***** CHECK AGAINST DELIVERY *****

United States - Sunset Reviews of Anti-Dumping Measures on Oil Country Tubular Goods from Argentina

AB-2004-4

Statement of the United States at the
Oral Hearing of the Appellate Body

October 15, 2004

Introduction

Mr. Chairman, members of the Division:

1. Thank you for your time in considering this appeal. We have discussed some of the issues with you before in some respects, such as those involving the Sunset Policy Bulletin, and we look forward to continuing that discussion, while other issues are novel. With respect to the defects in Argentina's panel request, we would like to emphasize that we are concerned that the Panel's findings in this dispute would significantly reduce the rights of Members, in particular parties and potential third parties, under DSU Article 6.2.

Sunset Policy Bulletin

2. We will first address the issue of whether the Sunset Policy Bulletin ("SPB") is a "measure" at all for WTO dispute settlement purposes let alone one that "mandates" Commerce to take any action, whether or not WTO-inconsistent. Let me put these issues into perspective. The challenges to the SPB brought previously by Japan and now by Argentina are puzzling. Argentina is merely attacking a useful transparency tool that Commerce is not required to have and which it could, with a word, do away with. A finding against the SPB accomplishes nothing,

because the existence of the SPB has no impact on whether Commerce must or must not undertake any action in a sunset review.

3. Let me first discuss whether the SPB is a measure at all. As explained in our submissions, the status of the SPB can only be judged based on domestic U.S. law. However, the Panel undertook no analysis of whether the SPB is a measure for purposes of WTO dispute settlement. For instance, Commerce was under no obligation to develop the SPB, does not need the SPB to have sufficient legal foundation for its actions (indeed, the SPB adds nothing to that foundation), nor was Commerce required under the U.S. Administrative Procedure Act to publish the SPB in the Federal Register. Any of these could have been relevant matters for the Panel to examine, but it examined none of them. Instead, the Panel simply adopts a conclusion based on its misreading of the Appellate Body report in *Japan Sunset*.

4. Governments make utterances all the time - including in press releases, "frequently asked questions" on a government web site, speeches, and publications. Argentina's approach would have the unfortunate result of having any of those utterances be a "measure" subject to challenge in WTO dispute settlement irrespective of the status of those utterances under the Member's domestic law. Such an approach could have a chilling effect on Members' speech, reducing the amount of information available to other Members and the public. And to what benefit? If a challenge to the utterances were unsuccessful, then there would be no need to change the utterances. If successful, then a change in the utterance would not bring relief. The true measures would remain in place, unchanged, absent a challenge to them.

5. Argentina does not offer any rebuttal to these points of legal error by the Panel. Instead, it simply repeats what the Panel said, or, more often, rewrites or even mischaracterizes what the

Panel said. For example, Argentina refers to its exhibits 63 and 64, as well as excerpts from four sunset determinations, which ultimately demonstrate nothing regarding whether the SPB is a measure, and which the Panel did not itself refer to in making its finding.[1] Also, Argentina attempts to excuse the Panel's failure to analyze this issue by asserting that the Panel did not need to "repeat in its entirety the same exhaustive analysis"[2] the Panel supposedly undertook elsewhere – without identifying where.

6. While Argentina argues that, "The panel did not simply shut its eyes and adopt the Appellate Body finding,"[3] a simple examination of the Panel's analysis shows it is inescapable that the Panel did just that. Argentina notes that the Appellate Body stated in *U.S. - Shrimp 21.5* that the panel in that dispute "was correct in using [the Appellate Body's *Japan Alcohol*] findings as a tool for its own reasoning,"[4] but Argentina ignores the fact that the Panel in this dispute offered no reasoning of its own whatsoever; it merely parroted what it incorrectly considered to be the Appellate Body's ultimate conclusion on the SPB. This is no basis for a conclusion that the SPB is a measure, and the Appellate Body should reverse that finding.

7. Turning now to the question of whether the SPB can accurately be said to require Commerce to do anything, the Panel again failed to look at U.S. domestic law – the *only* thing that *can* require Commerce to do anything – to see whether the SPB is mandatory. The Panel pointed to no principle of U.S. law that in any way supports the conclusion that the SPB "requires" Commerce to do anything at all, or that following the same logic as that expressed in a

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[1] Appellee Submission of Argentina, paras. 20-22.
[2] Appellee Submission of Argentina, para. 17.
[3] Appellee Submission of Argentina, para. 16.
[4] Appellee Submission of Argentina, para. 18.

non-binding document somehow makes that document binding. The Panel's approach is akin to saying that because subsequent panels continue to find persuasive the logic of an earlier panel, that earlier panel has become "binding" on those later panels. But the "consistent application" of the earlier panel's logic does not alter the legal status of that earlier panel's report.

8. Argentina also engages in creative rewriting of the Panel report (and the *Japan Sunset* Appellate Body report) on the question of whether the SPB mandates a WTO-inconsistent presumption. For example, while the Panel found that its analysis of the text of the SPB yielded inconclusive results regarding whether there is an irrefutable presumption in Section II.A.3 of the SPB, Argentina in paragraphs 35-36 appears to attribute to the Panel an (incorrect) reading of the *Japan – Sunset* Appellate Body report supporting the conclusion of an irrefutable presumption. Indeed, this Panel never undertook this analysis, instead relying solely on the alleged "consistent application" of the SPB. In addition, Argentina's explanation of *Japan Sunset*[5] is misleading; Argentina quotes the Appellate Body as follows: "the Appellate Body noted that [language in the SPB] suggested 'by negative implication, that data . . . *will* be regarded as conclusive . . . .'" In fact, the Appellate Body said that the statement "*may* suggest"[6] the data will be regarded as conclusive; Argentina compounded the misrepresentation by omitting the Appellate Body's statement in the sentence following the quotation, "In our view, however, the language of Section II.A.3 is not altogether clear on this point."[7] Thus, neither the Appellate Body in *Japan Sunset* nor the Panel in this dispute reached the conclusion which Argentina attributes to them.

9. Argentina also relies heavily on the repeated assertion that the United States "failed to

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[5] Appellee Submission of Argentina, para. 35.
[6] *Japan - Sunset* Appellate Body Report, para. 179.
[7] *Japan – Sunset* Appellate Body Report, para. 179.

rebut" Argentina's exhibits 63 and 64. This assertion is false. As the United States explained in its appellee submission at paragraph 189, while the United States did not contest the statistics in the exhibits, the United States thoroughly rebutted the *probative value* of these exhibits. It did so in its first written submission and again in answers to panel questions.[8]

10. As explained there, Argentina's logic with respect to these exhibits, unfortunately shared by the Panel, is an example of the classic *post hoc, ergo propter hoc* fallacy. Argentina's logic can be seen to be wrong if one considers the common experience – common, anyway, in the United States – of tipping in restaurants. I, for one, routinely tip approximately 15% of the bill in every restaurant, no matter how good or bad the service has been, and if someone were to prepare an exhibit like Argentina's exhibit 63, they would produce a similar 100% record of tips. But to conclude from that record that a 15% tip is *required* would be wrong – we all know that nothing *compels* those tips.

11. Further, with respect to the use of the "consistent application" of a measure in determining its meaning, we explained in our appellant submission several ways in which this consideration might be relevant to determining the meaning of a measure.[9] We would also like to note that there may in fact be some legal systems where repetition can lead to the development of law – for example, customary international law can develop that way. But the U.S. system is not such a system, though the Panel's (and Argentina's) analysis makes the unspoken, false assumption that it is.

12. One would expect a more careful analysis from a WTO panel. One would expect an

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[8] *See* First Written Submission of the United States, paras. 183-187; U.S. Answers to First Set of Panel Questions, paras. 16 and 17-19.

[9] Appellant Submission of the United States, para. 22.

explanation of why repetition of logic expressed in a non-binding, transparency document makes that document binding on U.S. authorities – as a matter of U.S. law. Argentina is dismissive of the U.S. arguments on this point, again misrepresenting U.S. arguments, in this case by suggesting that the United States is arguing that WTO panels must accept without question a Member's explanation of the meaning of its own laws.[10] The United States explicitly stated that panels need not accept without question a Member's explanations of its laws.[11] However, this does not also mean that a panel can ignore the actual status of an instrument within a Member's municipal legal system in determining the meaning of that instrument. Further, panels may not mechanistically apply artificial interpretive principles not found in a Member's municipal law to mis-determine the meaning of its domestic laws, regulations, and instruments.

13. In this dispute, it was Argentina that had the burden of proving the meaning of the SPB, and it failed to explain why, as a matter of U.S. law, the SPB had the claimed effect of requiring Commerce to take certain actions. It also failed to rebut U.S. arguments on why the SPB did not act in this manner. Yet the Panel made findings with no basis in U.S. law, findings which were, as a result, clearly and unambiguously wrong.

14. Argentina notes that the Appellate Body has concluded that DSU Article 11 claims "go to the very integrity of the WTO dispute settlement system itself."[12] Argentina misreads Article 11, which nowhere uses such a test, nor has the Appellate Body applied such a test in finding a panel not to have applied the Article 11 standard of review, for example in *Wheat Gluten*.[13]

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[10] Appellee Submission of Argentina, paras. 42, 46.

[11] Appellant Submission of the United States, para. 14.

[12] Appellee Submission of Argentina, para. 24.

[13] Appellate Body Report, *United States – Definitive Safeguard Measures on Imports of Wheat Gluten From the European Communities*, WT/DS166/AB/R, adopted on 19 January 2001,

However, were a WTO panel to conspicuously misdescribe the meaning of a measure, and then find a WTO breach based on that misreading, this would undermine the credibility and integrity of the system. The United States did not ask the Panel to blindly accept the U.S. explanation of the meaning of the SPB – but it did ask for findings that were not egregiously, and unsupportably, wrong.

The Waiver Provisions of U.S. Law

15. Under U.S. law, Commerce is *obligated* to "conduct a review to determine" whether revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping.[14] Also, under U.S. law, Commerce is *obligated* to consider *all* information on the administrative record of the sunset review in making its likelihood determination.[15] This explicitly includes all information in parties' submissions – regardless of whether a particular submission is "complete."[16]

16. The Appellate Body has stated that Article 11.3 of the Antidumping Agreement envisages that "authorities conducting a sunset review must act with an appropriate degree of diligence and arrive at a reasoned conclusion on the basis of information gathered as part of a process of reconsideration and examination."[17] This is exactly what U.S. law governing Commerce's conduct of a sunset review requires. Nothing in the waiver provisions at issue in this case alters or amends these requirements.

17. Rather, the waiver provisions direct Commerce to conclude that revocation of the order

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paras. 162-63.

[14] 19 U.S.C. § 1675(c)(1) (Exhibit ARG-1).

[15] 19 C.F.R. § 351.308(f) (Exhibit US-3).

[16] 19 C.F.R. § 351.308(f) (Exhibit US-3).

[17] *See* Appellate Body Report, *US - Steel Sunset*, para. 111.

would be likely to lead to continuation or recurrence of dumping *for an individual respondent* that provides no response or an incomplete response to Commerce's sunset questionnaire. Under U.S. law, Commerce is still required to complete a review and base its final, order-wide likelihood determination on any and all information on the administrative record of the sunset review.

18. Commerce does not issue final company-specific likelihood determinations; nor, as the Appellate Body has already found, are such determinations required under Article 11.3.[18] Thus, the Panel erred by analyzing whether a company-specific determination is consistent with Article 11.3, concluding that it is not, and then imputing that alleged inconsistency to the order-wide determination.[19] Instead, the Panel should have analyzed whether the order-wide determination is consistent with Article 11.3.

19. Argentina also states that the "deemed waiver" rule applies only to respondent interested parties and that U.S. parties are not similarly exposed to the "jeopardy" of deemed waiver.[20] Contrary to Argentina's assertions, U.S. law contains provisions applicable to domestic interested parties analogous to the so-called "deemed waiver" provisions. In particular, if no domestic interested party responds to Commerce's notice of initiation, Commerce will terminate the sunset review and revoke the order.[21] Commerce also will terminate the sunset review and revoke the order if no domestic interested party files a "complete" response to Commerce's

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[18] *Japan Sunset*, para. 149.

[19] *See, e.g.,* Panel Report, para. 7.101.

[20] Appellee Submission of Argentina, para. 56.

[21] 19 U.S.C. § 1675(c)(3)(A) (Exhibit ARG-1), and 19 C.F.R. § 351.218(d)(1)(iii)(B) (Exhibit ARG-3).

sunset questionnaire.[22]

20. In its appellee submission, Argentina makes a number of factual misstatements concerning the waiver provisions and misstatements about Article 11.3 which serve only to confuse the issue. For example, Argentina states that the waiver provisions result in Commerce reaching a final order-wide likelihood determination "without analysis" and "without any information", citing the sunset review of antifriction bearings from Sweden as illustrative.[23] Yet this decision demonstrates just the opposite point – in spite of the fact that one exporter responded, and that exporter waived participation, *Commerce nevertheless considered all of the evidence on the record in reaching its final, order-wide sunset determination.* Argentina quoted selectively from Commerce's determination in that review but neglected to quote Commerce's statement that it considered and based its likelihood determination "on the fact that dumping continued"[24] over the life of the order – and not on the fact that the exporter waived participation, or the fact that Commerce made an affirmative likelihood determination for that exporter. The United States notes that in that review, the information in support of revocation of the order was placed on the record by *domestic interested parties* – importers of the subject merchandise. This only confirms the point the United States has made all along: a respondent interested party may waive participation, but that does not mean the record will not contain information in support of revocation of the order.[25] Indeed, the United States pointed out in its

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[22] 19 C.F.R. §§ 351.218(e)(1)(i)(A) and (C) (Exhibit ARG-3).

[23] Appellee Submission of Argentina, paras. 69-70.

[24] *Antifriction Bearings from Sweden*, 64 Fed. Reg. 60282, 60284 (November 4, 1999) (ARG-63, Tab 6), partial quote in Appellee Submission of Argentina, para. 69.

[25] *See, e.g.,* U.S. Answers to First Set of Panel Questions, paras. 10, 17, 19, 22-23, 25, 29-32, 36, 38-39; Second Written Submission of the United States, paras. 24-26; U.S. Answers to Second Set of Panel Questions, paras. 3, 7, 11.

answers to panel questions that the record might contain information to explain depressed import volumes[26] – the precise scenario in the review Argentina cited. That review contradicts Argentina's argument that the United States cannot "credibly" argue that an order-wide determination can be consistent with the requirements of Article 11.3 when one or all of the exporters waive.[27]

21. Argentina's discussion of the waiver provisions and Articles 6.1 and 6.2 suffers from errors as well. First, Argentina argues that the Appellate Body is not authorized to make findings on the U.S. claims because the United States did not "identify any error of law in the panel report or erroneous legal interpretation by the panel"[28] and because the United States did not provide "citations" or "quotations" to the Panel's findings.[29] The U.S. Appellant submission pointed out that the section of the regulations in question could not possibly be inconsistent with Articles 6.1 or 6.2 because it has nothing to do with the presentation of information or argument.[30] The United States also noted that the Panel seemed to have assumed that Articles 6.1 and 6.2 establish obligations that they simply do not establish.[31] Inasmuch as the crux of the U.S. argument is that the Panel *failed* to explain why the cited regulations were inconsistent and that the Panel seemed to *assume* obligations not found in Articles 6.1 and 6.2, it is difficult to understand how the United States can quote something the Panel *did not say*. Second, as we explained in our appellant submission, U.S. law simply does not operate in the fashion posited by

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[26] U.S. Answers to Second Set of Panel Questions, para. 7.
[27] Appellee Submission of Argentina, para. 64.
[28] Appellee Submission of Argentina, para. 78.
[29] Appellee Submission of Argentina, para. 72.
[30] Appellant Submission of the United States, para. 51.
[31] Appellant Submission of the United States, para. 55.

Argentina, nor in the fashion hypothesized by the Panel.[32]

22. Finally, we take issue with Argentina's characterization of the U.S. arguments based on Article 11 of the DSU.[33] The United States has not made its Article 11 claims lightly. With respect to the SPB and the waiver provisions, an objective assessment of the evidence presented in this dispute cannot support the conclusions the Panel reached. The Panel simply dismissed the U.S. explanations of how its own municipal law works – yet the Panel did not have factual evidence to support a contrary interpretation.[34] It is for this reason that the United States has challenged the Panel's assessment under Article 11.

Issues Relating to the Likelihood of Continuation or Recurrence of Injury

23. Argentina has raised a number of issues regarding the Panel's findings with respect to the U.S. International Trade Commission's five-year sunset determination, which we addressed in our appellee submission. For that reason, we will limit our comments to the key issues.

24. First, Argentina argues that the Panel committed two errors with respect to the "likely" standard of Article 11.3: that it failed to interpret likely to mean probable and that it discounted the ITC's statements in other fora as to the meaning of likely. Both of these arguments are flawed. There is no evidence that the Panel *did not* interpret likely as "probable" in the sense that the Appellate Body used that term in *Japan Sunset*, and there is no suggestion in the Panel's report that it interpreted likely to mean "possible." The Panel was also correct in dismissing the relevance of the ITC's statements in other fora. Argentina is quibbling with the Panel's weighing of the evidence, not its legal conclusions.

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[32] Panel Report, paras. 7.121-7.127.
[33] Appellant Submission of the United States, paras. 56-76.
[34] *See, e.g.*, Appellee Submission of Argentina, paras. 81, 84, 93.

25. Second, with respect to the findings on likely volume, price, and impact, Argentina maintains that the Panel erred in two respects: by not properly applying the likely standard to each factor considered and by failing to assess whether the ITC properly established the facts, objectively evaluated these facts, and made a determination based on positive evidence. Argentina's arguments are unpersuasive. The Panel made no errors of law or of legal interpretation in reviewing the ITC's findings on volume, price effects, and impact. The Panel found that the ITC determination on its face applied the likely standard, and the Panel then evaluated whether the evidence supported the finding of likelihood. Again, Argentina is taking issue with the Panel's weighing of the evidence.

26. Regardless, the evidence before the Panel fully supported the Panel's conclusions. The evidence the ITC considered shows that its determination was based on a proper establishment of the relevant facts and an unbiased and objective evaluation of those facts, and was based on positive evidence – in application of the likely standard.

27. Third, Argentina claims that the Panel failed to interpret Article 11.3 to encompass various substantive obligations that arise by virtue of the use of the words "review" and "determine," and to find that the ITC's sunset determination violated those obligations. Argentina's claim that the ITC's determination failed to meet those standards is nothing more than a bald assertion. The agency made a prospective determination; conducted a rigorous examination and arrived at a reasoned conclusion on the basis of information gathered in the review; made a fresh determination and did not simply assume that a likelihood of injury existed; determined, on the basis of a proper establishment of the facts, that termination of the duty would

be likely to lead to continuation or recurrence of injury; and *had* a sufficient factual basis to allow it to draw reasoned and adequate conclusions.

28. Argentina's alternative argument – that the Panel should have found that the obligations of Article 3 of the Antidumping Agreement apply to sunset reviews – also is unconvincing. The Panel's conclusion that Article 3 does not apply *per se* to sunset reviews is supported by: (i) the fundamentally different nature of original investigations and sunset reviews, (ii) the Appellate Body's reasoning in *Japan Sunset*, and (iii) by a textual analysis of the Agreement itself.

29. Fourth, Argentina argues that the Panel erred in finding that cumulation is permitted in sunset reviews. Argentina takes the position that cumulation must be prohibited because it is not expressly provided for in Article 11.3. This position turns established principles of treaty interpretation on their head: It would mean that the shorter the provision in an agreement, the more the prohibitions it contains. Argentina would not only add words that are not present in the agreement, but it seeks to create entirely new obligations.

Preliminary Rulings

30. With regard to the Panel's evaluation of the U.S. preliminary ruling requests, the United States explained in detail why that assessment was deficient.[35] In short, the Panel interpreted "reading the panel request as a whole" to mean that merely referring to a measure in one part of a panel request sufficed to expand claims found in a separate section of the panel request, without regard to context or syntax. The Panel committed other errors as well.[36]

31. Argentina has again responded by mischaracterizing the U.S. submission and the Panel's

[35] Appellant Submission of the United States, paras. 91-111.
[36] *See* Appellant Submission of the United States, paras. 94-98, 102-105, 107-111.

report, and by offering unconvincing explanations to defend its poorly drafted panel request. Both the Panel's approach and the one advocated by Argentina eviscerate DSU Article 6.2 and instead place the burden on the responding party and potential third party Members of deciphering ambiguous panel requests and of inferring claims and measures not described therein.

32. The following examples highlight Argentina's distortion of the Panel report: In its discussion of the Panel's reliance on the section headings to expand the terms of reference of the dispute, Argentina argues that the Panel did not rely exclusively on the heading of section B.3 of the panel request to find that one particular "as applied" claim was within the terms of reference.[37] Yet a simple reading of the Panel report contradicts Argentina's interpretation.[38] Moreover, Argentina states that the United States failed to cite the paragraphs of the Panel report in which the Panel drew its conclusions,[39] but this is also untrue.[40]

33. In addition, according to Argentina, the United States wrongly asserted that Argentina stated the "totality of the claims" was found exclusively in sections A and B.[41] First, what the United States *actually* asserted was that Argentina *encouraged* the United States to believe that sections A and B of the panel request contained the totality of the claims.[42] Second, Argentina stated that "its particular claims were indeed set forth in sections A and B, while Page Four provides an elaboration of those claims."[43] Argentina's statement therefore confirms, rather than refutes, the U.S. assertion.

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[37] Appellee Submission of Argentina, para. 134.
[38] Panel Report, para. 7.32.
[39] Appellee Submission of Argentina, n. 140.
[40] *See* Appellant Submission of the United States, paras. 95-96.
[41] Appellee Submission of Argentina, para. 181.
[42] Appellant Submission of the United States, para. 109.
[43] Appellee Submission of Argentina, para. 181.

34. Moreover, as the United States pointed out in its first written submission to the Panel, Page Four lists, for example, the ITC sunset review regulations.[44] Yet those regulations are not referred to anywhere in section B, the section devoted to claims relating to the ITC. Similarly, Page Four lists provisions of the WTO agreements that are not found anywhere in sections A and B -- Articles 1 and 18 of the Antidumping Agreement and Articles VI and XVI of the GATT 1994. In other words, Page Four *does* contain "something different." If Page Four is simply an "elaboration" of the claims in sections A and B, then how can Argentina explain the listing of these additional Articles? On the other hand, if Page Four was supposed to constitute a separate set of claims, why does Argentina state that Page Four is simply an elaboration of the claims found in sections A and B?

35. The United States is particularly surprised by Argentina's intimation that because sunset review disputes have been brought by *other* Members, the United States is "intimately familiar with all lines of challenge, and all lines of defense."[45] In this connection, the United States would note that Mexico does not appear to agree with Argentina, and has emphasized the "significant differences in matters of law and fact" in this dispute and the Mexican OCTG dispute.[46] In any event, Argentina seems to be suggesting that the complaining party's panel request is not subject to the disciplines of Article 6.2 if another complaining party has already filed a panel request in a similar dispute. Moreover, if Argentina believes this dispute is the same as the one advanced by Japan, then the United States cannot understand why Argentina did not simply submit a modified version of the panel request in that dispute. Thus, in making this assertion, Argentina appears to

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[44] First Written Submission of the United States, para. 20.
[45] Appellee Submission of Argentina, para. 187.
[46] Third Party Submission by Mexico, paras. 2-3.

have undermined its own allegation that its panel request presented the problem clearly.

36. With respect to prejudice suffered as a result of an Article 6.2 deficiency, having been told that sections A and B set forth the "particular claims," the United States did not expect, and could not reasonably have expected, Argentina to make "as-such" claims against, for example, the SPB, the SAA, and the so-called "consistent practice." Indeed, Argentina failed in its panel request to provide what has become one of its primary claims, as confirmed in its subsequent submissions to the Panel, and one of the primary issues before the Appellate Body. In a dispute involving a large number of claims, a complaining party's failure to be clear and to include every measure and claim at issue in its panel request is particularly prejudicial. Rather than giving the United States the full measure of the time between the filing of the panel request and the filing of its first submission to prepare for its defense – five months – Argentina reduced the U.S. time to prepare to the time between the filing of its first written submission and the filing of the U.S. first submission – three weeks.

37. We note that Argentina's discussion of prejudice contains numerous errors – for example, the unsubstantiated statement that the "key attendant circumstance" is whether a party can demonstrate that it has suffered prejudice[47] – but in the interests of time we will not identify each error in this oral statement.

Conclusion

38. In evaluating the issues concerning the likelihood of continuation or recurrence of dumping, the Panel made a number of fundamental errors, including the legal conclusions it drew and the standard of review used in making its factual findings. Faulty analysis does no service to

[47]Appellee Submission of Argentina, para. 106.

the dispute settlement system. Similarly, reading Article 6.2 of the DSU to permit the complaining party to obscure its claims undermines Members' ability to know what is at stake in a dispute, to the detriment of the responding party and Members trying to decide whether to exercise their third party rights. It is not much to ask a complaining party to redraft a panel request that is deeply flawed.

39. With respect to the issues in connection with likelihood of continuation or recurrence of injury, the Panel correctly found that Article 11.3 does not contain the raft of obligations Argentina seeks to impute to it. Moreover, the Panel correctly found that the ITC applied the "likely" standard and that the facts, properly established, supported its finding of likelihood.

40. Thank you again for your time. We look forward to your questions.