ANNEX A-1

FIRST WRITTEN SUBMISSION OF MEXICO

I. EXEC,-

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

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

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

- The Department's Fourth Administrative Review Determination Not to Revoke violated Article 11.2 of the Anti-Dumping Agreement because the Department did not terminate the anti-dumping duty immediately upon the addition of the Determination Not to Revoke

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

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

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

ANNEX A-2

FIRST WRITTEN SUBMISSION OF THE UNITED STATES

(3 May 2004)

I. INTRODUCTION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

VII. THE MARGIN CALCULATION METHODOLOGY IN THE FOURTH REVIEW WAS CONS

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

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

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

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

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

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

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

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

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

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

36. Third, under Article 3.5, investigating authorities are obliged only to "examine any known factors other than the dumped imports which are at the same time injuring the domestic industry" and ensure that the injurious effects caused by those factors are not attributed to the dumped imports (emphasis added). If a particular factor is not known to the investigating authorities, or if that factor is not "at the same time injuring the domestic industry," then the investigating authorities are under no obligation to examine that factor in the course of their causality analvu5 in th TD -0.1426 Te8a09 Tc 0 Td to th45 0

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XVIII. CONCLUSION

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