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

(DS617)

SECOND WRITTEN SUBMISSION OF THE UNITED STATES OF AMERICA

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TABLE OF CONTENTS

TABLE OF REPORTS

Short Form	**Full Citation**
China – Autos (US)	Panel Report, *China – Anti-Dumping and Countervailing Duties on Certain Automobiles from the United States*, WT/DS440/R and Add.1, adopted 18 June 2014
China – Cellulose Pulp	Panel Report, *China – Anti-Dumping Measures on Imports of Cellulose Pulp from Canada*, WT/DS483/R, adopted 23 May 2017
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 – Fasteners (China) (Panel)	Panel Report, *European Communities – Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners from China*, WT/DS397/R, adopted 28 July 2011, as modified by Appellate Body Report, WT/DS397/AB/R
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
Korea – Pneumatic Values (Panel)	Panel Report, *Korea – Anti-Dumping Duties on Pneumatic Valves from Japan*, WT/DS504/R, adopted 30 September 2019, as modified by Appellate Body Report, WT/DS504/AB/R
Mexico – Anti-Dumping Measures on Rice (AB)	Appellate Body Report, *Mexico – Definitive Anti-Dumping Measures on Beef and Rice, Complaint with Respect to Rice*, WT/DS295/AB/R, adopted 20 December 2005
Morocco – Definitive AD Measures on Exercise Books (Tunisia) (Panel)	Panel Report, *Morocco – Definitive Anti-Dumping Measures on Exercise Books from Tunisia*, WT/DS578/R, circulated 27 July 2021
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

Short Form	**Full Citation**
US – Wheat Gluten (AB)	Appellate Body Report, *United States – Definitive Safeguard Measures on Imports of Wheat Gluten from the European Communities*, WT/DS166/AB/R, adopted 19 January 2001
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, adopted 23 May 1997, and Corr. 1

TABLE OF ABBREVIATIONS

Abbreviation	Definition
AD	Anti-dumping
AD Agreement	Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994
Commission, USITC	United States International Trade Commission
CVD	Countervailing Duty
DSU	Understanding on Rules and Procedures Governing the Settlement of Disputes
GATT 1994	*General Agreement on Tariffs and Trade 1994*
OCTG	Oil Country Tubular Goods
POI	Period of Investigation
SCM Agreement	Agreement on Subsidies and Countervailing Measures
USDOC	United States Department of Commerce
WTO	World Trade Organization

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", *Collins*, http://www.collinsdictionary.com/dictionary/english/as-the-case-may-be (accessed Apr. 23, 2024)
USA-08	Definition of "Case", *Oxford Learner's Dictionaries*, https://www.oxfordlearnersdictionaries.com/us/definition/american_english/case_1 (accessed Apr. 23, 2024)
USA-09	*Certain Oil Country Tubular Goods from India, Korea, The Philippines, Saudi Arabia, Taiwan, Thailand, Turkey, Ukraine, and Vietnam*, Inv. Nos. 701-TA-499-500 and 731-TA-1215-1223 (Preliminary), USITC Pub. No. 4422 (Aug. 2013) (excerpt)
USA-10	*Oil Country Tubular Goods from Argentina, Austria, Italy, Japan, Korea, Mexico, and Spain*, Inv. Nos. 701-TA-363-364 and 731-TA-711-717 (Preliminary), USITC Pub. No. 2803 (Aug. 1994) (excerpt)

Exhibit No.	Description
USA-11	*Oil Country Tubular Goods from India, Korea, Turkey, Ukraine, and Vietnam*, Inv. Nos. 701-TA-499-500 and 731-TA-1215-1216, 1221-1223 (Review), USITC Pub. 5090 (Jul. 2020) (excerpt)
USA-12	*Oil Country Tubular Goods from Argentina, Mexico, Russia and South Korea*, Inv. Nos. 701-TA-671-672 and 731-TA-1571-1573, Revised and Corrected USITC Hearing Transcript (Sept. 22, 2022) (excerpt)
USA-13	*Oil Country Tubular Goods From the Republic of Korea: Final Affirmative Countervailing Duty Determination*, 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	*Certain Preserved Mushrooms from Chile*, Inv. No. 731-TA-776 (Final), USITC Pub. 3144, at 14-15 (Nov. 1998)
USA-17	*Proclamation 9705: Adjusting Imports of Steel Into the United States*, 83 Fed. Reg. 11,625 (Mar. 15, 2018)
USA-18	*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*, 79 Fed. Reg. 53,691 (Dep't of Commerce Sept. 10, 2014)
USA-19	*Oil Country Tubular Goods from Argentina, Mexico, Russia and South Korea*, Inv. Nos. 701-TA-671-672 and 731-TA-1571-1573 (Preliminary), USITC Pub. No. 5248 (Nov. 2021)
USA-20	Definition of "Significant," The New Shorter Oxford English Dictionary, 4th 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)

Exhibit No.	Description
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	*Oil Country Tubular Goods from Argentina, Austria, Italy, Japan, Korea, Mexico, and Spain*, Inv. Nos. 701-TA-363-364 and 731-TA-711-717 (Final), USITC Pub. 2911 (Aug. 1995) (excerpt)
USA-29	*Certain Seamless Carbon and Alloy Standard, Line, and Pressure Steel Pipe from Argentina, Brazil, Germany, and Italy*, Inv. Nos. 701-TA-362 and 731-TA-707-710 (Final), USITC Pub. No. 2910 (July 1995) (excerpt)
USA-30	*Certain Carbon Steel Butt-Weld Pipe Fittings from France, India, Israel, Malaysia, The Republic of Korea, Thailand, The United Kingdom, and Venezuela*, 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	*The New Shorter Oxford English Dictionary*, 4th ed., L. Brown (ed.) (Clarendon Press, Oxford, 1993) (excerpt)

Exhibit No.	Description
USA-37	Statement of Administrative Action to the Uruguay Round Agreements Act, H.R. Rep. No. 103-316, Vol. I (1994) (excerpt)
USA-38	*Oil Country Tubular Goods from Argentina, Mexico, Russia and South Korea*, Inv. Nos. 701-TA-671-672 and 731-TA-1571-1573, Revised and Corrected USITC Hearing Transcript (Sept. 22, 2022) (additional excerpt)

I. INTRODUCTION

1. Throughout this dispute, Argentina's arguments have failed to meaningfully address the specific rights and obligations provided by the covered agreements and have misstated, or simply ignored, the relevant facts. In this second written submission, the United States will focus on flaws in the arguments Argentina presented during the first substantive meeting of the Panel with the parties and in its answers to the Panel's questions.

2. The United States has structured this submission as follows.

3. **Section II** addresses Argentina's claims that the U.S. Department of Commerce ("USDOC") acted inconsistently with Articles 5.1, 5.2, 5.3, 5.4, and 6.6 of the AD Agreement by failing to properly examine the evidence on the record and to determine, based on such evidence, that the application was made "by or on behalf of the domestic industry" (*i.e.*, whether the application had the requisite level of industry support). This section also addresses Argentina's new argument about "understated" domestic production – which Argentina presented for the first time at the first substantive meeting of the Panel. We demonstrate in section II that Argentina has failed to establish these claims.

4. **Section III** addresses Argentina's claims that the U.S International Trade Commission's ("USITC") decision to cumulate subject imports in the oil country tubular goods ("OCTG") investigation is inconsistent with Articles 3.1 and 3.3 of the AD Agreement. This section also refutes Argentina's claims in connection with the U.S. statutory provision regarding cumulation of imports at section 777(7)(G) of the Tariff Act of 1930, as Amended (19 U.S.C. § 1677(7)(G)).

5. **Section IV** addresses Argentina's claims that the USITC's injury analysis was inconsistent with Articles 3.1, 3.2, 3.4, and 3.5 of the AD Agreement.

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

6. In this section, the United States focuses on addressing the arguments that Argentina presented in its statements to the Panel during the first substantive meeting with the parties, including a new argument Argentina raised at the substantive meeting but not in its first written submission or before the USDOC, in support of Argentina's claims under Articles 5.1, 5.2, 5.3, 5.4, and 6.6 of the AD Agreement.[1]

[1] In this section, the United States has not addressed arguments that Argentina did not raise or sustain during the Panel's meeting or in its responses to the Panel's questions. For example, the United States has not further addressed Argentina's arguments under Article 6.6 of the AD Agreement. The United States has already demonstrated that Article 6.6 is not applicable to the arguments raised by Argentina on industry support for initiation, and we refer to our prior arguments in this regard. U.S. First Written Submission, paras. 23-29. During

7. This section proceeds as follows. In subsection II.A below, the United States responds to Argentina's arguments regarding its claims under Articles 5.1 and 5.4 of the AD Agreement. In subsections II.B and II.C, the United States responds to Argentina's arguments regarding its Articles 5.3 and 5.2 claims, respectively. In subsection II.D below, the United States addresses Argentina's continued failure to clarify how its arguments correspond to the particular claims it is making, despite the Panel's request for clarification, and highlights the United States' own understanding of what Argentina is arguing and not arguing in this dispute. Subsection II.E concludes that Argentina has failed to establish its claims that the USDOC acted inconsistently with Articles 5.1, 5.2, 5.3, 5.4, and 6.6 of the AD Agreement.

A. The USDOC's Analysis of Industry Support Is Not Inconsistent With Articles 5.1 and 5.4 of the AD Agreement

8. As the United States has demonstrated, the information provided by the domestic industry applicants in their application, coupled with the supplementary information the USDOC sought from the applicants, supported that the application was made "by or on behalf of the domestic industry" in accordance with Articles 5.1 and 5.4 of the AD Agreement.[2] Argentina has failed to demonstrate otherwise. During the first substantive meeting of the Panel, and in its responses to the Panel's questions, Argentina has continued to raise certain of the arguments it made in its first written submission under Articles 5.1 and 5.4 of the AD Agreement, as well as a new argument that the USDOC "understated" domestic production in the denominator of the industry support calculations. These arguments are unavailing and Argentina has failed to demonstrate that the USDOC acted inconsistently with Articles 5.1 or 5.4 of the AD Agreement.[3]

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the Panel's first substantive meeting, and in its responses to questions, Argentina provided no further articulation of how Article 6.6 is applicable in this dispute. Likewise, the United States has not reiterated its responses to Argentina's arguments that the AD Agreement somehow required the USDOC to "poll" the domestic industry in determining whether the application was made by or on behalf of the domestic industry, or that the USDOC somehow shifted an evidentiary burden to a specific interested party in the underlying initiation. We refer to our prior responses to these arguments in our first written submission. U.S. First Written Submission, paras. 56-58, 67-72.

[2] *See generally* U.S. First Written Submission, paras. 30-73.

[3] The United States takes note of Argentina's emphasis on redactions for business confidential information ("BCI") in the USDOC Initiation Checklist, particularly the exact percentages that the USDOC determined regarding the two numerical thresholds under Article 5.4. Argentina's Opening Statement at the First Substantive Meeting of the Panel, para. 14 (citing USDOC Initiation Checklist, Attachment II, at 6-7 (Exhibit ARG-18); USDOC Industry Support Calculations Table (Exhibit ARG-58)). According to Argentina, "the Panel is unable to assess the U.S. rebuttal claims regarding the accuracy and adequacy of the data relied upon for the industry support calculations, and whether the data were sufficient to demonstrate that the application was made 'on or behalf of the domestic industry'." Argentina's Opening Statement at the First Substantive Meeting of the Panel, para. 14. Argentina's assertion is incorrect. The United States explained each of the lines of analysis the USDOC applied in assessing industry support. While the exact numerical figures are BCI in the USDOC Initiation Checklist, the salient overarching fact remains that the underlying calculations satisfied both numerical thresholds in Article 5.4. This fact is public with regard to each of the four analytical approaches that the USDOC applied in assessing industry support for the application. *See* U.S. Responses to the Panel's First Set of Questions, paras. 50, 53, 54, 56, 58 (citing USDOC Initiation Checklist, Attachment II, at 6-7, 17-18 (Exhibit ARG-18)). In addition, counsel to various

9. In subsection A.1 below, we further refute Argentina's arguments that the USDOC relied on "outdated" or "anomalous" data, while in subsection A.2 we further address Argentina's arguments that the USDOC inappropriately relied on "estimated" production data. In subsection A.3, we further address Argentina's allegation that the USDOC "double-counted" domestic production, and in subsection A.4 we refute Argentina's new argument that the USDOC also "understated" domestic production in the denominator of the industry support calculations.

1. The USDOC Did Not Rely On "Outdated" or "Anomalous" Data

10. Argentina continues to argue that the USDOC relied on "outdated" or "anomalous" data for the purposes of assessing industry support for the application.[4] Nonetheless, it was entirely appropriate for the USDOC to rely on the applicants' actual production data for calendar year 2020, and domestic industry-wide shipment data from that same year, which the USDOC converted to estimated industry-wide production data. Calendar year 2020 corresponded to the most recently-completed calendar year preceding the filing of the application, and it reasonably overlapped with the USDOC's period of investigation.[5] The USDOC also appropriately relied on the 2018-2019 production-to-shipments conversion ratio, which was the "most recently available industry-wide production and shipment data" available on the record to convert the 2020 industry-wide shipment data to estimated production data.[6] The United States has previously explained that the USDOC also considered a more recent calendar year 2020 ratio of production to shipments proffered by the applicants to convert the 2020 industry-wide shipment data to estimated production data. Upon applying this more recent conversion ratio in its analysis, the USDOC found that the application *still* had the requisite industry support for

interested parties, including of Tenaris, were able to see these calculations at initiation, pursuant to the USDOC's administrative protective order governing the treatment of business proprietary information.

Moreover, Argentina suggests that "[i]ronically, the only production percentage that is revealed in the public record is Commerce's statement that '*The Petitions did not establish the support of domestic producers accounting for more than 50 percent of the total production of the domestic like product*'."). Argentina's Opening Statement at the First Substantive Meeting of the Panel, para. 14 (quoting USDOC Initiation Checklist, Attachment II, at 6 (Exhibit ARG-18) (emphasis added by Argentina)). However, Article 5.4 of the AD Agreement does not require that an application be supported by producers accounting for more than 50 percent of total production of the domestic like product, only that the supporters of the application account for more than 50 percent of total production "*produced by that portion of the domestic industry expressing either support for or opposition to the application*." AD Agreement, Article 5.4 (emphasis added). The 50 percent threshold referenced in Argentina's quotation above relates to a separate 50 percent threshold, found in U.S. law and not in the AD Agreement, which requires the USDOC to either poll the domestic industry or rely on other information to determine whether the requisite industry support exists for the application, where the supporters do not account for more than 50 percent of total production by the entire industry. *See* 19 U.S.C. § 1673a(c)(4)(D) (Exhibit ARG-10).

[4] Argentina's Responses to the Panel's First Set of Questions, paras. 29-30, 50.

[5] U.S. First Written Submission, para. 50; *see also* USDOC Initiation Checklist, Attachment II, at 16 (Exhibit ARG-18).

[6] *See* USDOC Initiation Checklist, Attachment II, at 15 (Exhibit ARG-18).

initiation.[7]

11. Argentina has pointed to nothing in the text of Articles 5.1 or 5.4 that specifies that an investigating authority must select a particular time period to examine industry support for an application, or that proscribes the types of evidence an investigating authority may use in such an analysis. Thus, the mere fact that data relate to the past does not mean they cannot be used to establish industry support, particularly 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]

12. Regarding its assertion that the USDOC relied on "anomalous" data, Argentina continues to aver that the "unprecedented market conditions in 2020 meant that U.S. OCTG production was fundamentally different from production in the very different OCTG market in 2021 at the time the application was filed."[9] However, Argentina then states that "the consequences of the 2020-*2021* market disruption for the broader OCTG market are hard to overstate."[10]

13. As we explained during the first substantive meeting of the Panel, Argentina's position is essentially that: (1) 2020 data are "outdated" and "anomalous," (2) 2021 was also part of the same "market disruption" that rendered 2020 data "anomalous," and (3) 2018-2019 data are outdated.[11] Argentina's arguments during the first substantive meeting, and its responses to the Panel's first set of questions, continue to suggest that Argentina would not have approved of any of these time periods for the purposes of determining industry support for the application.[12]

14. Thus, it appears to remain Argentina's view that there would not have been any recent time period preceding initiation that the USDOC should have examined for the purposes of industry support for the application.[13] But Article 5.4 requires an investigating authority to assess such support prior to initiation, and the USDOC used appropriate data and time periods to do so. Once again, Argentina is attempting 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

[7] USDOC Initiation Checklist, Attachment II, at 17-18 (Exhibit ARG-18); U.S. Opening Statement at the First Substantive Meeting of the Panel, para. 8.

[8] U.S. Opening Statement at the First Substantive Meeting of the Panel, para. 7; U.S. First Written Submission, para. 50.

[9] Argentina's Opening Statement at the First Substantive Meeting of the Panel, paras. 15-16.

[10] Argentina's Opening Statement at the First Substantive Meeting of the Panel, para. 15 (emphasis added).

[11] U.S. Opening Statement at the First Substantive Meeting of the Panel, para. 9 (citing Argentina's First Written Submission, paras. 173, 194, 215).

[12] *See* Argentina's Opening Statement at the First Substantive Meeting of the Panel, paras. 15-16; Argentina's Responses to the Panel's First Set of Questions, paras. 11, 28-30, 50, 53.

[13] U.S. Opening Statement at the First Substantive Meeting of the Panel, para. 9.

level of support."[14] The USDOC appropriately rejected interested parties' attempts to do just that at initiation,[15] and the Panel should reject Argentina's attempt to do so in this dispute.

2. The USDOC Appropriately Relied on Estimated Production Data in Assessing Whether the Application Was Made By or On Behalf of the Domestic Industry

15. Argentina continues to suggest, without textual support, that an investigating authority cannot use "estimated" production data in satisfaction of Article 5 of the AD Agreement.[16] Argentina's assertion has no basis in the text. As we have explained, none of the provisions cited by Argentina on this issue in this dispute require "actual" production data. The absence of the term "actual" connotes a certain level of flexibility in what data an investigating authority may rely on in assessing whether an application is made by or on behalf of the relevant domestic industry. Indeed, Articles 5.1 and 5.4 – and also Articles 5.2 and 5.3 – do not circumscribe the types of information an investigating authority must or must not use in assessing whether there exists the requisite industry support for the application.[17] The drafters could have used the phrase "actual" in these provisions if Members had wanted to impose the requirement that Argentina now seeks, as appears in other provisions of the AD Agreement.[18] The fact that they did not should be given meaning, and Argentina cannot read additional terms into the text that are not there.

16. Thus, Articles 5.1 and 5.4 – and indeed all of the other provisions cited by Argentina – permit an investigating authority to rely on alternative data, such as domestic industry shipment data, to the extent such data may serve as a suitable proxy for production, in assessing industry support for an application.[19] That is exactly what the USDOC did here, and it used additional information on the record to convert the shipment data to production data, such that it ultimately *did* analyze "total *production* of the like product," consistent with Article 5.1, as informed by Article 5.4.[20]

17. It is also entirely logical that an investigating authority should be able to rely on reasonable proxy information to estimate industry-wide production of the like product. It is reasonable to expect that applicants comprising a subset of the relevant domestic industry would

[14] USDOC Initiation Checklist, Attachment II, at 16-17 (Exhibit ARG-18); U.S. Opening Statement at the First Substantive Meeting of the Panel, para. 9.

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

[16] *See* Argentina's Responses to the Panel's First Set of Questions, paras. 23, 53-54.

[17] U.S. First Written Submission, paras. 45-47; U.S. Opening Statement at the First Substantive Meeting of the Panel, para. 6.

[18] U.S. Opening Statement at the First Substantive Meeting of the Panel, para. 6 (citing AD Agreement, Articles 8.3, 9.3.2).

[19] U.S. First Written Submission, paras. 46-47.

[20] U.S. First Written Submission, para. 47 (citing USDOC Initiation Checklist, Attachment II, at 4-8, 14-15, 17) (Exhibit ARG-18)).

not have production volumes for the entire domestic industry, given that such information would almost certainly constitute BCI of the firms in question for which applicants would not have access. Thus, there must be inherent flexibility in Article 5 of the AD Agreement for an applicant to provide less than "actual" production data for the entire domestic industry and instead rely on reasonably available and appropriate proxy data, and, in turn, for the investigating authority to be able to rely on such data to make its industry support assessment.

3. Argentina Cannot Substantiate that the USDOC Distorted the Industry Support Determination by "Double-Counting" Domestic Production

18. Argentina's assertion that the USDOC "double-counted" OCTG production by including processors and finishers of unfinished OCTG in its analysis of industry support is unfounded.[21] Argentina continues to assert that there was a "significant risk" that the USDOC double-counted domestic production.[22] But this assertion sidesteps Argentina's burden in this dispute, which is to make a *prima facie* case that the USDOC "double-counted" domestic production in its industry support determination, and that this is inconsistent with the AD Agreement. Simply asserting that there was a "significant risk" amounts to conjecture, and speculation is insufficient to make a *prima facie* case of inconsistency with the AD Agreement.[23] Here, the USDOC did not act inconsistently with Articles 5.1 or 5.4 of the AD Agreement.[24]

19. In its opening statement at the first substantive meeting of the Panel, Argentina remarked that the USDOC "failed to demonstrate that the comingling of pipe formation and pipe processing data did not result in 'double-counting', which would distort the industry support calculation."[25] This remark represents an obfuscation of the applicable burden of proof. Again, it is Argentina that bears the burden to make a *prima facie* case that the USDOC's determination was inconsistent with the AD Agreement. It is *not* the United States' initial burden to demonstrate that the USDOC's determination is not inconsistent with the AD Agreement.

20. As the United States explained previously, no interested party raised a "double-counting" argument before the USDOC. The phrase "double-count" is absent from the USDOC's record prior to initiation. Instead, Tenaris argued prior to initiation that further processing of green tube into finished OCTG should not be included in the domestic like product.[26] A full review of

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[21] Argentina's First Written Submission, paras. 197-208, 219, 221; Argentina's Opening Statement at the First Substantive Meeting of the Panel, paras. 29-31; Argentina's Responses to the Panel's First Set of Questions, para. 20.

[22] Argentina's Responses to the Panel's First Set of Questions, para. 20.

[23] U.S. Opening Statement at the First Substantive Meeting of the Panel, para. 10 (citing *US – Wool Shirts and Blouses (AB)*, p. 14; *China – Autos (US)*, para. 7.6).

[24] *See* U.S. First Written Submission, paras. 59-64; U.S. Opening Statement at the First Substantive Meeting of the Panel, para. 10.

[25] Argentina's Opening Statement at the First Substantive Meeting of the Panel, para. 29.

[26] *See* Tenaris's Pre-Initiation Comments (Oct. 15, 2021) at 9-10 (Exhibit ARG-03).

Tenaris's submissions to the USDOC reveals that Tenaris did not express a concern about "double-counting" production, but rather only a concern about the inclusion of "mere finishing operations" in the industry support analysis.[27]

21. Now, Argentina frames an argument before the Panel that the USDOC may have "double counted" finished OCTG and unfinished OCTG that undergoes further processing.[28] Notably, in all of its arguments with respect to potential "double-counting," Argentina has not provided any evidence that such "double-counting" affirmatively occurred, and all of its arguments are pure conjecture.[29] The *only* evidence that Argentina has proffered before the Panel in support of its "double-counting" argument in this dispute is two website screenshots of two of the applicants, Borusan U.S. and PTC. We refer to our prior responses to Argentina's arguments relying upon these screenshots.[30]

22. Furthermore, Argentina's "double-counting" argument presumes that either: (1) a fully integrated domestic producer of OCTG reported the same product twice, once as unfinished OCTG, or green pipe, and once again after it is further processed into finished OCTG; or (2) one domestic producer reported production of green tube, which it then subsequently sells to another domestic producer, which further processes the green tube into finished OCTG and reports finishing of OCTG as production. The record before the USDOC does not demonstrate a single instance of either of these scenarios occurring, or even of a domestic producer further processing another domestic producer's green tube.

23. For all of these reasons, the Panel should reject Argentina's "double-counting" argument.

4. Argentina Has Failed to Make a *Prima Facie* Case Regarding Its New Argument that the USDOC "Understated" Domestic Production

24. In its opening statement during the first substantive meeting of the Panel, Argentina introduced an entirely new argument that the USDOC "understated" total domestic production in the denominator of its industry support analysis, on the basis of Argentina's allegation that certain domestic industry shipment data for calendar year 2020 did not include "[i]mported pipe that is heat-treated in the United States."[31] Thus, according to Argentina, "the denominator is smaller than it should be due to the use of incomplete shipments data as a proxy for the missing

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[27] 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 4-5 (Exhibit ARG-22).

[28] Argentina's First Written Submission, paras. 197-208, 219, 221; *see also* Argentina's Opening Statement, paras. 29-31.

[29] *See e.g.* Argentina's First Written Submission, paras. 133, 197-200 (noting for the Panel that, as support for its "double counting" arguments, Argentina only cites to Tenaris' submissions before the USDOC, none of which affirmatively demonstrate that "double counting" actually occurred).

[30] U.S. First Written Submission, paras. 62-64.

[31] Argentina's Opening Statement at the First Substantive Meeting of the Panel, paras. 26-28.

production data."[32] Argentina repeats the same line of argument in its responses to the Panel's first set of questions.[33]

25. Similar to Argentina's "double-counting" argument, no interested party raised this additional line of argument before the USDOC at initiation.[34] Had any interested party been concerned about such alleged "understating" of domestic production, they – including the Government of Argentina – could have raised it before the USDOC for further inquiry.

26. Argentina's assertion that the USDOC "merely accepted unsubstantiated assertions from the supporters of the application,"[35] or "relied on a 'simple assertion'" from the applicants[36] that the domestic shipment data were complete, is baseless. The USDOC issued multiple questionnaires to the applicants prior to initiation regarding their claim that the application was made by or on behalf of the domestic industry, which covered, *inter alia*, the shipment data.

27. The USDOC issued its first supplemental questionnaire to the applicants on October 8, 2021, three days after they filed the application, in which the USDOC asked the applicants about the appropriateness of using shipment data as a proxy for production data, for further information regarding "the source of data for shipments by the U.S. industry," and to address possible errors in the shipment calculation.[37] The applicants responded to this questionnaire on October 12, 2021. With specific regard to the domestic industry shipments source, the applicants stated that: "[a]s far as petitioner is aware, the . . . shipment data account for all U.S. shipments of the domestic like product."[38] The applicants also provided various explanations regarding the use of

[32] Argentina's Opening Statement at the First Substantive Meeting of the Panel, para. 28.

[33] *See, e.g.,* Argentina's Responses to the Panel's First Set of Questions, para. 18.

[34] For example, Argentina argues that without heat treatment, minor processing (*e.g.*, threading) should not be considered domestic production and should not be included in the industry support calculation. Argentina then clarifies that, to the extent a U.S. producer heat treats green pipe and performs additional processing on that pipe (such as threading), that pipe would still be considered "production". *See* Argentina's Responses to the Panel's First Set of Questions, para. 47. No interested party raised the line of argument concerning inclusion of heat treatment from other processing during the pre-initiation period. In fact, the only instances where the word "heat" appears on the USDOC pre-initiation record are in the exhibits containing printouts of Borusan Mannesmann's and PTC Liberty Tubular's respective websites, describing the range of production and processing capabilities at each company's facilities. *See* Tenaris's Pre-Initiation Comments (Oct. 15, 2021) at 10 nn.26 & 27, Exhibits 5, 6 (Exhibit ARG-03) (describing the services provided by Borusan Mannesmann and PTC). As noted above, the record before the USDOC only contained arguments regarding the inclusion of "mere processing operations" – without distinction to heat-treatment, threading, or other processing operations. *See* 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 4-5 (Exhibit ARG-22).

[35] Argentina's Opening Statement at the First Substantive Meeting of the Panel, paras. 18, 31.

[36] Argentina's Opening Statement at the First Substantive Meeting of the Panel, para. 25; Argentina's Responses to the Panel's First Set of Questions, paras. 21, 24, 40, 51.

[37] USDOC First General Issues Questionnaire, at attachment (Oct. 8, 2021) (Exhibit ARG-12).

[38] Applicants' First General Issues Questionnaire Response, at 4-5 (Oct. 12, 2021) (Exhibit ARG-14).

shipment data more generally and corrected certain errors.[39]

28. The USDOC issued a second supplemental questionnaire to the applicants on October 19, 2021, in which it asked the applicants to clarify their industry support calculation with respect to the inclusion of data from OCTG production facilities represented by the United Steel Workers union, which was one of the applicants.[40] The applicants responded to this questionnaire on October 21, 2021, offering further clarifications regarding their industry support claim.[41]

29. This engagement between the USDOC and the applicants supports that the USDOC made efforts to safeguard against any deficiencies in the record before determining that the application was made by or on behalf of the domestic industry pursuant to Articles 5.1 and 5.4 of the AD Agreement. Indeed, this back-and-forth must be balanced against the fact that certain other interested parties, including Tenaris, raised concerns about the industry support calculations proffered by the applicants. The USDOC examined four different submissions from Tenaris commenting on industry support. However, *no* interested party argued that the shipment data were incomplete.[42] Indeed, the USDOC expressly observed that "Tenaris USA has not provided any evidence or made any arguments to impugn the . . . shipment data, which form the basis of the denominator used in the [applicants'] calculation of industry support."[43]

30. The absence of any objection, coupled with the response by the applicants – which the applicants' attorneys made on behalf of the applicants with the understanding that they were subject to criminal sanctions if they made willful, material false statements to the U.S. Government[44] – supports that there was no reason for the USDOC to further second-guess, on the basis of the record before it, whether the industry-wide shipment data were complete for the purposes of assessing industry support. Furthermore, in its initiation checklist, the USDOC concurred with the applicants that the shipment data were from "the recognized authority on the U.S. pipe and tube market."[45]

31. The *only* evidence Argentina has put forward before the Panel to support its "understating" argument is Exhibit ARG-66 (BCI). In addition to this exhibit not showing that such "under-counting" actually occurred in the USDOC's analysis of industry support for the application, we refer to our prior remarks about Exhibit ARG-66 (BCI) in our responses to the

[39] Applicants' First General Issues Questionnaire Response, at 3-4, 5-6 (Oct. 12, 2021) (Exhibit ARG-14).

[40] USDOC Second General Issues Questionnaire, at attachment (Oct. 19, 2021) (Exhibit ARG-16).

[41] Applicants' Second General Issues Questionnaire Response (Oct 21, 2021) (Exhibit ARG-20).

[42] For example, Tenaris described its issues with the use of shipment data in terms of the time period relied upon, not because it had concerns with the use of shipment data as a reasonable proxy for production data. *See* Tenaris's Pre-Initiation Comments (Oct. 15, 2021) at 3, 5-6 (Exhibit ARG-03).

[43] USDOC Initiation Checklist, Attachment II, at 15 (Exhibit ARG-18); U.S. Responses to the Panel's First Set of Questions, para. 26.

[44] *See* Applicants' First General Issues Questionnaire Response, at "Representative Certification" and "Counsel Certification" (Oct. 12, 2021) (Exhibit ARG-14).

[45] USDOC Initiation Checklist, Attachment II, at 5 (Exhibit ARG-18).

Panel's first set of questions.[46]

32. Thus, it is unclear how this line of argument on "understating" domestic production and Exhibit ARG-66 (BCI) – and also Argentina's "double-counting" argument discussed in subsection A.3 above – is relevant to the Panel's standard of review or the Panel's role under the DSU.[47] The relevant standard of review calls upon the Panel to determine whether an unbiased and objective investigating authority, looking at the same record as the relevant investigating authority, could have – not would have – reached the same conclusions that the authority reached. The DSU calls on the Panel to assess the "applicability of and conformity with the covered agreements," not to conduct a new investigation or in hindsight substitute its judgment for that of the investigating authority.[48] By introducing arguments and evidence that the investigating authority would not have considered at initiation, Argentina appears to be proposing that the Panel should substitute its judgment for that of the USDOC.

33. In addition, it is unclear how any of this argument or evidence is relevant to assessing the USDOC's compliance with Article 5.4 of the AD Agreement, or any of the provisions that Argentina invokes on the issue of industry support. Argentina has conceded that "the timing of a complaining party's notice to the authority of a problem with information supporting an application is also a relevant consideration in terms of assessing compliance with Article 5.4."[49] As noted above, no interested party raised any of these lines of argument with the USDOC during the pre-initiation period. Thus, by implication, it strains logic how the USDOC could have acted inconsistently with Articles 5.1 or 5.4 of the AD Agreement regarding alleged issues that were never brought to its attention.

B. The USDOC's Analysis of Industry Support Is Not Inconsistent With Article 5.3 of the AD Agreement

34. As the United States previously explained,[50] consistent with Article 5.3 of the AD Agreement, the USDOC examined its administrative record to determine whether there was "sufficient" evidence on the question of industry support for the application to justify initiating

[46] U.S. Responses to the Panel's First Set of Questions, para. 26.

[47] The United States further observes that Argentina introduced, as exhibits appended to its opening statement during the first substantive meeting of the Panel: (1) a United States Court of International Trade ("CIT") opinion from March 2024 remanding to the USDOC certain aspects of its industry support analysis (Exhibit ARG-62); (2) the USDOC's draft remand redetermination issued pursuant to the aforementioned CIT opinion (Exhibit ARG-63); and (3) the USDOC's final remand redetermination, issued in response to this same opinion, dated June 26, 2024, approximately two weeks before the Panel's first substantive meeting (Exhibit ARG-64). Argentina refers to these exhibits in its discussion of its "understating" argument. *See* Argentina's Opening Statement at the First Substantive Meeting of the Panel, paras. 26-28. These materials are not relevant to the Panel's task in this dispute.

[48] U.S. Closing Statement at the First Substantive Meeting of the Panel, paras. 4-5.

[49] *See* Argentina's First Written Submission, para. 159 (citing *EC – Fasteners (China) (Panel)*, para. 7.182).

[50] U.S. First Written Submission, para. 79.

the AD investigation on OCTG from Argentina.[51] The USDOC determined that the evidence adequately supported that the application had such support for the purposes of initiation.[52]

35. As discussed above, the arguments that Argentina made in its first written submission that the USDOC acted inconsistently with Article 5.3 overlap to some extent with those it made under Articles 5.1 and 5.4, namely: (1) the USDOC's use of alleged "outdated" and "anomalous" data for purposes of calculating industry support; (2) its use of estimated production data; and (3) alleged "double-counting" concerns.[53] Although Argentina also raised a new argument that the USDOC allegedly "understated" domestic production in its opening statement during the Panel's first substantive meeting, it now appears to be framing this as an inconsistency with Article 5.3.[54] With regard to each of these lines of argument, the United States refers to its responses to these arguments by Argentina in the context of Articles 5.1 and 5.4 in subsection A above, which the United States adopts in response to Argentina's parallel arguments regarding Article 5.3. For example, with specific regard to Argentina's contention that the USDOC was "passive[ ]" in accepting the applicants' characterization of the industry-wide shipment data as complete,[55] we refer to our discussion above regarding the back-and-forth the USDOC had with the applicants on this issue, the fact that no interested party asserted that the shipment data were "understated," or that there was "double-counting," and the USDOC's finding that these data were reputable.

C. The USDOC's Analysis of Industry Support Is Not Inconsistent With Article 5.2 of the AD Agreement

36. With regard to Argentina's claim under Article 5.2 of the AD Agreement, Argentina continues to assert that the application did not contain "'relevant evidence', including actual 'domestic production'."[56] As an initial matter, and as the United States previously explained, to the extent the Panel addresses Argentina's arguments under Article 5.3, it is unnecessary for the Panel to address Argentina's arguments under Article 5.2.[57]

37. Be that as it may, should the Panel address Argentina's arguments separately under Article 5.2, and not Article 5.3, then the United States observes that, on the question of industry support for the application, Argentina raises similar arguments in the context of Article 5.2 as it does with regard to Articles 5.1, 5.3, and 5.4, namely: (1) the USDOC's use of alleged

[51] *See generally* USDOC Initiation Checklist, Attachment II (Exhibit ARG-18).

[52] *See, e.g.*, USDOC Initiation Checklist, Attachment II, at 22 (Exhibit ARG-18); Argentina's First Written Submission, para. 223.

[53] Argentina's First Written Submission, paras. 128, 197-208, 224-233.

[54] Argentina's Responses to the Panel's First Set of Questions, para. 43.

[55] Argentina's Responses to the Panel's First Set of Questions, paras. 41-43.

[56] Argentina's Responses to the Panel's First Set of Questions, paras. 14-15; *see also* Argentina's First Written Submission, para. 236.

[57] U.S. First Written Submission, paras. 86, 89-91.

"outdated" and "anomalous" data for purposes of calculating industry support; (2) its use of estimated production data; (3) whether the USDOC should have "polled" the domestic industry; and (4) alleged "double-counting" concerns.[58] We refer the Panel to our prior responses to these arguments by Argentina in this regard.[59]

38. In its responses to the Panel's first set of questions, Argentina also now appears to be framing its allegation that the USDOC "understated" domestic production as an inconsistency with Article 5.2.[60] However, Argentina is incorrect that, even if the USDOC had "passively accept[ed]" the applicants' statement that, as far as they were aware, the industry-wide shipment data were complete, this would amount to an inconsistency with Article 5.2.[61] Article 5.2 imposes no obligation directly on the investigating authority. Rather, the pertinent obligation is in Article 5.3. In this sense, Articles 5.2 and 5.3 are related, such that whether the application meets the requirements in Article 5.2 would be relevant to the authority's examination of the application under Article 5.3.[62] Moreover, the applicants' framing that, "as far as Petitioner is aware," the industry-wide shipment data were complete, tracks with the obligation on an applicant in Article 5.2 to provide information that "is reasonably available to the applicant."[63] The USDOC did not merely accept an "unsubstantiated assertion" by the applicants that the shipment data were complete either;[64] we refer to our discussion in subsection A.4 above.

39. Finally, the Panel asked Argentina to clarify its argument that the applicants did not provide their own production data or those of supporters of the application.[65] In its responses to questions, Argentina now concedes that the applicants "provided their 'actual' 2020 production data".[66] But to the extent Argentina has suggested that the applicants were obligated to provide data beyond "estimated production data" for the remainder of the domestic industry,[67] the text of Article 5.2 does not read this way. Article 5.2(i) only requires an applicant, based on "information as is reasonably available to the applicant," to provide the applicant's "volume and value of domestic production of the like product by the applicant," and, where an application is made on behalf of the domestic industry, "to the extent possible, a description of the volume and

[58] Argentina's First Written Submission, paras. 129, 195-208, 234-237.

[59] U.S. First Written Submission, paras. 92-93.

[60] Argentina's Responses to the Panel's First Set of Questions, paras. 14-15, 22-24, 40, 55.

[61] Argentina's Responses to the Panel's First Set of Questions, paras. 15, 40.

[62] U.S. First Written Submission, paras. 89-90 (citing *Morocco – Definitive AD Measures on Exercise Books (Tunisia)*, paras. 7.354-7.355 (on appeal)).

[63] *Compare* Applicants' First General Issues Questionnaire Response, at 4-5 (Oct. 12, 2021) (Exhibit ARG-14), *with* AD Agreement, Article 5.2.

[64] Argentina's Responses to the Panel's First Set of Questions, para. 15.

[65] Argentina's Responses to the Panel's First Set of Questions, paras. 54-55 (Question 13).

[66] Argentina's Responses to the Panel's First Set of Questions, para. 55.

[67] Argentina's First Written Submission, para. 235; *see also* Argentina's Responses to the Panel's First Set of Questions, para. 54.

value of domestic production of the like product accounted for by such producers."[68] Thus, the text of Article 5.2 does not require an applicant to provide *actual* production data for the entire domestic industry; we refer to our discussion in subsection A.2 above. Article 5.2 only requires the applicant to provide its *own* production data and information reasonably available to the applicant regarding the production of the like product for the domestic industry, both of which the applicants provided in the application before the USDOC.

D. Argentina Has Failed to Clarify Its Arguments in Support of Its Claims on Industry Support

40. Finally, the United States draws attention to Argentina's failure to clarify how its arguments correspond to the particular claims it is making, despite the Panel's request for clarification. Thus, at this juncture, it is important to distinguish the arguments in support of claims that Argentina *is* making in this dispute, as compared to the arguments it is *not* making. The Panel requested clarification from Argentina in three of its questions following the first substantive meeting – questions 2, 3, and 4 – which sought to elicit a better understanding of how Argentina's arguments correspond to the particular claims it is making. Unfortunately, in its responses to the Panel's questions, Argentina's arguments continue to suffer from a lack of clarity regarding what arguments align with what claims under the AD Agreement.

41. The United States has presented this problem clearly. During the first substantive meeting of the Panel, the United States explained its understanding that Argentina made what we refer to as five "thematic" arguments regarding the USDOC's industry support determination in section V.C of its first written submission.[69]

42. In contrast, Argentina has not been able to consistently clarify which arguments support which claims. With regard to *some* of the AD Agreement provisions at issue, Argentina invoked all five thematic arguments in alleging that the USDOC acted inconsistently with the relevant provision, while for other provisions Argentina invoked a *subset* of these thematic arguments. Although Argentina now contends that section V.C of its first written submission "presents the record evidence underlying what the United States characterized as Argentina's 'thematic arguments' relating to USDOC's flawed industry support determination,"[70] section V.C of Argentina's first written submission also articulates specific allegations that the USDOC acted inconsistently with certain AD Agreement provisions within Argentina's recitation of this

[68] AD Agreement, Article 5.2.

[69] Namely, these arguments are that: (1) the USDOC inappropriately relied on "estimated" production levels as opposed to "actual" production levels; (2) the USDOC relied on "outdated" or "anomalous" data for the purposes of its industry support analysis; (3) that the USDOC should have "polled" the domestic industry; (4) the USDOC "double-counted" domestic production in its industry support calculation; and (5) that the USDOC inappropriately shifted the burden regarding industry support to Tenaris USA, a U.S. OCTG producer that opposed the application.

[70] Argentina's Responses to the Panel's First Set of Questions, para. 9.

"record evidence."[71] At the same time, subsequent sections V.D through V.G of Argentina's first written submission describe how the USDOC's conduct was separately inconsistent with Articles 5.1, 5.2, 5.3, 5.4, and 6.6 of the AD Agreement. As a consequence of Argentina's failure to reconcile these assertions or clarify its position, there appears to remain a lack of clarity about what Argentina is actually arguing in this dispute on the issue of industry support for the application.

43. Based on a full reading of section V of Argentina's first written submission, Argentina appears to rely on the following arguments in support of its AD Agreement claims:

- Articles 5.1 and 5.4: Argentina is invoking all five thematic arguments in support of these claims.[72]

- Article 5.3: Argentina is invoking thematic arguments 1, 2, and 4 in support of this claim.[73] That is, Argentina has *not* made an Article 5.3 claim regarding thematic arguments 3 or 5.

- Article 5.2: Argentina is invoking thematic arguments 1, 2, 3, and 4 in support of this claim.[74] That is, Argentina has *not* made an Article 5.2 claim regarding thematic argument 5.

- Article 6.6: Argentina is invoking thematic arguments 1, 2, 3, and 4 in support of this claim.[75] That is, Argentina has *not* made an Article 6.6 claim regarding thematic argument 5.

44. Finally, in its opening statement during the first substantive meeting of the Panel, Argentina raised a new line of argument that the USDOC also "understated" domestic production of the like product in its assessment of industry support.[76] The United States understands that Argentina is making this argument in support of its claims under Articles 5.1, 5.2, 5.3, 5.4, and 6.6.[77]

45. Based on aspects of Argentina's response to Panel question 4, it appears that Argentina itself recognizes that it has not invoked all of these thematic arguments in support of all of its AD

[71] Argentina's First Written Submission, paras. 196 (referencing Article 5.2(i) in arguing about the USDOC's use of 2018-2019 and 2020 data), 208 (referencing Articles 5.1, 5.2(i), 5.3, and 5.4 in alleging that the USDOC "double-counted" domestic production).

[72] Argentina's First Written Submission, paras. 208, 213-222; U.S. First Written Submission, para. 31.

[73] Argentina's First Written Submission, paras. 208, 223-233; U.S. First Written Submission, para. 80.

[74] Argentina's First Written Submission, paras. 196, 208, 234-237; U.S. First Written Submission, para. 92.

[75] Argentina's First Written Submission, paras. 238-241.

[76] Argentina's Opening Statement During the First Substantive Meeting of the Panel, paras. 27-28.

[77] Argentina's Opening Statement During the First Substantive Meeting of the Panel, para. 31.

Agreement claims.[78] However, elsewhere in its response to question 4, Argentina states that: "[t]he factual basis for Argentina's claims under Articles 5.1, 5.2, 5.3, 5.4 and 6.6 is the same."[79] Thus, at best, there remains a lack of clarify regarding what lines of argument are in support of what claims that Argentina is making on this issue, or at worst, Argentina appears to be engaging in a tactic of creating a moving target of arguments in support of its claims regarding industry support for the application.

E. Conclusion

46. In sum, the USDOC conducted a rigorous assessment of the record evidence in determining that the application to initiate the AD investigation on OCTG from Argentina was made "by or on behalf of the domestic industry." The USDOC employed various analytical approaches in assessing this question, appropriately followed up with the applicants, and addressed arguments raised by interested parties, including many of the arguments Argentina now makes in its first written submission. Those arguments are unavailing, and the Panel should uphold the USDOC's reasoned determination to initiate the underlying investigation, and find that the USDOC did not act inconsistently with Articles 5.1, 5.2, 5.3, 5.4, or 6.6 of the AD Agreement.

III. ARGENTINA'S CLAIMS REGARDING THE CUMULATION OF IMPORTS CONTINUE TO BE WITHOUT MERIT

47. Argentina's claims regarding the cumulation of imports, both in terms of the USITC's decision to cumulate imports of OCTG from Argentina with imports from other sources subject to simultaneous AD and CVD investigations, *and* in terms of section 771(7)(G) of the Tariff Act of 1930, as amended (19 U.S.C. § 1677(7)(G)), continue to be without merit. As the United States demonstrated in its first written submission, Argentina has not established its claim that the USITC impermissibly "cross-cumulated" imports subject to the simultaneous AD and CVD investigations of OCTG, in a manner inconsistent with Article 3 of the AD Agreement.[80] Argentina has failed to show that the AD Agreement contains a prohibition on cumulating imports subject to AD investigations with other unfairly traded, but not dumped, imports subject to simultaneous CVD investigations. Indeed, the opposite is true – the silence in the AD Agreement, the origins in GATT 1994 Article VI of the parallel AD Agreement and SCM Agreement provisions on cumulation, and the identical nature of the rules governing injury investigations in both Agreements, speak against any such prohibition.

48. Likewise, the United States demonstrated that the USITC's cumulation analysis, namely, its analysis of the overlap of competition between and among subject imports from each country and the domestic like product, was based on an objective examination of positive evidence, and

[78] *See, e.g.*, Argentina's Responses to the Panel's First Set of Questions, para. 13 (alluding to thematic arguments 2 and 4 with regard to its Article 5.3 claim).

[79] Argentina's Responses to the Panel's First Set of Questions, para. 10.

[80] U.S. First Written Submission, paras. 100-122; *see also* U.S. Opening Statement at the First Substantive Meeting of the Panel, paras. 13-21.

thus was not inconsistent with Articles 3.1 and 3.3 of the AD Agreement.[81]

49. The United States also explained how section 771(7)(G) of the Tariff Act of 1930, as amended (19 U.S.C. § 1677(7)(G)), which contains the cumulation provision of the U.S. AD statute, is not inconsistent, as such, with Articles 3.1, 3.2, 3.3, 3.4, and 3.5 of the AD Agreement.[82] Specifically, it is not inconsistent with these provisions for the same reasons that the USITC's decision to "cross-cumulate" imports in the simultaneous AD and CVD investigations on OCTG is not inconsistent with the AD Agreement.[83]

50. Now, Argentina contends that the United States "concedes that the U.S. statute mandates cross-cumulation" because "[t]here was no response to the table in [Exhibit] ARG-36 demonstrating that the statute requires cross-cumulation."[84] Argentina's contention is incorrect; the United States has made no such concession. The statute on its face is not definitive regarding cross-cumulation, and the United States does not consider that Argentina has demonstrated that it requires cross-cumulation in its filings before this Panel.

51. Argentina has not advanced this argument further, and, while the Panel posed no questions to the parties on "cross-cumulation," certain third parties have addressed this issue in response to Panel questions.

52. In response to the Panel's second question to the third parties, the EU has clarified the apparent contradiction in its third-party oral statement between its discussion of the text of the Agreements and its concession that "there might be situations in which the way cross-cumulation is applied would not be inconsistent with the obligations set by the [AD Agreement] and the SCM Agreement."[85] Irrespective of the factual limitations that the EU would place on determining in which scenario cross-cumulation is not inconsistent with the AD Agreement, the crucial point is that, as long as there is *any* scenario under which cross-cumulation would not be inconsistent, that means it cannot be inconsistent "as such" for a Member's statute to allow for cross-cumulation. This is the case under 19 U.S.C. § 1677(7)(G).

53. In its response to Panel questions, the EU acknowledges that "some form of cumulation between dumped and subsidised imports from the same country is not incompatible with the ADA and SCM Agreement," and that therefore "cross-cumulation of imports from different countries should be – at least conceptually – also allowed."[86] While the EU suggests that an investigating authority could later in its analysis de-cumulate ("disaggregate") the dumped and subsidized imports, the United States observes that the analysis of whether the factors favor

[81] U.S. First Written Submission, paras. 123-165; *see also* U.S. Opening Statement at the First Substantive Meeting of the Panel, paras. 22-27.

[82] U.S. First Written Submission, paras. 323-324.

[83] U.S. First Written Submission, paras. 323-324.

[84] Argentina's Opening Statement at the First Substantive Meeting of the Panel, para. 34.

[85] EU's Third-Party Oral Statement, paras. 25-28.

[86] EU's Response to the Panel's Questions to Third Parties, paras. 10-11.

cumulation at all – whether cross-cumulation or AD-to-AD cumulation – is an inquiry that by its nature needs to be made prior to the causation analysis. Indeed, the very purpose of cumulation is to make a "cumulative assessment of the effects of the imports" where "appropriate in light of the conditions of competition" among the imported products and between those products and the domestic like product.[87] Thus, as the USITC did in the OCTG investigation, the investigating authority first goes through an analysis to determine if the conditions of competition are such as to support cumulation in the first place.

54. Moreover, the two examples provided by the EU of when "disentanglement" might become necessary are, in fact, two preliminary conditions that would need to be met before even cumulating imports under Article 3.3 of the AD Agreement. That is, first, if a product is excluded from the scope,[88] it would not be considered to be "subject" to an AD or CVD investigation,[89] and thus would not be subject to an injury investigation at all.

55. Likewise, second, to the extent the EU refers to imports from a certain source "being not capable of causing injury,"[90] the Agreements also require investigating authorities to address this possibility prior to making a cumulation assessment. Specifically, both the AD Agreement and the SCM Agreement require investigating authorities to first determine that the volume of each country is not negligible and that the dumping or subsidization is more than *de minimis* as preconditions to cumulation.[91]

56. With respect to the Panel's fourth question the Panel posed to the third parties, the Panel referred to an illustrative example showing the logic of reading the AD Agreement to allow cumulation of dumped, non-subsidized imports with subsidized imports simultaneously subject to investigation. In this hypothetical scenario, failure to cross-cumulate dumped imports from one country might mask injury caused by subsidized imports from another country. However, the examination of injury and consideration of whether to cumulate in this scenario should be no different from how these issues should be approached if the imports from both countries were dumped. In either instance, the authority must ensure that the preconditions for cumulation are met (neither set of imports are negligible or have *de minimis* margins), and consider whether the conditions of competition between the two sets of imports, and with the domestic like product, support cumulation.

57. In this respect, the United States emphasizes that investigating authorities are not obligated to conduct country-specific injury analyses of the imports from each country before

[87] AD Agreement, Article 3.3.

[88] EU's Response to the Panel's Questions to Third Parties, para. 13.

[89] *See* AD Agreement, Article 3.3; SCM Agreement, Article 15.3.

[90] EU's Response to the Panel's Questions to Third Parties, para. 13.

[91] AD Agreement, Article 3.3; SCM Agreement, Article 15.3.

addressing the cumulation factors.[92] Indeed, the authorities should not prejudge whether imports from one or both countries alone are causing injury to the domestic industry. That would defeat the very purpose of cumulation, *i.e.*, to examine the cumulative effects of subject imports upon the industry, and to prevent the cumulative effects of imports that are simultaneously causing injury to a domestic industry.

58. Finally, the United States notes that no matter which subject imports (dumped or subsidized) from which country are cumulated with subject imports (dumped or subsidized) from another country, the ultimate AD or CVD duties that will be applied will be determined separately for each country (and sometimes for producers within the country). Even if cumulated, goods that are subject only to an AD investigation will only be assessed AD duties calculated for that country, and goods that are subject only to a CVD investigation will only be assessed CVD duties.

IV. ARGENTINA'S CLAIMS REGARDING THE USITC'S DETERMINATION OF INJURY CONTINUE TO BE WITHOUT MERIT

59. As explained in our first written submission, the USITC reasonably concluded – based on the volume and price data it considered under Article 3.2 and the impact data it examined under Article 3.4 – that there existed a causal relationship under Article 3.5 between the subject imports and the domestic industry's weak production, employment, and financial performance during the period of investigation ("POI").[93] The USITC also objectively considered all other known factors as required by Article 3.5 and, based on positive evidence, fully ensured that it did not attribute any alleged injury from known factors to subject imports. The Panel thus should reject Argentina's arguments and find that Argentina has failed to establish that the USITC's determination of injury was not consistent with Articles 3.1, 3.2, 3.4, and 3.5 of the AD Agreement.

60. In this section, the United States will address three arguments put forward by Argentina during the first substantive meeting of the Panel and in response to the Panel's questions following that meeting and demonstrate that, contrary to Argentina's arguments:

- the evidence on which the USITC based its final determination definitively demonstrated that the injury to the domestic industry was caused by dumped imports, not Tenaris's domestically-produced OCTG;
- the USITC considered conditions of competition in the U.S. market during the POI in every aspect of its injury analysis; and
- the USITC's decision not to consider price suppression under Article 3.2

[92] *See EC – Tube or Pipe Fittings (AB)*, paras. 110-118 ("we find that the text of this provision refers to the 'dumped imports' and gives no indication that the analyses of volume and prices of the 'dumped imports' must be country-specific in multiple-country investigations.").

[93] U.S. First Written Submission, paras. 166-316.

cannot be challenged under Article 3.1 on a standalone basis.

A. Evidence that the USITC Relied on for its Investigation Demonstrated that the Injury to the Domestic Industry Was Caused by Dumped Imports, Not Tenaris's Domestically-Produced OCTG

61. Argentina argues that there is no way that the USITC could distinguish whether U.S. producers and U.S. purchasers claims about Tenaris involved that company's subject OCTG imports rather than its domestically-produced OCTG. According to Argentina, "assertions about 'Tenaris' without providing any evidence to support that the OCTG they competed against was imported rather than domestic confirm that the harm was due to intra-industry competition as well as other conditions, such as the high cost of HRC for the welded producers."[94]

62. Contrary to Argentina's argument, there is a plethora of evidence on the record of the USITC injury investigation that confirms the injury to the domestic industry was caused by dumped imports, not Tenaris domestically-produced OCTG. For example, Tenaris submitted for purposes of the record of this investigation not only a U.S. producer questionnaire, but also a U.S. importer questionnaire. The USITC's producer questionnaire specifically asked U.S. producers who were also importers not to include imports "in their reporting of domestic production or U.S. shipments," but to report them in a separate U.S. importer questionnaire.[95] As such, for purposes of the USITC's injury analysis, Tenaris distinguished its shipments of U.S.-produced OCTG from its shipments of imported OCTG.[96] It also distinguished the prices of its U.S.-produced OCTG from the prices of its imported OCTG.[97] The USITC integrated data submitted by Tenaris with data submitted by other U.S. producers and U.S. importers and found, along with other facts indicating how subject imports – through the effects of dumping – caused injury to the domestic industry, that:

- "Underselling by cumulated subject imports predominated during each year of the POI and interim 2022."[98] Cumulated subject imports undersold the domestic like product "at margins ranging between 0.0 and 73.1 percent and averaging 10.8 percent."[99]

- "Subject import volume increased significantly in absolute terms and relative

[94] Argentina's Responses to the Panel's First Set of Questions, para. 136; *see ibid.*, paras. 116-117, 126, 130-131.

[95] *See* Blank U.S. Producers' Questionnaire at II-18 and II-20 (requesting U.S. producers who also imported OCTG during the POI to complete a U.S importers' questionnaire) (Exhibit USA-33).

[96] *Compare* Blank U.S. Producers' Questionnaire at Part II (Exhibit USA-33) *with* Blank U.S. Importers' Questionnaire at Part II (Exhibit USA-34).

[97] *Compare* Blank U.S. Producers' Questionnaire at Part IV (Exhibit USA-33) *with* Blank U.S. Importers' Questionnaire at Part III (Exhibit USA-34).

[98] USITC Final Report at 36 (Exhibit ARG-01).

[99] USITC Final Report at 36, citing Table V-17 (Exhibit ARG-01).

> to apparent U.S. consumption from 2020 to 2021, driven by significant subject import underselling, capturing 12.0 percentage points of market share from the domestic industry during the period."[100]

The USITC's determination that subject imports captured market share from the domestic industry through significant underselling thus was not based on conjecture: It was based on the positive evidence reported by U.S. producers and U.S. importers, including Tenaris's own reporting.

63. Argentina also contends that, although "[t]he USITC's Staff Report confirms that 19 out of 28 purchasers stated that they purchased from 'Tenaris'[,] [t]he OCTG purchased from 'Tenaris' could have been domestic or subject OCTG, and, therefore, their responses could have described subject OCTG believing it was U.S.-produced OCTG or vice versa."[101]

64. To the contrary, the positive evidence of record demonstrates that most U.S. purchasers knew the origin of the OCTG they purchased. The USITC Purchaser Questionnaire explicitly asked U.S. purchasers to identify the source of their purchases in terms of the country of origin.[102] It also asked U.S. purchasers to provide a response to the question, "How often does your firm know the manufacturing location (country of origin) of the OCTG that you purchase?"[103] The evidence collected in response to these questions – and reported in the same USITC staff footnote that Argentina cites as support for its contention – indicates that most U.S. purchasers definitively knew whether the OCTG they purchased was subject OCTG imports or U.S.-produced OCTG:

> Of the 29 responding purchasers, 24 purchased domestic OCTG, 12 purchased imports of the subject merchandise from Argentina, 20 purchased imports of the subject merchandise from Mexico, 18 percent purchased imports of the subject merchandise from Russia, 16 purchased imports of the subject merchandise from South Korea, and 20 purchased imports of OCTG from other sources …. Six purchasers indicated that they did not know the source of some of their purchases. Those firms often listed their suppliers as distributors and/or producers (such as Tenaris) with production in multiple countries. <u>In response to an additional question, 16 purchasers stated they always knew the manufacturing location of the OCTG that they purchased, seven stated that they usually did</u>,

[100] USITC Final Report at 43 (Exhibit ARG-01); *see ibid*. at 32 (citing to Table IV-19 for the market share held by subject imports).

[101] Argentina's Responses to the Panel's First Set of Questions, para. 131 (citing USITC Staff Report at II-3 n.6) (Exhibit ARG-01).

[102] *See* Blank U.S. Purchasers' Questionnaire at II-1a (Exhibit USA-32).

[103] Blank U.S. Purchasers' Questionnaire at II-1b (Exhibit USA-32) (in response, U.S. purchasers could indicate "Always", "Usually", "Sometimes", or "Never").

> four stated that they sometimes did, and two stated that they never did.[104]

Therefore, Argentina's assertion that U.S. purchasers were ignorant as to the origin of the OCTG they purchased is patently untrue: The evidence of record clearly confirms that 23 out of 29 responding purchasers always or usually knew whether they purchased imported OCTG or U.S.-produced OCTG, as well as the manufacturing location of the imported OCTG they purchased.

65. Argentina further quotes and references in response to Panel Question 39 statements made by applicant company representatives during the USITC hearing.[105] The USITC did not reference these statements in its final report. There is thus no support for Argentina's argument that the USITC relied on these statements for purposes of its final determination.

66. Finally, Argentina's responses to Panel questions contradict its repetitive assertion that the USITC failed to consider Tenaris's argument about alleged intra-industry competition. For example:

- Argentina Response to Panel Question 36: Argentina asserts that "the issue is simply one of intra-industry competition."[106] The "issue" Argentina is discussing in response to this question is Tenaris's Rig Direct program and 'one price' approach.[107] The USITC Final Report plainly shows that the USITC conducted a detailed review of Tenaris's Rig Direct program and one price approach, including Tenaris's arguments about both.[108]

- Argentina Response to Panel Question 38: Argentina asserts that the USITC concluded "that it was 'unpersuaded' [by Tenaris's intra-industry argument] with no analysis of the record evidence."[109] The "source of the intra-industry competition" Argentina discusses in response to this question is "competition between Tenaris' Rig Direct® model and the distributor model."[110] Again, the USITC Final Report shows that the USITC conducted a detailed review of Tenaris's Rig Direct program and considered Tenaris's arguments about the program.[111]

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[104] USITC Final Report at II-3, n.6 (Exhibit ARG-01).

[105] Argentina's Responses to the Panel's First Set of Questions, paras. 132-135 (citing hearing transcript).

[106] Argentina's Responses to the Panel's First Set of Questions, para. 120.

[107] *See* Argentina's Responses to the Panel's First Set of Questions, paras. 119-120.

[108] *See* USITC Final Report at 30 n.165, 46 n.258, and 46 (discussing Rig Direct) (Exhibit ARG-01); *ibid.*, 37 n.206 (discussing the one price approach).

[109] Argentina's Responses to the Panel's First Set of Questions, para. 127.

[110] Argentina's Responses to the Panel's First Set of Questions, para. 127; *see ibid*., paras. 122-126.

[111] USITC Final Report at 30 n.165, 46 n.258, and 46 (Exhibit ARG-01).

Argentina thus tacitly acknowledged in its responses to Panel questions that the term "intra-industry competition" is nothing more than a shorthand expression for Tenaris's arguments about its Rig Direct program, its one price approach, etc. The USITC's final determination demonstrates conclusively that the USITC considered these arguments and, based on positive evidence, objectively found them to be unavailing.

67. Throughout this dispute, Argentina has claimed that Tenaris "would not import in a manner that would harm the U.S. industry, which includes its own investments,"[112] but the evidence before the USITC clearly indicated that dumped imports did just that. And while dumped imports might have been in Tenaris's best interests,[113] the USITC objectively found based on positive evidence that they were not in the best interests of the domestic industry as a whole. For the reasons put forward by the United States in its first and second written submissions, its statements at the Panel's first substantive meeting, and its responses to the Panel's questions, the Panel should reject Argentina's claims in regard to the USITC's injury determination and find this determination was not inconsistent with Articles 3.1, 3.2, 3.4, and 3.5 of the AD Agreement.

B. Conditions of Competition Informed Every Part of the USITC's Analysis of Whether There is Material Injury to the Domestic Industry by Reason of Dumped Imports

68. Argentina repeatedly argues that the USITC's injury investigation often fails to place dumped imports in the context of the conditions of competition that existed during the POI.[114] This is simply untrue. At the start of its injury investigations, the USITC set forth in detail the conditions of competition that existed during the POI. These conditions of competition informed the USITC's entire injury analysis.[115]

69. The USITC, for example, defined the following factors as impacting the demand conditions of competition in the U.S. market. The USITC found that "[d]emand for OCTG is

[112] Argentina's First Written Submission, para. 620 (footnote omitted); *see ibid.*, paras. 620-622, 624; Argentina's Responses to the Panel's First Set of Questions, paras. 103 (Tenaris "would not import in a manner that would harm the U.S. industry") and 122 ("subject imports from Argentina were not sold by Tenaris … in a manner that would harm the U.S. industry").

[113] Argentina tacitly acknowledges in its response to Panel Question 42a that Tenaris's business model, "which featured [in part] … the ability to supply from multiple facilities in different countries," enabled Tenaris to utilize imports "at a time when it faced supply constraints in the United States." Argentina's Responses to the Panel's First Set of Questions, Panel Question 42a., second para. 142 (footnote omitted). *Cf.* Tenaris Prehearing Brief, Exhibit 61, at 11-12 (the CITT found that Tenaris Canada imported OCTG not to fill a market niche but as part of a "deliberate and aggressive strategy" to compete against other domestic producers to maintain domestic market share) (Exhibit ARG-04).

[114] *See, e.g.*, Argentina's Responses to the Panel's First Set of Questions, paras. 98, 100, 103.

[115] USITC Final Report at 27 (stipulating that "[t]he following conditions of competition inform our analysis of whether there is material injury by reason of subject imports") (Exhibit ARG-01).

driven by oil and gas prices as well as exploration and production."[116] According to USITC, as a result of these factors and the COVID-19 pandemic, OCTG demand in the United States had fallen to an historic low by August 2020. OCTG demand recovered thereafter through the end of the POI as active U.S. rig count recovered and the effects of the COVID-19 pandemic dissipated.[117]

70. The USITC also defined the following factors as impacting the supply conditions of competition in the U.S. market. The USITC found that "[t]he domestic industry was the largest supplier of OCTG to the U.S. market throughout the POI," but observed that the domestic industry's "share of the U.S. market decreased by 8.2 percentage points from 2019 to 2021."[118] According to the USITC, the positive evidence indicated that:

> [w]hile several U.S. producers reported plant closings, shutdowns, and curtailments, and eight of 14 responding U.S. producers reported supply constraints since January 1, 2019, most purchasers rate both the availability and the reliability of supply of domestically produced OCTG as superior or comparable to that of subject imports from each source.[119]

At the same time the domestic industry's share of the U.S. market decreased from 2019 to 2021, the USITC found based on positive evidence that cumulated subject imports' share increased during this same time period.[120]

71. The USITC found "a moderate-to-high degree of substitutability between the domestic like product and cumulated subject imports."[121] In this regard, the USITC recognized that certain factors limited substitutability and noted that "the record indicates that certain specific OCTG products, at least at times, are unavailable from the domestic industry, and that some purchasers reported that considerations other than price, such as size and heat treatment, influence their purchasing decisions."[122] Nonetheless, as apparent from the evidence of record:

> majorities of responding domestic producers, importers, and purchasers reported that the domestic like product is always or frequently interchangeable with imports from each of the subject countries. Likewise, majorities of responding domestic producers, importers, and purchasers reported that factors other than price are

[116] USITC Final Report at 27 (Exhibit ARG-01) (footnote omitted).

[117] *See* USITC Final Report at 27 (Exhibit ARG-01).

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

[119] USITC Final Report at 28 (Exhibit ARG-01) (footnotes omitted).

[120] *See* USITC Final Report at 28 (Exhibit ARG-01).

[121] USITC Final Report at 29 (Exhibit ARG-01) (footnote omitted).

[122] USITC Final Report at 29 (Exhibit ARG-01) (footnote omitted).

> only sometimes or never significant in purchasing decisions between the domestic like product and imports from each subject source.[123]

72. The USITC also recognized other conditions of competition during the POI, including Tenaris's Rig Direct program,[124] HRC prices,[125] and inventories.[126] For example, the USITC reviewed the evidence of record in regard to Tenaris's contention that its Rig Direct program "is superior to the distribution model used by other U.S. producers."[127] The USITC also reviewed applicants' arguments to the contrary, specifically that: (1) "'domestic OCTG mills and their distributors provide the same services to end users as Tenaris selling subject imports under the Rig Direct program'"; and (2) U.S. "purchasers reported the domestic like product as superior or comparable to subject imports 'in an array of non-price purchasing factors,' including delivery terms and technical support/service."[128]

73. Lastly, the USITC found, based on the positive evidence, that "price is an important factor in OCTG purchasing decisions."[129] Specifically:

> Price/costs, along with quality/performance, was cited by purchasers most frequently as being among the top three factors influencing their OCTG purchasing decisions. Further, price was a factor that many responding purchasers cited as being very important to their purchasing decisions, although a greater number of purchasers cited availability, delivery time, product consistency, quality meets industry standards, and reliability of supply as very important purchasing factors.[130]

74. As already noted, it is readily apparent from the USITC Final Report that these conditions of competition fully informed the USITC's objective injury analysis under Articles 3.2, 3.4, and 3.5 of the AD Agreement of the positive evidence of record. For example, the USITC's consideration of price effects under Article 3.2 considered the relationship between

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[123] USITC Final Report at 29 (Exhibit ARG-01) (footnotes omitted).

[124] USITC Final Report at 30 n.165 (Exhibit ARG-01).

[125] USITC Final Report at 30-31 (Exhibit ARG-01).

[126] USITC Final Report at 31 (Exhibit ARG-01).

[127] USITC Final Report at 30 n.165 (Exhibit ARG-01) (citing and quoting from Tenaris Prehearing Brief).

[128] USITC Final Report at 30 n.165 (Exhibit ARG-01) (quoting Petitioner Post-hearing Brief). In rejecting Tenaris's argument that its Rig Direct program caused the shift in market share toward dumped imports, the USITC found, in part, that the evidence of record demonstrated that "large majorities of purchasers rated domestically produced OCTG as superior or comparable to subject imports with respect to both availability and technical support/service." *Ibid*., at 46 (footnote omitted).

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

[130] USITC Final Report at 29-30 (Exhibit ARG-01) (footnotes omitted).

dumped imports and domestic prices in the context of "the moderate-to-high degree of substitutability between cumulated subject imports" as well as "the importance of price in purchasing decisions."[131] Given these conditions of competition, plus "the predominant underselling by subject imports, both in quarterly comparisons and by volume,"[132] the USITC considered and established the explanatory force whereby the positive evidence of record indicated significant price underselling by the dumped imports during the POI.

75. The USITC likewise considered these conditions of competition when it examined other known factors that may have had an adverse impact on the domestic industry "to ensure that we are not attributing injury from such other factors to subject imports."[133] The USITC addressed all of Tenaris's arguments in this regard, including whether: (1) "injury to the domestic industry is explained by the industry's supply constraints and not subject imports";[134] (2) "the market share shift [to dumped imports] was caused as distributors drew down their 'inventory overhang{s}' in lieu of placing orders with domestic mills during the POI";[135] (3) the market share shift to dumped imports "was caused by superior availability and technical assistance resulting from Tenaris's Rig Direct Program";[136] (4) "rising domestic HRC prices and labor shortages constrained domestic supply and necessitated increased subject imports in 2021";[137] and (5) "intra-industry competition explains any injury to the domestic industry."[138] The USITC's examination of each of these other known factor objectively determined, based on positive evidence, that none of these factors could account for the injury to the domestic industry that it had attributed to the dumped imports.[139]

76. The USITC Final Report confirms that the USITC objectively considered the volume and price data under Article 3.2, and objectively examined the impact data under Article 3.4, within the context of the conditions of competition existing in the U.S. market during the POI. That report further confirms that the USITC objectively determined based on positive evidence that there existed – again, within the context of those conditions of competition – a causal relationship under Article 3.5 between the dumped imports and the injury to the domestic industry and that it did not attribute any alleged injury from other known factors to the dumped

[131] USITC Final Report at 37 (Exhibit ARG-01).

[132] USITC Final Report at 37 (Exhibit ARG-01).

[133] USITC Final Report at 44 (Exhibit ARG-01).

[134] USITC Final Report at 44 (Exhibit ARG-01).

[135] USITC Final Report at 45 (Exhibit ARG-01).

[136] USITC Final Report at 46 (Exhibit ARG-01).

[137] USITC Final Report at 46 (Exhibit ARG-01); *see ibid.*, at 47.

[138] USITC Final Report at 47 (Exhibit ARG-01).

[139] USITC Final Report at 44-47 (Exhibit ARG-01).

imports.[140] Accordingly, the USITC's injury finding is such as could have been, and was, reached by an unbiased and objective investigating authority.

C. The USITC's Decision Not to Reach a Conclusion on Price Suppression under Article 3.2 of the AD Agreement Cannot be Challenged under Article 3.1 on a Standalone Basis

77. In response to Panel Question 25, Argentina argues "that an investigating authority's failure to take into account evidence regarding price suppression that … conflicts with or otherwise calls into question its conclusions regarding price effects can be challenged under Article 3.1 on a stand-alone basis."[141] The United States initially notes that Argentina's panel request did not include a claim that the USITC's consideration of the price effects of dumped imports was, on a standalone basis, inconsistent with the obligations of the United States under Article 3.1.[142] Any claim now by Argentina in this regard thus is outside the Panel's terms of reference.[143]

78. If the Panel nonetheless elects to address this legal question, it should find that where an investigating authority 'considers' price suppression under Article 3.2, but decides not to reach a conclusion, such an act cannot be challenged under Article 3.1 on a standalone basis. Argentina contends that "irrespective of whether or not an authority is obligated under Article 3.2 to consider all three phenomena (*i.e.*, significant price undercutting, significant price depression, significant price suppression), once an investigating authority has chosen to undertake an analysis of these phenomena it has an obligation under Article 3.1 to conduct an objective examination and base its ultimate determination on positive evidence."[144] The Panel should reject this argument because it: (1) ignores the plain language of Article 3.2; (2) misconstrues the views expressed in previous panel reports about the obligations of Article 3.2 when read in context with Article 3.1; and (3) wrongly forces an authority to always reach a conclusion regarding all three phenomena.

79. First, Argentina misinterprets the plain language of Article 3.2 by insisting that the term

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[140] The third sentence of Article 3.5 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" (underline added). 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. *See China – Autos (US)*, para. 7.322 (citing *US – Wheat Gluten (AB)*, para. 67).

[141] Argentina's Responses to the Panel's First Set of Questions, para. 74.

[142] *See* Request for the Establishment of a Panel by Argentina, WT/DS617/1, paras. II.A.5 – II.A.12 (6 September 2023).

[143] *See* Request for the Establishment of a Panel by Argentina, WT/DS617/1, paras. II.A.5 – II.A.12 (6 September 2023).

[144] Argentina's Responses to the Panel's First Set of Questions, para. 77.

"consider" obligated the USTIC to reach a conclusion following its analysis of price suppression.[145] As the United States has demonstrated,[146] the fact that Article 3.2 states that an investigating authority need only "consider" possible price effects confirms that an authority is not obligated to make an explicit determination as to whether dumped imports have had an effect on prices through price undercutting, or through price depression, or through price suppression.[147] As the report in *US – Ripe Olives from Spain* explained, "[t]o 'consider' indicates a requirement that an investigating authority take something into account in reaching its decision, not a requirement to arrive at a particular conclusion."[148]

80. Argentina's argument also erroneously alters the plain language of Article 3.2 by substituting the conjunctive "and" for the conjunctive "or." According to Argentina, "Article 3.2 provides for three types of market phenomena that an investigating authority shall consider in its price effects analysis – price undercutting, price depression, and price suppression."[149] To the contrary, it is undisputable that the conjunctive in the second sentence of Article 3.2 is "or," not "and." In the context of Article 3.2, the plain meaning of the conjunctive "or" indicates that an investigating authority, when it considers the price effects of dumped imports, need not consider, or arrive at a decision regarding, all three lines of inquiry.[150] Rather, there are three alternative ways that it can consider price effects: price undercutting, price depression, or price suppression.[151] And as the report in *US – Ripe Olives from Spain* further explained, "a consideration of any of the three price effects [set forth in Article 3.2] can independently satisfy the requirement in Article 3.1 … to examine the 'effect … on prices in the domestic market for

[145] *See* Argentina's Responses to the Panel's First Set of Questions, paras. 81-82 (arguing that the USITC's refusal to consider and review evidence of no price suppression is inconsistent with the obligations of Article 3.2). The record clearly demonstrates that the USITC considered price suppression, but "[g]iven the significant underselling and the market share shift, … [did] not reach a conclusion as to whether the domestic producers would have been able to further increase prices to a significant degree than they did but for subject imports." USITC Final Report at 38-39 (Exhibit ARG-01).

[146] U.S. Responses to the Panel's First Set of Questions, para. 82.

[147] *See China – GOES (AB)*, para. 130 (noting that "[b]y using the word 'consider', Articles 3.2 and 15.2 do not impose an obligation on an investigating authority to make a *definitive determination* on the volume of subject imports and the effect of such imports on domestic prices" (italics original)).

[148] *US – Ripe Olives from Spain (Panel)*, para. 7.229 (underline added).

[149] Argentina's Responses to the Panel's First Set of Questions, para. 84 (underline added).

[150] *See China – HP-SSST (AB)*, para. 5.156 (the report, noting that the second sentence of Article 3.2 includes the terms "or" and "otherwise," did not read Article 3.2 as requiring an investigating authority to demonstrate the existence of price depression or price suppression when considering the existence of price undercutting).

[151] *See* AD Agreement, Article 3.2, second sentence ("[w]ith regard to the effect of the dumped imports on prices, the investigating authorities shall consider whether there has been a significant price undercutting by the dumped imports as compared with the price of a like product of the importing Member, or whether the effect of such imports is otherwise to depress prices to a significant degree or to prevent price increases, which otherwise would have occurred, to a significant degree" (underline added)).

like products'."[152]

81. Second, Argentina misconstrues the reasoning of the panels in *Korea – Pneumatic Values* and *China – Autos (US)*. Argentina argues that the reasoning in *Korea – Pneumatic Values* supports its position because the panel there "considered that where an investigating authority concludes that the effect of dumped imports is price depression or price suppression notwithstanding the fact that there is consistent price overselling over the POI, 'an objective examination of positive evidence […] requires that an investigating authority faced with evidence of consistent average price overselling, or relevant arguments of interested parties, take this into account in its consideration and explanations.'"[153]

82. Argentina quotes the panel's finding in *Korea – Pneumatic Values* out of context. Argentina cut the following phrase (right where the ellipsis appears above) from the panel's statement: "in the context of price suppression or depression and the ultimate determination under Article 3.5."[154] This phrase indicates that the panel's finding is limited to obligations under Article 3.5 and does not address obligations under Article 3.2 or Article 3.1. Therefore, the panel's reasoning in *Korea – Pneumatic Values* does not support Argentina's argument that an authority's decision not to reach a conclusion about price suppression under Article 3.2 can be challenged under Article 3.1 on a standalone basis.

83. Argentina's reference to the report in *China – Autos (US)* suffers a similar defect. In that dispute, the United States contended that China's finding of price depression was inconsistent, in part, with Articles 3.1 and 3.2.[155] The report shows that China's investigating authority did not consider price undercutting or price suppression during its injury investigation – it only considered price depression – and the United States did not contend that Article 3.2 obligated China to undertake the other two analyses.[156] After evaluating the U.S. claim in regard to the authority's consideration of price depression, the panel found that China's investigation failed "to reflect an objective examination of overselling by the subject imports in finding price depression."[157] The question addressed by the panel in *China – Autos (US)* thus involved the analysis of price depression. The question being addressed here is completely different; here Argentina argues that Articles 3.1 and 3.2, or Article 3.1 on a standalone basis, obligate the USITC to consider and reach a conclusion about price suppression. The report in *China – Autos*

[152] *US – Ripe Olives from Spain (Panel)*, para. 7.258; *see China – HP-SSST (AB)*, para. 5.156 ("the two inquiries under the second sentence of Article 3.2 are separated by the words 'or' and 'otherwise'. The elements that are relevant to a consideration of whether there has been 'significant price undercutting' may, therefore, 'differ from those relevant to the consideration of significant price depression and suppression'" (quoting *China – HP-SSST (Panel)*, para. 7.129)).

[153] Argentina's Responses to the Panel's First Set of Questions, para. 85 (ellipsis original).

[154] *Korea – Pneumatic Values (Panel)*, para. 7.299 (underline added).

[155] *See China – Autos (US) (Panel)*, paras. 7.238, 7.254 (the U.S. claim also argued that China's finding was inconsistent with Articles 15.1 and 15.2 of the SCM Agreement).

[156] *See China – Autos (US) (Panel)*, paras. 7.234-7.236.

[157] *China – Autos (US) (Panel)*, para. 7.271 (underline added).

(US) does not address Argentina's argument, and thus should not be misrepresented as providing support for it.

84. Finally, if Argentina's argument is put into practice, the very act of collecting evidence about price effects would trigger a requirement to consider and reach definitive conclusions regarding all three ways under Article 3.2 in which dumped imports may have an effect on prices. Like every reasonable investigating authority, the USITC began its injury investigation by asking U.S. producers and importers to submit price data during the POI.[158] The USITC could not have known in advance what that data might show. And yet, according to Argentina, because the USITC decided to examine that data for price underselling, price depression, or price suppression – an understandable next step – "it was incumbent upon the USITC to therefore perform an objective examination, based on positive evidence, of these price effects on the domestic like product."[159] In other words, in Argentina's view, the three ways to consider price effects under Article 3.2 are not alternatives at all; *i.e.*, where an authority has found one type of price effect, but happens to have also considered data about the other two types, it has no choice but to reach a definitive finding about all three types of price effects.[160] Such an interpretation acts to deter an authority from ever considering price data regarding more than one of the inquiries articulated in Article 3.2. Clearly such a 'chilling effect' is at odds with the plain language of Article 3.2, which inconvertibly establishes three alternative ways by which an investigating authority can consider the effect of dumped imports on prices, but does not otherwise obligate an authority to consider – let alone reach a definitive conclusion on – more than one alternative.

85. The United States has fully demonstrated that Argentina's argument is without merit. As explained in our first written submission,[161] while Article 3.1 does require the injury determination to involve an "objective examination" and to be based on "positive evidence,"[162] Article 3.1 does not articulate the analysis that an authority must undertake to determine "the effect of the dumped imports on prices in the domestic market for like products." It is the succeeding paragraph – Article 3.2 – that does so. Article 3.2 does not obligate the USITC to decide whether the effects of the dumped imports suppressed prices, and Article 3.1 does not provide a backdoor to challenge that decision. Therefore, the Panel should reject Argentina's argument and find that the USITC's decision not to make a definitive conclusion about price suppression under Article 3.2 cannot be challenged under Article 3.1 on a standalone basis.

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[158] *See* Blank U.S. Producers' Questionnaire at IV-2 – IV-8) (Exhibit USA-33); Blank U.S. Importers' Questionnaire at III-2 – III-9 (Exhibit USA-34).

[159] *See* Argentina's Responses to the Panel's First Set of Questions, para. 78.

[160] Argentina's Responses to the Panel's First Set of Questions, para. 78; *see ibid.*, paras. 81-82.

[161] U.S. First Written Submission, paras. 172-177.

[162] AD Agreement, Article 3.1; *see Mexico – Anti-Dumping Measures on Rice (AB)*, paras. 163-164.

V. CONCLUSION

86. For the foregoing reasons, and for the reasons put forward in the U.S. first written submission, the U.S. opening statement at the first panel meeting, and the U.S. responses to the Panel's questions during and following the first substantive meeting, the United States respectfully requests that the Panel reject all of Argentina's claims.