

# **CERTAIN ETHYL ALCOHOL FROM BRAZIL**

**Determination of the Commission in  
Investigation No. 701-TA-239 (Final)  
Under the Tariff Act of 1930,  
Together With the Information  
Obtained in the Investigation**

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**Determination of the Commission  
In Investigation No. 731-TA-248  
(Final) Under the Tariff Act of 1930,  
Together With the Information  
Obtained in the Investigation**

# **UNITED STATES INTERNATIONAL TRADE COMMISSION**

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Note.--Information which would disclose confidential operations of individual concerns may not be published and therefore has been deleted from this report. Deletions are indicated by asterisks.

UNITED STATES INTERNATIONAL TRADE COMMISSION  
Washington, DC

Investigations Nos. 701-TA-239 (Final)  
and 731-TA-248 (Final)

CERTAIN ETHYL ALCOHOL FROM BRAZIL

Determinations

On the basis of the record 1/ developed in the subject investigations, the Commission determines, 2/ 3/ pursuant to sections 705(b) and 735(b) of the Tariff Act of 1930 (19 U.S.C. §§ 1671d(b) and 1673d(b)), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Brazil of certain ethyl alcohol, 4/ provided for in item 427.88 of the Tariff Schedules of the United States (TSUS) and mixtures of certain ethyl alcohol provided for in items 430.10, 430.20, and 432.10 of the TSUS, which have been found by the Department of Commerce to be subsidized by the Government of Brazil and, in addition, which have been found by the Department of Commerce to be sold in United States at less than fair value (LTFV).

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1/ The record is defined in sec. 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(i)).

2/ Commissioner Eckes determines that an industry in the United States is materially injured by reason of imports from Brazil of certain ethyl alcohol which have been found by the Department of Commerce to be subsidized by the Government of Brazil and, in addition, which have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

3/ Commissioner Lodwick did not participate in these determinations.

4/ The ethyl alcohol (ethanol) covered by these investigations is fuel ethyl alcohol (fuel ethanol), provided for in item 427.88 of the Tariff Schedules of the United States (TSUS) as ethyl alcohol for nonbeverage purposes. The U.S. Department of Commerce has included mixtures of fuel ethanol, provided for in items 430.10, 430.20, and 432.10 of the TSUS, within the scope of these investigations. Further, Commerce stated that other blends may also be included within the scope of these investigations. Fuel ethyl alcohol is subject to additional duties under TSUS item 901.50.

### Background

The Commission instituted investigation No. 701-TA-239 (Final) effective November 12, 1985, following a preliminary determination by the Department of Commerce that imports of certain ethyl alcohol from Brazil were being the subsidized within the meaning of section 701 of the Act (19 U.S.C. § 1671). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of December 4, 1985 (50 F.R. 49777).

The Commission instituted investigation No. 731-TA-248 (Final) effective September 24, 1985, following a preliminary determination by the Department of Commerce that imports of certain ethyl alcohol from Brazil were being sold at LTFV within the meaning of section 731 of the Act (19 U.S.C. § 1673). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of October 10, 1985 (50 F.R. 41427). Subsequently, the Department of Commerce postponed its final antidumping duty determination and, accordingly, the Commission published a notice in the Federal Register of November 14, 1985 (50 F.R. 47123), revising its schedule for conduct of the investigation.

The hearing was held in Washington, DC, on February 5, 1986, and was a consolidated proceeding for both investigations. All persons who requested the opportunity were permitted to appear in person or by counsel.

VIEWS OF CHAIRWOMAN STERN, VICE CHAIRMAN LIEBELER,  
COMMISSIONER ROHR AND COMMISSIONER BRUNSDALE

On the basis of the record developed in the subject investigations, 1/ the Commission 2/ determines that an industry in the United States is not materially injured or threatened with material injury by reason of imports of fuel grade ethanol (fuel ethanol) from Brazil which the Department of Commerce (Commerce) has determined are sold at less than fair value (LTFV) and are receiving benefit of subsidy. 3/

Our negative determinations in these investigations are based on a number of factors. First, the domestic ethanol industry is growing rapidly. Second, the industry's problems can be traced to factors other than imports of ethanol from Brazil. Finally, it is unlikely that imports of ethanol from Brazil will increase significantly in the near future or will have a significant effect on prices of the domestic product. 4/

Like product and the domestic industry

The statutory framework under which the Commission conducts antidumping and countervailing duty investigations first requires the Commission to determine the domestic industry against which to assess the impact of unfairly traded imports. 5/

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1/ The record is defined in section 207.2(i) of the Rules of Commission Practice and Procedure (19 CFR § 207.2(i)).

2/ Commissioner Lodwick did not participate in these determinations.

3/ "Material retardation" was not an issue in these investigations and will not be discussed further.

4/ Commissioner Rohr notes that it has not been sufficiently demonstrated that the Brazilian industry has the intention or capability to injure the domestic industry.

5/ Section 771(4)(A) of the Tariff Act of 1930 defines the term "industry" as "[t]he domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product." 19 U.S.C. § 1677(4)(A). "Like product" is defined in section 771(10) as "[a] product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation . . . ." 19 U.S.C. § 1677(10).

Ethanol is a component of alcoholic beverages, such as beer, wine, and whiskey. It can also be used for fuel and in a number of industrial applications, in which case the government requires that various chemicals or denaturants be added to make it unsuitable for beverage use. The type of denaturant used depends upon the final use of the ethanol. For fuel ethanol, the denaturant is gasoline. 6/ Fuel ethanol and industrial ethanol have distinct characteristics. To be suitable for blending with gasoline, ethanol must be virtually anhydrous (the water content cannot be greater than 0.5 percent). The presence of water is acceptable for many, if not most, industrial applications. 7/

The imported product which is the subject of these investigations is anhydrous fuel ethanol without the denaturant. 8/ Although the denaturant is added in the United States, imported fuel ethanol is separate and distinct from imported industrial ethanol because of its concentration and its chemical impurities.

In the preliminary investigations the Commission determined that domestically produced industrial ethanol was not sufficiently "like" the imported fuel ethanol from Brazil and that the "like product" was the

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6/ Report of the Commission (Report) at A-4.

7/ Id. at A-7.

8/ Id. at A-4.

domestically produced fuel ethanol. 9/ 10/ There has been no request to change the definition of like product for these final investigations, nor do we see any reason to do so. Accordingly, the domestic industry is composed of U.S. producers of fuel ethanol. 11/

#### Condition of the domestic industry

In determining the condition of the domestic industry, the Commission considers, among other factors, domestic consumption, U.S. production, capacity, capacity utilization, shipments, inventories, employment, and profitability. 12/ 13/ Before undertaking this task it is important to review

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9/ Certain Ethyl Alcohol from Brazil, Invs. Nos. 701-TA-239 (Preliminary) and 731-TA-248 (Preliminary), USITC Pub. No. 1678 at 3-5 (April 1985).

10/ Commerce had identified the subject imports under four TSUS item numbers: nonbeverage ethanol (TSUS item 427.88) and three mixture provisions (TSUS items 430.10, 430.20, and 432.10). During Commerce's final investigation the petitioners alleged that imports of ethanol for fuel use were entering the country under additional TSUS items, either misclassified as ethanol for industrial use, blended with other additives such as xylene, or classified as an import from a CBI country when, in fact, it was wet Brazilian non-fuel grade ethanol that was merely dehydrated in a third country and imported into the United States as fuel ethanol. Accordingly, Commerce's final determination noted that "other blends may be included in the scope of the investigation" and that the "Department intends to work closely with the U.S. Customs Service to prevent circumvention of our determination through importation of ethanol blends." 51 Fed. Reg. 5,572 (Feb. 14, 1986). Commerce's notice and the possible expansion of the scope of the investigation does not affect the Commission's like product determination from the preliminary investigation: ethanol for fuel use.

11/ Vice Chairman Liebler and Commissioner Brunsdale have serious concerns about the like product and domestic industry definitions in these cases. They note that while ethanol has three different uses (i.e., in beverages, fuel, and industry), the analysis of material injury and causation set forth here has only considered ethanol used for fuel. They are concerned that the analysis may be too narrow in scope. However, a different disposition of this issue would not have altered their decisions in this case. See Commissioner Brunsdale's Additional Views in Certain Welded Carbon Steel Pipes and Tubes from Turkey and Thailand, Invs. Nos. 701-TA-251-253 and 731-TA-252 (Final), USITC Pub. No. 1810 at 49-55 (1986).

12/ 19 U.S.C. § 1677(7)(C)(iii).

13/ Commissioner Rohr notes that he considers the actual levels of these indicators as well as changes in them to be relevant.

briefly the history of this industry. In the mid-1970s, the U.S. government set up a program of tax subsidies and loan guarantees to spur development of the domestic fuel ethanol industry and other renewable domestic fuel sources. Many states also provided tax subsidies of their own as additional incentives to produce fuel ethanol. Ethanol production did not begin in significant volumes until the early 1980s. Therefore, the period of this investigation, 1982 through November 1985, substantially coincides with the beginning of production by a new domestic industry and a period of rapid growth for that industry. Ethanol is predominantly marketed as a gasoline extender, by blending 10 percent ethanol with 90 percent gasoline to make gasohol. 14/ However, it has had to rely on subsidies in order to compete in the marketplace. 15/ In 1985 those subsidies averaged 95 cents per gallon. 16/

Throughout the period of investigation, U.S. production and capacity increased rapidly, though the rate of growth slowed in 1984-85 (as would be expected in an emerging industry). 17/ Production reached \*\*\* in 1982 and then increased to 398 million gallons in 1983, 18/ 448 million gallons in 1984, and 582 million gallons in January-November 1985. U.S. capacity increases were equally dramatic, moving from 284 million gallons in 1982 to 497 million gallons in 1983, 612 million gallons in 1984, and 713 million gallons during

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14/ Commissioner Rohr notes that this practice is descriptive of the U.S. market for fuel ethanol but not necessarily other markets, such as Brazil, where pure ethanol is used. This is particularly relevant because use as a gasoline extender requires anhydrous ethanol whereas the ethanol used as fuel in Brazil itself is predominantly hydrous.

15/ Report at A-6-A-7, A-16-A-17; See generally, Petitioners' Prehearing Brief, Exhibit 4; Respondents' Prehearing Brief, Exhibit 7.

16/ Report at A-17.

17/ Chairwoman Stern and Commissioner Rohr note that they analyzed the facts of these investigations with regard to the unique characteristics of this industry and without any assumptions on the behavior of an emerging industry.

18/ Report at A-24, Table 1. The 1982 level is confidential.



January-November 1985. 19/ 20/ Notwithstanding the numerous reported equipment and operational problems that can be expected during startup of new plants, capacity utilization rates were in excess of 70 percent in 1982-84, before rising to 89.1 percent during January-November 1985. 21/

While petitioners alleged that there were 145 domestic fuel ethanol plants, with an aggregate annual capacity of 840 million gallons of ethanol, the vast majority of these plants are small-scale operations that have never produced an economically viable product and have left the fuel ethanol business. 22/ In any case, the six petitioners accounted for 83.5 percent of domestic production during January-November 1985, as reported by responses to the Commission's questionnaire. 23/

Total domestic shipments followed the same trend. They rose by more than 50 percent in 1983, by 19.6 percent in 1984, and by 51.6 percent in January-November 1985. 24/ Trends in employment, hours worked, total wages, and total compensation were uniformly upward during the period of investigation. 25/ U.S. producers' inventories increased in 1982-1983, remained relatively stable in 1984, and then declined during January-November 1985. 26/

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19/ Id.

20/ Throughout the period of investigation the vast bulk of domestic production capacity was concentrated in the Midwest region. As of November 1985, 97 percent of industry capacity was in the Midwest. Report at A-22.

21/ Id.

22/ Respondents' Prehearing Brief at 9-11, and Exhibits 6-10.

23/ Report at A-14.

24/ Id. at A-25, Table 2. The 1982 levels are confidential.

25/ Id. at A-27-A-29. Labor costs associated with fuel ethanol production, however, were less than 0.01 cent per gallon.

26/ Id. at A-28, Table 4.

Trends in profitability showed general improvement over the period. The industry as a whole reported operating profits in 1982 and 1983, 27/ followed by operating losses in 1984, and then a return to profitability in January–November 1985 on sharply higher sales volume. 28/ Indeed, operating income in January–November 1985 was almost twice the level of 1983. 29/ Moreover, changes in profitability between 1982 and 1985 closely paralleled changes in the cost of corn, the major cost component in ethanol's cost of production. 30/

Aggregate average unit revenue figures per gallon of fuel ethanol show a decline from 1982 through January–November 1985. It should be noted, however, that only one producer recorded such a decline; all the others experienced increases in average unit revenues. 31/ Moreover, the producer that had declining average unit revenues also had significantly higher profitability than the rest of the industry throughout the period of investigation. 32/

In summary, the domestic fuel ethanol industry is experiencing rapid growth during the initial phase of its development. Both production and capacity are expanding, and capacity utilization is very high. Employment, shipments, and profitability are increasing. Instead of signs of weakness,

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27/ Id. at A-30, Table 6.

28/ Id. at A-28.

29/ Post-Hearing Brief of Interbras, Response to Question of Commissioner Lodwick. Corn prices in 1984 averaged \$3.27 per bushel. In 1985, prices dropped to an average of \$2.75 per bushel. See also Petitioners' Prehearing Brief, Exhibit 6 at 9.

30/ Report at Table 6.

31/ Id. at A-31–A-32.

32/ Id. at A-32, Table 8.

the domestic industry has exhibited signs of strength, contrary to what one normally expects to find in an emerging industry which has encountered difficulties developing consumer acceptance for a new product. 33/ 34/ We therefore conclude that the domestic industry is not suffering material injury. 35/

No material injury by reason of LTFV imports from Brazil 36/

In determining whether material injury exists by reason of the subject imports, the Commission is required to consider a number of factors. These factors include the volume of imports of the merchandise under investigation, the effect of such imports on domestic prices, and the impact of such imports on the domestic industry. 37/ Evaluation of these factors involves a consideration of (1) whether the volume of imports or increase in volume is

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33/ For example, the Chrysler Corporation recommends against the use of fuels containing alcohol in their automobiles because some gasoline/alcohol blends may degrade the starting, driveability and fuel efficiency. Petitioners' Post Hearing Brief, Answer to Question 4; Harjehausen Affidavit at 8.

34/ We note that, without regard to whether losses may or may not be anticipated, the profitability indicators of this industry are not in and of themselves sufficient to convince us that it is currently experiencing material injury.

35/ Chairwoman Stern does not believe it necessary or desirable to make a determination on the question of material injury separate from the consideration of causality. She joins her colleagues by concluding that the domestic industry has not been demonstrated to be experiencing economic problems unusual for its position as an emerging industry heavily involved in state and federal government programs which are frequently changed.

36/ We have already determined that the domestic industry is not materially injured. However, even if we had determined that the domestic industry was materially injured, imports of ethanol from Brazil were not a cause of that material injury.

37/ 19 U.S.C. § 1677(7)(B).

significant, (2) whether there has been significant price undercutting by the imported products, and (3) whether imports have otherwise depressed prices to a significant degree or prevented price increases. 38/ On the basis of the available data we have concluded that the domestic industry is not being materially injured by reason of dumped and subsidized imports from Brazil. 39/

(1) Import Volumes

Importers' shipments increased from 1982 to 1984 but declined in interim 1985 compared to interim 1984. Similarly, while the ratio of imports to total U.S. consumption, or aggregate import penetration, increased from 1982 to 1984, it dropped significantly in 1985 as importers' shipments failed to rise as rapidly as domestic consumption and domestic shipments. 40/ However, because the U.S. ethanol market is not one unified national market, changes in the aggregate import penetration do not accurately reflect the competitive challenges imports posed to domestic producers. An analysis of the ethanol

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38/ 19 U.S.C. § 1677(7)(C).

39/ Vice Chairman Liebelier generally finds five factors to be particularly helpful on the issue of causation. Certain Red Raspberries from Canada, Inv. No. 731-TA-196 (Final), USITC Pub. 1680, at 11-19 (1985) (Additional Views of Vice Chairman Liebelier) (The stronger the evidence of the following . . . the more likely that an affirmative determination will be made: (1) large and increasing market share, (2) high dumping and subsidy margins, (3) homogeneous products, (4) declining prices and (5) barriers to entry to other foreign producers (low elasticity of supply of the imports)). Because the ethanol industry is a "young" industry, this analysis yields results that are not particularly informative. Rather, the analysis found in the text, infra, particularly the section dealing with the high elasticity of domestic demand due to the existence of a close substitute (gasoline), provides a more appropriate framework than the five factor test within which to analyze causation in this case. See Cellular Mobile Telephones and Subassemblies Thereof from Japan, Inv. No. 731-TA-207 (Final), USITC Pub. 1786 (December 1985) (five factor test may be inappropriate in young, technologically advanced industry).

40/ Report at A-40, Table 14.

business in the United States must consider individual state markets, since each state has its own peculiar characteristics. These characteristics include tax incentives and the transportation costs incurred in shipping domestic and imported product, both of which vary from state to state. 41/ Therefore, a realistic analysis of import penetration must allow for the fact that domestic producers have difficulty servicing certain peripheral markets on the east and west coasts because domestic rail and truck transport is so much more costly than international water transport.

There is also evidence that in particular markets domestic producers cannot satisfy demand. 42/ 43/ Increasing purchases of Brazilian ethanol by domestic producers indicate that the domestic industry has been having difficulty supplying its customers solely from its own production. Additionally, there are uncontested allegations in the record that the largest domestic producer of ethanol sought to become the exclusive distributor for Brazilian ethanol in the United States and proposed the purchase of 650 million gallons of ethanol over a three-year period. 44/ Such allegations, along with high capacity utilization figures, support the argument that domestic supplies of ethanol are tight.

## (2) Prices

An analysis of price behavior must also be framed in terms of individual

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41/ Id. at A-17, A-53-A-55. See generally, Petitioners' Post-Hearing Brief, Exhibit 1, Address of Marilyn Herman, "Federal and State Alcohol Fuel Tax Incentives and Regulations," The 1985 Washington Conference on Alcohol (Nov. 15, 1985).

42/ Report at A-55. We note that domestic barge transport to either the east or west coasts from the Midwest is also uneconomic.

43/ Commissioner Rohr believes that whether imports may be necessary to satisfy demand is not relevant to his determination and is not, in any event, an excuse for unfair trade. He therefore disassociates himself from this portion of the analysis.

44/ Petitioners' Prehearing Brief at 31-32 and Exhibit 27; Post-Hearing Brief of Interbras at 7.

state markets. 45/ To account for the different price structures in the many states in which ethanol is marketed, the Commission conducted price comparisons in California, Florida, Illinois, Alabama, and Ohio. The results were mixed. In Florida and Illinois, bargeload Brazilian prices were generally lower than domestic prices, while truckload Brazilian prices were uniformly higher. 46/ In Ohio, bargeload Brazilian prices were sometimes higher and sometimes lower than domestic prices. 47/ Based upon the available information in the record, there is no basis for concluding that the imported product has significantly undersold the domestic product. 48/

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45/ Petitioners' Post-Hearing Brief, Exhibit 1, Address of Marilyn Herman, "Federal and State Alcohol Fuel Tax Incentives and Regulations," The 1985 Washington Conference on Alcohol at 5-8, Table I (Nov. 15, 1985). At present, 32 states provide a tax forgiveness for alcohol blended fuels. Seven states restrict eligibility for the tax credit to ethanol produced in that state, while ten states offer reciprocity for the exemption for qualifying alcohol from other states.

46/ Report at A-51.

47/ Id. at A-52-A-53.

48/ Vice Chairman Liebler and Commissioner Brunsdale believe that evidence of underselling is ordinarily not probative on the issue of causation. In discussing "underselling," the Commission usually compares one importer's transaction price with a domestic producer's transaction price. They do not find this sort of data, by itself useful.

In this case, Vice Chairman Liebler and Commissioner Brunsdale note that domestic and foreign products are such close substitutes that they can be treated as homogeneous. However, there do appear to be slight differences among alternative suppliers, domestic and foreign, in terms of such factors as credit terms, availability and prompt delivery, and also product quality. (Product quality is determined by percent water content because ethanol must be virtually anhydrous to blend correctly with gasoline). But these differences do not clearly distinguish foreign supply from domestic supply. In other words, the quality of domestic supply varies by firm and some domestic firms offer slightly better product than foreign product while other domestic firms provide a slightly inferior product. Hence, depending on the domestic source, the foreign price may be either above or below the domestic price. This suggests that the price differences observed by the Commission are not helpful in analyzing causation. See Office of Economics memorandum, EC-J-094.

Commissioner Brunsdale concurs with Vice Chairman Liebler's views on this subject, which are more fully set forth in Certain Table Wine from the Federal Republic of Germany, France, and Italy, Invs. Nos. 701-TA-258-60 and 731-TA-283-85 (Preliminary), USITC Pub. 1771 at 34-36 (1985) (Additional Views of Vice Chairman Liebler).

From our assessment of price trends in particular states, it is apparent that domestic ethanol prices paralleled gasoline prices in each state except for California. 49/ This is not surprising since ethanol has been marketed as a gasoline extender throughout the period of investigation. In order to induce refiners and distributors to use ethanol and market gasohol, the price of ethanol must be sufficiently below the price of gasoline to cover the costs of establishing separate storage and shipping facilities as well as the costs of developing markets for a new product. Estimates of this price differential are approximately 5-15 cents per gallon of gasohol. 50/ While we do not suggest that there is a one-to-one correlation between gasoline and ethanol prices, these prices do parallel one another closely. Such a relationship is apparent in the price data for Florida, Ohio, and Michigan. 51/ Additionally, petitioners and respondents do not dispute that gasoline sets a price ceiling on ethanol prices. 52/

Analysis of price trends also reveals that imports of ethanol from Brazil have not had a significant effect on domestic prices. A comparison of ethanol price trends in Florida and Illinois, for example, demonstrates that imported

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49/ Report at A-52-A-53. The available price data for California are inconclusive because the removal of the state exemption in July 1984 led to a severe drop in shipments by U.S. producers, who are primarily located in the Midwest. As a consequence, after that date California prices for domestic ethanol are probably not reporting normal, ongoing commercial transactions. Instead, they are expected to be based on nominal transactions and may also reflect special or intermittent orders. Id. at A-44-A-47.

50/ Office of Economics memorandum, EC-J-094; Respondents' Prehearing Brief, Exhibit 1 at 16.

51/ Report at A-44.

52/ Id. at A-41; Hearing Transcript (Tr.) at 104-09; Respondents' Prehearing Brief, Exhibit 1 at 17. Petitioners and respondents both agree that ethanol prices must be at a discount below gasoline prices. They disagree only as to the correlation between declining gasoline prices and declining ethanol prices. Respondents suggest that the correlation is almost one-to-one. Petitioners suggest that a one-to-one correlation does not exist.

ethanol was absent from the market when domestic prices were at their lowest levels. 53/ Furthermore, the domestic industry as a whole, with the exception of one producer, has reported consistently increasing average unit revenue from 1982 through interim 1985. 54/ This suggests not only that imports, which have been increasing throughout the same period, have not had a significant impact on prices, but also that the one domestic producer with falling average unit revenue has initiated many price declines in the market. 55/ Given the predominant influence of gasoline prices on ethanol prices and the evidence of record demonstrating that imports have a negligible effect on domestic prices, we conclude that imports of ethanol have not significantly depressed or suppressed domestic ethanol prices.

Furthermore, since ethanol is used predominantly as a gasoline extender, ethanol is essentially a substitute for gasoline. The fact that changes in the price of gasoline are closely matched by changes in the price of ethanol provides evidence that ethanol and gasoline are indeed close substitutes. Moreover, because so much more gasoline is sold in this country than ethanol, changes in the price of gasoline cause changes in the price of ethanol. 56/

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53/ Respondents' Prehearing Brief, Exhibit 1 at 20-24.

54/ Report at A-31-32.

55/ Id. at A-55. There is considerable evidence on the record supporting the allegations that the domestic industry has initiated price declines in the market. See, e.g., Id. at A-101-A-102.

56/ Reportedly, gasohol sales (consisting of 10 percent ethanol and 90 percent gasoline) are only about 5.5 percent of total gasoline sales. Department of Energy, Office of Alcohol Fuels, "Sixth Annual Report on the Use of Alcohol Fuels" at 4 (April 1985).



We are persuaded that the evidence strongly supports the proposition that the U.S. demand for ethanol is highly sensitive to its price. This means the demand curve for ethanol is highly elastic. 57/ 58/ A highly elastic demand means that subsidized or dumped imports have virtually no effect on the domestic price of ethanol. Given demand, the predominant effect of an increase in import supply (caused, for example, by a new or more generous foreign export subsidy policy) is to add to domestic consumption. In particular, the additional quantity of imports would only have a minimal effect on domestic output. This is true when demand is highly elastic because the additional quantity of foreign product would be absorbed by the market with at most an insignificant effect on the domestic price. With domestic price substantially unchanged, domestic firms would continue to supply virtually the same quantity of output they did before imports increased. Therefore, the subsidized or LTFV imports cannot be a cause of material injury to the domestic industry.

Furthermore, we note that we have previously considered, as one factor among many, the subsidy or dumping margins in our analysis of title VII cases. 59/ 60/ In the present case, Commerce has determined that the dumping

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57/ A demand curve of a product is highly elastic if a small percentage increase in its price causes a very large percentage decrease in quantity purchased, assuming that all other factors that might influence the demand for the product are constant (e.g., prices of substitute products, consumer incomes, and tastes).

58/ Commissioner Rohr disassociates himself from this analysis of elasticity. He has based his analysis on the actual facts of these investigations with respect to prices rather than what theory states might or should be occurring.

59/ See Heavy-Walled Rectangular Welded Carbon Steel Pipes and Tubes from Canada, Inv. No. 731-TA-254 (Final), USITC Pub. 1808 (February 1986).

60/ Commissioner Rohr disassociates himself from this discussion of the effect of dumping or subsidy margins. He did not consider them in his analysis of these investigations.

margin was 98.81 percent and that the subsidy margin was 2.6 percent. But the margins themselves have no significance unless their context in each particular case is examined. Under the conditions just outlined, the size of the margins affects the quantity of imports but does not have a significant effect on the domestic price or production. Thus, in this case, the size of the margins does not shed any additional light on whether imports are a cause of material injury to the domestic industry.

(3) Financial experience

The losses experienced by some domestic producers in 1982-84 are hardly surprising for a new industry. 61/ Moreover, a comparison of trends in profitability with trends in corn costs reveals that the losses for the industry as a whole in 1984 can be directly traced to increased corn costs in 1984 and the profits in 1985 follow sharply declining corn costs in 1985. 62/ In this context it should be noted that increased ethanol costs cannot be passed on in the form of higher ethanol prices because the price of gasoline limits the price of ethanol. In addition, the record is replete with domestic producer statements blaming their losses on normal startup problems that frequently occur in new capital intensive plants. 63/

The rapid improvement in almost all of the traditional factors relevant to a material injury analysis, the highly elastic demand for ethanol, the anticipated startup losses caused by factors other than imports, and profitability in interim 1985 lead us to conclude that the domestic industry

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61/ For Commissioner Rohr's views on this subject see note 18 supra.

62/ See note 24 supra.

63/ Respondents' Prehearing Brief at 45-46 and Exhibits 7, 11, 33.

is not suffering material injury by reason of imports of ethanol from Brazil. 64/

No threat of material injury by reason of LTFV imports from Brazil

In making a determination as to whether there is threat of material injury, the Commission is required to consider, among other factors:

(I) If a subsidy is involved, such information as may be presented to it by the administering authority as to the nature of the subsidy (particularly as to whether the subsidy is an export subsidy inconsistent with the Agreement),

(II) any increase in production capacity or existing unused capacity in the exporting country likely to result in a significant increase in imports of the merchandise to the United States,

(III) any rapid increase in United States market penetration and the likelihood that the penetration will increase to an injurious level,

(IV) the probability that imports of the merchandise will enter the United States at prices that will have a depressing or suppressing effect on domestic prices of the merchandise,

(V) any substantial increase in inventories of the merchandise in the United States,

(VI) the presence of underutilized capacity for producing the merchandise in the exporting country,

(VII) any other demonstrable adverse trends that indicate the probability that the importation (or sale for importation) of the merchandise (whether or not it is actually being imported at the time) will be the cause of actual injury, and

(VIII) the potential for product-shifting if production facilities owned or controlled by the foreign manufacturers, which can be used to produce products subject to investigation(s) . . . , are also used to produce the merchandise under investigation. 65/

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64/ Commissioner Rohr states that on the basis of the foregoing analysis he does not believe that a causal connection has been established between imports and the condition of the domestic industry.

65/ 19 U.S.C. § 1677(7)(F)(i).

Moreover, a finding of threat of material injury must be based on evidence that the threat is real and that actual injury is imminent and must not be based on mere conjecture or supposition. 66/

The final countervailing determination by Commerce was that the total net subsidy for Brazilian ethanol was 2.6 percent. 67/ Not only is this a small amount, but the largest component of the net subsidy, 1.65 percent attributed to the PROALCOOL loan program, was not an export subsidy but was an industrial loan program available to Brazilian producers of ethanol, most of which is consumed domestically. 68/ Therefore, the nature of the subsidy itself does not suggest that exports will necessarily increase in the future.

U.S. market penetration of Brazilian imports increased during 1982-84, before dropping sharply during January-November 1985. 69/ Adjusting market penetration data to account for abnormal inventory buildup that occurred in December 1984 does not alter this pattern. 70/

U.S. importers' inventories of fuel ethanol from Brazil increased sharply from 1982 to 1984, before dropping dramatically by November 30, 1985. 71/

Brazilian capacity figures include both hydrous and anhydrous production. While such capacity is large and there is evidence of excess capacity, in any given year physical capacity is not a limiting factor in ethanol production. The determining factor is sugar cane production for a particular year as sugar cane is the principal input from which ethanol is

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66/ 19 U.S.C. § 1677(7)(F)(ii); see also H.R. Conf. Rept. 1156, 98th Cong., 2d Sess. 174 (1984).

67/ 51 Fed. Reg. 3,376 (Jan. 27, 1986).

68/ 51 Fed. Reg. 3,364 (Jan. 27, 1986).

69/ Report at A-39, Table 13.

70/ Id. at A-39.

71/ Id. at A-40, Table 14.

derived. 72/ Such production levels are set by the Brazilian government and, once established, are primarily affected by the weather. Short-term adjustments in cane production are difficult since sugar cane takes two years from planting to harvesting. 73/

While it may be theoretically possible to shift production from refined sugar to ethanol in Brazil or from hydrous ethanol to anhydrous ethanol, there are several structural rigidities that limit such a practice. The first is Brazilian demand for hydrous ethanol. By the end of 1986 there will be 3.2 million hydrous ethanol vehicles in use in Brazil, 74/ requiring an estimated 2.2 billion gallons of hydrous ethanol in 1986. 75/ Vehicles that use hydrous ethanol cannot use gasoline or gasohol without major engine modifications. Thus, there are two separate and distinct fleets of vehicles in Brazil: one that uses hydrous ethanol and one that uses anhydrous ethanol blended with gasoline. 76/ Shifting production from hydrous ethanol to anhydrous ethanol would therefore require fundamental changes in the transportation and fuel policies of Brazil. Given that only 5 percent of new vehicles in Brazil use anhydrous ethanol blended with gasoline, such a shift is highly unlikely. 77/

Finally, low and declining gasoline prices are now an important

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72/ Id. at A-34-A-35; Post-Hearing Brief of the Brazilian Ethanol Producers' Special Committee, Answers of Dr. Nastari at 12; Respondents' Prehearing Brief at 60-61.

73/ Respondents' Prehearing Brief at 61.

74/ Posthearing Brief of the Brazilian Ethanol Producers' Special Committee, Answers of Dr. Nastari at 2.

75/ Id.

76/ Id. at 5.

77/ Id. at 3.

disincentive to produce and export anhydrous ethanol to the United States. 78/ Since gasoline prices in the United States act as an effective ceiling on ethanol prices, the U.S. market will become less appealing to Brazilian producers. Moreover if wholesale gasoline prices remain, as expected, in the 50 to 60 cents per gallon range, 79/ it is unlikely that Brazilian producers will increase anhydrous exports when sugar cane costs alone are 49 cents per gallon of ethanol and when the average net cost to purchasers of Brazilian ethanol is \$1.08 per gallon. 80/

The price impact of future U.S. imports from Brazil is necessarily complicated by the wide array of state tax programs and their applicability to Brazilian imports, the nature of competition in particular state markets (both between domestic and Brazilian producers and among domestic producers), the impact of falling gasoline prices, and the ability of ethanol producers to market their product as an octane enhancer instead of as a gasoline extender. Many of the states that provide state tax incentives for the production of ethanol now limit the availability of those benefits to domestically produced ethanol or to ethanol produced from raw materials grown in that state. 81/ Additionally, many other states that have provided incentives to both foreign and domestically produced ethanol have recently changed their laws to limit

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78/ Declining gasoline prices creates an incentive to produce anhydrous ethanol in Brazil for blending with cheaper gasoline for use in Brazil. This is because the relative price differential between gasohol and hydrous ethanol would decline. However due to the massive commitment to consumption of hydrous ethanol in Brazil, fundamental shifts in consumption patterns for gasohol and hydrous ethanol are unlikely. See also Report at A-56-A-57; Respondents' Prehearing Brief at 65, Exhibit 1 at 28.

79/ Post-Hearing Brief of Brazilian Ethanol Producers' Special Committee at 6.

80/ Respondents' Prehearing Brief at 65; Post-Hearing Brief of Brazilian Ethanol Producers' Special Committee at 7.

81/ Report at A-17. See generally, Petitioners' Post-Hearing Brief, Exhibit 1, Address of Marilyn Herman, "Federal and State Alcohol Fuel Tax Incentives and Regulations," The 1985 Washington Conference on Alcohol (Nov. 15, 1985).

the benefits to domestically produced ethanol. 82/ Since the average state tax subsidy in 1985 was 35 cents per gallon, Brazilian ethanol is at a serious competitive disadvantage in those states. 83/ Brazilian ethanol's influence on prices in those states is severely limited if Brazilian ethanol is able to compete at all.

There are other states, such as California, where state tax incentives have been eliminated for all ethanol and where transportation costs are so high that the domestic industry (97 percent of whose capacity is located in the Midwest) can no longer market its product regardless of the presence or absence of ethanol. 84/ Indeed, the data of record indicate that domestic shipments to California dropped significantly when the state tax incentive was repealed. Instead of purchasing Brazilian ethanol, California refineries merely reduced their production of gasohol and increased their production of gasoline. 85/

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82/ Report at A-17.

83/ Id. at A-17.

84/ Id. at A-46-A-47, A-54-A-55. Transportation costs play a significant role in the marketing of ethanol. Ethanol cannot be shipped through interstate pipelines because water in the system could cause the anhydrous ethanol to become hydrous and unsuitable for blending with gasoline. Therefore, ethanol must be shipped by truck, rail, or barge. Shipment by barge is considerably less expensive than shipment by rail or by truck. Thus, shipments of Brazilian ethanol to the east or west coasts by water enjoy a significant transportation cost advantage over domestic shipments which must go by rail or truck. Id. at A-14-A-15, A-53-A-55.

85/ Posthearing Brief of Interbras, Response to Question of Chairwoman Stern. In 1983, the last full year that the California state subsidy was in effect sales of ethanol reached 48.9 million gallons. Sales dropped to 36.9 million gallons in 1984, and further to 24.7 million gallons in 1985. Furthermore, market penetration of ethanol also declined sharply in California following the expiration of the state subsidy. In April-June 1984 ethanol comprised 5.6 percent of the fuel market. In July-September, immediately after the subsidy expired, market penetration dropped to 2.7 percent. The most recent quarterly figures, indicate that ethanol now comprises a mere 0.98 percent of the market.

Given current trends in gasoline prices and the likelihood that gasoline prices will remain low for the near future, it is doubtful that Brazilian ethanol will be able to compete in the U.S. marketplace. Indeed, these depressed gasoline prices threaten the viability of the domestic ethanol industry even if it continues to receive an average of 95 cents per gallon in government subsidies.

In conclusion, we determine that imports of ethanol from Brazil do not pose a threat of material injury to the domestic industry. The ability of Brazilian producers to increase exports in the near future is limited by smaller than anticipated sugar cane production, structural impediments to the shifting of production from hydrous to anhydrous ethanol, and prohibitively low gasoline prices in the United States. Any decision to the contrary requires the Commission to speculate that a number of economic trends would suddenly reverse themselves and to suppose that fundamental changes would occur in the domestic market for ethanol as well as in the Brazilian economy. Such supposition and conjecture cannot form the basis for an affirmative determination. 86/

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86/ Chairwoman Stern notes that it is impossible at this stage to accurately forecast the future of this new industry. This is so not necessarily because it is new so much as because its fate is so dependent on myriad federal and state actions ranging from regulations to financial incentives. But her determination in these investigations must rest on whether the subject imports have been shown to cause or threaten material injury. This has not been demonstrated.



### Dissenting Views of Commissioner Eckes

I respectfully disagree with my four colleagues in the Commission majority. On the basis of the record in investigations Nos. 701-TA-239 and 731-TA-248 (Final), I determine that an industry in the United States is materially injured by reason of imports of fuel grade ethanol (fuel ethanol) from Brazil which the Department of Commerce has determined to have been subsidized and sold at less than fair value (LTFV).

Let me summarize, briefly, these views. My determinations are based upon the record developed over the entire period of investigation. This record conclusively shows that, except for the period immediately following the filing of this petition, the condition of the domestic industry deteriorated as the imports of fuel ethanol from Brazil increased steadily and rapidly. Brazilian imports have undercut domestic prices and caused material injury. In addition, many factors in the record indicate that Brazilian imports of dumped and subsidized ethanol pose a real and imminent threat of future material injury to domestic producers.

This set of views will discuss fully the reasons for my affirmative determination, and explain why the majority's negative holding may not be "in accordance with law." From my perspective this case elevates to prominence a fundamental

legal issue relating to how the Commission applies the statutory criteria in our trade laws. At issue here is whether members of the Commission have the discretion to disregard explicit statutory criteria and substitute their own presumptions and tests in administering our trade laws. Or must the Commission apply the law as it is written, even though individual Commissioners may disagree personally with the trade laws and the intent of Congress?

Domestic industry 1/and like product 2/

The Commission defined the like product as domestically produced fuel ethanol in its preliminary determination. 3/ None of the parties has challenged or taken issue with that definition, and no new information has been developed in the record which suggests that it should be changed. Therefore, domestically produced fuel ethanol is "like" the imports under investigation and that the domestic industry is composed of U.S. producers of fuel ethanol.

Condition of the domestic industry

In assessing the condition of the domestic fuel ethanol industry during the preliminary investigation, the Commission

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1/ 19 U.S.C. 1677(4)(A).

2/ 19 U.S.C. 1677(10).

3/ Certain Ethyl Alcohol From Brazil, Invs. Nos. 701-TA-239 and 731-TA-248 (Preliminary), USITC Pub. 1678 (April 1985) at 3-5 (Hereinafter referred to as "Preliminary").

observed several key situational factors that have shaped this industry's growth. It noted, first, that the U.S. market for this product is comparatively young and that consumption is growing rapidly. Second, the Commission observed that this industry has relied heavily on the availability of tax incentives. And, third, it mentioned the obvious point that the price of fuel ethanol depends heavily on the price of gasoline. These situational considerations which are part of the underlying conditions of trade have not changed.

Based on the record of this investigation, it appears that the domestic ethanol industry and the U.S. market are still expanding. Indeed, from 1982 through 1985 consumption grew over 300 percent. The Commission observed this growth pattern in the preliminary investigation when it reported that "domestic production, capacity, shipments, employment, wages and net sales all increased substantially from 1982 to 1984."

4/ From my standpoint, these are precisely the trends that one might expect for a new industry in a growing market.

Even so, a year ago when this Commission rendered its preliminary affirmative determination, there were dark clouds on the horizon, and these remain today. For one thing, despite its expansion, the domestic industry remains heavily dependent on tax incentives and confronts a frequently changing and sometimes hostile climate of regulations and laws. While federal tax exemptions favoring development increased,

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4/ Id. at 6.

state incentives generally decreased or were eliminated. For another thing, the domestic industry remains vulnerable to the effects of declining gasoline prices. 5/ And, of course, a

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5/ While a broad spectrum of factors may be considered in examining the conditions of trade it is imperative to note that the Commission's causation analysis must be more narrowly focused. In the legislative history Congress warned the Commission specifically against weighing the causes of injury in a Title VII investigation. The House Ways and Means Committee report on the Trade Agreements Act of 1979 says:

"In determining whether such injury is 'by reason of' such imports, the ITC looks at the effects of such imports on the domestic industry. The law does not, however, contemplate that injury from such imports be weighted against other factors . . . which may be contributing to overall injury to an industry. Any such requirement has the undesirable result of making relief more difficult to obtain for those industries facing difficulties from a variety of sources, precisely those industries that are most vulnerable to subsidized or dumped imports." H.R. Rep. No. 96-317, 96th Cong., 1st Sess. 47 (1979).

Similar language appears in the Senate Report on the Trade Agreements Act of 1979. See Also S. Rep. No. 249, 96th Cong., 1st Sess. 57, 74-75 (1979).

Moreover, the Court of International Trade provides important guidance to the Commission regarding the requirement of a causal nexus between the subject imports and the role of weighing various causes by the Commission. The court states:

The statute's causation prerequisite to an affirmative injury determination is satisfied if the subsidized imports contribute, even minimally, to the conditions of the domestic industry, and the Commission is precluded from weighing the causes of injury. [emphasis added]

British Steel Corporation and British Steel Corporation, Inc., v. United States of America, United States International Trade Commission, 593 F. Supp. 405, 413 (CIT 1984).

third uncertain variable has been the pattern of imports. 6/ 7/

When it conducted the preliminary investigation, the Commission found that the principal indicator of injury to the domestic industry was poor financial performance. Operating income for the fuel ethanol industry decreased substantially from 1982 to 1983 and showed a loss in 1984. 8/ In 1985, however, there was some improvement, and operating income increased to nearly \$50 million dollars and a 6 percent share of net sales. 9/ While my colleagues may see this as a sign of health, and so conclude that the domestic industry is not experiencing material injury, such a conclusion is entirely unjustified in the present investigation. The next section of this opinion shows that this financial upturn is artificial and, in my judgment, the domestic industry continues to experience material injury, which the statute defines as injury that is "not inconsequential, immaterial, or unimportant." 10/

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6/ Parties to this investigation agreed that there is a possibility for market development using fuel ethanol as an octane enhancing ingredient in gasoline. This opportunity has not been realized to date, however, and even if ethanol gains some acceptance as an enhancing agent, respondents state that "the net cost of ethanol to the distributor must be at least 15 cents a gallon less than the wholesale price of gasoline." Transcript of the hearing in Invs. Nos. 701-TA-239 and 731-TA-248 on February 5, 1986, at 158 (hereinafter referred to as "Transcript").

7/ Preliminary at 6.

8/ Report of the Commission in Invs. Nos. 701-TA-239 and 731-TA-248(Final) at A-30 (hereinafter referred to as "Report").

9/ Report at A-30.

10/ 19 U.S.C. 1677(7)(A).

Material Injury by Reason of Unfairly Traded Imports 11/

I have concluded that the domestic ethyl alcohol industry is materially injured by reason of Brazilian imports. In approaching the evidence, this Commissioner sought to apply the analytical criteria established in the statute.

In assessing material injury, the statute stipulates that the Commission shall consider among other factors the following:

- (i) the volume of imports of the merchandise which is the subject of the investigation,
- (ii) the effect of imports of that merchandise on prices in the United States for like products, and
- (iii) the impact of imports of such merchandise on domestic producers of like products. 12/

The statute continues, stating that for purposes of evaluating these factors that the Commission "shall consider" and "shall evaluate" certain specific factors contained in the subsequent provisions. 13/

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11/ Most of the data on imports, import penetration, income and loss and pricing are confidential and therefore must be discussed in general terms.

12/ 19 U.S.C. 1677 (7)(B).

13/ The Commission's reviewing court has in its opinions focused on this mandate. In Gifford-Hill Cement Co., et al. v. United States, 615 F. Supp. 577, 584 (CIT 1985), the court states

"In evaluating injury caused by dumping, the ITC must follow statutory guidelines which set forth certain indicia of injury that the Commission must consider . . . . These indicia include the volume of imports, the effect of imports on prices of the like domestic product, and the impact of imports on domestic producers of the like domestic product."

If one looks at each of these, one finds compelling evidence for an affirmative determination. First, imports increased steadily and rapidly from 1982 to 1984. 14/ Brazilian imports more than doubled from 1982 to 1983 and more than tripled from 1983 to 1984. 15/ This rising import volume brought similar increases in market penetration. Brazilian fuel ethanol took a significant share of the U.S. market in 1982 and more than doubled that share in 1984. 16/

It is important to note that while Brazilian imports were increasing, the financial condition of the U.S. industry deteriorated. In 1982, a start-up year for the domestic industry, Brazilian import penetration was significant, and domestic producers had a negative ratio of operating income to net sales. The following year, Brazilian market penetration increased slightly, and with rising consumption and production in the U.S., the domestic industry managed to generate a low positive ratio of operating income to net sales. 17/

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14/ At the Commission hearing in this investigation on February 5, 1986, counsel for those in opposition to the petition suggested that a more accurate analysis of the correlation between import penetration and profitability should be based on "import sales." (Transcript at pp. 230-231). Presumably, counsel for those in opposition to the petition, felt that "import sales" figures had either increased absolutely or relatively for the interim period (January-November) 1985. The Report clearly shows that this is not the case. Imports decreased in both absolute and relative terms in that time frame (Report at A-39-40).

15/ Report at A-38.

16/ Report at A-39-40.

17/ Report at A-30, A-39-40.

But this promising improvement ended abruptly in 1984 when Brazilian imports soared, taking nearly two and one-half times their 1983 share of the domestic market. I believe it significant that while imports were climbing in 1984, domestic profitability deteriorated sharply. For the entire year 1984 domestic producers had a negative ratio of operating income to net sales. Operating income plummeted; while the domestic industry figures were positive in 1983, they decreased significantly to negative figures in 1984. 18/ To me the data cited above demonstrate clearly how unfairly traded Brazilian ethyl alcohol has injured domestic producers. 19/

During four and one-half years on the International Trade Commission, this Commissioner has participated in some 1000 investigations. In these he has noted a predictable pattern: Imports often fall after a domestic industry submits a petition for import relief. And, this is precisely what occurred in

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18/ Report at A-39-40 and A-49.

19/ In the past Commissioners have frequently looked for a correlation between imports and profitability when they perform the statutory analysis of considering the impact of imports on domestic producers of like products. See, for example, "Views of the Commission," Motorcycle Batteries from Taiwan, Inv. No. 731-TA-42 (Final), USITC Pub. 1228 (March 1982) at 9. More recently, I found such a correlation in Heavy-Walled Rectangular Welded Carbon Steel Pipes and Tubes from Canada, Inv. No. 731-TA-254 (Final), USITC Pub. 1808 (Feb. 1986) at 31-32.

Former Chairman Bill Alberger frequently employed correlation analysis, especially when writing a negative determination. See Bicycle Tires and Tubes from Taiwan, Inv. No. 731-TA-94 (Preliminary), USITC Pub. 1258 (June 1982) at 19, and Lamb Meat from New Zealand, Inv. No. 701-TA-80 (Preliminary), USITC Pub. 1191 (Nov. 1981) at 20.



1985 after counsel for the Ad Hoc Committee of Domestic Fuel Ethanol Producers filed petitions on February 25, 1985.

One can not overlook the impact the pending countervailing duty and antidumping investigations have had on the pattern of Brazilian imports. Both the Commission and our reviewing court have held that the posting of bonds and the pendency of cases may account for a reduction in the increase of imports entering the United States and that an antidumping order can be presumed to distort the meaning of observable data regarding present conduct in the U.S. market. 20/ By analogy, a pending case which contains allegations of critical circumstances would serve to curtail imports under investigations and distort short-term data.

Domestic petitioner originally alleged critical circumstances, and had Commerce made an affirmative determination on this point the Brazilians might have been subjected to a significant duty based on the Customs value of Brazilian fuel ethanol. 21/

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20/ Anhydrous Sodium Metasilicate From France, Inv. No. 731-TA-25(Final), USITC Pub. 1118 (December 1980) at 6; Rhone Poulenc, S.A. and Rhone Poulenc, Inc. v. United States 592 F. Supp. 1324, 1325 (1984). See Also Television Receiving Sets From Japan Inv. No. AA1921-66, TC Pub. No. 367 (March 1971) at 8; Matsushita Electric Industrial Co. v. United States 569 F. Supp. 853, 862 (1983), motion for rehearing denied 573 F. Supp. 122 (1983).

21/ Note that if Commerce had made a finding of critical circumstances then a significant duty would have been imposed and would have included imports that had entered 90 days prior to Commerce's published preliminary determination.

As my colleagues know, to make such a determination the Department of Commerce generally looks at a three or four-month period before and after the date a petition for relief is filed. Since there was a pronounced increase in fuel ethanol from Brazil in the four-month period prior to February 25, 1985, when the petition was filed, the Brazilians might have faced even steeper duties had there not been a significant decline in Brazilian imports in the months immediately afterward.

Indeed, fuel ethanol imports from Brazil decreased dramatically -- down 37 percent for the January-November 1985 period when compared with the same interim period for 1984. 22/ And, as one might suspect this decline in imports coincided with an improvement in the domestic industry's profitability. Net sales increased from \$579 to \$836 million and operating income rose from a negative figure to \$50 million. The key ratio of operating income to net sales improved from a negative figure in the first 11 months of 1984 to a positive 6 percent in the same interim period of 1985. 23/

Some of my colleagues may seek to explain away this pattern, asserting instead that the Commission should base its determination on 1985 data. After all, if one looks at the most recent months imports are down and the industry appears

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22/ Report at A-38.

23/ Report at A-30.

healthier. But such analysis seems myopic in light of Commission practice, decisions by our reviewing court, and the trends reflected over the entire record of this investigation. 24/

Now let's examine the effect imports have had on domestic prices. Commission data show significant underselling of Brazilian ethanol at both the distributor and end-user levels in five states where delivered price comparisons could be made. 25/ During the period of this investigation imported ethanol was sold primarily in bargeload quantities. 26/ And, the majority of distributors' delivered purchase price comparisons involving these bargeload shipments show that suppliers of Brazilian ethanol have been underselling the domestic market.

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24/ Nor should one rely on elasticity analysis in rebutting the factual record of this investigation. In EC-J-010 (Jan 7, 1986) at 9, the ITC's Director of Economics notes that elasticity estimates "are usually not very reliable, are seldom statistically significant, and only rarely are sufficient price data available to allow empirical estimates of elasticities of substitution at the product level." Any effort to rely on elasticities would seem to be another instance where ". . . a theoretical model, based on a set of assumptions, may be outweighed by real world data." Maine Potato Council v. U.S., 613 F. Supp. 1237, 1244 (CIT 1985), footnote 8.

25/ Report at A-51-53.

26/ Report at A-41 (footnote 4). Reporting importers stated that between 75 and 80 percent of total 1984 imported ethanol sales were shipped by barge.

For example, in Florida, Brazilian ethanol sold for as much as 16 percent below the price of U.S.-produced ethanol. 27/ And, in Illinois, Brazilian ethanol sold for as much as 12 percent below the price of domestically-produced ethanol. 28/

A similar pattern of Brazilian underselling exists when end-user purchases are compared. Almost all of these show Brazilian ethanol underselling domestic ethanol. 29/ Because price is reportedly the major sourcing determinant in most purchases of fuel ethanol 30/, and because Brazilian and U.S.-produced ethanol are physically fungible, 31/ it is reasonable to assume that even small levels of underselling could be expected to cause domestic fuel ethanol producers to either reduce their prices or lose sales.

Obviously, changes in state and federal tax incentives as well as differing state tax treatment for domestic and imported fuel ethanol complicate any analysis of price trends. Even so, evidence available to the Commission demonstrates that lower-priced Brazilian imports of fuel ethanol had a negative effect on prices of U.S. produced ethanol. For instance, in

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27/ Report at A-50-51.

28/ Report at A-83. Of the bargeload price comparisons underselling occurred in 57 percent of the Florida comparisons, 100 percent of the Illinois comparisons and 40 percent of the Ohio comparisons.

29/ Report at A-53. Eight of the nine price comparisons examined by the Commission showed underselling by suppliers of Brazilian ethanol.

30/ Report at A-55.

31/ Office of Economics Memo EC-J-094, at 1.

late 1984 when Internor, the principal importer of Brazilian ethanol, brought in large quantities of fuel ethanol to avoid an impending 10 cent per gallon increase in the duty for ethanol, prices of U.S.-produced ethanol declined by an average of 10.5 percent in all five states examined by the Commission. 32/ Indeed, several confirmed lost revenue allegations indicate that lower-priced Brazilian ethanol available during late 1984 aggravated gasoline price declines during that period, forcing U.S. producers to lower their ethanol prices. 33/

Complete price trends are best analyzed in the Florida market, where Brazilian and domestic ethanol received equal tax treatment during the entire period under investigation, and are therefore directly competitive. 34/ The prices of both U.S.-produced and imported ethanol sold in Florida declined by much more than could be expected during January 1984-October 1985, given the changes in state and federal tax incentives. 35/ Additionally, the fact that Florida ethanol prices were less closely related to the price of wholesale gasoline than in other markets analyzed indicates to me that the presence of unfairly traded Brazilian imports had a strong impact on prices in Florida. 36/

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32/ Report at A-39, A-44.

33/ Report at A-56-62.

34/ Report at A-47.

35/ Report at A-44 (footnote 3).

36/ Domestic producers located in the Midwest are able to serve the Florida market by barging product down the Mississippi River.

Before concluding this section, let me comment briefly on weighing causes in Title VII investigations. The legislative history indicates clearly that unfairly traded imports need not be the "principal, a substantial, or a significant cause of material injury." <sup>37/</sup> It is sufficient for an affirmative determination that the unfairly traded imports be only a contributing cause. Our reviewing courts have emphasized this point in several determinations. For example, in Gifford-Hill Cement, the U.S. Court of International Trade stated: ". . . the Commission must rule in the affirmative if it finds even slight contribution from imports to material injury." <sup>38/</sup> From my standpoint, the substantial evidence of import penetration, price undercutting, and price depression discussed in the preceding pages is more than the "slight contribution" to injury required for an affirmative determination.

#### Threat of Injury

Even if I had not determined that dumped and subsidized Brazilian fuel ethanol imports were a cause of material injury, an examination of the factors the Commission must consider

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<sup>37/</sup> See S. Rep. No. 249, 96th Cong., 1st Sess. 74-75 (1979) and H.R. Rep. No. 96-317, 96th Cong. 1st Sess. 47 (1979).

<sup>38/</sup> Gifford-Hill Cement Company v. U.S., 615 F. Supp. 577, 584 (CIT 1985). See also British Steel Corporation v. U.S., 593 F. Supp. 405, 413 (CIT 1984).

in threat analyses compels a determination of threat of material injury. The statute instructs the Commission to consider, among other relevant economic factors, eight specific criteria. These include the nature of any subsidy; production capacity; any rapid increase in market penetration; the probability of price depression or suppression; any substantial increase in inventories; the presence of underutilized capacity in the exporting country; demonstrable trends indicating the probability of importation causing actual injury; and the potential for product shifting. 39/

Petitioners have alleged that the subsidies determined by Commerce were export subsidies and nothing in the record compels a different conclusion.

On the basis of information supplied to the Commission by representatives of the Brazilian producers, it is clear that Brazil has a large and rapidly growing capability to produce ethanol (both hydrous and anhydrous). From a level of 2.2 billion gallons in 1982-1983, Brazil's effective production capacity rose at an average annual rate of about 14 percent to 3.3 billion gallons in 1985-1986. By 1987-1988 production capacity is expected to reach 3.7 billion gallons. 40/ Separate data were not available on Brazil's capacity to produce anhydrous ethanol, but information available to the

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39/ 19 U.S.C. 1677 (7) (F).

40/ Report at A-34.

Commission indicates that sufficient capacity exists to sharply increase domestic production. For example, in 1982-1983 Brazilian production of anhydrous ethanol was approximately 900 million gallons, more than three times U.S. capacity and more than four times U.S. production in that time period.

Market penetration has increased rapidly over the period of investigation. Imports of fuel ethanol from Brazil captured a significant share of the U.S. market in 1982. This share increased in 1983 and more than doubled in 1984. Although there was a decrease in 1985, the import penetration figure remained at an injurious level. 41/

The discussion in this opinion shows that imports of fuel ethanol from Brazil have entered the U.S. at prices that have had a depressing effect on domestic prices and consequently captured a significant share of the domestic market. Because of the established pattern of low-priced Brazilian imports into the U.S. and the fact that the U.S. is Brazil's only potential export market for ethanol, it is more than probable that long term import trends will continue.

Inventories of U.S. producers increased significantly in 1983 and remained at that level in 1984. Interim figures for 1985 indicate a decline from the comparable period in 1984 but 1985 figures remained high above 1982 figures. 42/ Importers'

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41/ Report at A-39-40.

42/ Report at A-28.



inventories more than doubled in 1983 and more than tripled in 1984. In 1985, importers sold from their massive inventories in order to avoid additional duties and their inventories dwindled to near zero. 43/

The Brazilian capacity to produce ethanol is staggering, and respondents have confirmed that there are virtually no plant-capacity limitations that would restrict the production of ethanol (hydrous or anhydrous). Further, respondents confirm that there is excess capacity (at least until 1990) to produce ethanol in Brazil. 44/

Adverse trends that indicate a probability that the importation of dumped and subsidized ethanol will be the cause of actual injury is evidenced by the proven ability of Brazil to change the production and marketing of ethanol very rapidly and the effect of Brazilian imports on the U.S. market over time. Brazil has demonstrated a remarkable ability to shift rapidly its production and marketing of fuel ethanol in response to changing market conditions. Brazilian production fell 25 percent in 1983, dropped another 16 percent in 1984, and then rose 28 percent in 1985. 45/ Even more drastic are the changes in amounts of fuel ethanol exported from Brazil. These exports rose 357 percent in 1984, and then fell 60 percent in 1985. 46/ When the imposition of an increased

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43/ Report at A-33.

44/ Report at table 10 and at A-20-21.

45/ Report at A-34.

46/ Report at A-34.

duty in January 1985 promised to depress Brazilian ethanol prices and profits, the Brazilians quickly boosted exports to avoid the sharp increase in U.S. duties. 47/ The effects of Brazilian fuel ethanol imports have been outlined earlier. When these factors are considered in light of Brazil's need to satisfy debt-service obligations and the fact that the U.S. is the only available export market for Brazilian ethanol, 48/ it is more than probable that absent CVD duties, the upward trends of imports will continue and have an adverse effect on the domestic industry.

Finally, the potential for product shifting in Brazil is evidenced by the fact that Brazilian ethanol production is based on sugarcane production, and a major percentage of Brazilian growers of sugarcane produce both marketable sugar and ethanol. Therefore, sugar production could easily be decreased to allow for increased ethanol production.

Commission Discretion:

It is not my responsibility to assess the correctness of the Commission majority's final determination, but I do wish to offer my perspective on several important points. First, it appears that some members of the Commission majority may have rendered a determination that is "not in accordance with law."

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47/ Report at A-16-17.

48/ Report at A-33-35.

I use the word "may" deliberately, because it is not practical for the Commissioners to exchange views and respond fully to one another's argumentation and still meet the tight statutory deadlines. Consequently, my impressions of the majority's point of view are based on past practice, and their written views in recent cases, not on first-hand review of their opinions in this investigation.

Even so, it is arguable that some members of the majority may not have applied properly the statute, legislative history, and existing case law to the facts at hand. Indeed, some seem determined to revise the statute under the thin veil of administrative discretion.

#### 1. Proxies for the Statute?

In examining the impact of imports on the affected industry, one of my colleagues frequently seems to ignore statutory criteria and chooses instead to focus on five factors which, "when viewed together, serve as proxies for the inquiry

that Congress has directed the Commission to undertake."

(emphasis added) 49/ She says:

The stronger the evidence of the following . . . the more likely that an affirmative determination will be made:  
 (1) large and increasing market share, (2) high dumping margins, (3) homogeneous products, (4) declining prices and (5) barriers to entry to other foreign producers (low elasticity of supply of other imports). 50/

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49/ This analysis is more fully developed in Certain Raspberries from Canada, Inv. No. 731-TA-196 (Final), USITC Pub. 1707 (June, 1985) at 11-19, especially 12-13. My colleague says: ". . . it seems that the statute directs the causation analysis to two basic factors: volume of imports and the effects of the LTFV imports on prices. This is not much guidance. . . . The mere presence of LTFV imports is not sufficient to establish causation." (emphasis added)

On substituting "proxy" criteria for the statute, see, for example, Certain Carbon Steel Pipes and Tubes from the People's Republic of China, the Philippines, and Singapore. Invs. Nos. 731-TA-292 through 296 (Preliminary), USITC Pub. 1796 (Dec. 1985) at 26, and Certain Welded Carbon Steel Pipes and Tubes from Taiwan, Inv. No. 731-TA-211 (Final), USITC Pub. 1799 (Jan. 1986) at 16. Occasionally, the five factors are described with slightly different language. In Natural Bristle Paint Brushes from the People's Republic of China, Inv. No. 731-TA-244 (Final), USITC Pub. 1805 (Jan. 1986) at 16, these are purported to be "proxies for the injury analysis that Congress has directed the Commission to undertake." (emphasis added).

But, in several more recent cases the five factors are "proxies for the injury that Congress has directed the Commission to undertake." (emphasis added) See, for example, Low-Fuming Brazing Copper Wire and Rod from South Africa, Inv. No. 731-TA-247 (Final), USITC Pub. 1790 (Jan. 1986) at 15, and Dynamic Random Access Memory Semiconductors of 256 Kilobits and Above from Japan, Inv. No. 731-TA-300 (Preliminary), USITC Pub. 1803 (Jan. 1986) at 29.

50/ Iron Construction Castings from Canada, Inv. No. 731-TA-263 (Final), USITC Pub. 1811 (Feb. 1986) at 23.

I reject the notion that one may apply a "proxy," or substitute, for an unambiguous statute that spells out specific criteria -- such as the volume of imports, evidence of price undercutting, price depression or suppression, and other factors that Congress has expressly instructed the Commission to consider. Nor, is it likely that Congress intended for Commissioners to stray far from the specific statutory criteria and to rely in the absence of compelling circumstances on the phrase "all relevant factors" as an invitation to substitute abstract economic models for specific criteria designated in the statute.

## 2. Underselling "Not Probative"?

Nonetheless, in a series of opinions, several Commissioners among those in the majority in this investigation have indicated that they do not consider some of the statutory criteria relevant or appropriate. Although the statute instructs the Commission to look at price undercutting, 51/ two of my colleagues hold that "evidence of underselling is

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51/ At the request of one of these Commissioners on October 3, 1985, the Director of Economics prepared a lengthy memorandum analyzing Title VII causation analysis from an economics perspective. This analysis stresses the difficulties of using pricing data in Commission investigations. See Director, Office of Economics to the Vice Chairman, "Title VII causation analysis, especially underselling and lost sales" in EC-J-010, January 7, 1986.

ordinarily not probative on the issue of causation." 52/ They assert that when imports undersell domestic products, the price differences "are usually explained by differences in the items compared. Rarely will the characteristics of the imported product exactly match those of the domestic product." 53/ A third Commissioner -- also among the majority in this case -- "believes that evidence of underselling should be used only with caution." 54/

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52/ Heavy-Walled Rectangular Welded Carbon Steel Pipes and Tubes from Canada, Inv. No. 731-TA-254 (Final), USITC Pub. 1808 (Feb. 1986), p. 11. One of these Commissioners says elsewhere that "Firms, whether foreign or domestic, generally charge the most they can for their product. As a result, price differentials are usually accounted for by differences in the product or associated services. Thus, 'underselling' based on a comparison of transactions' prices often has no relevant economic content. Price undercutting refers to predatory pricing behavior whereby a firm lowers its prices to drive out competitors in order to gain monopoly power." See footnote 59 in Iron Construction Castings from Brazil, Canada, India, and the People's Republic of China Invs. Nos. 701-TA-249 and 731-TA-262 through 265 (Preliminary), USITC Pub. 1720 (June 1985) at 18.

From my own point of view, this passage contains a number of unsupported assertions about business behavior, pricing and the like which are used to disregard statutory criteria written by Congress and signed by the President.

53/ Certain Welded Carbon Steel Pipes and Tubes from Turkey and Thailand, Invs. Nos. 701-TA-253 and 731-TA-252 (Final), USITC Pub. 1810 (Feb. 1986) at 44.

54/ Heavy-Walled Rectangular Welded Carbon Steel Pipes and Tubes from Canada, Inv. No. 731-TA-254 (Final), USITC 1808 (Feb. 1986) at 11.

### 3. Lost Sales "Rarely Determinative"?

With respect to lost sales information -- another criterion familiar to traditional Commission analysis -- the same three Commissioners have stated that "the presence or absence of confirmed lost sales is rarely determinative or persuasive on the question of a causal link between LTFV imports and material injury to the domestic industry." 55/56/

On another aspect of the lost sales question, two of my colleagues even suggest that any attempt to determine whether the domestic industry has lost sales to imports is necessarily biased. They say: ". . . the Commission's sampling method is biased, [emphasis added] e.g., we do not ask how many foreign sales are lost to domestic producers' sales." 57/ To me, this claim of bias appears to display confusion about the nature of the International Trade Commission's statutory role. Under U.S. law, the Commission must determine whether U.S. imports injure the domestic industry. Presumably, other countries have

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55/ See Heavy-Walled Rectangular Welded Carbon Steel Pipes and Tubes from Canada, Inv. No. 731-TA-254 (Final), USITC Pub. 1808 (Feb. 1986) at 12.

56/ While the term "lost sales" does not appear in Title VII, 19 U.S.C. 1677(7)(C)(iii)(I) does require the Commission to evaluate a "decline in . . . sales" as part of its impact analysis. Nonetheless, the Court of International Trade has upheld the traditional Commission practice of using lost sales analysis as a signal of imports impacting the domestic industry. The Court says: "Sales lost due to underpricing is an important test of injury in the case of fungible goods." Gifford Hill Cement Company v. U.S., 615 F. Supp. 577, 586 (CIT 1985).

57/ Certain Welded Carbon Steel Standard Pipes and Tubes from Turkey and Thailand, Invs. Nos. 701-TA-253 and 731-TA-252 (Final), USITC Pub. 1810 (Feb. 1986) at 10.

administrative mechanisms, like the ITC, charged with determining whether their own domestic industries have been injured by U.S. exports. And it is not our responsibility to query foreign producers and importers about sales they may have lost to U.S. industries. As noted earlier, the Commission need only determine that imports are a contributing cause of material injury to the domestic industry.

#### 4. Import Volume "Not Useful"?

Nor do some of my colleagues consider another statutory criterion, import volumes, a reliable indicator. Two Commissioners say that "the absolute volume of imports is not a useful indicator of causation," when there are sharp increases in domestic consumption. <sup>58/</sup> I disagree with that point of view. In the present case, ethyl alcohol from Brazil, U.S. consumption has risen steadily, and before the filing of this petition imports climbed sharply both in absolute terms and as a share of consumption. As noted in our earlier discussion, there appears to be a correlation between rising import levels and injury to the domestic industry's profitability. From my

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<sup>58/</sup> Heavy-Walled Rectangular Welded Carbon Steel Pipes and Tubes from Canada, Inv. 731-TA-254 (Final), USITC Pub. 1808 (Feb. 1986) at 10. In a memorandum (EC-J-010) circulated on January 7, 1986, at the request of one Commissioner, the Commission Director of Economics concludes that "looking at the level or existence of imports as the cause of injury would not only be inconsistent with the [GATT] Agreement on Interpretation, it would be inconsistent with most of the language of Section 771(7)(C)." See p. 10.



perspective the record of this investigation contains ample evidence to rebut my three colleagues' assertion. In the present investigation, the absolute volume of imports is a very useful indicator of causation.

#### 5. Presumptive Tests?

Another practice emerging in Commission determinations which also appears to lack any statutory basis whatsoever is the use of explicit presumptive tests for weighing the impact of imports. For example, one colleague asserts the presumption "that imports cannot be a cause of material injury if the import penetration ratio is below 2.5 percent. This presumption," she continues, "can be rebutted by a showing that both supply and demand are inelastic." 59/

This requirement that a petitioner must use supply and demand analysis to rebut a presumption that an import penetration ratio below 2.5 percent cannot be the cause of injury would appear to conflict with the intent of Congress as expressed in the legislative history. The House Ways and Means Committee has said:

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59/ See footnote 58 in Iron Construction Castings from Brazil, Canada, India, and the People's Republic of China, Invs. Nos. 701-TA-249 and 731-TA-262 through 265 (Preliminary), USITC Pub. 1720 (June 1985) at 18. See also Carbon-Steel Structural Shapes from Norway, Inv. 731-TA-234 (Final), USITC Pub. 1785 (Nov. 1985) at 9. The analytical basis for this presumption, complete with demand and supply curves, is discussed in Certain Welded Carbon Steel Pipes and Tubes from Thailand and Venezuela, Invs. No. 701-TA-242 and 731-TA-252 and 253 (Preliminary), USITC Pub. 1680 (April 1985) at 19-30.

. . . the petitioner will not be required to bear the burden of proving the negative, that is, that material injury is not caused by such other factors, nor will the ITC be required to make any precise mathematical calculations as to the harm associated with respect to such factors.(emphasis added) 60/

Such a burdensome requirement means that domestic petitioners must use abstract economic theories and models, along with factual data, to help demonstrate that imports are, in fact, injuring them. I consider this an unreasonable and unrealistic requirement. Not only is there no statutory basis for such a presumption but adherence to this practice, in effect, requires each domestic industry seeking relief to hire a consulting economist, thus adding to the costs of all parties -- domestic and foreign -- to our proceedings. In addition such an approach makes it more difficult for very small firms with limited financial resources to rely on trade remedies to offset dumped or subsidized imports. 61/

#### 6. Inconsistent Margins Analysis?

Another issue that comes up frequently in Commission opinions discussing causation is margins analysis. 62/ Three members of the Commission majority in the present investigation presume that with an "extremely low dumping margin" from the

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60/ House Ways and Means Committee, Trade Agreements Act of 1979, p. 47.

61/ Congressional concerns regarding the availability of U.S. trade laws to small businesses were the focus of the 1984 amendments to the Tariff Act of 1930. 19 U.S.C. 1339.

62/ In a memorandum (EC-J-010) circulated on January 7, 1986, at the request of a colleague, the Commission's Director of Economics appears to encourage the use of margins analysis. He says: "And if Title VII [of the Trade Agreements Act of 1979] is consistent with the GATT, then the Commission must consider the dumping margin or the level of the subsidy in making its injury determination." See p. 26.

Department of Commerce, "a very special set of circumstances would have to exist in the domestic market for imports to cause injury to the domestic industry." 63/ Consequently, they use the low dumping margin as a reason for a negative determination.

But, when the dumping margin is "extremely large," no opposite presumption prevails. Frequently, in such circumstances as the present, where a dumping margin approaches 100 percent, these colleagues appear to ignore the implications of margins analysis altogether and reach for an alternative rationale for a negative determination. It is certainly arguable that with a 98.8 percent dumping margin that "a very special set of circumstances would have to exist in the domestic market for imports" not "to cause injury to the domestic industry." 64/65/66/

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63/ Heavy-Walled Rectangular Welded Carbon Steel Pipes and Tubes from Canada, Inv. No. 731-TA-254 (Final), USITC Pub. 1808, at 14.

64/ It is generally known that I do not favor the practice of examining margins. My latest discussion of this subject appears in Heavy-Walled Rectangular Welded Carbon Steel Pipes and Tubes from Canada, Inv. 731-TA-254 (Final), USITC pub. 1808 (Feb. 1986) at 28-29. Former Vice Chairman Michael J. Calhoun offered a profound criticism of margins analysis in Certain Steel Wire Nails from the Republic of Korea, Inv. No. 701-TA-145 (Preliminary), USITC Pub. 1203 (March 1982) at 15-22.

65/ Indeed, based on CIT's discussion in The Maine Potato Council v. The United States, 613 F. Supp. 1237, 1242 (CIT 1985), there would appear to be considerable question about whether the Commission has any authority under the statute even to consider the size of margins in making its determination. The Court cites the colloquy on the floor of the House which suggests that Congress did not confer authority on the Commission to base determinations on the subsidy level or dumping margin. In that colloquy Chairman Sam Gibbons told a colleague that he, Congressman Ed Jenkins,

(Footnote continued on the next page.)

65/ (Continued)

"is correct" in believing that certain language in the Trade and Tariff Act of 1984 does not give the Commission authority to base its decisions on the dumping margins or subsidy levels. 96 Cong. Rec. H7908-09 (July 26, 1984).

66/ When dumping margins are large, the advocates of margins analysis sometimes overlook this fact, and find other reasons for a negative determination. For instance, in a recent cellular mobile telephone case, the Department of Commerce found dumping margins of between 88 and 107 percent for major Japanese electronics firms. A Commissioner who frequently employs a five-step analysis, which includes dumping margins, made no mention of this subject in a negative determination. See Cellular Mobile Telephones and Subassemblies Thereof from Japan, Inv. No. 731-TA-207(Final), USITC Pub. 1786 (Dec. 1985) at 22-34. The same occurred in oil country tubular goods from Spain where dumping margins were between 70 and 83 percent. See Oil Country Tubular Goods from Argentina and Spain, Inv. 731-TA-191 and 195 (Final), USITC Pub. 1694 (May 1985), especially at 19-21. However, in a recent photo album case where Korean producers were assigned 64.81 percent dumping margins, the same Commissioner did cite the high margin of dumping as a basis for an affirmative determination. See Photo Albums and Photo Album Filler Pages from Hong Kong and the Republic of Korea, Inv. No. 731-TA-240 and 241 (Final), USITC Pub. 1784 at 19-20.

### 7. Profitability "Suspect"?

Revisionism does not stop with causation analysis. It now extends to injury analysis. Where the issue of material injury is pivotal to the disposition of a countervailing duty or anti-dumping investigation, some Commissioners display a similar enthusiasm for substituting proxy tests, theoretical presumptions, and complex economics models for plain statutory language. Indeed, the trend toward revisionism, in which Commissioners substitute their own tests for the statute, has gone so far that even a domestic industry with negative gross profits is presumed not to be experiencing injury by some Commissioners. In a recent pipe-and-tube investigation, according to my colleagues in their written opinion, negative profits must be biased because "sustained negative gross profits are not rational for a firm. Continued production is not rational when revenues are less than variable costs." <sup>67/</sup> To me, such a statement implies that if firms are losing money, they do not deserve to exist, even though dumped or subsidized imports are a cause of that material injury. Obviously, I disagree, and find nothing in the statutory language or legislative history to justify such a position.

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<sup>67/</sup> Certain Welded Carbon Steel Pipes and Tubes from Turkey and Thailand, Invs. Nos. 701-TA-253 (Final) and 731-TA-252 (Final), USITC Pub. 1810 (Feb. 1986) at 39.

Perhaps I am misreading my colleagues' analysis, and thus misinterpreting the outcome of recent cases. However, the net effect of some of my colleagues' reasoning has been to discard the carefully crafted statutory tests and to revise the law by administrative fiat. In my view the Commission's statutory findings cannot and should not be made by improvising a host of dubious, arbitrary, and illegitimate analytical techniques, such as "proxies," "presumptive tests," and "elasticities," to rationalize negative determinations. The statute is generally clear, and those of us charged with administering it have no business substituting academic fictions for the factual record and our own judgment.

Since the Trade Agreements Act of 1979 was implemented, most Commissioners have tried to administer our trade laws with fairness and impartiality. From time to time our reviewing courts may have disagreed with individual Commission decisions, but the Commissioners generally have worked diligently and in a nonpartisan manner to apply the law as it was written by Congress. And from this sensitivity to statutory construction and legislative intent has emerged an extensive corpus of case law that establishes a transparent framework for the predictable administration of our trade laws.

To me the new revisionism is a threat to the fairness, predictability, and integrity of our trade law system. In devising substitutes for the statute, the revisionists offer the parties only proxies, presumptions and abstractions, not

the certainty of consistent statutory interpretation. Parties -- both domestic and foreign -- cannot be sure what factors will be dispositive when statutory standards are explained away, bent, or simply disregarded.

In closing, it is appropriate to call my colleagues' attention to the recent Court of Appeals for the Federal Circuit opinion sustaining the Commission's determination in American Lamb Meat. In this decision our reviewing court addressed the issue of how the Commission and the courts might best determine congressional intent. The court said succinctly: "We begin with the best source of congressional intent, the statute. . . ." (emphasis added). 68/

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68/ American Lamb Company v. the United States, slip opinion, p. 16.





## INFORMATION OBTAINED IN THE INVESTIGATIONS

## Introduction

On February 25, 1985, petitions were filed with the U.S. International Trade Commission and the U.S. Department of Commerce (Commerce) by counsel on behalf of the Ad Hoc Committee of Domestic Fuel Ethanol Producers. 1/ The petitions allege that imports of certain ethyl alcohol (fuel ethanol) 2/ from Brazil are being subsidized by the Government of Brazil and, in addition, are being sold in the United States at less than fair value (LTFV) and that an industry in the United States is materially injured and threatened with material injury by reason of such imports. Accordingly, effective February 25, 1985, the Commission instituted preliminary countervailing duty and antidumping investigations Nos. 701-TA-239 (Preliminary) and 731-TA-248 (Preliminary) under the applicable provisions of the Tariff Act of 1930 (19 U.S.C. §§ 1671b(a) and 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of such merchandise into the United States.

On the basis of information developed during the course of those investigations, the Commission determined that there was a reasonable

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1/ The Ad Hoc Committee of Domestic Fuel Ethanol Producers comprises the following: New Energy Co. of Indiana, South Bend, IN; Graf Feed and Fuel Alcohol, Watertown, MN; Midwest Grain Products, Inc. (formerly Midwest Solvents Co.), Atchison, KS; South Point Ethanol, South Point, OH; Archer Daniels Midland Co., Decatur, IL; Pekin Energy Co., Pekin, IL; Bio-Chemical Energy, Palm Harbor, FL; Grudem Brothers Co., St. Paul, MN; KV Alternatives, Inc., Morton, MN; Alcon Industries, Inc., Houston, MN; Byron Elevator Co., Byron, MN; Southern Ethanol, Palm Harbor, FL; Dawn Enterprises, Walhalla, ND; and the Ohio Farm Bureau Corp., Columbus, OH. The petition is supported by the Oil, Chemical, and Atomic Workers International Union. According to the petitions, "The Committee members represent 69 percent of domestic fuel ethanol production capacity" and "represent a substantial majority of domestic fuel ethanol production."

In a letter dated May 6, 1985, the Commission was informed by counsel for the Ad Hoc Committee of Domestic Fuel Ethanol Producers that the A.E. Staley Manufacturing Co., Decatur, IL, was withdrawing as a member of the committee.

2/ The ethyl alcohol (ethanol) covered by these investigations is fuel ethyl alcohol (fuel ethanol), provided for in item 427.88 of the Tariff Schedules of the United States (TSUS) as ethyl alcohol for nonbeverage purposes. The U.S. Department of Commerce has included mixtures of fuel ethanol, provided for in items 430.10, 430.20, and 432.10 of the TSUS, within the scope of these investigations. Other blends may be included in the scope of the investigations. Fuel ethyl alcohol is subject to additional duties under TSUS item 901.50.

indication that an industry in the United States was threatened with material injury by reason of imports of the subject merchandise (50 F.R. 15236, Apr. 17, 1985).

On September 24, 1985, the Commission was notified by Commerce of its preliminary determination that fuel ethanol from Brazil is being, or is likely to be, sold in the United States at LTFV, and Commerce scheduled its final antidumping determination for December 2, 1985. Also, Commerce preliminarily determined that critical circumstances do not exist (50 F.R. 38871, Sept. 25, 1985). As a result of Commerce's affirmative preliminary determination, the Commission instituted final antidumping investigation No. 731-TA-248 (Final). Notice of the institution of the Commission's investigation and of a hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register (50 F.R. 41427, Oct. 10, 1985). 1/

On October 28, 1985, Commerce published a notice in the Federal Register (50 F.R. 43602) postponing its final antidumping duty determination until January 31, 1986. Accordingly, the Commission published a notice in the Federal Register of November 14, 1985 (50 F.R. 47123), revising its schedule for the conduct of the investigation.

Effective November 12, 1985, Commerce preliminarily determined that certain benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters of fuel ethanol in Brazil. Commerce scheduled its final countervailing duty determination for January 20, 1986 (50 F.R. 46681). As a result of Commerce's affirmative preliminary determination, the Commission instituted final countervailing duty investigation No. 701-TA-239 (Final). Notice of the institution of the Commission's investigation and of a hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register (50 F.R. 49777, Dec. 4, 1985).

The hearing for antidumping investigation No. 731-TA-248 (Final) and countervailing duty investigation No. 701-TA-239 (Final) was a consolidated proceeding for both investigations. 2/ In addition, the Commission established concurrent schedules for the conduct of the two investigations.

Effective January 21, 1986, Commerce postponed its final antidumping duty determination on fuel ethanol from Brazil (51 F.R. 2746), and on January 23, 1986, the Commission was notified of Commerce's final affirmative

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1/ Copies of the Commission's and Commerce's notices are shown in app. A.

2/ A list of witnesses appearing at the Commission's hearing in support of and in opposition to the petitions is shown in app. B.

countervailing duty determination on fuel ethanol from Brazil. Commerce's notice of its final affirmative countervailing duty determination was published in the Federal Register of January 27, 1986 (51 F.R. 3361). Effective February 14, 1986, Commerce issued its final determination that fuel ethanol is being, or is likely to be, sold in the United States at LTFV (51 F.R. 5572).

## The Product

### Description

Ethyl alcohol, or ethanol, is a monohydric alcohol with the chemical formula  $C_2H_5OH$ . Chemically pure ethanol is a colorless and flammable liquid that looks like water but has a mild odor. Ethanol is soluble in water and forms a constant-boiling mixture (azeotrope) with a maximum ethanol concentration of about 95 percent. In order to obtain anhydrous ethanol with a concentration approaching 100 percent, it is necessary to redistill the ethanol in the presence of a chemical, such as benzene or cyclohexane, that breaks the azeotropic bond between ethanol and water. The benzene, or other chemical, is removed in the distillation process and recycled. Alternatively, newer methods have been developed to produce anhydrous ethanol by using "molecular sieves." Molecular sieves allow passage of the water molecule through the sieve while restricting passage of the larger alcohol molecule, thereby separating the water from the ethanol.

Ethanol is a constituent of alcoholic beverages such as beer, wine, whiskey, and gin. The concentration of beverage ethanol is frequently expressed as "proof spirit;" and 95-percent ethanol is equivalent to 190-proof ethanol, while anhydrous 100-percent ethanol is equivalent to 200-proof ethanol. Historically, alcoholic beverages have been heavily taxed, and the tax is an important source of revenue for many governments. When ethanol started to become important for industrial applications, it was recognized that the beverage tax was a burden for many essential manufacturing industries. To lift this beverage tax burden from industrial users of ethanol, the Tax-Free Industrial and Denatured Alcohol Act of 1906 was passed. Current regulations on ethanol stem from this basic legislation. <sup>1/</sup>

Basically, the concern of the Federal Government is to prevent tax-free ethanol from finding its way into beverages. To achieve this, the regulations call for controls of a financial and administrative type (i.e. bonds, permits, and recordkeeping) as well as controls of a chemical type. The chemical controls are denaturants to make the ethanol unsuitable for beverage use. There are distinct classifications of ethanol, ranging from pure ethanol, which is subject to the most stringent financial and administrative controls, to completely denatured alcohol, which calls for little control. The regulations governing the use of ethanol in the United States are administered by the Department of the Treasury or, more specifically, the Bureau of Alcohol, Tobacco, and Firearms (BATF).

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<sup>1/</sup> Kirk-Othmer Encyclopedia of Chemical Technology, John Wiley & Sons, New York, 2d ed., vol. 8, pp. 422-470.

More than 60 different formulations are used to denature ethanol and all denaturants are subject to BATF approval. Some of the substances that are used as denaturants include acetone, ammonia, brucine, ethyl acetate, gasoline, kerosene, methanol, and pine oil. The denaturant used, of course, will depend upon the final use of the ethanol. For example, gasoline is a suitable denaturant for ethanol to be used in motor fuel, while gasoline would not be suitable for ethanol to be used in chemical synthesis or for most industrial applications.

On the basis of discussions with producers, importers, and consumers, fuel ethanol from Brazil is like and directly competitive with fuel ethanol produced in the United States. Further, these sources have stated that industrial and beverage ethanol are separate and distinct products from fuel ethanol and have different customers, specifications, channels of distribution, and uses.

### Manufacturing processes

Ethanol can be produced, in commercial quantities, by fermentation or by chemical synthesis. The processes are so different that separate discussions are presented below. From about 1950 until 1980, most nonbeverage ethanol produced in the United States was made by chemical synthesis. However, with enactment of legislation designed to promote the production of fuel from renewable resources, the situation reversed, and now most ethanol is produced by fermentation processes.

Fermentation processes.--Ethanol can be derived from raw materials in which the carbohydrate is present in the form of sugar. The many and varied raw materials used in the manufacture of ethanol by fermentation are conveniently classified under three types of agricultural raw materials--sugars, starches, and cellulose materials. Sugar from sugarcane, sugarbeets, molasses, or fruit may be fermented into ethanol directly. Starches from grains, potatoes, and other crops must first be hydrolyzed to fermentable sugars by the action of enzymes from malt or molds. Cellulose from wood, agricultural residues, and waste from pulp mills must likewise be converted to sugars, which is usually done by using mineral acids. Once the simple sugars are formed, enzymes from yeast readily ferment them into ethanol. 1/

Various distillation processes are then used to concentrate the ethanol from the aqueous solution of 10- to 12-percent ethanol that results from the fermentation process. Further distillation, in the presence of a chemical that breaks the azeotrope, is required to concentrate the ethanol to anhydrous ethanol (100-percent ethanol). As previously noted, a newer method of producing anhydrous ethanol is by using molecular sieves. Reportedly, molecular sieve systems can be designed to produce as much as 100 million

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1/ Kirk-Othmer Encyclopedia of Chemical Technology, John Wiley & Sons, New York, 2 ed., vol. 8, pp. 438 and 439.

gallons per year of anhydrous ethanol from hydrous ethanol with water content ranging from 5 to 20 percent. The advantage of molecular sieves is that less energy is required to produce anhydrous ethanol than is required by using azeotropic distillation. 1/

In the United States, virtually all fermentation ethanol is made from grain, predominately corn, while in Brazil most of the fermentation ethanol is made from sugar from sugarcane. Descriptions of typical wet- and dry-grain milling processes that produce the raw material for ethanol fermentation, along with flowcharts for these processes, are presented in appendix C.

A number of valuable coproducts are produced during the wet-grain milling process, including the separation of the grain germ. In the instance of corn, the germ is then used to make corn oil and germ meal. Additionally, the solid grain residue is high in protein and is marketed as animal feed, much of which is exported from the United States. Starch is separated from the other grain components and can be marketed, as such, for numerous applications in the paper and food industries (among others). In an integrated plant, some of the starch can be used to produce corn syrup. Through a chemical process, starch is converted by enzymes into fermentable sugars for the ethanol plant. Starch can be, and is in some plants, converted into high-fructose corn sweeteners. A salable byproduct of the fermentation process is carbon dioxide, which can be used to produce dry ice or which can be marketed in pressurized containers for many purposes, including carbonated soft drinks.

There have been allegations by the respondents in these proceedings that certain fuel ethanol producers, namely the A.E. Staley Manufacturing Co. (Staley) and the Archer Daniels Midland Co. (ADM), have diverted ethanol production capacity into the production of high-fructose corn sweeteners. Staff interviews were conducted during which corporate officials of these firms were asked to respond to such allegations. In addition, Staley and ADM were requested to provide, in their questionnaire responses, information about the actual effects on their ethanol capacity and production of flexibility to produce high-fructose corn sweeteners in lieu of ethanol or vice versa.

\* \* \* stated that it is not possible to produce high-fructose corn sweeteners in an ethanol plant nor is it possible to produce ethanol in a sweetener plant. \* \* \*. However, both plants use starch as the starting material (feedstock), and the \* \* \*. Therefore, the ethanol and sweetener plants are designed with \* \* \*. \* \* \* said that the "swing" capacity is approximately \*\*\* percent at \* \* \*. In other words, alcohol production could be reduced by about \*\*\* percent in order to produce more sweetener and vice versa. \* \* \*.

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1/ "Process Uses Molecular Sieves to Dry Ethanol," Chemical and Engineering News, Sept. 23, 1985, p. 24.

\* \* \* are the only fuel ethanol producers that use the wet milling process. All of the other domestic producers that use grain in the production of fuel ethanol use the dry milling process. In the dry milling process, the only commercial products are ethanol, a high protein residue (dried distillers grain) and, in some instances, carbon dioxide.

Synthetic processes.--Synthetic ethanol is produced by the hydration of ethylene. Ethylene is a hydrocarbon derived from natural gas or petroleum. The ethylene hydration process involves the catalytic addition of water to ethylene. Phosphoric acid is commonly used as a catalyst and high temperatures (300 degrees Celsius) and pressures of about 1,000 pounds per square inch are required. The reactor operates at low conversion rates so the unreacted ethylene is recycled back through the reactor. Minor side reactions result in the formation of small quantities of byproducts such as aldehydes, higher hydrocarbons, alcohols (other than ethanol), and ethers. 1/

Ethanol is made synthetically in the United States and other industrial countries that have large petrochemical industries. These countries often also produce some fermentation ethanol, frequently for beverage use. Brazil, however, is not believed to produce significant quantities of ethanol by chemical synthesis.

#### Uses

Currently, ethanol has three major end-use markets--beverage use, fuel use, and a host of industrial uses. Beverage ethanol is highly taxed and is not the subject of these investigations. Fuel ethanol is specifically named in the petitions as the product that is the subject of the complaint. 2/

Representatives of the domestic industry were asked to compare the characteristics of fuel ethanol with those of industrial ethanol in order to distinguish, as clearly as possible, the fuel market from the industrial market. Apparently, at least in the United States, there are distinct market separations because 95-percent ethanol is not used as motor fuel except in very limited situations. 3/ However, this is not true in Brazil, where a large number of automobiles have been specially modified to run on 90- to 95-percent ethanol. 4/

A large market has been developed in the United States, through U.S. Government and State government incentives, for ethanol that can be mixed with gasoline for motor fuel. These incentives are discussed further in the section of this report on alcohol fuel tax incentives. The incentives were

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1/ Kirk-Othmer Encyclopedia of Chemical Technology, John Wiley & Sons, New York, 2d ed., vol. 8, pp. 430-438.

2/ Petitions for these investigations, p. 14.

3/ Transcript of conference, pp. 76 and 77.

4/ Ibid, p. 166.

originally intended to develop production of ethanol from renewable feedstocks as a partial replacement for gasoline derived from petroleum. Recently, however, there has been increased emphasis placed on the marketing of ethanol as an octane enhancer. 1/

To be suitable for blending with gasoline, ethanol must be virtually anhydrous, because water present in concentrations greater than about 0.5 percent could cause a phase separation of the gasoline from the aqueous ethanol. If this separation were to occur, an engine fueled from this mixture would likely stall. It is, therefore, a critical requirement that the water content be very low for ethanol to be blended into gasohol. On the other hand, ethanol for motor fuel need not be as chemically pure as that for most industrial applications. Fuel ethanol usually has trace impurities of chemicals (such as ethyl acetate, various ketones, aldehydes, and substances called fusel oils) that will burn in an internal combustion engine and need not be removed for fuel use. However, these contaminants (some of which are toxic or odoriferous) must be removed by further purification for most industrial applications. 2/

Thus, in the United States, ethanol for use in blending with motor fuel must be anhydrous, or very nearly so, but need not be highly purified. The denaturant used most often with this ethanol is gasoline. 3/ However, toluene or mixtures of benzene, toluene, and xylene have been used as denaturants. Industrially, ethanol has numerous applications including its use as an intermediate to produce other organic chemicals such as acetaldehyde, acetic acid, ethyl acetate, ethyl chloride, ethylene dibromide, and ethyl ether, among others. Ethanol is also widely used as a solvent. Drugs, plastics, lacquers, polishes, plasticizers, perfumes, and cosmetics are products that generally use ethanol in their production; and the ethanol for these applications must be chemically pure, although not necessarily anhydrous.

#### U.S. tariff treatment

Imports of nonbeverage ethanol are classified in TSUS item 427.88, with a column 1 (most-favored-nation) duty rate of 3 percent ad valorem. The column 2 rate of duty under item 427.88 is 20 percent ad valorem and is applicable to imports from those Communist countries and areas specified in general headnote 3(d) of the TSUS.

The rates of duty on imports of ethanol were not reduced as a result of the Tokyo Round of the Multilateral Trade Negotiations. Thus, there is no preferential rate of duty for least developed developing countries specified

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1/ Transcript of conference, p. 13, and postconference submission of Interior Trade, Inc., pp. 5-10.

2/ Transcript of conference, pp. 13 and 14.

3/ Ibid, p. 78.

in general headnote 3(e)(vi) of the TSUS. Imports of ethanol are not designated as being eligible for duty-free treatment under the Generalized System of Preferences. However, such imports from designated beneficiary countries are eligible for duty-free entry under the Caribbean Basin Economic Recovery Act.

Ethanol that is imported to be used in producing a mixture of gasoline and ethanol (e.g., gasohol) or a mixture of a special fuel and ethanol for use as fuel, or to be used otherwise as a fuel, is subject to a temporary (through Dec. 31, 1992) additional duty of 60 cents per gallon under the provisions of TSUS item 901.50. 1/

Mixtures of ethanol and other compounds are principally classified under one of three mixture provisions of the TSUS, items 430.10, 430.20, or 432.10. These provisions set forth column 1 rates of duty (4.1 percent or 5 percent ad valorem) but provide that if a higher rate of duty applies to any of the components of the mixture, the higher rate will apply to the entire mixture. Most of the compounds mixed with the ethanol have rates of duty lower than 4.1 or 5 percent ad valorem (i.e., toluene, xylene, and benzene are free of duty if imported as such).

Customs was first asked to rule, in late 1983, whether the additional duty imposed by TSUS item 901.50 could be considered part of the duty applicable to ethanol under the highest component method set forth under the mixture provisions. Customs held that such additional duty was not properly added to the 3 percent ad valorem duty provided for nonbeverage ethanol under TSUS item 427.88, because item 901.50 applied only to importations of ethanol classified under item 427.88 and not to mixtures containing ethanol classified under some other TSUS provision (Customs ruling of Nov. 23, 1983, No. 807646). This interpretation was confirmed in a subsequent ruling issued by Customs in January 1984 and in a letter to the U.S. Ambassador to Brazil on September 12, 1984.

Customs remained of the foregoing opinion (issuing several additional letter rulings in June 1985) until it was asked in early July 1985, by representatives for the domestic ethanol industry, to reconsider its position for possible error. Evidently, the 1983 Customs ruling was not widely known until Customs responded to a request for a classification ruling from the Ambassador to Brazil, thus prompting actions by the domestic fuel ethanol industry to have Customs reconsider its position. 2/

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1/ The article description for TSUS item 901.50 reads as follows: "Ethyl alcohol (provided for in item 427.88, part 2D, schedule 4) when imported to be used in producing a mixture of gasoline and alcohol or a mixture of a special fuel and alcohol for use as fuel, or when imported to be used otherwise as fuel."

2/ Congressional Record, Sept. 11, 1985, pp. S 11268 and 11269, H 7386-7391.



Customs suspended the issuance of further rulings regarding the dutiable status of ethanol mixtures and reexamined its position with respect to the applicability of the additional duty imposed by TSUS item 901.50. On August 2, 1985, Customs ruled that its earlier position had been incorrect and that the additional duty imposed by TSUS item 901.50 is properly considered part of the duty on all alcohol imported for fuel purposes, including ethanol imported in mixtures with other compounds. The practical effect of this decision was to make all of the mixtures at issue (e.g., ethanol mixed with toluene, xylene, benzene, or motor gasoline) dutiable at the rate applicable to the ethanol component (3 percent ad valorem plus 60 cents per gallon). Customs' new position was made effective on August 1, 1985, except in the case of those parties that had previously been issued rulings from Customs that a lower rate of duty applied. Customs' new position with respect to the latter parties was made effective at 5:00 p.m. (local time, port of entry) on the date of Customs' written notification to those parties that the earlier rulings issued to them were being revoked. With one exception, such notification was given on August 2, 1985 (in the one instance, the notification was given on Aug. 7, 1985).

Customs had been advised during its reconsideration of the rulings that certain of the parties to whom rulings had previously been issued had entered into contracts to purchase various ethanol mixtures based on Customs assurance that the additional duty imposed by item 901.50 would not apply. In its notifications to the parties to whom rulings had previously been issued, Customs indicated that, in the event such parties made entries of ethanol mixtures after the effective date of Customs new position and could demonstrate that those entries were made in reliance on the earlier rulings, Customs would consider any evidence submitted to that effect. In response to this invitation, each of the parties who had received earlier rulings submitted to Customs evidence to support their claims that they had entered into contracts to purchase, over extended periods, substantial quantities of ethanol mixtures which totaled approximately 450 million gallons of various ethanol mixtures for fuel use. Several parties to whom Customs had not issued earlier rulings also submitted material to Customs in support of their claims that they, too, had entered into contracts to purchase ethanol mixtures based upon their knowledge of Customs' prior position. The amounts covered by these contracts raised the potential importations of ethanol mixtures to over a billion gallons.

On August 27, 1985, after meetings with representatives of all of the affected parties, Customs issued letters to each of the parties who had received earlier rulings stating that Customs would permit those parties to import the ethanol mixtures described in the letter previously issued to them at the rates set forth in that letter, provided such importations were determined by Customs to have been made under the terms of the agreements presented to Customs and were made not later than 5:00 p.m. (local time, port of entry) on November 1, 1985. Such letter rulings were granted to \* \* \*. Ultimately, according to Customs, the total volume of fuel ethanol mixtures authorized by Customs, under its August 27th letters, for entry without the additional duty of item 901.50, was 43.8 million gallons.

On August 29, 1985, a complaint was filed by the National Corn Growers Association, New Energy Co. of Indiana (New Energy), ADM, the Ohio Farm Bureau Corp., and Staley in the U.S. Court of International Trade challenging the actions taken by Customs on August 27, 1985, delaying the effective date of its August 2, 1985, revocations until November 1, 1985.

In their prehearing brief, petitioners call attention to a Customs letter ruling of January 15, 1986, which would allow duty-free entry under TSUS item 407.16 of certain mixtures of xylenes and fuel ethanol. Reportedly, 18 to 19 million gallons of these blends may be destined for the United States. 1/

At the Commission's hearing for these investigations, counsel for petitioners alleged that hydrous Brazilian ethanol is being exported from Brazil to Caribbean Basin countries where it is dried to anhydrous ethanol and then shipped to the United States free of duty. 2/ Respondents denied that Brazil has exported ethanol to Caribbean Basin countries. 3/

Tropicana Petroleum built a dehydrating plant in Jamaica and exports to the United States from this plant began during 1985. Tropicana's plant reportedly uses hydrous ethanol from Spain. Customs has held that anhydrous ethanol is a different product from hydrous ethanol and that the Jamaican anhydrous ethanol from this operation qualifies for duty-free entry into the United States. The National Corn Growers Association, ADM, and Staley have challenged Custom's determination in the U.S. Court of International Trade.

#### The Nature and Extent of Sales at LTFV and Subsidies

##### Sales at LTFV

Effective February 14, 1986, the U.S. Department of Commerce determined that fuel ethanol from Brazil is being, or is likely to be, sold in the United States at LTFV, as provided in section 735(a) of the Tariff Act of 1930 (51 F.R. 5572). The dumping margins range, according to Commerce's final determination, from 17.6 to 298.7 percent, and the weighted-average margins are shown in the following tabulation:

<u>Brazilian firm or organization</u>	<u>LTFV margin (Percent)</u>
Perrobras Comercio International S.A. (Interbras)---	101.12
Cooperative Central dos Produtores de Accure de Alcohol de Stado de Sao Paulo (Copersucar)	56.48
All others-----	98.81

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1/ Petitioners prehearing brief at p. 25.

2/ Transcript of hearing at p. 50.

3/ Ibid, p. 221.

Commerce made comparisons on approximately 90 percent of sales of Brazilian fuel ethanol to firms in the United States during the period September 1, 1984, through February 28, 1985.

Based on the allegation that various entities in the Petrobras group of related firms (P.I.I. in Commerce's notice) were selling fuel ethanol at a loss, Commerce analyzed P.I.I.'s prices and costs relative to all sales to the United States during the period of the investigation. Based upon its analysis, Commerce determined that a substantial portion of P.I.I.'s sales in the United States were at prices which resulted in substantial losses to P.I.I. relative to its acquisition costs. Normally, Commerce's determination of whether there are sales at LTFV focuses on a manufacturer's or producer's sales. However, according to Commerce, the law recognizes that when a trading company (middleman) is involved in sales under investigation, that trading company also can be the cause of LTFV sales. Based on a determination that P.I.I. was selling fuel ethanol at less than acquisition cost, Commerce determined that the appropriate level at which to make fair-value comparisons is on sales by Interbras and its related U.S. subsidiary, Internor, to the United States.

The petitioners alleged that imports of fuel ethanol from Brazil presented critical circumstances under the Tariff Act; however, Commerce made a final negative determination with respect to critical circumstances.

#### Subsidies

On January 23, 1986, the Commission was notified of Commerce's final affirmative countervailing duty determination with respect to fuel ethanol from Brazil. Effective January 27, 1986 (51 F.R. 3361), Commerce determined that certain benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters of fuel ethanol in Brazil. The net subsidy is 2.60 percent ad valorem. PROALCOOL (Brazil's fuel ethanol program), industrial credits to distillers and agricultural credits to distillers; FUNPROCUCAR (long-term loans administered jointly by the Banco do Brazil and the Instituto do Acucar e do Alcool); Instituto do Acucar e do Alcool (IAA) preferential financing; and income tax exemption for export earnings were determined by Commerce to confer subsidies. Further, Commerce determined that critical circumstances do not exist with respect to fuel ethanol from Brazil.

Projects eligible for PROALCOOL financing include the establishment, expansion, or modernization of a distillery; installation of an agricultural storage facility; production of raw materials for use in ethanol production; research and support for the production of raw materials; innovation and improvement of the technology related to the production and use of ethanol; and irrigation. Once a project is approved, the producer becomes eligible for PROALCOOL credit lines administered by the Banco Central do Brasil (BCB) to finance the startup cost, and PROALCOOL long-term investment loans, which are to be paid back according to amortization schedules linked to the expected development of production. To determine whether these loans made to ethanol

producers in Brazil were made on terms inconsistent with commercial considerations, Commerce compared PROALCOOL interest rates with the interest rates available to all agricultural and agro-industrial enterprises in Brazil. From this comparison, Commerce calculated a net subsidy of 1.65 percent ad valorem associated with the PROALCOOL program. In addition, Commerce calculated a net subsidy of 0.05 percent associated with the FUNPROCUCAR long-term loan program.

To determine whether an IAA loan was made on terms inconsistent with commercial considerations, Commerce compared the terms of the loans with the terms of loans made by the Banco Nacional de Desenvolvimento Economico e Social and its subsidiary agency, the Agencia Especial de Financiamento Industrial. Using this benchmark, Commerce found that the terms of the IAA loan are inconsistent with commercial considerations. Because this loan is limited to a specific enterprise, and provides funds to the borrower at an interest rate lower than those available from commercial sources, Commerce determined that the IAA loan confers a net subsidy of 0.12 percent ad valorem.

Under Brazilian law, exporters of fuel ethanol are eligible for an exemption from income tax on a portion of profits attributable to export revenue. Because this exemption is tied to exports and is not available for domestic sales, Commerce determined that this exemption confers an export subsidy. Commerce measured the benefit by multiplying an indexed value of the exemption by each company's effective tax rate and dividing the amount by the value of the distillers' exports. On this basis, Commerce calculated a net subsidy of 0.78 percent ad valorem.

Petitioners alleged that Brazilian fuel ethanol producers receive an "upstream subsidy" through the purchase of subsidized sugarcane inputs. Petitioners alleged that sugarcane growers in Brazil received loans under the PROALCOOL program on terms more favorable than normal agricultural credits. In December 1980, interest rates and eligibility levels on PROALCOOL agricultural loans were placed on a par with interest rates and eligibility levels on agricultural loans made with funds provided by the BCB. Commerce calculated a net subsidy of 0.03 percent, which is de minimis, related to PROALCOOL loans made to sugarcane growers before December 1980.

In addition, Commerce examined several other programs that were available to Brazilian sugarcane suppliers, including the PLANALSUGAR research and development program, regional research and development programs, plantation roads, SUDENE, and FINEX export financing. Commerce determined that no upstream subsidies are being paid or bestowed on fuel ethanol.

Commerce's Federal Register notice details a number of programs determined not to confer a subsidy.

## The U.S. Market

U.S. producers

Petitioners state that there are approximately 145 domestic fuel ethanol plants with an aggregate annual capacity of 840 million gallons of ethanol. 1/

The petitioners account for a major percentage of this capacity. The names and reported capacities, as of the end of November 1985, of selected fuel ethanol producers, compiled from data submitted in response to questionnaires of the U.S. International Trade Commission, are presented in the following tabulation:

Producer of fuel ethanol:	<u>Location</u>	<u>Capacity</u> (1,000 gallons)
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The largest single domestic producer of fuel ethanol is ADM, Decatur, IL. ADM is primarily engaged in agriculturally related businesses and products. The firm buys, sells, trades, and stores grain, and it owns and operates large grain elevators. Through its milling operations, ADM is engaged in the production of corn and soybean products including corn and soybean oil, corn and soy flour, corn syrup, high-fructose corn sweeteners, cornstarch, gluten meal, and livestock and poultry feeds.

Another major producer of fuel ethanol is Staley, Loudon, TN. The Loudon facility is a manufacturing division of Staley Continental, Inc., Decatur, IL. \* \* \*. New Energy, South Bend, IN, is a large producer of fuel ethanol. The corporate headquarters of New Energy are located in Washington, DC. Pekin Energy Co., Pekin, IL, is among the major producers of fuel ethanol. Pekin is jointly owned by \* \* \*.

South Point Ethanol, South Point, OH, in addition to the previously named firms, is a major producer of fuel ethanol. South Point Ethanol is jointly owned by Ashland Ethanol, Inc., Russell, KY; the Ohio Farm Bureau Synfuels Investment Co., Inc.; Publicker Gasohol, Inc., Greenwich, CT; and UGI Ethanol Development Corp., King of Prussia, PA. \* \* \*.

Kentucky Agricultural Energy Corp. (Kentucky Ag. Energy) is majority owned by \* \* \*, and Midwest Grain Products (formerly Midwest Solvents Co.) is \* \* \*.

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1/ Transcript of conference, p. 15.

As shown in the following tabulation, six petitioners accounted for 83.5 percent of the domestic production of fuel ethanol during January-November 1985, as reported in responses to the Commission's questionnaires:

Producer of fuel ethanol	<u>Production as a percent of U.S. production</u>
ADM-----	***
Dawn Enterprises-----	***
Midwest Grain Products-----	***
New Energy-----	***
Pekin Energy Co-----	***
South Point Ethanol-----	***
Total-----	83.5

For the instant investigations, an updated list of producers of fuel ethanol was requested from counsel for the petitioners. This list, compiled by Information Resources, Inc., contains the names, addresses, capacity, and other information of over 100 firms purported to produce fuel ethanol. Questionnaires were sent to all of the listed firms. Twenty-two firms provided statistical data in response to the questionnaires issued during the final and/or preliminary investigations. An additional 22 firms responded to the Commission's questionnaires, but did not provide data. Most of the firms that did not provide data stated that they did not produce fuel ethanol. Several firms reported that they had gone out of the fuel ethanol business. Data from usable questionnaire responses are believed to account for more than 90 percent of the domestic production of fuel ethanol during January 1982-November 1985.

#### U.S. importers

Interior Trade, Inc., was the principal importer of fuel ethanol from Brazil during \* \* \* through its parent Interbras, the trading subsidiary of Petrobras, the Brazilian oil company that is majority owned by the Brazilian Government. However, during 1985, several other firms became importers of record for fuel ethanol or of mixtures of fuel ethanol from Brazil. Among these firms are \* \* \*. Several of these firms, such as \* \* \*, purchased fuel ethanol from \* \* \* prior to becoming direct importers.

#### Channels of distribution

Fuel ethanol is marketed much like gasoline and has similar channels of distribution. For some producers, most of their product is sold to independent gasoline marketers. 1/ Large bulk shipments move by barge, rail, or truck to petroleum terminals. Petroleum wholesalers large enough to

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1/ Transcript of conference, pp. 24 and 68-71.

operate their own tank farms often maintain an ethanol tank. The ethanol can then be blended from this tank into gasohol at the tank farm. An alternative is to sell the ethanol in "top-off" quantities that would consist of adding about 800 gallons of ethanol to make an 8,000-gallon truckload of blended fuel containing 10 percent ethanol. The ethanol mixes with the gasoline while it is being transported to the service station, where it is pumped into the station's storage tanks and subsequently into automobile fuel tanks as gasohol or ethanol-enhanced gasoline.

One major disadvantage in the distribution of ethanol is that it cannot be shipped through interstate pipelines. Gasohol is not fungible with gasoline and must, therefore, be isolated in the distribution system. According to a major pipeline company, <sup>1/</sup> fungible means that the product is of such a kind or nature that one specimen or part may be used in place of another specimen or part or, more simply stated, the pipeline will deliver a like barrel of product in quality to the barrel received, but not necessarily the same barrel. Thus, it is possible to deliver gasoline to a pipeline at one location and immediately remove gasoline from the pipeline at some distant location, with the gasoline going in having been produced by one firm and the gasoline coming out having been produced by another firm.

Multiproduct pipelines are generally not completely free of water and neither anhydrous ethanol nor gasohol can be shipped through these pipelines because water in the system could cause the anhydrous ethanol to become hydrous and unsuitable for blending or water could cause the alcohol in gasohol to separate from the gasoline.

In order to utilize the octane-enhancing properties of ethanol, the Williams Pipe Line Co. recently decided to establish a regular leaded sub-octane grade of gasoline and expand its terminal ethanol-blending facilities. Terminals were selected so as to coincide with favorable state tax incentives. Thus, in October 1985, Williams began offering 85 sub-octane leaded gasoline at terminals in Kansas City, KS; Des Moines, IA; Sioux City, IA; Sioux Falls, SD; Minneapolis, MN; Alexandria, MN; Fargo, ND; and Grand Forks, ND. Williams is considering offering a sub-octane unleaded gasoline in mid-1986 for blending with ethanol.

ADM, one of the petitioners and the largest domestic producer, is large enough to operate its own distribution system and terminals. It operates its own barges, rail tank cars, and trucks and maintains ethanol tanks at numerous tank farms. Interior Trade, Inc., maintained large storage terminals at \* \* \*. Interior then sold in large quantities from these terminals primarily to customers, such as \* \* \*. \* \* \* has its own gasoline stations and uses much of the fuel ethanol captively in its gasohol blends.

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<sup>1/</sup> H.L. Teel, "Sub-Octane and Oxygenated Fuels in Williams Pipe Line Company," 1985 National Conference on Alcohol Fuels, Washington, DC, Sept. 18-19, 1985.

### Alcohol fuel tax incentives

Federal incentives.--The U.S. General Accounting Office, upon the request of Senators Charles H. Percy, David Durenberger, and J. James Exon, completed a report in June 1984 entitled Importance and Impact of Federal Alcohol Fuel Tax Incentives. <sup>1/</sup> According to this study, the cornerstone of the incentives was provided in the Energy Tax Act of 1978 (Public Law 95-618, Nov. 9, 1978). This act exempted fuels containing at least 10 percent ethanol produced from renewable resources from the Federal gasoline excise tax, which was then set at 4 cents per gallon. Because only one-tenth of a gallon of ethanol was needed to exempt the entire gallon of mixed fuel from the tax, the tax advantage amounted to 40 cents per gallon of ethanol.

The gasoline tax exemption has subsequently been amended by other legislation. The Crude Oil Windfall Profit Tax Act of 1980 (Public Law 96-233, Apr. 2, 1980) extended the tax exemption's termination date from 1984 to 1992. It also provided an equivalent 40-cents per gallon income tax credit to those businesses using or selling ethanol either as a straight fuel or as a blend with gasoline. The incentives were structured so that only one of the two benefits could be claimed. The act also provided a 10-percent energy investment tax credit through 1985 on investments in equipment to produce ethanol from renewable resources. This credit is in addition to the 10-percent investment tax credit available to any business investing in new machinery or equipment.

The Highway Revenue Act of 1982 (Public Law 97-424, title V, Jan. 6, 1983) increased the tax advantage provided to ethanol. Effective April 1, 1983, this act increased the exemption for gasohol from 4 cents to 5 cents per gallon. It also adjusted the income tax credit from 40 cents to 50 cents per gallon of ethanol. The Deficit Reduction Act of 1984 (Public Law 98-369) increased the exemption for gasoline containing at least 10-percent ethanol from 5 cents to 6 cents per gallon effective January 1, 1985.

As part of the Omnibus Reconciliation Act of 1980 (Public Law 96-499, Dec. 5, 1980), the Congress enacted a special duty on fuel ethanol imports. In addition to the 3 percent ad valorem duty applied to all nonbeverage ethanol imports, the act added a duty applied to all nonbeverage ethanol imports for use as fuel or in producing a fuel. The act added a 10-cent-per-gallon duty to ethanol imported for fuel purposes in 1981. It raised the extra duty to 20 cents per gallon during 1982 and to 40 cents per gallon from 1982 through 1992. Subsequently, the Highway Revenue Act of 1982 increased the duty to 50 cents per gallon for fuel ethanol imports entering between April 1, 1983, and December 31, 1992. The duty was further increased by the Deficit Reduction Act of 1984 to 60 cents per gallon effective

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<sup>1/</sup> The U.S. General Accounting Office, Importance and Impact of Federal Alcohol Fuel Tax Incentives, GAO/RCED-84-1, June 6, 1984.



January 1, 1985. The duty level has been set to offset the value of the Federal tax exemption so that foreign producers of fuel ethanol do not benefit from the exemption.

The Reagan administration proposed, as part of its 1986 tax reform plan, to terminate the Federal excise tax exemption for ethanol-blended fuels. 1/ However, the House version of the tax reform bill retained the Federal tax exemption for ethanol-blended fuels. 2/

State incentives.--As of November 1985, 32 States offered incentives, generally in the form of exemptions or credits with respect to the State excise tax or sales tax on motor fuels. Seven states restrict eligibility for the tax credit to that produced within the State and 10 States offer reciprocity for the exemption to qualifying alcohol from other States. The exemptions range from 1 cent to 16 cents a gallon, with an average State tax exemption of 3.5 cents per gallon of blended motor fuels. The combined Federal and State tax exemptions have effectively reduced the price of ethanol on the average by 95 cents a gallon (60 cents Federal and 35 cents State), thus enabling ethanol to compete favorably with regular and premium grades of gasoline at the wholesale level. 3/

According to Herman and Associates, 15 States had major changes in their tax laws for gasohol in 1985. Two States, North Carolina and Arkansas, repealed their exemption and one State, South Carolina, created a new exemption for ethanol blends. Six States extended the expiration date of their exemptions, five States decreased the rate of their exemptions, and two States increased their exemptions. The trend in State tax changes for ethanol in 1985 was action by many States to modify the tax exemption to exclude imported ethanol from qualifying for the tax exemption. In general, the States have done this by requiring that the feedstock must be derived, in whole or in part, from cereal grains or cereal grain byproducts thus excluding sugar-based foreign ethanol from qualifying for the State tax exemption.

In addition to tax incentives, the fuel ethanol industry has benefited from other forms of financial incentives. Both the Department of Energy (DOE) and the Department of Agriculture (USDA) have issued loan guarantees to fuel ethanol projects.

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1/ David E. Hallberg, "Ethanol Industry Outlook: Supply and Pricing/Tax Exemptions," The 1985 Washington Conference on Alcohol, Arlington, VA, Nov. 14-15, 1985.

2/ Telephone conversation with Eric Vaughn, president, Renewable Fuels Association.

3/ Marilyn J. Herman, "Federal and State Alcohol Fuel Tax Incentives and Regulations," Herman & Associates, The 1985 Washington Conference on Alcohol, Arlington, VA, Nov. 15, 1985.

### Factors affecting demand for fuel ethanol

When the fuel ethanol tax incentives were first established, fuel ethanol was viewed as a partial replacement or substitute for gasoline in the United States to lessen the dependence on foreign crude oil or other petroleum products. The only practical way to use ethanol in the vast majority of U.S. automobiles was to blend the ethanol with gasoline and, ultimately, the Environmental Protection Agency (EPA) established regulations allowing a maximum of 10 percent ethanol in the blended fuel.

Ethanol marketed as a replacement for gasoline must be priced, 1/ taking into consideration the effects of Federal and State tax incentives, near or below the price of gasoline. 2/ Ethanol, however, has a high octane rating that has the desirable effect of increasing the octane rating of the finished fuel with which it is blended. Recent events have increased the significance of ethanol's octane value and, as previously mentioned, some sub-octane gasoline is now available for blending with ethanol to take advantage of ethanol's octane-enhancing properties.

Lead phasedown.--Historically, tetraethyl lead and tetramethyl lead have been used as octane enhancers for gasoline since the octane enhancing properties of these chemicals were discovered more than 30 years ago. With the passage of the Clean Air Act, the EPA was given the authority to regulate fuels and fuel additives. Thus, on March 7, 1985 (50 F.R. 9386), EPA promulgated regulations that reduced the allowable lead in gasoline from 1.1 grams of lead per gallon of leaded gasoline to 0.5 gram per gallon effective on July 1, 1985, and 0.1 gram per gallon effective on January 1, 1986. EPA's actions were based on three major concerns about the use of lead in gasoline.

The first concern related to the use of leaded gasoline in vehicles designed and certified by EPA to use only unleaded gasoline. This practice is of concern because it results in greater use of lead in gasoline than previously estimated, and because leaded gasoline poisons catalytic converters and thereby causes very large increases in tailpipe emissions of several pollutants. EPA's second concern, related to the first, was that lead usage under the 1.1 grams per gallon standard was significantly higher than that anticipated at the time that standard was promulgated in 1982. EPA's third concern was the direct impact of the use of lead in gasoline on human health, particularly that of pre-school children. EPA did not take final action concerning a total ban on the use of lead in gasoline, but requested public comments on additional information relevant to the issue of a total ban on the use of leaded gasoline (50 F.R. 9400).

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1/ Transcript of preliminary conference, p 145.

2/ David E. Hallberg, "Ethanol Industry Outlook: Supply and Pricing/Tax Exemptions," The 1985 Washington Conference on Alcohol, Arlington, VA, Nov. 14-15, 1985.

In addition, on March 25, 1985, EPA took action to initiate the "banking" of lead rights. Under this mechanism, refiners that used less lead in gasoline than allowed by regulations during 1985 can either sell their lead rights on the open market to another refiner or they can use the banked lead in the future. The purpose of the banking rule was to provide flexibility in the transition to the 0.1 grams of lead per gallon of gasoline standard. Refiners and importers were allowed to bank lead credits or their unused lead allowance from January 1, 1985, through December 31, 1985, and may withdraw banked lead credits from April 1, 1986, until January 1, 1988.

Reportedly, 1/ refiners significantly reduced lead usage below the 1.1 grams of lead per gallon of gasoline during January-June 1985 in order to build lead banks for future use. During January-March 1985, 296 refiners and 19 importers banked 3.4 billion grams of lead rights.

The price of lead credits has reportedly risen from a range of 0.5 to 1.5 cents per gram prior to January 1, 1985, to a range of 2.0 to 4.0 cents per gram as of September 30, 1985. Under EPA regulations, alcohol marketers are eligible to bank and trade lead credits as a refiner or importer of gasoline. The amount of lead credits generated with ethanol is calculated by multiplying the number of gallons of alcohol added to leaded gasoline times the amount of lead allowed in each gallon and, in most cases, the lead credits are equivalent to the amount of alcohol blended. As of September 30, 1985, 949 blenders had registered with EPA to bank and sell lead rights compared with 156 blenders registered with EPA prior to January 1, 1985.

Thus, EPA's new regulations to phase down the use of lead in gasoline have increased the demand for other octane enhancers or added emphasis to refining techniques that produce unleaded gasoline components with a higher octane rating. 2/

Alternative methods of increasing octane.--Refiners have a variety of options to meet EPA lead standards and increase octane ratings of gasoline. According to most recent studies, many refiners will overcome the octane shortage by investing in octane-producing process units. Catalytic polymerization is one technique used to produce high octane components from crude oil. New catalysts are said to be available that will improve octane ratings of refinery products. In addition, increasing isomerization capacity to process straight-run gasoline is expected to increase output of higher octane products. Adding new refining equipment is costly, and some refiners may be unable to finance these projects because of low profit margins in the

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1/ Marilyn J. Herman, "The Environmental Protection Agency's Lead in Gasoline Rule and Its Impact on the Alcohol Fuels Industry," Herman & Associates, The 1985 Washington Conference on Alcohol, Arlington, VA, Nov. 14, 1985.

2/ "Refiners Grappling With Lead Phasedown in Gasoline," Chemical and Engineering News, Nov. 25, 1985, pp. 30 and 31.

refining industry. In addition, other oil-producing countries are adding refinery capacity and are likely to increase exports of finished petroleum products, such as gasoline, to obtain the value added from processing crude oil.

Benzene, toluene, and xylene are high-octane blending components used in gasoline refining and as petrochemical feedstocks. These chemicals are produced by naphtha reforming, olefins production, and from coke ovens and they have the desirable characteristic of being completely soluble in gasoline. In addition, prices of benzene, toluene, and xylene are related to the price of crude oil and further declines in crude prices could result in lower prices for these chemicals along with lower gasoline prices. 1/

Methyl tertiary butyl ether (MTBE), another octane enhancer, has excellent blending characteristics and is widely accepted by gasoline blenders. However, an industry observer feels that the prospects of increasing gasoline imports may inhibit growth in domestic MTBE capacity. 2/ Fuel ethanol, as previously mentioned, has good octane-enhancing characteristics and is likely to become more useful as a blending agent to increase fuel octane rather than as a replacement for gasoline. Methanol is an inexpensive octane enhancer, but it must be used with a cosolvent and corrosion inhibitor to blend well with gasoline. Methanol also increases the vapor pressure of the resulting blend when mixed with gasoline and this restricts its use under current standards.

Since 1978, EPA has granted eight waivers and denied five waiver applications for oxygenated fuels. A summary of these waivers is listed below and on the following page: 3/

- (1) Arconol waiver (44 F.R. 10530, Feb. 21, 1979) permits the use of up to 9 percent tertiary butyl alcohol, by volume. The blended fuel must adhere to the appropriate ASTM regional volatility requirements.
- (2) Methyl tertiary butyl ether waiver (44 F.R. 12242, Mar. 6, 1979) permits the use of up to 7 percent of this chemical. The blended fuel must adhere to the appropriate ASTM regional volatility requirements.
- (3) Gasohol waiver (44 F.R. 20777, Apr. 6, 1979) permits the use of 10 percent anhydrous ethanol in unleaded gasoline. There are no volatility restrictions.

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1/ "Oil: Saudi Arabia Bites Back," Newsweek, Oct. 7, 1985, p. 48.

2/ William Storck, "MTBE Growth Limited Despite Lead Phasedown in Gasoline," Chemical and Engineering News, July 15, 1985.

3/ Survey of Federal and State Alcohol Fuel Regulations, Herman & Associates, Washington, DC, July 1985.

- (4) Sun waiver (44 F.R. 37074, June 25, 1979; 45 F.R. 9766, Feb. 13, 1980) permits the use of a proprietary fuel additive consisting of tertiary butyl alcohol and methanol. The blended fuel must meet the appropriate ASTM regional volatility requirements.
- (5) Petrocoal waiver (46 F.R. 48975, Oct. 5, 1981) (49 F.R. 11879, Mar. 28, 1984, proposed revocation of waiver) permits a blended fuel of up to 6 percent of higher alcohols with a proprietary corrosion inhibitor. The blend must meet appropriate ASTM volatility requirements. This waiver is currently being contested in the U.S. Court of Appeals.
- (6) Oxinol waiver (46 F.R. 56361, Nov. 16, 1981) permits the use of a specified blend of methanol and tertiary butyl alcohol. The blended fuel must meet appropriate ASTM regional volatility requirements.
- (7) Ethanol additive waiver (44 F.R. 22404, May 24, 1982) permits the use of a proprietary stabilizer mixed with anhydrous ethanol and denatured with methyl isobutyl ketone. The blended fuel must meet the ASTM volatility requirements for time of year and location.
- (8) DuPont waiver (50 F.R. 2615, Jan. 17, 1985) permits the use of a blend of methanol, ethanol, and a proprietary corrosion inhibitor. The blended fuel must meet appropriate ASTM regional volatility requirements and other specifications.

Although ethanol could be an attractive cosolvent for methanol under the DuPont waiver, refiners and fuel blenders believe that restrictions related to fuel volatility make this waiver unworkable. 1/

#### Future demand for fuel ethanol

The future demand for ethanol will depend on a multitude of factors, including gasoline prices, the future of Federal and State tax incentives, future EPA regulations, and the availability of sub-octane gasoline blendstocks. 2/

One gallon of ethanol is approximately equal to 5 grams of lead in terms of the increase in octane achieved when blended into gasoline. The 0.5 gram of lead per gallon standard in 1985 required refiners to reduce lead usage by approximately 18 billion grams or the octane equivalent of 3.7 billion gallons

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1/ The Oxygenated Fuels Association has petitioned EPA requesting a reconsideration and clarification of the DuPont waiver.

2/ David E. Hallberg, "Ethanol Industry Outlook: Supply and Pricing/Tax Exemptions," The 1985 Washington Conference on Alcohol, Arlington, VA, Nov. 14-15, 1985.

of ethanol. In 1986 alone, the required lead reduction of 38.4 billion grams is the octane equivalent of 7.6 billion gallons of ethanol, or about 10 times the present ethanol capacity. Thus, ethanol alone cannot provide all the octane requirement resulting from EPA's lead phasedown regulations. 1/ In their study, Oppenheimer projected a demand of 800 million gallons of ethanol in 1986 and 1987. 2/ In their study of the costs of lead phasedown, EPA estimated the potential maximum demand for ethanol at about 920 million gallons. 3/

Domestic producers and importers were asked, in the Commission's questionnaires, for their projection on the effects of EPA's lead phasedown rules on the domestic fuel ethanol industry during 1986 and 1987.

\* \* \* responded that:

\* \* \* \* \*

The responses of six other producers are shown in the following tabulation (in millions of gallons):

<u>Producer</u>	<u>Projected demand for fuel ethanol</u>	
	<u>1986</u>	<u>1987</u>
* * *-----	***	***
* * *-----	***	***
* * *-----	***	***
* * *-----	***	***
* * *-----	***	***
* * *-----	***	***
Average-----	849	976

The responses of three importers are shown in the following tabulation (in millions of gallons):

<u>Importer</u>	<u>Projected demand for fuel ethanol</u>	
	<u>1986</u>	<u>1987</u>
* * *-----	***	***
* * *-----	***	***
* * *-----	***	***
Average-----	910	1,127

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1/ Marilyn J. Herman, "The Environmental Protection Agency's Lead in Gasoline Rule and Its Impact on the Alcohol Fuels Industry," Herman & Associates, The 1985 Washington Conference on Alcohol, Arlington, VA, Nov. 14, 1985, p. 4.

2/ "Ethanol Market Outlook," Oppenheimer and Co., Inc., Report No. 85-1040, July 30, 1985.

3/ Costs and Benefits of Reducing Lead in Gasoline, the Environmental Protection Agency, Washington, DC, February 1985, ch. II, p. 46.

Apparent U.S. consumption

Apparent U.S. consumption of fuel ethanol increased by \*\*\* percent from 1982 to 1983 and \*\*\* percent from 1983 to 1984. Apparent U.S. consumption of fuel ethanol during January-November 1985 was \*\*\* percent above that during the corresponding period of 1984. The increase in apparent U.S. consumption of fuel ethanol during January 1982-November 1985 reflects growth in the new gasohol markets for this product. The U.S. Department of Transportation (DOT) publishes monthly motor fuel sales statistics, including sales of gasohol, reported by states. According to DOT statistics, sales of gasohol increased from 2.3 billion gallons in 1982 to 4.3 billion gallons in 1983 and 5.4 billion gallons in 1984. If this gasohol contains 10 percent fuel ethanol, then consumption of fuel ethanol increased 88.3 percent from 1982 to 1983 and 27.4 percent from 1983 to 1984. Apparent U.S. consumption of fuel ethanol, computed U.S. consumption of fuel ethanol, and U.S. consumption of gasoline are shown in the following tabulation (in thousands of gallons):

<u>Period</u>	<u>Apparent U.S. consumption of fuel ethanol 1/</u>	<u>U.S. consumption of fuel ethanol 2/</u>	<u>U.S. consumption of gasoline 3/</u>	<u>Ratio (percent) of apparent consumption of fuel ethanol to gasoline consumption</u>
1982-----	***	225,905	102,747,065	***
1983-----	***	425,488	104,231,431	***
1984-----	***	542,047	108,222,697	***
Jan.-Nov.--				
1984-----	***	489,741	99,271,868	***
1985-----	***	4/	4/	

1/ Compiled from data submitted in response to the Commission's questionnaires.

2/ Computed as 10 percent of gasohol sales as reported in official statistics of the U.S. Department of Transportation.

3/ Actual U.S. consumption of gasoline reported as sales in official statistics of the U.S. Department of Transportation.

4/ Not available.

As shown above, the volume of fuel ethanol consumed is a small but growing share of total gasoline sales. Domestic consumption of gasoline increased 5.3 percent during 1982-84.

Consideration of Material Injury  
to an Industry in the United States

U.S. production, capacity, and capacity utilization

U.S. production of fuel ethanol increased by \*\*\* percent from 1982 to 1983 and by another 12.7 percent from 1983 to 1984 (table 1). Production during January-November 1985 was 582.1 million gallons. Similarly, U.S. capacity, for the reporting firms, increased 74.9 percent from 1982 to 1983 and 23.1 percent from 1983 to 1984.

Table 1.--Fuel ethanol: U.S. production, practical annual capacity, and capacity utilization, by quarters, January 1982-September 1985, and October-November 1985

Period	Production	Practical annual capacity 1/	Capacity utilization
	---1,000 gallons---		--Percent--
1982:			
January-March-----	***	***	2/ ***
April-June-----	***	***	2/ ***
July-September-----	***	***	2/ ***
October-December-----	***	***	2/ ***
1982-----	***	284,328	***
1983:			
January-March-----	***	***	2/ ***
April-June-----	***	***	2/ ***
July-September-----	***	***	2/ ***
October-December-----	***	***	2/ ***
1983-----	397,580	497,295	79.9
1984:			
January-March-----	***	***	2/ ***
April-June-----	***	***	2/ ***
July-September-----	***	***	2/ ***
October-December-----	***	***	2/ ***
1984-----	448,037	612,053	73.2
1985:			
January-March-----	***	***	2/ ***
April-June-----	***	***	2/ ***
July-September-----	***	***	2/ ***
October-November-----	***	***	2/ ***
January-November 1985-----	582,137	712,680	2/ 89.1

1/ Practical annual capacity was defined as the greatest level of output a plant can achieve within the framework of a realistic work pattern. Producers were asked to consider, among other factors, a normal product mix and an expansion of operations that could be reasonably attained in their industry and locality in setting capacity in terms of the number of shifts and hours of plant operations.

2/ On an annual basis.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

The capacity at November 30, 1985, was \*\*\* percent above that of December 31, 1984. Thus, table 1 clearly shows the rapid growth in the domestic fuel ethanol industry during January 1982-November 1985.



Several U.S. producers \* \* \* reported equipment and other operational problems with their fuel ethanol plants during January 1982-November 1985. In general, most of the problems were of a kind normally experienced during the startup of new plants. However, the most significant shutdown was that reported by \* \* \*, \* \* \*, \* \* \*, \* \* \*, \* \* \*.

During the preliminary investigation, counsel for Interior alleged that the domestic industry was unable to meet the demand for fuel ethanol during the period covered by the investigation. Consequently, producers were asked in the questionnaires for these final investigations if, at any time during January 1982-November 1985, they had placed any customer on product allocation or declined new business because of shortages of fuel ethanol.

Most producers responded in the negative to these questions. However,

\* \* \* \* \*

U.S. producers' domestic shipments, intracompany shipments, domestic purchases, and exports

U.S. producers' domestic shipments are shipments of the firms' production and do not include shipments of purchased fuel ethanol.

Intracompany transfers increased \*\*\* percent from 1982 to 1983, \*\*\* percent from 1983 to 1984, and 4.7 percent during January-November 1985 when compared with the corresponding period of 1984 (table 2).

Table 2.--Fuel ethanol: U.S. producers' domestic shipments, 1982-84, January-November 1984, and January-November 1985

Shipments	1982	1983	1984	January–November--	
				1984	1985
	Quantity (1,000 gallons)				
Intracompany transfers-----	***	***	53,412	48,184	50,440
Other-----	***	***	395,429	348,178	550,298
Total-----	***	375,353	448,841	396,362	600,738
	Value (1,000 dollars)				
Intracompany transfers-----	***	***	78,364	71,142	75,271
Other-----	***	***	565,609	506,707	811,194
Total-----	***	568,507	643,973	577,849	886,465

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

During January-November 1985, \* \* \* accounted for \*\*\* percent, \* \* \* accounted for \*\*\* percent, and \* \* \* accounted for \*\*\* percent of the intracompany transfers.

Total domestic producer shipments increased \*\*\* percent from 1982 to 1983, 19.6 percent from 1983 to 1984, and 51.6 percent when shipments during January-November 1985 are compared with the corresponding period in 1984. During January-November 1985, \* \* \* accounted for \*\*\* percent of total shipments by domestic producers, \* \* \* accounted for \*\*\* percent, \* \* \* accounted for \*\*\* percent, \* \* \* accounted for \*\*\* percent, \* \* \* accounted for \*\*\* percent, and other firms accounted for \*\*\* percent.

Table 3 shows U.S. producers' purchases of fuel ethanol from domestic sources (i.e., other U.S. producers, U.S. brokers, and U.S. importers).

Table 3.--Fuel ethanol: U.S. producers' domestic purchases, 1982-84, January-November 1984, and January-November 1985

Purchases	1982	1983	1984	January-November--	
				1984	1985
Quantity (1,000 gallons)					
From other					
U.S. producers---	***	***	***	***	***
From U.S. brokers,					
U.S. importers,					
and other U.S.					
sources-----	***	***	***	***	***
Total-----	12,974	15,009	27,894	27,656	47,111
Value (1,000 dollars)					
From other					
U.S. producers---	***	***	***	***	***
From U.S. brokers,					
U.S. importers,					
and other U.S.					
sources-----	***	***	***	***	***
Total-----	19,406	23,595	39,499	39,173	68,047

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Such purchases increased, on the basis of quantity, by 15.7 percent from 1982 to 1983, 85.8 percent from 1983 to 1984, and 70.3 percent during January–November 1985 compared with the corresponding period in 1984. In general, U.S. producers stated in their questionnaire responses that they made such purchases during times when their plants were temporarily closed for scheduled maintenance or because of equipment failures. No exports of fuel ethanol were reported.

Total purchases were \*\*\* percent of domestic shipments in 1982 (on the basis of quantity), 4.0 percent in 1983, 6.2 percent in 1984, 7.0 percent during January–November 1984, and 7.8 percent in the corresponding period of 1985.

\*                      \*                      \*                      \*                      \*                      \*

During January–November 1985, \* \* \* accounted for \*\*\* percent of the total quantity purchased from other U.S. producers, \* \* \* accounted for \*\*\* percent, \* \* \* accounted for \*\*\* percent, \* \* \* accounted for \*\*\* percent, and \* \* \* accounted for \*\*\* percent of the total.

#### U.S. producers' inventories

U.S. producers' end-of-period inventories of their firms' fuel ethanol production increased by \*\*\* percent from 1982 to 1983, \*\*\* percent from 1983 to 1984, and then declined \*\*\* percent from November 30, 1984, to November 30, 1985 (table 4). As of November 30, 1985, \* \* \* was holding \*\*\* percent of total U.S. producers' inventories, \* \* \* \*\*\* percent, \* \* \* \*\*\* percent, \* \* \* \*\*\* percent, and other firms \*\*\* percent.

#### U.S. employment, wages, and productivity

In general, the trends in employment of, hours worked by, and wages and total compensation paid to production and related workers producing ethanol increased during January 1982–November 1985, as shown in table 5. However, the data in table 5 should be viewed with the understanding that a number of companies were unable to separate data for fuel ethanol from their overall operations. The most significant omission in the reported data occurred in 1982, because \* \* \*, the \* \* \* domestic producer, did not provide separate data for its fuel ethanol operations from its operations producing industrial and beverage ethanol. Further, \* \* \* and \* \* \* did not provide data for their overall operations in which fuel ethanol is produced. Perhaps the most significant data in table 5 are those showing the very low (less than 0.01 cent per gallon) labor cost associated with the production of fuel ethanol.

**Table 4.--Fuel ethanol: U.S. producers' inventories as of  
Dec. 31, 1982-84, and Nov. 30, 1984-85**

Inventories	Dec. 31--			Nov. 30--	
	1982	1983	1984	1984	1985
Quantity (1,000 gallons)					
Fuel ethanol:					
Firm's					
production-----	***	***	***	***	***
Purchased by					
firms-----	***	***	***	***	***
Total-----	***	***	52,294	42,828	36,001
Ratio of inventories to shipments (percent)					
Fuel ethanol:					
Firm's					
production-----	***	***	***	***	***
Purchased by					
firms-----	***	***	***	***	***
Average-----	***	***	11.7	10.8	6.2

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

#### Financial experience of U.S. producers

Ten U.S. producers of fuel ethanol furnished usable income-and-loss data for their fuel ethanol operations. <sup>1/</sup> In the aggregate, the companies were profitable during 1982, but profits fell in 1983. The companies sustained losses both in 1984 and interim 1984, but profitability returned in interim 1985 on sharply higher sales volume. Operating results throughout the reporting period were affected by several factors, primarily fluctuating raw material cost (corn cost) and generally declining unit revenues.

Fuel ethanol operations.--Net sales of fuel ethanol increased in each year during January 1982-November 1985 as new producers began operations and others increased capacity and production (table 6). Five of the ten reporting companies initiated ethanol production after 1982.

<sup>1/</sup> Six of the producers' fuel ethanol operations constituted 85 to 100 percent of their total establishment operations for interim 1985. Two of the other producers did not provide establishment data and two firms did not have significant fuel ethanol sales.

Table 5.--Average number of U.S. producers' employees (total and production and related workers) producing all products and those producing fuel ethanol; hours worked by and wages, total compensation, and average hourly compensation paid to such workers; output per hour worked; and unit labor cost in producing fuel ethanol, 1982-84, January-November 1984, and January-November 1985

Item	1982	1983	1984	January-November--	
				1984	1985
Average employment:					
All persons-----	2,531	2,551	2,824	2,742	3,231
Production and related workers producing--					
All products-----	1,616	1,648	1,833	1,775	2,174
Fuel ethanol-----	980	1,082	1,158	1,098	1,516
Hours worked by production and related workers producing--					
All products					
1,000 hours--	2,204	3,285	3,758	3,310	4,482
Fuel ethanol-----do-----	1,057	2,186	2,536	2,194	3,344
Wages paid to production and related workers producing--					
All products					
1,000 dollars--	22,956	37,631	45,432	40,619	56,733
Fuel ethanol-----do-----	10,946	25,238	30,319	26,743	42,908
Total compensation paid to production and related workers producing--					
All products					
1,000 dollars--	31,894	49,406	60,200	54,158	76,742
Fuel ethanol-----do-----	13,248	30,758	36,816	32,660	55,037
Average hourly compensation paid to production and related workers producing--					
All products-----	\$14.47	\$15.04	\$16.02	\$16.36	\$17.12
Fuel ethanol-----	12.53	14.07	14.52	14.89	16.46
Output per hour worked:					
Fuel ethanol					
1,000 gallons--	***	181.9	177.0	180.2	174.1
Labor cost of producing fuel ethanol					
cents per 1,000 gallons--	***	6.3	6.8	6.8	7.4

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Table 6.--Income and loss experience of 10 U.S. producers <sup>1/</sup> on their operations producing fuel ethanol, 1982-84, interim 1984, and interim 1985

Item	1982	1983	1984	Interim period ended Nov. 30--	
				1984	1985
Net sales---1,000 dollars--	***	541,434	624,975	578,967	835,755
Quantity sold					
1,000 gallons--	***	357,949	426,866	388,902	565,177
Cost of goods sold					
1,000 dollars--	***	514,578	635,420	594,491	765,061
Gross profit (loss)---do----	***	26,856	(10,445)	(15,524)	70,694
General, selling, and administrative expenses					
1,000 dollars--	***	8,562	15,432	13,986	20,918
Operating income or (loss)-----1,000 dollars--	***	18,294	(25,877)	(29,510)	49,776
Interest expense <sup>2/</sup> ----do----	***	38,695	50,945	46,116	55,558
Other (income) or expense, net-----1,000 dollars--	***	(4,736)	478	639	(2,394)
Net income (loss) before income taxes-----do----	***	(15,665)	(77,300)	(76,265)	(3,388)
Depreciation and amorti- zation-----1,000 dollars--	***	45,453	48,566	47,160	67,479
Cash-flow or (deficit) from operations					
1,000 dollars--	***	29,788	(28,734)	(29,105)	64,091
As a share of net sales:					
Gross profit or (loss) percent--	***	5.0	(1.7)	(2.7)	8.5
Operating income or (loss)-----do----	***	3.4	(4.1)	(5.1)	6.0
Net income or (loss) before income taxes percent--	***	(2.9)	(12.4)	(13.2)	(.4)
Cost of goods sold--do----	***	95.0	101.7	102.7	91.5
General, selling, and administrative expenses percent--	***	1.6	2.5	2.4	2.5
Number of firms reporting:					
Operating losses-----	2	3	6	6	4
Net losses-----	3	4	7	7	5
Data-----	5	8	9	9	10

<sup>1/</sup> These firms are \* \* \*, \* \* \*, \* \* \*, \* \* \*, \* \* \*, \* \* \*, \* \* \*, \* \* \*, \* \* \*, and \* \* \*.

<sup>2/</sup> One firm, \* \* \*, did not report interest expense.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Net sales rose \*\*\* percent, from \$\*\*\* million in 1982 to \$541.4 million in 1983. In 1984, net sales were \$625.0 million, representing an increase of 15.4 percent over net sales in 1983. During the interim period of 1985, sales were \$835.8 million, increasing by 44.3 percent over the \$579.0 million in interim 1984. Operating income was \$\*\*\* million (\*\*\* percent of sales) in 1982 and declined to \$18.3 million (3.4 percent of sales) in 1983. Aggregate operating losses of \$25.9 million (4.1 percent of sales) and \$29.5 million (5.1 percent of sales) were sustained in 1984 and interim 1984, respectively. During interim 1985, operating income was \$49.8 million (6.0 percent of sales). High interest expense for initial production and capital expansion substantially reduced net income (loss) before income taxes for all periods except 1982. Estimated cash-flow (net income (loss) plus depreciation) was favorable in 1982 and 1983, but a cash deficit occurred in 1984. The 1985 interim period produced a cash-flow of \$64.1 million, including \$\*\*\* million for \* \* \*; however, four firms had negative cash-flows for the period.

The income-and-loss experience of the 10 U.S. producers, on a cents per gallon basis, is presented in table 7. The aggregate average unit revenues per gallon of fuel ethanol declined from \$\*\*\* per gallon in 1982 to \$1.479 per gallon in interim 1985. \* \* \*.

Table 7.--Income-and-loss experience of 10 U.S. producers on their operations producing fuel ethanol, 1982-84, interim 1984, and interim 1985, per gallon of ethanol sold

(Cents per gallon)									
Item	:	:	:	:	Interim period				
	:	:	:	:	ended Nov. 30--				
	1982	1983	1984	:	1984	1985			
	:	:	:	:	:	:			
Net sales-----	:	***	151.3	:	146.4	:	148.9	:	147.9
Cost of goods sold-----	:	***	143.8	:	148.9	:	152.9	:	135.4
Gross profit (loss)-----	:	***	7.5	:	(2.5)	:	(4.0)	:	12.5
General, selling, and	:	:	:	:	:	:	:	:	:
administrative expenses--	:	***	2.4	:	3.6	:	3.6	:	3.7
Operating income or (loss)--	:	***	5.1	:	(6.1)	:	(7.6)	:	8.8
Interest expense-----	:	***	10.8	:	11.9	:	11.9	:	9.8
Other (income) or expense,	:	:	:	:	:	:	:	:	:
net-----	:	***	(1.3)	:	.1	:	.1	:	(.4)
Net income (loss) before	:	:	:	:	:	:	:	:	:
income taxes-----	:	***	(4.4)	:	(18.1)	:	(19.6)	:	(.6)
Depreciation and amorti-	:	:	:	:	:	:	:	:	:
zation-----	:	***	12.7	:	11.4	:	12.1	:	11.9
Cash-flow (deficit)	:	:	:	:	:	:	:	:	:
from operations-----	:	***	8.3	:	(6.7)	:	(7.5)	:	11.3
	:	:	:	:	:	:	:	:	:

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

The income and-loss experience of ADM, the largest producer, and the other firms responding to the Commission's questionnaires are presented separately in table 8.

\* \* \* \* \*

Table 8.--Income-and-loss experience of ADM and 9 U.S. producers on their operations producing fuel ethanol, 1982-84, interim 1984, and interim 1985

\* \* \* \* \*

Capital expenditures and investment in productive facilities.--Total capital expenditures were \$\*\*\* million in 1982, \$136.2 million in 1983, and \$147.6 in 1984. During the 1985 interim period, expenditures dropped sharply to \$56.0 million. The total investment in productive facilities exceeded \$1 billion by November 1985 (\$1,040.8 million), representing an increase of \*\*\* percent compared with that of 1982.

Research and development.--Research and development expenses in this industry are not a significant factor. During January-November 1985, they were 0.1 percent of net sales. Details of capital expenditures, investment in productive facilities, and research and development expenses are presented in the following tabulation (in thousands of dollars):

<u>Period</u>	<u>Capital expenditures</u>	<u>Fixed assets</u> <u>Cost</u>	<u>Book value</u>	<u>Research and development costs</u>
1982-----	***	***	***	***
1983-----	136,227	810,521	704,480	902
1984-----	147,568	939,360	781,868	1,071
Jan.-Nov.--				
1984-----	142,245	934,435	780,519	1,027
1985-----	56,006	1,040,783	815,152	960

#### Consideration of Threat of Material Injury to an Industry in the United States

In its examination of the question of threat of material injury to an industry in the United States, the Commission may take into consideration such factors as the rate of increase in the subsidized and/or LTFV imports, the rate of increase of U.S. market penetration by such imports, the capacity of producers in the exporting country to generate exports (including the availability of export markets other than the United States), and other factors, such as the quantities of imports of the merchandise under investigation held in inventory in the United States.



Trends in imports and U.S. market penetration are discussed in the sections of this report that address the causal relationship between the alleged injury and subsidized and/or LTFV imports. A discussion of U.S. importers' inventories of fuel ethanol and the available data on the capacity of producers in Brazil to generate exports of this product follow.

#### U.S. importers' inventories

U.S. importers' inventories of fuel ethanol from Brazil increased sharply during 1982-84, then were reduced to \*\*\* as of November 30, 1985 (table 9). \* \* \*. Counsel for Interior stated that large quantities of fuel ethanol were imported during late 1984 in anticipation of the 10-cent-per-gallon increase in duty for fuel ethanol, effective January 1, 1985. 1/

Table 9.--Fuel ethanol and mixtures of fuel ethanol: U.S. importers' inventories of imported merchandise as of Dec. 31, 1982-84, and Nov. 30, 1984-85

(In thousands of gallons)						
Type	Dec. 31--			Nov. 30--		
	1982	1983	1984	1984	1985	
Fuel ethanol:						
From Brazil-----	***	***	***	***	***	***
All other-----	***	***	***	***	***	***
Total-----	***	***	***	***	***	***
Mixtures of fuel ethanol <u>1/</u>						
from Brazil-----	***	***	***	***	***	***

1/ Fuel ethanol content.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

#### Ability of producers in Brazil to generate exports and the availability of export markets other than the United States

An official request was made through the State Department to the Government of Brazil for data on Brazil's capacity to produce anhydrous fuel ethanol, Brazilian production data, exports of fuel ethanol to the United

1/ Interior's postconference brief, pp. 34 and 35.

States and to other countries, consumption of anhydrous fuel ethanol in Brazil, plans to expand Brazil's fuel ethanol industry, and other information relative to these investigations. In addition, Counsel for Interior and the other importers were requested to provide similar information in their questionnaire responses.

Respondents provided the data in table 10, which were derived from official Brazilian data. To assist the Commission, respondents converted as much of the data as possible to a calendar-year basis. Brazilian capacity data are available only for hydrous ethanol; however, respondents stated that existing anhydrous capacity is adequate to meet more than the current demand because Brazil is shifting their domestic vehicle fleet away from cars that use gasoline (or gasohol), at a rate of about 600,000 cars per year, to cars that run on hydrous ethanol. Cars that can use hydrous ethanol require different engines and other components from those that use gasohol.

Table 10.--Anhydrous fuel ethanol: Brazil's capacity, production, inventories, domestic shipments, and exports, 1982-85, with projections for 1986 and 1987

Item	:	1982	:	1983	:	1984	:	1985	:	Projections--	
										1986	1987
Capacity 1/	:	:	:	:	:	:	:	:	:	:	:
millions of gallons--	:	2,245	:	2,695	:	3,076	:	2/ 3,302	:	3/ 3,525	3/ 3,727
Production-----do-----	:	902	:	674	:	566	:	2/ 723	:	3/ 578	3/ 550
Inventories 4/-----do-----	:	53	:	369	:	416	:	2/ 243	:	3/ 327	3/ 308
Domestic shipments	:	:	:	:	:	:	:	:	:	:	:
millions of gallons--	:	533	:	574	:	550	:	2/ 564	:	3/ 518	3/ 516
Exports 5/-----do-----	:	53	:	53	:	189	:	2/ 75	:	3/ 79	3/ 79

1/ Effective total capacity to produce hydrous ethanol, crop-year basis.

2/ Actual through November with estimates for December.

3/ Projected.

4/ As of Jan. 1.

5/ Exports of anhydrous fuel ethanol and anhydrous industrial grade ethanol to all markets with the assumption that there will be no exports of fuel ethanol to the United States in 1986 or 1987.

Source: Compiled by respondents from CENAL and IAA data.

Respondents caution that the calendar-year data can be misleading unless the Commission recognizes that inventories peak in December and are at their lowest level at the end of the crop year. In addition, the ethanol plants operate, for the most part, for only 7 months of the year while sugarcane is being harvested. Thus, inventories at the beginning of the calendar year

are already largely committed to domestic consumption, security stocks, and exports under existing contracts. When all factors are taken into account, respondents conclude that there will be 64 million gallons of excess anhydrous ethanol available for export at the end of crop year June 1986-May 1987 and 11 million gallons at the end of crop year June 1987-May 1988.

Brazilian statistical data are unique in several respects that could cause confusion when compared with U.S. data. For example, Brazilian ethanol plants frequently run at 30 to 40 percent above "nameplate" capacity so that the effective capacity reported in table 10 is higher than nameplate capacity. In addition, table 10 shows increasing effective capacity through 1987 although no new plants are being added. This anomaly is caused by the long period required to bring a new Brazilian ethanol plant to full capacity. Respondents gave a "rule-of-thumb" that, during the first year, a Brazilian plant will operate at about 30 percent of capacity, 60 percent the second year, 90 percent the third year, and reach full capacity during the fourth year. Further, respondents stated that existing capacity is believed to be sufficient until 1990. The significance of all this is that Brazil has more than sufficient physical plant capacity to produce ethanol, both hydrous and anhydrous, to supply its domestic and export markets until 1990.

A second important point is that, in any given year, physical plant capacity is not, at present, the limiting factor in Brazil's ability to produce ethanol. The determining factor is the sugarcane crop, which is primarily affected by the weather. In addition, many Brazilian sugarcane growers can either produce sugar or ethanol from their cane crops. The Brazilian Government regulates both the production of sugar and ethanol through acreage allotments for sugarcane. For each crop year, the Government establishes sugarcane quotas to allow for Brazil's domestic requirements for sugar and for ethanol. Then additional quotas are provided to supply the anticipated export market.

Brazilian law requires the maintenance of reserves of hydrous and anhydrous ethanol to help prevent any shortfall in the domestic supplies. Further, regulations in Brazil require that all gasoline sold in Brazil be blended with anhydrous ethanol so that the resulting gasohol contains 20 percent (plus or minus 2 percent) anhydrous ethanol. The price of gasohol is set higher than the price of hydrous ethanol in Brazil to provide a disincentive to use gasoline or gasohol and provide an incentive to purchase vehicles that use hydrous ethanol.

#### Consideration of the Causal Relationship Between the Subsidized and/or LTFV Imports and the Alleged Injury

##### U.S. imports

Official import statistics show that aggregate U.S. imports of all grades of ethanol from all sources increased rapidly during 1982-84, from 35.5 million gallons in 1982 to 102.5 million gallons in 1983 and 170.0 million gallons in 1984 (table 11). Imports from Brazil increased rapidly during

Table 11.--Ethanol: U.S. imports for consumption, by principal sources, 1982-84, January-November 1984, and January-November 1985

Source	1982	1983	1984	January-November--	
				1984	1985
	Quantity (1,000 gallons)				
Brazil-----	17,753	72,967	136,575	100,928	57,287
United Kingdom-----	6,947	5,155	10,652	9,556	11,173
Canada-----	5,211	14,148	7,318	7,055	8,653
Argentina-----	4,582	5,520	6,455	5,536	4,623
Spain-----	0	923	3,868	3,868	1,982
France-----	0	1,612	2,385	2,050	7,814
Norway-----	4	4	6	4	6,500
Costa Rica-----	0	0	0	0	4,589
El Salvador-----	0	0	0	0	2,466
Jamaica-----	0	0	0	0	7,497
Saudi Arabia-----	0	0	0	0	29,650
All other-----	1,013	2,160	2,785	2,149	3,951
Total-----	35,509	102,489	170,045	131,148	146,184
	Value (1,000 dollars)				
Brazil-----	18,717	71,240	115,723	86,935	49,486
United Kingdom-----	8,568	5,921	13,253	11,861	12,170
Canada-----	5,018	12,984	8,746	8,455	8,945
Argentina-----	5,790	6,336	6,310	5,423	4,039
Spain-----	0	596	3,197	3,197	1,462
France-----	0	1,870	2,658	2,274	8,007
Norway-----	18	15	30	28	3,912
Costa Rica-----	0	0	0	0	5,647
El Salvador-----	0	0	0	0	3,074
Jamaica-----	0	0	0	0	6,652
Saudi Arabia-----	0	0	0	0	18,847
All other-----	914	2,623	2,791	1,994	4,518
Total-----	39,025	101,584	152,708	120,165	126,761

Source: Compiled from official statistics of the U.S. Department of Commerce.

1982-84, from 17.8 million gallons in 1982 to 73.0 million gallons in 1983 and 136.6 million gallons in 1984. Imports of ethanol from Brazil dropped during January-November 1985 when compared with the corresponding period 1984. However, imports from Costa Rica, El Salvador, and Jamaica increased during 1985 and are believed, by industry observers, to be fuel ethanol. In addition, during 1985, there was a sharp increase in imports of mixtures of fuel ethanol until Customs ruled in August of 1985 that the fuel ethanol in such mixtures is subject to the extra duty provided for under TSUS item 901.50.

Imports of fuel ethanol from Brazil, as reported to the Commission in response to its questionnaires (table 12), increased \*\*\* percent from 1982 to 1983 and \*\*\* percent from 1983 to 1984 on the basis of quantity. Imports of fuel ethanol from Brazil dropped \*\*\* percent during January-November 1985 compared with imports in the corresponding period of 1984. Domestic producers, as shown in table 12, were significant importers of fuel ethanol during 1982-84. \* \* \*. \* \* \*.

Collecting import data for these investigations through questionnaires proved to be more complicated than expected. Some importers were reluctant to respond to the Commission's questionnaires, and others reported ethanol purchased from importers as imports. Thus, there was some double reporting that had to be corrected, along with failures to report.

\* \* \* \* \*

With respect to imports of fuel ethanol from Brazil, responses to the Commission's questionnaires are now believed to be complete with two notable exceptions. \* \* \*. \* \* \*.

\* \* \* \* \*

Importers were requested to provide information about purchase requests received from U.S. producers of fuel ethanol. \* \* \*, in its questionnaire response, stated that it sold fuel ethanol to \* \* \* during 1984; received a request \* \* \* for \* \* \*; and was approached by \* \* \* in May 1985 with a request for \*\*\* million gallons of fuel ethanol.

#### U.S. market penetration by imports

The U.S. market penetration by imports of fuel ethanol increased during 1982-84, as shown in table 13. The ratio of imports of fuel ethanol from Brazil to apparent U.S. consumption increased from \*\*\* percent in 1982 to \*\*\* percent in 1983, and then increased to \*\*\* percent in 1984. There was a sharp drop in market penetration during January-November 1985 when compared with the corresponding period of 1984.

However, during January-November 1985, importers reported imports of \*\*\* million gallons of mixtures of fuel ethanol from Brazil containing about \*\*\* million gallons of fuel ethanol. Further, the quantity of mixtures of fuel ethanol is understated because not all importers of the mixtures have responded to the Commission's questionnaires. The mixtures were approximately \*\*\* percent fuel ethanol and \*\*\* percent toluene, benzene, xylene, or gasoline, and were blended with additional fuel ethanol to produce denatured fuel ethanol or blended into gasohol.

Table 12.--Fuel ethanol: U.S. imports reported by respondents to the Commission's importers' questionnaires, 1982-84, January-November 1984, and January-November 1985

Source	1982	1983	1984	January-November--		
				1984	1985	
	Quantity (1,000 gallons)					
Imports by importers:						
Brazil-----	***	***	***	***	***	
Spain-----	***	***	***	***	***	
Costa Rica-----	***	***	***	***	***	
Total-----	***	***	***	***	***	
Imports as mixtures:						
Brazil-----	***	***	***	***	***	
U.S. producers' imports:						
Brazil-----	***	***	***	***	***	
Canada-----	***	***	***	***	***	
Total-----	***	***	***	***	***	
All imports:						
Brazil-----	***	***	***	***	***	
Spain-----	***	***	***	***	***	
Costa Rica-----	***	***	***	***	***	
Canada-----	***	***	***	***	***	
Grand total-----	***	***	***	***	***	
	Value (1,000 dollars)					
Imports by importers:						
Brazil-----	***	***	***	***	***	
Spain-----	***	***	***	***	***	
Costa Rica-----	***	***	***	***	***	
Total-----	***	***	***	***	***	
Imports as mixtures:						
Brazil-----	***	***	***	***	***	
U.S. producers' imports:						
Brazil-----	***	***	***	***	***	
Canada-----	***	***	***	***	***	
Total-----	***	***	***	***	***	
All imports:						
Brazil-----	***	***	***	***	***	
Spain-----	***	***	***	***	***	
Costa Rica-----	***	***	***	***	***	
Canada-----	***	***	***	***	***	
Grand total-----	***	***	***	***	***	

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission. Imports of fuel ethanol are understated because not all importers responded to the Commission's questionnaires. The value of mixtures includes the value of all components of the mixtures.

Table 13.--Fuel ethanol: U.S. producers' shipments, imports for consumption, and apparent consumption, 1982-84, January-November 1984, and January-November 1985

Period	: U.S. pro- ducers' : shipments :	Imports : from : Brazil :	Other : imports :	: Apparent : consump- : tion :	: Ratio of total : imports to : consumption :
	: -----1,000 gallons-----				: ---Percent---
1982-----	: *** :	: *** :	: *** :	: *** :	: *** :
1983-----	: 375,353 :	: *** :	: *** :	: *** :	: *** :
1984-----	: 448,841 :	: *** :	: *** :	: *** :	: *** :
Jan.-Nov.--	: : :	: : :	: : :	: : :	: : :
1984-----	: 396,362 :	: *** :	: *** :	: *** :	: *** :
1985-----	: 600,738 :	: *** :	: *** :	: *** :	: *** :
	: : :	: : :	: : :	: : :	: : :

Source: Compiled from information submitted in response to questionnaires of the U.S. International Trade Commission.

At the Commission's hearing for these investigations, counsel for the respondents suggested that the Commission's usual way of viewing import penetration is not appropriate in these investigations because of the large inventories of fuel ethanol that were built up during December 1984 to avoid the additional 10-cent-per-gallon duty increase that was to become effective January 1, 1985. <sup>1/</sup>

Table 14 was prepared to enable the Commission to consider the merits of respondents arguments with respect to inventory adjustments. As shown in table 9, importers' \* \* \* inventories of fuel ethanol were reduced to \*\*\* during 1985. However, \* \* \* was holding \*\*\* million gallons of fuel ethanol contained in mixtures as of November 30, 1985. It was not possible to adjust the data for additional inventories of imported fuel ethanol that may have been held by domestic producers.

Taking importers' inventory adjustments into account tended to provide some leveling effect in the import penetration ratios when January-November 1984 is compared with the corresponding period of 1985 (table 14). Nevertheless, the trends shown in table 14 are the same as those shown in table 13.

### Prices

Sales practices.--Domestic producers sell fuel ethanol to distributors, refiners, brokers, gasoline retailers, and other ethanol producers. The largest importer of Brazilian ethanol \* \* \* sold to several large ethanol

<sup>1/</sup> Transcript of hearing at pp. 230-232.

Table 14.--Fuel ethanol: U.S. producers' shipments, imports for consumption, U.S. importers' shipments, and apparent consumption, 1982-84, January-November 1984, and January-November 1985

Period	U.S. producers' shipments	Imports for consumption	U.S. importers' shipments	Apparent consumption	Ratio of total importers' shipments to consumption
	-----1,000 gallons-----				---Percent---
1982-----	***	***	***	***	***
1983-----	375,353	***	***	***	***
1984-----	448,841	***	***	***	***
Jan.-Nov.--					
1984-----	396,362	***	***	***	***
1985-----	600,738	***	***	***	***

Source: Compiled from information submitted in response to questionnaires of the U.S. International Trade Commission.

distributors, which in turn compete with U.S. ethanol producers. Some of these distributors also import ethanol directly. Domestic producers generally quote ethanol prices on an f.o.b. plant or f.o.b. terminal basis, but may also quote on a delivered basis. Importers generally quote prices on an f.o.b. terminal basis (near the port of entry). The most common method of transport for U.S.-produced ethanol is by tanker truck, with a capacity of about 7,500 to 8,000 gallons, although it is also delivered by barge, railcar, or in smaller top-off quantities. Suppliers of ethanol quote several different prices depending on the type of shipment requested. Bargeload purchases are quoted at the lowest prices, railcar and truckload purchases are quoted at higher prices, and top-off purchases are quoted at the highest prices. A number of non-price factors affecting sales were identified, such as quality, credit terms, availability, and prompt delivery.

Fuel ethanol is used by gasoline refiners and marketers both as a fuel extender and as an octane enhancer. As a fuel extender, ethanol competes directly with gasoline, and ethanol prices must remain competitive with gasoline prices. With the recent decisions by EPA to accelerate the phaseout of lead in gasoline and to allow the banking of lead rights, and with increases in the availability of sub-octane gasoline, the demand for and value of fuel ethanol as an octane enhancer may increase. However, the recent decline in bulk gasoline prices to approximately \$0.50 to \$0.60 per gallon in response to falling crude prices will adversely affect the demand for and value of ethanol.

The actual differential between selling prices of ethanol and gasoline is wide. For example, in September 1985, the ethanol price in Illinois was \$\*\*\* per gallon and the unleaded gasoline wholesale price was \$0.84 per gallon. A price differential of similar size existed in other States as well and illustrates that, without fuel tax incentives, unsubsidized ethanol is



uneconomical as a direct replacement for gasoline. As indicated previously, to promote ethanol as an alternative fuel source, the Federal Government exempts gasohol blends containing at least 10 percent ethanol from a portion of the Federal excise tax on gasoline. Because 0.1 gallon of ethanol qualifies a gallon of gasohol for this \$0.06 exemption, a single gallon of ethanol effectively receives a \$0.60 Federal subsidy, significantly narrowing the above price differential. The exemption is received by the seller of the gasohol blend rather than by the producer of ethanol. 1/ The fuel tax exemption makes gasoline producers and distributors willing to pay a higher price for ethanol. 2/

In addition to the Federal tax exemption for gasohol, many state governments also exempt gasohol from a portion of the State gasoline tax. The State tax exemptions are not uniform, and the economic viability of domestic or foreign ethanol in a particular State often depends on the existence and level of the State tax exemption and whether the ethanol qualifies for the exemption. In States where no State tax exemption exists, the volume of ethanol sales is generally small or nonexistent. Some States require that either the ethanol be distilled or the feedstock (generally corn) be grown in that State to qualify for the exemption. This type of restriction effectively excludes from that market ethanol produced in other States (unless reciprocity agreements exist) or in Brazil. 3/

Price trends.--The Commission requested domestic producers and importers to provide their total monthly sales revenues and quantities sold by various shipment methods from January 1984 to November 1985 for sales of ethanol in California, Florida, Illinois, Michigan, and Ohio. From these data, Commission staff calculated producers' and importers' monthly revenue per gallon for ethanol as a surrogate for weighted-average prices of U.S.-produced and imported ethanol. 4/ Tables 15 and 16 present these data.

---

1/ It is possible for the tax exemption to be claimed at different levels of distribution, and the price of gasohol and ethanol at any level depends on which party intends to file the claim.

2/ Transcript of conference, p. 145.

3/ ADM has filed suits against some States having tax regulations that effectively excluded ADM from those State markets (Colorado, Minnesota, and Louisiana).

4/ Ethanol prices consistently vary by the shipment size (i.e., bargeload, railcarload, or truckload). Because domestic producers generally sell ethanol in truckload shipments, and importers generally sell bargeload quantities, the average price data discussed above should not be used for price comparisons.

Table 15.--U.S.-produced fuel ethanol: Weighted-average monthly selling prices of U.S. producers to customers in California, Florida, Illinois, Michigan, and Ohio, January 1984-November 1985

Period	California	Florida	Illinois	Michigan	Ohio
1984:					
January-----	\$***	\$***	\$***	\$***	\$***
February-----	***	***	***	***	***
March-----	***	***	***	***	***
April-----	***	***	***	***	***
May-----	***	***	***	***	***
June-----	***	***	***	***	***
July-----	***	***	***	***	***
August-----	***	***	***	***	***
September---	***	***	***	***	***
October-----	***	***	***	***	***
November----	<u>1/</u>	***	***	***	***
December-----	<u>2/</u>	***	***	***	***
1985:					
January-----	<u>1/</u>	***	***	***	***
February-----	<u>1/</u>	***	***	***	***
March-----	<u>1/</u>	***	***	***	***
April-----	***	***	***	***	***
May-----	***	***	***	***	***
June-----	***	***	***	***	***
July-----	***	***	***	***	***
August-----	***	***	***	***	***
September---	***	***	***	***	***
October-----	***	***	***	***	***
November----	***	***	***	***	***

1/ No data reported.

2/ A price of \$\*\*\* per gallon was reported in this period. The sale was made under special circumstances, according to the producer, but reportedly was made in competition with imported ethanol.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Table 16.--Fuel ethanol imported from Brazil: Weighted-average monthly selling prices of U.S. importers to customers in California, Florida, Illinois, Michigan, and Ohio, January 1984-November 1985

Period	California	Florida	Illinois	Michigan	Ohio
1984:					
January-----	<u>1/</u>	\$***	<u>1/</u>	<u>1/</u>	<u>1/</u>
February-----	\$***	***	<u>1/</u>	<u>1/</u>	<u>1/</u>
March-----	***	***	<u>1/</u>	<u>1/</u>	<u>1/</u>
April-----	<u>1/</u>	<u>1/</u>	<u>1/</u>	<u>1/</u>	<u>1/</u>
May-----	***	***	<u>1/</u>	<u>1/</u>	\$***
June-----	***	***	<u>1/</u>	<u>1/</u>	***
July-----	***	***	<u>1/</u>	<u>1/</u>	<u>1/</u>
August-----	***	***	<u>1/</u>	<u>1/</u>	***
September----	***	***	<u>1/</u>	\$***	***
October-----	***	***	<u>1/</u>	***	***
November-----	***	***	<u>1/</u>	***	***
December-----	***	***	<u>1/</u>	<u>1/</u>	***
1985:					
January-----	***	***	<u>1/</u>	<u>1/</u>	<u>1/</u>
February-----	***	***	<u>1/</u>	<u>1/</u>	***
March-----	***	***	<u>1/</u>	<u>1/</u>	***
April-----	***	***	<u>1/</u>	***	***
May-----	***	***	<u>1/</u>	***	***
June-----	***	***	<u>1/</u>	***	***
July-----	***	***	<u>1/</u>	***	***
August-----	<u>1/</u>	***	\$***	***	***
September----	<u>1/</u>	***	***	<u>1/</u>	***
October-----	<u>1/</u>	***	***	<u>1/</u>	***
November-----	<u>1/</u>	<u>1/</u>	***	<u>1/</u>	***

1/ No data reported.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Analysis of ethanol price trends is complicated by the many factors that affect ethanol prices, the two most important being tax incentives and gasoline prices. The Federal tax exemption on gasohol was raised from \$0.05 per gallon to \$0.06 per gallon on January 1, 1985, raising the effective subsidy for ethanol from \$0.50 to \$0.60 per gallon. However, in the five States examined by the Commission, State tax incentives were reduced or eliminated during 1984 or 1985. Gasoline prices, the second factor, declined sharply in all five States during late 1984 and early 1985 (table 17).

In order to demonstrate the relationship between domestic ethanol prices and gasoline prices, Commission staff adjusted producers' reported weighted-average prices in California, Florida, Michigan, and Ohio by deducting the amount of the effective Federal and State incentives from producers' prices to arrive at a net price of ethanol. This net price of ethanol 1/ would reflect blenders' true costs for the ethanol. 2/ The monthly net ethanol price and the monthly price of unleaded regular gasoline are shown in figures 1 through 4. These figures show that the net price of ethanol and the price of unleaded regular gasoline are correlated, especially in the Michigan and Ohio markets. 3/

California was the only State investigated that showed a net price of ethanol often higher than the price of unleaded regular gasoline. Several industry sources reported that ethanol in California is used primarily as an octane enhancer to produce premium gasoline that is sold at a higher price than regular gasoline.

Although the magnitude and timing of domestic price changes differed by State, some common trends are evident. Prices of ethanol in all five States declined during October-December 1984, by an average of \*\*\* percent. 4/ During 1985, domestic ethanol prices in all States increased through late spring or early summer, fluctuating near this higher level in the second half of 1985. Ethanol prices followed trends in gasoline prices during the spring of 1985.

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1/ The net ethanol price in Illinois was not calculated because the exact amount of the incentive, based on a percentage point exemption from the state sales tax, is hard to quantify.

2/ The possible effect of changes in the State tax incentives of neighboring States is hard to quantify, and thus could not be removed.

3/ The correlation coefficients are \*\*\* for California, \*\*\* for Florida, \*\*\* for Michigan, and \*\*\* for Ohio.

4/ The price declines in late 1984 through early 1985 were coincident with an increase in U.S. production of fuel ethanol of more than 36 percent.

Table 17.--Average prices of unleaded regular gasoline for refiner and gas plant operators' sales for resale in California, Florida, Illinois, Michigan, and Ohio, by months, January 1984-October 1985

(Per gallon)					
Period	California	Florida	Illinois	Michigan	Ohio
1984:					
January-----	\$0.862:	\$0.845:	\$0.844:	\$0.859:	\$0.857
February-----	.839:	.872:	.862:	.875:	.870
March-----	.869:	.876:	.867:	.882:	.876
April-----	.922:	.889:	.885:	.898:	.893
May-----	.924:	.886:	.879:	.890:	.883
June-----	.872:	.869:	.863:	.869:	.868
July-----	.814:	.843:	.833:	.842:	.842
August-----	.811:	.838:	.829:	.840:	.843
September-----	.848:	.850:	.853:	.864:	.854
October-----	.892:	.849:	.848:	.869:	.859
November-----	.893:	.830:	.831:	.851:	.836
December-----	.841:	.789:	.789:	.802:	.783
1985:					
January-----	.808:	.768:	.752:	.755:	.757
February-----	.873:	.836:	.829:	.833:	.823
March-----	.815:	.782:	.773:	.778:	.772
April-----	.917:	.887:	.885:	.885:	.883
May-----	.927:	.901:	.897:	.899:	.894
June-----	.909:	.896:	.907:	.908:	.894
July-----	.873:	.889:	.903:	.911:	.887
August-----	.841:	.871:	.878:	.887:	.857
September-----	.848:	.846:	.839:	.856:	.828
October-----	.841:	.851:	.842:	.845:	.835

Source: Petroleum Marketing Monthly, Department of Energy, various issues.

Figure 1.--The net price per gallon of U.S.-produced fuel ethanol and the wholesale price of unleaded regular gasoline in Florida, by months, January 1984-November 1985

\* \* \* \* \*

Figure 2.--The net price per gallon of U.S.-produced fuel ethanol and the wholesale price of unleaded regular gasoline in California, by months, January 1984-November 1985

\* \* \* \* \*

Figure 3.--The net price per gallon of U.S.-produced fuel ethanol and the wholesale price of unleaded regular gasoline in Ohio, by months, January 1984-November 1985

\* \* \* \* \*

Figure 4.--The net price per gallon of U.S.-produced fuel ethanol and the wholesale price of unleaded regular gasoline in Michigan, by months, January 1984-November 1985

\* \* \* \* \*

Reasonably complete price data for imported ethanol are available for sales to California, Florida, and Ohio; only limited data are available for Illinois and Michigan. These price data indicate that importers' average prices fluctuated markedly during 1984 and generally increased during early 1985.

California.--From January 1981 to June 30, 1984, California provided a tax exemption that applied to both Brazilian and domestic ethanol. California terminated the exemption effective July 1, 1984, and currently has no State tax exemption for gasoline containing alcohol. The California market is interesting because of the large population of automobiles and the ability of importers to enter ethanol close to their customers. U.S. producers, by contrast, are located primarily in the Midwest. Three major U.S. producers testified at the February 5, 1986, hearing regarding their interest in the California market. New Energy stated that, because of high transportation costs from its plant to California and the lack of a State incentive to blend ethanol, it has not chosen to market in California although it reviews the market regularly. South Point Ethanol stated that its response would be the same as that of New Energy. ADM testified that its Cedar Rapids, IA, plant was closer to California than most other major producers. ADM reported that they were "participating regularly in the California market until June or July of 1984." ADM commented that its "participation in California under current conditions is going to be very limited as it was during 1985." ADM's reported sales of fuel ethanol to California were approximately \*\*\* gallons during January-June 1984, dropped \*\*\* percent to \*\*\* gallons during July-December 1984, and declined further during January-November 1985 to \*\*\* gallons. \* \* \*.

In California, average domestic ethanol prices fell from \$\*\*\* per gallon in February 1984 to \$\*\*\* per gallon in April 1984, or by \*\*\* percent, despite rising California gasoline prices during this period. Domestic ethanol prices in this State then rose to \$\*\*\* during May-June 1984, before falling \$\*\*\* to \$\*\*\* per gallon in July, immediately following the expiration of the State incentive for ethanol of \$0.30 per gallon. Domestic ethanol prices were substantially higher during the spring of 1985 and increased steadily from \$\*\*\* to \$\*\*\* per gallon during April-June 1985, following gasoline price

increases in California. Domestic ethanol prices in California fell by \*\*\* percent from \$\*\*\* in June 1985 to \$\*\*\* per gallon in October 1985, coincident with the decline in gasoline prices in that State. In November 1985, domestic producers' prices on sales to California increased to an average of \$\*\*\* per gallon, equal to the average price during January 1984.

Importers' prices on sales to California decreased irregularly from \$\*\*\* per gallon in February 1984 to \$\*\*\* per gallon in December 1984, or by \*\*\* percent during the year. Average California prices of ethanol imported from Brazil then increased from \$\*\*\* in December 1984 to \$\*\*\* per gallon in May 1985, but fell to \$\*\*\* per gallon during June-July 1985.

Florida.--Florida provided a \$0.04 per gallon nonrestrictive exemption from the sales tax on gasoline during July 1980-June 1985. On July 1, 1984, the Florida tax exemption was restricted to ethanol distilled from U.S. agricultural products or byproducts. This restriction was subsequently deemed unconstitutional by the Florida Circuit Court on August 22, 1984. On July 1, 1985, the tax exemption was reduced to \$0.02 per gallon of gasohol.

Domestic producers' average ethanol prices in Florida were steady during January-March 1984 at \$\*\*\* per gallon despite gasoline price increases in Florida during this period, but fell by \*\*\* percent to \$\*\*\* in May 1984. Producers' prices to customers in Florida reached their highest 1984-85 level during June 1984 at \$\*\*\* per gallon, before falling almost continuously to \$\*\*\* per gallon in December 1984, or by \*\*\* percent from June. From December 1984 to May 1985, domestic producers' prices in Florida increased steadily, and by \*\*\* percent, from \$\*\*\* in December to \$\*\*\* per gallon in May. During May-November 1985, domestic ethanol prices were fairly steady at \$\*\*\* per gallon during May-June and at \$\*\*\* per gallon during September-November.

During 1984, prices of Brazilian ethanol sold to customers in Florida fluctuated between \$\*\*\* and \$\*\*\* per gallon. Importers' average 1985 prices on sales to Florida then generally increased from \$\*\*\* in February 1985 to \$\*\*\* per gallon during July-August 1985, before declining to \$\*\*\* per gallon during October 1985.

Illinois.--From July 1980 through August 1985, Illinois exempted gasohol from 4 percentage points of the State sales tax of 5 percent. This exemption was nonrestrictive with respect to Brazilian ethanol or ethanol from States other than Illinois. In September 1985, the Illinois exemption was reduced to 3 percentage points of the tax, and gasohol was redefined to allow only Illinois-produced ethanol derived from cereal grains or ethanol produced in States which offer reciprocity to Illinois-distilled ethanol. Accordingly, Brazilian ethanol is currently ineligible for the exemption.

Prices of U.S.-produced ethanol sold to customers in Illinois reached their 1984-85 high during March 1984 when they averaged \$\*\*\* per gallon. During March-August 1984, producers' prices fell from \$\*\*\* to \$\*\*\* per gallon. Illinois gasoline prices also fell during this period. After rising slightly to \$\*\*\* in September 1984, prices of domestically produced ethanol

fell by \*\*\* percent to \$\*\*\* per gallon in December 1984. Even though Illinois gasoline prices fell further in January 1985, the increase in the Federal tax exemption on gasohol may have contributed to the rise in the average price of ethanol in Illinois by \$\*\*\* to \$\*\*\* per gallon in January 1985. Ethanol prices during February-June increased irregularly from \$\*\*\* to \$\*\*\* per gallon, or by \*\*\* percent over the December 1984 average price level. After the Illinois tax exemption from the sales tax on gasoline dropped from 4 to 3 percent in September 1985, the average Illinois price of ethanol underwent a decline of \$\*\*\* to \$\*\*\* per gallon through the remainder of the period under investigation.

Michigan.--Michigan provided gasohol a \$0.05-per-gallon exemption from the State sales tax on gasoline from December 1980 through December 1984. In January 1985, the exemption was reduced to \$0.01 per gallon of gasohol, and on December 31, 1985, it expired. During the entire period of the exemption, only Michigan-produced ethanol or ethanol produced in States that offer reciprocal exemptions for Michigan-produced ethanol were eligible. Thus, Brazilian ethanol was not qualified for this exemption.

Average prices of domestic ethanol in Michigan fluctuated slightly during January-May 1984 between \$\*\*\* and \$\*\*\* per gallon, while Michigan gasoline prices generally rose in that period. Although Michigan gasoline prices consistently fell during May-August 1984, prices of U.S.-produced ethanol remained steady at \$\*\*\* per gallon. Producers' average prices increased slightly to \$\*\*\* per gallon during September-October, but fell steadily (by \*\*\* percent to \$\*\*\*) in December, closely following the 7.7-percent decrease in gasoline prices during that period. In January 1985, average domestic ethanol prices declined by \$\*\*\* per gallon. This price decline occurred as the Michigan tax exemption was reduced from \$0.04 to \$0.01 per gallon of blended gasoline and the Federal tax exemption was increased by \$0.01. The net effect of these changes in State and Federal regulations was a \$0.20-per-gallon-of-ethanol decrease in the incentive to blend. Additionally, gasoline prices fell \$0.047 further in January. Producers' prices in Michigan fluctuated upward by \*\*\* percent from \$\*\*\* in February 1985 to \$\*\*\* per gallon in August, fell slightly during September-October, and reached their highest 1985 price level in November 1985.

Ohio.--From 1981 to 1984, Ohio provided a direct tax credit of \$0.35 per gallon of alcohol blended. The credit applied to ethanol and methanol, with no restrictions on State of origin or production process. Thus, Brazilian ethanol was eligible for the credit. However, in January 1985, the credit was reduced to \$0.25 per gallon of alcohol and the qualifying alcohol was defined as Ohio-produced ethanol derived from wood or the grain of a cereal grass, or ethanol produced in a State offering exemption for Ohio-produced ethanol. Thus, as of January 1985, Brazilian ethanol was no longer eligible for the Ohio exemption, although some Brazilian ethanol purchased prior to the enactment was allowed the exemption for subsequent blending operations.



Domestic producers' average price data for sales of ethanol in the Ohio market are especially instructive because the \$0.10 increase in the effective Federal tax incentive completely offset the \$0.10 decrease in the State's effective tax incentive. Thus, the net effect of changes in the State and Federal tax exemptions was neutral during the period for which price data were collected. Average prices of domestic ethanol fell \$\*\*\* to \$\*\*\* per gallon in February 1984 from \$\*\*\* in January. During March-June 1984, ethanol prices in Ohio fluctuated between \$\*\*\* and \$\*\*\* per gallon. After rising slightly to \$\*\*\* in July, producers' average prices from July 1984 to January 1985 declined irregularly by \*\*\* percent to \$\*\*\* per gallon. The Ohio gasoline prices rose somewhat during August-October 1984 but fell by \$0.102 during October 1984-January 1985.

Beginning in February, domestic ethanol prices increased continuously to \$\*\*\* per gallon in May-June 1985, or by \*\*\* percent since January 1985. From this 1984-85 high, domestic producers' prices in Ohio fell to \$\*\*\* per gallon in September 1985 and returned to \$\*\*\* per gallon in November 1985, the same average price level as was experienced in January 1984.

On sales to Ohio, importers' average prices fluctuated downward during May-December 1984 from \$\*\*\* to \$\*\*\* per gallon. In 1985, importers reported their Ohio prices increasing irregularly from an average of \$\*\*\* during February-March 1985 to \$\*\*\* per gallon in October 1985. Importers' prices in this State fell to \$\*\*\* per gallon in November 1985.

#### Price comparisons

In order to compare prices of ethanol as observed by the purchaser in making a decision to buy, the Commission asked purchasers to report the lowest purchase prices they paid each month from January 1984 to November 1985 for fuel ethanol from suppliers of both U.S.-produced and Brazilian ethanol for use or resale in California, Florida, Illinois, Michigan, and Ohio. 1/ To make price data more easily comparable, purchasers were asked to report prices separately by type of shipment for bargeload, railload, and truckload purchases. Purchasers' price data indicated that distributors of ethanol generally received lower ethanol prices than did end users of ethanol. Thus, the price data are also separated into purchases by distributors and purchases by end users. 2/ These price data resulted in 32 delivered-price comparisons on sales to distributors and 9 comparisons on sales to end users.

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1/ If a purchaser did not purchase for use or resale in those States, it was asked to report the lowest monthly prices in a State in which it did have purchases.

2/ Some purchasers of ethanol are both distributors and end users in certain regions where they operate retail gasoline operations. These purchasers are classified as distributors in the following section.

Distributor price comparisons.--Eleven of the 32 price comparisons at the distributor level showed underselling by suppliers of imported ethanol. <sup>1/</sup> Price comparisons showing overselling primarily involved truckload shipments.

Alabama.--One price comparison involved bargeload purchases by distributors for use or resale in Alabama. During November 1985, distributors purchased U.S.-produced ethanol for \$\*\*\* per gallon and Brazilian ethanol for \$\*\*\* per gallon. Thus, suppliers of Brazilian ethanol undersold suppliers of domestic ethanol by \$\*\*\* per gallon, or \*\*\* percent.

California.--The Commission received price data from a distributor in California (\* \* \*) that purchased ethanol from suppliers of U.S.-produced and Brazilian ethanol during May 1984-August 1985. The distributor reports that these purchases were delivered by truck from local producers or terminals, although it is likely that some of the domestic ethanol was produced in the Midwest. The average quantity purchased each month from suppliers of U.S.-produced ethanol in these transactions was approximately \*\*\*. The average quantity of Brazilian ethanol purchased each month from \* \* \* was \*\*\* gallons, or approximately the \* \* \*. These price data are shown in the following tabulation:

<u>Period</u>	<u>U.S.-produced</u>	<u>Brazilian</u>
1984, May-----	\$***	\$***
1984, June-----	***	***
1984, July-----	***	***
1984, August-----	***	***
1984, September-----	***	***
1984, October-----	***	***
1984, November-----	***	***
1985, December-----	***	***
1985, January-----	***	***
1985, February-----	***	***
1985, March-----	***	***
1985, April-----	***	***
1985, May-----	***	***
1985, June-----	***	***
1985, August-----	***	***

The price of the Brazilian ethanol was generally substantially lower than the price of the U.S.-produced ethanol. On average, this distributor's purchases of U.S.-produced ethanol were less than \*\*\* percent of its purchases of Brazilian ethanol, and this substantial difference in quantities purchased may account for a portion of the underselling. The purchaser stated in its questionnaire response that \* \* \*.

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<sup>1/</sup> Absolute and percentage margins were calculated from unrounded weighted-average prices. Thus, the margins cannot always be directly calculated from the rounded prices in the tables.

Florida.--Distributors that purchase for use or resale in Florida provided 7 price comparison on bargeload purchases, 2 price comparisons on railcar purchases, and 6 price comparisons on truckload purchases. The bargeload purchase-price comparisons are shown in the following tabulation:

<u>Period</u>	<u>U.S.-produced</u>	<u>Brazilian</u>	<u>Margin</u> <u>(absolute)</u>	<u>Margin</u> <u>(percentage)</u>
1984, November----	\$***	\$***	\$***	***
1985, April-----	***	***	***	***
1985, May-----	***	***	***	***
1985, July-----	***	***	***	***
1985, August-----	***	***	***	***
1985, September---	***	***	***	***
1985, October-----	***	***	***	***

Four of these comparisons showed underselling by the Brazilian ethanol ranging from \$\*\*\* to \$\*\*\* per gallon or from \*\*\* to \*\*\* percent below the price of domestic ethanol. During May and September 1985, Brazilian ethanol was higher priced than U.S.-produced ethanol by \*\*\* and \*\*\* percent, respectively. The price comparison for July 1985 showed no difference between the prices of domestic and Brazilian ethanol.

Distributors purchasing for the Florida market provided an April 1985 price comparison involving railcar purchases. During April 1985, distributors purchased U.S.-produced ethanol for \$\*\*\* per gallon and Brazilian ethanol for \$\*\*\* per gallon. Thus, suppliers of Brazilian ethanol undersold suppliers of domestic ethanol by \$\*\*\* per gallon, or \*\*\* percent.

Whereas several bargeload delivered-price comparisons in the Florida market show underselling, all of the six truckload purchase price comparisons of ethanol sold to the Florida market, as presented below, show overselling by suppliers of Brazilian ethanol:

<u>Period</u>	<u>U.S.-produced</u>	<u>Brazilian</u>	<u>Margin</u> <u>(absolute)</u>	<u>Margin</u> <u>(percentage)</u>
1985, February----	\$***	\$***	\$(***)	(***)
1985, March-----	***	***	(***)	(***)
1985, April-----	***	***	(***)	(***)
1985, July-----	***	***	(***)	(***)
1985, September---	***	***	(***)	(***)
1985, October-----	***	***	(***)	(***)

Average overselling on these truckload purchases was \$\*\*\* per gallon or \*\*\* percent above the price of U.S.-produced ethanol.

Illinois.--Distributors' price data on bargeload ethanol purchases in the Illinois market provided the three price comparisons shown in the following tabulation:

<u>Period</u>	<u>U.S.-produced</u>	<u>Brazilian</u>	<u>Margin</u> <u>(absolute)</u>	<u>Margin</u> <u>(percentage)</u>
1984, December-----	\$***	\$***	\$***	***
1985, May-----	***	***	***	***
1985, August-----	***	***	***	***

In each period, suppliers of Brazilian ethanol undersold suppliers of U.S.-produced ethanol. The August 1985 price comparison showed the highest underselling, when Brazilian ethanol was priced \$\*\*\* or \*\*\* percent below domestic ethanol purchased during that month. As in the Florida market, although bargeload purchase price comparisons show underselling by suppliers of Brazilian ethanol in Illinois, truckload purchase price comparisons in that State showed overselling by suppliers of Brazilian ethanol. These price data are shown in the following tabulation:

<u>Period</u>	<u>U.S.-produced</u>	<u>Brazilian</u>	<u>Margin</u> <u>(absolute)</u>	<u>Margin</u> <u>(percentage)</u>
1984, September----	\$***	\$***	\$(***)	(***)
1984, October-----	***	***	(***)	(***)
1984, November-----	***	***	(***)	(***)
1984, December-----	***	***	(***)	(***)
1985, April-----	***	***	(***)	(***)
1985, May-----	***	***	(***)	(***)
1985, June-----	***	***	(***)	(***)
1985, July-----	***	***	(***)	(***)
1985, August-----	***	***	(***)	(***)

During September 1984-August 1985, Brazilian ethanol purchased by distributors in truckload quantities was higher priced than U.S.-produced ethanol by an average of \$\*\*\* per gallon or \*\*\* percent. Brazilian ethanol may be higher priced for truckload shipments because of higher transportation and handling costs associated with a truckload shipment of Brazilian ethanol (i.e., barge transport from Brazil to Florida and Illinois, terminal storage, truck transport to inland terminals in Florida and Illinois, plus handling costs at each step) or because the ethanol has been resold several times before the reporting distributor purchased it, with the price reflecting the profit of each seller.

Ohio.--Price data on distributors' 1984 purchases of bargeload quantities for the Ohio market are shown in the following tabulation:

<u>Period</u>	<u>U.S.-produced</u>	<u>Brazilian</u>	<u>Margin</u> <u>(absolute)</u>	<u>Margin</u> <u>(percentage)</u>
1984, May-----	\$***	\$***	\$(***)	(***)
1984, June-----	***	***	(***)	(***)
1984, August-----	***	***	(***)	(***)
1984, September----	***	***	***	***
1984, October-----	***	***	***	***

Three monthly price comparisons involving purchases of bargeload quantities in the summer of 1984 show that Brazilian ethanol was higher priced than U.S.-produced ethanol by margins of overselling that ranged from \$\*\*\* to \$\*\*\* per gallon, or by \*\*\* to \*\*\* percent above the price of U.S.-produced ethanol. However, in September and October 1984, respectively, Brazilian ethanol was \*\*\* and \*\*\* percent lower priced than domestic ethanol.

End-user price comparisons.--Underselling by suppliers of Brazilian ethanol occurred in 8 of the 9 monthly price comparisons involving end-users' purchases. Four price comparisons involving end-users' 1985 truckload purchases for use in Illinois are shown in the following tabulation:

<u>Period</u>	<u>U.S.-produced</u>	<u>Brazilian</u>	<u>Margin (absolute)</u>	<u>Margin (percentage)</u>
1985, February----	\$***	\$***	\$***	***
1985, March-----	***	***	***	***
1985, July-----	***	***	***	***
1985, August-----	***	***	***	***

These price comparisons generally showed that Brazilian ethanol was lower priced, by margins of underselling that averaged \$\*\*\* per gallon, or \*\*\* percent below prices of domestic ethanol.

In all five of the price comparisons shown below, which involve end users' purchases of truckload quantities of ethanol for use in Ohio, suppliers of imported ethanol undersold suppliers of domestic ethanol:

<u>Period</u>	<u>U.S.-produced</u>	<u>Brazilian</u>	<u>Margin (absolute)</u>	<u>Margin (percentage)</u>
1984, December----	\$***	\$***	\$***	***
1985, March-----	***	***	***	***
1985, April-----	***	***	***	***
1985, May-----	***	***	***	***
1985, June-----	***	***	***	***

On the average, the Brazilian ethanol undersold U.S.-produced ethanol in Ohio by \$\*\*\* per gallon, or \*\*\* percent.

#### Transportation costs

Domestic production and U.S. consumption of fuel ethanol is concentrated primarily in the Midwest. Several non-Midwestern States, including Alabama, California, Colorado, Florida, North Carolina, New Mexico, and Virginia are, or have been, important end-user States, despite their distance from domestic producers. Producers and importers of ethanol were asked to report their average transportation costs for shipments of ethanol to customers located at distances of 50 miles, 200 miles, and more than 500 miles.

The following tabulation shows average transportation costs at these distances for truck, rail, and barge transportation (per gallon):

	<u>Truck</u>	<u>Rail</u>	<u>Barge</u>
50 miles-----	\$0.020	\$0.022	\$0.010
200 miles-----	.059	.037	.023
More than			
500 miles-----	.134	.095	.041

Barge transportation is by far the least expensive of the transport methods, but it requires large-volume purchases and access to waterways. A typical bargeload shipment of ethanol is roughly 400,000 gallons, whereas a railcar shipment is about 30,000 gallons, a truckload shipment is about 8,000 gallons, and a top-off shipment is generally less than 800 gallons. Most ethanol suppliers reported that most sales were by truck. For short distances, truck transport is less expensive than rail transport; for distances of 200 miles or greater, rail transport appears to be the least expensive land transport method, but requires access to railways. Internor reported that it entered the Florida and California ethanol markets because there was no significant in-state ethanol capacity, because U.S. producers were located in the Midwest, and because these States provided nonrestrictive tax exemptions for gasohol. 1/

Average U.S.-inland transportation costs reported by domestic producers ranged from \$\*\*\* to \$\*\*\* per gallon, or from \*\*\* to \*\*\* percent of the final delivered price, with the lowest costs for barge shipments to Illinois and Ohio and the highest costs for truck and rail shipments to California. Importers' average U.S.-inland transportation costs ranged from \$\*\*\* to \$\*\*\* per gallon or from \*\*\* to \*\*\* percent, with the lowest costs for barge shipments to Florida and the highest costs for rail shipments to Colorado.

Regarding the Florida market, U.S. producers reported only barge shipments to Florida during the final investigation, with barge transport costs of \$\*\*\* to \$\*\*\* per gallon. During the preliminary investigation, U.S. producers reported truck transport costs to Florida of \$\*\*\* to \$\*\*\* per gallon. \* \* \*.

With respect to the California market, \* \* \* and \* \* \* reported rail transport costs to California of \$\*\*\* per gallon. \* \* \* reported transportation costs to California ranging from \$\*\*\* per gallon for rail shipments and \$\*\*\* per gallon for truck shipments. \* \* \*, a distributor of both domestic and Brazilian ethanol, reported inland transportation costs for bargeload purchases of Brazilian ethanol in California of \$\*\*\* to \$\*\*\* per gallon. The transport cost from Brazil to California was about \$\*\*\* per gallon in 1984. 2/

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1/ Postconference brief of Internor Trade, Inc., Mar. 21, 1985, p. 27.

2/ The cost was based on a comparison of f.o.b. and c.i.f. unit values of Brazilian ethanol imports into California.

U.S. producers, which are generally located in the Midwest, reported truck rates of only about \$\*\*\* per gallon if shipped to customers located 50 miles away. U.S. producers' actual shipping costs for shipments to Midwestern States were often higher, however. For example, the average inland transportation costs reported by producers on sales to Illinois are shown below by type of shipment (per gallon):

<u>Producer</u>	<u>Barge</u>	<u>Rail</u>	<u>Truck</u>
*	*	*	*

With respect to the Midwest market, imports from Brazil are barged from \* \* \* to customers or selling terminals along the Mississippi and Ohio Rivers. \* \* \*. \* \* \*.

#### Factors pertinent to purchasers' sourcing decisions

Purchasers were asked to list, in order of importance, the 3 major factors that determine from whom to purchase fuel ethanol. Of 24 purchasers, 12 listed price and 8 listed quality as the most important purchasing determinants. Purchasers that listed quality as the most important factor generally cited price as the second factor. Availability, credit terms, and prompt delivery also appear to play a role in sourcing decisions for purchases of fuel ethanol.

#### Price leadership

Asked whether there is a price leader among suppliers of fuel ethanol in purchasers' market areas, 14 purchasers replied negatively and 9 purchasers replied affirmatively. Of the 9 purchasers that believe there is a price leader, 7 purchasers named \* \* \* as the exclusive price leader, and a purchaser in \* \* \* named \* \* \* as the price leader in his market. \* \* \*, a distributor of fuel ethanol in \* \* \*, stated that both \* \* \* and \* \* \* had exercised price leadership in \* \* \* in various periods. \* \* \* has distributed both domestic and Brazilian ethanol in \* \* \*.

#### Availability of fuel ethanol supplies

The Commission requested purchasers to state whether or not they have experienced difficulties in obtaining supplies of fuel ethanol in recent years, particularly from suppliers of U.S.-produced ethanol. Whereas, 13 purchasers replied negatively, 11 purchasers stated that they have experienced supply problems. Almost all of the purchasers that believe supply has been adequate are end users of ethanol, including refiners, gasoline retailers, and major oil companies. The majority of purchasers that reported having difficulty obtaining sufficient supplies of fuel ethanol are distributors, and several of these distributors have purchased Brazilian ethanol. Some purchasers added that supply problems were temporary (1 or 2 months) or specific to certain suppliers rather than the entire industry simultaneously.

### Exchange rates

Table 18 presents indexes of the nominal and real exchange rates between the U.S. dollar and the Brazilian cruzeiro, and indexes of producer prices in the United States and Brazil, by quarters, from January-March 1983 (the base period) through July-September 1985. During this period, the cruzeiro depreciated steadily, declining by 95 percent against the dollar since the base period. However, because of the high rate of Brazilian inflation, the nominal-exchange-rate index does not explain changes in the real value of the Brazilian currency. Adjusted for inflation, the real value of the cruzeiro fluctuated within an 11 percent range during the period under investigation. The real value of the cruzeiro fell by 10 percent during April-June 1983 but regained most of its base period value by the end of 1983. From October-December 1983 to July-September 1984, the real value of the cruzeiro was relatively steady. During October-December 1984, the real value of the cruzeiro increased to 1 percent above its January-March 1983 value, before decreasing again during April-June 1985. As of July-September 1985, the real value of the cruzeiro was 5 percent lower in real terms than it was during January-March 1983.

### Lost sales/lost revenues

During the final investigation, 33 lost sales and 35 lost revenue allegations were provided by 6 producers. These allegations involved 44 purchasers, lost sales of approximately 35 million gallons, and lost revenues on sales of approximately 42 million gallons during 1984-85.

\* \* \*.--This lost sales allegation was made by \* \* \* and involved \*\*\* gallons of Brazilian ethanol allegedly purchased in \* \* \* for \$\*\*\* less per gallon than the domestic producer's price quote of \$\*\*\* per gallon. \* \* \*, an independent jobber in \* \* \*, reported that it purchases ethanol from \* \* \* and \* \* \*. \* \* \* stated that it has never purchased Brazilian ethanol because it is ineligible for State tax exemptions in areas where the company markets ethanol blends. The spokesman reported that ethanol prices are depressed currently because gasoline prices have declined.

\* \* \*.--This lost sales allegation was made by \* \* \* and involves lost sales of \*\*\* gallons \* \* \* in \* \* \* during \* \* \*. \* \* \*. \* \* \* is a distributor of fuel ethanol in \* \* \*, and has purchased domestic ethanol from \* \* \*, \* \* \*, and \* \* \*, and Brazilian ethanol from \* \* \* and \* \* \*. \* \* \*.

\* \* \*. \* \* \* reported that it has purchased some of the ethanol toluene mixtures of Brazilian origin but experienced complaints that the \* \* \*. This purchaser also stated that, in \* \* \*, ethanol is used primarily as an octane enhancer, competing with premium gas rather than regular gas (due to high demand for premium gas in \* \* \*). Because the ethanol is being used for its octane value, it can be sold at a higher price.



Table 18.--Indexes of producer prices in the United States and Brazil, 1/ and indexes of the nominal and real exchange rates between the U.S. dollar and the Brazilian cruzeiro, 2/ by quarters, January 1983-September 1985

(January-March 1983=100)					
Period	: U.S. Producer Price Index	: Brazilian Producer Price Index	: Nominal- exchange- rate index	: Real- exchange- rate index	
	:-----Dollars per cruzeiro-----				
1983:					
January-March-----	100.0	100.0	100.0	100.0	
April-June-----	100.3	132.2	68.6	90.4	
July-September-----	101.3	189.4	51.1	95.7	
October-December----	101.8	266.9	37.6	98.7	
1984:					
January-March-----	102.9	351.9	28.6	97.9	
April-June-----	103.6	467.5	21.6	97.3	
July-September-----	103.3	623.8	16.3	98.3	
October-December----	103.0	871.7	12.0	101.1	
1985:					
January-March-----	102.9	1201.3	8.7	101.3	
April-June-----	103.0	1536.3	6.2	93.1	
July-September-----	102.2	2017.8	4.8	94.8	

1/ Producer price indicators--intended to measure final product prices--are based on average quarterly indexes presented in line 63 of the International Financial Statistics.

2/ Exchange rates expressed in U.S. dollars per Brazilian cruzeiro.

Source: International Monetary Fund, International Financial Statistics.

\* \* \*.--This lost revenue allegation was made by \* \* \* and involves a \*\*\* percent price decrease on \* \* \*. \* \* \* is an \* \* \* in \* \* \*, that has \* \* \*. \* \* \* reported that, to its knowledge, it has not purchased any Brazilian ethanol. The purchaser requests its suppliers to provide a certification stating that the ethanol meets eligibility requirements. \* \* \* purchases U.S.-produced ethanol from \* \* \*, \* \* \*, \* \* \*, and \* \* \*. This purchaser reported that it has never asked for price reductions due to price competition from Brazilian ethanol because it does not want to purchase ethanol ineligible for State exemptions. The purchasers' spokesman added that he believes Brazilian ethanol may have an indirect effect on ethanol prices in his area, explaining that price competition from Brazilian ethanol in coastal markets encourages U.S. producers to sell more ethanol in the Midwest and this greater concentration of supply means lower ethanol prices in the Midwest. He noted that, as gasoline prices have fallen \$0.16, from \$0.75 per gallon in November 1985 to \$0.59 per gallon in February 1986, ethanol prices have fallen \$\*\*\*, or from \$\*\*\* to \$\*\*\* per gallon.

\* \* \*.--This lost revenue allegation was made by \* \* \* and involves price reductions of \$\*\*\* per gallon on \*\*\* gallons sold in the \* \* \* market during \* \* \*. \* \* \*. \* \* \* reported that, during \* \* \*, \* \* \* was its major supplier. This distributor also purchases from \* \* \* and \* \* \* and does not know whether its purchases from these two suppliers are of domestic or Brazilian origin because \* \* \*. A spokesman for the purchaser confirmed that \* \* \* had reduced its prices to \* \* \* around \* \* \*, but only by about \$\*\*\* or \$\*\*\* per gallon. At that time, \* \* \* reportedly established a new pricing strategy to meet any supplier's price in \* \* \*. The purchaser also stated that earlier \* \* \* had reduced its prices to him by about \$\*\*\* to compete with a price for an ethanol/toluene mixture. The purchaser mentioned that although gasoline prices are very low currently, at about \$0.52 per gallon unleaded and \$0.62 or \$0.64 per gallon premium, blenders can still improve their margins using ethanol, by blending \*\*\* percent unleaded, \*\*\* percent premium, and 10 percent ethanol. Finally, the purchaser said that he believed that Brazilian ethanol was needed in the U.S. market to "augment domestic production and smooth out supply."

\* \* \*.--This lost revenue allegation was made by \* \* \* and involves a \*\*\* percent price reduction from \$\*\*\* to \$\*\*\* per gallon on \* \* \*. \* \* \* is a distributor of ethanol in \* \* \*. The company purchases U.S.-produced ethanol from \* \* \*, \* \* \*, \* \* \*, and \* \* \*. The company reportedly has never purchased Brazilian ethanol because it does not believe it would qualify for State exemptions in its market areas. Denying that \* \* \* has ever received price reductions due to price competition from Brazilian ethanol, the company spokesman explained that gasoline prices are the focal point in bargaining discussions with the company's suppliers. The spokesman stated that \* \* \* is the price leader in his market area. \* \* \*. \* \* \*. The spokesman expressed concern that if Brazilian ethanol was eliminated from the U.S. market, more domestic ethanol would be diverted to coastal regions, causing ethanol prices in the Midwest to increase.

Certified Petroleum.--This lost sales allegation was made by South Point Ethanol at the hearing February 5, 1986. The allegation involves the failure to renew a 6-month contract with Certified to purchase 15 to 20 percent of South Point's production when the contract expired on August 31, 1984. This U.S. producer stated its belief that Certified failed to renew the contract because the price was not competitive with prices of Brazilian ethanol in the Ohio market. Certified's spokesman testified at the hearing that South Point Ethanol notified them that they were "cancelling the contract at the end of six months and I couldn't even buy any excess the last month or two that they had it, and so they cancelled the contract. We did not." 1/ Certified stated that it has resumed purchasing ethanol from South Point now that the U.S. producer has adequate supplies. \* \* \*. \* \* \*. \* \* \*. \* \* \*.

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1/ Transcript of hearing, p. 197.

Citgo Petroleum.--This lost sales allegation was made by \* \* \* and involves purchases of Brazilian ethanol for the \* \* \* market of \*\*\* gallons during \* \* \*. Jack Woerschling of Citgo testified at the hearing that Florida is currently Citgo's largest market for ethanol blends and that ADM was Citgo's principal supplier in Florida until mid-1985. In April 1985, ADM allegedly reduced its sales in Florida in favor of markets with higher netback profits, as tax-incentive changes in Florida and other States combined with high transportation costs to Florida made that market less attractive. Subsequent to April 1985, Citgo reported that it was unable to purchase sufficient quantities of U.S.-produced ethanol to meet its needs in Florida, and it "was forced to beg, borrow and almost steal ethanol in small quantities throughout the Gulf Coast." 1/ \* \* \*. \* \* \*. \* \* \*.

\* \* \*.--This lost sales allegation was made by \* \* \* and involves \*\*\* gallons of Brazilian ethanol allegedly purchased by \* \* \* in \* \* \* for \$\*\*\* less per gallon than the U.S. producer's quoted price of \$\*\*\* per gallon. \* \* \*, a \* \* \*, reported that it does not know the origin of the fuel ethanol it purchases because, for the last several years, it has purchased ethanol "secondhand" from distributors. This purchaser stated that the fuel ethanol market in \* \* \*. The \* \* \* will continue to blend limited quantities of ethanol in the next year for use in premium gasoline.

#### Information obtained during the preliminary investigations

During the preliminary investigations, lost sale and lost revenue allegations were provided by 8 ethanol producers; the allegations involved ethanol purchases by 42 companies.

There were 39 lost revenue allegations, which were generally concentrated in the last quarter of 1984 and which involved price decreases of \$\*\*\* to \$\*\*\* per gallon for sales of about \*\*\* million gallons of ethanol. The Commission's staff contacted 26 of the companies, that accounted for about \*\*\* million gallons of the lost revenue allegations. There were seven lost sale allegations, involving ethanol purchases in July-December 1984 that totaled \*\*\* million gallons. Details of the information received from the purchasers contacted follows.

\* \* \*.--This lost revenue allegation was made by \* \* \*, but no details were provided. \* \* \* is a distributor of Brazilian ethanol in the U.S. market. \* \* \* reported that any purchase of domestic ethanol would be made indirectly through \* \* \* because \* \* \* does not purchase directly from U.S. ethanol producers. \* \* \* reported that, in the \* \* \* market, ethanol from \* \* \* is available for \$\*\*\* per gallon and \* \* \* is available for \$\*\*\* per gallon.

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1/ Transcript of hearing, p. 181.

\*\*\*.--This lost revenue allegation was made by \*\*\* and involved a \$\*\*\* per gallon price decline for a sale of \*\*\* gallons in \*\*\*. This purchaser is located in \*\*\* and reported that it purchases \*\*\* ethanol from \*\*, \*, and \*\*, and purchases domestic ethanol from \*\*\*. \*, \*, \*. \*

\*\*\*.--This lost revenue allegation was made by \*\*\* and involves price decreases for a sale of \*\*\* gallons of ethanol in \*\*\*. This purchaser reported that it was purchasing \*\*\* gallons from \*\*. \*\*\* believes that the fall in ethanol prices in \*\* was greater than warranted, on the basis of the concurrent decline in gasoline prices. \*, \*.

\*\*\*.--This company was named in lost revenue allegations by both \*\* and \*. The \*\*\* allegation involves a \$\*\*\* per gallon price decrease in \*\*, and the \*\* allegation involved a \$\*\*\* per gallon price decrease in \*. \*\* is located in \*\*, and reported that it purchases from \*\*, \*, and \*. It purchases truck tankloads for its top-off facilities, and most of its purchases are from \*. \*, \*.

\*\*\*.--This company was named in lost revenue allegations by both \*\* and \*. The \*\*\* allegation involves a \$\*\*\* price decrease in \*\*, and the \*\* allegation involves a \$\*\*\* price decrease in \*. \*\* is located in \*\*, and it purchased from \*\*, \*, and \* on a top-off basis. \*. However, this purchaser also reported that U.S. producers maintain a certain margin between gasoline and ethanol prices, regardless of their cost situation. \*\* believes that with the lead phasedown of gasoline, major oil companies will become preferred customers of ethanol producers, and \*\* wants to maintain \*\* as an alternative source of supply. \*, \*.

\*\*\*.--This lost revenue allegation was made by \*\*\* and involves a \$\*\*\* per gallon price decrease in \*\*\* and a \$\*\*\* per gallon price decrease in \*\*. \*\*\* is located in \*\*. This purchaser reported that its primary suppliers are \*\* and \*\*, but that it has purchased ethanol from \*\*\* at competitive prices. \*, \*.

\*\*\*.--This lost revenue allegation was made by \*\*\* and involves a \$\*\*\* per gallon price decrease in \*\* and a \$\*\*\* per gallon price decrease in \*. \*\* is located in \*\*. This purchaser reported that its primary suppliers of ethanol are \*\* and \*. \*\* reported that it was approached by \*\* with prices about \$\*\*\* to \$\*\*\* lower than prices available from \*\*. \*\* reported that declining gasoline prices had the major impact on ethanol prices, but competition from \*\* caused prices to decline another \$\*\*\* to \$\*\*\* in the \*\* of \*\*.

\*\*\*.--This lost revenue allegation was made by \*\*\* and involves a \$\*\*\* per gallon price decrease in \*\* and a \$\*\*\* per gallon price decrease in \*. \*\* is located in \*\*. This purchaser reported that it believes the decline in ethanol prices was completely attributable to the declining price of gasoline. \*\* reported that independent \*\* require a fair price for ethanol and that \*\*'s price has been artificially high.

\*\*\*.--This lost revenue allegation was made by \*\*\* and involves a price decline of \$\*\*\* per gallon in \*\*\* and a price decline of \$\*\*\* per gallon in \*\*\*. \*\*\*. \*\*\*.

\*\*\*.--This company was named in both a lost revenue and a lost sales allegation by \*\*\*. The lost revenue allegation involved a price decline of \$\*\*\* per gallon from \*\*\* to \*\*\* in the \*\*\* market. \*\*\*. \*\*\*. \*\*\*.

\*\*\* is \*\*\*'s principal supplier of ethanol, although it purchases from \*\*\* for its \*\*\* terminals and also from \*\*\*. \*\*\*. \*\*\*. This purchaser reported that the increase in import volume in late 1984 was an attempt to beat the duty increase of January 1, 1985, and that \*\*\*. According to this purchaser, gasoline prices fell at a faster rate than did ethanol prices in late 1984; they fell to such an extent that ethanol was becoming uncompetitive with gasoline at that time.

\*\*\*.--This lost revenue allegation was made by \*\*\* and involves a price decrease of \$\*\*\* per gallon in \*\*\* in the \*\*\* market and a price decline of \$\*\*\* per gallon in \*\*\* in the \*\*\* market. \*\*\*. This purchaser reported that \*\*\* is the price leader in these markets.

\*\*\*.--This lost revenue allegation was made by \*\*\* and involves a price decrease of \$\*\*\* per gallon in \*\*\*. This purchaser is located in \*\*\*. \*\*\* reported that it purchases from \*\*\* and \*\*\* and has never purchased \*\*\* ethanol or been approached by suppliers of \*\*\* ethanol.

\*\*\*.--This lost revenue allegation was made by \*\*\* and involves a price decrease of \$\*\*\* per gallon in \*\*\*. \*\*\* is located in \*\*\*. \*\*\*. \*\*\* reported that \*\*\* is the price leader in the market.

\*\*\*.--This purchaser was named by two producers, \*\*\* and \*\*\* in both lost sale and lost revenue allegations. The lost revenue allegation by \*\*\* involved a price decrease of \$\*\*\* per gallon from \*\*\* to \*\*\*, affecting sales of approximately \*\*\* gallons in the \*\*\* market, and a price decrease of \$\*\*\* per gallon in \*\*\* affecting sales of \*\*\* million gallons in the \*\*\* market. The lost sale allegation by \*\*\* involves the purchase of \*\*\* gallons of \*\*\* ethanol in \*\*\*. The \*\*\* lost revenue allegation involves a price decrease of \$\*\*\* per gallon in \*\*\* for sales of \*\*\* gallons of ethanol. The lost sale allegation involves the purchase of \*\*\* gallons of \*\*\* ethanol in \*\*\*.

\*\*\*.--This lost revenue allegation was made by \*\*\* and involves a price decrease of \$\*\*\* per gallon in \*\*\*. \*\*\*. \*\*\*. \*\*\*'s primary supplier is \*\*\* but it also purchases from \*\*\*. \*\*\*. \*\*\*. and \*\*\*. The only foreign ethanol it purchases is in \*\*\* from \*\*\*. \*\*\*.

\*\*\*.--This lost sale allegation was made by \*\*\* and involves the purchase of \*\*\* gallons of \*\*\* in \*\*\*. \*\*\*. . \*\*\*. \*\*\*. This

purchaser expressed concern that, with the increase in ethanol demand that will result from the accelerated lead phaseout, ethanol producers will not have the capacity to supply \* \* \* such as \* \* \*. This purchaser reported that ethanol prices were \$\* \* \* above \* \* \*.

\* \* \*.--This lost revenue allegation was made by \* \* \* and involves a price decrease of \$\*\*\* per gallon in \* \* \*. \* \* \*. \* \* \*. It purchased about \*\*\* gallons of ethanol in \* \* \*. \* \* \* reported that it received several phone calls in the summer and fall of 1984 concerning foreign ethanol at a \$\*\*\* per gallon saving over domestic prices. \* \* \*. \* \* \* reported that ethanol price changes are exactly tied to gasoline price changes, and ethanol must be at least \$\*\*\* per gallon lower priced than gasoline.

\* \* \*.--This lost revenue allegation was made by \* \* \* and involves a price decrease of \$\*\*\* per gallon in \* \* \* and a price decrease of \$\*\*\* per gallon in \* \* \*. \* \* \*. Its primary suppliers are \* \* \*, \* \* \*, and \* \* \*. \* \* \*. \* \* \* reported that \* \* \* ethanol prices declined significantly, because of falling gasoline prices and intense competition among ethanol suppliers, especially in the \* \* \* market. \* \* \*. \* \* \*.

\* \* \*.--This lost revenue allegation was made by \* \* \* and involves a price decrease of \$\*\*\* per gallon in \* \* \*. \* \* \*. It believes ethanol from \* \* \* to be \* \* \* in origin. \* \* \*. \* \* \*. \* \* \*.

\* \* \*.--This lost revenue allegation was made by \* \* \* and involves a price decrease of \$\*\*\* per gallon in \* \* \*. \* \* \* is located in \* \* \*, and reported that it purchases exclusively from \* \* \* and has never received any offers to purchase foreign ethanol.

\* \* \*.--This lost revenue allegation was made by \* \* \* and involves a price decrease of \$\*\*\* per gallon in \* \* \*. \* \* \*. It did not report whether it had been approached by marketers of \* \* \* ethanol.

\* \* \*.--This lost revenue allegation was made by \* \* \* and involves a price decrease of \$\*\*\* per gallon in \* \* \*. \* \* \*, which is in \* \* \*, reported that it purchases ethanol from \* \* \* and \* \* \*. It has never been approached by a seller of \* \* \* ethanol.

\* \* \*.--This lost revenue allegation was made by \* \* \* and involves a price decrease of \$\*\*\* per gallon in \* \* \*. \* \* \* is located in \* \* \*, and reported that price negotiations occur all the time for purchases from all its suppliers.

\* \* \*.--This lost revenue allegation was made by \* \* \* and involves a price decrease of \$\*\*\* per gallon in \* \* \*. \* \* \* is located in \* \* \*. \* \* \*.

\* \* \*.--This lost sale allegation was made by \* \* \* and involves purchases of \* \* \* gallons \* \* \* of \* \* \* ethanol. \* \* \*. \* \* \*. \* \* \*.

\* \* \*.--This lost revenue allegation was made by \* \* \* and involves a price decrease of \$\*\*\* per gallon in \* \* \*. \* \* \*. \* \* \*. \* \* \*.

APPENDIX A

FEDERAL REGISTER NOTICES

## INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-248 (Final)]

### Certain Ethyl Alcohol From Brazil

**AGENCY:** United States International Trade Commission.

**ACTION:** Institution of a final antidumping investigation and scheduling of a hearing to be held in connection with the investigation.

**SUMMARY:** The Commission hereby gives notice of the institution of final antidumping investigation No. 731-TA-248 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Brazil of certain ethyl alcohol,<sup>1</sup> provided for in items 427.88,<sup>2</sup> 430.10, 430.20, and 432.10 of the Tariff Schedules of the United States (TSUS), which have been found by the Department of Commerce, in a preliminary determination, to be sold in the United States at less than fair value (LTFV). Unless the investigation is extended, Commerce will make its final LTFV determination on or before December 2, 1985, and the Commission will make its final injury determination by January 21, 1986 (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673d(b))).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, subparts A and C (19 CFR Part 207), and Part 201, subparts A through E (19 CFR Part 201).

**EFFECTIVE DATE:** September 24, 1985.

**FOR FURTHER INFORMATION CONTACT:** Tedford Briggs (202-523-4612), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

#### SUPPLEMENTARY INFORMATION:

##### Background

This investigation is being instituted as a result of an affirmative preliminary

determination by the Department of Commerce that imports of certain ethyl alcohol from Brazil are being sold in the United States at less than fair value within the meaning of section 731 of the act (19 U.S.C. 1673). The investigation was requested in a petition filed on February 25, 1985, by counsel on behalf of the Ad Hoc Committee of Domestic Fuel Ethanol Producers. In response to that petition the Commission conducted a preliminary antidumping investigation and, on the basis of information developed during the course of that investigation, determined that there was a reasonable indication that an industry in the United States was threatened with material injury by reason of imports of the subject merchandise (50 FR 15236, April 17, 1985).

#### Participation in the Investigation

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the Federal Register. Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

#### Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

#### Staff report

A public version of the prehearing staff report in this investigation will be placed in the public record on November 26, 1985, pursuant to section 207.21 of the Commission's rules (19 CFR 207.21).

#### Hearing

The Commission will hold a hearing in connection with this investigation beginning at 10:00 a.m. on December 11,

1985, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on November 21, 1985. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 10:30 a.m. on November 26, 1985, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is December 6, 1985.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

#### Written submission

All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of section 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on December 18, 1985. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before December 18, 1985.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential

<sup>1</sup> The ethyl alcohol (ethanol) included in this investigation is fuel-grade ethyl alcohol (fuel ethanol).

<sup>2</sup> Fuel ethyl alcohol imported under TSUS item 427.88 is subject to additional duties under TSUS item 901.50.



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submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

**Authority**

This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

Issued: October 7, 1985.

By order of the Commission.

**Kenneth R. Mason,**

*Secretary.*

[FR Doc. 85-24233 Filed 10-9-85; 8:45 am]

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with the Secretary to the Commission not later than January 15, 1986; the prehearing conference will be held in room 117 of the U.S. International Trade Commission Building on January 17, 1986, at 9:30 a.m.; the public version of the prehearing staff report will be placed on the public record on January 21, 1986; the deadline for filing prehearing briefs is January 31, 1986; the hearing will be held in room 331 of the U.S. International Trade Commission Building on February 5, 1986, at 10:00 a.m.; and the deadline for filing all other written submissions, including posthearing briefs, is February 11, 1986.

For further information concerning this investigation see the Commission's notice of investigation cited above and the Commission's Rules of Practice and Procedure, Part 207, Subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

**Authority:** This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

Issued: November 7, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-27113 Filed 11-13-85; 8:45 am]

BILLING CODE 7020-02-M.

[Investigation No. 731-TA-248 (Final)]

#### Certain Ethyl Alcohol From Brazil

**AGENCY:** International Trade Commission.

**ACTION:** Revised schedule for the subject investigation.

**EFFECTIVE DATE:** November 7, 1985.

#### FOR FURTHER INFORMATION CONTACT:

Tedford Briggs (202-523-4612), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal on 202-724-0002.

#### SUPPLEMENTARY INFORMATION:

On September 24, 1985, the Commission instituted the subject investigation and established a schedule for its conduct (50 FR 41427, October 10, 1985). Subsequently, the Department of Commerce extended the date for its final determination in the investigation from December 2, 1985, to January 31, 1986 (50 FR 43602, October 28, 1985). The Commission, therefore, is revising its schedule in the investigation to conform with Commerce's new schedule.

The Commission's new schedule for the investigation is as follows: requests to appear at the hearing must be filed

**SUMMARY:** The Commission hereby gives notice of the institution of final countervailing duty investigation No. 701-TA-239 (Final) under section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Brazil of certain ethyl alcohol, for nonbeverage purposes,<sup>1</sup> provided for in items 427.88,<sup>2</sup> 430.10, 430.20, and 432.10 of the Tariff Schedules of the United States, which have been found by the Department of Commerce, in a preliminary determination, to be subsidized by the Government of Brazil. Commerce will make its final subsidy determination in this investigation on or before January 20, 1986, and the Commission will make its final injury determination by March 11, 1986 (see sections 705(a) and 705(b) of the act (19 U.S.C. 1671d(a) and 1671d(b))).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and C (19 CFR Part 207), and Part 201, subparts A through E (19 CFR Part 201).

**EFFECTIVE DATE:** November 12, 1985.

**FOR FURTHER INFORMATION CONTACT:** Tedford Briggs (202-523-4812), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20438. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

**SUPPLEMENTARY INFORMATION:**

**Background.**—This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 701 of the act (19 U.S.C. 1671) are being provided to manufacturers, producers, or exporters in Brazil of certain ethyl alcohol. The investigation was requested in a petition filed on February 25, 1985, by the counsel on behalf of the Ad Hoc Committee of Domestic Fuel Ethanol Producers. In response to that petition the Commission conducted a

preliminary countervailing duty investigation and, on the basis of information developed during the course of that investigation, determined that there was a reasonable indication that an industry in the United States was threatened with material injury by reason of imports of the subject merchandise (50 FR 15236, April 17, 1985).

**Participation in the investigation.**—Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the Federal Register. Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

**Service list.**—Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

**Staff report.**—A public version of the prehearing staff report in this investigation will be placed in the public record on January 21, 1986, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

**Hearing.**—The Commission will hold a hearing in connection with this investigation beginning at 10:00 a.m. on February 5, 1986, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. The hearing will be consolidated proceeding which also covers investigation No. 731-TA-248 (Final), an antidumping investigation involving fuel grade ethyl alcohol from Brazil. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on January 10, 1986. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on January 17, 1986, in room

[Investigation No. 701-TA-239 (Final)]

**Certain Ethyl Alcohol From Brazil**

**AGENCY:** International Trade Commission.

**ACTION:** Institution of a final countervailing duty investigation and scheduling of a hearing to be held in connection with the investigation.

<sup>1</sup> The ethyl alcohol (ethanol) included in this investigation is fuel grade ethyl alcohol (fuel ethanol).

<sup>2</sup> Fuel ethyl alcohol imported under TSUS item 427.88 is subject to additional duties under TSUS item 601.50.

117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is January 31, 1986.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.8(b)(2) of the Commission's rules (19 CFR 201.8(b)(2))).

*Written submissions.*—All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on February 11, 1986. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before February 11, 1986.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

*Authority:* This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

Issued November 25, 1985.

By order of the Commission.

Kenneth R. Masan,

Secretary.

[FR Doc. 85-28832 Filed 12-3-85; 8:45 am]

BILLING CODE 7020-02-M

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**DEPARTMENT OF COMMERCE****International Trade Administration****[A-351-602]****Fuel Ethanol From Brazil; Preliminary  
Determination of Sales at Less Than  
Fair Value****AGENCY:** International Trade  
Administration, Import Administration,  
Commerce.**ACTION:** Notice.

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**SUMMARY:** We have preliminary determined that fuel ethanol from Brazil is being, or is likely to be, sold in the United States at less than fair value. We also have preliminarily determined that critical circumstances do not exist. We have notified the U.S. International Trade Commission (ITC) of our determination. We have directed the U.S. Customs Service to suspend the liquidation of all entries of fuel ethanol from Brazil that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice, and to require a cash deposit or bond for each entry in an amount equal to the estimated dumping margin as described in the "Suspension of Liquidation" section of this notice.

If this investigation proceeds normally, we will make a final determination by December 2, 1985.

**EFFECTIVE DATE:** September 25, 1985.

**FOR FURTHER INFORMATION CONTACT:**

Kenneth G. Shimabukuro or David Johnston, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone: (202) 377-5332 or 377-2239.

**SUPPLEMENTARY INFORMATION:**

**Preliminary Determination**

We have preliminarily determined that fuel ethanol from Brazil is being, or is likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The dumping margins range from 1 percent to 308 percent, and the weighted-average margins for the four respondents are shown in the "Suspension of Liquidation" section of this notice.

**Case History**

On February 25, 1985 we received a petition filed in proper form by the Ad Hoc Committee of Domestic Fuel Ethanol Producers on behalf of the domestic producers of fuel ethanol. We were informed, by letter dated March 15, 1985, that the Oil Chemical And Atomic Workers International Union (OCAW) joined the Ad Hoc Committee of Fuel Ethanol Producers as petitioners. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Brazil are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act (19 U.S.C. 1673), and that these imports are materially injuring, or threatening material injury to, a U.S. industry. The petitioners also alleged that sales in the home market were made at prices below the cost of production, and that "critical circumstances" exist.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping investigation. We initiated the investigation on March 18, 1985 (50 FR 11748), and notified the ITC of our action.

On April 11, 1985, the ITC found that there is a reasonable indication that imports of fuel ethanol from Brazil are threatening material injury to a U.S. industry (U.S. ITC Pub. No. 1678, April 1985).

Based on information obtained in response to preliminary questionnaires, we presented questionnaires to Cooperative Central dos Produtores de Acucare de Acool do Estado de Sao Paulo (COPERSUCAR) and certain of its distiller members and related sugar cane growers and Matarazzo Trading Cia. de Exportacao e Importacao (Matarazzo), formerly known as Comac Trading, because these companies knew that the merchandise was being sold for export to the United States.

Three independent trading houses, Companhia de Comercio Exterior (I.A.T.), Cotia Comercio Exportacao e Importacao S.A. (Cotia), and S.A. Costa Pinto Exportacao e Importacao (Costa Pinto), filed voluntary responses. The responses from Cotia and Costa Pinto were incomplete and, therefore, were not used. I.A.T.'s response, being complete, was used for purposes of the preliminary determination.

By letter dated June 12, 1985, the petitioners alleged that Interbras, the major trading company selling fuel ethanol to the United States, was reselling the merchandise in the United States at prices which did not cover its costs of acquisition from unrelated suppliers plus the costs incurred in selling the merchandise to the unrelated U.S. purchasers. After careful consideration we initiated an investigation of the facts relating to this allegation. Therefore, we presented Petrobras Comercio Internacional S.A.—Interbras (Interbras) with a questionnaire on July 18, 1985.

**Scope of Investigation**

The product covered by this investigation is fuel grade ethyl alcohol (fuel ethanol), currently classifiable in the *Tariff Schedules of the United States* (TSUS) under dual item number 427.8800/901.50, as well as that entered under TSUS item numbers 430.10, 430.20, and 432.10.

We made comparisons on approximately 95 percent of sales of fuel ethanol to the United States during the period of investigation, September 1, 1984, through February 28, 1985.

**Fair Value Comparisons**

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with foreign market value as specified below.

**United States Price**

As provided for in section 772(b) of the Act, for sales by Matarazzo, Copersucar, and I.A.T., we based the United States price on purchase price

because the fuel ethanol was sold to unrelated purchasers in the United States prior to its importation. We made deduction from the f.o.b. prices for wharfage, handling, inland freight and port charges, as appropriate.

Based on the allegation that Interbras was selling fuel ethanol at a loss (i.e. at prices which were lower than its costs of acquisition from unrelated suppliers after the deduction of all costs incurred in selling the merchandise in the United States), we analyzed Interbras prices and costs relative to all sales to the United States during the period of investigation. In order to determine whether Interbras recovered its acquisition costs we deducted all costs and expenses incurred in selling the merchandise by Interbras and its U.S. subsidiary, Interior, from the selling price to the first unrelated U.S. purchaser. We made deductions from the selling price, as appropriate, for brokerage, inspection, special customs duties, regular customs duties, general selling expenses, insurance, credit costs, storage and handling, commissions, and discounts incurred in the United States. We also deducted operating costs incurred in Brazil, an export tax, and ocean freight charges. Finally, we made an addition to the selling price to the first unrelated U.S. customer for payments received under the IPI export credit premium because these payments were directly related to the U.S. sales in question and because they effectively exchanged the net return to Interbras. Certain of the costs incurred by Interbras were denominated in cruzeiros. For purposes of converting cruzeiro denominated amounts to United States dollar equivalents, we used the certified exchange rate for the estimated date of acquisition to convert acquisition costs and operating expenses, and the certified rate for the date of exportation to convert the export tax, the IPI and ocean freight. We considered these rates as reflecting most accurately the actual costs incurred. All other charges were reported in U.S. dollars. Therefore, no currency conversion was required.

Interbras claimed an offset for revenues from certain financial transactions. We disallowed these claims since the claims were related to the financing of intracompany transfers and not to the sales to unrelated customers.

Interbras claims that we should not deduct the special duty imposed on fuel ethanol imports from the U.S. price because the United States imposed this duty in contravention of the General Agreement on Tariffs and Trade

(GATT). Interbras further argues that the compensation granted to Brazil under GATT rules in the form of U.S. tariff reduction on imports of corned beef from Brazil nullifies the cost to Brazil of the special duty.

We have preliminarily determined that this duty is a cost incurred by Interbras in selling the merchandise which has not been reduced by revenues received by Interbras under the compensation arrangement. Therefore, we have deducted the amount of the special duties levied relative to sales during the period of investigation.

Interbras argues that a discount given on certain U.S. sales should not be deducted because Interbras granted the discount in response to changed market conditions in the geographical area served by those sales. We have preliminarily determined that the discount results in a reduction of sales revenue, and, therefore, we have deducted the discount amount. Because Interbras did not specify which sales were subject to the discount, we deducted it from all sales prices to the customer receiving it.

Interbras argues that we should limit our analysis of its U.S. sales to the resales of fuel ethanol it acquired during the period of investigation. Virtually all of this fuel ethanol was sold during a later period. We have determined that the appropriate sales for consideration were those made during the period of investigation since those sales are the sales we would analyze if we were basing United States price on Interbras' sales.

Based on our analysis of all sales by Interbras in the U.S. during the period of investigation, we have preliminarily determined that a substantial portion of those sales were at prices which resulted in losses by Interbras relative to its acquisition costs. Therefore, for all Interbras U.S. sales during the period of investigation, we have based our comparisons on sales by Interbras and its related U.S. subsidiary, Interior. In accordance with section 772(c) of the Act, because all of the U.S. sales by Interbras were made after importation, we based United States price on exporter's sales price. We calculated the exporter's sales price on the basis of ex-tank prices with deductions and additions for the costs and payments indicated above in the discussion of the analysis of sales at less than acquisition costs. We deducted operational expenses incurred in Brazil, because they included freight and handling charges, which are normally deducted. These could not be segregated from indirect selling expenses which would not be deducted if reported separately.

In making our fair value comparisons, we converted cruzeiros to United States dollars using the certified foreign exchange rates on the date of purchase in accordance with § 353.56(a)(1) of the regulations for comparisons involving purchase price.

For comparisons involving exporter's sales price, we used the official exchange rate for the date of purchase since the use of that exchange rate is consistent with section 615 of the Tariff and Trade Act of 1984 (1984 Act). Therefore, we chose not to follow § 353.56(a)(2) of our regulations which predates the 1984 Act.

#### Foreign Market Value

In accordance with section 773(a)(1)(B) of the Act, we based foreign market value for I.A.T. on sales prices to third countries because I.A.T. had no home market sales of such or similar merchandise. We calculated third country prices on the basis of f.o.b. prices with deductions for inland freight, insurance and port charges incident to the exportation. We compared the selling prices to third countries to acquisition and selling costs to determine whether the sales were made at prices above cost. All prices were above cost for the merchandise. We made an adjustment for differences in commissions in the respective markets in accordance with section 353.15 of our regulations. We also made an adjustment for differences in physical characteristics of the merchandise in accordance with § 353.16 of our regulations.

For Matarazzo, in accordance with section 773(a)(2) of the Act, we based foreign market value on constructed value since, during the period of investigation, Matarazzo had no home market or third country sales. Constructed value was calculated on the basis of Matarazzo's acquisition cost plus the statutory minimums of 10 percent and 8 percent for general expenses and profit, respectively, since both were below the statutory minimums. There were no U.S. packing costs.

In accordance with section 773(a)(1)(A), we based Copersucar's foreign market value on home market selling prices since there were sufficient home market sales. Petitioners alleged that sales of fuel ethanol in the home market were at prices below the cost of producing fuel ethanol. We examined the production costs, which included all appropriate material and fabrication costs, selling, general, and administrative expenses. We found sufficient sales made at prices above the cost of production for purposes of

determining fair value. The Department notes that the cost of production of fuel ethanol reflected by the distillers in their responses did not increase over the period of investigation at the general rate of inflation of the Brazilian economy. During verification, the Department will scrutinize these costs in order to insure that all cost elements are appropriately stated to reflect the effects of inflation in accordance with the Department policy for hyperinflationary economies.

We calculated the home market prices on the basis of the f.o.b. factory price. In accordance with § 353.15 of the Commerce Regulations (19 CFR 353.15), we made circumstance of sale adjustments for differences in credit expenses. We adjusted for taxes paid in the home market but not on export sales in accordance with section 772(d)(1)(C). For Interbras, in accordance with section 773(a)(1)(A), we based foreign market value on home market sales by its parent, Petrobras, because there was a viable home market. Interbras claimed that due to the nature of price controls in Brazil, the home market sales were inappropriate for use in determining foreign market value. We preliminarily determined that home market sales should be used since (1) the mere existence of price controls does not invalidate home market prices (Certain Carbon Steel Products from Brazil, 49 FR 28298), and (2) these home market sales were in the ordinary course of trade of fuel ethanol in Brazil since they are the only sales at this level of trade in Brazil. Prior to the final determination in this investigation, we will develop information concerning the mechanism of the particular price controls relating to sales of fuel ethanol by Petrobras.

We compared Petrobras' home market prices to its costs of acquisition plus expenses incurred in Brazil to determine whether the home market sales were made at prices below cost. Because Petrobras did not report its home market acquisition costs from unrelated suppliers, we accepted the reported acquisition prices from the Copersucar response for purposes of the preliminary determination. Because Petrobras reported no handling or selling expenses, we added the 10 percent minimum for general expenses set forth in section 773(e)(1)(B)(i) as the best information available for these expenses. We have requested additional data relating to home market cost. All home market sales were at prices above cost.

Therefore, we calculated home market prices on the basis of the ex-tank prices with an adjustment for a tax imposed

only on home market sales. We calculated foreign market value on the basis of home market sales made in the same month as the comparable U.S. sales.

#### Verification

As provided in section 776(a) of the Act, we will verify all information used in reaching our final determination.

#### Preliminary Negative Determination of Critical Circumstances

The petitioner alleged that imports of fuel ethanol from Brazil present "critical circumstances." Under section 733(e)(1) of the Act, critical circumstances exist when (1) there is a history of dumping in the United States, or elsewhere, of the class or kind of the merchandise which is the subject of the investigation; or the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise, which is the subject of the investigation, at less than its fair value; and (2) there have been massive imports of the class or kind of merchandise that is the subject of the investigation over a relatively short period.

In determining whether there have been massive imports over a relatively short period, we normally consider the following factors: (1) Whether recent imports have increased significantly; (2) whether recent import penetration ratios have increased significantly; (3) whether the pattern of recent imports may be explained by seasonal factors; and (4) whether recent imports are significantly above average imports calculated over the last three years.

Based on our analysis of these factors, we have preliminarily determined that imports of fuel ethanol from Brazil were not massive over a relatively short period.

We, therefore, did not need to consider whether there is a history of dumping of fuel ethanol, or whether the person by whom or for whose account this product was imported knew or should have known that the exporters were selling this product at less than fair value.

We have determined, for the reasons described above, that "critical circumstances" do not exist with respect to fuel ethanol from Brazil.

#### Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to suspend liquidation of all entries of fuel ethanol from Brazil that are entered, or withdrawn from warehouse, for consumption, on or after the date of

publication of this notice in the **Federal Register**. The United States Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown below. This suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	Weighted-average margin percentage
Petrobras Comercio Internacional S.A. (Interbras)	119.02
Matarazzo Trading	23.15
I.A.T.	1.05
Cooperativa Central dos Produtores de Alcool de Estado de São Paulo (COPERSU-CAR)	4.28
All others	37.00

#### ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry before the later of 120 days after we make our preliminary affirmative determination or 45 days after we make our final affirmative determination.

#### Public Comment

In accordance with § 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties and opportunity to comment on this preliminary determination at 10:00 a.m. on October 21, 1985, at the United States Department of Commerce, Room 3708, 14th Street and Constitution Avenue N.W., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B099, at the above address within 10 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason

for attending; and (4) a list of the issues to be discussed.

In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by October 11, 1985. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within 30 days of the publication of this notice publication, at the above address and in at least 10 copies.

**Gilbert B. Kaplan,**

*Acting Deputy Assistant Secretary for Import Administration.*

September 18, 1985.

[FR Doc. 85-22896 Filed 9-24-85; 8:45 am]

BILLING CODE 3510-DS-M



[A-351-502]

**Postponement of Final Antidumping Duty Determination: Fuel Ethanol From Brazil**

**AGENCY:** International Trade Administration, Import Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** This notice informs the public that we have received a request from respondents in this investigation that the final determination be postponed, as provided for in section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)(2)(A)), and that we have determined to postpone our final determination as to whether sales of fuel ethanol from Brazil have been made at less than fair value until not later than January 31, 1985.

**EFFECTIVE DATE:** October 28, 1985.

**FOR FURTHER INFORMATION CONTACT:** Kenneth G. Shimabukuro, Office of Investigations, Import Administration, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone (202) 377-5332.

**SUPPLEMENTARY INFORMATION:** On March 25, 1985, we published a notice in the *Federal Register* (50 FR 11748) that we were initiating, under section 732(b) of the Act (19 U.S.C. 1673a(b)), an antidumping duty investigation to determine whether imports of fuel ethanol from Brazil were being, or were likely to be, sold at less than fair value. On April 11, 1985, the International Trade Commission determined that there is reasonable indication that imports of fuel ethanol from Brazil are threatening to materially injure a U.S. industry. (U.S. ITC Pub. No. 1678, April 1985). On September 25, 1985, we published a preliminary determination of sales at less than fair value with respect to this merchandise (50 FR 38871). The notice stated that if the investigation proceeded normally, we would make our final determination by December 2, 1985.

On October 7, 1985, Interbras, a respondent, requested that we extend the period for the final determination until not later than 105 days after the date of the preliminary determination. On October 8, 1985, counsel for Copersucar, Cotia, and Costa Pinto, respondents, requested that we extend the period for the final determination until 60 days from December 2, 1985, the present final determination due date. Collectively, these respondents account for a significant proportion of the

exports of fuel ethanol. Section 735(a)(2)(A) of the Act provides that the Department may postpone its final determination concerning sales at less than fair value until not later than 135 days after the date of publication of its preliminary determination, if exporters who account for a significant portion of the merchandise which is the subject of the investigation request a postponement after an affirmative preliminary determination. If a qualified exporter properly requests an extension after an affirmative preliminary determination, the Department is required, absent compelling reasons to the contrary, to grant the request. Accordingly, the Department will issue a final determination in this case not later than January 31, 1986.

The public hearing is also being postponed until 2:00 p.m. on December 4, 1985, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. Accordingly, prehearing briefs must be submitted to the Deputy Assistant Secretary by November 27, 1985.

This notice is published pursuant to section 735(d) of the Act.

Dated: October 17, 1985.

**Gilbert B. Kaplin,**

*Acting Deputy Assistant Secretary for Import Administration.*

[FR Doc. 85-25607 Filed 10-25-85; 8:45 am]

BILLING CODE 3510-DS-M

[C-351-501]

**Preliminary Affirmative Countervailing Duty Determination; Fuel Ethanol from Brazil**

**AGENCY:** Import Administration, International Trade Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** We preliminarily determine that certain benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters of fuel ethanol in Brazil. The estimated net subsidy is 0.84 percent *ad valorem*.

We have notified the United States International Trade Commission (ITC) of our determination. We are directing the U.S. Customs Service to suspend liquidation of all entries of fuel ethanol from Brazil that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice, and to require a cash deposit or bond on entries of this product in an amount equal to the estimated net subsidy as described in the "Suspension of liquidation" section of this notice.

If this investigation proceeds normally, we will make our final determination by January 20, 1986.

**EFFECTIVE DATE:** November 12, 1985.

**FOR FURTHER INFORMATION CONTACT:** Alain Letort or Barbara Tillman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377-5050 (Letort) or 377-2438 (Tillman).

**SUPPLEMENTARY INFORMATION:****Preliminary Determination**

Based upon our investigation, we preliminarily determine that there is reason to believe or suspect that certain benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters of fuel ethanol in Brazil. For purposes of this investigation, the following programs are found to

confer subsidies to manufacturers, producers, and exporters of fuel ethanol in Brazil:

- PROALCOOL Industrial Credits.
- Income Tax Exemption for Export Earnings.
- IAA Preferential Financing.

We determine the estimated net subsidy to be 0.84 percent *ad valorem* for all manufacturers, producers or exporters of fuel ethanol in Brazil.

**Case History**

On February 25, 1985, we received a petition in proper form from the Ad Hoc Committee of Domestic Fuel Ethanol Producers on behalf of the fuel ethanol industry in the United States. In compliance with the filing requirements of § 355.26 of our regulations (19 CFR 355.26), the petition alleged that manufacturers, producers, or exporters of fuel ethanol in Brazil directly or indirectly receive benefits which constitute subsidies within the meaning of section 701 of the Act, and that these imports materially injure, or threaten material injury to, a U.S. industry. On March 15, the Oil, Chemical and Atomic Workers' International Union joined in support of the petition.

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation, and on March 18, 1985, we initiated such an investigation (50 FR 11526). We stated that we expected to issue a preliminary determination by May 21, 1985.

Since Brazil is a "country under the Agreement" within the meaning of section 701(b) of the Act, an injury determination is required for this investigation. Therefore, we notified the ITC of our initiation. On April 12, 1985, the ITC preliminarily determined that an industry in the United States is threatened with material injury by reason of imports of fuel ethanol from Brazil (50 FR 15236).

On March 29, 1985, we received information from petitioners which established a reasonable basis to believe or suspect that the products under investigation benefited from upstream subsidies in the form of subsidized sugar cane inputs. On April 23, 1985, pursuant to section 703(h) of the Act, we extended the due date for a preliminary determination to November 4, 1985 (50 FR 16727).

We presented questionnaires<sup>B-13</sup> concerning the allegations to the government of Brazil in Washington, D.C. on April 15, May 14, June 3, June 17, August 26, and September 2, 1985. We received responses to these questionnaires on June 7, July 26, September 16, and October 21, 1985.

Based on the information contained in the June 7 response, we requested detailed responses from those producers who account for at least 60 percent of the fuel ethanol exported from Brazil to the United States. We also requested responses from the distillers' cooperative and the four trading company exporters through whom the distillers sold ethanol to the United States.

We issued upstream subsidy questionnaires on May 24 and June 17, 1985, and received responses on July 26, September 16, and October 21, 1985. The responding distillers provided us with a list of those sugar cane growers who accounted for the top 60 percent of their supplies of sugar cane in 1984. We requested detailed responses from those sugar cane growers who represent the top 60 percent of this group.

From September 23 to October 11, 1985, we verified the information submitted by the ethanol distilleries, distillers' cooperative, and trading companies. We intend to verify the information submitted by the upstream suppliers of sugar cane inputs before the final determination.

#### Scope of Investigation

The product covered by this investigation is fuel-grade ethyl alcohol (also called fuel ethanol) for use as a motor fuel additive, which is currently classified in the *Tariff Schedules of the United States (TSUS)* under item numbers 427.88, 430.10, 430.20, and 432.10. Ethanol, when imported to be used as a fuel or in producing fuel, is subject to additional duties under TSUS item number 901.50.

#### Analysis of Programs

Throughout this notice, we refer to certain general principles applied to the facts of the current investigation. These principles are described in the "Subsidies Appendix" attached to the notice of "Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina; Final Affirmative Countervailing Duty Determination and Countervailing Duty Order," which was published in the April 26, 1984, issue of the *Federal Register* (49 FR 18006).

Consistent with our practice in preliminary determinations, where a response to an allegation denies the existence of a program, receipt of benefits under a program, or eligibility of a company or industry under a program, and the Department has no persuasive evidence showing that the response is incorrect, we accept the response for purposes of the preliminary determination. All such responses are subject to verification. If the response

cannot be supported at verification, and the program is otherwise countervailable, the program will be considered a subsidy in the final determination.

For purposes of the preliminary determination, the period for which we are measuring subsidization ("the review period") is calendar year 1984.

Based upon our analysis of the petition and the responses to our questionnaires, we preliminarily determine the following.

#### *1. Programs Preliminarily Determined to Confer Subsidies*

We preliminarily determine that subsidies are being provided to manufacturers, producers, or exporters in Brazil of fuel ethanol under the following programs.

##### **A. PROALCOOL Industrial Credit**

Petitioners have alleged that, subject to the approval of the *Comissao Executiva Nacional do Alcool (CENAL)*, PROALCOOL offers long-term financing at preferential rates for the construction, expansion, and modernization of ethanol production and storage facilities.

In its response, the government of Brazil stated that the administering authority for the PROALCOOL program is the *Comissao Nacional Executiva do Alcool (CENAL)*. Private companies that wish to produce ethanol must submit a project to CENAL for approval; once approval is secured, the company may obtain start-up credits under PROALCOOL. It will then receive production quotas for sugar cane and alcohol from the *Instituto do Agucar e do Alcool (IAA)*.

Projects eligible for PROALCOOL financing include:

- Establishment, expansion, or modernization of a distillery;
- Installation of an agricultural storage facility;
- Production of raw materials for use in ethanol production;
- Research and support for the production of raw materials;
- Innovation and improvement of the technology related to the production and use of ethanol; and
- Irrigation.

CENAL also takes into account the location and dimension of each project.

Once a project is approved, the producer becomes eligible for (1) PROALCOOL credit lines administered by the *Banco do Brasil* to finance the start-up costs, and (2) PROALCOOL long-term investment loans, which are to be paid back according to amortization schedules linked to the expected development of production. Ethanol

distillers had PROALCOOL long-term loans outstanding during the review period. Typically, these loans were made for a duration of five years with a grace period of one year, in the case of storage facilities, or 12 years with a grace period of 3 to 4 years, in the case of production facilities. The maximum level of eligibility varied depending on the category of borrower and the year in which the loan was taken out. For example, from 1981 onward, the eligibility levels have been 70 percent in the case of an annexed distillery (defined as a distillery owned by a sugar cane producer) or an independent storage facility; 80 percent in the case of an autonomous distillery; or 90 percent in the case of an autonomous distillery established by a cooperative or producer association. The interest rates also varied, depending on the year in which the loan was taken out. In early years of the program, the interest rates were fixed. Since January 1, 1984, the principal amount of PROALCOOL loans has been fully indexed to ORTN, with an interest rate of 5 percent, except for those loans made to borrowers located in certain regions of Brazil (Amazonia, Northeast, State of Espirito Santo, and Vale do Jequitinhonha in the State of Minas Gerais).

To determine whether these loans were made on terms inconsistent with commercial considerations, we compared PROALCOOL interest rates with the interest rates available to all agricultural and agro-industrial enterprises in Brazil, which the government of Brazil provided in its response. We adjusted these interest rates to reflect the difference in eligibility levels between PROALCOOL industrial credits and normal agricultural loans. Using this benchmark, we found that the terms of the PROALCOOL loans are inconsistent with commercial considerations. Because PROALCOOL industrial credits are limited to a specific industry or group of industries, and provide funds to borrowers at interest rates lower than those available from commercial sources, we preliminarily determine that the PROALCOOL loan program confers a domestic subsidy. To calculate the benefit, we applied our long-term loan methodology, and calculated a net subsidy of 0.30 percent *ad valorem*.

##### **B. Income Tax Exemption for Export Earnings**

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Under Decree-Laws 1158 and 1721, exporters of fuel ethanol are eligible for an exemption from income tax on a portion of profits attributable to export revenue. Because this exemption is tied

to exports and is not available for domestic sales, we determine that this exemption confers an export subsidy. None of the trading company respondents claimed this exemption during the review period. However, several of the respondent distilleries took an exemption from income tax payable in 1984 on a portion of export profits earned in 1983. We allocated the benefit over the total value of all exports by the respondent distilleries to calculate a net subsidy of 0.44 percent *ad valorem*.

### C. IAA Preferential Financing

Petitioners allege that the ethanol industry in Brazil has received financing on preferential terms from IAA. In its response, the government of Brazil stated that the distillers' cooperative had received a loan from IAA.

To determine whether this loan was made on terms inconsistent with commercial considerations, we compared the interest rate with the highest long-term interest rate charged during the year the IAA loan was made by the Banco Nacional de Desenvolvimento Econômico e Social (BNDES), as published in our notice of "Final Affirmative Countervailing Duty Determination: Carbon Steel Plate from Brazil" (48 FR 2568). Using this benchmark, we found that the terms of the IAA loan are inconsistent with commercial considerations. Because this loan is limited to a specific enterprise, and provides funds to the borrower at an interest rate lower than those available from commercial sources, we preliminarily determine that the PROALCOOL loan program confers a domestic subsidy. To calculate the benefit, we applied our long-term loan methodology, and calculated a net subsidy of 0.10 percent *ad valorem*.

### II. Upstream Subsidies

Petitioners alleged that Brazilian fuel ethanol producers receive an "upstream subsidy" through the purchase of subsidized sugar cane inputs. Under section 771A(a) of the Act, we must apply the following tests in order to determine whether "upstream subsidies" are being paid or bestowed upon the products under investigation:

The term "upstream subsidy" means any subsidy described in section 771(5)(B) (i), (ii), or (iii) by the government of a country that—

(1) Is paid or bestowed by that government with respect to a product (hereafter referred to as an "input product") that is used in the manufacture or production in that country of merchandise which is the subject of a countervailing duty proceeding;

(2) In the judgment of the administering authority, bestows a competitive benefit on the merchandise; and

(3) Has a significant effect on the cost of manufacturing or producing the merchandise.

### A. Domestic Subsidies

#### PROALCOOL Agricultural Loans

Petitioners allege that sugar cane growers in Brazil have benefited from long-term financing at preferential interest rates under the PROALCOOL agricultural credit program. In response, the government of Brazil stated that certain sugar cane growers had received long-term agricultural credits from PROALCOOL. These credits were administered by the Banco Central do Brasil (BCB), with commercial, federal, and state banks acting as agents. Until December 1982, sugar cane growers received loans under the PROALCOOL program on terms more favorable than normal agricultural credits, which are also under the BCB's jurisdiction. In December 1982, however, the PROALCOOL program was eliminated; since that date, sugar cane growers have received agricultural credits at the same interest rates and on the same terms as other agricultural producers. Moreover, based on statistics provided in the response, sugar cane does not appear to have received a disproportionate share of agricultural credits in Brazil.

Because PROALCOOL agricultural credits made before 1982 were limited to a specific industry or group of industries at interest rates lower than regular agricultural credits, we preliminarily determine that the PROALCOOL program confers a domestic subsidy. Because agricultural credits made since December 1982 have been available without restriction to the producers of any agricultural product in Brazil, and the legislation does not designate specific products for receipt of financing or establish differing terms for specified products, we preliminarily determine that agricultural credits are available to more than a specific enterprise or industry, or group of enterprises or industries, and hence are not countervailable (see our notice of "Final Negative Countervailing Duty Determination: Fresh Cut Flowers from Mexico" (49 FR 15007)).

To calculate the benefit from PROALCOOL loans made to sugar cane growers before December 1982, we applied our long-term loan methodology, using regular agricultural credits as our benchmark. We thereby calculated a net subsidy of 0.07 percent, which is *de minimis*.

We examined several other domestic programs which were available to sugar cane suppliers:

- PLANALSUGAR Research and Development Program.

- Regional Research and Development Programs.

- Plantation Roads.

- SUDENE.

- FINEX Export Financing.

The first of these programs is preliminarily determined not to confer a subsidy, and is discussed below in "Programs Preliminarily Determined Not to Confer a Subsidy;" the others are discussed in "Programs Preliminarily Determined Not to Be Used."

Because the subsidy to upstream suppliers of sugar cane is *de minimis*, the issues of whether (1) this subsidy has a significant effect on the cost of producing fuel ethanol, and (2) the subsidy confers a competitive benefit on fuel ethanol from Brazil are moot. Accordingly, we preliminarily determine that no upstream subsidies are being paid or bestowed on fuel ethanol.

### III. Programs Preliminarily Determined Not To Confer a Subsidy

We preliminarily determine that subsidies are not being provided to manufacturers, producers, or exporters in Brazil of certain fuel ethanol under the following programs.

#### A. Research and Development Assistance

Petitioners allege that, under the aegis of the Programa Nacional do Alcool (PROALCOOL) and the Programa Nacional de Melhoramento da Cana-de-Açúcar (PLANALSUCAR), the government of Brazil provides research and development assistance aimed primarily at increasing the saccharose content of sugar cane and developing higher-yield and disease-resistant strains of sugar cane, and increasing the productivity of Brazilian distilleries.

In response, the government of Brazil has stated that research and development assistance is not restricted to the sugar cane and ethanol industries, but is available to all sectors of Brazilian agriculture under different programs. In addition, all research papers generated under the PROALCOOL and PLANALSUCAR programs are published and made available to all interested parties, not only in Brazil but also in other countries, including the United States. Therefore, we preliminarily determine that this program does not confer a subsidy.

#### B. Government Equity Infusions and Capital Assistance

Petitioners allege that BNDES-Participações S.A. (BNDESPAR), a holding company subsidiary of BNDES, and its predecessor Investimentos Brasileiros S.A. (IBRASA) have

provided equity capital, purchased debentures, and guaranteed securities to promote the capitalization of the Brazilian fuel ethanol industry, and that such equity investment was made on terms inconsistent with commercial considerations.

In its response, the government of Brazil stated that IBRASA/BNDESPAR have held a small equity position (less than five percent of the stock) in one ethanol distiller since 1981. IBRASA/BNDESPAR have acquired this equity position as a result of a public stock offering, on the same terms and conditions as those afforded to private commercial banks. Therefore, we preliminarily determine that BNDESPAR equity holding does not confer a subsidy.

#### *IV. Programs Preliminarily Determined Not to be Used*

We preliminarily determine that manufacturers, producers or exporters of fuel ethanol in Brazil did not use the following programs which were listed in our notice of "Initiation of a Countervailing Duty Investigation: Fuel Ethanol from Brazil" (50 FR 11526).

##### **A. PETROBRAS Storage Assistance**

Petitioners allege that PETROBRAS has provided storage facilities to Brazilian distilleries and cooperatives at non-commercial rates.

In its response, the government of Brazil claims that PETROBRAS storage assistance is provided on a commercial basis, subject to contractual fees and penalties similar to those of other storage facilities, and that for the most part the distilleries use their own storage tanks. Therefore, we preliminarily determine this program was not used.

##### **B. PETROBRAS Preferential Payment Terms**

Petitioners allege that PETROBRAS has offered distilleries in Brazil preferential payment terms for deliveries of ethanol, which may have constituted interest-free loans.

In its response, the government of Brazil states that PETROBRAS usually pays for ethanol purchased from the respondents fifteen days after receipt of the invoice, which is normal commercial practice in Brazil. Accordingly, we preliminarily determine this program was not used.

##### **C. Regional Development Programs**

Petitioners allege that ethanol distillers in the Northeast of Brazil are subsidized under the following federal and state programs.

##### **1. Cost Equalization Program**

Petitioners allege that, under this program, the IAA makes cash payments to fuel ethanol producers located in the states of Alagoas, Espirito Santo, Minas Gerais, Paraíba, Pernambuco, Rio de Janeiro, and others.

**2. SUDENE.** Petitioners allege that a government agency known as the Superintendência do Desenvolvimento do Nordeste (SUDENE) extends tax credits, exemptions, and other benefits to companies operating or investing in the Northeast of Brazil.

In its response, the government of Brazil stated that none of the companies from which we requested responses are located in any of the regions eligible for special assistance; accordingly, we preliminarily determine these two programs were not used.

##### **D. IAA and Other Government Loan Guarantees**

Petitioners allege that the IAA and other Brazilian government agencies have guaranteed loans taken out by certain fuel ethanol producers and cooperatives.

In its response, the government of Brazil stated that none of the companies from which we requested responses had received loan guarantees from the IAA or any other agency; accordingly, we preliminarily determine this program as not used.

##### **E. Restructured IAA Loans**

Petitioners allege that certain loans taken out by ethanol distilleries and cooperatives have been restructured with IAA assistance.

In its response, the government of Brazil states that no such loan restructuring has taken place. Accordingly, we preliminarily determine this program was not used.

##### **F. Accelerated Depreciation for Brazilian-Made Capital Equipment**

Petitioners allege that, pursuant to Decree-Law 1137, any company which purchases Brazilian-made capital equipment and has an expansion project approved by the CDI may depreciate this equipment at twice the rate normally permitted under Brazilian tax laws.

In its response, the government of Brazil stated that none of the respondents had used this tax provision during the review period. Accordingly, we preliminarily determine that this program was not used.

##### **G. Preferential Working-Capital Financing for Exports**

Petitioners allege that certain respondents have received preferential

export financing from the Carteira do Comércio Exterior (Foreign Trade Department, or CACEX) of the Banco do Brasil, which administers a program of short-term working-capital financing. During the review period, these working-capital loans were provided under Resolution 882 of the Banco Central do Brasil. On August 21, 1984, Resolution 882 was superseded by Resolution 950.

The government of Brazil stated in its response that exporters of the product under investigation are not eligible for this type of financing; accordingly, we preliminarily determine that this program was not used.

##### **H. Export Financing Under the CIC-CRECE 14-11 Circular.**

Petitioners allege that certain respondents may have obtained preferential export financing under the Banco do Brasil's CIC-CRECE 14-11 circular.

In its response, the government of Brazil stated that none of the respondents received this form of financing during the review period; accordingly, we preliminarily determine that this program was not used.

##### **I. FINEX Export Financing**

Petitioners allege that certain respondents, as well as importers of fuel ethanol from Brazil in the United States, may have received preferential export financing under Resolution 68 of the Conselho Nacional do Comércio Exterior (CONCEX).

In its response, the government of Brazil stated that the product under investigation is ineligible for FINEX financing. Accordingly, we preliminarily determine that this program was not used.

##### **J. Resolution 330 of the Banco Central do Brasil**

Petitioners allege that certain respondents may have benefited from Resolution 330 of the Banco Central do Brasil, which provides financing for up to 80 percent of the value of the merchandise placed in a specified bonded warehouse and destined for export.

In its response, the government of Brazil stated that none of the respondents participated in this program during the review period. Accordingly, we preliminarily determine this program was not used.

##### **K. Exemption of IPI Tax and Customs Duties on Imported Equipment (CDI)**

Petitioners allege that certain respondents may have participated in the CDI program, under which

companies may receive an exemption of 80 to 100 percent of customs duties and IPI tax on certain imported machinery. The recipient must demonstrate that the machinery or equipment for which an exemption is sought was not available from a Brazilian producer. The investment project must be deemed to be feasible and the recipient must demonstrate that there is a need for added capacity in Brazil.

In its response, the government of Brazil stated that none of the respondents were eligible to participate in this program during the review period. Accordingly, we preliminarily determine this program was not used.

#### L. The BEFIEX Program

Petitioners allege that exporters of fuel ethanol may have received benefits from the Comissão para a Concessão de Benefícios Fiscais a Programas Especiais de Exportação (Commission for the Granting of Fiscal Benefits to Special Export Programs, or BEFIEX), which grants certain tax benefits to Brazilian exporters.

In its response, the government of Brazil stated that none of the respondents participated in this program during the review period. Accordingly, we preliminarily determine this program was not used.

#### M. The CIEX Program

Petitioners allege that certain exporters of fuel ethanol may have received tax benefits from the Comissão para Incentivos à Exportação (Commission for Export Incentives, or CIEX) under Decree-Law 1428.

In its response, the government of Brazil stated that none of the respondents participated in this program during the review period. Accordingly, we preliminarily determine this program was not used.

#### N. Incentives for Trading Companies

Petitioners allege that, under Resolution 883 of the Banco Central do Brasil, trading companies may obtain export financing similar to that obtained by manufacturers under Resolutions 882 and 950.

In its response, the government of Brazil stated that none of the respondents participated in this program during the review period. Accordingly, we preliminarily determine this program was not used.

#### O. The PROEX Program

Petitioners allege that exporters of fuel ethanol may have benefited from short-term export credits under the Programa de Financiamento à Produção para a Exportação (PROEX), previously

referred to as the Apoio à Exportação program.

In its response, the government of Brazil stated that none of the respondents participated in this program during the review period. Accordingly, we preliminarily determine this program was not used.

#### P. Plantation Roads

Petitioners allege that sugar cane growers in the Northeast of Brazil have benefited from plantation roads built at government expense for their exclusive use.

In its response, the government of Brazil stated that none of the respondents are located in the Northeast of Brazil. Therefore, we preliminarily determine this program was not used.

#### Q. Regional Research and Development Programs

Petitioners allege that ethanol distillers and sugar cane growers located in the northeastern Brazilian states of Alagoas and Pernambuco have benefited from certain state-run research and development programs.

In its response, the government of Brazil stated that none of the respondents are located in the states of Alagoas and Pernambuco. Therefore, we preliminarily determine that these programs were not used.

#### R. FUNPROCUCAR

Petitioners allege that certain ethanol distillers have received preferential financing under the heading of FUNPROCUCAR. According to the government of Brazil, the now-terminated FUNPROCUCAR program was administered jointly by the Instituto do Açúcar e do Alcool (IAA) and the Banco do Brasil throughout the 1970's.

Although several respondents did receive long-term financing on preferential terms under the FUNPROCUCAR program, these loans were tied to the expansion of production facilities of refined sugar, a product which is neither under investigation nor used as an input for the product under investigation. Therefore, we preliminarily determine this program was not used.

#### V. Program Preliminarily Determined to have been Terminated

##### IPI Export Credit Premium

Until very recently, Brazilian exporters of manufactured products were eligible for a tax credit on the Imposto sobre Produtos Industrializados (Tax on Industrialized Products, or IPI). The IPI export credit premium, a cash reimbursement paid to the exporter upon the export of otherwise taxable

industrial products, was found to confer a subsidy in previous countervailing duty investigations involving Brazilian products. After having suspended this program in December 1979, the government of Brazil reinstated it on April 1, 1981.

Subsequent to April 1, 1981, the credit premium was gradually phased out in accordance with Brazil's commitment pursuant to Article 14 of the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade ("the Subsidies Code"). Under the terms of Ministry of Finance "Portaria" (Notice) No. 176 of September 12, 1984, the credit premium was eliminated effective May 1, 1985. According to the government of Brazil, none of the fuel ethanol producers received the IPI export credit premium after that date.

Accordingly, consistent with our stated policy of taking into account program-wide changes that occur subsequent to the review period but prior to our preliminary determination, we preliminarily determine that this program has been terminated, and no benefits under the program are accruing to current exports of fuel ethanol to the United States.

#### VI. Program for Which Additional Information is Needed

##### Government Debt and Equity Infusions in PETROBRAS

Petitioners allege that the ethanol-related activities of the predominantly state-owned energy conglomerate Petroleos do Brasil S.A. (PETROBRAS) are unprofitable, and that the government of Brazil's debt and equity infusions in PETROBRAS, which are inconsistent with commercial considerations, are enabling the conglomerate to continue in its support of the Brazilian ethanol industry.

PETROBRAS, however, does not export fuel ethanol from Brazil to the United States. Instead, fuel ethanol is exported by INTERBRAS, a trading company which is a separately incorporated subsidiary of PETROBRAS. In its response, the government of Brazil states that PETROBRAS has not received government equity infusions since 1976, the year in which INTERBRAS was incorporated. In addition, we reviewed INTERBRAS' financial statements since 1976, and it appeared that the company was profitable. Since we have no evidence on the record that any government debt and equity infusions into PETROBRAS were passed through to INTERBRAS, and since PETROBRAS'

investment in INTERBRAS does not appear to have been made on terms inconsistent with commercial considerations, we are reserving our decision on this matter. We will seek more information on government debt and equity infusions into PETROBRAS before making our final determination.

#### Preliminary Negative Determination of Critical Circumstances

Petitioners allege that imports of fuel ethanol from Brazil present "critical circumstances." Under section 703(e)(1) of the Act, critical circumstances exist when the Department has a reasonable basis to believe or suspect that (1) the alleged subsidy is inconsistent with the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade ("the Subsidies Code"), and (2) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Based upon our analysis, the only export subsidy bestowed upon fuel ethanol in Brazil is *de minimis*. Accordingly, we preliminarily determine that this subsidy is not inconsistent with the Subsidies Code.

Additionally, in preliminarily determining whether there is a reasonable basis to believe or suspect that there have been massive imports over a relatively short period of time, we normally consider the following factors: (1) Whether recent imports have increased significantly; (2) whether recent import penetration ratios have increased significantly; (3) whether the pattern of recent imports may be explained by seasonal factors; and (4) whether recent imports are significantly above imports calculated over the last three years.

In this case, information on the record indicates that imports of the subject merchandise have not surged over a relatively short period of time within the meaning of section 703(e) of the Act. Therefore, for the reasons described above, we preliminarily determine that "critical circumstances" do not exist with respect to fuel ethanol from Brazil.

#### Suspension of Liquidation

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all unliquidated entries of fuel ethanol from Brazil which are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**, and to require an *ad valorem* cash deposit or bond for each such entry

of this merchandise of 0.84 percent *ad valorem*. This suspension will remain in effect until further notice.

#### Verification

In accordance with section 776(a) of the Act, we will verify the data used in making our final determination. As previously stated, we will not accept any statement in the response for our final determination that cannot be verified.

#### ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-confidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure or threaten material injury to a U.S. industry 120 days after the Department makes its preliminary affirmative determination or 45 days after its final affirmative determination, whichever is latest.

#### Public Comment

In accordance with § 355.35 of our regulations, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination at 10:00 a.m. on December 16, 1985, at the U.S. Department of Commerce, room 6802, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, room B-099, at the above address within 10 days of the publication of this notice.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, at least 10 copies of pre-hearing briefs must be submitted to the Deputy Assistant Secretary by December 9, 1985. Oral presentations will be limited to issues raised in the briefs.

In accordance with 19 CFR 355.33(d) and 19 CFR 355.34, written views will be considered if received not less than 30 days before the final determination. or,

if a hearing is held, within 10 days after the hearing transcript is available.

This notice is published pursuant to section 703(f) of the Act (19 U.S.C. 1671b(f)).

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

November 4 1985.

[FR Doc. 85-26800 Filed 11-8-85; 8:45 am]

BILLING CODE 3510-DS-M



**International Trade Administration  
(A-361-502)**

**Postponement of Final Antidumping  
Duty Determination; Fuel Ethanol From  
Brazil**

**AGENCY:** International Trade  
Administration, Import Administration,  
Commerce.

**ACTION:** Notice.

**SUMMARY:** This notice informs the public that we have received a further request from respondents in this investigation that the final determination be postponed, as provided for in section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)(2)(A)), and that we have determined to postpone our final determination as to whether sales of fuel ethanol from Brazil have been made at less than fair value until not later than February 7, 1986.

**EFFECTIVE DATE:** January 21, 1986.

**FOR FURTHER INFORMATION CONTACT:** Kenneth G. Shimabukuro or Ray Busen, Office of Investigations, Import Administration, United States Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-5332 or 377-3464, respectively.

**SUPPLEMENTARY INFORMATION:** On March 25, 1985, we published a notice in the Federal Register (50 FR 11742) that we were initiating, under section 732(b) of the Act (19 U.S.C. 1673a(b)), an antidumping duty investigation to determine whether imports of fuel ethanol from Brazil are being, or are likely to be, sold at less than fair value. On April 11, 1985, the International Trade Commission determined that there is reasonable indication that imports of fuel ethanol from Brazil are threatening to materially injure a U.S. industry. (U.S. ITC Pub. No. 167A, April 1985). On September 25, 1985, we published a preliminary determination of sales at less than fair value with respect to this merchandise (50 FR 36871). The notice stated that if the investigation proceeded normally, we would make our final determination by December 2, 1985.

On October 7, 1985, Interbras, a respondent, requested that we extend the period for the final determination until not later than 106 days after the date of the preliminary determination. On October 8, 1985, counsel for Copersucar, Cotia, and Costa-Pina, respondents, requested that we extend the period for the final determination until 60 days from December 2, 1985. On October 17, 1985, the final determination was postponed until January 31, 1986.

On December 30, 1985, Willkie Farr & Gallagher requested, on behalf of exporters Copersucar, Cotia, Costa Pinto, and Interbras/Internor, a further extension to February 7, 1986, which is 135 days after the publication of the preliminary determination, under section 735(a)(2) of the Act (19 U.S.C. 1673d(a)(2)). Collectively, these respondents account for a significant proportion of the exports of fuel ethanol. Section 735(a)(2)(A) of the Act provides that the Department may postpone its final determination concerning sales at less than fair value until not later than 135 days after the date of publication of its preliminary determination if exporters who account for a significant proportion of the merchandise which is the subject of the investigation request a postponement after an affirmative preliminary determination. The Department is required, absent compelling reasons to the contrary, to grant the request. Accordingly, the Department will issue a final determination in this case not later than February 7, 1986.

This notice is published pursuant to section 735(d) of the Act.

Gilbert B. Kaplan,

*Deputy Assistant Secretary for Import Administration.*

January 14, 1986.

[FR Doc. 86-1256 Filed 1-17-86; 8:45 am]

BILLING CODE 3510-06-01

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[C-351-501]

**Final Affirmative Countervailing Duty  
Determination; Fuel Ethanol From  
Brazil**

**AGENCY:** Import Administration,  
International Trade Administration,  
Commerce.

**ACTION:** Notice.

**SUMMARY:** We determine that certain benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters of fuel ethanol in Brazil. The net subsidy is 2.60 percent *ad valorem*. In addition, we determine that "critical circumstances" do not exist with respect to the subject merchandise.

We have notified the United States International Trade Commission (ITC) of our determination. We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of fuel ethanol from Brazil that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice, and to require a cash deposit or bond on entries of this product in an amount equal to the net subsidy as described in the "Suspension of Liquidation" section of this notice.

**EFFECTIVE DATE:** January 27, 1986.

**FOR FURTHER INFORMATION CONTACT:**  
Alain Letort or Barbara Tillman, Office  
of Investigations, Import Administration,  
International Trade Administration, U.S.  
Department of Commerce, 14th Street  
and Constitution Avenue, NW.,  
Washington, DC 20230; telephone: (202)  
377-0186 (Letort) or 377-2438 (Tillman).

**SUPPLEMENTARY INFORMATION:**

**Final Determination**

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Based upon our investigation, we determine that certain benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers,

or exporters of fuel ethanol in Brazil. for purposes of this investigation, the following programs are found to confer subsidies:

- PROALCOOL Industrial Credits to Distillers
- PROALCOOL Agricultural Credits to Distillers.
- FUNPROCUCAR Long-Term Loans.
- IAA Financing.
- Income Tax Exemption for Export Earnings.

We determine the net subsidy to be 2.60 percent *ad valorem* for all manufacturers, producers or exporters of fuel ethanol in Brazil.

#### Case History

On February 25, 1985, we received a petition in proper form from the Ad Hoc Committee of Domestic Fuel Ethanol Producers on behalf of the fuel ethanol industry in the United States. In compliance with the filing requirements of § 355.26 of our regulations (19 CFR 355.26), the petition alleged that manufacturers, producers, or exporters of fuel ethanol in Brazil directly or indirectly receive benefits which constitute subsidies within the meaning of section 701 of the Act, and that these imports materially injure, or threaten material injury to, a U.S. industry. On March 15, the Oil, Chemical and Atomic Workers' International Union joined this proceeding as a co-petitioner.

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation, and on March 18, 1985, we initiated this investigation (50 F.R. 11526). We stated that we expected to issue a preliminary determination by May 21, 1985.

Since Brazil is a "country under the Agreement" within the meaning of section 701(b) of the Act, an injury determination is required for this investigation. Therefore, we notified the ITC of our initiation. On April 12, 1985, the ITC preliminarily determined that an industry in the United States is threatened with material injury by reason of imports of fuel ethanol from Brazil (50 F.R. 15236).

On March 29, 1985, we received information from petitioners which established a reasonable basis to believe or suspect that the product under investigation benefitted from upstream subsidies in the form of subsidized sugar cane inputs. On April 23, 1985, pursuant to section 703(h) of the Act, we extended the due date for a preliminary determination to November 4, 1985 (50 F.R. 16727).

We presented questionnaires concerning the allegations to the government of Brazil in Washington, DC on April 15, May 14, June 3, June 17,

August 26, and September 2, 1985. We received responses to these questionnaires on June 7, July 26, September 16, and October 21, 1985. Based on the information contained in the June 7 response, we requested detailed responses from those producers who account for at least 60 percent of the fuel ethanol exported from Brazil to the United States. We also requested responses from the distillers' cooperative, as well as from four trading company exporters who accounted for over 85 percent of Brazilian exports of fuel ethanol to the United States.

We issued upstream subsidy questionnaires on May 24 and June 17, 1985, and received responses on July 26, September 16, and October 21, 1985. The responding distillers provided us with a list of those sugar cane growers who accounted for the top 60 percent of their supplies of sugar cane in 1984. We requested detailed responses from those sugar cane growers who represent the top 60 percent of this group. On the basis of information contained in these responses, we made a preliminary determination on November 4, 1985 (50 F.R. 46681).

From September 23 to October 11, 1985, we verified the information submitted by the government of Brazil, ethanol distillers, the distillers' cooperative, and trading companies. We conducted a supplementary verification of this information, in addition to verifying information submitted by upstream suppliers of sugar cane inputs, from November 18 to December 6, 1985. Prehearing briefs were submitted on December 11, 1985, the hearing being held on December 18, 1985. Post-hearing briefs were received by the Department on December 30, 1985, and additional comments were submitted on January 13, 1986.

#### Scope of Investigation

The product covered by this investigation is fuel-grade ethyl alcohol (also called fuel ethanol) for use as a motor fuel additive, which is currently classified in the *Tariff Schedules of the United States (TSUS)* under item numbers 427.88, 430.10, 430.20, and 432.10. Ethanol, when imported to be used as a fuel or in producing fuel, is subject to additional duties under *TSUS* item number 901.50.

#### Analysis of Programs

Throughout this notice, we refer to certain general principles applied to the facts of the current investigation. These principles are described in the "Subsidies Appendix" attached to the notice of "Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina;

Final Affirmative Countervailing Duty Determination and Countervailing Duty Order," which was published in April 26, 1984 issue of the *Federal Register* (49 F.R. 18006).

Petitioners have alleged that as much as 25 percent of the fuel ethanol industry in Brazil is in a state of bankruptcy, and that a large portion of that industry is both uncreditworthy and unequityworthy. We have addressed in the appropriate sections of this notice specific allegations of uncreditworthiness and unequityworthiness made by petitioners against certain companies. It is our practice to investigate only allegations that specific companies are uncreditworthy or unequityworthy during a specific time period. Therefore, we will not make a determination as to whether the fuel ethanol industry in Brazil is uncreditworthy or unequityworthy, in whole or in part.

For purposes of the final determination, the period for which we are measuring subsidization ("the review period") is calendar year 1984.

Based upon our analysis of the petition, the responses to our questionnaires, our verifications, and comments filed by petitioners and respondents, we determine the following.

#### I. Programs Determined to Confer Subsidies

We determine that subsidies are being provided to manufacturers, producers, or exporters in Brazil of fuel ethanol under the following programs.

##### A. PROALCOOL Industrial Credits to Distillers

Petitioners have alleged that, under the guidelines of the Programa Nacional do Alcool (PROALCOOL) and subject to the approval of the Comissao Executiva Nacional do Alcool (CENAL), ethanol distillers receive long-term financing on terms inconsistent with commercial considerations for the construction, expansion, and modernization of ethanol production and storage facilities.

In its response, the government of Brazil stated that CENAL is the administering authority for the PROALCOOL program. Private companies that wish to produce ethanol must submit a project to CENAL for approval; once approval is secured, the company may obtain start-up credits under PROALCOOL. It will then receive production quotas for sugar cane and alcohol from the Instituto do Acucar e do Alcool (IAA).

Projects eligible for PROALCOOL financing include:

- Establishment, expansion, or modernization of a distillery;
- Installation of an agricultural storage facility;
- Production of raw materials for use in ethanol production;
- Research and support for the production of raw materials;
- Innovation and improvement of the technology related to the Production and use of ethanol; and
- Irrigation.

CENAL also takes into account the location and size of each project.

Once a project is approved, the producer becomes eligible for (1) PROALCOOL credit lines administered by the Banco do Brasil to finance the start-up costs, and (2) PROALCOOL long-term investment loans, which are to be paid back according to amortization schedules linked to the expected development of production.

Ethanol distillers had PROALCOOL long-term industrial loans outstanding during the review period. Typically, these loans were made for a duration of five years with a grace period of one year, in the case of storage facilities, or 12 years with a grace period of 3 to 4 years, in the case of production facilities. The maximum level of eligibility varied, depending on the category of borrower and the year in which the loan was taken out.

The interest rates on these loans also varied, depending on the year in which the loans were taken out. In the PROALCOOL program's early years, interest rates were fixed and did not include a mechanism to adjust for inflation. In the program's later years, the loans were partially, then fully, indexed to the inflation rate as measured by the variation in the nominal value of the Obrigações Reajustáveis do Tesouro Nacional (Readjustable National Treasury Bonds, or ORTN). This type of adjustment for inflation is referred to in Brazil as "monetary correction."

In December 1982, the interest rates on PROALCOOL industrial loans were placed on a par with interest rates on agro-industrial loans given to the processors of agricultural products, as part of the agricultural loan program, with funds provided by the Banco Central do Brasil (BCB). We verified that these agricultural and agro-industrial loans were available to producers of all types of agricultural and agro-industrial products in Brazil. In December 1983, PROALCOOL loans ceased to exist as such, and ethanol producers became eligible for agro-

industrial loans carrying an interest rate of 5 percent, including full monetary correction except for those loans made to borrowers located in certain regions of Brazil (Amazonia, Northeast, State of Espirito Santo, and Vale do Jequitinhonha in the State of Minas Gerais). We verified that none of the companies chosen to respond to our questionnaires are located in any of those areas.

Based on the foregoing, we determine that PROALCOOL loans are provided to a specific enterprise or industry, or group of enterprises or industries. Therefore, PROALCOOL industrial loans granted prior to the merger of the PROALCOOL and agricultural loan systems are countervailable to the extent that they were provided on terms inconsistent with commercial considerations. We also determine that, because agricultural loans are provided to a wide variety of agricultural and agro-industrial products, the agro-industrial loans received by ethanol distillers following the merger of the programs are not countervailable [see, "Final Negative Countervailing Duty Determination; Fresh Cut Flowers from Mexico" (49 FR 15007)].

At the time of our preliminary determination in order to ascertain whether PROALCOOL industrial loans were made on terms inconsistent with commercial considerations, we compared the interest rates on these loans to the interest rates of agro-industrial loans, taking into account the different levels of eligibility available under each program. Based on these comparisons, we found that PROALCOOL loans were given on terms inconsistent with commercial considerations. To measure the benefit, we used an composite benchmark made up of the interest rates on agro-industrial loans and ORTN, as a measure of the rate of inflation.

For the final determination, we have reconsidered the basis for evaluating whether PROALCOOL industrial loans are given on terms inconsistent with commercial considerations and the benchmark for measuring the benefit, if any. We have concluded that our earlier reliance on agro-industrial loans was incorrect.

Of the distillers selected to respond to our questionnaire, none had agro-industrial loans prior to the merger of the PROALCOOL program with the agricultural loan program. Instead, the primary alternative sources of funds for the distillers were loans from the Banco Nacional de Desenvolvimento Econômico e Social (BNDES) and its subsidiary agency, the Agência Especial de Financiamento Industrial (FINAME).

BNDES and FINAME loans have been found not to be countervailable in previous Brazilian countervailing duty investigations because they are provided to a wide range of industries [see, e.g., "Final Affirmative Countervailing Duty Determination; Certain Carbon Steel Products from Brazil" (49 FR 17988)].

Therefore, in accordance with the Subsidies Appendix, we have used company-specific benchmarks or, where the distiller did not take out a BNDES or FINAME loan in the same year as it undertook PROALCOOL loans, the BNDES or FINAME rates incurred by other distillers in that year. On this basis, we determine that PROALCOOL industrial loans were made on terms inconsistent with commercial considerations.

Respondents submitted information that the source of PROALCOOL loans was a World Bank loan to the government of Brazil. Documentation provided during verification shows that, in June 1981, the World Bank agreed to provide a loan to the government of Brazil for the purpose of financing PROALCOOL projects. The loan contract specified that the government of Brazil match the World Bank commitment. Funds provided by the World Bank are not countervailable [see "Initiation of Countervailing Duty Investigation; Certain Textiles and Textile Products from the Philippines" (49 FR 34382)]. Accordingly, for those PROALCOOL loans provided after June 1981, we are countervailing only that portion attributable to the government of Brazil's commitment under the terms of the World Bank contract.

To measure the benefit, we have computed the amount of principal and interest paid on the PROALCOOL loan during the review period and compared it to the amount of principal and interest that would have been paid that year had the financing been in the form of a BNDES or FINAME loan taken out in the same year as the PROALCOOL loan. For years where no BNDES or FINAME loans were taken out by the distillers, we have relied on best information available, derived from World Bank sources, to construct the benchmark. We used this methodology for measuring the benefits from PROALCOOL industrial loans, rather than the long-term loan methodology describe in the Subsidies Appendix, because payments under the benchmark loan are indexed to inflation. Therefore, we cannot calculate the grant equivalent to allocate over the life of the loan.

In addition, in reviewing PROALCOOL loan contracts received

during verification, we found that the proceeds from PROALCOOL loans were applied to purchase machinery and equipment used in the manufacture of refined sugar as well as alcohol. Therefore, after measuring the benefit from the PROALCOOL industrial loans, using the methodology described above, we allocated the benefit over the distillers' total sales, and calculated a net subsidy of 1.65 percent *ad valorem*.

#### *B. PROALCOOL Agricultural Credits to Distillers*

During verification, we found that certain loans to distillers, which the government of Brazil had originally reported as PROALCOOL industrial loans, were actually PROALCOOL agricultural loans. Like PROALCOOL industrial loans, PROALCOOL agricultural loans are long-term loans which are administered by the Banco Central do Brasil (BCB), with commercial, federal, and state banks acting as agents. Certain distillers who are also sugar cane growers received these loans, which were tied to their production of sugar cane.

In December 1980, interest rates and eligibility levels on PROALCOOL agricultural loans were placed on a par with interest rates and eligibility levels on agricultural loans made with funds provided by the BCB. We verified that these agricultural loans were available to producers of all types of agricultural products in Brazil. Moreover, based on statistics provided in the response, sugar cane does not receive a disproportionate share of agricultural credits in Brazil. In December 1983, PROALCOOL loans ceased to exist as such, and sugar cane growers became eligible, as were all other agricultural producers, for agricultural loans carrying an interest rate of 3 percent, including full monetary correction.

Based on the foregoing, we determine that PROALCOOL agricultural loans are provided to a specific enterprise or industry, or group of enterprises or industries, because they are limited to growers of sugar cane for ethanol. Therefore, PROALCOOL agricultural loans given prior to the merger of the PROALCOOL and agricultural loan systems confer a subsidy to the extent that they were given on terms inconsistent with commercial considerations. We also determine that, because agricultural loans are provided to a wide variety of agricultural and agro-industrial products, the agricultural loans received by ethanol distillers for their sugar cane operations following the merger of the programs are not countervailable [see our notice of "Final Negative Countervailing Duty

Determination; Fresh Cut Flowers from Mexico" (49 FR 15007)].

To determine whether PROALCOOL agricultural credits were made on terms inconsistent with commercial considerations, we compared the PROALCOOL interest rate with composite benchmark rates made up of the interest rates on agricultural loans and ORTN. The composite benchmarks were constructed to take into account the different levels of eligibility for PROALCOOL and agricultural loans. Using this benchmark, we find that the PROALCOOL agricultural loans made before December 1980 are inconsistent with commercial considerations, and therefore confer a subsidy. We also find that PROALCOOL agricultural loans made after December 1980 are not inconsistent with commercial considerations. In order to measure the benefit, we applied our long-term loan methodology, using the benchmark interest rate described above as the discount rate. We allocated the benefit over the distillers' total sales during the review period, and calculated a net subsidy of 0.001 percent.

#### *C. FUNPROCUCAR Long-Term Loans*

Petitioners allege that certain ethanol distillers have received countervailable financing under the heading of FUNPROCUCAR. According to the government of Brazil, the now-terminated FUNPROCUCAR program was administered jointly by the Banco do Brasil and the Instituto do Açúcar e do Alcool (IAA) throughout the 1970's in order to expand sugar refining capacity. IAA is the government agency which administers sugar and alcohol production and distribution in Brazil.

At verification, we ascertained that certain ethanol distillers had a number of FUNPROCUCAR loans outstanding during the review period. Although FUNPROCUCAR loans were tied to the expansion of production facilities for refined sugar, a product which is neither under investigation nor used as an input for the product under investigation, the machinery which was purchased with these loans can also be used in the production of fuel ethanol.

Because these loans were limited to a specific industry, the sugar refining industry, they are countervailable to the extent that they were provided on terms inconsistent with commercial considerations. To determine whether these loans were made on terms inconsistent with commercial considerations, we compared the interest rate with the following benchmarks.

For loans given in 1977, we used the same benchmark as for PROALCOOL

industrial loans, i.e., the BNDES/FINAME interest rate as derived from World Bank sources. For those loans given in 1975 and 1976, we used best information available. According to the World Bank, BNDES/FINAME applied a monetary correction cap of 20 percent in 1975 and 1976. We had no information on the average real interest charged. Therefore, we used the 1977 real interest rate and the partial monetary correction to construct our benchmark. We had no benchmark information for loans given in 1973 or 1974. Monetary correction was not applied until 1975. Therefore, we used the 1977 real interest rate as the best information available to calculate the interest differential.

Using these benchmarks, we find that the terms of FUNPROCUCAR loans were inconsistent with commercial considerations. In order to measure the benefit, we applied our long-term loan methodology. We allocated the benefit over the distillers' total sales during the review period, and calculated a net subsidy of 0.05 percent *ad valorem*.

#### *D. IAA Financing*

Petitioner's allege that the ethanol industry in Brazil has received financing on terms inconsistent with commercial considerations from the IAA. In its response, the government of Brazil stated that the Cooperativa Central dos Produtores de Açúcar e Alcool do Estado de São Paulo (COPERSUCAR) had received a loan from IAA. COPERSUCAR is the cooperative to which all but one of the distillers from whom we requested responses belong.

During verification, we ascertained that COPERSUCAR was the only respondent that had received any financing from IAA.

Because the IAA loan to COPERSUCAR was limited to a specific enterprise, a cooperative of ethanol distillers and sugar producers, we find the loan to be countervailable to the extent that it was provided on terms inconsistent with commercial considerations. To determine whether this loan was made on terms inconsistent with commercial considerations, we compared the terms of the IAA loan with the terms on FINAME loans taken out by distillers in the same year. Using this benchmark, we find that the terms of the IAA loan are inconsistent with commercial considerations.

In addition, in response to a specific allegation by petitioners, we analyzed the creditworthiness of COPERSUCAR. As a cooperative, COPERSUCAR operates only as an administrative, marketing, and selling arm for its

members, and is a non-profit organization. Therefore, COPERUCAR's ability to repay the loan depends on the creditworthiness of its member companies, and we must examine the financial position of its members in order to determine whether COPERUCAR itself is creditworthy. Based on our review of the financial ratios for the period 1978 through 1981 of the cooperative members chosen to respond to our questionnaires, we find these members, in aggregate, to be creditworthy in 1981, the year in which COPERUCAR received the loan.

In order to measure the benefit, we applied our long-term loan methodology for loans to creditworthy companies. We allocated the benefit over COPERUCAR's sales during the review period, and calculated a net subsidy of 0.12 percent *ad valorem*.

#### *E. Income Tax Exemption for Export Earnings*

Under Decree-Laws 1158 and 1721, exporters of fuel ethanol are eligible for an exemption from income tax on profits attributable to export revenue. Because this exemption is tied to exports and is not available for domestic sales, we determine that this exemption confers an export subsidy.

None of the trading company respondents claimed this exemption during the review period. However, several of the respondent distillers took an exemption from income tax payable in 1984 on export profits earned in 1983. We indexed the exempted profit, as required under Brazilian tax law, and multiplied it by each company's effective corporate tax rate to measure the benefit. We determined each company's effective corporate tax rate by taking the base tax liability and adding, where applicable, the standard surcharge for excess profits, and subtracting normal deductions such as the investment tax credit and the tax for the Programa de Integração Social (PIS) tax, which were taken by the respondents, and dividing the result by taxable income.

In certain past cases, we have refused to accept the investment tax credits in calculating an effective tax rate because, absent a showing of a reasonable expectation of returns from these investments, we considered them to be merely a way of targeting a company's taxes. However, in this proceeding, we verified that respondents received shares in certain investment funds and companies. Therefore, we have deducted the investment credits in calculating each company's effective tax rate.

As described above, we measured the benefit by multiplying the indexed value of the exemption by each company's effective tax rate and dividing the amount by the value of the distillers' exports. On this bases, we calculated a net subsidy 0.78 percent *ad valorem*.

#### **II. Upstream Subsidies**

Petitioners alleged that Brazilian fuel ethanol producers receive an "upstream subsidy" through the purchase of subsidized sugar cane inputs. Under section 771A(a) of the Act, we must apply the following tests in order to determine whether "upstream subsidies" are being paid or bestowed upon the product under investigation:

The term "upstream subsidy" means any subsidy described in section 771(5)(B)(i), (ii), or (iii) by the government of a country that—

(1) is paid or bestowed by that government with respect to a product (hereafter referred to as an "input product") that is used in the manufacture or production in that country of merchandise which is the subject of a countervailing duty proceeding;

(2) in the judgment of the administering authority, bestows a competitive benefit on the merchandise; and

(3) has a significant effect on the cost of manufacturing or producing the merchandise.

#### **Domestic Subsidy: PROALCOOL Agricultural Loans**

Petitioners allege that sugar cane growers in Brazil have benefitted from long-term financing on terms inconsistent with commercial considerations under the PROALCOOL agricultural credit program. In response, the government of Brazil stated that certain sugar cane growers had received long-term agricultural credits from PROALCOOL. These credits were administered by the BCB, with commercial, federal, and state banks acting as agents.

In December 1980, interest rates and eligibility levels on PROALCOOL agricultural loans were placed on a par with interest rates and eligibility levels on agricultural loans made with funds provided by the BCB. We verified that these agricultural loans were available to producers of all types of agricultural products in Brazil. Moreover, based on statistics provided in the response, sugar cane does not receive a disproportionate share of agricultural credits in Brazil. In December 1983, PROALCOOL loans ceased to exist as such, and sugar cane growers became eligible, as were all other agricultural producers, for agricultural loans carrying an interest rate of 3 percent, including full monetary correction.

Based on the foregoing, we determine that PROALCOOL agricultural loans are provided to a specific enterprise or

industry, or group of enterprises or industries, because they are limited to growers of sugar cane for ethanol. Therefore, PROALCOOL agricultural loans given prior to the merger of the PROALCOOL and agricultural loan systems confer a subsidy to the extent that they were given on terms inconsistent with commercial considerations. We also determine that, because agricultural loans are provided to a wide variety of agricultural and agro-industrial products, the agricultural loans received by sugar cane producers following the merger of the programs are not countervailable [see, "Final Negative Countervailing Duty Determination: Fresh Cut Flowers from Mexico" (49 FR 15007)].

To determine whether PROALCOOL agricultural credits were made on terms inconsistent with commercial considerations, we compared the PROALCOOL interest rates with composite benchmark rates made up of the interest rates on agricultural loans and ORTN. The composite benchmarks take into account the different levels of eligibility for PROALCOOL and agricultural loans. Using this benchmark, we found that the terms of the PROALCOOL agricultural loans made before 1980 are inconsistent with commercial considerations, and therefore confer a subsidy. To determine the benefit, we applied our long-term loan methodology. We allocated the benefit over total sales of sugar cane during the review period, and calculated a net subsidy of 0.03 percent, which is *de minimis*.

We examined several other domestic programs which were available to sugar cane suppliers:

- PLANALSUCAR Research and Development Program
- Regional Research and Development Programs
- Plantation Roads
- SUDENE

The first of these programs is determined not to confer a subsidy, and is discussed below in "Programs Determined Not to Confer a Subsidy;" the others are discussed in "Programs Determined Not to Be Used."

Because the subsidy to upstream suppliers of sugar cane is *de minimis*, the issues of whether (1) this subsidy has a significant effect on the cost of producing fuel ethanol, and (2) the subsidy confers a competitive benefit on fuel ethanol from Brazil are moot. Accordingly, we determine that no upstream subsidies are being paid or bestowed on fuel ethanol.



### III. Programs Determined Not To Confer a Subsidy

We determine that subsidies are not being provided to manufacturers, producers, or exporters in Brazil of fuel ethanol under the following programs.

#### A. Research and Development Assistance

Petitioners allege that, under the aegis of PROALCOOL and the Programa Nacional de Melhoramento da Cana-de-Açúcar (PLANALSUCAR), the government of Brazil provides research and development assistance aimed primarily at increasing the saccharose content of sugar cane, developing higher-yield and disease-resistant strains of sugar cane, and increasing the productivity of Brazilian distillers.

During verification, we ascertained that research and development assistance is not restricted to the sugar cane and ethanol industries, but is available to all sectors of Brazilian agriculture. In addition, all research papers generated under the PROALCOOL and PLANALSUCAR programs are published and made available to all interested persons, not only in Brazil but also in other countries, including the United States. Therefore, we determine that this program does not confer a subsidy.

#### B. Government Equity Infusions and Capital Assistance to Distillers

Petitioners allege that BNDES-Participações S.A. (BNDESPAR), a holding company subsidiary of BNDES, and its predecessor Investimentos Brasileiros S.A. (IBRASA) have provided equity capital, purchased debentures, and guaranteed securities to promote the capitalization of the Brazilian fuel ethanol industry, and that such equity investments were made on terms inconsistent with commercial considerations.

In its response, the government of Brazil stated that since 1981 IBRASA/BNDESPAR has held a small equity position (less than five percent of the stock) in on ethanol distiller (Usina Costa Pinto S.A.) as a result of a public stock offering. Subsequent to the response, petitioners alleged that Usina Costa Pinto was on the verge of bankruptcy at the time of the public stock offering, and, therefore, the investment was on terms inconsistent with commercial considerations.

During verification, we found that IBRASA/BNDESPAR acquired a very small equity position in Usina Costa Pinto on the same terms and conditions as equity investments by private commercial banks. We also ascertained

that another company, Costa Pinto Industria e Comércio Ltda. (CPIC), unrelated to Usina Costa Pinto, had indeed undergone a bankruptcy proceeding in 1981. CPIC is related to Sociedade Anônima Costa Pinto Exportação (CPEI), a trading company which exported fuel ethanol to the United States during the review period. We verified that CPEI had no government equity participation.

Because the IBRASA/BNDESPAR purchase of equity in Usina Costa Pinto was made on the same terms as purchases by private commercial banks, we find that that IBRASA/BNDESPAR's equity participation does not confer a subsidy.

#### C. Government Debt and Equity Infusions in PETROBRAS/INTERBRAS/INTERNO

Petitioners allege that the ethanol-related activities of the predominantly state-owned energy conglomerate Petroleos do Brasil S.A. (PETROBRAS) are unprofitable, and that the government of Brazil's debt and equity infusions in PETROBRAS are enabling the conglomerate to continue its support of the Brazilian ethanol industry. Therefore, petitioners claim that the loans and equity infusions were on terms inconsistent with commercial considerations. In a later submission, petitioners alleged that PETROBRAS users retained earnings from its profitable petroleum and petrochemical activities, to make equity infusions into INTERBRAS, a trading company which is a separately incorporated, wholly-owned subsidiary of PETROBRAS. Petitioners claim that such equity infusions are made on terms inconsistent with commercial considerations, and that they are used by INTERBRAS to cover the operating losses it experiences on its export sales of ethanol. Finally, petitioners allege that INTERBRAS made equity infusions into INTERNO, its wholly-owned trading arm in the United States, and that these infusions were made on terms inconsistent with commercial considerations.

Based on our investigation, we have learned that PETROBRAS is an energy conglomerate in which the government of Brazil holds 51 percent of the equity. PETROBRAS does not produce ethanol. Instead, it purchases domestically produced ethanol and sells it to distributors and retailers in Brazil. PETROBRAS is not directly involved in fuel ethanol sales to the United States. INTERBRAS, its wholly-owned subsidiary, exports fuel ethanol as well as other non-fuel products. INTERBRAS does not sell ethanol in the domestic

Brazilian market. INTERBRAS, in turn, owns a number of subsidiaries in various countries which act as selling arms for its export activities. INTERNO is INTERBRAS' selling arm in the United States.

We have also learned that PETROBRAS has received no equity infusions from the government since 1976, which is the first year for which we asked for information. Furthermore, the government has not converted any debt to equity from 1976 through 1984. With respect to debt, PETROBRAS had two FINEP (Financiadora de Estudos e Projetos) loans and two PROALCOOL loans outstanding during the review period. The two FINEP loans are tied to products other than ethanol. The PROALCOOL loans were used to build storage tanks for ethanol.

Neither INTERBRAS nor INTERNO has received direct government debt or equity infusions. However, PETROBRAS made equity infusions into INTERBRAS during 1976-1984 and, in 1983 and 1984, INTERBRAS converted some of INTERNO's debt to equity.

In examining whether these equity infusions into INTERBRAS and INTERNO confer a subsidy, petitioners contend that we must focus not on the overall equityworthiness of these firms, but rather on the profitability of the specific product line under investigation. In this way, they argue, subsidies cannot be removed from the scope of the countervailing duty law merely because profitable product lines are used to subsidize unprofitable product lines. Petitioners note that the concept and countervailability of "cross-product subsidization" was recognized by the Department in the countervailing duty investigation of *Nitrocellulose from France*, 48 FR 11971 (1983).

We determine that although PETROBRAS did have two preferential PROALCOOL loans, thus creating a subsidized pool of funds which could potentially be transmitted to INTERBRAS/INTERNO via equity infusions, these infusions were not made on terms inconsistent with commercial considerations, and are therefore not countervailable. Because we have determined that PETROBRAS' equity infusions into INTERBRAS/INTERNO were made on terms not inconsistent with commercial considerations, we do not have to reach the issue of whether PETROBRAS' profits constitute a potential source of subsidy funds for the activities of INTERBRAS/INTERNO.

We determine further that the equity infusions by INTERBRAS into INTERNO should be viewed as intra-company transfers of funds, and



therefore not countervailable, because INTERNOR is merely the selling arm of INTERBRAS in the United States, and its activities are expressly stated to be an extension of its parent's.

Although they are separately incorporated entities, INTERBRAS treats the profits and losses from INTERNOR and its other sales subsidiaries as line items in its income statement. In addition, in an annual note to its financial statements, INTERBRAS states that its sales subsidiaries are merely extensions of its own activities. Therefore, we have examined only the equity infusions from PETROBRAS to INTERBRAS/INTERNOR. We have examined INTERBRAS/INTERNOR's financial ratios and find it to be equitable.

We reaffirm our normal practice of examining a company's overall equity worthiness when making a determination of whether infusions were made on terms inconsistent with commercial considerations. We have long held that the benefit from an equity infusion benefits all operations of a company. The Court has upheld this practice in *British Steel Corp. v. United States* (Slip Op. 85-26, March 6, 1985, p. 20):

[T]he Court agrees with the defendants' contention that since equity investments in BSC benefitted all of its remaining manufacturing and exporting operation, it is unnecessary to trace the use of such funds or to find that they directly related to enhanced product competitiveness.

We disagree with petitioners' contention that we should focus on the profitability of INTERBRAS' ethanol activities in relation to its profitability on its other product lines in determining whether an equity investment is consistent with commercial practice. It is normal commercial practice for a firm engaged in a number of product lines to expect differing rates of return on each product line. Each product line must be sufficiently profitable over the long term to justify the commitment of resources by the company. However, simply because one product line has a lower rate of return than another does not indicate that a firm is behaving in a non-commercial manner. Were we to accept petitioners' rationale, any product line which achieved less than the average rate of return for the company as a whole would be considered as benefitting from the more profitable product lines. This leads to the absurd result that half of a company's activities are potentially subsidized.

Even if we had accepted petitioners' argument our determination that no subsidy was provided would not have

changed. We verified that INTERBRAS/INTERNOR ethanol-related activities were not unprofitable during the period of investigation. Therefore, we determine that there were no subsidized equity infusions.

#### *D. PETROBRAS Storage Assistance*

Petitioners allege that PETROBRAS has provided storage facilities to Brazilian distillers and cooperatives at non-commercial rates. In addition, petitioners allege that PETROBRAS made available to fuel ethanol exporters its pipeline from Sao Paulo to the port of Santos.

During verification, we ascertained that the rates fuel ethanol distillers pay PETROBRAS for the use of its storage facilities are identical to those they charge PETROBRAS for the same service. In addition, we found no evidence that PETROBRAS built storage tanks for use by the distillers, or that it provided the distillers with free use of its storage facilities. We also verified that PETROBRAS charged for the use of its pipeline to transport fuel ethanol. Therefore, we determine PETROBRAS storage assistance does not confer a subsidy.

#### *E. PETROBRAS Payment Terms*

Petitioners allege that ethanol distillers in Brazil receive two types of benefits by virtue of the payment terms for ethanol sales to PETROBRAS. First, payment is received by distillers within 15 days of invoicing. Petitioners contend that if the standard commercial payment terms in Brazil exceed 15 days, then PETROBRAS' "early" payment terms constitute a subsidy. Second, PETROBRAS takes delivery of ethanol over a twelve-month period but makes payments over a nine-month period, resulting in prepayment. Petitioners argue that such prepayment is unlikely to be consistent with standard commercial practice and, therefore, constitutes a subsidy.

All anhydrous fuel ethanol produced for the domestic market must be sold to PETROBRAS. Under IAA rules, PETROBRAS takes delivery of one-twelfth of each distiller's quota every month. Invoices are issued over a nine-month period, and payment is made by PETROBRAS within two weeks after invoicing. These payment terms are established by legislation.

Based on information gathered at verification, we determine that 15-day payment terms are not an unusual practice in Brazil. Terms normally range from payment on sight to 180 days. Therefore, we determine that PETROBRAS' 15-day payment terms do not confer a subsidy.

With regard to prepayment, we have concluded that the payment and delivery scheme reflects the agricultural commodity nature of this product. The harvest and production cycles are not continuous, yet the product is consumed year round. Thus, the delay in deliveries is the result of the necessary stockpiling and withdrawal for consumption during the period when ethanol is not produced. Therefore, we determine that this payment and delivery scheme can be considered normal commercial practice for agricultural commodities, and, as such, does not constitute a subsidy.

#### *IV. Programs Determined Not To Be Used*

We determine that manufacturers, producers or exporters of fuel ethanol in Brazil did not use the following programs which were listed in our notice of "Initiation of a Countervailing Duty Investigation: Fuel Ethanol from Brazil" (50 FR 11526).

##### *A Regional Development Programs*

Petitioners allege that ethanol distillers in the Northeast of Brazil are subsidized under the following federal and state programs.

1. *Cost Equalization Programs.* Petitioners allege that under this program, the IAA makes cash payments to fuel ethanol producers located in the states of Alagoas, Espirito Santo, Minas Gerais, Paraiba, Pernambuco, Rio de Janeiro, and others.

2. *SUDENE.* Petitioners allege that a government agency known as the Superintendência do Desenvolvimento do Nordeste (SUDENE) extends tax credits, exemptions, and other benefits to companies operating or investing in the Northeast of Brazil.

We verified that none of the companies from which we requested responses are located in any of the regions eligible for special assistance.

##### *B. IAA and Other Government Loan Guarantees*

Petitioners allege that the IAA and other Brazilian government agencies have guaranteed loans taken out by certain fuel ethanol producers and cooperatives.

We verified that none of the companies from which we requested responses had received loan guarantees from the IAA or any other government agency.

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##### *C. Restructured IAA Loans*

Petitioners allege that certain loans taken out by ethanol distillers and

cooperatives have been restructured with IAA assistance.

During verification, we ascertained that one of the respondents, Companhia Industrial e Agricola Sao Joao ("Sao Joao"), had its foreign-currency debt restructured and converted into cruzeiro-denominated debt in 1984. We verified that neither IAA nor any other agency of the government of Brazil was involved in this debt restructuring, and that it did not take place at the behest of the government of Brazil. Rather, the restructuring was carried out by Sao Joao's private creditors. Therefore, we determine this program was not used.

#### *D. Accelerated Depreciation for Brazilian-Made Capital Equipment*

Petitioners allege that, pursuant to Decree-Law 1137, any company which purchases Brazilian-made capital equipment and has an expansion project approved by the CDI may depreciate this equipment at twice the rate normally permitted under Brazilian tax laws.

At verification, we ascertained that none of the respondents had used this tax provision during the review period.

#### *E. Preferential Working-Capital Financing for Exports*

Petitioners allege that producers and exporters of fuel ethanol have received preferential export financing from the Carteira do Comércio Exterior (Foreign Trade Department, or CACEX) of the Banco do Brasil, which administers a program of short-term working-capital financing. During the review period, these working-capital loans were provided under Resolution 882 of the Banco Central do Brasil. On August 21, 1984, Resolution 882 was superseded by Resolution 950.

During verification, we ascertained that exports of fuel ethanol are not eligible for this type of financing.

#### *F. Export Financing Under the CIC-CREGE 14-11 Circular*

Petitioners allege that producers and exporters of fuel ethanol may have obtained preferential export financing under the Banco do Brasil's CIC-CREGE 14-11 circular.

During verification, we ascertained that none of the respondents had any such loans outstanding during the review period.

#### *G. FINEX Export Financing*

Petitioners allege that producers and exporters of fuel ethanol, as well as importers of fuel ethanol from Brazil in the United States, may have received preferential export financing under

Resolution 68 of the Conselho Nacional do Comércio Exterior (CONCEX).

During verification, we ascertained that fuel ethanol is not eligible for FINEX financing.

#### *H. Resolution 330 of the Banco Central do Brasil*

Petitioners allege that producers and exporters of fuel ethanol may have benefited from Resolution 330 of the Banco Central do Brasil, which provides financing for up to 80 percent of the value of the merchandise placed in a specified bonded warehouse and destined for export.

During verification, we ascertained that none of the respondents participated in this program during the review period.

#### *I. Exemption of IPI Tax and Customs Duties on Imported Equipment (CDI)*

Petitioners allege that producers and exporters of fuel ethanol may have participated in the CDI program, under which companies may receive an exemption of 80 to 100 percent of customs duties and IPI tax on certain imported machinery. The recipient must demonstrate that the machinery or equipment for which an exemption is sought was not available from a Brazilian producer. The investment project must be deemed to be feasible and the recipient must demonstrate that there is a need for added capacity in Brazil.

During verification, we ascertained that none of the respondents were eligible to participate in this program during the review period.

#### *J. The BEFIEX Program*

Petitioners allege that exporters of fuel ethanol may have received benefits from the Comissão para a Concessão de Benefícios Fiscais a Programas Especiais de Exportação (Commission for the Granting of Fiscal Benefits to Special Export Programs, or BEFIEX), which grants certain tax benefits to Brazilian exporters.

During verification, we ascertained that none of the respondents participated in this program during the review period.

#### *K. The CIEIX Program*

Petitioners allege that exporters of fuel ethanol may have received tax benefits from the Comissão para Incentivos à Exportação (Commission for Export Incentives, or CIEIX) under Decree-Law 1428.

During verification, we ascertained that none of the respondents participated in this program during the review period.

#### *L. Incentives for Trading Companies*

Petitioners allege that, under Resolution 883 of the Banco Central do Brasil, trading companies may obtain export financing similar to that obtained by manufacturers under Resolution 882 and 950.

During verification, we ascertained that none of the respondents participated in this program during the review period.

#### *M. The PROEX Program*

Petitioners allege that exporters of fuel ethanol may have benefited from short-term export credits under the Programa do Financiamento à Produção par a Exportação (PROEX), previously referred to as the Apóio à Exportação program.

During verification, we ascertained that none of the respondents participated in this program during the review period.

#### *N. Plantation Roads*

Petitioners allege that sugar cane growers in the Northeast of Brazil have benefited from plantation roads built at government expense for their exclusive use.

During verification, we ascertained that none of the respondents are located in the Northeast of Brazil. Therefore, we determine this program was not used.

#### *O. Regional Research and Development Programs*

Petitioners allege that ethanol distillers and sugar cane growers located in the northeastern Brazilian states of Alagoas and Pernambuco have benefited from certain state-run research and development programs.

During verification, we ascertained that none of the respondents are located in the states of Alagoas and Pernambuco. Therefore, we determine that these programs were not used.

#### *V. Program Determined to Have Been Terminated*

##### *IPI Export Credit Premium*

Until recently, Brazilian exporters of manufactured products were eligible for a tax credit on the Imposto sobre Produtos Industrializados (Tax on Industrialized Products, or IPI). The IPI export credit premium, a cash reimbursement paid to the exporter upon the export of otherwise taxable industrial products, was found to confer a subsidy in previous countervailing duty investigations involving Brazilian products. After having suspended this program in December 1979, the

government of Brazil reinstated it on April 1, 1981.

Subsequent to April 1, 1981, the credit premium was gradually phased out in accordance with Brazil's commitment pursuant to Article 14 of the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade ("the Subsidies Code"). Under the terms of Ministry of Finance "Portaria" (Notice) No. 176 of September 12, 1984, the credit premium was eliminated effective May 1, 1985. We verified that no producers or exporters of fuel ethanol received the IPI export credit premium after that date.

Accordingly, consistent with our stated policy of taking into account program-wide changes that occur subsequent to the review period but prior to our preliminary determination, we determine that this program has been terminated, and no benefits under the program are accruing to current exports of fuel ethanol to the United States.

#### Petitioners' Comments

*Comment 1:* Petitioners argue that the Department's failure to obtain subsidy data on all ethanol producers and exporters from the government of Brazil, and to base its sample solely on export volumes, skewed the subsidy findings and ignored a number of critical variables such as the creditworthiness of the distiller and/or cooperative; the nature of ownership (public or private); the location of production facilities; and the relationship between the distiller and grower (autonomous versus annexed). All these variables should have been measured and analyzed in order to determine the true level of subsidization occurring in the Brazilian fuel ethanol industry.

*DOC Position:* In light of the number of companies involved, the complexity of issues, and the multiplicity of government agencies administering the programs, obtaining global subsidy information from the government of Brazil and investigating 100 percent of the producers and exporters of fuel ethanol would be an administratively impossible task. Moreover, this is not required by law. Thus, we followed our well-established practice of obtaining information from producers who account for at least 60 percent of the dollar volume of exports to the United States of the merchandise in question. See, e.g., *Bars and Shapes from Mexico* [49 FR 32887 (1984)]; *Oil Country Tubular Goods from Mexico* [49 FR 47054 (1984)]; and *Certain Textile Mill Products and Apparel from Malaysia* [50 FR 9852 (1985)].

We do not agree with petitioners' contention that our methodology has skewed the subsidy findings or ignored critical variables. We believe the selection method utilized, and the investigation conducted pursuant thereto, provides an accurate representation of the industry. For further discussion of our methodology in selecting companies to receive detailed questionnaires and our investigation of only those companies that account for 60 percent of exports to the United States of the subject merchandise, see *Certain Textile Mill Products and Apparel from Malaysia* (50 FR 9852).

*Comment 2:* Petitioners contend that the Department must base its countervailing duty deposit rate on a nationwide average level of subsidization (i.e., all distillers capable of producing the product under investigation), due to the extensive control the government of Brazil maintains over the industry. It is argued that this information is relevant in order to capture subsidies to entities not currently exporting to the United States which might, however, do so in the future, and because the government of Brazil's role in ethanol production makes the distinction between exporters and domestic producers meaningless and artificial. Petitioners cite *Float Glass from Italy* as a precedent wherein the Department, in order to ensure that any potential subsidy was captured, examined both the region where the product was manufactured and the region from which the product was ultimately exported in considering whether regional subsidies were bestowed.

*DOC Position:* Countervailing duties are levied to neutralize the effects of benefits given to merchandise which is exported to the United States. Therefore, the law does not encompass entities which do not export to the United States. Whether or not the government of Brazil's "control" over the ethanol industry will affect Brazilian domestic entities' business decisions to export to the United States in the future is an issue inappropriate to this investigation. Changes in the make-up of the industry and the level of subsidization will be determined in any future administrative review. Our determination in *Float Glass from Italy* is inapposite to this investigation. That investigation involved examining a potential regional subsidy received by one of the plants of the company which manufactured the product under investigation. It does not stand for the proposition that the Department must examine every company in every region in order to determine whether a subsidy is being

provided with respect to the merchandise under investigation. See also response to petitioners' Comment 1.

*Comment 3:* Petitioners contend that while autonomous distillers receive greater PROALCOOL loan benefits than annexed distillers, the distillers selected to respond to the Department's questionnaire are all annexed to sugar-making facilities, thereby minimizing, by definition, the amount of subsidy resulting from the limited inquiry.

*DOC Position:* We disagree. According to verified information on the record, both autonomous and annexed distillers pay the same interest rates on PROALCOOL loans. Therefore, we have no reason to believe that the absence of autonomous distillers from our pool of respondents has resulted in any underestimation of the level of benefits.

*Comment 4:* Petitioners argue that the issue of regional subsidies was "side-stepped" by the Department since all the distillers selected to respond are located in one state, where regional subsidies apparently do not exist.

*DOC Position:* The issue of regional subsidization was not side-stepped by the Department. The Department did not select distillers by region, but by the dollar volume of their exports to the United States. That all of the distillers selected are located in a single state, where regional subsidies do not exist, merely demonstrates that the companies comprising over 60 percent of exports of fuel ethanol to the United States do not use regional subsidies. Furthermore, the 60 percent methodology does not misrepresent the estimated net subsidy. See also response to petitioners' Comment 1.

*Comment 5:* Petitioners contend that since the Brazilian ethanol industry is not autonomous from the government and the industry and the government are by and large inseparable, the Department's standard sampling techniques fall far short of defining the totality of government subsidization.

*DOC Position:* While the government of Brazil controls prices and implements production quotas on ethanol in Brazil, we do not find that the industry is inseparable from the government. The distillers and cooperatives are privately owned, keep their own accounts, and are responsible to their shareholders for all business decisions. The methodology utilized by the Department does not, under these circumstances, fail to define the totality of government subsidization.

*Comment 6:* Petitioners contend that most participants in the Brazilian fuel ethanol industry (including COPERSUCAR, Sao Joao and Usina Costa Pinto) should be considered

uncreditworthy from 1981 onward since, in the absence of debt back-ups and guarantees by the government of Brazil, these companies would not have received any loans.

**DOC Position:** We verified that none of the respondents received loan guarantees from the IAA or any other agency of the government of Brazil. Accordingly, this issue does not need to be addressed.

**Comment 7:** Petitioners contend that, for creditworthy companies, government-guaranteed debt constitutes a subsidy because the mere presence of the government guarantee ensures a lower rate of interest.

**DOC Position:** See answer to petitioners' Comment 6.

**Comment 8:** Petitioners argue that the Department should use a comparison of real interest rates in order to measure the subsidy value of cruzeiro-based replacement loans for those respondents with dollar-denominated debt in default.

**DOC Position:** We verified that Sao Joao's reorganization of its dollar-denominated debt was carried out by its private creditors without government direction, and that COPERSUCAR never had dollar-denominated debt at all. Accordingly, this issue need not be addressed.

**Comment 9:** Petitioners argue that the government of Brazil's contention that the portion of PROALCOOL credits originating from the World Bank should not be countervailed is irrelevant, since (i) this assertion of World Bank financing is undocumented, and (ii) it is the government of Brazil which targets the recipients and uses of PROALCOOL funds.

**DOC Position:** We disagree. As explained above in the section on "PROALCOOL Industrial Credits to Distillers," a copy of the contract between the World Bank and the government of Brazil has been entered on the record. We verified that the contract itself specifies that the World Bank funds are to be applied to finance PROALCOOL projects.

**Comment 10:** Petitioners argue that the Department must use a commercial benchmark, i.e., the charges that would be paid to a commercial lender, in measuring the benefits conferred by government-sourced debt. Therefore, every loan from a government source, obtained with a government guarantee or directed by the government must be examined. The Department's analysis in the preliminary determination was inappropriate because it compared subsidized debt to other government-based debt. In hyper-inflationary countries such as Brazil, commercial lenders are unwilling to provide long-

term financing. Therefore, the appropriate benchmark is the short-term, commercial interest rate. Moreover, the benchmark rate should include compensating balances, because such balances are normally required for short-term, commercial loans and because the Department's benchmark in the recent ruling on *Certain Agricultural Tillage Tools from Brazil* included compensating balances. Finally, if the recipient of the loan is uncreditworthy, an additional risk premium must be included in the benchmark.

**DOC Position:** In countries where long-term financing or the terms of long-term financing are controlled by the government, it has been the Department's practice to use government-sourced or directed loans as benchmarks when those loans are provided to more than a specific industry or group of industries (see, e.g., *Cold-Rolled Carbon Steel Flat-Rolled Products from Korea*, 49 F.R. 47284, and *Certain Textile Mill Products and Apparel from Colombia*, 50 F.R. 9863). In our view, this benchmark is the best measure of the benefit to the recipient of the subsidized loan because it reflects what the recipient would otherwise have paid for a comparable loan.

The short-term benchmark proposed by petitioners, a trade bill discount rate, cannot be considered comparable to long-term financing for investment. Even where the Department has used the short-term commercial rate in Brazil as a benchmark, most often for short-term export financing, we do not generally include compensating balances. This is because we have found that there is no uniform requirement for such balances (see, e.g., *Oil Country Tubular Goods from Brazil*, 49 F.R. 46570). Compensating balances have been included in benchmarks for uncreditworthy companies, as was the case in *Certain Agricultural Tillage Tools*, where we used that benchmark as best information available. In this investigation we have found no loans to uncreditworthy companies and, therefore, there is no need for such a benchmark.

**Comment 11:** Petitioners contend the cruzeiro-based bail-out of loans received by COPERSUCAR, Sao Joao, and Usina Costa Pinto in 1981 and 1984 should not be compared to other subsidized, cruzeiro-based agricultural loans. The subsidy value of the replacement loans should instead be compared to a benchmark reflecting the cost of dollar-denominated debt to uncreditworthy companies in Brazil. Moreover, this benchmark should be the highest rate associated with dollar-

denominated long-term debt in Brazil, should include dollar-based risk premiums, and should reflect any additional subsidy due to the relaxation of the repayment schedules.

**DOC Position:** As discussed above, we found no evidence that cruzeiro-based loans replaced dollar-denominated loans for COPERSUCAR or Usina Costa Pinto. For Sao Joao the refinancing of dollar-denominated debt was carried out between Sao Joao and private commercial banks without government direction. Therefore, the correct benchmark for refinancing of dollar-denominated debt need not be addressed.

**Comment 12:** Petitioners contend that the department's use of a general agricultural financing benchmark to measure the benefits received through PROALCOOL industrial credits undervalued the subsidy, since general agricultural financing is itself highly subsidized. According to a Banco de Boston newsletter, commercial banks are required to set aside a portion of their reserves for loans to the agricultural sector and the Department has found export financing from similar "set-aside" programs to be countervailable in *Prestressed Concrete Steel Wire Strand from Spain*.

**DOC Position:** For reasons discussed above, we have not used agricultural loan terms or commercial short-term loan rates proposed by petitioners as the benchmark for PROALCOOL industrial financing to distillers. This is not, however, because of the alleged set-aside characteristic of the agricultural loan program but because we have used company-specific benchmarks. Moreover, with respect to the Spanish export loans, we found that the interest rates on those loans were preferential. While the lower rates may have resulted from the set-aside requirements, we countervailed the result of the program, not the set-aside characteristic *per se*.

**Comment 13:** Petitioners argue that agricultural loans are not an appropriate benchmark for PROALCOOL loans because it has not been demonstrated that agricultural loans are generally available. Based on information they have provided, petitioners claim that agricultural financing is scarce and that it is allocated disproportionately to certain crops, including sugar cane. Moreover, the information submitted by respondents to demonstrate the general availability of agricultural financing shows only how the supply is allocated without any analysis of the relative demand. Unless agricultural entities<sup>30</sup> have equal access to the available credit, petitioners contend that

agricultural financing cannot be considered generally available.

**DOC Position:** We have reviewed the information supplied by petitioners and respondents regarding the availability of agricultural loans and have reaffirmed our preliminary finding that agricultural credits are not provided to a specific enterprise or industry, or group of enterprises or industries. In reaching this conclusion, we have considered information from the World Bank report, cited by petitioners, which indicates that, in terms of credit extended as a percentage of value of production, sugar cane does not receive a disproportionate share of agricultural funds. In addition, published statistics filed with one of the responses indicate that sugar cane did not receive a disproportionate share of agricultural funds. The World Bank report also offers explanations of why the demand for credit would vary among types of crops. Regarding the information submitted by petitioners on the recent shortage of agricultural loans, there is no indication that particular segments of the agricultural sector have suffered more than others. Hence, while demand may exceed supply, the alleged shortage of agricultural credit does not appear to affect certain crops disproportionately. Finally, the information submitted by respondents on the distribution of agricultural loans is more contemporaneous with the period during which PROALCOOL loans were given and, thus, is a more relevant measure of their availability.

**Comment 14:** Petitioners further contend that the Department should not use agricultural financing as a benchmark for PROALCOOL loans to sugar cane growers, because agricultural loans are highly subsidized. Instead, the Department should use a commercial interest rate in the range of ORTN plus 24 to 32 percent. Where appropriate, the benchmark should include a risk premium for uncreditworthy companies.

**DOC Position:** We disagree. We have chosen agricultural loans as the benchmark for PROALCOOL agricultural loans to sugar cane growers because they represent the major alternative source of financing to the growers, and because we have found them not to be limited to a specific enterprise or industry, or groups of enterprises or industries. We have not analyzed the creditworthiness of these companies because petitioners did not present any specific allegations that these companies were uncreditworthy.

**Comment 15:** Petitioners argue that the Department should use fixed interest rates in calculating PROALCOOL agricultural loan benefits, based on information received at verification.

**DOC Position:** The agricultural loans used as the basis for the PROALCOOL agricultural loan benchmarks were offered at fixed interest rates. Therefore, we are using a fixed interest rate benchmark.

**Comment 16:** Petitioners argue that the Department should rely on their estimates that one-half of the 1983-1984 sugar cane crop was used to produce ethanol and reduce by 50 percent the reported sales value of sugar cane in its calculation of the *ad valorem* benefit from agricultural subsidies on sugar cane.

**DOC Position:** Although PROALCOOL loans are used to finance the production of sugar cane for use in ethanol production, eligibility for these loans is not contingent upon the specific quantity of sugar cane earmarked for ethanol production. Moreover, even if we accepted petitioners' allegation, the upstream subsidy would still be *de minimis*.

**Comment 17:** Petitioners contend the Department should examine the discrepancy between the total debt figures in the balance sheet and loan ledger of Agropecuaria Monte Sereno S.A. ("Monte Sereno"), one of the sugar cane growers we investigated, to ensure that no additional loans were outstanding during the period of investigation.

**DOC Position:** As stated in the verification report on sugar cane growers, Monte Sereno's loan ledger, unlike the audited balance sheet, includes as yet unreleased parcels of long-term loans, which are posted in a separate account. The company's auditors removed these amounts from the balance sheet because they had not yet been received. After deducting these amounts from the outstanding loan balance according to the ledger, the Department investigator was able to reconcile it with the outstanding loan balance according to the balance sheet. Having done this, we are satisfied that no unreported parcels of long-term loans were disbursed during the review period.

**Comment 18:** Petitioners contend that, since the Department was unable to verify payment of principal and interest on non-PROALCOOL loans by Companhia Agricola Sertaozinho ("Sertaozinho"), one of the sugar cane growers under investigation, we should consider these loans as PROALCOOL agricultural loans and calculate the appropriate subsidy amount.

**DOC Position:** Documentation shows that Sertaozinho made principal and interest payments on its non-PROALCOOL loans.

**Comment 19:** Petitioners contend that in calculating benefits under the income tax exemption for export earnings program, the Department erred in reducing the effective corporate income tax rate from 35 percent to 26 percent, since there is no evidence that taxes earmarked for the development funds have actually yielded returns. Petitioners further contend there is no basis for a reduction in the calculated tax rate equal to the total amount of the investment because respondents have not demonstrated that they received any return on their investment.

**DOC Position:** We verified during the course of this investigation that the respondents received shares in certain investment funds and companies. In addition, in our recent investigation of *Certain Agricultural Tillage Tools from Brazil*, we verified that the respondents were receiving dividends from the same funds and companies that the ethanol distillers have invested in. Therefore, we find it is appropriate to deduct the investment credits in calculating the effective tax rate of each distiller.

**Comment 20:** Petitioners contend that, in calculating benefits under the income tax exemption for export earnings program, the Department erred in not adjusting respondents' tax liabilities for the surtax on excess profits, as in our recent investigation of *Certain Agricultural Tillage Tools from Brazil*.

**DOC Position:** We did not adjust respondents' tax liabilities for the surtax on excess profits at the time of the preliminary determination because we had tax returns for only a few of the distillers subject to this investigation. Now that we are in possession of the income tax returns of all the respondents we have in fact, followed our recent precedent, and have adjusted respondents' tax liabilities for the surtax on excess profits.

**Comment 21:** Petitioners contend the Department also erred in calculating export earnings eligible for the exemption by erroneously basing it on the income tax on the "portion of profits attributable to export revenue." The Department should instead have determined for each distiller and exporter the actual company-wide profits and the proportion of total sales which were exported.

**DOC Position:** In calculating the income tax exemption for export earnings, we do, in fact, use respondents' actual company-wide profits and the proportion of total sales which were exported.

**Comment 22:** Petitioners contend the Department, in calculating the benefit arising from the income tax exemption



on export earnings, should have indexed the respondents' tax liabilities for inflation, as it did in *Certain Agricultural Tillage Tools from Brazil*.

**DOC Position:** For purposes of our final determination, we have indexed the respondents' tax liabilities, in accordance with Brazilian tax law.

**Comment 23:** Petitioners argue that the benefit derived from the income tax exemption for export earnings should be allocated over export sales and not total sales, since this exemption is tied to exports and is not available to firms which have only domestic sales.

**DOC Position:** We agree. See answer to respondents' Comment 5 below.

**Comment 24:** Petitioners contend that BNDESPAR's purchase of equity in Usina Costa Pinto was inconsistent with commercial considerations since Usina Costa Pinto, like many other distillers, has been on the verge of bankruptcy since at least 1983. The mere fact that certain banks were also involved in the equity acquisition of Usina Costa Pinto should not prevent a finding of unequityworthiness.

**DOC Position:** The bankruptcy to which petitioners refer concerns another company, Costa Pinto Industria e Comércio Ltda., which we verified was not related to Usina Costa Pinto. We verified that IBRASA/BNDESPAR's purchase of a small percentage of Usina Costa Pinto stock was made on the same conditions and terms as those offered to, and paid by, other private banks in the stock offer. We also note that Usina Costa Pinto has been a consistently profitable company.

**Comment 25:** Petitioners contend that the redirection of PETROBRAS' oil-derived profits to its unprofitable ethanol activities clearly confers a countervailable subsidy on these activities and should be treated as grants.

**DOC Position:** Our determination with respect to PETROBRAS is discussed in the section on "Government Debt and Equity Infusions in PETROBRAS/INTERBRAS/INTERIOR."

**Comment 26:** Petitioners contend the Department should countervail PROALCOOL financing by PETROBRAS.

**DOC Position:** Our determination with respect to these loans is addressed in the section on "Government Debt and Equity Infusions in PETROBRAS/INTERBRAS/INTERIOR."

**Comment 27:** Petitioners contend that the provision by PETROBRAS of working capital, in the form of equity infusions, to meet INTERBRAS' heavy liabilities in 1983 and 1984 is an export subsidy at least as far as this working capital was used to support

INTERBRAS' highly unprofitable ethanol export activities.

**DOC Position:** Our determination with respect to PETROBRAS' equity infusions in INTERBRAS/INTERIOR is discussed in the section on "Government Debt and Equity Infusions in PETROBRAS/INTERBRAS/INTERIOR."

**Comment 28:** Petitioners contend that INTERBRAS' equity infusions into INTERIOR in 1984 is a subsidy since the latter was absolved of a heavy dollar-denominated liability in exchange for more stock from its parent. Given the fact that INTERIOR is wholly-owned by the PETROBRAS family, additional stock purchases enhanced neither PETROBRAS' nor INTERBRAS' direct equity position in the venture. Furthermore, in all the years of its existence except 1984, INTERIOR appears to have operated at a loss.

**DOC Position:** Our determination with respect to INTERIOR's debt-to-equity conversion is discussed in the section on "Government Debt and Equity Infusions in PETROBRAS/INTERBRAS/INTERIOR."

**Comment 29:** Petitioners contend that, in its quantification of equity subsidies from PETROBRAS to INTERBRAS/INTERIOR, the Department should trace the government funds flowing through PETROBRAS companies' equity accounts to its ethanol operations. The Department should either adopt the formula developed in *Industrial Nitrocellulose from France* and compare the rate of return on ethanol sales to INTERBRAS' and INTERIOR's rates of return on all other products, or measure the actual net operating losses arising from INTERBRAS' sales of ethanol.

**DOC Position:** Our determination with respect to PETROBRAS is discussed in the section on "Government Debt and Equity Infusions in PETROBRAS/INTERBRAS/INTERIOR."

**Comment 30:** Petitioners contend that research and development assistance to ethanol distillers and sugar cane growers should be treated as a subsidy notwithstanding the nominal general availability of such benefits in Brazil. *De facto* availability in this case indicates that the programs in question are targeted to distillers and cane growers as the two major actors in the production of fuel ethanol (see *Cabot Corp. v. United States* and *Agrexco Agricultural Export Co., Ltd. v. United States*).

**DOC Position:** The Department has verified that research and development assistance in Brazil is not limited or "targeted" to ethanol distillers and sugar cane growers. Instead, the government provides research and development for all sectors of Brazilian agriculture,

including but not limited to genetic research, soils, pork, cattle and forest industry programs.

Section 771(5) of the Act, in describing governmental benefits which should be viewed as domestic subsidies under the law, clearly limits such subsidies to those provided "to a specific enterprise or industry, or group of enterprises or industries." We have followed this statutory standard consistently, finding countervailable only the benefits from those programs which are applicable and, in fact, available only to one company or industry, a limited group of companies or industries, or companies or industries located within a limited region or regions within a country. See, e.g., "Final Affirmative Countervailing Duty Determination; Certain Steel Products from Belgium," 49 F.R. 39304, 39328 (1982), and "Final Negative Countervailing Duty Determination; Fresh Cut Flowers from Mexico" (49 F.R. 25007). We do not agree with the decisions in *Cabot Corp. v. United States*, Slip op. 85-102 (Ct. Int'l Trade Oct. 4, 1985) (presently on appeal to the Court of Appeals for the Federal Circuit), and *Agrexco Agricultural Export Co., Ltd. v. United States*, 604 F. Supp. 1238 (Ct. Int'l Trade 1985). In *Carlisle Tire and Rubber Company v. United States*, 564 F. Supp. 834 (Ct. Int'l Trade 1983), the Court approved the Department's specificity test.

**Comment 31:** Petitioners contend that regional development programs administered by the government of Brazil bestow subsidies irrespective of whether any exports to the United States originated from these regions since these programs have spurred the production of ethanol in non-profitable areas, thereby diverting ethanol produced in profitable regions to the United States.

**DOC Position:** Petitioners' allegation does not set forth a countervailable subsidy. Producers in regions which are exporting do not obtain an actual benefit from regional programs. Therefore, no countervailability exists.

**Comment 32:** Petitioners contend that PETROBRAS storage assistance to the ethanol industry is a subsidy and the absorption by PETROBRAS of those costs normally borne by producers and exporters of ethanol should be treated as direct grants.

**DOC Position:** We ascertained during verification that fuel ethanol distillers pay PETROBRAS the same rates for use of its storage facilities that PETROBRAS pays the distillers for the same service. Additionally, we found no evidence that PETROBRAS built storage tanks for use by the distillers, or that it provided the

distillers with free use of its storage facilities.

*Comment 33:* Petitioners contend the Department should find that PETROBRAS storage assistance is offered on preferential terms since the documented difference between PETROBRAS' government-regulated storage charges and the rates charged by private companies have not been explained.

*DOC Position:* Since we ascertained during verification that fuel ethanol distillers paid PETROBRAS the same rates for use of its storage facilities that PETROBRAS pays the distillers for the same service, we find that no preferentiality exists with respect to PETROBRAS storage assistance. Although there was one instance in which PETROBRAS was charged more than the uniform storage rate, circumstances surrounding that transaction indicate that it was an exception to the normal commercial practice.

*Comment 34:* Petitioners contend that PETROBRAS' practice of early payment and pre-payment for ethanol deliveries is a subsidy and should be treated as a zero-interest loan with terms running from the date of payment to the date of receipt normally expected under standard commercial practice.

*DOC Position:* Because of the agricultural commodity nature of this industry, delivery delays simply reflect the necessary stockpiling and withdrawal from consumption during the three-to-five month period when sugar cane harvesting stops. We found during verification that PETROBRAS paid COPERSUCAR and several independent distillers two weeks after invoicing, which does not differ from standard commercial practice in Brazil.

*Comment 35:* Petitioners contend that PETROBRAS payment terms are countervailable since in a country where the monthly inflation rate is over 10 percent, government-mandated payment terms of 15 days which are one-half to one-quarter those of commercial terms are highly preferential.

*DOC Position:* We verified that 15-day payment terms are not an unusual commercial practice in Brazil.

*Comment 36:* Petitioners contend that the Department failed in its analysis of export subsidies to consider deliveries by distillers to trading companies. Since under Brazilian law these transactions are considered an export, petitioners argue the Department should determine whether distillers are benefitting from any of the various export financing programs available in Brazil, as well as other export incentives such as BEFIEC, CIEC, and accelerated depreciation.

*DOC Position:* We verified that none of the responding distillers or trading companies benefited from any of the above-mentioned programs during the review period.

*Comment 37:* Petitioners contend that the FUNPROCUCAR program should be treated as a subsidy since FUNPROCUCAR loans could also benefit the production of "poor" molasses, which serves as an input for ethanol.

*DOC Position:* We have countervailed FUNPROCUCAR loans because the machinery purchased with these loans is used in the production of ethanol as well as refined sugar. See section on "FUNPROCUCAR Long-Term Loans."

*Comment 38:* Petitioners contend that the assumption and restructuring of COPERSUCAR's debt by IAA saved the cooperative from bankruptcy in 1981, and that COPERSUCAR thereby received a countervailable benefit.

*DOC Position:* We disagree. The facts on the record of this case demonstrate that there was no such debt assumption and restructuring. As discussed above, we did countervail a loan from IAA to COPERSUCAR.

*Comment 39:* Petitioners claim that since long-term cruzeiro financing was not available to any borrowers at the time of the IAA loan to the distiller's cooperative, the Department should use a dollar-denominated benchmark and calculate the benefit arising from the preferential interest rate and government assumption of exchange rate risks.

*DOC Position:* We were able to demonstrate at verification that long-term cruzeiro financing, in the form of BNDES and FINAME loans, was available to borrowers at the time of the IAA loan.

*Comment 40:* Petitioners contend that, if the Department chooses to use a cruzeiro benchmark, it should find COPERSUCAR uncreditworthy, use the highest cruzeiro interest rate available in Brazil, and apply an appropriate risk premium.

*DOC Position:* Since we found COPERSUCAR to be creditworthy, we did not need to construct a benchmark for an uncreditworthy company.

*Comment 41:* Petitioners contend that a number of distillers have received FINAME, BADESP/PROTAN, and other working capital loans on terms which are highly preferential. Given the preferentiality and specificity of these loan programs, petitioners argue that they should be countervailed as subsidies.

*DOC Position:* We found at verification that BADESP/PROTAN loans to distillers are in reality repassed

loans from BNDES. As stated in the program section "PROALCOOL Industrial Loans to distillers," both BNDES and FINAME loans have been found not countervailable in previous determinations because they are not limited to an enterprise or industry or group of enterprises or industries. Although several distillers had working capital loans from private commercial banks, we found nothing in the terms of these loans that would lead us to conclude that they were made on non-commercial terms.

*Comment 42:* Petitioners contend that any subsidies received by sugar cane growers sharing common ownership with distillers should be countervailed directly and not subject to upstream subsidy analysis.

*DOC Position:* We disagree. When the allegedly subsidized suppliers of the input product are distinct from the producers of the product under investigation, we analyze whether the alleged subsidies are passed through under the upstream provision [see "Initiation of a Countervailing Duty Investigation: Certain Table Wine from Italy" (50 F.R. 40584)]. In this case, although there is common ownership of the ethanol distillers and sugar cane growers, they are organized as separate companies, and the prices charged for sugar cane cannot be considered as inter-corporate transfer prices. Where a distiller also comprised sugar cane operations, we countervailed the PROALCOOL agricultural credits received by the distiller (see the section on "PROALCOOL Agricultural Credits to Distillers").

*Comment 43:* Petitioners argue that the Department should investigate the nature of the IAA price adjustments claimed by sugar cane growers. If these are straight grants untied to any revaluation of the goods sold, they should be excluded from the total sales value and countervailed as a subsidy.

*DOC Position:* We verified that these price readjustments were merely the regular revaluation of prices which the IAA makes three times a year, usually in February, June, and October, to counter the effects of inflation. Therefore, these adjustments are not subsidies and have been included in the sugar cane growers' total sales value.

*Comment 44:* Petitioners contend that the scope of investigation section should also encompass "wet" non-fuel grade ethanol transported from Brazil to the Caribbean Basin region, "dried" there, and then exported to the United States for use as a motor fuel additive.

*DOC Position:* The issue concerning wet Brazilian non-fuel grade ethanol

which is shipped to third countries to be dehydrated into anhydrous fuel ethanol for export to the United States was first raised in petitioners' prehearing brief. As we have no knowledge of actual shipments of this nature, originating from Brazil, entering into the United States, we determine that a clarification of the scope of our determination would be premature. If, at the time of any administrative review there is evidence of such imports, the Department will address the issue more fully.

**Comment 45:** Petitioners contend that the respondents' failure to provide English translations of all documents has hindered the Department in verifying the government of Brazil's claims and has deprived petitioners of the opportunity to participate meaningfully in this investigation. Petitioners argue that the Department should resolve all subsidy issues for which respondents submitted untranslated responses by using information contained in petitioner's submissions as "best information available" for the final determination.

**DOC Position:** Section 355.39(e) of the Department's regulations states that "[a]ll responses to requests for information must be in English . . . unless such requirement is waived." In cases where large quantities of voluminous documents are submitted in support of a questionnaire response, we have often waived the translation requirement for documents such as annual reports and descriptive brochures that would be overly lengthy and costly to translate if we felt that the Department's investigative staff was able to analyze these documents in the original language. Respondents' failure to provide English translations of all documents did not hinder the Department in its verification of respondents' submissions. We have not, therefore, resorted to best information available in our final determination. Furthermore, petitioners' comment regarding its lack of meaningful participation caused by untranslated documents was not made until a point too late for us to determine whether to require respondents to resubmit their information.

**Comment 46:** Petitioners argue that the Department has been placed at a distinct disadvantage due to the respondents' incomplete and untimely responses to the Department's questionnaires. With respect to any data outstanding, the Department should use "best information available" to complete the record for the final determination.

**DOC Position:** We disagree. We consider the responses we have received to be substantially complete

and to have been submitted in time for us to analyze and verify them.

**Comment 47:** Petitioners argue the Department should not use any information submitted by the government of Brazil later than the date petitioners received the confidential versions of the verification reports, since it would allow respondents to "paper" unfairly the record after the effective closing date for petitioners' comments.

**DOC Position:** We disagree. Documentation submitted by the respondents since the verification does not consist of new information, but rather consists of clarifications, requested by the Department's staff, of existing responses. This information merely substantiates previously verified information and is not in itself the basis for the Department's determination.

**Comment 48:** Petitioners contend that the Department's doctrine of "general availability" should not be applied to any of the subsidies under investigation in this proceeding (debt restructuring, PROALCOOL loans and regional R&D). Petitioners argue that the Department's "general availability" doctrine is inconsistent with the countervailing duty statute and with recent court decisions.

**DOC Position:** The Department's doctrine of "general availability" is appropriately applied to the programs listed by petitioners since Section 771(5) of the Act, in describing governmental benefits which should be viewed as domestic subsidies under the law, clearly limits such subsidies to those provided "to a specific enterprise or industry, or group of enterprises or industries." In light of the Court's decision in *Carlisle Tire and Rubber Co. v. United States*, upholding the Department's standard for finding that benefits are generally available, we are not following the standard adopted by the Court in *Cabot* or *Agrexco*. See response to petitioners' Comment 30.

#### Respondents' Comments

**Comment 1:** Respondents assert that the Department's use of anhydrous alcohol sales as the denominator in calculating the benefit accruing to ethanol distillers from PROALCOOL industrial credits was inappropriate, since these credits were used to purchase machinery used in the manufacture of sugar and other products as well. In light of this assertion, respondents contend that we should have used total sales by the distillers as our denominator.

**DOC Position:** By reviewing PROALCOOL industrial loan contracts, we verified that the funds were used to purchase machinery used in the

production of sugar, molasses, and other products. Accordingly, we are now allocating the benefit from PROALCOOL industrial credits over total sales.

**Comment 2:** Respondents argue that the hypothetical composite benchmark used to value benefits from PROALCOOL loans violates the Department's policy with respect to long-term loans as articulated in the Subsidies Appendix. Moreover, the amount of the benefit found has been artificially inflated because the Department cannot assume the companies borrowed the maximum amount under PROALCOOL, nor that the companies would have borrowed any additional funds to cover the eligibility differential. Therefore, the Department should use the agricultural or agro-industrial loan interest rate as the benchmark most reflective of any economic benefit.

**DOC Position:** As explained above, we have used BNDES and FINAME loans as benchmarks for PROALCOOL industrial loans to distillers because these loans are company-specific or represent what a comparable firm would otherwise have paid had it not obtained PROALCOOL industrial financing. Therefore, we have not used a composite benchmark for those loans.

We have continued to use the composite benchmark for PROALCOOL agricultural loans. While agricultural loans are the best representation of interest rates these firms would otherwise have paid for loans to finance cane growing operations, the level of financing available under the agricultural program was, by regulation, less than the level of financing from PROALCOOL. Therefore, it is not unreasonable to assume that additional funds would have to have been obtained elsewhere. Moreover, while borrowers may not always have used the maximum amount of financing available under PROALCOOL, it is just as likely that borrowers under the agricultural loan program did not obtain the maximum amounts. Therefore, it is reasonable to assume that the different maximum eligibility levels under each program reflect the relative differences in amounts borrowed.

**Comment 3:** Respondents contend that PROALCOOL credits are not countervailable since they were substantially financed by World Bank funds.

**DOC Position:** Funds provided by multinational organizations, such as the World Bank, are not countervailable [see *Certain Textile and Textile Mill Products from the Philippines*, 49 FR



34301 (1984) (initiation), and *Non-Rubber Footwear from Brazil*, 49 FR 9901 (1983) (preliminary)]. Under section 701(a) of the Act, the Department must determine whether "a country under the Agreement" or "a person who is a citizen or national of such a country, or a corporation, association, or other organization organized in such a country" is providing a subsidy with respect to a class or kind of merchandise. The World Bank is not a "country under the Agreement" as defined by section 701(a). Therefore, the portion of the funds provided under the PROALCOOL program after June 1981 which represents the financing of the World Bank is not countervailable.

*Comment 4:* Respondents contend that the Department, in calculating the benefit arising from the income tax exemption for export earnings, failed to use the respondents' effective tax rates.

*DOC Position:* See answer to petitioners' comment 19.

*Comment 5:* Respondents contend that the income tax exemption for export earnings is a domestic subsidy. Therefore, the Department should have allocated the benefit arising from this exemption over total sales rather than total exports.

*DOC Position:* We disagree. When a firm must export to be eligible for benefits under a subsidy program, and when the amount of the benefit received depends directly or indirectly on the firm's level of exports, that program confers an export subsidy. The fact that the firm as a whole must be profitable to benefit from the program does not detract from the program's basic function as an export subsidy. Therefore, the Department will continue to allocate the benefits under this program over export revenues instead of total revenues.

*Comment 6:* Respondents argue that the Department was incorrect in concluding that a loan provided by the IAA to COPERSUCAR bestowed a countervailable benefit since the interest rate provided on the loan was within the range of generally available long-term loan rates in Brazil.

*DOC Position:* We used as a benchmark for the loan to COPERSUCAR the terms paid by its member distillers for long-term financing in 1981. We consider COPERSUCAR to be comparable to its member distillers. Therefore, their loan rates are to be preferred as a benchmark over loan rates obtained by firms in other investigations.

*Comment 7:* Respondents contend that petitioners' allegations regarding the circumstances surrounding the IAA loan are incorrect. A review of

COPERSUCAR's audited financial statements reveals that, not only did COPERSUCAR not have any overseas debt, but also that the cooperative's total debt did not approach the level alleged by petitioners.

*DOC Position:* We agree. See the section on "IAA Financing" above.

*Comment 8:* Respondents argue that the Department was correct in investigating subsidies only to producers who export to the United States. Moreover, basing the finding on firms which account for 60 percent of exports to the United States was consistent with the law and past practice.

*DOC Position:* We agree. See responses to petitioners' comments 1 through 5.

*Comment 9:* Respondents claim that the alleged subsidies to PETROBRAS are not countervailable since (i) PETROBRAS only sells its product in the domestic market; (ii) there is no evidence that the government of Brazil paid more for its shares than that paid by private shareholders; (iii) there have been no new cash equity infusions in PETROBRAS by the government of Brazil for the ten years; (iv) PETROBRAS has been one of the most profitable companies in Brazil; and (v) PETROBRAS stock is one of the highest priced, actively traded, and most attractive stocks in the Brazilian stock market.

*DOC Position:* Our determination with respect to PETROBRAS is discussed in the section on "Government Debt and Equity into PETROBRAS/INTERBRAS/INTERNOR."

*Comment 10:* Respondents contend that petitioners' request to review return on investment in ethanol operations is misplaced since any equity infusion is provided to an entire company and not to a specific department of a company. Even if the Department accepts petitioners' approach, both PETROBRAS and INTERBRAS demonstrated during the verification that their respective ethanol operations were profitable during the review period.

*DOC Position:* Our determination with respect to this allegation is discussed in the section on "Government Debt and Equity into PETROBRAS/INTERBRAS/INTERNOR."

*Comment 11:* Respondents claim that PETROBRAS' equity infusion into INTERBRAS are commercially reasonable and are not countervailable since INTERBRAS has had a profit in every year since it began operations and private investment in PETROBRAS logically prohibits it from providing equity infusions in any corporation which is not equityworthy.

*DOC Position:* Our determination with respect to PETROBRAS' equity infusions into INTERBRAS is discussed in the section on "Government Debt and Equity Infusions into PETROBRAS/INTERBRAS/INTERNOR."

*Comment 12:* Respondents argue that petitioners' allegation regarding conversion of INTERNOR's debt into equity is inaccurate. There is no evidence on the record that this debt conversion was not based upon commercial considerations.

*DOC Position:* Our determination with respect to INTERNOR is discussed in the section on "Government Debt and Equity Infusions into PETROBRAS/INTERBRAS/INTERNOR."

*Comment 13:* Respondents argue that government equity infusions in Costa Pinto are not countervailable since IBRASA's purchase of stock in Costa Pinto was made on the same conditions and terms as those offered to, and paid by, other private banks in the stock offering.

*DOC Position:* We agree. See answer to petitioners' comment 24.

*Comment 14:* Respondents claim that fuel ethanol does not benefit from government assistance for research and development since virtually all agricultural research and development is conducted by the government of Brazil and is generally available to the public, thereby meeting criteria enunciated in *Cabot Corp. v. United States*. Unlike the situation in *Agrexco Agricultural Export Co. Ltd. v. United States*, respondents argue that they have provided information to the effect that the government of Brazil conducts virtually all agricultural research and development.

*DOC Position:* We agree that the research and development conducted by the government of Brazil is not limited to specific sectors of Brazilian agriculture. Additionally, research papers generated under these programs are published and made available to all interested parties.

*Comment 15:* Respondents contend that fuel ethanol does not benefit from PETROBRAS storage facilities since it was shown at verification that distillers were charged for and paid for storage; that the rate charged by PETROBRAS was exactly the same rate charged by the distillers to PETROBRAS for storage; that storage charges are fixed by government regulations and are adjusted according to variations in the price of ethanol. Moreover, there was no evidence that PETROBRAS constructed tanks for distillers or provided free use of storage tanks.

*DOC Position:* Our determination with respect to this issue is discussed in the

section on "PETROBRAS Storage Assistance."

*Comment 16:* Respondents claim that petitioners' allegation that PETROBRAS pays in October for ethanol deliveries in May is incorrect. Ethanol is produced over a seven-month period, paid for over a nine-month period, and delivered over a twelve-month period. This schedule reflects the agricultural commodity nature of the product. Since ethanol is produced prior to payment, petitioners' allusion to interest-free working-capital loans is specious. Also, the 15-day payment terms between PETROBRAS and the distillers are normal in the Brazilian economy.

*DOC Position:* Our determination with respect to this issue is discussed in the section on "PETROBRAS Payment Terms."

*Comment 17:* Respondents argue that the Department should disregard amendments to the original petition which have not been filed concurrently with the ITC as they are in violation of 19 C.F.R. 355.26(e).

*DOC Position:* The Department does not consider petitioners' submissions, received after the preliminary determination but before verification, to be amendments to the original petition. In their submissions, petitioners clarified their original allegations and set forth commentary on the questionnaire responses and on the proposed verification outline.

*Comment 18:* Respondents contend that the Department has initiated investigations into numerous new allegations without even satisfying the threshold initiation requirements for an original petition (19 CFR 355.27).

*DOC Position:* The Department's investigation of petitioners' allegations has satisfied the threshold initiation requirements of 19 CFR 355.27. The allegations under investigation properly allege a basis on which a countervailing duty may be imposed under 701(a) of the Act. Furthermore, the Department has the authority to investigate any potential subsidy programs it discovers during the course of the investigation.

*Comment 19:* Respondents contend that petitioners' allegations regarding the "uncreditworthiness" of the ethanol industry are misplaced since (i) creditworthiness is a company-specific issue; (ii) commercial banks have determined that each loan was commercially reasonable and the Department should not second-guess such decisions; (iii) neither the members of COPERFLU nor COPERFLU itself are subject to this investigation; (iv) COPERFLU is one of the largest and strongest private companies in Brazil and a review of its payments on interest

and principal demonstrates that it is a reliable borrower.

*DOC Position:* We have addressed in this notice the company-specific allegations of uncreditworthiness presented by the petitioners, and have found COPERFLU to be creditworthy based on the financial positions of its members in the years immediately preceding the IAA loan.

*Comment 20:* Respondents argue that petitioners' suggestion that the scope of investigation be expanded to include hydrous exports from Brazil which are then transformed to anhydrous in third countries is incorrect, since the United States Customs Service has reaffirmed that dehydration of hydrous ethanol constitutes a substantial transformation and this product subsequently cannot be considered fuel ethanol from Brazil and is outside the scope of this investigation.

*DOC Position:* The Department is not bound by United States Customs Service determinations. *Royal Business Machines, Inc. v. United States*, 507 F. Supp. 1087 (Ct. Int'l Trade 1980), *aff'd*, 669 F.2d 691 (Fed. Cir. 1982) recognized that the Department has the authority not only to define the scope but also to clarify the statement of scope of an investigation. Since petitioners' allegation regarding wet ethanol was received very late in this proceeding, and we have no evidence that any wet ethanol originating from Brazil has entered the United States, we are not resolving this issue at this time, but reserve the right to clarify the scope of investigation in any subsequent administrative review that may occur under section 751 of the Act or in a separate scope ruling.

#### Negative Determination of Critical Circumstances

Petitioners allege that "critical circumstances" exist with respect to imports of fuel ethanol from Brazil. Under section 705(a)(2) of the Act, we must determine whether critical circumstances exist as alleged under 703(e)(1) of the Act. Critical circumstances exist when the Department finds that (1) the alleged subsidy is inconsistent with the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade ("the Subsidies Code"), and (2) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Based upon our analysis, we have determined that the government of Brazil is providing an export subsidy to

fuel ethanol under the income tax exemption for export earnings.

Accordingly, we must now determine whether there have been massive imports over a relatively short period of time. In making this determination, we normally consider the following factors: (1) Whether recent imports have increased significantly; (2) whether recent import penetration ratios have increased significantly; (3) whether the pattern of recent imports may be explained by seasonal factors; and (4) whether recent imports are significantly above imports calculated over the last three years.

In this case, Department of Commerce statistics indicate that imports of the subject merchandise have not surged over a relatively short period of time within the meaning of section 703(e) of the Act. Therefore, for the reasons described above, we determine that critical circumstances do not exist with respect to fuel ethanol from Brazil.

#### Verification

In accordance with section 776(a) of the Act, we verified the information used in making our final determination. During verification, we followed standard verification procedures, including meeting with government officials, inspection of documents and ledgers, and tracing the information in the responses to source documents, accounting ledgers, and financial statements.

#### Suspension of Liquidation

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to continue to suspend liquidation of all unliquidated entries of fuel ethanol from Brazil entered, or withdrawn from warehouse, for consumption, on or after November 12, 1985. As of the date of publication of this notice in the Federal Register, the Customs Service should require a cash deposit or bond of 2.60 percent *ad valorem* for each such entry of this merchandise. This suspension will remain in effect until further notice.

#### ITC Notification

In accordance with section 705(c) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-confidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective

order, without the written consent of the Deputy Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure or threaten material injury to a U.S. industry 45 days after the date of publication of this notice. If the ITC determines that material injury, or the threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that injury exists, we will issue a countervailing duty order, directing Customs officers to assess a countervailing duty on fuel ethanol from Brazil entered, or withdrawn from warehouse, for consumption on or after the date of the suspension of liquidation as indicated in the "Suspension of Liquidation" section of this notice, equal to the net subsidy of 2.60 percent *ad valorem*.

This notice is published pursuant to section 705(d) of the Act [19 U.S.C. 1671d(d)].

Paul Freedenberg,

*Assistant Secretary for Trade Administration.*

January 21, 1986.

[FR Doc. 86-1706 Filed 1-24-86; 8:45 am]

BILLING CODE 3510-DS-M

**International Trade Administration****[A-351-502]****Antidumping; Fuel Ethanol From Brazil;  
Final Determination of Sales at Less  
Than Fair Value****AGENCY:** International Trade  
Administration, Import Administration,  
Commerce.**ACTION:** Notice.

**SUMMARY:** We have determined that fuel ethanol from Brazil is being, or is likely to be sold in the United States at less than fair value. We also have determined that critical circumstances do not exist. We have notified the U.S. International Trade Commission (ITC) of our determination. We have directed the U.S. Customs Service to continue to suspend the liquidation of all entries of fuel ethanol from Brazil that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice, and to require a cash deposit or bond for each entry in an amount equal to the estimated dumping margin as described in the "Continuation of Suspension of Liquidation" section of this notice.

If this investigation proceeds normally, the ITC will make a final determination by March 21, 1986.

**EFFECTIVE DATE:** February 14, 1986.**FOR FURTHER INFORMATION CONTACT:**

Mary S. Clapp or Kenneth G. Shimabukuro, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-1769 or (202) 377-5332.

**SUPPLEMENTARY INFORMATION:****Final Determination**

We have determined that fuel ethanol from Brazil is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (19

U.S.C. 1673d(a)) (the Act). The dumping margins range from 17.6 to 298.7 percent, and the weighted-average margins for the two respondents are shown in the "Continuation of Suspension of Liquidation" section of this notice.

**Case History**

On February 25, 1985, we received a petition filed in proper form by the Ad Hoc Committee of Domestic Fuel Ethanol Producers on behalf of the domestic producers of fuel ethanol. We were informed, by letter dated March 15, 1985, that the Oil Chemical And Atomic Workers International Union (OCAW) joined the Ad Hoc Committee of Fuel Ethanol Producers as petitioners. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Brazil are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act (19 U.S.C. 1673), and that these imports are materially injuring, or threatening material injury to, an U.S. industry. The petitioners also alleged that sales in the home market were made at prices below the cost of production, and that "critical circumstances" exist.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping investigation. We initiated the investigation on March 18, 1985 (50 FR 11748), and notified the ITC of our action.

On April 11, 1985, the ITC found that there is a reasonable indication that imports of fuel ethanol from Brazil are threatening material injury to a U.S. industry (U.S. ITC Pub. No. 1678, April 1985).

Based on information obtained in response to preliminary questionnaires, we presented questionnaires to Cooperative Central dos Produtores de Acucare de Acool do Estado de Sao Paulo (COPERSUCAR) and certain of its distiller members and related sugar cane growers and Matarazzo Trading Cia. de Exportacao e Importacao (Matarazzo), formerly known as Comac Trading, because these companies knew that the merchandise was being sold for export to the United States.

Three independent trading houses, Companhia de Comercio Exterior (I.A.T.), Cotia Comercio Exportacao e Importacao S.A. (Cotia), and S.A. Costa Pinto Exportacao e Importacao (Costa Pinto), filed voluntary responses. The responses from Cotia and Costa Pinto were incomplete and, therefore, were not used. I.A.T.'s response, being

complete, was used for purposes of the preliminary determination.

By letter dated June 12, 1985, the petitioners alleged that Interbras, the major trading company selling fuel ethanol to the United States, was reselling the merchandise in the United States at prices which did not cover its costs of acquisition from unrelated suppliers plus the costs incurred in selling the merchandise to the unrelated U.S. purchasers. After careful consideration we initiated an investigation of the facts relating to this allegation. Therefore, we presented Petrobras Comercio Internacional S.A. Interbras (Interbras) with a questionnaire on July 18, 1985. The responses to this questionnaire included information from various entities in the Petrobras corporate family. These entities are referred to collectively and separately as P.I.I. throughout this notice.

The preliminary determination was postponed until September 18, 1985 (50 FR 29494, 50 FR 33814) at the request of the petitioners. The preliminary determination was made on September 18, 1985 (50 FR 38871).

On October 7, October 8, 1985, and January 8, 1986, requests were received from respondents requesting that the final determination be postponed until February 7, 1986. The requests were granted on January 13, 1986 (51 FR 2746).

#### Scope of Investigation

The product covered by this investigation is fuel grade ethyl alcohol (fuel ethanol), currently classifiable in the *Tariff Schedules of the United States Annotated* (TSUSA) under dual item number 427.8800/901.50, as well as that entered as blended ethanol under TSUSA item numbers 430.10, 430.20, and 432.10.

Other blends may be included in the scope of the investigation.

The Department intends to work closely with the U.S. Customs Service to prevent circumvention of our determination through importation of ethanol blends.

We made comparisons on approximately 90 percent of sales of fuel ethanol to the United States during the period of investigation, September 1, 1984, through February 28, 1985.

#### Fair Value Comparisons

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with foreign market value as specified below, for P.I.I. and Copersucar.

#### United States Price

##### P.I.I.

Based on the allegation that P.I.I. was selling Fuel ethanol at a loss (i.e. at prices which were, after the deduction of all costs incurred in selling the merchandise in the United States, lower than its costs of acquisition from unrelated suppliers), we analyzed P.I.I.'s prices and costs relative to all sales to the United States during the period of investigation. In order to determine whether P.I.I. recovered its acquisition costs, we deducted all costs and expenses incurred in selling the merchandise by Interbras and its U.S. subsidiary, Interior, from the selling price to the first unrelated U.S. purchaser. We made deductions from the selling price for special customs duties, regular customs duties, general selling expenses, insurance, credit costs, storage and handling, commissions, and discounts incurred in the United States. We also deducted operating costs incurred in Brazil, and ocean freight charges. Finally, we made an addition to the selling price to the first unrelated U.S. customer for payments received under the IPI export credit premium program because these payments were directly related to the exportation of the ethanol and because they effectively enhanced the net return to Interbras.

Certain of the costs incurred by P.I.I. were denominated in cruzeiros. For purposes of converting cruzeiro denominated amounts to United States dollar equivalents, we used the certified exchange rate for the date of exportation. We considered these rates as reflecting most accurately the actual costs incurred. All other charges were reported in U.S. dollars. Therefore, no currency conversion was required.

Based on our analysis of all sales by P.I.I. in the U.S. during the period of investigation, we have determined that a substantial portion of those sales were at prices which resulted in substantial losses to P.I.I. relative to its acquisition costs. Normally a determination of whether there are sales at less than fair value focuses on a manufacturer's or producer's sales. However, the law recognizes that where a trading company (middleman) is involved in sales under investigation, that trading company also can be the cause of less than fair value sales. Congress, in the legislative reports to the Trade Agreements Act of 1979, left to this agency the task of establishing a methodology which would accurately capture this "middleman dumping."

We determined whether such "middleman dumping" was occurring by analyzing whether a substantial portion

of the trading company's sales to the United States during the period of investigation were at prices substantially below its acquisition costs for the merchandise. We do not believe that an analysis based solely upon whether any sales have been made at prices below acquisition costs by any amount is appropriate here. P.I.I. commingles acquisitions of ethanol (a fungible product) both prior to exportation and between importation and sale in the United States. Thus, they cannot attribute acquisition costs directly to specific sales. Under these circumstances we do not believe it would be reasonable to determine there was "middleman dumping" based on a few sales determined after the fact to be slightly below acquisition cost. Instead, we believe that measurement of the proportion of sales priced below the cost of acquisition as well as the magnitude of the resulting losses on those sales forms an appropriate basis for determining that it was selling the merchandise at less than acquisition cost.

Based on our determination of sales at less than acquisition cost, we have determined that the appropriate level at which to make fair value comparisons is on sales by Interbras and its related U.S. subsidiary, Interior, to the United States. Because all of the U.S. sales by P.I.I. were made after importation, we based United States price on exporter's sales price, in accordance with section 772(c) of the Act. We calculated the exporter's sales price on the basis of ex-tank prices with deductions for the costs indicated above in the discussion of the analysis of sales at less than acquisition costs, with the exception of selling expenses incurred in Brazil which we did not deduct.

#### Copersucar

As provided for in section 772(b) of the Act, for sales by Copersucar through a trading company other P.I.I., we based United States price on purchase price because Copersucar knew that the fuel ethanol was destined for the United States prior to this sale. The term of sales was ex-tank, therefore, a deduction was made for inland freight.

#### I.A.T. and Matarazzo

Although we received and verified completed questionnaire responses from I.A.T. and Matarazzo, we did not make fair value comparisons on ethanol sold to the United States through these two companies for purposes of this determination. Matarazzo, despite its original statement to the contrary, now claims that its suppliers knew at the

time of the sales to Matarazzo that the merchandise was destined for the United States. I.A.T. claims that its suppliers did not know the destination of the ethanol it purchased. However, based on our knowledge of the industry, we have determined that the only export market for fuel grade anhydrous ethanol from Brazil during the period of investigation was the United States. Since I.A.T. and Matarazzo do not sell in the home market, we have determined that their suppliers know or should have known that the anhydrous ethanol was being sold for export to the United States. Therefore, the appropriate level at which to make fair value comparison is sales prices between these companies and their suppliers for United States price and sales between suppliers and suppliers' customers in the home market for foreign market value. However, we do not have information on the suppliers' prices or costs, because in their original responses both trading companies asserted that their suppliers had no knowledge of destination. Since we do not have a basis for determining United States price or foreign market value for sales of these suppliers to I.A.T. and Matarazzo, we have not calculated margins for these sales. Instead, we are applying the "all others" rate set forth in the "Continuation of Suspension of Liquidation" section of this notice from entries of merchandise from these companies.

#### Foreign Market Value

##### General

Petitioner's alleged that home market prices of fuel ethanol were made at prices which were below cost of production, in substantial quantities over an extended period of time, and were at prices which do not permit the recovery of costs over a reasonable period.

##### P.I.I.

For P.I.I. in accordance with section 773(a)(1)(A), we considered home market sales by its parent, Petrobras, because there was a viable home market. P.I.I. claims that due to the nature of price controls in Brazil, the home market sales are inappropriate for use in determining foreign market value. We determined that home market sales could be used since (1) the mere existence of price controls does not invalidate home market prices (see, *Certain Carbon Steel Products from Brazil*, 49 FR 28298), and (2) these home market sales were in the ordinary course of trade of fuel ethanol in Brazil.

We compared P.I.I.'s home market prices to its costs of acquisition plus expenses to determine whether the home market sales were made at prices below costs. Because the formulation of P.I.I.'s home market prices did not account for the total selling, general and administrative expenses incurred on home market sales, we determined that all home market sales were at prices below cost. Therefore, we based foreign market value on constructed value. Since P.I.I.'s general expenses were less than the statutory minimum of 10 percent, we added the statutory minimum to the acquisition costs. Since the actual profit was below the statutory minimum of 8 percent, we added the statutory minimum. There were no packing costs. We made a circumstance of sale adjustment for the I.P.I. credit premium payment in accordance with § 353.15 of our regulations.

##### Copersucar

For purposes of determining Copersucar's foreign market value, we determined that Copersucar had a sufficient number of home market sales for purposes of our determination. We compared the home market prices to Copersucar's cost of production to determine whether these sales were at prices below the cost of production. Cost of production was based on the costs of materials, fabrication and general expenses. Due to the hyperinflationary nature of the Brazilian economy, comparisons of prices and the cost of production were made on a monthly basis. We found that Copersucar's prices were below the cost of production for a substantial number of sales, over an extended period of time and were at prices which did not permit the recovery of costs over a reasonable period of time. Therefore, we based foreign market value on the constructed value in the month of the sale to the United States. We calculated the constructed value on the basis of the costs of materials and fabrication. Since the actual general expenses exceeded the statutory minimum of 10 percent, we used the actual expenses. Since profit was less than the statutory minimum of 8 percent, we used the statutory minimum. We made adjustments for differences in credit terms and post-sale storage in accordance with § 353.15 of our regulations.

##### Currency Conversions

All transactions involving Copersucar were denominated in cruzeiros. Therefore, no currency conversions were necessary.

For fair value comparisons for P.I.I. involving exporter's sales price, we used

the official exchange rate on the date of purchase in the U.S., consistent with section 615 of the Trade and Tariff Act of 1984 (1984 Act). Therefore, we chose not to follow § 353.56(a)(2) of our regulations which predate the 1984 Act.

##### Petitioners' Comments

*Comment 1:* Petitioners contend that the Department should follow the precedent it established in *Color Television Receivers from Korea* in calculating the credit expenses incurred on U.S. sales by P.I.I. Under this approach the credit period is broken into two segments; first, from date of export to date of sale to the unrelated customer in the United States and second, from the time of that sale to receipt of payment from the unrelated customer. Also, the credit costs associated with these segments should be the parent company's cost of short-term credit and the U.S. subsidiary's short-term credit cost, respectively. Finally, the Department must ascertain the actual number of days associated with each segment and not rely on average periods.

*DOC Response:* For purposes of this final determination we have continued to use the methodology employed in the preliminary determination, and in numerous previous cases, and have included only those credit expenses incurred between the date of sale to the unrelated U.S. customer and payment by that customer.

*Comment 2:* Petitioners ask that the Department use best information available for determining direct expenses incurred in Brazil on U.S. sales by P.I.I. because the response contained only a lump-sum amount, thus denying the Department an opportunity to judge the completeness and accuracy of the reported costs.

*DOC Response:* During the verification of the response, we carefully examined all expenses incurred by P.I.I. on its U.S. sales and we have deducted those in our analysis of sales at less than the cost of acquisition.

*Comment 3:* Petitioners claim that all indirect selling expenses incurred in Brazil should be deducted from the exporter's sales price.

*DOC Response:* For purposes of this final we have continued to use the methodology employed in the preliminary determination, and in numerous previous cases, and have not deducted selling expenses incurred prior to importation.

*Comment 4:* Petitioners argue that all cruzeiro-denominated expenses relating to U.S. sales should be converted to dollars at the exchange rates in effect at



the time the expenses are incurred for the analysis of "trading company dumping" as well as for the calculation of exporter's sales prices. Alternatively, if conversions are made as of the date of sale, cruzeiro costs should be adjusted to reflect what cost would have been had it been incurred in the month of the sale.

*DOC Response:* For all conversions involved in the ESP calculations we used the exchange rate in effect on the date of sale for reasons stated in the "Foreign Market Value" section of this notice. For our "middleman dumping" analysis, we used exchange rates in effect at the time the cost was incurred as most accurately reflecting the true value of money. The use of different exchange rates for the two types of comparisons is appropriate. In trading company dumping analysis we are looking at whether the trading company is covering its cost of acquisition and selling expenses. In exporter's sales price we are deducting charges actually incurred in bringing the merchandise to the U.S. so as to arrive at an ex-tank comparison with foreign market value.

*Comment 5:* Petitioners argue that because Interbras' subsidiary, Interbras Cayman Co., is involved in sales to the U.S. the Department should deduct direct or indirect expenses incurred prior to importation by that subsidiary from exporter's sales price.

*DOC Response:* See our response to Petitioners' Comment 3.

*Comment 6:* Petitioners point out that Interior's income statement includes a fund for doubtful accounts and request that a portion of this amount be deducted from exporter's sales prices.

*DOC Response:* The fund for doubtful accounts was accounted for in the selling, general and administrative expenses of Interior and the appropriate amount was deducted from the selling price in our calculations.

*Comment 7:* Petitioners claim that the proper basis for the allocation of Interior's general and administrative expenses is sales value, not number of invoices.

*DOC Response:* We agree that the number of invoices is not an appropriate basis for allocating general and administrative expenses. The Department has applied its usual basis, costs of goods sold, to allocate general and administrative expenses.

*Comment 8:* Petitioners argue that the Department should reject Interbras/Interior's claim that Petrobras' home market prices, set by the Brazilian National Petroleum Council (CNP), should not be used for foreign market value. Petitioners contend that these sales are at the same level of trade, are

made in the ordinary course of trade, and are at quantities similar to Interior's U.S. sales. They argue further that the fact that these prices are set by a state agency does not invalidate the prices.

*DOC Response:* We agree that the fact that CNP sets than does not invalidate the prices by Petrobras in the home market for use in determining foreign market value. However, since we found that the CNP prices are below Petrobras' costs, we disregarded them.

*Comment 9:* Petitioners argue that various deductions from the CNP price claimed by Interbras/Interior, including contributions to CNP fund, cannot be allowed. Specifically, petitioners argue that these deductions cannot be treated as circumstance of sale adjustments because they are not directly related to the sales under consideration.

*DOC Response:* Since we did not base foreign market value on the CNP prices, the issue is moot.

*Comment 10:* Petitioners contend that a separate margin should not be calculated for Copersucar. Since virtually all of the fuel ethanol sold by Copersucar for export to the United States was sold to Interbras, and since Interbras was selling at less than its acquisition cost plus expenses, the appropriate analysis is at the Interbras level.

*DOC Response:* We have calculated a separate rate for Copersucar based on its sales to a trading company other than Interbras, because Copersucar knew the destination of the ethanol prior to the sale and because Copersucar filed an adequate response. For Copersucar's sales through Interbras, we did not make fair value comparisons at the Copersucar level.

*Comment 11:* Petitioners contend that if the Department does calculate a separate margin for Copersucar, the Department does calculate a separate margin for Copersucar, the Department should reconcile the discrepancy between the prices reported by Copersucar and the acquisition costs reported by Interbras.

*DOC Response:* Since we did not make fair value comparisons on Copersucar's sales through Interbras, the issue is moot.

*Comment 12:* Petitioners argue that if a separate margin is calculated for Copersucar, the Department should take account of inventory costs incurred prior to the export sale because any ethanol produced above the distilleries' domestic production quotas can only be sold for export. Thus, any inventory expense incurred in the storage of excess production is directly related to export export sales. In addition, any

costs incurred between the sale and the date the ethanol leaves the distilleries should also be taken into account.

*DOC Response:* We disagree that such inventory costs are directly related to U.S. sales because ethanol sold in both markets is drawn from the same inventory. Moreover, production above the quota is not necessarily exported. With regard to the post-sale period, no storage costs were incurred relative to the sale to the sale to the trading company for export to the United States.

*Comment 13:* Petitioners argue that if a separate margin is calculated for Copersucar, foreign market value should be based on constructed value because of the degree to which Copersucar's home market sales were at prices below the cost of production.

*DOC Response:* For purposes of our comparison, we determined that Copersucar's home market sales were made over an extended period of time and in substantial quantities at prices which did not permit recovery of all costs within a reasonable period of time. Therefore, we based foreign market value on constructed value.

*Comment 14:* Petitioners argue that the Department should properly match contemporaneous costs and prices in the context of Brazil's hyper-inflationary economy.

*DOC Response:* We agree. In the analysis of sales below cost of production, the Department followed its usual practice in hyper-inflationary economies and compared prices in each month to the industry weighted-average cost of production of the same month.

*Comment 15:* Petitioners argue that in calculating the cost of production for fuel ethanol, the Department should not use the average cost of producing hydrous and anhydrous ethanol, as reported by certain respondents. This is because hydrous ethanol is a prior stage product and less costly to produce. Therefore, use of average ethanol production costs understates the cost of producing anhydrous.

*DOC Response:* We agree. The Department did not use the average cost of hydrous and anhydrous ethanol production, but adjusted this average cost for the additional processing required to produce anhydrous ethanol.

*Comment 16:* Petitioners allege that the depreciation costs reported by Copersucar's member distilleries appear to be understated.

*DOC Response:* The depreciation expenses reported in the responses did not reflect the full amount of the respondent's depreciation. However, depreciation expenses were included as a part of the monetary correction and

also, in some cases, as part of "other" expenses. After considering the full amount of depreciation included in the various cost categories, the Department concluded that such expenses were not understated.

*Comment 17:* Petitioners claim that the ICM tax paid on ethanol inputs may have been understated.

*DOC Response:* The Department verified the amount of the ICM tax paid on ethanol inputs and did not find any discrepancies. Therefore, the verified amount was used.

*Comment 18:* Petitioners allege that distillery costs which are shared between ethanol and sugar production may be improperly allocated by (1) including costs which can be directly tied to the production of one of the products and (2) by allocating the costs on the basis of costs of goods sold rather than production volume.

*DOC Response:* Distillery costs were allocated between ethanol and sugar production based on production volume, not cost of goods sold. Costs which were allocated by production volume were costs incurred in the common processes used for the production of ethanol and sugar.

*Comment 19:* Petitioners argue that intercrop and sugar cane production costs should be adjusted by a Brazilian inflation index, such as ORTN, so that they can be properly allocated.

*DOC Response:* We agree. The methodology used by the Department indexes all intercrop planting, fallow and cultivation costs.

*Comment 20:* Petitioners argue that the Department erred in calculating Copersucar's credit expenses by not treating prepayment for home market sales as a credit revenue.

*DOC Response:* For purposes of this determination we have treated prepayment as a credit revenue.

*Comment 21:* Petitioners contend that Copersucar's claim for home market inventory costs should be denied unless they are shown to have been incurred after the sales and are borne by Copersucar since there is evidence on the record that the government may be absorbing these costs.

*DOC Response:* Since we are using the date of invoicing as the date of sale, we do not consider these costs as post-sale inventory costs and have made no adjustment.

*Comment 22:* Petitioners argue that the margins calculated for Matarazzo and I.A.T. were calculated at the incorrect level of trade since knowledge of destination can be attributed to their suppliers at the time of sale.

*DOC Response:* See our response to Petitioner's Comment 25.

*Comment 23:* Petitioners contend that margins on sales through Matarazzo and I.A.T. should be based on their suppliers' constructed value since those suppliers are probably selling in the home market at prices below the cost of production.

*DOC Response:* See our discussion in the "United States Price" section of this notice.

*Comment 24:* Petitioners argue that the margin for "all others" was based on an average which improperly included the Copersucar margin. Since the vast majority of Copersucar's exports were through Interbras, this ethanol was double-counted in the calculation of the "all others" rate.

*DOC Response:* For purposes of this determination, we based the margin for "all others" on the weighted average of the margins for sales by P.I.I. and sales by Copersucar to a trading company other than Interbras. Therefore, we avoid double-counting.

*Comment 25:* Petitioners contend that the Department should not consider the amended voluntary responses filed by Cotia and Costa Pinto after the preliminary determination since they were not filed in a timely manner.

*DOC Response:* Since distillers selling through independent trading companies have or should have had knowledge of destination, imputed or actual, the information in the responses is irrelevant to this determination. Therefore, issues relating to our use of these responses are moot.

*Comment 26:* Petitioners support the Department's inclusion of fuel ethanol containing certain additives within the scope of the investigation. Petitioners urge a clarification of the scope of the investigation of Brazilian ethanol which has been treated in the Caribbean Basin region by removing water to create anhydrous ethanol for fuel use.

*DOC Response:* The issue concerning wet Brazilian non-fuel grade ethanol which is shipped to third countries to be dehydrated into anhydrous fuel ethanol for export to the United States was first raised in Petitioners' Prehearing Brief. As we have no knowledge of actual shipments of this nature, originating from Brazil, entering into the United States, we determine that a clarification of the scope of our determination would be premature. If, at a later date, or at the time of any administrative review there is evidence of such imports, the Department will address the issue more fully.

*Comment 27:* Petitioners argue that the Department should follow the practice adopted in its recent findings on *Hydrogenated Castor Oil* and *12-Hydroxystearic Acid from Brazil* and

not make an adjustment for the IPI credit premium on P.I.I.'s U.S. sales.

*DOC Response:* We have determined that these payments are a circumstance of sale which is directly related to the export sales and adjusted the foreign market value accordingly.

*Comment 28:* Petitioner argue that no adjustments can be made to the CNP price charged by P.I.I. in the home market without a detailed reporting of sales transactions and related costs.

*DOC Response:* Since we did not calculate foreign market value for P.I.I., based on its home market prices, the issue is moot.

*Comment 29:* Petitioners argue that if a Copersucar rate is deemed appropriate, the analysis should be made at the distillery level since the distillers were aware of the destination of the ethanol.

*DOC Response:* Copersucar is a cooperative made up of member distillers. As such, all are related parties and are treated as one corporate entity. Therefore, all analysis of prices and costs includes factors relating to the total corporate organization.

*Comment 30:* Petitioners argue that I.A.T.'s response should be disregarded since certain information was not included in the response and the response was a voluntary response.

*DOC Response:* Since we did not use I.A.T.'s response for other reasons, the issue is moot.

*Comment 31:* Petitioners concur with the Department's use of I.A.T.'s third country sales in the same month as the U.S. sales if analysis is to be done at the I.A.T. level.

*DOC Response:* Since we did not make fair value comparisons for these sales, the issue is moot.

*Comment 32:* Petitioners argue that if the Department compares I.A.T.'s third country sales of hydrous ethanol to U.S. sales of anhydrous ethanol, adjustments for differences in physical characteristics of the merchandise should be based on actual production costs rather than acquisition costs.

*DOC Response:* Since we did not make fair value comparisons for these sales, the issue is moot.

*Comment 33:* Petitioners argue that the "all other" rate should reflect the weighted-average margins calculated for P.I.I., I.A.T. and Matarazzo as reflecting actual sales behavior.

*DOC Response:* See our response to Petitioners' Comment 24. B-42

#### Respondents' Comments

*Comment 1:* P.I.I. argues that fair value comparisons for the fuel ethanol that it and its subsidiary Interior sold in



the United States should have been based solely on the pricing practices of its major supplier since that supplier knew that the merchandise was destined for the United States at the time of sale. In P.I.I.'s view, there exists a statutory presumption that the purchase price will be the producer's price to the United States before importation, where the producer knew the destination at the time of its sale to the exporter, and a reseller's price cannot be considered the basis for exporter's sales price once a purchase price transaction is identified.

**DOC Response:** The legislative history of the 1979 amendments to the Act, while sustaining the Treasury Department's administrative practice of using the price between a manufacturer and unrelated trading company for exports to the United States when the manufacturer knew the destination at the time of its sale to the exporter, was not intended to bar us from looking at all facets of a transaction. Where there is a specific allegation that a trading company is failing to recover its costs in transactions concerning the subject merchandise, we will investigate that allegation to determine whether there is "middleman dumping." See *Roller Chains from Japan*, 48 FR 51801. Based on the allegation in this investigation that P.I.I. was selling fuel ethanol at a loss, we analyzed P.I.I.'s prices and costs relative to all sales to the United States during the period of investigation. We found that P.I.I. was selling substantial quantities in the United States at prices substantially below acquisition costs and expenses.

Therefore, we determined that the appropriate level to analyze for our investigation of dumping was that between the trading company and the unrelated United States purchaser. In calculating United States price, the statute directs that either the purchase price, or the exporter's sales price, of the merchandise be utilized, whichever is appropriate. Since the merchandise in question is sold by P.I.I. in the United States after the time of importation, use of the exporter's sales price was appropriate. 19 U.S.C. 1677a.

**Comment 2:** Interbras contends that any selling below acquisition and selling costs by P.I.I. was, at most, *de minimis* since offsetting profits on some sales offset losses on others resulting in a minimal overall loss, if any.

**DOC Response:** Our analysis shows that a substantial portion of these sales were made at prices significantly below costs of acquisition plus selling expenses.

**Comment 3:** P.I.I. argues that there is no statutory or regulatory basis for investigating "middleman dumping."

**DOC Response:** We disagree. The legislative history to section 772 of the Tariff Act of 1930 directs the Department to examine sales from the foreign producer to middlemen (trading companies) and any sales between middlemen before sale to the first unrelated U.S. purchaser to avoid below cost sales by the middlemen.

**Comment 4:** P.I.I. argues that the Finsocial tax should be added to the United States price since it is paid only on home market sales.

**DOC Response:** The statute provides for an addition to United States price for any tax which is rebated or not imposed by reason of exportation of the merchandise, but only if the tax is added or included in home market sales. Since we did not base our comparisons on home market sales, but on constructed value, no adjustment to United States price is required.

**Comment 5:** P.I.I. contends that in calculating its United States price, freight included in the reported expenses incurred in Brazil should not be deducted since it relates to the acquisition of the merchandise, not delivery to the point of exportation.

**DOC Response:** The freight expenses reflected costs incurred in acquiring the ethanol which were not included in the acquisition price. Therefore, these costs were deducted only in the calculation of sales below acquisition costs.

**Comment 6:** P.I.I. argues that the deduction of the special tariff on ethanol in determining whether prices obtained on U.S. sales covered acquisition costs and selling expenses and in the calculation of the exporter's sales price is inappropriate since the tariff was imposed in contravention of the General Agreement on Tariffs and Trade (GATT) and is the subject of compensation in the form of a reduced U.S. tariff on canned corned beef from Brazil.

**DOC Response:** The Department is required to subtract from the exporter's sales price any United States import duties incident to bringing the merchandise from the place of shipment to the place of delivery in the United States. 19 U.S.C. 1677a(d)(2). As this duty is a cost incurred by P.I.I. in selling the merchandise which has not been reduced by revenues received by P.I.I. from any other source, the Department has deducted the full amount in accordance with the statute. With respect to the respondent's concerns regarding the legality of the United States tariff, the Department does not have the authority, nor is an antidumping duty investigation under the Act an appropriate forum, to make such a legal determination.

**Comment 7:** P.I.I. argues that in determining whether its sales to the United States have been at prices above acquisition costs plus expenses, the Department should determine whether costs have been recovered over a reasonable period of time. P.I.I. claims that any short term analysis is invalid since ethanol prices are tied to those of gasoline and are therefore not set by the seller. P.I.I. bases its argument on the statutory language of section 773(b) of the Act which sets the parameters for determining whether home market sales are made at prices which were less than the cost of production.

**DOC Response:** The Department finds that the period of investigation provides a reasonable period of time during which to determine whether P.I.I. recovers its costs of acquisition plus expenses on its sales of ethanol to the United States. We do not find evidence that any relationship between the prices for ethanol, the prices for gasoline and the alcohol crop year requires a larger investigatory period before costs can be recovered. Therefore, using the parameters of section 773(b) of the Act, P.I.I. has not recovered its costs of acquisition plus expenses over a reasonable period of time.

**Comment 8:** P.I.I. argues that if fair value comparisons are made at the P.I.I. level, Petrobras' home market prices cannot be used in determining foreign market value since they are unrelated to the real value of fuel ethanol sold in Brazil. This argument is based on the fact that the ethanol market in Brazil is completely controlled by the government.

**DOC Response:** We are not persuaded that Petrobras' home market prices are an inappropriate basis for calculating foreign market value. Its sales are in the ordinary course of trade and government price controls do not invalidate these prices for fair value comparisons. Thus, where we did not use CNP prices for foreign market value it was because those prices were below the cost of production.

**Comment 9:** P.I.I. argues that when converting cruzeiro-based costs for purposes of determining exporter's sales price, foreign market value, and acquisition price and expenses, in a trading company dumping determination, the Department must use the rate in effect on the date of sale to the United States. It is asserted that the use of different rates of conversion for P.I.I.'s costs is by itself responsible for the finding of trading company dumping.

**DOC Response:** We disagree. For ESP and FMV calculations the Department uses a conversion rate based on the date

of sale to the United States. However, neither of these calculations are designed to evaluate whether an exporter is selling above acquisition cost plus expenses for purposes of trading company dumping. See Response to Petitioners' Comment 4.

*Comment 10:* P.I.I. argues that if foreign market value is based on the CNP price charged by Petrobras, certain deductions should be made for elements of the price which are unrelated to the value of fuel ethanol. These deductions include proceeds maintained for the account of the CNP, the costs of maintaining excess inventory, taxes, and certain freight costs. P.I.I. would have the CNP fund treated as a federal tax requiring an addition to the United States price for the amount of the fund, or as a direct expense for which a circumstance of sales adjustment is required.

*DOC Response:* Since foreign market value for P.I.I. was based on constructed value, issues pertaining to the CNP price and adjustments thereto are moot.

*Comment 11:* Copersucar argues that its foreign market value must be determined on the basis of the price in effect on the date of the U.S. sale to which it is being compared rather than prices in effect throughout the month of sale since there were significant price increases between the dates of sale to the United States and the end of the month.

*DOC Response:* Because we found Copersucar's home market prices to be below cost in months where U.S. sales occurred, we based foreign market value on constructed value during the month of the sale to the trading company for export to the United States.

*Comment 12:* Copersucar argues that the costs related to home market inventory should be treated as directly related, post sale expenses since home market prices, production levels and delivery terms are set prior to production.

*DOC Response:* We have determined the date of invoicing to be the date of sale. Therefore, the inventory costs incurred prior to invoicing cannot be considered directly related to the sales in question.

*Comment 13:* Copersucar claims that inventory carrying costs incurred relative to U.S. sales are not directly related to sales since there are no requirements in the contracts to hold inventory.

*DOC Response:* We agree and have no adjustment.

*Comment 14:* Copersucar argues that the entire amount of a January 1985 sale should be included in our analysis even though a substantial portion of the

ethanol was delivered after the period of investigation because all of the ethanol was included in a single contract and because payment for a large portion of the ethanol was made prior to delivery.

*DOC Response:* This sale was excluded in our calculation of Copersucar's margin, because it was a sale to Interbras (see Petitioners' Comment 10).

*Comment 15:* Copersucar argues that the Department should compare home market prices to production costs by matching monthly production costs to the sale prices in the months in which that production was actually sold since there is often a two or three month lag between production and sale.

*DOC Response:* We disagree. In a hyper-inflationary economy such as Brazil, we match prices with costs incurred in the month of sale as the most accurate way to compare equivalent currency values. We have done so for purposes of this determination.

*Comment 16:* Copersucar argues that the Department should accept the production costs reported by the distillers and the methodologies used by them because they are reasonable, consistent with company practices and financial statements, and are not contrary to methodologies employed by the Department in dealing with hyper-inflationary economies.

*DOC Response:* After analysis of the companies' accounting practices, the Department made adjustments to certain costs to reflect the effects of inflation, and also to allocation methods so as to account for the additional costs attributable to anhydrous ethanol.

*Comment 17:* Copersucar contends that the Department improperly included ethanol blends in the scope of the investigation because they were not included in the scope of the petition and they have not been investigated.

*DOC Response:* The Department has the authority not only to define the scope but also to clarify the statement of scope of an investigation. See *Royal Business Machines v. United States* 1 CIT 80 (1980), AFFD, 669 F.2d 692 (Fed. Cir. 1982). The Department has determined that certain fuel-grade ethanol blends are the same class or kind of merchandise as fuel grade ethanol. Further, the statute does not require the Department to make price comparisons on all types of merchandise within the class or kind that are subject to an investigation. See, e.g., *Large Power Transformers from France* (47 FR 10268). Therefore, the Department properly included certain ethanol blends within the scope of the investigation.

*Comment 18:* I.A.T. argues that the Department erred in only considering

two of its four sales to third countries for purposes of the preliminary determination.

*DOC Response:* Since we did not use I.A.T.'s data for purposes of this determination, the issue is moot.

*Comment 19:* I.A.T. argues that its United States prices should be increased in order to reflect revenues received from the Government of Brazil under the I.P.I. credit premium program.

*DOC Response:* Since we did not use I.A.T.'s data for purposes of this determination, the issue is moot.

*Comment 20:* I.A.T. argues that, due to unusual circumstances of its sales activities, the Department should use a more liberal standard than normal for determining whether less than fair value margins are *de minimis*. This claim is based on uncertainties involved in comparisons of similar rather than identical merchandise.

*DOC Response:* Since we did not use I.A.T.'s sales for purposes of this determination, the issue is moot.

*Comment 21:* I.A.T. argues that the Department should use a weighted-average United States price since the total safety margin on one sale is greater than the total margin on the other U.S. sales.

*DOC Response:* Since we did not use I.A.T.'s sales for purposes of this determination, the issue is moot.

*Comment 22:* I.A.T. contends that the Department should not use the constructed value of its suppliers as the basis for calculating I.A.T.'s foreign market value because I.A.T.'s suppliers did not know and could not have known anhydrous ethanol sold to I.A.T. was destined for the United States.

*DOC Response:* We have determined on the basis of our current knowledge of the ethanol market, including I.A.T.'s commercial activities, that the distillers supplying the trading companies knew or should have known the destination of the anhydrous fuel ethanol at the time of the sale to the trading companies during our review period. Therefore, we determined that fair value comparisons should be made at the distiller level.

*Comment 23:* Costa Pinto argues that the Department erred in using the acquisition cost of fuel ethanol as the basis of constructed value for Matarazzo, a trading company which only had sales to the United States during the period of investigation. Instead, Costa Pinto contends that the constructed value should be based on cost of production information provided by Copersucar, which is a respondent in this investigation, instead of the acquisition cost.

**DOC Response:** Since we did not make fair value comparisons for Matarazzo for purposes of this determination, the issue is moot.

**Comment 24:** Costa Pinto and Cotia contend that the Department erred in not considering their voluntary response since the information which was not provided, acquisition costs, is not relevant to the investigation and since Costa Pinto was not notified of the response deficiencies.

**DOC Response:** See our response to Petitioners' Comment 25.

**Comment 25:** Costa Pinto argues that since its response was corrected in time to permit verification, the Department is obligated to consider the response for purposes of this final determination.

**DOC Response:** See our response to Petitioners' Comment 25.

**Comment 26:** Costa Pinto argues that if the Department does not verify its response, documents supplied for the record should form the basis of the best information available concerning Costa Pinto's selling practices.

**DOC Response:** See our response to Petitioners' Comment 25.

**Comment 27:** Cotia contends that the Department erred in not requiring it to respond to the questionnaire in this investigation since it is historically a substantial exporter of fuel ethanol to the United States and it had informed the Department that its suppliers did not know the destination of the merchandise.

**DOC Response:** See our response to Petitioners' Comment 25.

**Comment 28:** Costa Pinto and Cotia contend that information obtained from Interbras should not be used to calculate the weighted-average margin used as the "all others" rate because it would be improper to spread the impact of trading company dumping beyond the actual trading company involved since such behavior is so unusual and only Interbras is the subject of exporter's sales price analysis.

**DOC Response:** It is our standard practice to use all affirmative rates in calculating the "all other" rate because this weighted average is the best approximation of the behavior of investigated and non-investigated firms. To the extent that other exporters have behaved differently from P.I.I., that will be reflected in actual antidumping duty assessment.

#### Verification

As provided in section 776(a) of the Act, we verified all the information provided by respondents by using standard verification procedures, including examination of relevant sales

and accounting records of the companies.

#### Final Negative Determination of Critical Circumstances

The petitioner alleged that imports of fuel ethanol from Brazil present "critical circumstances." Under section 733(e)(1) of the Act, critical circumstances exist when (1) there is a history of dumping in the United States, or elsewhere, of the class or kind of the merchandise which is the subject of the investigation; or the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise, which is the subject of the investigation, at less than its fair value; and (2) there have been massive imports of the class or kind of merchandise that is the subject of the investigation over a relatively short period.

In determining whether there have been massive imports over a relatively short period, we normally consider the following factors: (1) Whether recent imports have increased significantly; (2) whether recent import penetration ratios have increased significantly; (3) whether the pattern of recent imports may be explained by seasonal factors; and (4) whether recent imports are significantly above average imports calculated over the last three years.

Based on our analysis of these factors, we have determined that imports of fuel ethanol from Brazil were not massive over a relatively short period.

We, therefore, did not need to consider whether there is a history of dumping of fuel ethanol, or whether the person by whom or for whose account this product was imported knew or should have known that the exporter were selling this product at less than fair value.

We have determined, for the reasons described above, that "critical circumstances" do not exist with respect to fuel ethanol from Brazil.

#### Continuation of Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to continue to suspend liquidation of all entries of fuel ethanol from Brazil that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the Federal Register. The United States Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States

price as shown below. This suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	Weighted-average margin percentage
Petrobras Comercio Internacional S.A. (Interbras)...	101.12
Copersucar.....	56.48
All others.....	98.81

Article VI.5 of the General Agreement on Tariffs and Trade provides that "[n]o product . . . shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization." This provision is implemented by section 772(d)(1)(D) of the Act, which prohibits assessing dumping duties on the portion of the margin attributable to export subsidies. In the final countervailing duty determination of fuel ethanol from Brazil, we found export subsidies (51 FR 33611). Since dumping duties cannot be assessed on the portion of the margin attributable to export subsidies, there is no reason to require a cash deposit or bond for that amount. Thus, the amount of the export subsidies will be subtracted for deposit or bonding purposes from the dumping margins.

#### ITC Notification

In accordance with section 735(c) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

The ITC will determine whether these imports are materially injuring, or are threatening material injury to, a U.S. industry within 45 days of the publication of this notice. If the ITC determines that material injury or threat of material injury does not exist, this proceeding will be terminated and all securities posted as result of the suspension of liquidation will be refunded or cancelled.

However, if the ITC determines that such injury does exist, we will issue an antidumping duty order directing Customs officers to assess an antidumping duty on fuel ethanol from Brazil entered, or withdrawn from

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warehouse, from consumption after the suspension of liquidation, equal to the amount by which the foreign market value exceeds the United States price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Dated: February 7, 1986.

**Paul Freedenberg**

*Assistant Secretary for Trade Administration.*

[FR Doc. 86-3288 Filed 2-13-86; 8:45 am]

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**APPENDIX B**

**LIST OF WITNESSES APPEARING AT THE COMMISSION'S HEARING**

CALENDAR OF PUBLIC HEARING

Those listed below appeared as witnesses at the United States International Trade Commission's hearing:

Subject : Certain Ethyl Alcohol from Brazil

Inv. Nos. : 701-TA-239 (Final)

and

731-TA-248 (Final)

Date and time: February 5, 1986 - 10:00 a.m.

Sessions were held in connection with the investigation in the Hearing Room of the United States International Trade Commission, 701 E Street, N.W., in Washington.

In support of the imposition of countervailing  
and/or antidumping duties:

Akin, Gump, Strauss, Hauer & Feld--Counsel  
Washington, D.C.  
on behalf of

The Ad Hoc Committee of Domestic Fuel Ethanol  
Producers and the Oil Chemical and Atomic  
Workers International Union (OCAW)

Shannon S. Shuman, Economist, Akin, Gump,  
Strauss, Haver & Feld

Barry Direnfeld, President, New Energy Corporation  
of Indiana

Don Evans, Senior Vice President, New Energy Corporation  
of Indiana

John G. Reed, Vice President, International of Archer,  
Daniels Midland Company

- more -

Akin, Gump, Strauss, Hauer & Feld (Continued)

George Robey, Director of Special Projects for the  
Ohio Farm Bureau Federation

Ron Buening, President, Bio-Chemical Energy Inc.

Nolan W. Hancock, Director, Citizenship-Legislative  
Department; Oil, Chemical and Atomic Workers  
International Union

Varel Bailey, Chairman of the Board and Past President  
of the National Corn Growers Association

Professor John Umbeck, Associate Professor of Economics,  
Purdue University

Bill Hopkins, Director of Marketing and Administration,  
South Point Ethanol

Richard R. Rivers )  
Edward L. Rubinoff )--OF COUNSEL  
Rory F. Quirk )

In opposition to the imposition of countervailing  
and/or antidumping duties:

Rogers & Wells--Counsel  
Washington, D.C.  
on behalf of

Internor Trade, Inc. and Interbra

John Reilly, Principal, ICF Incorporated

Dean Walcutt, President, Certified Oil, Inc.

John D. Robertson, President, Beacon Oil Company

Marco Marangoni, Chief, Export Section, Alcohol  
Marketing Division, Petrobras

Charles D. Hartman, Energy Consultant

Eugene T. Rossides )  
Anthony F. Essaye )  
Roger A. Clark )--OF COUNSEL  
Robert E. Ruggeri )

D'Amico, Luedtke, Demarest & Golden--Counsel  
Washington, D.C.  
on behalf of

CITGO Petroleum Corporation

Jack Woersching, Manager of Special Fuels

William F. Demarest, Jr.--OF COUNSEL

McDermott, Will & Emery--Counsel  
Washington, D.C.  
on behalf of

RAJ Chemicals, Inc.

R. Sarah Compton)  
Kurt J. Olson )--OF COUNSEL

Bishop, Lieberman, Cook, Purcell & Reynolds--Counsel  
Washington, D.C.  
on behalf of

Cotia Comercio Exportacao e Importacao, S.A.

Antonio Pargana

Bill Alberger )  
Joseph Tasker, Jr.)--OF COUNSEL

Willkie, Farr & Gallagher--Counsel  
Washington, D.C.  
on behalf of

The Brazilian Ethanol Producers' Special Committee,  
Cooperativa Central dos Produtores de Acucar e  
Alcool do Estado de Sao Paulo, a producer and  
exporter, and S.A. Costa Pinto Exportacao e  
Importacao, an exporter

Plinio Nastari, Executive Secretary, Brazilian  
Ethanol Producers Special Committee

Noel Hemmendinger)  
Royai Daniel III )--OF COUNSEL  
Jeffrey W. Carr )



**APPENDIX C**

**TYPICAL WET AND DRY GRAIN MILLING PROCESSES**



## ADM CORN SWEETENERS

### WET CORN MILLING PROCESS

#### Customer Service

The initial step in corn wet milling is steeping of the cleaned corn. Steeping consists of soaking the corn in water at 120° F. for about 40 hours. A small amount of sulfur dioxide is added to the steep water for softening, to prevent germination of the kernel and to retard fermentation. The steeping process is necessary to provide efficient separation of the hull, gluten, germ and starch.

Next, the softened kernels are separated from the steepwater and passed through degerminating mills which macerate the kernel without damaging the corn germ. The coarse ground mixture is pumped through a series of hydro-clone centrifuges which separate the lighter weight germ from the starch, gluten and hull.

The remaining material passes on to mills for finer grinding. This grinding step releases the starch from the fiber and gluten. The finely ground material flows over a series of screens in order to separate the hulls from the starch and gluten solution.

Next, the lighter gluten is separated from the starch in continuous centrifuges. The remaining starch is washed and filtered to provide a slurry which is low in protein and ash content. The major finished products which are food and industrial starches, corn syrups, dextrose and ethanol are derived from this starch slurry.

In the production of unmodified starches, the starch slurry is de-watered and dried in flash driers or tunnel driers. If acid-modified, oxidized or derivatized starches are produced, the slurry is chemically treated prior to final washing and drying.

Conventional corn syrups are produced by treating the starch slurry with acid, enzymes, or a combination of acid and enzyme. The individual treatments result in products of varying levels of sweetness. The syrup is then carbon refined for clarification and decolorization, and evaporated to specific densities.

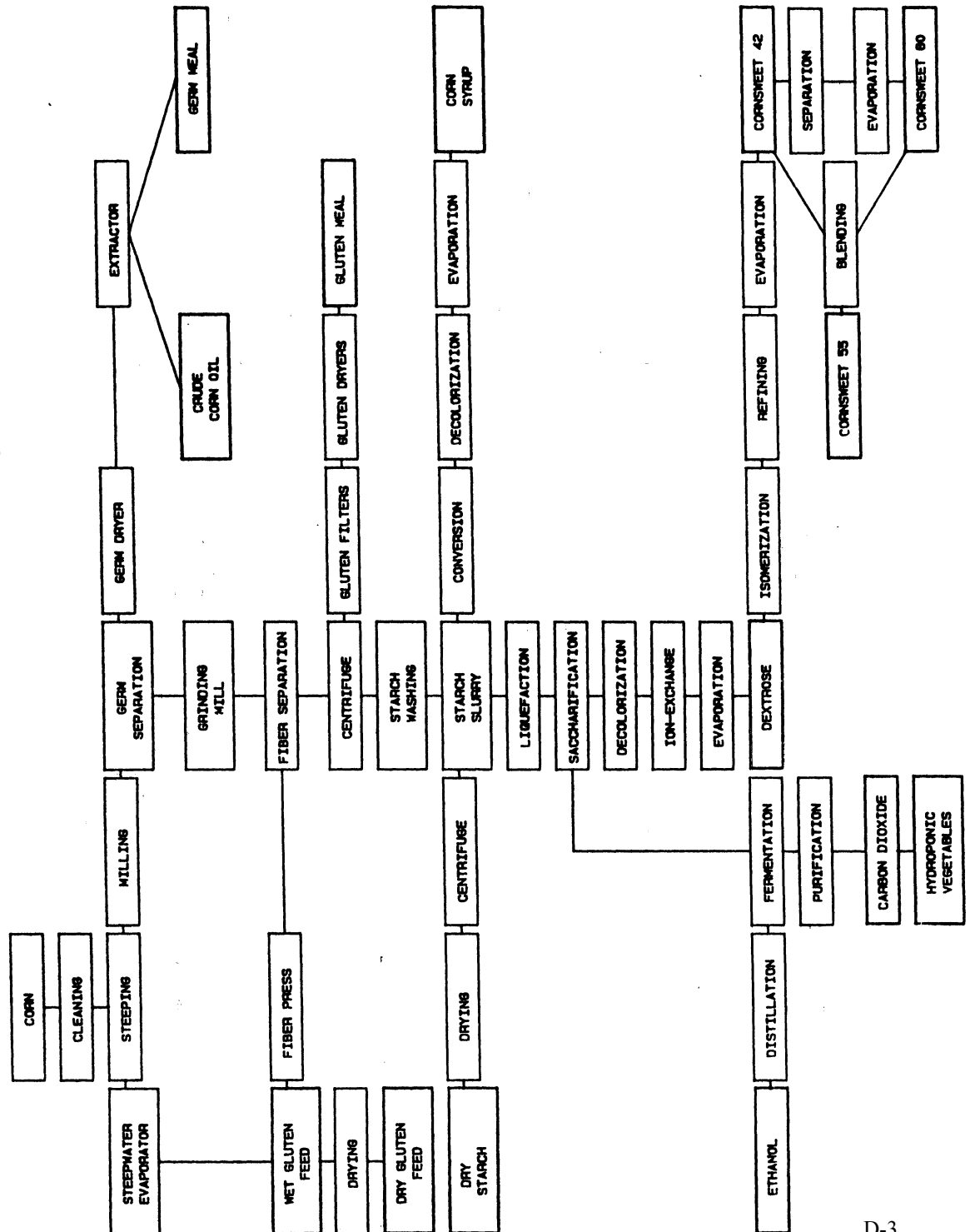
In the production of high fructose corn syrup, the starch is hydrolyzed, or saccharified, to dextrose and refined. The liquefied dextrose is isomerized by enzymatic action to a level of about 42% fructose. Some of this high fructose solution is separated by a chromatographic technique to produce a syrup of about 80-90% fructose. These two syrups are blended to yield a second generation product of 55% fructose.

The liquefied starch can also be made into beverage grade or industrial grade ethanol. A simultaneous saccharification and fermentation process is used, resulting in rapid fermentation of the sugars into ethanol. Distillation of this material yields 190 proof ethanol. Further dehydration of this product to 200 proof and the addition of a denaturant results in fuel grade ethanol.

The information contained herein is correct to the best of our knowledge. The recommendations and suggestions contained in this bulletin are made without guarantee or representation as to results. We suggest that you evaluate these recommendations and suggestions in your own laboratory prior to use. Our responsibility for claims arising from breach of warranty, negligence, or otherwise is limited to the purchase price of the material. Freedom to use any patent owned by ADM or others is not to be inferred from any statement contained herein.



# Corn Wet Milling Process





## ADM CORN SWEETENERS

Customer Service

ETHANOL PRODUCTION FROM CORN

DRY MILLING PROCESS

Cleaned corn from storage is conveyed to grinding mills where the whole kernels are ground to flour. The corn meal contains about 61% starch, 19% protein, 4% oil and 15% water. The purpose of the grinding phase is to make the starch accessible for conversion to fermentable sugars.

Next, the meal is mixed with water to prepare a starch slurry. Liquefying enzyme is added to the slurry and the mixture heated. This process, called cooking, converts the starch into soluble, polymeric sugars or dextrins.

The next step involves simultaneous saccharification and fermentation. After flash cooling, the cooked mash is mixed with glucoamylase enzyme and transferred to fermentation tanks where yeast is added. Sugar concentration, pH, and temperature are maintained at optimal conditions for the strain of yeast used and the saccharifying enzyme. As the enzyme converts the dextrins to fermentable sugars, the yeast acts upon the sugars to produce ethanol. Complete conversion is accomplished in 48 to 60 hours.

The ethanol is separated from the material by a two stage distillation process. The first stage, referred to as the beer still, strips the volatile components, predominately ethanol and water, from the remaining mass (whole stillage). The vapors off the beer still are fed to a rectifying column which concentrates the ethanol to 190° proof. Whole stillage from the process, high in protein, is collected and used to make distiller's dried grains, an important animal feed co-product.

Fuel grade, anhydrous ethanol can be made by refluxing the 190° proof ethanol with benzene. Another method involves passing the 190° proof ethanol through a column packed with corn grits. This material selectively absorbs the water resulting in anhydrous ethanol.



## Ethanol Production Corn Dry Milling Process

