

**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

Notification of an Appeal by the United States
under Article 16.4 and Article 17 of the Understanding on Rules
and Procedures Governing the Settlement of Disputes (DSU),
and under Rule 20(1) of the Working Procedures for Appellate Review

The following notification, dated 12 January 2007, from the Delegation of the United States, is being circulated to Members.

Pursuant to Article 16 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU") and Rule 20 of the Working Procedures for Appellate Review, the United States hereby notifies its decision to appeal to the Appellate Body certain issues of law covered in the Report of the Panel on *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/RW) and certain legal interpretations developed by the Panel in this dispute.

1. The United States seeks review by the Appellate Body of the Panel's legal conclusion that the provisions of section 751(c)(4)(B) of the Tariff Act of 1930, operating in conjunction with section 751(c)(4)(A) of the Tariff Act and section 351.218(d)(2) of Title 19 of the Code of Federal Regulations, are inconsistent with Article 11.3 of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* ("Antidumping Agreement").¹ This finding is in error and is based on erroneous findings on issues of law and related legal interpretations, such as the finding that U.S. law, including section 751(c)(4)(B) of the Tariff Act and section 351.218(d)(2)(iii) of the Department of Commerce's regulations, precludes the Department of Commerce from making an order-wide determination of likelihood of continuation or recurrence of dumping, supported by reasoned and adequate conclusions based on the facts before the agency, where an interested party elects not to participate in the sunset review at the Department of Commerce.

Other errors include, for example, reversing the burden of proof by failing to require Argentina to prove its claim and instead requiring the United States to disprove it; in addition, the Panel applied the wrong legal standard by evaluating whether the statute "may" breach the Antidumping Agreement, rather than whether the statute mandates a breach of that Agreement. Further, the Panel failed to make an objective assessment of the matter before it, including a failure to make an objective assessment of the facts of the case, contrary to Article 11 of DSU. For example, the Panel based its conclusion not on the evidence contained in the panel record – indeed, this provision of U.S. law had never been used – but rather on the basis of pure speculation by the Panel as to what the United States would do if the law were to be invoked. For example, the Panel moves from

¹See, e.g., paras. 7.32-7.41, 8.1(a).

speculating that evidence would "necessarily" have a "significant impact" on the U.S. determination at issue to concluding that the United States would be unable to consider any additional evidence.

2. The United States seeks review by the Appellate Body of the Panel's legal conclusion that the "volume analysis" incorporated by reference in the Section 129 determination forms part of the measure taken to comply within the meaning of Article 21.5 of the DSU for purposes of these proceedings.² This conclusion is in error and is based on erroneous findings on issues of law and related legal interpretations of DSU Article 21.5. For example, in the original proceeding, there were no recommendations or rulings pertaining to the volume analysis, and, in the redetermination, the volume analysis was an unchanged aspect of the original determination that was simply incorporated by reference, as was the case in *EC – Bed Linen (Article 21.5 – India)*.³

²See, e.g., paras. 7.88-7.96. Paragraphs 7.98-7.101 and 8.1(c)(2) would be rendered moot if the United States were to prevail with respect to this claim.

³Appellate Body Report, *European Communities – Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India: Recourse to Article 21.5 of the DSU by India*, WT/DS141/AB/RW, adopted 24 April 2003 ("*EC – Bed Linen (Article 21.5 – India)*").