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

Request for Consultations by Argentina

The following communication, dated 7 October 2002, from the Permanent Mission of Argentina to the Permanent Mission of the United States and to the Chairman of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

The Government of the Republic of Argentina hereby requests consultations with the Government of the United States of America pursuant to Article 4 of the World Trade Organization (WTO) Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), Article XXII:1 of the General Agreement on Tariffs and Trade 1994 (GATT 1994), and Article 17.3 of the Agreement on Implementation of Article VI of GATT 1994 (the Anti-Dumping Agreement) regarding the final determinations of the United States Department of Commerce (the Department) and the United States International Trade Commission (the Commission) in the sunset reviews of the anti-dumping duty order on oil country tubular goods (OCTG) from Argentina, issued on 7 November 2000 (65 Federal Register 66701) and June 2001 (USITC Pub. No. 3434), respectively, and the Department's determination to continue the anti-dumping duty order on OCTG from Argentina, issued on 25 July 2001 (66 Federal Register 38630).

The Republic of Argentina considers that the following US laws, regulations, policies and procedures related to the administration of sunset reviews and the application of anti-dumping measures are inconsistent with the obligations of the United States under the WTO, either on their face or as applied, as set forth in greater detail in Sections A and B below:

- Sections 751 (c) and 752 of the Tariff Act of 1930, as amended, codified at Title 19 of the United States Code §§ 1675 (c) and 1675a; and the US Statement of Administrative Action accompanying the Uruguay Round Agreements Act (the SAA), H.R. Doc. No. 103-316, vol. 1;
- The Department's *Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Anti-Dumping and Countervailing Duty Orders*; Policy Bulletin, 63 Federal Register 18871 (16 April 1998) (Sunset Policy Bulletin);
- The Department's sunset review regulations, codified at Title 19 of the United States Code of Federal Regulations § 351.218; and the Commission's sunset review regulations, codified at Title 19 of the United States Code of Federal Regulations §§ 207.60-69 (Subpart F).

Argentina considers that the US anti-dumping measures are inconsistent with the following provisions of the Anti-Dumping Agreement, the GATT 1994, and the WTO Agreement:

- Articles 1, 2, 3, 5, 6, 11, 12, and 18 of the Anti-Dumping Agreement;
- Articles VI and X of the General Agreement on Tariffs and Trade (GATT) 1994; and
- Article XVI:4 of the WTO Agreement.

Argentina's specific claims related to the US sunset reviews of anti-dumping measures on OCTG from Argentina are as follows:

A. With respect to the sunset review conducted by the Department:

1. The Department failed to base the initiation of its sunset review on sufficient evidence that the termination of the anti-dumping duty measure would likely lead to a continuation or recurrence of dumping, in violation of procedural, evidentiary, and public notice requirements of Articles 5, 11.3, 12.1, and 12.3 of the Anti-Dumping Agreement.
2. The United States' *de minimis* standard for sunset reviews –both on its face and as applied in this case- is inconsistent with the United States' obligations under Articles 11.3 and 5.8, which establish a 2.0 percent *de minimis* standard. The US anti-dumping statute (19 U.S.C. § 1675a (c)(4)), regulations (19 C.F.R. § 351.106(c)(1)) and official internal guidelines (including section II.A.5. of the Sunset Policy Bulletin) provide for a 0.5 percent *de minimis* standard for sunset reviews. Application of the WTO *de minimis* standard in this case would have resulted in the terminations of the anti-dumping order on OCTG from Argentina.
3. The Department's determination of the likelihood of continuation or recurrence of dumping misapplied the "likelihood" standard, lacked an adequate factual basis, and was based on a presumption in favor of maintaining the order, in violation of Articles 2, 11.3 and 11.4 of the Anti-Dumping Agreement.

B. With respect to the sunset review conducted by the Commission:

1. The United States' standard for determining whether the termination of anti-dumping orders would be "likely" to lead to continuation or recurrence of injury fails to implement the requirements of the Anti-Dumping Agreement because it equates "possible" injury with "likely" injury, in violation of Article 11.3 of the Anti-Dumping Agreement.
2. The Commission failed to conduct an "objective examination" of the record and failed to base its determination on "positive evidence" regarding whether termination of the anti-dumping duty order "would be likely to lead to continuation or recurrence" of injury or threat of injury with respect to the volume of imports, price effects on domestic like products and impact of imports on the domestic industry, in violation of Articles 11.3 and 3 of the Anti-Dumping Agreement.
3. The US statutory requirements that the Commission determine whether injury would be likely to continue or recur "within a reasonably foreseeable time" (19 U.S.C. § 1675a(a)(1)) and that the Commission "shall consider that the effects of revocation or termination may not be imminent, but may manifest themselves only over a longer period of time" (19 U.S.C. § 1675a(a)(5)) are inconsistent with Articles 11.3 and 3 of the Anti-dumping Agreement.

The Government of Argentina reserves its right to raise further factual claims and legal issues during the course of the consultations. In light of the DSU provisions governing this matter, including Article 4.3 thereof, as well as Article 17 of the Anti-Dumping Agreement, the Government of Argentina looks forward to receiving your reply to this request and to fixing a mutually acceptable date for consultations.
