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March 23, 2009

**VIA WWW.REGULATIONS.GOV**  
**DOCKET NO.: USTR-2009-0008**

## PUBLIC DOCUMENT

**Product:** Other parts, nesi, suitable for use  
solely or principally with the machines in  
heading 8501 or 8502

**HTS Subheading:** 8503.00.95

**Country:** Brazil

**Requested Action:** In Support of  
Redesignation to GSP eligibility

**Comments submitted by:** GE Energy, a  
division of General Electric Corporation

Ms. Marideth J. Sandler  
Chair  
Generalized System of Preferences Subcommittee  
Office of the U.S. Trade Representative  
1724 F Street, NW, Room F-220  
Washington, DC 20508

**RE: 2008 GSP Redesignation Request for HTS 8503.00.95 from Brazil**

Dear Ms. Sandler:

The following comments are submitted on behalf of GE Energy, a division of the General Electric Company (“GE Energy”)<sup>1</sup> in response to the notice appearing in the *Federal Register* on March 5, 2009, inviting comments regarding redesignations for duty-free status under the Generalized System of Preferences (“GSP”) program of articles currently subject to Competitive

<sup>1</sup> GE Energy is a U.S. importer of a variety of energy products and wind turbine components, which include the products of Brazil, which are the subject of these comments. GE’s headquarters are located at 3115 Easton Turnpike, Fairfield, CT 06828.

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Need Limitations (“CNL”).<sup>2</sup> GE Energy is seeking redesignation of GSP duty-free status for imports of wind turbine structural components classified under HTS 8503.00.95 from Brazil.

## **I. INTRODUCTION**

The products from Brazil that are the subject of these comments are classified under subheading 8503.00.95 of the Harmonized Tariff Schedule of the United States: Other parts, nesi, suitable for use solely or principally with the machines in heading 8501 or 8502. GE Energy imports other parts of generators and components generator sets classified under HTS 8503.00.95 such as structural bedplates and generators frames. These parts are used in the production and manufacture of wind turbine systems in the United States.

For the reasons discussed herein GE Energy strongly supports redesignation of HTS 8503.00.95, which includes wind turbine structural components from Brazil. Reinstatement of the duty-free treatment under GSP benefits U.S. economic interests, U.S. energy consumers, promotes vital national security and environmental policy and is consistent with the express purpose and mandate of the Generalized System of Preferences (“GSP”) statute and program.

## **II. IMPORTS OF WIND TURBINE STRUCTURAL COMPONENTS ARE ELIGIBLE FOR REDESIGNATION**

Wind turbine structural components from Brazil, classified in HTS subheading 8503.00.95, which had previously been removed from GSP eligibility based on competitive need limitations (“CNL”) are, in accordance with the statute, eligible for redesignation based upon 2008 calendar year import data. Under section 503(c)(2)(C) of the Trade Act of 1974 (the “Act”), 19 U.S.C. § 2463(c)(2)(C), if imports of an eligible article from a BDC cease to receive duty-free treatment due to exceeding a CNL in a prior year, the President may, subject to the considerations in sections 501 and 502 of the Act, redesignate such an article for duty-free treatment if imports in the most recently completed calendar year did not exceed the CNL.

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<sup>2</sup> See Generalized System of Preferences (GSP): Import Statistics Relating to Competitive Need Limitations (CNLS); Invitation for Public Comment on CNL Waivers Subject to Potential Revocation Based on New Statutory Thresholds, Possible de minimis Waivers, and Product Redesignations for the 2008 Annual Review, 74 Fed. Reg. 9642 (USTR March 5, 2009).

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Imports of HTS 8503.00.95, which includes wind turbine structural components from Brazil totaled \$64,866,475 in 2008 and accounted for 4.77% of total imports.<sup>3</sup> Brazilian imports of HTS 8503.00.95 were well below the statutory CNL limits set forth at section 503(c)(2)(A) of the Trade Act of 1974, as amended, 19 U.S.C. § 2463(c)(2)(A). Subject imports had an appraised value that was below the applicable amount for 2008 (\$135 million), and accounted for less than 50% of total U.S. imports of the product from all countries, by value. Since imports of HTS 8503.00.95 from Brazil in the most recently completed calendar year, 2008, did not exceed the CNL, redesignation of this article as GSP eligible is permissible and appropriate.

### **III. STATUTORY FACTORS CALL FOR THE REDESIGNATION OF WIND TURBINE STRUCTURAL COMPONENTS FROM BRAZIL**

As previously mentioned, redesignation requests are normally made in accordance with the statutory factors set forth in section 501 and 502 of the Trade Act of 1974, as amended, 19 U.S.C. §§ 2461 and 2464. These factors generally include: (1) the country's level of development; (2) its competitiveness in regard to the particular product; (3) the country's practices relating to trade, investment, and worker rights; (4) the overall economic interests of the United States, including the effect continued GSP treatment would have on the relevant U.S. producers, workers and consumers; and (5) any other relevant information.<sup>4</sup> A review of these factors will demonstrate that imports of HTS 8503.00.95, which includes wind turbine structural components from Brazil should be redesignated as duty-free under GSP.

#### *1. Brazil's Development Level Requires the Continuation of the GSP Program*

Brazil's designation as a beneficiary developing country ("BDC") has not changed since the inception of the GSP program and remains the appropriate designation given Brazil's level of development. While Brazil has made great progress and is becoming an important economy in Latin America, it remains a developing country with per capita income levels in the mid-range. According to the World Bank, Brazil's gross national income ("GNI") per capita for 2007 was

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<sup>3</sup> See Attachment 1.

<sup>4</sup> See United States Trade Representative, U.S. Generalized System of Preferences (GSP) Guidebook at 13 (February 2009) available at [http://www.ustr.gov/assets/Trade\\_Development/Preference\\_Programs/GSP/asset\\_upload\\_file403\\_8359.pdf](http://www.ustr.gov/assets/Trade_Development/Preference_Programs/GSP/asset_upload_file403_8359.pdf)

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\$5,910.<sup>5</sup> Furthermore, as of July 2008 the World Bank classified Brazil as an “upper middle income” country.<sup>6</sup> Thus, while Brazil has made progress in increasing its level of development, the data indicates that it remains appropriately designated as a BDC for purposes of the GSP program.<sup>7</sup>

### *2. Redesignation as GSP Eligible Allows Brazil to Compete with Developed Nations*

As the 2008 import data demonstrates Brazil needs the benefits of GSP because it is not sufficiently developed or competitive with respect to products classified under HTS 8503.00.95. This is highlighted by the dominance of developed countries and the fact that Brazil has lost market share with respect to HTS 8503.00.95 imports, while more developed economies have significantly increased their U.S. market share of these products. In 2008, Brazil’s exports of HTS 8503.00.95 declined by 78.7% by value while at the same time, the developed nations of China, Japan, the United Kingdom and France increased exports by 49%, 24%, 25% and 37% respectively, by value. We note that prior to 2008, imports of HTS 8503.00.95 from Brazil included a wider product blend, which contributed to the decline.

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<sup>5</sup> See The World Bank, Data & Statistics, Resources, available at <http://siteresources.worldbank.org/DATASTATISTICS/Resources/GNIPC.pdf> (last viewed, March 19, 2009).

<sup>6</sup> See The World Bank, Data & Statistics, Country Classification, available at <http://web.worldbank.org/WBSITE/EXTERNAL/DATASTATISTICS/0,,contentMDK:20420458~menuPK:64133156~pagePK:64133150~piPK:64133175~theSitePK:239419.00.html> (last viewed, March 19, 2009).

<sup>7</sup> The President may withdraw the application of duty-free treatment with respect to a BDC if the President determines that a BDC is a “high income” country as defined by the GSP statute and based upon World Bank statistics. See n.4, *supra*. For 2007, the most recent year available, the GNI per capita limit, which is set at the lower bound of the World Bank’s definition of a “high income” country, which was \$11,456. See n.6, *supra*. Brazil’s GNI per capita of \$5,910 remains well below the lower bound of the World Bank’s “high income” country definition.

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Table 1

## U.S. Imports of HTS 8503.00.95 by Customs Value

Country	2003	2004	2005	2006	2007	2008	Percent Change 2007 - 2008
<i>In Actual Dollars</i>							
China	64,566,128	71,635,876	79,890,742	150,847,441	153,799,185	229,311,995	49.10%
Mexico	274,886,463	170,700,952	121,501,364	121,386,249	154,928,742	179,764,837	16.00%
Canada	101,814,178	113,604,888	116,121,261	117,089,690	156,426,047	156,360,250	0.00%
Germany	85,633,912	66,078,055	106,030,113	91,479,847	144,204,622	125,900,647	-12.70%
Spain	4,578,410	3,759,038	23,259,298	156,840,565	193,031,828	123,094,242	-36.20%
Japan	85,431,632	109,337,754	151,914,658	123,378,909	90,880,741	113,336,110	24.70%
Korea	14,806,017	16,462,513	24,675,218	43,254,210	69,954,593	67,929,336	-2.90%
Brazil	84,924,372	32,377,274	143,384,255	196,486,603	304,951,796	64,866,475	-78.70%
United Kingdom	16,196,599	26,462,287	19,630,134	38,928,833	49,439,956	61,865,145	25.10%
Denmark	13,890,217	26,441,430	37,691,581	43,399,973	79,952,046	46,903,944	-41.30%
France	19,226,429	26,476,524	27,479,950	26,480,652	29,946,097	41,019,075	37.00%
India	3,047,734	3,527,996	13,352,643	33,462,160	29,553,895	34,789,040	17.70%
Taiwan	14,790,363	20,071,708	28,230,295	26,362,444	19,728,074	22,061,036	11.80%
Philippines	9,412,778	12,701,500	14,948,002	14,894,289	16,643,245	15,628,319	-6.10%
Netherlands	14,692,021	6,951,014	25,813,423	11,565,271	7,572,419	12,438,220	64.30%
Italy	4,894,199	7,148,258	25,694,166	18,806,459	13,740,906	9,251,250	-32.70%
Poland	6,387,661	2,903,743	10,592,336	7,775,541	6,594,196	6,082,244	-7.80%
Switzerland	5,450,579	3,144,607	3,219,762	2,751,498	2,924,599	4,797,999	64.10%
Indonesia	1,659,465	599,895	1,167,715	855,884	1,590,293	4,650,398	192.40%
	855,122,577	747,960,261	1,019,420,870	1,285,220,917	1,581,635,067	1,361,242,512	-13.90%
	<b>855,122,577</b>	<b>747,960,261</b>	<b>1,019,420,870</b>	<b>1,285,220,917</b>	<b>1,581,635,067</b>	<b>1,361,242,512</b>	<b>-13.90%</b>

Source: United States International Trade of Commerce, ITC DataWeb

Brazil's imports of HTSUS 8503.00.95 include wind turbine structural components which represent only 4.77% of total imports in 2008.<sup>8</sup> Of the seven other countries supplying more product to the U.S. market none are BDC's. The top seven developed countries account for over 70% of the imports with China taking the largest share of the U.S. market. Furthermore, imports from the developed countries account for over 90% of the imports, while, imports from the fifteen BDC's account for only 9% of the imports in 2008. Redesignation of Brazil origin products in such circumstances will further the objectives of GSP.

Duty-free imports to the U.S. would also allow wind turbine structural component manufacturers, located throughout Brazil, to add value and invest in Brazil. Brazilian industrial producers of the subject products have made investments that enrich their communities by focusing on environmental practices, worker empowerment and training, safety and support of socio-cultural and economic growth. Redesignation will further assist Brazilian companies so that they may continue to make positive contributions to job creation, wages, the environment, and the general standard of living in Brazil.

Redesignation is also supported by President Obama's trade policy agenda, which lists as a priority that the United States uphold its commitment to be a strong partner to developing

<sup>8</sup> See Attachment 1.

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countries.<sup>9</sup> According to the President, “[e]xpanded trade can make an important contribution to boosting growth in developing countries and lift their national income levels.”<sup>10</sup> Furthermore, “[t]rade preference programs help entrepreneurs in developing countries compete effectively in the world trading system.”<sup>11</sup> We submit that wind turbine structural components should be redesignated as GSP eligible because this would allow Brazil to compete with developed nations, thereby furthering the President’s trade policy agenda and priorities.

### *3. Country Practices of Brazil Support Redesignation*

We note that Brazil has been the subject of a country practice petition regarding intellectual property rights, which was closed in the 2005 GSP annual review.<sup>12</sup> However, as the *2009 Trade Policy Agenda and 2008 Annual Report of the President of the United States on the Trade Agreements Program* notes: “Brazil has achieved some progress in enhancing the effectiveness of intellectual property enforcement particularly with respect to pirated audio-visual goods.”<sup>13</sup> The report also highlights the recent MOU that was signed between the United States Patent and Trademark Office and Brazil’s IP office, which memorialized “the close working relationship between the two offices . . . that will serve as a vehicle for continued technical cooperation on IPR issues, such as patent and trademark examination training and information sharing.”<sup>14</sup> Thus, while Brazil was the subject of a country practices petition, it has subsequently made great effort to improve upon its protection of intellectual property rights.

### *4. Duty-Free Imports of Wind Turbine Structural Components Will Have A Beneficial Effect on the U.S.*

Even though some of the components of wind turbines are imported, including the product at issue in these comments, assembly of the wind turbine is performed in the U.S. by skilled U.S. workers. Assembly of the wind turbine takes place at GE Energy’s facilities in Pensacola, Florida and Greenville, South Carolina. Allowing duty-free imports of wind turbine

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<sup>9</sup> Executive Office of the President, The President’s Trade Policy Agenda at 4, (February 27, 2009) *available at* [http://www.ustr.gov/assets/Document\\_Library/Reports\\_Publications/2009/2009\\_Trade\\_Policy\\_Agenda/asset\\_upload\\_file810\\_15401.pdf](http://www.ustr.gov/assets/Document_Library/Reports_Publications/2009/2009_Trade_Policy_Agenda/asset_upload_file810_15401.pdf).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> See Generalized System of Preferences (GSP): Notice of Closure of Case 013-CP-05, Protection of Intellectual Property in Brazil, in the 2005 Annual Country Practice Review (USTR Jan. 13, 2006).

<sup>13</sup> United States Trade Representative, 2009 Trade Policy Agenda and 2008 Annual Report of the President of the United States on the Trade Agreements Program at 131.

<sup>14</sup> *Id.*

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structural components from Brazil will increase competition, lower production costs, which could contribute to greater domestic production of wind turbines.

Furthermore, redesignation of HTS 8503.00.95 from Brazil will further President Obama's energy policy and enhance our national security interests and environmental protections. President Obama's comprehensive energy plan aims to create new jobs by strategically investing in clean energy and ensuring that 10% of U.S. electricity comes from renewable sources (such as wind energy) by 2012.<sup>15</sup> Redesignating these products from Brazil as GSP eligible will decrease costs associated with production of wind turbines and therefore, aid in the implementation the President's energy agenda. Redesignation will also benefit U.S. citizens by increasing the supply of energy, lowering energy costs, decreasing our dependence on foreign oil and reducing the environmental impact of using carbon based fuels.

As trade statistics demonstrate, Brazil's exports of HTS 8503.00.95 to the United States do not pose a threat to the U.S. industry because they represent a small percentage of all imports of these products to the United States.

Additionally, as Brazil is a major purchaser of U.S. goods and services, growth of the Brazilian economy would likely stimulate the exportation of more U.S. products to Brazil to the benefit of the U.S. economy. Brazil is the second largest U.S. export market in Latin America behind Mexico.<sup>16</sup> In 2008 the United States exported goods valued at nearly \$34 billion to Brazil<sup>17</sup> representing approximately 24% of U.S. exports to Latin America and the Caribbean, excluding Mexico.<sup>18</sup> Rising economic conditions, as a result of redesignating GSP eligibility for wind turbine structural components from Brazil will increase Brazilian resident's buying power and lead to increase demand for U.S. goods. Thus, redesignation will benefit both U.S. and Brazilian economic and environmental standards and therefore, should be granted.

**IV.  
CONCLUSION**

In conclusion, redesignation of Brazilian imports of HTS 8503.00.95 as GSP eligible will have a beneficial effect on both Brazilian and U.S. economic and environmental interests. Further, redesignation advances President Obama's energy agenda, bolsters U.S. skilled

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<sup>15</sup> President's Agenda, Energy and the Environment, *available at* [http://www.whitehouse.gov/agenda/energy\\_and\\_environment/](http://www.whitehouse.gov/agenda/energy_and_environment/)

<sup>16</sup> *See* n. 13 at 115, *supra*.

<sup>17</sup> *See* n. 13 at 130, *supra*.

<sup>18</sup> *Id.*

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manufacturing jobs and enhances our national security interests as increased production and use of wind turbines will decrease our reliance on foreign oil.

For the foregoing reasons, GE Energy respectfully requests the GSP Subcommittee to recommend that the President use his discretionary authority to redesignate HTS 8503.00.95 imports from Brazil for GSP duty-free treatment.

Respectfully submitted,  
**SANDLER, TRAVIS & ROSENBERG, P.A.**

By: /s/Larry Ordet  
Larry Ordet  
Mark Tallo



## US Imports of HTS 8503.00.95 by 2008 Customs Value

HTS Number	Country	2008	Percentage of
		<i>In Actual Dollars</i>	2008 Exports
85030095	China	229,311,995	16.85%
.	Mexico	179,764,837	13.21%
.	Canada	156,360,250	11.49%
.	Germany	125,900,647	9.25%
.	Spain	123,094,242	9.04%
.	Japan	113,336,110	8.33%
.	Korea	67,929,336	4.99%
.	<b>Brazil</b>	<b>64,866,475</b>	<b>4.77%</b>
.	United Kingdom	61,865,145	4.54%
.	Denmark	46,903,944	3.45%
.	France	41,019,075	3.01%
.	India	34,789,040	2.56%
.	Taiwan	22,061,036	1.62%
.	Philippines	15,628,319	1.15%
.	Netherlands	12,438,220	0.91%
.	Italy	9,251,250	0.68%
.	Poland	6,082,244	0.45%
.	Switzerland	4,797,999	0.35%
.	Indonesia	4,650,398	0.34%
.	Thailand	4,300,851	0.32%
.	St Kitts-Nevis	3,802,854	0.28%
.	Finland	3,793,410	0.28%
.	Belgium	3,695,192	0.27%
.	Czech Republic	3,317,062	0.24%
.	Romania	3,016,757	0.22%
.	Austria	2,983,549	0.22%
.	Hungary	1,726,475	0.13%
.	Slovak Republic	1,687,726	0.12%
.	Malaysia	1,516,630	0.11%
.	Sweden	1,471,370	0.11%
.	South Africa	1,364,907	0.10%
.	Australia	1,353,061	0.10%
.	Russia	1,116,817	0.08%
.	Slovenia	676,494	0.05%
.	Hong Kong	675,773	0.05%
.	Norway	601,902	0.04%
.	Israel	506,220	0.04%
.	Ireland	502,742	0.04%
.	New Zealand	423,008	0.03%
.	Sri Lanka	294,420	0.02%
.	Tunisia	245,934	0.02%
.	Argentina	223,118	0.02%
.	Costa Rica	220,086	0.02%
.	Singapore	201,020	0.01%
.	Ukraine	195,145	0.01%
.	Afghanistan	143,245	0.01%
.	Turkey	143,042	0.01%
.	United Arab Em	132,502	0.01%
.	Croatia	129,038	0.01%
.	Georgia	128,140	0.01%
.	Estonia	112,136	0.01%
.	Iceland	100,500	0.01%
.	Macao	86,040	0.01%
<b>Subtotal 85030095</b>		<b>1,361,242,512</b>	<b>100.00%</b>
<b>Total</b>		<b>1,361,242,512</b>	

Source: United States International Trade Commission DataWeb