
Original: English

**UNITED STATES – ANTI-DUMPING ADMINISTRATIVE REVIEW
ON OIL COUNTRY TUBULAR GOODS FROM ARGENTINA**

Request for Consultations by Argentina

The following communication, dated 20 June 2006, from the delegation of Argentina to the delegation of the United States and to the Chairman of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

Upon instructions from my authorities, I hereby wish to convey the request of Argentina to hold consultations with the United States of America pursuant to Article 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (DSU), Article XXIII of the *General Agreement on Tariffs and Trade 1994* (GATT 1994), and Article 17 of the *Agreement on Implementation of Article VI of GATT 1994* (the Anti-Dumping Agreement), in connection to the anti-dumping duty administrative review by the United States Department of Commerce (USDOC) on Oil Country Tubular Goods, other than Drill Pipe (OCTG) from Argentina with respect to Acindar Industria Argentina de Aceros S.A. (Acindar), for the period 1 August 2000 through 31 July 2001, published in the Federal Register of the United States on 9 September 2002¹ and 19 March 2003², and also in connection to the Tariff Act of 1930, Section 773(e)(2)(B)(iii), as well as any amendments thereto or extensions thereof and any related measures.

Argentina is concerned that the anti-dumping duty administrative review with respect to Acindar is inconsistent with the obligations of the United States under the GATT 1994 and the Anti-Dumping Agreement. The provisions of these Agreements with which this measure appears to be inconsistent include, but are not limited to, the following:

Article 2.2 and note 2 of the Anti-Dumping Agreement and Article VI of the GATT 1994, because the USDOC failed to properly establish that Acindar's home sales during the period of review did not permit a proper comparison;

Article 2.2.2 of the Anti-Dumping Agreement and Article VI of the GATT 1994, because the USDOC:

¹ Preliminary Results of Antidumping Duty Administrative Review; Oil Country Tubular Goods from Argentina (67 FR 57215, of 9 September 2002).

² Final Results and Recision in Part of Antidumping Duty Administrative Review; Oil Country Tubular Goods, Other Than Drill Pipe, From Argentina (68 FR 13262, of 19 March 2003); and the Issues and Decision Memo for the Antidumping Duty Administrative Review of Oil Country Tubular Goods from Argentina – 1 August 2000 through 31 July 2001 (68 FR 13262, 19 March 2003).

- improperly calculated the constructed normal value taking into account the amounts for profits based on Siderca's financial statement, disregarding Acindar's actual data pertaining to production and sales in the ordinary course of trade;
- when calculating the constructed normal value, the USDOC added direct selling expenses reported for Acindar's US sales, disregarding the selling expenses reported on Acindar's financial statement;

Article 2.2.2 (iii) of the Anti-Dumping Agreement and Article VI of the GATT 1994, because even if the amount for profit could not be determined on Acindar's actual data, by improperly using Siderca's financial statement under alternative III (as provided by Section 773(e)(2)(B)(iii) of the Tariff Act of 1930) to assess profit for Acindar's constructed normal value, the USDOC did not properly establish that the profit determined did not exceed the profit normally realized by Siderca or other producers on sales of OCTG in the domestic market of Argentina;

Article 2.4 of the Anti-Dumping Agreement and Article VI of the GATT 1994, because:

- by using Siderca's financial statement (including seventy-three per cent of export sales) in calculating Acindar's profit ratio and, therefore, constructed normal value,
- by not taking into account that Acindar sold only welded OCTG during the period of review while Siderca sold only seamless OCTG during the fiscal year covered by the financial statement when calculating Acindar's profit ratio,
- by disregarding the fact that Siderca's home market sales were made pursuant to long-term supply contracts tending to cause Siderca's home market prices lag behind the general price increase during the period,
- by not indicating what further information from Companhia 103 was necessary to calculate Acindar's profit ratio,
- by making circumstances-of-sale adjustments adding direct selling expenses reported for Acindar's US sales, disregarding the selling expenses reported on Acindar's financial statement,
- by utilizing Siderca's financial statement for the period ending 31 March 2001 and, therefore, not comparing sales made at as nearly as possible the same time,

the USDOC did not conduct a fair comparison between Acindar's export price and the constructed normal value, failed to make due allowances for the above-mentioned differences that affected price comparability and did not indicate Acindar what information was necessary to ensure a fair comparison;

Articles 6.1, 6.2 and 6.6 of the Anti-Dumping Agreement, because by, *inter alia*:

- not making clear, expressly requesting, and/or seeking to clarify the kind of information required with respect to Companhia 103's (i.e. Acindar's home sales unit) and Siat's (Siderca's home sales unit) profits because of an alleged "ambiguity" and "unclearness", and

- using instead Siderca's financial statement (including seventy-three per cent of export sales) as the basis for Acindar's constructed value profit,

the USDOC did not give notice of the information required and denied Acindar ample opportunity to present in writing all evidence considered relevant, did not provide Acindar a full opportunity for the defence of its interests and did not satisfy itself as to the accuracy of the information supplied;

Article 6.8 and Annex II of the Anti-Dumping Agreement, because by recurring to facts available and resorting to Siderca's financial statement for calculating Acindar's constructed value profit, the USDOC failed to comply with the necessary conditions established in those provisions;

Article 6.9 of the Anti-Dumping Agreement, because by not disclosing how it determined the dumping margin for the period of review to be 60.73%, the USDOC failed to inform Acindar of the essential facts under consideration which formed the basis for the decision to apply antidumping duties;

Article 9.2 of the Anti-Dumping Agreement and Article VI of the GATT 1994 because, *inter alia*:

- by not calculating the constructed normal value taking into account the amounts for administrative, selling and general costs and profits based on actual data pertaining to production and sales in the ordinary course of trade of OCTG by Acindar,
- by not establishing an amount of profit that did not exceed the profit normally realized by other producers on sales of OCTG in the *domestic* market of Argentina,
- by not taking into account that Acindar sold only welded OCTG during the period of review while Siderca sold only seamless OCTG during the fiscal year covered by the financial statement when calculating Acindar's profit ratio,
- by disregarding the fact that Siderca's home market sales were made pursuant to long-term supply contracts tending to cause Siderca's home market prices lag behind the general price increase during the period,

the USDOC failed to collect anti-dumping duties in the appropriate amount;

Article 9.2 and 9.3 of the Anti-Dumping Agreement and Article VI of the GATT 1994, because the zeroing methodology applied by the USDOC in the administrative review at issue with regard to Acindar resulted in amounts of assessed anti-dumping duties that exceeded Acindar's margin of dumping with which the anti-dumping duties had to be compared; and

Articles 12.2 and 12.2.2 of the Anti-Dumping Agreement because, *inter alia*, by not providing details of the calculations that led to a determination of a dumping margin for Acindar of 60.73%, the USDOC did not make available through the Notice of Final Results of Antidumping Duty Administrative Review and the Issues and Decision Memo, all the relevant information of fact and law and reasons that led to the impositions of anti-dumping

duties, and in particular, the reasons for the methodology used in the establishment and comparison of the export price and the normal value.

In addition, Argentina also requests consultations with the United States with respect to the Tariff Act of 1930 ("the Act"), in particular, Section 773(e)(2)(B)(iii), which appears to be inconsistent with United States' obligations under the Anti-Dumping Agreement and the GATT 1994. Argentina is concerned that this provision of the Act allows the United States to establish an amount for profit that exceeds the profit normally realized by other exporters or producers on sales of products of the same general category in the domestic market of the country of origin, in violation of Article 2.2.2(iii) of the Anti-Dumping Agreement and Article VI of the GATT 1994.

For all of the measures identified above, the United States also failed to comply with its obligations under Articles 1 and 18.1 of the Anti-Dumping Agreement and Article XVI:4 of the WTO Agreement.

Argentina reserves its right to raise further factual, "as applied" and "as such" claims and legal issues during the course of consultations.

We look forward to receiving your reply to this request and to fixing a mutually convenient date for consultations.
