

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

**WT/DS213**

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

**February 28, 2002**

1. With respect to the Panel's question concerning the Article 11.9 *de minimis* standard and reviews under Article 21.2, for essentially the same reasons set forth in the United States' First Written Submission and Oral Statement, 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.

2. With respect to the Panel's question concerning negligible import volume and injury standards under Article 11.9 and the negligible injury standard under Article 15.3, and reviews under Article 21.2, with respect to Article 11.9, as stated above, 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.

3. With respect to the Panel's question concerning negligible import volume and injury standards under Article 11.9 and the negligible injury standard under Article 15.3, and reviews under Article 21.3, the negligibility provisions do not apply to Article 21.3 for the same reasons they do not apply to Article 21.2.

4. With respect to the Panel's questions concerning the applicability of the Article 27.10 negligible import volume standards and the Article 27.10(b) and Article 27.11 *de minimis* standards to reviews under Article 21, 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.

5. With respect to the Panel's questions concerning the impact of the large volume of "transition" orders on the genesis of the United States' sunset rules, 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, the United States described in detail the process it used to determine and publicly announce the schedule for the conduct of the sunset reviews of the transition orders.

6. 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. Procedurally, the rules with respect to 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. Substantively, Commerce's analysis is the same for transition orders and non-transition orders.

7. With respect to the Panel's question concerning when a sunset review is considered to be initiated, 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.

8. With respect to the Panel's question concerning Commerce's adequacy determination and information collected after that determination, 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. The specific factual information needed to determine whether to conduct a full sunset review (*i.e.*, aggregate export figures) is only a *small part* of the information and argument contained in the original substantive responses submitted by the interested parties. 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. 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.

9. With respect to the Panel's questions concerning whether there is a "presumption" in the SCM Agreement that no provision of the Agreement is applicable to reviews under Article 21.3 unless specifically indicated, the United States considers that, in light of the text and context of Article 21.3, 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.

10. The United States considers that other provisions of the SCM Agreement would apply to reviews under Article 21.3 where the Agreement says they apply. 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”).

11. With respect to the Panel’s questions concerning the methodology for the calculation of the level of subsidization and the *ad valorem* rate in reviews under Article 21.3 versus in original investigations, the United States notes, as an initial matter, that the SCM Agreement does not specify a methodology for calculating the *ad valorem* rate. 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.

12. With respect to the Panel’s question as to whether the injury test applicable to investigations is also applicable to reviews under Article 21.3, 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.”

13. 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.

14. 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. 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.

15. With respect to the Panel's question as to whether, under U.S. law, the Article 11.4 industry support provisions are applicable in a review under Article 21.3, 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.

16. With respect to the Panel's question as to whether the Article 16 definition of domestic industry must be taken into account in the USITC's assessment of the likelihood of continuation or recurrence of injury in a review under Article 21.3, the answer is 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.

17. With respect to the Panel's question as to 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, under Article 11.9, Members must apply a one percent *de minimis* standard in countervailing duty investigations. 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. As discussed above, 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.

18. With respect to the Panel's request that the United States respond to arguments in the EC's Oral Statement concerning the use and relevance of footnote 52, in its Oral Statement, 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. (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.) 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. 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.

19. With respect to the Panel's question concerning the rationale for the United States' application of a 0.5 percent *de minimis* standard in sunset reviews, 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.

20. 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. In addition, 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.

21. 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. In response to Commerce stated that

“[t]he 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.... [I]t 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%.” 52 FR at 30661.

22. With respect to the Panel’s question concerning the relationship between duty assessment proceedings ("administrative reviews") and reviews under Article 21.3, 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. The normal procedure used for determining the amount of final liability is the administrative review procedure. In contrast, a sunset review is not a procedure for determining the amount of final countervailing duty liability. The purpose of the sunset review is to determine the likelihood of the continuation or recurrence of subsidization in the event that the countervailing duty is revoked. Thus, a sunset review involves a prediction of a government’s future behavior without the discipline of an order in place. The focus of the analysis is predictive, as opposed to a focus on the present or the past.

23. With respect to the Panel’s question concerning the ability of the German producers, the German government, and the EC Commission to request an administrative review of the countervailing duty order on certain steel flat products from Germany, 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. Concerning the textual basis for this in the SCM Agreement, as discussed above, 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.

24. In response to the Panel’s question concerning the option of a changed circumstances review, 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.

25. In response to the Panel’s questions concerning the administrative record from the original investigation, 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. 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 order on corrosion-resistant carbon steel flat products from Germany.

26. In response to the Panel's question concerning a particular calculation memorandum from the original investigation, yes, 13 April 2000 was the first time that the German exporters made a request to have the calculation memorandum placed on the administrative record of the sunset review. In response to the Panel's questions concerning other requests to place information from the administrative record in the original investigation on the administrative record of the sunset review, 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. As discussed in the United States' First Written Submission, 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.

27. 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.

28. With respect to the Panel's question concerning the use of the word "determine" as used in Article 21.3, 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." 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. 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 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.

29. With respect to the Panel's question concerning the methodology used by the United States to determine the likelihood of continuation or recurrence of subsidization and injury, the substantive provisions governing likelihood of continuation or recurrence of subsidization are contained in Commerce's *Sunset Policy Bulletin*. 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. The USITC's regulations, at 19 CFR 207.60-207.69, address 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.

30. With respect to the Panel's question as to whether, under the U.S. system, original investigations and reviews under Article 21.3 are different segments of one proceeding, the answer is 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. A countervailing duty proceeding consists of one or more "segments". "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. Each segment contains its own discrete administrative record. A final determination, and the discrete record upon which it is based, is subject to judicial review.

31. With respect to the Panel's questions concerning whether administrative reviews are prerequisites for conducting sunset reviews, 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. 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. Finally, even if there has been no administrative review, Commerce will consider if is evidence demonstrating that programs have been terminated with no residual benefits. In the instant case, even though no administrative review had been conducted, 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.

32. With respect to the Panel's questions concerning a particular calculation memorandum and the use of this business confidential document in Commerce's sunset review, on April 13, 2000, the German producers in the sunset review sought to have *all* the calculation memoranda from the original investigation placed on the record of the sunset review. Commerce, however, 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.

33. 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. 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.

34. 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 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. The German producers in the sunset review were Thyssen Krupp Stahl AG, Stahlwerke Bremen GmbH, EKO Stahl GmbH, and Salzgitter AG. 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. The particular document submitted by the EC in the instant case appears to contain business confidential information for Thyssen. In its First Written Submission, the EC itself notes that this exhibit contains business confidential information.

35. With respect to the Panel's questions concerning acceptance and consideration of certain evidence from respondent interested parties, 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. Generally, therefore, Commerce will accept any evidence from foreign respondents, including evidence with respect to the issues set out in the Panel's question. 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. 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.

36. With respect to the Panel's request for a schematic representation of the timing and information requirements under U.S. law for sunset reviews, the United States provided copies of Annex VIII of Commerce's *Sunset Regulations*, which contains detailed schedules with timing and information requirements for Commerce sunset reviews, and Annex B of the ITC's *Sunset Regulations*, which provides a sample schedule for five-year reviews.

37. With respect to the Panel's request for certain figures concerning the United States' initiation and conduct of sunset reviews under Article 21.3, the United States indicated as follows: The number of sunset reviews under Article 21.3 initiated since 1 January 1995 is 56. 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 is 17. The number of expedited sunset reviews conducted since 1 January 1995 is 24. The number of such reviews which resulted in revocation of the CVD order in question, due to a finding of no likelihood of continuation or recurrence of subsidisation is 0, and due to a finding of no likelihood of continuation or recurrence of injury is 5. The number of full sunset reviews conducted since 1 January 1995 is 15. The number of such reviews which resulted in revocation of the CVD order in question, due to a finding of no likelihood of continuation or recurrence of subsidisation is 3, and due to a finding of no likelihood of continuation or recurrence of injury is 4.