

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

Notification of an Appeal by the United States
under paragraph 4 of Article 16 of the Understanding on Rules
and Procedures Governing the Settlement of Disputes ("DSU")

The following notification, dated 31 August 2004, 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* (WT/DS268R) 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 relating to "affirmative" waivers are inconsistent with Article 11.3 of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* ("Anti-Dumping Agreement"). This finding is in error and is based on erroneous findings on issues of law and related legal interpretations, including, for example, 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;¹

2. The United States seeks review by the Appellate Body of the Panel's legal conclusion that the provisions of section 351.218(d)(2)(iii) of the Department of Commerce's regulations relating to "deemed" waivers are inconsistent with Article 11.3 of the Anti-Dumping Agreement. This finding is in error and is based on erroneous findings on issues of law and related legal interpretations, including, for example, 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;²

¹See Panel Report, paras. 7.80-7.103, 8.1(a)(i)-(ii).

²See *id.*

3. The United States seeks review by the Appellate Body of the Panel's legal conclusion that provisions of section 351.218(d)(2)(iii) of the Department of Commerce's regulations relating to "deemed" waivers are inconsistent with Articles 6.1 and 6.2 of the Anti-Dumping Agreement. These findings are in error and are based on erroneous findings on issues of law and related legal interpretations, including, for example, that under 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, an exporter that fails to file a complete response to the notice of initiation has been deprived of ample opportunity to submit information in accordance with Article 6.1 or to confront parties with adverse interests under Article 6.2, and which also renders the order-wide likelihood determination inconsistent with Articles 6.1 and 6.2;³

4. The United States seeks review by the Appellate Body of the Panel's legal conclusion that provisions of section II.A.3 of the *Sunset Policy Bulletin* are inconsistent with Article 11.3 of the Anti-Dumping Agreement, and, to the extent that the Panel's conclusion is premised on an erroneous assessment of the facts, the United States seeks review of that assessment pursuant to Article 11 of the DSU. This finding is in error and is based on erroneous findings on issues of law and related legal interpretations, including, for example: the Panel's conclusion that the *Sunset Policy Bulletin* is a measure, based solely on its conclusion that the Appellate Body found this in another dispute; the Panel's failure to rely on the meaning of the *Sunset Policy Bulletin* under U.S. municipal law in assessing whether the *Sunset Policy Bulletin* mandates a breach; and the Panel's reliance on the "consistent application" of the *Sunset Policy Bulletin* to conclude that the *Sunset Policy Bulletin* mandates a breach;⁴

5. The United States seeks review by the Appellate Body of the Panel's factual findings regarding U.S. law. These findings are in error and do not represent an objective assessment of the facts as required by Article 11 of the DSU;⁵

6. The United States seeks review by the Appellate Body of the Panel's legal conclusion that Argentina's Panel Request was not inconsistent with Article 6.2 of the DSU. This finding is in error and is based on erroneous findings on issues of law and related legal interpretations, including, for example: the Panel's conclusion that Argentina's panel request was sufficiently clear and presented the problem clearly,⁶ the Panel's conclusion that certain claims were within the terms of reference,⁷ and the Panel's conclusion that the United States did not establish prejudice.⁸

³See *id.*, paras. 7.107-7.128, 8.1(a)(iii).

⁴See *id.*, paras. 7.134-7.144, 7.152-7.173, 8.1(b).

⁵See *id.*, paras. 7.80-7.128.

⁶See *id.*, paras. 7.10-7.48.

⁷See *id.*, paras. 7.49-7.70.

⁸See *id.*, para. 7.71.