United States – Countervailing Measures Concerning Certain Products from the European Communities: Recourse to Article 21.5 by the European Communities (WT/DS212)

Answers of the United States of America to Questions from the Panel to the Parties in Connection with the Substantive Meeting

A. Scope of the Panel's mandate

Q1. In its written submissions, the United States refers inter alia to two excerpts from the Appellate Body Report in EC- Bed Linen: "we do not see why that part of a redetermination that merely incorporates elements of the original determination . . . would constitute an inseparable element of the measure taken to comply with the DSB rulings in the original dispute"; and "India [sought] to challenge an aspect of the original measure which has not changed, and which the European Communities did not have to change, in order to comply with the DSB recommendations and rulings to make that measure consistent . . . . " Given the specific facts and circumstances in EC – Bed Linen, please explain how the Appellate Body ruling applies to this dispute. In other words, how do the relevant facts and circumstances in EC – Bed Linen apply to the facts and circumstances of the three Section 129 determinations at issue? (United States)

1. In *EC – Bed Linen*, India sought to use the Article 21.5 proceeding to have the Panel address issues that were not related to compliance with the Dispute Settlement Body's ("DSB") recommendations and rulings in the underlying dispute. The European Communities ("EC") opposed India's efforts and explained why permitting India to advance such claims in an Article 21.5 proceeding would be "manifestly unfair:"

> Article 21.5 advances the purpose of achieving a "prompt" settlement of the disputes by providing an expeditious procedure to establish whether a Member has properly implemented the DSB's recommendations and rulings . . . . The accelerated process provided for in Article 21.5 is not necessary, however, with respect to claims that could have already been pursued before the original panel. Article 21.5 is not intended to provide a "second service" to complaining parties which, by negligence or calculation, have omitted to raise (or argue) certain claims during the original proceeding.
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> India's reading of Article 21.5 would diminish the procedural rights of defendants for no good reason, thereby altering the balance of rights and obligations of Members which the *DSU* purports to maintain. In the first place, the deadlines are shorter in Article 21.5 proceedings, thus rendering more difficult the defence. Second, and more importantly, the defending party would not be entitled to a "reasonable period of time", with the consequence that . . . "A Member . . . might,

> depending on the nature of the violation, be subjected to suspension of concessions."
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> In so far as India did not pursue a claim with respect to a finding set out in the original measure before the original Panel, the EC could assume legitimately that such finding was WTO consistent and did not need to be corrected. It would be manifestly unfair to expose the EC to the possibility of an immediate suspension of concessions under Article 22 of the *DSU* in response to a violation which the EC could not have anticipated when the implementing measures were taken and which it will be given no opportunity to correct.[1]

2. The EC argued that "the right to make a claim must be exercised promptly, with the consequence that Article 21.5 of the DSU must be interpreted as excluding the possibility to raise or argue for the first time a claim before an Article 21.5 Panel when the same claim could have been pursued before the original Panel."[2] In short, the EC did not appear to believe, when it was a respondent, that the limitations inherent in an Article 21.5 proceeding were a "technicality," a position the EC is now adopting as a complainant.

3. The Appellate Body agreed with the position the EC adopted at that time, and which the EC appears to disagree with now, *i.e.*, that unchanged parts of an original measure, which did not have to be changed in order to comply with the DSB recomendations and rulings, are not subject to Article 21.5 proceedings. The quotation in the Panel's question confirms that point.

4. The facts of this dispute conform precisely to the scenario in *EC – Bed Linen.* Just as the EC argued that India should not be permitted to use Article 21.5 to advance claims that "could have already been pursued before the original panel" because the EC "could assume legitimately that such finding was WTO consistent and did not need to be corrected," so the EC should not be permitted to do so here.

5. In this dispute, the DSB's recommendations and rulings concerned privatization and privatization alone. With respect to the British sunset review, the EC's arguments concerning Glynwed are unchanged findings from the original proceeding. In the original sunset review, Commerce determined that subsidization was likely to continue or recur not only because of British Steel, but also because of Glynwed. Commerce's conclusion regarding Glynwed was *not*

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[1] Appellee Submission of the European Communities, paras. 139-142 (citations omitted) (Exhibit US-4).

[2] Appellee Submission of the European Communities, para. 147 (Exhibit US-4). Indeed, the EC even went so far as to suggest that permitting a complaining Member to advance a claim in an Article 21.5 proceeding when that claim could have been brought in the original proceeding implicated the "requirement to engage in dispute settlement procedures in good faith." *Id.*, para. 143.

predicated on a privatization analysis.[3] Therefore, Commerce's finding regarding Glynwed is an aspect of the original determination that did not change and did not have to change to comply with the DSB's recommendations and rulings. As the EC noted in *EC – Bed Linen,* "the re-determination confirmed, without making any changes, the findings made in the original determination . . . . That confirmation was made for reasons of transparency and legal certainty and was not, from a legal point of view, strictly necessary . . . ."[4] The same is true for the finding regarding Glynwed. As a result, consistent with *EC – Bed Linen*, an Article 21.5 proceeding is not the appropriate forum to address any grievances the EC might have regarding Commerce's Glynwed findings.

6. The posture of the Spanish sunset review is the same. In the original sunset review, Commerce determined that subsidization was likely to continue or recur not only because Commerce concluded that the privatization of Aceralia did not extinguish the benefit from non-recurring (and hence allocable), pre-privatization subsidies, but because of the existence of other subsidy programs that do not confer allocable subsidies (because they provide recurring subsidies).[5] Therefore, Commerce's finding regarding the other subsidy programs is an aspect of the original determination that did not change and did not have to change to comply with the DSB's recommendations and rulings and, as the EC argued in *EC – Bed Linen*, is not subject to Article 21.5 proceedings.

7. With respect to arguments about the International Trade Commission's ("ITC") likelihood of injury determination, the EC in *EC – Bed Linen* again provides an apt assessment of the situation. "Those elements of the original determination that were not addressed in the re-determination . . . are not part of the measure 'taken to comply'. Instead, they are part of the original measure and, as such, cannot be challenged before an Article 21.5 Panel but only before an ordinary Panel established in accordance with Article 4.7 of the *DSU*."[6] The United States agrees, as did the Appellate Body when it confirmed that unchanged parts of a measure that did not have to be changed to comply with the DSB's recommendations and rulings are not properly part of an Article 21.5 proceeding.

8. The United States is not arguing that all of the EC's claims are beyond the scope of this Panel. For the sunset review from France, the United States agrees that it is proper for this Panel, as part of its Article 21.5 jurisdiction, to review Commerce's revised privatization analysis of Usinor. Commerce's revised privatization analysis was not part of the original determination and was a change necessary to comply with the DSB's recommendations and rulings.

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[3] *Issues and Decision Memorandum in Cut-to-Length Carbon Steel Plate from the United Kingdom: Final Results of Expedited Review of Countervailing Duty Order*, 65 Fed. Reg. 18309 (April 7, 2000) (Exhibit EC-6).

[4] Appellee Submission of the European Communities, para. 131 (Exhibit US-4).

[5] *Issues and Decision Memorandum in Cut-to-Length Carbon Steel Plate from Spain*, p. 13-14 (Exhibit EC-7).

[6] Appellee Submission of the European Communities, para. 134 (Exhibit US-4).

9. In the words of the EC, to permit consideration of the claims regarding Glynwed, the recurring Spanish subsidy programs, and injury in this forum would provide a "second service" to a complaining party that, "by negligence or calculation" omitted to raise the claims during the original proceeding; it would "diminish the procedural rights" of the United States "for no good reason;" and would deprive the United States of a "reasonable period time" to come into compliance. The United States "could assume legitimately" that these findings were "WTO consistent and did not need to be corrected." It would be "manifestly unfair to expose" the United States to the "possibility of an immediate suspension of concessions . . . in response to a violation which the" United States "could not have anticipated when the implementing measures were taken and which it will be given no opportunity to correct." Thus, the material facts and circumstances of *EC – Bed Linen* are perfectly analogous to the facts and circumstances in this dispute.

10. The EC has argued that *EC – Bed Linen* is factually distinct from the present dispute because in the former India advanced the same claim in both the original proceeding as well as the Article 21.5 proceeding. However, as the excerpts from the EC's appellee submission in that dispute confirm, the argument the EC advanced, and which the panel and the Appellate Body accepted, was not limited to situations in which the "same claim" was being advanced; the EC logically argued that a claim that could have been brought in the original proceeding could not for the first time be brought in an Article 21.5 proceeding. Indeed, the fact that India was attempting to raise the same claim merely provided, in the EC's view, "*additional* grounds"[7] – not the only grounds – for considering India's claim beyond the scope of an Article 21.5 proceeding. The Appellate Body's conclusions, as quoted by the Panel in this question, demonstrate that its conclusions regarding the scope of an Article 21.5 proceeding are not limited to situations in which the same claim is advanced. Instead, they apply more broadly to situations in which a Member raises a claim that does not pertain to the measure taken to comply.

> ***Q3. Is the USDOC asserting that the change-of-ownership methodology had no material effect on the other elements of the sunset review determination? Is the USDOC arguing that even if the new change-of-ownership methodology resulted in a changed amount of subsidisation, this finding would not require the USDOC to revise the entire determination? (United States)***

11. The United States does assert that application of its new privatization methodology did not change the challenged subsidy likelihood determinations – those determinations remained affirmative despite the reexaminations performed in the revised sunset reviews. In addition, the United States disputes, for the reasons explained below, that the revised sunset reviews could have resulted in a changed amount of subsidization.

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[7] Appellee Submission of the European Communities, para. 149 (Exhibit US-4) (Emphasis added).

12. Article 21.3 of the SCM Agreement provides that a definitive countervailing duty must be terminated after five years unless the authorities determine that the "expiry of the duty would be likely to lead to continuation or recurrence of subsidization and injury." The focus of a sunset review under Article 21.3 is thus on future behavior, *i.e.*, whether subsidies and injury are likely to continue or recur in the event of expiry of the duty.

13. Commerce's subsidy likelihood determination is not dependent on the *magnitude* of the subsidy rate in any prior segment of the countervailing duty proceeding, and Commerce does not calculate a subsidy rate for purposes of the subsidy likelihood determination itself.[8] Further, Commerce conducts its subsidy likelihood determination on an order-wide, not company-specific, basis, unlike certain determinations in investigations and assessment reviews.[9]

14. In sum, application of Commerce's new privatization methodology to the revised sunset review determinations cannot have had any impact on subsidy calculations. Application of the new privatization methodology did not result in the elimination of subsidization on an order-wide basis. In the British review, the analysis of Glynwed's subsidies was not based on the privatization methodology; similarly, in the Spanish review, the analysis of the recurring Spanish subsidy programs was not based on any privatization methodology.

Q4. Does the United States consider that the amount of subsidisation is relevant for the purpose of determining injury? Is the same consideration also relevant in the context of a sunset review? (United States)

15. Nothing in Article 15 of the SCM Agreement requires investigating authorities to consider the level of subsidization in an injury analysis. Nor does Article 21.3 require that the authorities consider the level of likely subsidization in determining whether injury is likely to continue or recur. If the Panel is asking about the relationship between Article 15 and Article 21.3, the United States notes that Article 3 of the Antidumping Agreement does not apply to sunset reviews under Article 11.3 of that Agreement;[10] by direct analogy, Article 15 of the SCM Agreement does not apply to Article 21.3 sunset reviews of countervailing duty orders.

Q5. If by implementing the DSB recommendations and rulings, another inconsistency arises, do the parties believe that an investigating authority is obligated to address this further inconsistency in the context of the DSB

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[8] Appellate Body Report, *United States – Sunset Review of Anti-Dumping Duties on Corrosion-Resistant Carbon Steel Flat Products from Japan,* WT/DS244/AB/R, adopted 9 January 2004, para. 127 (the authorities in an antidumping sunset review need not "calculate or rely" on dumping margins).

[9] *Id.* at paras. 155-158 (sunset likelihood determination may be made on an order-wide basis).

[10] See, Appellate Body Report, *United States – Sunset Reviews of Antidumping Measures on Oil Country Tubular Goods from Argentina,* WT/DS268/AB/R, adopted December 17, 2004, para. 280.

recommendations and rulings? Please comment in light of the following excerpt from paragraph 79 of the Appellate Body Report in EC – Bed Linen:

> ***"... It is to be expected, therefore, that the claims, arguments, and factual circumstances relating to the "measure taken to comply" will not, necessarily, be the same as those relating to the measure in the original dispute.[11] Indeed, a complainant in Article 21.5 proceedings may well raise new claims, arguments, and factual circumstances different from those raised in the original proceedings, because a "measure taken to comply" may be inconsistent with WTO obligations in ways different from the original measure. In our view, therefore, an Article 21.5 panel could not properly carry out its mandate to assess whether a "measure taken to comply" is fully consistent with WTO obligations if it were precluded from examining claims additional to, and different from, the claims raised in the original proceedings.*** [12] **(European Communities/United States)**

16. At the outset, the United States notes that the factual situation put forth in the question is not the factual situation before the Panel. The newly alleged inconsistencies did not arise in the implementation of the DSB recommendations and rulings. Commerce's findings regarding Glynwed, the Spanish subsidy programs, and the ITC's likelihood of injury determination were unchanged parts of the original measure. Therefore, the EC's claims in that regard are not alleged "inconsistencies" "arising" out of implementation of the recommendations and rulings but rather are aspects of the original determination that are simply, in the words of the EC, "confirmed, without making any changes . . . for reasons of transparency" in the revised determination.[13]

17. In the *Bed Linen* quotation that the Panel cites above, the Appellate Body cited to *Canada – Aircraft*. The quotation from *Canada – Aircraft* makes clear that if the measure taken to comply is itself WTO-inconsistent, then an Article 21.5 panel may review the measure taken to comply for WTO-inconsistencies. Article 21.5 provides two bases for review of a "measure

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[11] (*footnote original*) *Ibid.*

[12] (*footnote original*) As we put it in *Canada – Aircraft (Article 21.5 – Brazil)*:

> Indeed, the utility of the review envisaged under Article 21.5 of the DSU would be seriously undermined if a panel were restricted to examining the new measure from the perspective of the claims, arguments and factual circumstances that related to the original measure, because an Article 21.5 panel would then be unable to examine fully the "consistency with a covered agreement of the measures taken to comply", as required by Article 21.5 of the DSU.

(Appellate Body Report, *Canada – Aircraft (Article 21.5 – Brazil)*, para. 41) We defined the function of Article 21.5 proceedings in the same vein in our Report in *US – Shrimp (Article 21.5 – Malaysia)* (para. 87).

[13] Appellee Submission of the European Communities, para. 131 (Exhibit US-4).

taken to comply" – either there is a claim that no such measure exists, or there is a claim that the measure is inconsistent with a covered agreement. In either case, though, the panel is reviewing only a "measure taken to comply." There is no reference in Article 21.5 to any other type of measure, and therefore there is no jurisdiction under Article 21.5 to review any other measure. Accordingly, a panel's review under Article 21.5 of a measure taken to comply is not limited to the DSB's recommendations and rulings; if inconsistencies with WTO obligations other than those addressed in the DSB's recommendations and rulings arise with respect to those aspects of the determination that changed to comply with the recommendations and rulings, then an Article 21.5 panel would have jurisdiction to review those changed aspects for WTO consistency.

Q6. Which laws and regulations govern a Section 129 proceeding? How does the Section 129 procedure work in practice? Please explain the respective responsibilities of the USTR and the USDOC in Section 129 proceedings and how these agencies interrelate. (United States)

18. Section 129(b) of the Uruguay Round Agreements Act, codified at 19 U.S.C. 3538(b), addresses instances in which the DSB has found that an action taken by Commerce in an antidumping or countervailing duty proceeding is inconsistent with U.S. obligations under the AD or SCM Agreement.[14] In such an instance, USTR may ask Commerce to issue a determination that would render that agency's action not inconsistent with the recommendations and rulings of the DSB. USTR plays no role in that determination. Commerce will then issue the revised determination within 180 days of receiving the request from USTR.

19. Section 129(b) also provides that USTR may direct Commerce to "implement" its revised determination for purposes of U.S. law. The Statement of Administrative Action provides an explanation of what this language means in the context of the statute:

> The Trade Representative may decline to request implementation of the [revised] determination. This might be the case, for example, if Commerce issued a final affirmative subsidy determination and a WTO panel subsequently finds that Commerce's analysis was not consistent with the Subsidies Agreement. On making a new determination at the Trade Representative's direction, Commerce could correct the analytical flaw found by the panel without changing the original outcome. In such a case, there would be no need to implement the new determination as a matter of domestic law.[15]

The circumstances discussed in this passage describe precisely the situation in the Article 21.5 matter before the Panel.

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[14] *See United States – Section 129(c)(1) of the Uruguay Round Agreements Act,* WT/DS221/R, adopted August 30, 2002.

[15] Statement of Administrative Action at 356 (Exhibit US-5).

20. The present dispute involves three sunset reviews. Under the U.S. system, a sunset review only determines whether an order is continued or revoked. It does not affect companies on an individual basis except if the order is revoked. With respect to these three reviews, Commerce's revised determinations were affirmative and the orders were therefore continued. For that reason, companies' entries were not affected by the revised determination, and there was no need to "implement" for purposes of U.S. law.

Q7. What are the implications if the USTR does or does not direct implementation? (United States)

21. In the case of the three reviews at hand, the absence of a direction to implement has no implications. Under U.S. law, there was no need to implement because the revised determinations did not affect the outcome; for example, the revised determinations did not result in revocation of the order. Therefore, USTR exercised its discretion not to direct implementation.

Q8. Does the USDOC have the discretion to implement DSB recommendations and rulings on its own initiative? Has the USDOC done so on any occasion? If so, under which circumstances? (United States)

22. Commerce has no independent authority to implement DSB recommendations and rulings on its own initiative. The Section 129 process is the standard procedure through which Commerce revises determinations to come into compliance.

Q9. Does the USDOC have the discretion to recalculate the margin of subsidisation in a Section 129 proceeding? If so, under which conditions could a revised margin lead to a new likelihood-of-injury determination? (United States)

23. As stated above, Commerce does not, and is not required to, recalculate margins of subsidization in sunset reviews. Consequently, any revisions to Commerce's sunset determinations that might be occasioned by a proceeding under section 129 cannot result in any recalculations to margins of subsidization.

Q10. Does the USDOC have the discretion to open the record and consider new evidence in a Section 129 proceeding? Has the USDOC done so on any occasion? If so, under which circumstances? (United States)

24. Commerce may consider new evidence where it is relevant to the measure taken to comply, which in this case involved the application of Commerce's new privatization methodology. Under the *Modification Notice,* a number of factual issues must be resolved when Commerce applies its new privatization methodology. Consequently, where it was necessary for

Commerce to apply the new methodology for purposes of resolving those factual issues, Commerce gave the interested parties an opportunity to submit new evidence, and Commerce considered that evidence.

Q11. In a Section 129 proceeding, does the USDOC have the discretion to reconsider evidence already on the record in the underlying determination? Has the USDOC done so on any occasion? If so, under which circumstances? (United States)

25. In a proceeding under section 129, Commerce may consider relevant evidence from the underlying determination. Commerce may, however, either take action on its own to move such evidence onto the record of the section 129 proceeding or offer interested parties the opportunity to place such evidence on the record. Evidence from the underlying determinations was placed on the record of several of the section 129 proceedings occasioned by the DSB's recommendations and rulings in this case – including all of the revised French and Italian reviews – and Commerce considered that evidence.[16]

Q12. What are the main features of an "expedited" sunset review? How does this compare to other types of sunset reviews? (United States)

26. In an "expedited" sunset review under section 751(c)(3)(B) of the Tariff Act of 1930, as amended ("Act"), Commerce normally will issue a final determination within 120 days of the initiation of the sunset review; in a "full" sunset review, Commerce's deadline is 240 days under section 751(c)(5)(A) of the Act.

27. The additional difference between "expedited" and "full" sunset reviews at Commerce is that, in the case of the latter, Commerce will issue preliminary results before issuing final results in the review.

Q13. In a sunset review, as a matter of practice, does the USDOC make a finding on the rate of subsidisation? (United States)

28. No. *See* Response to Question 3.

Q14. Does US law require the USDOC to determine a rate likely to prevail and report this rate to the ITC in the sunset review? For what purpose? (United States)

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[16] *See*, for example, *Issues and Decision Memorandum for the Determination Under Section 129 of the Uruguay Round Agreements Act: Countervailing Duty Administrative Review: Grain-Oriented Electrical Steel from Italy* (24 October 2003), at 4 (Exhibit US-6) (Commerce looked at new evidence in concluding that privatization extinguished the benefit).

29. In a sunset review, U.S. law requires that Commerce report to the ITC a rate likely to prevail in the event of revocation. That rate is not calculated in the sunset review, and it is not used for the imposition, collection, or assessment of duties. Nor does Commerce use it to determine whether countervailable subsidization is likely to continue or recur in the event of revocation. The ITC *may* consider the rate in making its likelihood of injury determination. In these reviews, the ITC did not rely on the rates.

Q15. Does the USDOC have the discretion to open the record and consider new evidence in an expedited sunset review? Does the USDOC have the discretion to open the record and consider new evidence in other types of sunset reviews? (United States)

30. During the course of a sunset review, expedited or otherwise, Commerce solicits and accepts information from parties, all of which is then considered in making a final determination. For expedited sunset reviews, *see* 19 C.F.R. §351.308(f); 19 C.F.R. §351.218(d)(3). For sunset reviews in general, *see* 19 C.F.R. §351.218(e)(2); 19 C.F.R. §351.218(d)(3).

Q16. At page 7 of the UK Section 129 determination the USDOC states: "The Department's duty, in reaching a determination under section 129(b)(2) of the URAA for this case, is not to reconduct the original sunset review in its totality, but to render it not inconsistent with the findings of the Appellate Body." Does the UK Section 129 determination also intend to render the original sunset review not inconsistent with the adopted findings of the Panel? (United States)

31. Commerce's Section 129 determination was intended to render the original sunset review not inconsistent with the recommendations and rulings of the DSB. The DSB adopted both the Appellate Body report and the Panel report as modified by the Appellate Body.

Q18. How did the United States implement the DSB's recommendations and rulings in the three sunset reviews at issue? In the Notice of Implementation, the USDOC indicates that "[b]ecause the U.S. Trade Representative declined to direct the Department to implement the revised determinations with regard to the four sunset reviews involved in the WTO dispute, [the USDOC is] not implementing these Section 129 Determinations". What constitutes "implementation" in these cases? (European Communities/United States)

32. As a previous panel has noted, terms used in a Member's municipal law and those used in WTO provisions "do not necessarily have the same meaning."[17] In this dispute, the United States

[17] *United States – Sections 301-310 of the Trade Act of 1974*, WT/DS152/R, adopted January 27, 2000, para. 7.20.

implemented the recommendations and rulings of the DSB by revising the determinations to render them not inconsistent with those recommendations and rulings. However, for purposes of U.S. law, USTR determined that it was unnecessary to "implement" the revised determinations because, as discussed in greater detail above, the revisions could not have resulted in revocation of any of the orders.

Q19. If the Section 129 determinations constitute "implementation" in the four sunset cases, what is the relevance of the fact that the USTR declined to direct implementation? Does the absence of the USTR's direction to implement affect the legal status of the three Section 129 determinations at issue? If so, to what extent? (United States)

33. As noted above, the United States implemented for purposes of the WTO by revising the determinations in question. However, because complying with the DSB's recommendations and rulings did not require the United States to change the outcome of the determinations, there was no need, under U.S. law, for Commerce to "implement." Accordingly, the absence of USTR direction to implement means that the three determinations remain unimplemented under U.S. law, but implementation would not have resulted in the revocation of any of the orders.

Q 20. Why did the USTR direct the USDOC to implement eight of the twelve Section 129 determinations and then decline to direct the USDOC to implement the other four Section 129 determinations? (United States)

34. Bringing eight of the twelve determinations into compliance with the DSB's recommendations and rulings resulted in either a change to the the cash deposit rate or revocation of the order. Therefore, USTR "directed" Commerce to implement in order to modify the cash deposit rate or revoke the order. Bringing the remaining four determinations into compliance only required Commerce to correct – as the SAA describes it – an "analytical flaw" (the privatization methodology) and did not affect the outcome of the review. As a result, there was no need to implement as a matter of U.S. law.

Q21. Do the parties agree that the three Section 129 determinations at issue are the measures taken to comply in these Article 21.5 proceedings? (European Communities/United States)

35. Those aspects of the Section 129 determinations that represent revisions to the original determinations in order to comply with the DSB's recommendations and rulings are the measures taken to comply in these proceedings. With respect to these revised determinations, the revised privatization analysis of Usinor is a measure taken to comply. By contrast, any findings regarding Glynwed and the Spanish subsidy programs in the revised sunset review are not measures taken to comply because they are unchanged aspects of the original determination

having nothing to do with privatization, and they therefore did not need to be changed in order to come into compliance with the DSB's recommendations and rulings.

Q22. During the meeting, the United States said it understood its obligation to implement the DSB recommendations and rulings in respect of privatisation as requiring it to "remove the taint". What did the United States mean by the term "remove the taint"? What impact does it have on the revised sunset determinations? (United States)

36. The DSB's recommendations and rulings addressed the WTO-consistency of Commerce's privatization methodology. The Panel and the Appellate Body concluded that Commerce's analysis of the continuing benefit inuring to British Steel after its privatization was not consistent with U.S. WTO obligations.

37. As the Panel stated, the sunset reviews "based on the gamma methodology" are inconsistent with the SCM Agreement.[18] Thus, Commerce eliminated its reliance on a flawed privatization methodology by assuming that the privatization of British Steel extinguished any continuing benefit. As the United States has noted, Commerce's original determination to continue the sunset order was not based solely on findings resulting from use of the flawed methodology; the *Issues and Decision Memorandum* in the original sunset determination noted that Glynwed also benefitted from a subsidy program, and Glynwed's subsidization was not subject to a privatization analysis.[19] Therefore, the revised determination is no longer based on the flawed methodology, and the United States has thereby complied with the recommendations and rulings of the DSB.

38. The same is true of the Spanish review, where the original sunset determination was based not only on the existence of non-recurring subsidies, but also on the existence of recurring subsidies. The latter are not affected by privatization and therefore were not subject to the DSB's recommendations and rulings.

Q23. Does the United States argue that it has complied with the DSB recommendations and rulings by referring a respondent company to an alternate procedure, i.e. an administrative review, to obtain a company-specific rate based on the new privatisation methodology? (United States)

39. No. The DSB's recommendations and rulings addressed the following issue: Whether the privatization methodology then used by the United States was consistent with U.S. WTO

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[18] Panel, para. 8(1)(c).

[19] *Issues and Decision Memorandum in Cut-to-Length Carbon Steel Plate from the United Kingdom: Final Results of Expedited Review of Countervailing Duty Order*, 65 Fed. Reg. 18309 (April 7, 2000) (Exhibit EC-6), at 6, 13.

obligations and whether the U.S. decision, in the context of a sunset review, to continue the order was WTO-consistent in light of the fact that it was based on a flawed analysis of whether the benefit survived the privatization. The Appellate Body confirmed in *Japan Sunset* that order-wide sunset reviews are permissible and that the United States is not obligated to make company-specific determinations in those reviews.[20] If British Steel wishes to obtain a revised company-specific rate, then the appropriate venue, under U.S. law, is for British Steel to seek an administrative review. However, that would be unrelated to the question of complying with the DSB recommendations and rulings.

Q27. Can the United States clarify to whom Usinor's employees/retirees are related? Are they related to Usinor, as indicated in the French Section 129 determination, and/or to the Government of France, as argued in the written submissions? (United States)

40. For purposes of the application of the new privatization methodology, Commerce does not distinguish between the company and its owner. As employees of Usinor, the employees are related to (or affiliated with) Usinor and, therefore, related to (or affiliated with) the seller, the combined Usinor/Government of France entity.

Q28. In its Oral Statement, the United States referred for the first time to the concept of "affiliation" to describe the alleged relation between Usinor and its employees/retirees. Could the United States explain what this concept means from a legal point of view? Could the United States provide a citation to US law? Where does the concept of affiliation appear in the French Section 129 determination? (United States)

41. "Affiliation" appears in section 771(33) of the Act. It informs Commerce's interpretation of the term "related" as that term was applied in the revised French sunset review under section 129 in that section 771(33) of the Act makes it clear that the relationship between employers and employees is one of "affiliation." In fact, Question 8 in the questionnaire sent to French respondents in the section 129 proceeding referred both to relatedness and affiliation in setting forth possible criteria for determining whether the privatization transaction was at arm's length.

42. Regardless of whether one uses the term "related" or "affiliated," the issue before Commerce was whether there was a relationship between buyer and seller such that it would be prudent to investigate whether that relationship had an impact on the result of the sales process. Commerce concluded that the relationship between Usinor and its employees did necessitate further inquiry. In this regard, the United States notes that Article 15.4 of the Customs Valuation Agreement provides that employers and employees are considered to be related parties.

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[20] Appellate Body Report, *United States – Sunset Review of Anti-Dumping Duties on Corrosion-Resistant Carbon Steel Flat Products from Japan,* WT/DS244/AB/R, adopted 9 January 2004, para. 150.

Commerce's view that the relationship between employer and employee might influence the price is not without prcedent. Thus, for purposes of customs valuation, Members have already agreed that a relationship between an employee and its employer can be grounds for further examination as to whether the price actually paid whether the price actually paid was influenced by the relationship between the buyer and the seller. Similarly, in the French privatization, the fact that Commerce considered the employer and employee – the buyer and the seller – related (or affiliated) simply led to further examination of whether the price the employees paid for the shares, which the seller described as "preferential," was in fact at arm's length and for fair market value.

Q29. In the French Section 129 determination the USDOC states: "We determine that the employees of Usinor were related to Usinor...".[21] Can the United States indicate the excerpt(s) in this French Section 129 determination where the reasoning for such a conclusion lies? (United States)

43. U.S. law provides that employers and employees are to be considered affiliated (related). The fact that Commerce finds parties to be affiliated (related) does not result in a conclusion about whether the transaction was for fair market value; instead, that finding suggests that the transaction merits further scrutiny. Commerce made this precise finding in the draft determination, and no one, including the interested parties, challenged the conclusion.

Q30. Did the European Communities provide information related to the effect of different incentives and restrictions on the respective risk premiums of the four classes of share offering? If so, did the USDOC take this information into account? Please see the Usinor Prospectus, inter alia, at pages 21-24. (European Communities/United States)

44. The EC never provided Commerce with evidence demonstrating that the "costs" of any restrictions on the different share classes fully account for the differences in the prices offered to the buyers. Most especially, the EC never provided Commerce with evidence demonstrating how restrictions on the employee shares might have fully accounted for the special ("preferential") price offered to the employees. Rather, as here, the EC provided Commerce with nothing more than conclusory allegations.

Q32. At page 6 of the French Section 129 Determination, the USDOC states:

> ***"The decision to privatize Usinor and the terms of privatization were executed through an order of the Ministry of Economic Affairs and Finance, based on an opinion by the Privatization Commission, both issued in June 1995. Share prices were set by***

[21] French Section 129 Decision Determination, p. 6.

> ***the Ministry, based on the opinion of the Privatization Commission, in consultation with Banque S.G. Warburg ("Warburg") and the other Global Coordinators of the share offerings, and in accordance with the privatization law. The Privatization Commission stated that it relied upon various valuation methodologies for Usinor including, inter alia, stock-exchange-based comparisons and net liquidity flows. Based on its analysis, the Commission recommended a minimum value for Usinor of FF 15,750 billion."***

Do the parties consider that this price of FF 15,750 billion is the fair market value (FMV) for Usinor? For what price did the Government of France actually sell Usinor? (European Communities/United States)

45. No. That was an appraised value, not a fair market value. An appraised value is – by definition – only an pre-sale estimate. It is not the result of a market process. See Modification Notice, 68 FR at 37131. Moreover, as pointed out in the Issues and Decision Memorandum for the Section 129 Determination: Corrosion-Resistant Carbon Steel Flat Products from France at 7, this particular appraised value was treated by the seller as a "minimum value," not even an estimated sales price.

Q33. In its First written submission, the United States argues that "although approximately 95 percent of the benefit from previously allocated subsidies was extinguished by the privatisation of Usinor, the remaining 5 percent of the allocated subsidy continued to benefit the privatized entity".[22] In its Second written submission, it further states that "Commerce reasonably determined that a corresponding portion of the allocated benefit continued to be countervailable after privatisation".[23] During the meeting with the Panel, the United States argued that the privatisation extinguished approximately 95 percent of the pre-privatisation, non-recurring subsidies. Can the United States please indicate to the Panel the excerpt of the Section 129 determination where that finding can be found? How does the United States reconcile this with the USDOC's position in the Section 129 determination? Specifically, please see the USDOC's statement at page 15 of the French Section 129 determination where the USDOC explains:

> ***"In this determination, we have applied the approach laid out in our Modification Notice, which states that, where we find that the baseline presumption is not rebutted because a transaction was not***

[22] US First written submission, para. 12.
[23] US Second written submission, para. 5.

> ***made at arm's length and for fair market value, or because of severe market distortions, "we will find that the company continues to benefit from the prior subsidies in the full amount of the remaining unallocated balance of the subsidy benefit." See Modification Notice, 68 FR at 37138." (United States)***

46. Commerce found that the benefit associated solely with the employee shares was a sufficient basis for an affirmative subsidy likelihood finding in the revised French sunset review – Commerce took the 95 percent of the shares that were not sold to Usinor employees out of the analysis because the benefit associated with those shares had been extinguished by an arm's-length/fair market value privatization. See Issues and Decision Memorandum for the Section 129 Determination: Corrosion-Resistant Carbon Steel Flat Products from France; Final Results of Expedited Sunset Review of Countervailing Duty Order, at 10 ("Third, the GOF set and received a market-clearing price for Usinor's shares, except in the employee offering which constituted only 5.16 percent of the sale. . . ."); and at 16 ("As described in the 'Conclusion' section above [p.12], we have determined that the sale of shares to Usinor employees permitted the continuation of certain allocable, non-recurring, pre-privatization subsidies at an above de minimis rate beyond the original sunset review. On this basis, we reaffirm our original likelihood determination. . . .").

47. These findings are entirely consistent with Commerce's statement from page 15 of the French section 129 determination. The statement quoted by the Panel was Commerce's response to the respondent's argument that, where something less than fair market value (but greater than zero) is paid for a share, the continuing benefit amount should only be the difference between the price actually paid and the fair market value. Commerce had already rejected that approach when formulating its new privatization methodology. Modification Notice, 68 FR at 37138. Rather, under Commerce's new methodology, where less than fair market value is paid for a share, the entire remaining allocable subsidy benefit attributable to that share continues to be countervailable.

> ***Q36. In the French Section 129 determination, the USDOC concludes that the employee share price was "preferential", i.e. lower than the market-clearing price. Yet it also concludes that the employee share resale restriction, together with restrictions on the French offering and the stable shareholders offering, constituted a "committed investment" because these restrictions "were aimed at encouraging the purchasers to hold onto their shares for a period of time".[24] The USDOC stated that "there is no evidence indicating that these commitments distorted the amount that share purchasers were willing to pay"; therefore it concluded that "any committed investments were fully reflected in the share price". Do these findings indicate that the employee share price accurately and fully reflects the employees' willingness to hold onto the shares***

[24] French Section 129 determination, p. 9.

for a minimum period? Please explain how these findings relate. (European Communities/United States)

48. In responding to this question, it is necessary first to clarify the general purpose and scope of Commerce's examination of potential "committed investments." We direct the Panel's attention to the thorough explanation of this issue in the Modification Notice, 68 FR at 37133. A fundamental concern underlying Commerce's examination of committed investments is transparency, that is, whether the parties to the privatization were aware of the committed investment requirements. If the facts of a particular privatization demonstrate the requisite level of transparency, Commerce will generally find that the presence of committed investment requirements is not a basis for finding that the sale was for less than fair market value.

49. In the revised French sunset review, by finding that the committed investment met the enumerated criteria, Commerce found that any restrictions and requirements were fully known to the potential buyers and, thus were fully reflected in the "amount that share purchasers were willing to pay." This finding was only intended to indicate that the existence of committed investments did not provide an additional reason for concluding that the transaction was not for fair market value, over and above Commerce's other findings with respect to fair market value.

50. In sum, Commerce's determination that any restrictions or requirements were reflected in the employee sales price does not mean, and was not intended to mean, that the entire discount or extent of the "preference" in the employee share price is fully accounted for by such restrictions or requirements.

Q37. In its First written submission, the United States argues that "Commerce assumed that the privatisation[] in the UK ... [was] at arm's-length and for fair market value".[25] Can the United States identify in the text of the UK Section 129 determination the facts and circumstances on the basis of which the USDOC "assumed" that the privatisation of British Steel was at arm's length and for FMV? (United States)

51. The United States assumed that the privatization of British Steel was at arm's length and at fair market value based on the recognition that this issue could not affect the outcome of the sunset review, given that the continuation of the order independently relied on the subsidization of Glynwed. As the United States has noted, its task was to bring its measure into compliance with the DSB's recommendations and rulings. In doing so, Commerce reviewed the bases for continuation of the order. Because one of the bases for continuing the order was the subsidization of Glynwed, which did not involve privatization and therefore was not affected by the DSB's recommendations and rulings, an in-depth privatization analysis of British Steel could not have

[25] US First written submission, para. 49.

changed the outcome. Therefore, Commerce simply assumed that the privatization was at arm's length and for fair market value.7 Because Commerce conducts its sunset reviews on an order-wide basis, the outcome of the sunset review would not have been affected had Commerce instead made a "determination" regarding British Steel, as opposed to simply assuming the privatization was at arm's length and for fair market value.

Q38. On the issue of privatisation, Brazil cited the following Appellate Body finding:

> ***"We have already determined, in US – Lead and Bismuth II, that the gamma method is inconsistent with the obligation under Article 21.2 of the SCM Agreement. That obligation requires an investigating authority in an administrative review, upon receiving information of a privatisation resulting in a change in ownership, to determine whether a "benefit" continues to exist. In our view, the SCM Agreement, by virtue of Articles 10, 19.4, and 21.1, also imposes an obligation to conduct such a determination on an investigating authority conducting a sunset review. As we observed earlier, the interplay of GATT Article VI:3 and Articles 10, 19.4 and 21.1 of the SCM Agreement prescribes an obligation applicable to original investigations as well as to reviews covered under Article 21 of the SCM Agreement to limit countervailing duties to the amount and duration of the subsidy found to exist by the investigating authority. Consequently, we see no error in the Panel's finding that, in sunset reviews, the investigating authority, before deciding to continue to countervail pre-privatisation, non-recurring subsidies, is obliged to 'examine the conditions of such privatisations and to determine whether the privatized producers received any benefit from the prior subsidisation to the state-owned producers'."[26]***

In the UK Section 129 determination, the USDOC assumes arguendo that the privatisation was at arm's length and for FMV. Then, however, the USDOC states that it received allegations that the privatisation was affected by "market distortions"; concludes that such a privatisation would not warrant a finding that the privatisation extinguished pre-privatisation, non-recurring subsidies; and dismisses the issue, explaining that it would not address this issue because it did not address the arm's length/FMV issue. Given all of this, what is the determination on the privatisation? (United States)

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[26] Appellate Body Report, para. 149 (emphasis added).

52. Commerce did not make any company-specific determinations on privatizations in the UK section 129 determination. Rather, Commerce determined that, assuming arguendo that the privatization of British Steel plc was at arm's-length and for fair market value (so that all pre-privatization subsidies were eliminated) , there remained a sufficient basis for an affirmative subsidy likelihood determination, i.e., the finding in the original sunset review that other subsidies, not affected by privatization, continued during the life of the order.

Q39. Given the Appellate Body's recommendations and rulings, how did the USDOC remove the so-called "taint" in this case? Does the United States consider that its removal of the "taint" consists of "assuming arguendo"? (United States)

53. Commerce assumed that the privatization of British Steel plc was at arm's length and for fair market value and thereby rendered the revised UK sunset review consistent with the DSB's recommendations and rulings. As noted above, Commerce found that there remained a sufficient basis for an affirmative subsidy likelihood determination absent the benefit associated with allocable, pre-privatization subsidies conferred upon British Steel plc. Because the revised determination was not based on a privatization analysis of any kind, the revised determination was no longer "tainted."

Q40. The United States argues in its submissions that the USDOC assumed in its Section 129 determination that British Steel plc was privatized at arm's length and for FMV. The Panel understands that the only subsidy programmes benefiting British Steel prior to its privatisation were non-recurring. Is that correct? If this is the case, if the privatisation did in fact extinguish the benefit of those non-recurring subsidies, what is the basis for maintaining the CVD order vis-à-vis British Steel plc? (United States)

54. As explained above, consistent with Article 21.3 of the SCM Agreement, Commerce's subsidy likelihood determination is made on an order-wide basis. Thus, a sunset review does not result in maintenance of an order vis-a-vis one company or another. Rather, the order is simply continued, and those companies subject to the order remain subject to the order. As the United States has noted, if British Steel wishes to have the order revoked vis-a-vis itself, rather than on an order-wide basis, then British Steel may request an assessment review to begin that process.

Q41. Which subsidy programmes is the United States currently countervailing? Which recurring programmes form the basis of the USDOC's affirmative determination of likelihood of continuation or recurrence of subsidisation in the UK Section 129 determination? (European Communities/United States)

55. The current deposit rate for Glynwed is .73 percent ad valorem. For all other exporters, the deposit rate is 12 percent ad valorem. These deposit rates are based on the results of the original investigation, not on the results of the sunset review or the revised sunset review. The original investigation resulted in affirmative findings with respect to the following programs: Equity Infusions into British Steel, Cancelled NLF Debt, Regional Development Grants, the European Regional Development Fund, ECSC Article 54 Loans/Interest Rebates, and Transportation Assistance.[27] There have been no assessment reviews conducted with respect to the UK countervailing duty order, and, thus, there has been no opportunity to revise the deposit rates.

56. Regarding Commerce's revised likelihood determination in the UK case, Commerce based the affirmative result on its finding in the underlying sunset review that Glynwed is likely to continue to benefit from countervailable subsidies.[28]

Q42. What evidence did the European Communities/UK Government/Corus provide regarding recurring subsidisation? When did they provide it? In the Section 129 determination? In the sunset review? Please distinguish between evidence on general programmes and those specific to either British Steel or Glynwed, if applicable. In the Section 129 determination, did they provide any evidence on the same programmes additional to that evidence already provided in the sunset review? Did the evidence regarding non applicable/no longer available subsidy programs submitted during the sunset review concern the countervailed subsidy programs benefiting Glynwed? (European Communities/United States)

57. The European Communities/the Government of the UK/Corus offered arguments concerning a number of programs in the original sunset review, including programs that benefit or are likely to benefit Glynwed. Commerce rejected those arguments. In the Section 129 proceeding, the EC sought to re-introduce arguments regarding programs that benefit or are likely to benefit Glynwed. However, because the purpose of the Section 129 proceeding was to bring the United States into compliance with the DSB's recommendations and rulings, which were limited to privatization, those arguments (and the underlying information) were inapposite.

Q44. At page 19 of the original sunset review Issues and Decision Memorandum (Exhibit EC-6), the USDOC provides a company-specific rate for

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[27] *Issues and Decision Memorandum in Cut-to-Length Carbon Steel Plate from the United Kingdom: Final Results of Expedited Review of Countervailing Duty Order*, 65 Fed. Reg. 18309 (April 7, 2000) (Exhibit EC-6).

[28] *Issues and Decision Memorandum in Cut-to-Length Carbon Steel Plate from the United Kingdom: Final Results of Expedited Review of Countervailing Duty Order*, 65 Fed. Reg. 18309 (April 7, 2000) (Exhibit EC-6) at 13-14.

Glynwed (0.73 percent) and an all others rate (12.00 percent). Does this mean that the USDOC would have a sufficient basis to recalculate the countervailing duty in a sunset review? If not, what is the source for this rate? (United States)

58. Those are the rates from the original investigation. They were not calculated, or recalculated, in the sunset review.

Q45. What is the cash deposit rate(s) for the relevant products in this case? Is the legal basis for this cash deposit rate(s) the original investigation, the original sunset review, or the revised sunset review provided in the Section 129 determination? (European Communities/United States)

59. In addition to the deposit rates for the UK case (see answer to Question # 41), the deposit rate in the Spanish case is 36.86 percent country-wide, and the deposit rate in the French case is 15.13 percent (Usinor and country-wide). In both cases, these deposit rates were determined in the investigation (which, in the French case, included recalculation as a result of domestic litigation); no party has requested an assessment review in either of these cases.

Q46. The Panel notes that sunset reviews in the United States are conducted on an order-wide basis. Please explain why the UK Section 129 determination provides a company-specific rate for Glynwed. (United States)

60. Commerce did not assign Glynwed a new company-specific rate in the UK section 129 determination. The reference to the rate relates back to the rate that Commerce assigned to Glynwed in the original investigation (there were no administrative reviews) and reported to the Commission in the initial sunset determination. As discussed above, in the initial sunset determination, Commerce reported company-specific rates only because the U.S. statute requires Commerce to report likely-to-prevail rates to the ITC.

Q47. Would a decrease in the volume of subsidized imports pursuant to a likelihood-of-subsidisation determination have an impact on the likelihood-of-injury analysis? (United States)

61. The volume of subsidized imports would not be affected by a section 129 determination finding likelihood-of-subsidization on an order-wide basis. The Appellate Body has clarified that Members are not obligated to make company-specific determinations in sunset reviews of antidumping orders; by analogy, Members are not obligated to make such determinations in sunset reviews of countervailing duty orders.[29] Thus, where, as in the case of the UK section 129 determination, there is a finding that order-wide subsidization is likely to continue or recur, there

[29] Appellate Body Report, *United States – Sunset Review of Anti-Dumping Duties on Corrosion-Resistant Carbon Steel Flat Products from Japan,* WT/DS244/AB/R, adopted 9 January 2004, para. 150.

would be no change in the volume of imports covered by the order. If, on the other hand, a section 129 determination by Commerce resulted in an order-wide finding of no likely subsidization, the USTR could direct Commerce to "implement" by revoking the order altogether.

Q48. Can the United States confirm that the USDOC did not need to revisit the privatisation analysis in the UK (and Spain) case(s) because it relied on other grounds for its likelihood-of-subsidisation determination? (United States)

62. Yes.

Q49. Given the text of Article 21.1 SCM, which provides that "a countervailing duty shall remain in force only as long as and to the extent necessary to counteract subsidisation which is causing injury", could one assume that a change in circumstances, especially one affecting the level of subsidised imports, would require an authority to revaluate injury? What is the relationship between the obligations in Article 21.1 SCM and Article 21.3 SCM? (European Communities/United States)

63. As this Panel has noted, Article 21.1 establishes a "general rule," and Article 21.3 "seems to provide a specific application" of that general rule.[30] The United States provides for change-in-circumstance reviews pursuant to Article 21.2.

Q50. In its First written submission, the United States argues that "Commerce assumed that the privatisation[] in ... Spain [was] at arm's-length and for fair market value"[31] Can the United States identify in the text of the Spain Section 129 determination the facts and circumstances on the basis of which the USDOC "assumed" that the privatisation of Aceralia was at arm's length and for FMV? (United States)

64. As was the case with the UK review, it was unnecessary for Commerce to conduct a privatization analysis because there were other, non-privatization grounds for continuing the order. See the U.S. answer to Question 39.

Q51. Which subsidy programmes is the United States currently countervailing? Which recurring programmes form the basis of the USDOC's affirmative determination of likelihood of continuation or recurrence of

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[30] Panel Report, paras. 7.107-7.108.

[31] US First written submission, para. 49.

subsidisation in the Spain Section 129 determination? (European Communities/United States)

65. In the original affirmative countervailing duty determination, the following programs were found to confer countervailable subsidies: (1) Law 60/70 – Long-term Loans from the Bank of Industrial Credit and Equity Infusion; (2) Royal Decree 878/81 – BCI Exceptional Credits, Grants, and Equity Infusion; (3) 1984 Council of Ministers Meeting – Equity Infusions, Loan Guarantees, Share "Issue Premium," and Grant; (4) 1987 Government Delegated Commission on Economic Affairs – Deferral of Social Security and Other Tax Obligations, Grants, and Fund for Employment Promotion and Early Retirement; (5) Contributions Made to INI Special Finance Accounts; and (6) ECSC Article 54 Loans and Loan Guarantees. There have been no assessment reviews to take into account changes to these programs and/or changes to the subsidy rates associated with these programs.

66. In the Spanish sunset review (and in the revised Spanish sunset review), Commerce's affirmative likelihood determination was based in part on a determination that there are countervailable recurring, non-allocable subsidies provided by programs that continue to exist such as the 1987 Government Delegated Commission on Economic Affairs: Fund For Employment Promotion and Early Retirement.

Q52. What evidence did the European Communities/Government of Spain provide regarding recurring subsidisation? When did they provide it? In the Section 129 determinations? In the sunset reviews? Please distinguish between evidence on general programmes and those specific to Aceralia. In the Section 129 determination, did they provide any evidence on the same programmes additional to that evidence already provided in the sunset review? (European Communities/United States)

67. The European Communities and the Government of Spain offered arguments concerning a number of programs in the original sunset review. Commerce rejected these arguments in the original review.[32] In the Section 129 proceeding, the EC and and the Government of Spain sought to re-introduce their earlier arguments regarding recurring subsidies. However, because the purpose of the Section 129 proceeding was to bring the United States into compliance with the DSB's recommendations and rulings, which were limited to privatization, the arguments (and underlying information) on recurring subsidy programs were inapposite.

[32] *Issues and Decision Memorandum in Cut-to-Length Carbon Steel Plate from Spain* (Exhibit EC-7).

Q53. What is the cash deposit rate(s) for the relevant products in this case? Is the legal basis for this cash deposit rate(s) the original investigation, the original sunset review, or the revised sunset review provided in the Section 129 determination? (European Communities/United States)

68. See response to Question 45.

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TABLE OF EXHIBITS

Exhibit US-	Title of Exhibit
4	Appellee Submission of the European Communities in *European Communities – Anti-Dumping Measures on Imports of Cotton-Type Bed-Linen from India – Recourse to Article 21.5 of the DSU by India*, (selected pages), (3 February 2003).
5	"Statement of Administrative Action" in *Message from the President of the United States Transmitting the Uruguay Round Agreements, Texts of Agreements Implementing Bill, Statement of Administrative Action and Required Supporting Statements*, H.R. Doc. No. 103-316, Vol. 1 at 656, 1022-1027 (1994).
6	*Issues and Decision Memorandum for the Determination Under Section 129 of the Uruguay Round Agreements Act: Countervailing Duty Administrative Review: Grain-Oriented Electrical Steel from Italy* (24 October 2003).