period 1998 to 2.8 percent in interim period 1999.¹⁰³ At the same time, domestic producers held about 95 percent of the market by weight and by head in each year examined and in the interim periods.¹⁰⁴ Subject imports' share of U.S. production (calf crop) declined from 3.7 percent in 1996 to 3.2 percent in 1998, and was 1.7 percent in interim period 1999 compared to 2.3 percent in interim period 1998.¹⁰⁵

The significance of the small volume of subject imports, nearly all of which are cattle ready for slaughter, is reduced when considered in the context of a U.S. cattle industry composed of producers of cattle at all stages of development. As indicated above, virtually all of subject imports of live cattle from Canada (93 percent by weight) entered the United States in 1998 ready for immediate slaughter, with fed cattle accounting for 65.4 percent by weight in 1998, and cull cattle accounting for 27.4 percent by weight.¹⁰⁶ The remaining seven percent of subject imports by weight entered the United States in 1998 primarily as feeder cattle with some yearling or stocker cattle.¹⁰⁷

Petitioner has urged us to take into account the concentration of the imports in particular regional markets in evaluating the significance of the volume of subject imports.¹⁰⁸ We have done so, but we

then U.S. apparent consumption (denominator) should be increased to include, for example, all U.S. cattle placed in U.S. feedlots. Canadian Respondent's Prehearing Brief at 4 and n.1; Canadian Respondent's Posthearing Brief at 12-14 and Response I to Commission Questions; Canadian Respondent's Final Comments at 4, 5, and 13; Joint Packers' Posthearing Brief, Attachment 1 at 9-10; Joint Packers' Final Comments at 3. We recognize that there is an active market for feeder cattle that is separate from the market for fed cattle. A market share calculation that only takes into account the transactions at the slaughter stage does not take into account these sales of the domestic like product. Thus, we considered whether it would be appropriate to include U.S. cattle inventory together with annual slaughter of U.S. origin in the denominator when calculating import market share (e.g., January 1, 1999 inventory with 1998 annual slaughter for the 1998 annual consumption figure). However, the inventory figures would include cattle that were not transacted in that year. Accordingly, we have relied for U.S. producers' shipments data on the annual slaughter as the denominator, but recognize that this figure overstates the subject import presence in a market that includes significant transactions in the domestic like product at the feeder and yearling/stocker stages.

In addition, Petitioner argued that the U.S. producers' market share was overstated because the U.S. producers' shipments data include the additional weight gained in the United States by cattle imported at the stocker and feeder stages and fed to slaughter weight in the United States. Petitioner's Prehearing Brief at 51. However, such imported cattle become U.S. cattle and thus are correctly included in U.S. producers' data. CR at II-5, n.13 (USDA defines domestic cattle to include all cattle fed in the United States including cattle imported as stocker or feeder cattle and fed prior to slaughter.)

¹⁰³ CR/PR at Table IV-3. Canada's market share by weight was 4.2 percent in 1996, 3.8 percent in 1997, and 3.7 percent in 1998. Canada's market share by head of cattle was 3.8 percent in 1996, 3.5 percent in 1997, and 3.4 percent in 1998. Comparing interim period 1998 and 1999 figures, Canada's market share by head declined from 3.6 percent to 2.7 percent.

¹⁰⁴ CR/PR at Table IV-3. The U.S. market share by weight held by the domestic industry was: 95.3 percent in 1996; 95.5 percent in 1997, 1998, and interim period 1998; and 96.4 percent in interim period 1999. The U.S. market share by head held by the domestic industry was: 95.0 percent in 1996; 94.7 percent in 1997 and 1998; 94.5 percent in interim period 1998; and 94.9 percent in interim period 1999.

¹⁰⁵ Calculated from CR at IV-9.

¹⁰⁶ Calculated from CR/PR at Table J-1. Cattle for immediate slaughter include: steers and heifers (fed cattle) and bulls and cows (cull cattle) under the category - weighing 320 kg or more; and the category - weighing less than 90 kg (veal calves). Veal calves also are included in this category but accounted for less than 0.5 percent by weight of total subject imports in 1998.

¹⁰⁷ Calculated from CR/PR at Table J-1.

¹⁰⁸ Petitioner's Posthearing Brief at 5; Petitioner's Final Comments at 13 and 14.

concluded that the geographic distribution of the subject imports serves to diminish, rather than enhance, the significance of the small volume of subject imports. Almost 80 percent of subject imports entered states other than the primary feeder belt states (Texas, Kansas, Nebraska, Colorado, and Iowa), and thus the great majority of subject imports entered states that are considered secondary markets, such as Washington, Utah, and Pennsylvania.¹⁰⁹ In the feeder belt states, subject imports accounted for an even smaller market share (1.1 percent by head) than their share of the market overall (3.4 percent by head) in 1998.¹¹⁰

We are mindful, as we found in our preliminary determination, that a relatively small volume of imports of an agricultural commodity product may be significant in light of the effect of that small volume on prices. However, based on the evidence in the final phase of this investigation, we find that the volume and market share of subject imports are not significant even in the context of the conditions of competition for this agricultural industry, in light of the small share held by subject imports, the geographic dispersion of the subject imports, the different segments of the U.S. cattle industry and, as discussed below, the lack of significant price effects caused by the subject imports.

D. PRICE EFFECTS OF THE SUBJECT IMPORTS FROM CANADA

Section 771(C)(ii) of the Act provides that, in evaluating the price effects of the subject imports, the Commission shall consider whether --

(I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and

(II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.¹¹¹

A number of factors affect the price of cattle at each stage of development, including the cattle cycle, the volume of cattle being marketed, the demand for and the price of beef and beef byproducts, weather conditions, input costs,¹¹² and transportation.¹¹³ Moreover, the relative importance of each factor

¹⁰⁹ In 1998, about 22 percent of subject imports entered the feeder belt states as a share of total subject imports (by head) as follows: Texas (less than 0.05 percent); Kansas (1.3 percent); Nebraska (13.2 percent); Colorado (6.1 percent); and Iowa (1.3 percent). CR/PR at Table K-1. In 1998, over 80 percent of subject imports entered the following eight states in descending order by percent of total subject imports (by head): Washington (25.2 percent); Utah (14.1 percent); Nebraska (13.2 percent); Pennsylvania (7.2 percent); Minnesota (6.9 percent); Colorado (6.1 percent); Idaho (6.0 percent); and North Dakota (4.6 percent). CR/PR at Table K-1.

¹¹⁰ CR/PR at Table IV-3 and Calculated from CR/PR at Table K-1 and USDA, Livestock Slaughter 1998 Summary at 22 and 23. Subject imports held less than 0.05 percent share by head of the Texas market in 1998, a 0.2 percent share of the Kansas market, a 2.3 percent share of the Nebraska market, a 3.2 percent share of the Colorado market, and a 1.7 percent share of the Iowa market. Id. Individual state market shares are calculated using all subject imports entering a state (which includes fed, cull, feeder, and stocker cattle) as a share of the total commercial cattle slaughter in that state in 1998. Thus, for the same reasons discussed earlier, these market shares are somewhat overstated.

¹¹¹ 19 U.S.C. § 1677(7)(C)(ii).

¹¹² The cost of grain has a significant impact on the cost of production and affects the price of fed cattle. CR at V-1.

¹¹³ CR/PR at V-1.

differs significantly according to stage of development. Most cattle associations and purchasers reported that domestic and Canadian live cattle at the same stage of development are interchangeable;¹¹⁴ at the same time, however, most cattle associations and purchasers reported that differences other than price between Canadian and U.S. cattle at similar stages of development are significant.¹¹⁵

Cattle prices in the United States typically are set in the national spot market. Feed lots and cattle producers generally are price takers and have little alternative but to take the market price at the time their product is ready for sale.¹¹⁶ While cattle can be sold on either the spot market or on a contract or formula basis, the majority of U.S. fed cattle are sold on the spot market directly from the feedlot, usually in the United States by a bid system.¹¹⁷ The share of cattle sold on contract and formula combined varies by region in the United States.¹¹⁸ Spot market prices of cattle are widely disseminated and readily available.¹¹⁹

Domestic prices reported in questionnaires generally increased from the first quarter of 1996 to the second quarter of 1999, by a range of three percent to ***.¹²⁰ In general, reported U.S. prices followed the

¹¹⁴ CR at II-12. In responses to Commission questionnaires, 26 of the 29 responding cattle associations reported that U.S. and Canadian feeder cattle were interchangeable, 27 of the 30 responding cattle associations reported that U.S. and Canadian fed cattle were interchangeable, 20 of the 22 responding cattle associations reported that U.S. and Canadian cull cattle were interchangeable, and all 14 of the responding purchasers reported that domestic and Canadian cattle were interchangeable. *Id.*

¹¹⁵ CR at II-12 and II-13. In responses to Commission questionnaires, 22 of the 29 responding cattle associations and eight of the 12 responding purchasers reported that differences other than price between Canadian and U.S. cattle were significant. Cited differences included health, drugs, vaccinations, product safety, regulations, contracts, proximity, availability, and quality. *Id.* Eight of the responding purchasers *** reported that quality was the most important factor in their purchasing decisions, while eight other purchasers *** reported availability was the most important factor. Only one purchaser reported price as the most important factor, although most identified price as one of the three most important factors. *Id.* at II-11. In evaluating the importance of 18 factors, 16 of the 16 responding purchasers rated availability as very important and 14 purchasers also rated quality as very important. *Id.* at II-11 and II-12.

¹¹⁶ CR/PR at V-1. It is important that cattle for slaughter be sold at their optimal weight in order to receive their best quality grades. CR at V-9.

¹¹⁷ CR at V-8. Under the bid system, feedlot operators offer fed or cull cattle that are or will be ready for slaughter to packers, and the packers bid a price for the cattle. There may be several rounds of requests and offers before a sale price is agreed. Cattle sold on the spot market are sold to be picked up during the following week. Although sales/purchase timing is sporadic, these cattle could be slaughtered evenly over the next week. CR at V-8 and V-9.

¹¹⁸ The spot sales price typically is used as the basis for the formula price, with a formula to adjust for the quality and quantity of the meat. Under the formula agreement, a feedlot typically informally agrees to sell all its cattle to one packer and the packer informally agrees to purchase those cattle. However, neither party is bound and either can withdraw from the arrangement at any time. In contrast, contract sales tend to cover specific lots of cattle with set prices based on an agreed amount such as the forward cattle price on the Chicago Mercantile Exchange. Contract sales have some price adjustments for the quality of the meat, but neither party can withdraw from the agreement after it is made. Contract sales reportedly are becoming less common while formula sales account for an increasing portion of sales. CR at V-4-V-8.

¹¹⁹ CR at V-2 and V-3.

¹²⁰ CR/PR at Tables V-2 - V-7. We note that reporting coverage was comprehensive for Product 1 (fed cattle, live weight), Product 2 (fed cattle, carcass weight), and Product 5 (cull cattle); reporting coverage was limited for Product 3 (fed cattle, contract basis), Product 4 (feeder cattle), and Product 6 (veal cattle). Thus, we have focused our analysis on Products 1, 2, and 5. The reported prices for Product 3 declined by 0.4 percent from the beginning to the end of the period of investigation. We note that the prices for this product were on a contract or formula basis and the reporting coverage was limited. CR/PR at Table V-4.

pricing trends of USDA data. Domestic prices fluctuated between years but generally increased during 1996, declined during 1997 and part of 1998, and increased during the remainder of 1998 and into 1999. Prices for imports from Canada followed similar trends. Overall prices have been low relative to costs since 1996.¹²¹

For purposes of the preliminary determination, we found that there was a reasonable indication that the small volume of imports from Canada were having a significant effect on domestic prices.¹²² We continue to recognize that a small volume of imports of a price-sensitive agricultural product can have a significant effect on domestic prices. However, based on our full evaluation of the evidence in the final phase of this investigation, we find that the small and declining volume and market share of imports from Canada are not depressing domestic prices or suppressing price increases to a significant degree.

Petitioner argued that the small volume of imports is significantly affecting domestic prices in the cattle industry in light of the conditions of competition in this industry. Specifically, petitioner contended that: 1) live cattle are a perishable commodity; with a short window for sale, particularly for cattle ready for slaughter; 2) the live cattle market is a national market; 3) the cash or spot market price for fed cattle, which directly affects all sales including many forward contracts and formula contracts, is “thin” and is significantly affected by imports; 4) imports from Canada are concentrated in certain regional markets, and price effects in those markets have a “ripple effect” on national prices; and 5) prices for cattle at different stages of development are related.¹²³ We do not find Petitioner’s arguments persuasive.

As discussed above, there is a national market for the price of cattle which is driven by the primary feeding and slaughter areas (“feeder belt states”), Texas, Kansas, Nebraska, Colorado, and Iowa.¹²⁴ “Secondary markets in the Northwest and the Mid-Atlantic states draw off of the Midwestern fed cattle prices.”¹²⁵ Thus, while the spot market prices in the feeder belt states are quickly transmitted to, and affect, the secondary markets, the price discovery is asymmetrical (i.e., prices in the secondary markets affect prices in the feeder belt states to a much lesser extent).¹²⁶

Subject imports are concentrated in secondary markets. For example, subject imports are concentrated in the Northwest, which includes Washington, Oregon, and Idaho; over 30 percent of subject imports enter these secondary markets.¹²⁷ A substantial portion (27.4 percent by weight, or 24.8 percent by head) of subject imports enter as cull cattle for slaughter.¹²⁸ These imports primarily enter in the states of Minnesota and Pennsylvania.¹²⁹ As stated above, subject imports held only a 1.1 percent share of the total

¹²¹ CR/PR at Table VI-3.

¹²² Live Cattle-Prelim., USITC Pub. 3155 at 21.

¹²³ Petitioner’s Posthearing Brief at 2-5; Tr. at 62 and 63; Petitioner’s Prehearing Brief at 4 and 40-48.

¹²⁴ USDA/GIPSA, Concentration in the Red Meat Packing Industry at 14, 37 (Feb. 1996); Tr. at 87-88 and 98.

¹²⁵ Tr. at 87-88. “Lower prices in Nebraska means lower prices in other states.” Id. at 98.

¹²⁶ USDA/GIPSA, Concentration in the Red Meat Packing Industry at 7 and 14 (Feb. 1996). See also Tr. at 98 and 339-340; Petitioner’s Posthearing Brief at 4 (“If prices in Colorado, Nebraska and Kansas fall, prices will fall in Florida.”)

¹²⁷ CR/PR at Table K-1.

¹²⁸ Calculated from CR/PR at Table J-1.

¹²⁹ In 1998, 7.2 percent of total subject imports by head entered Pennsylvania, and 6.9 percent entered Minnesota. CR/PR at Table K-1.

cattle slaughtered in the five primary feeder belt states.¹³⁰ Thus, the concentration of subject imports in secondary markets substantially diminishes the price effects of subject imports in the market overall.

Moreover, while the market share held by subject imports in the Northwest is 23.4 percent,¹³¹ almost all fed cattle in the state of Washington, which accounts for the majority of cattle slaughtered in this region, is sold on a contract or formula basis.¹³² Contract and formula prices are not reported to the same degree as spot sales, and thus have less potential to affect spot prices in other regions. This factor makes it unlikely that any effect that the subject imports have in regional/secondary markets (particularly in the Northwest) will transfer directly to or have a significant effect on the much larger national market.¹³³

We have considered, and rejected, Petitioner's argument that subject imports are significant because they serve to shrink an already thin U.S. spot market. In fact, the spot market accounts for about 80 percent of the domestic market and is hardly thin.¹³⁴ In addition, even if all Canadian fed cattle are considered as the equivalent of "captive supply," as Petitioner suggested, economic research indicates that the impacts of captive supply on fed cattle cash market prices "are negative, but very small."¹³⁵ Thus, even if Canadian cattle are considered as "captive supply," the small volume accounted for by subject imports would have a very small impact on the spot market for fed cattle.

The domestic product includes cattle at all stages of development. As indicated above, certain conditions of competition have differing relative affects on the prices for feeder cattle and for fed cattle. For example, the price that feedlots pay for feeder cattle is affected directly and significantly by grain prices, in contrast to fed cattle prices which are much less directly affected by grain prices.¹³⁶ Reflecting the different conditions of competition, there is not a direct correlation between prices of cattle at different stages of development.¹³⁷ Thus, the effect of subject imports on fed cattle prices is diluted further for the domestic like product as a whole, since subject imports enter primarily only at the slaughter stage, whereas the majority of the domestic industry is involved in segments of the industry prior to the feedlot segment.¹³⁸

¹³⁰ Calculated from CR/PR at Table K-1 and USDA, Livestock Slaughter 1998 Summary at 22 and 23; see note 109 supra for calculation methodology. Total subject imports share of the (cattle slaughter) market by head in the primary feeder belt states in 1998 were: less than 0.05 percent in Texas; 0.2 percent in Kansas; 2.3 percent in Nebraska; 3.2 percent in Colorado; and 1.7 percent in Iowa. Id. Moreover, the market share for subject imports that enter as cattle for immediate slaughter (fed and cull cattle) are even smaller. In 1998, the market share of subject imports of slaughter cattle by head were: less than 0.01 percent for Texas; less than 0.01 percent for Kansas; 1.9 percent for Nebraska; 2.9 percent for Colorado; and 0.7 percent for Iowa. Calculated from CR/PR at Table K-1, Document No. 199911035020 (APHIS), and USDA, Livestock Slaughter 1998 Summary at 22 and 23.

¹³¹ Calculated from CR/PR at Table K-1, Document No. 199911035020 (APHIS), and USDA, Livestock Slaughter 1998 Summary at 14, 22 and 23. The market share of subject imports that entered as slaughter cattle by head was 20.4 percent in 1998.

¹³² CR at V-6.

¹³³ USDA/GIPSA, Concentration in the Red Meat Packing Industry (Feb. 1996); Tr. at 339 ("[i]f the market were to drop \$2 in Washington, I would not even notice that impact because it has really no effect on my market.").

¹³⁴ Petitioner's Posthearing Brief at 8.

¹³⁵ USDA, Beef Industry Price Discovery: A Look Ahead at 40.

¹³⁶ CR/PR at V-1; USITC Pub. 3048 at 2-16.

¹³⁷ Compare CR/PR at Table V-2 (USDA prices for fed cattle) to CR/PR at Table V-5 (USDA prices for feeder cattle); compare USITC Pub. 3155 at Table V-1 (USDA prices for fed cattle) to USITC Pub. 3155 at Table V-2 (USDA prices for stocker cattle). See Petitioner's Prehearing Brief at Tab 1. See, also, CR/PR at V-1. Indeed, there are separate futures markets for feeder cattle and for fed cattle. CR at VII-4.

¹³⁸ Calculated from CR/PR at Table III-3 (comparing number of slaughter cattle and cattle on feed to total inventory).

While there is evidence of underselling by subject imported fed cattle,¹³⁹ we do not view this evidence to be significant for several reasons. First, as discussed above, the overall market share of subject imports is small and declining. Second, a substantial portion of the imports of fed cattle are destined for secondary markets and prices in secondary markets do not significantly affect overall U.S. price levels. Indeed, in the state of Washington, there is a very limited spot market from which prices could be disseminated to the national spot market. Third, imported Canadian fed cattle are sold on the Canadian spot market prior to importation and, therefore, do not compete directly in the U.S. spot market. Fourth, the effect of any underselling for fed cattle would be even less significant in the stocker/yearling and feeder cattle segments of the market. Finally, there is evidence on the record that the differences in reported prices, including overselling in cull cattle, reflect differences in factors such as availability, quality and yield grade of the products.¹⁴⁰

Lastly, there does not appear to be any correlation between fluctuations in domestic prices and the volume of subject imports.¹⁴¹ Based on the foregoing, we find that the subject imports of Canadian cattle have not had a significant depressing or suppressing effect on domestic prices.¹⁴² Rather, we conclude that low domestic prices during 1996 through 1998 reflect the liquidation phase of the cattle cycle and other market factors.¹⁴³

E. IMPACT OF THE SUBJECT IMPORTS FROM CANADA ON THE DOMESTIC INDUSTRY

In examining the impact of the subject imports on the domestic industry, we consider all relevant economic factors that bear on the state of the industry in the United States.¹⁴⁴ These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is dispositive,

¹³⁹ CR/PR at Tables V-2 - V-7. We note that reporting coverage was comprehensive for Product 1 (fed cattle, live weight), Product 2 (fed cattle, carcass weight), and Product 5 (cull cattle); reporting coverage was limited for Product 3 (fed cattle, contract basis), Product 4 (feeder cattle), and Product 6 (veal cattle). Thus, we have focused our analysis on Products 1, 2, and 5. Pricing data reported for Products 1 and 2 (fed) show small margins. The pricing data for Product 5 (cull cattle) show overselling in every period.

¹⁴⁰ CR at II-11 and II-12. In this regard, we note that no purchaser reported that Canadian cattle were generally lower priced than U.S. cattle. Thirteen of fifteen responding purchasers reported that U.S. and Canadian cattle were comparable in terms of lowest price, while two purchasers reported U.S. cattle as being lower priced. CR at II-13 and II-14.

¹⁴¹ For example, in 1996 when the volume of subject imports was at its peak, domestic prices were relatively high, and conversely, in 1998 when subject imports continued to decline, domestic prices were generally at their lowest levels. See CR/PR at Tables V-2 and V-3.

¹⁴² CR/PR at Table V-1; Canadian Respondent's Posthearing Brief at 3.

¹⁴³ See, e.g., USDA, FAS Online, "A Look at Rising Cattle and Beef Trade in North America," at 2 (April 9, 1999) ("In 1998, U.S. cattle and beef prices moved downward, reflecting record cattle weights at slaughter and near record beef production. Moreover, record supplies of pork and poultry meat and the stagnating domestic beef consumption were also factors in lower prices.").

¹⁴⁴ 19 U.S.C. § 1677(7)(C)(iii). See also SAA at 851 and 885 ("In material injury determinations, the Commission considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they also may demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports." *Id.* at 885.)

and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”¹⁴⁵ ¹⁴⁶

We recognize that the domestic industry has experienced significant declines in most of the key domestic industry factors.¹⁴⁷ Indeed, the financial performance indicators for the industry were negative in each year of the period of investigation.¹⁴⁸ No party disputes that the U.S. cattle industry has been suffering.

Weak performance by the domestic industry is expected during the liquidation phase of the cattle cycle, and is not unique to this agricultural industry. The critical issue we must decide is whether the subject imports materially contributed to the industry’s condition.

Petitioner argued that the subject imports from Canada have prolonged and exacerbated the current cattle cycle as compared to previous cattle cycles.”¹⁴⁹ We do not find this argument persuasive. For the reasons discussed above, we find that the volume and price effects of subject imports are not significant. Therefore, we do not find that subject imports have materially contributed to the prevailing pricing levels and the financial condition of the industry during the liquidation phase of the current cycle.¹⁵⁰ Accordingly,

¹⁴⁵ 19 U.S.C. § 1677(7)(C)(iii).

¹⁴⁶ The statute instructs the Commission to consider “the magnitude of the margin of dumping” in an antidumping proceeding, as part of its consideration of the impact of imports. 19 U.S.C. § 1677(7)(C)(iii)(V). In its notice of final determination, Commerce assigned final dumping margins on the subject merchandise from Canada ranging from 0.62 (*de minimis*) to 15.69 percent, with an all other rate of 5.63 percent. 64 Fed. Reg. at 56758 and 56759 (Oct. 21, 1999).

¹⁴⁷ CR/PR at Tables III-3 and IV-3. U.S. production (the calf crop) steadily declined from 39.8 million head in 1996 to 38.6 million head in 1998, and from 28.4 million head in interim period (Jan.-June) 1998 to 28.2 million head in interim period (Jan.-June) 1999. Production capacity for the domestic industry steadily declined from 55.0 million head in 1996 to 52.8 million head in 1998, and from 52.8 million head as of Jan. 1, 1998 to 52.2 million head as of Jan. 1, 1999. U.S. producers’ shipments (slaughter of animals of U.S. origin) declined from 36.6 million head in 1996 to 35.2 million head in 1998. U.S. shipments increased slightly from 17.4 million head in interim period 1998 to 17.6 million head in interim period 1999. U.S. producers’ shipments by weight followed a similar trend over the period of investigation. Mid-year and year-end inventories (total number of cattle and calves) declined from 1996 to 1998, and were lower in interim period 1999 compared with interim period 1998. The unit value of commercially slaughtered U.S. cattle by pounds fluctuated between years but increased from \$0.59 in 1996 to \$0.60 in 1998, and remained at \$0.62 for both interim period 1998 and interim period 1999. *Id.*

¹⁴⁸ CR/PR at Tables VI-1, VI-2, VI-3, and VI-4. Since the USDA reporting format for cow-calf production cash costs and returns has changed during the period of investigation, we considered data for the 1996 to 1997 period from Table VI-1 and data for the 1997 to 1998 period from Table VI-2 separately. The gross value of U.S. cow-calf production (comparable to revenues on a per-unit basis) increased from \$312.28 per bredcow in 1996 to \$405.50 per bredcow in 1997; however, it declined from \$414.27 per bredcow in 1997 to \$402.98 per bredcow in 1998. CR/PR at Tables VI-1 and VI-2. Total cash expenses increased from \$522.24 per bredcow in 1996 to \$535.92 per bredcow in 1997; however, it declined from \$542.25 per bredcow in 1997 to \$502.01 per bredcow in 1998. *Id.* While, the gross value of production less cash expenses was negative in all three years, it improved each year from 1996 to 1998. *Id.* The record indicates that the sharp decline in feed costs in 1998 limited the negative return in that year. CR at VI-2. The USDA estimated net returns or margins (difference between the selling price and expenses) for commercial feedlot operations generally were positive in 1996 to the middle of 1997, were negative in the second half of 1997 until October 1998, and were positive from November 1998 to June 1999. CR/PR at Table VI-3.

¹⁴⁹ Petitioner’s Posthearing Brief at 13 and Exhibit 10 at 5.

¹⁵⁰ We note that the current cycle would have to extend beyond 1999 in order to be longer than the 1949-58 and the 1958-67 cycles, beyond 2001 in order to be longer than the 1979-90 cycle, and beyond 2002 in order to be longer than the 1967-79 cycle. CR/PR at II-3, citing U.S. Beef Industry: Cattle Cycles, Price Spreads, and Packer

we find that the subject imports from Canada have not adversely impacted the domestic industry producing live cattle.

F. CONCLUSION

For the reasons stated above, we find that the domestic industry is not materially injured by reason of subject imports from Canada.

III. **NO THREAT OF MATERIAL INJURY BY REASON OF LTFV IMPORTS FROM CANADA**¹⁵¹

Section 771(7)(F) of the Act directs the Commission to determine whether the U.S. industry is threatened with material injury by reason of the subject imports from Canada by analyzing whether “further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted.”¹⁵² The Commission may not make such a determination “on the basis of mere conjecture or supposition,” and considers the threat factors “as a whole.”¹⁵³ In making our determination, we have considered all factors, including all conditions of competition, that are relevant to this investigation,¹⁵⁴ and have determined that the domestic industry is not threatened with material injury by reason of the subject imports from Canada.

Petitioner indicated that it is not arguing that the U.S. cattle industry is threatened with material injury by reason of imports of live cattle from Canada.¹⁵⁵ Nonetheless, as directed by statute, the Commission has considered this issue.

As an initial matter, we reiterate our observation that the domestic industry has experienced declines in most key domestic indicators throughout the period of investigation. However, such weak performance, which is normal during the liquidation phase of the cattle cycle, is expected to improve as the industry moves into the consolidation phase. Notwithstanding the industry’s vulnerable condition, we find, for the reasons expressed below, that the domestic industry is not threatened with material injury by reason of the subject imports.

Concentration, USDA, ERS, Technical Bulletin 1874 at 1 (April 1999); See Petitioner’s Posthearing Brief, Exhibit 10 at Table 2. Thus, the current cycle is not longer than the previous cycles.

¹⁵¹ Commissioner Askey joins this section of the Commission opinion.

¹⁵² 19 U.S.C. §§ 1673d(b) and 1677(7)(F)(ii).

¹⁵³ 19 U.S.C. § 1677(7)(F)(ii). An affirmative threat determination must be based upon “positive evidence tending to show an intention to increase the levels of importation.” Metallwerken Nederland B.V. v. United States, 744 F. Supp. 281, 287 (Ct. Int’l Trade 1990), citing American Spring Wire Corp. v. United States, 590 F. Supp. 1273, 1280 (Ct. Int’l Trade 1984). See also Calabrian Corp. v. United States, 794 F. Supp. 377, 387-88 (Ct. Int’l Trade 1992), citing H.R. Rep. No. 1156, 98th Cong., 2d Sess. 174 (1984).

¹⁵⁴ 19 U.S.C. § 1677(7)(F)(i). Factor I regarding countervailable subsidies is inapplicable to this antidumping investigation. Factor VII regarding raw and processed agricultural products is inapplicable, because this investigation does not involve a processed agricultural product. Additionally, Factor VI regarding product shifting is not an issue in this investigation. Finally, there is no evidence in the record of dumping findings or antidumping remedies in markets of foreign countries relevant to this investigation. 19 U.S.C. § 1677 (7)(F)(iii).

¹⁵⁵ Tr. at 154 (“We don’t have a threat case that’s made.”).

We find no likelihood of substantially increased subject imports. Subject import volumes declined over the period of investigation, both by weight and by head.¹⁵⁶ The decline in subject imports, particularly at the end of the period of investigation, is consistent with the increase in slaughter capacity in Canada.¹⁵⁷ The corresponding market share of subject imports also declined significantly over the period of investigation, both by weight and by head.¹⁵⁸ The market share of the imports, which is small, only 3.7 percent by weight in 1998, declined significantly between interim periods from 3.8 percent by weight in interim period 1998 to 2.8 percent by weight in interim period 1999.¹⁵⁹ In contrast, the domestic industry's market share has remained at about 95 percent by weight and by head throughout the period of investigation.¹⁶⁰ We find that the overall declining volume and the low and declining market share of subject imports from Canada during the period of investigation do not indicate the likelihood of substantially increased subject imports.

Furthermore, there is no indication of excess production capacity, or an imminent increase in capacity, in Canada that indicates the likelihood of substantially increased imports. Production and capacity to produce live cattle in Canada were lower in 1998 than in 1996.¹⁶¹ The number of cattle in Canada has declined slightly over the period of investigation.¹⁶² While the cattle inventory in Canada is expected to slowly begin to increase in 2000 and beyond, this increase will occur as the industry enters the consolidation phase of the cattle cycle when rebuilding of the herd begins and less cattle are marketed for slaughter.¹⁶³ Although the U.S. market is Canada's primary export market for cattle, the record indicates that the majority of Canadian shipments of cattle are to its home market, and those shipments increased over the period of investigation and are expected to further increase as a result of increases in Canadian slaughter capacity.¹⁶⁴ Thus, our evaluation of each of the statutory factors with respect to subject imports leads us to conclude that neither the volume nor the market penetration of subject imports is likely to increase substantially in the imminent future.

¹⁵⁶ CR/PR at Table IV-3. U.S. imports of live cattle from Canada by weight were: 1.834 billion pounds in 1996, 1.659 billion pounds in 1997, 1.623 billion pounds in 1998, 815.1 million pounds in interim period (Jan.-June) 1998, and 613.1 million pounds in interim period (Jan.-June) 1999. U.S. imports of live cattle from Canada by head were: 1,476,000 in 1996, 1,352,000 in 1997, 1,253,000 in 1998, 652,000 in interim period 1998 and 491,000 in interim period 1999.

¹⁵⁷ Slaughter capacity in Canada increased by 25 percent, or 720,000 head, from 1996 to 1999 and now totals 3.8 million head per annum. In Western Canada, plant capacity increased from 2.26 million head in 1996 to 2.95 million head in 1999, for an increase of 30 percent. Moreover, as additional capacity was brought on line in October 1998 at the IBP Lakeside plant in Brooks, Alberta, slaughter levels for Alberta were 13.3 percent higher in 1999 than those of a year earlier. CR at VII-3; Tr. at 212; Canadian Respondent's Prehearing Brief at 28; Canadian Respondent's Posthearing Brief at 7.

¹⁵⁸ CR/PR at Table IV-3. Canada's market share by weight was 4.2 percent in 1996, 3.8 percent in 1997, and 3.7 percent in 1998. Comparing interim period 1998 and 1999 figures, Canada's market share declined from 3.8 percent to 2.8 percent. Canada's market share by head of cattle was 3.8 percent in 1996, 3.5 percent in 1997, and 3.4 percent in 1998. Comparing interim period 1998 and 1999 figures, Canada's market share declined from 3.6 percent to 2.7 percent. See note 102 *supra* indicating that these market share figures may be overstated.

¹⁵⁹ CR/PR at Table IV-3.

¹⁶⁰ CR/PR at Table IV-3.

¹⁶¹ CR/PR at Table VII-1.

¹⁶² CR/PR at VII-1 and Table VII-1. For purposes of applying the statutory threat factors to this investigation, we consider the overall number of cattle in Canada as the "inventory" of cattle in Canada, although different cattle would be marketable at different times.

¹⁶³ CR at VII-1 and VII-3; Tr. at 230.

¹⁶⁴ CR/PR at Table VII-1.

Moreover, we do not find that the imports of live cattle from Canada are likely to enter the market at prices that are likely to depress or suppress domestic prices to a significant degree and are likely to increase the demand for further imports. As discussed earlier, the imports from Canada are entering the United States in small volumes that are not currently having significant price suppressing or depressing effects on the domestic prices of live cattle.¹⁶⁵ Moreover, domestic prices have increased in the most recent period of the investigation. The record does not indicate any likelihood that the declining volume and market share of imports from Canada will depress or suppress domestic prices in the future to any significant degree.

Due to the small and declining market share of the imports from Canada and their lack of effects on domestic prices, we find that any actual or potential negative effect of the subject imports on existing development and production efforts of the domestic industry would not be material, and would not constitute a threat of material injury to the domestic cattle industry. We find no indication of “any other demonstrable adverse trends” that indicate that there is likely to be material injury by reason of the subject imports from Canada. Therefore, we do not find that material injury “would occur unless an order is issued or a suspension agreement is accepted.”

Based on these factors, we determine that significantly increasing volume of subject imports are not imminent, and that material injury will not occur in the absence of an antidumping duty order. Therefore, we find that the domestic industry is not threatened with material injury by reason of subject imports from Canada.

CONCLUSION

For the foregoing reasons, we determine that the domestic industry producing live cattle is not materially injured or threatened with material injury by reason of LTFV imports from Canada.

¹⁶⁵ For Commissioner Askey’s views on the current price effects of the subject imports, see her Concurring Views.

VIEWS OF COMMISSIONER CAROL T. CRAWFORD

On the basis of information obtained in this investigation, I determine that the industry in the United States producing live cattle is not materially injured or threatened with material injury by reason of imports of live cattle from Canada that are sold in the United States at less than fair value ("LTFV"). I join the majority of the Commission in the findings with respect to like product and domestic industry, and in the discussion of the conditions of competition that are distinctive to the domestic industry. Furthermore, I concur in the determination that an industry in the United States is not materially injured or threatened with material injury by reason of the subject imports from Canada. However, because my analysis differs from the majority, my separate views follow.

I. ANALYTICAL FRAMEWORK

In determining whether there is a reasonable indication that a domestic industry is materially injured by reason of the LTFV imports, the statute directs the Commission to consider:

- (I) the volume of imports of the merchandise which is the subject of the investigation,
- (II) the effect of imports of that merchandise on prices in the United States for like products, and
- (III) the impact of imports of such merchandise on domestic producers of like products, but only in the context of production operations within the United States . . .¹

In making its determination, the Commission may consider "such other economic factors as are relevant to the determination."² In addition, the Commission "shall evaluate all relevant economic factors which have a bearing on the state of the industry . . . within the context of the business cycle and conditions of competition that are distinctive to the affected industry."³

The statute directs that we determine whether a domestic industry is materially injured "by reason of" the unfairly traded imports. Thus we are called upon to evaluate the effect of dumped imports on the domestic industry and determine if they are causing material injury. There may be, and often are, other "factors" that are causing injury. These factors may even be causing greater injury than the dumping. However, the statute does not require us to weigh or prioritize the factors that independently are causing material injury. Rather, the Commission is to determine whether any injury "by reason of" the unfairly traded imports is material. That is, the Commission must determine if the subject imports are causing material injury to the domestic industry. "When determining the effects of imports on the domestic industry, the Commission must consider all relevant factors that can demonstrate if unfairly traded imports are materially injuring the domestic industry."⁴ It is important, therefore, to assess the effects of the unfairly traded imports in a way that distinguishes those effects from the effects of other factors unrelated to the dumping. To do this, I compare the current condition of the industry to the industry conditions that

¹ 19 U.S.C. § 1677(7)(B)(i).

² 19 U.S.C. § 1677(7)(B)(ii).

³ 19 U.S.C. § 1677(7)(C)(iii).

⁴ S. Rep. No. 100-71 at 116 (1987)(emphasis added); Gerald Metals, Inc. v. United States, 132 F.3d 716 (Fed. Cir. 1997) (rehearing denied).

would have existed without the dumping, that is, had subject imports all been fairly priced. I then determine whether the change in conditions constitutes material injury.⁵

In my analysis, I evaluate the effects of the dumping⁶ on domestic prices, domestic sales, and domestic revenues. To evaluate the effects of the dumping on domestic prices, I compare domestic prices that existed when the imports were dumped with what domestic prices would have been if the imports had been priced fairly. Similarly, to evaluate the effects of the dumping on the quantity of domestic sales,⁷ I compare the level of domestic sales that existed when imports were dumped with what domestic sales would have been if the imports had been priced fairly. The combined price and quantity effects translate into an overall domestic revenue impact. Understanding the impact on the domestic industry's prices, sales, and overall revenues is critical to determining the state of the industry, because the effects on the statutory impact factors⁸ (e.g., employment, wages, etc.) are derived from the impact on the domestic industry's prices, sales, and revenues.

I then determine whether the price, sales, and revenue effects of the dumping, either separately or together, demonstrate that the domestic industry would have been materially better off if the imports had been priced fairly. If so, the domestic industry is materially injured by reason of the dumped imports.

For the reasons discussed below, I determine that the domestic industry producing live cattle is not materially injured or threatened with material injury by reason of dumped imports of live cattle from Canada.

II. CONDITIONS OF COMPETITION

To understand how an industry is affected by unfair imports, we must examine the conditions of competition in the domestic market. The conditions of competition constitute the commercial environment in which the domestic industry competes with unfair imports, and thus form the foundation for a realistic assessment of the effects of the dumping. This environment includes demand conditions, substitutability among and between products from different sources, and supply conditions in the market.

A. Demand Conditions

An analysis of demand conditions tells us what options are available to purchasers, and how they are likely to respond to changes in market conditions, for example an increase in the general level of prices in the market. Purchasers generally seek to avoid price increases, but their ability to do so varies with conditions in the market. The willingness of purchasers to pay a higher price will depend on the importance of the product to them (e.g., how large a cost factor), whether they have options that allow them to avoid

⁵ Both the Court of International Trade and the United States Court of Appeals for the Federal Circuit have held that the "statutory language fits very well" with my mode of analysis, expressly holding that my mode of analysis comports with the statutory requirements for reaching a determination of material injury by reason of the subject imports. *United States Steel Group v. United States*, 96 F.3d 1352, at 1361 (Fed.Cir. 1996), *aff'd* 873 F.Supp. 673, 694-695 (Ct. Int'l Trade 1994).

⁶ As part of its consideration of the impact of imports, the statute as amended by the URAA now specifies that the Commission is to consider in an antidumping proceeding, "the magnitude of the margin of dumping." 19 U.S.C. § 1677(7)(C)(iii)(V).

⁷ In examining the quantity sold, I take into account sales from both existing inventory and new production.

⁸ 19 U.S.C. § 1677(7)(C)(iii).

the price increase, for example by switching to alternative products, or whether they can exercise buying power to negotiate a lower price. An analysis of these demand-side factors tells us whether demand for the product is elastic or inelastic, that is, whether purchasers will reduce the quantity of their purchases if the price of the product increases. For the reasons discussed below, I find that demand conditions are such that purchasers are likely to reduce significantly the amount of cattle they buy if prices increase.

Importance of the Product and Cost Factor. Key factors that measure the willingness of purchasers to pay higher prices are the importance of the product to purchasers and the significance of its cost. In the case of an intermediate product (e.g., an input), the importance will depend on its cost relative to the total cost of the downstream product in which it is used. When the price of the input is a small portion of the total cost of the downstream product in which it is used, changes in the price of the input are less likely to alter demand for the input or for the downstream product.

The cost share of cattle as a percentage of the final products, *i.e.*, beef cuts and beef byproducts, is quite high, ranging from 80 percent to 95 percent.⁹ It is somewhat less for feedlot operators, but still ranges up to 75 percent of their costs.¹⁰ For individual consumers, evidence indicates that meat accounts for 18.2 percent of food expenditures and that beef accounts for 43.7 percent of per-capita meat expenditures.¹¹ Therefore, the cost share of cattle accounts for significant shares of the costs of the intermediate and final products, while beef purchases account for a significant portion of the total per capita expenditures for beef and food. These significant shares indicate that demand is likely to be fairly elastic.

Alternative Products. Another important factor in determining whether purchasers would be willing to pay higher prices is the availability of viable alternative products. Often purchasers can avoid a price increase by switching to alternative products. If such an option exists, it can impose discipline on producer efforts to increase prices.

Products that can substitute for cattle include other meats, particularly pork and poultry, as well as nonsubject downstream products, such as carcasses imported from Canada. The record indicates that pork and poultry are regularly substituted for beef.¹² The availability of these alternative products indicates that demand is likely to be elastic.

Concentration of Buying Power. Although there is no concentration within the domestic cattle industry, there is considerable concentration in the packing industry, which is the purchaser of cattle. The four largest packers account for the great majority of the cattle purchased and processed into beef products.¹³ Therefore, the purchasing power of the buyers is concentrated in the packing industry, which can and does exert significant influence over prices for cattle. In fact, petitioner acknowledges that the domestic producers are “price takers”¹⁴ that thus have a limited ability to affect prices.

The existence of buying power among the relatively small number of purchasers, *i.e.*, the packers, implies that purchasers do not strictly react to changes in prices for these products, but can influence them as well. However, demand for cattle is ultimately a derived demand, that is, consumers purchase beef

⁹ CR at II-10; PR at 7.

¹⁰ CR at VI-5; PR at VI-4.

¹¹ CR at II-11; PR at II-7.

¹² CR at II-9 to II-10; PR at II-6.

¹³ CR at IV-1; PR at IV-1.

¹⁴ CR at V-1; PR at V-1; and Petitioner’s Posthearing Brief at 41 and 78.

through market outlets supplied by the packers. As discussed above, since beef represents a fairly high percentage of consumers' meat expenditures, and there are readily available substitute products for beef, an increase in the price of beef is likely to result in lower consumer purchases of beef. Because cattle represents a high percentage of the end cost of beef, any increase in the price of cattle will translate into significant increases in the cost of beef. Since beef consumers will reduce their consumption in response to higher beef prices, any increase in the price of cattle will ultimately result in lower purchases of cattle, despite the buying power of the packers. Therefore, I find that purchasers are likely to reduce significantly the amount of cattle they buy in response to a general increase in prices for these products.

B. Substitutability

Simply put, substitutability measures the similarity or dissimilarity of imported versus domestic products from the purchaser's perspective. Substitutability depends upon 1) the extent of product differentiation, measured by product attributes such as physical characteristics, suitability for intended use, design, convenience or difficulty of usage, quality, etc.; 2) differences in other non-price considerations such as reliability of delivery, technical support, and lead times; and 3) differences in terms and conditions of sale. Products are close substitutes and have high substitutability if product attributes, other non-price considerations, and terms and conditions of sale are similar.

While price is nearly always important in purchasing decisions, non-price factors that differentiate products determine the value that purchasers receive for the price they pay. If products are close substitutes, their value to purchasers is similar, and thus purchasers will respond more readily to relative price changes. On the other hand, if products are not close substitutes, relative price changes are less important and are therefore less likely to induce purchasers to switch from one source to another.

Given the existing demand conditions for cattle, overall purchases are likely to decrease somewhat when overall prices of cattle increase. In addition to any changes in overall demand for cattle, the demand for cattle from different sources will decrease or increase depending on their relative prices and their substitutability. If cattle from different sources are substitutable, purchasers are more likely to shift their demand when the price from one source (i.e., subject imports) increases. The magnitude of this shift in demand is determined by the degree of substitutability among the sources.

Nonsubject imports are only a minuscule presence in the market, and thus purchasers effectively have only two potential sources of cattle: the domestic product and the subject imports from Canada. Purchasers are more or less likely to switch from one source to another depending on the similarity, or substitutability, between and among them. I have evaluated the substitutability between domestic cattle and the subject imports as follows.

Overall, there is inherent substitutability in the U.S. market between domestic cattle and Canadian cattle, because all must meet USDA requirements. However, substitutability is reduced by differing product characteristics and non-product factors between the two sources.

1. Product Characteristics. There is a basic substitutability among cattle at the different production stages. However, cattle at different stages of production are not very good substitutes for each other. Cattle that have not been fed to an appropriate size are not substitutes for fed cattle because they will not produce the same type (quality grades and sized pieces) of beef.¹⁵ Therefore, slaughter cattle (*i.e.*, fed cattle and cull cattle) are not good substitutes for cattle at the other stages of production (*i.e.*, calves, stockers and feeder cattle). In 1998, about 88 percent of the number of cattle imported from Canada

¹⁵ CR at II-11; PR at II-7.

consisted of slaughter cattle.¹⁶ In contrast, in 1998 only about 35 percent of domestic cattle were slaughter cattle.¹⁷ Therefore, calves, stockers and feeder cattle account for a substantial portion of the like product that is not substitutable for the vast majority of the subject imports. Consequently, substitutability between the two sources is reduced considerably.

2. *Non-Product Factors.* The record indicates that domestic cattle have certain advantages over the subject imports. Purchasers have indicated that domestic cattle are superior to the subject imports in delivery times, availability and product quality.¹⁸ Availability and product quality are particularly important to packers, the four largest of which account for the great majority of cattle purchased and processed into beef products.¹⁹ Therefore, these factors further reduce the substitutability between the two sources of cattle.

For the reasons discussed above, I find that domestic cattle and the subject imports from Canada are, at best, only moderate substitutes for each other.

C. Supply Conditions

Supply conditions in the market are a third condition of competition. Supply conditions determine how producers would respond to an increase in demand for their product, and also affect whether producers are able to institute price increases and make them stick. Supply conditions include producers' capacity utilization, their ability to increase their capacity readily, the availability of inventories and products for export markets, production alternatives and the level of competition in the market. For the reasons discussed below, I find that the elasticity of supply of cattle is quite low.

Capacity Utilization and Capacity. Unused capacity can discipline prices. If there is a competitive market, no individual producer can make a price increase stick. Any attempt at a price increase by one producer would be beaten back by competitors who could produce more product to sell at the prevailing price.

A traditional concept of capacity utilization is not particularly applicable to the cattle industry as a measure of whether the domestic industry has the ability to increase its output in response to attempted price increases. Rather, I find that the most relevant consideration is the time it takes to "produce" fed cattle, that is, the length of time from when a calf is conceived until it has been raised to the point where it is ready for slaughter. The record indicates that the length of time from conception to slaughter is about two and one-half years.²⁰ Thus, in the short run, the domestic industry is not able to "produce" more cattle.

Inventories and Exports. As with capacity utilization, traditional concepts of inventories are not particularly applicable to the cattle industry. Specifically, live cattle are regularly traded at each stage of development, and thus the reported "inventories" do not represent product accumulating in storage. Rather, the reported inventories are, in fact, cattle already in the market when counted as inventory. Furthermore,

¹⁶ Calculated from Table J-1.

¹⁷ Calculated from Table III-3. The whole herd of domestic cattle in 1998 is represented by the inventory of 99.744 million head on January 1, 1998. In 1998, 35.166 million head were slaughtered, an amount equal to 35.3 percent of the whole herd. Although precise data are not available for each stage of production, I find this estimate to be a reasonable approximation of the portion of the domestic like product accounted for by slaughter cattle.

¹⁸ CR at II-13 to 14; PR at II-8.

¹⁹ CR at IV-1; PR at IV-1.

²⁰ CR at II-5; PR at II-3.

once cattle reach the optimal weight for slaughter, it is important that they be sold quickly because they are at their best quality at that size, and continued feeding requires more food for each additional pound, which results in increased fat content.²¹ Therefore, the reported inventories do not represent an additional source of supply for the domestic industry. Finally, the domestic industry's exports are extremely small, and thus do not represent a significant source of supply.²² Therefore the domestic industry has no actual inventories and extremely small exports available that could have added supply to the U.S. market in response to changes in demand.

Level of Competition. The level of competition in the domestic market has a critical effect on producer responses to demand increases. A competitive market is one with a number of suppliers in which no one producer has the power to influence price significantly. In the U.S. market, there are more than 1.1 million domestic producers of cattle, which are widely dispersed. Thus, there is virtually no concentration within the domestic industry. Rather, there is significant competition within the domestic industry. Nonsubject imports are only a minuscule presence in the market, and thus they are not a source of competition. Even though there is virtually no competition from nonsubject imports, the competition among domestic producers indicates that there is a significant level of competition in the U.S. market for cattle.

Notwithstanding the level of competition in the U.S. market, the domestic industry's ability to supply the demand for subject imports is extremely limited, and consequently I find that the elasticity of supply is quite low.

III. NO MATERIAL INJURY BY REASON OF LTFV IMPORTS OF CATTLE FROM CANADA

The statute requires us to consider the volume of subject imports, their effect on domestic prices, and their impact on the domestic industry. I consider each requirement in turn.

A. Volume of Subject Imports

By weight, subject imports from Canada decreased from 1.834 billion pounds in 1996 to 1.659 billion pounds in 1997, and then further decreased to 1.623 billion pounds in 1998. In the first 6 months of 1999, the subject imports were 0.613 billion pounds. The value of the subject imports was \$984.7 million in 1996, \$933.1 million in 1997, \$893.8 million in 1998, and \$340.3 million in the first 6 months of 1999.²³ By weight, the subject imports held a market share of 4.2 percent in 1996, 3.8 percent in 1997, 3.7 percent in 1998, and 2.8 percent in the first 6 months of 1999. Their market share by value was 3.8 percent in 1996, 3.4 percent in 1997, 3.5 percent in 1998, and 2.5 percent in the first 6 months of 1999.²⁴ While it is clear that the larger the volume of subject imports, the larger the effect they will have on the domestic industry, whether the volume is significant cannot be determined in a vacuum, but must be evaluated in the context of its price effects and impact. Based on the market share of the subject imports from Canada and the conditions of competition in the domestic market, I find that the volume of subject imports from Canada is not significant in light of the lack of price effects and impact, as discussed below.

²¹ CR at V-9; PR at V-7.

²² Table III-3.

²³ Table IV-3.

²⁴ Table IV-3.

B. Effect of Subject Imports on Domestic Prices

To determine the effect of the subject imports on domestic prices, I examine whether the domestic industry could have increased its prices if the subject imports had not been dumped. As discussed, both demand and supply conditions in the domestic market are relevant. Examining demand conditions helps us understand whether purchasers would have been willing to pay higher prices for the domestic product, or buy less of it, if subject imports had been sold at fairly traded prices. Examining supply conditions helps us understand whether available capacity and competition among suppliers to the market would have imposed discipline and prevented price increases for the domestic product, even if subject imports had not been unfairly priced.

If the subject imports from Canada had not been dumped, their prices in the U.S. market would have increased. Thus, if subject imports had been fairly priced, they would have become more expensive relative to domestic cattle. In such a case, if subject imports are good substitutes with other cattle, purchasers would have shifted towards the relatively less expensive products.

In these investigations, the dumping margins for the subject imports are fairly small, ranging from 0.62 percent (*de minimis*) to 15.69 percent, with an “all others” rate of 5.63 percent, and margins of less than 6 percent apply to virtually all of the subject imports. Therefore, the subject imports likely would have been priced only slightly higher had they been fairly traded. At only slightly higher prices, it is likely that there would have been only a slight shift in demand away from the subject imports. Thus, most of the subject imports’ small market share, only 3.7 percent by weight in 1998,²⁵ would have continued to be sold at fairly traded prices. Therefore, there would have been only a small increase in demand for domestic cattle, had the subject imports been fairly traded.²⁶

Any increase in demand for domestic cattle would have been limited by the moderate substitutability between the two sources. As discussed, about 88 percent of the subject imports consists of fed cattle and cull cattle, which are not good substitutes for the substantial portion of the like product that consists of calves, stockers and feeder cattle. Thus, any increase in demand for domestic cattle would have been limited primarily to domestic fed and cull cattle. Therefore, had the subject imports been fairly traded the overall increase in demand for domestic cattle would have been very small. Consequently, the increase in demand for domestic cattle would not have been significant, and it would have been too small for the domestic industry to increase its prices significantly, regardless of the conditions of competition.

Notwithstanding the substantial limitations on domestic supply discussed above, even if the domestic industry had tried to increase its prices in response to the very small increase in demand, its efforts would not have been successful. Demand is fairly elastic, and thus domestic suppliers’ ability to raise prices in response to an increase in demand is limited. In addition, while there is virtually no competition from nonsubject imports, there is significant competition among producers within the domestic industry. Thus, competitive conditions indicate that price discipline exists in the market. Furthermore, the concentration of purchasing power within the packing industry supports the conclusion that domestic cattle producers are price takers. The competition among domestic producers and the purchasing power of the packing industry would have enforced price discipline in the market. In these circumstances the domestic industry likely would not have been able to increase its prices had the subject imports been sold at fairly

²⁵ Table IV-3.

²⁶ Nonsubject imports are minuscule, and thus virtually all of a shift in demand away from the subject imports would have resulted in an increase in demand for domestic cattle.

traded prices. Consequently, I find that subject imports are not having significant effects on prices for domestic cattle.

C. Impact of Subject Imports on the Domestic Industry

To assess the impact of subject imports on the domestic industry, I consider output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, research and development and other relevant factors.²⁷ These factors together either encompass or reflect the volume and price effects of the subsidized and dumped imports, and so I gauge the impact of the dumping through those effects.

As discussed above, only a very small portion of the demand for the subject imports from Canada would have shifted to the domestic product, had the subject imports been sold at fairly traded prices. The domestic industry would not have been able to increase its prices in response to the very small increase in demand for domestic cattle. Therefore, any impact on the domestic industry would have been on its output and sales.

Because it takes two and one-half years to raise cattle from conception to slaughter, the domestic industry could not have increased its output of cattle readily in response to the shift in demand. As discussed above, the domestic industry has no actual inventories and only extremely small levels of exports available with which it could have supplied any increase in demand. Therefore, the domestic industry could not have increased its output or sales significantly had the subject imports been fairly traded. Even assuming that the domestic industry *could have* increased its output and sales in response to the small shift in demand away from the subject imports, the increase in demand for domestic cattle would have been so small that any effect on the domestic industry's output and sales would not have been significant. Consequently, the impact on the domestic industry would not have been significant had the subject imports been fairly traded.

D. Conclusion

On the basis of the foregoing analysis, I find that the domestic industry would not have increased its prices or its output and sales, and therefore its revenues, significantly had the subject imports been fairly traded. Therefore, I find that the domestic industry would not have been materially better off if the subject imports had not been dumped. Consequently, I determine that the domestic industry producing live cattle is not materially injured by reason of LTFV imports of live cattle from Canada.

IV. NO THREAT OF MATERIAL INJURY BY REASON OF LTFV IMPORTS OF CATTLE FROM CANADA²⁸

The statute requires the Commission to determine whether the U.S. industry is threatened with material injury by reason of the subject imports by determining whether "further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is

²⁷ 19 U.S.C. § 1677(7)(C)(iii).

²⁸ Petitioner has not advanced any arguments that the domestic industry is threatened with material injury by reason of the subject imports.

issued or a suspension agreement is accepted . . .”²⁹ In reaching my determination, I have considered all the factors that are relevant to this investigation³⁰ and have determined that the domestic industry is not threatened with material injury by reason of the subject imports from Canada.

By weight, subject imports from Canada decreased from 1996 to 1997, and further decreased from 1997 to 1998. The corresponding full-year market share of the subject imports also decreased, and was quite small and stable throughout the period of investigation, between 3.7 percent and 4.2 percent.³¹ Therefore, there has been no increase in the volume or market share of the subject imports. Consequently, there has not been a significant rate of increase in the volume or market penetration of the subject imports that would indicate the likelihood of substantially increased imports. There is no indication in the record of any increase in production capacity in Canada or inventories³² of Canadian cattle that constitutes evidence of the likelihood of substantially increased imports. Although the U.S. market is Canada’s primary export market for cattle, the record indicates that Canadian exports have remained fairly stable, are not projected to increase in the immediate future, and in fact have declined from 1996 to 1998.³³ For these reasons, I find that further dumped imports are not imminent.

Subject imports from Canada are not likely to enter the U.S. market at prices that are likely to have significant depressing or suppressing effects on domestic prices. As discussed above, the subject imports are entering the market in such small volumes that they are not currently having significant effects on domestic prices. There is no record evidence to suggest that the conditions of competition or the lack of significant price effects is likely to change in the immediate future. In addition, the volume of the subject imports is so small that any actual or potential negative effects on existing development and production efforts of the domestic industry would not be material. There is no evidence of any other demonstrable adverse trends that indicate the probability that there is likely to be material injury by reason of the subject imports from Canada. For these reasons, I do not find that material injury by reason of the subject imports would occur unless an order is issued or a suspension agreement is accepted.

For the reasons stated above, I do not find that further dumped imports from Canada are imminent. Furthermore, I do not find that material injury will occur unless an order is issued or a suspension agreement is accepted. Consequently, I find that the domestic industry is not threatened with material injury by reason of the LTFV imports of live cattle from Canada.

V. CONCLUSION

I determine that the domestic industry producing live cattle is not materially injured or threatened with material injury by reason of LTFV imports of live cattle from Canada.

²⁹ 19 U.S.C. § 1673d(b) and 1677(7)(F)(ii).

³⁰ 19 U.S.C. § 1677(7)(F)(I). Factor VII regarding raw and processed agricultural products is not applicable, because this investigation does not apply to both a raw agricultural product and any product processed from it. Additionally, Factor VI regarding product shifting is not an issue in this investigation. Finally, there is no evidence in the record of dumping findings or antidumping remedies in markets of foreign countries relevant to this investigation. 19 U.S.C. § 1677 (7)(F)(iii).

³¹ Table IV-3. The market share for the first 6 months of 1999 was 2.8 percent.

³² As discussed above, the traditional concept of inventories is not applicable in the cattle market.

³³ Table VII-1.

CONCURRING VIEWS OF COMMISSIONER THELMA J. ASKEY

Based on the record in this investigation, I determine that an industry in the United States is not materially injured or threatened with material injury by reason of imports of live cattle from Canada that are sold in the United States at less than fair value (“LTFV”).¹

I concur in, and join, the Commission’s findings with respect to the domestic like product and industry in this investigation. I also join the Commission’s discussion of its determination that the domestic industry is not threatened with material injury by reason of the subject imports. I write separately, however, to explain my determination that the industry is not materially injured by reason of the subject imports. I do so primarily because my findings on the substitutability of the subject and domestic merchandise and the influence of the beef packing industry on market prices differ somewhat from those of my colleagues in the Commission majority. Nonetheless, I note that I agree with the general considerations outlined in my colleagues’ negative determination. I emphasize that my decision to write a concurring opinion does not reflect a significant disagreement with the analysis of my colleagues in the Commission majority.

I. NO MATERIAL INJURY BY REASON OF THE SUBJECT IMPORTS FROM CANADA

In final phase antidumping duty investigations, I am required to determine whether an industry in the United States is materially injured by reason of the subject imports under investigation.² The statute defines “material injury” as “harm which is not inconsequential, immaterial or unimportant.”³ The Court of Appeals for the Federal Circuit has stated that the Commission may not find an industry has been materially injured by reason of the subject imports if the subject imports are responsible only for “a minimal or tangential contribution to [the] material harm” being suffered by the domestic industry.”⁴

In assessing whether the domestic industry is materially injured by reason of subject imports, I must consider the volume of imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.⁵ Moreover, I must consider all relevant economic factors that bear on the state of the industry in the United States.⁶ No single factor is dispositive, and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”⁷

For the reasons discussed below, I determine that the domestic industry producing live cattle is not materially injured by reason of subject imports from Canada.

¹ Material retardation of an industry is not an issue in these investigations.

² 19 U.S.C. § 1673d(b).

³ 19 U.S.C. § 1677(7)(A).

⁴ Gerald Metals, Inc. v. United States, 132 F.2d 716, 722 (Fed. Cir. 1997).

⁵ 19 U.S.C. § 1677(7)(B)(i). The Commission “may consider such other economic factors as are relevant to the determination” but shall “identify each [such] factor . . . and explain in full its relevance to the determination.” 19 U.S.C. § 1677(7)(B). See also Angus Chemical Co. v. United States, 140 F.3d 1478 (Fed. Cir. 1998).

⁶ 19 U.S.C. § 1677(7)(C)(iii).

⁷ 19 U.S.C. § 1677(7)(C)(iii).

A. Conditions of Competition

I have considered the following conditions of competition for purposes of assessing whether the domestic cattle industry is being materially injured by reason of the subject imports.

First, the market for live cattle in the United States consists of four distinct market segments, each reflecting a different developmental stage of live cattle.⁸ During the first stage of development -- the “cow/calf” stage -- young calves are typically raised with their mothers from birth to weaning. These calves are generally weaned from their mothers when they are between five to ten months old, at which point they generally weigh between 400 to 650 pounds. During the second or “yearling/stocker” stage, newly weaned calves are removed from their mothers and kept on stocker/yearling operations or ranches. These cattle weigh between 400 pounds to 750 pounds in weight and are between 12 and 20 months of age. During the third or “feeder” stage of development, cattle are placed in feedlots or confined areas for about three to five months for the purpose of bringing them to slaughter weight. In these feedlots, they are fed high-energy grain stuffs, typically corn and protein supplements and some roughage. Feeder cattle generally weigh between 650 or 750 pounds and 1,100 to 1,300 pounds. During the final stage, cattle are removed from feedlots and made ready for slaughter when they are between 15 to 24 months old and weigh between 1,100 and 1,300 pounds.

Second, the industry producing live cattle consists of three distinct categories of producer: cow-calf producers, which maintain cow herds and raise calves from birth to weaning; stocker/backgrounder producers, which feed weaned calves in fenced pastures or on the open range; and feedlot producers, which fatten cattle for three to six months immediately prior to slaughter. Generally, there is not a significant level of vertical integration between producers in each of these market segments, especially in the downstream segments of the market, and cattle are generally transferred from one segment of the market to the next through open market purchases.⁹

Third, the members of the domestic cattle industry are numerous and relatively diffuse. In 1998, there were more than one million cattle operations in the United States.¹⁰ Cow-calf operations are the most numerous of the three categories, but even the feedlot sector -- which is somewhat less diffuse -- consisted of 104,071 operations in 1998.¹¹ In this regard, no individual cattle producer, even the largest, had one-time feeding capacity that was as much as one percent of total cattle inventories in the United States.¹²

In contrast, the beef packing industry (the primary purchasers of live cattle fed for slaughter) is heavily concentrated. The four largest beef packing firms purchased nearly 81 percent of cattle fed for slaughter in the United States and 33 percent of all culled cattle slaughtered for beef in the United States in

⁸ CR at I-4 -I-8, PR at I-3-I-6.

⁹ CR at V-1; Petitioners’ Prehearing Brief at 41 & 78. Corresponding with the different conditions in each industry segment, purchasers in each segment have somewhat different concerns depending on the stage of development of the cattle being purchased. Packer purchasers of fed cattle, the concentrated downstream industry, are concerned with the quality of the meat that the fed cattle will produce. CR at II-4; PR at II-3. Purchasers of calves, stockers, and feeder cattle, however, are principally interested in the health of the animal and its potential for weight gain. *Id.*

¹⁰ The number of cattle operations declined by five percent from 1996. CR and PR at III-1.

¹¹ CR at III-2, PR at III-1.

¹² Compare CR and PR at Table III-2 with Table III-3. Moreover, even if one compares this one-time feed capacity to the total cattle on feed as of July 1, 1999, the largest producers would account for only 5.0 percent of total cattle on feed. *Id.*

1998.¹³ My review of the record indicates that the comparative difference between the levels of concentration in the beef packing industry and the feedlot operators, in particular, leads to unequal bargaining positions between the two groups. This disparity in bargaining positions enables to beef packers to have a more significant influence on price levels in the slaughter market than the feedlot producers.¹⁴ Accordingly, the feedlot producers are price takers in this market, primarily due to the level of concentration in the beef packing industry and the diffuse nature of the cattle industry.¹⁵

Fourth, the market for live cattle in the United States is subject to a predictable cycle of expansions and contractions known as the “cattle cycle.” The cycle consists of a series of cyclical supply changes in the market that directly translate into price movements for live cattle. The cattle cycle generally lasts 10-12 years and has four stages: the expansionary phase, the peak year, the liquidation phase, and the consolidation phase. Generally, the cattle market enters the expansionary phase of the cycle when slaughter cattle prices are at relatively low but stable levels. At this point, cattle producers choose to retain more cattle for breeding purposes rather than marketing them for slaughter. This gradually reduces the number of slaughter cattle available in the market and therefore gradually increases the market prices paid for slaughter cattle over the course of the expansionary phase. The expansionary phase may last between three and eight years. As the expansionary phase continues and the larger number of cows retained for breeding produce larger supplies of live cattle, producers gradually market larger numbers of cattle to be slaughtered. Supplies of slaughter cattle gradually increase until the supply eventually exceeds demand during what is known as the peak year of the cycle. At this point, prices for slaughter cattle begin to decline and shortly thereafter the liquidation phase of the cycle begins. During the liquidation phase of the cycle, which usually lasts between two to four years, cattle producers respond to the rapidly increasing supply of cattle held for slaughter by reducing their breeding herds, thus increasing the supply of slaughter cattle on the market and further reducing the price. After this process has been completed, the market enters its consolidation phase (lasting about a year), when slaughter cattle prices begin to reflect the reductions in supply resulting from the liquidation of the breeding stock during the liquidation phase. As the supply of cattle held for slaughter decreases during the consolidation phase, the prices paid for slaughter cattle begin to level off.¹⁶ Generally, the parties agree that the cattle cycle has been in its

¹³ CR at IV-1-IV-4, PR at IV-1-IV-2.

¹⁴ In this regard, I recognize that certain studies indicate that there is not a clear link between the concentrated nature of the beef packing industry and lower farm prices. See, e.g., USDA, “U.S. Beef Industry: Cattle Cycles, Price Spreads, and Packer Concentration,” Technical Bulletin No. 1874 at iii & 37 (April 1999) (“Concentration Study”). As an initial matter, I note that these studies generally recognize that the data does not necessarily support a finding that the industry is actually competitive. Id. Moreover, I note that a number of studies indicate that the number of packers is one variable used by many studies in pricing models for the cattle industry. See T. Schroeder et al., “Beef Industry Price Discovery: A Look Ahead,” at 2 (February 1997) (attached in Petitioners’ Prehearing Brief at Ex. 6). Further, I note that the industry’s Herfindahl-Hirschman Index is at a level that the Justice Department would consider to be highly concentrated and that the increasing concentration in the industry since 1970 has been accompanied by a general decline in real (i.e., adjusted for inflation) cattle prices. E.g., Concentration Study at 30-36, 21 & Beef Packers’ Posthearing Brief at Ex. G. Moreover, I would add that the Concentration Study appears to recognize that the beef packing industry may not be achieving increased profit margins at the wholesale sale level but may be obtaining increasing price spreads in the retail segment because of increased retail level services being performed by the packing industry. Concentration Study at iii.

¹⁵ CR and PR at V-1; Petitioners’ Prehearing Brief at 4-5, 41 & 78.

¹⁶ The evidence in the record indicates that the cattle cycles in the United States and Canada are similar and usually parallel each other. CR at VII-1; Tr. at 229 and 230.

liquidation phase during the entire period of investigation, although they disagree on whether the liquidation phase is on the verge of ending.¹⁷

Fifth, the cost of grain may be an important factor in a feedlot operator's decision to retain cattle or market them for slaughter. Relatively low grain prices may create an incentive for feedlot operators to retain cattle in the feedlots for slightly longer periods of time because additional weight gain to the cattle is relatively inexpensive.¹⁸ Significantly higher grain prices, however, may encourage feedlot operators to market slaughter cattle as quickly as possible to avoid significant additional feed costs.¹⁹ The cost of grain was relatively high in 1996 and throughout 1997 (with the highest cost in August 1997) but has subsequently declined throughout 1998 and in the first half of 1999.²⁰

Sixth, cattle fed for slaughter are sold either on the spot market or by contract, although even contract sales generally set price by referring to some price index, often the spot market price in a certain location, as of the time of delivery.²¹ Market prices are generally available relatively quickly throughout the market.²²

Seventh, over 65 percent of the U.S. inventory of live cattle is located in fourteen states.²³ Moreover, nearly forty percent of cattle inventory is located in the major feeding and slaughter areas of Nebraska, Kansas, Iowa, Colorado, and Texas (the "feeder belt" states). Accordingly, since cattle prices are rapidly disseminated throughout the national cattle market, prices paid for cattle in the feeder belt states generally have a significant impact on prices within the entire national market.²⁴ As testimony at the

¹⁷ Petitioner argued that the current cattle cycle is not operating in the expected fashion. Petitioner's Prehearing Brief at 57-58; Tr. at 175. Petitioner's economist alleged that "we're proceeding into the 10th year of this cattle cycle" which was expected to turn around in 1997 and USDA reports "now are stretching that out to 2001. . . this one is different. It is longer. It is more severe." Tr. at 175 and 176. According to Petitioner, "we could easily be at the bottom of the liquidation phase and start going back up, but only if we can do something about the imports. . . we're in a stagnant position in this cattle cycle." Tr. at 180 and 181; Petitioner's Posthearing Brief, Response to Questions from Commissioner Hillman at 47, and Commissioner Koplán at 73.

Conversely, the Canadian Respondent contended that "neutral observers, including the USDA, consider this cycle to have been well within the normal parameters governing recent cycles" and that this "cycle has been of average length." Canadian Respondent's Posthearing Brief at 3. According to this Respondent, "[t]here is general agreement that the liquidation phase of the cycle is either over or about to be over." *Id.* The Canadian Respondent maintained that two features unique to the current cycle were the heavier carcass weights and the increases in feed grain prices that occurred in 1996. *Id.* at 5-6. The Packer Respondents contended that "[i]n 1999, the liquidation cycle is finishing and consolidation is beginning, with the expected improvement in price and profitability." Joint Packers' Prehearing Brief at 21.

¹⁸ CR at I-8.

¹⁹ CR at V-9. The timing of this decision is limited by the fact that cattle will reach an optimum quality grade at a weight of approximately 1,200 pounds and that they stay at this weight for a relatively short period of time. Moreover, packers prefer cattle of consistent size. In addition, from the feeders perspective, additional weight gain usually is less efficient in that it requires more feed for each pound gained and results in the cattle disproportionately gaining weight in fat rather than more valued muscle. *Id.*

²⁰ CR at VI-7 and Table VI-4.

²¹ CR at V-2-5; PR at V-2-V-4.

²² CR at V-4-6; PR at V-3-V-5.

²³ CR and PR at Table G-1. The fourteen states in descending order by number of head of cattle in inventory as of January 1, 1999 are Texas, Nebraska, Kansas, Oklahoma, California, Missouri, South Dakota, Iowa, Wisconsin, Colorado, Montana, Minnesota, Kentucky, and Tennessee. *Id.*

²⁴ Tr. at 87-88, 95-96, 98; Petitioner's Posthearing Brief, Response to Questions at 34 and 35; Petitioner's

(continued...)

hearing indicated, “secondary markets in the Northwest and the Mid-Atlantic states draw off of the Midwestern fed cattle prices.”²⁵ As a result, while the spot market prices in Nebraska, Kansas, and Texas are quickly transmitted to, and affect, the secondary markets, the price discovery is asymmetrical (*i.e.*, prices in the secondary markets do not lead prices in the feeder belt states).²⁶

Eighth, although the record indicates that the subject imports may be moderately good substitutes for the domestic merchandise within the same stage of development, the overall substitutability of the subject merchandise and the domestic like product is significantly limited. Most importantly, the substitutability of the subject and domestic merchandise is limited by the fact that virtually all Canadian imports of live cattle in 1998 were ready for immediate slaughter.²⁷ In 1998, however, only approximately 35 percent of total U.S. cattle inventory consisted of cattle ready for slaughter; the remaining 65 percent consisted of calves, stockers/yearlings and feeder cattle not yet ready for slaughter.²⁸ Because cattle at different stages of development are not good substitutes for one another,²⁹ the difference in the composition of subject and domestic merchandise significantly reduces their substitutability.

Moreover, the substitutability of the subject and domestic merchandise appears to be somewhat limited even within the same stage of development. For example, although the large majority of cattle associations and purchasers reported that Canadian and domestic cattle were generally interchangeable,³⁰ a majority of responding purchasers reported that there were significant, non-price differences between Canadian and domestic cattle, including quality, availability, proximity and contractual restrictions.³¹ Similarly, more than two-thirds of cattle associations reported that differences in product characteristics and sales conditions between the subject and domestic merchandise affected their sales of cattle, including differences in quality levels, exchange rate issues, health and safety matters, and sales methods.³²

Finally, demand in the live cattle market is primarily derived from downstream demand for beef products and beef by-products.³³ During the period from 1996 to 1998, demand for live cattle in the U.S. market has remained relatively stable, with apparent consumption of live cattle fluctuating only minimally.³⁴ However, demand for live cattle for slaughter has strengthened in 1999, with apparent

²⁴ (...continued)

Prehearing Brief at 43; Canadian Respondent’s Final Comments at 3 and 4; Joint Packers’ Final Comments at 4. The leading price discovery points are Nebraska and Kansas. Joint Packers’ Posthearing Brief at 11 and Attachment 6, quoting USDA/GIPSA, Concentration in the Red Meat Packing Industry at 14 (Feb. 1996).

²⁵ Tr. at 87-88 & 98.

²⁶ USDA/GIPSA, Concentration in the Red Meat Packing Industry at 7 and 14 (Feb. 1996), included at Attachment 6 in Joint Packers’ Posthearing Brief. See also Tr. at 98; Petitioner’s Posthearing Brief at 4 (“If prices in Colorado, Nebraska and Kansas fall, prices will fall in Florida.”)

²⁷ The record indicates that, by weight, nearly 93 percent of all live cattle imports from Canada were ready for slaughter. See CR and PR at Table J-1. Fed cattle for slaughter accounted for 65.4 percent by weight of total subject imports in 1998, and cull cattle accounted for 27.4 percent by weight of subject imports. Id. The remaining seven percent of subject imports by weight entered the United States in 1998 primarily as feeder cattle with some yearling or stocker cattle. Id.

²⁸ See CR and PR at Table III-3.

²⁹ CR at II-11, PR at II-7.

³⁰ CR at II-13, PR at II-8.

³¹ Id.

³² CR at II-12-13, PR at II-7-II-8.

³³ CR at II-8; PR at II-5.

³⁴ Apparent consumption of live cattle was 43.59 million pounds in 1996, 43.36 million pounds in 1997 and
(continued...)

consumption by weight of fed cattle for slaughter increasing by 2.1 percent in interim 1999 when compared with interim period 1998.³⁵ Industry analysts report that there has been a significant increase in demand for beef during 1999.³⁶

B. Volume of Subject Imports

Section 771(7)(C)(i) provides that the “Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.”³⁷

As I did in my preliminary determination, I again find that the volume of the subject Canadian imports is not significant. Whether considered on a weight or head basis, the volume of the subject imports from Canada has been small and has declined throughout the period of investigation.³⁸ In absolute terms, the volume of the subject imports decreased from 1996 to 1998 and continued to decrease in interim 1999³⁹ when compared to interim 1998.⁴⁰ In this regard, I note that, although the volume of Canadian imports has fluctuated somewhat in the last eight years (particularly in 1994 and 1995), the volume level of imports from Canada has remained relatively stable since 1992.⁴¹

³⁴ (...continued)

43.3 million pounds in 1998. CR and PR at Table IV-3. As discussed below, these apparent consumption numbers are somewhat understated.

³⁵ CR and PR at Table B-1.

³⁶ See, e.g., “Here’s The Beef”, Cheryl Strauss Einhorn, *Barron’s*, October 11, 1999, see also CR and PR at Table L-1 (beef demand in interim 1999 was 2.4 percent higher than in interim 1998.)

³⁷ 19 U.S.C. § 1677(7)(C)(i).

³⁸ For purposes of my volume and market share analysis in this investigation, I have considered volume measures on the basis of both cattle weight and head of cattle. Nonetheless, I believe that a comparison of volume trends based on weight is more instructive in this investigation because an analysis of volume based on head of cattle might mask weight variations between classes of cattle (i.e., veal calves v. steer for slaughter) or changes in the average weight of the individual cattle slaughtered. See, e.g., CR and PR at Table H-1 (showing a general increase in the average weight of cattle at slaughter since 1970). Moreover, I note that cattle are generally sold on the basis of weight, not by head.

³⁹ In this regard, I have considered that the volume of imports continued to decline after the filing of the petition and that prices have strengthened since that time. See, e.g., Petitioner’s Prehearing Brief at 87. I note, however, that the continued decline in subject volume during interim 1999 is consistent with the decline in the volume trends exhibited by the subject imports during 1997 and 1998 and that the volume decline can be attributed in part to such factors as increased slaughter capacity added in Canada. Moreover, I note that the strengthening of prices is consistent with the fact that the record suggests that the demand for beef products is strengthening and that the liquidation phase of the cattle cycle may now be ending. Because of the pendency of the investigation, however, I have reduced the weight accorded to these volume changes after the filing of the petition for purposes of my analysis. See 19 U.S.C. 1677(7)(I).

⁴⁰ CR and PR at Table B-1.

⁴¹ CR and PR at Table H-1. When performing my analysis, I have primarily relied on data for the Commission’s traditional three-and-a-half year period of investigation, covering 1996 through 1998 and interim 1999. However, I have also given attention to all of the data in the record, including data stretching far beyond our standard period. Accordingly, I have considered, to the extent it is relevant, data for 1995 in my analysis. In this regard, I note that the volume of the Canadian imports in 1994 and 1995 was lower than in 1996 through 1998. Nonetheless, I note that these volume levels were lower than 1992 and 1993. CR and PR at Table H-1. I

(continued...)

Similarly, when considered on the basis of weight, the market share of the subject imports⁴² was small and declined throughout the period of investigation, falling from 4.2 percent in 1996 to 3.7 percent in 1998, then further declining from 3.8 percent in interim 1998 to 2.8 percent in interim 1999.⁴³ When considered on the basis of head of cattle, the market share of the subject imports was also small, declining from 3.8 percent in 1996 to 3.4 percent in 1998, and then further declining to 2.7 percent in interim 1999 from 3.6 percent in interim 1998.⁴⁴

Quite simply, the small and declining volume of the subject imports from Canada is not significant for purposes of the Commission's analysis under the antidumping statute. I recognize that, as petitioners argue, a small volume of agricultural imports may have a significant impact on domestic prices in a commodity market. This is, however, not such a case. As I discuss below, the record of this investigation clearly shows that the subject imports have had a minimal, if any, impact on domestic prices and the financial condition of the industry. Accordingly, given the conditions of competition in this market and my finding that the subject imports have not had a significant impact on domestic prices in this market, I again find that the volume of the subject imports has not been significant during the period of investigation.

C. Price Effects of Subject Imports

⁴¹ (...continued)

further note that, although there was an increase in the volume of the subject imports increased between 1995 and 1998, the entire increase in import volume occurred between 1995 and 1996 and the volume of the subject imports has declined consistently since that year. CR and PR at Table B-1 and USITC Pub. 3155 at Table C-1.

⁴² In analyzing market share in this proceeding, I have primarily relied on the market share and consumption data set forth in the Commission's report at Table IV-3. CR and PR at Table IV-3. I note, however, that the market shares in this table appear to significantly overstate the actual market share levels of the subject imports. As the Commission majority correctly notes, an accurate assessment of market share in this market would include all commercial and internal shipments of all live cattle (after elimination of any double-counting that might any shipments of cattle that may have been double-counted). The market shares calculated by the staff in the Commission's report do not include all commercial and internal shipments of all live cattle, however. Instead, the domestic shipments presented in the chart amount consist only of the volume of domestic cattle slaughtered in the domestic market. Moreover, although complete data for subject and non-subject imports at all stages of development were included in the chart, the vast majority of the subject imports consist of cattle ready for slaughter. In essence, the market share charts amount to a calculation of market shares for the domestic, subject and non-subject producers in the slaughter cattle segment of the market, not the entire market for all live cattle. For this reason, this methodology overstates the market share figures for the subject imports in the entire cattle market. In this regard, I note that, if one compares the volumes of live cattle imported from Canada to total U.S. inventories of all live cattle plus imports of live cattle, the subject imports accounted for less than 1.5 percent of all live cattle inventories throughout the period of investigation. Compare CR and PR at Table H-1 with CR and PR at Table B-1. Because of the absence of more reliable data on the actual market share of the subject imports, however, I have relied on the data in Table IV-3 for purposes of my analysis.

⁴³ CR and PR at Table IV-3.

⁴⁴ CR and PR at Table IV-3. Moreover, the large bulk of the subject imports entered states other than the primary feeder belt states of Texas, Kansas, Nebraska, Colorado and Iowa. Because prices in the nationwide market for cattle are influenced by price activity in the feeder belt markets, the concentration of the subject imports in non-feeder states further minimizes the volume effects of the subject imports. For a more detailed description of this aspect of the market, see my pricing analysis below.

Section 771(7)(C)(ii) provides that, in evaluating the price effects of the subject imports, the Commission shall consider whether (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.⁴⁵

As I did in the preliminary phase of this investigation, I again determine that the subject imports have not had significant adverse price effects on domestic prices during the period of investigation. In coming to this conclusion, I have carefully examined the record evidence with respect to the importance of price in the purchase decision for cattle, the substitutability of the subject and domestic merchandise in the fed cattle segment of the market, the patterns of underselling exhibited by the subject imports during the period, and the price and profitability experience of the domestic producers during the period of investigation. In particular, I note that the record evidence indicates that price remains an important aspect of the purchase decision in this market⁴⁶ and that there is a reasonable degree of substitutability between the subject and domestic merchandise within the slaughter cattle segment of the market, which is the portion of the market in which the bulk of the subject imports compete directly with the domestic industry.⁴⁷ Further, I note that record indicates that the subject imports undersold the domestic product in 54 of 79 possible quarterly price comparisons, or sixty-eight percent of the possible comparisons.⁴⁸ Finally, I note that the record indicates that, during the latter half of the period of investigation until the filing of the petition, the domestic feedlot producers, the segment of the industry most directly in competition with the subject imports, experienced an increasing cost/price squeeze, generally becoming more unprofitable over that time span.⁴⁹ Without more, these facts might suggest that the subject imports have had a significant price-suppressing or depressing effect on domestic prices during the period.

Nonetheless, the entire record of this investigation clearly demonstrates that the subject imports have not had significant adverse impacts on domestic prices during the period of investigation. First, a close review of the price comparison data indicates that the subject imports have not actually had an observable impact on domestic prices during the period of investigation. Although the subject imports fairly consistently undersold the domestic merchandise during the period of investigation, the price comparison data clearly indicates that domestic price movements, whether upwards or downwards, generally occurred independent of the existence of underselling by the subject imports.⁵⁰ In other words, none of the price movements for the domestic merchandise can be clearly and directly linked to underselling by the subject imports. Similarly, although the volume levels of the subject imports fluctuated during the period of investigation, there is no observable correlation between fluctuations in domestic prices and fluctuations in the volume of subject imports over the period of investigation.⁵¹ Given the absence of any

⁴⁵ 19 U.S.C. § 1677(7)(C)(ii).

⁴⁶ Thirteen of eighteen responding purchasers reported that price was one of the three most important factors in their purchase decision. CR at II-11, PR at II-7.

⁴⁷ As I indicated above, the record indicates that the large majority of cattle associations and purchasers reported that Canadian and domestic cattle were generally interchangeable. CR at II-13, PR at II-8.

⁴⁸ The products chosen for price comparison purposes accounted for approximately 35 percent of the weight of cattle slaughtered in the United States in 1998 and approximately 41 percent of the subject imports, by weight, in 1998. CR at V-11, PR at V-8.

⁴⁹ CR and PR at Table VI-2 and VI-3.

⁵⁰ CR and PR at Tables V-1 through V-7 and Figure V-2.

⁵¹ For example, a review of the pricing comparison data for products 1 and 2, the largest volume pricing
(continued...)

observable correlations between the price or volume of the subject imports and domestic prices, the pricing data indicates that the subject imports have not had a significant adverse impact on those prices.

Secondly, although the subject imports undersold the domestic merchandise in more than two-thirds of the possible price comparisons during the period of investigation, the margins of underselling were generally very small, ranging between 0.1 percent and 4.8 percent in the large majority of the instances of underselling.⁵² Given that there is only a moderate level of substitutability between the subject and domestic merchandise (even within the fed for slaughter segment of the market) and that a number of purchasers indicated that the domestic product was superior to the Canadian merchandise with respect to such important considerations in the purchase decision as quality, availability and delivery time,⁵³ I believe that the minimal underselling margins exhibited by the subject imports simply indicate that some purchasers consider the domestic merchandise to be a better value product than the subject merchandise.⁵⁴ Accordingly, I believe that the underselling exhibited by the subject imports during the period of investigation does not indicate there has been significant adverse price competition between the subject and domestic merchandise during the period of investigation.⁵⁵

Third, I note that any possible link between the price movements for the domestic merchandise and the subject imports is further minimized by the fact that the subject imports are concentrated in secondary regional markets. As I discussed above, the record indicates that prices in the national market are driven by market prices in the “feeder belt” states of Texas, Nebraska, Kansas, Colorado, and Iowa.⁵⁶ The subject imports, however, are more concentrated in secondary markets in the United States, such as Washington, Oregon, Pennsylvania, and Idaho, which have a less significant impact on prices in the national market.⁵⁷ In this regard, almost eighty percent of the subject imports entered the non-“feeder belt” states in 1998⁵⁸ and the subject imports held only a 1.1 percent share of the total cattle slaughtered in the five primary feeder belt states in 1998.⁵⁹ In light of the regional concentration of the subject imports, it is clear that the bulk of the subject imports can have had little impact on pricing in the main price setting

⁵¹ (...continued)

products, indicates that prices actually increased in 1996 when the market share of the subject imports was at its peak, but then declined somewhat in 1997 and 1998 as import market share declined. See CR at Tables V-2 and V-3 and Figure V-2..

⁵² CR and PR at Tables V-1 through V-7

⁵³ CR and PR at II-13-14.

⁵⁴ In essence, the reported levels of underselling simply reflect the moderate substitutability differences between the subject and domestic merchandise in the slaughter cattle segment of the market.

⁵⁵ CR and PR at II-12-14. In any event, I believe that the small underselling margins would be unlikely to have a significant adverse effect on domestic prices, given the small and declining volumes of the subject imports that were in the domestic market during the period of investigation.

⁵⁶ Tr. at 87-88. The evidence in the record indicates that the leading price discovery points actually are Nebraska and Kansas. USDA/GIPSA, Concentration in the Red Meat Packing Industry at 14 (Feb. 1996), included at Attachment 6 in Joint Packers’ Posthearing Brief.

⁵⁷ CR at Table K-1.

⁵⁸ See CR and PR at Table K-1.

⁵⁹ See CR and PR at Tables IV-3 & K-1; USDA, Livestock Slaughter 1998 Summary at 22 and 23. The subject imports held less than 0.05 percent of the Texas slaughter market by head, 0.2 percent of the Kansas market, 2.3 percent of the Nebraska market, 3.2 percent of the Colorado market and 1.7 percent of the Iowa market.

regions of the national market and, thus, had only a minimal impact, at best, on domestic prices overall in the national market.⁶⁰

Fourth, any possible adverse impact of the subject merchandise on domestic prices is further limited by the fact the vast bulk of the subject merchandise enters the United States as cattle ready for slaughter and does not therefore directly compete with merchandise sold in the upstream segments of the cattle market, such as the cow/calf segment and the stocker/yearling segment of the market. Although the record suggests that there may be some indirect linkages between price movements in the market, the limited substitutability of the cattle in the upstream segments of the market and the slaughter segment further limits any possible price effects on domestic cattle prices by reason of the subject imports. As a result, the subject imports can have, at best, only a minimal price impact on the upstream segments of the cattle market, which comprises more than half of the overall cattle market in the United States.

Finally, the record clearly establishes that domestic price and profitability trends during the period of investigation are attributable to two significant factors that have nothing to do with the subject imports. First, as petitioner concedes, the domestic feedlot industry consists of a numerous group of relatively small producers who do not enjoy equal bargaining power with the highly concentrated beef packing industry.⁶¹ Because of the relative disparity in bargaining power between the two segments, I find that the beef packing industry has a much more significant influence over price levels in the market than the feedlot producers. Accordingly, I agree with petitioners that the cattle producers, including the subject producers, are price takers in this market. However, given the large number of domestic feedlot producers and the relatively small size of the Canadian cattle industry compared to the domestic industry,⁶² even the complete removal of the Canadian imports from the market as a bargaining entity would not significantly reduce the ability of the packers to continue exercising an important influence over domestic prices for cattle.

Second, the price of live cattle in the U.S. market is significantly affected by the existence of the cattle cycle. During the period of investigation, the domestic market for live cattle was going through the liquidation phase of the cattle cycle, during which feedlot operators reduce their herds by increasing the number of cattle they market for slaughter. During this phase, prices generally decline or stay flat, due to an increasing supply of cattle ready for slaughter in the marketplace.⁶³ As a result of the fact that the market was going through this phase of the cycle, prices obtained by the feedlot producers have remained somewhat flat throughout the period, even in the face of significantly rising grain costs during 1997 and the first part of 1998.⁶⁴ Accordingly, feedlot producers have suffered a significant cost/price squeeze during this period, primarily due to an excess of domestic supply in the market that was a natural consequence of the liquidation phase of the cattle cycle. In other words, I believe the record indicates that the industry would have experienced similar price and profitability levels during the period of investigation, even if the subject imports had not been present in the market. Given this, and the factors I have described above, the

⁶⁰ CR at V-6. I also note that record indicates that the spot still comprises the bulk of the live cattle market in the United States. Accordingly, I do not agree that the spot market for cattle has become a “thin” one in which the subject imports have an exacerbated impact on domestic prices.

⁶¹ See, e.g., Petitioner’s Prehearing Brief at 78.

⁶² The Canadian cattle industry is estimated to be one-eighth the size of the U.S. cattle industry. CR and PR at VII-1.

⁶³ Moreover, this imbalance in supply and demand during the liquidation phase of the cycle may have been further exacerbated by increased supplied of cattle from the Texas and southwestern United States market that were placed on the market because of drought conditions throughout the Southwest. CR and PR at II-3.

⁶⁴ See CR and PR at Table VI-3.

feedlot industry's flat price levels and reduced profitability cannot be clearly attributed in a more than minimal fashion to the subject imports.

In sum, I find that the subject imports have not had significant adverse effects on domestic prices in this market.

D. Impact of the Subject Imports on the Domestic Industry

Section 771(7)(C)(iii) provides that the Commission, in examining the impact of the subject imports on the domestic industry, "shall evaluate all relevant economic factors which have a bearing on the state of the industry," including actual and potential declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity; factors affecting domestic prices; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, investment, and existing development and production efforts of the domestic industry; and the magnitude of the margin.⁶⁵ I have considered these factors within the context of the conditions of competition within this market.⁶⁶

As I previously indicated, the subject imports have had minimal, if any, volume or price effects during the period of investigation. During the period of investigation, the subject imports from Canada occupied a small and declining share of the market, concentrated almost exclusively in the slaughter cattle segment of the market. Throughout this period, the subject imports have had little or no volume impact on the domestic industry, which has maintained a consistent and dominant 95 percent share of the marketplace. Moreover, the small and declining volume of the subject imports have not had a significant depressing or suppressing effect on domestic prices and did not contribute in more than a minimal manner to the cost/price squeeze experienced by portions of the industry.⁶⁷ In sum, I cannot find that the prevailing domestic pricing levels and the financial condition of the industry can be attributed to the subject imports in a more than minimal fashion.⁶⁸ I therefore find that the subject imports have not had an adverse impact on the condition of the domestic industry.

In making this finding, I recognize, of course, that the domestic industry has experienced significant declines in many of the key domestic industry factors.⁶⁹ Indeed, many of the financial

⁶⁵ As part of my consideration of the impact of imports, the statute specifies that the Commission is to consider in an antidumping proceeding, "the magnitude of the dumping margin." 19 U.S.C. § 1677(7)(C)(iii)(V). In making my determination, I have considered the margins of dumping announced by Commerce in its final determination in this proceeding. 64 Fed. Reg. 56739, 56,758-759 (October 21, 1999).

⁶⁶ No party has alleged that the captive production provision, 19 U.S.C. § 1677(7)(C)(iv), should be applied.

⁶⁷ Indeed, the feedlot industry, in particular, experienced its worst unit losses as imports were declining in 1997 and 1998. See CR and PR at Table VI-3.

⁶⁸ In this regard, I note that the record evidence does not support a finding that the liquidation phase of the cattle cycle has lasted for a longer period than usual due to the impact of the subject imports.

⁶⁹ CR/PR at Tables III-3 and IV-3. U.S. production (the calf crop) steadily declined from 39.8 million head in 1996 to 38.6 million head in 1998, and from 28.4 million head in interim period (Jan.-June) 1998 to 28.2 million head in interim period (Jan.-June) 1999. Production capacity for the domestic industry steadily declined from 55.0 million head in 1996 to 52.8 million head in 1998, and from 52.8 million head as of Jan. 1, 1998 to 52.2 million head as of Jan. 1, 1999. U.S. producers' shipments (slaughter of animals of U.S. origin) declined from 36.6 million head in 1996 to 35.2 million head in 1998. U.S. shipments increased slightly from 17.4 million head in interim period 1998 to 17.6 million head in interim period 1999. U.S. producers' shipments by weight followed a similar trend over the period of investigation. Mid-year and year-end inventories (total number of cattle and

(continued...)

performance indicators for the industry were negative in each year of the period of investigation.⁷⁰ Nonetheless, the current state of the industry is readily explained by other factors, such as the concentration of the beef packing industry and the existence of the cattle cycle. In sum, I find that the subject imports of live cattle are too low in volume to affect domestic prices significantly. The lack of any current volume or price effects indicates to me that the subject imports have not had a more than minimal or tangential causal nexus to any injury that may be suffered by the industry.

E. Conclusion

For the foregoing reasons, I find that the domestic industry producing live cattle is not materially injured by reason of the subject imports of live cattle from Canada.

⁶⁹ (...continued)

calves) declined from 1996 to 1998, and were lower in interim period 1999 compared with interim period 1998. The unit value of commercially slaughtered U.S. cattle by pounds fluctuated between years but increased from \$0.59 in 1996 to \$0.60 in 1998, and remained at \$0.62 for both interim period 1998 and interim period 1999. *Id.*

⁷⁰ CR/PR at Tables VI-1, VI-2, VI-3, and VI-4. Since the USDA reporting format for cow-calf production cash costs and returns has changed during the period of investigation, we considered data for the 1996 to 1997 period from Table VI-1 and data for the 1997 to 1998 period from Table VI-2 separately. The gross value of U.S. cow-calf production (comparable to revenues on a per-unit basis) increased from \$312.28 per bredcow in 1996 to \$405.50 per bredcow in 1997; however, it declined from \$414.27 per bredcow in 1997 to \$402.98 per bredcow in 1998. CR/PR at Tables VI-1 and VI-2. Total cash expenses increased from \$522.24 per bredcow in 1996 to \$535.92 per bredcow in 1997; however, it declined from \$542.25 per bredcow in 1997 to \$502.01 per bredcow in 1998. *Id.* While, the gross value of production less cash expenses was negative in all three years, it improved each year from 1996 to 1998. *Id.* The record indicates that the sharp decline in feed costs in 1998 limited the negative return in that year. CR at VI-2. The USDA estimated net returns or margins (difference between the selling price and expenses) for commercial feedlot operations generally were positive in 1996 to the middle of 1997, were negative in the second half of 1997 until October 1998, and were positive from November 1998 to June 1999. CR/PR at Table VI-3.

DISSENTING VIEWS OF CHAIRMAN LYNN M. BRAGG

I find that the domestic industry producing live cattle is materially injured by reason of imports of the subject merchandise from Canada which are sold in the United States at less-than-fair-value. Importantly, I recognize that a rote analysis based upon a comparison of absolute volumes of domestic and subject merchandise fails to capture the unique market characteristics of the domestic live cattle industry, and therefore overlooks the actual impact subject imports have had on domestic live cattle producers.

OVERVIEW

As a starting point in my analysis in this investigation, I first acknowledge that in commodity cases even a “relatively small volume of imports can have a significant effect on domestic prices.”¹ This principle is central to understanding injury here because it recognizes that for “price sensitive and fungible product[s],” such as live cattle, “the impact of seemingly small volumes [of subject imports] . . . is magnified in the marketplace.”² And in this case, the impact is magnified even further due to the liquidation phase of the cattle cycle and the importance of key pricing regions in setting national live cattle prices. It is therefore essential that the volume, price, and impact analysis in this investigation incorporate the unique conditions of competition of the live cattle industry. Once these conditions of competition are incorporated, the injury analysis necessarily begins at the regional market level and proceeds outward.

Applying this analytical framework to the facts of this investigation, I first conclude that the second and third most popular destinations for subject imports from Canada based on a percentage of total volume (i.e. Nebraska & Utah) were markets with no supply shortages. I then note that the Nebraska and Utah regions drive national cattle prices and that subject imports are mostly sold on the spot market in these regions. I further find that the volume of subject imports into these key price setting regions was equivalent to or greater than the daily slaughter for one large packer spread out each week for every week of the year. Recognizing that the price that large packers pay for cattle purchased on the spot market is immediately reported nationwide, and thus directly impacts live cattle prices nationwide, I therefore conclude that the volume of subject imports is significant.

With respect to price, I find that the subject imports consistently undersold the domestic like product, which is particularly important in the context of commodity cases where one would not expect to find evidence of pervasive underselling due to the immediacy of “price discovery.” I also find that even if possible quality differences between the domestic and Canadian products are taken into consideration, significant margins of underselling remain, especially in the primary product categories examined by the Commission. I therefore find that the significant volume of undersold subject imports caused price suppression and depression among domestic live cattle prices to a significant degree.

I conclude my analysis by finding that as a result of the significant volume of subject imports and resulting significant negative price effects on domestic live cattle prices, the liquidation phase of the domestic cattle cycle was lengthened, resulting in a significant adverse impact on an already vulnerable

¹ Live Cattle from Canada and Mexico, Inv. Nos. 701-TA-386 (Preliminary) and 731-TA-812-813 (Preliminary), USITC Pub. 3155 at 21, aff’d, Ranchers-Cattlemen Action Legal Foundation v. United States, 23 CIT ___, Slip Op. 99-122 (November 5, 1999). See, e.g., USX Corp. v. United States, 655 F. Supp. 487, 490 (CIT 1987) (“it is the *significance* of a quantity of imports, *and not absolute volume alone*, that must guide the ITC’s analysis under section 1677(7)”).

² USX Corp. v. United States, 655 F. Supp. 487, 490 (CIT 1987).

domestic live cattle industry.

ANALYSIS

I. LIKE PRODUCT

As I did in my preliminary determination, I define the domestic like product³ consistent with the scope of the investigation as determined by the Department of Commerce, namely:

all live cattle except imports of (1) bison, (2) dairy cows for the production of milk for human consumption, and (3) purebred cattle and other cattle specially imported for breeding purposes.⁴

I note that for purposes of this final investigation, no party argued for a definition of the domestic like product different from that adopted in the Commission's preliminary determination.

II. DOMESTIC INDUSTRY/RELATED PARTIES

Based on the foregoing like product definition, I find that the domestic industry consists of all "operations" engaged in the production of live cattle, including: cow-calf operators (covering the birth to weaning stage -- usually at five to ten months); backgrounders or stocker/yearling operators (which raise weaned calves until usually twelve to twenty months); and feedlot operators (which "finish" cattle during the last three to five months, until slaughter). The domestic industry does not include slaughterhouses or packers.

Having defined the domestic industry, I next consider whether to exclude any domestic producers from the industry as related parties.⁵ Upon review of the record, I determine that even if a domestic producer could be deemed to be a related party, the record generally does not include individual domestic

³ 19 U.S.C. § 1677(10). In analyzing domestic like product issues, the Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; and (4) customer and producer perceptions of the products.

⁴ See Notice of Final Determination of Sales at Less Than Fair Value: Live Cattle from Canada, 64 Fed. Reg. 56739 (October 21, 1999). Commission Report ("CR") at A-5.

⁵ Domestic producers are "related parties" if they import subject merchandise, or if they directly or indirectly control or are controlled by a subject foreign producer or exporter. 19 U.S.C. § 1677(4)(B). In appropriate circumstances, such related parties may be excluded from the domestic industry. The primary factors the Commission examines in deciding whether appropriate circumstances exist to exclude the related parties include:

- (1) the percentage of domestic production attributable to the importing producer;
- (2) the reason the U.S. producer has decided to import the product subject to investigation, i.e., whether the firm benefits from the LTFV sales or subsidies or whether the firm must import in order to enable it to continue production and compete in the U.S. market; and
- (3) the position of the related producers vis-a-vis the rest of the industry, i.e., whether inclusion or exclusion of the related party will skew the data for the rest of the industry.

19 U.S.C. § 1677(4)(B).

producer data. Exclusion of a related party would therefore provide no additional insight into whether the domestic industry is materially injured by reason of subject imports. I also note that based upon the highly fragmented nature of the domestic industry, the inclusion of a related party would not skew the domestic industry data. Based upon the foregoing, I find that appropriate circumstances do not exist to exclude any related party from the domestic industry.

III. MATERIAL INJURY BY REASON OF THE SUBJECT IMPORTS

For the reasons discussed below, I find that the domestic industry producing live cattle is materially injured “by reason of” the subject merchandise from Canada which is sold in the United States at less-than-fair-value.⁶ In making this determination, as directed by statute, I have considered the volume of imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.⁷ I have evaluated all relevant economic factors within the context of the business cycle (i.e. the cattle cycle) and other conditions of competition distinctive to the live cattle industry.⁸

A. Conditions of Competition

An important condition of competition in this investigation is the unique business cycle, specifically referred to as the “cattle cycle.” The cattle cycle historically lasts about ten years and has four distinct phases.⁹ After these phases are completed, the cattle cycle begins anew.

The parties agree that a cattle cycle exists. The parties disagree as to whether the current cycle is the liquidation phase (as Petitioners argue and as confirmed by questionnaire responses) or between the

⁶ 19 U.S.C. § 1673d(b).

⁷ 19 U.S.C. § 1677(7)(B)(i). The Commission “may consider such other factors as are relevant to the determination” but shall “explain in full its relevance to the determination.” 19 U.S.C. § 1677(7)(B)(ii).

⁸ 19 U.S.C. § 1677(7)(C)(iii).

⁹ CR at II-1, II-3. The four phases of the cattle cycle include:

The Expansionary Phase: When cattle prices are relatively high, cattle producers retain more cattle for breeding, rather than slaughtering the animals. This initially reduces the number of cattle slaughtered and typically results in increased cattle prices. This phase lasts between three and eight years.

Peak Year: As a result of the expansionary phase, cattle supplies begin to increase to the optimum point where supply and demand are roughly equivalent.

Liquidation Phase: This phase begins as increased supply from the expansionary phase exceeds demand. Prices begin to fall. As a result, producers reduce their herds by sending some of their breeding stock to slaughter, thereby further increasing supply and reducing prices. This phase may last two to four years.

Consolidation Phase: In this phase, supply reductions from the previous phase have created a supply shortage, thereby causing prices to rise. This phase may last about a year.

Id.

liquidation and expansionary phases (as Respondents argue).¹⁰ What the parties agree upon, however, is that cattle prices will reach their lowest point in a given cattle cycle during liquidation.

Another important condition of competition is the heavy concentration of the packing industry (which purchases nearly all live cattle destined for immediate slaughter). The three largest domestic packers account for a large majority of the cattle slaughter market in the United States as well as the majority of subject imports from Canada.¹¹ The concentration of packers increases the packers' leverage relative to cattle producers, thus providing packers the ability to use imports to reduce domestic live cattle prices and/or prevent price increases.

In addition, the majority of packers are located in the feeder belt states (including Nebraska) which drive national live cattle prices.¹² A rise or fall in prices in this key pricing region will precipitate a rise or fall in prices nationwide. I also recognize that prices in other regions impact prices nationally, though not to the degree that feeder belt states impact prices.¹³

A further condition of competition is the linkage between the prices of fed cattle and stocker cattle. Upon review of the full record evidence in this final phase investigation, I find that fed cattle prices are directly related to stocker cattle prices.¹⁴ I therefore determine that a change in the price of fed cattle will generally lead to a related change in the price of stocker cattle. I also conclude, however, that the relationship between fed cattle prices and stocker prices must be viewed in the context of feed grain prices. There is therefore a three part interrelationship between feed grain prices, stocker prices, and fed cattle prices.

Over the period of investigation ("POI"), prices for fed cattle and stocker cattle generally followed the same trends.¹⁵ This was not the case in the preliminary investigation, where the record evidence reasonably led to the conclusion that the two pricing sets were not related. However, based upon the full record in this final phase investigation, it is apparent that the price divergence relied upon in the preliminary investigation to support a finding of no linkage between fed cattle and stocker cattle prices was a short-term incident resulting from a sharp decline in feed grain prices, and is not indicative of the historical relationship between fed cattle and stocker cattle prices.¹⁶ As the record indicates, fed cattle prices and stocker cattle prices returned to equilibrium with the stabilization of feed grain prices in 1997.¹⁷

Another important condition of competition is the fact that the majority of both U.S. cattle and subject imports are purchased on the spot market.¹⁸ Spot market prices in both the United States and Canada are readily available. In the United States, the United States Department of Agriculture ("USDA") provides timely spot prices of feeder steers and heifers, fed steers, and culled cows in on its Web site and

¹⁰ CR at II-3.

¹¹ CR at II-3, IV-1.

¹² USDA/GIPSA, Concentration in the Red Meat Packing Industry (Feb. 1996).

¹³ USDA/GIPSA, Concentration in the Red Meat Packing Industry (Feb. 1996).

¹⁴ I observe that in Ranchers-Cattlemen Action Legal Foundation v. United States, 23 CIT ___, Slip Op. 99-122 (November 5, 1999), the U.S. Court of International Trade upheld the Commission majority's preliminary finding of no direct link between the prices of stocker cattle and fed cattle. I note, however, that the record in this final phase investigation contains information not contained in the record of the preliminary investigation which reasonably supports the conclusion that there is a direct link between prices for fed cattle and stocker cattle.

¹⁵ See USDA-ER, Livestock, Dairy, and Poultry Situation and Outlook, 1996-1999.

¹⁶ See CR at V-18, V-19; Pre-Hearing Brief of Petitioners at Exhibit 1.

¹⁷ See USDA-ER, Livestock, Dairy, and Poultry Situation and Outlook, 1996-1999.

¹⁸ CR at I-11.

over the telephone.¹⁹ In Canada, spot prices are available from CanFax, and are updated continually.²⁰ In addition, prior to Canadian live cattle auctions, auction participants usually “discover” the current U.S. price of cattle.²¹

The record further indicates that there is a domestic live cattle supply shortage in the Northwest region of the United States. I therefore agree with Respondents that subject imports into the state of Washington are directly related to the supply shortage in that region. I also find, however, that there are no supply shortages in states outside the Northwest region. I note in this regard that my definition of the Northwest region does not include the state of Utah.²²

Finally, I note that Respondents argue that imports of live cattle from Canada to the United States are directly related to Canadian slaughter capacity, and therefore directly related to imports of beef from Canada into the United States. It is argued that any decrease in imports of live cattle from Canada will result in a related increase in imports of beef.

The record shows that over the last six months of the POI, an increase in beef imports coincided with a decrease in live cattle imports. However, over the entire POI, beef imports have steadily increased while the volume of live cattle imports from Canada has fluctuated.²³ Thus, when viewed in the context of the entire POI, a compelling and direct correlation between beef and cattle imports from Canada is not apparent on the record.

B. Volume

Over the POI, Nebraska was the third largest importer of subject imports, with Washington the number one importer and Utah number two. Nebraska received 164,968 head of live cattle from Canada in 1996; 156,877 head in 1997; and 165,588 head in 1998, representing an increase of 5.6 percent from 1997 to 1998.²⁴

Of the 165,588 head imported into Nebraska in 1998, 141,395 head went directly to slaughter.²⁵ It is important to focus on the volume of animals destined for immediate slaughter because, as I noted above, prices for slaughter animals are directly related to the price paid for live cattle at earlier stages of development. On an absolute basis, 141,395 head of cattle would appear to be an insignificant figure when one considers that approximately 7.3 million head of cattle were slaughtered in Nebraska in 1998.²⁶ However, the 141,395 head figure takes on more significance when one recognizes that:

1. Nebraska is one of the acknowledged primary markets for determining national live cattle prices;
2. There was a glut of supply in Nebraska over the POI;

¹⁹ CR at V-2.

²⁰ CR at V-2-3.

²¹ CR at V-3.

²² Based upon the USDA’s reporting methodology for federally inspected slaughter, I define the Northwest region to include only Alaska, Idaho, Oregon, and Washington.

²³ Canadian Cattlemen’s Association Post-Hearing Brief at Appendices D & G.

²⁴ CR at Appendix K-3; Preliminary Commission Report at Appendix D-3.

²⁵ USDA/APHIS, U.S. Imports of Slaughter and Feeder Cattle from Canada, 1998.

²⁶ USDA, Commercial Cattle Slaughter, 1998.

3. Cattle purchases by large-scale packers on the spot market, where most cattle from Canada is purchased, are immediately reported throughout North America and therefore have a significant influence on domestic cattle prices nationwide; and
4. The domestic industry was vulnerable due to the cattle cycle (see following discussion on impact).

On the issue of supply, if there was a supply glut in the Nebraska region, as the record makes clear, what incentive would Nebraska packers have to purchase cattle from Canadian suppliers located much further away than domestic supplies? As will become apparent, I believe the primary driver for these purchases was lower prices.

The next important issue in the volume analysis is the significance of large packers' spot market purchases in setting prices. I again point out that the majority of subject imports are purchased on a spot basis. It should also be noted that spot prices are generally recognized as the best indicator of live cattle prices and are often relied upon in determining prices for live cattle purchased under contract agreements. Therefore, any change in the spot price will also affect the price paid under most contract agreements.

As discussed earlier, large packers' purchases on the spot market are immediately reported across the nation. In this context, it must be recognized that even one large purchase by a large packer in a key pricing region, such as Nebraska, will influence national cattle prices. Because packers purchase most of their cattle on a weekly basis, it is important to consider the impact of imports from Canada in the context of weekly purchases rather than on an absolute volume basis.

The average daily slaughter capacity of large domestic packing facilities is approximately 2,883 head per day.²⁷ Dividing this figure into the total number of cattle (for immediate slaughter) imported into Nebraska in 1998 reveals that on average, in the most important price discovery market in the nation, at least one average-sized packer purchased an entire day's supply of live cattle from Canadian suppliers each week for 49 weeks of the year. I find that by impacting 49 week's of supply for one average-sized packer in the primary U.S. price discovery region, and in the context of heavy packer concentration, the volume of subject imports is significant.

Applying this analytical framework to Utah's 1998 volume of subject imports (i.e. 177,625 head) reveals that one average-sized packing facility (based upon a national packing capacity average) in Utah purchased 3,415 head of live cattle from Canada each week, well in excess of one day's capacity.²⁸ I again conclude that in an environment where average-sized packers' purchases dictate market prices (as a result of heavy packer concentration), greater than one day's supply per week for an average-sized large packer is significant. Based upon my finding of significant import volumes in these two primary pricing regions, I conclude that, on the whole, the volume of subject imports is significant.

C. Price

As discussed above, national price levels are determined by spot prices. The importance of "price discovery" is twofold: (1) sellers will rapidly move to obtain even slightly higher prices in any market thus inflating or magnifying the importance of regional market prices; and (2) the broadcast spot market prices in turn establish the prices for a large number of contract sales.

As set forth in the Commission's Report, during the POI imports from Canada undersold U.S.

²⁷ See CR at IV-2.

²⁸ See CR at Table IV-1; USDA/APHIS, U.S. Imports of Slaughter and Feeder Cattle from Canada, 1998.

products in 54 out of 79 quarters reported, or in 68.4 percent of pricing comparisons.²⁹ Importantly, one would not expect to find significant evidence of underselling in commodity cases due to the immediacy of price discovery. Therefore, evidence of significant underselling, as seen in this investigation, is particularly indicative of a price advantage enjoyed by subject imports.

By consistently underselling domestic producers' prices by margins up to \$4.00 per 100 lbs. and more, in important regional markets, unfairly traded imports provided packers leverage to ratchet down U.S. prices on a national basis.³⁰ Once a single producer agrees to a lower price set by a packer, other producers rush to supply at the same price. In this setting, offers to sell or sales of even small quantities of live cattle from Canada have a substantial and meaningful impact on spot market prices.

Average prices for domestic spot market fed cattle fell from \$69.23 per hundred weight in the fourth quarter of 1996 to \$59.56 per hundred weight in the third quarter of 1998.³¹ Average prices for this category then rose slightly to \$60.95 in the fourth quarter of 1998, arguably as a result of the filing of the petition.³² Average prices continued to rise in the first quarter of 1999 and are now in the range of third quarter 1997 prices of approximately \$65.00 per hundredweight.³³

Respondent packers also argue that the underselling in this investigation is a result of imports from Canada grading at lower levels than U.S. products. But even if one were to assume a minimal grade deficiency for all subject imports, one would still find significant evidence of underselling.³⁴

The record also indicates that average unit values for subject imports were \$.08 per pound lower than domestic average unit values in 1997 and \$.05 per pound lower in 1998, or \$5.00 lower per hundredweight in 1998.³⁵ Applying this margin to an average per cattle weight of 1,250 pounds translates into an average per cattle price advantage of \$62.50 for the subject merchandise. By purchasing (on average) one day's supply of live cattle from Canada each week, an average-sized domestic packer would enjoy average price savings of approximately \$180,000 per week. Based on all of the foregoing, I determine that the significant volume of subject imports has both suppressed and depressed domestic live cattle prices to a significant degree.

D. Impact

The record is replete with evidence that domestic producers experienced significant losses over the POI. While it is difficult to breakdown precise financial losses, the Commission Report indicates that the gross value of domestic cow-calf production was negative in 1996, 1997, and 1998, though over the course of the POI the losses were increasingly less negative.³⁶ In addition, the USDA reported that cash receipts from the marketing of all domestic cattle decreased from \$36.0 billion in 1997 to \$33.7 billion in 1998, a 6 percent decrease.³⁷

With respect to feedlot operators, margins were generally positive from the middle of 1996 to the

²⁹ CR at V-23.

³⁰ CR at V-12.

³¹ CR at V-12-13.

³² CR at V-12-13.

³³ CR at V-12-13.

³⁴ CR at V-12-13.

³⁵ CR at IV-5.

³⁶ CR at VI-2.

³⁷ CR at VI-1.

middle of 1997, and were negative in the second half of 1997 and most of 1998.³⁸ Since the latter months of 1998 and through the middle of June 1999, margins have been positive.³⁹ Based upon these significant industry-wide financial losses and the existence of the liquidation phase of the cattle cycle throughout the POI, I determine that the domestic live cattle industry was, and remains, vulnerable.

The trend in subject imports and domestic prices in the first half of 1999, after this investigation commenced, underscores the correlation between import prices, total cattle supply, and domestic revenues. With the filing of the petitions, imports dropped in the second half of 1998 and fell even further in the first half of 1999. At the same time, prices and net margins for feedlot operators have steadily improved since October 1998.

As recognized in the preliminary determination and discussed above, another key condition of competition relating to the performance of the domestic industry is the cattle cycle. All parties agree that over the POI the domestic industry was, and as most would agree, continues to be, in the liquidation phase, or low point of the cattle cycle. The parties disagree, however, as to the impact of subject imports on the cattle cycle. Upon review of the record evidence, I determine that a significant volume of subject imports has suppressed and depressed domestic prices to a significant degree. Based upon the price sensitive nature of the product in the context of the cattle cycle, I conclude that by suppressing and depressing prices, subject imports forced domestic producers to refrain from rebuilding their herds with the effect of lengthening the liquidation phase of the cattle cycle, thereby amplifying the negative effects on an already vulnerable domestic industry.

CONCLUSION

Based on all of the foregoing, I find that the domestic industry producing live cattle is materially injured by reason of imports of the subject merchandise from Canada sold into the United States at less-than-fair-value.

³⁸ CR at VI-5.

³⁹ CR at VI-5.