

***** CHECK AGAINST DELIVERY *****

***United States - Sunset Review of Antidumping Duties on
Corrosion-Resistant Carbon Steel Flat Products from Japan***

AB-2003-5

Statement of the United States at the
Oral Hearing of the Appellate Body

October 30, 2003

Mr. Chairman, members of the Division:

1. On behalf of the United States delegation, I would like to thank the Appellate Body for this opportunity to comment on certain issues raised in this proceeding concerning the U.S. sunset review of corrosion-resistant steel from Japan. We will not repeat our appellee's submission here, which we believe fully addresses Japan's arguments. Rather, we would briefly like to focus on the central issues raised in this appeal. We will be pleased, of course, to answer any additional questions you may wish to pose.

2. Mr. Chairman, we can all be forgiven if the issues in this dispute sound very familiar. Indeed, the proceedings below, and now those on appeal, address issues which either have been directly addressed in other disputes, or which closely relate to those addressed in other disputes. In either case, the Panel faced a straightforward task. It applied the WTO obligations in question based on approaches taken in recently adopted panel and Appellate Body reports, and it did so correctly. The Panel's findings should be upheld.

3. Before addressing those findings, we would like to raise at the outset Japan's claims and allegations that the Panel failed to apply the correct standard of review. Consistent with its

earlier findings on this issue, the Appellate Body should disregard these claims. They are outside the scope of this appeal because Japan did not include them in its notice of appeal.

4. With respect to those claims which were raised in the notice of appeal, the Panel correctly found that Commerce had a sufficient factual basis from which to reasonably draw its conclusions concerning the likelihood of continuation or recurrence of dumping. Japan, in appealing this finding, improperly asks the Appellate Body to reconsider the facts established on the record with respect to the evidentiary basis for Commerce's determination of likelihood of continuation or recurrence of dumping. Japan also alleges that the Panel ignored Commerce's reliance on dumping margins that were allegedly inconsistent with Article 2 of the Antidumping Agreement. The Appellate Body should reject Japan's attempt to reargue the Panel's assessment of the facts before it and the weight it accorded those facts. The Appellate Body should also decline to review Japan's claim regarding alleged WTO-inconsistent dumping margins, which is a factual issue that was not before the Panel.

5. Furthermore, there is no basis in the Antidumping Agreement for Japan's claim that a determination of likelihood of continuation or recurrence of dumping under Article 11.3 of the Antidumping Agreement must be made on a company-specific basis. Despite Japan's urging, the Panel correctly declined to create new substantive obligations in Article 11.3 by incorporating the provisions of Article 6.10.

6. Finally, the Panel correctly found that Commerce's *Sunset Policy Bulletin* is not a measure that can be challenged "as such," and that the United States did not act inconsistently with Article 18.4 of the Antidumping Agreement. The *Sunset Policy Bulletin* is not a legal

instrument with independent status under U.S. law – it is not a “measure.” Accordingly, it cannot mandate WTO-inconsistent behavior. Consequently, the Panel correctly found that it was not required to consider Japan’s “as such” claims in respect of particular provisions of the *Sunset Policy Bulletin*.

7. Mr. Chairman, members of the Division, this concludes our oral presentation today. For the reasons discussed today and in our written submission, we ask that you reject each of Japan’s claims in this dispute. We would be pleased to entertain questions you may have. Thank you very much.