REQUEST FOR CONCILIATION UNDER ARTICLE 17
OF THE AGREEMENT BY THE GOVERNMENT OF INDIA

Communication from the United States

It is the position of the United States that its implementation of the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade (hereinafter the Code) is consistent with the spirit and letter of the Code. The United States believes that the issues raised by India in Document SCM/20 can be resolved amicably between our two governments, and that progress has been made on these points.

With respect to the specific points raised in Document SCM/20, the United States responds as follows:

A. Non-Extension of the Benefit of Injury Criterion for Industrial Fasteners

The United States has announced formally its intention to conduct an expedited review of the countervailing duty order with respect to duty-free fasteners. This expedited review is the result of changed circumstances brought to the attention of U.S. authorities by the Government of India. The United States expects to take further action with respect to this review very soon.

B. Methods and Principles of Calculating Countervailing Duties in the Cases of Fasteners, Castings and Leather Footwear and Uppers

In conformity with the Code, the United States has in the past and will continue to consider non-countervailable the exemption, remission or deferral of prior stage cumulative indirect taxes insofar as such exemption, remission or deferral comports with item (h) of the illustrative list of export subsidies. The decision involving textiles from India reflects the standard U.S. approach for considering whether a program described as a rebate
of such indirect taxes meets the requirements of item (h). In describing a program as an indirect tax rebate, a foreign government has an affirmative responsibility to be able to do more than merely assert an *ex post facto* relationship between the export payment and indirect taxes. There must be evidence that payment levels are based on the indirect tax incidence of a product sector as collected and reviewed by the foreign government.

In determining the existence of an indirect tax rebate program, the U.S. will in large degree be guided by a foreign government's own methodologies and administration. The extent to which a foreign government establishes that: (a) such programs are established and operated to rebate indirect taxes; (b) there is a clear link between eligibility for the export payments and the incidence of indirect taxes; and (c) the level of export payments for various products are grounded in documented and reasonable calculations of indirect taxes borne by products will indicate the *bona fide* nature of the payment as an indirect tax rebate. Conversely, export payment programs which provide significant competitive export advantages to foreign manufacturers will be considered countervailable if there is no or insufficient evidence of proper linkage between indirect taxes and export payments.

This issue involves numerous questions of fact. The United States has proposed a methodology for verifying the establishment of the necessary causal link between the indirect tax burden and the export payment under the Cash Compensatory Support (CCS) system. The United States is awaiting the response of the Government of India to its proposals.

C. **Retroactive Application of Duties**

The third issue raised by the Government of India concerns the allegedly improper retroactive application of countervailing duties on leather footwear and leather lasted uppers from India. The Indian authorities assert that the assessment of countervailing duties in an amount greater than the level of estimated countervailing duty deposits constitutes a retroactive determination which violates the provisions of Article 5 of the Code. The U.S. believes that Article 4 of the Code, not Article 5, is controlling and that the action taken by U.S. authorities was consistent with Article 4. Article 5 clearly is limited to the period between an affirmative preliminary determination in a countervailing duty investigation and the issuance of a
countervailing duty order (or a negative final determination). It deals with provisional measures and retroactivity during the period. It has no application to actions taken after issuance of a countervailing duty order. In such situations, Article 4 is controlling.

After conducting a countervailing duty investigation, the U.S. authorities issued and published a countervailing duty order on this product in October 1979. The amount of subsidization was determined to be 4.24 percent of the F.O.B. invoice price for leather footwear and 1.01 percent for leather lasted uppers. On February 17, 1982, the U.S. authorities published the results of their administrative review of the order, covering imports of this product during 1980. Prior to publication of this notice, estimated countervailing duties of 4.24 percent adn 1.01 percent had been required by U.S. Customs on entries of Indian leather footwear and uppers since this was the most current estimate of the amount of subsidization. In the February 17 notice, however, the U.S. authorities determined that for 1980 the amount of the subsidy actually was 15.08 percent ad valorem for leather footwear and 12.58 percent ad valorem for uppers. Accordingly, U.S. Customs will be instructed to assess countervailing duties in those amounts on leather footwear and uppers from India imported during 1980. Since the estimated duties which had been deposited previously were insufficient to cover the duties levied, the result is that additional duties will be payable. The action taken by the U.S. authorities on February 17, 1982, is consistent with Article 4(2) of the Code. The countervailing duty levied was equal to (and therefore not in excess of) the amount of the subsidy found to exist by the U.S. authorities on leather footwear and uppers imported during 1980.

The United States emphasizes that, for all cases for which a final affirmative determination has been issued but the investigation of the question of injury has not been completed, definitive duties are not collected. Rather, the importer in the United States is required to post a cash deposit equal to the amount of the subsidy found to exist. Subsequently, if the determination with respect to injury is negative, the United States refunds the cash deposit. In addition, U.S. law requires that the United States shall also pay interest on such refunded deposits. Thus, the interests of all parties concerned are fully protected under U.S. law. In this respect, the United States notes that its law goes farther than the Code in ensuring equitable treatment of all interested parties to a countervailing duty proceeding.

With regard to the issue of product coverage under the countervailing duty order on certain leather footwear, the United States views this issue as one involving the facts of the
situation. The question is that of establishing which types of footwear received CCS payments of not more than five percent at the time of the original investigation and thus were excluded from the order. On June 30, 1982, the United States requested additional information from the Government of India. Upon receipt of this information, the United States will act as expeditiously as possible to render a determination regarding product coverage under the countervailing duty order.

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The United States emphasizes its continued willingness to explore avenues which may lead to a resolution of these issues. Insofar as bilateral efforts are continuing with respect to certain specific issues raised by the Government of India in Document SCM/20, the United States believes that it is at this time inappropriate for the Committee to take substantive action on the request of the Government of India. The United States is currently waiting for responses from the Government of India on two of the issues discussed above. Therefore, in the view of the United States, any consideration of the relief as requested by the Government of India would be premature at this time.