

*United States - Sunset Review Of Antidumping Duties
On Corrosion-Resistant Carbon Steel Flat Products From Japan
(WT/DS244)*

**Answers from the United States to Questions from the Panel
in connection with the
Second Substantive Meeting of the Panel
January 22, 2003**

II. MANDATORY AND DISCRETIONARY LEGAL INSTRUMENTS/"PRACTICE"

Both Parties

Q79. The Panel notes the following statement by the Appellate Body, in *US - Carbon Steel*:

Thus, a responding Member's law will be treated as WTO-consistent until proven otherwise. The party asserting that another party's municipal law, as such, is inconsistent with relevant treaty obligations bears the burden of introducing evidence as to the scope and meaning of such law to substantiate that assertion. Such evidence will typically be produced in the form of the text of the relevant legislation or legal instruments, which may be supported, as appropriate, by evidence of the consistent application of such laws, the pronouncements of domestic courts on the meaning of such laws, the opinions of legal experts and the writings of recognized scholars. The nature and extent of the evidence required to satisfy the burden of proof will vary from case to case.¹

The Panel further notes that the Appellate Body, in *US - Countervailing Measures on Certain EC Products*, reviewed that panel's finding regarding the consistency with the US' WTO obligations of a certain method (referred to as an "administrative practice"), as such, used by the DOC in CVD investigations.² In the same report, the Appellate Body stated that it was not, "by implication, precluding the possibility that a Member could violate its WTO obligations by enacting

¹ Appellate Body Report on *United States - Countervailing Duties on Certain Corrosion-Resistant Carbon Steel Flat Products from Germany* ("US - Carbon Steel"), WT/DS213/AB/R and Corr. 1, adopted 19 December 2002, para. 157.

² Appellate Body Report on *United States - Countervailing Measures Concerning Certain Products from the European Communities* ("US - Countervailing Measures on Certain EC Products"), WT/DS212/AB/R, adopted 8 January 2003, paras. 129 and 146.

legislation granting discretion to its authorities to act in violation of its WTO obligation."³

In your view:

a) What, if any, are the implications of these Appellate Body findings regarding the issue of whether "practice" *as such* can be challenged under the WTO Agreement?

1. The Appellate Body's finding from the *US - Carbon Steel* report emphasizes that the burden lies with the complaining party to produce evidence as to the scope and meaning of a challenged measure which demonstrates that it is inconsistent with an agreement obligation. That scope and meaning must be determined by reference to the challenged Member's municipal law. An indirect implication of the *US - Carbon Steel* finding is that U.S. administrative practice cannot be considered a measure, and cannot be challenged as such. Further, as discussed below, the cited Appellate Body statement from *US - Countervailing Measures on Certain EC Products* has no implications for the Panel's question, because the issue of whether U.S. practice can, as such, be a measure, and whether it can mandate a violation, was not before the Appellate Body.

2. Commerce administrative practice is neither a "measure" within the meaning of the relevant WTO agreements, nor a "mandatory" measure within the meaning of the mandatory/discretionary distinction. A "measure" – which can give rise to an independent violation of WTO obligations – must "constitute an instrument with a functional life of its own" – *i.e.*, it must "*do something concrete, independently of any other instruments.*"⁴ The "practice" identified by Japan in this case consists of nothing more than individual applications of the U.S. AD law in the context of sunset reviews. While Commerce, like many other administrative agencies in the United States, uses the term "practice" to refer collectively to its past precedent, "practice" has neither a "functional life of its own" nor operates "independently of any other instruments" because the term only refers to individual applications of the U.S. statute and regulations.⁵ In contrast to the U.S. statute and regulations, which clearly function as "measures", no general, *a priori* conclusions about the conduct of sunset reviews under U.S. law can be drawn from an examination of "practice". The "practice" that Japan claims is a measure simply consists of specific determinations in specific sunset proceedings; Japan has failed to identify how such "practice" constitutes an instrument with a functional life of its own.

³ *Id.*, note 334.

⁴ Panel Report, *United States – Measures Treating Export Restraints as Subsidies ("US - Export Restraints")*, WT/DS194/R, adopted 23 August 2001, para. 8.85.

⁵ Japan's definition of "practice" does not comport with its status in U.S. law. Japan describes practice as "administrative procedures", which it defines as "a detailed guideline that the administrating [sic] authority follows when implementing certain statutes and regulations." Japan First Submission, para. 8. We define "administrative procedures" and "guidelines" in our answer to Question 82.

3. Moreover, even if “practice” could be considered a measure (and the United States’ position is that it cannot), in order for any measure, as such, to be found WTO-inconsistent, the measure must be “mandatory”, *i.e.*, it must require WTO-inconsistent action or preclude WTO-consistent action.⁶ The Appellate Body and several panels have explained the distinction between mandatory and discretionary measures. A Member may challenge, and a WTO panel may find against, a measure only if the measure “mandates” action that is inconsistent with WTO obligations, or “precludes” action that is WTO-consistent.⁷ In accordance with the normal WTO rules on the allocation of the burden of proof, it is up to the complaining party to demonstrate that the challenged measure mandates WTO-inconsistent action or precludes WTO-consistent action.⁸ As we have explained in our submissions, the “practice” Japan alleges is a measure is *not* binding on Commerce, and, under U.S. administrative law, Commerce may depart from its precedent in any particular case, so long as it explains the reasons for doing so. Therefore, this “practice” does not mandate WTO-inconsistent action or preclude WTO-consistent action. Japan also has failed to even identify, much less demonstrate, how the alleged “measure” does either as a matter of U.S. municipal law.

4. Neither of the Appellate Body findings quoted above otherwise implicates the United States’ position that the “practice” as such alleged by Japan cannot be challenged under the WTO Agreement. In *US - Carbon Steel*, the EC had argued that the U.S. law at issue was not “genuinely discretionary.”⁹ The Appellate Body disagreed and upheld the Panel’s finding that U.S. law as such is not inconsistent with respect to the obligation under Article 21.3 of the SCM Agreement to determine likelihood of continuation or recurrence of subsidization in a sunset review.¹⁰ In the above-quoted paragraph, the Appellate Body discussed the type of evidence that a party challenging the WTO-consistency of another Member’s law might introduce to substantiate its assertion. In that paragraph, and elsewhere in its findings,¹¹ the Appellate Body did suggest that it could consider the agency’s “consistent application” or “consistent practice” – but only *as evidence of the meaning of the challenged law* – not, as Japan advocates, as the challengeable measure itself. In any event, while consistent application of a law might provide evidence of its meaning, that meaning ultimately must be determined based on its meaning under municipal law. Under U.S. municipal law, administrative precedent, regardless of how often repeated, has no functional life of its own, and mandates nothing – an agency may disregard it so long as it explains why.

⁶ *U.S. - Export Restraints*, paras. 8.126-32.

⁷ Appellate Body Report, *US - Carbon Steel*, para. 162; *United States - Anti-Dumping Act of 1916* (“1916 Act”), WT/DS136/AB/R, WT/DS162/AB/R, adopted 26 September 2000, paras. 88-9; Appellate Body Report, *United States - Section 211 Omnibus Appropriations Act of 1998*, WT/DS176/AB/R, adopted 2 February 2002, para. 259; *see also US - Export Restraints*, paras. 8.77-9; Panel Report, *United States - Section 129(c)(1) of the Uruguay Round Agreements Act*, WT/DS221/R, adopted 30 August 2002, para. 6.22.

⁸ Panel Report, *Brazil – Export Financing Programme for Aircraft – Second Recourse by Canada to Article 21.5 of the DSU*, WT/DS46/RW/2, adopted 23 August 2001, para. 5.50.

⁹ *US - Carbon Steel*, para. 155.

¹⁰ *Id.*, paras. 162-63.

¹¹ *Id.*, paras. 147-48.

5. In *US-Countervailing Measures on Certain EC Products*, the panel's characterization of its findings as relating to Commerce's "method" was not appealed, and the Appellate Body did no more than accept the panel's characterization. Moreover, at the panel stage, this issue was also not disputed; the EC was challenging two Commerce privatization methodologies applied in twelve specific countervailing duty investigations, and the United States focused its argumentation on the substantive issues. That the panel referred to these methodologies in this manner, and the Appellate Body thereafter, thus provides no guidance as to how either a panel or the Appellate Body would answer the question of whether non-binding administrative precedent, or practice, can be independently challenged as a measure, and could mandate a breach of a particular obligation. To the contrary, when panels have been faced with this question, they have uniformly concluded that U.S. administrative practice cannot as such, be challenged,¹² and the Appellate Body has consistently applied the mandatory/discretionary distinction to find that measures which do not mandate a breach of an obligation do not breach that obligation. The Appellate Body's statement in note 334 of the *US - Countervailing Measures on Certain EC Products* report reflects no more than the truism that Members could, if they chose in the language of the WTO Agreement, impose an obligation prohibiting legislation providing discretion to act in a certain manner. There has been no suggestion that the obligations at issue in this dispute operate in this manner.

6. Thus, the findings in *US-Countervailing Measures on Certain EC Products*, as discussed above, do not vitiate the United States' position that the "practice" as alleged by Japan cannot be challenged under the WTO Agreement. Japan has not identified a Commerce "practice" that is challengeable as a measure, much less demonstrated that such a "measure" violates a specific WTO obligation.

b) What relevance, if any, do these findings, and your response to (a), have for the present proceedings?

7. As discussed above, neither of the Appellate Body findings quoted above alter the conclusion that "practice" as such cannot be challenged under the WTO Agreement.

8. Japan has argued in various submissions that the SAA and/or the *Sunset Policy Bulletin* represent fixed and binding Commerce practice that amounts to WTO-inconsistent "measures". The finding in *US - Carbon Steel* correctly states that the burden is on Japan to prove both the scope and nature and the inconsistency of such a "measure". Japan has failed to meet its burden. Neither the SAA nor the *Sunset Policy Bulletin* can be considered measures giving rise to an independent violation of WTO obligations, and even if they could be, neither prescribes a particular methodology or practice which mandates WTO-inconsistent action or precludes WTO-consistent action.

¹² E.g., Panel Report on *United States - Anti-Dumping and Countervailing Measures on Steel Plate from India*, WT/DS206/R, adopted 29 July 2002, paras 7.22-7.24; *U.S. - Export Restraints*, paras. 8.126, 8.129-8.130.

9. As the United States has previously demonstrated, the SAA is a type of legislative history which, under U.S. law, provides authoritative interpretative guidance in respect of the statute. Thus, the SAA operates only in conjunction with (and as an interpretive tool for) the U.S. antidumping statute, and cannot be independently challenged as WTO-inconsistent.

10. Nor can the *Sunset Policy Bulletin* be challenged independently as a violation of WTO obligations. Under U.S. law, the *Sunset Policy Bulletin* is a non-binding statement, providing evidence of Commerce's understanding of sunset-related issues not explicitly addressed by the statute and regulations.¹³ In this regard, the *Sunset Policy Bulletin* has a legal status comparable to that of agency precedent. As with its administrative precedent, Commerce may depart from its policy bulletin in any particular case, so long as it explains the reasons for doing so. The *Sunset Policy Bulletin* does nothing more than provide Commerce and the public with a guide as to how Commerce may interpret and apply the statute and its regulations in individual cases. Absent application in a particular case, and in conjunction with U.S. sunset laws and regulations, the *Sunset Policy Bulletin* does not "do something concrete" for which it could be subject to independent legal challenge under the WTO Agreements.

United States

Q80. How do you respond to Japan's argument that the Sunset Policy Bulletin is an "administrative procedure" within the meaning of Article 18.4 of the Anti-dumping Agreement?

11. The *Sunset Policy Bulletin* is not an "administrative procedure" within the meaning of Article 18.4. It is a statement of policy and provides a framework for Commerce's conduct of sunset reviews.

12. Japan's argument that the *Sunset Policy Bulletin* is an "administrative procedure" is based on its erroneous assertion that an administrative "practice" can evolve into an administrative "procedure" (or a "measure") simply based on the fact Commerce has issued a particular number of affirmative sunset determinations all in which it considered guidance set forth in the *Sunset Policy Bulletin*. The panel in *US - Steel Plate from India* addressed this very issue, finding that the number of times a certain result is repeated does not turn the repeated pattern, or "practice", into a "measure":

The practice India has challenged is not, on its face, within the scope of the measures that may be challenged under Article 18.4 of the AD Agreement. In

¹³ *Sunset Policy Bulletin*, 63 Fed. Reg. at 18871 ("This policy bulletin proposes *guidance* regarding the conduct of sunset reviews. As described below, the proposed policies are intended to complement the applicable statutory and regulatory provisions by providing *guidance* on methodological or analytical issues not explicitly addressed by the statute and regulations.") (emphasis added) (Exhibit JPN-6).

particular, we do not agree with the notion that the practice is an “administrative procedure” in the sense of Article 18.4 of the Agreement. It is not a pre-established rule for the conduct of anti-dumping investigations. Rather, ... a practice is a repeated pattern of similar responses to a set of circumstances – that is, it is the past decisions of the USDOC.... India argues that at some point, repetition turns the practice into a “procedure”, and hence into a measure. We do not agree. That a particular response to a particular set of circumstances has been repeated, and may be predicted to be repeated in the future, does not, in our view transform it into a measure. Such a conclusion would leave the question of what is a measure vague and subject to dispute itself, which we consider an unacceptable outcome. Moreover, we do not consider that merely by repetition, a Member becomes obligated to follow its practice. If a Member were obligated to abide by its practice, it might be possible to deem that practice a measure. The United States, however, has asserted that under its governing laws, the USDOC may change a practice provided it explains its decision.¹⁴

13. Commerce issued the *Sunset Policy Bulletin* in an attempt to be as transparent as possible with respect to Commerce’s approach to sunset reviews. In an area in which both the AD Agreement and the U.S. statute provide authorities with extremely broad discretion, the United States considered it valuable to provide interested parties with guidance as to the approach Commerce likely would take under given circumstances. The alternative and clearly less desirable approach would be a less transparent system wherein the parties in a sunset review would have little or no idea how the administering authority would address issues raised in sunset reviews.

United States

Q81. How do you respond to Japan's reference (in paras. 15-16 of Japan's oral statement at the second Panel meeting) to the statement in the Appellate Body report in *US - Carbon Steel* concerning the possible establishment of practice in connection with the *Sunset Policy Bulletin* through reference to the number of instances that certain conduct has occurred in US sunset reviews? Are the figures presented by Japan in this connection accurate?

14. As discussed in response to Question 80 above, the number of times a certain conduct occurs in sunset reviews does not turn the conduct into a “measure”. Contrary to Japan’s assertion, language in the *US - Carbon Steel* Appellate Body report supports the proposition that numbers alone do not reveal anything about whether precedent, or “practice,” should be considered a measure. The burden is on Japan to establish that, as a matter of U.S. municipal

¹⁴ Panel Report on *United States - Anti-Dumping and Countervailing Measures on Steel Plate from India* (“*US - Steel Plate from India*”), WT/DS206/R, adopted 29 July 2002, para 7.22 (citation omitted).

law, the number of times that conduct occurs has some legal significance. It does not. As already explained, Commerce remains free to depart from past precedent, or from the *Sunset Policy Bulletin*, so long as it explains why. This is an incontrovertible fact under U.S. law, and it would be a mischaracterization of U.S. law to suggest otherwise. Further, in rejecting the EC's argument concerning "practice" in *US - Carbon Steel*, the Appellate Body did no more than conclude that the EC had not even provided evidence of repeated conduct, let alone demonstrate that, were there such evidence, it would have legal significance. Again, the scope and nature of a purported measure must be determined by reference to the municipal law of the Member. While repeated conduct might provide evidence of the meaning of a statute or regulation – a point made in paragraph 148 of *US - Carbon Steel* – it would not result in the repeated conduct having a functional legal status of its own. Repetition does not support a conclusion that Commerce "practice" is a measure that mandates WTO-inconsistent action or precludes WTO-consistent action.

15. Whether Japan's figures are accurate is not the issue. The fact is that, under U.S. law, they are irrelevant. In any event, Japan's numbers are incomplete and misleading, we believe, because they do not reflect completed sunset reviews (*i.e.*, where both Commerce and the USITC have made their final likelihood determinations). The United States provides the more complete picture below.

16. In May 1998, Commerce published a schedule for the sunset review of the 321 antidumping and countervailing duty orders and suspension agreements in place as of January 1, 1995, the effective date of the United States' implementation of the Uruguay Round Agreements.¹⁵ This schedule includes the antidumping duty order on corrosion-resistant carbon steel flat products from Japan at issue in this case.¹⁶ Those sunset reviews were initiated between July 1998 and December 1999 and have all been completed. Out of the total number of sunset reviews conducted and completed,¹⁷ almost one half were revoked. The breakdown of the numbers is as follows:

- 150 orders were revoked as a result of sunset review
 - 78 were revoked based on no domestic interest
 - 1 (CVD order) was revoked based on Commerce's negative likelihood determination
 - 71 were revoked based on the USITC's negative likelihood determination
- 163 orders were continued as a result of sunset review based on affirmative likelihood determinations by both Commerce and the USITC
- 1 sunset review was terminated because the order was revoked based on a changed circumstances review conducted by Commerce

¹⁵ 63 Fed. Reg. 26779 (May 14, 1998).

¹⁶ The schedule also includes the countervailing duty order at issue in *US - Carbon Steel*.

¹⁷ Note that, out of the sunset reviews conducted and completed, 116 were expedited because the foreign respondents chose either not to participate or not to participate fully in the Commerce portion of the sunset review.

- 7 orders were rescinded prior to the scheduled initiation of sunset reviews (so no sunset reviews were initiated) based on the USITC's redetermination of its original injury determination in the investigation

United States

Q82. Please explain your view of the distinctions, if any, between an administrative procedure, an administrative practice, a "method" and a guideline, and provide the rationale and criteria underlying such distinctions.

17. "Administrative procedures" are the procedures by which an agency administers the law and its own regulations. In the United States, such procedures generally are set forth in an agency's regulations.

18. Administrative agencies in the United States use the term "practice" to refer collectively to their past precedent. That precedent is *not* binding. The U.S. Court of International Trade has held, "As long as Commerce properly explains its reasons, and its practice is reasonable and permitted by the statute, Commerce's practice can and should continue to change and evolve." *Rhodia, Inc. v. United States*, Consol. Court No. 00-08-00407, Slip. Op. 2000-109 (CIT September 9, 2002) at 15; *see also, Zenith Electronics Corp. v. United States*, 77 F.3d 426, 430 (Fed. Cir. 1996).

19. The term "method" or "methodology", as used by Commerce, refers typically to the particular analysis of specific item, *i.e.* calculating a sum. A method might be set forth in a statute or regulation, or be determined on a case-by-case basis.

20. "Guideline", as used by Commerce, refers typically to a statement of policy.

III. EVIDENTIARY STANDARDS FOR INITIATION OF SUNSET REVIEWS

United States

Q84. The Panel notes Japan's argument in paragraph 8 of its oral statement at the second Panel meeting concerning the Appellate Body's statement in *US-Carbon Steel* that "termination of the countervailing duty is the rule and its continuation is the exception". In light of this, how does the United States reconcile the statutorily-imposed automatic initiation of sunset reviews with the obligation in Article 11.3 of the *Anti-dumping Agreement* that the authorities initiate a review *on their own initiative*? In particular, does the operation of the US statute necessarily preclude any possibility for the "rule" in Article 11.3 to have any meaning or application? Does the phrase "on their own initiative" in Article 11.3 require that the authority *itself* be required to consider the facts of a specific proceeding in order to decide

whether or not to initiate? How would the United States respond to the proposition that the use of the phrase "on their own initiative" in Article 11.3 requires that the authorities should or must be given the discretion *not* to self-initiate a sunset review when the factual circumstances so justify, and that by mandating self-initiation in every case the US law runs counter to that requirement? With reference to paragraph 37 of your responses to the Panel's questions following the first meeting, can the phrase "on their own initiative" merely be used to contrast a self-initiated review with a review initiated on the basis of a request? If so, on what basis?

21. In *US - Carbon Steel*, the Appellate Body considered the requirement under U.S. law for the automatic self-initiation of all sunset reviews and found U.S. law to be WTO-consistent.¹⁸ The Appellate Body also found that no evidentiary standard is prescribed for the self-initiation of a sunset review.¹⁹ The Appellate Body made these findings in conjunction with its finding that:

This is not to say that authorities may continue the countervailing duties after five years in the absence of evidence that the expiry of the duty would be likely to lead to continuation or recurrence of subsidization and injury. Article 21.3 prohibits the continuation of countervailing duties unless a review is undertaken and the prescribed determination, based on adequate evidence, is made.²⁰

In other words, the Appellate Body had no problem reconciling the United States' automatic self-initiation and conduct of sunset reviews with the concept that termination is the rule and continuation is the exception.

22. The United States believes that the Appellate Body's finding in *US - Carbon Steel* should inform the Panel's decision in this case on this issue. The phrase "on their own initiative" does not require the authority to consider the facts of a specific proceeding in order to decide whether or not to initiate – that would suggest some sort of evidentiary prerequisite, a requirement which the Appellate Body rejected in *US - Carbon Steel*. The Appellate Body's reasoning in that case is equally valid here. On the same basis, the United States also does not consider that the phrase requires that authorities be given the discretion not to initiate. (This is not to say that Commerce would ignore a specific expression of no-interest on the part of the domestic industry; as previously explained, under those circumstances, Commerce would revoke an order and not initiate a sunset review.)

Q85. Considering Question 10 the Panel posed earlier to the United States and the US response thereto, on what legal basis and under what precise circumstances would the DOC *not* "automatically" self-initiate an investigation? Has this ever, in

¹⁸ *US - Carbon Steel*, para. 116.

¹⁹ *Id.* ("Nor do we consider that any other evidentiary standard is prescribed for the self-initiation of a sunset review under Article 21.3.")

²⁰ *Id.*, para. 117.

fact, occurred? Please cite any relevant examples. For example, if the DOC is approached by the single producer constituting the domestic industry in advance of the time set for initiation of a particular sunset review and the domestic industry informs the DOC that it has no interest in the order being continued, would the DOC decide *not* to self-initiate a sunset review (*i.e.* notwithstanding the explicit obligation to automatically self-initiate)? If so, under what power would the DOC so act?

23. Pursuant to section 751(c)(1) of the Act, Commerce automatically self-initiates sunset reviews in every case, unless the U.S. domestic industry provides Commerce with written notice that the industry no longer had an interest in the maintenance of a particular antidumping duty order. In that instance, Commerce would not initiate a sunset review and would revoke the order pursuant to section 751(b) of the Act.

24. In at least three instances, Commerce has either not initiated a sunset review or terminated a sunset review based upon the domestic industry's expression of no interest in the order being continued. In *AFBs from Singapore* and *Ball Bearings from Thailand*, Commerce conducted changed circumstances reviews based on expressions of no interest in the orders from portions of the domestic industry. Commerce determined to revoke those orders, even though there was some opposition from other domestic industry members.²¹ In *Kiwifruit from New Zealand*, Commerce initiated a sunset review, but subsequently terminated it after Commerce revoked the order in response to the domestic industry's indication that it was no longer interested in maintaining the order.²² We also note the situation in which Commerce rescinded 7 orders prior to the scheduled initiation of sunset reviews (and so no sunset reviews were initiated) based on the USITC's redetermination of its original injury determination in the investigation.²³ Although in this instance Commerce's reason for not initiating scheduled sunset reviews was not based on an indication of no domestic interest, it does demonstrate that Commerce has the authority to not automatically self-initiate sunset reviews where appropriate.

Q86. Is Japan raising an argument addressing this element (discussed in Question 85 above) of Article 11.3 concerning automatic self-initiation (and not relating

²¹ See *Antifriction Bearings (Other Than Tapered Roller Bearings) And Parts Thereof From Singapore; Final Results of Changed Circumstances Countervailing Duty Reviews and Revocation of Countervailing Duty Orders*, 61 Fed. Reg. 20796 (May 8, 1996), and *Ball Bearings From Thailand; Final Results of Changed Circumstances Countervailing Duty Review and Revocation of Countervailing Duty Order*, 61 Fed. Reg. 20799 (May 8, 1996). These changed circumstances reviews were requested after the statutory requirement for sunset reviews was enacted and prior to Commerce's issuance of the transition order schedule.

²² See *August 1999 Sunset Reviews: Termination of Reviews, Final Results of Reviews and Revocation and Termination*, 64 Fed. Reg. 59737 (Nov. 3, 1999); and *Fresh Kiwifruit from New Zealand: Final Results of Changed Circumstances Review: Revocation of Order*, 64 Fed. Reg. 50486 (Sept. 17, 1999).

²³ See *Ferrosilicon From Brazil, Kazakhstan, People's Republic of China, Russia, Ukraine, and Venezuela*, 64 Fed. Reg. 51097 (Sept. 21, 1999).

specifically to evidentiary standards)? If so, where is it to be found in Japan's request for establishment of the Panel?

25. No. Japan's claim in this regard is limited to those provisions of U.S. law and regulations that "mandate the DOC to automatically self-initiate without sufficient evidence."²⁴

IV. DE MINIMIS STANDARD IN SUNSET REVIEWS

Both parties

Q87. The Panel notes Japan's argument that the decision of the Appellate Body in *US - Carbon Steel* is not relevant for this case regarding the applicability of a *de minimis* standard in sunset reviews, for several reasons. Please respond to the following questions in this respect:

Regarding Japan's argument that the phrase "For the purpose of this paragraph" found in Article 11.9 of the *SCM Agreement* does not exist in Article 5.8 of the *Anti-dumping Agreement* makes the latter different from the former in this respect²⁵, please explain whether in your view the Appellate Body, in *US - Carbon Steel*, based its decision on the cited phrase or rather on its view that investigations and reviews were distinct processes?

26. The inclusion of the phrase "For the purpose of this paragraph" in Article 11.9 of the SCM Agreement is not relevant to the analysis under the AD Agreement. Article 5 is entitled "Initiation and Subsequent Investigation" and the *de minimis* standard for investigations is found in Article 5.8. There is no *de minimis* standard in Article 11 of the AD Agreement generally, and there is no *de minimis* standard in Article 11.3 of the AD Agreement specifically.

27. The Appellate Body in *US - Carbon Steel* did not base its finding concerning the *de minimis* standard for sunset reviews on the phrase "for the purpose of this paragraph". The Appellate Body, in discussing Article 21.3 found, inter alia, that – (1) the plain text of Article 21.3 does not contain a *de minimis* standard and that such silence must have meaning (para. 64); (2) Article 11 is entitled "*Initiation and Subsequent Investigation*" and does not contain language extending the obligations found there beyond investigations (para. 67); (3) there is no cross-reference to Article 11.9's *de minimis* standard despite the frequent use of cross-references elsewhere in the SCM Agreement (para. 69); and (4) there is an express reference to Article 12, but not Article 11 (although both provisions contain rules related to investigations), in Article 21.4. The Appellate Body concluded that "original investigations and sunset reviews are distinct processes with different purposes" and that the qualitative differences between investigations and

²⁴ Japan Request for the Establishment of a Panel, 4 April 2002, para. 1.

²⁵ Japan Second Written Submission, para. 134.

reviews may serve to explain the absence of a requirement to apply a specific *de minimis* standard in a sunset review (para. 87).

- a) **With reference to paragraph 82 of the Appellate Body report, does the fact that the *Anti-dumping Agreement* contains only one *de minimis* standard necessarily render the logic of the Appellate Body's findings in *US - Carbon Steel* non-transferable to this dispute?**

28. No; as discussed above, the Appellate Body in *US - Carbon Steel* did not base its finding that there is no *de minimis* standard in Article 21.3 solely or principally on the existence of the additional *de minimis* thresholds for developing countries found in the SCM Agreement. The Appellate Body's finding of no *de minimis* standard for sunset reviews under Article 21.3 of the SCM Agreement was based on an analysis of the text, context, object and purpose of Article 21.3 in particular and the SCM Agreement as a whole.

- b) **With respect to the decision of the Appellate Body in *US - Carbon Steel* and with reference to the *US-DRAMS* panel report, does the use of the term "cases" in Article 5.8 also embrace sunset reviews?**

29. No; the term "cases" in Article 5.8 does not embrace sunset reviews. The Appellate Body in *US - Carbon Steel*, addressing Article 11.9, the parallel provision in the SCM Agreement, stated:

We do not subscribe to the view, expressed by Japan, that the use of the word "cases" (rather than the word "investigation") in the second sentence of Article 11.9 means that the application of the *de minimis* standard set forth in that provision must be applied in *all* phases of countervailing duty proceedings – not only in investigations. The use of the word "cases" does not alter the fact that the terms of Article 11.9 apply the *de minimis* standard only to the investigation phase. We note further that the panel in *US-DRAMS* rejected a similar argument with respect to the meaning of the word "cases" in Article 5.8 of the Anti-Dumping Agreement, a provision almost identical to Article 11.9 of the SCM Agreement.²⁶

The Appellate Body's reasoning, not to mention the reasoning of the *US - DRAMS* panel, is equally valid in this proceeding.

²⁶ *US - Carbon Steel*, note 58 (emphasis in original; citation omitted).

V. DETERMINATION OF LIKELIHOOD OF DUMPING/DUMPING MARGINS IN SUNSET REVIEW

1. Nature of sunset determination

United States

Q89. How do you respond to Japan's reference in para. 28 of its oral statement at the second Panel meeting to the recent *EC-Bed-Linen 21.5* panel report and the Appellate Body decision in *US-Carbon Steel* as supportive of Japan's argument that "quantification" of the probable margin of dumping "is a must"?

30. The report issued by the Article 21.5 panel in *EC - Bed Linen* cited by Japan does not address sunset reviews under Article 11.3 of the AD Agreement.²⁷ Rather, it concerns quantification of dumping margins in *antidumping investigations*. The United States does not dispute that quantification of dumping margins is required in antidumping investigations. However, quantification of likely future dumping margins is not required in sunset reviews under Article 11.3 of the AD Agreement.

31. The Appellate Body's findings in *US - Carbon Steel* in fact support the United States' position that quantification is not required in sunset reviews. Japan's argument that quantification is required is based on the panel's finding in *US - Carbon Steel* that "in our view, one of the components of the likelihood analysis in a sunset review under Article 21.3 is an assessment of the likely rate of subsidization."²⁸ Japan neglects to mention, however, that the panel's finding on quantification is tied inextricably to its (erroneous) finding on *de minimis*. Specifically, the panel stated:

Nor are we persuaded by the US argument that, as there is no obligation to quantify subsidization in sunset reviews, there can be no obligation to apply a *de minimis* standard. We consider that, *because there is an obligation to apply a de minimis standard*, and this cannot be done unless subsidization is quantified, there is a consequential obligation to quantify the likely future rate of subsidization.²⁹

32. In other words, the panel's finding that quantification is required follows directly from its finding that there is an obligation to apply a *de minimis* standard. The Appellate Body in *US -*

²⁷ Panel Report on *European Communities – Anti-dumping Duties on Imports of Cotton-Type Bed Linen from India, Recourse to Article 21.5 of the DSU by India*, WT/DS141/RW, 29 November 2002 (unadopted), para. 6.128.

²⁸ Panel Report on *United States - Countervailing Duties on Certain Corrosion-Resistant Carbon Steel Flat Products from Germany* ("*US - Carbon Steel Panel Report*"), WT/DS213/R, adopted 19 December 2002, para. 8.96.

²⁹ *Id.*, para. 8.72.

Carbon Steel overturned the panel's finding on *de minimis* and found that there is no *de minimis* standard applicable to sunset reviews under Article 21.3 of the SCM Agreement.³⁰ The Appellate Body's reasoning on this issue is equally applicable in this case. Because there is no obligation to apply a *de minimis* standard, the premise for the *US - Carbon Steel* panel's analysis is missing and therefore its conclusion does not follow. In any event, there would be no rationale for requiring quantification of a likely future amount of dumping in the absence of a *de minimis* standard.

Q90. How, if at all, does the United States conduct a "rigorous"³¹, "prospective"³² analysis in sunset reviews? In the view of the United States, what constitutes an adequate factual basis for a sunset review? What consideration, if any, is given under US law to likely changes in export prices and normal values? Considering the fact that anti-dumping proceedings concern individual exporting companies' pricing policies, does the United States take into account changes in such policies in its sunset determinations? If so, how? Please cite the relevant portions of the record.

33. The purpose of a sunset review is to determine, based on a predictive analysis, whether the conditions necessary for the continued imposition of an antidumping duty exist. Thus, the focus of a sunset review under Article 11.3 is likely future behavior if the remedial measure were removed, not whether or to what extent dumping currently exists or has existed in the past. Thus, consideration of factors which serve to advance this predictive analysis may be relevant to the inquiry. Commerce considers the past behavior of the exporters and any information submitted by the interested parties relevant to the likelihood inquiry. In addition, other factors which may be considered are cost, price, market or economic data, provided that Commerce deems this information relevant to the likelihood inquiry. Interested parties may also submit any information they deem relevant to the issue of likelihood.

34. In this context, the outcome in each case is determined on the facts of that particular case and must be supported by sufficient evidence on the record of the sunset review at issue. Once a sunset review is initiated, an administering authority is required by Article 11.3 to determine whether dumping is likely to continue or recur if the order is revoked. The record in a sunset review must contain sufficient evidence to support the conclusion that there is a likelihood of dumping in the future. The United States considers that, when exporters have continued to dump in the period following the imposition of the duty and prior to the sunset review (*i.e.* with the discipline of the order in place), this evidence is sufficient to support an affirmative likelihood determination absent information demonstrating that the dumping will cease.

³⁰ *US - Carbon Steel*, para. 92 (emphasis added).

³¹ *Id.*, para. 71.

³² *US - Carbon Steel Panel Report*, para. 8.96.

35. With respect to price and cost information, as stated above and in our earlier submissions, parties may submit any additional information that they deem relevant and wish Commerce to consider. Section 351.218 of the regulations provides that a party may submit any information it deems relevant and which it wishes Commerce to consider in making the sunset determination. Commerce may consider and has considered³³ export price and normal value information, as well as other factors³⁴ in making its likelihood determination in a sunset review.

36. After Commerce issues its final determination of likely dumping, pursuant to Section 751(c) of the Act, the USITC conducts a review to determine whether revocation of the order or termination of the suspended investigation would likely lead to the continuation or recurrence of material injury.³⁵ In determining whether injury would be likely, the USITC considers “the likely volume, price effect and impact of the subject merchandise on the industry.”³⁶ The USITC takes into account its prior injury determination, whether any improvement in the state of the industry is related to the order under review, whether the industry is vulnerable to material injury if the order is revoked, and any findings by Commerce regarding duty absorption under section 1675(a)(4) of the Act.³⁷

37. Thus, only after Commerce finds that dumping is likely to continue or recur *and* the USITC finds that injury is likely to continue or recur will the antidumping duty order be continued.

Both parties

Q91. In your view, do "changed-circumstances" reviews under Article 11.2 and sunset reviews under Article 11.3 of the Agreement require the application of different degrees of rigour by the authorities? If so, why and in what respects?

38. We are unclear as to what the Panel means by the application of “degrees of rigour” with respect to reviews under Articles 11.2 and 11.3. However, the Appellate Body has explained that “the determination made in a review under Article 21.2 must be a meaningful one....”³⁸ The Appellate Body also has stated that,

[O]n the basis of its assessment of the information presented to it by interested parties, as well as of other evidence before it relating to the period of review, the investigating authority must determine whether there is a continuing need for the application of countervailing duties. The investigating authority is not free to

³³ See *Sugar & Syrups from Canada*, 65 Fed. Reg. 735 (Jan. 6, 2000) (Exhibit JPN-25(1)).

³⁴ See *Brass Sheet & Strip from the Netherlands*, 64 Fed. Reg. 48362 (Sept. 3, 1999) (Exhibit JPN-25(m)).

³⁵ Section 751(c) (Exhibit JPN-1(e)).

³⁶ 19 U.S.C. § 1675a(a)(1); USITC Pub. 3364 at 17.

³⁷ 19 U.S.C. § 1675a(a)(1).

³⁸ *US - Carbon Steel*, para. 71.

ignore such information. If it were free to ignore this information, the review mechanism under Article 21.2 would have no purpose.³⁹

39. The United States considers that reviews under both Article 11.2 and 11.3 also should be “meaningful” and should be based on assessment of the information presented and other evidence relating to the period of review. This does not mean that the analysis and the issues are identical, as evidenced by the differences in the language between Article 11.2 and Article 11.3. The determination as to whether there is a continuing need for the application of duties must be considered in light of the specific requirements of each Article.

United States

Q94. The Panel notes that the Final Sunset Determination in the instant sunset review indicates that the additional information submitted by NSC on 11 May 2000 would not change the DOC’s ultimate conclusion regarding the likelihood of continuation. The Panel also notes Japan’s response to Question 47 and US response to Question 60 from the Panel. In your view:

a) Would the United States have been more vulnerable to an allegation of acting inconsistently with the Agreement had the DOC’s final determination not followed this line of reasoning?

40. No. Commerce’s determination was that dumping is likely to continue or recur if the antidumping duty were revoked because the record evidence demonstrated that the Japanese exporters continued to dump during the five-year period preceding the sunset review. Thus, Commerce reasonably concluded, absent any explanation or evidence to the contrary, that Japanese exporters of corrosion-resistant steel would continue to dump were the order revoked.

b) If your answer to (a) is in the affirmative, do you think the inclusion of that phrase cured that inconsistency? If so, in what way(s)?

41. See U.S. answer to Question 94(a).

³⁹ Appellate Body Report on *United States - Imposition of Countervailing Duties on Certain Hot-Rolled Lead and Bismuth Carbon Steel Flat Products Originating in the United Kingdom*, WT/DS138/AB/R, adopted 7 June 2000, para. 61.

Q95. With reference to the US response to Panel Question 64 following the first meeting, would the United States explain why the "good cause" standard is applicable only in sunset reviews under US law (and not to investigations and other types of reviews)?

42. The statute at section 752(c)(2) requires "good cause" be shown before Commerce is *required* to consider "other factors" information in making the likelihood determination in a sunset review. Generally, under U.S. administrative law, an agency is required to explain its determinations and to address each argument and piece of information submitted by the interested parties to the proceeding in its final determination. The "good cause" provision is an evidentiary threshold requirement under which the submitting party must demonstrate that the "other factors" information is relevant to an analysis of the likelihood issue before consideration by Commerce is *required* in sunset review.

Q96. What is the legal relationship between Articles 11.1 and 11.3? Does the inclusion of the phrase "to the extent necessary" in Article 11.1 of the Agreement suggest that the investigating authorities in sunset reviews are required to quantify the likely margin of dumping, or is an authority free to act without limitation?

43. In *US - Carbon Steel*, the Appellate Body explained the relationship between Articles 21.1 and 21.3 of the SCM Agreement:

The first paragraph of Article 21 stipulates that a countervailing duty "shall remain in force only as long as and to the extent necessary to counteract subsidization which is causing injury". We see this as a general rule that, after the imposition of a countervailing duty, the continued application of that duty is subject to certain disciplines. These disciplines relate to the *duration* of the countervailing duty..., its *magnitude*..., and its *purpose*.... Thus, the general rule of Article 21.1 underlines the requirement for periodic review of countervailing duties and highlights the factors that must inform such reviews. This does not, however, assist us in determining whether a specific *de minimis* standard is intended to be applied in an Article 21.3 review.⁴⁰

44. The language of Article 11.1 of the AD Agreement is parallel to the language of Article 21.1 of the SCM Agreement. Consequently, Article 11.1 of the AD Agreement simply contains a "general rule" that, after the imposition of an antidumping duty, the continued application of that duty is subject to certain disciplines. Moreover, just as such a general rule does not assist one in determining whether a specific *de minimis* standard is required in sunset reviews, it does not assist one in determining whether quantification of likely future margins is required in sunset review.

⁴⁰ *US - Carbon Steel*, para. 70.

45. The United States notes that Article 11.1 of the AD Agreement does not, in any way, reference the quantification of dumping margins in *sunset reviews*. Furthermore, there is simply no reason for Commerce to quantify dumping margins for purposes of the likelihood of dumping determination in sunset reviews; Commerce quantifies dumping margins in annual administrative reviews and *only assesses dumping duties to the extent that dumping is found in such reviews*. Neither Article 11.1 nor Article 11.3 of the AD Agreement (1) obligates an administering authority to quantify, or determine the magnitude of, dumping margins for purposes of sunset reviews or (2) includes any specifications regarding the methodology or methodologies that must be employed in such reviews. Commerce reports the margin likely to prevail in the event of revocation to the USITC purely as a matter of U.S. domestic law.

Q97. Does a determination of likelihood of continuation or recurrence of dumping require a comparison with a certain historical point of reference when "dumping" was determined to exist? If so, how does the United States respond to the proposition that certain potential flaws in that historical reference point for "dumping" - that is, that the existence of dumping may originally have been established through the use of WTO-inconsistent methodologies - render the sunset likelihood of dumping determination also inconsistent with Article 11.3?

46. As explained in detail in our previous submissions, Commerce's determination of the likelihood of continuation or recurrence of dumping is qualitative, not quantitative. Moreover, the magnitude of dumping found in the original investigation played no role whatsoever in Commerce's analysis of the likelihood issue. Japan itself has acknowledged this fact.⁴¹ Consequently, even if the Panel were to determine that "the existence of dumping may originally have been established through the use of WTO-inconsistent methodologies," such a determination would have no bearing on the validity of the likelihood of dumping determination in question.

47. Furthermore, in the instant case, Commerce found in post-URAA annual administrative reviews, *i.e.*, reviews subject to the requirements of the *WTO Agreement*, that dumping continued to occur in the five years preceding the sunset review. These findings formed the basis of Commerce's determination that dumping was likely to continue or recur if the order were revoked. If the respondents in the annual administrative reviews believed that Commerce's dumping calculations were inaccurate or otherwise contrary to U.S. law, they could have filed judicial challenges to those calculations. If Japan believed that Commerce's dumping calculations in the annual administrative reviews were contrary to the *WTO Agreement*, Japan could have filed WTO challenges to those calculations. Neither the respondents nor Japan took advantage of the opportunities at their disposal to challenge the results of the annual administrative reviews.

⁴¹ See, *e.g.*, Japan Second Submission, para. 83.

Q98. How does the United States ensure fulfilment of the obligation in Article 11.1? Why, and for what purpose, did the DOC in fact quantify the likely dumping margin in this sunset review?

48. The United States fulfills the obligation in Article 11.1 of the AD Agreement by subjecting the continued application of antidumping duties to certain disciplines, including “changed circumstances” reviews as appropriate under Article 11.2, and the sunset review discipline under Article 11.3 of the AD Agreement. In this review, as in all full sunset reviews, Commerce, in accordance with the requirement in U.S. law (but not under the AD Agreement), reported the margin of dumping likely to prevail in the event of revocation to the USITC. The reported margin plays no role whatsoever in Commerce’s analysis of the likelihood of continuation or recurrence of dumping. That analysis, qualitative in nature, is focused on the determination of a *likelihood* of future dumping, not a *magnitude* of future dumping.

Both parties

Q99. The Panel notes Japan's statements in paragraphs 26-28 of its oral statement at the second meeting of the Panel with the parties regarding the quantitative vs. qualitative nature of a determination of likelihood of continuation or recurrence of dumping in a sunset review. In that respect, please explain, how (if at all), and the extent to which, the use of the term "dumping" in Article 11.3 renders the obligations stemming from Article 2 of the Agreement in respect of the calculation of dumping margins applicable in sunset reviews?

49. As explained in detail in our previous submissions, Article 11.3 of the AD Agreement does not require that current or future dumping be quantified in sunset reviews. Consequently, the obligations stemming from Article 2 of the AD Agreement in respect of the calculation of dumping margins are not applicable in the context of sunset reviews.

50. Furthermore, as noted above, Commerce quantifies current dumping margins in annual administrative reviews, not sunset reviews. If Japan’s argument here is intended to require administering authorities to quantify *current* dumping margins, that purported requirement is satisfied by Commerce’s conduct of annual administrative reviews. If, on the other hand, Japan’s argument here is intended to require that administering authorities speculate as to future pricing behavior, Japan should be required to explain in detail how such speculation can, and why it should, be undertaken.

Q100. The Panel notes the following statement of the Panel, in *US - Carbon Steel*:

In our view, one of the components of the likelihood analysis in a sunset review under Article 21.3 is an assessment of the likely rate of subsidisation. We do not

consider, however, that an investigating authority must, in a sunset review, use the same calculation of the rate of subsidisation as in an original investigation. What the investigating authority must do under Article 21.3 is to assess whether subsidisation is likely to continue or recur should the CVD be revoked. This is, obviously, an inherently prospective analysis. Nonetheless, it must itself have an adequate basis in fact.⁴²

In your view, what, if any, are the implications of that finding to the present proceedings, particularly regarding the quantitative vs. qualitative nature of the likelihood determinations under Article 11.3 and the issue of whether or not Article 11.3 requires the establishment of the likely margin of dumping (or, at least, an evaluation of whether export prices are likely to be lower than normal values in the foreseeable future)?

51. See answer to Question 89 (above). In addition, in light of the Appellate Body's finding that there is no *de minimis* standard applicable to countervailing duty sunset reviews, and in light of the parallel nature of the provisions governing antidumping sunset reviews, it is clear that there is no *de minimis* standard applicable to antidumping sunset reviews. Consequently, as pointed out in our second written submission, quantification of likely future dumping margins would have no function in the context of the likelihood of dumping determination. Commerce's analysis, qualitative in nature, is focused on the determination – required by Article 11.3 of the AD Agreement – of a *likelihood* of future dumping, not a *magnitude* of future dumping.

2. "Order-wide basis"

Both parties

Q101. How, if at all, is Article 9.4 relevant to the issue of order-wide vs. company specific determinations in sunset reviews? Are there any (other) contextual elements in the Agreement that shed light on this issue?

52. Article 9.4 of the AD Agreement, consistent with Article 9.2 of the AD Agreement, assumes that the definitive antidumping duty is imposed with respect to a "product," *i.e.*, on an order-wide basis, not with respect to individual companies found to be dumping. This assumption is what enables Article 9.4 to permit antidumping duties to be applied to "imports from exporters or producers not included in the examination" conducted in the context of the antidumping duty investigation. As pointed out in our written submissions, this assumption

⁴² US - Carbon Steel Panel Report, para. 8.96.

undermines Japan's claim that the definitive antidumping duty is necessarily reviewed under Article 11.3 of the AD Agreement on a company-specific basis.

53. We have pointed out in our written submissions another relevant contextual element in the AD Agreement: the likelihood of injury determination under Article 11.3 is inherently order-wide in nature, not company-specific. Article 11.3 does not, however, distinguish between the degree of specificity required for likelihood of injury determinations and the degree of specificity required for likelihood of dumping determinations. Consequently, neither of these determinations is required to be made on a company-specific basis.

Q102. How do you respond to the following reading of Articles 11.3 and 6.10 by virtue of the cross-reference in Article 11.4 to "the provisions of Article 6 regarding evidence and procedure"?

Article 11.3 requires that an investigating authority in a sunset review make a determination of likelihood of continuation or recurrence of dumping. An investigating authority may also proceed to establish the margin of dumping likely to prevail if a duty is terminated. The obligation in Article 6.10 that "[t]he authorities shall, as a rule, determine an individual margin of dumping for each known exporter or producer concerned of the product under investigation" applies where the investigating authority proceeds to establish the margin of dumping likely to prevail.

54. Japan's claim is not that Commerce failed in the instant sunset review to establish company-specific margins likely to prevail in the event of revocation;⁴³ Commerce, in fact, found that two Japanese producer/exporters were likely to dump in the event of revocation, and reported to the USITC that the rate of dumping likely to prevail would be 36.41 percent.⁴⁴ Rather, Japan claims that Commerce improperly made its likelihood of dumping determination on an order-wide basis. This attempt to require, for purposes of sunset reviews under Article 11.3 of the AD Agreement, a *substantive* application of Article 6.10 of the AD Agreement is precluded by Article 11.4 of the AD Agreement, which provides for the inclusion only of the *procedural* aspects of Article 6.

United States

Q103. In a likelihood of continuation or recurrence of dumping determination in a sunset review, how, if at all, would the United States deal with the situation where

⁴³ Japan First Written Submission, paras. 202-06.

⁴⁴ Final Results of Sunset Review, 65 Fed. Reg. at 47,381.

the specific circumstances of one exporter from a given exporting Member with multiple exporters would absolutely preclude that exporter from possibly continuing or recurring dumping upon termination of the duty?

55. As an initial matter, we note that those facts are not present in the instant case. Under U.S. law, it is possible under certain circumstances for companies to request company-specific revocations of antidumping duty orders.⁴⁵ Such requests, however, are not addressed in the context of the likelihood of dumping determination in sunset reviews under Article 11.3 of the AD Agreement.

3. "Ample Opportunity"

Both parties

Q104. In your view, does the 30-day "good cause" requirement for the submission of information in a sunset review conform to the requirement of Article 6.1 of the Agreement that the interested parties be given ample opportunity to submit in writing all evidence that they deem relevant? Why or why not?

56. There is no 30-day "good cause" requirement under U.S. law for the submission of information in a sunset review. The statute and regulations require that "good cause" be shown before Commerce is required to consider "other factors" information in a sunset review. The statute, at section 751(c)(2), leaves the determination of whether "good cause" has been shown to the discretion of Commerce.

57. Article 6.1 provides that parties be given the opportunity to submit any information they deem relevant. Section 351.218(d)(3)(iv)(B) of Commerce's *Sunset Regulations* provides that a party may submit "any other relevant information or argument that the party would like [Commerce] to consider" in the sunset review.

58. Article 6.1.1 requires that parties be given at least 30 days to respond to a questionnaire. Section 351.218(d)(3)(i) of Commerce's *Sunset Regulations* provides those 30 days. In addition, interested parties have the opportunity to request extensions – section 351.302(c) provides that a party may request an extension of a specific time limit and section 351.302(b) provides that unless expressly precluded by statute, Commerce may, for good cause, extend any time limit established by its regulations. Thus, the statute and regulations provide ample opportunity for interested parties to submit whatever evidence they wish in a sunset review in accordance with the obligations set forth in Article 6.1.

⁴⁵ 19 C.F.R. § 351.222(b)(2).