STATEMENT BY THE REPRESENTATIVE OF BRAZIL
AT THE MEETING OF 26-27 OCTOBER 1989

I. INTRODUCTION AND FACTUAL SUMMARY

These comments are submitted by the Government of Brazil concerning the Report by the Panel entitled United States - Countervailing Duties on Non-Rubber Footwear from Brazil. (SCM/94)

By letter dated 28 September 1989, the Panel rejected the opportunity to consider these comments prior to circulating its Report to the Committee. It is the position of Brazil that the parties should have been permitted, pursuant to Article 18:6 of the Code, to comment on the proposed findings and conclusions of the Panel prior to finalizing those findings and referring them to the Committee. Article 18:6 clearly provides for the submission to the parties of both the descriptive part of its report as well as the Panel’s conclusions, or an outline of the conclusion, with a view to obtaining comments of the parties.

In our view, those findings contain serious errors and omissions which might have been avoided had the opportunity for substantive comment been afforded. Therefore, the Government of Brazil respectfully submits the following comments on the proposed Panel Report for the consideration of the Committee. It should be noted that these comments are not a mere repetition of the arguments made before the Panel.

A. Factual Summary

For the convenience of the Committee, we summarize the basic factual aspects of the dispute:

The United States imposed a countervailing duty order on entries of non-rubber footwear from Brazil in 1974 without an injury determination in accordance with the existing legislation clause of the GATT Protocol of Provisional Application (Report, paragraph 4.1). On 1 January 1980, the Code entered into force for both Brazil and the United States (Report, paragraph 4.1). On 1 January 1980, the provisions of Title I of the United States Trade Agreements Act (TAA) became effective; Section 104(b)
of the TAA provided that signatories might request, within a three-year period starting 1 January 1980, an injury review for pre-existing countervailing duty orders (Report, paragraph 2.3). On 4 January 1980, the United States Department of Treasury published a notice in the Federal Register suspending liquidation of all entries of footwear from Brazil exported after 7 December 1979 and entered on or after 4 January 1980 (Report, paragraph 2.2).

In October 1981, within the three years provided by the TAA, Brazil requested the United States to undertake an injury review; in May 1983, the United States made a negative injury finding (Report, paragraph 4.1). The United States revoked the countervailing duty order effective from 29 October 1981 but held that countervailing duties could be levied on entries between 4 January 1980 and 28 October 1981, despite the finding of no injury (Report, paragraph 4.1).

The Panel agreed with Brazil's most basic position - i.e. Article VI:6(a) of the General Agreement imposes an on-going obligation which prohibits the "levy" of countervailing duties in the absence of determinations of both subsidization and injury (Report, paragraph 4.5). Effective 1 January 1980, a new obligation to make a determination of injury prior to the levy of countervailing duties was created for the United States vis-à-vis Brazil as a result of the removal of the exemption previously afforded under the Protocol of Provisional Application (Report, paragraph 4.5). The Panel held that this obligation could be implemented by the United States automatically or by means of a request procedure. Brazil has always agreed with this position.

It should be noted that the fact that the United States law called for parties to request an injury review within three years of 1 January 1980 was never in issue. Brazil followed that procedure by making its request in October 1981. Brazil's fundamental dispute with the Panel's conclusion is this: Brazil takes the position that the United States could not "levy" countervailing duties in the face of a no injury finding once the obligation to make an injury determination prior to such levy arose on 1 January 1980 (Article VI:6(a) of the General Agreement and Articles 1 and 4:4 of the Code).

The Panel apparently agreed in principle with this position (Report, paragraph 4.5) but ruled, in effect, to the contrary.

B. Summary of the objections to the Panel Report

1. Denial of Most-Favoured-Nation Treatment

As noted in paragraph 3.11 of the Report summarizing the position of Brazil, the United States has clearly recognized its international obligation to provide an injury test for pre-existing orders retroactive to the date on which the obligation arose, irrespective of the date of request
for injury review, in several other cases. Since the consideration of this case by the Panel, the United States has reaffirmed this position in cases involving Lime and Certain Textiles Mill Products from Mexico.

The Report concludes that it was proper for the United States to limit the implementation of its obligation to provide the injury test to the date of the request in the case of Brazil. It did not address the issue of the discriminatory application of the request procedure when compared to the application of this procedure in the other cases noted. Therefore, before the Report can be adopted, it is necessary for the Committee to address the crucial issue of whether the United States procedure results in a denial of Most-Favoured-Nation ("MFN") treatment toward Brazil because of the discriminatory application of the request procedure by the United States.

In the alternative, the Committee should reconsider the underlying position recommended by the Panel, since the position taken by Brazil in this dispute is the same as the position taken by the United States in the case of other countries.

2. **Obligation to made a determination of injury prior to levying countervailing duties**

The Report of the Panel correctly sustained the Government of Brazil's most basic position that Article VI:6(a) prohibits the levying of countervailing duties in the absence of determinations of both subsidization and injury (Report, paragraph 4.5). The Panel also recognized that this obligation commenced on 1 January 1980 for pre-existing countervailing duty orders of original signatories such as Brazil and the United States (Report, paragraph 4.5). There was a finding of no injury in May 1983. The revocation, however, was made retroactive only to October 1981 rather than the date the obligation arose on 1 January 1980. The Panel took the position that a "practical" approach to Article VI:6(a) was necessary because the Code provisions did not directly address the situation involving pre-existing orders. In so doing, the Panel erroneously applied the doctrine of mutatis mutandis to the wrong provision, Article 4:9, so that the practical solution changed the basic rights and obligations resulting from Article VI:6(a). If the result of the application of that doctrine is such that it contradicts the terms of the very provision supposedly being interpreted, then the application of the doctrine is misplaced. The doctrine of mutatis mutandis should have been applied to the provisions of Article 4:4, which requires an affirmative finding both of subsidy and injury as a precondition to imposing countervailing duties. This would result in a practical solution which is consistent with the rights of signatories and the requirements of Article VI:6(a), which the Code is implementing.

3. **Provisional Measures**

The Report's conclusion that the preliminary cash deposits collected by the United States after 1 January 1980 were definitive, not provisional
duties, is likewise incorrect because it fails to take account of the effect of the intervening obligation. Even the United States, in its procedures, recognized that these duties were provisional between the date of request and the final determination of injury - a conclusion placed in doubt by the Panel finding (Report, paragraph 4.13). The only real question was whether these duties became provisional once the obligation to make a determination of injury prior to the levy arose and the United States acted to preserve the status quo by suspending liquidation on the entries.

II. THE REQUEST PROCEDURE HAS BEEN INCONSISTENTLY APPLIED BY THE UNITED STATES AND RESULTS IN A DENIAL OF MOST-FAVoured-nATION TREATMENT TOWARD BRAZIL

The Report held that the obligation to extend the injury test under Article VI:6(a) of the General Agreement can be met by either an automatic procedure or a request procedure. The Government of Brazil never argued to the contrary. Furthermore, Brazil made its request for an injury determination within the three-year period provided in United States law. The issue raised by Brazil was whether the request procedure adopted must effectively implement the obligation as of the point in time required by the General Agreement. The Report concludes, in essence, that the request procedure may limit the effect of the injury determination to the date of the request rather than to the date of the obligation - even when that determination is one of no injury.

The Government of Brazil believes this conclusion to be in error, both as a logical and legal proposition, since the only date having legal relevance to the signatories under the General Agreement and the Code is the date of the obligation - regardless of whether the implementation is by means of a request procedure or an automatic procedure. A more basic issue, however, is the fundamental requirement of the General Agreement which requires that national procedures be adopted in a manner that guarantees MFN treatment to all signatories. By investing the "date of request" with a legal significance co-equal to the "date of the obligation", the Panel preliminarily has upheld the procedure applied by the United States toward Brazil in this matter. In three recent cases, Lime from Mexico, Wire Rod from Trinidad and Tobago, and Fasteners from India, the United States implemented the position urged by Brazil in this case - i.e., that the legally relevant date for purposes of the international obligations of the United States is the date upon which the obligation arose rather than the date of the request for an injury review. The inconsistent and contradictory application of the principles and procedures in the case of Non-Rubber Footwear from Brazil and these cases results in a denial of m.f.n. treatment to Brazil.

This issue is referred to in the summary of Brazil's position in paragraph 3.11 of the Panel Report and the specific details are explained at length in the 31 March 1989 rebuttal submission of Brazil and in the
Statement of the Delegation of Brazil before the Second Meeting of the Panel of 20 April 1989. However, the issue is not addressed by the Panel's Report.

Two recent events clarify the issue even further and require consideration by the Committee. On 14 August 1989, the date of the Panel's decision, the United States announced its intent to revoke the countervailing duty order involving Lime from Mexico as of 24 August 1986 - the date on which Mexico acceded to the GATT and the date on which the obligation to extend the injury test arose (54 F.R. 33264, 14 August 1989). In that case, Mexico did not request an injury test until December 1986 and USTR did not request the ITC to conduct that review until 31 January 1989. The effective date of the revocation is still 24 August 1986 - the only date with legal significance in terms of United States international obligations, notwithstanding the proposed Report of the Panel. This determination by the United States also cites the authority of Certain Fasteners from India and Wire Rod from Trinidad and Tobago. In those two cases, the United States also determined that the legally significant event, for purposes of United States international obligations, was the date that the international obligation arose rather than the date of the request to conduct the injury test itself. A copy of these notices is appended for the convenience of the Committee (Appendix B).

A new case has now been presented in the United States (after the Report of the Panel). On 5 September 1989, the United States published the Final Results of the Countervailing Duty Administration Review involving Certain Textile Mill Products from Mexico. In the comments which it submitted on 14 November 1988 in the context of the review, the Mexican exporters argued that:

...Mexico's accession to the GATT entitles Mexico to an injury test on the duty-free products entered on or after 24 August 1986 as required by the international obligations of the United States.

Department's Position: We are currently pursuing means by which an injury determination can be made concerning imports of duty-free Mexican textile mill products entered on or after 24 August 1986, the date Mexico acceded to the GATT. Twelve of the items cited by the respondent, ...were duty-free on and after 24 August 1986. We will instruct the Customs Service not to liquidate shipments of the duty-free products listed above which were entered, or withdrawn from warehouse, for consumption on or after 24 August 1986, until we resolve this issue.

54 F.R. 36841, 36843 (5 September 1989). A copy of this notice is also contained in Appendix B of this submission.
The request for an injury determination in this case was made by the exporters in the context of the administrative review on 20 November 1988. The effect of the injury determination will be for entries on or after 24 August 1986 - the date upon which the United States became obligated to conduct an injury test prior to levying countervailing duties.

In this proceeding, the Government of Brazil pointed out that the action by the United States in Lime, Wire Rod, Fasteners and now Textile Mill Products resulted in a denial of m.f.n. treatment with respect to Brazil. Obviously, this most fundamental problem would have been resolved had the Panel upheld the position of the Government of Brazil - and of the United States in these four cases - that the United States procedures must give effect to the obligation to an injury determination as of the date the obligation comes into existence rather than the date of the request to fulfil that obligation. If the Committee concurs that the date of request has legal significance co-equal to that of the obligation, it must further determine whether, in fact, the United States has implemented this obligation in a consistent manner for all GATT signatories under Article VI or whether the discriminatory application of this principle in the case of Brazil has resulted in a denial of m.f.n. treatment for Brazil.

Finally, as the Committee considers this issue, we recommend that it consider the United States defence of its discriminatory treatment in the case of Lime from Mexico, which is presented at pages 5-9 of its 20 April 1989 statement before the Panel. The United States first explains why, pursuant to Article VI, it had no alternative under GATT but to extend the injury obligation as of the date the obligation arose in the Lime case (having lost the shelter of the protection of the Provisional Protocol). "Because the obligations of GATT Article VI pertain for the duration of an order, when a country with duty-free imports accedes to the GATT, those imports cannot be subject to countervailing duties without an injury test".

In other words, to put this sentence into the terms adopted by the Panel, even though those countervailing duties had been "imposed" previously, the intervening obligation to make a determination of injury prohibits the United States from "levying" countervailing duties on those imports until that injury determination first has been made. Once made, that injury determination must be made effective as of the date the injury obligation became effective because the requirement of Article VI is a continuing requirement throughout the life of the order. The only date of any legal significance is the date upon which the obligation was imposed. The date of the request to the United States to fulfil its obligation has no legal significance and does not limit the further obligation to give effect to the injury determination as of the date that the obligation arose.

The United States claims that the same procedure was available to Brazil. Clearly, this is not so. Brazil requested an injury determination within the three-year period provided by United States law. In both Non-Rubber Footwear from Brazil and Lime from Mexico, the request for an injury determination occurred subsequent to the date the obligation arose.
Unlike the situation in Non-Rubber Footwear, this fact did not bar the United States from giving effect to its determination as of the date the obligation arose in the case of Lime. The United States also distinguished Lime from that of Non-Rubber Footwear based on an argument that the levels of obligation under the GATT and Code differ. This position is, correctly, rejected in the Panel's Report (Report, paragraph 4.3). Once that distinction is rejected, however, it is clear that the issue in Lime, Wire Rod, Fasteners, Textile Mill Products and Non-Rubber Footwear is the same. The only difference is in the treatment accorded to Non-Rubber Footwear compared to those other cases.

The failure of the United States to implement the injury test in a consistent manner has resulted in a denial of m.f.n. treatment toward Brazil. To the extent that the Committee concurs that the United States request procedure fulfills its obligations under Article VI, the Committee must also determine whether the discriminatory application of the request procedure results in a denial of m.f.n. treatment toward Brazil.

Given the seriousness of the issue, the Government of Brazil also reserves the right to raise the m.f.n. issue before the Council.

III. THE OBLIGATION OF THE CODE MUST BE INTERPRETED IN A MANNER THAT DOES NOT CHANGE THE BASIC RIGHTS AND OBLIGATIONS RESULTING FROM ARTICLE VI

The Report sustained the most basic position advanced by the Government of Brazil: Article VI:6(a) imposes an ongoing obligation which prohibits the "levy" of countervailing duties in the absence of a determination of subsidization and injury. On 1 January 1980, the exemption previously afforded to the United States from the obligation to extend the injury test terminated with respect to original signatories of the Code such as Brazil. At that point in time, a new obligation was created for the United States.

The command of Article VI:6(a) is clear:

No contracting party shall levy any ... countervailing duty on the importation of any product of the territory of another contracting party unless it first determines that the effect of the subsidization ... is such as to cause or threaten material injury... (Emphasis added).

The Panel concluded that while the principle is clear, Article VI does not state how this principle must be implemented in practice; the Code, while being the practical implementation of the GATT, does not specifically address the issue of how pre-existing orders should be treated under the Code.

The Panel specifically considered the term "levy" and noted that Article VI:6(a) does not stipulate whether the injury determination must be made "on a shipment-by-shipment basis or for all subsequent imports" (Report, paragraph 4.4) (Emphasis added). The Report goes on to endorse
the use of the "pre-selection system as a procedure implementing Article VI:6(a) [which] ... did not change the basic rights and obligations resulting from Article VI:6(a), regarding the imposition of countervailing duties on products imported from other contracting parties". (Report, paragraph 4.4, emphasis added). In essence, as described by the Panel, the pre-selection system permitted the determination of subsidization and injury to be made at the time of the imposition of the countervailing duty. Countervailing duties could then be "levied" - i.e. physically collected - on the basis of that prior determination which met the prerequisites of Article VI. Thus, there was no need to make an entry-by-entry determination of injury.

Since the Panel lays so much emphasis on the pre-selection system, it is important to recognize why that practical solution was consistent with Article VI:

(1) So long as the essential requirement of Article VI - i.e. subsidization and injury - were determined to exist at a point prior to the actual levy of the countervailing duties, the assumption was that these determinations had an ongoing validity until otherwise changed, which permitted the levy of countervailing duties.

(2) Therefore, recalling that Article VI:6(a) prohibits the levy "unless [the contracting party] first determines" the existence of subsidy and injury, the practical adoption of the pre-selection process was consistent with Article VI and did not change the basic rights and obligations stated therein because it required that a determination of subsidy and injury exist as a legal and logical condition precedent to the levy of countervailing duties. The determination, or the effect of the determination, occurred at a point in time prior to the levy as required by Article VI:6(a).

The Panel then described the issue in this matter as follows:

The Panel recalled that Article VI:6(a) of the General Agreement required a contracting party not to levy a countervailing duty on the importation of goods unless there had been an injury determination and that this requirement imposed an ongoing obligation throughout the life of the decision to impose such a duty. This ongoing obligation also applied in cases where the pre-existing decisions to impose countervailing duties without injury determinations subsequently became subject to Article VI:6(a) ... Consequently, the existence of a valid decision on the one hand, and the entry into effect of a new obligation on the other, required that this decision be re-examined in the light of this new obligation ...

Paragraph 4.5 of the Report.
The problem to be addressed is properly stated. In resolving the practical problem, however, the Panel applied the doctrine of mutatis mutandis to Article 4:9 of the Code and in so doing changed the basic rights and obligations of Article VI. As the Panel correctly noted in Paragraph 4.4 with respect to the endorsement of the pre-selection system, however, practical solutions can be adopted only to the extent that they do not change the basic rights and obligations resulting from the General Agreement (Article VI:6(a) in this case). Therefore, if the application of the doctrine of mutatis mutandis has the effect of changing the basic rights and obligations of the General Agreement, then a fortiori it has been applied improperly.

Article 4:9 provides the basis for changed circumstance reviews under the Code. A changed circumstance review presumes that a subsidy and injury determination have already been made at the time of imposition and provides a procedure to review whether such injury or subsidy - previously determined - still exists. Article 4:9 provides that "[a] countervailing duty shall remain in force only as long as, and to the extent necessary to counteract subsidization which is causing injury". Thus, Article 4:9 cannot properly be applied to cases in which the condition to be reviewed - injury - was not determined to exist at some earlier point in time, such as occurs when an intervening obligation has arisen since the initial determination to impose countervailing duties was rendered.

It is ironic that the Panel saw fit to reject the use of Article 4:4 under the doctrine of mutatis mutandis while, at the same time, it applied Article 4:9 (see paragraphs 4.9 and 4.10 of the Report). Of all the provisions of the Code, Article 4:9 is the most singularly inappropriate Article to use in cases which the nature of the obligation itself changed since the date of imposition. This is because the fundamental assumption of the provision is that the condition under review had been determined to exist at an earlier point in time.

The Panel appears to have recognized this problem by noting that the Code had not created any new obligations but only codified the existing interpretation of Article VI and by arguing that the use of Article 4:9 was consistent with the pre-selection system (Report, paragraph 4.10). The Government of Brazil disagrees strongly with both points for the reasons explained below (see Report, paragraph 4.5). In fact, Article 4:9 is inconsistent with the pre-selection system in this case precisely because new obligations had been created which had to be fulfilled prior to the levy.

With regard to the creation of new obligations, the Code created no new obligations which had not previously existed under Article VI. But, as the Panel recognized in paragraph 4.5, a new obligation surely had been created for those signatories who had previously been exempted from the injury requirement: "Consequently, the existence of a valid decision on the one hand, and the entry into effect of a new obligation on the other, required that this decision be re-examined in the light of this new obligation" (Report, paragraph 4.5). As clearly stated by the Panel, the
obligation to extend the injury test prior to the levying of countervailing duties arises under Article VI:6(a) on 1 January 1980 for the United States and Brazil. Therefore, it is difficult to understand how the Panel could then justify its decision on the basis that the Code had not created any new obligations as the Panel did in paragraph 4.10.

With regard to the pre-selection system, the use of that system was consistent, as a practical matter, with the provisions of Article VI:6(a) for the very reason Article 4:9 is not: the pre-selection system was compatible precisely because it required a demonstration of both subsidy and injury prior to the levy. Timing is the very essence of this obligation. Article 4:9 provides for revocation after the levy and thus presumes that the conditions precedent were determined to exist ab initio for the earlier levies not affected by the revocation.

Looked at another way, it must be recalled that the debate over the pre-selection system was whether the determinations required under Article VI "should be on a shipment-by-shipment basis or for all subsequent imports" (Report, paragraph 4.4). The question did not involve nor permit the determination to be made after the levy. Article 4:9, however, involves the prospective revocation of a countervailing duty order after earlier levies of countervailing duties precisely because the legal requirements for those earlier levies are assumed to have been in place unchanged. Article 4:9, then, is related to the pre-selection system only to the extent that the very conditions which exist under pre-selection up to the point of a request to remove the countervailing duty pursuant to Article 4:9 are the conditions which had been determined to exist ab initio prior to any levy of countervailing duties - subsidy and injury.

The fact that Article 4:9 cannot be used to solve the "practical" problems facing the Panel does not mean that the Panel was without a remedy. The Government of Brazil agrees with the Panel that the countervailing duty orders imposed in 1974 did not become invalidated on 1 January 1980. Similarly, Brazil agrees that the United States had the discretion to fulfil its obligation automatically or by means of a request procedure. To be clear, neither of these points was ever in issue as far as Brazil was concerned and Brazil repeatedly made this clear throughout the proceeding. The issue always was the practical issue of whether the United States was obligated to implement its procedures in such a way as to give effect to the no injury determination at a point prior to the levy of countervailing duties, as required by Article VI:6(a), once the obligation to make that determination prior to such levy arose.

In this regard, Article 4:4 can be applied, mutatis mutandis, to a case under the Code where a countervailing duty imposed without an injury determination subsequently became eligible for an injury determination. Article 4:4 provides that:
"If ... a signatory makes a final determination of the existence and amount of the subsidy and that, through the effects of the subsidy, the subsidized imports are causing injury, it may impose a countervailing duty ..."

Article 4:4 is the statement of the basic conditions which must exist before countervailing duties can be imposed under the Code. In this regard, it is the practical recitation of the requirements of Article VI:6(a).

While it is true that the valid imposition which occurred in 1974 formed the legal basis for the levy of countervailing duties under Article VI prior to 1 January 1980, the intervening obligation which arose on 1 January 1980 meant that the 1974 imposition was no longer sufficient, as a legal matter, to meet the continuing obligations of Article VI as of that point in time. This does not mean that the prior order was "invalidated" - but it does mean that it was no longer possible to base the levy of countervailing duties on that determination after 1 January 1980 until the new obligation was also fulfilled by making an injury determination prior to the levy.

The theory expounded by Brazil is not novel - it is exactly the procedure adopted by the United States in the cases of Lime, Fasteners, Wire Rod, and Textile Mill Products. It is no mere coincidence that the fact patterns in these cases and Non-Rubber Footwear from Brazil are identical - i.e. (1) pre-existing order, (2) intervening obligation, (3) subsequent request to fulfil the injury obligation. Nor is it a coincidence that the United States is fully capable of implementing the practical theory in all of these cases. The only difference between these other cases and Non-Rubber Footwear is that in the other four cases, the injury determination is made effective by the United States as of the date of the obligation (step (2)), while in the case of Brazil it was made effective as of the date of the subsequent request (step (3)). The reason the United States was capable of implementing its obligation on the date of the obligation in all of the cases, including that of Brazil, is due to the way the United States system works as a practical matter.

The attached chart incorporates the chart put forward by the Committee in paragraph 4:9 of the Report (Column (1)) and compares it to the case where no injury requirement exists (Column (2)) and to the case where the obligation to extend the injury test arises after a countervailing duty order is issued but before countervailing duties are levied (Lime, Wire Rod, Fasteners, Textile Mill Products and Non-Rubber Footwear) (Column (3)). The problem with the chart as presented by the Panel in paragraph 4:9 (Column (1)) of Chart 1) is that it does not take into account the intervening obligation to provide an injury test which the Panel itself noted in paragraph 4.5. Thus, the chart presented by the Panel deals only with cases originating in their entirety after 1 January 1980 but not with those cases where the nature of the obligation changed between the imposition and levy of countervailing duties (see Column (3) of Chart 1).
As recognized by the Panel, countervailing duties can be collected \textit{ex post} or \textit{ex ante}. The United States collects countervailing duties \textit{ex post} and has done so since 1 January 1980. The United States suspends liquidation at stage (d) in the chart and determines the final countervailing duty to be \textit{levied} years after making the initial decision of subsidy and injury.
### Chart 1 - Sequence of Events

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<th>(1) Sequence of Events under the Code</th>
<th>(2) Sequence of events where injury test is not required</th>
<th>(3) Sequence of events for pre-existing cases where the obligation to extend the injury test arises before CVD's are levied</th>
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1. **No obligation to determine the existence of injury existed at this time.**
2. **The obligation to render a determination of injury arose.**
A suspension of liquidation was in effect on 4 January 1980 in the case of Non-Rubber Footwear because United States law requires suspension of liquidation following the imposition of countervailing duties in order to preserve the status quo. In Lime, Fasteners, Wire Rod and Textile Mill Products, the entries at issue were also in a state of suspension, previously ordered for the same reason, at the time the obligation to grant the injury test became effective. As the United States noted in its submissions to the Panel, this is normal United States procedure. Although the request for ITC reviews all occurred later in time, the United States made the results of the ITC review effective as of the date the obligation arose in those other cases - not the date of request. Again, this presented no particular problem in the other cases because the entries were under control of the United States authorities due to the suspension of liquidation. The case of Brazil was no different.

It is clear from the text of Article VI:6(a) that the obligation to "first determine" the existence of injury prior to levying CVDs must be made prior to the levy. The application of the doctrine of mutatis mutandis to Article 4:9 has the effect of changing the basic rights and obligations resulting from Article VI:6(a). The correct practical solution is to apply the provision of Article 4:4, mutatis mutandis.

IV. WHEN THE OBLIGATION TO MAKE A DETERMINATION OF INJURY CAME INTO EFFECT, THE DUTIES BECAME PROVISIONAL UNTIL THE CONDITION PRECEDENT TO LEVYING COUNTERVAILING DUTIES WAS AGAIN MET

The Report of the Panel dismisses Brazil's contention that the duties deposited between 4 January 1980 and 28 October 1981 were provisional on the basis that the 1974 order continued in force. In so doing, the Panel ignores the intervening obligation which came into existence on 1 January 1980 and the fundamental relationship between that obligation and the nature of the duties deposited after that point in time.

There is no dispute that up until 1 January 1980, definitive duties had been collected on imports of non-rubber footwear from Brazil since 1974. There is also no dispute that had this case originated in its entirety after 1 January 1980 - had the subsidy and injury been determined to exist on, for example, 1 April 1981 - then all duties deposited after that time during the review process would likewise have been definitive (see Column (1) of Chart 1). In other words, duties are definitive under the pre-selection process once the fundamental prerequisites for levying the duties have been fulfilled.

The countervailing duties deposited after 4 January 1980 ceased to be definitive and became provisional because all of the conditions precedent required to levy countervailing duties were no longer present. The reason, clearly, is that while the level of subsidization had been determined to exist, it then became necessary to make a determination of injury. Pending that determination of injury, the duties deposited after the date of the obligation (1 January 1980) ceased to be definitive under the concept of
pre-selection and became provisional. In this case, duty deposits commenced on 4 January 1980, the date that suspension of liquidation was ordered. By definition, duties deposited between the determination of subsidy and the determination of injury are provisional. (Article 5)

The analysis of this issue in paragraph 4.13 of the Report is surprising because, using that analysis, the duties deposited and refunded between 29 October 1981 through 21 June 1983 were likewise definitive and not provisional. Yet clearly the United States recognized the provisional nature of these duties. They were refunded because the injury determination was negative. Had that determination been affirmative they would have been limited to 1 per cent under United States law implementing this very same provision of Article 5 of the Code.

The only real dispute between the two parties - which the Panel avoided by dismissing the issue and treating all duties deposited after 1 January 1980 as definitive - was whether or not the duties deposited between 4 January 1980 and 28 October 1981 were the same as the provisional duties refunded by the United States after 28 October.

The Panel's Report ignored the fundamental relationship between the intervening obligation to render an injury determination and the nature of the duties deposited after that obligation arose on 1 January 1980. In so doing, the Panel Report also calls into question the nature of the duties deposited after 28 October 1981.

The Government of Brazil respectfully disagrees with this conclusion of the Panel and believes that the ramifications of this decision have not been fully explored by the Panel and should be explored by the Committee.

CONCLUSION

The Government of Brazil respectfully requests the Committee to consider the Panel Report in the light of the comments submitted herein.
ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Council on Environmental Quality Guidelines (40 CFR Part 1500) and the Soil Conservation Service Guidelines (7 CFR Part 650), the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Summit Farm irrigation RCD Measure on County, Utah.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Holt, State Conservationist, Soil Conservation Service, Federal Building, 125 South State Street, P.O. Box 11350, Salt Lake City, Utah 84147, telephone 801-524-3050.

SUPPLEMENTARY INFORMATION: The environmental assessment of this project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Francis T. Holt, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure plan concerns the installation of a pressure sprinkler irrigation system. The planned works of improvement include installation of a sluice structure in conjunction with grate work on the existing diversion. Burying approximately 47.520 feet of pipeline, 459 risers, 13 pressure relief valves, 15 air valves and one pressure reducing station. Approximately 41,000 feet of 6" sprinkler lines and irrigation water management.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available for public review at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Francis T. Holt.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the Federal Register.

Catalog of Federal Domestic Assistance Program No. 10.001, Resource Conservation and Development Program Executive Order 12372 regarding State and local cleaning house review of Federal and federally assisted programs and projects is applicable.

Fonda T. Holt,
State Conservationist.
April 22, 1985.

[FR Doc. 85-11234 Filed 5-8-85. 8:45 am]
BILLING CODE 3410-15-11

DEPARTMENT OF COMMERCE
International Trade Administration

Short Supply Determinations of Aluminum-Covered Rolled Steel Sheet; Request for Comments

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for short supply determination under Article 8 of the U.S.-EC Arrangement Concerning Trade in Certain Steel Products with respect to aluminum-covered cold rolled sheet, with an aluminum coating of 5 percent or more by volume per side in relation to nominal thickness. The dimensions for the steel in question range in thickness from 30mm or 0.0079 inch to 30mm or 0.118 inch and in width from over 304.8mm or 12 inches to 500mm or 19.69 inches.

EFFECTIVE DATE: Comments must be submitted no later than 10 days after publication of this notice. Comments should focus on the economic factors involved in granting or denying the request. Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly so label the business proprietary portion of their submission and also include with it a submission without proprietary information which can be placed in the public file. The public file will be maintained in the Central Records Unit, Import Administration, U.S. Department of Commerce. Room 5009 at the above address.

Alan F. Hohner,
Deputy Assistant Secretary for Import Administration.
May 6, 1985.

[FR Doc. 85-11235 Filed 5-8-85. 8:45 am]
BILLING CODE 3105-01-M

(C-274-002)

Carbon Steel Wire Rod From Trinidad and Tobago; Intention To Review and Preliminary Determination To Revoke Countervailing Duty Order

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

ACTION: Notice of intention to review and preliminary determination to revoke countervailing duty order.

SUMMARY: The Department of Commerce has received information which shows changed circumstances sufficient to warrant an administrative review, under section 751(b)(1) of the Tariff Act, of the countervailing duty order on carbon steel wire rod from Trinidad and Tobago. The review covers the period from January 1, 1984. Carbon steel wire rod from Trinidad and Tobago became duty-free on January 1, 1984. The Department is authorized to collect countervailing duties on carbon steel wire rod from Trinidad and Tobago.

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The Department is authorized to collect countervailing duties on carbon steel wire rod from Trinidad and Tobago.
maternally injure, threaten to maternally injure, or maternally retard the establishment of a United States industry. Trinidad and Tobago is a signatory of that agreement.

There has been and will be no injury determination with respect to this order on wire rod from Trinidad and Tobago. Because the Department cannot assess countervailing duties on this merchandise, the Department intends to revoke the order. The revocation would apply to wire rod entered, or withdrawn from warehouse, for consumption on or after January 1, 1984. Therefore, an injury determination is now required for the imposition of countervailing duties on wire rod from Trinidad and Tobago.

On November 27, 1984, the Department requested the ITC to conduct an injury review under section 751(b) of the Tariff Act of 1930 and to determine that the wire rod from Trinidad and Tobago had not previously made an injury determination under section 703. Further, the ITC stated that it did not believe that an antidumping injury determination could substitute for a countervailing duty injury determination.

Scope of the Review

Imports covered by the review are shipments of carbon steel wire rod from Trinidad and Tobago. Such merchandise is currently classifiable under item 5704.10.00 of the Tariff Schedules of the United States Annotated. The review covers the period from January 1, 1984.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that, absent an affirmative injury determination, we lack legal authority to impose countervailing duties on carbon steel wire rod from Trinidad and Tobago. Further, we preliminarily determine that the lack of an affirmative injury determination on wire rod from Trinidad and Tobago provides a reasonable basis for revocation of the order. In light of the date that the wire rod became duty-free, January 1, 1984, there is good cause (as required by section 751(b)(2) of the Tariff Act) to conduct this review at this time.

Therefore, we tentatively determine to revoke the order on this product effective January 1, 1984. The date that the merchandise became duty-free. We intend to instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise, entered, or withdrawn from warehouse, for consumption on or after January 1, 1984, without regard to countervailing duties and to refund any estimated countervailing duties collected with respect to those entries.

This notice does not cover unliquidated entries of wire rod from Trinidad and Tobago which were entered, or withdrawn from warehouse, for consumption prior to January 1, 1984. The Department will cover any such entries in a separate review if requested.

Interested parties may submit written comments on these preliminary results and tentative determination to: Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230. Telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On January 4, 1984, the Department of Commerce ("the Department") published in the Federal Register (49 FR 480) a final affirmative countervailing duty determination and countervailing duty order on carbon steel wire rod from Trinidad and Tobago. Therefore, the Department must conduct a review under section 751(b) of the Tariff Act of 1930 ("the Tariff Act") to conduct this review at this time.
and paint are purchased from domestic sources.

Zone procedures will allow Toyota to defer duty payments, and to take advantage of the same duty rate available to importers of finished cargo boxes, which is lower than the rates for most of the imported material. The company will also be exempt from duties on exports and scrap. Toyota has indicated that zone procedures will be an important factor in the company's future plans for the facility.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of Dennis Puccinelli (Chairman), Fore- and Trade Zones Staff, U.S. Department of Commerce, Washington, D.C. 20230, Max C. Willis, Acting District Director, U.S. Customs Service, Region VII, 300 South Ferry Street, Terminal Island, San Pedro, California 90731; and Colonel Paul W. Taylor, District Engineer, U.S. Army Engineer District Los Angeles, P.O. Box 271, Los Angeles, California 90033.

Comments concerning the proposed subzone are invited in writing from interested persons and organizations. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before November 1, 1982.

In any case the application is available for public inspection at each of the following locations:

U.S. Dept. of Commerce District Office, 11777 San Vicente Boulevard, Room 600, Los Angeles, California 90049
Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th and Pennsylvania, N.W., Room 1512, Washington, D.C. 20220
John J. De Ponte, Jr.,
Executive Secretary, Foreign-Trade Zones Board.

BACKGROUND

On July 8, 1982, the Department announced its intent to review, under section 751(b)(1) of the Tariff Act of 1982 ("the Act"), the partial revocation of the countervailing duty order issued on certain fasteners from India. The review covers imports of duty-free fasteners and the period from January 1, 1982 through June 30, 1982.

Scope of the Review

Imports covered by the review are those fasteners from India which were included under the original order and which now receive duty-free treatment, under GSP, upon importation into the United States. Such fasteners are currently classifiable under items 648.5400 and 648.5600 of the TSUSA. Dutiable imports of fasteners, currently classifiable under TSUSA items 648.4920, 648.4940, 648.5800, 648.6020, 648.6040, 648.6320 and 648.6340, are not covered by this review.

Analysis of Comments Received

Interested parties were invited to comment on the preliminary results and tentative determination to revoke in part. At the request of a domestic party, the United States Fastener Manufacturing Group ("FMG"), the Department held a hearing on August 26, 1982. We also received comments from the Industrial Fasteners Group of the American Association of Exporters and Importers ("AAEI").

Comment 1: FMG contends that the Indian government that it had no authority under the applicable statute (section 604(b) of the Trade Agreements Act of 1979 ("the TAA") and section 311(b) of the Tariff Act) to conduct an injury investigation on fasteners.

On July 8, 1982, the Department announced its intent to review, under section 751(b)(1) of the Tariff Act, the order with regard to covered duty-free fasteners (47 FR 39695). On July 19, 1982, we published in the Federal Register 47 FR 31035 our preliminary results of the review and our tentative determination to revoke the order with regard to such fasteners.

In the preliminary results notice, we stated that we lack the authority to impose countervailing duties on duty-free goods where an international obligation of the U.S. requiring an injury determination exists (e.g., GATT membership), unless an affirmative injury determination is made. This position is based on the language contained in section 303(a)(2) of the Tariff Act, which applies in this case.

Supplementary Information

On July 21, 1980, the Department of Commerce ("the Department") published in the Federal Register (45 FR 46807) an affirmative final countervailing duty determination regarding certain fasteners from India. Since India was not a "country under the Agreement" within the meaning of section 701(b) of the Tariff Act of 1980 ("the Act") at that time, and all fasteners subject to the investigation were at that time dutiable, the investigation was conducted under section 303 of the Tariff Act and was not referred to the United States International Trade Commission ("the ITC") for an injury determination.

Effective January 8, 1982, fasteners from India entering under items 648.5400 and 648.5600 of the Tariff Schedules of the United States Annotated ("TSUSA") acquired duty-free status under the Generalized System of Preferences ("GSP"). On January 27, 1982, the Department held a hearing on August 26, 1982. We also received comments from the Industrial Fasteners Group of the American Association of Exporters and Importers ("AAEI").

Comment 1: FMG contends that section 751(b) of the Tariff Act precludes an administrative review of a countervailing duty order issued under section 303 of the Tariff Act. FMG argues that section 751(b) authorizes only a review of those determinations expressly cited and does not cite determinations made under section 303. In addition, FMG contends that section 103(b) of the TAA does not bring section 303 determinations within the scope of section 751(b). FMG argues that the

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prenatural portion of the reference in section 103(b) to title VII of the Tariff Act means that only the provisions in subtitie A of title VII are included in section 103(b). Since section 751(b) is in subtitie C of title VII, FMG concludes that section 751(b) reviews cannot be conducted for the countervailing duty order. In support, FMG notes that Congress specifically included section 303 determinations in section 751(b) but left such reference out of section 751(b). 

AAEI argues in opposition that the parenthetical in section 103(b) does not limit the application of title VII. To the extent section 751 relates to the imposition of countervailing duties through the annual review process, section 751 relates to subtitle A of title VII and is included in section 303(b). 

DOC Position: While a technical reading of the relevant statutory provisions does not provide a clear answer, the result FMG would have the Department reach is at odds with the statute and legislative intent. Section 751(b) provides that:

Whenever the administering authority receives information concerning an affirmative determination made under section 705(a), (a) which shows changed circumstances sufficient to warrant a review of such determination, it shall conduct such a review.

Section 103(b) of the TAA, which amends section 303 of the Tariff Act, provides that:

The duty imposed under subsection (a) of section 303(a) shall be imposed "...in accordance with title VII of this Act (relating to the imposition of countervailing duties)."

Senate Report 96-249, 96th Cong., 1st Sess. at 103-104 (1979). states that the amendment under section 103(b) of the Tariff Act would conform section 303 of the Tariff Act to the provisions of title VII of the Tariff Act. Accordingly, section 103(b) makes the provisions of title VII pertaining to countervailing duties apply to section 303 determinations. For the reasons outlined under our position on Comment 3, the word "imposition" in the parenthetical reference in section 103(b) means "levy" and refers to the entire life of an order, whenever countervailing duties are assessed or collected. The phrase "relating to" refers to the provisions of title VII pertaining to countervailing duties as distinguished from those provisions relating exclusively to antidumping duties. If Congress had intended section 103(b) to refer only to subtitle A of title VII, Congress could have more easily and more precisely said so. In the absence of an expression of congressional intent to apply only a part of section 751 to section 303 orders, the Department is unable to conclude that the law has that effect.

Comment 2: FMG contends that since there is no authority to conduct an administrative review of the order on certain cotton products from India under section 751(b), there is no authority to revoke that section under section 751(c). The industry also states that section 355.42 of the Commerce Regulations does not provide authority to revoke in the circumstances of this case.

DOC Position: Section 751(c) provides in relevant part that:

The administering authority may revoke, in whole or in part, a countervailing duty order "...after review under this section."

Since there is authority under section 751(b) to review a countervailing duty order issued under section 303, it follows that there is authority to revoke such an order under section 751(c). Section 355.42(c) of the Commerce Regulations states:

(c) Revocation or termination by the Secretary. The Secretary may on his own initiative revoke an Order...after three years if he is satisfied that...other changed circumstances sufficient to warrant a review of an Order...shall conduct such a review...".

The three-year time period does not apply to this unique case in which the Department is revoking an order on the basis of having no legal authority to impose countervailing duties. If the Department were required to comply with the three-year restriction in the unusual circumstances of this case, the Department would be forced to act "ultra vires" to instruct Customs to collect duties, which the countervailing duties should be subject to an injury test.

Comment 2: FMG asserts that an injury determination in this case is not required nor authorized under section 303(a)(2). FMG bases its conclusion on its interpretation of the word "imposed" in section 303(a)(2). The industry concludes that Congress contemplated an injury determination only if the product in question were duty-free at the time of the original final determination of bounty or grant.

DOC Position: Section 303(a)(2) of the Tariff Act states:

The case of any imported article or merchandise which is free of duty, duties may be imposed under this section only if there are affirmative determinations by the Commission under subtitie IV of this chapter (title VII), except that such a determination shall not be required unless a determination of injury is required by the international obligations of the United States.

To understand what Congress intended the word "imposed" to mean, we must look to the legislative history of section 331 of the Tariff Act of 1930. Senate Report 93-1258, 93rd Cong., 2d Sess., at 185 (1974) provides the congressional reasons for the inclusion in the Trade Act of 1974 of an injury requirement for duty-free merchandise.

The report states:

The inclusion of an injury standard is appropriate in light of the general countervailing duty rule in Article VI of the GATT which requires a finding of injury before such duties may be levied on subsidized product imports. Section 303 of the 1930 Tariff Act does not provide for an injury test. However, because the present U.S. countervailing duty law, which only applies to dutiable items, predates the GATT, it is within the permitted exceptions to the GATT under the so-called "grandfather clause.

However, the extension of such law to nontutiable items is not covered by any such exceptions and such nontutiable items should be subject to an injury test. The Committee expects that any negotiated concession by the United States to extend the injury requirement to dutiable items, which would be subject to approval by Congress, would be compensated for by concessions of equivalent value by foreign nations.

This language makes clear that Congress intended section 331(a) to conform to the Article VI GATT injury requirement. Paragraph 6 of Article VI of the GATT states that:

No contracting party shall levy any...countervailing duty on the importation of any product of the territory of another contracting party unless it determines that the effect of the...subsidization...is such as to cause or threaten material injury to an established domestic industry, or is such as to retard materially the establishment of a domestic industry.

Thus, it is apparent that in this context, Congress intended "impose" to mean "levy." The GATT does not define "levy." However, the Act contains an Interpretation and Application of Articles VI, XVI and XXIII if the GATT ("Subsidies Code") defines "levy" to mean "the definitive or final legal assessment or collection of a duty or tax." Accordingly, the injury requirement extends beyond the issuance of the countervailing duty order throughout the life of an order whenever duties are assessed or collected. (We also note that, while not dispositive, the use of section 303 itself is "levy of Countervailing Duties."

Comment 4: The question of whether an injury test applies is currently before the U.S. Court of International Trade. If Commerce were to revoke the order before the issue before the Court would become moot.
DOC Position: AAEI filed a complaint against the United States in the Court of International Trade. Court No. 82-2-001, alleging that:

The Final Determination published by the ITC in the review proceedings here contested * * * * is contrary to law in that it determines that countervailing duties are imposable on certain fasteners from India without any finding, as required by 19 U.S.C. 1871, by the United States International Trade Commission.

The annual review referred to covered the period from July 21, 1980 through December 31, 1980, while the proposed revocation covers entries during a later period beginning on January 6, 1982, the date certain covered fastener items became duty-free. Accordingly, the issue before the court would not become moot if the order were revoked.

Final Results of the Review

As a result of our review, we determine that, absent an affirmative injury determination, the Department lacks legal authority to impose countervailing duties on such duty-free fasteners from India. Therefore, the Department revokes the order with regard to Indian fasteners entered under TSUSA item numbers 646.5400 and 648.5600 effective January 6, 1982, the date when the merchandise became duty-free. Accordingly, the Department will instruct the Customs Service to proceed with liquidation of all unliquidated entries of such fasteners entered, or withdrawn from warehouse, for consumption on or after January 6, 1982 without regard to countervailing duties and to refund any estimated countervailing duties collected with respect to these entries.

This administrative review, partial revocation, and notice are in accordance with sections 751(b)(7) and (c) of the Tariff Act (19 U.S.C. 1677(b)(1), (c)) and §§ 355.41(b) and 355.42 of the Commerce Regulations (19 CFR 355.41(b), 355.42).

Gary N. Hordick,
Deputy Assistant Secretary for Import Administration.

September 28, 1982.

Initiation of Countervailing Duty Investigation; Certain Iron-Metal Construction Castings From Mexico

AGENCY: International Trade Administration, Commerce.

ACTION: Initiation of Countervailing Duty Investigation.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Mexico of certain iron-metal construction castings receive benefits which constitute bounties or grants within the meaning of the countervailing duty law. If the investigation proceeds normally, we will announce our preliminary determination on or before December 6, 1982.

EFFECTIVE DATE: October 6, 1982.


SUPPLEMENTARY INFORMATION:

Petition

On September 10, 1982, we received a petition from counsel on behalf of eleven domestic manufacturers of certain iron-metal construction castings.

The petition alleges that manufacturers, producers, or exporters in Mexico of certain iron-metal construction castings receive, directly or indirectly, bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act).

Since Mexico is not a "country under the Agreement" within the meaning of section 701(b) of the Act, the section 303 of the Act applies to this investigation.

Because the merchandise is nondurable and there is no "international obligation" within the meaning of section 303(a)(2) of the Act which requires an injury determination for nondurable merchandise from Mexico, the domestic industry is not required to allege that, and the U.S. International Trade Commission (ITC) is not required to determine whether, imports of this product cause or threaten material injury to a U.S. industry.

Initiation of Investigation

Under section 702(c) of the Act, we must determine, within 30 days after a petition is filed, whether a petition sets forth the allegations necessary for the initiation of a countervailing duty investigation and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition, certain iron-metal construction castings, and our investigation and whether it contains the allegations necessary for the initiation of a countervailing duty investigation and whether it contains.

Therefore, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Mexico of certain iron-metal construction castings, as listed in the "Scope of the Investigation" section of this notice, receive bounties or grants. If our investigation proceeds normally, we will make our preliminary determination by December 6, 1982.

Scope of the Investigation

The merchandise covered by the petition consists of certain iron-metal construction castings, including manhole covers, rings and frames, catch basin frames and grates, cleanout covers and grates, meter boxes and valve boxes. These castings are called municipal or public works castings and are used for access and/or drainage for public utility, water and sanitary systems. Manhole covers, rings and frames are currently classifiable under item number 657.0950 of the Tariff Schedules of the United States Annotated (TSUSA) and catch basin frames and grates, cleanout covers and grates, and meter boxes and valve boxes are currently classifiable under TSUSA item number 657.0990. These products enter the United States duty-free.

Allegations of Bounties or Grants

The petitioners allege that manufacturers, producers, or exporters of certain iron-metal construction castings in Mexico receive bounties or grants of the following types: subsidized export financing, insurance and other direct services; export promotion through tax incentives; investment and development subsidies; and indirect subsidies. More specifically, petitioners allege that benefits are being provided under the following programs: the Fund for the Promotion of Exports of Mexican Manufactured Products (FOMEX); Compania Mexican de Seguros (COMESEC); the Industrial Equipment Fund Providing Credit for Production of Exports (FONEF); the Mexican Foreign Trade Institute (IMCE); CEMEs (tax rebate certificates); reduction and exemption of various import duties; CEPROFIs (tax incentives certificates); specific industries and state tax incentives; the Trust for Industrial Parks, Cities and Commercial Centers (FIDEIN); the Guaranties and Development Fund for Medium and
SUMMARY: The Department of Commerce has received information sufficient to warrant initiation of a changed circumstances administrative review of the countervailing duty order on lime from Mexico. Based on this information, we preliminarily determine that the U.S. lime industry would not be materially injured or threatened with material injury if the countervailing duty order on lime from Mexico were revoked. Therefore, we intend to revoke this countervailing duty order. We invite interested parties to comment on these preliminary results and intent to revoke.


SUPPLEMENTARY INFORMATION: On September 11, 1984, the Department of Commerce ("the Department") published in the Federal Register (49 FR 35672) a notice of final affirmative countervailing duty determination and countervailing duty order on lime from Mexico. At the time the countervailing duty order was issued, Mexico was not entitled to an injury test under U.S. and international law. Countervailing duties were imposed upon this merchandise, which was and remains duty free, without a determination that these entries were injuring the relevant domestic industry.

On August 24, 1986, Mexico acceded to the General Agreement on Tariffs and Trade ("GATT"). Consistent with our earlier positions in Certain Fasteners from India: Final Results of Administrative Review and Partial Revocation of Countervailing Duty Order (47 FR 44129; October 6, 1982) and Carbon Steel Wire Rod from Trinidad and Tobago: Preliminary Results of Administrative Review and Tentative Determination to Revoke Countervailing Duty Order (50 FR 19561; May 6, 1985), the Department has concluded that it lacks the authority under Article VI of the GATT and section 303(a)(2) of the Tariff Act of 1930, as amended ("the Tariff Act"), to levy countervailing duties on duty-free imports from Mexico absent a determination regarding injury to the domestic industry.

On January 31, 1989, in order to fulfill our international obligations, the United States Trade Representative ("USTR") requested that the U.S. International Trade Commission ("ITC") conduct an investigation pursuant to Section 352 of the Tariff Act to assess whether (1) an industry in the United States would be materially injured, or would be threatened with material injury, or (2) the establishment of an industry in the United States would be materially retarded, if the Department were to revoke the outstanding countervailing duty order on lime from Mexico. On July 10, 1986, the ITC submitted to USTR its report on the "Conditions of Competition Between U.S. and Mexican Lime in the United States Market" (Investigation No. 332-271).

Scope of Review

The United States, under the auspices of the Customs Cooperation Council, has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule (HTS) as provided for in section 1201 et seq. of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after this date is now classified solely according to the appropriate HTS item number(s).

Imports covered by this review are shipments from Mexico of calcium oxide (CaO), commonly called quicklime or lime, and calcium hydroxide [Ca(OH)2], commonly called hydrated lime or hydrate. Through 1986, such merchandise was classifiable under item numbers 512.1100 and 512.1400 of the Tariff Schedules of the United States Annotated. This merchandise is currently classifiable under HTS item numbers 2520.20.00, 2522.10.00 and 2522.30.00. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Initiation, Preliminary Results of Review and Intent to Revoke

The Government of Mexico's accession to the GATT, the international obligations that we incurred which require an affirmative determination of injury to a domestic industry prior to levying countervailing duties on duty-free imports of lime from Mexico, and the ITC's investigation of the "The Conditions of Competition Between U.S. and Mexican Lime in the United States Market" are changed circumstances sufficient to warrant initiation of a review. Further, because of our international obligations and the information in the ITC's report, we conclude that expedited action is warranted and are combining the notices of initiation and preliminary results of changed circumstances administrative review.
As a result of our review of the record developed in the ITC's investigation, we preliminarily determine that the United States lime industry would not be materially injured or threatened with material injury, nor would the establishment of an industry be materially retarded, by reason of imports of lime from Mexico if the countervailing duty order covering those imports were revoked. Further, we preliminarily determine that the Southwestern United States lime industry would not be materially injured or threatened with material injury, nor would the establishment of an industry be materially retarded, if the countervailing duty order were revoked. For these reasons, and in view of our international obligations not to levy countervailing duties on duty-free imports from CATT-member countries in the absence of an affirmative injury determination, we preliminarily determine that there is a reasonable basis to believe that the requirements for revocation based on changed circumstances are met.

Therefore, we intend to revoke the countervailing duty order on lime from Mexico effective August 24, 1986. The current requirements for the cash deposit of estimated countervailing duties will remain in effect until publication of the final results of this review.

Interested parties may submit written comments on these preliminary results and intent to revoke within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within five days of the date of publication, or the first workday following. Rebuttal briefs and rebuttals to written comments, limited to issues in those comments, must be filed not later than 37 days after the date of publication. The Department will publish the final results of the review and its decision on revocation, including its analysis of issues raised in any such written comments or at a hearing.

This initiation of review, administrative review, intent to revoke and notice are in accordance with sections 751 (b) and (c) of the Tariff Act (19 U.S.C. 1675 (b) and (c)) and §§ 355.22 and 355.25 (d)(1) and (d)(3) of the Commerce Regulations published in the Federal Register on December 27, 1985 (53 FR 32560) (to be implemented in 19 CFR 355.22 and 355.25).


Lisa B. Barry,
Acting Assistant Secretary for Import Administration

National Oceanic and Atmospheric Administration
South Atlantic Fishery Management Council; Public Meeting

The South Atlantic Fishery Management Council and its Committees will meet on August 28 through September 1, 1989, at the Town and Country Inn, 200 Savannah Highway, Charleston, SC, to discuss snapper/grouper, large pelagic, bluefish, shark, king and Spanish mackerel, habitat, and other fishery management issues. The Council's Finance, Executive, Advisory Panel, Scientific and Statistical, and Law Enforcement Committees also will meet.

A detailed agenda will be available to the public on or about August 11, 1989. For more information contact Carrie R.F. Knight, Public Information Specialist, South Atlantic Fishery Management Council, One Southpark Circle, Suite 308, Charleston, SC 29407; telephone: (803) 571-4386.

Dated: August 8, 1989.

Richard H. Schaefer,
Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

DEPARTMENT OF DEFENSE
Department of the Air Force

Amendment to the Notice of Intent (NOI) To Prepare an Environmental Impact Statement for the Realignment of Mountain Home AFB, ID

On February 8, 1989, the Department of the Air Force published a notice of intent document in the Federal Register (54 FR 6258). Please add the following:

To accommodate the move of the 35 TTW and associated assets from George AFB, California to Mountain Home AFB, Idaho, additional air-to-ground gunnery range and associated airspace will be required at Saylor Creek Weapons Range. The exact size of new airspace and air-to-ground range expansion is still under study and will be included in the Mountain Home AFB, ID Realignment Environmental Impact Statement (EIS). As part of the range expansion, some lands managed by the Bureau of Land Management (BLM) will need to be withdrawn for Air Force use and some private and state lands will need to be acquired. The anticipated total acquisition will represent approximately 1,300,000 acres. Where compatible and possible, land use will remain as it is now. However, some weapons impact areas for the air-to-ground ranges will be designated for sole (exclusive) Air Force use.

The proposal for additional airspace requirements includes lowering the floor of the existing military operating areas (MOAs) to 10,000 feet mean sea level (MSL) for subsonic flight training over Nevada and Oregon, and possibly extending the boundary of Paradise MOA further south. The proposal for supersonic flight operations includes the proposed Owyhee MOA and the expanded Saylor Creek Range, all in the state of Idaho. Supersonic flight operations are a desirable capability for all modern fighter aircraft. Supersonic operations and associated impacts will be evaluated within the context of the EIS for the Mountain Home AFB Realignment and Saylor Creek Expansion.

Since the EIS includes a proposed land withdrawal, the Bureau of Land Management (BLM) will be a cooperating agency for the EIS. This may require BLM land use plans to be amended and updated to cover the expanded range area. All issues involved in the range and airspace expansion will be addressed in the EIS.

The range and airspace expansion were not included in the original notice of intent because the requirements associated with these expansions were being evaluated.

We plan to hold additional scoping meetings. Specific dates and times will be announced in the local media.

Questions concerning this proposal, additional scoping, or the draft EIS may be directed to: Captain Wilfred Cassady, HQ TAC/DEE, Langley AFB, VA 23665-5542, Telephone (804) 784-4430.

Written comments should be submitted by August 31, 1989.

Patsy J. Connors,
Air Force Federal Register Liaison Officer

[FR Doc. 89-18041 Filed 8-11-89; 8:45 am]

BILLING CODE 3510-01-M.
for all other companies during the period from January 1, 1986 through December 31, 1986.

**Effective Date:** September 5, 1989.

**For further information contact:**
Jean Carroll Kemp or Ilene Hersher, Officer of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue NW., Room B-099, Washington, DC 20220; telephone: (202) 377-2796.

**Supplementary Information:**

**Background**

On September 28, 1988, the Department of Commerce ("the Department") published in the Federal Register (53 FR 37327) the preliminary results of its administrative review of the countervailing duty order on certain textile mill products from Mexico. The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

**Scope of Review**

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1986, the United States fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 seq. of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS number(s).

Imports covered by the review are the Tariff Schedules of the United States. Annotated items listed in appendix A. Such merchandise is currently classified HTS items listed in appendix B. The review covers the period January 1, 1986 through December 31, 1986 and the following programs: (1) FORMEX; (2) FOCAFON; (3) FONEI; (4) CEPROI; (5) State tax incentives; (6) National Industrial Development Fund ("FONIND"); (7) NDP preferred helo; (8) Trust Fund for the Study and Development of Industrial Parks ("FIDEN"); (9) Bancomext loans; (10) Delay of payments on loans; (11) Delay of payments to PEMEX of fuel; charges; (12) PROFEOE loans; (13) Export credit insurance; (14) Tax Rebate Certificate ("CEDIP"); (15) Accelerated depreciation; (16) Article 15 loans; (17) Preferential state investment incentives; and (18) Import duty reductions and exemptions.

**Analysis of Comments Received**

We received comments from the following respondents: Fibras Sinteticas, Hilsa Mel Texcana, the Mexican Textile Industry Chamber, and Tapetes Luxor. At the request of respondents, we held a public hearing on November 22, 1988. On December 2, 1988, we received post-hearing comments from the Mexican Textile Industry Chamber.

**Comment 1:** As a result of the "Understanding Between the United States and Mexico Regarding Subsidies and Countervailing Duties" (the "Understanding"), signed on April 23, 1985, Mexico became a "country under the Agreement." Therefore, respondents argue that U.S. law (19 U.S.C. 1671a(n)) requires an affirmative injury determination as a prerequisite to the imposition of countervailing duties on any Mexican merchandise imported on or after April 23, 1985, whether the countervailing duty order was published before or after that date.

While Article VI of the General Agreement on Tariffs and Trade ("GATT") requires an affirmative injury determination before the imposition of countervailing duties, the United States was allowed to "grandfather" provisions in its laws which allowed countervailing duties to be placed on dutiable products without an injury test. Duty-free products were not subject to countervailing duties at the time the United States acceded to the GATT. In 1974, Congress amended section 303 of the Tariff Act of 1930 to authorize the United States to impose countervailing duties on duty-free products. However, for countries towards which the United States has an "international obligation," Congress authorized the imposition of countervailing duties on imports of duty-free goods only after an affirmative injury determination. Thus, the "grandfather clause," which allowed countervailing duties on dutiable products absent an injury test, did not apply to duty-free products from countries towards which the United States had an international obligation.

The Trade Agreements Act of 1979 ("TAA") established an injury test requirement before any countervailing duties could be imposed on products from "countries under the Agreement," and amended section 303 of the Tariff Act to apply only to countries which were not under the Agreement. Under the TAA, respondents claim that no countervailing duties can be imposed on Mexican imports after the date Mexico became a country under the Agreement, absent an affirmative injury determination.
The imposition of duties in this review would occur after April 23, 1985. Before Mexico's accession to the GATT on August 24, 1986, the United States had no international obligation towards Mexico to provide an injury test on any merchandise covered by this order. Whether dutiable or duty-free, we agree, however, that we must grant an injury test on duty-free merchandise from a country towards which the United States has an international obligation.

Mexico's accession to the GATT created such an obligation for an injury test on entries of duty-free merchandise made on or after August 24, 1986 before countervailing duties can be imposed on such merchandise.

We appealed the CIT's decision in Anahuac I. On July 13, 1989, the United States Court of Appeals for the Federal Circuit reversed the CIT's decision in Anahuac I and upheld the CIT's decision in Anahuac II, where the court supported the proposition that the Understanding does not require an injury test for Mexican countervailing duty orders issued before April 23, 1985, but only for countervailing duty investigations in progress on that date or orders issued after that date. In fact, contrary to respondents' interpretation, the CIT in Anahuac II explicitly upheld the Department's position that "the Understanding excluded CVD orders existing prior to April 23, 1985, the effective date of the Understanding. See 686 F. Supp. 1191 at 1213. We confirmed with the principal U.S. negotiators that the intent of Article 5 of the Understanding was to exclude from the application of the Understanding, and hence the application of country under the Agreement status, orders existing prior to April 23, 1985. The U.S. Court of Appeals also upheld the Guadalajara decision, in which the CIT indicated that an injury test is required only on duty-free goods from Mexico entering the United States after Mexico acceded to the GATT.

As we have explained in numerous final results notices, we believe that we lack the authority to revoke any countervailing duty order on Mexican products on the basis of the Understanding. See, e.g., Portland Hydrlic Cement and Cement Clinker from Mexico: Final Results of Countervailing Duty Administrative Review, (51 FR 44501, December 10, 1986); Certain Iron Metal Construction Castings from Mexico: Final Results of Countervailing Duty Administrative Review, (51 FR 9003, March 20, 1986); Portland Hydraulic Cement and Cement Clinker: Final Results of Administrative Review, (52 FR 16325, May 23, 1987); and Bricks from Mexico: Final Results of Countervailing Duty Administrative Review, (53 FR 36314, September 30, 1988).

Comment 2: Respondents argue that the relevant U.S. statute (19 U.S.C. 1671) does not permit a country's entitlement to an injury test to depend in any way on the interpretation of the term "investigation" as used in the Understanding. When it officially designated Mexico as a country under the Agreement, the Office of the United States Trade Representative did not put any qualifications on that status, as doing so would have been in violation of 10 U.S.T. 10571. The statute does not permit the Department to impose duties on entries from a country under the Agreement unless (1) subsidiaries are being provided, and (2) the International Trade Commission ("ITC") makes an affirmative injury determination.

The CIT's decision in Anahuac I clearly defines "country under the Agreement" as used in the Understanding to mean both the process through which the Department initially issues a countervailing duty order and any subsequent administrative reviews. The CIT's discussion in Anahuac II of the term "investigations in progress" as used in the Understanding does not permit a country's entitlement to an injury test to depend on the entries that occurred prior to the Understanding. That discussion should not be construed to negate the basic implication of the CIT's Guadalajara and Anahuac II decisions that an injury test is required for all merchandise from Mexico entered on or after April 23, 1985.

Department's Position: As discussed in our response to Comment 1, the U.S. Court of Appeals reversed the Anahuac I decision, and upheld the decisions in Anahuac II and Guadalajara, thus supporting our position that the Understanding does not require an injury test for products subject to pre-Understanding countervailing duty orders.

Comment 3: The Mexican Textile Industry Chamber argues that in Article 8 of the Understanding, Mexico was granted "most favored nation" ("MFN") status. The MFN principle requires that Mexico be given the same treatment as other countries under the Agreement. When the TAA was enacted, countries under the Agreement had three years after the effective date of the TAA to request an injury test for products covered by countervailing duty orders in effect before that date. Mexico deserves this same treatment as of the date it became a country under the Agreement and, thus, should have been accorded an injury test within three years of the
Discussion: The international obligation created in Article 8 of the Understanding does not extend to entries covered by this review because the Understanding itself makes clear that the only international obligation of the United States is to provide an injury test to investigations in progress or investigations begun after April 1985. The investigation in this case was completed in March 1988. Therefore, the United States is not required by the MFN language in Article 8 to grant an injury test in this case on entries of merchandise covered by this review. See, Portland Hydraulic Cement and Cement Clinker From Mexico: Final Results of Administrative Review. (53 FR 18325, May 23, 1988).

The three-year grace period provided for in section 104(b) of the TAA applies only to the three-year period after the effective date of the TAA, i.e., January 1, 1986. We are not persuaded by commenters' arguments that the grace period began in April 1985. The investigation in this case was initiated on April 1985. The investigation in this case was completed in March 1988. Therefore, the United States is not required by the MFN language in Article 8 to grant an injury test in this case on entries of merchandise covered by this review. See, Portland Hydraulic Cement and Cement Clinker From Mexico: Final Results of Administrative Review. (53 FR 18325, May 23, 1988).

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benchmark to calculate the benefit from a subsidy, consistent with the full definition of "subsidy" in the statute.

Comment 6: Tapetes Luxor argues that it should not be required to post cash deposits of estimated countervailing duties. The Department has sufficient information and has had ample time to verify that Tapetes did not receive any benefits under its current owners (the company changed ownership in April 1987) and did not benefit from the FOMEX financing that the previous owners' U.S. importer received in 1985. Tapetes has since renounced FOMEX benefits for itself and its U.S. importers. Tapetes argues that the Department places unnecessary and unjustified hardships on the company by requiring it to continue to post countervailing duty deposits when it is not receiving benefits. The Department has previously made adjustments to cash deposits based on subsequent events. See, e.g., Certain Softwood Products from Canada: Final Countervailing Duty Determination, (48 FR 24159, May 31, 1983).

Department's Position: As we explained in detail in the final results of our last review in this case, because Tapetes did not export during the period of review, we do not maintain a record on which to base a determination that it did not receive benefits in the review period. See, Certain Textile Mill Products from Mexico: Final Results of Countervailing Duty Administrative Review, 52 FR 45010, November 24, 1987. As noted in 1987, we will revisit its claims in the 1987 review, which is already underway.

Comment 7: The Mexican Textile Industry Chamber argues that the Department should retract its improper expansion of the scope of the countervailing duty order on Mexican textile mill products with regard to cotton yarns. The Department's interpretation of the cotton yarn TSUSA numbers as series of ranges adds 133 new TSUSA items to the scope of the order. The Department's interpretation that these items were intended to be included in the scope is not supported by the record. Petitioners clarified that the ranges applied to fabrica, but they never did so for yarns. Additionally, petitioners never responded to the Department's request for comments on this issue.

Department's Position: We have already considered this issue in our scope determination memorandum signed on September 22, 1988. In that memorandum, we decided that the record supports our interpretation that each of the cotton yarn numbers published in the original countervailing duty order and subsequent notices represented a range of TSUSA items. If respondents did not agree with our scope determination, the proper remedy was to appeal the scope determination to the CIT within 30 days of that determination.

Comment 8: The Mexican Textile Industry Chamber contends that the Department should accept zero-rate certifications from companies that certified zero-rate status in the last review but not in this review. These companies simply did not know that they had to re-certify to maintain their zero-rate status. Since the petitioners have not sought a hearing in this review, acceptance of such certificates would not prejudice the interests of any party.

Department's Position: The new Commerce Regulations (53 FR 52354, December 27, 1988, to be codified at 19 CFR 355.22) allow a producer or exporter to request an individual administrative review if that producer or exporter and the government submit certifications that the producer or exporter did not apply for or receive any net subsidy on the merchandise from any program that the Department previously found countervailable in the proceeding and will not do so in the future. This provision became effective on March 1, 1988. For any reviews initiated prior to the effective date of this provision, including this review, it was our policy to accept zero-rate certifications from companies if we received these certifications before the publication of the preliminary results or, in cases where we verify, before the verification. This practice allowed all interested parties to comment on zero-rate findings after reviewing the preliminary results of the administrative review. Since we did not receive certifications before our preliminary results, we cannot accept them.

Comment 9: Fibres Sinteticas ("FISISA") argues that the Department should correct its preliminary results to reflect the benefit from subsidies FISISA received only on its U.S. exports. FISISA reported all its FOMEX loans to the Mexican government, including a loan for a shipment to Shanghai, China that transacted the United States. The Government of Mexico did not exclude FISISA's FOMEX loan on this shipment from its questionnaire response. This FOMEX loan was not for exports to the United States and therefore should be excluded from the Department's calculation of FISISA's company-specific benefit. Eliminating this loan brings FISISA's rate well within the rate for "all other" companies. FISISA argues that its supplemental data on the Chinese shipment is not a submission of new information but a clarification of information the Department received in the questionnaire response. Other interested parties had ample time to comment on the clarification and did not do so. The Department should accept this clarification and adjust its calculations.

Department's Position: After reviewing FISISA's questionnaire response, commercial invoices for the China shipment transiting the United States, bank debit notices, FOMEX documents, and other information regarding the shipment, we agree that the FOMEX loan for that shipment was not for products exported to the United States. We have revised our calculations for FISISA accordingly by omitting the FOMEX loan for that shipment. However, § 355.22(d) of our new regulations define a significant differential as a difference of the greater of at least five percentage points, or 25 percent, from the weighted-average net subsidy calculated on a country-wide basis. Even with the China shipment financing removed from the calculation of the company's benefits, FISISA's company-specific benefit is more than five points higher than the weighted-average country-wide rate. We also found another company, Hilasal Mexicana, to have benefits that are significantly different. In addition, we inadvertently omitted another company's CEPROFI benefits from the "all other" rate.

Adjusting for these corrections, we determine the benefit during the review period from FOMEX to be zero or de minimis for 25 companies, 11.50 percent ad valorem for Fibres Sinteticas, 9.85 percent ad valorem for Hilasal Mexicana and 2.69 percent ad valorem for all other companies; from FOGAIN to be zero or de minimis for 27 companies and 0.03 percent ad valorem for all other companies; from CEPROFI to be zero or de minimis for 27 companies and 0.01 percent ad valorem for all other companies; and from FONEI to be zero or de minimis for 27 companies and 0.01 percent ad valorem for all other companies. The resulting total benefit is zero or de minimis for 25 companies, 11.50 percent ad valorem for Fibres Sinteticas, 9.83 percent ad valorem for Hilasal Mexicana and 3.01 percent ad valorem for all other companies during the period January 1, 1988 through December 31, 1988.

We have also reconsidered the calculation of the FOMEX benefit for purposes of cash deposits of estimated countervailing duties. Since the end of the 1988 review period, the Costa
Porcentual Promedio (CPP) has been alternately volatile and stable for various periods of time. Because the interest rate on FOMEX per-export loans is based in significant part on the CPP, as is our benchmark, we cannot accurately estimate the change, if any, in the benefit received from FOMEX preexport loans. Therefore, we determine that the "all other" cash deposit rate for FOMEX is the same as the review period assessment rate. 2.96 percent ad valorem. We determine that for the purposes of cash deposits of estimated countervailing duties, the rate is zero or de minimis for 25 companies. 11.50 percent ad valorem for FISISA, 9.83 percent ad valorem for Hilasal Mexicana and 3.01 percent ad valorem for all other companies.

In the preliminary results, Crisol Textil, S.A. de C.V. was listed as receiving de minimis benefits for purposes of cash deposits of estimated countervailing duties. For the purposes of cash deposits, we now determine the benefit for Crisol Textil to be in the "all other" category.

Firms Not Receiving Benefits

We determine that the following firms received zero or de minimis benefits during the period January 1, 1986 through December 31, 1986:

(1) Abetex, S.A. de C.V.
(2) Acrinet, S.R.L. de C.V.
(3) Celulosa y Derivados, S.A. de C.V.
(4) Corporacion Charles, S.A.
(5) Corporacion Miami, S.A.
(6) Fabrica de Hilados y Tejidos SINDEC, S.A.
(7) Fabrica de Hilados y Tejidos del Río, S.A.
(8) Fariel, S.A. de C.V.
(9) Fisher Price, S.A. de C.V.
(10) Glassmex, S.A.
(11) Jerumex, S.A.
(12) Milyon, S.A. de C.V.
(13) Noblis Lees, S.A. de C.V.
(14) Rylex, S.A. de C.V.
(15) Sociedad Cooperativa de Produccion Maquiladora El Progreso, S.C.L.
(16) Stanmex, S.A. de C.V.
(17) Telas Ajjic, S.A.
(18) Terpel, S.A. de C.V.
(19) Textiles Mabratex, S.A.
(20) Textiles Panzacola, S.A.
(21) Texturizadoa y Tejidos Windsor, S.A.
(22) Torenco, S.A. de C.V. and
(23) Turbofil, S.A.

Final Results of Review

After reviewing all of the comments received, we determine the total bounty or grant to be zero or de minimis for 25 companies, 11.50 percent ad valorem for FISISA, 9.83 percent ad valorem for Hilasal Mexicana and 3.01 percent ad valorem for all other companies during the period January 1, 1986 through December 31, 1986.

Merchandise entering under the following TSUSA items covered by this review is afforded duty-free status under the Generalized System of Preferences: 319.0300, 319.0700, 339.1000, 355.8100, 355.8200, 355.8300, 355.8400, 360.7900, 360.8400, 364.0500, 364.1800 and 364.2300. Section 303 of the Tariff Act prohibits the imposition of countervailing duties on duty-free products absent an injury test when the United States has an international obligation to provide such a test. Mexico’s accession to the GATT on August 24, 1986 imposes such an international obligation on the United States with respect to duty-free merchandise entered into the United States on or after the date of Mexico’s accession.

For the duty-free merchandise, the Department will instruct the Customs Service to liquidate, without regard to countervailing duties, shipments from the 25 firms listed above exported on or after January 1, 1986 and on or before December 31, 1986. The Department will also instruct the Customs Service to assess countervailing duties of 11.50 percent of the f.o.b. invoice price on shipments from FISISA, 9.83 percent of the f.o.b. invoice price on shipments from Hilasal Mexicana and 3.01 percent of the f.o.b. invoice price on shipments from all other firms entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement and waiver shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.22 of the Commerce Regulations published in the Federal Register on December 27, 1988 (53 FR 52354) (to be codified at 19 CFR 355.22).

Eric L. Garsfinkel
Assistant Secretary for Import Administration.
Appendix A—Certain Textile Mill Products From Mexico
C-201-405
TSUSA Item Numbers for 1988
300.8005
300.8010
300.8024
300.8028
301.0104 through 301.0108
301.1000 through 301.1004
301.2000 through 301.2004
301.3000 through 301.3004
302.0124 through 302.0128
302.1024 through 302.1028
302.2024 through 302.2028
302.3024 through 302.3028
302.4024 through 302.4028
302.5024 through 302.5028
302.6024 through 302.6028
302.7000
310.0106
310.0107
310.0108
310.0110
310.014
310.0130