

*United States – Sunset Reviews of Anti-Dumping Measures on
Oil Country Tubular Goods from Argentina:
Recourse to Article 21.5 of the DSU by Argentina*

WT/DS268

**Closing Statement of the United States
at the Panel Meeting with the Parties**

July 13, 2006

1. The United States recalls that the Appellate Body report in this dispute explains the relevance of a company-specific finding to an Article 11.3 claim, where the Article 11.3 determination is made on an order-wide basis: the question is whether such a company-specific finding tainted the order-wide determination.¹ Therefore, Argentina must demonstrate that any company-specific finding in this dispute tainted the order-wide determination.
2. The United States also recalls that it is under no obligation to make a company-specific finding. Commerce declined to make such a finding regarding Siderca. Therefore, under the analytical framework set out by the Appellate Body, Commerce cannot have acted inconsistently with Article 11.3 by not making *any* finding regarding Siderca.
3. With respect to Acindar, the United States recalls that Acindar declined to participate in the original review. According to Argentina, Acindar did not know about the review. However, as the Panel may know, the United States initiates sunset reviews automatically and does so via public notice in the Federal Register. We find it difficult to accept a contention that an exporter shipping merchandise subject to a dumping order was unaware of a sunset review of that order. Moreover, having now a second opportunity to provide information, Acindar failed to provide some of the information requested, even to attempt to do so, as Siderca did.

¹Appellate Body Report, paras. 231-232.

4. In the fact of these facts, Argentina argues that we could not collect new information to come into compliance. Argentina argues that Articles 11.3 and 11.4 prevent the collection of new information. But those provisions are silent on *how* a Member comes into compliance, and they say nothing about the collection of new information. The United States initiated its review prior to the five-year anniversary of the order and completed that review within 12 months. That the review was later found WTO-inconsistent does not change either of those facts.

5. With regard to Commerce's analysis of Acindar's likely past dumping, we recall that a sunset review is a forward-looking analysis. The calculation of a dumping margin is not required, nor does the absence of dumping necessarily require termination. In this proceeding, we were between those extremes because one exporter stopped shipping and the other began shipping during the period of review and was not subject to administrative review until after the sunset review period. It is clear that these facts alone do not mean that dumping is not likely to continue or recur, because we know that it can, and we know that it has. The question is what factors the investigating authority uses to analyze likelihood. The Appellate Body has said that no methodology is prescribed.

6. Commerce did not calculate a dumping margin, nor could it have done so, as Argentina acknowledges, because the companies did not retain those data. There is nothing wrong with that, but Argentina cannot complain that it is Commerce's fault that the data do not exist. Commerce still had to analyze whether dumping was likely to continue or recur. To make the determination, Commerce analyzed whether it was likely that Acindar had dumped in the past. We do not see that the Appellate Body has found Article 2 to be directly applicable in situations

other than those involving the calculation of a margin.² Nevertheless, we consider that Article 2 informs the analysis of likely past dumping, and Article 2 does provide, and did provide, guidance in this redetermination.

7. Finally, we note that Argentina has spent much of these proceedings putting new facts before the Panel, including, for example, the U.S. Steel Price List. We cannot reconcile that approach with Article 17.5(ii) of the Antidumping Agreement. Moreover, Commerce placed the Preston price data on the record on November 22; if Argentine respondents considered that the U.S. Steel prices were more probative, they were free to do so in any of the four submissions they made – Siderca’s November 30 comments, December 7 comments, or December 14 comments, or Acindar’s November 30 comments, all put on the record after November 22.

8. This concludes our closing statement. We thank the Panel, the Secretariat, and the interpreters for their hard work.

²See, *United States – Corrosion Resistant (AB)*, para. 124.