ANNEX A

EXECUTIVE SUMMARIES OF THE FIRST WRITTEN SUBMISSIONS OF THE PARTIES

ANNEX A-1

FIRST WRITTEN SUBMISSION OF MEXICO

I. EXECUTIVE SUMMARY OF MEXICO' CLAIMS

1. Mexico's claims are summarized as follows:

A. THE DEPARTMENT'S SUNSET REVIEW WAS INCONSISTENT WITH WTO OBLIGATIONS

- The statute (19 U.S.C. § 1675a(c)(1)), the SAA (pages 889-890), and the SPB (Section II.A.3) as such violate Article 11.3. The text of the statute, the SAA, and the SPB are sufficiently clear to demonstrate a violation of Article 11.3 for two reasons:

  - First, the statute, the SAA, and the SPB establish a presumption that termination of the anti-dumping duty would be likely to lead to continuation or recurrence of dumping in violation of Article 11.3. The presumption created by the statute, the SAA, and the SPB violates Article 11.3 as such because declines in import volume and/or the existence of historic dumping margins are given decisive weight, while the burden is placed on exporters to convince the Department even to consider any other factors (see section VII.A.).

  - Second by permitting the use of presumptions, the statute, SAA, and SPB adopt a meaning of "likely" that is inconsistent with the use of that term in Article 11.3. Because the statute, SAA, and Section II.A.3 of the SPB require the Department to attach decisive weight to declines in import volume and/or the existence of historic dumping margins, the US legal standard is less than the "likely" or "probable" standard required by Article 11.3 and therefore inconsistent as such with Article 11.3 (see section VII.A.).

- The Department's consistent practice in sunset review cases demonstrates the WTO-inconsistent presumption and itself constitutes a violation of Article 11.3 as such. To date there have been 227 sunset reviews conducted by the Department where the domestic industry has participated. In 100 per cent of these proceedings, the Department determined that dumping would be likely to continue or recur.[1] In these cases no respondent has been able to overcome the criteria prescribed by the SAA and the SPB as conclusive of likely dumping[2] (see section VII.B.);

- The Department's Sunset Determination was inconsistent with Article 11.3 of the Anti-Dumping Agreement because the Department focused solely on a decline in import volume, failed to apply the disciplines of Article 2, failed to conduct a prospective analysis, failed to make a determination of "likely" (or "probable") dumping, and failed to base its determination on positive evidence. The Department's reliance on the import volume decline in the wake of the anti-dumping measure as the sole basis for its likelihood determination was inconsistent

[1] US Department of Commerce Sunset Reviews (MEX-62).
[2] *Id.*

with Article 11.3. In addition, the Department's reporting of the original margin of dumping of 21.70 per cent to the Commission for purposes of its likelihood decision was inconsistent with Article 11.3 and Article 2 of the Anti-Dumping Agreement (see section VII.C.);

B. THE COMMISSION'S SUNSET REVIEW WAS INCONSISTENT WITH US WTO OBLIGATIONS

- The Commission's standard for determining whether termination of the duty would be likely to lead to continuation or recurrence of injury is inconsistent as such with Article 11.3 of the Anti-Dumping Agreement because the Commission applies a lower standard than that required by Article 11.3 (see section VIII.A.);

- The Commission's Sunset Determination that termination of the duty would be likely to lead to continuation or recurrence of injury was inconsistent with Article 11.3 of the Anti-Dumping Agreement because the Commission applied a lower standard for determining the likelihood of injury than that which is required by Article 11.3. The Appellate Body has confirmed that "likely" means "probable" and not something less than probable (see section VIII.B.);

- The Commission's Sunset Determination violated Article 11.3 because it was not based on "positive evidence" that termination of the duty would be likely to lead to continuation or recurrence of injury (see section VIII.C.);

- The Commission's Sunset Determination violated Articles 3.1, 3.2, 3.4, 3.5, and 11.3 of the Anti-Dumping Agreement because the Commission did not conduct an objective examination of the record or base its determination on positive evidence. The Commission's conclusions regarding the likely volume of imports, the likely price effects, and the likely impact of imports on the domestic industry can in no way be considered to be objective when those conclusions are viewed in light of a neutral examination of the information on the record. Moreover, the purported bases relied on by the Commission in support of its likely injury finding simply do not constitute positive evidence as required by Article 3.1 of the Anti-Dumping Agreement (see sections VIII.D.1-3);

- The Commission's Sunset Determination violated Article 3.4 because in assessing the likelihood of continuation or recurrence of injury to the domestic industry, the Commission either failed to evaluate or improperly evaluated the relevant economic factors and indices having a bearing on the state of the industry, including the mandatory factors enumerated in Article 3.4 of Anti-Dumping Agreement (see section VIII.D.4);

- The Commission' Sunset Determination violated Article 3.5 because the Commission failed to: (1) demonstrate a causal relationship between the dumped imports and likely injury to the domestic industry; (2) separate and distinguish the effects of other factors from those of the effects of the dumping; and (3) base its determination on the effects of the dumping on the domestic industry (see sections VIII.D.5);

- The Commission's Sunset Determination violated Articles 3.7 and 3.8 because the Commission based its likelihood of injury determination on conjecture and remote possibility and failed to satisfy the special requirements of Articles 3.7 and 3.8 for making prospective injury determinations (see sections VIII.D.6);

- The Commission's application of a cumulative injury analysis of OCTG imports from Korea, Italy, Japan, Mexico, and Argentina to determine whether termination of the anti-dumping duty on Mexican OCTG imports would be likely to lead to continuation or recurrence of

injury was inconsistent with Articles 11.3 and 3.3 of the Anti-Dumping Agreement, which preclude the use of a cumulative injury analysis in sunset reviews. Alternatively, assuming *arguendo* that cumulation is permitted in sunset reviews, the Commission violated Articles 11.3 and 33 by failing to comply with the explicit restrictions on cumulation set forth in Article 3.3. (see sections VIII.E and F);

- The US statutory requirements that the Commission determine whether injury would be likely to continue or recur "within a reasonably foreseeable time" (19 U.S.C. § 1675a(a)(1)) and that the Commission "shall consider that the effects of revocation or termination may not be imminent, but may manifest themselves only over a longer period of time" (19 U.S.C. § 1675a(a)(5)) are inconsistent with Articles 3.1, 3.2, 3.4, 3.5, 3.7, 3.8, 11.1 and 11.3 of the Anti-Dumping Agreement. By adding the phrase "within a reasonably foreseeable time" and including a time frame that is not "imminent" but rather relates to "a longer period of time," US law requires ("shall consider") speculation and an open ended analysis for possible future injury. The Commission's market forecasting and sheer speculation is inconsistent with WTO requirements to assess whether termination of an anti-dumping duty order would be likely to lead to recurrence of injury at the time of termination – not at some distant, undefined point in the future. The Commission's application of these statutory provisions in the sunset review of OCTG from Mexico also violated US WTO obligations as noted above (see sections VIII.G.1 and 2).

C. THE DEPARTMENT'S FOURTH ADMINISTRATIVE REVIEW DETERMINATION NOT TO REVOKE THE ORDER WAS INCONSISTENT WITH US WTO OBLIGATIONS

- The Department's Fourth Administrative Review Determination Not to Revoke violated Article 11.2 of the Anti-Dumping Agreement because the Department did not terminate the anti-dumping duty immediately upon a showing that the continued application of the duty was not "necessary to offset dumping" (see section IX.A.);

- The Department violated Articles 11.2, 2.4, and 2.4.2 of the Anti-Dumping Agreement because the Department "zeroed" Hylsa's negative margins and relied on the positive margin that resulted from this unlawful methodology as justification for not revoking the anti-dumping duty on OCTG from Mexico with respect to Hylsa (see section IX.B.);

- The Department's Fourth Administrative Review Determination Not to Revoke violated Article 11.2 of the Anti-Dumping Agreement because the Department: (i) applied a standard which required a demonstration that dumping was "not likely" in the future; (ii) arbitrarily imposed a "commercial quantities" threshold test which has no basis in Article 11.2; and (iii) it ignored positive evidence that demonstrated that the measure was no longer necessary to offset dumping (see section IX.C); and

- The Department violated Article X:2 of the GATT 1994 because the Department imposed conditions on TAMSA for the termination of the anti-dumping duty in advance of the official publication of such conditions (see section IX.D.).

D. VIOLATIONS OF GATT ARTICLE X:3(A)

- Separate and apart from whether US anti-dumping laws and regulations regarding sunset reviews are found to be consistent *per se* with US WTO obligations, the data drawn from the Department's sunset review determinations demonstrate that the Department failed to administer in an impartial and reasonable manner US anti-dumping laws, regulations,

decisions and rulings with respect to the Department's conduct of sunset reviews of anti-dumping duty orders, in violation of Article X:3(a) of the GATT 1994 (see section X).

E. CONSEQUENTIAL VIOLATIONS OF THE ANTI-DUMPING AGREEMENT, THE GATT 1994, AND THE WTO AGREEMENT.

Because the United States violated its obligations under the Anti-Dumping Agreement, it also violated the provisions of Article VI of the GATT 1994, Articles 1 and 18 of the Anti-Dumping Agreement, and Article XVI:4 of the WTO Agreement (see section X.I).

ANNEX A-2

FIRST WRITTEN SUBMISSION OF THE UNITED STATES

(3 May 2004)

I. INTRODUCTION

1. This proceeding involves Mexico's challenge to the findings of the US Department of Commerce ("Commerce") and the US International Trade Commission ("ITC") in the sunset review determinations and Commerce's fourth administrative review of the anti-dumping duty order on oil country tubular goods ("OCTG") from Mexico.

2. Mexico disagrees with the conclusions drawn by Commerce and the ITC in the sunset and fourth review determinations. However, the fact that Mexico disagrees with those conclusions does not render them inconsistent with US obligations under the AD Agreement. Mexico asserts obligations that in many cases do not exist, and its claims to have identified breaches by the United States are meritless.

II. THE PANEL SHOULD REJECT MEXICO'S CLAIMS CONCERNING AN ALLEGED "PRESUMPTION" AND ITS ALLEGED INCONSISTENCY WITH ARTICLE 11.3

3. Article 11.3 establishes the requirement that an investigating authority either terminate the duty after five years or conduct a review to determine whether termination of that order "would be likely to lead to continuation or recurrence of dumping and injury."

4. Mexico's entire claim under Article 11.3 hinges upon the existence of an alleged Commerce "presumption" in sunset reviews that the continuation or recurrence of dumping is likely. Mexico's claim fails because: (1) the alleged "WTO-inconsistent presumption" does not exist; (2) the instruments that allegedly give rise to this presumption do not constitute challengeable measures for purposes of the DSU; and (3) even if the instruments and practices were subject to challenge, two of them – the *Sunset Policy Sunset Policy Bulletin* and Commerce practice – are not "mandatory" within the meaning of the mandatory/discretionary distinction, i.e., they do not mandate a breach of a WTO obligation.

III. COMMERCE FULLY CONSIDERED ALL RECORD INFORMATION IN MAKING THE FINAL SUNSET DETERMINATION

5. Mexico claims that Commerce failed to address all the record information in the sunset review of OCTG from Mexico and, thereby, failed to determine, in accordance with Article 11.3, that dumping was likely to continue or recur if the anti-dumping duty were removed. Specifically, Mexico asserts that Commerce failed to address TAMSA's explanations for the depressed state of OCTG imports from Mexico for the period following imposition of the order. In addition, Mexico alleges that Commerce failed to consider, in making the likelihood determination, information regarding the dumping margin calculated for TAMSA in the original investigation. Mexico is wrong

because Commerce addressed TAMSA's import volume explanation and Commerce did not rely upon the dumping margin from the original investigation (or any dumping margin) in making the affirmative likelihood determination in the sunset review.

IV. MEXICO'S CLAIMS REGARDING COMMERCE'S IDENTIFICATION OF THE MARGINS LIKELY TO PREVAIL IN THE EVENT OF REVOCATION ARE EQUALLY ERRONEOUS

6. Mexico maintains that, pursuant to Article 2 and Article 11.3 the margins reported to the ITC as the rates of dumping likely to prevail in the event of revocation were improperly identified by Commerce. Mexico is wrong, because there simply is no obligation under the AD Agreement to consider the magnitude of the margin likely to prevail in determining likelihood of continuation or recurrence of injury in a sunset review under Article 11.3. In addition, as a factual matter, Commerce did not "rely" on the margins from the original investigation in making the likelihood determination in OCTG from Mexico as asserted by Mexico. Rather, Commerce relied solely on the depressed state of OCTG imports from Mexico to make its affirmative determination that dumping was likely to continue or recur and simply reported the "margins likely to prevail" to the ITC. For these reasons, the Panel should not and need not consider Mexico's arguments concerning the manner in which Commerce identified the margins that it reported to the ITC.

V. THE PANEL SHOULD REJECT MEXICO'S CLAIM THAT COMMERCE'S DETERMINATION NOT TO REVOKE TAMSA AND HYLSA FROM THE ANTI-DUMPING DUTY ORDER WAS INCONSISTENT WITH ARTICLES 11.1 AND 11.2 OF THE AD AGREEMENT

7. Article 11.2 requires a review of the continuing need for "the anti-dumping duty." The "anti-dumping duty" refers to the anti-dumping duty order as a whole, not as applied to individual companies. As the Appellate Body stated in *Japan Sunset*, "the duty" referenced in Article 11.3 is imposed on a product-specific (i.e., order-wide) basis, not a company-specific basis.

8. Mexico's second principal claim is that, in not revoking the order on OCTG from Mexico based on the results of the fourth administrative review, the United States breached its obligations under the AD Agreement and GATT 1994. The heart of Mexico's claim rests on the obligations in Article 11.2 of the AD Agreement. An examination of the text of that Article, in context and in light of its object and purpose, demonstrates that Mexico's claims are unfounded.

9. Article 11.2 contains no obligation for Members to provide company-specific revocations. For this reason, and because neither TAMSA nor Hylsa sought to present information substantiating the need for the overall revocation of "the duty" during the fourth administrative review, Mexico's revocation claims based on the fourth administrative review must fail.

10. Even assuming *arguendo* that this Panel were to find that Article 11.2 applies to company-specific opportunities for revocation, the terms of Article 11.2 would not compel the revocations TAMSA and Hylsa sought in the fourth administrative review, as Mexico argues.

11. Article 11.2 of the AD Agreement provides that a reviewing authority must conduct a revocation review "where warranted" and where an interested party requests a review in order to determine whether continued imposition of an anti-dumping duty is necessary. However, Article 11.2 expressly limits this right to instances in which the interested party is able to ". . . submit positive information substantiating the need for a review." In the Fourth Administrative Review, however, TAMSA failed to substantiate the need for such a review.

12. Under US law and consistent with Article 11.2, Commerce will examine the need for revocation at the request of an interested party only if the interested party provides positive information substantiating the need for a review. This positive information includes, *inter alia*, that (1) the requesting party has meaningfully participated in the US market for at least three years and (2) the requesting party has not dumped subject merchandise during that three year period.

13. Meaningful participation in the market is necessary because without it there is no evidentiary basis for determining whether continued imposition of the duty is necessary. Commerce examines the sales volumes during the periods in which the exporter did not dump both in absolute terms and in comparison with the period of investigation and/or other review periods. If the sales volumes during the non-dumped periods represent an extremely small portion of the sales during the period of investigation and/or other review periods, Commerce infers that these sales are an insufficient evidentiary basis for the need to examine whether the order continues to be necessary. If an interested party were able to provide evidence that the severely reduced sales volume was due to some unusual occurrence, independent of the discipline of the order, Commerce could find that the extremely small sales constitute information sufficient to substantiate the need to review the duty.

14. During the fourth administrative review, TAMSA argued that it had sold OCTG in commercial quantities during the second, third and fourth reviews. Commerce analyzed TAMSA's request and determined that these sales were made at volumes that constituted an extremely small portion of the sales TAMSA made during the POI.. Commerce allowed TAMSA an opportunity to refute the inference that its extremely small sales failed to substantiate the need for an examination of whether the order remained necessary. In response, TAMSA argued that its extremely small sales were probative because the small sales were caused by both the dumping order on OCTG from Mexico as well as a cyclical downturn in the oil industry. After considering these arguments, Commerce rejected them, fully explaining why in the final results of the fourth review. Thus, Commerce found that TAMSA failed to meaningfully participate in the market because it had not sold OCTG in commercial quantities. Consistent with Article 11.2, TAMSA had failed to provide positive information substantiating the need for a review and Commerce properly rejected its revocation request.

15. Mexico also argues that, in reviewing the necessity of the OCTG order in the *Final Results of Fourth Review*, Commerce improperly applied a "not likely" standard with respect to the question of whether the order remained necessary as to TAMSA. In the *Final Results of Fourth Review*, Commerce analyzed whether TAMSA's revocation request provided a sufficient evidentiary basis for consideration for revocation. Commerce found that, as an evidentiary matter, the request was insufficient. Because Commerce thus did not reach the question of whether the continued imposition of the duty remained necessary to offset dumping, Mexico's arguments that Commerce improperly applied a "not likely" standard in resolving that question should be rejected by this Panel.

VI. COMMERCE'S "IMPOSITION OF CONDITIONS" FOR REVOCATION WAS NOT INCONSISTENT WITH ARTICLE X:2 OF THE GATT 1994

16. Through a misleading characterization of the facts, Mexico has attempted to argue that the commercial quantities requirement Commerce applied in the *Final Results of Fourth Review* was imposed without official publication "in advance of its application," in breach of Article X:2 of the GATT. Although Mexico implies that the commercial quantities requirement was imposed through a change in practice in 1999, that requirement was set forth in the regulations published in 1997, in section 351.222(e)(1) of Commerce's regulations, a section of the regulations Mexico studiously deemphasizes. This regulation was effective for all administrative reviews initiated on the basis of requests for reviews made on or after 1 July 1997. Thus, the effective date of the regulations preceded the date of request for the second, third, and fourth OCTG administrative reviews. Commerce properly applied the regulation to TAMSA's request for revocation. Second, to the extent

that Mexico is challenging an alleged change in Commerce "practice," TAMSA's claim under Article X:2 must fail because, Article X:2(a) is limited in scope to measures of general application, not to changes in how Commerce exercises its discretion on a case-by-case basis – its so-called practice.

VII. THE MARGIN CALCULATION METHODOLOGY IN THE FOURTH REVIEW WAS CONSISTENT WITH THE AD AGREEMENT BOTH AS SUCH AND AS APPLIED TO HYLSA

17. Mexico claims that the United States calculated dumping margins for OCTG with respect to Hylsa in a manner inconsistent with Articles 11.2 and 2 of the AD Agreement, relying primarily on the Appellate Body reports in *EC – Bed Linen* and *Japan Sunset.*

18. In the fourth review, one of the three consecutive years Hylsa needed to qualify for revocation, Commerce calculated a weighted-average margin of 0.79 for Hylsa. Because the revocation inquiry conducted in accordance with Article 11.2 failed to demonstrate that the anti-dumping duty was no longer necessary to offset injurious dumping, no obligation arose under Article 11.1 for Commerce to revoke the order as to Hylsa. Mexico argues that, had the margin been calculated in the manner it suggests, Hylsa would not have been considered to have dumped in that review and argues that the order should therefore have been revoked as to Hylsa. However, quite apart from the question of which methodology Commerce used to calculate Hylsa's overall margin, the United States was not required to revoke the order as to Hylsa.

19. First, even if Hylsa had been assigned a weighted-average margin of zero per cent for the fourth review, this alone would not have been sufficient for the order to have been revoked with respect to Hylsa. Commerce would have permissibly analyzed whether Hylsa made sales to the United States in commercial quantities during the three years upon which the revocation claim was based. Thus, the United States was not required to revoke the order with respect to Hylsa even if it had received a margin of zero per cent in the fourth review.

20. Second, because Article 11.2 of the AD Agreement does not require company-specific revocation, the Panel should reach this calculation methodology issue only if it finds that the United States was required to conduct a company-specific revocation analysis. Moreover, the Panel should find that Mexico has failed to establish a *prima facie* violation of Article 2.4 with respect to the challenged calculation methodology.

21. Commerce's calculation is not inconsistent with the AD Agreement. Article 2.4 does not establish obligations as to the calculation of the overall dumping margin. Mexico merely justifies its position with respect to "zeroing" largely by relying on the reasoning in the Appellate Body Reports in *EC – Bed Linen* and *Japan Sunset.*[1] That reliance, however, is misplaced. *EC – Bed Linen* is not relevant to this dispute because the finding in that case was based on a provision that is explicitly limited to the investigation phase and because it examined a calculation methodology distinct from that which is before this Panel. Mexico's reliance on the Appellate Body report in *Japan Sunset* is equally inapposite.[2] In *Japan Sunset*, the Appellate Body found that it was unable to make findings on whether the United States acted inconsistently with Article 2.4 or Article 11.3 of the ADA by relying on dumping margins from administrative reviews in making its likelihood determination in a sunset review.[3] Consequently, there were no findings in that report relevant to this dispute.

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[1] *European Communities – Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India ("EC – Bed Linen"*), WT/DS141/AB/R, Report of the Appellate Body, adopted 12 March 2001.

[2] Mexico First Written Submission, paras. 293-294.

[3] *United States – Sunset Review of Anti-Dumping Duties on Corrosion-Resistant Carbon Steel Flat Products from Japan*, WT/DS244/AB/R, adopted 9 January 2004, para. 138.

VII. THE UNITED STATES APPLIED ITS ANTI-DUMPING LAWS, REGULATIONS, DECISIONS AND RULINGS WITH RESPECT TO COMMERCE'S SUNSET REVIEWS IN A UNIFORM AND IMPARTIAL MANNER, IN ACCORDANCE WITH ARTICLE X:3(A) OF THE GATT 1994

22. Mexico attempts to revisit its claims by turning to Article X:3(a) of the GATT 1994 in the alternative. Taken together the terms of Article X:3(a) require that, in administering US sunset review laws and regulations, Commerce must act in a manner that is consistent, unbiased and not irrational or absurd. Mexico does not appear to be arguing that US administration of its laws is not consistent, focusing instead on an alleged lack of impartiality and reasonableness.

23. However, Mexico has provided no evidence of bias or that Commerce has administered US laws and regulations in an irrational or absurd manner, instead merely asserting the conclusion that the record in sunset reviews demonstrates bias. As demonstrated above, Mexico's "clear systematic bias" does not exist, and a deconstruction of Mexico's "analysis" of 301 Commerce sunset reviews shows that in 88 per cent of the cases, the issue of likelihood of dumping simply was not contested. With respect to the 12 per cent of the cases where likelihood was contested, Mexico provides no evidence – let alone proves – that those cases were not decided in an impartial and unreasonable manner.

VIII. THE ITC APPLIED THE CORRECT STANDARD FOR DETERMINING WHETHER TERMINATION OF THE ANTI-DUMPING DUTY ORDERS WOULD BE LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF INJURY, AND THE ITC'S DETERMINATION OF LIKELIHOOD IN THE SUNSET REVIEW OF OCTG FROM MEXICO WAS CONSISTENT WITH ARTICLE 11. 3 AND ARTICLE 3.1 OF THE AD AGREEMENT

24. Much of Mexico's first submission is based on the incorrect and unproven premise that the Commission's application of the "likely" standard was inconsistent with Article 11.3 of the Agreement. The Commission does not, as Mexico states, take the position in this dispute that "likely" means "possible." Rather, the United States agrees that the term "likely" as used in Article 11.3 can be equated with "probable" in the manner that the US courts understand the meaning of "probable" and as "probable" has been explained by the Appellate Body. The views of the participating Commissioners in the OCTG sunset review remain consistent with the "likely" standard as that term has been defined by the US courts and the WTO Appellate Body.

25. The US courts charged with reviewing the interpretation of the statute have interpreted the meaning of "likely" as used in the US statute, giving due regard to the SAA, in a manner completely consistent with the meaning ascribed to "likely" in Article 11.3. Accordingly, there is no basis for Mexico to assert that the US statute is inconsistent as such with Article 11.3. Mexico plainly has failed to meet its burden on this claim.

IX. THE ITC'S DETERMINATION WAS CONSISTENT WITH ARTICLE 11.3 BECAUSE THE ESTABLISHMENT OF THE FACTS WAS PROPER AND THE EVALUATION OF THE FACTS WAS UNBIASED AND OBJECTIVE

26. Mexico argues that the ITC failed to conduct an "objective examination" based on "positive evidence" in accordance with Article 3.1. Article 3.1 does not apply to sunset reviews. Nonetheless, the ITC's sunset determination was based on a proper establishment of the relevant facts and an unbiased and objective evaluation of those facts and, accordingly, would satisfy the requirements of Article 3.1, were that provision applicable.

X. ARTICLE 3 DOES NOT APPLY TO SUNSET REVIEWS

27. Nothing in Article 3 indicates that its requirements are intended to extend to sunset reviews, nor does Article 11.3 indicate that sunset reviews are governed by the requirements of Article 3. The inapplicability of Article 3 to sunset reviews under Article 11.3 is clear based on an analysis of the text of these treaty provisions.

XI. THE ITC'S SUNSET DETERMINATION WAS CONSISTENT WITH ARTICLE 11.3

28. Mexico's claims concerning Article 3.1 are premised on the notion that Article 3.1 applies to sunset reviews. As explained above, the provisions of Article 3 are not applicable to sunset reviews. There are further textual indications in Article 3.1 as to why it specifically is not applicable to sunset reviews. For example, in a sunset review, authorities are required to evaluate the likelihood in the future of a continuation or recurrence of injury if the dumping order is lifted. Imports may not even be present in the market at the time of the sunset review, and they may not be sold at dumped prices. Even if they are sold at dumped prices, the effects of the dumping are offset, at least in part, by the anti-dumping duty. As a result, an examination of "the volume of dumped imports and the effect of dumped imports on prices" is not meaningful in the context of an Article 11.3 review.

29. The ITC's sunset determination was based on a proper establishment of the relevant facts and an unbiased and objective evaluation of those facts, was based on evidence gathered during the review, and, accordingly, would satisfy the requirements of Article 3.1, were that provision applicable. Mexico has failed to show that the ITC's determination was biased in favour of any interested party or that the quality of the evidence considered was compromised in any way. That the ITC may have given a different weight or meaning to record evidence than the Mexican respondent would have preferred, does not go to whether the ITC conducted an "objective" examination based on "positive" evidence. To the contrary, if the ITC's establishment of the facts was proper and its evaluation was unbiased and objective, then its evaluation shall not be overturned "even though the panel might have reached a different conclusion."

30. Mexico's arguments concerning the likely volume of imports do not stand up to scrutiny. The ITC's findings on the likely volume of imports are based on an objective evaluation of the relevant facts and are supported by positive evidence. Mexico's criticisms of the ITC's findings with respect to likely price effects likewise are without merit. The claim regarding the likely adverse impact should be rejected because it is based on Mexico's meritless arguments concerning volume and price effects.

XII. THE ITC SUNSET DETERMINATION WAS NOT INCONSISTENT WITH ARTICLE 3.4 OF THE AD AGREEMENT

31. In addition to the general inapplicability of the provisions of Article 3 to sunset reviews, there are also textual indications in Article 3.4 as to why it specifically is not applicable to sunset reviews. There may be no "dumped imports" at the time of a sunset review, and consequently there may be no "impact" for the investigating authority to examine. There also may not be any "actual and potential" declines evident or reflected in the information before the investigating authority at the time of the sunset review, by virtue of the absence of imports. In short, the obligations described in Article 3.4 cannot practicably be applied to all sunset reviews, and certainly could not be applied to sunset reviews in the same systematic and comprehensive manner that has been required in original dumping investigations.

32. Moreover, even if Article 3.4 did apply, while all enumerated factors must be evaluated, not all are necessarily material in any particular case. If, upon evaluation, the authority determines that a particular factor is not material to the investigation, the authority is not required to discuss that factor

in its notice or report. In this review, the Commission's staff report clearly addresses each of the factors enumerated in Article 3.4.

33. The ITC considered, cited extensively to, and appended to its published determination the report of the ITC staff in the OCTG sunset review, which presents detailed information concerning each of the Article 3.4 factors.

XIII. THE ITC SUNSET DETERMINATION WAS NOT INCONSISTENT WITH ARTICLE 3.5 OF THE AD AGREEMENT

34. In addition to the general inapplicability of Article 3 to sunset reviews, there are further textual indications in Article 3.5 that it specifically is not applicable to sunset reviews. For example, Article 3.5 refers to the "dumped imports and speaks of such imports in the present tense as "causing injury." However, in a sunset review there may be no dumped imports. As a result of the order, such imports may have decreased or exited the market altogether, or if they have maintained their presence in the market, they may be priced higher than they were during the original investigation, when they were entering the market unencumbered by any additional duties.

35. Second, Article 3.5 refers to existing "injury" and describes an existing causal link between dumped imports and that injury. However, in a sunset review, with an anti-dumping order in place, there may be no current injury or causal link; indeed, it would be surprising if there were given the remedial effect of an anti-dumping duty order. This is implicit in the reference in Article 11.3 to the "continuation or recurrence of injury."

36. Third, under Article 3.5, investigating authorities are obliged only to "examine any known factors other than the dumped imports which are at the same time injuring the domestic industry" and ensure that the injurious effects caused by those factors are not attributed to the dumped imports (emphasis added). If a particular factor is not known to the investigating authorities, or if that factor is not "at the same time injuring the domestic industry," then the investigating authorities are under no obligation to examine that factor in the course of their causality analysis.

37. In focusing on the positive performance of the domestic industry during the review period, Mexico ignores that Article 11.3 expressly contemplates an examination of the likelihood of a "recurrence" of injury. Such an examination plainly recognizes that an industry that was injured prior to the entry of the orders may not experience injury during the pendency of the orders, yet injury may be likely to recur if the orders are revoked. Indeed, the imposition of the orders in the first instance may be responsible for the industry's improved performance.

38. Even if Article 3.5 were applicable, Mexico has not identified any "other causal factors" the ITC failed to consider.

XIV. THE US STATUTORY PROVISIONS AS TO THE TIME FRAME IN WHICH INJURY WOULD BE LIKELY TO CONTINUE OR RECUR ARE NOT INCONSISTENT WITH ARTICLES 11.3 AND 3 OF THE AD AGREEMENT

39. Article 11.3 does not specify the time frame relevant to a sunset inquiry. Article 11.3 only requires a determination of whether revocation "would be likely to lead to continuation or recurrence of injury." The words "to lead to" affirmatively indicate that the Agreement contemplates the passage of some period of time between the revocation of the order and the continuation or recurrence of injury. In the absence of any specific provision in Article 11.3, Members remain free to determine under their own laws and procedures the time frame relevant in sunset inquiries.

40. Mexico attempts to inject the "imminent" and "special care" terms from Articles 3.7 and 3.8 into an Article 11.3 sunset review. As previously explained, Article 3 does not apply to Article 11.3 sunset reviews.

41. Because the statutory requirements contained in Sections 752(a)(1) and 752(a)(5) are not inconsistent with AD Agreement Articles 11.3 and 3, the ITC's application of those requirements is likewise not inconsistent with those articles.

XV. THE ITC DID NOT ACT INCONSISTENTLY WITH ANY PROVISION OF THE AD AGREEMENT BY CONDUCTING A CUMULATIVE ANALYSIS IN THE OCTG SUNSET REVIEW

42. Mexico argues that because cumulation is not expressly permitted in Article 11.3, the ITC is prohibited from engaging in a cumulative analysis in a sunset review. However, the genesis of any obligation or right arising under the WTO Agreement is the text of the relevant provision. Absent a textual basis, the rights of Members cannot be circumscribed.

43. The relevant principle of treaty interpretation goes to the object and purpose of the treaty, and not particular treaty provisions. To the extent that the purpose of Article 11.3 is relevant, Mexico simply misconstrues it. If that purpose were simply a ministerial rescission of anti-dumping duties, there would be no need to inquire as to whether expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury.

44. Mexico seeks to bolster its argument that cumulation is not permitted in sunset reviews by noting that there is no explicit cross-reference to cumulation or to Article 3.3 in the context of Article 11. This argument has no merit. A cross-reference to an obligation is necessary where the drafters seek to assert a broader obligation. However, there is no need to cross-reference to a permissive authority where a right exists absent its limitation in the Agreement.

45. In addition to the inapplicability of the provisions of Article 3 to sunset reviews, Mexico's position is directly at odds with recent panel and Appellate Body reports construing the meaning of Article 3.3.

XVI. THE DECISIONS OF COMMERCE AND THE COMMISSION COMPLIED WITH ARTICLE VI OF THE GATT 1994, ARTICLES 1, 18.1, AND 18.4 OF THE AD AGREEMENT AND ARTICLE XVI:4 OF THE WTO AGREEMENT

46. These claims are consequential claims in that they depend upon a finding that some other provisions of the AD Agreement or GATT 1994 have been breached. None of the "measures" identified by Mexico, however, is inconsistent any other provision of the WTO Agreement. They are therefore not inconsistent with Article VI of the GATT 1994, Articles 1 and 18 of the AD Agreement, and Article XVI:4 of the WTO Agreement.

XVII. THE SPECIFIC REMEDY SOUGHT BY MEXICO IS INCONSISTENT WITH ESTABLISHED PANEL PRACTICE AND THE DSU

47. Finally, Mexico has requested this Panel to recommend that the DSB request the United States to immediately revoke the anti-dumping duty on OCTG imports from Mexico. In so doing, Mexico has requested a specific remedy that is inconsistent with established GATT/WTO practice and the DSU. Therefore, should the Panel agree with Mexico on the merits, the Panel nonetheless should reject the requested remedy, and instead should make a recommendation, consistent with the DSU and established GATT/WTO practice, that the United States bring its anti-dumping measure into conformity with its obligations under the AD Agreement.

XVIII. CONCLUSION

48. Based on the foregoing, the United States respectfully requests that the Panel reject Mexico's claims in their entirety.