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MEMORANDUM

DATE: August 28, 2003

TO: James J. Jochum
Assistant Secretary
for Import Administration

FROM: Jeffery A. May
Deputy Assistant Secretary, Group I
Import Administration

SUBJECT: Issues and Decision Memorandum for the Final Determinations of the Antidumping Duty Investigations of Certain Durum Wheat and Hard Red Spring Wheat from Canada

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SUMMARY

We have analyzed the comments in the case briefs and rebuttal briefs submitted by the petitioners[1] (the "petitioners") and the Canadian Wheat Board ("CWB"), in the antidumping duty investigations of certain durum wheat and hard red spring ("HRS") wheat from Canada. As a result of our analysis, we have made changes, including correction of a clerical error, in the margin calculations. We recommend that you approve the positions we have developed in the Discussion of Issues section of this memorandum. Below is the complete list of the issues in these investigations for which we received comments from the parties:

Sales Issues:

[1] The petitioners are the North Dakota Wheat Commission ("NDWC") (hard red spring wheat), the Durum Growers Trade Action Committee (durum wheat), and the U.S. Durum Growers Association (durum wheat).

Common Cost Issues:

Farmer-Specific Cost Issues:

Farmer 5
Comment 37: Depreciation Expense of the Omitted Asset
Comment 38: Labor Cost for Non-Crop Activity

Farmer 6
Comment 39: Trucking Expense

Farmer 7
Comment 40: Unsupported Corrections to Normal Records
Comment 41: Reallocate Fertilizer Costs
Comment 42: Interest Expense Offset
Comment 43: Capitalization of Costs

Farmer 8
Comment 44: Imputed Seed
Comment 45: Production Quantity
Comment 46: Offset to Fertilizer Costs

Farmer 9
Comment 47: Depreciation Expense

Farmer 11
Comment 48: Fixed Assets
Comment 49: Land Use Costs

Farmer 12
Comment 50: Seed Cleaning Costs
Comment 51: Production Quantity
Comment 52: Custom Work Costs
Comment 53: Interest Charge on a Trade Payable Account

Farmer 14
Comment 54: Overstatement of Other Crop Costs
Comment 55: Understatement of Fertilizer Costs
Comment 56: Overhead Adjustment
Comment 57: Interest Expense
Comment 58: G&A Expense

Farmer 15
Comment 59: Tax Return Errors
Comment 60: Omitted Expenses
Comment 61: Livestock Costs

Farmer 16
Comment 62: Input Values for Seed, Fertilizer, and Chemicals
Comment 63: Cost Allocation Basis

Farmer 17
Comment 64: Omitted Actual Labor Cost

Farmer 19
Comment 65: Imputed Seed Costs
Comment 66: Depreciation Should be Included in Fixed Overhead
Comment 67: Revised Cash Ticket Analysis is Correctly Reported
Comment 68: Crop Insurance Profit Factor and Recoveries Should be Recalculated

Farmer 21
Comment 69: Fertilizer and Chemical Costs
Comment 70: Capitalization of Costs
Comment 71: Costs Not Associated With the Farmers' Livestock Operations

Farmer 22
Comment 72: Overhead Allocations, New Factual Information

Farmer 23
Comment 73: G&A Expenses
Comment 74: Production Quantities

Farmer 26
Comment 75: Exclusion of the 2000 Seed from the 2001 Production Quantity
Comment 76: Improper Allocation of the Cost of Chemicals

BACKGROUND

The Department of Commerce ("the Department") published the preliminary determinations in these investigations on May 8, 2003. See Notice of Preliminary Determinations of Sales at Less Than Fair Value: Certain Durum Wheat and Hard Red Spring Wheat From Canada, 68 FR 24707 (May 8, 2003) ("Preliminary Determinations"). The period of investigation ("POI") is July 1, 2001 through June 30, 2002. We invited parties to comment on our preliminary determinations. We received case briefs from the petitioners and the CWB on July 30, 2003, and rebuttal briefs from the petitioners and the CWB on August 5, 2003.

DISCUSSION OF ISSUES

Sales Issues

Comment 1: Particular Market Situation

The petitioners state that there are three criteria for finding the existence of a particular market situation: (1) whether there is government control over pricing, (2) whether prices can be considered to be competitively set, and (3) the extent of government control establishing that prices cannot be considered to be competitively set. The petitioners contend that the evidence established in these investigations fulfills each of these criteria.

The petitioners assert that the Department has already acknowledged the existence of the CWB as a government-controlled monopoly buyer and seller of wheat in the Canadian domestic market. The petitioners contend that the GOC has direct control over the CWB, as the CWB is a statutory creature of the GOC and the CWB's monopoly powers over the wheat market are conferred upon it by the GOC under the Canadian Wheat Board Act. The petitioners state that, by legislative mandate, the CWB is the exclusive trader of durum wheat and hard red spring wheat that is grown in the western provinces of Canada. In further support of their claim that the GOC has control over the CWB, the petitioners state that the CWB has its own cabinet minister and the GOC appoints five of the CWB's directors and its Chief Executive Officer. In addition, the CWB must have its finances approved by the GOC and the GOC guarantees its borrowing and lending as well as the initial payments made to western farmers. Accordingly, the petitioners assert that the GOC clearly has administrative control over the CWB.

Concerning whether prices can be considered to be competitively set, the petitioners argue that, as the CWB is a monopoly buyer and seller of wheat in the Canadian domestic market and the GOC protects the domestic market by restricting imports into Canada, the market is controlled and protected. According to the petitioners, it is, therefore, inconceivable that prices are competitively set. Throughout these investigations, the CWB has claimed that its prices are competitively set because they are based on published prices from the Minneapolis Grain Exchange ("MGE") or other news wire data sources. The petitioners contend that the CWB may use the MGE or news wire sources in its pricing formula, however, its sales and negotiation processes allow it to set prices arbitrarily in a non-commercial manner. According to the petitioners, the Department's finding that Canadian domestic prices are linked to competitive MGE prices in the United States does not support a finding that there is no particular market situation in Canada. The petitioners contend that there is no integrated North American market and competitive U.S. prices reflected on the MGE do not apply to the Canadian market. The petitioners allege that the CWB, acting as an arm of the GOC simply borrows U.S. prices to set prices artificially in Canada, thereby neutralizing Canadian competitive market forces.

The petitioners further claim that the fact that the CWB does not track certain product characteristics which are important to customers and affect the value of the wheat is further

evidence that the CWB and the GOC have absolute control over sales and pricing. The petitioners assert that because the CWB is a monopoly and faces no domestic competition, it has no need to establish a system in which domestic customers can purchase wheat competitively. The petitioners cite the fact that the MGE tracks product characteristics that the CWB does not track as further evidence of the lack of market-based pricing and as evidence that further undermines the CWB's claim that its prices are based on the MGE. The petitioners also argue that in a truly competitive market the Winnipeg Commodity Exchange, Canada's only agricultural futures and options exchange, would likely track the prices of durum wheat and hard red spring wheat.

With respect to the third criterion (i.e., the extent of government control such that prices cannot be considered to be competitively set), the petitioners allege that the GOC distorts pricing in the Canadian wheat market through its control over domestic transportation and through its efforts to promote investment in Canadian milling capacity. Citing the sales verification report (Verification of the Sales Response of the Canadian Wheat Board in the Antidumping Duty Investigations of Certain Durum Wheat and Hard Red Spring Wheat from Canada ("Sales Verification Report") dated July 21, 2003), which states that freight is a large component of the price of wheat, the petitioners contend that the GOC maintains a highly regulated rail system that allows the CWB to control the railroads and grain companies in Canada and, thus, to adjust its transportation costs and its prices in a non-market fashion. Citing their January 13, 2003, submission to the Department concerning the particular market allegation, specific statements made by the CWB, and the Canadian Wheat Board Act, the petitioners argue that the CWB arbitrarily prices wheat in Canada with the specific goal of encouraging and retaining processing activities in Canada. The petitioners contend that, due to the efforts of the CWB as part of the GOC, milling capacity in Canada has increased considerably from 1991 to 2001, compared to milling capacity in the United States. The petitioners assert that while free market principles would never guarantee the survival of an industry in a particular country, the GOC, through the CWB, guarantees the success of the Canadian milling industry.

The petitioners further contend that the Canadian home market is protected by the GOC through numerous non-tariff trade barriers. The petitioners argue that Canada subjectively adjusts its wheat grading system each crop year, restricts the types of wheat that can be planted through its wheat registration system, imposes excessive sanitary-phytosanitary requirements, and employs an end-use certificate program which acts to prevent the import of foreign wheat into Canada. The petitioners assert that these non-tariff trade barriers exclude foreign competitors from the Canadian domestic wheat market by classifying most imported wheat as feed wheat.

For the aforementioned reasons, the petitioners allege that a particular market exists in Canada and, therefore, the Canadian domestic market is not the appropriate basis for determining normal value in these investigations. Accordingly, the petitioners assert that the Department should rely upon facts available and apply the highest margins available as set forth in the original petitions for the final determinations.

The CWB argues that the Department's determination that a particular market situation does not exist in Canada for purposes of these investigations is correct, was verified without discrepancy, and must not be changed. According to the CWB, the Department has fully considered and correctly rejected the arguments made by the petitioners first in its February 4, 2003, decision and again in the Preliminary Determinations (see memorandum to Jeffrey A. May, Deputy Assistant Secretary, titled "Particular Market Situation" dated May 1, 2003 ("Particular Market Memorandum")). The CWB asserts that the Department's decision on this issue came after extensive review of numerous submissions by both the petitioners and the CWB and that the petitioners' case brief presents no information that has not already been considered and rejected by the Department.

In the Preliminary Determinations the Department stated that its finding that a particular market situation did not exist in this instance "may be subject to change based on the results of verification." The CWB asserts that the Sales Verification Report shows no discrepancies in any aspect of the information on this point and fully supports the Department's earlier determination. Accordingly, the CWB argues that the Department's decision to use home market sales as the basis for normal value is correct and the Department should continue to use Canadian home market sales as the basis for normal value for the final determinations.

Finally, the CWB argues that the petitioners' assertion that adverse facts available is warranted in this instance is inappropriate. The CWB asserts that section 776(b) of the Act specifically requires that an interested party must fail to cooperate to the best of its best ability in order for the Department to apply facts available with adverse inferences. The CWB contends that it has clearly acted to the best of its best ability in these investigations in providing all of the information requested by the Department in written form and at verification. Accordingly, the CWB argues that the Department should reject the petitioners' facts available argument.

Department Position: Section 773(a)(1)(C)(iii) of the Act requires the Department to disregard home market prices as the basis for normal value if the Department determines that a "particular market situation" in the home market prevents a proper comparison of home market price with export price. The Statement of Administrative Action ("SAA") states that, while a "particular market situation" is not defined in the Act, such a situation might exist "where there is government control over pricing to such an extent that home market prices cannot be considered to be competitively set" (see SAA at 822).

As discussed in the Particular Market Memorandum and in the Preliminary Determinations, the Department has a strong preference for using home market prices in its dumping calculations and, therefore, has established a high threshold for rejecting home market sales based upon a particular market situation (see Preliminary Determinations at 24710). See e.g., Fresh Kiwifruit from New Zealand; Final Results of Antidumping Administrative Review, 61 FR 46438 (September 3, 1996); Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Review, ("Cold-Rolled from Korea") 62 FR 18404 (April 15, 1997); Notice of Final Results of Antidumping Duty

Administrative Review: Furfuryl Alcohol from the Republic of South Africa, 62 FR 61804 (November 14, 1997); Notice of Final Determination of Sales at Less than Fair Value: Fresh Atlantic Salmon from Chile, 63 FR 31411 (June 9, 1998); Electrolytic Manganese Dioxide from Greece: Final Results of Antidumping Duty Administrative Review, 65 FR 68978 (November 15, 2000). While we have recognized the existence of the CWB as a "government entity," and "a monopoly buyer and seller of wheat in the Canadian domestic market," even where there is evidence of government control, "we must have substantial evidence that government control is so extensive that prices are not competitively set" (see Cold-Rolled from Korea (at 18412)).

For purposes of the Preliminary Determinations, in accordance with the SAA statement noted above, we addressed whether there is government control over pricing, whether prices can be considered to be competitively set, and the extent of government control establishing that prices "cannot be considered to be competitively set. In the Preliminary Determinations we found that the GOC does not control prices to such an extent that they are non-competitive, that Canadian domestic prices are linked to competitive MGE prices in the United States, and that through the price negotiation process, Canadian domestic consumers of wheat are involved in establishing the MGE-linked price system (see Particular Market Memorandum). We stated that, because this finding was based in part on representations by the CWB on how it sets prices in the home market, our decision regarding the appropriateness of the Canadian home market prices may be subject to change based upon the results of verification.

At verification, we examined the CWB's selling process and pricing practices in detail (see Sales Verification Report at pages 5-8 and Exhibits S-2 and S-5). We selected numerous home market sales transactions, traced through all of the applicable price adjustments, and ultimately tied the prices to the MGE or other news wire sources without discrepancy. We confirmed that the CWB's pricing mechanism was based on publicly available market sources (i.e., the MGE or other news wire sources) and traced the price adjustments to source documents. The verified evidence on the record supports the CWB's claims and our Preliminary Determinations that the GOC does not control prices to such an extent that they are non-competitive and inappropriate for use in our dumping analyses. Accordingly, we continue to find that a particular market situation in the Canadian domestic home market for hard red spring and durum wheat does not exist within the meaning of section 773(a)(1)(C)(iii) of the Act.

Comment 2: Inclusion of Certain Product Characteristics in Model Match Criteria

The CWB argues that the Department should exclude hard vitreous kernel content ("HVK"), test weight and moisture content from the model match criteria for the final determinations, because the model match criteria adopted by the Department in the Preliminary Determinations ignore the operational reality of the CWB's business. The CWB maintains that, as stated in its responses and at verification, sales negotiations are made using the standard criteria: grade, class and protein for HRS; and grade and protein for durum wheat. According to the CWB, HVK, test weight and moisture content are not components of its sales negotiations, and the CWB does not collect or possess information on these product characteristics in its normal operations. Rather,

the CWB asserts that the Canadian Grading Commission ("CGC") grade standards incorporate minimum HVK, test weight, and moisture content values into the grade standards themselves. The CWB maintains that although these are important product characteristics, because of the quality and consistency of Canadian wheat and due to the CGC's tightly-defined grade specifications, customers know what grades and proteins of wheat are available and, thus, specifying HVK, test weight and moisture content is unnecessary. Therefore, the CWB asserts that the inclusion of product characteristics beyond grade, class, and protein for HRS, and grade and protein for durum wheat would result in the use of duplicative model matching characteristics, which goes against Department practice.

The CWB contends that Canadian durum and HRS wheat are not stored, marketed, priced, or sold based on these additional product characteristics. The CWB states that the MGE and newswire services publish futures prices for the base grade only, which reflects grade and protein, not a multitude of end-product combinations of grade, class, protein, HVK, test weight, and moisture content. The CWB states that at verification the Department tied numerous transactions to the MGE prices, and in no instance did the CWB adjust a single price because of a specific HVK, test weight or moisture content. The CWB asserts that U.S. grain companies do not sell using all of the product characteristics presented by the petitioners, but rather U.S. companies adjust the price through bonification clauses, after the sales negotiations have concluded. According to the CWB, the bonification clauses are in fact the only difference between the U.S. and CWB sales agreements. The CWB states that while the CWB bonifies on grade and protein alone due to the reliability of Canadian wheat and the CGC's tightly-defined grade specifications, U.S. grain companies bonify on additional characteristics because of the greater heterogeneity of quality and U.S. wheat types a customer might receive. Moreover, the CWB contends that a vast number of different bins at each grain elevator would be necessary in order to store the wheat according to grade, class, protein, test weight, HVK and moisture content. Thus, the CWB argues that the Department should reverse its earlier decision and rely only on class, grade and protein as model matching criteria for the final determinations.

Citing to the Department's sales verification report, the CWB asserts that the Department verified that the CWB provided all of the product characteristic information available to it. The CWB states that in virtually all instances, when product characteristic information was submitted by the CWB, it was "produced either from data received *after* the completion of the sales negotiation or only after requests were made of third parties to obtain the information *for the purposes of this investigation*." CWB case brief at 13. The CWB contends that neither the CWB nor its customer have this information when negotiating the sale, and the grain *cannot* be stored, priced, or sold, in the manner the petitioners allege and the Department preliminarily accepted. According to the CWB, if it were to use this data for its sales, it could only be used as a price adjustment factor after the shipment has taken place, and the Department has verified that the CWB does not subsequently adjust prices or determine prices based on the specific HVK, test weight or moisture content of a particular shipment. The CWB points to the lengths that it needed to go to in order to gather the product characteristic information for these investigations to illustrate the lack of influence this information has on the sales process.

According to the CWB, it is Department practice to "match sales by standardized grade distinctions when minor differences in the products sold, falling within those grade distinctions, have no impact on price." CWB Case Brief at 11. See Notice of Final Determination of Sales at Less Than Fair Value: Emulsion Styrene-Butadiene Rubber from Mexico, 64 FR 14872, 14972 (March 29, 1999); Notice of Final Determination of Sales at Less than Fair Value: Stainless Steel Wire Rod from Japan, 63 FR 40434, 40445 (July 29, 1998); Notice of Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from France, 58 FR 41726 (August 5, 1993). The CWB contends that variations in the HVK, test weight, or moisture content do not result in a change in price, unless the change results in a change in grade. The CWB also states that it is Department practice not to use duplicative model-matching characteristics. See Notice of Final Determination of Sales at Less than Fair Value: Certain Polyester Staple Fiber from Taiwan, 65 FR 16877 (March 8, 2000) and accompanying Issues and Decision Memorandum for the Investigation of Certain Polyester Staple Fiber from Taiwan at Comment 4. The CWB asserts that, because HVK, test weight and moisture content are captured in the CGC grade standards, by including these characteristics in the model-matching the Department has not followed its standard practice.

The petitioners contend that HRS and durum wheat are sold in the United States and Canada according to the model match criteria, the model match criteria are price determinative and, thus, all product characteristics should be used in the model match concordance for the final determinations. The petitioners argue that it is irrelevant that the CWB does not collect HVK, test weight and moisture content data for some sales until after the sales negotiation process is complete. According to the petitioners, the fact that detailed data are not collected until after the negotiation is complete says nothing about whether those characteristics are important to the customer and whether they enter into the price negotiation. The petitioners contend that the model matching criteria were chosen by the Department after careful consideration, were found by the Department to be price-determinative, and nothing on the record contravenes this determination.

The petitioners refute the CWB's claim that it would be impossible to price and store the grain according to the model match characteristics. According to the petitioners, there are hundreds, or even thousands of grain elevators in the United States and Canada. While each elevator cannot store each combination of the product characteristics, the petitioners assert that, given the vast number of elevators, every sale down to the most precise contract specification can be fulfilled. The petitioners contend that U.S. elevators have multiple bins for storing the wheat and typically segregate deliveries of HRS and durum wheat based on a number of different factors (including protein level, test weight, HVK, percent damaged kernels, falling number and moisture). Depending on the contract specifications, elevators then blend the segregated wheat prior to shipment to an export or domestic customer. The petitioners state that there has been growth in the number of large elevators in Canada that emulate elevators in the United States with their quick load-out capabilities that rely on having more segregation bins to optimize grain quality during load-out. The petitioners contend that country elevators are equipped to handle multiple

crops segregated into a number of different bins. Because of the "hundreds of elevators under CWB control," the petitioners claim that the CWB is capable of selling the subject merchandise in accordance with the model matching characteristics. The petitioners also claim that the system whereby elevators bid for the right to sell the CWB's wheat implies that the elevators know the specifications of the wheat that they have on hand.

The petitioners further assert that in the process of having the wheat inspected, tested and graded by the CGC or private grain inspectors, all of the model match criteria chosen by the Department are examined. The petitioners question the CWB's assertion that the elevators, which often arrange for the inspection and testing of the wheat, do not have detailed product characteristic information. The petitioners also argue that the significant cost of testing the grain makes it hard to believe that the CWB only accounts for grade and protein. Specifically, if wheat with quality characteristics which exceed the minimum levels of the CGC standards has a higher value and, thus, can be sold for a high price, the petitioners argue that it makes no sense for the CWB or the elevators to ignore additional product characteristic information, especially when it is already in their possession or readily available. Given that the CWB's stated goal is to maximize returns to western Canadian grain farmers, the petitioners contend that it is implausible that the CWB would not use more detailed product characteristic data to command higher prices.

Furthermore, the petitioners argue that the Department has sufficient evidence on the record of these investigations such as contracts and related sales documentation that reference model match characteristics to conclude that the model match criteria are part of the sales process. Comparing the CWB's average prices of home market durum sales for which all product characteristics were reported to average prices of home market sales for which complete product characteristic data were not reported on a control number-specific basis, the petitioners conclude that the additional product characteristics have an impact on price.

According to the petitioners, the CWB's claim that it prices off the MGE demonstrates that the CWB uses the additional model match criteria in its pricing decisions. The petitioners assert that the MGE quotes prices for No. 1 Milling Quality HRS and Choice Milling Quality Durum, products which are significantly superior to CGC base grades. The petitioners contend that the CWB cannot, therefore, logically base its pricing on the MGE specifications if it only sells based on grade and protein. For example, because the CGC standards for No. 1 CWAD (durum) only require 80 percent HVK content, whereas Choice Milling Durum requires 90 percent HVK content, if the CWB really bases its prices off the MGE, it would need to know detailed product characteristic data beyond grade and protein content. Likewise, the petitioners assert that specifications in the MGE cash durum market require a falling number of 325, but this is not specified in the CGC standards. Similarly, Canadian standards allow for cumulative damage equal to 3 percent, while the USDA limits cumulative damage to 2 percent. Accordingly, the petitioners claim that, "to the extent that the CWB's home market prices were linked to the MGE, the CWB must have been able to identify the model match characteristics for those sales in order to ensure that the shipments met the MGE requirements. Otherwise, the linkage – a linkage in price between dissimilar products – is meaningless." Petitioners' rebuttal brief at 13.

Department Position: In market economy antidumping proceedings, the subject merchandise sold in the United States is compared to home market or third-country market products by applying model matching criteria that are established by the Department in conjunction with interested parties in the proceeding. In these cases, after considering the comments raised by the parties, we established a model matching hierarchy based on six product characteristics for durum wheat (i.e., type, grade, protein content, vitreous kernel content (or HVK), moisture, and test weight) and seven product characteristics for HRS wheat (i.e., type, grade, protein content, class,[2] vitreous kernel content (or HVK), moisture, and test weight) (see Selection of Model Matching Criteria for Purposes of the Antidumping Duty Questionnaire ("Model Matching Memorandum") dated December 6, 2002.

The CWB reported all of the product characteristic information available to it in its sales listings. For durum wheat, this resulted in near complete product characteristic information for U.S. sales and product characteristic information for a significant number of home market sales. For HRS wheat, this resulted in complete product characteristic for only a small number of U.S. and home market sales. Therefore, in the Preliminary Determinations, for durum wheat we matched U.S. sales for which complete product characteristic data was reported to those home market sales for which complete product characteristic data was reported. For HRS wheat, however, we found that we were unable to make meaningful comparisons if we were to rely on all seven product characteristics because of the limited number of U.S. and home market sales for which the CWB could provide complete product characteristic information. Accordingly, we matched U.S. sales of HRS wheat to home market sales using only the first four product characteristics (i.e., type, grade, protein content, and class). We stated that we intended to verify the CWB's claims that all product characteristic data available to it had been reported and that the CWB does not consistently collect or maintain data on vitreous kernel content, test weight, and moisture content. Moreover, we stated our position that all of the product characteristics selected by the Department are important for making proper comparisons in these proceedings.

Prior to issuing the model match criteria in these investigations, we solicited comments from the petitioners and the CWB and conferred with industry experts (see Model Matching Memorandum). The petitioners, the CWB, officials from the U.S. Department of Agriculture ("USDA"), and members of the North American Millers Association ("NAMA") all agreed that type, grade, and protein content are relevant product characteristics for purposes of distinguishing wheat models. Furthermore, based on our review of interested party comments and other documentation, including the Canadian Grain Commission's *Official Grain Grading Guide* and CWB export contracts and shipping documents, we found that class, hard vitreous kernel content, test weight, and moisture content are all important product characteristics that distinguish wheat models. As noted above, the CWB has asserted that these product characteristics are subsumed

[2] Class is a product characteristic for hard red spring wheat only because Canada has only one class of durum wheat, Canada Western Amber Durum Wheat. See Canadian Wheat Board, Growing Grain: Durum, at http://www.cwb.ca/en/growing/durum/.

within grade, i.e., the reporting of a particular grade implies a particular minimum or maximum level of hard vitreous kernel content, test weight, and moisture content. While we acknowledge that the *Official Grain Grading Guide* specifies minimum or maximum standards within grades for hard vitreous kernel content, test weight, and moisture content, our review of pertinent documentation led us to conclude that, even within grade, there may be substantial variations with respect to these product characteristics that can be used to distinguish durum wheat or hard red spring wheat models. This was consistent with our discussions with NAMA and the USDA, and our review of U.S. and Canadian grading standards. Furthermore, information submitted by the CWB in its model matching comments indicated that these product characteristics are tracked by the CWB with respect to shipments of Canadian wheat to the United States. Accordingly, we included class (for hard red spring wheat only), hard vitreous kernel content, test weight, and moisture content characteristics in the model match hierarchy. See Model Matching Memorandum. In establishing the product matching criteria in these investigations, we considered all of the information available to us in defining a product matching hierarchy that would result in meaningful product comparisons.

At verification, we confirmed that the CWB reported all product characteristic data available to it. Accordingly, for HRS wheat, we are continuing to match U.S. sales to home market sales based on type, grade, protein, and class to ensure that our dumping finding is based on a sufficient number of comparisons. With respect to durum wheat, while we recognize that the information available to the CWB did not allow for complete reporting of HVK, test weight, and moisture content, our analysis of the price differences between home market sales of durum wheat for which complete product characteristic information has been reported and home market sales for which only type, grade and protein were reported is consistent with the conclusion that we have drawn that this additional product characteristic information is important for making proper product comparisons. Regardless of when the product characteristic information is made available to the CWB, it appears that the availability of the additional product characteristic information ultimately impacts the price paid by the customer.

Furthermore, we do not find that including all the product characteristics in the model matching criteria is duplicative. According to the CGC, neither moisture content nor test weight are included in the Canadian grading criteria and, therefore, the inclusion of these characteristics adds further detail to the product specifications that are captured by using grade, type and protein alone. We also do not find the CWB's argument that grain cannot be stored in such a way as to permit the elevators to meet detailed contract specifications beyond grade and protein to be persuasive. Since elevators maintain multiple storage bins and wheat can be blended before delivery in order to meet contract specifications, wheat can be delivered according to more detailed product specifications. For the reasons stated above, we continue to find that the product characteristics selected by the Department are important for making proper product comparisons in these proceedings.

Comment 3: Date of Sale

The CWB contends that the Department should reconsider its preliminary decision to use shipment date rather than invoice date as the date of sale. The CWB argues that the Department's use of shipment date as the date of sale for the Preliminary Determinations contravenes the declared intent of the Department's date of sale regulations, i.e., to simplify the reporting and verification of the date of sale. The CWB asserts that use of shipment date as date of sale departs from the plain meaning of the Department's regulations at 19 CFR 351.401(i), which contains a clear preference for invoice date. The CWB further contends that the verified record clearly demonstrates that shipment date does not better represent the date on which the material terms of the CWB's home market and U.S. sales were set than does invoice date. According to the CWB, departure from invoice date as date of sale is only permissible when a different date better reflects the date the material terms of sale are established. Furthermore, the CWB argues that the Department's determination to reject invoice date merely because the shipment date precedes the invoice date is insufficient reason to ignore the Department's clearly stated regulatory preference for invoice date as the date of sale.

The CWB asserts that the Department's decision to use shipment date as the date of sale complicated the reporting and verification of the data in these proceedings because invoice date is recorded by the CWB as the date of sale in the ordinary course of business. Thus in order to comply with the Department's request to report sales using shipment date as the date of sale, the CWB had to expend significant additional resources. The CWB argues that this is the exact problem the post-URAA regulations addressed, namely that the use of the date of shipment as the date of sale in these investigations has added several layers of complexity, difficulty, and expense to both the reporting and verification processes, and will continue to do so in any future administrative reviews.

The CWB acknowledges that in these investigations, the use of the date of shipment rather than the date of invoice as the date of sale results in higher dumping margins. However, it is the CWB's assertion that the margin impact of a particular methodology is temporal. The CWB asserts that a methodology yielding a particular impact in an investigation may yield the opposite result in subsequent administrative reviews. Therefore the CWB argues that the Department should "choose a methodology that is legally sustainable and will simplify reporting and verification if this investigation becomes subject to administrative review." CWB Case Brief at 34.

The CWB argues that the Department's decision in the Preliminary Determinations to use shipment date as the date of sale simply because it almost always preceded the invoice date ignores the commercial reality of the CWB's business. The CWB further contends that a date other than invoice date will "better reflect" the date that the material terms of sale are set only "if the party shows that the material terms undergo no meaningful change between the proposed date and the invoice date." See Allied Tube & Conduit Corp. v. United States, 132 F. Supp. 1087, 1090 (CIT 2001), citing the Notice of Final Determination of Sales at Less than Fair Value: Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Mexico, ("Pressure Pipe from Mexico") 65 FR 39358 (June 26, 2000) and accompanying Issues

and Decision Memorandum for the Final Determination in the Antidumping Duty Investigation of Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Mexico - April 1,1998, through March 31, 1999 at Comment 2 and Circular Welded Non-Alloy Steel Pipe and Tube from Mexico: Final Results of Antidumping Duty Administrative Review, 65 FR 37518 (June 15, 2000) and accompanying Issues and Decision Memorandum for the 1997-1998 Administrative Review of Circular Welded Non-Alloy Steel Pipe from Mexico: Final Results of Antidumping Duty Administrative Review at Hylsa Comment 1. The CWB argues that for the vast majority of the its U.S. sales and a significant percentage of its U.S. and home market sales taken together, the material terms of sale are not even known to either party until a point in time after shipment to the customer. The CWB states that only after the grain is unloaded at the customer destination are the material terms of sale (quantity, product and price) known for sales made through sales channels 1, 2, 4, 5, and 7. The CWB asserts that while for the remaining channels of distribution, a different date might arguably better represent the date of sale, sales through these channels account for only a minority of total durum and hard red spring wheat sales during the POI.

The petitioners argue that the Preamble to the Department's regulations clearly states that the Department will be particularly attentive to the possibility of manipulation of dates of sale when a firm does not have a standard invoicing practice. See Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27349 (May 19, 1997). The petitioners assert that there is no consistency in how long after shipment the CWB issues the sales invoice. Therefore, the petitioners contend that the CWB does not have a functioning standard invoicing practice and, thus, an alternative date for the date of sale is appropriate. In addition, the petitioners assert that the Department has a longstanding practice of using the date of shipment as the date of sale if date of shipment precedes the date of the invoice. See e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Brazil ("Cold-Rolled from Brazil"), 67 FR 62134, 62136 (October 3, 2002); Notice of Final Determination of Sales at Less Than Fair Value: Folding Metal Tables and Chairs from the People's Republic of China ("Tables and Chairs from China"), 67 FR 20090, 20093 (April 24, 2002); Stainless Steel Bar from Japan: Final Results of Antidumping Administrative Review ("SSB from Japan"), 65 FR 13717, 13718 (March 14, 2000); and Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from Italy ("Sheet and Strip from Italy"), 64 FR 30750, 30765 (June 8, 1999).

The petitioners rebut the CWB's claim that the material terms of sale are not known until the invoice date by referencing reported sales where both the shipment and payment dates precede the date of invoice. The petitioners assert that, in those instances, it is obvious that the terms of sale were established prior to the invoice date. According to the petitioners, the sample contract documents demonstrate that all material terms of sale are established no later than the date of shipment. While the CWB claims that, for sales made through certain channels, the final quantity is only known when grain is unloaded at the customer destination, the petitioners assert that these are only minor deviations between the ordered quantity and the delivered quantity. The petitioners state that the Department has consistently held that minor deviations between

ordered and delivered quantities do not alter the date of sale. See e.g., Notice of Final Determination of Sales at Less Than Fair Value: Silicon Metal From the Russian Federation, 68 FR 6885, 6889 (February 11, 2003); Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From Kazakhstan, 66 FR 22168, 22171 (May 3, 2001); Notice of Final Determination of Sales at Less Than Fair Value; Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Turkey, 65 FR 15123, 15125 (March 21, 2000); Welded Carbon Steel Pipes and Tubes From Thailand: Preliminary Result of Antidumping Duty Administrative Review, 66 FR 18901, 18902 (April 12, 2001); and Pressure Pipe From Mexico at 65 FR 39359. With respect to sales channel 1 specifically, the petitioners assert that the sample contract documents clearly show that the CWB's customers (i.e., mills) are obligated to purchase the total quantity shipped and to carry insurance on the shipment. The petitioners contend that, since insurance is based on value, these documents clearly demonstrate that the material terms of the contract are established prior to the shipment date.

Department Position: We agree with the petitioners and for the final determinations have continued to use the shipment date as the date of sale. There is no evidence on the record to demonstrate that the material terms of sale change after shipment such that we would be compelled to deviate from our normal practice that, where date of shipment precedes date of invoice, we use date of shipment as date of sale. Moreover, because of the nature of the CWB's invoicing system, we do not find that the invoice date best reflects when the material terms of sale were established.

While we agree with the CWB that the invoice date is the Department's preferred date of sale, it is Department practice to use the date of shipment as the date of sale where date of shipment precedes invoice date. See e.g., Cold-Rolled from Brazil at 67 FR 62136; Tables and Chairs from China at 67 FR 20093; SSB from Japan at 65 FR 13718; and Sheet and Strip from Italy at 64 FR 30765. Further, as stated in the Preamble to the Department's regulations, "{i}n some cases, it may be inappropriate to rely on the date of invoice as the date of sale, because the evidence may indicate that, for a particular respondent, the material terms of sale usually are established on some date other than the date of invoice." Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27349 (May 19, 1997). During the sales verification we found that when making an invoice revision, the CWB's invoicing system generates a new invoice with a new invoice date, potentially resulting in the generation of multiple invoices for the same sale issued at progressively later dates. See Sales Verification Report at 41. With this invoicing system it would be difficult to determine accurately the date of sale based on the date of invoice, as there is potentially no correlation between when the material terms of sale are established and the final invoice date. Accordingly, contrary to the CWB's assertions, we do not find that the invoice date better reflects when the material terms of sale were established.

Furthermore, concerning the CWB's assertion that the final quantity is not known until the time of invoicing, at verification we noted that the material terms of sales, including the quantity, do not change for certain sales (e.g., channel 7 sales; home market sales in channels 1 and 2). In addition, as noted by the petitioners, the Department has consistently held that minor deviations

between the ordered and delivered quantity do not alter the date of sale. Accordingly, for the final determinations, we continue to find that the date of shipment is the appropriate date of sale.

Comment 4: Exclusion of Channel 6 Sales from LOTH 1

The CWB argues that the Department erred in the Preliminary Determinations by excluding channel 6 sales from LOTH/U1. According to the CWB, classifying channel 6 sales and producer direct sales ("PDS") together as LOTH/U2 contradicts the Department's regulation on distinguishing levels of trade. The CWB suggests that if the Department's intent was to isolate all PDS sales, then the Department should define LOTH/U2 by CUSCATH/U code 3, (i.e., PDS sales), and LOTH/U1 as all other sales.

The CWB states that the Department appears to have confused channel 6 sales and PDS sales in the Preliminary Determinations because it describes channel 6 sales as "Western Mill Producer Direct sales made to end users and producers." Preliminary Determinations 68 FR at 24714. According to the CWB, this description is incorrect, as channel 6 sales are not made to producers, but instead are CWB sales shipped directly to customer mills. Although the producer does deliver the grain, it is not involved in the sale of the grain, as is the case in a true PDS sale. The CWB contends that the only similarities between channel 6 sales and PDS sales is how the grain is moved to the customer, not how it is sold. Channel 6 sales and PDS sales have virtually no selling functions in common.

The CWB states that excluding channel 6 sales from LOTH/1 contradicts the Department's regulation on distinguishing levels of trade, which states that different levels of trade "are characterized by purchasers at different places in the chain of distribution, and sellers performing qualitatively different selling functions in selling to them." See 19 CFR 351.412(C)(2). The CWB states that the selling functions and types of customers for channel 6 sales are virtually identical to those for Channels 1-9 and the non-PDS sales in Channel 10. According to the CWB, PDS sales share virtually no common selling functions with non-PDS sales. Therefore, the CWB argues that the Department should reclassify channel 6 sales as LOTH/U1.

The petitioners did not comment on this issue.

Department Position: We agree with the CWB that only PDS sales should be included in LOTH2. The only common element between channel 6 sales and PDS sales is that they are both delivered directly from the farm to the mill. However, selling functions, not delivery terms, are the basis for finding distinct levels of trade. Accordingly, we find that non-PDS channel 6 sales were made at the same level of trade as all of the CWB's other non-PDS sales and we have revised the programming for the final determinations accordingly.

Comment 5: Treatment of Sales Made Above Normal Value

The CWB argues that the Department should abandon its preliminary decision to set all negative

control-number specific margins to zero when calculating the weighted-average dumping margin. The CWB argues that this methodology is an unreasonable interpretation of the Uruguay Round Agreements Act ("URAA") and impermissible under U.S. law as it ignores the Court of International Trade's ("CIT") statements on zeroing and is inconsistent with World Trade Organization ("WTO") Appellate Body findings.

The CWB argues that the CIT stated that the Department's zeroing practice is likely not in the spirit of the AD Agreement because it distorts the calculation of the dumping margin. See Corus Staal BV v. United States Department of Commerce ("Corus Staal"), 259 F. Supp. 2d 1253, CIT LEXIS 18, at 25 (CIT 2003). The CWB states that, in Corus Staal, the CIT nevertheless concluded that the Department's zeroing practice technically complied with the minimum standards for upholding the practice because, in Corus Staal, the CIT simply reaffirmed its Bowe Passat v. United States ("Bowe Passat"), 926 F. Supp. 1138 (CIT 1996) decision. In Bowe Passat, the Court agreed with the Department's argument that zeroing is needed to deal with masked or targeted dumping. However, the CWB asserts that the CIT, while nominally following its Bowe Passat decision in Corus Staal, failed to take into account the adoption of the URAA and concomitant incorporation of Article 2.4 of the 1994 WTO Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade ("Article 2.4") into U.S. law, which "caused the Department's zeroing practice to run afoul of Bowe Passat as an unreasonable interpretation of the URAA" (see CWB case brief at 41). See the Statement of Administrative Action ("SAA"), H.R. Rep. No. 103-826, Pt. 1 at 82 (1994), where the SAA noted that Article 2.4 was incorporated into U.S. law.

According to the CWB, in Bowe Passat, the CIT held that the U.S. antidumping statute did not expressly require or prohibit zeroing and, therefore, upheld the zeroing practice despite acknowledging the distortion of dumping margin calculations. The CWB asserts that the CIT based its finding solely on the Department's professed need to deal with "targeted" or "masked" dumping, stating that it would defer to the Department's zeroing methodology only "unless and until it becomes clear that such a practice is impermissible or unreasonable...." (Bowe Passat, 926 F. Supp. at 1150).

The CWB argues that the adoption of the URAA has made it clear that zeroing is an unreasonable interpretation of the URAA. The CWB asserts that Article 2.4 and its corresponding URAA provision expressly provide a remedy for targeted or masked dumping. See 777A(d)(1)(B) of the Act and Agreement on Implementation of Article VI of GATT art. 2.4.2 (April 15, 1994), reprinted in H.R. Doc. No. 103-316, Vol. 1 at 1455. Therefore, the CWB asserts that the single purpose justifying the Department's zeroing practice (i.e., masked or targeted dumping) is obsolete and that the Department is bound to make a "fair comparison" between export price and normal value to "determine dumping margins as accurately as possible." See Viraj Group Ltd. v. United States, 162 F. Supp.2d at 656, 662-663 (CIT 2001).

The CWB also argues that the Department's zeroing practice is inconsistent with the WTO Appellate Body's findings in European Communities - Antidumping Duties on Imports of Cotton

Type Bed Linens from India, ("Bed Linen") WTO/OS141/AB/R (March 1, 2001) which found that zeroing, in the context of an antidumping investigation, violated the Antidumping Agreement. The CWB argues that, while the WTO decision may not be directly binding on the Department in these investigations, the Appellate Body report specifically considered the use of zeroing in an antidumping investigation with facts virtually identical to those in this case and found it to violate the WTO's Antidumping Agreement.

The petitioners argue that the CWB is incorrect in its interpretation of the URAA and the CIT's statements on zeroing. The petitioners contend that zeroing is not prohibited under the URAA and the CIT has endorsed it. Moreover, it is the CIT's decisions that are binding on the Department, not the WTO's. The petitioners cite to Corus Staal, where the CIT stated that the URAA is silent as to the impact of negative margins and that the statue neither requires nor prohibits the Department from considering non-dumped sales. See also Bowe Passat and Timken v. United States, 240 F.Supp.2d 1288 (CIT 2002). The petitioners assert that the CIT found that, even though Corus Staal and Bed Linen are similar in fact, consideration of WTO precedent is inappropriate because the CIT has recognized that WTO decisions are not binding on the CIT or the Department (see Corus Staal). Accordingly, the petitioners assert that the Department should adhere to its well-established, court sanctioned zeroing methodology when calculating the margins for the final determinations in these investigations.

Department Position: We agree with the petitioners that the Department's methodology is consistent with our statute. See e.g., Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar from Italy, 67 FR 3155 (January 23, 2002) at the accompanying Issues and Decision Memo for the Antidumping Duty Investigation of Stainless Steel Bar from Italy; Final Determination at Comment 1 and Notice of Final Determination of Sales at Less Than Fair Value; Certain Hot-Rolled Carbon Steel Flat Products From The Netherlands, 66 FR 50408 (Oct. 3, 2001) at the accompanying Issues and Decision Memorandum for the Antidumping Investigation of Certain Hot-Rolled Carbon Steel Flat Products from the Netherlands; Notice of Final Determination of Sales at Less Than Fair Value (A-421-807) at Comment 1.

Section 771(35)(A) of the Act defines "dumping margin" as "the amount by which the normal value exceeds the export price or constructed export price of the subject merchandise." Section 771(35)(B) of the Act defines "weighted-average dumping margin" as "the percentage determined by dividing the aggregate dumping margins determined for a specific exporter or producer by the aggregate export prices and constructed export prices of such exporter or producer." These sections, taken together, direct the Department to aggregate all individual dumping margins, each of which is determined by the amount by which normal value exceeds export price or constructed export price, and to divide this amount by the value of all sales. The directive to determine the "aggregate dumping margins" in section 771(35)(B) makes clear that the singular "dumping margin" in section 771(35)(A) applies on a comparison-specific level, and does not itself apply on an aggregate basis. At no stage in this process is the amount by which EP or CEP exceeds normal value on sales that did not fall below normal value permitted to cancel out the dumping margins found on other sales. This does not mean, however, that sales

that did not fall below normal value are ignored in calculating the weighted-average rate. It is important to note that the weighted-average margin will reflect any "non-dumped" merchandise examined during the investigation, the value of such sales is included in the denominator of the dumping rate, while no dumping amount for "non-dumped" merchandise is included in the numerator. Thus, a greater amount of "non-dumped" merchandise results in a lower weighted-average margin.

This is, furthermore, a reasonable means of establishing duty deposits in investigations, and assessing duties in reviews. In an investigation such as the present case, the deposit rate calculated must reflect the fact that the Bureau of Customs and Border Protection ("BCBP") is not in a position to know which entries of merchandise entered after the imposition of a dumping order are dumped and which are not. By spreading the estimated liability for dumped sales across all investigated sales, the weighted-average dumping margin allows the BCBP to apply this rate to all merchandise entered after an order goes into effect.

As the petitioners point out and the CWB concedes, the above-described methodology has been upheld by the CIT (see Corus Staal). The facts of the case and the arguments made in Corus Staal surrounding the Department's treatment of sales made above normal value were virtually identical to those in these investigations. Contrary to the CWB's claim that Corus Staal did not address the fairness of the Department's calculation of the dumping margin, the plaintiffs in that case, Corus Staal BV and Corus Steel USA, Inc., specifically argued that the Department's methodological treatment of sales made above normal value is an "unreasonable interpretation of the statute because it results in a fundamentally *unfair comparison* that intentionally ignores certain transactions and distorts the final margin {emphasis added}." The CIT's response in Corus Staal was clear; it stated that it "cannot find that zeroing [the Department's treatment of sales made above normal value] is an unreasonable application of the statue as it is presently written."

Finally, the CIT specifically addressed Bed Linen in Corus Staal, stating "that Bed Linen cannot be the basis for striking Commerce's methodology. As this court has frequently recognized, WTO decisions are not binding upon Commerce or the court" (see Corus Staal).

Comment 6: Clerical Error in the Calculation of the LOT Adjustment

The petitioners argue that, in the Preliminary Determinations margin calculations, the Department incorrectly deducted the LOT adjustment from home market price in instances where a U.S. sale at LOT 2 is matched to a home market sale at LOT 1.

The CWB agrees with the petitioners.

Department Position: We agree with the petitioners and the CWB that the LOT calculation mentioned above constitutes a ministerial error under 19 CFR 351.224(f). Accordingly, for the final determinations, we have corrected this error in our margin calculations.

Common Cost Issues[3]

Comment 7: Farmer Estimates and Representations

The petitioner asserts that many of the allocations and offsets used to calculate the reported costs are based on unverified farmer estimates and representations. Specifically, the petitioner protests the reliance on estimates and representations in the methodologies adopted for overhead allocations, imputed seed, affiliated party transactions, beginning and ending inventories, and byproduct offsets. Referencing Final Determination of Sales at Less Than Fair Value: Greenhouse Tomatoes from Canada, 67 FR 8781 (February 26, 2002), and accompanying Final Issues and Decision Memorandum for the Investigation of Greenhouse Tomatoes from Canada ("Greenhouse Tomatoes from Canada"), the petitioner contends that the Department cannot accept calculations based merely on representations. Furthermore, the petitioner argues that the Department has consistently rejected unreliable and unverifiable information regardless of whether it increases or decreases costs. Thus, the petitioner requests that the Department: re-allocate overhead and other costs based on verified information; completely reject the byproduct offset, allocations to non-subject activities and allocations to the services performed for outside parties; and disregard any inventory balances based on farmer estimates (including estimated figures from the crop insurance inventory declarations). In support of the inventory argument, the petitioner specifically mentions Farmer 11, claiming that he could not support the reported beginning and ending balances.

The CWB argues that perfectly calculated costs are neither attainable nor necessary. Citing Floral Trade Council v. United States, 822 F. Supp. 766, 772 (CIT 1993), the CWB contends that in the absence of actual figures, the courts recognize that calculating costs is an inexact science that only estimates the costs incurred to produce a product. Because detailed records are not a necessity in the farming industry, the CWB asserts that the farmers themselves were often the best source of the production information required by the Department. Additionally, the CWB argues that nearly every case before the Department requires producer estimates to some extent. Citing the Notice of Final Determination of Sales at Less Than Fair Value: New Minivans from Japan, 57 FR 21937, 21952 (May 26, 1992), the CWB states that in cases where the normal books maintained by a company do not accurately reflect costs, the Department will adopt alternative methodologies to reasonably capture costs. Furthermore, the CWB notes that section 773(f)(1) of the Act directs the Department to rely on a respondent's records, if such records are kept in accordance with the home country's generally accepted accounting principles ("GAAP") and reasonably reflect the production costs. Thus, the Department's objective, according to the CWB, is to reasonably reflect the producer's costs. The CWB believes that the record supports that the estimates employed in the current case were conservative, reasonable and represent the most precise methodologies available to the Department.

[3]The cost of production comments apply to the HRS wheat investigation only. As there is a single petitioner in the HRS wheat investigation (i.e., the North Dakota Wheat Commission), the discussions that follow refer to "the petitioner" in the singular.

Addressing the petitioner's objections to specific estimates and representations, the CWB claims that the petitioner's arguments were factually misguided and overstated the CWB's reliance on estimates. First, the CWB contends that the fair market value estimates used in the overhead calculations were comparable to blue book values. Second, the CWB asserts that the only representations obtained from the farmers with regard to affiliated party transactions were the identification of inputs. All other information was obtained from public sources. Third, the self-produced seed quantities and seeding rates were substantiated at verification through review of purchased seed seeding rates, seed cleaning amounts, and comparisons to other farms and public sources. Fourth, the CWB argues that the inventory amounts are based on cash ticket analysis.

With regard to Farmer 11, the CWB maintains that the petitioner's argument is baseless. The CWB claims that the inventory changes are supported and were properly verified. First, the CWB notes that the deliveries after August 10, 2002 and before the 2002 harvest clearly relate to ending inventory for the cost reporting period. Second, the CWB asserts that the 2001 seed which was cleaned in 2002 and kept for the 2003 crop was clearly supported by the seed cleaning invoice and the subsequent delivery tickets. Therefore, the CWB contends that the Department should continue to use Farmer 11's reported and verified production quantities. Finally, the CWB believes that byproduct offsets were supported by verified sales data compiled for the POI and by comparison to public data. Thus, the CWB believes that the reasonableness and accuracy of every farmer representation or estimate is supported by internal farm records or public information.

The CWB further argues that case law precedent establishes that actual costs or a particular methodology are not required for the Department's calculations. Instead, the CWB argues that where actual costs are unavailable, only relatively accurate calculations that the Department has verified as sound and reasonable are required. Dismissing the petitioner's cite Greenhouse Tomatoes from Canada, the CWB states that the estimates in question were not verified; thus, in that case the normal books and records were the best information available. Furthermore, the CWB sees the current case as distinct from Greenhouse Tomatoes from Canada in that the estimates used by the CWB were necessary to fill the gaps in the farmers' records or to provide more representative costs. Therefore, believing that the farmer estimates and representations are reasonable and conservative, the CWB urges the Department to employ them in the calculation of the cost of production.

Department Position: Farmers typically do not maintain the type of detailed records normally required for the calculation of the per-unit costs in a dumping analysis. However, the Department does not believe that this deficiency in the normal books and records, which was outside the CWB's control, should result in the rejection of the farmer's data. Section 773(f)(1) of the Act directs the Department to use the producer's records for calculating cost; the Act conditions the use of such records on their conformity with GAAP and their reasonable reflection of the producer's costs. Because the normal books maintained by the farmers in the current case lack the details necessary to calculate all aspects of the per-unit cost in accordance with section 776(a), the Department must use facts otherwise available and look to alternatives to fill the gaps

in the farmers' records as long as the significant portions of a farmer's cost data proved reliable.

In such instances, the Department may use, among other things, statements and estimates provided by a respondent, if the statement or estimate appears consistent with other record evidence. In other words, the issue becomes whether any of the respondent's data can be used, and, if so what is the appropriate fact filling information. Based on the verification procedures performed, the Department has concluded that the cost respondents' data in large part was supported by records. In addition, in many instances the cost respondents provided sufficient corroborating evidence to support the estimates and representations employed in the reported costs. Where the Department found inadequate support, adjustments have been made for the final determination.

Specifically, the overhead allocation methodology has been revised based on relative direct costs exclusive of feeder cattle purchases and imputed amounts. The costs associated with affiliated party transactions received have been amended to reflect the average custom rates from a public source. Byproduct offsets have been revised based on per head consumption quantities from public sources. For further details, see Comments 14, 16, and 20 where these issues have been discussed at length. Additionally, see Comment 11 where the Department discusses the estimates used in the calculation of imputed seed costs.

Regarding beginning and ending inventory balances, the Department disagrees with the petitioner. The petitioner argues that inventory balances based on crop insurance reports merely reflect the farmers' own estimates and should be zeroed out. However, the Department believes that the CWB's reliance on inventory declarations made to third parties, i.e., crop insurance companies, is appropriate and reasonable. Furthermore, during verification, the Department discovered that the information reported to crop insurance companies is subject to random audits by the insurance company. See Verification Report on the Cost of Production and Constructed Value Data Submitted by the Canadian Wheat Board for Cost Respondent 23 ("Farmer 23 Verification Report") dated July 18, 2003 at page 17. Therefore, the Department disagrees with the petitioner's argument that the inventory balances contained in crop insurance reports are unreliable. Accordingly, the Department has not adjusted beginning and ending inventory balances for the final determination. With respect to the arguments regarding Farmer 11, the Department agrees with the CWB. Farmer 11 presented inventory balances based on the amounts reported in the crop insurance reports adjusted for differences discovered in preparation of the response. These amounts were verified by the Department through a review of crop insurance reports, wheat delivery tickets and seed cleaning invoices. Therefore, the Department has not adjusted Farmer 11's beginning and ending inventory balances for the final determination.

Finally, the Department agrees with the petitioner that, as in the decision in Greenhouse Tomatoes from Canada, unverified and unreliable information based merely on the CWB's own representations should be rejected. However, in Greenhouse Tomatoes from Canada, the Department refused to substitute data available in the respondent's records with unverifiable

estimates. The statute establishes a preference to rely on the normal records of a company if such information is available, is in accordance with home country GAAP and is reasonable. In the current case, in certain instances such information was not available, necessitating the reliance on facts otherwise available, and in some cases estimates. As noted above, the Department believes that the CWB, for the most part, provided sufficient information to support such estimates. Where such support was not provided, the reported estimates were revised for the final determination based on the best information available to the Department.

Comment 8: Representative COPs

The CWB contends that the calculated COP must represent a value that the Department can state, with at least a 50 percent degree of certainty, that sales in Canada at amounts below the COP are being sold below the cost of production. The CWB states that the Department may choose a statistically valid sample of cost respondents or it may sample the producers accounting for the largest volume of the subject merchandise. In this case, the CWB maintains that the Department did not survey the largest producers, and therefore the Department must take into account the principles of statistics in both selecting the respondents and evaluating the data. Thus, the CWB argues that the Department should adjust the calculated COP downward, to the lowest end of the range of the calculated margin of error on the sample. According to the CWB, adjusting the calculated COP downward will give the Department at least a 50 percent certainty that the actual COP for the entire population of wheat producers is not below the calculated COP used in the below-cost test of HRS farmers. The CWB's argument is based on an analysis of Dr. Wachtel's report in the June 2, 2003 General Items response to the Department's supplemental section D questionnaire.

The petitioner argues that there is no basis or precedent for the Department to use the lower bound of the 50 percent confidence interval as the cut-off for applying the below-cost test. The petitioners counter that Dr. Wachtel's paper only demonstrates that the actual mean of the COP could be lower or higher than the sample mean found by the Department and that the CWB would have the Department disregard all of the other potential means in the confidence interval. Additionally, petitioners contend that the CWB refused on many occasions to specify a sample size that could have narrowed the confidence interval. Finally, the petitioners argue that Dr. Wachtel, based on his own inputs and formula, incorrectly calculated the 50 percent confidence interval for the weighted sample mean. Specifically, the petitioner contends that the true confidence interval level is narrower than the one included in Dr. Wachtel's paper. According to the petitioner, Dr. Wachtel appears to have forgotten to divide his results by the square root of the sample size of the soil sub-sectors.

Department Position: We disagree with the CWB. The confidence interval constructed by Dr. Wachtal only establishes a range in which the population mean lies with a certain probability. Other than that, however, the confidence interval tells us nothing about where in the interval the population mean lies. For this reason, any point in the interval, either above or below the sample mean (the interval mid-point), is just as likely to be the population mean as any other point.

There is therefore no basis to think that reducing the sample mean makes it more likely that the population mean lies above it. It is just as likely, in fact, that increasing the sample mean would achieve the same result. Therefore, for the final determination we continue to use the sample mean for COP.

Comment 9: Eliminate Outliers in Calculating the Average COP

The CWB argues that the Department should eliminate outlier farms in arriving at an average COP for HRS wheat. According to the CWB, the universe of HRS producers in the POI consisted of over 64,000 permit holders and the Department ultimately chose a sample of 27 farmers from which to calculate an average COP. The CWB states that there was no attempt to make the sample statistically valid. According to the CWB, at the time the sample was being selected, the CWB suggested a process by which aberrational costs would be ignored in order to arrive at a more representative average cost. The CWB states that in this case a severe drought or alternatively, near-flood conditions, resulted in highly aberrational yields and, therefore, highly aberrational costs as demonstrated by Farmer 8. The CWB argues that the use of such values in a sample that is not intended to be statistically valid is both aberrational and prejudicial.

The petitioner did not comment on this issue.

Department Position: The Department's objective is to calculate the average cost of production of HRS wheat for Canadian farmers during the POI. Where it is not practicable to examine all known exporters or producers of the subject merchandise, the Department is directed to investigate: A) a sample of exporters, producers, or types of products that is statistically valid based on the information available at the time of selection; or B) exporters and producers accounting for the largest volume of the subject merchandise that can reasonably be examined. See section 777A(c)(2) of the Act.

This case represents a particular challenge in terms of cost respondent selection. In order to achieve an acceptable margin of error, a true statistical sample would require the examination of more farmers than the Department's resources would allow. On the other hand, the very fragmented nature of HRS wheat production in Canada meant that selecting the number of producers accounting for the largest volume would represent a very small portion of Canadian HRS wheat production. For this reason, after consulting with interested parties, the Department selected a stratified sample of producers accounting for differences in soil type and province, in order to reasonably approximate the cost of production of HRS wheat. The 27 selected producers were selected at random to cover all relevant soil types within each major producing province in Canada, resulting in a well represented average cost of producing HRS wheat in Canada.

We disagree that Farmer 8's cost should be eliminated in arriving at an average COP for HRS wheat. Section 773(f)(1)(A) of the Act states that "costs shall normally be calculated based on the records of the exporter or producer of the merchandise, if such records are kept in accordance

with the generally accepted accounting principles of the exporting country (or the producing country, where appropriate) and reasonably reflect the costs associated with the production and sale of the merchandise." The CWB argues that Farmer 8's costs were aberrational because he experienced a severe drought during 2001. However, many farmers experienced a drought during 2001. In fact the CWB's own web page (www.cwb.ca) has articles about how "dry conditions across western Canada had a huge impact on yields and production of all commodities grown in western Canada during 2001." According to the CWB's web page, 2002 also proved to be a bad year for droughts. Most farmers in Canada take out insurance against such things as floods, droughts and hail because these are normal occurrences. Many Canadian farmers experienced droughts, as shown by the number of Canadian farmers who claimed crop insurance proceeds during 2001. In fact, 9 of the 27 farmers in this investigation received crop insurance proceeds during 2001, including Farmer 8.

Crop insurance is purchased based on different levels of production based on long-term average yields. Crop insurance is purchased to guarantee a certain level of production. Each farmer can purchase an insurance policy that will pay them in the event that certain yield levels are not achieved based on the long-term average yields of the individual farmers. From the response, it can be seen that Farmer 8 achieved low yields. Because drought was experienced throughout Western Canada, and Farmer 8 was chosen at random, there is no indication that his experience was not reflective of the cost incurred by other farmers. Thus we have determined that Farmer 8's costs should be included in calculating an average cost of producing HRS wheat in Canada.

Comment 10: Collapsing

The petitioner argues that the circumstances in this case do not allow for the collapsing of the costs of any of the individual farmers with their affiliates. The petitioner notes that there were four farmers whom the Department exempted from the request to uncollapse their costs in the supplemental section D questionnaire. Although the petitioner concedes that two of those cost respondents had not combined their costs to begin with, it disagrees that the other two should be permitted to combine their costs. The petitioner cites the Department's cost respondent selection memorandum as stating that it "found it unnecessary to combine those affiliated parties that are not involved in the operations of the selected respondent." See Identification of Cost of Production Respondents memorandum dated August 22, 2003 at page 7. Accordingly, the petitioner concludes that collapsing farm costs would be impermissible.

The petitioner points out that collapsing the farmers' costs with affiliates would lead to distortions in the costs for several reasons: some entities record their books on a cash basis while others record costs on an accrual basis; some farmers had compiled or reviewed financial statements while their affiliates may only report tax returns; and the farms have differing fiscal years and different reporting periods. The petitioner notes that it had advised the Department to obtain and verify any information necessary to disaggregate farm costs. As a result of this, the petitioner asserts that it is possible for the Department to disaggregate farm costs for Farmers 17 and 19.

The petitioner contends that there were three farmers that should have disaggregated their costs (i.e., Farmers 7, 8, and 25) but did not do so. The petitioner notes that for two of those farmers, the CWB explained that the reason that they could not disaggregate their costs was because of the commingling of the expenses. In its submissions, the CWB stated that these combined producers did not know how much each farm individually produced. However, the petitioner rebuts that this is not reasonable because these producers submitted separate tax returns for themselves and for each of the combined entities. According to the petitioner, if these producers could determine their individual incomes, they should be able to segregate their own production. In fact, the petitioner claims that because Farmer 25 is a corporation, the recordkeeping requirements should be more stringent. In the case where the necessary information is not on the record to uncombine these entities, the petitioner asks that the Department resort to facts available with adverse inferences because these farmers failed to cooperate by acting to the best of their ability to comply with the Department's request for information.

The CWB claims that it was necessary to combine the farmers mentioned by the petitioner in order to calculate an accurate COP and CV. In response to the Department's supplemental questionnaire, the farmers responded based on the directions given. For those farmers (Farmers 7 and 8) that the CWB believed qualified for collapsing under the Department's regulations, the CWB continued to combine their costs. In addition, the CWB claims that Farmer 16 should have been combined with his affiliate rather than be treated as two distinct parties. The CWB emphasizes that the farm entities are closely-held family operations in which all management is performed by the farm owner and virtually all of the labor is provided by the farm owner. The CWB disagrees with the petitioner's interpretation of the Department's instructions for the uncollapsing in the supplemental questionnaire. The CWB argues that the statute and regulations do not specify which companies should be collapsed nor does it prohibit collapsing.

The CWB maintains that the combined farms' operations are intertwined through common participation in production and shared facilities, shared management, and decision making with regard to planting. For instance, Farmers 7 and 8 each operate their farms as a single corporation. In each situation, the farms commingled production in shared bins, delivered grain jointly, split elevator receipts, pooled expenses, shared crop insurance policies, shared labor, and shared management. In addition, the CWB claims that the Department specified for Farmers 17 and 19 to remain combined based on their business situations. Therefore, the CWB asserts that the Department should continue to treat Farmers 7, 8, 17, and 19 on a collapsed basis. Further, based on the business situation of Farmer 16, the CWB claims that the Department should recollapse it with the farm operations of its affiliate.

The CWB argues that the Department should have valued transactions between the corporation and the owners on a collapsed basis. The CWB notes that in two of the verification reports (Farmers 23 and 25) the Department stated that the farms and their shareholders should be combined and any transfer costs should be ignored. See Farmer 23 Verification Report and Verification Report on the Cost of Production and Constructed Value Data Submitted by the Canadian Wheat Board for Cost Respondent 25 dated July 18, 2003 ("Farmer 25 Verification

Report"). The CWB argues that there is no basis to include payments between the farmers and their shareholders as part of COP because these payments contain distributions of profit. The CWB cites Notice of Final Determination of Sales at Less Than Fair Value: Live Cattle from Canada ("Live Cattle from Canada"), 64 FR 56738, 56746 (October 21, 1999) at Comment 6 in which the collapsed entity was permitted to eliminate inter-company transactions and Comment 11 on personal expenses.

Department Position: We have determined that 19 CFR 353.401(f) is not relevant in this proceeding in the context of whether there is significant potential for the manipulation of price. In our April 22, 2003 Identification of Cost of Production Respondents memorandum at page 7, we explained that:

> because the CWB is the sole exporter of Canadian wheat to the United States and due to the structure of the Canadian system, Canadian farmers have no option for distributing their wheat to the United States except through the CWB. Thus, the individual farmers are not in a position to either influence the price of the subject merchandise nor circumvent the potential antidumping duties that may be put in place as a result of this investigation. Because the Department's purpose for collapsing affiliated parties is to eliminate the potential for manipulation of the antidumping duty order, the Department agrees with respondent that this concern is absent from this case. Therefore, the Department finds it unnecessary to collapse those affiliated parties that are not involved in the operations of the selected cost respondent.

While we continue to believe that the significant potential for the manipulation of price is not present in this case, we consider the significant potential for manipulation of production referred to in 19 CFR 351.401(f) to be a valid concern. We have analyzed the facts surrounding the operations of each selected cost respondent to determine the extent to which affiliated parties are involved in the farming operations of the selected cost respondents and in which instances we believe there is a significant potential for manipulation of production.

In this case, in accordance with section 351.401(f)(2)(iii) of the Department's regulations, there are several instances where the operations of a cost respondent farm and an affiliate are intertwined through significant transactions between the affiliated producers (e.g., supplied seed, fertilizer, chemicals, equipment use, labor, etc.). However, in each of these situations we do not believe that this automatically translates into there being significant potential for manipulation of production. We are able to test these transactions to ensure that the respondent farmers did not receive preferential treatment. However, in the case where a cost respondent and an affiliated farm commingled their production in shared bins and have joint deliveries to the grain elevators, we consider there to be significant potential for manipulation of production. In this instance, the determination of the production quantity related to each farm becomes arbitrary and raises concerns as to how accurately production quantities are being matched to production costs. We therefore consider it appropriate to combine the operations of those farmers who commingle production and have joint deliveries to the grain elevators, in effect treating them as a single

operating unit.

We reviewed each of the farms and their reported combined entities. We note that Farmers 7 and 8 each had their production commingled with that of affiliates and had joint deliveries. As such, we consider it appropriate for these farmers to have combined their operations with their affiliates in reporting costs to the Department. We do not consider it appropriate, however, to combine the operations of Farmers 16, 17, 19, and 25 with that of their affiliates' farms where the affiliate provided production-related inputs to the selected cost respondents. For these farms, we continued to treat the entities as affiliates and thus applied section 773(f)(2) of the Act to ensure that such affiliated party transactions occurred at arm's length prices.

Finally, Farmer 21 has a unique situation in that there is only one farm involved, but Farmer 21 reported a constant percentage of the farmer's income and expenses on his wife's tax return and the balance on his tax return (i.e., married filing separately). Therefore, we have continued to rely on Farmer 21 and his wife's combined expenses from the tax returns for this final determination.

As to the petitioner's argument that combining farmers' costs would lead to distortions in costs due to differences in bookkeeping or fiscal years, we disagree. As with any combining situation, these types of differences are to be expected. They are accounted for in any such combining of entity costs. For those farmers' costs that we are combining or uncombining, we have made appropriate adjustments to account for these and other differences. In instances where we could not identify specific costs, we have used information available to gap fill. We do not deem it proper to use adverse inferences in applying these facts available as the CWB and the cost respondents have acted to the best of their ability to comply with our requests for information to date in this proceeding. See Cost of Production and Constructed Value Adjustments for the Final Determinations – Canadian Wheat Board Cost Respondents dated August 28, 2003 ("Final Determination Cost Calculation Memorandum") where we discuss each farm that we have combined or uncombined.

Comment 11: Seed Costs

The petitioner claims that the CWB's methodology for valuing self-produced wheat seed is flawed because it is not representative of all of the provinces and soil types, and that the average common seed value applied to self-produced seed does not always reflect the actual practices of individual farmers. The petitioner explains that the unit value used is based on actual prices paid by only two farmers. Additionally, the petitioner points out that the value is based on common seed and not the more expensive certified seed, which was often noted as being used by the verified farmers. The petitioner contends that for the seeding rates, the CWB often relied on farmer estimates. The petitioner asserts that the Department should use averages of the actual seeding rates from farmers in each of the provinces instead of the estimates.

The petitioner has proposed the following: For those farmers who had actual seeding rates or

seed purchases, the Department should use those rates and values. In instances where a farmer has a quantity from a seed cleaning invoice (e.g., Farmer 4), the petitioner claims that the Department should use this quantity as the seed applied in the rate calculation. For those farmers that do not have an actual seeding rate, the petitioner asserts that the Department should use the simple average of actual seeding rates within the province for that soil type. For those farmers that did not have actual seed purchases for the 2001 harvest, the petitioner claims that the Department should use the simple average of actual purchases within the province for that soil type. The petitioner has provided a schedule that summarizes the rates and values for each farmer according to its suggested method at exhibit 5 of its case brief.

The CWB asserts that the farmers' reported cost of self-produced seed consumed during the cost reporting period ("CRP") was based on an objective, verifiable figure: the average price actually paid by the farmers for common seed. The CWB contends that they could have used a sample of purchased seed, but they did not; they used the average of all actual purchases. The CWB adamantly disagrees with the petitioner's argument that certified seed purchases should be included in the average seed purchase value computation. The CWB explains that it is a well-known fact that self-grown seed is different and of a lower value than certified seed.

The CWB explains that there are two possible approaches to developing a cost for self-produced seed. One approach is to use the cost of growing the seed plus the cleaning costs. The other approach is to look at the opportunity cost of using the HRS as seed as opposed to selling it on the market. Using figures from the provincial crop planning guides,[4] the CWB calculated a cost for cleaned seed using both of the above possible approaches, and under both approaches, the calculated seed cost was less than that used by the CWB for the reported costs. Therefore, the CWB argues that their reported average unit value is conservative and the Department should continue to use it for the final determination.

With regard to the seeding rate, the CWB contends that it is not as easy to identify as the petitioner has alleged. The seeding rates are determined by more than simply province and soil zone. The CWB explains that other factors include the type of tillage system used, the anticipated precipitation, the level of nutrients in the soil, and each farmer's preferences. The CWB notes that each farmer has a specific way of determining how much seed to spread. The CWB emphasizes that the seeding rates are not estimated, they are absolutely known by the farmers. The CWB claims that the petitioner's arguments about the differences in seeding rates for farmers within similar province and soil zones are explainable. For instance, Farmer 1 and Farmer 3, who are both in the black soil zone in Alberta, have different seeding rates because they use different tillage systems. Likewise, Farmers 23 and 24, who are both in the dark brown soil zone in Alberta, have different seeding rates because one uses irrigation and the other does not. For the above reasons, the CWB maintains that the Department should continue to use the reported seeding rates.

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[4] See the original September 13, 2002 petitions at Volume III for the "provisional crop planning guides" (Exhibit III-11 for Alberta; Exhibit III-12 for Saskatchewan; and Exhibit III-13 for Manitoba).

Additionally, the CWB claims that the petitioner has erroneously assumed that the amount of wheat cleaned is the same as the amount of self-grown wheat planted in a given year. The CWB points to Farmer 25's verification report where it is explained that when wheat is cleaned, about 10 percent of the volume is lost in the cleaning. See Farmer 25 Verification Report. The CWB further clarifies that farmers generally prefer to clean more seed than is needed for planting in a given season so that they do not have to return to the facility to get additional seed cleaned for the current crop year. Any excess can be used in future plantings or can be sold. Although the farmers try to be as exact as they can, they try to avoid not having enough seed for the current year's planting. Finally, the CWB adds that the reported seed usage rates were close, if not higher, than those shown in the provincial crop planning guide for Saskatchewan. This, the CWB says, supports the reasonableness of what was reported.

Department Position: We disagree with the petitioner that the CWB's methodology for computing the imputed seed cost for self-produced wheat seed is flawed. In addressing this issue it is important to split the imputed seed cost calculation into its two components: the unit seed valuation, and the seeding rate per acre.

With regard to the unit seed valuation, we agree with the CWB that it was reasonable to calculate the average unit cost using common seed purchases only. There is a clear distinction between common seed and certified seed. Certified seed is of a higher quality and must meet certain testing standards.[5] The CWB has made the claim that none of the self-produced seed has been certified. See the CWB's April 21, 2003 common issues volume of the cost of production questionnaire response. At the cost verifications, we noted no information to lead us to believe that any of the farms produced self-grown certified seed. Further, we saw no invoices of certification. Because certification associates an official standard of quality to the seed and common seed generally has lower quality than certified seed, we believe that there is a difference between the two types. While some of the self-grown seed may have met the certification standard, it would be speculation to assume so. None of the farmers had their seed tested and certified, and, therefore, we consider it appropriate to use common seed purchased in the average seed cost computation.

In addition, we acknowledge the CWB's comparison of the common seed unit values to the cost of producing and the cost of selling the seed based on the provincial crop planning guide. We analyzed both comparisons and found that they support the reported unit seed values. We also consider it reasonable for the CWB to have based its average common seed purchase price on purchases by the two farmers selected. These two farmers were the only ones from our selection of farmers who purchased common seed during the period. As such, they are not self-selected farmers as claimed by the petitioner. Therefore, we agree with the CWB that it was reasonable for them to use the average of all common seed purchases made by the entire population of selected cost respondents, including related seed cleaning costs, as the unit value for imputing the

[5] See Agri-facts, Practical Information for Alberta's Agriculture Industry, Alberta Agriculture Food and Rural Development, (revised November 1999), page 3.

self-produced seed consumed by farmers.

We agree with the CWB, in part, that the seeding rates per acre used by the various farms were reasonably determined. The level of documentation and evidence reflected in the submitted farmer-specific seeding rates varied from farm to farm. In general, the farmers fell within two basic groups: (1) those with full support and documentation, and (2) those with minimal to no support, where their estimates were based on past experience, knowledge of industry standards, machinery settings, and other data, all corroborated by public sources.

Because the best source of data to be used in an antidumping duty investigation or review is generally that which is recorded and maintained by a respondent in the normal course of business, we will continue to use the reported application rates for those farmers with full support and documentation. However, for those farmers who had minimal to no support for their seeding rates and based their rates on past experience, industry standards, machine settings, or other estimated amounts, we have applied as facts otherwise available the higher of the estimated rates or the soil-specific rates as specified by the provincial crop planning guide for Saskatchewan.[6] In instances when documentation does not exist, we have set this public source as the self-produced seeding rate floor.

The petitioner proposed the use of the specific province and soil specific actual seed application rate in those instances where farmers had minimal to no support for their seeding rates. This would be an appropriate surrogate for those application rates if the rates were readily transferable. However, that is not the case. They are not transferable because of the substantial differences in tillage systems, soil nutrient levels, regional precipitation levels, and farmer preferences. This can clearly be seen in the CWB's comparisons of rates within one province and soil zone, based on our verifications. The same reasoning applies to the proposed province-wide averages. These averages are simply made up of the simple average of the province and soil-specific application rates. Because of the erratic nature of the reported rates and the fact that the soil zone and province specific actual rate averages proposed by the petitioner are often made up of only a few farmers at most, we believe that using the public source rates as the floor provides a usable benchmark for comparison to the reported rates. With a true average figure, sporadic differences are evened out. See the Final Determination Cost Calculation Memorandum, which shows the revised application rates and common seed values which we have applied to each respondent farmer with self-produced seed.

As to the petitioner's point regarding the use of the total quantity of wheat cleaned as the quantity of self-produced wheat seed applied, we did not find that correlation to be valid. As the CWB noted, we found that there are differences between the quantity of seed cleaned and seed applied, mainly due to the farmers' concern that they have enough seed for the current year's planting. As such, they prefer to err on the side of cleaning more seed than they will need, with the excess going into inventory to be used in the following year. Accordingly, we agree with the CWB that

[6]We note that, with the exception of one farmer, we used the reported estimated seeding rates.

the farmers do not always plant the entire amount of seed cleaned. For example, as noted in the Verification Report on the Cost of Production and Constructed Value Data Submitted by the Canadian Wheat Board for Cost Respondent 11 ("Farmer 11 Verification Report") dated July 18, 2003, Farmer 11 retained some seed to be used in the 2003 crop year. Therefore, we have decided to calculate the imputed seed costs as discussed above.

Comment 12: Imputed Labor Costs

The CWB contends that the Department's use of provincial crop planning guides to calculate labor in the Preliminary Determinations overstated the value for labor and that the cost respondents' submitted values for labor, based on a study by Professor Richard A. Schoney of the University of Saskatchewan, should be used in the final determination. Further, the CWB asserts that if the Department does not rely on the study by Professor Schoney, the Department should avoid double counting labor expenses related to custom work. According to the CWB, if the provincial crop planning guides are used to calculate imputed labor for the final determination as they were in the Preliminary Determinations, then labor costs for some farmers would be double counted in both the imputed labor figure and custom work. Lastly, the CWB argues that if the Department relies on the provincial crop planning guides to calculate imputed labor cost, the Department should use labor costs from Alberta for brown and dark brown soil zones as a surrogate for farms with brown and dark brown soil zones in Saskatchewan.

The CWB argues that the data based on the study by Professor Schoney provides the best estimate of imputed labor costs. To support this assertion, the CWB cited its description of Professor Schoney's study from the April 21, 2003 common issues volume of the cost of production questionnaire response at pages 1-2 and the June 4, 2003 general issues volume of the cost of production supplemental questionnaire response at pages 2-3 where it is explained that Professor Schoney studied numerous farms to determine both the type and capacity of the equipment used on those farms, as well as the functions for which that equipment was used. The professor then calculated how many hours were required to perform the functions on the farm, given that farm's recipe of functions performed and the capacity of the relevant equipment. The CWB claims that the calculation of required total hours, as well as hours for individual functions, were developed through scientific, empirical research as opposed to surveys merely requesting farmer estimates of time worked and other types of estimates.

Further, the CWB claims that at verification the Department evaluated the time required for various functions using the equipment employed by the farmer and verified that the hours allocated to imputed labor submitted by the respondent farms were reasonable, if not overstated, estimates of the actual labor expended. The CWB cited Farmers 6, 19, and 25's verification reports where the reported hours per acre, based on Professor Schoney's study, were greater than the hours per acre published in the Projected 2003 Crop Budgets Northwest North Dakota ("Projected Crop Budgets") dated December 2002 from North Dakota State University and the Saskatchewan Agriculture, Food and Rural Revitalization: Farm Machinery Custom and Rental

Rate Guide ("Custom Rate Guide").[7] The CWB also claims that the Department verified that the hourly wage rate used by the respondent farmers to value imputed labor was reasonable and consistent with wages paid to third parties for farm labor. The CWB cites the verification reports for Farmers 4, 5, and 11 claiming that the Department verified that wages paid to outside laborers were at or below the rate used by the CWB in imputing the reported labor cost. Moreover, the CWB asserts that the labor functions and rates listed in the Custom Rate Guide are below the rates used by the respondent farmers. In addition, the CWB asserts that the provincial crop planning guide for Manitoba relied on by the Department includes a labor rate that is the same as the rate used by the respondent farmers in their responses.

According to the CWB, if the Department does not rely on the study by Professor Schoney, the Department should avoid double counting labor expense relating to custom work. The CWB alleges that the Department double counted labor for some farms in its Preliminary Determinations because these farms had outside suppliers perform some farm functions which were reported as part of custom work and the labor hours derived from the provincial crop planning guides would also include these farm functions. The CWB claims that it submitted alternative imputed labor calculations based on the figures from the provincial crop planning guides, but taking into account an offset in situations where the respondent farm contracted to have certain functions performed by others and the costs were already reported as part of custom work, in its June 4, 2003 general issues volume of the cost of production supplemental questionnaire response at pages 9-11 and Exhibit 3. The CWB claims this issue arises for 10 of the 24 respondent farmers (i.e, Farmers 1, 4, 5, 6, 7, 8, 14, 15, 16 and 21) for which the Department recalculated labor costs in its Preliminary Determinations, including 8 respondent farms in the Manitoba black and black-grey soil zones. The CWB further asserts that if the Department does not use its calculated offsets, the Department should calculate offsets that relate proportionally to the fraction of overall labor avoided by contracting out, as opposed to performing, the relevant function(s).

Further, the CWB asserts that if the Department relies on the provincial crop planning guides for imputed labor cost, the Department should use labor rates from Alberta brown and dark brown soil zones as a substitute for Saskatchewan brown and dark brown soil zones (the provincial crop planning guide for Saskatchewan does not include figures for labor cost) rather than using the average of labor costs for all soil zones in Alberta and Manitoba. The CWB argues that by using the average labor costs for the Manitoba and Alberta black and grey soil zones to create figures for Saskatchewan farms in the black and black-grey soil zones in the Preliminary Determinations, the Department ignored the relevance of soil zones in estimating the amount of labor required on the respondent farms. The CWB contends that the Department could not use an average labor cost for brown and dark brown soil zones in Alberta and Manitoba as a surrogate for farms with brown and dark brown soil zones in Saskatchewan because there are no brown or dark brown soil zones in Manitoba, only in Alberta. The CWB contends that the labor costs on the record for black and black-grey soil zones, if included in an average, would unduly inflate the labor cost for

[7] See the CWB's June 2, 2003 cost of production supplemental questionnaire response.

Saskatchewan farms with brown and dark brown soil zones. Additionally, the CWB alleges that labor cost estimates for Alberta black and black-grey zones are higher than those for Manitoba black and black-grey zones according to their respective provincial crop planning guides, and therefore, if this pattern of higher estimates continued, then it would follow that estimates for Alberta brown and dark brown soil zones would also be conservatively higher than for Manitoba brown and dark brown soil zones.

The petitioner argues that the Department should not accept the imputed labor rates based on Professor Schoney's study and contends that the provincial crop planning guides remain the most authoritative source of information on the record for imputing labor costs. Second, the petitioner asserts that the CWB's imputed labor costs underestimate indirect and management labor costs. Third, the petitioner contends that Professor Schoney's study was not subjected to verification as the CWB claims. Fourth, the petitioner contends that if the Department decides to use the CWB's wage rate to calculate an imputed labor cost, the Department should not use the per hour rate proposed by the CWB uniformly for all provinces. Last, the petitioner asserts that the Department should not adjust for double counting in the manner proposed by the CWB.

According to the petitioner, the rates from the provincial crop planning guides are province and soil specific, are prepared by the provincial governments, and represent the actual experience of numerous surveyed Canadian farmers. Additionally, the petitioner asserts that unlike Professor Schoney's data, the provincial crop planning guides contain data that are contemporaneous to the cost reporting period and estimates of all farm labor, not just direct labor requirements that could have been modified to influence the dumping proceedings.

The petitioner alleges that the CWB's underestimated indirect and management labor costs should be rejected by the Department because they are unsubstantiated estimates that could not be verified. The Department should not accept calculations based only on the judgment of the CWB and Professor Schoney. The petitioner asserts that the Professor's judgment is disputed in the Farmer 25 Verification Report at page 14 which says, "Farmer 25 believes that indirect labor accounts for more of his time than direct labor because of multiple trips into town for supplies, repairs and maintenance of equipment, etc."

The petitioner alleges that there was no additional information about the database provided at verification and the Department did not examine Professor Schoney's database. The petitioner alleges that the Department did not verify that all relevant farm functions were included nor did the Department assess the database results using alternative ranges for farm size. With respect to the CWB's argument that, based on information in Farmer 25's verification report which compares labor requirements derived from Professor Schoney's study to those derived in the Projected Crop Budgets and from the Custom Rate Guide, the petitioner contends that a closer inspection of the results demonstrates that the comparison is meaningless. Specifically, the CWB is comparing hours per acre for one size of equipment derived from the Projected Crop Budgets to hours per acre of an average of more than one piece of equipment in the Custom Rate Guide. In addition, the analysis says nothing about what equipment is actually used in

Saskatchewan. Further, in its rebuttal brief, the petitioner asserts that the Department's comparisons of labor requirements of the Custom Rate Guide and those derived from Professor Schoney's database were misleading and do not support the Professor's labor requirements.

With regard to the CWB's wage rate, the petitioner contends that if the Department decides to use wage rates to calculate an imputed labor cost, the Department should not use the uniform per hour wage rates for all provinces as proposed by the CWB. The petitioner asserts that the CWB has provided limited support for the wage rate from Professor Schoney's study. Further, the petitioner alleges that it is strange that the CWB has not cited a survey of wage rates for hired farm labor from the Government of Canada or supplied any other official government data for the record. The petitioner asserts that the rates from this survey were conservatively low because they were depressed by fruit and vegetable labor costs, which are lower than rates for other types of farm labor. According to the petitioner, this survey provides more evidence that production costs vary by province, not just by soil type.

The petitioner contends that the Department should not adjust for double counting in the manner proposed by the CWB. The petitioner alleges that there are three problems with the CWB's proposal to adjust labor rates for double counting related to custom work using Professor Schoney's study.

First, the petitioner argues that the labor associated with custom work is not fully counted in the provincial crop planning guide labor rate. The petitioner cites a letter from the CWB to the Department (letter from Renn Breitkreuz to Terry Caherty and Michael Martin, April 8, 2003) that states that custom work would "cover any instances where the farmer paid someone else to truck the grain to the elevator." In other words, the petitioner asserts, when farmers do not truck their own wheat, the cost of hiring a truck, including labor costs, is counted as custom work. Thus, if the Department adjusts the provincial crop planning guide labor rate by the direct labor requirement attributed to this task (and other tasks) by Professor Schoney, it will be removing a portion of labor costs that are not even counted in the Alberta provincial crop planning guide labor rate, but are instead already counted as custom work. Similarly, the petitioner asserts, the provincial crop planning guide for Manitoba includes a variable "other costs" which likely includes custom work such as trucking, including the labor component. The petitioner alleges that if the labor component for trucking and other tasks is not completely represented in the provincial crop planning guide labor rate or counted elsewhere, any adjustment by the Department based on Professor Schoney's labor rates will excessively reduce the provincial crop planning guide labor rate.

Second, the petitioner argues that the CWB's proposal is dependent on the accuracy of Professor Schoney's labor requirements. The petitioner contends that the Professor's labor requirements are based in part on farms whose production levels are outside those specified by the Department's sample. Additionally, the petitioner alleges that labor related to trucking would be based on outdated information because of when the Professor drew his sample.

Lastly, the petitioner finds fault in the CWB's methodology because it requires the Department to rely on the farmer's representations as to how much time to allocate between custom work and work completed by the owner. The petitioner contends that if the Department decides an offset is necessary, it should take several steps before making an adjustment. These steps include: 1) making sure that the farmer's allocation is reasonable (i.e., if the allocation is contradicted by other information in the response, the Department should assume that 100 percent of the task was performed by the owner; 2) because a portion of certain labor is already included in the custom work in the provincial crop planning guides, the Department should reduce the adjustment implied by the CWB's allocation; 3) if the allocation involves bartered work, the Department should make sure that the custom rate, and not the rental rate, was used to calculate the value of barter acquired (i.e., if the rental rate was used, no adjustment is warranted); and, 4) in bartered transactions the Department should use the appropriate rental rate to calculate the amount of barter acquired and use the unmodified provincial crop planning guide labor rate.

Department Position: The farmers selected as cost respondents fall into two general categories with regard to labor, those that paid their owner-operators' wages, and those that did not. In both cases, in accordance with section 773(f)(2) of the Act, it is necessary to determine a fair market value associated with the owner-operator labor provided during the cost reporting period in order to determine whether the "transfer price" for wages paid to affiliated parties (i.e., the owner-operators and family members) provide a reasonable basis for valuing such costs.

Section 773(f)(2) of the Act directs the Department to compare the transfer price paid between affiliates to a market price for such inputs. See Notice of Final Results of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled from Japan, 61 FR 38139, 38162 (July 23, 1996) and Silocomanganese from Brazil; Final Results of Antidumping Duty Administrative Review, 62 FR 37869, 37871 (July 15, 1997). In doing so, we rely on the transfer price between affiliated parties unless it is shown that the respondent received preferential treatment for such inputs. Consistent with our practice, in this case we relied on the wages paid to affiliated parties as long as they exceeded the market value for such services.

As noted, some of the farmers received wages and some did not. Also, many of the labor activities performed on the farms were done by family members and no compensation was recorded. Alternatively, some farmers recorded wages paid to hired help or the labor was captured in custom work. None of the farmers had records documenting all of the tasks performed on the farm and the amount of time spent on each. Generally, we found that for the selected farmers, significant amounts of labor activity were not valued or recorded. Thus, because the farmers' records omit significant amounts of labor costs, we do not consider them to reasonably reflect the cost of producing wheat. Section 773(f)(1) of the Act requires that we use a respondent's records as long as they reasonably reflect the cost of producing the merchandise. Therefore, we are in a neutral gap filling facts available situation. Accordingly, we analyzed the different options available to determine a market price for each farmer's owner- operator labor and have determined that it is reasonable and appropriate to rely on the provincial crop planning

guides used for the Preliminary Determinations for the final determination.

We agree with the petitioner that we should not rely on the study prepared by Professor Schoney in determining the farmer-specific imputed labor costs. The CWB hired Professor Schoney with the specific purpose of preparing a detailed theoretical labor cost computation for each farmer for this investigation. Professor Schoney computed the farm labor costs using a model from data he collected over 10 years ago. While the model appears detailed, the underlying data used in the model may be very old. In addition, the data relates to farms in only one province (see the CWB's April 21, 2003 common issues volume of the cost of production questionnaire response at page 6), and there is no source documentation supporting the model, so the information could not be verified (see the CWB's June 4, 2003 general issues volume of the cost of production supplemental questionnaire response at page 4). In the April 21, 2003 questionnaire response at Exhibit 4, page 2, Professor Schoney explains that his "{d}irect labor estimates are based on engineering field performance equations and farmer-specific machine-system width, travel speed, field efficiency coefficients plus local travel time and refueling." Furthermore, at pages 7 and 8 of the narrative response and page 2 of exhibit 4, both the CWB and Professor Schoney acknowledge that his model does not include indirect and management labor and therefore the CWB increased direct labor costs by an unsupported estimate of 50 percent to account for these costs. Finally, we note that based on some statements made by the farmers we visited, this estimate may be understated. As noted above, the Farmer 25 Verification Report at page 14 states "Farmer 25 believes that indirect labor accounts for more of his time than direct labor because of multiple trips into town for supplies, repairs and maintenance of equipment, etc."

The Department recognizes that the provincial crop planning guides also rely on some estimates. However, the provincial crop planning guides are province and soil type specific, are prepared by the provincial governments annually, represent the actual experience of many farms in the respective regions, and include contemporaneous data.

We disagree with the CWB that the model prepared by Professor Schoney was verified. In the Farmer 25 Verification Report at pages 14 and 15, the Department compared labor rates from the Projected Crop Budgets, the Schoney study, and the Custom Rate Guide. This comparison was done for discussion purposes only and by no means constitutes verification of the underlying data in the Schoney study. Similarly, in the Verification Report on the Cost of Production and Constructed Value Data Submitted by the Canadian Wheat Board for Cost Respondent 19 ("Farmer 19 Verification Report") dated July 18, 2003 at page 14, we compared certain labor rate estimates used in the response to those in the Custom Rate Guide. Again, we did not directly verify the labor time requirements in the Schoney study. Finally, the Verification Report on the Cost of Production and Constructed Value Data Submitted by the Canadian Wheat Board for Cost Respondent 6 ("Farmer 6 Verification Report") dated July 18, 2003 at page 16 relates the farmer's estimate of how long it takes him to seed, fertilize, and harrow his crops. Whether this estimate is higher, lower, or the same as the rate included in the response in no way constitutes a verification of the method utilized by Professor Schoney, the accuracy of its application, or the database itself. None of the assertions about labor hours could be directly tested against existing

documentation because Professor Schoney did not keep the actual surveys completed by the individual farmers that were the underlying data to the study. See Comment 7 where the Department addresses farmer assertions.

Therefore, we have continued to use the provincial crop planning guides to impute labor costs. However, we agree with the CWB that an offset for the double counting of labor for some tasks included in both custom work and imputed labor is appropriate. The Department agrees with the petitioner about the method used by the CWB to calculate the offset, and thus we did not use the method relying on the study by Professor Schoney. Rather the Department has developed its own methodology to calculate the offset. The basis for the offset is taken from the Custom Rate Guide. The offset will be subtracted from reported custom work costs and is determined by extracting the labor component from the Custom Rate Guide rates for the equipment that is used to perform the related custom work task. Specifically, reported custom work will be reduced by the average percentage of the custom rate represented by labor. Additionally, we agree with the petitioner that there should be no adjustment for double counting of labor in instances where a farmer paid for trucking grain to the country elevators. As was learned from the cost allegation in the durum wheat case, see Request for the Department to Reconsider its Decision to Not Initiate an Investigation of Sales Below the Cost of Production by the Canadian Wheat Board (dated April 8, 2003) at page 9, a large percentage of the Canadian wheat farmers truck their own wheat to the county elevators. However, some pay outside haulers for this service. As a result, the provincial crop planning guides reflect the labor component of this task in two places, as part of direct labor, and as part of custom work. Because some of the trucking labor costs are not captured in the labor cost line of the provincial crop planning guides, we do not consider it appropriate to back out labor costs from the custom work trucking costs incurred by the few farmers who actually paid for such services.

Finally, given the relevance of soil zones in estimating the amount of required labor, we agree with the CWB that labor rates from Alberta brown and dark brown soil zones should be used as a surrogate for Saskatchewan brown and dark brown soil zones rather than using the average labor costs for all soil zones in Alberta and Manitoba.

Comment 13: Personal Expenses

The petitioner maintains that the reported labor costs should include the higher of the imputed or actual labor cost. The petitioner states that the majority of the cost respondents chose not to pay themselves regular salaries, but instead paid their personal expenses through the farms' bank accounts and withdrew cash as needed. The petitioner argues that personal expenses paid by the farms on behalf of their owners, transfers of cash to owners' investment accounts, and owners' cash withdrawals represent actual labor costs. To support the inclusion of personal expenses in the reported costs, the petitioner references Greenhouse Tomatoes from Canada at Comment 32, where the Department found that "the payment of personal expenses on behalf of an active owner is simply a form of compensation," and included the payments in the reported costs.

For Farmer 25, a farm corporation, the petitioner argues that personal expenses paid on behalf of the farmer by the corporation should be included as labor costs. The petitioner notes that these items were not reported as expenses on the tax return or financial statements, but instead were reclassified to shareholder loans. Because it is a common practice for shareholder loans in closely-held corporations not to be repaid, the petitioner argues that these are in effect deferred expenses of the corporation, i.e., a future cancellation of debt loss. The petitioner notes that section 773(f)(1)(A) of the Act directs the Department to rely on a respondent's records only when they reasonably reflect the costs of production. Referencing Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon-Quality Steel Plate Products from Korea, 64 FR 73196, 73203 (December 29, 1999) ("Cut-to-Length Plate from Korea") where the Department disagreed with the company's audited financial statements and revised costs accordingly, the petitioner encourages the Department to likewise adjust Farmer 25's records to include personal expenses in actual paid labor.

The CWB notes that the method of recording personal expenses impacts twelve farmers (i.e., 3, 4, 5, 6, 9, 11, 12, 13, 15, 21, 25, and 26). Farmer 25 is organized as a corporation, Farmer 13 as a partnership, and the remaining farms as sole proprietorships. The CWB asserts that the impacted farms all operate as sole proprietorships in substance and thus the farmers' personal and business expenses are inseparable. The CWB asserts that to classify personal expenditures as wages is inappropriate. To support this claim, the CWB cites the Notice of Final Determination of Sales at Less Than Fair Value: Fresh Kiwifruit from New Zealand, 51 FR 13695 (April 17, 1992) at Comment 6 where the Department rejected the inclusion of personal expenses in the reported costs in the setting of a proprietorship with imputed labor cost.

For Farmer 25, a farm corporation, the CWB notes that the corporation did not include personal expenditures as expenses in either the income statement or tax return, but instead reduced a loan from the shareholder. To clarify, the CWB states that there is no loan to the shareholder, but rather a loan from the shareholder. As a result, the CWB maintains that there is no tax avoidance or deferral of costs. The CWB notes that the loan from the shareholder is used to pay personal expenses related directly to the farmer's living expenses and not to work expended. When cash is drawn for personal expenses, the loan due to the shareholder is reduced.

The CWB asserts that due to the structures of closely-held family corporations, family partnerships, and family proprietorships, it is impossible to establish with certainty that payments relate either to labor, return on farm income, return on capital, or a return for some other input or service. Therefore, the CWB suggests that the Department disregard such payments and rely on an appropriate imputed labor calculation.

Department Position: We disagree with the petitioner that the personal expenses at issue should be included as wages paid to the respective farm owners. In addressing this issue, it is best if we segregate the farms at issue by type of operating entity, i.e., sole proprietorship, partnership, or corporation.

Of the sole proprietorship farmers and the partnership farmers at issue here, none keep their books or records on a basis other than that used for tax reporting purposes. Thus, the tax returns are their normal books and records. Some of these farmers often pay for personal and farm related expenses from the same checking account, while others maintain separate checking accounts. However, in both situations, for tax reporting purposes, they sort through their payments at year end and determine which expenditures relate to the farm activities. Any personal type expenses reported on their tax returns were included in the reported costs. Those personal expenses not treated as farm-related on their tax returns were excluded from the reported costs. We found no evidence at any of the cost verifications that certain personal expenses should have been included as farm-related expenses. As noted above, the tax returns are their books and records, and absent any evidence that certain personal expenses should have been included as farm-related costs, it is inappropriate to include such costs for the final determination.

For the one corporate farm at issue here, Farmer 25, we disagree with the petitioner that the personal expenses paid on behalf of the farmer by the corporation, but treated as an offset to the principal balance of the loan due from the corporation to the farmer (shareholder), should be included as additional farm wages. The corporation has an outstanding loan balance due to the farmer. Instead of paying the farmer cash during the year as repayment of a portion of the loan, the corporation paid some personal expenses on behalf of the farmer, and reduced the loan balance due by the same amount. As such, it is inappropriate to include the repaid principal balance of the loan as an additional cost of labor. However, we do agree that a cost needs to be associated with the non-interest bearing loan due to the shareholder. For the final determination, we imputed the interest expense associated with the outstanding loan balance.

Furthermore, in the case cited by the petitioner, Greenhouse Tomatoes from Canada, the expenses in question which were excluded from the reported costs were included as operating expenses in the normal books and records and audited financial statements of the company. In this case, we note that the personal expenses and the transfers at issue were not included as operating expenses in the 2001 tax return. Therefore, we have decided not to include the expenses in question in the reported cost of production.

Comment 14: Overhead Allocation Basis

In their initial submission, the cost respondents used direct costs to allocate overhead costs between crops and other farm operations ("direct cost method"). In the Preliminary Determinations, the Department revised this methodology to exclude imputed labor and herd acquisition and amortization costs from the allocation base. The CWB argues that this revision overstated the overhead costs allocated to crop operations. While labor was removed from all operations, they note that major direct costs, i.e., livestock acquisition and amortization costs, were only removed from livestock operations, but no major direct costs were removed from crop operations. The CWB compares herd acquisition and amortization costs to seed, chemicals and fertilizer costs, which they claim are significant direct costs for crop operations and were included in the allocation base.

As an alternative, after the Preliminary Determinations, the CWB submitted a new allocation method ("capital asset method") using fixed asset values. The CWB argues that this method is similar to the methodology used by the Department in Live Cattle from Canada. This methodology relies upon fixed asset values and their proportional use in each operation. We note that because of the method (i.e., tax basis) in which farmers typically keep records, fixed asset values were based on farmer estimates in the absence of historical costs. The CWB states that while the petitioner criticizes the use of farmer estimates in the new methodology, the CWB asserts that the Department found these estimates to be accurate when compared to average blue book values. They further assert that at verification the Department also closely scrutinized the usage allocations represented by the farmers. Because few questions were raised regarding the usage allocations and the Department was able to propose corrections to several of the questions in the cost verification reports, the CWB concludes that the nature of the various assets, for the most part, provides for fairly straightforward usage attributions.

While believing that both the initial and supplemental methods provide accurate allocations of overhead costs, the CWB endorses the direct allocation methodology due to the ease of application. Also, because this method was based on the selected farmers' actual expenses, the CWB believes this method is easily verified. Further, the CWB argues that in the Preliminary Determinations the Department accepted labor as an appropriate allocation base for the operations of Farmer 5 and Farmer 20 (i.e., two farmers with potentially labor intensive specialty operations). However, where livestock was involved, the Department disregarded the labor component from the allocation base without an explanation. The CWB argues that although labor is not the only significant direct cost for most farm operations as it is for Farmer 5, the CWB believes the record demonstrates it is a significant cost of livestock operations. In support of this argument, the CWB references the Farmer 25 Verification Report and the Verification Report on the Cost of Production and Constructed Value Data Submitted by the Canadian Wheat Board for Cost Respondent 3 ("Farmer 3 Verification Report") dated July 18, 2003 where the Department discusses the various duties associated with the livestock operations of these farms. Further, the CWB argues that the labor component cannot be ignored simply because it is imputed. The CWB asserts that the Department has used imputed labor to calculate the COP, and therefore, the Department can have no reason to exclude labor from the allocation base for fixed and variable overhead costs.

The CWB questions the Department's rationale for excluding herd acquisition and amortization costs from the allocation base. In the Preliminary Determinations, the Department stated that it eliminated these costs from the overhead calculation because they were not an appropriate cost driver for farm overhead costs. The CWB states that there is no legal or factual support for this conclusion. Noting that the Department used seed, fertilizer and chemical costs as the cost drivers for crops, the CWB argues that the herd acquisition and amortization costs are the cost drivers in the livestock operation. The CWB argues that neither operation could function without these costs.

Next, the CWB argues that the Department verified all of the components of the herd acquisition

and amortization costs. Therefore, the CWB concludes that there is no reason to omit these costs from the overhead allocation base. Moreover, the CWB argues that the Department used these costs for allocating G&A and interest rates.

With regard to the capital asset method, the CWB claims that the farmers' estimates of usage factors are accurate and were discussed at length with the Department. Additionally, they argue that the Department compared the estimated fair market values to blue book or other public sources noting no significant variances. Thus, the CWB claims that the capital asset methodology was verified. The CWB then claims that this methodology was duplicated by the Department when verifiers reviewed and suggested possible reallocation ratios for certain farmer estimates.

Regarding the petitioner's objection to the mix of historical costs and fair market values, the CWB states that for all farms, except one, the valuation base was consistent within a farm. An individual farm either had historical cost records or it did not, in which case it used fair market values. According to the CWB, the one farm that was the exception had historical costs for all but two assets. Therefore, the CWB contends that using the consistent set of values to establish the relevant ratios of asset values was both reasonable and accurate.

Addressing the petitioner's final point regarding the capital asset method, the CWB states that rental equipment does not factor into the overhead calculation. Because depreciation is tied to asset ownership, rental equipment should not be used to allocate fixed overhead. Further, the CWB states that equipment rental expense was directly allocated between operations in the allocation of variable overhead expense. The CWB then argues that the petitioner's claims regarding Farmer 9 are inaccurate. The CWB points out that Farmer 9 does not rent equipment, but rather he uses an affiliated parties' equipment at no charge. However, for purposes of reporting to the Department, Farmer 9 has included the full value of that equipment usage in the response. Thus, the CWB asserts that rental equipment has not biased the overhead allocation, especially as variable overhead includes repairs and fuel expenses. Farmer 9 does not repair the equipment that he does not own and all fuel costs for this farmer were allocated to crops. Furthermore, the custom rates used to impute the value of equipment borrowed from affiliated parties includes components for machinery cost and fuel, as well as a profit margin. Thus, by imputing a cost based on those figures the CWB absorbed the equivalent of significant fixed and variable overhead in the reported costs.

Discussing the petitioner's concerns about the direct cost method, the CWB states that the petitioner's main objection to this method appears to be the potential for increasing overhead costs allocated to livestock due to the CWB's calculation of livestock direct costs. In its initial submission, the CWB capitalized and amortized breeding cattle which are expensed as purchased in their normal records. The petitioner's concern is that an increase in livestock costs would allocate a greater amount of variable and fixed overhead costs to livestock. The respondent argues that all factors related to livestock acquisition and amortization costs were verified by the Department; therefore, the amortized values are reasonable and should be used for the final determination. The CWB allows that a significant disparity between the annual herd acquisition

cost and the amortized cost for the herd would raise questions regarding the representativeness of the year's data. However, according to the CWB, the cost reporting period was marked by a significant drought resulting in low crop yields, and, consequently, reduced revenues in certain parts of Canada. As such, the CWB states that many farmers had less cash available and did not make livestock purchases in 2001. As a result, the CWB argues that a methodology based solely on livestock acquisition costs, as seen in the farmers' tax returns, would not reasonably measure livestock costs.

The CWB states that the cattle not associated with the farmers' own commercial livestock operations did absorb time, expense and asset usage until the time that they were isolated from the farmers' own cattle. Therefore, disregarding this livestock from the overhead allocation base would be unreasonable.

Finally, the respondent asserts that the Department's Preliminary Determinations method is unreasonable because the proportion of overhead allocated to crops is greater than the amount allocated to crops using either of the CWB's methods. Thus, the CWB argues that the Department's revisions significantly distorted costs. For the final determination, the CWB recommends using one of the two allocation methods submitted by the CWB.

The petitioner believes that the capital asset overhead allocation method submitted by the CWB is fundamentally flawed and should be rejected. The petitioner poses four objections to this methodology. First, the petitioner argues that the method is essentially driven by farmer estimates of the asset usage attributable to each operation. The petitioner points out that the Department has consistently rejected the use of such unverifiable estimates in prior cases. In reference, the petitioner cites to Greenhouse Tomatoes from Canada. Second, the petitioner objects to the method's use of farmer estimates of fair market values in situations where the historical costs of fixed assets were not available (i.e., the current price the assets could be sold for versus the actual historical amount paid for the asset). Consequently, the petitioner states that this results in a mix of historical costs and fair market values that further distorts the reported costs. Finally, the petitioner observes that the method does not take into account rented equipment. For example, if a farmer owned all livestock equipment, but only rented crop equipment, none or very little overhead costs would be allocated to crops. The petitioner notes that this was the case for Farmer 9. Moreover, the petitioner stated that this farmer allocated a portion of the grain bins to hay; however, the cost verification report states that the bins were not used to store hay. Therefore, the petitioner believes the direct cost method is more appropriate for allocating overhead costs.

Furthermore, the petitioner argues that the Department should continue to exclude livestock acquisition costs from the allocation bases for overhead. The petitioner argues that by simply overstating livestock operation costs, the CWB could shift costs away from HRS wheat operations. In its case brief, the petitioner identifies two ways in which it believes the CWB has overstated livestock costs and distorted the cost allocations. First, the farmers deviated from their normal records by amortizing purchases of livestock that were normally expensed. Moreover, the petitioner points out that the CWB capitalized livestock using an average cattle cost calculated

based only on Saskatchewan costs rather than the actual price paid by each farmer. According to the petitioner, this change in accounting treatment for the reported farm costs significantly increased livestock costs. Second, the petitioner noted that at least two farmers overstated their livestock costs by including costs not associated with their own commercial livestock operations. Therefore, the petitioner believes the Department's decision in the Preliminary Determinations to exclude both labor and livestock acquisition and amortization costs was correct.

The petitioner asserts that the CWB's capital asset allocation method distorts costs and is not based on verified information. First, the petitioner claims that the Department did not express any opinion on the accuracy of the market values. Furthermore, the market values presented by the CWB deviated in both directions from the blue book values. Because the absolute value of the assets does not affect the calculation, but rather its relative value, the allocation is distorted by the inconsistent variances. The petitioner states that had the variances been either consistently lower or higher, the CWB's allocation would have provided the same result as an allocation based on the blue book values. However, they assert that was not the case.

Finally, while the petitioner, like the CWB, supports the use of the direct cost allocation method, the petitioner disagrees with the inclusion of livestock acquisition or labor costs in the allocation base. The petitioner argues that, as noted, the livestock was amortized not based on the individual farmers' actual costs, but on the average cost of all Saskatchewan cost respondents. Consequently, the amortized cattle costs and the imputed labor costs represent the least accurate segments of the reported costs. To limit the distortion of the entire cost calculation, the petitioner states that Department should continue to exclude these costs from any allocation base.

For the final determination, the petitioner encourages the Department to continue using the direct cost allocation method, net of livestock acquisition and labor costs, as used in the Preliminary Determinations.

Department Position: The issue here is how to reasonably allocate a farm's variable and fixed overhead costs to the various production operations of the farm. None of the farms selected allocate overhead cost to specific products, and thus we must evaluate the method used by the CWB for reporting purposes. To determine whether an allocation method is reasonable, cost accounting typically looks to the relationship between the cost pool being allocated and the allocation factor or base. The stronger the association between the expenses in the cost pool and the allocation factor, the more reasonable the method. For example, factory overhead costs are often allocated based on machine hours because it is assumed that this measure of time is a good indicator of production activity and that overhead expenses would be incurred, more or less, in relation to the machine hours.

In its original submission, the CWB allocated variable and fixed overhead to the various profit making operations using relative direct costs. Direct costs are costs that can be traced to a single product, while costs that can benefit several activities are considered indirect costs. As the petitioner argues, neither the allocation method nor the direct costs for cattle were recorded in the

farmers' records in the same manner as they were reported to the Department.[8] For the Preliminary Determinations, it was determined that the use of the reported direct cost method as an allocation base misstated the farm's variable and fixed overhead costs allocated between livestock and crop operations. Our primary concern was that the direct costs of the livestock (i.e., purchase price of the cattle themselves) vary significantly from the direct costs of crops (i.e., seed, fertilizer and chemicals). As such, we did not believe that the relative direct costs of each fairly reflected the indirect costs associated with each type of operation.

The determination of an appropriate allocation factor is complicated in this case by several factors. First, nearly all of the farmers keep their records on a cash basis. That is, they recognize an expense when cash is paid, and revenue when cash is received. As a result, the expenses recorded on the books do not necessarily match either the period of time in which they would normally be recognized or the revenue to which the expense was associated. Second, farmers do not typically keep detailed cost records. For example, farms do not typically record all labor costs for work performed by themselves or family members, equipment loaned to or borrowed from others, or production quantities associated with a set of costs. Third, farmers do not typically allocate costs to specific products in their normal records. Finally, the dissimilar nature of products produced on the farm make it difficult to determine appropriate allocation factors over which to allocate common costs.

Consider that the cash basis accounting practiced by the cost respondents (as well as their tax basis accounting followed in their tax returns) recognizes the expense of the livestock on the date of purchase; however, the animal is retained and cared for over a period of time. Also, livestock purchases may not occur consistently each year, whereas the direct costs for crop operations do occur each year. For example, seed, fertilizer and chemicals will be needed year after year for crop operations. Even raw materials used for crops might be purchased and expensed in a prior period under the cash basis accounting system. A farmer may retain his herd and incur related overhead expenses without incurring significant current year direct costs, i.e., purchases of livestock. As the CWB notes, the economic conditions in a certain year may dissuade a farmer from increasing his herd. Additionally, many farmers produce their own feed (e.g., hay) and bedding straw. Consequently, the direct livestock costs available for the allocation of overhead costs could be minimal and could potentially overstate costs allocated to crop operations. Conversely, if a farmer makes significant livestock purchases in a single year, costs allocated to crop operations could be understated.

We considered the types of expenses that were included in farm variable and fixed overhead. Fixed overhead costs almost exclusively consisted of depreciation expense, while significant variable overhead costs included machinery and fence repairs, machinery fuel, electricity and small tools, etc. In attempting to find an appropriate cost driver (i.e., some factor that is closely

[8] The selected farmers did not allocate overhead costs to their various operations in their normal records and the breeding livestock acquisition costs, a component of direct costs, were expensed as purchased in the farmers' normal records rather than capitalized and amortized as reported to the Department.

associated with the incurrence of the costs), we reviewed the various production activities associated with both the livestock and crop operations. We learned that crop operations experience higher activity during the planting, spraying, fertilizing and harvesting phases of production, while livestock demands greater activity during breeding phases. The maintenance of the herd appears to require a moderate level of attention over time. The Department noted a difference between farming activities associated with breeding versus feeder livestock. While the former is kept long term for "breeding" purposes, feeder stock is purchased and resold within short time periods. Therefore, in terms of activity, to maintain the herd, the breeding stock requires more attention, whereas feeders are just fed to a specified weight gain then resold.[9] The Guidelines for Estimating 2001 Background Costs (" 2001 Cattle Production Summaries") from the Manitoba Department of Agriculture in September 2001 states that a typical backgrounding operation (i.e., a feeder cattle operation) would "feed 500 pound steers...for approximately 100 - 200 days...." We also reviewed the Guidelines for Estimating 2001 Cow-Calf Production Costs ("2001 Cow-Calf Production Costs") published by the same authority.[10] Comparing the estimated costs for backgrounding versus cow-calf (i.e., a breeding cattle operation) operations in the 2001 Cattle Production Summaries and 2001 Cow-Calf Production Costs, we discovered that backgrounding operations incurred significantly less overhead costs (specifically, fuel, repair and utility costs) than cow-calf operations.

Finally, we note that in this case direct crop costs typically include seed, fertilizer, chemical, land use, custom work and insurance costs, while direct livestock costs include livestock purchases, feed, and land use costs. Land use costs typically included land rent and property taxes. While the incurrence of seed, fertilizer, chemical and feed direct costs may correspond with the production activities that generate overhead costs, the relative amounts of these expenses may not necessarily provide a complete or precisely accurate reflection of the production activity required for each. As a result of the inherent difficulties in determining the ultimate cost driver, we had to weigh the pros and cons of each of the proposed allocation methods and determine the most appropriate method.

As noted above, at the Preliminary Determinations, given the problems identified with the reported direct cost method, the Department revised the allocation base (i.e., the direct costs) to exclude livestock acquisition costs and imputed labor costs.

The CWB, believing that this revision understated the variable and fixed overhead costs allocated to livestock operations (and overstated HRS costs), submitted overhead costs using a capital asset method. This method was based on the relative fixed asset values and their estimated usage in

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[9] See Farmer 23 Verification Report at page 19 where the Department stated that "...cows are purchased for breeding purposes, while heifers and steers {i.e., feeders} are purchased for resale after a specified amount of weight gain."

[10] See 2001 Cattle Production Summaries and 2001 Cow-Calf Production Costs that were submitted by the CWB in its April 21, 2003 common issues volume of the cost of production questionnaire response at Exhibits 8 and 11, respectively.

each operation of the farm. The average percentages derived from this exercise were then applied to fixed overhead costs to allocate costs between livestock and crop operations. Seeded acreage was then used to allocate costs between the various crop operations.[11] For variable overhead, the CWB matched expenses with the fixed assets that appeared to drive the expense. For example, machinery fuel was allocated based on the relative livestock and crop percentages from the powered equipment (e.g., tractors, combines). Then, seeded acreage was again used to allocate costs between the various crop operations. Where the historical costs of fixed assets were not available, farmers estimated the fair market value of such equipment. Usage percentages were also estimated based on the farmers' experience.

The Department's concerns with this method are two-fold. First, we agree with the petitioner that the method relies upon a multitude of farmer estimates and representations that cannot be verified. Second, and most importantly, the allocation factor, i.e., the fixed asset values, again do not appear to reflect the production activity associated with each operation. While it appears that machinery fuel and repairs would be linked to the usage of certain fixed assets, the Department sees no direct correlation between the historical cost or fair market value of an asset to the amount of fuel or the number and types of repairs that will be required. Neither do we find fixed asset values and their estimated usage percentages to be an appropriate driver for depreciation costs. We note that depreciation is an allocation of a fixed asset's cost over the periods believed to be benefitted by such equipment. Because different types of fixed assets have varying lives (i.e., periods to be benefitted), simply allocating depreciation based on relative cost would not necessarily recognize an appropriate portion of depreciation for each operation benefitted by the fixed assets. For example, assume a farmer who owns a $100,000 barn used 100 percent for livestock and a $50,000 tractor that was used 100 percent for crops. Typical lives for such fixed assets under GAAP would be 40 and 5 years, respectively. Assuming a straight line depreciation method (i.e., total cost of the asset divided by the life of the asset), the annual depreciation would be $2,500 for livestock operations and $10,000 for crop operations. However, under the capital asset method, livestock would be assigned approximately $8,334 of these costs ($100,000/$150,000 times $12,500).

Based on the above, the Department must therefore use gap-filling facts available to allocate farm overhead costs to farm operations. For the final determination, the Department has used the direct cost method adjusted for imputed labor and feeder livestock purchases. While both the direct cost and capital asset allocation methods do not appear to perfectly reflect the production activity that generates overhead costs, we agree with the petitioner that the capital asset method has the additional flaw of being built upon numerous estimates. As the CWB points out, certain procedures were undertaken at the cost verifications to find corroborating data to support these estimates; however, the Department is directed to rely upon a respondent's normal books and

[11]We note that the direct cost method also functioned in the same manner in that direct costs were used to allocate between livestock and crop operations, while seeded acreage was used to allocate overhead costs between crops. Consequently, the manner in which overhead costs are allocated for farms with which there is no livestock or non-crop operations is not at issue. Only farms with non-crop operations in which acreage is not reflective of the costs incurred are affected by this issue.

records when possible.[12] Section 773(f)(1) of the Act allows the Department's cost calculation to deviate from a respondent's records when such records are not in compliance with GAAP or do not provide for a reasonable reflection of the actual costs. However, as discussed above, neither method appears to provide for a more accurate or reasonable allocation of overhead costs. Therefore, the Department will base the method on the normal records, i.e., the direct costs, for the final determination. For further discussion of the Department's position on the use of estimates and CWB representations in the calculation of the cost of production, see Comment 7.

Additionally, in accordance with section 773(f)(1) of the Act's preference for using the normal records of a respondent when possible, the Department is excluding labor from the allocation base. Because most of the selected farmers were not paid a wage for their farm activities and they did not keep records of the hours worked or the tasks performed,[13] labor was imputed based on public sources for the reported costs. Therefore, including labor in the allocation base would be straying from the normal records maintained by the cost respondents and including an additional estimate in the calculation. While the CWB argues that because imputed labor was used for calculating COP it must be used for allocating overhead costs, the Department notes that it is able to allocate overhead costs without including labor. Furthermore, because imputed labor has been excluded from the overhead bases of all operations, the Department believes that excluding imputed labor provides for a reasonable allocation of overhead costs. Therefore, following the guidelines provided by section 773(f)(1) of the Act, the Department determined that introducing additional estimates (i.e., imputed labor) into the calculation of costs was not necessary. Regarding the CWB's reference to the use of imputed labor in the allocation base for certain farmers in the Preliminary Determinations, the Department notes that the CWB was incorrect with respect to Farmer 20. The Department did in fact exclude imputed labor from the overhead allocation base for Farmer 20. See, Cost of Production and Constructed Value Adjustments for the Preliminary Determination - Canadian Wheat Board Cost Respondents ("Preliminary Cost Calculation Memorandum") dated May 1, 2003 at Attachment 20-1. For Farmer 5, the cost respondent originally reported virtually no direct costs related to this activity.[14] Therefore, to account for the overhead costs associated with this activity, at the Preliminary Determinations, the Department did not remove imputed labor from the overhead allocation base.[15] At verification, the cost respondent was able to isolate various expenses previously identified as overhead, as direct costs related to this activity. Therefore, for the final determination, the Department has excluded labor costs from the overhead allocation base for all farmers.

The Department acknowledges the CWB's concern that completely excluding livestock

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[12]Furthermore, the Department must clarify that the verification procedures undertaken should not be interpreted to sanction the use of certain costs or methodologies employed by a respondent.

[13]See Farmer 23 Verification Report at page 13 and Farmer 25 Verification Report page 14.

[14]See the CWB's April 21, 2003 cost of production questionnaire response for Farmer 5 at Attachment 1-A.

[15]See Preliminary Cost Calculation Memorandum at Attachment 5.

acquisition costs and the petitioner's concern that completely including livestock acquisition costs could potentially distort the cost calculation. Once again, we note that the cash basis accounting practiced by the respondent farmers recognizes the expense of the animals (and seed, fertilizer, and chemicals) on the date of purchase. The Department, for the most part, has accepted the reported accrual adjustments to the cost respondents' normal books to provide for a more accurate reflection of the production costs of the 2001 crop year. However, as discussed above, a farmer may choose to make large livestock purchases or no livestock purchases in a given year. Because of the relative values of livestock versus seed, allocating overhead costs based on a respondent's normal records in a year of large livestock purchases would potentially overstate the overhead costs assigned to livestock. Conversely, a farmer not purchasing livestock in a certain year would still be incurring overhead costs on the existing herd. Farmers that produce their own feed (hay, etc.) would further understate the overhead costs allocated to livestock. Consequently, in an attempt to alleviate these concerns, the Department accounted for the difference in the production activity associated with breeding versus feeder livestock. Based on our cost verifications and supported by the public sources referenced in our above discussion, the production activity surrounding breeding stock appeared to be higher than feeder stock. Furthermore, for feeder stock, the cost of feed appears to account for the bulk of the required farming activity for feeders. Additionally, breeding stock are kept for multiple years, while feeders are bought and resold within short period of time. Therefore, for the final determination, we have accepted the CWB's capitalization and amortization of breeding stock.[16] However, to account for the variance in the production activity between breeding and feeder stock and to avoid the consequent overstatement of overhead costs assigned to livestock, we have excluded feeder purchases (which were not capitalized and amortized by the CWB due to the short amount of time they remain on the farm) from the direct cost allocation base.

Regarding the CWB's argument that the capital asset method is similar to the methodology used in Live Cattle from Canada, we find no reference to overhead cost allocations in the determination referenced. Also, the Department disagrees with the CWB's comments that because the components of herd acquisition costs and the capital asset method underwent certain verification procedures, it can be concluded that these costs are reasonable and acceptable for use in the final calculation. The verification procedures undertaken should not be interpreted to sanction the use of certain costs or methodologies employed by a respondent. Verifications are undertaken to attest to the accuracy and completeness of the submitted factual information, not for the Department to draw conclusions regarding the reasonableness of the information. Next, for Farmer 21, the Department agrees with the CWB that regardless of who actually owned the livestock, if the farm was incurring overhead expenses in relation to these animals, then overhead costs should be allocated to them. Therefore, for the final determination, we have included the amortization of all breeding livestock in the allocation base for Farmer 21. For Farmer 15, the livestock were feeders, so under the Department's methodology for the final determination, the

[16] As adjusted by the Department for the findings at the cost verifications. See the farmer-specific adjustments in the Cost of Production and Constructed Value Adjustments for the Final Determination - Canadian Wheat Board Cost Respondents (August 28, 2003).

acquisition costs of these animals were not included in the direct cost base.

Comment 15: Financial Statement Depreciation

The petitioner contends that Farmers 7 and 25 departed from their official financial statements and included in the reported costs their tax depreciation expenses. The petitioner argues that the Department should rely on section 773(f)(1)(A) of the Act, which states that costs should be calculated based on the normal records of the producer, provided such records were "kept in accordance with generally accepted accounting principles of the exporting country ... and reasonably reflect the costs associated with the production and sale of the merchandise." The petitioner maintains that the Department, in deciding which depreciation method to use (i.e., financial or tax), should determine which method 1) represents the producer's normal records, 2) conforms with Canadian GAAP, and 3) more accurately reflects the relevant production costs.

The petitioner cites Chrome-Plated Lug Nuts from Taiwan; Final Results of Antidumping Duty Administrative Review, 64 FR 17314 (April 9, 1999) ("Lug Nuts from Taiwan") in arguing that it is well established practice that when a respondent prepares financial statements in the normal course of business, the Department would consider them as representing the respondent's normal records and only if financial statements are not available, would the Department turn to tax returns as an alternative source of information.

In regard to depreciation based on market value on the financial statements conforming with Canadian GAAP, the petitioner interprets proprietary statements by the chartered accountants for Farmer 25 as meaning that 1) it was the companies' intended policy to report depreciation in this manner, and 2) the Canadian GAAP's provision in question represents a recommendation and not a mandatory rule. The petitioner contends that because Farmer 7's chartered accountants did not express an opinion on the subject, the Department should have no reason to believe that the chosen depreciation policy does not conform with Canadian GAAP.

Furthermore, the petitioner argues that the most important question is which of the two depreciation methods reflects the relevant production costs more accurately. The petitioner contends that the financial depreciation represents the farmers' costs more accurately because it was their conscious decision to employ such a practice. The petitioner maintains that the Department, as a normal practice, has accepted fair-market-value-based depreciation. The petitioner cites Cut-to-Length Plate from Korea in their assertion that the Department has suggested that fair-market-value depreciation may result in a more accurate cost reporting. The petitioner cites Intermediate Accounting, 5th Edition, Williams, Stanga, and Holder, The Dryden Press, Harcourt Brace College Publishers (1995) at pages 73-74 in their assertion that most accountants concur that "current value" accounting would result in a more meaningful evaluation of a company's financial position and performance.

Additionally, in the farmer-specific comments for Farmer 12, the petitioner points out that the cost respondent used tax depreciation in its reported costs. The petitioner asserts that the Department

normally prefers financial accounting deprecation to tax return depreciation. Therefore, the Department should use financial accounting depreciation for this farmer in the final determination.

The CWB argues that the petitioner has offered no legal or factual grounds for the Department to use financial statement depreciation for Farmer 7 and Farmer 25 despite the fact that the depreciation in the financial statements for those farmers did not comply with either Canadian or U.S. GAAP. The CWB maintains that the Department should continue to calculate depreciation based on historical costs, because historical cost depreciation provides a more accurate representation of actual costs and would result in a consistent approach to depreciation costs across all of the respondent farms. The CWB also maintains that historical depreciation should be used because the financial statement depreciation for Farmers 7 and 25 do not accord with GAAP.

The CWB states that Farmers 7 and 25 employed historical cost depreciation because the financial statement depreciation reflected a market-based asset revaluation in violation of Canadian GAAP. The CWB contends that the petitioner draws a false distinction when it characterizes the Canadian GAAP as a recommendation for Farmer 25. The CWB continues that, if this were the case, then there would have been no reason for the accountants to specify in their review report that the practice was a departure from Canadian GAAP. In citing paragraph 26 of Canadian GAAP section 3840, the CWB asserts that the transfer of assets into the farming corporation cannot be transferred at the exchange amount because the earnings process is not complete and, even if it were complete, there has been no change in ownership. Thus, the CWB concludes that it is impossible to read this language to permit the valuation of the farm assets at other than historical book value.

In regard to Farmer 7, the CWB maintains that the petitioner has misinterpreted the role of the accountant. The CWB argues that because Farmer 7's financial statements were only compiled, there is no accountant’s report describing the basis of accounting expressed in the financial statement. Therefore, the Department cannot interpret the absence of an accountant’s report for Farmer 7 in the manner suggested by the petitioner. Finally, the CWB argues that accounting for capital assets at market value does not conform with Canadian GAAP and, therefore, there is no reason to discuss the petitioner’s arguments of why market prices are a better measure of cost than historical cost.

Additionally, in the farmer-specific comments for Farmer 23, the CWB argues that tax rather than financial statement depreciation should be used in the COP calculation for Farmer 23. The CWB asserts that Farmer 23 does not maintain a fixed asset ledger for computing financial statement depreciation, thus, the financial statement depreciation is only an estimate made by the farmer’s accountant. Consequently, as mentioned in the verification report, the tax return is the only record available for substantiating farm assets.

The CWB also notes that several of the selected farmers calculate both a tax and financial statement depreciation expense. However, while the other farmers calculated fixed overhead

using tax depreciation, Farmer 23 included financial statement depreciation in the reported costs. The CWB argues that the Department should also accept tax depreciation for Farmer 23.

Department Position: We agree with the CWB that the depreciation in the financial statements for Farmers 7 and 25 did not comply with Canadian GAAP and that the Department should continue using depreciation expenses based on an historical cost rather than revalued amounts. It is the Department's normal practice to rely on the records of the producer of the merchandise, if such records are kept in accordance with the GAAP of the exporting country and reasonably reflect the cost associated with the production of the merchandise. See Section 773(f)(1)(A) of the Act. In this case, both farmers' financial statements include depreciation expenses based on the revaluation of assets to market value due to changes in the corporate status. As the CWB points out in its rebuttal brief, accounting for capital assets at market value for these transactions is not in accordance with Canadian GAAP. See Canadian GAAP section 3840. However, in the normal course of business, both farmers report depreciation expenses based on historical book value for Canadian tax reporting purposes. Thus, for the final determination, the Department has continued to rely on the historical book value depreciation methodology used by Farmers 7 and 25 for tax reporting purposes.

For Farmer 12, we disagree with the petitioner that we should rely on the expenses recorded in the cost respondent's financial accounting system (i.e., ledger). Farmer 12 did not prepare financial statements. The farmer only maintained a simple cash ledger and checkbook. See the CWB's April 21, 2003 cost of production questionnaire response for Farmer 12 at pages 11-12. The Department turns to tax returns as an alternative source of information if the financial statements are not available.[17] Therefore, we have relied upon the depreciation expense reported in the farmer's tax return for the final determination.

Farmer 23, like Farmers 7 and 25, does prepare financial statements. However, while the financial statements prepared by Farmers 7 and 25 state that they are not in compliance with GAAP, Farmer 23's financial statements make no such statement. At the cost verification, the Department attempted to obtain a copy of the fixed asset ledger used to compute financial statement depreciation. However, company officials stated that Farmer 23 did not maintain a fixed asset ledger and that the farmer's personal accountant (who was absent from the verification) calculated depreciation expenses for the financial statements. The CWB provided no evidence demonstrating that depreciation costs from the financial statements were unreasonable. The tax return was the only record evidence provided to the Department to substantiate farm assets. See Farmer 23 Verification Report at page 14. Unlike Farmer 25 and Farmer 7, we have no reason to believe that Farmer 23's financial statement depreciation was misstated. We also note that while the statements were not audited or reviewed, they were compiled by an outside accountant who would normally be obligated to disclose material misstatements. See April 21, 2003 section D questionnaire response at Exhibit 2. Therefore, the Department will continue to

[17] In this case, we note that the difference between the amount recorded on the ledger and the tax return was small.

use Farmer 23's reported financial statement depreciation in the final determination.

Comment 16: Affiliated Party Transactions Received Methodology

The petitioner contends that Department should reject the CWB's methodology for imputing the cost of services received by the producers from affiliated parties (i.e., familial affiliates) because it is based on an incorrect premise that the producers are engaged in barter transactions. According to the petitioner, there is no verifiable record evidence that any barter transactions took place. Therefore, the petitioner argues that services received from affiliated parties and services provided to affiliated parties should be treated as two separate transactions. As such, the petitioner asserts that the services received should be valued in accordance with section 773(f)(2) and (3) of the Act while the services provided should be treated in a manner consistent with the Department's practice. See Comment 17, below, for the reference to Live Cattle from Canada and Fresh Cut Flowers from Colombia; Final Results and Partial Rescission of Antidumping Duty Administrative Review ("Flowers from Colombia"), 62 FR 53287 (October 14, 1997).

The petitioner also argues that the CWB's use of rental rates and custom rates from the Custom Rate Guide to value the services received, irrespective of the provinces to which the producers belong, is inappropriate. According to the petitioner, these rates vary from province to province, and therefore, the use of the Saskatchewan rates for farmers located in Alberta and Manitoba is not appropriate. Furthermore, the petitioner contends that the CWB has chosen the Saskatchewan rates consistent with the most hours of annual usage, even when the estimated hours of annual usage were demonstrably and significantly lower than the annual usage rates from the other provinces. The petitioner asserts that the CWB's use of the lowest rental and custom rates irrespective of the utilization hours has systematically understated the producers' reported costs for the subject merchandise.

Finally, the petitioner contends that the CWB's methodology is flawed because it relies upon the farmers' estimates and representations. The petitioner concludes that the Department should use the best province-specific information available to quantify the services received from affiliated parties.

The CWB counters that if, as suggested by the petitioner, the Department includes the value of services received from affiliated parties (i.e., familial affiliates) and ignores the value of the services provided to affiliated parties, it would yield a "perverse" result. Such an approach would compound the problem caused by uncollapsing family farms by assuming that the total costs of the two farms exceed the sum of the costs of each by an amount equal to their collaboration. The CWB argues that, instead, the Department must take into account both sides of the exchanges between affiliated parties.

The CWB objects to the petitioner's arguments related its reliance on the Custom Rate Guide. The CWB argues that the effect of using the Custom Rate Guide as applied by the producers was to incorporate a 15 percent profit factor for services acquired from affiliated parties at various levels of usage. The CWB contends that the if the Department views the affiliated parties as

independent entities, then it must value inputs received at a true open market rate. The Custom Rate Guide rates, according to the CWB, are based on maximum usage – the rate charged by professionals in the market providing the relative service – and therefore provide a true open market rate.

The CWB contends that the use of the Saskatchewan Custom Rate Guide to value the services acquired by producers in all provinces was appropriate because it was not possible to procure province-specific rates because of time constraints imposed by the Department's deadlines. The CWB asserts that the Saskatchewan Custom Rate Guide provides a complete publicly available and objective source for custom rates. Furthermore, when the rates reflected in the 2002 Saskatchewan Custom Rate Guide are compared to the average custom rates reported in the 2001 Custom Rate Guides of the other provinces, the Saskatchewan rates are, if not universally, consistently higher.

Department Position: We agree with the CWB, in part, and have valued the services acquired by the producers from affiliated (i.e., familial) parties based on the average of the range-rates reported in the Custom Rate Guide. See Comment 17 concerning the Department's position on services provided by the producers to affiliated parties.

During the cost reporting period, various producers received services from affiliated parties. As set forth in section 773(f)(2) of the Act, the Department may disregard transactions between affiliated persons if those transactions do not fairly reflect the value in the market under consideration. The Department's practice in conducting this analysis is to compare the transfer prices for the inputs charged by affiliated parties to the market value for that same input. The cost assigned to the producer is the higher of market value or transfer price. In this case, there were no transfer prices or costs available for the services acquired by the producers from their affiliated parties. Therefore, the Department has determined that the market price is the appropriate measure to value these services.

We agree with the petitioner that use of the custom work rates from the Custom Rate Guide for Saskatchewan may not reflect the market value for producers located in the Alberta and Manitoba provinces. However, we note that the petitioner was unable to procure and provide the province-specific custom rates. We also note that the petitioner in its brief recalculated the value of these services for the cost respondent located at Alberta and Manitoba using the rates from the Custom Rate Guide for Saskatchewan. In the absence of province-specific custom rates on the record, we consider it reasonable to value these services using the rates from the Custom Rate Guide for Saskatchewan.

We disagree with the CWB that in a competitive market the custom work rates will be fixed at the highest utilization level and, therefore, the use of the lowest custom work rates in valuing these services is appropriate. The CWB's assumption that the supply of farming equipment (i.e., highest utilization level) will be more than the demand (i.e., the rate at which equipment is used) causing the rental rates to go down is merely speculative. We also disagree with the petitioner

that the Department should use the appropriate range-rate based on the utilization of the specific price of equipment at issue. These rates reflect the use of equipment by only the affiliated parties and preclude the affiliated parties from renting their equipment to non-affiliates. In establishing a fair market price, the Department normally looks to transactions between two unaffiliated parties as a measure of market price. See Notice of Final Determination of Sales at Less than Fair Value: Pure Magnesium from Israel, 66 FR 49349 (September 27, 2001) and accompanying Issues and Decision Memorandum for the Final Determination in the Antidumping Duty Investigation of Pure Magnesium from Israel dated September 14, 2001 at Comment 7. In this case, we do not have on record the equipment rates for transactions between two non-affiliates, nor is there record evidence of what the supply and demand would be for the equipment rental. To pick the highest or lowest hours of rental would unfairly disadvantage one party or the other. Therefore, for this final determination we used the average of the range-rates reported in the Custom Rate Guide.

Refer to Comment 7 for the Department's position regarding the reliance on the producer's estimates and representations.

Comment 17: Costs of Services Provided to Outside Parties

The petitioner argues that the Department should disallow the CWB's exclusion of the cost of services provided to affiliated parties because the cost of these services is not separately identified in the producers' books and records. The petitioner points to Flowers from Colombia, where the Department denied a revenue offset not recorded in the respondent's books and records and Live Cattle from Canada, where the Department denied a cost offset that was not recorded in the respondent's books and records. The petitioner asserts that the producers in this case calculated the cost of services provided to outside parties based on a mix of the producers' own representations, recollections, and estimates. As such, the Department must disallow the exclusion of the costs calculated based on the respondent's unverifiable estimates and representations.

In the event that the Department allows the exclusion of the costs allocated to the services provided to outside parties, the petitioner asserts that the Department should reduce the excluded costs by the costs not associated with the services in question. For those farmers who provided the use of their equipment as the service to outside parties, the petitioner argues that it is not appropriate to use the asset-related costs (i.e., depreciation expense, repair, fuel, etc.) in the allocation of all fixed assets. The petitioner also argues that certain expenses included in the allocated variable overhead costs are completely unrelated to the loaned equipment. Furthermore, the petitioner contends that the producers, in order to calculate the amounts to be excluded for certain farmers (see e.g., the CWB's June 2, 2003 cost of production supplemental questionnaire response for Farmers 13 and 14), allocated variable and fixed overhead costs between subject and non-subject merchandise based on relative acreage. The petitioner argues that the costs assigned to the subject merchandise, based on relative acreage, were greatly reduced because the producer included the affiliate's cultivated acres in the non-subject merchandise acreage.

The CWB holds that in order to derive a reasonable and fair cost of production for each farmer, the Department must take into account the increased costs of a family member on the receiving end of an affiliated party transaction. In turn, the Department must also take into account the other side of the equation – the provision of services to an affiliate – and decrease the providing affiliated party's costs.

Department Position: We agree with the CWB and have allowed the cost of services provided to affiliated parties to be excluded from the producers' reported costs. Because the Department required each producer to include the cost of all services received from affiliated parties, the Department finds it reasonable to allow the exclusion of all costs related to services provided by the producer to affiliated parties.[10] While we acknowledge that the cost of the services performed by the producer for affiliated parties was not recorded in the books and records of the producer, to calculate costs accurately we find it reasonable in this case to assign costs to the services the producers provided to affiliated parties because we assigned costs to the services received from affiliated parties (i.e., the cost of services received from affiliated parties were also not recorded on the producers' books and records). Refer to Comment 16, above, regarding services received from affiliated parties and Comment 7, above, regarding the Department's reliance on the producers' estimates and representations.

We have recalculated the producers' costs of services provided to affiliated parties excluding the affiliated parties' costs. In those instances where the producer assigned variable overhead expenses to the cost of services performed for affiliates, we have included only those variable overhead costs related to the services performed. In all of these instances, the service provided to affiliated parties by the farmers was the use of equipment. Therefore, we allocated only those costs related to equipment (i.e., machinery repair and machinery fuel) to the services provided to affiliated parties. In those instances where record evidence shows that the affiliated party provided machinery repairs or fuel for the equipment, we did not allocate the producers' machinery repair and fuel to the cost of the services provided to the affiliate. In regard to fixed overhead expenses, where possible, we allocated only the depreciation of the loaned equipment. In those instances where such information was not available, and the cost respondent allowed its affiliate the use of virtually all of its equipment and machinery, we allocated the depreciation of all fixed assets.

We based the allocation of variable and fixed overhead expenses to the cost of services provided on the relative number of the affiliate's seeded acres to the total seeded acres of the farmer in question and the affiliated party. We believe that the use of seeded acres as the allocation basis is reasonable because the loaned equipment was used on both the producer's and affiliated party's total seeded acres.

Comment 18: Land Use

[10] We note that in theory the cost of services provided to affiliates would be matched to revenue earned on providing these services. It would not be appropriate to match the cost of these services with wheat revenue.

The petitioner states that the Department should reallocate the farmers' land rent cost using land-specific information submitted by the CWB. According to the petitioner, the CWB allocated all of the land use costs (i.e., property taxes, water rights and cash rent) based on the relative acreage of HRS wheat to other crops which included all lands owned as well as rented. However, the petitioner claims that the farmer's own land analysis provided more crop-specific information regarding the use of the land. Specifically, the petitioner states that the information on the record shows the amount of the owned land and the amount of the rented land that was used for HRS wheat for each farmer. Therefore, the petitioner argues that the property taxes and rent should be allocated based on specific identification resulting in more land use cost allocable to HRS wheat.

The CWB argues that they purposefully allocated land use costs over cultivated acres. According to the CWB, in order to maximize the productivity of the land, the farmers rotate crops over a number of years and thus no individual plot is associated with any single crop. Instead, the CWB maintains that all cultivated land is associated with all the crops over the course of a cycle and therefore it is appropriate to report average land use for all crops. According to the CWB, relying on a direct link between costs, parcels and crops may have increased HRS costs for some farms and lowered it for others, but, in all cases it would provide a distorted measure based on a snapshot without taking into account the full use of the relevant land over the course of the crop rotation cycle.

Department Position: We agree with the petitioner. The CWB provided an analysis of the use of its land during the growing season. The information on the record shows the amount of the owned land and the amount of the rented land that was used for HRS wheat. The CWB also provided the property taxes paid on its land and the rent paid for the other parcels. For each growing season, a farmer can rent more or less land, rent different plots of land, and decide which plots to use to produce his various crops. Naturally, some plots of land are more fertile than others and, therefore, are better suited for crop production than others. As such, it follows that the better suited land will generate higher yields, and ultimately be more valuable, thus costing more. To more accurately match costs associated with a crop in a particular year, it is more appropriate to match a specific plot of land to the crop grown on that plot of land. The information is available on the record to match the expenses with the plots of land used to produce each of the crops, and therefore, for the final determination, we have allocated property taxes and rent to the crops grown on the specific plots of land.

Comment 19: Crop Insurance Proceeds

The petitioner contends that for the final determination the Department should deny the cost offset claimed by the CWB for crop insurance proceeds because: (1) in some cases these proceeds are related to crops prior to the POI; and (2) crop and hail insurance proceeds are an involuntary disposal of the property covered by these insurances, and are properly related to the sale and not production of the subject merchandise. The petitioner maintains that crop insurances are different from the insurance purchased for production assets (i.e., trucks, tractors, combines, etc.), because

their associated depreciation expenses are considered input in the production of the subject merchandise. Therefore, according to the petitioner, the Department's practice is to only include insurance premiums and insurance proceeds related to production assets in the cost of production. The petitioner cites Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from Thailand, 60 FR 22557 at Comment 13 (May 8, 1995), and Aramid Fiber Formed of Para-Phenylene Terephthalamide From the Netherlands: Notice of Final Results of Administrative Review, 61 FR 51046, 51408 (October 2, 1996), where the Department included the insurance proceeds in the cost of production because they were related to the failure of equipment and a production facility. The petitioner asserts that crops are not an input but rather the output of the production process and therefore insurance proceeds related to crops should not be included in the reported costs. To support their position, the petitioner cites Live Cattle from Canada, where the Department denied a cost offset for a disaster claim.

According to the petitioner, the main issue is whether the cost of failed production (i.e. the resulting losses) should be excluded and maintains that it is the Department's practice to exclude extraordinary losses from the reported costs. Crop failure is not extraordinary and, therefore, the costs associated with the failed crop should not be excluded. Moreover, in calculating the profit factor the petitioner contends that the CWB erroneously assumed that the profit factor is the same for HRS wheat and other crops. Additionally, the petitioner asserts that the crop insurance proceeds actually received were determined based on estimated quantities, and therefore, the profit calculation and the resulting cost calculation for the lost crops are also an estimate. Finally, the petitioner maintains that the CWB did not reduce the hail insurance proceeds for any potential profit included in the proceeds.

The CWB argues that for the final determination the Department should include the crop insurance proceeds as an offset to the HRS wheat cost of production because: (1) these proceeds are related to losses incurred during the 2001 crop year; and (2) the value of the lost costs and not the market value of the lost crops, was used to calculate the offset. The CWB maintains that in past cases the Department has granted offsets to cost of production if the insurance proceeds are directly linked to the subject merchandise and the offsets are calculated based on cost recoveries not containing a profit element. See Notice of Final Determination of Sales at Less Than Fair Value: Red Raspberries from Canada, 50 FR 19768 (May 10, 1985) ("Red Raspberries from Canada") and Notice of Final Determination of Sales at Less Than Fair Value: Fresh and Chilled Atlantic Salmon from Norway, 56 FR 7661 (February 15, 1991) ("Salmon from Norway"), at the respondent Hofa and Austevoll Comment 5. The CWB contends that it has satisfied the conditions necessary to claim this cost offset by reducing the insurance proceeds for any potential profit element and providing supporting documents linking these insurance proceeds to the 2001 crop year. Therefore, for the final determination the Department should include the crop insurance proceeds as an offset to the HRS wheat cost of production.

Further, the CWB contends that the Department should not limit the cost offset for the insurance proceeds that would have been collected had the recovery amount been based on actual production and not on estimated production because these insurance proceeds were actually realized by the

cost respondent and were appropriately reduced for any potential profit element. The CWB points out that even if actual production exceeded the figure relied on by the crop insurance to pay out recoveries, this fact was accounted for in the profit calculation, and maintains that whatever method was used to determine the crop insurance recovery (market or cost) or the basis for measuring the precise amount of the payment (estimated or actual production), unless the payment exceeded the cost incurred, there is no ground for the Department to reduce crop insurance recoveries.

The CWB calculated the potential profit by summing the actual production and the quantity for which they received crop insurance recoveries. That sum was multiplied by the per metric ton recovery to determine whether the amount recovered would exceed the cost incurred. For farmers for which that figure exceeded the total cost incurred, the percentage by which the hypothetical recovery exceeded cost was treated as a potential profit. Accordingly, the recoveries claimed as an offset to costs were reduced by that percentage to eliminate any possible profit in the crop insurance recoveries. If actual production was higher than that determined by the crop insurance adjuster, the sum of the actual production and the quantity on which a payment was made would have been higher by the difference between actual and estimated production. Likewise, the hypothetical recovery based on that claim would also be increased by the difference. As a consequence, to the extent that a profit resulted from the additional payment, the profit factor for such a respondent would have been increased and the offset to recoveries would have increased as well. Thus, in such a setting the application of a profit factor would have offset any potential benefit from a difference between actual production and the crop insurance adjuster estimate upon which actual recoveries were based.

According to the CWB, crop insurance recoveries were based on production quantities estimated soon after harvest, and out of nine farmers reporting crop insurance recoveries, three had lower actual production than estimated, and six had higher actual production than estimated. The CWB suggests that rather than limiting the crop insurance recoveries for any difference between the actual and estimated production quantities, the Department should adjust these insurance recoveries for the differences between the actual and estimated production quantities for all nine farmers.

Department Position: The petitioner asserts that the Department should disregard the insurance proceeds received by the farmers for two main reasons: they relate to prior years crops; and they are associated with sales, not production, of subject merchandise. We disagree with the petitioner on both points, and have allowed the insurance proceeds as an offset to the farmers' cost of production, except as limited by the profit portion of the proceeds.

The CWB has provided record evidence throughout this proceeding to support its position that the proceeds relate to the 2001 crop year. In its June 2, 2003 cost of production supplemental questionnaire response, the CWB submitted copies of the crop insurance inspection summaries to substantiate that these insurance proceeds were related to the 2001 crops. In addition, at verification, the Department reviewed the details surrounding the insurance revenue proceeds and

noted that there was no reason to suspect that these proceeds do not relate to the 2001 crop year.

The farmers take out the crop insurance to protect themselves against lower than normal production yields. In effect, they are purchasing insurance to guarantee themselves income for a certain level of output. If they produce more HRS wheat than is set by their insurance policy, they are entitled to no proceeds. If they produce less, the insurance company pays the farmer a set price per ton for the quantity of production below the insured level. The yield experienced directly impacts each farmer's per-unit cost of production. The more produced, the lower the per-unit cost of production. As such, contrary to the petitioner's claim, these proceeds are directly related to production, or lack thereof, of subject merchandise. We disagree with the petitioner's point that because the insurance proceeds do not relate to a failed piece of equipment, or any other type of production input, the proceeds must be rejected. Output quantities have as much to do with production operations as do production inputs. While we have allowed insurance proceeds to offset reported costs of production in cases where the proceeds relate to insured equipment failures, this does not mean that this is the only instance in which we will allow an offset. In fact, we have allowed an offset for lower than expected production yields in other agricultural cases. In Red Raspberries from Canada, the Department included the proceeds from the Farm Insurance Income Program ("FIIP") as an offset to costs because it was attributed directly to raspberry production. In addition, consistent with this case, the premiums paid into the FIIP in Red Raspberries from Canada were treated as an expense and included in the cost of production. Similarly, in Salmon from Norway, at the respondent Hofa and Austevoll Comment 5, the Department included the insurance proceeds received by these two respondents for the loss of fish crops due to disease as offsets to the costs. In both of these cases insurance proceeds were related to production outputs.

While we agree that the crop insurance proceeds should be allowed as an offset to the COP, the offset should be limited to the additional per-unit cost incurred as a result of the low production yield being insured against, i.e., any component of profit embedded in the insurance proceeds should be eliminated. We included the insurance proceeds because it compensates the farmer for higher than normal per-unit costs incurred. However, we consider it unreasonable to allow the farmer to further reduce its per-unit costs by profit received from the insurance company which goes beyond the additional costs incurred as a result of the insured event.

In this case, crop insurance recoveries were based on production quantities estimated soon after harvest which differed from the reported actual production quantity used to calculate the per-unit COP. We agree with the CWB in part that the effect of the difference between the estimated production quantity, which is the basis of the insurance proceed computation, and farmer's actual production quantity, will come out in the insurance premium profit calculation. However, we disagree with the CWB's profit rate calculation methodology. The CWB's proposed profit calculation method relies on a theoretical production quantity rather than actual quantity, is not limited to the quantity of production below the insured level, and calculates the profit as a rate rather than an absolute amount. We have revised the profit calculation to better isolate the profit associated with the actual quantity of wheat covered by the insurance, i.e., the actual quantity of

production below the insured level, and to determine the profit as an absolute value. Accordingly, we have used the following formula to determine the profit portion of the proceeds for the final determination:

Profit = Insurance Proceeds - ((Insured Production Quantity - Actual Production Quantity) * (Aggregate HRS COP / Insured Production Quantity)).

In addition to crop insurance, many farmers purchase additional hail insurance or municipal hail insurance. Unlike the crop insurance, these insurance premiums are purchased on a per-acre basis. Hail insurance proceed values are based on the estimated per-acre cost to the farmer associated with the hail damage and not on the per-ton market value for wheat lost. Because it does not appear to include a profit component, we included the entire additional and municipal hail insurance proceeds in the HRS wheat cost of production.

We also find the petitioner's argument that crop failures are not extraordinary items to be misplaced. In this case, the issue is whether the crop insurance proceeds should be treated as an offset to cost, not whether the crop failure is an extraordinary item.

Finally, we find the petitioner's reliance on Live Cattle from Canada to deny the crop insurance proceeds as an offset to costs to be misplaced. In that case, the Department denied the disaster claim because it was not recorded in the farmers' normal books and records, nor in the respondent's audited financial statements, and therefore, there was no basis for the Department to include the claimed cost offset. In this case, however, the crop insurance proceeds were recorded in the farmers' books and records.

Comment 20: Straw By-Product Offset

The CWB argues that farmers that raise livestock are entitled to an offset to HRS wheat costs in the form of a by-product recovery for HRS straw internally consumed in their livestock operations. The CWB notes that in the cost questionnaire, the Department included a question to elicit information relating to byproduct recovery as an offset to the cost of producing HRS wheat. The CWB states that in its response, a number of farmers identified straw recovery resulting from revenue received on their external sales of straw. The CWB asserts that straw recovery related to those farmers is not at issue in this investigation, and the full amount of the recovery is an appropriate offset to HRS wheat and other crops' production costs. The CWB notes that a number of farmers provided information as to straw recovery where the straw was used internally as bedding in the farmers' livestock operations, and that the Department used this data in the Preliminary Determinations.

The CWB notes that to calculate the amount of the recovery, the farmers provided the number of bales used in their cattle operations, based on their knowledge of herd size, their experience, and their knowledge of the amount of straw they would have baled for that period given the herd size. The CWB states that for the most part there were no records of actual straw bales produced or

used, but two farmers (Farmers 6 and 9) had year-end records of straw bales in inventory.

The CWB notes that to value the straw internally consumed, it calculated an average market price for straw bales and, based on this calculation, conservatively valued its byproduct recoveries. The CWB asserts that this valuation is further supported by the Farmer 25 Verification Report in which the Department verified that the farmer purchased straw bales at the same value as used in the byproduct recovery calculation.

The CWB notes that in the verification reports the Department identified a number of possible issues relating to the byproduct recovery amount used including: 1) the Department questioned the value of the recovery, comparing the per head amount to figures contained in the 2001 Cattle Production Summaries and 2) the Department questioned whether any offset was appropriate based on the belief that all costs associated with baling have been included in livestock costs. The CWB argues that both concerns are misplaced and an offset for byproduct recovery for straw is appropriate. The CWB asserts that to the extent the Department disregards the straw offset for internally consumed HRS straw, adjustments must also be made to the other crops costs that were reduced as a result of straw recoveries, and all other affected values must be recalculated.

The CWB states that the Department questioned the reported value for those farms where the value of the offset on a per head of cattle basis exceeded the amounts contained in the 2001 Cattle Production Summaries. The CWB asserts that where the Department has verified both components of the offset calculation, there should be no issue with the amounts reported. As noted above, the CWB asserts that it calculated an average market price for straw, which was supported by the Farmer 25 verification findings. The CWB argues that the Department's own verifications should eliminate concern that the market value of straw was overstated. Therefore, according to the CWB, the only remaining component of the calculation to consider is the number of bales utilized in the calculation by each farmer. The CWB notes that for this component, it relied on the experience of each farmer as the farm-specific demands may vary depending on a number of factors, including the farmer's own preferences, the weather at each farm, how soon the cattle were forced into corrals, the relative time in the corrals and at pasture, etc. The CWB notes that most of the farmers did not have records relating to straw use and had to rely on their experience, memory, and normal livestock bedding practices. The CWB argues that those farmers' estimates were reasonable and yield reliable estimates, which are supported by the two farmers that did maintain records of straw use and/or inventory amounts.

The CWB states that both Farmers 6 and 9 take physical inventory at year-end for a number of livestock-related items including straw bales. The CWB argues that the amount maintained in inventory at year-end supports the claimed offset. The CWB asserts that based on these verified quantities, the Department calculated straw costs per head squarely in the range of costs per head calculated by the Department for the other farmers whose offsets were in question.

The CWB also argues that when correctly analyzed, there is no disparity between the offsets claimed by the respondent farms and the values in the 2001 Cattle Production Summaries. The

CWB notes that the cost of C$20.00 per head quoted by the Department is based on a usage of one ton per head per year, citing its April 21, 2003 common issues volume of the cost of production questionnaire response at Exhibit 11, page 3. The CWB asserts that in that worksheet, the straw was valued at C$20.00 per ton, but if the straw were valued at the per bale rate verified by the Department and assuming a bale of straw weighs approximately 800 - 900 pounds, the average usage rate contained in the worksheet would be different. The CWB notes that the byproduct recoveries were verified for seven farmers and resulted in a range of values. The CWB argues that the average value per head of cattle of these farmers compares favorably with the worksheet average usage amounts when valued at verified market rates. The CWB asserts that to the extent there is a difference in the calculated costs between the reported costs and those in the 2001 Cattle Production Summaries, that difference primarily relates to the average cost of straw, not the quantity consumed. However, the CWB points out that the value was supported by verified evidence on the record.

In addition, the CWB notes that the 2001 Cattle Production Summaries worksheet cautions that its data represents an average of all the herds reporting. The CWB notes that it is not surprising for the sampled farmers to have values above and below the amount recomputed from the worksheet. The CWB also notes that the worksheet data is based on a 150 head herd, which is significantly larger than most of the livestock operations that are at issue in this investigation. Therefore, according to the CWB, if operational efficiencies are advantageous to a herd of that size, one would expect to see a lower cost structure than that reported by the sampled farmers. The CWB asserts that because the verified farmers approximate on average the worksheet usage value at verified market rates, this further demonstrates the reasonableness of the offset values claimed by the farmers.

The CWB notes that in the issues section of some of the verification reports, the Department questions whether the farmers should be entitled to an offset for straw recovery on the basis that costs associated with the baler have been assigned to livestock. While the CWB acknowledges that there may be an argument that straw recoveries should be reduced by an amount relating to the cost of harvesting the straw, the CWB asserts that this does not justify eliminating the offset completely.

The CWB claims that each of the respondent farmers claiming an offset for HRS straw bought a baler for economic use in baling hay, not byproduct HRS straw. The CWB claims that baling HRS straw is incidental to the baler's intended purpose. The CWB contends that if any portion of baler cost or its associated labor were attributed to HRS wheat, it would be very small.

The CWB argues that if the Department determines that some adjustment to the claimed offset is required, the Department could make the adjustment by reducing the amount of the claimed offset by the baling rate contained in the Custom Rate Guide, which has otherwise been used to value affiliated party transactions. The CWB notes that the rate for baling in this guide is C$5.75 per bale which includes equipment cost, labor cost, and a 15 percent profit rate. The CWB argues that since the profit rate is 15 percent, the true "value" of baling is C$5 per bale. The CWB

asserts that the Custom Rate Guide would not account for the true cost of baling straw in this situation, since straw is a secondary consideration for the farmer, rather than the primary crop baled. Therefore, the CWB contends that the guide attributes significantly more equipment cost to HRS baling than is appropriate, and thus, a reduction in the claimed offset of C$5 per bale of HRS wheat would be quite conservative and likely overstate any appropriate reduction considerably.

The petitioner argues that byproduct offsets were based on quantities and values representing circumstantial evidence and representations made by farmers themselves. The petitioner asserts that because the representations cannot be substantiated by existing records, the accuracy of the reported costs is called into question. Citing Greenhouse Tomatoes from Canada, the petitioner contends that the Department cannot accept calculations based merely on the respondent's own representations. The petitioner asserts that the Department should completely reject the byproduct cost offsets because they are based on the same kind of unverifiable estimates and representations.

The petitioner agrees with the Department's verifiers' suggestion that the offsets for the imputed value of straw bales used as livestock bedding should be disallowed because all the costs associated with this activity have already been allocated to livestock. The petitioner argues that while the CWB theorized that there are some straw-related costs left in HRS wheat costs because all the costs of growing HRS wheat are the same as the costs of growing HRS straw, there is no way to determine the straw component of those costs with any degree of accuracy. The petitioner asserts that all the reliably identifiable straw baling costs (e.g., costs associated with a baler) were already removed from the HRS wheat costs and included in the livestock costs. The petitioner argues that the Department should not accept the approximations suggested by the CWB and should recognize the already identified straw costs as the only verifiable representation of the full costs associated with this activity. Therefore, according to the petitioner, because the full costs of this activity were already excluded from the HRS wheat costs, no offset to HRS wheat is appropriate.

The petitioner points to the CWB's brief and argues that the CWB tried to legitimize the straw estimates by claiming that the estimated quantities were reasonable because they were close to the quantities for Farmers 6 and 9. The petitioner notes that the CWB argues that these two farmers took physical inventory of straw bales at year end and those inventory figures supported their claimed quantities of straw bales and were verified by the Department. The petitioner asserts that as with the other CWB claims regarding alleged confirmations on the part of verifiers, the situation conveyed by the cost verification reports is quite different. According to the petitioner, in Farmer 6's verification report, the verifiers did not mention any inventory counts of straw bales on the part of the farmer. The petitioner argues that the straw bale quantities were based solely on what the farmer stated or explained. The petitioner argues that the quantity of Farmer 9's own bales included in his inventory count was explained by the cost respondent's representatives. The petitioner asserts that the CWB tried to support its estimates by relying on yet other estimates and its representatives' unsupported statements.

Department Position: We agree with the petitioner in part and the CWB in part. Notwithstanding the CWB's claims of physical inventories by Farmers 6 and 9 (addressed below), the farmers' claims of the number of straw bales utilized in the offset calculation by each farmer were clearly estimates. Even though the CWB claims that these estimates were based on the experience of each farmer, were reasonable, and yield reliable results, the fact remains that they are estimates that cannot be tied to records of the farmer. In Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from India, 63 FR 72246 (December 31, 1998), the Department rejected an allocation methodology because it relied purely on unsubstantiated estimates. Also, as the petitioner noted, in Greenhouse Tomatoes from Canada, the Department rejected certain allocations because they were based on suppliers' representations or management's experience, and the respondent in that case was unable to produce any reports or records to substantiate the allocation factors.

In accordance with section 773(f)(1)(A) of the Act, the Department normally relies on data from a respondent's books and records where those records are prepared in accordance with the home country's GAAP, and where they reasonably reflect the costs of producing the merchandise. In this case, the straw offset is an imputed offset because the straw is used internally by the farmers for their livestock operations, and it is therefore not in the cost respondents' books and records. In calculating an imputed amount, we still want to tie the components of the calculation to the cost respondents' records. In this case, the two components are the quantity of straw and the price of the straw. For the quantity component of the calculation, the CWB noted that the straw quantities were based on estimates because most of the farmers did not have records relating to straw use and had to rely on their experience, memory, and normal livestock bedding practices. When a respondent's submitted costs do not reasonably reflect the costs of producing the merchandise due to limitations in the respondent's records kept in the ordinary course of business, the Department's practice is to take a non-adverse facts available approach to more accurately reflect the cost of producing the merchandise. In this case, as non-adverse facts available, we used public information submitted in Exhibits 8 and 11 of the CWB's April 21, 2003 common issues volume of the cost of production questionnaire response (i.e., the 2001 Cattle Production Summaries and 2001 Cow-Calf Production Costs reports, respectively). The 2001 Cow-Calf Production Costs report estimates that straw use for cow-calf herds is one ton per cow per year, with C$20 per ton for straw. The 2001 Cattle Production Summaries report estimates that the annual straw usage is four pounds per feeder per day, with 160 days on feed, and with C$20 per ton for straw, for an average of 0.32 tons per cow per year. Therefore, for each farmer who claimed a straw offset, we have multiplied the calculated per ton straw price (see below) by one ton per cow per year, and then multiplied by the number of cow-calves the farmer has, not including feeder cows. For farmers with feeder cattle who have claimed a straw offset, we have multiplied the calculated per ton straw price (see below) by 0.32 tons per cow per year, and then multiplied by the number of feeder cows that the farmer owns.

Regarding the CWB's claims of physical inventories by Farmers 6 and 9, we find that there is no information on the record to show how production quantities were tracked, nor how the inventory quantities related to quantities consumed. In addition, while Farmer 9 presented a physical

inventory, there was no information on the record to show the difference between the inventory amount and the straw amount claimed. While Farmer 6 explained that he takes a physical inventory at year-end, as noted above, there is no information on the record relating the inventory amount to production or consumption quantities of straw. For these reasons, we have determined we cannot rely on the CWB-provided estimates of straw usage and have used the straw usage amounts from the 2001 Cattle Production Summaries and 2001 Cow-Calf Production Costs, as explained above.

While the 2001 Cattle Production Summaries and 2001 Cow-Calf Production Costs use a price of C$20 per ton of straw, we looked at actual straw sales or purchase prices by the cost respondents in this case. While Farmer 7 sold HRS straw, there is no evidence on the record to show the per unit price of the straw. In addition, while Farmer 20 also sold HRS straw, the purchaser baled the straw and there are no formal records verifying the per unit price. The only other information available is the price that Farmer 25 paid for straw. In contrast to the straw quantity, the CWB provided documentation at verification showing a price paid for straw. In our calculations for the straw offset, we have used the amount per bale that Farmer 25 paid for straw. To convert the amount per bale to an amount per ton, we had to determine the weight of a bale. The evidence on the record shows that different farmers indicated that bales were different weights. Since we are using the price per bale from Farmer 25, we used information on the weight per bale provided by Farmer 25. Farmer 25 stated that he used straw bales that were in a certain weight range. We used the mid-point of his specified range to convert the price per bale Farmer 25 paid, to a price per ton.

We also need to address the Department's comments noted in the issues section of some of the verification reports, concerning whether farmers should be entitled to an offset for straw recovery on the basis that costs associated with the baler have been assigned to livestock. These comments were based on the CWB's overhead methodology using fixed assets' usage. Because we are now using direct costs to allocate fixed assets and not the CWB's overhead allocation methodology based on fixed assets' usage, as discussed in Comment 14, Overhead Allocation Methodology, these comments are moot.

Therefore, to calculate the straw byproduct offset for all farmers who claimed the offset, we are using the per-cow straw usage rates from the 2001 Cattle Production Summaries and 2001 Cow-Calf Production Costs for feeder cows and breeding cows-calves, respectively, multiplied by the price per ton of straw paid by Farmer 25, and multiplied by the number of feeder cows and breeding cow-calves, respectively, that each farmer owns.

Comment 21: G&A and Interest Expense Denominators

The CWB argues that it was incorrect for the Department, in the Preliminary Determinations, to include imputed labor costs in the cost of manufacture, but to exclude imputed labor from the denominator used in calculating the G&A and interest expense ratios. The CWB maintains that to properly allocate G&A and interest expenses associated with the various enterprises, the

Department should include imputed labor in the denominator when calculating the relevant ratios.

The petitioner argues that livestock costs should not be included in the denominator used for the calculation of the G&A and interest expense rates. The petitioner asserts that the respondent could overstate livestock costs and therby reduce the G&A and interest expense allocated to HRS.

Department Position: We disagree with the CWB that the Department should include the imputed labor costs for each farmer in their cost of manufacturing ("COM") denominator used to calculate the G&A and interest expense ratios. In the Preliminary Determinations, for certain farmers we imputed labor costs for HRS production using the provincial crop planning guides. In calculating the G&A and interest expense ratios we excluded imputed labor costs from the denominator, i.e., COM, used to calculate the ratios, and applied these resulting ratios to the reported COM excluding imputed labor costs. We used this methodology to ensure that the calculation and application of the ratios were on the same bases.

Here the CWB is asserting that the HRS wheat imputed labor costs should be included in the COM denominator used to calculate the ratios. If we were to adopt this methodology, before calculating the general expense ratios, we would first have to calculate imputed labor costs for all operations of each farm (i.e., barley, canola, tame hay, flaxseed, livestock, etc.) and include the resulting amount in the COM used as the denominator in calculating the ratios. However, record evidence does not provide the information needed to impute labor costs for all farm operations accurately, nor do we believe it is necessary in this case to calculate labor costs for all farm operations. Including an imputed labor amount for all farm operations in the COM denominator used in the ratio calculations and the same amount in the COM to which the ratios are applied does not create more accurate G&A and interest expense ratio calculations. Therefore, consistent with the Preliminary Determinations, we continue to exclude the imputed labor amounts from the COM denominators used in calculating the G&A and interest expense ratios.

Finally, we note that a proper accounting of cattle costs in the denominators of the G&A and interest ratios needs to be determined. As stated elsewhere, in the farmers' normal records, cattle purchases are expensed as incurred. However, the CWB has provided a modified accrual accounting for these expenses, recognizing cattle amortization expense. This treatment results in a denominator used to calculated the two ratios that is more in line with the denominator the Department usually uses for these ratios. In short, revenues are better matched with expenses. Because G&A and interest expenses relate to the company as a whole, we believe that the use of the CWB's modified accrual method in determining the denominator used to calculate the ratios, would result in more appropriate ratios. Therefore, we have included the cattle amortization expense in the denominator.

Comment 22: Value of Bookkeeping Services

The petitioner argues that Farmers 4, 5 and 7 failed to provide a cost for the bookkeeping services provided by an affiliated party. The petitioner contends that the Department should include an

imputed amount for bookkeeping services in the reported costs for these farms based on the information available.

The CWB states that in the Preliminary Determinations, the Department created a serious distortion in the calculated costs by imputing an additional cost for bookkeeping services. The CWB asserts that the costs for such services are already covered by the imputed labor calculations submitted to the Department. Furthermore, the CWB claims that bookkeeping services for the farms in this investigation do not require an extensive time commitment. The CWB points out that for Farmers 4 and 5, the Department verified the short amount of time spent performing bookkeeping functions throughout the year, and therefore, the CWB does not believe an adjustment for bookkeeping services is necessary.

Department Position: We agree with the respondent that an adjustment for bookkeeping services is not warranted. As noted in comment 12, in the Preliminary Determination, we double counted labor costs by including it in both custom work and imputed labor. Similarly, in the Preliminary Determination, we double counted bookkeeping services by imputing labor using the provincial crop planning guides and additionally imputing labor for bookkeeping services. We believe that bookkeeping services are accounted for in the labor rate used from the provincial crop planning guides. We examined the petitioner's cost build-up used in the petition that was based on the provincial crop planning guides and noted that no additional labor component for bookkeeping was added to the cost build-ups. We also noted that provincial crop planning guides used by the Department to calculate farm labor for the final determination state that the reported labor amounts do not include a provision for the management of the farm. Therefore, we consider it reasonable to conclude that the provincial crop planning guides include a labor component for all other operations associated with farming. In the instant case, we consider management of the farm and bookkeeping services to be separate categories of costs. Managing a farm is related to conducting and supervising farm operations (i.e., determining on which plot of land each crop should be planted, when the land should be prepared and planted, dealing with livestock purchasing, cow/calving operations, etc.). Thus, we consider it reasonable to conclude that bookkeeping labor does not fall within the definition of farm management. Therefore, we agree with the respondents that the costs for bookkeeping labor is already covered by the imputed labor calculations from the provincial crop planning guides. As a result, to avoid double counting, no adjustment is necessary to the G&A expense ratio calculation for the uncompensated bookkeeping services provided for Farmers 4, 5, and 7.

Farmer Specific Issues

Farmer 1
Comment 23: Production Quantities

The CWB argues that the Department should not reduce Farmer 1's production volume by the

amount of seed consumed in 2002. The CWB contends that Farmer 1 demonstrated at verification that the HRS wheat production volume was correctly reported and that the reported production included all deliveries of the 2001 crop, plus that portion of the 2001 crop that was used as seed in 2002.

The petitioner did not comment on this issue.

Department Position: We agree with the CWB. At verification we verified production quantities and agree that the quantities were correct as reported.

Comment 24: Well Expenses

The CWB asserts that expenses related to the construction of wells should be allocated to Farmer 1's livestock operations. The CWB states that at verification the Department verified that the wells are used exclusively for livestock.

The petitioner did not comment on this issue.

Department Position: We agree with the CWB. At verification the Department verified that the wells in question were constructed to service livestock. Therefore we consider it appropriate for the expenses related to the wells to be allocated to Farmer 1's livestock operations.

Comment 25: Over-Excluded Livestock Costs

The CWB asserts that if the Department employs the overhead allocation method applied in the Preliminary Determinations, the Department should correct the allocation of fixed and variable overhead costs for Farmer 1. The CWB points out that the Preliminary Determinations states that the Department "excluded the cost of the purchased livestock, regardless of whether it was expensed or amortized, from direct cost pools used to allocate fixed and variable overhead expenses." See Preliminary Cost Calculation Memorandum at page 6. However, for Farmer 1 the CWB alleges that the Department's calculation of the revised livestock direct cost subtotal used for allocating overhead costs to the livestock operation deducts more than just the cost of purchased livestock from the total livestock direct costs which results in an understatement of fixed and variable overhead costs allocated to livestock and consequently an overstatement of costs allocated to HRS wheat. See id. at Attachments 1-2 and 1-3, E.

The petitioner did not comment on this issue.

Department Position: We agree with the CWB and have adjusted the livestock costs accordingly.

Farmer 3
Comment 26: Imputed Seed Costs

The petitioner states that Farmer 3's actual seeding rate is lower than other farmers in the same province and soil type. Therefore, the petitioner argues that Farmer 3's unidentified seed purchased during the POI should be allocated to HRS wheat.

The CWB argues that Farmer 1 and Farmer 3 employ different tillage systems and, therefore, the seeding rate for Farmer 1 is not comparable with Farmer 3. The CWB contends that the seeding rate for Farmer 3 is reasonable for the black soil zone in which the farmer resides.

Department Position: The benchmark seeding rate for the soil type of both Farmer 1 and Farmer 3 is stated in the CWB's common issues volume III-12 at page 2. Farmer 3's submitted seeding rate is comparable to the seeding rate listed in the provincial crop planning guide for Saskatchewan. Therefore, we did not increase Farmer 3's seed costs for the unidentified seed purchase.

Comment 27: Actual Labor Costs

The petitioner points out that Farmer 3's reported costs include imputed labor instead of the actual paid labor reported in his tax returns. The petitioner states that for the Preliminary Determinations, the Department erroneously included the imputed labor cost instead of the higher actual labor cost. The petitioner argues that the Department could not verify that the labor paid was for other services that were performed off the farm. Thus, according to the petitioner, the payment should be added to the actual paid labor cost. The petitioner contends that the Department should include the actual paid labor cost in determining the HRS wheat labor cost for the final determination.

The CWB argues that the amount reported in Farmer 3's tax return was for services performed off the farm and not for farm labor. The CWB contends that treating the amount as farm labor would overstate the wage rate according to the provincial crop planning guide for the soil zone.

Department Position: We agree with the petitioner and have included this amount in the calculation of Farmer 3's labor costs. At verification, we were unable to determine that the labor expense in question was for off the farm services as Farmer 3 failed to provide any documentation to support its position. In addition, Farmer 3's tax return reflected no sales revenue associated with its claimed off farm services. See Farmer 3 Verification Report at page 11.

Comment 28: Chemical Costs

The petitioner argues that the Department should include the amount of unidentified chemicals as HRS wheat chemical cost. The petitioner asserts that the per-acre chemical cost for HRS wheat does not compare to other farmers operating within the same province and soil type. The petitioner states that the Department should use facts available to determine Farmer 3's chemical cost per-acre.

The CWB agrees with the Department that chemical costs that were submitted as other crops

should be revised to allocate a portion of the costs to HRS wheat, as shown in the Farmer 3 Verification Report. However, the CWB disagrees that chemical usage by farms using different tillage systems can be compared. According to the CWB, Farmer 1 employs a minimum tillage system, while Farmer 3 employs a conventional system. According to the CWB, one would expect that a farm with a minimum tillage system would have higher chemical costs than one using a conventional tillage system. Therefore, Farmer 3's chemical costs should not be equivalent to Farmer 1's.

Department Position: We agree with the petitioner and have included the amount of unidentified chemicals as HRS wheat chemical costs. At verification, for certain chemical purchases, Farmer 3 could not provide evidence to substantiate what chemicals were purchased and that the chemicals were not used in HRS wheat production. Therefore, we included the unidentified costs as HRS wheat chemical costs for the final determination. See Farmer 3 Verification Report at page 9.

Additionally, we adjusted Farmer 3's submitted other crop chemical costs to allocate a portion of those costs to HRS wheat. As stated in the Farmer 3 Verification Report, certain chemicals purchased could be used on both HRS and other crops but it was allocated wholly to other crops. Therefore, we included a portion of these chemical costs, as HRS wheat costs for the final determination. See id.

Comment 29: Revenue from Green Barley

The CWB states that the green barley baled and sold to outside parties was not a by-product, but were actually sales of barley. Therefore, sales revenue should not be offset against the cost of barley production in the cost allocation methodology used in the final determination.

The petitioner did not comment on this issue.

Department Position: We agree with the CWB and have eliminated the barley sales revenue from the other crops' costs.

Comment 30: Country Elevator Charges

The CWB states that no change in custom work expense is necessary for the final determination because a revised list of country elevator charges incurred by individual farms from Alberta, Manitoba and Saskatchewan was provided on July 9, 2003.

The petitioner did not comment on this issue.

Department Position: We agree with the CWB and accordingly have not made an adjustment to Farmer 3's custom work expenses related to the country elevator charges in the final determination.

Farmer 4
Comment 31: Imputed Interest Expense

The CWB argues that Farmer 4's imputed interest expense is reasonable and overstates, rather than understates, the reported expenses. The CWB states that to calculate the prime rate used in Farmer 4's imputed interest expense calculation, Farmer 4 used the average monthly rates in effect during the cost reporting period. The CWB notes that in the verification report, the Department stated that if it had calculated the interest rate based on the number of days for which each rate was applicable, the average prime rate calculated would have changed.

The CWB states that it is using information on Farmer 4's affiliated party outstanding loan balances during the cost reporting period obtained from the farmer's general ledger and the daily market interest rates to test the reasonableness of Farmer 4's reported imputed interest expense. The CWB argues that the result of this calculation is lower than the imputed interest expense previously reported to the Department. Therefore, according to the CWB, the only appropriate revision for the final determination would be to use the method that recognizes both the daily interest rate, as well as the respondent's daily loan balance which would result in a reduction of that expense.

The petitioner points out that an analysis of the calculation in the CWB's case brief reveals that there was an apparent error in the CWB's calculation, leading to the unexpected result that the imputed interest expense was lower than that submitted at verification. The petitioner notes specifically that the rate used in the CWB's case brief was incorrect. The petitioner agrees that, other than the interest rate discrepancy, the CWB's methodology in its case brief is more appropriate, except that the beginning balance of the mortgage should also be included.

Department Position: We agree with the petitioner that the CWB used the wrong interest rate in the calculation in its case brief. We recalculated the imputed interest rate, recognizing the correct daily interest rate, and the cost respondent's daily loan balance. We note that our recalculation of interest expense takes into account the beginning balance of the mortgage. See Cost of Production and Constructed Value Adjustments for the Final Determination–Canadian Wheat Board Cost Respondent 4 ("Farmer 4 Final Cost Calculation Memorandum") dated August 28, 2003.

Comment 32: Short-Term Interest Income

The CWB argues that the Department should use Farmer 4's reported short-term interest income as reported. The CWB notes that in the verification report, the Department questioned whether certain short-term interest income claimed by Farmer 4 should be excluded because it related to sales made in a prior year. The CWB notes that Farmer 4 maintains his accounting records on a modified accrual basis and that, under this accounting method, the farmer records his accounts receivable and accounts payable on an accrual basis, but may recognize certain other expenses and income items, including short-term interest income, on a cash basis. The CWB also states that

Farmer 4 uses the cash basis for reporting his farm income and expense to the Canadian tax authorities, and that consistent with both his accounting records and his tax reporting, Farmer 4 recognized the short-term interest income received during the cost reporting period as income during the same period. The CWB argues that this reporting approach is consistent with the reporting of other aperiodic expenses incurred by the farmer. Therefore, according to the CWB, the Department should not exclude this amount from the farmer's reported cost of production.

The petitioner argues that Farmer 4's short-term interest income offset should be disallowed. The petitioner notes that the Department's verifiers found that the interest income offset claimed by Farmer 4 relates entirely to sales made in prior periods by the cost respondent. The petitioner states that while the CWB argues that this interest income does not actually relate to prior years, the CWB should have presented these clarifications at verification and there should be a presumption that it did. The petitioner notes that under this presumption, the verifiers would have arrived at their conclusion taking all these facts into consideration. The petitioner argues that, more importantly, the reason for the exclusion of this interest income offset is not only due to the period during which it was incurred, but because of the nature of the offset as well. The petitioner points out that the verifiers found the interest income in question related to sales and therefore should not be considered for purposes of the cost of production calculations. Therefore, according to the petitioner, the Department should reaffirm its cost verification finding and disallow the claimed interest income offset.

Department Position: We agree with the petitioner. The claimed interest income offset related to sales transactions. The Department requests that interest charges collected on sales for late payment by customers be reported as sales-related information in sections B and C of the questionnaire under Interest Revenue, and not in the section D response as cost data. Therefore, we have disallowed the claimed interest income offset to the interest expenses for Farmer 4.

Comment 33: Overhead Expense Allocation Between Crops

The CWB argues that Farmer 4 properly allocated overhead expenses to hay. The CWB notes that in the verification report, the Department questioned whether Farmer 4 properly allocated overhead between crops and livestock because Farmer 4 treated certain assets used on hay acreage as devoted in whole or in part to livestock. The CWB points out that the Department suggested that it might be appropriate to remove hay acreage from the acres assigned to other crops. The CWB notes that such an adjustment would result in substantially more overhead cost being allocated to HRS wheat. The CWB argues that the adjustment would also result in no overhead costs relating to cropping equipment such as the airseeder, cultivator, sprayer, and fertilizer cart being allocated to hay, despite the fact that this equipment was used for hay production. The CWB asserts that even if the Department assumed all hay costs related to livestock, simply eliminating hay from the relevant acreage for other crops would not result in such cultivation costs for hay being allocated to livestock, but would result in hay cultivation costs being absorbed by other crops including HRS wheat. Therefore, the CWB contends that Farmer 4's approach was reasonable and appropriate and does not distort the relevant HRS wheat cost calculation.

The petitioner did not comment on this issue.

Department Position: As noted in Comment 14 above, Overhead Allocation Methodology, we are not using the CWB's allocation methodology based on asset usage and crop acreage. Therefore, this issue is moot.

Comment 34: Custom Work Costs

The petitioner argues that the Department should adjust Farmer 4's custom work costs for omitted trucking expenses. The petitioner asserts that according to the Farmer 4 Verification Report, Farmer 4 failed to include in its custom work costs the trucking expenses related to shipments of wheat to the elevator during January to June 2001. The petitioner states that the cost verification report contains the information necessary to calculate the relevant amount of these expenses, which the Department should include in custom work costs.

The CWB asserts that, as explained in the verification report, any cost associated with the trucking expenses to the elevator that the petitioner references were borne by the elevator. The CWB argues, therefore, that the trucking cost was not a cost of the farm.

Department Position: We agree with the CWB. At verification we found that the trucking costs in question were paid by the elevator. Therefore, it would not be appropriate to include these expenses in custom work expenses. See Farmer 4 Verification Report.

Comment 35: Land Use Cost

The petitioner argues that the Department should reallocate Farmer 4's land use costs by ignoring the unverified acreage used for other purposes. The petitioner states that the Department was unable to verify pasture acreage used to allocate land use costs as there was no documentation showing the exact acreage of related uncultivated land. The petitioner asserts that the Department must conclude that the acreage figures in question do not represent actual information but are just a guess on the part of the CWB. The petitioner argues that the Department's normal practice is to disallow the allocations or cost offsets calculated based on unverifiable information. The petitioner asserts that the Department therefore should reallocate Farmer 4's land use costs between HRS wheat and other crops, ignoring the unverified acres assigned to livestock.

The CWB argues that Farmer 4 provided certified responses indicating that only a portion of his uncultivated land was used as pasture land. The CWB notes that it did not claim that all of the uncultivated land was used for pasture, but there is no dispute that some of Farmer 4's uncultivated land was used for pasture. The CWB argues that the Department verified both the amount of the uncultivated land and the fact that there were fence repairs on the farmer's land, which would only be relevant to livestock operations. The CWB asserts that while the petitioner proposes that the Department assume no land was used for livestock, nothing on the record supports such an extreme measure. The CWB states that there is no reason to doubt the accuracy

of the cost respondent's claimed allocation between pasture and other uses, and the CWB compared Farmer 4's acreage and herd size to that of other farmers.

Department Position: We agree with the CWB. It is clear from evidence on the record that Farmer 4 owns a certain amount of uncultivated land, at least some of which is used as pasture land. Most of the total acreage can be traced to property tax bills or rental agreements, less planted acres from crop insurance reports. It is clear from the record that Farmer 4 owns livestock that he has to put out to pasture somewhere. The farmer does not keep any record of the amount of land that is unusable for cultivation. As noted in the verification report, the cost respondent explained that the land is unusable because it has old railway beds, sloughs, an old yardsite, and a town lagoon. Therefore, the farmer made a reasonable estimate of the amount of unusable land to derive the amount of pasture land. The only evidence on the record is the total amount of uncultivated land. Because the cost respondent used a smaller amount of land than the total uncultivated acreage as pasture land, the amount of land use costs allocated to livestock is smaller than if the total amount of uncultivated land had been used. As these estimates seem reasonable and there is no other evidence on the record, we have used the land use allocation as presented by Farmer 4.

Comment 36: Machinery Repair Expenses

The petitioner argues that, for Farmer 4, the Department should reverse its reclassification of machinery repair expenses and include the entire balance in variable overhead before allocating it based on direct costs net of livestock acquisition costs and labor costs. The petitioner asserts that Farmer 4, using the same kind of estimates the CWB used in its new methodology for allocation of overhead, allocated machinery repairs costs among different operations, and then between HRS wheat and other crops. The petitioner notes that Farmer 4 allocated two specific amounts to livestock and another business segment. The petitioner urges the Department to remove these amounts from livestock and the other business segment and include them in the total variable overhead before applying the allocation method used in the Preliminary Determinations.

The CWB argues that the Department reviewed Farmer 4's repair and maintenance invoices at verification and confirmed that the amounts attributable to livestock and the other business segment costs were appropriately allocated.

Department Position: We agree with the petitioner. The machinery repair expenses reclassified from overhead to livestock and the other business segment were identified as applicable to these business segments based on the asset being repaired. This reclassification depended on the CWB's estimates of the assets' use. As noted in the Farmer 4 Verification Report, certain of the assets related to the reclassifications were not allocated 100 percent to livestock or the other business segment. Therefore, we have reclassified these expenses back to overhead and allocated them to livestock, crop, and other business segment costs based on the methodology detailed in Comment 14 above, Overhead Allocation Methodology. See Farmer 4 Final Cost Calculation Memorandum for a list of the expenses reclassified from livestock and the other business segment

costs to overhead.

Farmer 5
Comment 37: Depreciation Expense of the Omitted Asset

The petitioner contends that during the cost reporting period, Farmer 5 purchased a piece of equipment which was not included in his tax return. As a result, the depreciation expense of the omitted asset was not included in the reported costs. The petitioner maintains that for the final determination, the Department should include the depreciation expense associated with the omitted asset.

The CWB argues that the payment made for the equipment at issue is the net of an acquisition and a disposal, and has been properly included in the tax return. The depreciation expense included in the reported costs are from the tax returns and, therefore, the depreciation expense associated with the equipment at issue has been included in the reported costs.

Department Position: We agree with the CWB that the depreciation associated with the piece of equipment at issue was included in the reported costs. In the cash receipt and payment statement, the net payment, which was the difference between the acquisition and the disposal value, was registered. However, in the tax return the acquisition and the disposal are shown separately. We reconciled the reported depreciation expense to the tax return. Therefore, for the final determination we made no adjustment to the reported depreciation expense.

Comment 38: Labor Cost for Non-Crop Activity

The petitioner contends that in determining the labor costs associated with non-crop activities, the Department should rely on the verified hours and not on the estimated hours.

The CWB argues that the verified hours at issue were related to the direct labor involved in the non-crop activity for which Farmer 5 billed the customers. According to the CWB, in addition to the direct labor, Farmer 5 also has indirect labor such as transportation of equipment to work-site, set up of machinery, etc. These indirect labor hours were estimated based on the direct labor hours and number of jobs. Therefore, the Department should include the amount of estimated indirect labor in the calculation of labor cost for the non-crop activity.

Department Position: As noted in Comment 21 above, regarding G&A and interest expense denominators, we are not including direct labor cost in the allocation base for G&A and interest expenses. Therefore, this issue is moot.

Farmer 6
Comment 39: Trucking Expense

The CWB argues that trucking deliveries which were unpaid by Farmer 6 should be imputed using

the same rate as the other trucking deliveries which were paid, should the Department elect to make such an adjustment. Specifically, the CWB contends that the Canadian dollar per metric ton (MT) rate as charged by the trucking company on each of the invoices presented at verification is the correct rate. Further, the CWB proposes that this rate be multiplied by the weight in MT net of dockage and shrinkage obtained from the delivery tickets which relate to those shipments.

The petitioner did not comment on this issue.

Department Position: We consider it appropriate to include an amount for the unpaid trucking deliveries. While we agree with the CWB that the Canadian dollar per MT rate paid by Farmer 6 for other shipments is appropriate, we disagree that the amount should be calculated by multiplying the rate by the weight delivered net of shrinkage and dockage. Instead, we are imputing the delivery cost of the wheat by multiplying the rate paid by the gross weights of the deliveries. Calculating an imputed amount for the unpaid shipments by using gross weights is more appropriate because this is the same manner in which the farmer was charged on the invoices he paid.

Farmer 7
Comment 40: Unsupported Corrections to Normal Records

The petitioner asserts that the Department should not reduce Farmer 7's cost for an unsupported error correction. The petitioner claims that to calculate the costs reported to the Department, Farmer 7 reduced the costs reported in his tax return and financial statements to correct for reporting errors in various expense categories. The petitioner points out that neither Farmer 7's tax return nor financial statements were adjusted for this error. Furthermore, the petitioner states that Farmer 7 did not provide any substantiation for the corrections when requested by the Department in its supplemental section D questionnaire response. The petitioner contends that the Department should disallow the corrections and rely on the costs reported in Farmer 7's official financial statements and tax return.

The CWB states that in the supplemental D response, they provided the relevant work papers to support their corrections. The CWB maintains that the Department did not request that they submit all of the invoices supporting all of their costs within the questionnaire response. In fact, the Department only requested that the CWB provide work papers supporting certain adjustments. Furthermore, the CWB states that if the Department had verified Farmer 7 and requested specific invoices, Farmer 7 would have provided copies of any invoices requested.

Department Position: We agree with the CWB and have allowed the error corrections in the reported costs. In its May 16, 2003 supplemental section D questionnaire, the Department asked Farmer 7 to explain several of the adjustments to costs that were reported in his section D response. In his June 2, 2003 supplemental questionnaire response, Farmer 7 provided explanations and worksheets supporting these error corrections. Based on the information

provided, we consider it appropriate to allow the error corrections for the final determination.

Comment 41: Reallocate Fertilizer Costs

The petitioner states that Farmer 7 did not follow his reporting methodology when allocating fertilizer costs between HRS wheat and other crops. The petitioner asserts that Farmer 7 only allocated a portion of the fertilizer costs based on seeded acres; the remaining costs were assigned directly either to HRS wheat or to other crops. The petitioner contends that Farmer 7 offered no additional explanation as to the methodology used to assign fertilizer costs, and, if Farmer 7's total fertilizer costs were allocated in the manner prescribed, the amounts allocated to HRS wheat would have been higher.

The CWB states that Farmer 7 allocated fertilizer costs consistent with the description provided in his responses. The CWB explained three scenarios that applied to the allocation of the cost of fertilizer. First, fertilizer that was used on both wheat and one other crop was allocated to each crop based on the number of seeded acres. Second, the CWB explained that certain fertilizer elements were included in certain fertilizer blends that were used exclusively on other crops, and thus, the full cost of the fertilizer blends was attributed to the other crops. Finally, common fertilizer costs were allocated to all of Farmer 7's crops based on seeded acres. The CWB claims that because Farmer 7 appropriately reported fertilizer costs, no adjustment is warranted.

Department Position: We agree with the CWB that the fertilizer costs were allocated as described in Farmer 7's questionnaire response and have not adjusted the reported fertilizer costs. We examined Farmer 7's June 2, 2003 supplemental questionnaire response, and the fertilizer allocations appear to be reasonable and consistent with the narrative explanation. Therefore, no adjustment is necessary.

Comment 42: Interest Expense Offset

The petitioner states that the Department should disallow Farmer 7's interest income offset because Farmer 7 failed to provide support for the claimed offset. The petitioner points out that Farmer 7 failed to substantiate whether this interest income was short-term in nature despite a request from the Department for such substantiation in its supplemental section D questionnaire response.

The CWB states that Farmer 7 fully cooperated with the Department and provided extensive material in a timely manner. The CWB points out that the Department had the option to verify Farmer 7 and chose not to and, as a result, the Department should not make an adjustment to Farmer 7's interest income offset.

Department Position: We agree with the CWB and have allowed the interest income offset to interest expenses in the reported costs. In his April 21, 2003 questionnaire response, Farmer 7 provided an explanation for this offset. From the information provided, we consider it appropriate

to allow the offset for the final determination.

Comment 43: Capitalization of Costs

The petitioner states that Farmer 7 departed from the accounting practices followed in their normal books and records and capitalized and amortized corporate start-up costs that were entirely expensed on its financial statements and tax returns. The petitioner asserts that section 773(f)(1)(A) of the Act instructs the Department to "rely on the allocations that have been historically used by the exporter or producer, in particular for establishing appropriate amortization and depreciation periods, and allowances for capital expenditures and other developmental costs." The petitioner points out that during the preparation of his financial statements and tax returns, Farmer 7 made reasonable judgments as to the capitalization and expensing of different items. This judgment was exercised in the normal course of business without any prior knowledge of the upcoming antidumping investigation. Furthermore, the petitioner contends that in prior periods, the same type of charges were also likely to have been expensed and, as a result, no amortization expense has been carried forward into the POI.

The CWB states that the Department's treatment of Farmer 7's start-up costs contradicts section 773(f)(1)(A) of the Act. The CWB points out that the costs were incorrectly expensed on the tax return and financial statements, and should have been capitalized under the requirements of both Canadian GAAP and Canadian tax law. The CWB points out that the accountants that prepared Farmer 7's financial statements stated that they had not audited, reviewed or otherwise attempted to verify the accuracy or completeness of Farmer 7's financial information. Furthermore, the CWB claims that treating the start-up costs as a current expense dramatically distorts the calculation of Farmer 7's cost of producing HRS wheat. Finally, the CWB asserts that completely expensing this type of cost is not permitted under U.S. GAAP when it can be shown that the costs benefit more than one period.

Department Position: We agree with the CWB that Farmer 7's costs associated with establishing the corporation should be capitalized in his reported costs. Section 773 (f)(1)(A) of the Act directs the Department to "calculate costs based on the records of the exporter or producer of the merchandise if such records are kept in accordance with the generally accepted accounting principles of the exporting country and reasonably reflect the costs associated with the production and sale of the merchandise. The administrating authority shall consider all available evidence on the proper allocation of costs, including that which is made available by the exporter or producer on a timely basis, if such allocations have been historically used by the exporter or producer, in particular for establishing appropriate amortization and depreciation periods, and allowances for capital expenditures and other development costs." We agree with the CWB that the costs in question were recorded as expenses in the current period in Farmer 7's financial statements and tax return in error. Canadian GAAP states that when future benefits of an intangible asset are reasonably assured, such costs are to be capitalized. Furthermore, Canadian GAAP states that intangible assets should be amortized over their useful life, unless that life is determined to be indefinite. In this case, we agree that the costs associated with establishing the corporation do not

have an indefinite life and should be amortized over a reasonable life. This error distorted Farmer 7's costs of producing HRS wheat. According to the SAA at 834 the Department can consider all available evidence submitted by the exporter or producer on a timely basis regarding the proper allocation of costs, which, in the instant case, is the capitalization and amortization of the costs associated with the establishment of the corporation. We disagree with the petitioner's argument that because Farmer 7's current financial statements and tax return reflect allocations and classifications that have been historically used by Farmer 7, amortization of prior years' start-up costs may have been missed in the cost reporting period. Based on the evidence on the record, the costs in question relate to the creation of formal corporate and partnership structures for Farmer 7 which occurred for the first time during the cost reporting period and did not exist in prior years. Therefore, no amortization of prior costs existed.

Farmer 8
Comment 44: Imputed Seed Cost

The petitioner claims that the bushels of seed estimate reported in the April 21, 2003 questionnaire response is different from the seed estimate in the June 2, 2003 supplemental questionnaire response. The petitioner maintains that the quantity of seed used in the imputed seed cost calculation for Farmer 8 should be based on the bushels reported in accordance with Farmer 8's response to question 1 of the supplemental section D questionnaire.

The CWB did not comment on this issue.

Department Position: We agree with the petitioner that the quantity of seed used for the imputed seed cost calculation should be based on Farmer 8's June 2, 2003 supplemental questionnaire response. We note that Farmer 8 specifically stated the quantity of seed used for the 2001 HRS wheat crop in his supplemental response to question 1. However, Farmer 8 did not adjust the actual calculation to reflect this change. See the CWB's June 2, 2003 supplemental questionnaire response for Farmer 8 at Exhibit 8-A, worksheet D1.B. Thus, for the final determination, we have calculated Farmer 8's imputed seed cost based on the quantity of seed stated in the supplemental response.

Comment 45: Production Quantity

The petitioner argues that Farmer 8 overstated his reported production quantity by including wheat production from the 2000 growing season in his ending inventory for 2001. According to the petitioner, a portion of the wheat seed grown in the 2000 crop year for use in the 2001 crop year remained in inventory at the end of 2001 and thus should be excluded from the 2001 crop year production quantity.

The CWB contends that the year the wheat was grown for use as seed is irrelevant. The CWB contends that to determine production quantity for 2001, Farmer 8 adjusted the sum of deliveries by deducting the opening inventory of crop and seed and adding the ending inventory of crop and

seed on hand before the 2002 harvest.

Department Position: We agree with the CWB that the year in which the wheat was grown to produce seed is irrelevant to the production quantity for the 2001 crop. The production quantity was properly calculated by adjusting the delivered quantity by deducting seed and wheat opening inventory and adding seed and wheat ending inventory. Therefore, for the final determination, we have not adjusted Farmer 8's production quantity.

Comment 46: Offset to Fertilizer Costs

The petitioner contends that Farmer 8's claimed offset to fertilizer costs for an alleged sale should be disallowed for the final determination because there is no supporting documentation. The petitioner maintains that the Department's normal practice is to disallow unsupported cost offsets.

The CWB claims that Farmer 8's sale of fertilizer to a neighbor was fully explained in the supplemental response. The CWB explains that there was no invoice and only the neighbor's cancelled check could have been used as evidence. The CWB asserts that, since the neighbor was away at the time of the supplemental response, the cancelled check was not available. The CWB argues that if the Department had chosen to verify Farmer 8, the check could have been obtained from the neighbor.

Department Position: We agree with the petitioner that the unsupported claimed offset to fertilizer cost should be disallowed. It is the Department's normal practice to disallow offsets to claimed costs if they are unsupported. In regard to the CWB's claim that support (i.e., the cancelled check) could have been provided if the Department had chosen to verify Farmer 8, it is the respondent's responsibility to support its reported costs and offsets, regardless of whether the Department conducts a verification. Therefore, for the final determination, we have disallowed Farmer 8's offset to fertilizer costs for the alleged sale.

Farmer 9
Comment 47: Depreciation Expense

The CWB contends that Farmer 9 has properly allocated the depreciation expense to livestock because during the cost reporting period, this equipment was used to remove and replace a fence line and clear the trees from uncultivated land which was used by the livestock for grazing.

The petitioner did not comment on this issue.

Department Position: As noted in Comment 14 above, overhead allocation methodology, we are not using the CWB's allocation methodology based on asset usage and crop acreage. Therefore, this issue is moot.

Farmer 11

Comment 48: Fixed Assets

The CWB argues that the Department has erroneously proposed to exclude two assets from Farmer 11's fixed overhead ratio allocation calculations. Farmer 11 claims that the fact that the Department could not locate a small number of older assets in either the fixed asset ledger or in the general ledger does not warrant excluding these cattle-related assets from the allocation calculation. The CWB insists that neither reason is sufficient to assume that the assets did not exist during the cost reporting period. The CWB argues that because they have submitted certified responses and representations that these assets existed, and because the Department has not provided evidence that Farmer 11 does not have these assets, the Department therefore has no basis for disregarding them.

The petitioner did not comment on this issue.

Department Position: As noted in Comment 14 above, Overhead Allocation Methodology, we are not using the CWB's allocation methodology based on asset usage and crop acreage. Therefore, this issue is moot.

Comment 49: Land Use Costs

The petitioner claims that Farmer 11's land use costs should be adjusted. First, the petitioner argues that the value for the land the farmer rented from his relative should have been higher to include two payments noted by the Department. Related to that same rental, the petitioner claims that the rent paid was lower than market value despite the lower quality of the land. The petitioner asserts that there were no additional labor costs added for any additional work done to that land to make it usable. The petitioner does not believe that the rental rate which the Department obtained from a third party was actually a fair market value because that third party has business relations with the farmer. The petitioner claims that the source is not impartial, and therefore the Department should use the average of the other two per-acre land rent values to compute a revised land rental cost for the land which Farmer 11 rented from his relative. Additionally, the petitioner notes that because there were two parcels of land with no rental cost, these acres should be excluded from the land use costs allocation ratios.

The CWB argues that because the two payments mentioned by the petitioner were paid in 2002, they should not be added to reported costs. With regard to the amount which Farmer 11 paid to his relative, the CWB maintains that this is an appropriate rental rate. As the farmer explained, the land was of a lower quality and needed to be worked on in order to be usable. The CWB contends that any additional costs of harrowing required during the cost reporting period were minimal. In 2002, the CWB explains, the land rent was adjusted upwards because the land was of a better quality. The CWB asserts that the higher 2002 rental rate was a market rate. Farmer 11 claims that nothing on the record indicates that he has a relationship with the third-party source. However, Farmer 11 explains that the rate is not meant to be a market rate to be included as the cost but rather a comparative figure to support that the actual rental rates are reasonable.

Department Position: We agree with the CWB that the land costs were properly reported. Regarding the plot of land which the farmer rented from a relative, we verified two payments made in 2002. Because these rental fees are from the following year, we did not add these to the land expenses for 2001. We had looked at these payments in order to verify Farmer 11's explanation that the lower per-acre rent during the cost reporting period was later increased to a market price as the land became more usable. As a result, we noted that the 2002 per-acre rental was higher than the 2001 per-acre rental fee.

In testing the reasonableness of the affiliated rent value, we obtained an average market rate for that specific area from an unaffiliated source. While the petitioner argues that this source is affiliated with Farmer 11 because the farmer is a customer, we have not found any evidence to demonstrate that this is the case. In any event, we examined the source document from the unaffiliated source in order to obtain a benchmark for the affiliated rent paid by Farmer 11. The petitioner did not question either of the other affiliated rentals, which were slightly above the benchmark rental rate. We have not adjusted the questioned rental rate because we believe there is sufficient evidence to demonstrate that the rental rate reflected the lower quality of the land. We agree that there were additional labor costs expended on the farm to make the land usable in the following year; however, that particular plot of land produced other crops, and not HRS during the POI. Therefore, we have not added any additional labor expenses for the harrowing to the cost of production.

Regarding the two plots of land with no actual rent paid during the POI, we point to the Farmer 11 Verification Report, where we stated that Farmer 11 performs work on that land. Because he used equipment and labor on that land, we have continued to calculate overall overhead costs including these plots of land in the acreage allocation figures.

Farmer 12
Comment 50: Seed Cleaning Costs

The petitioner notes that Farmer 12 excluded the total seed cleaning expenses from its reported costs claiming that the entire amount was related to seed used for the 2002 crop. The petitioner argues that based on Farmer 12's records, only a portion of the seed cleaning expenses could be related to the seed left for the 2002 crop. Thus, the remaining amount should be added back to the reported costs.

The CWB claims that the seed cleaning costs in question were incurred in December 2001 and therefore, relate exclusively to the 2002 crop. Accordingly, these costs should not be included in the reported costs.

Department Position: We agree with the CWB. Information on the record shows that the total seed cleaning expense was incurred at the end of December 2001. See the CWB's June 2, 2003 cost of production supplemental questionnaire response for Farmer 12 at Exhibit B-6. According to information on the record, the wheat planting season is typically April to June depending on

weather conditions. See the CWB's April 21, 2003 cost of production questionnaire response for Farmer 11 at page 5. Thus, based on the fact that the seed cleaning cost was incurred at the end of the year, it is reasonable to believe that the farmer incurred the seed cleaning cost at issue in preparing for the upcoming farming season (i.e., cleaning seed that will be used as crop for the year 2002). Thus, the Department did not include the seed cleaning cost in the farmer's reported costs.

Comment 51: Production Quantity

The petitioner argues that Farmer 12 overstated its production quantity (i.e., own seed used) and the Department should adjust the reported production quantity in the final determination.

The CWB did not contest the change proposed by the petitioner.

Department Position: We agree with the petitioner. Information on the record demonstrates that Farmer 12 overstated the reported production quantity by inadvertently overstating the quantity of seed maintained in its ending inventory and used for the 2002 growing season. See the CWB's June 2, 2003 cost of production supplemental questionnaire response for Farmer 12 at page 12-5. We have decreased Farmer 12's production quantity for the final determination accordingly.

Comment 52: Custom Work Costs

The petitioner argues that the Farmer 12's custom work cost calculation was based on contradictory statements and unsupported information (i.e., grain hauling service provided by an affiliated party). Specifically, the petitioner points out that the grain hauling rates used in the custom work cost calculation varied and that the CWB did not provide support or an explanation for either the rates or quantities. Further, according to the petitioner, Farmer 12 removed a particular transaction from the custom work cost in its supplemental response without any explanation. Therefore, the petitioner asserts that the Department cannot rely on the submitted calculation and should resort to facts available. If the Department does not resort to total facts available, the petitioner suggests that the Department should adjust these costs by 1) including the removed transaction in the reported costs and 2) using the highest reported grain hauling rate on the record.

According to the CWB, the petitioner's claim that the reported custom work cost calculation was based on "contradictory statements and unsupported information" is simply not true. The CWB argues that the petitioner assumes that Farmer 12 used different valuation methods to value grain hauling services. However, this was not the case. The value of grain hauling performed by an affiliated party was valued at the market rate based on similar custom hauling services provided by the affiliate to unaffiliated third parties. The CWB asserts that Farmer 12 properly valued the service provided by the affiliated party. The CWB further argues that the use of various grain hauling rates was simply due to the grain being hauled to different locations. Lastly, the CWB asserts that the transaction in question was correctly omitted from Farmer 12's revised cost

response as it was originally reported in error.

Department Position: We agree with the CWB in part. First, the Department reviewed record information and noted that the CWB's statements made with respect to the custom work valuation were not contradictory. As stated by the CWB, each statement made was related to different aspects of the custom work calculation. For example, one statement explained how Farmer 12 determined the market value for grain hauling services performed by its affiliated party. Another statement explained how Farmer 12 determined a value for the trailer used by its affiliated party. Second, according to the CWB, the use of various grain hauling rates was due to transporting the grain to different locations. In general, the transportation costs increase with distance. Thus, it is reasonable that the transportation charge for grain would vary by location. Further, the CWB provided supporting documents illustrating the transported quantities for certain items in the calculation sheet. Therefore, it is reasonable to conclude that the rates and the quantities presented in the calculation sheet are reliable because they are supported by documentation. Lastly, the CWB contends that the transactions in question were correctly omitted from the revised cost response since they were originally reported in error. However, we note that the CWB did not remove this item until its latest supplemental questionnaire response dated June 2, 2003. In this response, the CWB failed to fully explain or provide supporting documentation for the claimed error. Thus, we have included the omitted item in Farmer 12's reported costs for the final determination.

Comment 53: Interest Charge on a Trade Payable Account

The petitioner argues that Farmer 12 failed to include interest charges on a trade payable (i.e., interest charges related to a material purchase) in his reported costs. The petitioner asserts that the interest charges on accounts payable should be added to the related material expense and not to the company-wide interest expense rate calculation for the final determination.

The CWB argues that the interest expense at issue was paid in 2002 and was properly excluded from Farmer 12's reported costs. The CWB suggests that if the Department deems it appropriate to include the interest expense in Farmer 12's reported costs, it should be included in the interest expense and not in the direct materials costs.

Department Position: We agree with the petitioner in part. During the POI, Farmer 12 purchased fertilizers and incurred interest charges on accounts payable related to these purchases. The Department reviewed the information on the record and determined that the excluded interest charges relate to the POI fertilizer purchases. As such, it is appropriate to include these charges in the reported POI costs. Due to the fungibility of money, the Department normally includes all interest expense amounts incurred in the interest expense rate computation regardless of the activity generating such costs. Accordingly, the Department has included these interest charges in the interest rate calculation for the final determination.

Farmer 14

Comment 54: Overstatement of Other Crop Costs

The petitioner states that Farmer 14 overstated the cost of seed used for other crops. The petitioner asserts that because common costs were allocated based on total cost of goods sold, the overstatement of costs for other crops results in more common costs, such as G&A and overhead, being allocated to other crops and less common costs being allocated to HRS wheat. The petitioner claims that Farmer 14 did not provide support for its other crops' seed costs and used an imputed cost. The petitioner contends that the Department should not consider these unsubstantiated imputed seed costs in the costs of other crops used for the allocation of G&A and overhead expenses. Specifically, the petitioner contends that Farmer 14 overstated the imputed value of seed used for other crops by applying the price of HRS wheat seed and not a price of the other crops' seed. Lastly, the petitioner claims that Farmer 14 made an error in calculating the acreage seeded.

The CWB states that the seed costs for the other crops came directly from Farmer 14's tax return and was not imputed or estimated. The CWB claims that any difference in the seeding rates for other crops can be assumed to be confined to the seeding rates for other crops, with no impact on reported costs of HRS wheat. The CWB contends that the petitioner's challenge to the reported cost of other crops' seed is based on their claim that such seed on a per bushel basis is less expensive than wheat seed, but the petitioner does not consider the fact that the conversion rate for wheat seed to bushels is different than the conversion rate of other crops' seed to bushels, making a cost per bushel comparison between wheat and other crops incompatible. The CWB agrees that Farmer 14 made an error in calculating the acreage seeded on an uncollapsed basis and an adjustment should be made to reflect only Farmer 14's acres.

Department Position: We agree with the CWB and the petitioner that the acres used to determine the other crops' seed cost were overstated. For the final determination, we adjusted the acres seeded in the calculation of the imputed other crop seed cost to include only Farmer 14's seeded acreage. We agree with the CWB that no further adjustment to the actual costs and imputed costs of seed is necessary. The actual costs and imputed costs and rates for the other crops were substantiated by evidence on the record. The actual costs used for other crops' seed costs tied directly to Farmer 14's tax return. In addition, the seeding rates and seed costs for the other crops used to impute costs for all farmers were examined during the Department's cost verifications. Therefore, for the final determination, no additional adjustment to Farmer 14's reported other crops' seed costs is necessary.

Comment 55: Understatement of Fertilizer Costs

The petitioner states that Farmer 14 used an unsubstantiated estimate for the cost of fertilizer purchased in 2001 for the 2002 crop year and subtracted this amount from the fertilizer costs reported to the Department. The petitioner claims that this estimate was clearly overstated when compared to prior year's purchases.

The CWB states that the amount of fertilizer bought in a prior period for the 2002 crop was not an estimate and is clearly shown on the record. Furthermore, the CWB points out that the purchase was made in the winter, close to three months after the harvest of the 2001 crop, and therefore, it was clearly not for the 2001 crop.

Department Position: We agree with the CWB. Evidence on the record supports the adjustment to fertilizer purchases in 2001 for purchases that relate to the 2002 crop year. For the final determination, no adjustment to Farmer 14's reported fertilizer costs is necessary.

Comment 56: Overhead Adjustment

The CWB points out that the adjustment the Department made in the Preliminary Determinations to increase variable overhead was related to Farmer 14's collapsed entity. Because Farmer 14 submitted uncollapsed information after the Preliminary Determinations, this adjustment to variable overhead is not necessary for the final determination.

The petitioner did not comment on this issue.

Department Position: We agree with the CWB and have eliminated the adjustment made in the Preliminary Determinations to increase Farmer 14's variable overhead.

Comment 57: Interest Expense

The CWB points out that the adjustment the Department made in the Preliminary Determinations to increase interest expense was related to Farmer 14's collapsed entity. Because Farmer 14 submitted uncollapsed information after the Preliminary Determinations, this adjustment to interest expense is not necessary for the final determination.

The petitioner did not comment on this issue.

Department Position: We agree with the CWB and have eliminated the adjustment made in the Preliminary Determinations to increase Farmer 14's interest expense.

Comment 58: G&A Expense

The CWB points out that the adjustment the Department made in the Preliminary Determinations to increase G&A expenses for the deduction of GST taxes twice was corrected in Farmer 14's supplemental section D response and, therefore, this adjustment to G&A expenses is not necessary for the final determination.

The petitioner did not comment on this issue.

Department Position: We agree with the CWB and for the final determination have not made an

adjustment to Farmer 14's G&A costs related to the GST tax.

Farmer 15
Comment 59: Tax Return Errors

The petitioner states that Farmer 15 reduced his cost by what he claimed were corrections to errors found in his normal books and records in the course of preparing the section D response. The petitioner argues that these allegedly incorrect amounts were amounts that Farmer 15 reported in his official tax return which reduced taxable income. The petitioner states that the tax return represents a crucial part of a respondent's normal records, and in the absence of financial statements, are relied upon by the Department in its verification of the reported costs. The petitioner further claims that Farmer 15 did not provide any documents that would cause the Department to doubt the accuracy of the figures in the tax return. Therefore, the petitioner concludes that the Department should rely on Farmer 15's tax return and disallow these downward adjustments to the costs.

The CWB states that in preparing the responses to the Department's questionnaires, Farmer 15 undertook a meticulous review of all farm and personal records to ensure that all costs were properly captured. Farmer 15 stated that in some cases, costs not recorded in Farmer 15's tax returns were included, and in other cases, costs on tax returns were corrected or reclassified. According to the CWB, these corrections were made to ensure the greatest possible accuracy of the responses and to ensure that all responses could be fully verified. The CWB argues that in some cases those corrections reduced costs, and in other cases, the corrections increased costs.

Department Position: We disagree with the petitioner. In the course of preparing the questionnaire response, Farmer 15 found that some of his expenses were double counted in his tax return. Other adjustments were made due to timing differences (i.e., to exclude expenses incurred in the 2001 tax year that relate to the 2002 tax year, and to include expenses incurred in the 2000 tax year that related to the 2001 tax year). Farmer 15 provided cost ledgers on which the tax returns were based. The expenses in the ledgers were grouped together in various categories (i.e., fertilizers, pesticides and insurance expense) and then recorded in the farmer's tax return. Farmer 15 listed each of the expenses that were double counted in his tax return. See supplemental section D questionnaire response at Exhibit A, worksheets D-2 and D-2a. Farmer 15 demonstrated that the expenses at issue were double counted in his tax return based upon an examination of the ledger. We consider the adjustments made by Farmer 15 to the expenses reported on his tax return reasonable in light of the facts and circumstances surrounding them.

Comment 60: Omitted Expenses

The petitioner claims that Farmer 15 made two types of adjusting entries to the costs reported in his tax return: reclassification and adjusting entries. According to the petitioner, Farmer 15 states that he reclassified an amount from chemical expense to custom work. The petitioner argues, however, that the actual reclassifying entries made by Farmer 15 did not include this entry.

Instead, the petitioner claims that the entry was included among the adjustments reducing the chemical costs without a corresponding increase in the custom work costs. Therefore, the petitioner asserts that the Department should increase Farmer 15's custom work costs by the omitted costs.

The CWB claims that no error was made and that the reclassification of the reported costs was applied correctly.

Department Position: We agree with the CWB that no error was made. Farmer 15 made both reclassification entries and adjusting entries to reconcile its tax return to the reported costs. A careful review of the calculation of each reclassification amount shows that Farmer 15 correctly reclassified an amount from chemical expense to custom work. Contrary to the petitioner's assertion, no additional adjustment reducing chemical costs further is necessary for the final determination.

Comment 61: Livestock Costs

The petitioner states that Farmer 15 consumed some of his cattle. Therefore, the petitioner argues that the livestock cost related to these cattle represent personal expenses paid by the farm on behalf of the farmer. Thus, the petitioner argues that in its final determination, the Department should reduce Farmer 15's livestock costs for the farmer's personal expenses by the percentage that the consumed cattle represents of the total cattle raised.

The CWB argues that the petitioner is trying to reduce Farmer 15's livestock costs in an attempt to indirectly increase any resulting allocations to HRS wheat. The CWB maintains that such an approach would defy common sense and reality as it would increase HRS wheat costs because the farmer consumed two cattle from his livestock operations. The CWB claims that the two animals in question did represent part of the return the farmer drew out of his livestock operations. The CWB notes that the fact that Farmer 15 consumed the animals did not decrease his livestock costs or increase his HRS costs. Finally, the CWB maintains that the sustenance the farmer derived cannot be considered a wage, but instead a general return, in effect, for living expenses from the ownership of the farm.

Department Position: We agree with the CWB that the livestock costs should not be decreased. Expenses were incurred to raise the livestock just as they were incurred to grow HRS wheat. The fact that the farmer consumed two of his cattle does not reduce the expenses incurred in raising the livestock and would not increase the costs of HRS wheat. Finally, we disagree with the CWB's argument that the consumption of the two cattle does not represent compensation to the farmer. However, because the total of this farmer's actual compensation, including the estimated value of these two cows, is less than this farmer's imputed amount, we used the imputed labor amount for the final determination. See Comment 12.

Farmer 16

Comment 62: Input Values for Seed, Fertilizer, and Chemicals

The CWB presents two separate arguments in support of its position that the input values for seed, fertilizer, and chemicals should not be adjusted. First, the CWB asserts that to value the inputs of seed, fertilizer, and chemicals based on the higher of transfer price or market value is incorrect and that the real issue is the uncollapsed structure of the two farms. Farmer 16 contends that the input value issues arise because Farmer 16 is not collapsed with the affiliated party, from whom he received the inputs. The Department requested that Farmer 16 and his affiliated party segregate their farming operations because both farmers had separate CWB permit numbers. Farmer 16 asserts that his segregated reported farm costs represented imputed costs from public sources rather than actual costs incurred. Moreover, because Farmer 16 utilized both affiliated party equipment and labor, he relied on custom work rates which were inflated by a 15 percent profit rate. As a result of these distortions, Farmer 16 asserts that the Department should recognize the interrelationship of the farm operations of Farmer 16 and his affiliated party and for the final determination, collapse the operations of these farmers.

If Farmer 16 and his affiliated party continue to be treated as separate entities, the second argument presented by the CWB is that Farmer 16's affiliated party is not in the business of producing, trading, or selling seed, fertilizer, or chemicals. During the cost reporting period, the affiliated party purchased all of the seed, fertilizer, and chemicals used on both farms. At year end, the affiliated party and Farmer 16 determined the value of the inputs that the affiliated party provided to Farmer 16. Therefore, the CWB asserts that the invoice transaction between the affiliated party and Farmer 16 represented Framer 16's proportional share of the input costs related to his farm and not a formal transaction between two affiliated corporate entities

The petitioner contends that the higher of transfer price or market value should be incorporated in the imputed seed and fertilizer cost calculations. The petitioner asserts that section 773(f)(2) of the Act does not distinguish between the different kinds of affiliated parties (i.e., corporate versus individual). Moreover, the petitioner maintains that even though the affiliated party is not in the business of producing or selling these inputs, the reality of the transaction is that Farmer 16's affiliated party purchased certain inputs at one price and re-sold them to Farmer 16 at a different price. The petitioner maintains that the transaction between Farmer 16 and the affiliated party was a sale between two affiliated parties and subject to section 773(f)(2) of the Act.

Department Position: We agree with the petitioner that the higher of transfer price or market price should be used to value the inputs Farmer 16 obtained from his affiliated party. Because the calculated market value exceeded the transfer price between affiliates, we adjusted the reported costs to reflect the market value.

Comment 63: Cost Allocation Basis

The CWB states that Farmer 16 incorrectly excluded veterinary and feed costs from the reported cattle-specific costs. Therefore, the Department should include these costs in any cost allocation

performed for the final determination.

The petitioner did not comment on this issue.

Department Position: We agree with the CWB and have included these cattle-specific costs in the cost allocations for the final determination.

Farmer 17
Comment 64: Omitted Actual Labor Cost

The petitioner states that Farmer 17 excluded from custom work expenses the wages paid to an employee. The petitioner claims that Farmer 17 intended to add this amount to actual labor costs but that the calculation did not include wages classified as custom work. The petitioner asserts that actual labor costs paid by Farmer 17 are relevant because they are likely to exceed the imputed labor cost. Therefore, the petitioner urges the Department to increase Farmer 17's actual labor cost for the wages that were classified as custom work.

The CWB agrees with the petitioner that the referenced labor cost should have been included in the reported paid labor. However, the CWB argues that it was appropriate to rely on the imputed labor costs for Farmer 17 and the error had no impact on the calculated cost of HRS wheat.

Department Position: We agree with both the petitioner and the CWB that the wages from custom work should be included as actual wages. For further detail regarding imputed labor, see Comment 12. For the final determination, we included the omitted custom work wages in the actual labor costs.

Farmer 19
Comment 65: Imputed Seed Costs

The petitioner contends that the Department should increase Farmer 19's reported costs to include an imputed amount for self-grown seed that, contrary to the farmer's claims, was excluded. The petitioner argues that this farmer's seeding rate, when compared to that of Farmer 20, does not accurately reflect both purchased and self-grown seed. Furthermore, the petitioner argues that during the cost verification the Department noted that the seed rate was based on statements made by company officials. These statements, according to the petitioner, cannot be relied on for the final determination. The petitioner recommends that the Department calculate Farmer 19's seed costs using Farmer 20's seeding rate at Farmer 19's actual costs.

The CWB does not dispute that Farmer 19's reported costs should be corrected to include the cost of self-grown seed. However, the CWB disagrees with the petitioner's suggestion that the Department use Farmer 20's seeding rate to determine Farmer 19's seed costs. Farmer 20 uses irrigation and consequently employs a higher seeding rate than a non-irrigated farm like Farmer 19. The CWB also disagrees with the petitioner's suggestion that the cost for purchased certified

seed should be used for self-grown common seed. The CWB claims that record evidence shows that the seeding rate was lower on the acres where certified seed was planted than on the acres where self-grown seed was used. Because Farmer 19 did not mix certified and self-grown seed on the same acres, the CWB concludes that there is no basis for the petitioner to dispute the seeding rate on the acres where certified seed was planted. Furthermore, the CWB contends that, given Farmer 19's seeding rate on acres planted with certified seed, the seeding rate claimed by Farmer 19 on the acres planted with self-grown seed was reasonable. The CWB points out that the Department verified the seed usage and seeding rates and found no cause to question the reported seeding rate. See Farmer 19 Verification Report at pages 8-9.

Department Position: We agree with both the petitioner and the CWB and have adjusted Farmer 19's seed costs to include the cost of self-grown seed. See Comment 11 regarding seed costs.

Comment 66: Depreciation Should be Included in Fixed Overhead

The CWB asserts that the Department should apply the Capital Cost Allowance ("CCA") tax depreciation method for computing the fixed overhead cost for Farmer 19 and all other applicable producers. The CWB argues that for those producers that do not prepare financial statements, the CCA tax depreciation method is the only option for reporting depreciation expense (i.e., fixed overhead). The CWB points to the cost verification reports for Farmers 19 and 25 concluding that the Department has accepted the CCA tax depreciation method for the calculation of fixed overhead expenses. See Farmer 25 Verification Report at page 18 and Farmer 19 Verification Report at page 7.

The petitioner did not comment on this issue.

Department Position: We agree with the CWB and have calculated Farmer 19's fixed overhead cost using the CCA tax depreciation method. We note that Farmer 19 had not included depreciation expenses in its reported costs. See Farmer 19 Verification Report at page 2, finding 6. For purposes of the final determination, we included depreciation expenses, based on the CCA tax depreciation method, in our calculation of fixed overhead for Farmer 19.

Comment 67: Revised Cash Ticket Analysis is Correctly Reported

The CWB asserts that the revised cash ticket analysis is correctly reported for Farmer 19. The CWB argues that no adjustment to account for Farmer 19's previously excluded freight charges is necessary because this correction was made in the CWB's July 9, 2002, submission concerning revised sales adjustments.

The petitioner did not comment on this issue.

Department Position: We agree with the CWB and have used the revised sales adjustments as reported in the CWB's July 9, 2003 submission.

Comment 68: Crop Insurance Profit Factor and Recoveries Should be Recalculated

The CWB contends that the Department must update the crop insurance profit rate (and the offset to HRS wheat costs) to reflect all changes made to the cost of production submitted by Farmer 19 at the start of verification or as a result of other changes made by the Department.

The petitioner did not comment on this issue.

Department Position: We agree with the CWB and have revised the calculation of Farmer 19's crop insurance profit rate to reflect all adjustments that we made to Farmer 19's reported COP. See Comment 19 regarding crop insurance.

Farmer 21
Comment 69: Fertilizer and Chemical Costs

The petitioner asserts the Department should use the actual fertilizer and seed costs reported in Farmer 21's tax return. The petitioner points out that if the adjustment the CWB made was actually due to double-counting of invoices, then it would be reasonable to think one or more specific invoices that were double-counted would equal an invoice or combination of invoices provided in the complete set of invoices submitted. The petitioner argues that Farmer 21 submitted only the invoices he was able to locate and simply guessed that the difference between the actual invoices and the costs reported on the tax return was due to double-counting. The petitioner notes that in absence of financial statements the tax return of the respondent becomes the official books and records.

The CWB argues that Farmer 21 reported to the Department accurate costs for the fertilizer and seed. The CWB states that in preparation of the response to the Department, an error was found in the costs reported for tax purposes. The CWB points out that all invoices provided to the Department were from one supplier and that Farmer 21 confirmed with the supplier that there were no other purchases of fertilizer or chemicals during the POI. According to the CWB, the information on the record supports the adjustments made by Farmer 21 and provides the Department with the basis to allow the adjustments to the fertilizer and chemical costs.

Department Position: The Department agrees with the petitioner that the adjustments to the fertilizer and chemical costs should not be allowed. It is the Department's practice to calculate costs in accordance with section 773 (f)(1)(A) of the Act, which states that costs should be calculated based on the normal records of the producer "if such records are kept in accordance with generally accepted accounting principles of the exporting country and reasonably reflect the costs associated with the production and sale of the merchandise." It is the Department's position in this case that because Farmer 21 does not prepare audited financial statements, the farm tax return is considered the "normal records." See Lug Nuts from Taiwan. The Department requested additional information in its supplemental section D questionnaire as to the double counting error. See Farmer 21's supplemental section D questionnaire response at question 6.

The CWB's response to the supplemental section D questionnaire failed to explain the claimed double counting error in its response. Therefore, we have included the full amount of the expenses recorded in Farmer 21's tax return in the revised costs.

Comment 70: Capitalization of Costs

The petitioner states that Farmer 21 departed from the accounting practices followed in his normal books and records and capitalized and amortized tractor repairs that were entirely expensed on his tax return. The petitioner asserts that section 773(f)(1)(A) of the Act instructs the Department to "rely on the allocations that have been historically used by the exporter or producer, in particular for establishing appropriate amortization and depreciation periods, and allowances for capital expenditures and other developmental costs." The petitioner points out that during the preparation of his tax return, Farmer 21 made reasonable judgments about the capitalization and expensing of different items. This judgment was exercised in the normal course of business without any prior knowledge of the upcoming antidumping investigation. Furthermore, the petitioner contends that in prior periods, the same type of repairs were likely to have also been expensed, and as a result, no depreciation expense has been carried forward into the POI.

The CWB states that the Department's treatment of Farmer 21's major repairs on his tractor engine contradicts section 773(f)(1)(A) of the Act. The CWB points out that the costs were incorrectly expensed on Farmer 21's tax returns and financial statements and should have been capitalized under the requirements of both Canadian GAAP and Canadian tax law. The CWB claims that treating the repairs as a current expense dramatically distorts the calculation of Farmer 21's cost of producing HRS wheat. Finally, the CWB maintains that completely expensing these costs is not permitted under U.S. GAAP when it can be shown that the costs benefit more than one period.

Department Position: We agree with the CWB that Farmer 21's replacement of his tractor engine represents a substantial investment in relation to the total value of the tractor and should be capitalized in his reported costs. Section 773(f)(1)(A) of the Act directs the Department to "calculate costs based on the records of the exporter or producer of the merchandise if such records are kept in accordance with the generally accepted accounting principles of the exporting country ... and reasonably reflect the costs associated with the production and sale of the merchandise. The administrating authority shall consider all available evidence on the proper allocation of costs, including that which is made available by the exporter or producer on a timely basis, if such allocations have been historically used by the exporter or producer, in particular for establishing appropriate amortization and depreciation periods, and allowances for capital expenditures and other development costs." We agree with the CWB that the repairs were recorded as expenses in the current period on Farmer 21's tax return in error. According to Canadian tax law CCA Interpretation bulletin IT-128R "but where the engine itself is replaced, the expenditure not only is for a separate marketable asset but also is apt to be very substantial in relation to the total value of the property of which the engine forms a part, and, if so, the expenditure likely would be regarded as capital in nature." Additionally, both Canadian GAAP

and U.S. GAAP require that improvements that enhance the service potential of a capital asset be capitalized. It is evident from the information on the record that Farmer 21's tractor engine replacement is substantial in amount, and meets the requirements of a capital expenditure. According to the SAA at 834 the Department can consider all available evidence submitted by the exporter or producer on a timely basis regarding the proper allocation of costs, which in the instant case is the capitalization and depreciation of the tractor engine replacement. We disagree with the petitioner's argument that Farmer 21's current tax return reflects allocations that have been historically used by Farmer 21. Based on the evidence on the record, the repairs expense in the prior year was insignificant, indicating that historically, Farmer 21 appears to have followed the Canadian tax law and Canadian GAAP and properly capitalized major repairs such as the tractor engine replacement.

Comment 71: Costs Not Associated With the Farmers' Livestock Operations

The petitioner claims that Farmer 21 overstated his livestock costs by including costs that were not associated with his livestock operations. The petitioner states that the livestock cost for cattle not owned by Farmer 21 should be excluded from his reported livestock costs. See Final Determination Cost Calculation Memorandum for a discussion on the nature of the livestock not owned by Farmer 21.

The CWB argues that the costs associated with raising the cattle in question were included in the cost of the farm on Farmer 21's tax return. The CWB notes that if the costs associated with raising the cattle in question were excluded, the effect would be an increase in the costs allocated to HRS wheat and other crops, even though the livestock costs are in no way associated with HRS wheat or other crops.

Department Position: The Department agrees with the CWB that to exclude the costs associated with raising the livestock in question would unjustly shift costs from livestock to crop production. The costs associated with the cattle in question are included in the costs of the farm and as such should be included with the livestock costs.

Farmer 22
Comment 72: Overhead Allocations, New Factual Information

The petitioner argues that the Department should reject revised overhead allocation calculations for Farmer 22 which were submitted at verification as representing new factual information. The petitioner notes that at the cost verification, Farmer 22 submitted as minor corrections revised allocation calculations. The petitioner states that unlike other farmers, Farmer 22 did not submit this revised allocation calculation in the June 2, 2003 supplemental response because he had not provided an equipment listing to the accountants preparing the calculations. The petitioner notes that this list of fixed assets Farmer 22 used in his operations, their values, and estimated usages, serves as the basis for the new allocation calculations. The petitioner argues that this is new factual information as defined under 19 CFR 351.301(b)(1). The petitioner asserts that other

farmers who revised their allocation calculations submitted those revised calculations on June 2, 2003, within the statutory deadline. The petitioner argues that, therefore, the Department should reject Farmer 22's revised allocation calculations submitted at verification on the grounds that they represent new factual information.

The CWB asserts that Farmer 22 made great efforts to respond to the Department's requests for information in the time required. The CWB notes that given the late date of the HRS cost initiation and notwithstanding the complexity of the case, the Department had almost no time beyond the minimum time required to allow for questionnaire responses. The CWB notes that it accommodated the Department's constraints and did not seek extensions on farmer-specific data requests. The CWB states that it continually sought to correct and refine the data submitted to make the farmer representations as transparent and verifiable as possible. The CWB argues that under the circumstances, the Department should exercise discretion to accept the data supporting the overhead allocation because it was the same methodology employed for other cost respondents, it was submitted in advance of verification of Farmer 22 and the overhead allocations were verified by the Department.

Department Position: Because we are not using the overhead allocation methodology based on asset usage, as discussed in Comment 14 above, Overhead Allocation Methodology, this issue is moot.

Farmer 23
Comment 73 : G&A Expenses

The CWB states that Farmer 23's reported G&A expenses include accounting fees related to the 2000 fiscal year and requests that the Department revise the G&A expenses for this overstatement.

The petitioner did not comment on this issue.

Department Position: We agree with the CWB. During Farmer 23's cost verification, the Department verified that the reported G&A expenses include the accounting fees for fiscal years 2000 and 2001. Therefore, the reported G&A expenses are overstated by the fiscal year 2000 accounting fees. Consequently, we have revised G&A expenses for this error in the final determination.

Comment 74: Production Quantities

The petitioner argues that only the verified production quantities should be used to calculate Farmer 23's per-unit COP. Referencing the Farmer 23 Verification Report, the petitioner notes that the Department was unable to verify the ending inventory quantity. Ending inventory was composed of deliveries taking place in 2002, inventory still on hand on July 31, 2002, and inventory fed to livestock. In particular, the petitioner states that the quantity fed to livestock was based solely on Farmer 23's estimate for crop insurance reporting purposes. Furthermore, the

petitioner claims that Farmer 23 attempted to support the submitted production quantity by accepting some figures but rejecting others from the same crop insurance report, thus calling into question his credibility and the validity of the report. The petitioner states that the reported production quantity should be replaced with the total production quantity from the crop insurance report if the Department determines that the reports are reliable. However, if the reports cannot be relied upon, the claimed quantity fed to livestock should also be disregarded. In which case, the petitioner recommends that the Department rely on the delivered quantities of HRS wheat only.

The CWB does not contest the use of the total production quantity from the crop insurance report. However, the CWB contends that the production quantity reported as internally consumed was for substandard wheat and was accurately reported to the Department.

Department Position: We agree with the petitioner and have adjusted the reported production quantity to reflect the verified quantity. During the cost verification, the farmer was unable to substantiate the submitted production quantity. However, we note that the petitioner's claims regarding the crop insurance reports are somewhat inaccurate. The total production quantity and the internally consumed quantity were actually from separate crop insurance reports. The total production quantity was based on an estimate made by Farmer 23's insurance agent soon after the 2001 harvest, while the internally consumed quantity was based on an estimate by Farmer 23. It was unclear whether the agent's estimate of the total production quantity included the internally consumed figures. Regardless, Farmer 23 was unable to reconcile the difference between the reported production quantity and the 2001 production quantity from the crop insurance report. Therefore, we have adjusted the reported production quantity to reflect the total 2001 production quantity from the crop insurance report.

Farmer 26
Comment 75: Exclusion of the 2000 Seed from the 2001 Production Quantity

The petitioner asserts that according to the 2001 seed cleaning invoices, a portion of the 2001 cleaned seed related to the 2000 crop year and remained in the 2001 ending inventory. The petitioner states that the Department should reduce Farmer 26's 2001 production quantity by the cleaned seed from the 2000 crop year included in the ending inventory quantity.

The CWB asserts that the petitioner miscalculated the amount of seed related to 2000. One of the invoices used in the petitioner's calculation related to December 2001. The CWB also states that a portion of the 2000 cleaned seed was used on another farm. In addition, the CWB contends that Farmer 26 cleaned seed for both the 2001 and 2002 crop years. Therefore, Farmer 26 states that the seed cleaning invoices do not provide any support that there was an erroneous carryover of seed from the 2000 crop year in ending inventory.

Department Position: We agree with the CWB. The petitioner erroneously calculated the cleaned seed quantity from the 2000 crop year. The second seed cleaning invoice related to the 2001 crop year. In 2001, Farmer 26 cleaned seed for his farm and an affiliated party's farm. Therefore,

Farmer 26's seed consumption cannot be directly correlated to the quantity of seed cleaned. For the final determination, we did not lower the 2001 production quantity by the cleaned seed quantity purportedly related to the 2000 crop year.

Comment 76: Improper Allocation of the Cost of Chemicals

The petitioner maintains that Farmer 26 was unable to provide evidence to support the allocation of two specific chemical costs solely to other crops. Because the public source that was provided as evidence was a web-based public document and referenced wheat, the petitioner contends that the Department should reallocate these costs based on the probable rather than Farmer 26's claimed use of each chemical. As such, the petitioner contends that the Department should allocate the disputed chemical costs to wheat production.

The CWB argues that based on farmer representations and invoices, Farmer 26 properly allocated certain chemicals solely to other crops.

Department Position: We disagree with the petitioner. During verification, we reviewed numerous invoices and had discussions with Farmer 26 about chemical usage and associated crops. Farmer 26 stated that the two chemicals in question were used on non-HRS wheat crops and we verified these statements through the review of actual invoices. See Farmer 26 Verification Report at IV.A.3.a. Furthermore, there is no information on the record that contradicts the statements made by Farmer 26. For the final determination, we will continue to assign the two chemicals solely to other crops.

RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above positions and adjusting all related margin calculations accordingly. If these recommendations are accepted, we will publish the final determinations of these investigations in the Federal Register.

Agree_____ Disagree_____

_____

James J. Jochum
Assistant Secretary
for Import Administration

_____

(Date)