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

(DS617)

OPENING STATEMENT OF THE UNITED STATES OF AMERICA AT THE FIRST SUBSTANTIVE MEETING OF THE PANEL

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China – Autos (US)	Panel Report, *China – Anti-Dumping and Countervailing Duty Measures on Certain Automobiles from the United States*, WT/DS440/R and Add.1, adopted 18 June 2014
China – GOES (AB)	Appellate Body Report, *China – Countervailing and Anti-Dumping Duties on Grain Oriented Flat-Rolled Electrical Steel from the United States*, WT/DS414/AB/R, adopted 16 November 2012
China – HP-SSST (AB)	Appellate Body Reports, *China - Measures Imposing Anti-Dumping Duties on High-Performance Stainless Steel Seamless Tubes ("HP-SSST") from Japan and the European Union*, WT/DS454/AB/R;WT/DS460/AB/R adopted 28 October 2015
EC – Countervailing Measures on DRAM Chips	Panel Report, *European Communities – Countervailing Measures on Dynamic Random Access Memory Chips from Korea*, WT/DS299/R, adopted 3 August 2005
EC – Tube or Pipe Fittings (AB)	Appellate Body Report, *European Communities – Anti-Dumping Duties on Malleable Cast Iron Tube or Pipe Fittings from Brazil*, WT/DS219/AB/R, adopted 18 August 2003
EU – Footwear (China)	Panel Report, *European Union – Anti-Dumping Measures on Certain Footwear from China*, WT/DS405/R, adopted 22 February 2012
Korea – Pneumatic Valves (AB)	Appellate Body Report, *Korea – Anti-Dumping Duties on Pneumatic Valves from Japan*, WT/DS504/AB/R, and Add.1, adopted 30 September 2019
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US – Hot-Rolled Steel (AB)	Appellate Body Report, *United States – Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan*, WT/DS184/AB/R, adopted 23 August 2001
US – Ripe Olives from Spain (Panel)	Panel Report, *United States – Anti-Dumping and Countervailing Duties on Ripe Olives from Spain*, WT/DS577/R, adopted 20 December 2021

US – Oil Country Tubular Goods Sunset Reviews (AB)	Appellate Body Report, *United States – Sunset Reviews of Anti-Dumping Measures on Oil Country Tubular Goods from Argentina*, W/DS268/AB/R, adopted 17 December 2004
US – Tyres (China) (AB)	Appellate Body Report, *United States – Measures Affecting Imports of Certain Passenger Vehicle and Light Truck Tyres from China*, WT/DS399/AB/R, adopted 5 October 2011
US – Wool Shirts and Blouses (AB)	Appellate Body Report, *United States – Measure Affecting Imports of Woven Wool Shirts and Blouses from India*, WT/DS33/AB/R and Corr. 1, adopted 23 May 1997

I. INTRODUCTION

Madam Chairperson, members of the Panel,

1. On behalf of the U.S. delegation, I would like to thank you for agreeing to serve on this Panel. I would also like to express our gratitude as well to the Secretariat staff assisting you with your work.

2. In our statement today, we will highlight several important issues addressed in the Parties' written submissions. With respect to these issues, Argentina has raised claims based on untenable interpretations and applications of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ("AD Agreement"). Rather than advance arguments based on the plain meaning of the applicable provisions, Argentina asks the Panel to accept interpretations of WTO rules that have little connection to how they are properly understood in light of their ordinary meaning, read in context, and in light of the object and purpose of the AD Agreement. Our statement today will make plain Argentina's legal and factual errors, and provide the Panel with interpretations based on a proper reading of the relevant provisions.

3. First, we will address Argentina's claims that the U.S Department of Commerce ("Commerce") failed to properly examine the evidence on the record, and to determine that the application seeking an anti-dumping ("AD") investigation on oil country tubular goods ("OCTG") from Argentina was made "by or on behalf of the domestic industry." Argentina's argument fails because the information in the application satisfied the numerical thresholds contained in Article 5.4 of the AD Agreement, the information was sufficient under Article 5.3, and the information was reasonably available to the applicants in conformity with Article 5.2. We will then address Argentina's claims regarding the U.S. International Trade Commission's ("ITC") decision to cumulate subject imports in the OCTG investigation. However, nothing in the AD Agreement precludes cumulating dumped and subsidized imports for purposes of assessing effects, as contemplated by the text of Article VI of the GATT 1994. Furthermore, Article 3.3 of the AD Agreement does not require an investigating authority to find *perfect* overlap in competition in assessing whether to cumulate imports. A reasonable overlap of competition is sufficient, and the evidence of record supported such a reasonable overlap. Finally, we will address Argentina's claims regarding the ITC's injury analysis, which fail because none of Argentina's arguments establish that the ITC's injury determination was inconsistent with Articles 3.1, 3.2, 3.4, and 3.5 of the AD Agreement.

II. COMMERCE'S DETERMINATION THAT THERE WAS ADEQUATE INDUSTRY SUPPORT TO INITIATE THE INVESTIGATION WAS NOT INCONSISTENT WITH ARTICLES 5.1, 5.2, 5.3, 5.4, AND 6.6 OF THE AD AGREEMENT

4. We turn first to whether Commerce appropriately initiated the AD investigation based on an application filed by or on behalf of the domestic OCTG-producing industry (*i.e.*, whether there existed the requisite industry support for the application). Argentina asserts that Commerce's determination on industry support was inconsistent with Articles 5.1, 5.2, 5.3, 5.4,

and 6.6 of the AD Agreement.[1] As the United States demonstrated in our first written submission, all of Argentina's arguments lack merit, including its invocation of Article 6.6, which does not apply to initiations.[2] We will not reiterate all of our responses here, but, rather, we will focus on a few issues.

5. Argentina's arguments primarily center on its allegations that Commerce used "estimated," "outdated," and "anomalous" data to discern production levels and that this data was inadequate to support Commerce's industry support determination.[3]

6. As an initial matter, none of the AD Agreement articles invoked by Argentina circumscribe the types of information an investigating authority must or must not rely on in determining whether an application is made by or on behalf of the domestic industry. For example, Articles 5.1 and 5.4 do not preclude the use of *estimates* of production levels in determining the level of industry support for the application. The word "actual" does not appear anywhere in Article 5. By way of contrast, the AD Agreement does use "actual" elsewhere, such as in Article 8.3 on undertakings and Article 9.3.2 on duty assessment. The fact that "actual" is not used in Article 5 is relevant, and suggests that authorities have a certain level of flexibility regarding what data they may rely on in discerning industry support.[4] Thus, an authority may rely—as Commerce did in the underlying initiation—on alternative data, such as domestic industry shipment data, to the extent it can serve as a reasonable proxy for production.[5]

7. Commerce did not rely on "outdated" information either.[6] The text of Article 5.3 imposes no temporal limitation on the data an investigating authority may rely on in determining whether there is sufficient evidence to initiate an AD investigation. The same can be said of the other articles invoked by Argentina, including Articles 5.1 and 5.4.[7] Of course, the more current the evidence, the more likely it is to show *current* dumping, injury, causation, and—relevant here—industry support for the application.[8] However, the mere fact that data relates to the past does not amount to an inconsistency with any of these articles. This is especially the case where, as here, the investigating authority has considered that the data is otherwise reliable, and has appropriately refuted interested party arguments to the contrary.

8. In determining industry support for the application, Commerce primarily relied on calendar year 2020 production and shipment data, and a limited set of data covering 2018-2019 to convert the 2020 shipment data to production data. Commerce's period of investigation was

[1] Argentina's First Written Submission, paras. 126-241.

[2] *See, e.g.,* U.S. First Written Submission, paras. 23-29 (responding to Argentina's Article 6.6 arguments).

[3] Argentina's First Written Submission, paras. 168-178, 189-196, 197-208, 215, 219, 224, 227, 230, 232, 235-236.

[4] Argentina's First Written Submission, para. 235; U.S. First Written Submission, para. 46.

[5] U.S. First Written Submission, paras. 46-47 (citing U.S. Department of Commerce, Enforcement and Compliance, Office of AD/CVD Operations, "Antidumping Duty Investigation Initiation Checklist: Oil Country Tubular Goods from Argentina," Attachment II, at 4-8, 14-15, 17 (Exhibit ARG-18) ("Commerce Initiation Checklist")).

[6] *See, e.g.,* Argentina's First Written Submission, para. 191.

[7] *See* U.S. First Written Submission, para. 49.

[8] *See* U.S. First Written Submission, para. 82.

October 1, 2020, through September 30, 2021. Thus, the majority of the data Commerce relied on for industry support was contemporaneous with its period of investigation.[9] It also bears emphasis that Commerce employed several lines of analyses in determining industry support. It even employed an analysis of relying on alternative 2020 production-to-shipments data to convert the 2020 shipment data to production data, and *still* found that the application had the requisite industry support.[10] Under *all* the lines of analysis that Commerce applied to the record information, the application satisfied the 50 and 25 percent thresholds in Article 5.4.

9. In addition, the data were not "anomalous." Despite Argentina's various contentions now that the OCTG market was "volatile and highly unusual," or "did not accurately reflect the state of the domestic industry at the time of the filing of the application,"[11] we observed that Argentina appears to concede at certain points in its first written submission that even data going into *2021* would have suffered from issues as well.[12] We pointed out these instances in our first written submission.[13] If Argentina's position is that (1) 2020 data is "outdated" and "anomalous,"[14] (2) 2021 was also part of the same "market disruption" that rendered 2020 data "anomalous,"[15] and (3) 2018-2019 data is outdated,[16] it does not appear that there is any recent time period Commerce could have used in Argentina's view. Commerce appropriately rejected attempts by certain interested parties to "adjust the time period analyzed for industry support to move the needle in such a way so that the [application] no longer ha[s] the requisite level of support."[17] Argentina now appears to be engaging in those same efforts before this Panel.

10. Finally, Argentina asserts that there was a "significant risk" that Commerce "double-counted" production of OCTG by including processors and finishers of unfinished OCTG in its industry support assessment, or that it was "unclear" whether Commerce "double-counted" production.[18] Beside the fact that no interested party made such an allegation before Commerce, the evidence Argentina points to does not show that Commerce *actually* "double-counted" production.[19] It is Argentina's burden to make a *prima facie* case that Commerce's industry support determination is inconsistent with the AD Agreement.[20] Argentina's suggestion that there was a "risk" that Commerce "double-counted," or that it was "unclear" whether Commerce

[9] *See, e.g.*, Commerce Initiation Checklist, Attachment II, at 5-6 (Exhibit ARG-18); U.S. First Written Submission, paras. 50-51.

[10] Commerce Initiation Checklist, Attachment II, at 17 (Exhibit ARG-18); U.S. First Written Submission, para. 51.

[11] Argentina's First Written Submission, para. 215.

[12] *See* Argentina's First Written Submission, paras. 45-46, 173-174.

[13] U.S. First Written Submission, paras. 54-55.

[14] Argentina's First Written Submission, para. 215.

[15] Argentina's First Written Submission, para. 173.

[16] Argentina's First Written Submission, para. 194.

[17] Commerce Initiation Checklist, Attachment II, at 16-17 (Exhibit ARG-18).

[18] Argentina's First Written Submission, paras. 200, 202, 205 (emphasis omitted).

[19] U.S. First Written Submission, paras. 59-64.

[20] U.S. First Written Submission, para. 20 (citing *US – Wool Shirts and Blouses (AB)*, p. 14; *China – Autos (US)*, para. 7.6).

did so, amounts to conjecture. But such speculation is not enough to demonstrate any inconsistency with these articles.[21]

11. Ultimately, Argentina prefers Commerce to have employed a different approach to assessing industry support, namely, "polling" the domestic industry.[22] But the Panel's role is to determine whether an unbiased and objective investigating authority, looking at the same record as Commerce, could have—not would have—reached the same conclusions that Commerce reached on industry support.[23] Under this lens, the fact that other possible methodologies were available to Commerce to assess industry support does not render what Commerce actually did inconsistent with Articles 5.1, 5.2, 5.3, or 5.4 of the AD Agreement.[24]

III. THE ITC'S DECISION TO CUMULATE IMPORTS WAS NOT INCONSISTENT WITH ARTICLES 3.1 AND 3.3 OF THE AD AGREEMENT

12. We now turn to the issue of cumulating imports for the purposes of assessing whether material injury exists. Here, we explain that Article 3.3 of the AD Agreement does not prohibit an investigating authority from cumulating imports subject to simultaneous AD and countervailing duty ("CVD") investigations, or so-called "cross-cumulation." This is not surprising as the original General Agreement on Tariffs and Trade envisioned that the related remedies for dumped and subsidized imports could be applied simultaneously and excluded both from the limitations for import duties otherwise set out in Article II. We will then briefly explain how the ITC's analysis of how the "conditions of competition" among subject OCTG imports and the domestic like product warranted cumulation of all imports under Article 3.3.

A. The AD Agreement Does Not Preclude an Investigating Authority from Cumulating Imports Subject to Simultaneous AD and CVD Investigations

13. Argentina has challenged both the ITC's decision to cross-cumulate imports in the underlying OCTG investigation, and the U.S. statutory provision authorizing such cross-cumulation. Contrary to Argentina's arguments and those of certain third parties,[25] these U.S. measures are fully consistent with the AD Agreement.[26] As an initial matter, the text of the AD Agreement does not discuss or prohibit cross-cumulation.[27] But silence in the text cannot imply a prohibition.[28] In a similar vein, the lack of reference to "subsidized imports" in Articles 3.1, 3.2, 3.4, and 3.5 of the AD Agreement supports that there is *also* a silence in the agreement on

[21] *See US – Wool Shirts and Blouses (AB)*, p. 14.

[22] U.S. First Written Submission, paras. 56-58.

[23] *See* AD Agreement, Article 17.6(i).

[24] *See* AD Agreement, Article 17.6(i).

[25] Argentina's First Written Submission, paras. 276-289, 321-324, 696-723.

[26] U.S. First Written Submission, paras. 101-122, 319, 323-324.

[27] U.S. First Written Submission, paras. 104-105.

[28] *See US – Oil Country Tubular Goods Sunset Reviews (AB)*, para. 294.

whether examining cumulated dumped and subsidized imports in other components of a material injury analysis is permissible.[29]

14. Additional context in the AD Agreement, Agreement on Subsidies and Countervailing Measures ("SCM Agreement"), and General Agreement on Tariffs and Trade 1994 ("GATT 1994") support our interpretation that Article 3.3 of the AD Agreement permits cross-cumulation. Significantly, Article 3.3 of the AD Agreement and Article 15.3 of the SCM Agreement are written in essentially identical terms. This highlights the overlap of the injury analysis under both covered agreements. Both contemplate that an investigating authority may consider the cumulative injurious effects of unfairly traded imports from multiple sources, given that these imports can have a cumulative injurious impact on the domestic industry.[30] Given this overlap, it is crucial to read Articles 3.3 and 15.3 together.

15. It is not surprising that nothing in the AD Agreement or the SCM Agreement prohibits cross-cumulation. In fact, this follows from Article VI of the GATT 1994, which the AD Agreement and SCM Agreement further elaborate and clarify. It is also significant that both Article 3.1 of the AD Agreement and Article 15.1 of the SCM Agreement on injury explicitly refer to Article VI, confirming that this article is critical context.

16. Article VI:6(a) of the GATT 1994 provides that a Member shall not impose ADs or CVDs "unless it determines that the effect of *dumping or subsidization*, as the case may be, is such as to cause or threaten to cause material injury to an established domestic industry . . ."[31] The text ("the effect of dumping or subsidization") explicitly recognizes that there may be situations in which it may be the "case" that the injury is caused by dumping, subsidization, or both.[32] The term "or" includes both possibilities, and "as the case may be" further confirms that there need not be a binary choice between two options.[33] Thus, the cumulation of dumped and subsidized imports may be appropriate "as the case may be" in particular injury investigations.

17. Not reading all of these articles together risks undermining the purpose of cumulating imports. As certain previous reports have reasoned, the ability to cumulate the injurious effects of dumped imports is a "useful tool" for an investigating authority "to ensure that all sources of injury and their cumulative impact on the domestic industry are taken into account in an investigating authority's determination."[34] Furthermore, "[a] cumulative analysis logically is premised on a recognition that the domestic industry faces the impact of the 'dumped imports' as a whole and that it may be injured by the total impact of the dumped imports, even though those dumped imports originate from various countries."[35] These points have equal logic in a situation

[29] Argentina's First Written Submission, paras. 279-280, 284-286, 288; U.S. First Written Submission, para. 106.

[30] U.S. First Written Submission, para. 110.

[31] GATT 1994, Article VI:6(a) (emphasis added).

[32] U.S. First Written Submission, paras. 113-114.

[33] *See, e.g.*, Definition of "As the Case May Be", *Collins*, http://www.collinsdictionary.com/dictionary/english/as-the-case-may-be (Exhibit USA-07).

[34] *US – Oil Country Tubular Goods Sunset Reviews (AB)*, para. 297; U.S. First Written Submission, para. 115.

[35] *EC – Tube or Pipe Fittings (AB)*, para. 116; U.S. First Written Submission, para. 115.

in which some imports are dumped and others subsidized, as was the case in the OCTG investigation here.[36] An analysis that focuses solely on the injurious effects of either dumped or subsidized imports alone, when both types of unfairly traded imports are injuring the domestic industry simultaneously, would prevent the investigating authority from adequately taking into account the injurious effects of all of these imports, and would render the authority's injury analysis less than complete.[37]

18. We highlight this issue with an example. First, imagine a scenario where there is an AD investigation of a product involving three countries, including one Member, Country A, and all of them are dumping. There is also a simultaneous CVD investigation on the same product involving four other countries, none of whom is also dumping. In the context of the AD investigation, Country A has a small volume of dumped imports. Due to the small volume, dumped imports from Country A taken in isolation might not be causing material injury to the domestic industry. Per Article VI of the GATT 1994 and Article 3.3 of the AD Agreement, the authority can cumulate competing imports from all three countries—including Country A—that are subject to the AD investigations, and find material injury caused by the cumulated unfairly traded imports exists, and thus address the contributory effects of the dumped imports from Country A. The authority also can determine that the exact same domestic industry is materially injured by the cumulated subsidized imports in the CVD investigations.

19. Now, let's imagine the same scenario, where Country A is the *only* country subject to the AD investigation. Nothing about Country A's imports has changed. The domestic industry is still being materially injured by the cumulated subsidized, non-dumped imports of the same product from the four countries subject to the simultaneous CVD investigations. Yet, under Argentina's theory, the investigating authority would be unable to remedy the contributory effects of the dumped imports from country A, notwithstanding that these imports compete with the cumulated subsidized imports and with the domestic like product.

20. Neither Article VI nor Article 3.3 requires an investigating authority to ignore the effects of the subsidized imports, together with the effects of Country A's dumped imports. Indeed, there is no reasonable or logical rationale that can account for the difference in this outcome. It would be misguided to consider the injury caused by dumped and subsidized imports to the same domestic industry in isolation. Injury caused by dumped and subsidized imports is, from the perspective of domestic producers, indistinguishable.[38] Accordingly, it would make little analytic sense for an investigating authority to conduct separate injury analyses of dumped and subsidized imports, when both types of imports are simultaneously injuring the same domestic industry and the requirements for cumulation are otherwise met.

21. The interpretation of Article VI and Article 3.3 that underlies the approach of the USITC is one that an unbiased and objective investigating authority could have reached.[39] The AD

[36] U.S. First Written Submission, para. 116.

[37] U.S. First Written Submission, para. 116.

[38] U.S. First Written Submission, para. 120.

[39] *See* AD Agreement, Article 17.6(i).

Agreement should be interpreted consistent with its text in a manner ensuring that treatment of those imports is consistent under all the applicable provisions of the WTO agreements.[40]

B. The ITC's Analysis of the "Conditions of Competition" Among Subject Imports and the Domestic Like Product Warranted Cumulation of All Subject Import Sources

22. Contrary to Argentina's assertions, the ITC's four-factor cumulation analysis appropriately accounted for the relevant conditions of competition between and among subject imports and the domestic like product, consistent with Articles 3.1 and 3.3 of the AD Agreement.

23. As an initial matter, it is important to keep in mind that the ITC's examination of the conditions of competition was a multi-factor analysis. The ITC's examination of all factors, *combined*, supported cumulating imports. That is, it is critical to examine the whole picture here, as the ITC did, and not various pieces of evidence in isolation. Furthermore, it is important to recall that Article 3.3 does not require a perfect overlap of competition.[41] In this light, the ITC found cumulation was warranted based on a "reasonable overlap" of "conditions of competition."[42]

24. Specifically, positive evidence on the ITC's record supported that subject imports and the domestic like product were fungible. Subject imports from each source and the domestic product were produced to American Petroleum Institute specifications, could be used interchangeably in most applications, and were perceived by majorities or pluralities of market participants to be interchangeable and comparable across purchasing factors.[43]

25. Positive evidence on the record also supported that subject imports from each source and the domestic like product were sold through overlapping channels of distribution. Specifically, they were sold to both distributors and end users during every year of the period of investigation, regardless of the term Tenaris used to characterize its sales to end users.[44]

26. Finally, the record supported that subject imports were present in the U.S. market for nearly the entire period of investigation and were sold in overlapping geographic regions in the United States.[45]

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[40] U.S. First Written Submission, para. 120.

[41] U.S. First Written Submission, para. 129 (citing *EC – Pipe or Tube Fittings (Panel)*, para. 7.242).

[42] *Oil Country Tubular Goods from Argentina, Mexico, Russia and South Korea*, Inv. Nos. 701-TA-671-672 and 731-TA-1571-1573 (Final), USITC Pub. No. 5381, at 17-23 (Exhibit ARG-01) ("USITC Final Report").

[43] U.S. First Written Submission, para. 132.

[44] U.S. First Written Submission, para. 133.

[45] U.S. First Written Submission, paras. 134–135.

27. Accordingly, the ITC's determination to conduct a cumulative assessment of these imports was based on positive evidence and one that an unbiased and objective investigating authority could have reached.[46]

IV. THE ITC'S DETERMINATION OF INJURY IS NOT INCONSISTENT WITH ARTICLES 3.1, 3.2, 3.4, AND 3.5 OF THE AD AGREEMENT

28. It is undisputable that the ITC conducted a thorough and objective investigation of the evidence of record before it determined that positive evidence demonstrated that the dumped imports are, through the effects of dumping, causing injury to the domestic industry within the meaning of the AD Agreement. The Panel in this dispute should recognize that an unbiased and objective investigating authority, looking at the same evidentiary record as the ITC, could have reached the same conclusion.

29. Argentina's arguments to the contrary lack merit.

30. Most of Argentina's arguments hang on the legally invalid idea that the ITC should have conducted a duplicate causation analysis at every step of its investigation, grafting onto Articles 3.2 and 3.4 an obligation that exists just under Article 3.5. Other arguments ask the Panel to overlook its role as a reviewer of agency action and conduct a *de novo* review because, according to Argentina, the ITC should have been persuaded by Tenaris's assertions even though the ITC, after considering the positive evidence of record, found those assertions unavailing.

31. The Panel asked each party to avoid a lengthy repetition of the arguments in its submission, so I will not repeat in this opening statement every argument that the United States made in its first written submission in response to Argentina's claims. However, I would like to underscore the following three points:

(1) The ITC's volume and price effects inquiries under Article 3.2, and its impact inquiry under Article 3.4, did not need to address the causal relationship between dumped imports and injury to the domestic industry;

(2) The ITC's causation inquiry under Article 3.5 did not need to address other known factors; and

(3) The ITC's inquiry into other known factors under Article 3.5 correctly evaluated all factors that were possibly injuring the domestic industry at the same time as the dumped imports were.

[46] *See* AD Agreement, Article 17.6(i).

A. The ITC's Consideration of the Volume and the Price Effects of the Dumped Imports is Not Inconsistent with Articles 3.1, 3.2, and 3.4 of the AD Agreement

32. Point 1: Argentina argues that the ITC's considerations of volume and price effects under Article 3.2, and its examination of the impact of these imports on domestic producers under Article 3.4, should address the causal relationship between dumped imports and injury to the domestic industry.

33. Argentina is wrong: Articles 3.2 and 3.4 do not require a causation analysis.

34. The volume inquiry under Article 3.2 just concerns the identification of the change in the volume of imports and a consideration of whether there has been a significant increase in dumped imports over the POI.[47]

35. The price effects inquiry just concerns the identification of possible price undercutting, or price depression, or price suppression, and a consideration whether there has been significant price undercutting, or significant price depression, or significant price suppression, over the POI.[48] The use of the conjunction "or" between these possible price effects indicates that they are independent lines of inquiry.[49]

36. The impact inquiry under Article 3.4 addresses specific economic factors and indices and an examination of the impact of dumped imports on the state of the domestic industry over the POI. The importance of a factor may vary significantly from case to case,[50] and nothing in Article 3.4 requires an investigating authority to reach a negative injury determination merely because the domestic industry reported a number of positive or improving factors.[51]

37. Causation is not required to be examined under the text of these provisions, and causation is not relevant to any of these inquiries. As correctly reasoned in other disputes, an authority is not required under Articles 3.2 and 3.4 to demonstrate whether dumped imports are causing injury to the domestic industry, nor is the authority required under these articles to analyze other known factors that may be causing injury to the domestic industry.[52]

38. Every argument put forward in Argentina's challenge to the ITC's volume inquiry, and many of the arguments put forward in its challenges to the ITC's price effects and impact inquiries, focus on causation or other known factors. The plain text of Articles 3.2 and 3.4, and

[47] *See US – Ripe Olives (Panel)*, para. 7.247.

[48] *See China – HP-SSST (AB)*, para. 5.161.

[49] *See US – Ripe Olives (Panel)*, para. 7.258.

[50] *See Korea – Pneumatic Valves (AB)*, para. 5.172.

[51] *See EU – Footwear (China)*, para. 7.413.

[52] *See China – GOES (AB)*, para. 154; *Korea – Pneumatic Valves (AB)*, para. 5.190 (quoting *China – HP-SSST (AB)*, para. 5.205, and citing *China – GOES (AB)*, 150).

the framework of Article 3 generally, confirm that questions about causation and other known factors are to be examined under Article 3.5, not Article 3.2 or Article 3.4.

39. The Panel should find that Argentina has failed to make a *prima facie* case that the ITC's consideration of volume and price effects, and its examination of the impact of subject imports on domestic producers, were inconsistent with Articles 3.1, 3.2, and 3.4 of the AD Agreement. The ITC's findings are such as could have been reached by an unbiased and objective investigating authority.

B. The ITC's Causation Analysis is Not Inconsistent with Articles 3.1 and 3.5 of the AD Agreement

40. Point 2: Article 3 of the AD Agreement establishes a step-by-step progression for conducting the investigation of injury in anti-dumping proceedings. The evidentiary record in the OCTG investigation demonstrates that the ITC followed this progression precisely.

41. The ITC began its investigation by first examining the conditions of competition in the U.S. OCTG market during the POI, including demand and supply conditions and the degree of substitutability between the domestic like product and subject imports.[53] For example, the ITC objectively found, based on positive evidence, that domestic like product "is always or frequently interchangeable with subject imports" and "that price is an important factor in OCTG purchasing decisions."[54] The ITC's findings regarding conditions of competition informed the specific inquiries that it subsequently conducted under Articles 3.2, 3.4, and 3.5 of the AD Agreement.[55]

42. The ITC's consideration of the volume and price effects of the dumped imports under Article 3.2 then objectively found, based on positive evidence, that a significant and increasing volume of dumped imports had predominantly undersold the domestic like product and, through this underselling, had captured market share from the domestic industry during the POI.[56]

43. The ITC's examination of the impact of dumped imports on the state of the domestic industry under Article 3.4 also objectively found, based on positive evidence, that subject imports had explanatory force for the industry's inability to fully capitalize on increasing demand and resulted in the domestic industry's production, employment, and financial performance being weaker than they otherwise should have been during the POI.[57]

44. As discussed, the ITC's volume, price effects, and impact inquiries appropriately did not address the causal relationship between dumped imports and injury to the domestic industry. The ITC reserved its analysis of causation until its inquiry under Article 3.5.

[53] USITC Final Report at 27-32 (Exhibit ARG-01).

[54] USITC Final Report at 29 (Exhibit ARG-01).

[55] USITC Final Report at 27 (Exhibit ARG-01).

[56] USITC Final Report at 32-39 (Exhibit ARG-01).

[57] USITC Final Report at 39-43 (Exhibit ARG-01).

45. Under that Article 3.5 causation analysis, the ITC took into account the findings it made pursuant to its volume, price effects, and impact inquiries and concluded that the positive evidence on the record of the investigation demonstrated a causal relationship between dumped imports and injury to the domestic industry. As the ITC noted, in part: "[D]espite the 32.2 percent increase in apparent U.S. consumption from 2020 to 2021, the industry's production, employment, and financial performance remained weaker in 2021 than would have been expected in light of the strong increase in demand."[58]

46. The arguments put forward by Argentina challenging this determination fail to make a *prima facie* case that the ITC's finding was inconsistent with Articles 3.1 and 3.5 of the AD Agreement.

47. Argentina first argues that the ITC's causation analysis should have considered other known factors.[59] The second sentence of Article 3.5, which sets forth the obligation to demonstrate a causal relationship, does not impose an obligation to examine other known factors as part of the examination of a possible causal relationship between dumped imports and injury to the domestic industry. The third sentence of Article 3.5 further states that "[t]he authorities shall also examine any known factors other than the dumped imports which at the same time are injuring the domestic industry, and the injuries caused by these other factors must not be attributed to the dumped imports."[60] The plain language of Article 3.5 thus makes clear that, where there may be multiple factors injuring the domestic industry at the same time, the examination of the causal relationship between dumped imports and injury to the domestic industry only needs to demonstrate that dumped imports are a cause of injury to the domestic industry. The examination does not need to demonstrate that dumped imports are the cause of injury.[61]

48. Argentina also argues that the Panel should dismiss the ITC's finding of a causal relationship between dumped imports and injury because, after the domestic industry petitioned for trade remedy relief, the subject imports abruptly competed "less aggressively" and the domestic industry's overall performance—not surprisingly—improved in interim 2022.

49. To the contrary, as the ITC correctly found, this sudden withdrawal substantiated that the subject imports were a cause of injury to the domestic industry during the POI, because it confirmed a correlation between subject imports and domestic industry performance: In 2021, when subject imports competed aggressively in the U.S. market, the domestic industry's performance was weaker than would have been expected relative to the strong increase in demand.[62] In interim 2022, when the subject imports competed less aggressively, the industry's

[58] USITC Final Report at 43 (Exhibit ARG-01).

[59] *See, e.g.*, Argentina's First Written Submission, paras. 594 (oil price war and COVID-19), 595 (supply constraints), 596-600 (inventory), 601-602 (HRC prices), 603-605 (labor shortages), 607 (Tenaris's U.S. industry position), 608 (intra-industry).

[60] AD Agreement, Article 3.5, third sentence (underline added).

[61] *See China – Autos (US)*, para. 7.322 (citing *US – Wheat Gluten (AB)*, para. 67).

[62] USITC Final Report at 43 (Exhibit ARG-01).

performance improved.[63] This finding of a correlation between dumped imports and injury to the domestic industry is one that clearly could have been reached by an objective and unbiased investigating authority.

50. Last of all, Argentina argues that the ITC failed to follow its own past practice.[64] The ITC investigations cited by Argentina addressed entirely different industries with entirely different fact patterns. For example, in *Large Diameter Welded Pipe from China and India*, the ITC found that import volumes did not relate to the filing of the application because of the project-based nature of demand for large diameter welded pipe.[65] In *Certain Aluminum Plate from South Africa*, the ITC found that import volumes did not relate to the filing of the application because the decline in subject imports was consistent with the business plan considered and adopted by the foreign producer before the application was filed.[66] Different conclusions were reached based on different facts.

51. None of Argentina's arguments establish that the ITC's finding of a causal relationship between the dumped imports and the injury to the domestic industry was inconsistent with Articles 3.1 and 3.5. The ITC's finding is such as could have been reached by an unbiased and objective investigating authority.

C. The ITC's Examination of Other Known Factors is Not Inconsistent with Articles 3.1 and 3.5 of the AD Agreement

52. Point 3: The AD Agreement does not specify the particular methods and approaches an investigating authority may use to conduct the analysis of other known factors.[67] As a result, the question of whether an authority's analysis of other known factors is consistent with Article 3.5 turns on whether it has evaluated these factors and whether its evaluation is supported by positive evidence and reflects an objective examination.[68]

53. Argentina argues that the ITC did not evaluate certain other known factors, or that when it did, its evaluation was not supported by positive evidence and not objective. To the contrary, the ITC's investigation clearly demonstrates that it conducted an examination of every other known factor identified during its investigation and, following a thorough review of positive evidence, objectively ensured that it did not attribute injury from any of these factors to dumped imports.[69]

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[63] USITC Final Report at 43 (Exhibit ARG-01).

[64] Argentina's First Written Submission, paras. 649-650, 652.

[65] *Large Diameter Welded Pipe from China and India*, Inv. Nos. 701-TA-593-594 and 731-TA-1402 and 1404 (Final), USITC Pub. 4859, at 41 n.287 (Jan. 2019) (ARG-52).

[66] *Certain Aluminum Plate From South Africa*, Inv. No. 731-TA-1056 (Final), USITC Pub. 3734, at 24 (Nov. 2004) (Public Version) (ARG-53).

[67] *See US – Hot-Rolled Steel* (AB), para. 224; *US – Tyres* (AB), para. 252.

[68] *See EC – Countervailing Measures on DRAM Chips* (Panel), paras. 7.272-7.273 (citing *US-Hot-Rolled Steel* (AB), paras. 192-193).

[69] U.S. First Written Submission, paras. 292-316.

54. For example, the record of the investigation demonstrates that the ITC examined the dramatic decline in OCTG demand during the early part of the POI, resulting from, what Tenaris called, "the one-two punch of OPEC/Russia supply jousting and the COVID-19 global pandemic."[70] The ITC's examination of this 'one-two punch' pervades every aspect of its final report,[71] including its discussion of conditions of competition,[72] which contains a reference to the staff report statement that "[o]ver the course of 2019, OCTG demand declined due to a dispute over oil prices and production between Saudi Arabia and Russia."[73] The Panel thus should reject Argentina's argument that the ITC failed to examine the dramatic decline in OCTG demand during the early part of the POI simply because its final determination did not re-mention the 'Russia/Saudi price war' as a cause of this decline as part of its examination of other known factors..[74]

55. In addition, the Panel should consider whether the events that lead to this dramatic decline in OCTG demand is, in fact, a "known factor[] other than the dumped imports."

56. Recall that the ITC's causation analysis under Article 3.5 concluded that the evidence demonstrated a causal relationship between dumped imports and injury because of the domestic industry's performance in 2021.[75] Interested parties involved in the investigation, including Tenaris, agreed that the impact of the so-called 'one-two punch' had dissipated by the end of the third quarter of 2020.[76] The dramatic decline in OCTG demand brought about by these events thus was not injuring the domestic industry "at the same time" dumped imports were, and, for this reason, should not be considered a "known factor[] other than the dumped imports," as that concept is defined under Article 3.5.

57. Argentina puts forward additional arguments about other known factors, including Tenaris's role in the domestic industry, intra-industry competition, supply constraints, HRC prices, labor shortages, and inventory overhang. Our first written submission demonstrates that the ITC examined each of these factors in detail and objectively concluded, based on positive evidence, that none of them explained the injury that the ITC attributed to the dumped imports. Argentina's arguments to the contrary are nothing more than an invitation for the Panel to conduct a *de novo* examination and substitute its judgment for the ITC's. The Panel should reject this invitation and find all of Argentina's claims without merit.

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[70] Tenaris Pre-Hearing Brief, at 4 (ARG-04).

[71] *See*, *e.g.*, USITC Final Report at 27-28, 40, 43 n.243, 45 n.256 (Exhibit ARG 01).

[72] USITC Final Report at 27 ("Demand Considerations") and 27 n.135, citing USITC Final Report at II-1 ("U.S. market characteristics") and II-19 ("Demand determinants") (Exhibit ARG-01).

[73] USITC Final Report at II-19, cited at USITC Final Report at 27 n.135 (Exhibit ARG-01).

[74] *See* USITC Final Report at II-19, II-25 (mentioned in final staff report) (ARG-01); USITC Preliminary Report at 31 n. 179 (mentioned in preliminary determination) (Exhibit USA-19).

[75] USITC Final Report at 43 (underline added) (Exhibit ARG-01).

[76] USITC Final Report at 27 ("Petitioners and Tenaris agree that OCTG demand in the United States, after declining through August 2020 due to the COVID-19 pandemic, recovered thereafter through the end of the POI") ("U.S. oil and gas prices fell irregularly from January 2019 to mid-2020, and then increased irregularly though the end of the POI") (Exhibit ARG-01).

58. The ITC provided a reasoned explanation of the injurious effects, if any, of each of the identified factors other than dumped imports. It explained why these other factors could not account for the adverse effects that it had attributed to the dumped imports. The ITC's findings are such as could have been reached by an unbiased and objective investigating authority.

V. CONCLUSION

59. As we have demonstrated in the U.S. first written submission and our opening statement today, Argentina's claims are without merit. The United States respectfully requests that the Panel reject them.

60. Madam Chairperson, members of the Panel, this concludes our opening statement. We thank you for your attention and would be pleased to respond to your questions.