(10) Fondo Financiero de Proyectos de Desarrollo (FONADE)

FONADE is an industrial and commercial state entity owned by the National Department of Planning. FONADE finances feasibility studies on pre-investment projects that are not conditioned on exporting. The main client is the National Institute for Road Development. We verified that no Colombian flower growers/exporters of the subject merchandise applied for or received financing from FONADE during the POR. Therefore, we preliminarily determine that FONADE's financing was not used by Colombian flower growers/exporters of the subject merchandise during the POR.

Program Specific to the Roses and Other Cut Flowers' Suspension Agreement

(11) Air Freight Rates (apply only to the roses suspension agreement)

The Departmento Administrativo de la Aeronautica Civil (DAAC) is the government agency that develops, maintains and regulates air transport and air space activities. Section D(3) of the suspension agreement states that the Department may consider rescinding the agreement if the air freight rates paid by cut flower exporters approach the government-mandated maximum rates set by the DAAC because such rates might be indicative of government control rather than the result of competitive forces.

At verification, we examined the companies' air freight bills and found that the rates negotiated between the flower producers and air freight carriers were between the minimum and maximum rates permitted and did not approach the maximum. Therefore, we preliminarily determine that this program did not confer any countervailable benefits upon exports of the subject merchandise to the United States and Puerto Rico during the POR.

Preliminary Results of Review

We preliminarily determine that the GOC and signatory companies have complied with all the terms of the suspension agreements during the period January 1, 1993 through December 31, 1993. In addition, we preliminarily determine that the peso and dollar benchmarks established in the 1991 and 1992 administrative reviews of these suspended investigations will continue to apply to loans after the date of publication of the final results of these administrative reviews, and until revised by the Department (*See Roses and Other Cut Flowers and Miniature Carnations from Colombia; Final Results of Countervailing Duty Administrative Reviews of Suspended Investigations;* (published concurrently with this notice).

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues in those comments, must be filed not later than 37 days after the date of publication. Any hearing, if requested, will be held 44 days after the date of publication or the first workday thereafter. The Department will publish the final results of its analysis of issues raised in any such written comments or at a hearing. This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: August 8, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–20300 Filed 8–15–95; 8:45 am]

BILLING CODE 3510–DS–M

[C–301–003; C–301–601]

Roses and Other Cut Flowers From Colombia; Miniature Carnations From Colombia; Final Results of Countervailing Duty Administrative Reviews of Suspended Investigations

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

ACTION: Notice of Final Results of Countervailing Duty Administrative Reviews of Suspended Investigations.

SUMMARY: On October 18, 1994, the Department of Commerce (''the Department'') published the preliminary results of its administrative reviews of the agreements suspending the countervailing duty investigations on roses and other cut flowers (roses) from Colombia and on miniature carnations (minis) from Colombia. We gave interested parties an opportunity to comment on the preliminary results. After reviewing all the comments received, we determine that the Government of Colombia (GOC) and producers/exporters of roses and minis have complied with the terms of the suspension agreements during the periods January 1, 1991, through December 31, 1991, and January 1, 1992, through December 31, 1992.

EFFECTIVE DATE: August 16, 1995.

FOR FURTHER INFORMATION CONTACT: Jean Kemp and Stephen Jacques, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., N.W., Washington, D.C. 20230; telephone: (202) 482–3793.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994. However, references to the Department's *Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments* (54 FR 23366; May 31, 1989) (*Proposed Regulations*), are provided solely for further explanation of the Department's countervailing duty practice. Although the Department has withdrawn the particular rulemaking proceeding pursuant to which the *Proposed Regulations* were issued, the subject matter of these regulations is being considered in connection with an ongoing rulemaking proceeding which, among other things, is intended to conform the Department's regulations of the Uruguay Round Agreements Act (*See* 60 FR 80 (January 3, 1995)).

Background

On October 18, 1994, the Department published in the **Federal Register** (59 FR 52,514) the preliminary results of its administrative reviews of the agreements suspending the countervailing duty investigations on roses and minis from Colombia (*See Roses and Other Cut Flowers From Colombia; Suspension of Investigation,* 48 FR 2,158 (January 18, 1983); *Roses and Other Cut Flowers From Colombia; Final Results of Countervailing Duty Administrative Review and Revised Suspension Agreement,* 51 FR 44,930 (December 15, 1986); and *Miniature Carnations from Colombia; Suspension of Countervailing Duty Investigation,* 52 FR 1,353 (January 13, 1987)). We have now completed these administrative reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act), and 19 CFR 355.22.

Scope of Review

The products covered by these administrative reviews constitute two ''classes or kinds'' of merchandise: roses and minis from Colombia. During the PORs, such merchandise covered by these suspension agreements was classifiable under *Harmonized Tariff Schedule* (HTS) item numbers 0603.10.60, 0603.10.70, 0603.10.80, and

0603.90.00 for roses, and 0603.10.30 for minis. The HTS item numbers are provided for convenience and Customs purposes. The written descriptions remain dispositive.

These reviews of the suspended investigations involve over 450 Colombian flower growers/exporters of roses, over 100 Colombian flower growers/exporters of minis, as well as the GOC. We verified the response from four producers/exporters of the subject merchandise: Floramerica, Inc. (roses and minis); Jardines de los Andes S.A. (roses and minis); Agrosuba, Ltda. (roses and minis) and Horticultura de la Sabana (minis) (collectively, the four companies). The suspension agreement for minis covers seven programs: (1) Tax Reimbursement Certificate Program; (2) PROEXPO/BANCOLDEX (funds for the promotion of exports); (3) Plan Vallejo; (4) Free Industrial Zones; (5) Export Credit Insurance; (6) Countertrade; and (7) Research and Development. The suspension agreement for roses covers the seven programs listed above, as well as (8) Air Freight Rates.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. Also, at the request of the GOC, we held a public hearing on January 9, 1995. We received comments from the respondents, the GOC and Association de Flores (Asocolflores), and the petitioners, the Floral Trade Council (FTC).

Comment 1: The FTC asserts that both suspension agreements allow the Department to terminate the suspension agreements if producers/exporters account for less than 85 percent of the total exports of the subject merchandise to the United States and Puerto Rico. Further, the FTC claims that there is effectively no suspension agreement for the minis since the GOC does not have an up-to-date list of signatories during the periods of review (PORs) (*See Roses and Other Cut Flowers From Colombia; Final Results of Countervailing Duty Administrative Review and Revised Suspension Agreement*, 51 FR 44,930, and 44,933 (December 15, 1986); and *Miniature Carnation from Colombia; Suspension of Countervailing Duty Investigation,* 52 FR 1,353 and 1,356 (January 13, 1987)).

Department's Position: The suspension agreement on minis states that should exports to the United States by the producers and exporters account for less than 85 percent of the subject merchandise imported directly or indirectly into the United States from Colombia, the Department *may* attempt to negotiate an agreement with additional producers or exporters or *may* terminate this Agreement and reopen the investigation under 19 CFR 355.18(b)(3)(c) of the Commerce Regulations.

We have found that the GOC has not maintained an up-to-date list of signatories for both suspension agreements. However, the GOC reported, and the Department verified, information for *all* producers/exporters during the PORs, regardless of whether they had signed the suspension agreements. At verification, we reviewed the Colombian Custom Authority's list of all flower companies exporting minis to the United States and Puerto Rico for 1991 and 1992 (*See* verification exhibits D–VIII and D–IX). In addition, the Department reviewed and verified at each GOC agency information for all producers of the subject merchandise, regardless of their signatory status. At the Banco de la Republica (the Central Bank), we checked computer records of U.S. and Puerto Rican country identification codes showing that no CERT payments were made to any flower growers/exporters for shipments of the subject merchandise. At PROEXPO/BANCOLDEX, we reviewed and verified all loans issued and outstanding in 1991 (*See* also Government Verification Report) and we have determined that the Colombian flower growers/exporters have complied with the terms of the suspension agreements during the PORs. Similarly, we verified that no countervailable benefits were granted to or received by any flower growers/exporters for Plan Vallejo, Air Freight Rates, Free Industrial Zones, and Export Credit Insurance Program. Based on this evidence, the Department verified more than 85 percent of the Colombian flower growers/exporters during the PORs. Consequently, the Department will neither renegotiate the minis suspension agreement with the GOC and the growers/exporters of the subject merchandise, nor terminate the suspension agreements, nor reopen the investigation. However, the Department may require respondents to update the list of signatories of the suspension agreements for future administrative reviews.

Comment 2: The FTC contends that the GOC is unable to monitor the ultimate shipment destination of exports for which CERT rebates were granted and therefore unable to monitor compliance with the suspension agreements with regard to the CERT program (*See Miniature Carnations from Colombia; Final Results of Countervailing Duty Administrative Review and Determination not to Terminate Suspended Investigation,* 59 FR 10,790, and 10,793 (March 8, 1994); FTC Public Factual Submission at Exhibits 9 and 10 (August 1, 1992); FTC Public Request for Verification (July 23, 1993)).

Department's Position: We disagree with petitioners. At verification, the Department reviewed documentation provided by the four companies and by the Central Bank, including applications and records of official government approval and disapproval for CERT payments. The Department also examined export documents (DEX) and other shipping documents to determine destinations of shipments receiving CERT payments, and verified that no shipments of the subject merchandise received CERT payments. We also verified documentation at the four companies confirming that the GOC did not grant CERT payments on subject merchandise (*See* verification reports for each company). Thus, we have determined that the GOC has adequately monitored the suspension agreements and has provided the Department of relevant reports in accordance with the terms of the suspension agreements (*See* also *Miniature Carnations from Colombia; Final Results of Countervailing Duty Administrative Review and Determination not to Terminate Suspended Investigation,* 59 FR 10,790 (Comment 7) (March 8, 1994)).

Comment 3: The FTC asserts that export documents offer no objective support for the conclusion that CERT payments were made only for third-country exports. The FTC contends that the GOC granted CERT payments on certain shipments which may either have been transhipped to the United States without traveling the entire distance to Canada and Europe or have been reshipped to the United States from the Netherlands Antilles and Panama (*See Associacion Colombiana de Exportadores v. United States,* 704 F. Supp. 1114 (CIT 1989), *aff'd* 901 F.2d 1089, *cert. denied* 498 U.S. 848 (1990)). Moreover, the FTC cites the BANCOLDEX annual report for 1992 and asserts that the GOC admitted that Panama and the Netherlands Antilles ''have been traditionally identified as destinations for fictitious and over-invoiced exports'' in order to receive CERT rebates, and that ''it was precisely for this reason that the CERT program was abolished for these countries in early 1992.'' The FTC asserts that the sheer volume shipped to Panama and the Netherlands Antilles indicates that it was a substantial conduit for transhipment (*See Fresh Cut Roses from Colombia and Ecuador, Inv. Nos. 731–*

TA–684–85, USITC Pub. 2766, at C–7 (March 1994)). Consequently, the FTC alleges that this is a *prima facie* breach of the suspension agreements, which are no longer in the public interest, and that the Department is required pursuant to 19 U.S.C. 1671c(i) to resume the investigation and/or issue countervailing duty orders.

The GOC argues that the value of total exports of all Colombian products to Panama (or even the Netherlands Antilles) does not indicate that a single flower was transshipped through the Netherlands Antilles. Contrary to FTC's assertions, the GOC explains that bananas and flowers are not the largest of Colombia's non-traditional exports; however, they are the largest agricultural exports.

Department's Position: The suspension agreements obligate Colombian growers/exporters to renounce CERT payments on exports of the subject merchandise to the United States and Puerto Rico. Additionally, in January 1987, the GOC set the level of CERT payments at zero percent for exports of the subject merchandise. At verification, the Department fully verified the non-receipt of CERT payments on exports of the subject merchandise by reviewing the Central Bank's CERT printouts by destination. At the four companies, we examined several third-country sales, including sales to Panama and the Netherlands Antilles, by reviewing the export documents (DEXs), the receipt of payments, and airway bills. In addition, we examined the ultimate destination of specific sales of the subject merchandise. Based on the findings of verification, we found no evidence to support an allegation of transshipment or reshipment of the subject merchandise. As a result, we have determined that with respect to this issue the GOC and the flower growers/exporters were in compliance with the suspension agreements during the PORs.

Comment 4: The FTC argues that since CERT rebates are not necessarily tied to third-country exports, the Department should reconsider its position that ''rebates tied to exports to third countries do not benefit the production of export of the subject merchandise.''

Department's Position: It is the Department's policy that rebates tied to exports to third countries do not benefit the production or export of the subject merchandise destined for the United States. We found no evidence in the questionnaire responses or at verification that would cause us to reconsider our position (*See Miniature Carnations from Colombia; Final Results of Countervailing Duty Administrative Review and Determination not to Terminate Suspended Investigation,* 59 FR 10,790 (Comment 7) (March 8, 1994)). The Department verified that Colombian exporters only received CERT payments based on exports to countries other than the United States during the PORs. The Department has determined that CERT payments benefit only those shipments to which they are tied, and not to shipments of subject merchandise to the United States.

Comment 5: The FTC asserts that the GOC did not comply with the suspension agreements with regard to Colombian peso (peso) loans for the following reasons:

First, the FTC claims that were the Department to compare the interest rates on 1991 and 1992 PROEXPO/BANCOLDEX (BANCOLDEX) loans to the weighted-average commercial lending published by the International Monetary Fund (IMF) or the FFA/FINAGRO (FINAGRO) rates during the PORs, the Department would find that Colombian flower growers/exporters received loans at preferential interest rates.

Second, the FTC asserts that the Department should not equate compliance with pre-established benchmark interest rates with compliance with the terms of the suspension agreement covering minis, because under the minis suspension agreement the Colombian flower growers/exporters have two distinct obligations: (1) not not apply for or receive financing at preferential terms; and (2) not to apply for or receive financing other than that offered at or above the most recent benchmark interest rates determined by the Department.

Finally, the FTC argues that if the Department's 1989 benchmark for minis were to be applied to 1991 and 1992 loans received for roses, the Department would likely find Colombian producers/exporters receiving BANCOLDEX loans at preferential rates during the PORs. The 1989 minis benchmarks set by the Department were tied to the ''Depositors a Termino Fijo'' (DTF) interest rate, which is based on Colombian financial institution's 90-day deposit rates, and was set at DTF plus one percentage point. The FTC asserts that the annual average DTF rate compared to a sample of individual loan rates for roses exporters shows these exporters received preferential loans. Consequently, the FTC asserts that the suspension agreements should either be revised or found unworkable.

The GOC argues that all Colombian flower producers/exporters of minis and roses have fully complied with the terms of their respective suspension agreements. Furthermore, the GOC asserts that the FTC incorrectly applies the minis benchmark interest rates to loans for exports of roses. The GOC explains that the current benchmarks for roses and minis differ, not because there is a defect in the suspension agreements or because of the Department's approach, but instead because the FTC had requested a review of only the minis suspension agreement in 1989. Regardless, the GOC claims that loans issued to roses growers/exporters met the benchmarks established under the minis suspension agreement.

Department's Position: The Department disagrees with the FTC. The Department has determined in previous reviews that any changes to benchmark interest rates for the suspension agreements should be set prospectively, since suspension agreements are forward looking (*Miniature Carnations From Colombia; Final Results of Countervailing Duty Administrative Review and Determination Not To Terminate Suspended Investigation,* 59 FR 10,790, and 10,795 (March 8, 1994)). Because the Department's benchmarks are prospective and are based on an appropriate alternative source of financing, loans at or above the benchmark did not confer any countervailable benefits. Furthermore, the Department verified that the Colombian flower growers/exporters of the subject merchandise have fulfilled the two distinct obligations in the suspension agreements: (1) not to apply for or receive financing at preferential terms; and (2) not to apply for or receive financing other than that offered at or above the most recent benchmark interest rates determined by the Department.

At verification, the Department reviewed all loans issued by BANCOLDEX during the PORs, in particular the four companies we visited at verification, and found that the loans granted were on terms consistent with the suspension agreements. Additionally, because BANCOLDEX loans were pegged to the floating DTF rate, and the DTF rate fluctuated widely over the review periods, we did not compare the rate on an individual loan with the annual average DTF rate. Therefore, Colombian flower growers/exporters did not apply for or receive financing at preferential terms, and the Department determines that the GOC did not confer any countervailable benefits during the PORs, and that signatories complied with the terms of

the suspension agreements for the BANCOLDEX programs during the PORs.

Finally, the Department agrees with the respondents that because the suspension agreements are two separate agreements, it is erroneous to apply the 1989 minis benchmark interest rates to the roses suspension agreement.

Comment 6: The FTC asserts that the Department should reconsider its use of the subsidized FINAGRO interest rate, when establishing new short- and long-term benchmarks. The FTC argues instead that the Department use weighted-average interest rates of available non-government-related financing at commercial lending rates maintained by the Central Bank during the PORs. In addition, the FTC asserts that the Department is not required to look to interest rates available to the agricultural sector, when the rates are not available to flower growers/exporters (*See Rice From Thailand; Preliminary Results of Countervailing Duty Administrative Review*, 57 FR 8,437 and 8,439 (March 10, 1992)).

The FTC asserts that if the Department decides to base its peso loan benchmarks on FINAGRO interest rates, then it should use the maximum interest rates for large producers, *i.e.,* DTF plus 6 percentage points. In addition, the FTC argues that the Department should adjust the interest rates to reflect the spread between short- and long-term BANCOLDEX loans. The FTC argues that the Department should not establish a two-tier benchmark system, or a range of interest rate benchmarks, because there would be no criteria by which the Department could determine what is preferential

The GOC assets that the FTC offers no basis upon which the Department could support a change from a FINAGRO based benchmark to weighted-average interest rates on available non-government-related financing at commercial lending rates. The GOC argues that FINAGRO lending rates are appropriate because the rates are not enterprise or industry specific, which otherwise would make them a counteravailable subsidy (*See Final Affirmative Countervailing Duty Determination: Miniature Carnations from Columbia*, 52 FR 32,033, and 32,037 (August 25, 1987); and *Roses and Other Cut Flowers From Colombia; Final Results of Countervailing Duty Administrative Review and Revised Suspension Agreement*, 51 FR 44,930, and 44,932 (December 15, 1986)).

The GOC asserts that the Department's benchmarks for peso loans (DTF plus 6 percentage points, plus 0.25 percentage point for each year after the first year) are not the actual FINAGRO rates. Instead, the appropriate benchmark interest rates set by the Departments should be in accordance with FINAGRO's specified interest rates of January 24, 1992, *i.e.,* DTF plus 2 percentage points for small producers and DTF plus up to 6 for large producers, with no provisions for an additional one quarter percentage point for long-term loans. The GOC asserts that the actual interest rate paid by the borrower is determined by arm's-length negotiations between the borrower and the financial intermediary and that the FINAGRO's specified interest rates serve as a cap for any loans issued by the intermediary bank.

Department's Position: While the Department verified that there is no single, predominant source of alternative financing in Colombia, we have determined that FINAGRO, a major intermediary lender to the agricultural sector, is an appropriate alternative source of financing for the Department's benchmarks. Because there is insufficient information on the record about nongovernment-related financing at commercial rates, we have determined that it is inappropriate to weight average the commercial interest rates.

The most recent FINAGRO short-term rate is equal to the Colombian fixed deposit rate, DTF, plus up to 6 percentage points. We agree with petitioners that by establishing a range of interest rate benchmarks (*i.e.,* DTF plus up to 6 percentage points), as suggested by respondents, there is in effect no benchmark because this would be equivalent to setting the benchmark (minimum rate) at DTF—a rate that does not reflect commercial rates or an alternative rate of financing. Therefore, the Department determines that the most recent verified average interest rate on all loans (administrative review 1993) financed by FINAGRO through Caja Agraria, *i.e.,* nominal DTF plus 3.66 percentage points, is the appropriate benchmark for short-term financing. These interest rates were verified in the concurrent 1993 administrative review (*See Government Verification Report 1993–Administrative Review of Countervailing Duty Suspension Agreements on Roses and Other Cut Flowers and Miniature Carnations from Colombia* (July 21, 1995)). Since BANCOLDEX also administered long-term loans, we determine that the same nominal DTF plus 3.66 percentage points, plus an additional 0.25 percentage point for each year after the first is the appropriate benchmark. Furthermore, loans provided at or above the benchmark will not be considered preferential (*See* Comments 5 and 9).

The Department determines not to adopt the two-tier interest rate system (borrowers can receive different interest rates depending on the size of the company) because BANCOLDEX loans are not issued on the basis on the size of flower growers.

The Department determines that the short- and long-term benchmarks for peso denominated financing will be effective 14 days after the date of publication of the final results of these administrative reviews.

Comment 7: The FTC requests that the Department weight-average Caja Agraria interest rates with FINAGRO rates as done in previous reviews. In the case that there is conflicting data, the FTC suggests rejecting such data and using best information available.

In response, the GOC claims that the reported Caja Agraria interest rates are lower than reported FINAGRO rates (Submission of June 3, 1994) and further argues that the submitted information does not conflict with rates provided in the questionnaire response, which were reported as applicable rates for different denomination loans.

Department's Position: The Department disagrees with petitioners. FINAGRO is the major alternative source of agricultural financing in Colombia that provides rediscount rates to intermediary banks in Colombia. We have determined that because information submitted by respondents about Caja Agraria rates conflicts with what we found at verification and because Caja Agraria's interest rates are similar to the rates offered by FINAGRO, FINAGRO interest rates represent the best alternative source of financing for agricultural entities in Colombia.

Comment 8: The FTC asserts that the Department should use effective rather than nominal interest rates. The FTC contends that effective rates are a more accurate measure of a subsidy and reflect a considerably higher rate. The FTC asserts that nominal rates vary widely, since commissions and other surcharges can add to the cost of a loan. In addition, the FTC asserts, the GOC has not established that the financial intermediary does not assess surcharges for its services or use of its own funds in financing loans.

In response, the GOC argues that the nominal and effective interest rates are equivalent, because the nominal rate is the rate expressed as if interest were due at the beginning of each quarter, while the effective rate is the equivalent rate calculated on the basis of interest being payable at the end of the quarter. Furthermore, the GOC argues that there

are no surcharges by financial intermediaries on BANCOLDEX loans for the portion of the loan provided by the financial intermediary.

Department's Position: We agree with respondents. The Department determines that the nominal and effective interest rates are equivalent, as stated by respondents. In addition, the Department verified that there are no surcharges by financial intermediaries on BANCOLDEX loans for the portion of the loan provided by the financial intermediary. Therefore, we will continue using nominal interest rates.

Comment 9: The FTC contends that the Department must determine whether Colombian flower growers/exporters have received U.S. dollar (dollar) loans at preferential interest rates. To the extent that the suspension agreements restrict the Department's ability to administer the law, the FTC asserts that the agreements must be terminated or amended for the PORs.

The FTC asserts that the Department should determine the countervailability of dollar loans administered by BANCOLDEX during the PORs because none of the international lending and development institution funding (*i.e.,* the Corporation Andina de Fomento (CAF), Banco Latinoamericano de Exportaciones (BLADEX) and Fondo Latinoamericano de Reservas (FLAR)) satisfy the three criteria established by the *North Star Steel Ohio v. United States,* 824 F. Supp. 1074 (CIT 1993); First, the GOC partially funded FLAR and CAF and FLAR is located in Colombia, that is a ''country under the agreement.'' Second, the FTC asserts that ''the terms and benefits'' of FLAR, CAF and BLADEX are ''within the purview of the GOC'' since BANCOLDEX controls the administration of these programs and the distribution of funds. Third, the FTC contends that the U.S. Government did not fund either CAF or BLADEX.

The GOC asserts that since the source of funds for the dollar loans was not the GOC but international lending and development institutions, there is no legal basis for the Department to declare them countervailable, regardless of the interest rate (*See* Proposed CVD Regulations, 54 FR 23,366, 23,374, and 23,382 (May 31, 1989) Section 355.44(o).

Department's Position: We disagree with respondents. Respondents suggest that the BANCOLDEX loans funded by the dollars secured from CAF, FLAR, and BLADEX are non-countervailable because these are international development or lending institutions. It is long-standing Department policy that loans from international institutions, such as the World Bank or the Inter-American Development Bank (IADB), are not countervailable subsidies (*See Final Affirmative Countervailing Duty Determination: Fuel Ethanol from Brazil,* 51 FR 3361, 3375 (January 27, 1986); *Final Results of Countervailing Duty Administrative Review; Oil Country Tubular Goods from Argentina (OCTG),* 56 FR 64493 (December 10, 1991); and *North Star Steel of Ohio v. United States,* 824 F. Supp. 1074, and 1079 (CIT 1993)). Nevertheless, as demonstrated below, whether the CAF, FLAR, and BLADEX are international development or lending institutions is irrelevant for this review.

When determining the countervailability of funding supplied by international institutions, the Department's analysis considers not only the source of the funding for a particular program, but how those funds are administered. The Department analyzes whether the international institution or the government in the recipient country controls the administration, the terms, conditions, and interest rate of the loan program. *OCTG,* 56 FR at 64496. In this context, the Department is careful to ''distinguish the countervailable benefit accruing from the government's action from the benefits to the borrower extended by the international lending institution.'' *North Star Steel,* 824 F. Supp. at 1079.

According to Article 21 of the 7th Law (January 11, 1991), the Colombian Congress in its General Rules for Foreign Trade called for the creation of the Banco de Comercio Exterior de Colombia S.A. (BANCOLDEX) as a financial institution linked to the Ministry of Foreign Trade. This law enabled the GOC to replace PROEXPO with BANCOLDEX and to regulate BANCOLDEX's legal and operational aspects. In November 1991, the GOC passed decree 2505 officially establishing BANCOLDEX and defining its legal nature, function, rights, and obligations. The business purpose of BANCOLDEX consists mainly, but not exclusively, of the promotion of activities related to exports. To this end, BANCOLDEX acts as a discount or rediscount bank, rather than as a direct intermediary. Despite the change in name from PROEXPO to BANCOLDEX, the same GOC resolutions which governed export loans granted by PROEXPO govern those granted by BANCOLDEX.

In the *North Star Steel* case cited above, the Court affirmed the Department's determination that IADB loans were not countervailable because the financing was from an international lending institution and the Government of Argentina had no control over the administration of the loans. In similar cases, the Department has found a subsidy where a portion of the loans was provided by the government of the recipient country involved (*Ethanol,* 51 FR at 3375). In all cases, it is the Department's policy, where the funding is international in nature, to examine the administration of the funding, *i.e.,* the origin and nature of the loan terms, to determine what party or parties control the funds. In the *OCTG* case cited above, the international lending institution set the interest rates on its loans while the Argentina government provided only guarantees and had no control over the interest rate set by the lending institution (*See OCTG,* 56 FR 64496).

The BANCOLDEX loan programs are an updated version of the PROEXPO loan programs with the addition of the dollar loan program. The GOC resolutions governing the BANCOLDEX programs are identical to the PROEXPO resolutions. Most importantly, BANCOLDEX loans, including the terms and benefits applicable to those loans, are within the GOC's control. The interest rates, terms, and conditions of the BANCOLDEX dollar loans are set or controlled by the GOC through the governing resolutions, *i.e.,* Resolutions 13/91 and 4/92. Therefore, despite the source of the funding for the dollar loans, the Department determines that the dollar loans administered by BANCOLDEX are potentially countervailable and the Department has calculated dollar benchmarks accordingly (*See* Comment 10 below).

Comment 10: the FTC asserts that, by using the annual weighted-average effective U.S. prime lending rates reported in the *Federal Reserve* rather than one quarter of 1994 as done in the preliminary determination, the Department would find that the dollar denominated BANCOLDEX loans issued during the PORs were preferential (the weighted-average U.S. lending rate for 1992 was 8.72 percent, compared to the dollar denominated loans issued to the five leading exporters of roses and minis in 1992; *See* Public questionnaire response). Consequently, the FTC requests that the Department either terminate the suspension agreements or remove their reference to benchmarks and determine compliance with the suspension agreements based on current rates for 1991 and 1992.

However, the FTC argues that should the Department decide to establish prospective benchmarks, the Department should include dollar benchmarks for BANCOLDEX loans for

the following reasons: the Department cannot know whether dollar loans will continue to be funded by international financial institutions or whether BANCOLDEX will convert non-funded, peso-based loans to dollar-based loans. Furthermore, the FTC argues that it is unclear whether international lending institutions will continue to supply the funding to BANCOLDEX for these loans.

When setting dollar benchmarks, the FTC argues that instead of the GOC's proposed benchmark based on the average rate for fixed and floating loans under $1 million, the Department should compare interest rates on BANCOLDEX loans to the U.S. Prime rate for comparable commercial financing as published by the *Fedeal Reserve (See Certain Steel Products from Mexico,* 58 FR 37,358 (Dep't Comm. 1993)). Or at minimum, the FTC argues that the Department should establish multiple benchmarks reflecting different size loans at fixed or floating rates.

The GOC disagrees with the proposed benchmark and contends that the Department should adopt the following: first, the Department should use the average lending rate for loans under $1 million, because some BANCOLDEX loans at issue are not limited to amounts under $100,000. Second, because some of the BANCOLDEX dollar loans are floating rates, the GOC claims that the Department should average the *Federal Reserve's* short-term floating and fixed rate for loans under $1 million. Third, the GOC asserts that the Department should use the most recent published terms of *Federal Reserve* lending statistics. Fourth, the GOC contends that the Department should convert its Prime-base benchmark to a London Interbank Offered Rate (LIBOR) based benchmark, by taking the appropriate Prime-based benchmark rate spread, and adding the average spread between Prime and LIBOR. If not converted to LIBOR, it will create severe administrative problems for BANCOLDEX to be working simultaneously with two different base rates. Finally, because the rates published in the *Federal Reserve Bulletin* are compound interest rates, the GOC asserts that the Department should permit the GOC to freely set the nominal interest rate at whatever level is necessary to ensure that the effective interest rate equals or exceeds the proposed benchmark.

Consequently, because the actual rate on short-term BANCOLDEX loans exceeded the GOC's proposed benchmark rate, there is no basis for requiring producers/exporters to renegotiate any outstanding loans. If any dollar loans nonetheless did have to be refinanced or repaid, the GOC contends that the Department must allow time for this process to occur (*See* Comment 9).

Department's Position: The Department agrees with respondents that the calculation of the dollar loan benchmark in the Department's preliminary determination was incorrect because it was not necessarily representative of dollar-based interest rates in Colombia. The Department has, therefore, modified its calculation of the dollar loan benchmark in the following manner, which is consistent with the Department's prior practice (*See Final Affirmative Countervailing Duty Determination: Certain Steel Products from Mexico;* 58 FR 37358 (July 9, 1993)) (*See* Calculation Memo (July 21, 1995)).

The Department determines that LIBOR will be the basis of the benchmark for dollar loans, because LIBOR is used as the basis for dollar loan interest rates in Colombia. Therefore, the Department's benchmark for dollar-based loans in Colombia will be the six-month LIBOR rate in effect at the time of the loan plus 1.52 percentage points. The Department determines that the short- and long-term benchmarks for dollar denominated financing will be effective 14 days after the date of publication of the final results of these administrative reviews (*See* Comment 11 below).

It should be noted that the rate specified here was calculated based on effective, not nominal, interest rates; the effective rate is the equivalent to the nominal rate calculated on the basis of interest being payable at the end of the quarter. BANCOLDEX will now be required to set the nominal interest rates for dollar-based loans at a level that is high enough to ensure that the effective interest rates of these loans are at or above the Department's new benchmark.

Comment 11: The GOC asserts that if any dollar loan needs to be refinanced or repaid, the Department should grant 90 days after the publication of the final results for the process of refinancing to occur. This is the same period initially established in the minis suspension agreement (52 FR 1355, para. II.B., 1986).

Department's Position: We agree with respondents. The Department, therefore, determines that the effective date for completing the repayment and/or refinancing of any outstanding dollar and peso loans to meet the new short and long-term dollar and peso benchmarks is 90 days after publication of these final results in the **Federal Register**.

Comment 12: The FTC claims that under the terms of the suspension agreements the Department is forced to apply outdated/subsidized benchmark interest rates to determine ''compliance'' with the suspension agreements. The FTC objects to the Department's practice in setting prospective and outdated benchmark interest rates to determine compliance with the terms of the suspension agreements and argues that the Department should either terminate the suspension agreements with respect to the BANCOLDEX program, or, at least, amend the agreements by prohibiting Colombia growers from receiving loans at non-preferential rates. The FTC asserts that the Department should refrain from establishing fixed benchmark interest rates, and instead the Department should determine a benchmark for each review period by adhering to the precedents set in the *Final Affirmative Countervailing Duty Determination and Countervailing Duty Order, Steel Wire Rope from Thailand,* 56 FR 46299 (September 11, 1991); and *Final Results of the Administrative Review for Rice from Thailand*, 59 FR 8,906, and 8,907 (1994).

The FTC claims that the suspension agreements are not in the public interest because Colombian flower growers/exporters can ''technically'' comply with the terms of the suspension agreements while at the same time receive loans at preferential interest rates. Because the benchmarks are outdated, the FTC asserts, they are incapable of eliminating the net subsidy on flowers. Thus, the FTC contends that if Colombian flower growers continue to receive loans at preferential interest rates, the Department should either impose countervailing duties or fashion a suspension agreement that eliminates the subsidy, offsets the subsidy completely, or ceases the exports.

In addition, the FTC asserts that the Department cannot predict future interest rates, especially since interest rates fluctuated widely between 19 and 32 percent during the POR, or predict what Colombian flower growers/exporters could receive in non-peso based interest rates years after establishing benchmarks which may not be applicable to unforeseen loan programs.

The GOC contends that there are several reasons why loans are non-preferential: First the Department establishes its benchmark interest rates as a spread above a base rate—this ties the benchmark interest rate to a market indicator like the DTF, Prime rate, and/or LIBOR—and no longer as a fixed interest rate benchmark. Second, GOC

keeps BANCOLDEX interest rates in line with overall interest rate levels regardless of the Department's benchmarks. Finally, prospective benchmarks could be to the advantage, *i.e.*, too low, but just as well to the disadvantage, *i.e.*, too high, for the Colombia flower growers/exporters.

Department's Position: The Department disagrees with petitioners. The Department determines that suspension agreements are forward looking, and that the Department sets benchmark interest rates prospectively (*See Miniature Carnations from Colombia: Final Results of Countervailing Duty Administrative Review;* 56 FR 14240 (April 8, 1991) and *Miniature Carnations from Colombia; Final Results of Countervailing Duty Administrative Review and Determination Not To Terminate Suspended Investigation;* 59 FR 10790, (March 8, 1994.)).

At verification, the Department examined documentation that indicated that BANCOLDEX charged interest rates on its short- and long-term loans above the Department's established benchmark rates in effect during the POR. The Department also found that the companies received BANCOLDEX loans on terms consistent with the suspension agreements. Consequently, we have determined that signatories were in compliance with the terms of the suspension agreements for the BANCOLDEX programs. Since BANCOLDEX loans were above the benchmark rates, the Department determines that the GOC did not confer any countervailable benefits through the BANCOLDEX programs during the POR. The Department finds that signatories complied with the suspension agreements' benchmarks and avoided countervailable benefits during the POR, resulting in a situation analogous to non-use for the BANCOLDEX programs by Colombian flower growers/exporters of the subject merchandise. Therefore, there is no basis for petitioners claim that suspension agreements are not in the public interest.

To ensure timely updates of the benchmarks for BANCOLDEX financing, however, the Department may request information on FINAGRO, commercial dollar loans and other alternative sources of financing in Colombia outside of the annual administrative review process (*See* Section III. Monitoring of the Agreement in *Roses and Other Cut Flowers from Colombia: Final Results of Countervailing Duty Administrative Review and Revised Suspension Agreement* 51 FR 44930 and 44933 (December 15, 1986) and *Suspension of Countervailing Duty Investigation: Miniature Carnations from Colombia* 52 FR 1353 and 1355 (January 13, 1987)).

Comment 13: The FTC asserts that according to 19 CFR 355.19(b), the Department can revise the suspension agreements if it ''has reason to believe that the signatory government or exporters have violated an agreement or that an agreement no longer meets the requirements of section 704(d)(1) of the Act.'' The FTC claims that respondents have violated the terms of the suspension agreements during the PORs (*See* Comments 5 and 9).

The GOC argues that all Colombian flower producers/exporters of minis and roses have fully complied with the terms of their respective suspension agreements and that it supports the Department's past policy of having suspension agreements be forward looking, and that the Department sets benchmarks interest rates prospectively.

The GOC asserts that there is no need to amend or clarify the suspension agreements and it was inappropriate for the Department to have requested comments from interested parties for the following reasons: first, the suspension agreements cannot be unilaterally amended or clarified by the Department or the Colombian flower growers/exporters. Second, the Department has no power to amend or clarify the agreements without the consent of all signatories. Third, the Department should first raise the issue with the signatories and negotiate an amendment, which then can be subject to public comments (*See* 19 CFR 355.18(g)).

The GOC contends that there is no basis for considering to amend the suspension agreements Because dollar loans were provided by international financial institutions, the GOC asserts that the loans are non-countervailable and there is no need for the Department to determine whether these loans were granted on non-preferential terms.

The GOC argues that based on FTC's proposed amendments of the suspension agreements (*See* Comment 12), no Colombian flower grower/exporter would sign such an agreement where signatories would agree to a blanket commitment to that all PROEXPO/BANCOLDEX loans have to be ''non-preferential'' without any understanding as to how the Department would interpret that term. Further, the GOC argues that suspension agreements are supposed to provide certainty so that when BANCOLDEX loans are issued the GOC knows what rate must be charged to comply with the suspension agreements.

Department's Position: The Department has determined not to initiate an amendment to the suspension agreements, based on the information received. The Secretary has no reason to believe at this time that the exporters of the subject merchandise have violated the suspension agreements or that the agreements no longer meet the requirements of section 704(d)(1). Consequently, the Department will not currently renegotiate the suspension agreements with the GOC and the producers/exporters of the subject merchandises and will not terminate the suspension agreements and reopen the investigation.

Final Results of Reviews

After considering all of the comments received, we determine that the GOC and the Colombian flower growers/exporters of the subject merchandise have complied with the terms of the suspension agreements for the periods January 1, 1991, through December 31, 1991, and January 1, 1992, through December 31, 1992. In addition, we determine that the peso and U.S. dollar benchmarks established in this final notice will be effective 14 days after the date of publication of this notice. Moreover, the Department determines that the effective date for completing the repayment and/or refinancing for any outstanding peso and U.S. dollar loans to meet the new short- and long-term benchmarks in 90 days after publication of these final results in the **Federal Register**.

These administrative reviews and notice are in accordance with sections 751(a)(1)(C) of the Tariff Act (19 U.S.C. 1675(a)(1)(C)) and 19 CFR 355.22 and 355.25.

Dated: August 8, 1995.

Susan G. Esserman,

Assistant Secretary for Important Administration.

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National Oceanic and Atmospheric Administration

Monterey Bay National Marine Sanctuary Advisory Council; Open Meeting

AGENCY: Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.