United States - Anti-dumping Measures on
Oil Country Tubular Goods from Mexico

(WT/DS282)

Opening Statement of the United States at the Second Meeting of the Panel with the Parties

August 17, 2004

Mr. Chairman, members of the Panel:

1. On behalf of the United States delegation, I would like to thank you for this opportunity to further clarify certain issues raised in this proceeding concerning the U.S. sunset review and fourth administrative review of OCTG from Mexico.

2. With respect to the substantive issues, we do not intend to offer a lengthy statement today but will focus on issues raised by Mexico's second submission. We will first address central issues concerning the likelihood of continuation or recurrence of dumping, then those concerning the fourth administrative review, and finally those concerning the continuation or recurrence of injury.

Issues Regarding Sunset Review

3. Mr. Chairman, the claims raised by Mexico in this dispute essentially focus upon the obligations contained in Article 11.3 of the AD Agreement and the U.S. sunset review system. For the most part, Mexico's second submission presents nothing new, but simply repeats Mexico's case in its entirety. Repetition notwithstanding, Mexico still fails to establish a *prima facie* case. Although we have addressed Mexico's arguments in our prior written submissions, we make the following brief comments to address a number of mischaracterizations in Mexico's second submission.

4. First, citing the Appellate Body report in *Japan Sunset,* Mexico argues that the Sunset Policy Bulletin is a "measure." In this regard, we call the Panel's attention to the fact that the Appellate Body in *Japan Sunset* did not find that Commerce's *Sunset Policy Bulletin* is a "measure." Instead, the Appellate Body simply reversed the panel's finding that the *Sunset Policy Bulletin* was not a measure because the panel's analysis was flawed.[1]

5. In search of support for its argument, Mexico incorrectly claims that the Appellate Body in Japan Sunset "evaluated" whether "'the type of instrument itself, be it a law, regulation, *procedure, practice,* or something else'"could be subject to dispute settlement. Mexico misquotes the Appellate Body, which made no such statement but instead asked whether the type of instrument should determine whether it is subject to dispute settlement. By merely asking this question, the Appellate Body in fact did not draw the conclusion Mexico desires. Moreover, based on the false premise that such a conclusion was drawn, Mexico claims that the United States has failed to address Mexico's comments in this regard. However, the United States has addressed Mexico's claim in both our first written submission at paragraph 114 and in our second submission in footnote 21, by noting that nowhere in *Japan Sunset* did the Appellate Body conclude that the *Sunset Policy Bulletin* is a measure or that Commerce's sunset "practice" may be challenged.

6. The most significant issue with respect to Mexico's arguments regarding the *Sunset Policy Bulletin* is that, as the complaining party, Mexico must, through evidence and argumentation, make a *prima facie* case that the *Sunset Policy Bulletin* is a measure and, in

[1] Appellate Body Report, *Japan-Sunset*, para.100-101.

addition, is inconsistent with U.S. WTO obligations. Mere assertions are not sufficient to establish a complaining party's *prima facie* case. Mexico has provided nothing -- either evidence or argument -- to establish its claim regarding the legal significance of the *Sunset Policy Bulletin* in the context of the U.S. legal regime.

7. While the Appellate Body did state that "legal instruments" could be challenged as measures, Mexico has not demonstrated that the *Sunset Policy Bulletin* is a "legal instrument." The *Sunset Policy Bulletin* is not a law or a regulation, and it does not have the status of a law or regulation under the U.S. legal regime. Mexico's response to this has been to state that the Panel is not required to take as "'fact' any Member's explanation" regarding the meaning of its own law. However, as noted earlier, Mexico has to date not even made its *prima facie* case regarding this claim, let alone established that the U.S. explanation of the meaning of the *Sunset Policy Bulletin* in the context of its municipal law is incorrect.

8. Mexico also claims that, notwithstanding the failure of respondent interested parties to respond to the notice of initiation in 173 sunset reviews, Commerce has failed in its "duty to seek out information." As we have noted in our prior submissions, Commerce actively seeks out information by publishing the notice of initiation of the sunset review and its sunset questionnaire, as well as by sending notification of the review and where the questionnaire can be found directly to all interested parties who have participated in prior administrative proceedings. In failing to respond to these notifications, respondents also fail to rebut the positive evidence placed on the record by the domestic interested parties. As the Appellate Body in *Japan Sunset* acknowledged, "the primary source of information in all proceedings conducted under the [AD] agreement . . . is the exporters or producers themselves who posses the best evidence of their

likely future pricing behavior – a key element in the likelihood of future dumping."[2]

9. Second, Mexico argues that the "good cause" provision in U.S. law restricts the evidence Commerce may consider in a sunset review. The "good cause" provision, however, is nothing more than a requirement for the submitting party to provide a legally sufficient reason for the information to be considered in the sunset review. In other words, the submitting party need only demonstrate how the so-called "other factors" information is relevant to the likelihood of dumping analysis. Nevertheless, very few interested parties have submitted or attempted to submit "other factors" information in sunset reviews.

10. In support of Mexico's "good cause" claim, Mexico has mischaracterized both *Canada-Sugar* and *Brass Sheet & Strip-Netherlands*. Mexico argues that these sunset reviews demonstrate that Commerce only uses "other factors" information to find a likelihood of dumping.[3] In *Canada-Sugar*, however, Commerce rejected the "other factors" information submitted by the domestic interested party, but later considered it only at the insistence of both the domestic and respondent interested parties. In *Brass Sheet & Strip-Netherlands*, Commerce considered all the information, including the "other factors" information, submitted by the respondent interested party. Commerce used the depressed state of imports as the basis of its affirmative likelihood determination because the respondent interested party's explanation for its import volumes was undermined by its own statements concerning its future export plans of the subject merchandise. Thus, Mexico's grievance is not with the application of the "good cause" and "other factors" provisions in those reviews, but with Commerce's analysis of the information

---

[2] Appellate Body Report, *Japan-Sunset*, para 199.

[3] Mexico Second Written Submission, para. 19.

in those reviews.

11. Finally, with regard to the sunset review of OCTG from Mexico, Mexico's claims in its second submission are mutually inconsistent. Mexico claims both that Commerce impermissibly relied upon the margin of dumping calculated in the original investigation in making the affirmative dumping determination, and that Commerce impermissibly relied on depressed import volumes because import volume data alone cannot support an affirmative dumping determination. As we have explained in our prior submissions and is clear from the *Decision Memorandum*, Commerce based its affirmative likelihood determination on the depressed state of OCTG imports from Mexico. Thus, it appears that Mexico agrees with the United States that depressed import volumes, rather than the dumping margin, formed the basis for the determination.

12. In addition, Mexico alleges that Commerce referred to Hylsa's 0.79 percent margin of dumping in the fourth administrative review to support the affirmative likelihood determination in the sunset review. This is incorrect. The United States never referred to or relied on Hylsa's margin of dumping in the final results of the fourth administrative review in the sunset review of OCTG from Mexico. Instead, in referring to Hylsa's margin <u>in this proceeding</u>, the United States was responding to Mexico's assertion in its second question to the United States that "[t]here can be no dispute that dumping stopped after the imposition of the dumping order on OCTG from Mexico . . ." Given that Hylsa did have a positive margin, we noted this fact in our response, along with the caveat that Commerce had not considered the final results of the fourth administrative review in the sunset review.

Issues Concerning the Fourth Administrative Review

13. As with the sunset review, Mexico's arguments depend on an overly expansive interpretation of Article 11.2.

Article 11.2 Does Not Impose Company-Specific Termination Obligations

14. The United States has demonstrated in its prior submissions in this proceeding[4] that the text of Article 11.2 does not impose company-specific termination obligations, but refers to the termination of "the duty" as a whole. Mexico continues to ignore this fact, raising instead arguments that are at best irrelevant and at times incorrect.

15. First, Mexico argues that because Article 11.2 permits "any interested party" to request termination of "the duty," it also compels investigating authorities to conduct termination reviews at the company-specific level. This goes beyond the obligations agreed to in the text of the Agreement. The United States meets its obligations regarding Article 11.2 requests by permitting "any interested party"[5] to request a termination review of "the duty" pursuant to 19 C.F.R. §§ 351.222(b)(1) and 351.222(g). Mexico relies upon section 351.222(e) for its assertion that an individual company can only request revocation for itself.[6] However, section 351.222(e) does not mean that an individual exporter cannot request revocation of the order as a whole – it simply means that when an individual exporter requests revocation for itself (either as part of a request for revocation as a whole or in part), that exporter must submit the information described in section 351.222(e). Section 351.222(e)(iii) states that an exporter must provide an agreement regarding reinstatement of the order "if applicable" – the phrase "if applicable" indicates that

---

[4] U.S. First Submission, paras. 143- 151; U.S. June 18 Answers to Panel Questions, para. 1; U.S. June 18 Answers to Mexico's Questions, para. 32; U.S. Second Submission, paras. 49-53.

[5] *See* U.S. June 18 Answers to Mexico's Question, paras. 30-32.

[6] *See* Mexico's Second Submission, paras. 201, 210.

subsection (e) covers requests for both revocation as a whole and revocation in part. If subsection (e) were truly limited to a request by an exporter for revocation only with respect to itself, then the phrase "if applicable" would be unnecessary because the exporters would always have to include the agreement. In other words, when an exporter requests revocation of the order as a whole, the reinstatement agreement is not necessary because, if the request is granted, the order will have been revoked.

16. Mexico further claims that, because Article 11.2 permits a request by any interested party and Article 11.3 provides for a request only by a domestic industry, this means that the scope of the termination review must be different under Article 11.2. There is, however, no need for a provision in Article 11.3 for an individual respondent to request a termination review because that Article provides that, absent such a review, the duty shall be terminated. It is this difference, rather than a difference between company-specific and order-wide review, that dictates the differences in the request provisions of Articles 11.2 and 11.3.

17. Second, Article 11.2 refers not just to respondents, but to "any interested party," and the Panel's earlier questions also properly referred broadly to "individual companies." The United States wishes to make clear, however, that respondent interested parties, as well as domestic interested parties, have requested and received order-wide revocation reviews.[7]

18. In its second submission, Mexico makes a new argument, claiming that section 351.222(g) reviews do not fulfill Article 11.2 obligations because that provision does not contain

[7] See, e.g., MEX-66, Tab 1 (importer); Tab 6 (importer); Tab 24 (foreign producer/exporter and its U.S. affiliate and U.S. producer); Tab 49 (foreign producer/exporter); Tab 59 (foreign exporter and U.S. producer); see also Exhibit US-40 at Tab A (Extruded Rubber Thread)(foreign producer/exporter); Tab B (seven Nitrocellulose orders)(Brazilian producer/exporter, German producer, importer); Tab C (Bulk Aspirin)(importer).

the language "determine whether the continued imposition of the duty is necessary to offset dumping."[8] The issue, however, is not whether that phrase was explicitly invoked, but whether the relevant obligation – termination of the duty when it is no longer necessary – has been met. Based on section 351.222(g) reviews, Commerce has, in fact, terminated numerous measures which no longer remained necessary to offset dumping.[9]

19. In this respect, I'd like to say a few words about Exhibit MEX-66. Mexico's assertion that section 351.222(g) is "not a means through which the Department examines whether the continued imposition of the duty is necessary to offset dumping" because it is "chiefly a mechanism for revocation where the U.S. industry is no longer interested in the continuation of the antidumping order" is incorrect, because it establishes a false dichotomy. These two aspects are not contrary to each other. So-called "no interest" revocations are an important means of revocation when the duty is no longer necessary. Although other grounds for revocation of the entire order may be alleged under section 351.222(g), the United States has previously explained that most foreign exporters and producers prefer to seek company-specific revocation to maintain an advantage over home-country competitors in the U.S. market.[10] Requests for changed circumstances revocation of the order are decided on the merits of the grounds alleged. Mexico has not pointed to a single case where respondents demonstrated the order was no longer necessary but Commerce nevertheless maintained the order because it was favored by the domestic industry.

---

[8] Second Submission of Mexico at paras. 210-217.

[9] *See* Exhibit MEX-66 at the tabs indicating "order revoked in whole" except for Tab 2, which is actually a partial scope revocation, *i.e.*,1, 5, 23, 24, 25, 26, 33, 35, 36, 38, 41, 49, 50, 51, 58, 59, 61.

[10] *See* U.S. Answer to Panel Question 23 and U.S. Second Submission, at para. 46.

20. The number of cases relevant to the issue before this Panel is, moreover, much smaller than that suggested by Mexico's new exhibit. Section 351.222(g) deals with various types of "changed circumstances," including requests for narrowing the scope of the products covered by the order. Termination of "the duty" when it is no longer necessary accounted for 18 of the cases, and led to revocation of the order in all but one of those cases.[11] The other 43 cases in Exhibit MEX-66 involve reductions in product scope (42) or company-specific revocation (1), and are not relevant to the issue before the Panel. We will be glad to provide further comments on how section 351.222(g), in addition to serving broader functions, fulfills U.S. obligations under Article 11.2 in response to any questions the Panel may have.

Neither TAMSA nor Hylsa presented Positive Information Sufficient to Substantiate The Need for A Review of Whether the Antidumping Duty Continued to be Necessary

21. Mexico has not demonstrated why TAMSA's ability to make a single token sale[12] to or through its U.S. affiliate[13] in each of the three review periods without dumping constitutes evidence sufficient to substantiate the need for a review of the necessity of the order. Instead, Mexico simply assumes that this threshold requirement for review in the text of Article 11.2 has been met. The same is true of Hylsa's token sales,[14] which Commerce did not further evaluate because Hylsa was found to have dumped in the fourth review period. Mexico further assumes that – had Commerce conducted a substantive inquiry into whether the order was no longer

---

[11] *See* the 17 revocation-in-whole cases cited in n.9, and Tab 6, the sole non-revocation in whole case in Exhibit MEX-66.

[12] *See* Fourth Review Final Results, Comment 1 (Exhibit Mex-9 at page 4); *see also* U.S. First Submission, para. 173, n. 187 and sources cited therein.

[13] *See* Second Review Preliminary Results, 63 FR at 48701, Exhibit MEX-4; Third Review Preliminary Results, 64 FR at 48983-84, Exhibit MEX-6; Fourth Review Preliminary Results, 65 FR 55000, Exhibit MEX-8.

[14] See Exhibit US-41 (Hylsa volume data).

necessary – the results would have been those sought by TAMSA and Hylsa, and then complains that the United States cannot impose conditions "when [the duty] is no longer necessary to offset dumping."[15] The record does not justify these assumptions.

22. The United States has previously shown, with respect to the requirement that a party seeking a revocation review under section 351.222(b) demonstrate the absence of dumping during three sequential years of sales in commercial quantities, why this requirement accords with the requirement in Article 11.2 for the interested party to substantiate that such a review is needed.[16] A few token sales simply cannot demonstrate a sufficient shift in the nature of the market to indicate that the existence of the dumping order needs to be re-examined.

23. Because Mexico cannot demonstrate that TAMSA and Hylsa met the threshold requirement in Article 11.2, it has seized upon the theory that Commerce did not apply a threshold requirement at all, asserting, instead, that Commerce conducted a substantive review of the merits of the future necessity of the order.[17] The United States demonstrated in its second submission, however, that these new claims are baseless with respect to the fourth administrative review of OCTG from Mexico.[18] Furthermore, the fact that the Commerce Department declines to address the merits of the necessity of an order when the requesting party fails to meet the threshold requirements for such reviews undermines Mexico's attempt to mischaracterize the

---

[15] *See* Second Submission of Mexico at para. 226.

[16] *See* U.S. First Submission, paras. 161-164; U.S. Opening Statement at First Panel Meeting, para. 21; U.S. Answers to Mexico's Questions, paras. 31-32; U.S. Second Submission, paras. 56, 61.

[17] *See*, *e.g.*, Second Submission of Mexico at paras. 203, 227, 228, 237-241.

[18] U.S. Second Submission, at para. 65, n. 69.

nature of the OCTG determination at issue.[19]

Mexico's Remaining Commercial Quantities Complaints Lack Merit

24. Without rebutting the arguments that the United States set forth in its first submission, Mexico continues to repeat unavailing arguments regarding commercial quantities – without explaining how they constitute breaches of U.S. obligations.[20] First, although Mexico claims that "commercial quantities" was not defined for revocation purposes, Mexico fails to explain why the absence of such a definition constitutes a breach of Article 11.2. Second, Mexico has failed to explain why the existence of a definition for commercial quantities in a different context constitutes a breach of Article 11.2. Third, Mexico's final three claims in this regard are simply incorrect, as explained in the U.S. first submission.

25. Mexico has also argued that if there were sufficient quantities to conduct an administrative review for purposes of calculating the final margin, then there were sufficient quantities to conduct a revocation review. However, the purpose of the administrative review under U.S. law is to calculate the final margin for imports – and Members are required under Article 9.3 to undertake such calculations, regardless of the quantity involved. On the other hand, a revocation review requires an evaluation as to whether dumping is likely to continue or recur, a fundamentally different inquiry. In that kind of review, where Members are assessing whether continuation of the order is necessary, they are entitled to evaluate whether the zero margins on which the request was based provide an adequate indication of how the requesting

---

[19] *See*, *e.g.*, *Silicon Metal from Brazil: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent Not to Revoke Order in Part,* 66 FR 40980, 40981-82 (August 6, 2001) (Exhibit US-37), and *Notice of Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke the Antidumping Order: Brass Sheet and Strip from the Netherlands*, 65 FR 742, at Comment 6 (Exhibit US-39).

[20] *See* Second Submission of Mexico at paras. 229, 252-265, 266-270.

party would behave if the order were revoked. Unless these margins are based on sales in commercial quantities, those margins cannot "warrant" an Article 11.2 review.

26. Mexico also argues that footnote 22 of the AD Agreement implies that any zero margin is sufficient "positive evidence" to trigger obligations under Article 11.2. However, if the drafters intended an Article 11.2 review to be compelled by the existence of a zero margin, they would have so stated. And since they did not, such decisions are thus at the discretion of each Member.

Mexico Has Not Met its Burden of Proof with Respect to the Revocation Issue

27. The review obligation contained in Article 11.2 is only triggered when there is a request for a review of the duty by an interested party which submits positive information substantiating the need for the review. As the United States has amply demonstrated, neither TAMSA nor Hylsa ever requested a review of "the duty" and neither submitted information sufficient to "substantiate" the need for such a review. Thus, no obligation under Article 11.2 was ever triggered during the fourth administrative review of OCTG from Mexico. Also, Commerce was not required to conduct, and did not conduct, an inquiry into the merits of whether the duty continued to be necessary.

28. Moreover, Mexico, as the complaining party in this case, has the burden of demonstrating that the United States has violated Article 11.2.[21] Mexico's claim, therefore, that Commerce has not demonstrated that the order did remain necessary is wholly irrelevant and seeks to turn the burden of proof in this proceeding on its head. Mexico's further insistence that Commerce applied an incorrect standard to a revocation review it was not required to conduct and did not

[21] Second Submission of Mexico, paras. 237-270.

conduct[22] only highlights the extent to which the facts of the case are at odds with Mexico's claims.

29. Mexico's claims regarding the U.S. requirement that a request for revocation based on an absence of dumping be supported by data reflecting sales in "commercial quantities" also relies upon unsupportable claims of inflexible "presumptions" regarding declines in import volumes after the imposition of an order. Such baseless claims cannot detract from the stark fact that Mexico has not met, and cannot meet, its burden of presenting a solid affirmative argument as to why Article 11.2 must be read to mandate that TAMSA's ability to make a token sale a year of OCTG without dumping constitutes a "need" for consideration for revocation of the duty.

Mexico's Arguments Regarding "*Offset*" Are Also Inapposite

30. Mexico alleges that Hylsa's margin calculation is WTO-inconsistent based on Articles 2 and 11.2 of the AD Agreement. However, the calculation of dumping margins in an administrative review under the United States' system is performed pursuant to Article 9.3.1 of the AD Agreement and Mexico has failed to raise any claims pursuant to this provision. Mexico fails to demonstrate that Article 11.2 contains any obligations with respect to margin calculations and, on that basis alone, its claim must fail. Thus, as there are no Article 9.3.1 claims before this Panel, Mexico's arguments regarding Hylsa's margin calculation should therefore be rejected.

31. Regarding its Article 2 claims, Mexico argues that a "fair analysis" of Hylsa's sales would have found "negative dumping margins."[23] This argument fails for the following reasons. First, the analysis of each export transaction in the fourth administrative review was based on a

---

[22] *Cf.* Second Submission of Mexico, paras. 237-245 *with* U.S. Second Submission para 65, n.69.

[23] Mexico Second Written Submission at paras. 271-275.

comparison with a normal value for identical or similar home market transactions, with due allowance made for any differences affecting price comparability. Thus, a fair comparison was made and Article 2.4 of the AD Agreement requires nothing more. Second, Mexico has failed to establish that the AD Agreement contains any obligations as to how to determine an overall rate of dumping or even whether such an overall rate of dumping must be determined in a review. Therefore, Mexico failed to even establish a *prima facie* case that the United States acted in a manner inconsistent with Article 2.4 of the AD Agreement in the fourth review.

32. Finally, to the extent that Mexico relies upon alleged inconsistencies with Article 2.4.2 for its offset claim, Mexico not only pursues contradictory legal arguments of the interpretation of the term "investigation," but now asserts that the United States' non-application of an offset is inconsistent with two separate Article 2 provisions of the AD Agreement. There are two distinct provisions of the AD Agreement at issue here. Regarding the first, while the United States agrees that the "fair comparison" requirement of Article 2.4 applies to reviews generally, as we have already noted, the United States made a fair comparison in this case. With regard to the second, Article 2.4.2, the United States disagrees with Mexico's contradictory interpretation of the term "investigation." In the context of interpreting the SCM Agreement, the Appellate Body recognized that the negotiators distinguished between investigations and the investigatory phase, on the one hand, and reviews on the other, as provided in that Agreement.[24] The AD Agreement similarly distinguishes between investigations and reviews and Mexico's efforts to ignore the limitation of Article 2.4.2 to the investigation phase would improperly alter the rights and

[24] Appellate Body Report, *United States – Countervailing Duties on Certain Corrosion-Resistant Carbon Steel Flat Products from Germany* ("U.S. - Carbon Steel"), AB-2002-4, paras. 66-72.

obligations undertaken by the Members. Accordingly, Mexico's claims for an offset for non-dumped transactions should be rejected by the Panel.

Issues Concerning the Likelihood of Continuation or Recurrence of Injury

Standard of Review

33. Turning to Mexico's challenges to the ITC's injury analysis, at the outset, we wish to put to rest the nonissue of standard of review. Mexico distorts the United States' view of the standard of review applicable to this proceeding.[25] The United States agrees that the Panel should review the ITC's determination to ascertain whether that determination was based on a proper establishment of the facts, or put another way, on "positive evidence." Although Article 3, including Article 3.1, is not directly applicable to Article 11.3 sunset reviews, Article 17.6(i) of the Agreement directs the Panel to determine whether the Commission's evaluation of the facts pursuant to the Article 11.3 review was unbiased and objective.

Inapplicability of Article 3 Requirements to an Article 11.3 Sunset Review

34. A Panel's examination of a review under Article 11.3 is to ensure that the authorities' establishment of the facts was proper and that their evaluation of the facts was objective and unbiased.[26] In this case, Mexico has not shown that the Commission's evaluation was anything other than objective and unbiased and based on a proper establishment of the facts. Lacking the ability to meet this burden, Mexico has attempted to graft onto Article 11.3 detailed substantive requirements that are notably absent from that Article.

35. While Mexico and the third parties may believe that Article 11 should specify particular

[25] Mexico Second Submission, paras. 112-119.
[26] Antidumping Agreement Article 17.6(i).

criteria that must be addressed in making an Article 11.3 evaluation, it remains that the Agreement as written does not so specify. There is no authority for Mexico to write requirements into the Agreement that simply are not there.

36. Mexico's discussion of the requirements of Article 3.5 provides a good example of how Mexico is attempting to expand improperly the obligations of Members in sunset reviews. In the face of Article 3.5 obligations that cannot practically be imposed on sunset reviews, Mexico rewrites the requirements of that Article to echo the requirements of a sunset analysis. That is, according to Mexico, Article 3.5 requires authorities to demonstrate that expiry of the duty would lead to dumped imports, and that the dumped imports are likely to cause injury.[27] Of course, nothing in Article 3.5 imposes these requirements, which instead are captured in Article 11.3.

37. We explained in our submissions that original injury investigations and sunset reviews are fundamentally different inquiries with different purposes. The conceptual differences between original investigations and sunset reviews have, as a general matter, been recognized by the Appellate Body;[28] and, the panel in the Argentina *OCTG* dispute recently recognized the specific distinction between injury investigations and injury reviews.[29] We have pointed to very specific and fundamental obligations in Articles 3.1, 3.4 and 3.5 that just do not make sense in the context of sunset reviews.

38. Mexico has failed to explain how the volume and price effects analyses mandated by Articles 3.1 and 3.2 would be applied in a sunset review. Instead, Mexico states that the absence

---

[27] Mexico Second Submission, para. 158.

[28] *Japan Sunset*, AB Report, para. 106; *US-Carbon Steel*, AB Report, para. 87.

[29] *United States – Sunset Reviews of Anti-Dumping Measures on Oil Country Tubular Goods from Argentina*, WT/DS268/R ("Argentina OCTG"), paras. 2.272-2.273.

of imports would require the investigating authorities to determine why the imports are absent and whether they are likely to return to the market.[30] The United States agrees that these are relevant inquiries in a sunset review, but they are not analyses required by Article 3.2. Indeed, Mexico's response to the Panel's questions merely highlights the differences in the analytical process relevant to a sunset review and that conducted in an original investigation.

39. Mexico's own arguments concerning the application of Articles 3.4 and 3.7 further illustrate why those Articles are not applicable to sunset reviews. As the panel in *ITC Lumber* explained, even in the context of an original threat determination, Article 3.4 serves to establish the background against which the impact of future dumped imports must be assessed.[31] It does not require a forward-looking evaluation of what the industry would look like based on future dumped imports. Therefore, Mexico's argument that Article 3.4 requires the ITC to evaluate the industry in light of a margin likely to prevail – a number inherently linked to "future" dumped imports – is incompatible with the *ITC Lumber* panel's interpretation of Article 3.4.

40. Mexico's emphasis on the Article 3.4 mention of the magnitude of the margin of dumping only serves to illustrate that the Article does not apply to sunset reviews. Article 3.4 does not mention the magnitude of the dumping margin that is likely to prevail if an order is revoked. Indeed, given that the Article 3.4 examination concerns the current condition of the industry, it would run counter to the very meaning of that Article to impose into it a requirement to consider, let alone rely on, a projected future margin that is likely to prevail if an order is

---

[30] Mexico's Response to Panel Questions, para. 38.

[31] *United States – Investigation of the International Trade Commission in Softwood Lumber from Canada*, Report of the Panel, WT/DS277/R, adopted 26 April 2004, paras. 7.105-7.106.

revoked.

41. Unable to find any textual or practical support for its assertion that the requirements of Article 3 apply to sunset reviews, Mexico points to the U.S. statute as proof that it is practical to apply those requirements to sunset reviews.[32] Just because the U.S. statute requires consideration of some of the same elements in both original investigations and sunset reviews does not indicate that the analytical framework for the two types of determinations is the same. To the contrary, as we demonstrated in our written submissions, the core conceptual aspects of the two types of determinations are different in crucial respects.

42. Moreover, this case does not turn on whether the term "injury" referred to in Art. 11 has the same meaning as the term referenced in footnote 9. Even if the "injury" that may be found to be likely to continue or recur under Article 11.3 includes a threat of injury or material retardation of the establishment of an industry, that does not change the fact that the determination required under an Art. 11.3 review differs from the determination required under an Article 3 investigation.

The "Reasonably Foreseeable Future"

43. Mexico insists that the U.S. statute allows an "undefined time frame" within which injury may continue or recur after expiry of the duty. This characterization is wrong. Contrary to Mexico's assertion, the statute does not give the Commission "unbridled discretion"[33] to extend the period without limits. Rather, in order to effectuate the notion that an order can be maintained only if the expiry of the duty would be likely to lead to continuation or recurrence of

[32] Mexico Second Submission, para. 148.
[33] Mexico Second Submission, para. 165.

(dumping and) injury, the U.S. statute restricts the period for the injury review to what is likely to occur within "the reasonably foreseeable future."

44. Nothing in the Agreement spells out any set period of time that should be examined between the potential expiry of the duty and any resultant continuation or recurrence of injury. Mexico's reliance on Article 11.1 and on the last sentence of Article 11.3 to show otherwise is misplaced. Neither of those provisions refers to the length of the future period that should be examined to ascertain whether revocation of the order is likely to lead to continuation or recurrence of injury. Rather, they both address the timing of removal of the duty in the event of a negative determination, not the length of the time period between potential revocation and the consequences of such revocation for the domestic industry.

The *Likely* Standard

45. There are two cognizable questions raised by Mexico concerning the *likely* injury standard. First, is the standard set out in the U.S. statute consistent with Article 11.3? Second, in the OCTG review, did the Commission apply the *likely* standard in a manner consistent with Article 11.3?

46. The answer to both of these questions is an emphatic *yes*. With respect to the first issue, the statute on its face plainly uses the exact term – *likely* – as the term used in the Agreement. Given this fact, it is difficult to see how Mexico can claim that the statute itself does not comply with the Agreement, and Mexico's as such claim fails. Regarding the ITC's application of the *likely* standard in the OCTG review, we have rebutted in our written submissions Mexico's claim that the ITC did not apply the standard in a WTO-consistent manner.

47. Mexico attempts to obscure this straightforward issue. For example, Mexico cites to

arguments the Commission made several years ago in responsive briefs it submitted in domestic court litigation. As we explained in our first written submission,[34] those legal arguments were the beginning of a "dialogue" with the U.S. Court of International Trade. At the end of this dialogue, it became apparent that the court and the ITC interpreted the *likely* requirement in the U.S. statute in a manner consistent with the view the Appellate Body has taken of the *likely* requirement.

48. Mexico's arguments regarding the *likely* standard and the ITC's interpretation of it are ultimately semantic. But rather than debating synonyms for the term *likely*, it is more useful to examine the details of the ITC's analysis, as explained fully in our submissions.[35] It is also worth noting that the ITC, using the *likely* standard, has made negative determinations as to the likelihood of continuation or recurrence of injury, leading to the revocation of antidumping measures, in over one-third of the transition sunset reviews it conducted. These negative determinations include, of course, the Commission's determination on drill pipe from Mexico and Argentina in the OCTG reviews.

49. Turning to Mexico's challenges to the factual aspects of the ITC's determination, Mexico in its second submission revisits many of the same points it made earlier. Mexico consistently fails to address the collective weight of the evidence relied on by the ITC, instead arguing that a particular fact is not itself sufficient to support a finding. By following its selective approach, Mexico never comes to grips with the actual and full basis for the ITC's determinations. The application of the standard of review to the facts in this case should lead this Panel to the same

---

[34] U.S. First Submission, paras. 226-228.

[35] U.S. First Submission, paras. 268-309.

conclusion that the Argentina *OCTG* panel reached in finding that the *identical* ITC determination was based on a proper establishment of the facts.[36]

50. For example, in its second submission, Mexico argues as though the ITC identified only one fact that supported its finding that foreign producers would have the incentive to increase their exports of casing and tubing to the United States if the orders were revoked.[37] That is, Mexico discusses only the ITC's finding that casing and tubing were among the highest value pipe and tube products. Mexico simply fails to acknowledge the other findings showing the incentive to increase imports of casing and tubing, including that the United States is the world's largest market for these products, that exporters would desire to service existing customers' U.S. needs, that prices were lower in world markets than in the United States, and that there exist import barriers.

51. With respect to the one factor Mexico does acknowledge, Mexico is simply mistaken when it characterizes the incentive to produce high value casing and tubing as "a general assumption rather than positive evidence."[38] The relatively high value (and profit margins) of casing and tubing was established during the ITC's sunset reviews.[39] It stands to reason that pipe and tube producers – as profit-maximizing entities – would seek to maximize their production of products with higher profit margins.

52. Mexico incorrectly contends that "the subject producers would only have increased incentives to ship OCTG to the United States if the profits realized on U.S. sales with the orders

---

[36] Argentina *OCTG*, paras. 7.287-7.312.
[37] Mexico Second Submission, para. 123.
[38] Mexico Second Submission, para. 125.
[39] Exhibit MEX-20 (ITC Report) at 16, 19.

in place were not already greater than those realized on sales of other pipe and tube products."[40] This argument ignores that the producers would be likely to increase shipments of the high-valued products to the United States if the disincentives associated with the antidumping order were removed. The volume of the dumped imports declined substantially when the orders were entered, including an order imposing antidumping duties of 21.70 percent on imports from each of the Mexican producers. If the orders were revoked, and the restraining effects of the orders removed, all the incentives to increase shipments to the United States identified by the Commission, and discussed in our previous submissions, are operative.

53. Mexico overlooks that there is substantial unused capacity among subject producers in Japan and Korea, which were included in the cumulative assessment for the likely injury determination. Like any producer, they have a strong incentive to maximize production and profits. Japan had the largest capacity of any subject country during the original investigation.

54. The Commission found that production facilities in subject countries and in the United States produce a variety of pipe and tube products in addition to OCTG and can easily shift production from one product to another. Mexico asserts that foreign producers had to fulfill contractual obligations and so did not have an "unlimited" flexibility to change products. Mexico's suggestion that all of Tenaris' production is devoted to long-term contracts is at odds with testimony given by the person responsible for exports of OCTG from all of the Tenaris companies; he testified that Tenaris' long-term agreements account for only about 55 percent of its sales of OCTG.[41] As a result, long term contracts do not prevent producers from making a

[40] Mexico Second Submission, para. 126.

[41] Exhibit US-24 (ITC Hearing Tr. at pp. 200 and 205).

significant increase in shipments to the United States. Thus, Mexico's suggestion that the Commission relied on "assumptions" rather than evidence provided by the exporter is erroneous.

55. Mexico's other contention is that Tenaris would decline to participate in the U.S. market, where most sales are to distributors, because Tenaris sells mostly to end users in other markets. Whatever its preference in other markets, Tenaris sold to distributors in the United States both before and after the orders were entered. Even as to other markets, a Tenaris representative conceded that some sales are to "service companies for supplies to end users," which are distributors by another name.[42] Further, Mexico ignores that the Commission found that the Tenaris group adapted itself to U.S. market dynamics and that three of the four Tenaris group members that were involved in these reviews, including Mexican producer TAMSA, each made sales to the U.S. market through distributors.[43]

56. Mexico also argues that if Tenaris had really been interested in shipping to the United States, it could have done so through Algoma in Canada.[44] Contrary to Mexico's contention, the lack of imports from Algoma is not indicative of likely volumes from subject producers. Algoma is situated in the second-largest regional market in the world, giving Algoma a considerable home market, whereas producers in Korea and Japan are heavily export-oriented.[45]

57. Just as it has failed to undermine the ITC's likely volume findings, Mexico has not demonstrated any flaw in the ITC's likely price effects or likely impact findings. With respect to likely impact, Mexico in its second submission merely repeats arguments that we have already

---

[42] Mexico Second Submission, para. 124 (quoting Exhibit US-24 (ITC Hearing Tr. at p. 204).
[43] Exhibit MEX-20 (ITC Report) at 13 n.73.
[44] Mexico Second Submission, para. 125.
[45] Exhibit MEX-20 (ITC Report) at Figure 1 at page II-5.

rebutted. As to likely price effects, Mexico now takes a new approach to its repetitious argument that underselling was the key to the ITC's price effects findings, arguing now that U.S. law requires the ITC to consider likely underselling.[46] Although U.S. law does require the ITC to *consider* likely underselling,[47] U.S. law does not require the ITC to rely on likely underselling, let alone make that factor the principal focus of its analysis.

58. Mexico also gives undue emphasis to the volatile nature of demand for casing and tubing. As the ITC found, the volatile nature of demand is just one factor among many tending to show that the subject imports and domestic like product likely would compete on the basis of price. As a result of this volatility, producers attempting to cope with changes in demand must compete largely on the basis of price, in light of the high degree of substitutability between domestic and imported products. In its second submission, Mexico labors to create the impression that volatility in demand is somehow inconsistent with projections of strong demand in the near term. There is no inconsistency. Demand can be volatile in general, yet still be projected to be strong or weak in a given period. Accordingly, the ITC acknowledged demand projections, but also noted that it is difficult to make accurate projections.

* * * * *

59. This concludes our opening statement. We would be pleased to answer any questions you have.

[46] Mexico Second Submission, para. 129.
[47] Exhibit MEX-24, 19 U.S.C. § 1675a(a)(3)(A).