

EXPLANATION OF COMMISSION DETERMINATION ON ADEQUACY

in

Live Swine from Canada,
Inv. No. 701-TA-224 (Review)

On March 5, 1999, the Commission determined that it should proceed to a full review of the outstanding countervailing duty order on live swine from Canada pursuant to section 751(c)(5) of the Tariff Act of 1930, as amended.¹

The National Pork Producers Council (NPPC) was the sole domestic interested party to respond to the notice of institution. In its response, NPPC stated that its 44 affiliated state associations collectively account for 85,000 domestic swine producers. NPPC further stated that it could not provide “a list of known and currently operating U.S. producers of the Domestic Like Product,” as requested by the notice of institution, and that the producers it and its affiliated state associations represent were too numerous to identify individually.

Commission rule 207.61(c) states that when an interested party cannot furnish information requested in a notice of institution, it must “notify the Commission, provide a full explanation of why it cannot furnish the requested information, and indicate alternative forms in which it can provide equivalent information.”² NPPC’s statement that it could not provide a listing of those domestic producers it represents, unaccompanied by any explanation or proffer of alternative forms in which it could provide equivalent information (*e.g.* on a computer disk), did not comply with Commission rule 207.61(c).³ Nevertheless, in light of the other information provided in NPPC’s response and the fragmented structure of the domestic swine industry, the Commission concluded that NPPC’s response is individually adequate.⁴

Because NPPC represents a substantial number of producers (74 percent) in a highly fragmented industry, the Commission believed it is reasonable to conclude that NPPC represents a significant proportion of domestic swine production. Accordingly, it found the domestic interested party group response to be adequate.

Regarding respondent interested party responses, the Commission received a response from a Canadian trade association which estimates that its members account for 95 percent of Canadian swine producers and 85 percent of Canadian swine production. The Commission also received responses from two Canadian governmental entities whose responses referenced the trade association’s. The Commission found the respondent interested party group response to be adequate.

¹ Commissioner Crawford did not participate in this review.

² 19 C.F.R. § 207.61(c).

³ Vice Chairman Miller concluded that NPPC complied with Commission rule 207.61(c).

⁴ Commissioner Askey agreed that NPPC’s submission failed to include requested information and that NPPC did not comply with Commission rule 207.61(c) but disagreed with the conclusion that the submission was nevertheless adequate. NPPC, like other similarly situated trade associations, is expected to submit requested information and otherwise to comply with Commission rules.

Because the Commission found both domestic and respondent interested party group responses to be adequate, it determined that it should proceed to a full review.⁵

⁵ Despite Commissioner Askey's conclusion that NPPC's submission is inadequate, she nevertheless chooses to give the NPPC the benefit of the doubt that, as it stated in its submission, it will in fact cooperate fully over the course of the investigation.