UNITED STATES - SUNSET REVIEWS OF ANTI-DUMPING MEASURES ON OIL COUNTRY TUBULAR GOODS FROM ARGENTINA

WT/DS268

SECOND WRITTEN SUBMISSION

OF THE

UNITED STATES OF AMERICA

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I. INTRODUCTION

1. Given the comprehensive nature of the Panel's questions regarding the Department of Commerce's ("Commerce") sunset review procedures, the United States will use this submission to place Argentina's claims regarding those procedures (1) within the perspective of the WTO agreements regarding sunset reviews; (2) in the context in which sunset reviews are conducted in the United States; (3) in terms of the actual sunset review procedures, in particular, the decision whether to expedite; and (4) in terms of this particular sunset review. In so doing, the United States will reconfirm that, no matter how they are analyzed, Argentina's as such and as applied claims regarding those procedures are baseless.

2. Because these claims are baseless, Argentina has sought to color the proceedings by alleging a series of "irrefutable presumptions" in U.S. sunset review law. As this submission will make clear, Commerce provides ample opportunity for parties to "refute" evidence on the record and findings made in the course of the sunset review. A party's failure to attempt to refute a finding does not make that finding irrefutable; it simply means the party has not availed itself of the opportunity to present facts and arguments. Article 11.3 of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* ("Antidumping Agreement") does not prescribe specific methodologies with respect to sunset reviews; instead, it requires Members to afford interested parties the full opportunity for a defense of their interests.[1] U.S. sunset review law complies with this requirement.

3. The general tenor of Argentina's position with respect to Commerce's determination in this particular sunset review is that the review was conducted unfairly because Siderca was the "only exporter" of OCTG during the original investigation, yet Commerce found that Siderca did not meet the 50 percent threshold normally used to assess whether to conduct an expedited or full sunset review.[2] Notwithstanding the significant fact that Siderca ignored more than one opportunity to suggest a different outcome, the United States notes that there is a second Argentine exporter of OCTG to the United States; this exporter did not respond to the notice of initiation.[3]

4. The United States is concerned that if the Panel adopts Argentina's arguments, it will create an incentive for respondent interested parties to participate minimally, if at all, in sunset review proceedings. According to Argentina's arguments, respondent interested parties should be permitted to refuse to participate fully in a sunset review, and then later have a WTO panel find that the results of that review are not consistent with WTO obligations. The United States does

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[1] *See e.g., United States – Sunset Review of Anti-Dumping Duties on Corrosion-Resistant Carbon Steel Flat Products from Japan*, WT/DS244/AB/R, Report of the Appellate Body, circulated December 15, 2003 ("*Japan Sunset"),* para. 123.

[2] First Written Submission of Argentina, para. 151.

[3] The United States notes the care with which Siderca described itself in its substantive response to the initiation of the sunset proceedings: "Siderca is the only producer of seamless OCTG in Argentina. To Siderca's knowledge, there is no other producer of OCTG in Argentina." Substantive Response of Siderca to the Department's Initiation of Sunset Review of the AD Order on OCTG from Argentina (Aug. 2, 2000) at 3 (emphasis added). (Exhibit ARG-57.) Siderca carefully qualified the latter statement, and only the latter statement. The United States understands Acindar, the other Argentine producer, to manufacture welded OCTG, rather than seamless OCTG.

not believe that the Antidumping Agreement permits respondent interested parties to bootstrap investigating authorities into revoking orders by participating minimally, if at all, in the proceedings. Indeed, the Appellate Body in *Japan Sunset* has made specific reference to the "prominent role" of interested parties in sunset reviews because they often have the "best evidence" of their likely future pricing behavior.[4]

5. The United States believes that the facts and argument presented in this proceeding confirm that Commerce makes appropriate procedures available to respondent interested parties so that they may defend their interests in sunset review proceedings. This submission will provide the following in support thereof: A review of the Appellate Body's pertinent findings in *Japan Sunset*; an overview of U.S. law governing Commerce's conduct of sunset reviews; a demonstration that the law is consistent with the Antidumping Agreement; and a discussion of respondent interested parties' participation in the part of the review relating to the determination of likelihood of dumping.

6. This submission also addresses the determination by the U.S. International Trade Commission ("ITC") that revocation of the duties would be likely to lead to continuation or recurrence of injury. Specifically, the submission responds to arguments made by Argentina in its oral statement at the Panel's first meeting and to certain points raised by third parties in their written submission and oral statements regarding the ITC's injury determination.

II. REVIEW OF KEY APPELLATE BODY FINDINGS IN *JAPAN SUNSET*

7. In *Japan Sunset*, various aspects of the U.S. sunset review regime were challenged, requiring the Appellate Body to examine the nature of the obligations arising from Article 11.3 of the Antidumping Agreement. By closely reviewing the language of Article 11.3 and comparing it with language in other provisions of the Agreement, including Article 11.2, the Appellate Body concluded that "Article 11.3 does not prescribe any particular methodology to be used by investigating authorities in making a likelihood determination in a sunset review;"[5] "WTO Members are free to structure their anti-dumping systems as they chose, provided that those systems do not conflict with the provisions of the *Anti-Dumping Agreement*."[6] Furthermore:

> Article 11.3 does not expressly state that investigating authorities must determine that the expiry of the duty would be likely to lead to dumping *by each known exporter or producer concerned.* In fact, Article 11.3 contains no express reference to individual exporters, producers, or interested parties . . . . We also note that Article 11.3 does not contain the word 'margins' . . . .[7]

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[4] *Japan Sunset,* para. 199.
[5] *Japan Sunset,* para. 149.
[6] *Japan Sunset,* para. 158.
[7] *Japan Sunset,* para. 149.

The Appellate Body thus confirmed that a sunset review is fundamentally different from both an original investigation and an administrative review.

8. Based on this assessment, the Appellate Body also concluded that in a sunset review there is no "obligation for investigating authorities to make their likelihood determination on a company-specific basis."[8] The Appellate Body therefore upheld the right of the United States to conduct sunset reviews on an order-wide basis.

9. The Appellate Body further confirmed the significant role that respondent interested parties play in sunset review proceedings, an issue that is at the heart of this particular dispute. Indeed,

> the *Anti-Dumping Agreement* assigns a prominent role to interested parties as well and contemplates that they will be a primary source of information in all proceedings conducted under the agreement. Company-specific data relevant to a likelihood determination under Article 11.3 can often only be provided only by the companies themselves. For example, as the United States points out, it is the exporters or producers themselves who often possess the best evidence of their likely future pricing behaviour – a key element in the likelihood of future dumping.[9]

10. Similarly, the Appellate Body recognized the importance of the administrative review process, which provides parties with the opportunity to request revocation of an antidumping duty order with respect to a particular exporter or producer.[10]

11. Because of a direct reference in Article 11.4, the Appellate Body concluded that the provisions of Article 6 regarding evidence and procedure apply to sunset review proceedings, a position with which the United States has agreed. Accordingly, "Article 6 requires all interested parties to have a full opportunity to defend their interests."[11] Bearing in mind that it is Argentina's burden to prove that the U.S. sunset review proceedings do not comply with Article 6, the United States will nevertheless demonstrate that its sunset review proceedings provide a full opportunity for interested parties to defend their interests.

III. OVERVIEW OF COMMERCE'S EXPEDITED SUNSET PROCEDURES

12. Prior to delving into the specific sunset review procedures of the United States, it bears repeating that a sunset review occurs only after affirmative determinations of dumping and injury have been made. Moreover, individual companies are provided the opportunity to have orders

[8] *Japan Sunset,* para. 155.
[9] *Japan Sunset,* para. 199.
[10] *Japan Sunset*, para. 158.
[11] *Japan Sunset*, para. 152.

revoked in part, *i.e.,* with respect to that individual company, prior to the initiation of a sunset proceeding.

A. The Availability of Revocation Procedures Prior to Initiation of a Sunset Review

13. Specifically, revocation for a particular company from an antidumping duty order is possible by two methods under U.S. law (revocations of antidumping duty orders, in part, are generally termed "company-specific" revocations in U.S. parlance). The first and most common method is for a producer or exporter to seek revocation pursuant to section 351.222(b)(2) of *Commerce's Regulations, i.e.,* after three annual administrative reviews wherein Commerce has calculated, in each review, a dumping margin of zero or de minimis for the producer or exporter seeking revocation.

14. The second method for a producer or exporter seeking revocation is the "changed circumstances" review.[12] Under this method, a producer or exporter may request a review at any time after providing information that changed circumstances warrant a review for the purposes of revocation of an antidumping duty order.

15. Thus, a producer or exporter may seek revocation for itself from an antidumping duty order prior to the initiation of a sunset review. The Appellate Body in *Japan Sunset* recognized the importance of the availability of these procedures in ensuring that an antidumping duty remain in force only so long as and to the extent necessary to counteract dumping which is causing injury.[13] In this context, the United States conducts its sunset reviews on an order-wide, rather than company-specific, basis.

B. The Decision to Expedite

16. With regard to sunset reviews themselves, Commerce will conduct either an expedited or a full review. The decision whether to conduct an expedited or full sunset review is based on a two-part procedure: (1) Solicitation and evaluation of individual substantive responses (including waivers); and (2) Assessment of the adequacy of the aggregate response.

1. Solicitation and Evaluation of Substantive Responses

17. In its notice of initiation, Commerce solicits substantive responses from respondent interested parties. These responses are due not later than 30 days after publication of the notice of initiation.[14]

18. Commerce examines each substantive response submitted by a domestic or respondent interested party to assess whether it is complete, *i.e.,* whether it contains the information

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[12] Section 751(b) of the Tariff Act of 1930 (Exhibit ARG-1), codified at 19 C.F.R. § 351.216.
[13] *Japan Sunset*, para. 199.
[14] 19 C.F.R. 351.218(d)(3)(i) (Exhibit ARG-3).

specified in the regulations.[15] A "complete" substantive response normally must contain the limited information required by section 351(d)(3)(ii) of the *Sunset Regulations*.

19. In terms of responses, section 751(c)(4)(A) of the Tariff Act of 1930 ("the Act") specifically provides a respondent interested party with an opportunity to affirmatively "waive" participation in the Commerce proceeding thereby affording the respondent interested party the opportunity to concentrate its resources on addressing the ITC's determination of likelihood of the continuation or recurrence of injury.[16] In addition, section 351.218(d)(2)(iii) of the *Sunset Regulations* provides that Commerce will consider a failure by a respondent interested party to submit a complete substantive response, whether based on no submission or submission of an incomplete response, as a waiver of that party's participation in Commerce's sunset review.[17]

20. Consequently, each Commerce determination concerning the completeness of the substantive response filed by the respondent interested party would be based on one of three sets of circumstances: (1) no submission of a substantive response based on an affirmative "waiver" statement by the respondent interested party that it did not wish to participate in Commerce's sunset proceeding; (2) a finding that the respondent interested party is "deemed" to have waived its right to participate based on the submission of an incomplete substantive response or the failure of the party to submit any substantive response; and (3) a finding that the respondent interested party submitted a complete substantive response.

21. In the first two circumstances, Commerce would make a finding that the failure to submit any substantive response or to submit an incomplete substantive response constitutes an incomplete substantive response from the particular respondent interested party who failed to submit a substantive response or who submitted an incomplete substantive response. When Commerce determines that a respondent interested party has waived its right to participate, Commerce is directed by section 751(c)(4)(B) of the Act to make an affirmative finding of likelihood of continuation or recurrence of dumping for that respondent interested party.[18] This is not a determination of likelihood for the entire order.

2. Assessment of Adequacy

22. Once Commerce has determined which respondent interested parties have filed complete substantive responses, Commerce will then normally evaluate whether the aggregate response to

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[15] *See* 19 C.F.R. 351.218(e) (Exhibit ARG-3) and Preamble, 63 Fed. Reg. at 13518 (Exhibit US-3).

[16] *See* 19 U.S.C. 1677(c)(4)(A) & (B); SAA at 880 (Exhibit US-11); and 19 C.F.R. 351.218(d)(2)(i) & (ii) (requirements for notice of waiver) (Exhibit ARG-3).

[17] 19 C.F.R. 351.218(d)(2)(iii) ("deemed waiver") (Exhibit ARG-3).

[18] *See* section 751(c)(4)(B) of the Act, providing that the affirmative likelihood determination resulting from the waiver described in section 751(c)(4)(A) only applies "with respect to that party." 19 U.S.C. § 1675(c)(4)(B) (Exhibit ARG-1); *see also*, SAA at 881 ("If Commerce receives such a waiver, Commerce will conclude that revocation or termination would be likely to lead to continuation or recurrence of dumping or countervailable subsidies with respect to that submitter.") (emphasis added) (Exhibit US-11).

the notice of initiation, by the respondent interested parties who filed complete substantive responses, is "adequate."[19] The so-called 50 percent threshold, provided in section 351.218(e)(1)(ii)(A) of the *Sunset Regulations*, is normally used to make this aggregate adequacy determination.[20]

23. In order to determine the adequacy of the aggregate response to the notice of initiation, Commerce sums, for the five years preceding the sunset review, the export volumes of the subject merchandise of all the respondent interested parties who filed complete substantive responses to the notice of initiation. If the export volumes represented by the respondent interested parties, in the aggregate, are more than 50 percent of the total exports of the subject merchandise during the five year period, Commerce will normally find that the aggregate response to the notice of initiation is "adequate" and will conduct a full sunset review. If the export volumes represented by the respondent interested parties, in the aggregate, are not more than 50 percent of the total exports of the subject merchandise during the five year period, Commerce will normally find that the aggregate response to the notice of initiation is "inadequate" and will conduct an expedited sunset review (although Commerce has made exceptions, as discussed in the U.S. response to question 1 of the Panel).

C. Record Evidence in an Expedited Sunset Review.

24. Section 751(c)(3)(B) of the Act states that where interested parties collectively provide an inadequate response to a notice of initiation, Commerce may issue, without further investigation, a final determination based on the facts available.[21] It should be noted that in this context, the facts available include information provided in complete and incomplete substantive responses, as well as prior determinations.[22] Contrary to Argentina's assertion, facts available in this context is not a "euphemism for adverse inferences"[23] under section 351.308(f), applicable to

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[19] *See Sunset Policy Bulletin,* 63 Fed. Reg. at 18872 (Exhibit ARG-35). An "adequate" number of substantive responses normally is required, because Commerce makes its likelihood determination on an order-wide basis.

[20] Section 751(c)(3) of the Act leaves to Commerce's discretion the choice of methodology for determining when the response from interested parties to the notice of initiation is "adequate" for the purposes of conducting a full sunset review. See SAA at 880 (in many cases, some but not all parties will respond; nevertheless, where parties demonstrate a "sufficient willingness to participate," the agency will conduct a full sunset review) (Exhibit US-11). Consequently, Commerce promulgated section 351.218(e)(1)(ii) of the *Sunset Regulations* to codify the 50 percent threshold test and to give effect to section 751(c)(3) of the Act. *See* Preamble, 63 Fed. Reg. at 13518. (Exhibit US-3).

[21] The SAA in discussing section 751(c)(3) states that this provision "is intended to eliminate needless reviews. This section will promote administrative efficiency and ease the burden on agencies by eliminating needless reviews while meeting the requirements of the [Antidumping and SCM] Agreements. If parties provide no or inadequate information in response to a notice of initiation, it is reasonable to conclude that they would not provide adequate information if the agencies conducted a full-fledged review. However, where there is sufficient willingness to participate and adequate indication that parties will submit information requested throughout the proceeding, the agencies will conduct a full review." SAA, at 880 (Exhibit US-11).

[22] Section 351.308(f)(2)(Exhibit US-27).

[23] Argentina Oral Statement, para. 7.

sunset reviews. Interested parties who submitted complete substantive responses are afforded an opportunity to submit comments on Commerce's adequacy determination pursuant to section 351.309(e) of the *Sunset Regulations*. After consideration of these interested party comments on the adequacy determination, if Commerce still finds that the aggregate response to the notice of initiation is not more than 50 percent of the total imports, then Commerce normally will conduct an expedited sunset review and base the final sunset determination on the facts available in accordance with section 751(c)(3)(B) of the Act.[24]

25. In making the order-wide final sunset determination in an expedited sunset review, Commerce will rely on all information on the administrative record of the sunset proceeding, including information in the substantive responses and rebuttal responses of the domestic interested parties, prior agency determinations, as well as the information submitted by respondent interested parties in their substantive and rebuttal responses.[25] Commerce normally will not accept additional submissions from any interested party, whether domestic or respondent, after that interested party's substantive submission is found to be incomplete. Nevertheless, any information submitted by an interested party in its substantive response is considered by Commerce when Commerce makes the final determination in an expedited sunset review, even in a case where the particular substantive response was found to be incomplete.[26]

26. At the conclusion of the sunset review, Commerce publishes the *Final Sunset Determination*, announcing the final likelihood determination, and issues a *Decision Memorandum* explaining the issues decided in the sunset review (including the likelihood determination), the methodologies employed, and factual bases supporting the final determination.

IV. ARGENTINA HAS NOT MET ITS BURDEN OF DEMONSTRATING THAT COMMERCE'S SUNSET REVIEW PROCEDURES ARE INCONSISTENT WITH ARTICLE 11.3 AND ARTICLE 6

27. WTO Members are free to structure their sunset reviews as they choose, provided the reviews do not conflict with the Antidumping Agreement.[27] Argentina bears the burden of proving that Commerce's sunset review procedures conflict with the Antidumping Agreement.

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[24] Section 351.218(e)(1)(ii)(C)(2) of the *Sunset Regulations* provides that Commerce may base its final sunset determination on "the facts available" without further investigation in a case where the aggregate respondent interested parties is inadequate or Commerce may exercise its discretion and conduct further investigation. The decision whether to conduct further investigation in an expedited sunset review is left to Commerce's discretion. *See* SAA at 879-880 (Exhibit US-11).

[25] *See* section 351.308(f)(1) of the *Sunset Regulations* (definition of "the facts available") (Exhibit US-27). If a respondent interested party submitted a statement of waiver or was deemed to have waived due to its failure to submit any substantive response to the notice of initiation, then, obviously, there would be no information from that respondent interested party for Commerce to consider in making the final sunset determination.

[26] *See* section 351.308(f)(2) of the *Sunset Regulations* (Exhibit US-27).

[27] *Japan Sunset,* para. 158.

28. In this dispute, Argentina claims that Commerce's expedited "waiver" procedures violate Article 11.3 because a "waiver" mandates a finding of dumping through the application of "facts available."[28] Not only does Article 11.3 state nothing about findings and facts available, but Argentina's claim is essentially a simple mischaracterization of the procedures themselves. In addition, Argentina has not demonstrated that Commerce's expedited procedures mandate a finding of likely dumping simply because section 751(c)(3)(B) of the Act and section 351.308 of the *Sunset Regulations* provide that Commerce normally may rely on the "facts available" when making the final sunset determination in cases where the respondent interested parties do not demonstrate sufficient interest in participating in the sunset review. Section 351.308(f) clearly defines "the facts available" as prior agency determinations, the information submitted by the interested parties (notwithstanding whether their submissions were "complete"), and any other information on the administrative record. As demonstrated above, there is no negative inference to be associated with the use of the term "facts available" in this context. It simply defines all the information on the record and provides that the final sunset determination in an expedited review will be made on the basis of all the information on the administrative record of that review. Section 751(c)(3)(B) of the Act and section 351.218 of the *Sunset Regulations* require that the sunset determination be made using all the information on the administrative record.

29. Argentina has also claimed that the expedited sunset procedures violate the obligations in Articles 6.1 and 6.2 of the Antidumping Agreement. In this regard, Argentina has made no demonstration that the expedited procedures, as such, preclude interested parties from submitting evidence or having a full opportunity to defend their interests.[29] Instead, as illustrated above, the expedited sunset procedures provide interested parties with the opportunity to submit a substantive response containing any information the party wishes Commerce to consider, to submit a rebuttal substantive response, to submit comments on Commerce's adequacy determination, and to request extension of deadlines for the submission of factual information. Consequently, Argentina has not shown how the expedited sunset procedures preclude any interested party from having a full opportunity to defend its interests. The United States notes that Members are merely required to offer respondent interested parties the opportunity to defend their interests; the United States is not required to ensure that respondent interested parties take advantage of that opportunity.

30. Simply put, Argentina has not met its burden of demonstrating how the expedited sunset procedures, as such, preclude WTO-consistent action or mandate WTO-inconsistent action.

V. ARGENTINE RESPONDENT INTERESTED PARTIES DID NOT TAKE ADVANTAGE OF THE FULL OPPORTUNITY TO DEFEND THEIR INTERESTS

[28] Argentina Oral Statement, para.47.
[29] *See, e.g.*, Argentina Oral Statement, para. 48.

31. Because Article 11.3 does not prescribe detailed criteria for conducting sunset reviews, but rather sets forth minimal obligations with respect to evidence and procedure, the question in this dispute essentially is whether Argentina has demonstrated that Commerce did not provide respondent interested parties the opportunity to participate in the review and present evidence. A review of the proceedings will reveal that the respondent interested parties simply failed to take advantage of the opportunities available to them.

A. Review of Respondent Interested Parties' Opportunities to Submit Fact and Argument in these Proceedings

32. On July 3, 2000, Commerce published its notice of initiation of the sunset review of the antidumping duty order on certain OCTG from Argentina.[30] In the notice, Commerce, as is its normal practice, highlighted the deadline for filing a substantive response in the sunset review and the information that was required to be contained in the response.[31] Commerce also explicitly referred parties to the applicable regulation concerning requests for an extension of filing deadlines.[32] On August 2, 2000, a domestic interested party filed a response to the notice of initiation providing, inter alia, statistics indicating imports of Argentine OCTG during the period of review. That same day, Siderca filed a substantive response in which it stated that it had "no share of total exports of subject merchandise" during the period of review.[33] Siderca did not file a rebuttal submission, as it was entitled to do.[34] Therefore, Siderca permitted the record to indicate that there were imports of subject merchandise, for which cash deposits were paid pursuant to the antidumping order, and that Siderca, the lone respondent interested party that filed a submission, did not account for 50 percent of those imports. Siderca did so even though the regulations clearly provide that under such circumstances, Commerce will "normally" expedite the review.

33. Siderca's failure to seize its opportunities continued. On August 22, 2000, Commerce issued an Adequacy Memorandum, in which it recited the facts received thus far in the proceeding (i.e., imports of subject merchandise together with an admission by the sole respondent interested party to file a submission that it was not responsible for any of the imports) and concluded that Siderca did not account for 50 percent of imports of the subject merchandise. Siderca did not file a response to the Adequacy Memorandum, as it was entitled to do pursuant to

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[30] *Initiation of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders or Investigations of Oil Country Tubular Goods* ("*Sunset Initiation*"), 65 FR 41053, 41054 (July 3, 2000) (Exhibit ARG-44).

[31] *Sunset Initiation*. The information requirements concerning substantive responses to notices of initiation of sunset reviews are set forth at 19 C.F.R. 351.218(d)(3) (Exhibit ARG-3).

[32] *Sunset Initiation*. 19 C.F.R. 351.302(c) provides that a party may request an extension of a specific time limit. 19 C.F.R. 351.302(b) provides that unless expressly precluded by statute, Commerce may, for good cause, extend any time limit established by its regulations. The U.S. antidumping duty statute does not contain deadlines for submission of information in a sunset review (Exhibit US-3).

[33] Page 4, (Exhibit ARG-57).

[34] 19 C.F.R. 351.218(d)(4) (Exhibit ARG-3).

section 351.309(e). Not having received a response to its Adequacy Memorandum, Commerce then proceeded with an expedited review, as contemplated by the regulations to which Siderca was privy.

34. The facts on the record – as Siderca allowed them to stand – therefore supported a finding of dumping during the life of the order. Commerce found that dumping duties were levied and collected, at the dumping margins assigned in the original investigation, against Argentine OCTG imported into the United States during the five-year period preceding the sunset review. Commerce also examined import data from several sources, including the Census Bureau Statistics and the ITC Trade Database, and found that U.S. imports of Argentine OCTG had declined substantially immediately after the order was imposed and remained at depressed levels for the entire five-year period prior to the sunset review. Based on these findings and absent any evidence or argument from Siderca to the contrary, Commerce concluded that dumping by Argentine exporters was likely to continue or recur in the event of revocation of the order.[35]

35. In this regard, Argentina's allegation that its "treatment in the sunset review depended entirely on the assumption that the U.S. statistics were correct, that there were other exports from Argentina, and that these alleged other exports were relevant enough to trigger a waiver and/or expedited review"[36] is wrong. Argentina's "treatment in the sunset review" is the direct result of the meager participation of its foreign exporters. Moreover, the United States notes that as the government of the country in which subject merchandise was produced, Argentina was an interested party and could have participated in the proceedings, had it chosen to do so.[37]

B. Argentina's Claims Regarding the Antidumping Agreement

36. Argentina claims that Commerce's sunset determination in OCTG from Argentina is not consistent with Article 11.3 because a sufficient factual basis does not exist to support the final affirmative determination.[38] As noted above, Commerce created a factual record, including substantive responses from interested parties and prior proceedings.

37. Argentina relies heavily on the argument that the 1.36 percent margin from the original investigation is flawed because it was calculated in 1995 (it is "old") and the margin was calculated using an allegedly WTO-inconsistent methodology. However, the Appellate Body in *Japan Sunset* has concluded that Members are not obligated to calculate "new" dumping margins.[39] They are merely obligated to provide respondent interested parties opportunities to

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[35] *Decision Memorandum* at 4-5 (Exhibit ARG-51).
[36] Argentina Oral Statement, para. 43.
[37] Section 771(9) of the Tariff Act of 1930.
[38] Argentina Oral Statement, paras. 69-70.
[39] *Japan Sunset,* para. 149.

offer evidence in support of negative likelihood determination. Therefore, the magnitude of dumping is not pertinent to making a determination with regard to likelihood of dumping.[40]

38. Argentina also maintains that Commerce violated Article 6 because the expedited review procedures deprived Siderca of the opportunities for evidence submission and the defense of its rights under Article 6.1 and Article 6.2 of the Antidumping Agreement. Argentina alleges, in particular, that the nature of Commerce's expedited sunset review in OCTG from Argentina denied Siderca a meaningful opportunity to submit evidence and impermissibly limited its ability to submit additional argument or factual information in defense of its interests.[41] As discussed above, Siderca had more than one meaningful opportunity to defend its interests. In its substantive submission, Siderca could have included any information to indicate to Commerce that there were no aggregate consumption imports of OCTG during the period of review, or that Commerce should not use the 50 percent threshold in this particular case. Instead, Siderca simply focused on the magnitude of the dumping margin. Similarly, Siderca could have filed a rebuttal response to dispute or explain the statistics provided by the domestic interested party, which showed imports of subject merchandise; at that point, Siderca knew that, based on the record evidence, it would not satisfy the 50 percent threshold normally used, based on Siderca's own lack of shipments. Further, Siderca failed to response to the Adequacy Memorandum, which it was entitled to do. Again, the fact that respondent interested parties (again recalling that there are two Argentine exporters of OCTG) failed to take advantage of their opportunities does not mean that the United States failed to provide them.

39. In sum, there is no basis for Argentina's claim that Commerce's expedited sunset review procedures impermissibly limited an interested party's ability to present its case or defend its interests, and Argentina has not demonstrated that Siderca's ability to present its case or submit evidence was impaired in any way in the instant sunset review.

VI. ARGENTINA HAS NOT DEMONSTRATED THAT THE ITC'S SUNSET REVIEW PROCEDURES ARE INCONSISTENT WITH THE ANTIDUMPING AGREEMENT

40. Argentina bears the burden of proving that the ITC's sunset review determination is inconsistent with the Antidumping Agreement. Argentina has not met this burden.

41. Indeed, Argentina advanced arguments at the Panel meeting that are simply not accurate. These concern in particular the "likely" standard of Article 11.3, cumulation**,** and whether the ITC properly established the relevant facts and assessed those facts objectively. Each argument will be addressed in turn.

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[40] It should be noted that Argentina's challenge in this dispute is to Commerce's *reporting* of the 1.36 percent margin to the ITC for its use in making the determination of the likelihood of continuation or recurrence of injury. *See* Argentina First Written Submission, paras. 189 & 193.

[41] Argentina First Written Submission, paras. 121-122.

A. The "Likely" Standard of Article 11.3

42. Argentina erroneously argues that decisions by U.S. courts in other cases are relevant to this dispute. They are not. But even if they were, these U.S. court decisions are not ultimately helpful to Argentina's argument that "likely" entails a high degree of probability. In the one case that has completed the first stage of judicial review, the court ultimately explained that it did not interpret "'likely' to imply any degree of 'certainty'."[42]

B. Article 3 of the Antidumping Agreement Does Not Apply to Sunset Reviews

43. Argentina argues that because the term "injury" has the same meaning in Article 11.1 as in Article 3, and because "the overarching principles of Article 11.1 provide the immediate context of Article 11.3," the term "injury" must have the same meaning in Article 11.3 as it does in Article 3.[43] The United States is not of the view that "injury" has the same meaning in Articles 3 and 11.1, on the one hand, and in Article 11.3, on the other. The analysis required by Articles 3 and 11.1, and by Article 11.3 is fundamentally different. Articles 3 and 11.1 speak of existing "injury." Article 11.3 on the other hand speaks of the likelihood of the "continuation or recurrence of . . . injury." These provisions have a different focus and involve entirely different determinations, as the Appellate Body has recognized on more than one occasion.[44]

44. Argentina questions whether the injury referred to in Article 11.3 can be any different than that referred to in Article 11.1.[45] The United States is of the view that Article 11.1 is best viewed as a statement of general principle as to the duration of antidumping duty measures, but not as providing specific content to Members' obligations under Article 11.3 with respect to sunset reviews.[46] This becomes clear if one considers the consequences of a literal interpretation of the two provisions. Article 11.1 would appear to require the revocation of an antidumping duty order as soon as it is no longer causing injury ("[a]n anti-dumping duty shall remain in force *only as long as* . . . necessary to counteract dumping which is causing injury"). Article 11.3 (and Article 11.2 for that matter), however, contemplates that an antidumping measure may be continued even if there is no current injury, if it is likely that injury will recur. Put another way, if Article 11.1 is read as providing specific content to Members' obligations under Article 11.3, it would make a nullity of that part of Article 11.3 that permits the continuation of a duty when injury is likely to recur. Such an interpretation flies in the face of the fundamental principle of

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[42] *Usinor Industeel v. United States*, Slip Op. 02-152 at 6 (CIT December 20, 2002) (Exhibit US-18).

[43] Argentina Oral Statement, paras. 98 and 101.

[44] *US-German Steel*, AB Report, para. 87, *US-Japan Sunset*, AB Report, para. 106

[45] Argentina Oral Statement, para. 98.

[46] The text of Article 11.1 existed in its present form in the Tokyo Round Antidumping Code (as Article 9.1 in that code), prior to the adoption of the provision for sunset reviews.

treaty interpretation that treaties should not be interpreted in such a way as to make any of their provisions inutile.[47]

45. It is significant that neither Argentina nor any of the third parties have responded to the United States' observation that applying the definition of "injury" in footnote 9 to the determination of "recurrence of injury" in Article 11.3 would lead to absurd results. It would mean that the inquiry in a sunset review would become whether expiry of the duty would be likely to lead to continuation or recurrence of material injury to a domestic industry, threat of material injury to a domestic industry or material retardation of the establishment of such an industry. Continuation or recurrence of a threat of material injury would involve a very attenuated notion of future injury and would set an extremely low threshold in sunset reviews for continuing antidumping duty measures. The United States is of the view that this is not what was intended by Members when Article 11.3 was negotiated. Moreover, it is hard to see how many of the obligations of Article 3 would be relevant to an inquiry of whether expiry of the duty would be likely to lead to continuation or recurrence of material retardation of the establishment of an industry. The United States can see no basis for selectively applying parts of the definition of "injury" in footnote 9 to sunset reviews, but not applying others. Either the definition applies to Article 11.3 in its entirety or it does not apply at all.

46. The fallacy of Argentina's position that Article 3 applies to sunset determinations is apparent by considering an analogy (albeit an imperfect one). Suppose that there are two distinct inquiries: (1) whether at least one meter of snow is lying on the ground; and (2) whether it is likely that at least one meter of snow will fall within a month. Although both of these inquiries refer to "at least one meter of snow" (in the same way that footnote 9 and Article 11.3 both use the word "injury"), the steps that would be appropriate to pursue each inquiry are quite different. The first inquiry might be pursued by measuring the depth of the snow at certain spots; the second inquiry might be pursued by certain meteorological analysis. However, it would be inappropriate to pursue the second inquiry using methods appropriate for the first (*i.e.*, by measuring the amount of snow currently on the ground).

47. Argentina misconstrues the Appellate Body's report in *Steel from Germany*, when it asserts that "[t]he Appellate Body used the SCM equivalent of [footnote 9] as an illustration of how the injury concept applies throughout the Agreement, including in sunset reviews."[48] In the section of the *Steel from Germany* report referred to by Argentina, the Appellate Body was merely listing "provisions of the SCM Agreement that apply independently of cross-references in that they contain explicit statements of their scope of application." Contrary to Argentina's suggestion, the Appellate Body made no finding that Article 15, note 45 of the SCM Agreement

[47] *See United States - Standards for Reformulated and Conventional Gasoline*, WT/DS2/AB/R, Report of the Appellate Body adopted 20 May 1996, page 23 (footnote omitted).

[48] Argentina Oral Statement, para.96.

applies in sunset reviews. Argentina's reliance on the panel report in *DRAMs from Korea* also is unpersuasive.[49] The panel in that dispute was not considering the applicability of Article 3 to reviews under Article 11.2.

48. We next address arguments contained in the submissions and oral statements of third parties. The EC maintains that the reference in Article 3.1 to "a determination of injury for purposes of Article VI of GATT 1994" lends support to the conclusion that Article 3 obligations apply to sunset reviews.[50] This argument is unpersuasive. Article VI of GATT 1994 does not mention sunset reviews, and a sunset review does not entail a "determination of injury."

49. The EC also argues that Article 3 must be applicable to sunset reviews because otherwise members would have "completely unfettered discretion" in determining the likelihood of continuation or recurrence or injury.[51] The EC's concerns are unfounded. First, sunset reviews are subject to the provisions regarding evidence and procedure in Article 6 (by virtue of the explicit provision to this effect in Article 11.4). Furthermore, sunset reviews, if subject to dispute settlement, must satisfy the provisions of Article 17.6(i) of the Antidumping Agreement, *i.e.*, the establishment of the facts must be found to have been "proper" and the evaluation of those facts to have been "unbiased and objective." Finally, as the Appellate Body has explained, "[t]he words 'review' and 'determine' in Article 11.3 suggest 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 the process of reconsideration and examination."[52]

50. Japan's discussion of how selected provisions of Article 3 supposedly apply to sunset reviews in fact demonstrates just the opposite. Japan notes that Article 3.1 requires that authorities base their injury determination on an objective examination of "the volume of the dumped imports" and "the effect of dumped imports on prices."[53] But in a sunset review there may be no current imports, or they may not currently be dumped. Japan then explains that Article 3.2 sets forth further rules on how authorities shall consider the volume of dumped imports and price effects.[54] Again, these rules are inapplicable in sunset reviews because of the possible absence of dumped imports. Japan goes on to characterize Article 3.4 as providing the "detailed requirements for the examination of the impact of dumped imports under Article 3.1, and, therefore, for a determination of injury."[55] But, as explained in the United States' first

[49] Argentina Oral Statement, para. 97.
[50] Third Participant's Submission by the European Communities, paras. 124-125.
[51] Third Participant's Submission by the European Communities, para. 126.
[52] *Japan Sunset*, para. 111.
[53] Third Party Submission of Japan, para. 11.
[54] Third Party Submission of Japan, para. 11.
[55] Third Party Submission of Japan, para. 12.

submission, there are also numerous textual indications in Article 3.4 that it is not applicable to sunset reviews.[56]

51. Next, Japan asserts that the causation and non-attribution requirements of Article 3.5 apply to sunset reviews because of the use of the phrase "within the meaning of this Agreement" in that article.[57] The simple answer to this is that a determination of the likelihood of continuation or recurrence of injury in a sunset review is not a determination of injury. As explained in the United States' first written submission, the obligations under Article 3.5 are incompatible with the nature of sunset reviews.[58]

52. In connection with its argument regarding the applicability of Article 3.5 to sunset reviews, Japan points to the likely margin of dumping for OCTG from Argentina, 1.36 percent.[59] The United States notes that this is not the only margin that is relevant to these sunset reviews. The likely dumping margins applicable to the other four countries considered cumulatively with Argentina in these reviews were: Italy – 49.78 percent, Japan – 44.20 percent, Korea – 12.17 percent, and Mexico – 21.70 percent.[60]

53. Japan argues that the ITC failed to observe the non-attribution requirement of Article 3.5 to the extent that it did not separate and distinguish the effects of dumping on the domestic industry from the effects of several other specific factors.[61] As explained in the United States' first submission (paras. 348-354), the non-attribution analysis of Article 3.5 cannot be conducted in the context of sunset reviews. Japan also misrepresents the ITC Report when it states that: "[t]he ITC also noted that '[o]il and natural gas prices, the ultimate drivers of OCTG demand' and 'a slowdown in the U.S. and/or world economy' would be factors contributing to likely injury to the domestic industry." The ITC Report (p. II-13) identified these as factors relevant to demand trends, but not as factors contributing to likely injury to the domestic industry.

54. Japan and Korea suggest that in a sunset review the ITC must first establish whether there is current injury, before considering likelihood of continuation or recurrence.[62] However, there is simply no textual basis in Article 11.3 for imposing a requirement that authorities first make a "present injury" determination before considering whether expiry of the duty is likely to lead to continuation or recurrence of injury.

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[56] U.S. First Submission, para. 346.
[57] Third Party Submission of Japan, para. 13.
[58] U.S. First Submission, para. 350-353.
[59] Third Party Submission of Japan, paras. 38-39.
[60] ITC Report at I-14.
[61] Third Party Submission of Japan, para. 40.
[62] Third Party Submission of Japan, para. 14; Third Party Submission of the Republic of Korea, para. 11.

55. Korea argues that investigating authorities should not be permitted to use "different substantive definitions and standards to determine whether initially to impose a measure (in an antidumping investigation) and whether to terminate or continue that measure (in a sunset review)."[63] Korea's position, like that advanced by the EC and Japan, fails to account for the fundamentally "different nature and purpose of original investigations, on the one hand, and sunset reviews, on the other hand."[64] A determination of injury and a determination of the likelihood of continuation or recurrence of injury involve fundamentally different inquiries.

C. Cumulation in Sunset Reviews

56. The only textual basis that Argentina offers for its argument that cumulation is not permitted in sunset reviews is that Article 11.3 refers to "any definitive anti-dumping duty" and to "the duty," and that Article 11.1 refers to "an antidumping duty." Argentina's position that the drafters of the Antidumping Agreement deliberately "have chosen the singular and have avoided the plural"[65] is unconvincing. The reference to "any definitive anti-dumping duty" is not necessarily to the singular.[66] Moreover, the reference in Article 11.3 to "the duty" is merely descriptive and is hardly evidence that the drafters intended to prohibit cumulation. (As noted in the United States' first submission,[67] cumulation in antidumping investigations was a widespread practice among GATT contracting parties prior to the adoption of Articles 3.3 and 11.3 in the Uruguay Round.)

57. Argentina seeks to bolster its argument by referring to "the object and purpose" of Article 11.3. As the United States pointed out in its first submission (para. 367), the relevant principle of treaty interpretation speaks of the object and purpose of *the treaty*, and not particular treaty provisions.[68] The United States does not agree with Argentina's suggestion that Article 11.3 merely rescinds antidumping duties. Article 11.3 is clear that expiry of such duties is only appropriate where it is not likely that this would lead to the continuation or recurrence of dumping and injury.

58. Argentina's claim that the United States has violated Article 11.3 by cumulating because "Argentina, and each WTO Member, negotiated for the right to have an antidumping measure affecting its exports removed after five years"[69] is similarly unpersuasive. The negotiating objective of the United States and certain other Members was to retain antidumping duties where

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[63] Third Party Submission of the Republic of Korea, para. 9.

[64] *Japan Sunset*, para. 124

[65] Argentina Oral Statement, para. 105.

[66] *The New Shorter Oxford English Dictionary* (p. 91) defines "any" as having singular or plural meanings. (Exhibit US-28).

[67] U.S. First Submission, para. 370.

[68] *Vienna Convention on the Law of Treaties*, Art. 31(1).

[69] Argentina Oral Statement, para. 107.

warranted. The negotiating objectives of Argentina and perhaps other Members cannot be used to read into the Antidumping Agreement obligations that do not exist in the treaty as reflected by its text. Indeed, it is the text reflects "the delicate balance of rights and obligations attained by the parties to the [Uruguay Round] negotiations."[70]

59. Argentina's suggestion that, if cumulation is permitted in sunset reviews, the limitations on cumulation in Article 3.3 must also apply is directly at odds with the Appellate Body's finding in *US–German Steel*[71] and therefore Argentina's argument should be rejected.

60. Argentina argues that the standards that the ITC applies in deciding whether to cumulate run "directly counter to the 'likely' standard established by Article 11.3."[72] Argentina is confusing the standards for (i) deciding whether cumulation in a sunset review is appropriate with (ii) the standard for determining whether expiry of the duty would be likely to lead to continuation or recurrence of injury. The Antidumping Agreement is silent on the former question, and thus the standards that the ITC applied in deciding whether to cumulate cannot violate Article 11.3.

D. Contrary to Argentina's Assertions, the ITC Properly Established the Relevant Facts and its Assessment of Those Facts Was Objective

61. Article 17.6 provides that "in its assessment of the facts of the matter, the panel shall determine whether the authorities' establishment of the facts was proper and whether their evaluation of those facts was unbiased and objective." Notwithstanding Argentina's misstatements and selective analysis about the factual record, the ITC did in fact properly establish facts and evaluate them in an unbiased and objective manner.

62. In its oral statement, Argentina seeks to cast doubt on the ITC's finding that the likely volume of subject imports would be significant if the antidumping duty orders were revoked. Argentina incorrectly states that the ITC found that "subject producers' capacity utilization rates represent a potentially important constraint on the ability of these subject producers to increase shipments of casing and tubing to the United States."[73] The ITC was not referring to all of the subject producers (*i.e.*, the casing and tubing producers in the five countries subject to the sunset reviews) when it stated producers were "operating at capacity utilization rates that represent a potentially important constraint on [their] ability . . . to increase shipments of casing and tubing to the United States." This is clear from a review of pages 18-19 of the ITC Report.

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[70] *US-German Steel*, AB Report, para. 91.
[71] *US–German Steel*, AB Report, paras. 58-97.
[72] Argentina Oral Statement, para. 109.
[73] Argentina Oral Statement, para. 117.

63. On page 18 the ITC first reviewed the capacity of subject producers in Japan. It stated: "[i]n addition to the reported capacity of NKK [the only Japanese producer to have provided data to the ITC], we find that there is significant available capacity among the other Japanese producers."[74] Then, at the top of page 19 of the ITC Report the ITC reviewed the capacity of subject producers in Korea, and referred to "Korea's unused capacity for all pipe and tube products."[75]

64. Only after having considered available capacity in Japan and Korea did the ITC discuss the capacity utilization rates of "[p]roducers in *the other subject countries* (and NKK in Japan)" (emphasis added), and it was in connection with *these producers* that the ITC made the observation about capacity utilization rates representing a potentially important constraint on their ability to increase exports to the United States.[76] In short, the ITC's finding of potential capacity constraints on exports applies only to producers in Argentina, Italy and Mexico -- and not to producers in Japan (except for NKK) and Korea.

65. This is especially significant because of the size of the casing and tubing industry in Japan. The ITC noted that "[i]n the original investigations, the import volume, market share, and production capacity of casing and tubing from Japan were the largest of the subject countries."[77] Because all but one of the Japanese producers declined to participate in this sunset review, the precise size of the Japanese industry was not known. However, according to the ITC Report, U.S. producers stated that non-responding Japanese producers had the potential to supply 3.5 million tons of OCTG[78] – an amount that exceeded the total capacity of the U.S. casing and tubing industry in 2000.[79] (Data on the capacity of those Korean producers that responded to the ITC's questionnaire is confidential.) In light of the foregoing, Argentina's argument that the ITC's volume finding was contradicted by the fact of capacity restraints is simply erroneous.

66. In addition to its conclusions about excess capacity in Japan and Korea, the ITC found that producers in Argentina, Italy, and Mexico, and NKK in Japan, would have incentives to devote more of their productive capacity to producing and shipping casing and tubing to the U.S. market, despite their apparently high capacity utilization rates. The ITC gave a number of reasons for reaching this conclusion. Argentina's attempts in its oral statement to discredit the ITC's reasoning are unpersuasive.

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[74] *Oil Country Tubular Goods from Argentina, Italy, Japan, Korea, and Mexico,* USITC Pub. 3434, Inv. Nos. 701-TA-364, 731-TA-711, and 713-716 (June 2001) ("ITC Report") (Exhibit ARG-54) at 18.

[75] ITC Report at 19. The ITC's more specific findings as to unused capacity among Korean producers are redacted from the ITC Report because they reflect business proprietary information.

[76] ITC Report at 19.

[77] ITC Report at 18.

[78] ITC Report at II-8.

[79] The U.S. casing and tubing industry's capacity in 2000 was 3.3 million tons. ITC Report at III-1, table III-1.

67. First, with respect to the ITC's finding that Tenaris would have a strong incentive to expand its presence in the U.S. market, Argentina maintains that "the Commission only examines 'half' the story" and that "some of the companies forming the so-called Tenaris Alliance were outside the antidumping duty orders under review."[80] This assertion is incorrect. In fact, only one of the five Tenaris companies, Algoma in Canada, was not subject to the antidumping duty orders involved in these sunset reviews.[81]

68. Argentina argues that if Tenaris had really been interested in shipping to the United States, it could have done so through Algoma in Canada.[82] Argentina neglects to mention, however, that in 2000 -- only one year before the reviews at issue here -- counsel for Siderca assured the ITC, during a five-year review involving OCTG from Canada, that DST (the predecessor organization to Tenaris) had no intention of using the Algoma facility to ship OCTG to the United States.[83] Based at least in part on this assurance, the ITC lifted a longstanding antidumping order on OCTG from Canada. Tenaris' commitment not to ship OCTG from Canada completely undermines Argentina's argument that Tenaris could use Algoma to serve this market.

69. Also, in connection with the incentive for Tenaris to ship to the United States, Argentina suggests that this was not likely to occur because of long-term contractual commitments by Siderca and other affiliated producers to sell elsewhere.[84] The suggestion by Argentina that all of Tenaris' production was devoted to long-term contracts is at odds with Tenaris' own testimony in the sunset reviews. Siderca's President (who testified that he was responsible for exports of OCTG from all of the Tenaris companies) testified that its long-term agreements account for only about 55 percent of its sales of OCTG.[85] In other words, Tenaris' commitments under long-term contracts would not present a significant impediment to expanding shipments to the United States.

70. The United States pointed out (in para. 328 of its first written submission) that Argentina's claim that Siderca's ability to ship to the United States was limited by long-term contractual commitments was also undermined by the fact that many of these contracts were with

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[80] Argentina Oral Statement, para. 119.

[81] ITC Report at 16.

[82] Argentina Oral Statement, para. 119, first subparagraph.

[83] *See, Certain Pipe and Tube from Argentina, Brazil, Canada, India, Korea, Mexico, Singapore, Taiwan, Thailand, Turkey, and Venezuela*, Inv. Nos. 701-TA-253 (Review) and 731-TA-132, 252, 271, 273, 276, 277, 296, 409, 410, 532-534, 536, and 537 (Review), USITC Pub. 3316 (July 2000) at 51 n. 310, and OCTG-IV-5 (Exhibit US-29).

[84] Argentina Oral Statement, para. 119.

[85] *Oil Country Tubular Goods from Argentina, Italy, Japan, Korea, and Mexico,* Inv. Nos. 701-TA-364, 731-TA-711, and 713-716, ITC Hearing Transcript, ("ITC Hearing Tr."), pp. 200 and 205 (German Cura, Siderca) (Exhibit US-30). Argentina cites to this very testimony in its oral statement (para. 119, third subparagraph).

global oil and gas companies that would be eager to buy from Siderca in the United States. Argentina now asserts that the United States ignored evidence that the global companies with which Tenaris had contracts represented only 12-14 percent of U.S. oil and gas rigs.[86] In fact, the ITC did not ignore this evidence. As the ITC explained in its report (p. 19, n. 124), the evidence on the U.S. market share of these companies was mixed: Tenaris claimed it was only 12-14 percent; the domestic industry claimed it was significantly greater. The ITC found that the U.S. presence of these global companies to be significant under either estimate.[87]

71. Argentina contends that the evidence that global oil and gas companies already buying from Tenaris would also want to do so in the United States if the antidumping orders were revoked is supported only by "a second-hand statement that one customer had expressed such a desire."[88] This is incorrect. This was not only the testimony of the president and chief executive officer of one of the largest distributors of OCTG in the United States;[89] the director of another large OCTG distributor told the ITC:

> Most of the major end users already purchase from these subject producers internationally and the end users are unwavering in their desire to see the extremely low priced OCTG that they get internationally extended to the U.S. market. They have said as much to me quite openly and I think you would hear the same thing from most of my colleagues up here today.[90]

72. The second reason that the ITC found that the subject producers would have an incentive to devote more of their capacity to shipping casing and tubing to the U.S. market is that casing and tubing were among the highest valued pipe and tube products, generating among the highest profit margins.[91] Argentina characterizes this factor as "a general assumption rather than positive evidence."[92] Argentina is mistaken. The relatively high value (and profit margins) of casing and tubing was established during the ITC's sunset reviews,[93] and Argentina does not dispute this fact. It stands to reason that pipe and tube producers – as profit-maximizing entities – would seek to maximize their production of products with higher profit margins. Argentina's attempts to dismiss this factor as "conjecture and speculation"[94] is unpersuasive.

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[86] Argentina Oral Statement, para. 119, fourth and fifth subparagraphs.
[87] ITC Report, p. 19 n.124.
[88] Argentina Oral Statement, para. 119, fifth subparagraph.
[89] ITC Hearing Tr. at 59 (Mr. Ketchum, Red Man Pipe and Supply) (Exhibit US-20).
[90] ITC Hearing Tr. at 55 (Mr. Stewart, Hunting Vinson) (Exhibit US-20).
[91] ITC Report, p. 19.
[92] Argentina Oral Statement, para. 120, first subparagraph.
[93] ITC Report, p.16.
[94] Argentina Oral Statement, para. 120, fourth subparagraph.

73. The third factor that the ITC relied on in determining that producers in Argentina, Italy, and Mexico, and NKK in Japan, would have incentives to increase their shipments of casing and tubing to the United States, is that prices for casing and tubing on the world market were significantly lower than prices in the United States.[95] Argentina's characterization of this evidence as "anecdotal" is misleading. As its report makes clear, the ITC relied on the testimony of three executives from firms that produce or distribute OCTG, who each testified that prices for casing and tubing in the United States were significantly higher than international prices.[96] Argentina also attempts to downplay this factor by noting that the ITC recognized that there was contradictory evidence as to the magnitude of the price differential.[97] The fact that Argentina does not dispute the existence of a price differential, but rather questions its magnitude, speaks for itself.

74. The fourth factor that the ITC relied on is that foreign casing and tubing producers also faced import barriers in other countries or on related products that were produced in the same facilities as OCTG. Import barriers in other countries existed in the form of a 67 percent antidumping duty in Canada on casing from Korea. The import barriers on related products that the ITC identified were: (i) U.S. antidumping duties on seamless standard pipe from Argentina, Japan, and Mexico; (ii) U.S. import quotas on welded line pipe shipped from Korea; and (iii) U.S. antidumping duties on circular, welded, non-alloy steel pipes from Korea.

75. Argentina seeks to downplay the Canadian antidumping duty on casing from Korea of 67 percent.[98] However, it was reasonable for the ITC to take this factor into account, especially since the Korean industry is heavily export-dependent, Canada is the second largest regional market for OCTG in the world,[99] and the Canadian duty was relatively high.

76. In connection with antidumping measures on related products, Argentina claims that there was no evidence that pipe and tube producers would ever shift production from other products to OCTG. This is simply false. In sworn testimony before the ITC, domestic producers specifically testified that there is a hierarchy of pipe and tube products, and that OCTG is at the top of that hierarchy.[100] These same producers also testified that their companies did switch production to

[95] ITC Report at 19-20.

[96] ITC Report at 19 n.128.

[97] Argentina Oral Statement, para. 121, second subparagraph.

[98] Argentina Oral Statement, para. 122, first subparagraph.

[99] The United States directs the Panel's attention to Figure II-1 on page II-5 of the ITC Report, which shows that the percentage of worldwide rig counts in 2000 was as follows: United States – 47.91 percent, Canada – 17.99 percent, Latin America – 11.87 percent, Middle East – 8.16 percent, Far East – 7.32 percent, and Europe and Africa – 6.75 percent.

[100] IT Hearing Tr. at 158-159 (Mr. Dunn, Lone Star Steel) (Exhibit US-30).

higher-value products like OCTG as market conditions warranted.[101] This evidence directly supports the ITC's finding that if the orders on OCTG were revoked, Tenaris would have a strong incentive to shift products in order to increase its output of OCTG.

77. Finally, the ITC explained that industries in at least some of the subject countries were heavily export-dependent. The ITC noted that Japan and Korea in particular had very small home markets and depended nearly exclusively on exports.[102] Argentina seeks to minimize the significance of this factor by arguing that the ITC inferred that just because "certain companies have been successful in exporting," they would increase their exports to the United States by certain amounts.[103] Argentina misconstrues the ITC's finding in two respects. First, the ITC did not conclude merely that certain companies "have been successful in exporting;" rather, it found that the industries in at least some of the countries involved (and particularly in Japan and Korea) were *dependent* on exports because of very small home markets for their products. Second, the ITC did not infer from this export-orientation that these industries would increase their exports to the United States in specific amounts (as Argentina argues). Instead, this export-orientation was just one of a number of factors that led the ITC to conclude that the likely volume of subject imports would be significant if the antidumping duty orders were revoked.

78. Argentina's approach to the ITC's analysis of the likely volume of imports is to examine in isolation each factor that the ITC considered and to assert that each factor does not amount to positive evidence. However, the Panel is directed in Article 17.6 to assess whether the establishment of the facts was proper and whether the evaluation of those facts was unbiased and objective. The ITC properly developed an extensive record in the sunset reviews at issue and conducted an unbiased and objective analysis of that record. Although Argentina may have drawn a different conclusion based on those facts, that alone does not render the ITC's determination inconsistent with the Antidumping Agreement.

VII. CONCLUSION

79. Based on the foregoing, the United States renews its request that the Panel reject Argentina's claims in their entirety.

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[101] ITC Hearing Tr. at 159 (Mr. Dunn, Lone Star Steel) and 161 (Mr. Barnes, IPSCO Tubulars) (Exhibit US-30)].

[102] ITC Report at 20.

[103] Argentina Oral Statement, para. 123.