

**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 Other Appeal by Argentina
under Article 16.4 and Article 17 of the Understanding on Rules
and Procedures Governing the Settlement of Disputes (DSU),
and under Rule 23(1) of the Working Procedures for Appellate Review

The following notification, dated 24 January 2007, from the Delegation of Argentina, is being circulated to Members.

Pursuant to Articles 16.4 and 17 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU") and Rule 23(1) of the *Working Procedures for Appellate Review*, Argentina 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 (OCTG) from Argentina – Recourse to Article 21.5 of the DSU By Argentina* (WT/DS268/RW) (the "Panel Report") and certain legal interpretations developed by the Panel in this dispute.

1. Argentina seeks review by the Appellate Body of the Panel's conclusions, and its related legal findings and interpretations, that "[t]he USDOC did *not* act *inconsistently* with Articles 11.3 and 11.4 of the Agreement by developing a new factual basis for its Section 129 Determination." This conclusion is set out in paragraph 8.1(b) of the Panel Report. The related legal findings and interpretations of the Panel are set out in paragraphs 7.47 to 7.61 of the Panel Report.

2. The Panel acted inconsistently with its obligation under Article 11 of the DSU to make an objective assessment of the matter before it. The Panel determined that "the resolution of Argentina's claim must have regard to broader, horizontal considerations underpinning the operation of the WTO dispute settlement system."¹ By basing its findings on "broader, horizontal considerations underpinning the operation of the WTO dispute settlement system", rather than on the specific claims and arguments raised by Argentina, the Panel failed to make an objective assessment of "the matter before it", including "the facts of the case" and "the applicability of and conformity with the relevant covered agreements."

3. The Panel's findings set out in paragraphs 8.1(b) and 7.47 to 7.61 of the Panel Report were also inconsistent with Articles 3.2 and 19.2 of the DSU. The Panel's findings have diminished Argentina's right under Article 11.3 of the Anti-Dumping Agreement to termination of the measure after five years in the absence of compliance with the requirements of Articles 11.3 and 11.4. The

¹ Panel Report, para. 7.51; *see also* para. 7.57.

Panel's findings also diminished the obligation of the United States to terminate the antidumping measure on Argentine OCTG absent a review and determination consistent with Articles 11.3 and 11.4 of the Anti-Dumping Agreement.

4. The Panel acted inconsistently with its obligation under Article 11 of the DSU by failing to objectively assess Argentina's request for a suggestion pursuant to Article 19.1 of the DSU. Noting the original Panel's conclusion that it "saw no particular reason to make a suggestion and therefore decline[ed] Argentina's request"², Argentina provided additional argument and explanation as the need for a suggestion during the DSU Article 21.5 proceeding. However, without any analysis, the Panel simply repeated its statement that it "saw no particular reason to make a suggestion and therefore decline[ed] Argentina's request."³ The Panel also violated Article 12.7 of the DSU by failing to set out the findings of fact, the applicability of relevant provisions and the basic rationale behind its finding that there was "no particular reason to make a suggestion."

5. In the light of the Panel's finding that the United States did not bring itself into compliance with its obligations under the Anti-Dumping Agreement, and in light of the fact that the United States has not appealed the Panel's finding in the regard,⁴ Argentina respectfully requests that the Appellate Body suggest that the United States terminate the anti-dumping measure on OCTG from Argentina. The United States accepts the Panel's decision that the United States did not achieve compliance before the expiration of the implementation period. Article 19.1 of the DSU authorizes Panels and the Appellate Body to make suggestions, and to suggest ways in which the Member concerned could implement the recommendations. A suggestion to terminate the anti-dumping measure is appropriate and necessary in this case in order to protect the specific rights of Argentina which the United States violated, and continues to violate.

² WT/DS268/R, para. 8.5.

³ Panel Report, para. 9.4.

⁴ While the U.S. Notice of Appeal and the U.S. Appellant's Submission allege certain legal errors related to the Panel's consideration of the matter before it, the United States does not appeal the Panel's findings in paragraph 8.1(c)(1) of the Panel's Report. The Panel concluded that the Section 129 Determination, which was one of the measures taken to comply, is inconsistent with U.S. obligations under the Anti-Dumping Agreement. Thus, the United States does not challenge the conclusion that at the United States failed to bring itself into compliance with its WTO obligations. Stated differently, even if the United States were to prevail on all its arguments in this appeal, it would still have failed to bring itself into compliance with its obligations under the Anti-Dumping.