

*United States – Sunset Reviews of Antidumping Measures
on Oil Country Tubular Goods from Argentina:
Recourse to Article 21.5 of the DSU By Argentina
(WT/DS268)*

Answers of the United States to Argentina's Written Questions

July 24, 2006

Measure Taken to Comply

Q1. If USDOC only incorporated the volume inference from its original sunset review, why did USDOC ask question 8 of its questionnaire ("Did you ship any merchandise under consideration to the United States during the period August 1, 1995 through July 31, 2000? If so, indicate the shipment volumes.")

1. See U.S. Answer to Panel Question 18(a).

Q2. The United States indicates that the volume inference from the original sunset review was incorporated into the Section 129 determination.

a. Was the inference in the original sunset review based on the Sunset Policy Bulletin ("SPB")?

b. If yes, does the United States agree that USDOC relied on the SPB in the Section 129 Determination? If not, please explain.

Q3. Is the inference that USDOC draws from the volume decline a necessary part of the USDOC's conclusion in the Section 129 determination that expiry of the measure would be likely to lead to a continuation or recurrence of dumping?

Q4. Does the affirmative "likelihood" determination stand without inference of likelihood based on the volume findings?

Regarding the Volume Inference

Q5. Page 11 of the 129 Determination states: "Declining import volumes after, and apparently resulting from, imposition of an antidumping duty order indicate that exporters would need to dump to sell at pre-order levels."

a. What is the textual support in Article 11.3 for an investigating authority to make a finding based on an "apparent" link between the declining volumes and the dumping order?

- b. Please explain how the USDOC's reliance on an "apparent" link is consistent with the Appellate Body's statement in this dispute that "the investigating authority must arrive at a reasoned determination resting on a sufficient factual basis; it may not rely on assumptions or conjecture."**
- c. Please explain how the USDOC's reliance on an "apparent" link is consistent with the Appellate Body's statement that: "The cessation of imports in the second scenario and the decline in import volumes in the third scenario could well have been caused or reinforced by changes in the competitive conditions of the market-place or strategies of exporters, rather than by the imposition of the duty alone. Therefore, a case-specific analysis of the factors behind a cessation of imports or a decline in import volumes (when dumping is eliminated) will be necessary to determine that dumping will recur if the duty is terminated." (US - Corrosion Resistant Sunset Review, DS244, AB Report, para. 177).**
- d. Why does the USDOC believe that declining import volumes apparently caused by the imposition of the order necessarily "indicate that exporters would need to dump"?**
- e. The quoted statement in the chapeau to this question suggests to Argentina that USDOC found that declining import volumes were conclusive of whether revocation of the order would lead to continuation or recurrence of dumping. Does the United States agree? If not, please explain.**
- f. Why does USDOC focus on the exporter's ability to "sell at pre-order levels"? Is this required in order to obtain termination under Article 11.3? Is the authority's obligation to establish "likely" dumping different if the exporters do not ship at pre-order volumes?**
- g. Can you identify the portion of the Issues and Decision Memorandum from the original sunset determination (ARG- 8) that specifically states that:**
- i. USDOC could draw inferences from "declining import volumes after, and apparently resulting from, imposition of an antidumping duty order";**
 - ii. the Argentine exporters "would need to dump" upon expiry.**
- Q6. We note that the exporter, Siderca, provided factual information in its November 30, 2005 response (ARG-15) regarding the decline in its volume**

(pages 7 - 10).

- a. *Did USDOC consider this information?*
- b. *Did it influence USDOC's statement that the declining import volumes "apparently resulted from the imposition of the antidumping duty?" If no, please explain why not.*
Regarding Article 11.3 and Article 11.4 Obligations

2. The volume analysis is not within the scope of these proceedings.

Q7. The United States has claimed that it is now in compliance with Article 11.3. But, assuming that the DSB ultimately adopts rulings and recommendations that it is not, will the United States terminate the measure?

3. As the United States is in compliance with the DSB recommendations and rulings, there is no basis for the assumption in the question. In any event, the question is not relevant to the matter before the Panel, whether the measure taken to comply by the United States is consistent with the covered agreements.

Q8. In light of the time-frames established by Articles 11.3 and 11.4 (the window of opportunity for the administering authority to collect information to establish the evidentiary basis in order to make the substantive determination), how can these requirements be reconciled with the collection of new information by the USDOC five years later in a compliance proceeding?

4. See U.S. First Written Submission, paras. 28-31, and U.S. Second Written Submission, paras. 20-27.

Q9. If the United States believes that it can conduct more Section 129 determinations in the event of a Panel finding in this case that the United States is not in compliance, is there a limit on the number of such determinations that the USDOC can make? Please explain your answer.

5. The question is premised on a position not expressed by the United States in this proceeding.

Q10. Is there a limit on the number of times that the USDOC can collect, in subsequent proceedings, additional evidence in order to support its original decision to continue the measure? Please explain your answer.

6. This question is speculative.

Q11. Assuming arguendo, that an administering authority can use new

information that was gathered during the RPT in order to bring a WTO-inconsistent Article 11.3 determination into conformity with its WTO obligations, what are the consequences of the new determination being found to be inconsistent in an Article 21.5 proceeding?

7. It is not clear what is meant by “consequences.” The United States and Argentina have reached agreement on some potential procedural consequences in that event. See WT/DS268/14.

Q12. In this case, under what authority could the Member keep in place AD duties that are based on an Article 11.3 determination that has been found by a compliance panel to be an inconsistent determination, following the expiration of the RPT?

8. The question is speculative.

Regarding Acindar's Information -- "Likely Past Dumping"

Q13. Can you identify any circumstance in the original sunset proceeding in which the USDOC or the USITC asked a specific question to Acindar and Acindar did not respond? Please consider in your answer that the USITC stated in its 2001 determination that: "In these reviews, the Commission received responses from Argentine producers Siderca and Acindar (a producer of welded OCTG)." (USITC Sunset Determination, footnote 113).

9. As Argentina may recall, the United States prevailed on all of its claims regarding the USITC, and questions regarding the USITC are therefore beyond the scope of this proceeding.

Q14. Can you identify any circumstance in the Section 129 proceeding in which the USDOC asked Acindar a specific question and Acindar did not respond?

10. It is unclear what Argentina means by “specific question.” However, Acindar did submit a questionnaire response. See, e.g., U.S. First Written Submission, para. 39.

Q15. Why does the USITC identify and send questionnaires to the exporters, while the USDOC does not?

11. As Argentina may recall, the United States prevailed on all of its claims regarding the USITC, and questions regarding the USITC proceeding are therefore beyond the scope of this proceeding.

Q16. Does the investigating authority's obligation under Article 11.3 change depending upon the level of participation by the exporter?

12. See, e.g., *U.S. – Japan Corrosion (AB)*, para. 199; *US – Argentina OCTG (AB)*, para. 234.

Q17. The waiver provisions were applied by USDOC in the original sunset proceeding. The Panel determined that the application of the waiver provisions invalidated the factual basis of USDOC's determination and rendered it inconsistent with Article 11.3.

13. Argentina provides no reference in support of its proposition that the original Panel concluded that the waiver provisions “invalidated the factual basis” of the determination. See U.S. First Written Submission, para. 22.

a. Does the United States agree that the effect of Acindar's non-participation in the original sunset proceeding led to the USDOC's waiver determination, which has already been adjudicated in this Panel's review of the original 2000 sunset determination?

14. Commerce was not aware in 2000 that Acindar had failed to participate; Acindar declined to identify itself at that time.

b. Does the United States agree that the Section 129 Determination is a different measure than the original 2000 USDOC sunset determination?

15. The relevance of the question is unclear, but the Section 129 Determination is a measure taken to comply with the DSB recommendations and rulings in the original dispute.

c. Does the United States agree that Acindar cooperated with the USDOC Section 129 proceeding?

16. Argentina does not identify a provision of the Antidumping Agreement that requires an investigating authority to establish “cooperation.” Therefore, the relevance of this question is unclear.

d. To what extent did Acindar's non-participation in the original 2000 USDOC sunset determination affect USDOC's Section 129 determination?

17. As Argentina may be aware, Commerce permitted Acindar to participate in the Section 129 proceeding, notwithstanding Acindar's failure to participate in the original sunset proceeding.

Q18. *USDOC found that "Acindar likely was dumping subject OCTG during the original sunset review period". The USDOC then inferred that Acindar "was likely to continue selling in the United States at dumped prices if the order were revoked". As a basis for the inference of "likely future dumping":*

- a. Is evidence of actual past dumping sufficient to support the inference of "likely future dumping?"*
- b. Is evidence of "likely" past dumping a weaker basis for the inference than evidence of "actual" past dumping?*
- c. Would "possible" past dumping be a sufficient basis for the inference of likely future dumping?*

18. Article 11.3 does not specify any particular factors that must be considered in a sunset review. See, e.g., *US – Corrosion Resistant (AB)*, para. 123.

Q19. *What level of certainty does the notion of likely past dumping provide?*

19. It is not clear by Argentina means by "level of certainty."

Q20. *If as stated by the US in its Second Written Submission, during the Section 129 Determination proceedings, USDOC sought to evaluate "what the respondent's dumping profile had been over the life of the order" (emphasis added), why didn't the USDOC ask information regarding export price and normal value?*

20. The United States addressed this issue in response to the Panel's questions.

Q21. *At what level of specificity have you identified the products exported by Acindar during the sunset period? Do you know:*

- a. the steel grade;*
- b. the physical dimensions (wall thickness and outside diameter);*
- c. whether they are plain end or threaded and coupled;*

21. The United States addressed this issue in response to the Panel's questions.

Q22. *The same question as above with respect to the products in the Preston Pipe Reports.*

22. The United States addressed this issue in response to the Panel's questions.

Q23. *USDOC took the view that it had the right to develop a new evidentiary basis to support its 2001 decision to continue the measure, provided that the*

information pertained to the sunset period. Why didn't USDOC ask Acindar to identify the specific products that it shipped to the United States during the review period?

23. Argentina has failed to identify any provision in the covered agreement that requires such a question.

Q24. The United States explained during the hearing that it constructed its October 31, 2005 questionnaire (ARG-13) with knowledge that Acindar had no viable home or third market, knowledge which the United States claimed that USDOC obtained in an administrative review of a period subsequent to the sunset review period.

a. Did USDOC establish on the record of the Section 129 determination prior to issuance of its questionnaire that Acindar did not have a "viable" home market or third country market?

24. The United States addressed the issue of viability in response to Panel Question 10.

b. Would you agree that "viability" is an Article 2 concept?

25. Article 2 does not provide "concepts" just as it does not provide "notions." See U.S. First Written Submission, para. 46.

c. Article 2 indicates a standard test for viability, and also indicates that "any" sales in the home or third country market can be used to establish a viable market in certain circumstances. Article 2 also indicates that viability can be determined on a country-wide basis. Did the USDOC consider all options provided for by Article 2 before concluding that there was not a viable home or third country market for all of the years included in the sunset review period?

26. The United States addressed the issue of viability in response to Panel Question 10.

d. Would you agree that "export price" and "normal value" are Article 2 concepts?

27. Article 2 does not provide "concepts" just as it does not provide "notions." See U.S. First Written Submission, para. 46.

e. Can the United States indicate whether it believes that market prices in the importing country can be used as "normal value"?

28. The appropriate surrogate for normal value depends on the facts on the record.

f. In light of the statement by the United States that the Acindar division encompassing OCTG production was profitable, and USDOC's apparent belief that all of Acindar's OCTG production was shipped to the United States, why was it necessary to request product-specific OCTG costs? Why did USDOC not conclude from the profitability of Acindar's OCTG production that Acindar was selling above normal value and was not likely to dump in the United States?

29. The United States is unable to locate, on the record of the proceeding, an argument that Acindar's OCTG production was profitable, nor any argument as to the relevance of that fact.

Q25. The United States indicated in the hearing that it would not compare a welded OCTG product with a seamless OCTG product because of the difference in the two products. Do the same concerns permit the comparison of plain end OCTG with threaded and coupled OCTG? If not, why not?

30. Production of welded OCTG entails a significantly different production process than for seamless OCTG and thus, it has a significantly different cost and price structure. PE and T&C go through the same production process that only differ in the end finishing stages. The differences between welded and seamless OCTG are more relevant than the differences between PE and T&C. This is exhibited by the fact that Preston Publishing collects and reports prices for OCTG by distinguishing between seamless and welded, but it does not do so for end finishing.

Q26. During the hearing and in its Second Submission, the United States explained that it calculated a weighted average of Siderca's plain end and threaded and coupled products in order to ensure that the comparison with the Preston Pipe Report data was on a consistent basis. However, when comparing each of Acindar's U.S. sales (which, by definition, were either plain end or threaded and coupled) to the Preston Pipe Report data (which, by definition, did not distinguish between plain end and threaded and coupled), the Department appears not to have been concerned with any possible distortion that could arise from comparing products with different end finishes. Is this reasonable? If yes, please explain why.

31. Commerce used a weighted average approach to reviewing Siderca's data because it was analyzing the data on an aggregate level. In contrast, when doing its analysis as to Acindar, it did a sale-by-sale analysis so as to compare the sales with contemporaneous price data, and weight averaging was not relevant. Had Acindar been able to provide its cost data, then Commerce would have been able to compare the sales to the costs on a more specific level.

Siderca's Information

Q27. Did USDOC ever advise Siderca, before the final determination, that it considered Siderca's cost information to be internally inconsistent?

32. See U.S. First Written Submission, para. 82.

Q28. Did USDOC give Siderca the opportunity to clarify the inconsistencies?

33. See U.S. First Written Submission, para. 82.

Regarding Waiver

Q29. Once a company files an affirmative waiver and a statement that it is likely to dump, does the USDOC have any discretion under the statute to determine on a company-specific basis that the waiving company would not be likely to dump?

34. See U.S. First Written Submission, para. 14.

Q30. If the answer to the above question is yes, then please explain how a company-specific finding that dumping would not be likely in this circumstance could be consistent with the mandate of Section 751(c)(4)(B) of the Tariff Act?

35. Section 751(c)(4)(B) does not speak to order-wide determinations.

Q31. Does the United States agree that under U.S. law, in the event of a conflict between a federal statute and an agency's implementing regulation, that the terms of the statute would prevail in the event of a conflict? If not, please explain why not.

36. Argentina has not established that, as a matter of U.S. municipal law, any such conflict exists.

Q32. To illustrate the operation of the statutory mandate, please consider the following situation. USDOC maintains an antidumping order on a steel product from country A. There are 3 exporters in A, one of which is a subsidiary of the U.S. company that petitioned for the AD duties. In the sunset determination, that company invokes the waiver provision, admitting that it is likely to dump in the United States upon revocation. The other 2 exporters participate by filing a substantive response.

a. Would DOC make an affirmative likelihood

- determination with respect to the waiving exporter?*
- b. *Would DOC have any discretion not to make an affirmative likelihood determination with respect to the waiving exporter?*
- c. *If the other two exporters later protested that the "admission" was false, and done in order to increase the chances of continuing the measure, could USDOC weigh the evidence to decide not to make an affirmative determination with respect to the waiving exporter?*

37. See U.S. Answer to Panel Question 7.

Q33. Has any party ever used the new waiver provision and submitted a the requisite "admission" that it is likely to dump upon revocation?

38. The United States is unaware of any such waiver at this time.

Others

Q34. Has USDOC ever issued a negative sunset determination in reviews in which the U.S. industry requests continuation of the measure?

39. The United States is unable to relate this question to any of Argentina's claims in this proceeding.