ding period in 1984. This rapid increase in market share was found to have had a disruptive effect on the U.S. market, leading the ITC to conclude that the U.S. industry had been injured by Canadian imports of live swine.

The condition of the pork products industry during the period of investigation had deteriorated, as evidenced by the industry's declining financial situation and declining capacity utilization rate. The industry was unprofitable and was experiencing material injury. Although imports of pork products increased in volume, the import penetration ratios remained low (less than 3% of U.S. consumption). The pricing data revealed no discernible trends regarding the effect of the subject imports, and the price of U.S. pork generally rose as imports from Canada increased. These indicators led the ITC to conclude that the U.S. industry was not suffering material injury by reason of Canadian pork product imports. Canadian pork production, exportation and consumption levels had all decreased slightly, indicating that Canadian-origin imports did not pose a threat to the U.S. industry.

On August 15, 1985, the countervailing duty order was issued. A cash deposit of C$0.04386/lb. was required for all entries of live swine. The suspension of liquidation with respect to fresh, chilled and frozen pork products was terminated as a result of the negative ITC determination. For a further discussion of the original investigation, see *U.S. Trade Remedy Law* (March 1993).

4.2 Legal and Subsequent Issues

4.2.1 CIT Challenge

The Canadian Meat Council (CMC) took the original subsidy ruling to the U.S. Court of International Trade. The basis of its appeal was that the Commerce decision had assumed a pass-through of subsidies on live swine to pork producers, without actually conducting an upstream investigation to determine the extent or existence of such a pass-through. Commerce had refused to conduct an upstream subsidy investigation because, in its view, swine were not an input into pork production. In effect, Commerce was arguing that swine and pork were the same product. In May 1987, the Court ruled in favour of the CMC and remanded the case back to Commerce to perform a full upstream subsidy investigation. However, as the CIT upheld the ITC no-injury determination, which had been appealed by the U.S. National Pork Producers Council, the issue of the upstream subsidy investigation (and lack thereof) became moot.

The Alberta Pork Producers' Marketing Board also challenged Commerce's original decision with respect to the countervailability of the Agricultural Stabilization Act (ASA) Hog Stabilization Program.[172] The CIT affirmed Commerce's determination, finding that: (1) hogs received benefits as a "named" commodity; and

172 *Alberta Pork Producers' Marketing Board v. United States*, 669 F.Supp. 445 (Court of International Trade 1987).