

PUBLIC VERSION

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

(DS617)

**RESPONSES OF THE UNITED STATES OF AMERICA
TO THE PANEL'S QUESTIONS FOLLOWING THE
SECOND SUBSTANTIVE MEETING OF THE PANEL WITH THE PARTIES**

December 6, 2024

TABLE OF EXHIBITS

| Exhibit No. | Description |
|--------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| U.S. First Written Submission | |
| USA-01 | 19 C.F.R. § 351.204 |
| USA-02 | Applicants’ Letter, “Oil Country Tubular Goods from Argentina, Mexico, the Republic of Korea, and Russia: Response to General Issues Questionnaire” (Oct. 12, 2021) (excerpts) |
| USA-03 | Tenaris Bay City, Inc., IPSCO Tubulars Inc., Maverick Tube Corporation, and Tenaris Global Services (U.S.A.) Corporation, “Oil Country Tubular Goods from Argentina, Mexico, the Republic of Korea, and Russia: Comments on Petitioners’ Second General Issues Questionnaire Response” (Oct. 22, 2021) (excerpts) |
| USA-04 | Applicants’ Letter, “Petitions for the Imposition of Antidumping and Countervailing Duties: Oil Country Tubular Goods from Argentina, Mexico, the Republic of Korea, and Russia,” Vol. 1, Part 3 (Oct. 6, 2021) (excerpt) |
| USA-05 | USITC Blank U.S. Purchaser Questionnaire from OCTG investigations (excerpt) |
| USA-06 | 19 C.F.R. §§ 351.102, 351.301 |
| USA-07 | Definition of “As the Case May Be”, <i>Collins</i> , http://www.collinsdictionary.com/dictionary/english/as-the-case-may-be (accessed Apr. 23, 2024) |
| USA-08 | Definition of “Case”, <i>Oxford Learner’s Dictionaries</i> , https://www.oxfordlearnersdictionaries.com/us/definition/american_english/case_1 (accessed Apr. 23, 2024) |
| USA-09 | <i>Certain Oil Country Tubular Goods from India, Korea, The Philippines, Saudi Arabia, Taiwan, Thailand, Turkey, Ukraine, and Vietnam</i> , Inv. Nos. 701-TA-499-500 and 731-TA-1215-1223 (Preliminary), USITC Pub. No. 4422 (Aug. 2013) (excerpt) |
| USA-10 | <i>Oil Country Tubular Goods from Argentina, Austria, Italy, Japan, Korea, Mexico, and Spain</i> , Inv. Nos. 701-TA-363-364 and 731-TA-711-717 (Preliminary), USITC Pub. No. 2803 (Aug. 1994) (excerpt) |

PUBLIC VERSION

*United States – Anti-Dumping Measure on
Oil Country Tubular Goods from Argentina (DS617)*

U.S. Responses to Questions Following
the Second Panel Meeting – December 6, 2024 – Page iii

| | |
|--------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| USA-11 | <i>Oil Country Tubular Goods from India, Korea, Turkey, Ukraine, and Vietnam</i> , Inv. Nos. 701-TA-499-500 and 731-TA-1215-1216, 1221-1223 (Review), USITC Pub. 5090 (Jul. 2020) (excerpt) |
| USA-12 | <i>Oil Country Tubular Goods from Argentina, Mexico, Russia and South Korea</i> , Inv. Nos. 701-TA-671-672 and 731-TA-1571-1573, Revised and Corrected USITC Hearing Transcript (Sept. 22, 2022) (excerpt) |
| USA-13 | <i>Oil Country Tubular Goods From the Republic of Korea: Final Affirmative Countervailing Duty Determination</i> , 87 Fed. Reg. 59,056, 59,057 (Dep't of Commerce Sept. 29, 2022) |
| USA-14 | USITC Blank U.S. Importer Questionnaire from OCTG investigations |
| USA-15 | TMK Post-Conference Brief |
| USA-16 | <i>Certain Preserved Mushrooms from Chile</i> , Inv. No. 731-TA-776 (Final), USITC Pub. 3144, at 14-15 (Nov. 1998) |
| USA-17 | <i>Proclamation 9705: Adjusting Imports of Steel Into the United States</i> , 83 Fed. Reg. 11,625 (Mar. 15, 2018) |
| USA-18 | <i>Certain Oil Country Tubular Goods From India, the Republic of Korea, Taiwan, the Republic of Turkey, and the Socialist Republic of Vietnam: Antidumping Duty Orders; and Certain Oil Country Tubular Goods From the Socialist Republic of Vietnam: Amended Final Determination of Sales at Less Than Fair Value</i> , 79 Fed. Reg. 53,691 (Dep't of Commerce Sept. 10, 2014) |
| USA-19 | <i>Oil Country Tubular Goods from Argentina, Mexico, Russia and South Korea</i> , Inv. Nos. 701-TA-671-672 and 731-TA-1571-1573 (Preliminary), USITC Pub. No. 5248 (Nov. 2021) |
| USA-20 | Definition of "Significant," <i>The New Shorter Oxford English Dictionary</i> , 4 th ed., L. Brown (ed.) (Clarendon Press, Oxford, 1993), Vol. 2, p. 2860 |
| USA-21 | 19 U.S.C. § 1862 |
| USA-22 | 15 C.F.R., Part 705 |
| USA-23 | WTO Council for Trade in Goods, Minutes of the Meeting of the Council for Trade in Goods, 10 November 2017, G/C/M/130, at 26-27 (Mar. 22, 2018) |
| USA-24 | U.S. Department of Commerce, "The Effect of Imports of Steel on the National Security: An Investigation Conducted under Section 232 of the Trade Expansion Act of 1962, as Amended," at 1-61 (Jan. 11, 2018) |

| | |
|-----------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| USA-25 | Presidential Proclamation 9759 of May 31, 2018, “Adjusting Imports of Steel into the United States,” 83 Fed. Reg. 25857-25860 |
| USA-26 | Petitioners’ Public Posthearing Brief, Exhibits. 3-4 |
| U.S. Responses to the First Set of Panel Questions | |
| USA-27 | Uruguay Round Agreements Act, Pub. L. 103-465 (Dec. 8, 1994), 108 Stat. 4809 (excerpt) |
| USA-28 | <i>Oil Country Tubular Goods from Argentina, Austria, Italy, Japan, Korea, Mexico, and Spain</i> , Inv. Nos. 701-TA-363-364 and 731-TA-711-717 (Final), USITC Pub. 2911 (Aug. 1995) (excerpt) |
| USA-29 | <i>Certain Seamless Carbon and Alloy Standard, Line, and Pressure Steel Pipe from Argentina, Brazil, Germany, and Italy</i> , Inv. Nos. 701-TA-362 and 731-TA-707-710 (Final), USITC Pub. No. 2910 (July 1995) (excerpt) |
| USA-30 | <i>Certain Carbon Steel Butt-Weld Pipe Fittings from France, India, Israel, Malaysia, The Republic of Korea, Thailand, The United Kingdom, and Venezuela</i> , Inv. Nos. 701-TA-360-361 and 731-TA-688-695 (Final), USITC Pub. No. 2870 (Apr. 1995) (excerpt) |
| USA-31 | Trade and Tariff Act of 1984, Pub. L. 98-573 (Oct. 30, 1984), 98 Stat. 2948 (excerpt) |
| USA-32 | USITC Blank U.S. Purchaser Questionnaire from OCTG investigations (full) |
| USA-33 | USITC Blank U.S. Producer Questionnaire from OCTG investigations (full) |
| USA-34 | USITC Blank U.S. Importer Questionnaire from OCTG investigations (full) |
| USA-35 | Application, Volume I, at Exhibits I-11, I-14 (Oct. 6, 2021) |
| USA-36 | <i>The New Shorter Oxford English Dictionary</i> , 4th ed., L. Brown (ed.) (Clarendon Press, Oxford, 1993) (excerpt) |
| USA-37 | Statement of Administrative Action to the Uruguay Round Agreements Act, H.R. Rep. No. 103-316, Vol. I (1994) (excerpt) |
| USA-38 | <i>Oil Country Tubular Goods from Argentina, Mexico, Russia and South Korea</i> , Inv. Nos. 701-TA-671-672 and 731-TA-1571-1573, Revised and Corrected USITC Hearing Transcript (Sept. 22, 2022) (additional excerpt) |

| | |
|---------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Opening Statement of the United States at the Second Panel Meeting | |
| USA-39 | <i>The New Shorter Oxford English Dictionary</i> , 345 (L. Brown ed. 1993) |
| U.S. Responses to the Second Set of Panel Questions | |
| USA-40 | <i>Oil Country Tubular Goods from Argentina, Mexico, Russia and South Korea</i> , Inv. Nos. 701-TA-671-672 and 731-TA-1571-1573, Revised and Corrected USITC Hearing Transcript (Sept. 22, 2022) (additional excerpt) |

Question 1 (To both parties): Please confirm whether in the underlying OCTG investigation, the definition of domestic industry and domestic like product included imported OCTG that was not heat treated in the United States, but only underwent in the United States what Argentina refers to as “minor processing”, such as threading alone.

Response:

1. The United States understands this question as pertaining to the U.S. Department of Commerce’s (“USDOC”) assessment of industry support for the application.
2. As an initial matter, no interested party made any specific arguments about “threading” of unfinished OCTG before the USDOC prior to initiation. Tenaris’s arguments regarding further processing were generally focused on whether “mere finishing operations” should be included as part of domestic production *at all*, as a matter of defining the scope of the products to be investigated.¹ Indeed, Tenaris in its comments on industry support did not articulate what constituted “mere finishing operations” or include any discussion of “threading” operations specifically. The Government of Argentina did not file any comments preceding the USDOC’s initiation.²
3. Thus, the USDOC addressed Tenaris’s arguments as it presented them, that is, as essentially a scope issue. Specifically, in response to those arguments, the USDOC explained that, consistent with prior U.S. International Trade Commission (“USITC”) determinations, OCTG finishing operations should be included as production of the domestic like product.³ In fact, the USITC had previously observed that, because processors that perform heat treatment domestically engage in sufficient production-related activities, they qualified as domestic producers of OCTG for initiation purposes.⁴
4. The record at the time of the USDOC’s initiation did not support the notion that the domestic industry included processors of OCTG that do not conduct “heat treatment” in the United States, but instead *only* perform “minor processing” such as “threading” alone. While the domestic like product was defined to include OCTG that was threaded, the record at initiation was devoid of *any* evidence supporting the notion that members of the domestic industry only perform threading or “minor processing” operations.

¹ Tenaris’s Pre-Initiation Comments (Oct. 15, 2021) at 9-10 (Exhibit ARG-03); Tenaris’s Pre-Initiation Comments (Oct. 20, 2021) at 8 (Exhibit ARG-17); Tenaris’s Pre-Initiation Comments (Oct. 22, 2021) at 5 (Exhibit ARG-22).

² Notably, the Government of Argentina waited to make an entry of appearance until after the USDOC initiated the investigation, despite having the right to do so before. Had it entered an appearance before the USDOC prior to initiation, the Government of Argentina could have made arguments now raised before the Panel. However, Argentina elected not to do so.

³ USDOC Initiation Checklist, Attachment II, at 14 (Exhibit ARG-18).

⁴ *Certain Oil Country Tubular Goods from India, Korea, the Philippines, Taiwan, Thailand, Turkey, Ukraine, and Vietnam*, Inv. Nos. 701-TA-499-500 and 731-TA-1215-1217 and 1219-1223 (Final), USITC Pub. No. 4489, at 13 (Sept. 2014) (“USITC OCTG 2014 Report”) (Exhibit ARG-60).

5. Indeed, it is important to emphasize that there are clear principles regarding the U.S. OCTG industry, the domestic like product, and the reporting, collection, and presentation of production and shipment data. For example, the USITC’s report from the OCTG AD and CVD investigations from 2014 stated that “[d]iscussion of independent threaders is limited . . . as the Commission in recent OCTG investigations has not deemed independent threaders to be part of the domestic industry producing casing and tubing.”⁵

6. U.S. OCTG producers, including the four company applicants here, have participated in multiple AD and CVD investigations and reviews at the USITC involving OCTG products, where they were required to report production data according to these principles. In other words, the domestic industry participants that filed the application underpinning the OCTG from Argentina AD investigation were quite sophisticated regarding their reporting obligations for domestic production. There is *no* evidence on the USDOC’s administrative record that suggests any U.S. OCTG producers departed from these well-established reporting principles when providing the information underlying the USDOC’s industry support analysis, such as reporting “threading” alone of imported OCTG as domestic production.

7. Finally, evidence on the USDOC’s record indicates that two of the applicants, Borusan and PTC Liberty, have production capabilities beyond “threading alone.” Information provided by Tenaris prior to initiation indicates that, in addition to Borusan’s OCTG casing manufacturing capabilities, any imported pipe from its Turkey facility is “also heat-treated, inspected, *and* threaded” at its U.S. facility.⁶ Similarly, PTC Liberty has heat treating capability, in addition to OCTG production capability.⁷ Thus, the record before the USDOC describes domestic industry capabilities beyond “threading alone.”

Question 2 (To the United States): At initiation stage, Tenaris submitted that the USDOC should confirm whether the applicants’ production data included “only their own OCTG production, or include[d] both OCTG production and finishing operations”. We are referring to Exhibit ARG-3, at pages 9 and 10.

a. What steps, if any, did the USDOC take to address this request?

Response:

8. The United States refers to its response to Question 1 above, which demonstrates that the record evidence supported the conclusion that heat-treatment of OCTG constituted U.S. production and that other finishing operations (*e.g.*, threading, inspecting, or upsetting) *alone* did not constitute U.S. production. Furthermore, there was no record evidence suggesting that the applicants departed from the data reporting principles established in the multiple past AD and

⁵ USITC OCTG 2014 Report at I-24 n.35 (Exhibit ARG-60).

⁶ See Tenaris’s Pre-Initiation Comments (Oct. 15, 2021) at Exhibit 5 (Exhibit ARG-03) (describing services provided by Borusan).

⁷ See Tenaris’s Pre-Initiation Comments (Oct. 15, 2021) at Exhibit 6 (Exhibit ARG-03) (describing services provided by PTC Liberty).

CVD proceedings on OCTG. Thus, the USDOC did not request further clarification from the applicants regarding the production data provided, beyond what the USDOC requested in its supplemental questionnaires to the applicants.

b. Did the applicants provide data that distinguished between green pipe production and OCTG finishing operations?

Response:

9. As an initial matter, the USDOC does not typically divide up reporting obligations on applicants where there is a singular domestic like product. Thus, consistent with the approaches taken in prior AD and CVD investigations involving OCTG, the applicants in this investigation, who participated in those prior investigations, provided their total production of the domestic like product as a whole, *i.e.*, not disaggregated for each individual product that may be encompassed in the domestic like product. Furthermore, there was no evidence on the record that suggested that the applicants followed different reporting principles than before.

Question 3 (To the United States): During the second meeting of the Panel, the United States confirmed that threaders were not part of the domestic industry.

Please explain what steps the USDOC took to ensure that the data used to examine industry support, *i.e.* shipment data of the US industry, and the production data of the applicants and their supporters, did not include imported heat-treated OCTG that only underwent minor processing in the United States such as threading.

Response:

10. The United States refers to its response to Question 1 above. Furthermore, we clarify our comments with respect to threaders and their inclusion in the domestic industry. Threading operations were expressly covered by the scope of the investigation and the ultimate antidumping order.⁸ Therefore, companies that engage in threading operations *as part of* their production process of OCTG are members of the domestic industry. However, as discussed above in response to Question 1, for the purposes of measuring production of the domestic like product, the record before USDOC does not show that the industry support calculation included any companies that engage in threading *alone*.

⁸ USDOC Initiation Checklist, Attachment I (Exhibit ARG-18) (“The merchandise covered by the investigation is certain oil country tubular goods (OCTG), which are hollow steel products of circular cross-section, including oil well casing and tubing, of iron (other than case iron) or steel (both carbon and alloy), whether seamless or welded, regardless of end finish (*e.g.*, whether or not plain end, *threaded*, or threaded and coupled) . . . Subject merchandise includes material matching the above description that has been finished, packaged, or otherwise processed in a third country, including by performing any heat treatment, cutting, upsetting, *threading*, coupling, or any other finishing, packaging, or processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the OCTG”) (emphasis added); *Oil Country Tubular Goods From Argentina, Mexico, and the Russian Federation: Antidumping Duty Orders and Amended Final Affirmative Antidumping Duty Determination for the Russian Federation*, 87 Fed. Reg. 70,785, 70,787 (Exhibit ARG-08) (same).

Question 4 (To both parties): In reaching the finding that domestic producers “were capable of hiring as warranted”, Argentina contends that the USITC dismissed certain questionnaire responses and testimony by a Tenaris employee that allegedly conflicted with this finding. We are referring to the questionnaire responses and witness testimony cited in Argentina’s first written submission, at paragraphs 603 and 604, and footnotes 681, 682, 683, and 684. We have some questions on these:

- a. Did the USITC ignore these allegedly-conflicting materials in reaching the finding that domestic producers “were capable of hiring as warranted”? If not, where on the record is there an indication that they were considered?**

Response:

11. No, the USITC did not ignore the information about allegedly-conflicting materials cited in Argentina’s first written submission at paragraphs 603 and 604 and footnotes 681, 682, 683, and 684.

12. Footnotes 680, 681, and 682, which purportedly support the arguments put forward by Argentina in paragraph 603, specifically reference the USITC Final Staff Report. It is apparent then that the USITC looked at and considered the allegedly-conflicting materials that purportedly support the argument put forward by Argentina at paragraph 603 of its first written submission:

- Footnote 680: “*See, e.g.*, Staff Report at II-14 (“U.S. mills reduced their capacity in 2020 and have had difficulty restoring that capacity due to shortages of labor and raw materials.”) (Public Version) (**ARG-01**).”
- Footnote 681: “Staff Report at II-4-5 (“U.S. producer . . . stated that . . . labor availability had hampered U.S. producers’ ability to ramp up production”), II-13 (“Importer . . . described supply constraints as including . . . labor and supply chain issues that began in 2020 and have continued since”) (Public Version) (**ARG-01**).”
- Footnote 682: “Staff Report at II-4-5, II-13-14 (Public Version) (**ARG-01**).”

The USITC thus clearly did not ignore this material when it determined that the domestic industry, as a whole, was “capable of hiring as warranted,” because the USITC Final Report demonstrates that the USITC examined this material as part of its final determination.⁹

⁹ All of the USITC Commissioners considered the staff report in its entirety in reaching their determinations, and approved the staff report to be incorporated with the opinion into the USITC Final Report. *See* USITC Final Report at 1, 3 (Exhibit ARG-01) (indicating that the USITC based its determination on the entire record developed in the subject investigations).

13. The data cited at footnotes 683 and 684 also does not support the argument put forward by Argentina at paragraph 604 of its first written submission. Exhibit 1 of the Tenaris Posthearing Brief, referenced in footnote 684 of Argentina’s first written submission, includes the following Tenaris responses to a question about its employment activities:

- “Mr. Schnurbusch, the HR Senior Director for Tenaris’ U.S. operations, explained that Tenaris was forced to suspend operations at certain facilities and reduce workers due to the drop in oil prices and the COVID-19 pandemic in 2020, and consequently headcount dropped to 900 employees. However, once oil prices and demand for OCTG increased and the effects of the pandemic eased in late-2020, Tenaris ramped up operations and by the end of 2021 headcount was at 2,700 employees at its U.S. facilities.”¹⁰
- “He [Mr. Schnurbusch] reported that Tenaris has hired significant employees since late 2020, total headcount (fixed and variable employees) is up, and Tenaris seeks to hire more employees:

{W}e have hired approximately 1,900 employees since October 2020, current headcount is up to around 3,400 employees, and we expect to add another 560 employees in the coming months.

Therefore, although Tenaris reduced workers because it suspended operations due to unprecedented market conditions . . . , Tenaris re-hired these workers as soon as it was possible to restart operations.”¹¹

That Tenaris “hired significant employees since late 2020” thus further refutes Argentina’s argument, because the information that Argentina relies on indicates that Tenaris was capable of hiring once “demand for OCTG increased and the effects of the pandemic eased in late-2020.”

14. Finally, the Panel should disregard Argentina’s argument to the extent they rely on Exhibits 8 and 9 of Tenaris Posthearing Brief, both of which are cited in footnotes 683 and 684 of Argentina’s first written submission, because these exhibits are blank, marked “Not Capable of Public Summary.”¹²

¹⁰ Tenaris Posthearing Brief at Exhibit 1 at 20-21 (citing USITC Hearing Transcript at 177 (Schnurbusch)) (Exhibit ARG-29).

¹¹ Tenaris Posthearing Brief at Exhibit 1 at 21 (citing USITC Hearing Transcript at 177 (Schnurbusch)) (Exhibit ARG-29). *See also* USITC Final Report, at III-10-12 (Table III-6) (Exhibit ARG-01) (news sources and company statements, including statements by Tenaris USA, report production increase, production restart, and production restart/expansion during 2021).

¹² Tenaris Posthearing Brief at Exhibits 8 and 9 (Exhibit ARG-29).

15. As the USITC explained at pages 46-47 of its Final Report, it considered the arguments put forward by Tenaris, but found that the weight of the evidence on the record did not support Tenaris’s contention that the domestic industry, as a whole, suffered a labor shortage.¹³ The USITC explained that domestic producer questionnaire responses, as well as domestic industry witnesses, confirmed that the domestic industry generally was capable of hiring as warranted when demand for domestic OCTG increased.¹⁴ The USITC further noted that positive evidence in the record showed that the domestic industry “sharply expanded employment in interim 2022, after the filing of the petitions”¹⁵ The USITC thus considered all aspects of Tenaris’s argument, as highlighted by the USITC’s statement that its ultimate finding on the labor shortage issue was “[c]ontrary to Tenaris’s argument that labor shortages significantly constrained domestic production.”¹⁶ In short, the allegedly-conflicting materials put forward by Tenaris (and relied on by Argentina in this dispute) did not undermine the positive evidence supporting the USITC’s finding that the injury suffered by the domestic industry was not attributable to labor shortages.

b. To what extent was the substance of these allegedly-conflicting materials taken into account by the USITC through its reliance on table III-5 of the staff report, or through its consideration of Tenaris' submissions on this point, in reaching this finding?

Response:

16. Table III-5 of the USITC Final Report reflects all of the domestic producers’ reported changes in operations since January 1, 2019.¹⁷ Of the 39 changes to the domestic industry reported during the POI, none apparently involved labor shortages.¹⁸ Therefore, it is incorrect to suggest that Table III-5 reported data that conflicted with the USITC’s finding that domestic producers “were capable of hiring as warranted.”

17. In addition, none of the 16 publicly-reported developments in the U.S. industry since January 21, 2019, reported in Table III-6 of the Final Report mention labor supply constraints. To the contrary, the table lists a number of employee reductions in 2019 and 2020, followed by

¹³ USITC Final Report at 46-47 n.265 (Exhibit ARG-01).

¹⁴ USITC Final Report at 46-47 n.265 (Exhibit ARG-01).

¹⁵ USITC Final Report at 46-47 (Exhibit ARG-01); *see* USITC Final Report at III-33 (Table III-38) and C-5 (Table C-1) (Exhibit ARG-01).

¹⁶ USITC Final Report at 46. (Exhibit ARG-01).

¹⁷ USITC Final Report at Table III-5 (Exhibit ARG-01). All domestic producers had the opportunity to respond to the USITC U.S. producer questionnaire and report changes to the industry, along with narrative responses describing any changes. *See* Blank Purchaser Questionnaire at 8-9 (Question II-2a) (Exhibit USA-33).

¹⁸ Tenaris’s counsel had full access to business proprietary information during the USITC investigations. That said, Tenaris’s arguments before the USITC never referenced Table III-5 as indicating support for its arguments about alleged labor shortages. *See generally* Exhibits ARG-04, ARG-29, ARG-32 (Tenaris’s prehearing and posthearing briefs and final comments).

the hiring of employees in 2021 and 2022, including five instances when Tenaris restarted production and hired new employees.¹⁹

18. In sum, the USITC conducted an objective examination of the positive evidence about purported labor supply constraints. Argentina’s arguments to the contrary are nothing more than an invitation for the Panel to conduct a *de novo* examination of the investigatory record and substitute its judgment for the USITC’s. It is not the Panel’s task to conduct a *de novo* review of the evidence on the record of the underlying investigation, nor to substitute its judgment for that of the investigating authority. The Panel should find that the investigatory record confirms that the USITC evaluated the evidence in an unbiased and objective manner and explained its rejection of Tenaris’s argument that labor shortages significantly constrained domestic production.

Question 5 (To both parties): In relation to the allegedly-conflicting materials referred to in the previous question: were the allegedly-conflicting materials a representative reflection of the body of record evidence before the USITC on the allegations of labor shortages, or were these materials unrepresentative when viewed in light of the body of record evidence before the USITC?

Response:

19. When viewed in light of the body of record evidence, Argentina’s allegedly-conflicting materials are not, as the USITC determined, representative of the labor situation confronting the domestic industry as a whole.

20. As explained in the U.S. response to Question 4, the evidence relied on by Argentina does not undermine the positive evidence relied on by the USITC in rejecting Tenaris’s argument. Two other U.S. producers and a representative of the workers employed by U.S. producers testified under oath that producers were able to, and did, hire employees as needed to meet growing demand.²⁰ Their representations were borne out by the data showing that U.S. producers hired workers and expanded employment (particularly in interim 2022, after the filing of the applications for trade remedy relief).²¹

21. For example, two managers overseeing operations at U.S. Steel stated that “[w]e had the people. We had the availability²²” and that “we started up our electric arc furnace in October of 2020, and we hired 150 people during that time frame ... and we also hired employees throughout our production facilities through this timeframe.”²³ And as shown in the U.S. response to Question 4, Tenaris’s contention that it experienced a labor shortage is contradicted

¹⁹ USITC Final Report at III-9-11 (Table III-6) (Exhibit ARG-01).

²⁰ See U.S. First Written Submission, para. 313.

²¹ See USITC Final Report at III-33 (Table III-28) and C-4 (Table C-1) (Exhibit ARG-1).

²² USITC Hearing Transcript at 75 (Exhibit USA-40).

²³ USITC Hearing Transcript at 77 (Exhibit USA-40).

by its own acknowledgement on the record before the USITC that “once oil prices and demand for OCTG increased and the effects of the pandemic eased in late-2020, Tenaris ramped up operations and by the end of 2021 headcount was at 2,700 employees at its U.S. facilities.”²⁴

22. Tenaris’s actual ability to hire employees as needed is further evidenced by the public reports summarized in Table III-6 of the USITC Final Report, which reflects Tenaris’s and other domestic producer’s ability to increase production or restart production at various plants during 2021 and interim 2021 once oil prices and demand for OCTG increased and the effects of the pandemic eased in late-2020.²⁵ Tenaris’s witness, Mr. Schnurbusch, testified as much during the USITC hearing, indicating that when demand increased in late 2020, Tenaris “ramped-up our operations at our steel shop in Koppel, PA, our seamless mills in Bay City, Texas and in Ambridge, PA, and our finishing operations in Bay City, Baytown, Conroe, and McCarty, Texas and in Hickman, Arkansas.”²⁶ Mr. Schnurbusch also indicated that Tenaris subsequently restarted its plants in Conroe, Texas; Koppel, Pennsylvania; Brookefield, Ohio; and Blytheville, Arkansas.²⁷

23. Other than Tenaris, Argentina identifies just one other domestic producer, one importer, and one purchaser that even mentioned domestic producer labor constraints during the POI.²⁸ Such statements must be read in the context of a record where 19 domestic producers, 27 importers, and 28 purchasers responded to the USITC’s questionnaires.²⁹ In addition, as for Argentina’s reliance on a quoted response by an importer about labor constraints, it is unclear how such a statement bears relevance to the question of whether domestic producers faced labor constraints. Finally, nowhere in Argentina’s submissions to this Panel are there citations indicating that other U.S. producers and purchasers reported in their questionnaire responses the existence of labor shortages during the POI.³⁰

24. In sum, the allegedly-conflicting material cited by Argentina did not outweigh the evidence the USITC relied on in making its finding, including: other U.S. producer questionnaire responses; aggregate data that domestic producers expanded their employment during the POI; testimony from representatives from the domestic industry and workers that they were capable of

²⁴ Tenaris Posthearing Brief at Exhibit 1 at 22 (citing USITC Hearing Transcript at 177 (Schnurbusch)) (Exhibit ARG-29).

²⁵ USITC Final Report at Table III-6 (Exhibit ARG-01).

²⁶ USITC Hearing Transcript at 200 (Schnurbusch) (Exhibit USA-40).

²⁷ USITC Hearing Transcript at 201 (Schnurbusch) (Exhibit USA-40). A U.S. Steel representative similarly indicated that when it idled its facilities, it idled them in a manner that they would more easily be able to restart production. USITC Hearing Transcript at 102 (Dorn) (“idled them in a manner where they could be restarted”) (Exhibit USA-40).

²⁸ Argentina’s First Written Submission, paras. 603-604 and nn.680 and 681.

²⁹ USITC Final Report at II-4-5, II-14 (“28 responding purchasers”), III-1 (“Nineteen firms provided usable data on their operations”) (Exhibit ARG-01).

³⁰ Nor in Tenaris’s submissions to the USITC did they cite any questionnaire responses other than those discussed above having reported the existence of labor shortages during the POI. *See generally* Exhibits ARG-04, ARG-29, ARG-32 (Tenaris’s prehearing and posthearing briefs and final comments).

hiring as warranted; as well as testimony from Tenaris and other testimony and public information demonstrating that even Tenaris itself actually hired substantial numbers of production related workers during the POI. For the reasons set forth in the responses to Questions 4 and 5, and for reasons provided for in previous U.S. submissions, the Panel should find that investigatory record confirms that the USITC evaluated the evidence in an unbiased and objective manner and provided a reasoned and adequate explanation for rejecting Tenaris’s argument that labor shortages significantly constrained domestic production.

Question 6 (To Argentina): The United States asserts that it is “patently untrue” for Argentina to “assert[] that U.S. purchasers were ignorant as to the origin of the OCTG they purchased”, but instead, “the positive evidence of record demonstrates that most U.S. purchasers knew the origin of the OCTG they purchased”. We are referring to the United States' second written submission, at paragraph 64. What is Argentina's response?

Response:

25. This question is addressed to Argentina.

Question 7 (To the United States): Argentina states that “U.S. producers *only* gained 0.6% of market share, when imports were *supposedly* competing less aggressively because of the petition” (emphasis original). We are referring to Argentina's second written submission, at paragraph 189. Did price underselling by the investigated imports continue after the filing of the applications? If so, did the USITC take this into account when finding that “the subject imports competed less aggressively in the U.S. market after the filing of the petitions”?

Response:

26. Yes, the record indicates that price underselling by the subject imports continued after the filing of the applications for trade remedy relief. The USITC found that cumulated subject imports predominately undersold the domestic like product in interim 2022, after the applications.³¹ The USITC also found that subject imports predominately undersold the domestic like product in each full year of the POI (2019, 2020, and 2021).³² Finally, while subject imports continued to undersell the domestic like product throughout the POI, the USITC found that subject imports nonetheless raised their prices over the POI (from the first quarter of 2019 to the second quarter of 2022).³³

27. Accordingly, the USITC took into account cumulated subject import underselling in interim 2022 and subject imports increasing prices over the POI when finding that “the subject

³¹ USITC Final Report at 36 (Exhibit ARG-01) (“Underselling by cumulated subject imports predominated during each year of the POI and interim 2022”).

³² USITC Final Report at 36 (Exhibit ARG-01).

³³ USITC Final Report at 38 (Exhibit ARG-01) (“For all pricing products for which first quarter 2019 to second quarter 2022 price comparisons are available, subject import prices increased over the POI” (footnote excluded)).

imports competed less aggressively in the U.S. market after the filing of the petitions.”³⁴ This is evident by the USITC’s prefacing of this finding with the phrase “[a]s discussed above”³⁵ and the USITC’s examination of import market share hand-to-hand with price underselling.³⁶ Further, in addition to the USITC’s specific reference to the market share shifts in interim 2022 as compared to interim 2021, the USITC considered everything discussed in its opinion collectively, including its discussion of predominant underselling by subject imports in each year of the POI and interim 2022³⁷ and subject imports increasing prices over the POI.³⁸ Therefore, the Panel should find that the investigatory record confirms that the USITC’s conclusion that subject imports continued to predominately undersell the domestic like product after the filing of the applications, albeit less aggressively, is one that could have been reached by an objective and unbiased investigating authority.

Question 8 (To the United States): Argentina contends that the USITC's injury assessment is based on “an extremely vague and entirely subjective standard that cannot overcome the objective improvements of almost all of the metrics in terms of output, employment, and financial indicators that were improving prior to the filing of the application”. We are referring to Argentina's second written submission, at paragraph 182.

- a. Did the USITC ascertain what level of improvement in the domestic industry's condition should have occurred in the absence of the dumped imports in terms of the indicators listed in Article 3.4?**
- b. If not, what guided the USITC's finding that the level of the domestic industry's improved performance was insufficient and thus indicative of injury?**

Response:

28. The U.S. response addresses both Questions 8(a) and (b): The USITC finding that the level of the domestic industry’s improved performance was insufficient, and thus indicative of injury, was guided by the actual data and trends demonstrated in the record over the entire POI, beginning with the pre-pandemic base year of 2019; taking into account the drop in oil prices and COVID-19 pandemic year of 2020, which was then followed by an increase in OCTG demand during the recovery year of 2021; and ending with the post-application interim year of 2022.

29. This is evident from the USITC Final Report, which confirms that the USITC scrutinized the domestic industry performance data and trends in the context of the conditions of competition

³⁴ USITC Final Report at 43 (Exhibit ARG-01).

³⁵ USITC Final Report at 43 (Exhibit ARG-01).

³⁶ Compare USITC Final Report at 36 (in the “price effects” section of the Final Report, the USITC discussed market share, which it then immediately followed with a discussion of price underselling), *with* USITC Final Report at 42-43 (in the “impact” section of the Final Report, the USITC discussed underselling, which it then immediately following with a discussion of market share) (Exhibit ARG-01).

³⁷ USITC Final Report at 36 (Exhibit ARG-01).

³⁸ USITC Final Report at 38 (Exhibit ARG-01).

that existed over the POI vis-à-vis U.S. consumption and market share data and trends in the context of those same conditions of competition:

Domestic Industry Performance Trends Over the POI

- “U.S. mills’ capacity decreased by 3.7 percent during 2019-20 then increased by 1.3 percent during 2020-21, decreasing overall by 2.4 percent between 2019 and 2021. Capacity was 9.3 percent higher in January-June 2022 than in January-June 2021.”³⁹
- “Most U.S. mills reported lower production in 2021 compared to 2019; however, all U.S. mills reported higher production in January-June 2022 compared to January-June 2021. Production decreased by 48.4 percent during 2019-20 then increased by 16.9 percent during 2020-21, decreasing overall by 39.7 percent between 2019 and 2021. The sharp decrease in production from 2019 to 2020 occurred while the effects of the oil and gas downturn and the COVID-19 pandemic on the OCTG industry were reportedly at their highest. U.S. mills’ production was 84.4 percent higher during January-June 2022 than in January-June 2021.”⁴⁰
- “U.S. mills’ capacity utilization decreased from 44.6 percent in 2019 to 23.9 percent in 2020 then increased to 27.6 percent in 2021, decreasing by 17.0 percentage points during 2019-21. Capacity utilization was 16.2 percentage points higher in January-June 2022 (39.7 percent) than in January-June 2021 (23.6 percent).”⁴¹

U.S. Consumption and Market Share Trends Over the POI

- In contrast, “[t]he quantity of apparent U.S. consumption decreased by 49.6 percent during 2019-20 then increased by 32.2 percent during 2020-21, ending 33.4 percent lower in 2021 than in 2019. The quantity of apparent U.S. consumption was 70.6 percent higher in January-June 2022 than in January-June 2021.”⁴²
- “U.S. producers’ market share based on quantity increased from 56.7 percent in 2019 to 60.4 percent in 2020 but then decreased to 48.4 percent in 2021, ending 8.2 percentage points lower in 2021

³⁹ USITC Final Report, at III-12 (Exhibit ARG-01) (underline added).

⁴⁰ USITC Final Report, at III-12 (Exhibit ARG-01) (underline added).

⁴¹ USITC Final Report, at III-12 (Exhibit ARG-01) (underline added).

⁴² USITC Final Report, at IV-40 (Exhibit ARG-01) (underline added)

than in 2019. U.S. producers' market share was 0.6 percentage points higher in January-June 2022 than in January-June 2021."⁴³

- “The value of apparent U.S. consumption was 185.1 percent higher in January-June 2022 than in January-June 2021. U.S. producers' market share based on value increased from 63.0 percent in 2019 to 66.4 percent in 2020 but then decreased to 56.4 percent in 2021, ending 6.6 percentage points lower in 2021 than in 2019. U.S. producers' market share was 0.5 percentage points higher in January-June 2022 than in January-June 2021.”⁴⁴

30. As the USITC recognized, positive evidence of record demonstrated that the domestic industry, at a minimum, should have been able to benefit from the increase in apparent domestic consumption in the recovery year 2021.⁴⁵ But as the USITC found, while apparent U.S. consumption increased 32.2 percent from 2020 to 2021, domestic producers' sales and shipments barely increased during that same period, resulting in a 12 percentage point loss in domestic producers' market share.⁴⁶ At the same time, subject imports substantially increased in both quantity and market share as they continued to undersell the domestic product.⁴⁷

31. The inability of the domestic industry to regain market share, as undersold subject imports increased their presence in the market, was reflected in the inability of the industry to recover following the 2020 pandemic year. It is not unreasonable for an objective investigating authority to have expected the domestic industry's production, employment, and financial performance to increase commensurately with the 32.2 percent increase in demand. Yet, from 2020 to 2021, while production increased 16.9 percent, U.S. shipments increased only 6.0 percent, net sales quantity increased only 2.2 percent, and the domestic industry's financial situation remained dire with a \$236.3 million loss.

32. As the USITC indicated, it would be logical to expect the domestic industry to capitalize on the strong recovery in demand.⁴⁸ Instead, the subject imports captured market share from the domestic industry, resulting in considerably less than anticipated improvement in the domestic

⁴³ USITC Final Report, at IV-40 (Exhibit ARG-01) (underline added).

⁴⁴ USITC Final Report, at IV-47 (Exhibit ARG-01) (underline added).

⁴⁵ USITC Final Report at 40 (Exhibit ARG-01).

⁴⁶ See USITC Final Report at C-3, C-4 and C-5 (Table C-1) (Exhibit ARG-01).

⁴⁷ The exact data for cumulated subject imports are redacted due to the need late in the investigations to remove data for non-subject Korean producer Hyundai from data that had previously been made publicly available. The unredacted data in the USITC Report, however, show that even without data for subject imports from Korea, the market share held by cumulated imports just from Argentina, Mexico and Russia increased 10 percentage points between 2020 and 2021 (4.0 + 3.6 + 2.4), and 7.4 percentage points between 2019 and 2021 (1.5 + 5.8 + 0.1). USITC Report at C-3 (Table C-1). During those same periods, U.S. producers' market share fell by 12 percentage points between 2020 and 2021, and fell overall by 8.2 percentage points between 2019 and 2021. USITC Report at C-3 (Table C-1).

⁴⁸ USITC Final Report at 40 (Exhibit ARG-01).

industry’s production, employment, and financial performance from 2020 to 2021.⁴⁹ In other words, the increasing subject imports prevented the domestic industry from even returning to 2019 levels—a measure that an objective investigating authority, such as the USITC, could rationally expect. Therefore, the Panel should find that investigatory record confirms that the USITC’s determination of injury was not inconsistent with Articles 3.1, 3.2, 3.4, or 3.5 of the AD Agreement.

Question 9 (To both parties): The Panel understands that the Prusa Analysis (concerning a lagged approach to pricing) was based on aggregate pricing data. Did Tenaris provide data to the USITC that would have enabled the USITC to identify the subset of Tenaris’ price data for which adjustments for the time-lag should have been made?

Response:

33. No, even if such a time-lag adjustment were appropriate, Tenaris did not provide data to the USITC that would have enabled the USITC to identify the subset of Tenaris’s price data for which adjustments for the time-lag could have been made in the importer data and U.S. producer data. Additionally, Tenaris did not provide any clear indication of how many of its sales were made by contract with periodic adjustments.⁵⁰

Question 10 (To both parties): In relation to the questionnaire responses that Argentina contends were disregarded by the USITC, was [[* * *]] the US producer and/or importer being quoted? We are referring to the questionnaire responses cited in Argentina’s first written submission, at paragraph 603 and footnotes 681 and 682.

Response:

34. The USITC received usable questionnaire responses from 19 domestic producers and 27 importers.⁵¹ As cited in Argentina’s first written submission at paragraph 603, footnote 681, the domestic producer and the importer quoted in the USITC Final Report (Exhibit ARG-1 at II-4-5 and II-13-14) [[* * *]].⁵² In addition to these citations, and to Tenaris’s own statements alleging labor shortages, Argentina’s single other mention of a labor shortage, cited in footnote

⁴⁹ See USITC Final Report at 40-43 and accompanying footnotes (Exhibit ARG-01). See also USITC Final Report at C-4-5 (Table C-1) (Exhibit ARG-01).

⁵⁰ USITC Final Report at 46 at n.193 (citing Tenaris Prehearing Br., Exhibit 63 (Prusa Analysis) (indicating that 25 percent of Tenaris’s sales are not by contract, and stating only that Tenaris’s contracts “typically” have quarterly price adjustments)) (Exhibit ARG-01).

⁵¹ USITC Final Report at III-1 and IV-1 (Exhibit ARG-01).

⁵² We also note that Argentina’s quotation from page II-4-5 of the Staff Report omits parts of the cited producer’s statement, which could give the impression that the producer’s response highlighted only labor concerns. The producer actually stated that “section 232 measures, along with recovery from the COVID-19 pandemic, supply chain issues, and labor availability” hampered its ability to ramp up production. USITC Final Report at 4-5 (Exhibit ARG-01).

680 of Argentina’s first written submission, refers to one of the 29 purchasers who provided usable questionnaire responses.⁵³

Question 11 (To the United States): The Panel refers to the sentence straddling the fourth and fifth lines of page 23 of Exhibit ARG-1 (“the market impact of * is not yet clear”). The Panel infers that in that sentence, the USITC stated that the market impact of the [[* * *]] was not yet clear. Is the Panel’s inference correct?**

Response:

35. Consistent with the U.S. responses to Questions 17 and 18 following the first substantive meeting of the Panel,⁵⁴ [[* * *]].

⁵³ USITC Final Report at II-3 and II-14 (Exhibit ARG-01).

⁵⁴ U.S. Responses to the Panel’s First Set of Questions, paras. 62-63.