UNITED STATES – FINAL ANTI-DUMPING MEASURES ON STAINLESS STEEL FROM MEXICO: RECOURSE TO ARTICLE 21.5 OF THE DSU BY MEXICO

(WT/DS344)

EXECUTIVE SUMMARY OF FIRST WRITTEN SUBMISSION OF THE UNITED STATES OF AMERICA

JULY 29, 2011

I. INTRODUCTION

1. Proceedings under Article 21.5 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU") are meant to address disagreements "as to the existence or consistency with a covered agreement of measures taken to comply with the recommendations and rulings "of the Dispute Settlement Body ("DSB")." A panel composed under Article 21.5, therefore, begins with the recommendations and rulings of the DSB.

2. The United States welcomes Mexico's acknowledgment that the United States has complied with the DSB's recommendations and rulings in *US – Zeroing (Mexico)* concerning Mexico's "as applied" claims with respect to zeroing in investigations. With respect to Mexico's claims regarding non-compliance with "as such" recommendations and rulings with respect to zeroing in administrative reviews, there is no dispute "as to the existence or consistency" of measures taken to comply. However, Mexico improperly attempts to expand the proper scope of this Article 21.5 proceeding by challenging the WTO-consistency of six administrative reviews (identified in the Annex to Mexico's panel request as case nos. 6 through 11), a 2005 sunset review (identified in the Annex as case no. 12), and the initiation notice for the 2010 sunset review (identified in the Annex as case. no. 13) that are not measures taken to comply, as well as some unidentified "measures closely connected thereto," unidentified "future subsequent periodic reviews," and unidentified "instructions and notices issued pursuant thereto."

3. It should be noted that, as part of the 2010 sunset review of the antidumping order at issue, the U.S. International Trade Commission ("ITC") voted on July 17 to revoke the order at issue in this dispute. Under U.S. law, the antidumping duty order on *Stainless Steel Sheet and Strip in Coils from Mexico* will be revoked effective July 25, 2010, and all duties paid on entries on or after July 25, 2010 will be refunded in full, with interest. Accordingly, the vast majority of duties paid on entries made after the expiry of the reasonable period of time to comply in this dispute have either already been liquidated or will be refunded as a result of the sunset review.

II. STANDARD OF REVIEW AND BURDEN OF PROOF

4. Under Article 11 of the DSU, a panel must "make an objective assessment of the matter before it, including an objective assessment of the facts of the case and the applicability and conformity with the relevant covered agreements." Moreover, under Article 19.2 of the DSU, the Panel's findings and recommendations may not add to or diminish the rights and obligations of Members under the covered agreements. The burden in this dispute is on Mexico to prove that the United States failed to implement the DSB's recommendations and rulings. The Appellate Body's findings in the original proceeding do not excuse Mexico from meeting the burden of proof on all aspects of its claims in this proceeding.

III. ARGUMENT

A. Mexico's "As Such" Claim

5. Mexico claims that the United States has failed to comply with the DSB's recommendations and rulings that zeroing in administrative reviews is "as such" inconsistent with Article VI:2 of the GATT 1994 and Article 9.3 of the AD Agreement. Mexico states that the United States "has taken no final action to implement the DSB's recommendations" with respect to simple zeroing "as such" in

administrative reviews. There is no disagreement as to the "existence" of any such measure taken to comply. The United States has never claimed to have taken such final action and does not dispute that to be the case.

6. In its submission, Mexico refers to the proposed rule and proposed modification published by Commerce on December 28, 2010 that concerns zeroing in administrative reviews ("Proposed Modification"). Mexico correctly points out that the Proposed Modification is exactly that – proposed – and "makes no change in policy or practice." The Proposed Modification is not a "measure taken to comply," and Mexico appears to acknowledge this fact in stating that the United States has taken no final action to comply. Nor is the Proposed Modification within the Panel's terms of reference – as a simple proposal that is not final and has not been adopted, it is not a "measure" let alone a "measure taken to comply" and was not "specifically identified" by Mexico in its request for the establishment of this Panel. Mexico's characterizations of the Proposed Modification if "implemented in its proposed form" are not relevant to this proceeding and appear instead to be calling for statements that would be *obiter dicta*. The United States therefore respectfully requests the Panel not to address Mexico's discussion of the Proposed Modification contained in paragraphs 73-77 of its First Written Submission.

B. Administrative Reviews 1-5

7. In the underlying dispute, Mexico obtained DSB recommendations and rulings with respect to five administrative reviews (identified by Mexico as case nos. 1 through 5). As Mexico is aware, all entries have been liquidated in accordance with U.S. law prior to the end of the RPT. Nevertheless, Mexico argues that the United States has failed to comply with the recommendations and ruling because these five administrative reviews allegedly had prospective effect on subsequent revocation decisions in Administrative Reviews 7 and 9 and the two subsequent sunset reviews (2005 and 2010). In light of the foregoing, Mexico argues that "the United States has an obligation to bring these measures into compliance with the DSB's findings and recommendations."

8. As a legal matter, however, Mexico's arguments are unfounded. Reviews 1-5 are expired measures. When a measure has been found to be WTO-inconsistent, the DSU calls for the Member to "withdraw" or "remove" the measure. In this case, there simply is no longer any measure to be "withdrawn" or "removed" within the meaning of Articles 3.7 and 22.8 of the DSU. Mexico's concept that a Member must somehow "correct" an expired measure due to the potential that a subsequent measure may refer to or rely upon it (what Mexico terms the "prospective effect" of the expired measure) is therefore in error. Moreover, Mexico's references to "prospective effect" appear to be an attempt to bring indirectly within the terms of reference of an Article 21.5 proceeding measures for which there would otherwise not be any basis to challenge.

9. In addition, as a factual matter, the margins of dumping calculated in Administrative Reviews 1 through 4 (identified by Mexico as cases no. 1 through 4) were not considered in the revocation decisions made in connection with either Administrative Reviews 7 or 9. While Commerce did decline to revoke the order as it applied to Mexinox in both Administrative Reviews 7 and 9, the zeroing in Administrative Reviews 1 through 5 was not determinative of either of those decisions.

10. With regard to the revocation determination in Administrative Review 7, Mexico's claim with respect to revocation is premised on the misunderstanding that a weighted average dumping margin calculated with offsets would have qualified the exporter for revocation. In Administrative Review 7 a zero (or *de minimis*) weighted average dumping margin calculated with offsets did not suffice to qualify an exporter for revocation pursuant to the terms of Commerce's regulation. Commerce instead looked to see if there was an absence of sales at less than normal value. Here, Commerce found that Mexinox sold merchandise for less than normal value in subsequent administrative reviews (*i.e.*, Administrative Reviews 6 and 7), a finding that disqualified an exporter from revocation, *regardless* of its behavior during the time period covered by Administrative Review 5.

11. As to the revocation determination Commerce made in Administrative Review 9, the United States would simply note that the margins calculated in Administrative Reviews 1 through 5 are irrelevant, as only sales covered by Administrative Reviews 7, 8, and 9 were considered. And as a factual matter Commerce denied the revocation request in Administrative Review 9 based on evidence of sales of less than normal value in Administrative Reviews 7, 8, and 9.

12. Mexico further argues that the United States has failed to comply with the DSB's recommendations and rulings concerning administrative reviews 1 through 5 because the results of those administrative reviews affected the 2005 and 2010 sunset reviews. Mexico is mistaken.

13. As an initial matter, we would note that Mexico is incorrect to contend that the 2005 and 2010 sunset reviews "will continue to have a legal impact on all subsequent sunset reviews." As discussed previously, the ITC has now voted to revoke the order, and no further sunset reviews will take place. This situation highlights why Mexico's claims regarding measures that were unknown at the time of the panel request should be denied as falling outside the Panel's terms of reference.

14. In the 2005 sunset review, Commerce considered the dumping margins determined in administrative reviews 1 through 3 only. However, in Administrative Reviews 2 and 3, by Mexico's own calculations, even with providing offsets there was dumping at above *de minimis* levels (1.83 and 4.96 percent respectively). In this instance, this would have been sufficient for Commerce to determine that dumping was likely to continue or recur if the order were to be revoked. Thus, the result of the 2005 sunset review would have been the same with or without the use of offsets.

15. With respect to the 2010 sunset review, as noted that review has led to a decision to terminate the antidumping order, so there is no basis for Mexico to complain. Moreover, to the extent that Mexico suggests that Commerce relied upon dumping margins from administrative reviews 1 through 5, Mexico is mistaken. Rather, Commerce relied on the five most recently completed reviews (*i.e.*, Administrative Reviews 6-10) and the margin from the investigation as modified by the Section 129 determination." Moreover, the margin in Administrative Review 10 would be above *de minimis* regardless of whether zeroing is used. When dumping continued with the discipline of the antidumping duty order in place, Commerce would find that dumping is likely to continue or recur in the absence of the order. Accordingly, even under Mexico's own analysis, the results of the 2010 sunset review were not dependent on any zeroing (much less zeroing in Administrative Reviews 1-5).

16. In any event, regardless of the margins of dumping determined in prior administrative reviews, in both the 2005 and 2010 sunset reviews, Commerce found that there was an independent WTO-consistent ground for finding that the dumping is likely to continue or recur. Even if dumping had been completely eliminated (which it was not), the likelihood of continuation or recurrence of dumping determination in the 2005 and 2010 sunset reviews, is still supported by the finding that import volumes for the subject merchandise declined significantly after the antidumping duty order was imposed.

C. This Panel Should Not Reach the Merits of Mexico's Claims Concerning the Subsequent Administrative Reviews (Administrative Reviews 6-11)

17. Mexico claims that a "sufficiently close nexus" in terms of nature, effects, and timing, exist between Administrative Reviews 6 through 11 and the measures covered by the original panel request so that these "closely connected subsequent periodic reviews" are properly considered within the terms of reference of this Panel. The United States disagrees. Specifically, the United States maintains that the date of entry is the relevant date for assessing implementation, and that the fact that due to judicial review liquidation may take place after the expiry of the RPT does not change this conclusion. As such, all entries covered by Administrative Reviews 6-10 fall outside the Panel's terms of reference except for the last two months of entries covered by Administrative Review 10. Moreover, the United States also maintains that Administrative Reviews 10 and 11 fall outside the Panel's terms of reference as neither was specifically identified as a measure in Mexico's panel request as required by DSU Article 6.2. The United States further maintains that the Panel should reject Mexico's claims with regard to Administrative Review 11 as the review has been rescinded. The United States recognizes that the Appellate Body previously disagreed with many of these U.S. positions in *US – Zeroing (Japan) (21.5)*. However, as explained below and as noted above, the United States remains of the view that these findings were incorrect, that there are important factual differences between the disputes (such as the fact that one of the measures at issue was rescinded), and the Panel is not obliged to adhere to the findings of the Appellate Body in another dispute.

1. Implementation Is Determined by the Date of Entry

18. Implementation of the DSB's recommendations and rulings applies only on a prospective basis. In the context of antidumping duties, the date of entry, rather than the date the duties are collected, is determinative in determining compliance. Therefore, under a correct understanding of the covered agreements, the post-RPT actions Mexico challenges with respect to Administrative Reviews 6-9 do not constitute a failure to comply with the DSB's recommendations and rulings in this dispute, because none of these administrative reviews served as the basis for the assessment of duties on entries made after the end of the RPT. The same holds true for all of the entries covered by Administrative Review 10 except for those entries made in the last two months of the review period.

19. Mexico's position would require the United States to adopt retroactive compliance measures and create inequality between prospective and retrospective assessment systems where there should be none. The AD Agreement is neutral between antidumping systems and does not favor one system over the other. Moreover, and as discussed below, this analysis does not change even if liquidation of the

duties paid on those entries happen after the expiry of the RPT.

a. Implementation of the DSB's Recommendations and Rulings Applies Only Prospectively

20. The WTO dispute settlement system requires that implementation be determined on a *prospective* basis. The starting point is Article 21.5 of the DSU, which provides for a dispute settlement proceeding "where there is disagreement as to the existence or consistency with a covered agreement of measures taken to comply with the recommendations and rulings {of the DSB}." The focus in an Article 21.5 proceeding is on whether, as of the time of panel request, a measure taken to comply exists, and if so, whether that measure is consistent with the covered agreements. A Member's compliance with the DSB's recommendations and rulings is therefore determined on a prospective basis – has compliance been achieved as of the date of the Article 21.5 panel request.

21. When considering whether relief is "retroactive" or "prospective" in the context of antidumping duties, provisions contained in both the GATT 1994 and the AD Agreement support the position that the date of entry, as opposed to the date that final duties are collected, is determinative. Article VI:2 of the GATT 1994 provides: "In order to offset or prevent dumping, a contracting party may *levy* on any dumped product an anti-dumping duty not greater in amount than the margin of dumping in respect of such product." Article VI:6(a) of the GATT 1994 reflects the fact that the levying of an antidumping duty generally takes place on "the importation of any product." Nonetheless, Ad Note, paragraphs 2 and 3 of Article VI clarifies that, even for duties that are generally levied at the time of importation, Members may instead require a cash deposit or other security, in lieu of the duty, pending final determination of the relevant information. The liability, however, is incurred at the time of entry. Consistent with the Ad Note, assessment and collection in the U.S. system occurs after the date of importation. Indeed, a Commerce determination in an administrative review normally covers importations of the subject merchandise during the 12 months prior to the month in which the administrative review is initiated.

22. Several provisions of the AD Agreement further support the proposition that the date of entry is the relevant date for determining whether implementation occurred, regardless of when the administering authority determines the amount of dumping duty liability and collects the duties. Article 10.1 of the AD Agreement demonstrates that the critical factor for determining whether particular entries are liable for the assessment of antidumping or countervailing duties is the fact that liability for these duties is incurred on the date of entry. Similarly, Article 8.6 of the AD Agreement demonstrates that the critical factor for determining the applicability of the provision is the date of entry. In fact, whenever the AD Agreement specifies an applicable date for an action, the scope of applicability is based on entries occurring on or after that date.

23. In the U.S. view, previous reports have erroneously dismissed these textual arguments because they were based in the AD Agreement and the GATT 1994 rather than the DSU. Yet the DSU does not exist in a vacuum, but must be read in light of the rights and obligations contained in the covered agreements. Here, the United States had the underlying obligation to comply with the substantive obligations covered by the DSB's recommendations and rulings. In this dispute, the recommendations

and rulings pertained to the AD Agreement and the GATT 1994. The focus in the Article 21.5 panel proceeding is on the existence, or consistency with the AD Agreement or the GATT 1994, of measures taken to comply with the recommendations and rulings concerning the AD Agreement and the GATT 1994.

24. The Appellate Body has confirmed that the AD Agreement does not favor one system over the other, or place one system at a disadvantage. Therefore, a proper interpretation of implementation requires that retrospective duty assessment, prospective duty assessment, and prospective normal value systems be placed on a "level playing field."

25. Previous reports have found that the United States had compliance obligations with respect to importer-specific assessments made on merchandise entering *prior* to the end of the RPT because the United States collected duties on some of this merchandise *after* the end of the RPT. Determination of final liability and collection at some point after importation is a principal feature of a retrospective system. Indeed, that is the main distinction between retrospective and prospective systems, as reflected in the text of Article 9.3.1 and 9.3.2.

26. In the U.S. retrospective system, duties are not *assessed* at the time of entry. Thus, only in retrospective systems does entry of merchandise trigger *potential* liability, because only in retrospective systems is *final* liability determined and collected at a later date.

27. The United States maintains that there is no textual justification for the view that the Panel need not ensure neutrality among differing antidumping systems. If a Member maintaining a retrospective system must act with respect to entries that occurred prior to the end of the RPT compliance for retrospective systems would be very different and more extensive than for prospective duty assessment and prospective normal value systems. By contrast, recognizing that it is the date of entry that controls for purposes of compliance would maintain neutrality among the divergent systems.

28. An approach based on the date of entry would ensure equal treatment between retrospective and prospective dumping systems. The concept that implementation obligations apply only to future entries (*i.e.*, entries occurring after the RPT) is not unique to retrospective systems. Focus on the date of entry as the appropriate date for implementation is consistent with the effect that a finding of inconsistency would have on an antidumping measure in a prospective antidumping system. Under such systems, the Member collects the amount of antidumping duties at the time of importation. If an antidumping measure is found to be inconsistent with the AD Agreement, the Member's obligation is to modify the measure as it applies at the border to imports occurring on or after the end of the RPT.

b. The Fact that Liquidations With Respect to Administrative Reviews 6-10 Will Occur After the End of the RPT as a Result of Judicial Review Can Not Support a Finding of Non-Compliance

29. Under U.S. law, the liquidation of entries will occur in accordance with the final decision of the court, or, in this case, the NAFTA binational panel. Accordingly, the amount of duties levied through

any future liquidation actions may be determined in a manner consistent with the recommendations and rulings of the DSB in the underlying dispute. Here, Administrative Reviews 6, 7, 8, 9, and 10 are subject to NAFTA panel review. If judicial review had not occurred here, the majority of entries covered by Reviews 6, 7 and 8 would have been liquidated before the end of the RPT on April 30, 2009.

30. Article 13 of the AD Agreement requires Members to provide for independent judicial review. A Member that maintains a system that provides for judicial review and judicial remedies for the review of administrative actions should not be subject to findings that it failed to comply based on a delay that is a consequence of judicial review. What the United States must do to comply is determined by the covered agreements, in this case, the AD Agreement and the DSU.

31. The AD Agreement itself recognizes that judicial review may cause a delay in meeting certain obligations. Articles 9.3.1 and 9.3.2 impose time limits for assessing antidumping duties. However, footnote 20 to Article 9.3.1 expressly recognizes that observance of the time limits required in Articles 9.3.1 and 9.3.2 may not be possible where the product in question is subject to judicial review proceedings. Thus, it is clear that if a particular time limit is not observed due to pending judicial review, the delay caused by the judicial review is not inconsistent with the AD Agreement.

32. As a systemic matter and as discussed in the preceding section, WTO obligations do not create inequalities between Members operating retrospective antidumping systems as compared to Members operating prospective antidumping systems. However, a finding that a Member failed to comply because liquidation was suspended until after the RPT due to litigation would give private litigants the ability to control compliance by Members operating retrospective antidumping systems. This is because such a litigant could delay liquidation of an entry for many years to ensure that entries were only liquidated after the expiry of the RPT. This result would not occur in a prospective system, where the duty collection occurs on importation, *i.e.*, at the time of entry.

33. For the above reasons, the Panel should find that future liquidation of the entries covered by Administrative Reviews 6, 7, 8, 9, and 10, which has not occurred, does not demonstrate that the United States failed to comply with the recommendations and rulings of the DSB because these liquidations would have occurred prior to the conclusion of the RPT but for the delay caused by judicial review. Moreover, the calculation methodology for any such future liquidations is unknown.

2. Administrative Reviews 10 and 11 Fall Outside the Panel's Terms of Reference Because They Were Not in Existence at the Time of Mexico's Request for a Panel

34. Under Article 6.2, a panel request must identify the "*specific measures* at issue" in the dispute, and a panel's terms of reference under Article 7.1 are limited to those specific measures. In its Article 21.5 panel request Mexico identifies the "preliminary results" in Administrative Review 10 and the "initiation" of Administrative Review 11. However, neither of these measures were completed at the time of Mexico's panel request (and Administrative Review 11 was never completed), and Mexico does not identify in its panel request the same "measures" that it complains about in its first

submission. Rather, Mexico argues that both administrative reviews are within the terms of reference because both Administrative Reviews 10 and 11, and associated liquidation instructions, have a "close nexus" with preceding measures. Mexico's view has no basis in the text of the DSU, however.

35. Articles 6.2 and 7.1 of the DSU do not permit a panel to examine measures that were not identified in a panel request simply because they may be part of a so-called "continuum" of similar measures that were identified. Nor does the DSU allow for the inclusion of future measures within a panel's terms of reference merely because the process which resulted in the measure had been initiated at the time of the panel request. Rather, under Article 6.2 of the DSU, a panel request must *identify* the *specific* measures at issue, and under Article 7.1, a panel's terms of reference are limited to those specific measures.

36. In addition, the United States believes that systemic considerations militate against taking a contrary position. Article 21.5 proceedings are meant to resolve disagreements over the existence or consistency with the covered agreements of a measure taken to comply. A compliance panel examines a complaining party's claims as to whether a Member has complied with the DSB's recommendations and rulings at the time of the panel request. The WTO dispute settlement system does not contemplate that parties will make new legal claims on new or amended measures midway through a compliance panel proceeding.

3. With Respect to Administrative Review 11, The Panel Must Reject Mexico's Claims Pursuant to Article 9.3 of the AD Agreement, Article VI:2 of the GATT 1994, and Articles 21.1, 21.3 of the DSU

37. The Panel should reject Mexico's claim in this respect as speculative and unfounded. As Mexico acknowledges, Administrative Review 11 was rescinded (*i.e.*, terminated) and no dumping calculations were performed as part of that rescinded review. Accordingly, no "amendments thereto" or "measures closely connected thereto" will come to pass. The same is true for Mexico's alleged "continuing series of determinations," "future subsequent periodic reviews," and "instructions and notices issued pursuant thereto," which are unlikely to occur after the ITC's decision to revoke the order in the 2010 sunset review.

4. Mexico's Claims That the United States Failed to Comply by Not Revoking the Order in Administrative Reviews 7 and 9 Are Unfounded

38. Mexico argues that the United States failed to bring itself into compliance with the DSB's recommendations and rulings by not revoking the antidumping order in Administrative Reviews 7 and 9. As an initial matter, the original dispute was not about any revocation decision by Commerce. Commerce's decisions not to revoke the order as to Mexinox does not demonstrate that the United States failed to comply with the DSB's recommendations and rulings. As discussed above, Mexinox sold subject merchandise at less than normal value in three consecutive years leading up to the revocation determinations in both Administrative Reviews 7 and 9. Accordingly, Mexinox was not eligible for revocation with or without zeroing, and there is no WTO obligation that provides otherwise.

D. This Panel Should Reject Mexico's Claims Concerning the Liquidation Instructions for Administrative Reviews 6 Through 11

39. Mexico argues that for the entries covered by Administrative Reviews 6 though 10, Commerce "expressed its *intention* to issue liquidation instructions" and that such instructions, if and when they are issued at some point in the future, would be WTO inconsistent. Mexico's claims are speculative in nature because liquidation instructions have not been sent, and will not be sent until the NAFTA binational panel litigation is concluded for administrative reviews 6 through 10. The Panel does not need to make any factual findings and reach the merits of Mexico's claims regarding these instructions, except for finding that no instructions concerning the entries covered by these administrative reviews have been issued.

40. Mexico's claim that the issuance of liquidation instructions in Administrative Reviews 6 through 10 is inconsistent with Article 9.3 of the AD Agreement is also incorrect. Because liquidation instructions have not been issued, neither the Panel nor the parties can know whether "the amount of the anti-dumping duty... exceed{s} the margin of dumping." Moreover, the liquidation instructions do not determine the margin of dumping.

41. Mexico's claim that Commerce's issuance of liquidation instructions issued in Administrative Review 11 is also inconsistent with Article 9.3 of the AD Agreement must also be rejected, because the rates included in the instructions were not based on margins determined in the administrative review. Administrative Review 11 was rescinded, and thus no dumping margins were calculated. Pursuant to Commerce's regulations, Commerce issued liquidation instructions to CBP, instructing it to liquidate at the rate in effect at the time of entry. Therefore, there was no violation of Article 9.3 because Commerce did not determine dumping margins in Administrative Review 11, and the liquidation instructions were not based on margins calculated in Administrative Review 11. These facts are substantially similar to what occurs in a prospective normal value system when an importer does not request an administrative review/refund procedure.

42. Mexico's claim that the United States has acted inconsistently with GATT Article II concerning liquidation instructions in Administrative Reviews 6 through 11 must be rejected because Mexico's claim concerning Article II is properly raised only under Article VI of the GATT 1994. Article II:2(b) of the GATT 1994 expressly provides that "nothing in this Article shall prevent any contracting party from imposing at any time on the importation of any product . . . any anti-dumping or countervailing duty applied consistently with the provisions of Article VI." The United States has imposed the antidumping duty order following the less than fair value investigation (as modified by the section 129 determination) consistently with the provisions of Article VI of the GATT 1994. Although Mexico concedes that liquidation has been suspended, it nevertheless states that "the assessment rates determined in those periodic reviews using simple zeroing and the associated liquidation instructions continue to have legal effects." Because liquidation instructions have not been issued, Mexico speculates about something that does not exist.

43. In addition, Mexico's claim that the United States has acted inconsistently with its obligations

under Articles II:1(a) and (b) of the GATT 1994 because it applied simple zeroing in Administrative Review 11 should also be rejected because Administrative Review 11 was rescinded before any antidumping calculations took place. Accordingly, there is no legitimate basis for Mexico to argue that Administrative Review 11 is WTO inconsistent.

44. Finally, Mexico claims that the United States has acted inconsistently with Articles 21.1 and 21.3 of the DSU. Mexico has failed to show how the alleged U.S. failure to implement within the RPT amounts to a breach of either of these DSU articles. Article 21.1 merely states why "prompt compliance" is "essential" to the WTO dispute settlement system. This article imposes no substantive obligation. In addition, Article 21.3 provides a Member with the *right* to a "reasonable period of time" in which to comply with the DSB's recommendations and rulings if it is impracticable for that Member to comply immediately. It does not impose any *obligation* on Members, apart from the obligation to inform the DSB of the Member's intention regarding implementation.

E. Mexico's Claims Concerning the Sunset Reviews Are Unfounded

45. As discussed in section IV.B.2.a, Mexico contends that the 2005 sunset review is within the terms of reference of this Panel. Mexico is incorrect. DSU Article 3.7 provides that the "aim of the dispute settlement mechanism is to secure a positive solution to a dispute." If the 2005 sunset review was indeed necessary to secure a positive solution to the dispute concerning administrative reviews 1 through 5, Mexico should have included it in the original dispute, but it did not. There were no DSB recommendations and rulings regarding sunset reviews and so the 2005 sunset review is not a "measure taken to comply."

46. Mexico similarly argues that the 2010 sunset review is within this Panel's terms of reference. However, at the time of Mexico's panel request, neither Commerce nor the ITC had published their respective final determinations regarding 2010 sunset review. Accordingly, the 2010 sunset review falls outside the Panel's terms of reference for all the reasons discussed above. Moreover, given that the ITC made a negative determination – voting to revoke the antidumping order – it is unclear exactly what "measure" Mexico is now claiming is a measure taken to comply and why that measure is inconsistent with the DSB recommendations and rulings. The United States considers that Mexico's claim is now misplaced.