

***UNITED STATES - COUNTERVAILING DUTIES
ON CERTAIN CORROSION-RESISTANT CARBON
STEEL FLAT PRODUCTS FROM GERMANY***

WT/DS213

**ANSWERS OF THE UNITED STATES OF AMERICA
TO QUESTIONS FROM THE PANEL**

February 21, 2002

Introduction

1. As explained in the United States First Written Submission (paras. 6-7, 12), under U.S. law, the U.S. Department of Commerce (“Commerce”) and the U.S. International Trade Commission (“USITC”) jointly conduct sunset reviews. Commerce has the responsibility of determining whether revocation of a countervailing duty order would be likely to lead to continuation or recurrence of subsidization, whereas the USITC has the responsibility of determining whether revocation of a countervailing duty order would be likely to lead to continuation or recurrence of injury.

2. As the Panel is aware, the instant dispute involves Commerce’s final results of the full sunset review of the countervailing duty order on certain corrosion-resistant carbon steel flat products from Germany. The EC has not challenged the companion USITC sunset injury determination involving the same case. Nevertheless, in certain instances, the Panel has asked questions involving injury-related issues. In an effort to be forthcoming and responsive, the United States has attempted to answer the Panel’s questions to the extent that it can in the context of the disputed Commerce determination. Unless otherwise indicated, the United States’ answers necessarily reflect only Commerce’s substantive analysis and Commerce’s procedures and evidentiary requirements.

Questions to Both Parties

1. *In your view:*

(a) *Is the de minimis standard contained in Article 11.9 of the Agreement on Subsidies and Countervailing Measures ("SCM Agreement" or "the Agreement") applicable to reviews under Article 21.2?*

3. For essentially the same reasons set forth in the United States’ First Written Submission (paras. 70-87) and Oral Statement (paras. 20-29), the *de minimis* standard contained in Article 11.9 is not applicable to reviews under Article 21.2. In particular, as is the case with respect to Article 21.3, there is no reference to Article 11.9 or any other *de minimis* standard in Article 21.2. It seems evident that had the drafters of the SCM Agreement wished such a reference, one could have been easily made. Furthermore, the panel in *Korea DRAMs* addressed this issue (albeit in the context of antidumping administrative reviews) and came to the same conclusion.¹

4. The United States considers the absence of a cross-reference significant for both Article 21.2 and Article 21.3. If the drafters had wanted to make Article 11.9 explicitly applicable to Article 21.2, they would have included a cross-reference. They did not do so. The absence of a cross-reference is all the more significant given the fact that the drafters did provide explicit cross-references elsewhere in Article 21; *i.e.*, Article 21.4 provides that the evidentiary and procedural provisions of Article 12 shall apply to reviews under Article 21, and Article 21.5

¹ See *Korea DRAMs*, para. 6.87 and US First Written Submission, para. 73.

provides that the provisions of Article 21 shall apply to undertakings under Article 18. Articles 21.4 and 21.5, therefore, demonstrate that the drafters knew how to incorporate by reference.

5. The focus of a sunset review under Article 21.3 is future behavior, *i.e.*, the likelihood of continuation or recurrence of subsidization – not whether or to what extent subsidization currently exists. Under these circumstances, mathematical certainty or precision as to the exact amount of likely future subsidization is not necessarily practicable and certainly not required. *See, e.g., Korea DRAMs*, para. 6.43 (discussing prospective analysis, albeit in the context of a different type of review). Thus, although there is no requirement to quantify the amount of subsidization likely to continue or recur, the DOC, nevertheless, does so.

(b) *Are the negligible import volume and injury standards contained in Article 11.9 and the negligible injury standard contained in Article 15.3 applicable to reviews under Article 21.2?*

6. No. With respect to Article 11.9, as stated in response to subpart (a) of this question, Article 21.2 neither refers to nor incorporates any provisions of Article 11.9. With respect to Article 15.3, the United States directs the Panel's attention to the fact that this article does not refer to a "negligible *injury* standard." Rather, in connection with cumulation, Article 15.3 addresses the question of whether the *volume of imports* in an original investigation is negligible. Article 21.2 does not incorporate the provisions of Article 15.3. See response to Questions 26 and 27(b).

c) *Are the negligible import volume and injury standards contained in Article 11.9 and the negligible injury standard contained in Article 15.3 applicable to reviews under Article 21.3?*

7. No, the negligibility provisions do not apply to Article 21.3 for the same reasons they do not apply to Article 21.2.

(d) *Are the negligible import volume standards for developing countries set out in Article 27.10 applicable to reviews under Article 21 in general, and to reviews under Article 21.3 in particular? Is the 2 per cent de minimis standard for developing countries set out in Article 27.10(b) applicable to reviews under Article 21 in general, and to reviews under Article 21.3 in particular? And is the 3 per cent de minimis level for certain developing countries set out in Article 27.11 applicable to reviews under Article 21 in general, and to reviews under Article 21.3 in particular?*

8. No to all parts of this question. These negligibility provisions, like those contained in Articles 11.9 and 15.3, apply only to original investigations. Similarly, the *de minimis* standards for various developing countries, like the standard contained in Article 11.9, only apply to

original investigations. Article 27.10 specifies that it applies to “[a]ny countervailing duty investigation.” It does not mention Article 21 reviews. Nor does any part of Article 21 reference or incorporate any provisions of Article 27.10.

Questions to the EC

9. Consistent with the Panel’s instructions, the United States intends to file comments on the EC’s answers to questions 2-20 on Thursday, February 28, 2002.

Questions to the United States

21. *To what extent were the United States’ rules in respect of reviews under Article 21.3 shaped by the large volume of “transition” orders before the United States upon entry into force of the WTO Agreement? In what way do the rules in respect of “non-transition” orders differ from those in respect of “transition” orders?*

10. On January 1, 1995, the date on which the WTO Agreement entered into force with respect to the United States, there were over 300 antidumping and countervailing duty orders in existence. Pursuant to its obligations under Article 32.4 of the SCM Agreement (and Article 18.3.2 of the AD Agreement), the United States deemed all of these “transition” orders to be imposed on January 1, 1995. Consequently, the United States was obligated to initiate sunset reviews of all of these transition orders no later than January 1, 2000, the *de jure* five-year anniversary date of the orders. In its First Written Submission (paras. 20-21), the United States described in detail the process it used to determine and publically announce the schedule for the conduct of the sunset reviews of the transition orders.

11. When developing its procedures for sunset reviews, the United States certainly took into account the monumental task of initiating over 300 sunset reviews of transition orders. However, it is difficult to measure the extent to which the volume of the transition orders initially shaped both the procedural and substantive rules now in place.

12. Procedurally, the rules with respect to the sunset reviews of transition orders and those of non-transition orders differ very little. One notable difference that takes into account the volume of transition orders concerns Commerce’s ability to extend its deadlines for its preliminary and final determinations. Pursuant to 751(c)(5)(B) of the Tariff Act of 1930 (“the Act”), Commerce may extend the period for making its preliminary and final determinations in any sunset review if that sunset review is deemed to be extraordinarily complicated. In accordance with section 751(c)(5)(C)(v) of the Act, Commerce could treat sunset reviews of transition orders as extraordinarily complicated merely by virtue of their being transition orders. Sunset reviews of non-transition orders, on the other hand, must meet at least one of four other statutory requirements in order to be deemed extraordinarily complicated.

13. Substantively, Commerce's analysis in sunset reviews is the same for transition orders and non-transition orders.

22. *Is it correct to state that, under US law, a review under Article 21.3 is deemed to be initiated upon publication of a notice of initiation (which is required to occur no later than 30 days before the fifth anniversary date of an order or suspension of an investigation under Section 351.218(c)(1) of the Sunset Regulations)?*

14. Yes, section 351.218(c)(1) of Commerce's *Sunset Regulations* provides that no later than 30 days before the fifth anniversary date of an order or suspension of an investigation, the Secretary will publish a notice of initiation of a sunset review. In order to provide to the public advance notice of the initiation of sunset reviews, Commerce provides on its website (<http://ia.ita.doc.gov/sunset/schedule.htm>) the schedule for sunset review initiations through calendar year 2005. With respect to the sunset reviews of transition orders, Commerce published its initiation schedule in the *Federal Register* on May 28, 1998.

23. *The Panel notes the US statement: "On October 20, 1999, Commerce determined to conduct a full sunset review based on its receipt of complete substantive responses from the EC, the German Government, and German producers accounting for a significant portion of German exports to the United States. On March 27, 2000, Commerce published its preliminary sunset determination finding likelihood of continuation or recurrence of subsidization." How was the determination of 20 October 1999 promulgated, and what precise information, if any, would have been collected by the US DOC between 20 October 1999 and 27 March 2000?*

15. Following normal procedures, Commerce promulgated its determination to conduct a full sunset review in the form of a decision memorandum issued and made public on October 20, 1999. This memorandum was included as part of the United States' First Written Submission as Exhibit US-1.

16. Pursuant to its *Sunset Regulations*, Commerce will conduct a full sunset review where it receives adequate response to the notice of initiation. Commerce normally will consider the response to the notice of initiation to be adequate where it receives complete responses from a domestic interested party, respondent interested parties accounting on average for more than 50 percent of total exports to the United States and, in the context of a sunset review of a countervailing duty order, the foreign government.

17. The specific factual information needed to determine whether to conduct a full sunset review is only *a small part* of the information and argument contained in the original substantive responses submitted by the interested parties (normally due 30 days after the initiation of the sunset review). Commerce normally does not collect additional information after it makes its adequacy determination. Commerce, therefore, did not collect any additional information between its October 20, 1999, adequacy determination and its March 27, 2000, preliminary determination.

18. As previously mentioned, the information needed to determine adequacy is *only a small part* of the information and argument contained in the parties' substantive responses to the standard sunset questionnaire (set forth in sections 351.218(d)(3)(ii)-(vi) of Commerce's *Sunset Regulations* (Exhibit EC-14)). In particular, the only specific factual information needed to determine adequacy is the aggregate export figures provided by respondent interested parties. Additional information and argument required to be submitted by the parties in their substantive responses concerns, *inter alia*, the likely effect of revocation of the order, the subsidy rate likely to recur or continue if the order were revoked, and any other information a party would like Commerce to consider. Thus, between the time of its adequacy determination and its preliminary determination, Commerce analyzes and considers all of the remaining information and argument provided by the parties; *i.e.*, the bulk of the responses.

24. *The Panel notes the United States' arguments contained in paragraph 65 of its first written submission.*

- (a) *Does the United States consider that there is a presumption in the SCM Agreement that no provisions of the Agreement are applicable to reviews under Article 21.3, unless specifically indicated?*

19. In light of the text and context of Article 21.3, the United States considers that no provisions are applicable to reviews under Article 21.3, unless specifically indicated. In the view of the United States, it is not a matter of there being a "presumption." Instead, it is a matter of what the text of Article 21.3 provides, as interpreted in accordance with the rules of Article 31 of the *Vienna Convention on the Law of Treaties*. There are several ways in which other provisions of the Agreement may be applicable to the provisions of Article 21.3. There could be a cross-reference between the two provisions, a reference in one provision to the other, or a general statement that a provision applies throughout the Agreement or throughout Part V of the Agreement. There are no such references with respect to the Article 11.6 evidentiary requirements for self-initiation or the Article 11.9 *de minimis* standard.

- (b) *In what circumstances might some other provisions of the Agreement apply to reviews under Article 21.3?*

20. The United States considers that other provisions of the SCM Agreement would apply where the Agreement says they apply. See response to Question 24(c) below.

- (c) *If there are other provisions that, in the view of the United States, apply to reviews under Article 21.3, what are they, and why do they apply?*

21. Examples of other provisions that apply to Article 21.3 are: the definition of "subsidy" in Article 1 ("For the purpose of this Agreement"); the definition of "interested parties" in Article 12.9 ("for the purposes of this Agreement"); calculation of the amount of a subsidy under Article 14 ("For the purpose of Part V"); definition of "injury" under Article 15 and footnote 45 ("Under

this Agreement”); definition of “like product” under footnote 46 (“Throughout this Agreement”); definition of domestic industry in Article 16 (“For the purposes of this Agreement”); definition of “levy” under footnote 51 (“As used in this Agreement”).

25. *In the view of the United States, is the same methodology for the calculation of the level of subsidisation and the ad valorem rate applicable to reviews under Article 21.3 as it is in original investigations? Please explain in detail.*

22. As an initial matter, the United States notes that the SCM Agreement does not specify a methodology for calculating the *ad valorem* rate.

23. If Commerce were to calculate the level of subsidization in the context of reviews conducted under Article 21.3, it certainly would apply the same calculation methodology as it applies in original investigations conducted under Article 11. However, Commerce does not *calculate* the level of subsidization in sunset reviews. Article 21.3 does not require such a calculation. What Article 21.3 does require is that a countervailing duty be terminated not later than five years from the date upon which it is imposed, unless the authorities determine that expiry of the duty would be likely to lead to continuation or recurrence of subsidization and injury.

24. In conducting sunset reviews, Commerce determines whether the expiry of the duty would be likely to lead to continuation or recurrence of subsidization and, if so, the level of that subsidization. It reports that level of subsidization to the USITC for its use in making its injury determination. In determining the level of subsidization that is likely to continue or recur if the order were revoked, Commerce normally will select the rate *calculated* in the original investigation, because that is the only calculated rate that reflects the behavior of exporters and foreign governments without the discipline of an order in place. Thus, in a sunset review, Commerce does not calculate a rate. Instead, it reports to the USITC a rate that has already been calculated. Commerce may make adjustments to the calculated rate to reflect particular findings it has made in administrative reviews, but that does not amount to the recalculation of a rate.

25. The relationship between administrative assessment reviews under section 751(a) of the Act and sunset reviews under section 751(c) of the Act is one of convenience. Neither type of review is necessarily dependent upon the other, although information gathered in the context of an administrative review can have consequences for the final determination in a sunset review and can provide interested parties with an evidentiary record to support their positions in the sunset review. For example, in a sunset review, Commerce normally begins with the net countervailable subsidy rate established in the original investigation. (*See Sunset Policy Bulletin*, section III.A.1.) This rate, however, could be adjusted based on the findings contained in prior administrative reviews involving such things as program changes, terminations, or new subsidies. (*Sunset Policy Bulletin*, sections III.B.3 and III.A.1.) Commerce only uses information developed in the original investigation or prior administrative proceedings because

this information has been subject to the rigors of the administrative process in those proceedings, such as interested party briefing and onsite verification.

26. *In the view of the United States, is the same test of injury applicable to reviews under Article 21.3 as it is in original investigations? Please explain in detail.*

26. The Article 21.3 injury standard is not the same as the standard for injury in original investigations, although it contains some of the same elements. The injury determinations in original investigations are governed by the provisions of Article 15 of the SCM Agreement and Article VI of GATT 1994. Paragraph 6 of Article VI conditions the levying of countervailing duties on a determination that the effects of the subsidized imports are “such as to cause or threaten material injury to an established domestic industry, or [] such as to retard materially the establishment of a domestic industry.” Article 15 of the SCM Agreement further specifies the factors that investigating authorities must consider in reaching “[a] determination of injury for purposes of Article VI of GATT 1994.”

27. The aim of the Article 21.3 review is to determine whether revocation of the countervailing duty would be likely to lead to continuation or recurrence of injury. Footnote 45 to Article 15 indicates that the term *injury* as used throughout the Agreement “shall be interpreted in accordance with the provisions of this Article.” In turn, Article 15 specifies three general criteria – volume, price effects and impact on the domestic industry – that are pertinent to any *injury* determination under the Agreement.

28. The focus of a review under Article 21.3, however, differs from that of an original investigation under Article 15. The nature and practicalities of the two types of inquiries demonstrate that the tests for the two cannot be identical. In an original investigation, the investigating authorities examine the condition of an industry that has been exposed to the effects of the subsidized imports. In that investigation, an authority examines the relationship between import-related factors (such as relative and absolute increases in import volumes and underselling and other price effects) to industry-related factors (such as trade, financial and employment data that have a bearing on the state of the industry and that may be indicative of present injury or imminent threat of injury). See Articles 15.5 and 15.7. Five years later, as a result of the countervailing duty order, subsidized imports may have either decreased or exited the market altogether, or if they maintain their presence in the market, may be priced higher than they were during the original investigation, when they were entering the market unencumbered by any additional duties.

29. Thus, the inquiry contemplated in a review conducted pursuant to Article 21.3 is counterfactual in nature, and entails application of a somewhat different standard with respect to the volume, price and relevant industry factors. An authority must decide the likely impact of a prospective change in the status quo; *i.e.*, the revocation of the countervailing duty order and the elimination of its restraining effects on volumes and prices of imports.

27. Under US law:

(a) *Are the conditions of Article 11.4 required to be fulfilled in respect of the domestic industry filing a notice of intent to participate in a review under Article 21.3, for the DOC to determine whether to conduct a review of or revoke a particular CVD order?*

30. The conditions of Article 11.4, with respect to industry support, are not required to be fulfilled in order for Commerce to conduct a sunset review under U.S. law. Article 21.3 itself contains no requirement in this regard and contains no reference to Article 11.4 or the industry support requirements of that provision. Section 751(c)(2) of the Act generally requires that interested parties submit an expression of their willingness to participate in the review and to provide any information requested, but it does not mandate a particular level of domestic interested party participation as a prerequisite for a sunset review. Section 751(c)(2) of the Act does require that at least one domestic interested party participate in order for the sunset review to continue. Absent such participation, this section of U.S. law and Commerce's regulations provide for revocation of the order.

31. Section 351.218(d)(1) of Commerce's *Sunset Regulations* provides the criteria for a domestic interested party to establish a notice of intent for the purposes of the conduct of a sunset review. Under section 351.218(d)(1)(ii), a domestic interested party is required, *inter alia*, to provide information related to its identity, the identity of foreign producers, exporter, importers with which it has a business relationship, and a description of the subject merchandise.

(b) *Is the definition of domestic industry contained in Article 16 required to be taken account of in the ITC's assessment of the likelihood of continuation or recurrence of injury in a review under Article 21.3?*

32. Yes. Article 21.3 addresses the inquiry into whether revocation of the countervailing duty would be likely to lead to continuation or recurrence of *injury*. Footnote 45 to Article 15 of the SCM Agreement specifies that, "[u]nder this Agreement, the term 'injury' shall, unless otherwise specified, be taken to mean material injury *to a domestic industry*, threat of material injury *to a domestic industry*, or material retardation of the establishment of *such industry*...." (Emphasis added). Article 21.3 does not contain an exception to the general definition, and therefore, the *injury* referred to in that Article is relative to the condition of *the domestic industry*. Article 16 addresses the definition of the domestic industry "[f]or the purposes of this Agreement," and therefore applies in the context of addressing the continuation or recurrence of injury under Article 21.3.

28. *In the view of the United States, what textual support exists in the SCM Agreement for the proposition that no de minimis standard is applicable to reviews under Article 21.3 as it is in original investigations?*

33. Under Article 11.9, Members must apply a one percent *de minimis* standard in countervailing duty investigations.² Nothing in the text of Articles 11.9 or 21.3 requires application of the Article 11.9 one percent *de minimis* standard in Article 21.3 sunset reviews, or any other type of review. In particular, there is no reference in Article 21.3 to a *de minimis* standard and the text of Article 11.9 makes no reference to Article 21.3. See also response to Question 1(a) above.

29. Please respond to paragraph 44 of the oral statement of the European Communities at the first meeting of the Panel, in respect of the US use and relevance of footnote 52 of the SCM Agreement as set out in paragraphs 74 and 81 of the first written submission of the United States. In other words, why is the content of footnote 52 relevant to the question of whether the *de minimis* standard applicable to original investigations is applicable to reviews under Article 21.3?

34. In its Oral Statement, the EC merely reiterates its previous argument that the *de minimis* standard for investigations contained in Article 11.9 “should” apply in sunset reviews conducted pursuant to Article 21.3 because investigations and sunset reviews purportedly serve the same purpose. The United States disagrees. The purpose of an investigation is to determine whether and to what extent subsidization exists. In this context, the function of the one percent *de minimis* standard is to determine whether foreign government subsidies warrant the imposition of an order in the first instance. Using the example given in our First Written Submission (para. 80), if the investigating authority found that a government program had provided recurring subsidies at a rate of more than one percent, imposition of a countervailing duty would be warranted if the subsidized imports were found to cause injury. In contrast, the focus of a sunset review is the future, *i.e.*, whether subsidization is likely to continue or recur. Therefore, the mere continued existence of a subsidy program could warrant maintaining the duty beyond the five-year point, *even if the amount of the subsidy was currently zero*, because subsidization may be likely to recur absent the discipline of the order. To read a particular *de minimis* requirement for sunset reviews into the Agreement would render footnote 52 a nullity.

² The text of Article 11.9 reads in relevant part:

An application under paragraph 1 shall be rejected and an investigation shall be terminated promptly as soon as the authorities concerned are satisfied that there is not sufficient evidence of either subsidization or of injury to justify proceeding with the case. There shall be immediate termination in cases where the amount of a subsidy is *de minimis*, or whether the volume of subsidized imports, actual or potential, or the injury, is negligible. For the purpose of this paragraph, the amount of the subsidy shall be considered *de minimis* if the subsidy is less than 1 per cent *ad valorem*.

35. In its Oral Statement (para. 44), the EC opined that the United States has confused the purposes of an administrative (*i.e.*, assessment) review and a sunset review and the application of footnote 52. It is the EC that is confused. Pursuant to Article 21.3 and footnote 52, the mere existence of a subsidy program, even with a net countervailable subsidy rate of zero, could form the basis for a determination of likelihood of future subsidization in accordance with Article 21.3 and footnote 52. The United States agrees with the EC that footnote 52 refers to a situation where the authority determines that the subsidy rate for a particular time period is zero and that, in the United States, that determination takes place in the context of an administrative review.³ The EC seems to think, however, that footnote 52 serves no other purpose than to make a point about administrative reviews. The EC posits that “[s]unset reviews under Article 21.3 are completely different from administrative reviews.” If that is so, why then did the Members include footnote 52 in Article 21.3, the provision governing sunset reviews? There must be a reason.

36. The United States considers that footnote 52 means that the current level of subsidization is not decisive as to whether subsidization is likely to recur. The EC has not offered any alternative interpretation. The reason for this gap in the EC’s argumentation is that the EC’s claim that a *de minimis* standard is required in the context of Article 21.3 sunset reviews would render note 52 meaningless. See also the United States’ First Written Submission (para. 73), discussing the panel report in *Korea DRAMs*.

30. *Could the United States explain the rationale for the 0.5 per cent de minimis standard applicable to reviews under Article 21.3 under US law?*

37. As a matter of domestic policy, Commerce has long applied a 0.5 percent *de minimis* standard in administrative (*i.e.*, assessment) reviews. The application of this standard pre-dates the Uruguay Round negotiations. The entry into force of the WTO Agreement did not require a change in this standard, because the Article 11.9 *de minimis* standard is only applicable to investigations. For this same reason, when the United States amended its law in 1994 to provide for sunset reviews, it chose to apply its long-standing 0.5 percent *de minimis* standard to sunset reviews. The United States could have chosen to apply no *de minimis* standard to sunset reviews at all.

38. Commerce’s *de minimis* standard in reviews is different from its *de minimis* standard in investigations. Prior to the entry into force of the WTO Agreement, Commerce applied a 0.5 percent *de minimis* standard in investigations. However, in order to conform to Article 11.9 of the SCM Agreement, Congress amended the U.S. statute so as to require the use of a 1 percent *de minimis* standard in investigations.

³ EC Oral Statement, para. 44. Although not necessarily germane to the instant dispute, the United States does not agree with the EC’s statement that footnote 52 refers to a situation where a subsidy is “*de minimis*” in an administrative review. Footnote 52 only discusses a finding in the most recent assessment proceeding that “no duty” is to be levied.

39. In a sunset review, the *de minimis* standard has particular application in several respects. For example, if Commerce determined in a sunset proceeding, based on the original investigation and any administrative reviews, that the existing countervailable subsidy programs had been terminated and that the likely net countervailable rate of subsidization was *de minimis*, Commerce normally would determine that there was *no* likelihood of continuation or recurrence of subsidization.

40. In addition, the *Sunset Policy Bulletin* (section III.A.6.b) provides that, if the combined benefits of all programs considered in the sunset review have never been above *de minimis* at any time the order was in effect, and there is no likelihood that the combined benefits of such programs would be above *de minimis* in the event of removal of the duty, Commerce normally would determine that there is no likelihood of continuation or recurrence of subsidization.

41. In 1987, following a notice and comment rulemaking proceeding, Commerce published a final regulation codifying its long-standing practice of applying a 0.5 percent *de minimis* standard in investigations and administrative reviews.⁴ Pursuant to the regulation, net aggregate subsidies (and ad valorem dumping margins) of less than 0.5 percent would be disregarded for purposes of publishing or revoking orders, setting cash deposit rates, or assessing countervailing duties. In response to comments regarding Commerce's decision to set 0.5 percent as the *de minimis* threshold, Commerce stated as follows:

The doctrine of *de minimis non curat lex*, that the law does not concern itself with trifles, is a basic tenet of Anglo-American jurisprudence, inherent in all U.S. laws. With respect to the antidumping and countervailing duty laws, the Department has concluded that the potential benefits to domestic petitioners from orders on dumping margins or net subsidies below 0.5% are outweighed by the gains in productivity and efficiency provided by a *de minimis* rule. Even in price-sensitive markets, the effect of requiring a deposit or assessment of duty based on a rate of 0.5% *ad valorem* would be negligible. No party submitting comments has provided any information to support a different conclusion. Accordingly, it would be unreasonable for the Department and the U.S. Customs Service to squander their scarce resources administering orders for which the dumping margins or the net subsidies are below 0.5%. The fact that the Department of Treasury⁵ and Commerce may not always have applied a uniform *de minimis* standard in the past is an additional reason supporting the adoption of a fixed standard which can be applied consistently in the future.⁶

In response to comments that the *de minimis* threshold be set at 1%, Commerce stated that,

⁴ *Antidumping and Countervailing Duties; De Minimis Dumping Margins and De Minimis Subsidies*, 52 FR 30660 (August 17, 1987) ("*De Minimis Rule*") (Exhibit US-6).

⁵ Until 1980, the U.S. Department of Treasury administered the antidumping and countervailing duty laws.

⁶ *De Minimis Rule*, 52 FR at 30661.

After many years of applying a 0.5% *de minimis* threshold, the Department has developed no basis to conclude that 1% represents a level of benefit not worth the expense of investigations or annual reviews....^[7]

31. Under US law, what is the relationship between duty assessment proceedings ("administrative reviews") and reviews under Article 21.3?

42. The United States has a "retrospective" assessment system under which the amount of final liability for countervailing duties is determined after the subject merchandise is imported. Although the amount of the countervailing duty liability may be determined in the context of other types of reviews, the most frequently used procedure for determining the amount of final liability is the administrative review procedure under section 751(a)(1) of the Act.

43. In an administrative review, Commerce determines the net countervailable subsidy rate for a particular time period. During the review, Commerce may examine nonrecurring subsidy programs and their benefit streams, recurring subsidy programs, newly alleged countervailable programs, and may conduct onsite verifications of information submitted or collected during the review. In addition, Commerce would address comments raised by the interested parties in their case and rebuttal briefs. Based on an examination of the administrative record, Commerce would determine the net countervailable rate of subsidization for the period under review, determine the amount of final countervailing duty liability for entries made during the period of review, and establish cash deposits for future entries of the subject merchandise.

44. Under section 751(c) of the Act, a sunset review is not a procedure for determining the amount of final countervailing duty liability. A sunset review is conducted to determine the likelihood of the continuation or recurrence of subsidization in the event that the countervailing duty order is revoked. Consequently, Commerce does not calculate the net countervailable rate of subsidization at the time of the sunset review, nor does it examine periods preceding the sunset review period. Commerce does not calculate the present rate because the purpose of the sunset review is to determine the likelihood of the continuation or recurrence of subsidization. Thus, a sunset review necessarily involves a prediction of a government's future behavior without the discipline of a countervailing duty order in place. The focus of the analysis is predictive, as opposed to a focus on the present or the past.

45. The relationship between administrative assessment reviews under section 751(a) of the Act and sunset reviews under section 751(c) of the Act is one of convenience. Neither type of review is necessarily dependent upon the other, although information gathered in the context of an administrative review can have consequences for the final determination in a sunset review and can provide interested parties with an evidentiary record to support their positions in the sunset review. For example, in a sunset review, Commerce normally begins with the net countervailable subsidy rate established in the original investigation. (*See Sunset Policy*

⁷ *Id.*

Bulletin, section III.A.1.) This rate, however, could be adjusted based on the findings contained in prior administrative reviews involving such things as program changes, terminations, or new subsidies. (*Sunset Policy Bulletin*, sections III.B.3 and III.A.1.) Commerce only uses information developed in the original investigation or prior administrative reviews because this information has been subject to the rigors of the administrative process in those proceedings, such as interested party briefing and onsite verification. Thus, while sunset reviews generally may have little relevance to administrative reviews, administrative reviews and, perhaps more importantly, the administrative record developed in administrative reviews, may have considerable relevance to a sunset review.

32. *Please respond to the following:*

- (a) *Is it correct, as the European Communities contends, that the foreign respondents, the German exporters and Government, and the EC Commission, could not have requested and received a review of the CVD order without the product having been imported into the United States?*

46. Section 351.213(d)(3) of Commerce's Regulations provides that Commerce "may rescind an administrative review" if Commerce determines that there were no entries, exports or sales of the subject merchandise during the period of review (so called, "no shipment reviews"). Thus, Commerce's regulations provide no absolute requirement for shipments as a pre-requisite to an administrative review and provide Commerce with the discretion to conduct a "no shipment" administrative review of an order.

47. As a general matter, however, Commerce's long-standing policy is to refrain from conducting administrative reviews where there have been no shipments of the subject merchandise. This policy exists because the conduct of an administrative review requires Commerce to expend limited resources and, where there are no shipments of subject merchandise, there can be no assessment of countervailing duties. The policy also recognizes that there is little benefit to any interested party, foreign or domestic, in conducting an administrative review where the interested parties must expend resources to participate in the review. However, notwithstanding this general policy with respect to "no shipment" reviews, the regulations provide that rescission of an administrative review for no shipments is discretionary.

- (b) *What is the textual basis for this in the SCM Agreement?*

48. As indicated in response to Question 32(a), Commerce's regulations do not make the existence of shipments an absolute prerequisite for an administrative review. Instead, the regulations provide Commerce with the discretion to conduct a "no shipment" administrative review of an order. In this regard, Articles 19 and 21.2 of the SCM Agreement do not preclude no shipment administrative reviews.

(c) *Is a "changed circumstances" review possible under US law in the absence of any exports to the United States of the product subject to the order?*

49. Yes, a "changed circumstances" review is discretionary and may be initiated when Commerce (or the USITC) determines that conditions warranting such a review exist. Such reviews normally are initiated based on a request from an interested party. In the past, Commerce has conducted changed circumstances reviews to examine a variety of issues. For example, Commerce has conducted changed circumstances reviews to determine the effect on existing orders of changes in company ownership or successorship, changes in governments or geographical boundaries, joint ventures, declarations of "no interest" in the order from a domestic industry, and requests for product exclusions.

33. *Under US law, does the record of the original investigation form part of the record of the review under Article 21.3? If only some part does, what part does not, and on what basis? More particularly, in the case at hand, was information from the record of the original investigation used by the DOC in the initiation, or course, of the review under Article 21.3? If so, what part, and on what basis?*

50. No, the administrative record from Commerce's original countervailing duty investigation does not automatically become part of the administrative record of the sunset review. Under U.S. law and Commerce regulations, each individual review (whether administrative, sunset, or changed circumstances) by Commerce is considered a separate segment of the proceeding, with a separate and distinct administrative record, and separately reviewable by domestic courts.

51. Pursuant to section 751(c) of the Act and consistent with Article 21.3 of the SCM Agreement, Commerce automatically self-initiates sunset reviews. Therefore, Commerce did not use any information from the original investigation to initiate the sunset review of the countervailing duty order on corrosion-resistant carbon steel flat products from Germany.

52. All the information considered by Commerce in the course of the particular sunset review at issue in this dispute was either supplied by interested parties or collected by Commerce. Commerce may place publicly-available information, regardless of source, on the administrative record. Interested parties are permitted to submit any publicly-available information or their own proprietary information, including information from the original investigation, for Commerce's consideration in the sunset review.

34. *Please explain:*

(a) *Whether 13 April 2000 was the first time that the German exporters made a written request to the DOC to have the calculation memorandum made part of the record of the review under Article 21.3; and*

53. Yes, 13 April 2000 was the first time that the German exporters made such a request.

(b) *Whether the DOC received requests from other interested parties to include information from the original investigation in the record of the review under Article 21.3. If so, did the DOC accept any such requests?*

54. With respect to business confidential information, no other interested parties placed, or requested that Commerce place, such information on the administrative record during the sunset review.

55. As discussed in the United States' First Written Submission (paras. 117-119), in the instant case, Commerce accepted and considered submissions or parts of submissions from the U.S. producers and the German Government which included public information from the original investigation. Specifically, Commerce accepted a submission from the U.S. producers dated April 28 and portions of a German government submission of April 18.

56. In accepting the U.S. producers' submission, Commerce considered that the submission contained the *public* version of Preussag's questionnaire response from the original investigation and that the U.S. producers had submitted the document because the German producers had cited to the questionnaire response in one of their submissions prior to the deadline for factual information without submitting the document itself. Commerce also accepted portions of the German Government's April 18 submission. Commerce, however, only accepted those portions of the German Government's submission that were part of the original investigation, contained *no new factual information*, and were *publicly available*. None of the information accepted by Commerce in this instance was confidential information that would have been unavailable to other parties such as the U.S. producers.

35. *Could the United States explain the statement - expressed on page 21 of its memorandum dated 27 July 2000, which memorandum contains the public version of the final results of the review under Article 21.3 in the carbon steel case - that "in a sunset review, unlike other segments of a proceeding, we do not conduct investigations"? In particular:*

(a) *How does the United States reconcile this view with the word "determine" used in Article 21.3 of the SCM Agreement?*

57. Article 21.3 establishes that in the context of the sunset review, Commerce is obligated to determine whether expiry of the countervailing duty would be likely to lead to continuation or recurrence of subsidization. The definition of "determine" in the context of Article 21.3 requires a decision about something. In *The New Shorter Oxford English Dictionary*, "determine" is defined as to "settle or decide (a dispute, controversy, etc., or a sentence,

conclusion, issue, etc.) as a judge or arbiter.”⁸ Further, this entry contains the notation “followed by simple object, subordinate clause with *that, what, whether, etc.*” The United States considers that this is precisely the manner in which the word “determine” is used in Article 21.3.

58. Article 21.3 requires the authorities to determine or decide something, *i.e.*, whether subsidization is likely to continue or recur. The United States considers that it may determine, in accordance with the requirements of Article 21.3, whether subsidization is likely to continue or recur without conducting its own investigation, but, rather, by making its decision based on the evidentiary record developed during the sunset review because all parties, both foreign and domestic, have every opportunity under the U.S. system to provide any information they deem relevant.

(b) *What methodology, and precise criteria, would the United States use to determine the likelihood of continuation or recurrence of subsidisation and injury as set out in Article 21.3 of the SCM Agreement? Could the United States submit any internal memoranda or guidelines that might exist in this respect?*

59. The substantive provisions governing sunset reviews are contained in Commerce’s *Sunset Policy Bulletin*, which the EC has submitted as Exhibit EC-15. As an initial matter, in determining whether subsidization is likely to continue or recur, Commerce will consider the net countervailable subsidy determined in the investigation and subsequent reviews, and whether any change has occurred in programs which gave rise to the net countervailable subsidy determined in the investigation and subsequent reviews.

60. Section III.B of Commerce’s *Sunset Policy Bulletin* explains the process for determining the rate likely to prevail in the absence of the discipline of the countervailing duty. Pursuant to the *Sunset Policy Bulletin*, Commerce normally selects a rate from the investigation because this rate is the only calculated rate that reflects the behavior of foreign exporters and foreign governments without the discipline of a countervailing duty in place. See also section 752(b)(3) of the Act. Commerce also considers subsequent administrative reviews because information developed during these proceedings concerning subsidization (*e.g.*, additional subsidies and accompanying benefits granted after issuance of an order or program terminations) may be an indicator of possible future government behavior or may demonstrate the continuation of existing benefits beyond the sunset period.

61. For purposes of determining whether a net countervailable subsidy is likely to continue or recur, U.S. law requires that Commerce consider whether any change has occurred in the programs which gave rise to the net countervailable subsidy determination in the investigation or subsequent reviews. See section 752(b)(1)(B) of the Act. Thus, Commerce may make adjustments to the net countervailable subsidy where Commerce has conducted an administrative

⁸ The New Shorter Oxford English Dictionary 651 (4th ed. 1993).

review and (1) determined that a program was terminated with no residual benefits and no likelihood of reinstatement; (2) found a new countervailable program or found a program not previously used but subsequently found countervailable; (3) determined that the net countervailable subsidy rate should increase as a result of best information available or facts available; (4) determined that a program is not countervailable. (*Sunset Policy Bulletin*, section III.B.3.)

62. Commerce will not make adjustments to the net countervailable subsidy for programs that still exist, but were modified subsequent to the order to eliminate exports to the United States from eligibility. (*Sunset Policy Bulletin*, section III.B.3.b.) Absent evidence to the contrary, Commerce considers that such modifications reflect foreign government behavior *with* the discipline of the countervailing duty. Commerce, however, must consider the likelihood of continuation or recurrence of subsidization *without* the discipline of the duty. In the context of a sunset review, the government's behavior prior to the imposition of the duty is probative evidence as to how the government will behave if the order is revoked.

63. Commerce may consider other factors in making adjustments to the net countervailable subsidy rate. For example, Commerce may adjust the net countervailable subsidy rate for programs determined to provide countervailable subsidies in other countervailing duty investigations or administrative reviews of other countervailing duty orders; or for programs newly alleged to provide countervailable subsidies. (*Sunset Policy Bulletin*, sections III.C.1 & 2.)

64. Commerce normally will determine that revocation of a countervailing duty is likely to lead to a continuation or recurrence of subsidization where a program continues or where a program has been only temporarily suspended or partially terminated. (*Sunset Policy Bulletin*, section III.3.a.) Again, as discussed above, this is because absent evidence to the contrary, Commerce considers that this reflects behavior modified only in response to the discipline of the duty.

65. Commerce also determines whether a fully allocated benefit stream will continue after the sunset review period in making its likelihood determination regardless of whether the program has been terminated. (*Sunset Policy Bulletin*, section III.4.) The *Sunset Policy Bulletin* makes clear, in accordance with section 752(b)(2)(A) of the Act, that a zero or *de minimis* net countervailable subsidy rate shall not by itself require Commerce to determine that revocation will not likely lead to a continuation or recurrence of subsidization. (*Sunset Policy Bulletin*, section III.B.6.)

66. In addition, Commerce will consider new programs alleged to provide countervailable subsidies in a sunset review only where good cause is shown that such programs should be examined in the context of a sunset review. (Section 752(b)(2)(B) of the Act; *Sunset Policy Bulletin*, section III.C.2.) Normally, Commerce will consider a new subsidy allegation in the context of a sunset review only where information on such programs was not reasonably

available to domestic interested parties during the most recently completed administrative review or where the alleged countervailable subsidy program came into existence after the completion of the administrative review. The burden is on the interested party to provide information or evidence that would warrant consideration of a newly alleged subsidy program. (*Sunset Policy Bulletin*, section III.C.2.)

67. Finally, if Commerce's final sunset determination is affirmative, Commerce reports the net countervailable subsidy determined, per the *Sunset Policy Bulletin* criteria, to the USITC for possible consideration in making its injury determination. See section 751(c) and 752(a)(6) of the Act.

68. The USITC has adopted a series of regulations addressing the procedures for conducting five-year review investigations to determine whether continuation of the countervailing duty would be likely to lead to continuation or recurrence of material injury. These regulations are codified at 19 CFR 207.60-207.69. These regulations were adopted after full notice and comment rulemaking at which any person or entity was entitled to be heard. They were published in the Federal Register on June 5, 1998, along with a preamble explaining the purpose of each rule and addressing comments provided during the rulemaking process. 63 FR 30599 (June 5, 1998). As required by the statute and regulations, the USITC provides a thorough explanation of each determination it reaches, including, *inter alia*, its determinations in sunset reviews. Should it wish to do so, the Panel can access the USITC's sunset review rules, as well as all ITC review determinations, on the USITC's Internet site at www.usitc.gov.

(c) *Is the Panel to understand that, in the United States' view, original investigations and reviews under Article 21.3 are different segments of one proceeding? Please explain in detail.*

69. Yes. Under the U.S. system, a "proceeding" begins on the date of the filing of a petition and ends on, *inter alia*, the revocation of an order.⁹ A countervailing duty proceeding consists of one or more "segments".¹⁰ "Segment" refers to a portion of the proceeding that is separately judicially reviewable. For example, a countervailing duty investigation, an administrative review, or a sunset review each would constitute a segment of a proceeding.¹¹

70. Each segment has a beginning (initiation) and an end (final determination or final results). Each segment contains its own discrete administrative record. Each final determination is based solely on the information placed upon and contained in the administrative record for that segment. The final determination, and the discrete record upon which it is based, is subject to judicial review.

⁹ 19 CFR 351.102 (definition of "proceeding").

¹⁰ 19 CFR 351.102 (definition of "segment of proceeding").

¹¹ See 19 CFR 351.102 (definition of "segment of proceeding", examples under para. 2).

36. *Could the United States explain the statement - expressed on page 34 of its memorandum dated 27 July 2000, which memorandum contains the public version of the final results of the review under Article 21.3 in the carbon steel case - that, "since no administrative reviews of these orders were conducted we are unable to determine whether any additional benefits under these programs were received"? Is the Panel to understand that, in the United States' view, administrative views are prerequisites for conducting full reviews under Article 21.3 of the SCM Agreement? Please elaborate.*

71. Under the U.S. system, administrative reviews are not prerequisites for conducting full sunset reviews. However, as a starting point for making its likelihood determination in a sunset review, Commerce considers the countervailable subsidies and programs found to be used, and the amount of the subsidy determined, in the original investigation. The rationale for this approach is that the findings in the original investigation provide the only evidence reflecting the behavior of the respondents without the discipline of countervailing measures in place. This makes sense given that, in a sunset review under Article 21.3, an authority is considering whether, without the discipline of the duty, subsidization would likely continue or recur; *i.e.*, what would happen without the discipline of the duty.

72. Commerce also considers its findings in administrative reviews subsequent to the original investigation because information developed during administrative reviews concerning subsidization – *e.g.*, additional subsidies and accompanying benefits granted after issuance of an order or program terminations – may be an indicator of possible future subsidization or may demonstrate the cessation of subsidization. As noted above, for purposes of determining whether a net countervailable subsidy is likely to continue or recur, U.S. law requires Commerce to consider whether there have been changes to a subsidy program which gave rise to a net countervailable subsidy determination in the investigation or subsequent administrative reviews. As a result, Commerce may make adjustments to the net countervailable subsidy determined in the investigation where Commerce has conducted an administrative review.

73. In addition, Commerce may make adjustments to the net countervailable subsidy determined in the investigation if, for example, there is evidence demonstrating that programs have been terminated with no residual benefits. Commerce may make such adjustments regardless of whether it has conducted an administrative review. In the instant case, for example, no administrative review had been conducted, yet Commerce agreed with the EC and German producers that two programs had been terminated with no residual benefits and adjusted the net subsidy rate accordingly. See United States First Written Submission, para. 40.

74. Under section 751(c) of the Act, a sunset review is not a procedure for determining the amount of final countervailing duty liability. A sunset review is conducted to determine the likelihood of the continuation or recurrence of subsidization in the event that the countervailing duty order is revoked. Consequently, Commerce does not calculate the net countervailable rate of subsidization at the time of the sunset review, nor does it examine time periods preceding the sunset review period. Commerce does not calculate the present rate because the purpose of the

sunset review is for Commerce to determine the likelihood of the continuation of recurrence of subsidization. Thus, the purpose of a sunset review necessarily requires a prediction of a government's future behavior without the discipline of a countervailing duty order in place. The focus of the analysis is predictive, as opposed to a focus on the present or the past.

75. The relationship between administrative assessment reviews under section 751(a) of the Act and sunset reviews under section 751(c) of the Act is one of convenience. Neither type of review is necessarily dependent upon the other, although information gathered in an administrative review can have consequences for the final determination in a sunset review and can provide interested parties with an evidentiary record to support their positions in the sunset review. Normally, Commerce only uses information developed in the original investigation or prior administrative proceedings because this information has been subject to the rigors of the administrative process in those proceedings, such as interested party briefing and onsite verification.

37. *Regarding the confidentiality of the information contained in the calculation memorandum that the German exporters requested the DOC to add to the record of the review under Article 21.3 in question, could the United States explain:*

76. On April 13, 2000, the German producers in the sunset review – Thyssen Krupp Stahl AG, Stahlwerke Bremen GmbH, EKO Stahl GmbH, and Salzgitter AG – sought to have *all* the calculation memoranda from the original investigation placed on the record of the sunset review. Three German producers of certain corrosion-resistant carbon steel flat products were involved in the original investigation: Hoesch Stahl AG (Hoesch), Preussag Stahl AG (Preussag), and Thyssen Stahl AG (Thyssen).

(a) Why the confidentiality of this document would prevent its use in the review under Article 21.3?

77. As discussed in response to Question 33 above, a countervailing duty investigation and a sunset review are considered separate “segments”, each with its own discrete administrative record. In the instant review, Commerce could not move business confidential information from the record of one segment of the proceeding (*i.e.*, the investigation) to another separate segment of the proceeding (*i.e.*, the sunset review) without the express permission of the person who submitted the confidential information.

78. Article 12.4 of the SCM Agreement provides that confidential information shall not be disclosed without the specific permission of the party submitting it. Consistent with the obligations concerning the treatment of confidential information under Article 12, U.S. law and Commerce regulations provide stringent requirements and safeguards regarding the disclosure and use of business confidential information in the context of countervailing duty proceedings under what is called an administrative protective order or “APO”. The APOs granted during the original 1993 investigation would only have allowed for the disclosure of business confidential

information in the context of that investigation, per the agreement of the party submitting the confidential information. (In contrast, APOs granted in investigations initiated after June 1998, when the APO regulations were amended, allow parties to move business confidential information from one segment to another in certain circumstances, without seeking permission from the party that originally submitted the information.¹²) As a result, Commerce could not accede to the German producers' request in the sunset review to move all the calculation memoranda from the record of the original investigation to the record of the sunset review without the permission of the parties who originally submitted the information. The request from the German producers in the sunset review contained no indication of such permission.

(b) On what basis the United States describes this document as confidential?

79. Under U.S. law and regulations, certain information provided by interested parties in an administrative proceeding, whether an investigation or review, may be accorded business confidential treatment. Section 351.304 of Commerce's regulations sets forth the requirements for parties to claim that factual information should be considered business proprietary information and afforded protection from public disclosure. The claim for proprietary treatment must be made by the owner of the information, the information must be clearly identified, and the claim must be accompanied by an explanation why the information should be afforded proprietary treatment. The German producers did so in the original investigation and Commerce granted their requests.

(c) Which party's confidential information was contained in this document? If the confidential information related to the German exporters, did they request confidentiality? If so, when and how?

80. The calculation memoranda from the original investigation would have contained the business confidential information of the three German producers of certain corrosion-resistant carbon steel flat products that were involved in the original investigation: Hoesch, Preussag, and Thyssen. These producers would have requested business confidential treatment for their data at the time they submitted the data during the original countervailing duty investigation in 1992-93.

81. As noted above, Commerce regulations set forth the requirements for parties to claim that factual information should be considered business proprietary information and afforded protection from public disclosure. The claim for proprietary treatment must be made by the owner of the information, the information must be clearly identified, and the claim must be accompanied by an explanation why the information should be afforded proprietary treatment. These claims are made at the same time as the information is filed.

¹² See 19 CFR 351.306(b) and *Antidumping and Countervailing Duty Proceedings; Administrative Protective Order Procedures; Procedures for Imposing Sanctions for Violation of a Protective Order*, 63 FR 24391 (May 4, 1998) (effective date, June 3, 1998).

82. The particular document submitted by the EC in the instant case (Exhibit EC-21) appears to contain business confidential information for Thyssen. In its First Written Submission (note 75), the EC itself notes that this exhibit contains business confidential information.

- (d) *Whether this document contained information relating only to the German exporters who made this request during the review under Article 21.3, or whether the document included information relating to some other German exporters who were not involved in the review under Article 21.3?*

83. As mentioned above, the German producers in the sunset review were Thyssen Krupp Stahl AG, Stahlwerke Bremen GmbH, EKO Stahl GmbH, and Salzgitter AG. The German producers in the original investigation were Hoesch, Preussag, and Thyssen. The request from the German producers in the sunset review to move the business confidential information from the record of the original investigation to the record of the sunset review contains no indication that the German producers in the sunset review were authorized to permit the movement of such information.

38. *Is it DOC practice to accept evidence from foreign respondents, following a notice of initiation of a review under Article 21.3, concerning:*

- (a) *the termination of a subsidy programme;*
(b) *the termination of the benefit stream of a non-recurring subsidy; or*
(c) *the level of a subsidy?*

And to what extent is such evidence considered in the review?

84. Section 351.218(d)(3)(v)(B) of Commerce's *Sunset Regulations* provides that interested parties may submit *any* relevant information or argument that the party would like Commerce to consider in the course of the sunset review. Generally, therefore, Commerce will accept any evidence from foreign respondents, including evidence with respect to the issues set out in the Panel's question.

85. In the context of a sunset review (or any other segment of a countervailing duty proceeding), Commerce considers all relevant evidence that is timely filed. Regarding the extent to which Commerce might base a particular determination on such evidence, it is difficult to say in the abstract. The relevance and probative value of a particular piece of evidence will vary from case to case. Suffice it to say that in the sunset review at issue in this dispute, Commerce considered information and argument from the EC and German producers in finding that two programs had been terminated with no residual benefits. See United States First Written Submission, para. 40. As a general proposition, Commerce's *Sunset Policy Bulletin* provides detailed guidance on analytical issues related to Commerce's determination of likelihood of continuation or recurrence of subsidization and the net countervailable subsidy rate likely to prevail if the duty were revoked. See discussion in the response to Question 35(b).

39. *Could the United States provide the Panel with a schematic representation of the timing and information requirements under US law for reviews under Article 21.3, in respect of both DOC and ITC proceedings?*

86. Annex VIII of Commerce's *Sunset Regulations*, attached as Exhibit US-4, contains detailed schedules with timing and information requirements for Commerce sunset reviews. These schedules are as follows:

Annex VIII-A--Schedule for 90-Day Sunset Reviews

Annex VIII-B--Schedule for Expedited Sunset Reviews

Annex VIII-C--Schedule for Full Sunset Reviews

87. Annex B of the ITC's *Sunset Regulations* provides a sample schedule for five-year reviews, 63 FR 30611 (June 5, 1998), attached as Exhibit US-5.

40. *Could the United States provide the Panel with the following figures in respect of the United States' initiation and conduct of reviews under Article 21.3:*

(a) *The number of reviews under Article 21.3 initiated since 1 January 1995;*

88. 56.

(b) *The number of such reviews which resulted in revocation of the CVD order in question due to no filing by the domestic industry of a notice of intent to participate;*

89. 17.

(c) *The number of expedited reviews under Article 21.3 conducted since 1 January 1995;*

90. 24.

(d) *The number of such reviews which resulted in revocation of the CVD order in question:*

(i) *due to a finding of no likelihood of continuation or recurrence of subsidisation; and*

91. 0.

(ii) *due to a finding of no likelihood of continuation or recurrence of injury.*

92. 5.

(e) *The number of full reviews under Article 21.3 conducted since 1 January 1995;
and*

93. 15.

(f) *The number of such reviews which resulted in revocation of the CVD order in
question:*

(i) *due to a finding of no likelihood of continuation or recurrence of
subsidisation; and*

94. 3.

(ii) *due to a finding of no likelihood of continuation or recurrence of injury.*

95. 4.

U.S. Exhibit List

<u>Number</u>	<u>Document</u>
4	Annex VIII of the DOC's <i>Sunset Regulations</i>
5	Annex B of the ITC's <i>Rules of Practice and Procedure</i>
6	<i>De Minimis</i> Rule, 52 Fed. Reg. 30660, August 17, 1987