

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

Recourse by Argentina to Article 22.2 of the DSU

The following communication, dated 21 May 2007, from the delegation of Argentina to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 22.2 of the DSU.

Argentina requests that a meeting of the Dispute Settlement Body (DSB) be held on 4 June 2007 in order to consider the following agenda item:

- *United States – Sunset Reviews of Anti-Dumping Measures on Oil Country Tubular Goods from Argentina (WT/DS268) – Recourse by Argentina to Article 22.2 of the Understanding on Rules and Procedures Governing the Settlement of Disputes*

**History of the Dispute**

On 17 December 2004, the DSB adopted the original Appellate Body Report and the original Panel Report, as modified by the Appellate Body, in this dispute. The resulting DSB recommendations and rulings included "as applied" violations related to the US Department of Commerce (USDOC) November 2000 likelihood of dumping determination in the sunset review of the anti-dumping duty order on Oil Country Tubular Goods (OCTG) from Argentina.

The original Panel found that the USDOC likelihood of dumping determination was inconsistent with the obligations of the United States under Articles 11.3 and 6.2 of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* (the "Anti-Dumping Agreement").<sup>1</sup> These findings were not appealed by the United States.

The DSB recommended that the United States bring its measures into conformity with US WTO obligations. On 14 January 2005, the United States informed the DSB that it intended to implement the recommendations and rulings of the DSB in a manner that respected US WTO obligations.<sup>2</sup>

During the subsequent arbitration under Article 21.3(c) of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (the "DSU"), the Arbitrator determined that the "reasonable period of time" for the United States to implement the DSB recommendations and rulings

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<sup>1</sup>Panel Report, *United States – Sunset Reviews of Anti-Dumping Measures on Oil Country Tubular Goods from Argentina*, WT/DS268/R, adopted 17 December 2004, para. 8.1(d)(i) ("Panel Report"); see also paras. 7.219, 7.222, and 7.235.

<sup>2</sup> WT/DSB/M/181, 14 January 2005, para. 10.

would be 12 months from the date of adoption of the Panel and Appellate Body Reports, i.e., by 17 December 2005.<sup>3</sup>

On 2 November 2005, the USDOC initiated a proceeding under Section 129 of the US Uruguay Round Agreements Act in a purported attempt to address the Panel's findings concerning the USDOC's likelihood determination. On 16 December 2005, the USDOC issued its "Section 129 Determination," which stated in part that "we find there is likelihood of continuation or recurrence of dumping had the antidumping duty order on OCTG from Argentina been revoked in 2000, i.e., at the end of the original sunset period."<sup>4</sup>

On 20 December 2005, the United States asserted to the DSB that it had "implemented the recommendations and rulings of the DSB in [this] dispute."<sup>5</sup> Argentina indicated at that DSB meeting that did not agree.<sup>6</sup>

On 5 January 2006, Argentina and the United States concluded an agreement on procedures under Articles 21 and 22 of the DSU that apply to this dispute: *Agreed Procedures under Articles 21 and 22 of the Dispute Settlement Understanding Applicable to the WTO Dispute United States – Sunset Reviews of Anti-Dumping Measures on Oil Country Tubular Goods from Argentina* (the "Sequencing Agreement").<sup>7</sup>

#### **Proceeding Under Article 21.5 of the DSU**

On 26 January 2006, Argentina requested consultations with the United States under Article 21.5 of the DSU. On 6 March 2006, Argentina requested the establishment of a Panel. The Panel was established by the DSB on 17 March 2006.

On 30 November 2006, the DSU Article 21.5 Panel issued its Report and found that the United States had failed to implement the rulings and recommendations of the DSB.<sup>8</sup> The Panel found, among other things, that:

- "The USDOC acted *inconsistently* with Article 11.3 of the Agreement as the Section 129 Determination that dumping was likely to continue or recur lacked a sufficient factual basis with regard to its analysis of both (1) likely past dumping and (2) volume,"<sup>9</sup>
- "The USDOC acted *inconsistently* with Article 6.4 of the Agreement in the sunset review at issue by not giving the Argentine exporters timely opportunities to see certain information that the USDOC used in its Section 129 Determination,"<sup>10</sup>

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<sup>3</sup> Award of the Arbitrator, *United States – Sunset Reviews of Anti-Dumping Measures on Oil Country Tubular Goods from Argentina*, Arbitration under Article 21.3(c) of the DSU, WT/DS268/12, circulated 7 June 2005, para. 10.

<sup>4</sup> *Section 129 Determination: Final Results of Sunset Review, Oil Country Tubular Goods from Argentina*, A-357-810 (16 Dec. 2005) ("USDOC Section 129 Determination").

<sup>5</sup> WT/DSB/M/202, 1 February 2006, para. 41.

<sup>6</sup> *Id.*, para. 42.

<sup>7</sup> WT/DS268/14, 5 January 2006.

<sup>8</sup> Panel Report, *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, circulated 30 November 2006 ("DSU 21.5 Panel Report").

<sup>9</sup> DSU 21.5 Panel Report, para. 8.1(c). Original emphasis.

<sup>10</sup> DSU 21.5 Panel Report, para. 8.1(e). Original emphasis.

- "The USDOC acted *inconsistently* with Article 6.5.1 of the Agreement by not requiring a petitioner submitting confidential information to submit a non-confidential summary thereof."<sup>11</sup>

On 12 January 2007, the United States filed a Notice of Appeal with respect to certain issues of law covered in the DSU Article 21.5 Panel Report.<sup>12</sup> On 24 January 2007, Argentina filed a Notice of Other Appeal.<sup>13</sup>

On 12 April 2007, the Appellate Body issued its Report. It upheld the findings of the DSU Article 21.5 Panel that the United States had failed to implement the recommendations and rulings of the DSB.<sup>14</sup> Specifically, the Appellate Body upheld the Panel's finding, in paragraphs 7.91 and 7.96 of the DSU Article 21.5 Panel Report, that the USDOC's volume analysis was properly before the Panel. The Appellate Body consequently found that the Panel's findings in paragraphs 7.101, 7.102, and 8.1(c) of the Panel Report also stood.<sup>15</sup>

The United States did not appeal the rulings of the DSU Article 21.5 Panel that the USDOC acted inconsistently with Articles 6.4 and 6.5.1 of the Anti-Dumping Agreement.

On 11 May 2007, the DSB adopted the Appellate Body Report and the DSU Article 21.5 Panel Report, as modified by the Appellate Body.

Thus, the Section 129 Determination has been found to be inconsistent with US obligations under Article 11.3 of the Anti-Dumping Agreement because the USDOC's determination that dumping was likely to continue or recur was based on (1) a WTO-inconsistent finding of likely past dumping during the sunset review period, and (2) a WTO-inconsistent inference of likely dumping based on the reduction of Argentine OCTG imports into the United States following the imposition of the anti-dumping measure. The Section 129 Determination was also inconsistent with Articles 6.4 and 6.5.1 of the Anti-Dumping Agreement.

### **Argentina's Request Pursuant to DSU Article 22.2**

The United States has failed to comply with the recommendations and rulings of the DSB within the reasonable period of time. Therefore, pursuant to Article 22.2 of the DSU and paragraph 7 of the Sequencing Agreement, Argentina requests authorization from the DSB to suspend the application to the United States of tariff concessions and related obligations under the General Agreement on Tariffs and Trade (GATT) 1994.

The suspension of tariff concessions and related obligations requested by Argentina covers trade in an amount equivalent to the level of nullification and impairment of benefits accruing to Argentina as a result of the failure of the United States to bring the above-mentioned measures into compliance with the Anti-Dumping Agreement or otherwise to comply with the recommendations and rulings of the DSB by 17 December, 2005.

Argentina requests authorization from the DSB to suspend the application to the United States of tariff concessions and related obligations under the GATT 1994 covering trade in an annual amount of US\$44 million dollars for the first year. For subsequent years, the level of suspension of concessions and related obligations will be determined by applying to this initial level a ratio of the

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<sup>11</sup> DSU 21.5 Panel Report, para. 8.1(f). Original emphasis.

<sup>12</sup> WT/DS268/19.

<sup>13</sup> WT/DS268/20.

<sup>14</sup> WT/DS268/AB/RW.

<sup>15</sup> DSU Art.21.5 Appellate Body Report, para. 185 (b).

size in metric tons of the OCTG market in the United States for the most recently completed calendar year to the size of the OCTG market in the United States in 2006. Thus, if the size of the OCTG market in the United States increases relative to 2006, then the level of suspension of concessions and related obligations would increase proportionately in accordance with this formula.

Argentina intends to implement the suspension of concessions and related obligations under the GATT 1994 by imposing duties in excess of bound rates on products originating in the United States. For each year in which Argentina intends to take such measures, Argentina will notify to the DSB, for transparency purposes, a final list to be defined by Argentina indicating the level of additional duties that Argentina will apply on selected products to which the suspension of concessions and related obligations will apply.

In implementing any suspension of concessions and related obligations, Argentina will ensure that the suspension does not exceed the level authorized by the DSB.

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