UNITED STATES – ANTI-DUMPING MEASURES ON OIL COUNTRY TUBULAR GOODS FROM MEXICO
(DS282)

Answers of the United States of America
to Questions from Mexico
in Connection with the First Substantive Meeting

June 18, 2004

The Department's Sunset Review of OCTG from Mexico

Q1. How can a WTO Member obtain revocation of an antidumping duty in a U.S. sunset proceeding in circumstances in which there are no exports to the United States during the period under review?

1. As an initial matter, the United States wishes to point out that revocation occurs if either the Department or the ITC makes a negative finding with respect to likelihood. Therefore, revocation will always be possible if the ITC makes a negative determination, notwithstanding any Commerce findings regarding the presence or absence of exports.

2. In conducting sunset reviews under U.S. law, Commerce and the ITC each conduct sunset reviews pursuant to sections 751(c) and 752 of the Act. Commerce has the responsibility for determining whether revocation of an antidumping duty order would be likely to lead to continuation or recurrence of dumping. If Commerce makes an affirmative determination of likely dumping, the ITC conducts a review to determine whether revocation of the antidumping duty order would be likely to lead to continuation or recurrence of material injury. In a sunset review where there was an absence of imports during the five-year period prior to the sunset review, the likelihood determinations made by Commerce and the ITC respectively would be based on a totality of the circumstances presented in the sunset review and not necessarily on the absence of imports. The United States notes that the "no exports" scenario described by Mexico is not a factual circumstance present in this dispute.

Q2. There can be no dispute that dumping stopped after the imposition of the antidumping order on OCTG from Mexico and that there was no evidence of current dumping during the sunset review period.

3. Mexico's premise that dumping stopped after the imposition of the order is false. Although Commerce did not consider the Final Results of the Fourth Administrative Review of OCTG from Mexico (1998-1999 period of review) in the sunset review (because the Final Results were issued after the completion of the sunset review), Commerce did find dumping during that period of review, which is within the five-year period examined in the sunset review. *See* U.S. First Written Submission, para. 43.

a. In such circumstances, does the fact of lower export volumes mean that a Member could never obtain revocation?

4. No.

b. If not, please explain how a Member could obtain revocation, even hypothetically.

5. As explained in the answer to question 1 above, revocation occurs if either Commerce or the ITC makes a negative determination. In a sunset review where there was a significant reduction in imports of the subject merchandise during the five-year period prior to the sunset review, the likelihood determinations made by Commerce and the ITC respectively would be based on a totality of the circumstances presented in the sunset review and not necessarily on the reduction of imports.

Q3. In paragraph 122 of its First Submission, the United States says that the original margin is the "only" evidence of the behavior of the respondents without the discipline of the antidumping order. This statement is consistent with the SAA and the SPB. If the nature of the Article 11.3 analysis is to determine what would happen in the absence of an antidumping order, and the United States says that the "only" probative evidence of an exporter's behavior without the discipline of the order is the original margin, then doesn't the U.S. approach guarantee an affirmative determination of likely dumping? If not, can the United States provide an example that shows that this is not always the outcome?

6. The reference to paragraph 122 in this question ignores the opening statement of that paragraph, in which the United States stated that the margin of dumping determined in the original investigation is only "the starting point for making its likelihood determination in a sunset review" and that Commerce then "examine[s] any subsequent evidence, such as the final results of administrative reviews." This statement makes it clear that the Department takes into account evidence suggesting that what is likely to occur in the future may differ from what has occurred in the past. Commerce makes its determination whether dumping is likely to continue or recur in a sunset review based on all the evidence on the record of that sunset review.

Q4. The United States seems to argue that the Department does apply certain presumptions in the conduct of sunset reviews, but that these presumptions are rebuttable. In particular, Mexico would point to the United States' treatment of the existence of dumping margins and post-order declines in volume.

a. Have respondents ever been able to overcome the Departments presumptions relating to historic dumping margins and pre-order / post-order volume comparisons?

7. Commerce does not apply presumptions in making its likelihood of dumping determination in a sunset review. Commerce considers all the evidence, including any information submitted by interested parties, on the record of the sunset review in making the likelihood of dumping determination.

8. In its Panel Request and its First Written Submission, Mexico advanced arguments regarding Commerce's alleged application of a presumption in favor of continuing an antidumping order, which the United States has refuted. Mexico now asserts that the United States "seems to argue" that the Department applies certain presumptions, without explaining what these presumptions may be or providing a citation thereto, and then poses the question based on that assumption. In the absence of more concrete references to the "presumptions" about which the United States "seems to argue" it "applies," the United States is unable to address this question more fully.

b. The Department's regulations shift the burden of considering additional information (apart from margins and volume) on the exporter. What is the basis in for doing so? How is this consistent with the Appellate Body reaffirmation of the Article 11.3 obligation to conduct a review, undertake a "rigorous examination" of the record, and make a determination of likelihood on the basis of positive evidence?

9. Nothing in Commerce's *Sunset Regulations* "shift[s] the burden of considering additional information" to an exporter. Commerce's *Sunset Regulations* provide all interested parties with the opportunity to address the likely effects of revocation. Interested parties may include any factual information, argument, and reason to support such statements. *See* section 351.218(d)(3)(ii)(F) of Commerce's *Sunset Regulations*. In addition, any interested party, domestic or respondent, may submit any information it chooses in a sunset review, as provided by section 351.218(d)(3)(iv)(B) of Commerce's *Sunset Regulations*. Commerce then bases its likelihood determination on all the record evidence in every sunset review. As the Appellate Body in *Japan Sunset* found, Commerce's analysis in the sunset review of *Corrosion-Resistant Steel from Japan*, based solely on historical dumping margins and import volumes, was not inconsistent with the obligations of Article 11.3.[1]

[1] *See United States - Sunset Review of Anti-Dumping Duties on Corrosion-Resistant Carbon Steel Flat Products from Japan,* WT/DS244/AB/R, adopted January 9, 2004 *("Japan Sunset AB")*, paras. 205-207.

c. The United States also takes the position that Article 11.3 contains few substantive disciplines – only those in Article 11.3, and that authority therefore is free to make its likely determination in any manner it considers appropriate. Combining this interpretation of Article 11.3 together with the presumptions employed by the Department, and the Department's placement of the burden on exporters to convince the Department to consider information apart from historic dumping margins and volume, under what circumstances will the Department determine that dumping would not be likely to continue or recur?

10. Mexico's question is prefaced with assertions for which Mexico has provided no citations and which have little, if any, basis in the record of this dispute. Nevertheless, the likelihood determination in each sunset review is based on the facts developed in the particular sunset review. Therefore, Commerce will make a negative likelihood determination whenever the record evidence in a sunset review supports such a determination.

Q5. It is clear that the Department requires that import volume be at pre-order levels. But in the U.S. retrospective system of duty assessment, the importer assumes the risk of assessment. Mexico asks whether it is not reasonable to assume that importers would reduce the volume that they purchase in order to lower their risk? How does the Department take this factor into consideration? Did the Department consider this factor in the sunset review of OCTG from Mexico?

11. It is not "clear" to the United States that "the Department requires that import volume [sic]" be at pre-order levels, nor does Mexico provide support for this statement. Regardless, Commerce's analysis of the likelihood or continuation or recurrence of dumping in a sunset review does not require that import volumes be at any particular level. A significant and continued reduction in imports following the imposition of the duty, however, is considered highly probative evidence that the exporters cannot participate in the market at or near pre-order levels without dumping and, therefore, are likely to resume dumping. Nevertheless, any interested party, domestic or respondent, may submit any information it chooses in a sunset review, as provided by section 351.218(d)(3)(iv)(B) of Commerce's *Sunset Regulations*, to explain why a reduction in import volumes is not relevant to, or highly probative evidence for, the likelihood determination.

12. Commerce considered TAMSA's and Hylsa's explanations for their respective reductions in import volumes after imposition of the duty and addressed these explanations for the Final Results in the sunset review of OCTG from Mexico.[2]

[2] *See* Commerce Sunset Final Decision Memorandum at 5-6 (Exhibit MEX-19).

Q6. The Department determined that the margin "likely to prevail" would be 21.7%. This is consistent with the U.S. statute, the SAA, and SPB, which direct the Department to consider and assign a highly probative value to the original margin as the best indication of exporters' behavior. Does the United States agree that this margin was not calculated through the application of Article 2 of the Antidumping Agreement, since the original investigation was initiated prior to entry into force of the Agreement? In reaching its determination that 21.7% was the margin likely to prevail, did the Department take any steps to ensure that the margin was consistent with the WTO Antidumping Agreement, including Articles 2 and 6?

13. As the United States previously has explained, Commerce's determination of likelihood of continuation or recurrence of dumping is distinct from its reporting of a "margin likely to prevail" to the ITC. Furthermore, the SAA and *Sunset Policy Bulletin* do not and cannot "direct" Commerce to take any action because neither the SAA nor the *Sunset Policy Bulletin* have the force of law. Commerce did determine that the margin likely to prevail would be 21.7 percent and did report that number to the ITC, which had the discretion to consider it or not in making the determination of the likelihood of continuation or recurrence of injury. Commerce did not base its affirmative likelihood determination in the sunset review on any particular magnitude of dumping, but instead based its affirmative likelihood determination solely on evidence concerning the significant reduction in import volumes since the imposition of the duty on OCTG from Mexico. There is no obligation in Article 11.3 or elsewhere in the AD Agreement to calculate a margin of dumping or to report a margin of dumping for use in making a determination of the likelihood of continuation or recurrence of injury determination in a sunset review.

The Commission's Sunset Review of OCTG from Mexico

Q7. Assuming that the Panel finds that the Department's determination of likely dumping is inconsistent with Article 11.3, what effect would this have on the Commission's determination of likely injury? If there would be no effect, please explain why?

14. Given the purely hypothetical nature of this question and the many variables that could underlie the finding alluded to by Mexico, the United States is unable to answer this question. The answer would depend on the basis for any such finding of inconsistency.

Q8. Does the United States consider that it is possible to find injury in the absence of dumping? If the answer is yes, please explain how that would be compatible with the following provisions of the GATT and the Antidumping Agreement:

a. GATT Article VI:6(a): No contracting party shall levy any anti-dumping … unless it determines that the effect of the dumping or subsidization, as the case may be, is

such as to cause or threaten material injury to an established domestic industry, or is such as to retard materially the establishment of a domestic industry."

b. Antidumping Agreement, Article 3.5: It must be demonstrated that the dumped imports are, through the effects of dumping, as set forth in paragraphs 2 and 4, causing injury within the meaning of this Agreement."

c. Antidumping Agreement, Article 11.1: An anti-dumping duty shall remain in force only as long as and to the extent necessary to counteract dumping which is causing injury.

d. The Appellate Body's statement in Steel from Germany (para. 81): "It is unlikely that very low levels of subsidization could be demonstrated to cause 'material' injury."

15. Under U.S. law, the ITC will not assess injury in the absence of an affirmative dumping finding. Under the U.S. statute, the ITC will not make an injury determination in an original investigation unless Commerce has made an affirmative dumping determination. Likewise, in a sunset review, the ITC will not make a likely injury determination unless Commerce has made an affirmative determination with respect to likely dumping.

Q9. Does the United States consider that it is possible to find that injury would likely to continue or recur in the absence of a finding that dumping would be likely to continue or recur? If the answer is yes, please explain how that would be compatible with the above GATT and Antidumping provisions? In particular how likely injury could be determined without any likely dumping.

16. See the answer to question 8.

Q10. Please indicate if in the OCTG sunset review of Mexico the ITC relied on: (a) the likely margin of dumping to prevail that was reported by the USDOC; (b) any other margin of dumping, or (c) no margin of dumping at all?

17. The ITC did not rely on a margin of dumping.

Q11. Section 752(a) (6) of the Tariff Act provides: "In making a determination under section 751 (b) or (c), the Commission <u>may</u> consider the magnitude of the margin of dumping or the magnitude of the net countervailable subsidy." (Emphasis added). Does it mean that the Commission may make determinations under those two sections without considering the magnitude of the margin of dumping? How does the Commission proceed in its injury analysis when it chooses not to consider the margin of dumping?

18. Neither the AD Agreement nor the U.S. statute require the ITC to consider the magnitude of the margin of dumping in a sunset review.[3] In its sunset reviews, the ITC conducts a thorough analysis of numerous statutory factors, as demonstrated by its determination in the OCTG review.

19. Although the Agreement does not require investigating authorities to consider any particular factors at all, the U.S. statute imposes requirements beyond those of the Agreement by providing that the ITC must consider "the likely volume, price effect and impact of imports of the subject merchandise on the industry if the order is revoked," as well as other considerations such as prior injury determinations.[4] Further, for each of these considerations, the statute sets out specific criteria the ITC shall and does consider in its determination.

20. For example, in examining likely volume, the statute requires the ITC to consider any likely increase in production capacity or unused capacity in the exporting country; existing inventories of subject merchandise, or likely increases in the merchandise; the existence of barriers to the importation of such merchandise into countries other than the United States, and the potential for product shifting if the production facilities in the exporting country that are currently used for production of other products can be used to produce the subject merchandise.[5]

21. In evaluating the likely price effects, the ITC considers whether there is likely to be significant price underselling by the subject merchandise or whether imports of the subject merchandise are likely to enter the United States as prices that otherwise would have price depressing or suppressing effects.[6]

22. Finally, in evaluating the likely impact, the statute requires the ITC to consider all relevant economic factors which are likely to bear on the state of the industry in the United States, including likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity; likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and likely negative effects on the existing development and production efforts of the industry.[7]

Q.12 Section 752(a)(1) of the Tariff Act states: "That the Commission shall take into account …. (D) in an antidumping proceeding under section 751(c), the findings of the administering authority regarding duty absorption under section 751(a)(4)." (Emphasis added). Why does the United States consider that the Department's duty

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[3] In *Japan Sunset*, the Appellate Body recognized that Article 11.3 does not even require investigating authorities to rely on dumping margins in making their determination of likelihood of continuation or recurrence of dumping. *Japan Sunset AB*, para. 127. Likewise, there is nothing in Article 11.3 that creates an obligation for investigating authorities to rely on dumping margins in making their determination of likelihood of continuation or recurrence of injury.

[4] 19 U.S.C. § 1675a(a)(1) (Exhibit MEX-24).

[5] 19 U.S.C. § 1675a(a)(2) (Exhibit MEX-24).

[6] 19 U.S.C. § 1675a(a)(3) (Exhibit MEX-24).

[7] 19 U.S.C. § 1675a(a)(4) (Exhibit MEX-24).

absorption finding is relevant to the Commission's determination of the likelihood of injury? How can the mandatory statutory requirement to consider the duty absorption finding be reconciled with the discretionary statutory provision that gives the commission discretion to consider the magnitude of the margin of dumping in making the likelihood of injury determination?

23. This question addresses matters that are outside the terms of reference of this dispute. There were no duty absorption findings made with respect to the review of OCTG from Mexico, and Mexico has not challenged the statutory provisions regarding consideration of duty absorption findings.

Q13. Please compare paragraphs 315 and 316 of the U.S. First submission. Paragraph 315 indicates that "the Commission considered each of the factors enumerated in article 3.4, and the chart included by the Commission specifically indicated that the Commission included the margin of dumping reported by the Department. In paragraph 316, however, the United States responds to Mexico's claim that the commission considered the wrong dumping margin by asserting that that "Mexico's assertion pertains to the commerce determination, not to the ITC's. Mexico's assertion is addressed at section B.3." Can the United States please reconcile these statements? Did the Commission consider the margin of dumping in its analysis?

24. To the extent Mexico has challenged the propriety of the likely margin of dumping that Commerce reported to the ITC, this argument has been addressed in portions of the U.S. submission concerning Commerce's review. To the extent Mexico claims that the alleged problems with the margin reported by Commerce tainted the ITC's determination, this cannot be so, because irrespective of the worthiness of the reported margin likely to prevail, the ITC did not rely on or otherwise factor the reported likely margin into its analysis.

Q14. In the sunset review of OCTG from Mexico, did the Commission ever consider Mexican exports on an individual basis, that is, without cumulating the Mexican exports with those of other countries? If not, does the United States consider that Mexico has an independent right to termination under Article 11.3?

25. The ITC considered Mexican exports on an individual basis in connection with its analysis of whether it was appropriate to cumulate the volume and effect of imports from the five countries subject to the sunset reviews. First, the ITC examined subject imports from each of the individual countries (including Mexico) in addressing whether imports from any of the countries were likely to have no discernible adverse impact on the domestic industry.[8] The ITC did not

[8] The cumulation provision of the U.S. sunset law provides that the ITC may not cumulatively assess the volume and effects of the subject merchandise in a case in which it determines that "such imports are likely to have no discernable adverse impact on the domestic industry." 19 U.S.C. § 1675a(a)(7) (Exhibit MEX-24).

find that subject imports of casing and tubing from any of the subject countries were "likely to have no discernible adverse impact on the domestic industry."

26. The ITC then found that there likely would be a reasonable overlap of competition between the subject imports (including imports from Mexico) and domestically produced casing and tubing, and among the subject imports themselves, sufficient to warrant cumulation.

27. The United States does not consider that Mexico has a right to termination under Article 11.3 premised on the examination only of whether the revocation of the antidumping duty order relating to subject imports from Mexico will lead to a continuation or recurrence of injury. Imports from a group of countries may cumulatively cause injury even if imports from individual countries in the group may not.[9] Accordingly, it would be illogical to require that the injury analysis in sunset reviews be conducted only on a country-specific basis. Such a requirement would require Members to allow antidumping duties to expire even though the expiry of the duty would be likely to lead to continuation or recurrence of injury.

> ***Q15. It is self-evident that injury cannot be both likely to continue and likely to recur at the same time. These two outcomes are mutually exclusive because for injury to recur, injury must not currently exist. At the same time, injury can only continue if injury currently exists. With this in mind, please clarify whether the Commission determined that injury was likely to continue or whether injury was likely to recur? If the Commission determined that injury was likely to continue, please explain how such a determination would be compatible with the Department's determination that dumping was likely to recur (not to continue).***

28. Contrary to the underlying premise of Mexico's questions, nothing in Article 11.3 requires Members to distinguish between the likely continuation of injury and the likely recurrence of injury. Nor does Article 11.3 require investigating authorities to make current dumping or injury determinations; rather it requires them to make determinations about whether injury and dumping are likely to continue or recur. Both Commerce and the ITC based their respective determinations on their findings that dumping and injury, respectively were likely to continue or recur. Commerce did not, as Mexico asserts, make a separate finding that dumping was likely to recur. (In fact, Hylsa was found to be dumping while the order was in place.)

29. Likewise, the ITC found that revocation of the antidumping duty orders from the five subject countries, and the countervailing duty order on imports of casing and tubing from Italy,

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[9] See, *European Communities - Anti-Dumping Duties on Malleable Cast Iron Tube or Pipe Fittings from Brazil,* WT/DS219/AB/R, Report of the Appellate Body, adopted August 18, 2003 *("EC Pipe Fittings")*, para. 116.

would be likely to lead to continuation or recurrence of material injury to an industry in the United States.[10] Such a finding is consistent with Article 11.3.[11]

The Department's Determination Not to Revoke the Order: The Article 11.2 Review

Q16. The United States takes the view that Article 11.2 does not create an obligation to terminate a measure on a "company-specific" basis.

a. Would the United States explain its view as to "interested parties" and "any interested party" in Article 11.2?

30. The reference to "any interested party" in Article 11.2 is to an interested party, domestic or respondent, who may request a review by submitting positive information to substantiate the need for the review. The term "interested parties" is plural, meaning many or multiple interested parties have the right to request the authorities to examine whether the continued imposition of the duty is necessary to offset dumping, or whether the injury would be likely to continue or recur if the duty were removed or varied, or both. Language concerning who can request that inquiry does not establish any obligations regarding how the inquiry is conducted.

b. Does the United States agree that Article 11.2 obligates Members to conduct a review under Article 11.2 when an interested party submits positive information warranting such a review?

31. Article 11.2 of the AD Agreement requires the administering authority of the Member to review the need for the continued imposition of the duty, where warranted. Article 11.2 requires that, after a reasonable amount of time passed since the imposition of the antidumping duty, any interested party may request such a review by submitting positive information that substantiates the need for the review.

c. In the view of the United States what is the purpose of allowing individual exporters to request a review under Article 11.2 if it cannot lead to termination of the measure for that exporter?

32. Article 11.2 of the AD Agreement allows individual exporters to request a review of the continuing need for "the duty," as a whole, *i.e.*, the need for the antidumping duty order, before the obligations under Article 11.3 are triggered. In other words, Article 11.2 recognizes that revocation may be warranted at some time earlier than five years. Article 11.2 does not address,

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[10] ITC Report at 1.

[11] *See*, *United States – Definitive Safeguard Measures on Imports of Circular Welded Carbon-Quality Line Pipe From Korea*, WT/DS202/AB/R, Report of the Appellate Body, adopted March 8, 2002, para. 167 (unnecessary to make a discrete finding of "serious injury" or "threat of serious injury" when making a determination whether to apply a safeguard measure).

and does not explicitly require, termination on a company-specific basis. If the entire order is revoked, however, the duty will be revoked for the requesting respondent interested party, as well as all other exporters. Article 11.2 further states that the reviewing authorities have the discretion to determine whether review of the challenged duty is "warranted" and whether an interested party "submits positive information substantiating the need for a review." After determining the review is warranted, based on positive information substantiating the need for a review, authorities conducting an Article 11.2 review examine whether the continued imposition of the duty is necessary to offset dumping or whether the injury would be likely to continue or recur if the duty were removed. If the authorities determine that the antidumping duty is no longer warranted, they are obligated to terminate the duty immediately.

Q17. Does the United States believe that TAMSA and Hylsa were the only known Mexican exporters of OCTG? If not, what information in the record provides a basis to believe that there were other Mexican exporters of OCTG?

33. TAMSA and Hylsa are not the only Mexican exporters of OCTG known to Commerce. For example, in the original investigation, Mexican exporters Tubacero S.A. de C.V. and Villacero Tuberia Nacional, S.A. de C.V., as well as Hylsa, were sent antidumping surveys.[12] In the first administrative review, Commerce received requests for an administrative review for not only TAMSA and Hylsa, but also Tuberia Nacional S.A. de C.V.[13] Lastly, during the sunset review of OCTG from Mexico, information on the record indicated that TAMSA and Hylsa represented only a portion of all Mexican exports of OCTG to the United States.[14] Because no order-wide request for revocation was made during the fourth administrative review, there was no reason for Commerce to determine the need for the continuation of the order for Mexican exporters other than TAMSA and Hylsa.

Q18. Did the Department consider that the individual requests of TAMSA and Hylsa for revocation of the order were a sufficient basis to conduct a review and make a determination on an order-wide basis? If not, why?

34. Both TAMSA and Hylsa requested revocation on a company-specific basis. Each of their letters requested that Commerce revoke the antidumping duty order with respect to each company, pursuant to section 351.222(b)(2) of Commerce's *Regulations*.[15] Pursuant to section 351.222(b)(2) of Commerce's *Regulations*, Commerce determined whether to revoke the antidumping duty order in part, as to the requesting producer or exporter. Therefore, Commerce

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[12] See 60 Fed. Reg. 6510 (February 2, 1995) (MEX-3)

[13] *See* Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation, 62 Fed. Reg. 50292 (September 25, 1997)("Initiation of First Administrative Review") (Exhibit US-9).

[14] See Adequacy Memorandum (Exhibit US-31).

[15] TAMSA's request for review and revocation (Exhibit MEX-10); Hylsa's request for review and revocation (Exhibit MEX-11).

considered each of their requests for a company-specific revocation review, not a request for an order-wide revocation review.

35. Section 351.222(b)(1) of Commerce's *Regulations* governs requests for revocation on an order-wide basis and would require Commerce to investigate the industry as a whole. Given the order-wide nature of the determination, such a review also would require information for all producers and exporters covered by the duty at the time of the revocation review. Commerce did not seek such information during the fourth administrative review because neither TAMSA nor Hylsa requested an order-wide revocation review pursuant to section 351.222(b)(1) of Commerce's *Regulations*.

Q19. Under what U.S. procedure can an individual company request revocation on an order-wide basis? Has this ever occurred? Can you provide examples since the entry into force of the WTO Antidumping Agreement?

36. An individual company may request revocation on an order-wide basis through a changed circumstances review under section 751(b) of the Act and section 351.222(g) of Commerce's regulations. Examples include *Coumarin from the People's Republic of China*, 69 Fed. Reg. 24122 (May 3, 2004); *Porcelain-on-Steel Cookware from Mexico*, 67 Fed. Reg. 19553 (April 22, 2002); *Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled from Germany*, 67 Fed. Reg. 19551 (April 22, 2002); *Certain Fresh Cut Flowers from Ecuador*, 64 Fed. Reg. 56327 (October 19, 1999). This list is not exhaustive. Section 351.222(b)(1) of Commerce's regulations provides a second option for an individual company to request revocation on an order-wide basis, so long as all exporters and producers covered at the time of the revocation have not dumped for at least three consecutive years.

Q20. Mexico notes that TAMSA argued before the Department that the reasonableness of a particular sales-transaction of OCTG should not be measured on the basis of tonnage due to the influences that product characteristics have on weight. See MEX-54 at 15-16. Specifically, TAMSA explained that the 44.7 tons shipped during the fourth review amounted to more than four miles of tubes, which TAMSA considered to be in significant "commercial quantities." What weight did the Department give to this transaction?

37. Commerce considered but rejected TAMSA's argument of using the length or number of pieces, as evidence for purposes of the commercial quantities threshold criteria for TAMSA's request for a revocation review. Commerce evaluates the commercial quantity standard on a case-by-case basis, with the goal of basing the revocation determination on a company's normal commercial practice. Sales of OCTG from Mexico by TAMSA, in the original investigation and in the previous two reviews, as well as in this fourth administrative review, were consistently measured in terms of volume (metric tons) and value (U.S. dollars). Accordingly, Commerce examined TAMSA's overall record of sales to the United States during these three years, in terms of comparable, common measurements of both volume and value, and concluded that

TAMSA did not sell OCTG in the United States in commercial quantities in each of the three years.[16]

Q21. Does the United States agree that the 0.79 percent dumping margin relied on by the Department was calculated as set forth in MEX-63?

38. Commerce did not rely upon any margin for the purposes of its likelihood determination in the sunset review. The United States agrees that Attachments 1-12 of MEX-63, which are all record documents from the fourth administrative review, reflect the calculation methodology used by Commerce to calculate the 0.79 percent dumping margin. The first 21 pages of Exhibit MEX-63 reflect Mexico's characterization of Commerce's methodology. The United States does not agree with this characterization and notes that it was not part of the record before Commerce in the fourth administrative review.

Q22. Does the United States agree with Mexico's description of the calculation methodology in Exhibit MEX-63 and paragraphs 289-292 of Mexico's First Submission.

39. No.

Q23. Does the U.S. agree that the extent to which the net price of sales to the United States exceeded the normal value is not reflected in the numerator of this calculation?

40. The numerator used to calculate the overall margin of dumping aggregates all margins of dumping found as a result of comparisons between export price and normal value. When the export price is greater than the normal value, consistent with Article 2.1 of the AD Agreement, dumping has not occurred with respect to that comparison.

Q24. Was the 0.79 percent margin relied on by the Department for purposes of its likelihood determination in the sunset review established on the basis of a fair comparison in light of the Appellate Body's decisions in Bed – Linens (paras. 55, 61, 62) and Japan Sunset (paras. 126-132)?

41. Commerce did not rely upon any margin for the purposes of its likelihood determination in the sunset review. Rather, Commerce relied upon the declining import volumes to establish its likelihood determination in the sunset review.

42. To the extent that Mexico's question relates to the calculation of the overall margin of dumping in the fourth administrative review, that margin was established on the basis of a fair comparison and Mexico has not established otherwise.

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[16] See *Fourth Review Issues and Decision Memorandum* at Comment 1 (Exhibit MEX-9).